

**FINDING AND STATEMENT OF REASON
OF THE
NORTH DAKOTA DEPARTMENT OF HEALTH
REGARDING PROPOSED RULE RELATING TO
WATER QUALITY STANDARDS**

FINDING

I find that emergency rulemaking to amend N.D. Admin. Code § 33-16-02.1-09(3)(b), relating to the Standards of Quality for Waters of the State, is necessary because imminent peril threatens public health, safety, or welfare, which is abated by emergency effectiveness.

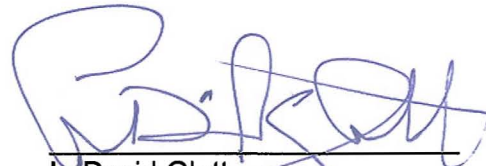
STATEMENT OF REASON

The rule changes the maximum limit of sulfate in a segment of the Sheyenne River. The rule will change the maximum level of sulfate in the segment of the Sheyenne River that runs from its headwaters to 0.1 mile downstream from the Baldhill Dam, including Lake Ashtabula, from 450 mg/L to 750 mg/L.

The rule changes are being made for the following reasons:

- 1) Devils Lake is now at 1451.7 ft-msl. This is 1.0 feet higher than the historical record set on June 27, 2009. USGS studies have indicated that the Devils Lake basin is in a wet cycle at this time. They also indicated that if Devils Lake reaches 1452.0 by the end of June, it has a 10-percent chance of overflowing into the Sheyenne River in the next 10 years, assuming no discharge from the State outlet. This would have major, adverse downstream consequences.
- 2) From May 15, 2009 to May 15, 2010, Devils Lake has increased 1.6 feet in depth with the total volume increase for Devils Lake and Stump Lake of 277,000 acre-feet. To reach 1458.0 feet in both lakes would require a storage increase of 1,372,000 acre-feet. This could occur in five years with precipitation similar to 2010, and three years with 2009 precipitation. Although the probability of having three consecutive years of precipitation similar to 2009's may be low, it is apparent that in a wet cycle, increasing lake levels can be expected to occur.
- 3) Rising lake levels inundate private property and productive farmland and stress the capacity of existing dike systems, roads acting as dikes, and other structures not designed to retain water. Their failure would result in additional flooding of cities and rural areas, impacting land productivity as well as municipal and rural infrastructure.

Dated May 25, 2010.



L. David Glatt
Environmental Chief
North Dakota Department of Health