

MAY 28 2010



NORTH DAKOTA
DEPARTMENT *of* HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov



May 25, 2010

Mr. John Walstad, Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard Ave., 2nd Floor
Bismarck, ND 58505

Dear Mr. Walstad:

On December 24, 2009, the North Dakota Department of Health filed the attached Notice of Intent to Adopt Administrative Rules with the Legislative Council. These rules have since been adopted, with slight modification, as final rules by the Health Council, but are awaiting approval by the Administrative Rules Committee and the United States Environmental Protection Agency. The Department has found that emergency rulemaking is necessary for the proposed N.D. Admin. Code § N.D.C.C. § 33-16-02.1-09(3)(b) and is declaring it to be an interim final rule effective as of the date that this letter and the Department's Finding and Statement of Reason are filed with the Legislative Council.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. David Glatt".

L. David Glatt, P.E., Chief
Environmental Health Section
ND Department of Health

LDG/cc
Attach.

Environmental Health
Section Chief's Office
701.328.5150

Division of
Air Quality
701.328.5188

Division of
Municipal Facilities
701.328.5211

Division of
Waste Management
701.328.5166

Division of
Water Quality
701.328.5210



— State of —
North Dakota
Office of the Governor

John Hoeven
Governor

May 28, 2010

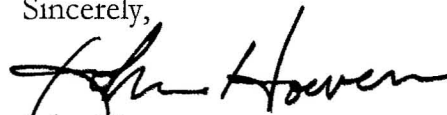
Dave Glatt
Environmental Health Chief
Department of Health
600 E Boulevard Ave.
Bismarck ND 58505-0200

Dear Dave,

On May 26, 2010, I received your request to approve an interim rule under the emergency rulemaking process, and I find that it is necessary under N.D.C.C. § 28-32-03(2)(a). The interim rule shall be effective when filed with the legislative council.

As required by statute, the Department shall take the appropriate measures to make the interim rule known to every person who may be affected by it. It is my understanding that the Health Department has held a public hearing and taken public comment on the rule and that the Health Council has voted to support the rule change.

Sincerely,


John Hoeven
Governor

38:34:35



May 25, 2010

RECEIVED
MAY 26 2010
BY: _____

The Honorable John Hoeven
Governor of North Dakota
600 E. Boulevard Avenue
Bismarck ND 58505-0001

Dear Governor Hoeven:

The North Dakota Department of Health recently received letters from the North Dakota State Water Commission and the city of Devils Lake describing widespread flood impacts affecting the environment, economic stability and public health in the Devils Lake region (see enclosed). The letters describe the need for an emergency response to flood conditions and request the department to initiate immediate action.

The following issues are of concern:

- 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.

In an effort to address the widespread flood impacts in the Devils Lake region, the department finds that emergency rulemaking is necessary and is requesting the

authority to implement an interim emergency rule to reclassify stream water quality standards for a portion of the Sheyenne River. This action would allow an immediate increase of discharge from the west end of Devils Lake in an effort to stabilize or decrease lake levels, thus reducing the impact of flooding.

Under N.D.C.C. § 28-32-03, emergency rules are appropriate if "[i]mmminent peril threatens public health, safety or welfare, which would be abated by emergency effectiveness." With your approval, the Department of Health has the authority to determine that emergency rulemaking is necessary and declare the rule to be an interim final rule. An emergency rule becomes effective "no earlier than the date of filing with the legislative council of the notice required by section 28-32-10." Notice for this rule has already been filed with the Legislative Council, as the rule has already been subject to the public participation process and been adopted by the Health Council. The rule will become permanently effective once it is approved by the Administrative Rules Committee, published in the North Dakota Administrative Code, and approved by the United States Environmental Protection Agency. Due to the emergency conditions in Devils Lake, the Department would like to use emergency rulemaking so that the rule may be effective while the rule is going through the final stages of the formal rulemaking process. With your approval, the Department will declare the rule to be effective upon the filing of its Finding and Statement of Reasons with the Legislative Council. As with all rules, the emergency rule will expire after 180 days, unless adopted as a final rule.

We request your approval of the attached emergency rule.

If you have any questions relating to this matter, please contact me at 701-328-5150.

Sincerely,

A handwritten signature in black ink, appearing to read "L. David Glatt", written over a horizontal line.

L. David Glatt, P.E., Chief
Environmental Health Section

LDG/MTS:dlp
Enclosures

COPY



NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov



December 23, 2009

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Dear Mr. Walstad:

The Notice of Intent to Amend Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,

A handwritten signature in black ink, appearing to read "L. David Glatt".

L. David Glatt, P.E. Chief
Environmental Health Section
ND Department of Health

Enclosures

NOTICE OF EMERGENCY EFFECTIVENESS
OF PROPOSED AMENDMENT TO
N.D. ADMIN. CODE § 33-16-02.1-09(3)(b)

TAKE NOTICE that the North Dakota Department of Health has, with the approval of the governor, found that emergency rulemaking is necessary and is declaring the proposed amendment to N.D. Admin. Code § 33-16-02.1-09(3)(b) effective as of May 26, 2010. This proposed amendment has been adopted by the North Dakota Department of Health but is awaiting review by the Administrative Rules Committee, publication in the North Dakota Administrative Code, and approval by the United States Environmental Protection Agency.

The proposed amendment to N.D. Admin. Code § 33-16-02.1-09(3)(b) adds a site-specific sulfate standard of 750 mg/L for the Sheyenne River from its headwaters to 0.1 mile downstream from Baldhill Dam.

The proposed amendment may be reviewed at the Department of Health, 918 East Divide Ave., Bismarck, ND, or on the department's website at www.ndhealth.gov. A copy of the proposed amendment may be requested by writing the above address or calling 701.328.5210.

Dated this 26th day of May 2010.



L. David Glatt, P.E., Chief
Environmental Health Section
N.D. Department of Health

NOTICE OF INTENT TO
AMEND ADMINISTRATIVE RULES
RELATING TO STANDARDS OF WATER QUALITY

TAKE NOTICE that the North Dakota Department of Health will hold a public hearing to address proposed amendments to the Standards of Quality for Waters of the State, N.D. Admin. Code Chapter 33-16-02.1, at the Environmental Training Center, 2639 East Main Ave., Bismarck, N.D. on Wednesday, February 17, 2010, at 1:00 p.m.

The purpose of the proposed amendments is to complete the Department's triennial review of the Standards of Quality for Waters of the State, as required by 33 U.S.C. § 1313(c). The Department is proposing amendments to N.D.C.C. § 33-16-02.1-09, Table 1, Table 2, and Appendix II, as part of this triennial review. The proposed amendments are as follows:

1. Revise N.D.C.C. § 33-16-02.1-09(1)(b) classification of Class IA streams to clarify that softening or other treatments may be considered in determining whether the ambient water quality meets the Department's requirements and to remove the municipal and domestic use designation for the segment of the Sheyenne River from its headwaters to 0.1 mile downstream from Baldhill Dam. Revisions to Appendix I, Stream Classifications, were also made to reflect this change in the Sheyenne River's designated use.
2. Revise N.D.C.C. § 33-16-02.1-09(3)(b) numeric standards for Class IA streams to add a site-specific sulfate standard for the Sheyenne River from its headwaters to 0.1 mile downstream from Baldhill Dam.
3. Revise N.D.C.C. § 33-16-02.1-09(3)(e) numeric standards for lakes and reservoirs to clarify that reservoirs located on Class IA, Class II, or Class III streams have the parameter limitations for that class stream.
4. Revise Table 1, Maximum Limits for Substances in or Characteristics of Class I Streams, to remove the fecal coliform maximum limit and make editorial changes to the nitrates maximum limit.
5. Revise Table 2, Water Quality Criteria, to update numeric criteria based on toxicological information from the U.S. Environmental Protection Agency.
6. Revise Appendix II, Lake Classification, to clarify that it applies to reservoirs and to clarify that a default classification of Class 4 applies to lakes not specifically listed in Appendix II. Editorial corrections were also made to certain lakes or reservoirs.

The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000, so a regulatory analysis was not required.

The proposed amendments may be reviewed at the North Dakota Department of Health, 918 East Divide Ave., Bismarck, ND, or on the Department's website at www.ndhealth.gov. A copy of the proposed amendments may be requested by writing the above address or calling the Department at 701-328-5210. Written or oral comments on the proposed amendments sent to the above mailing address or telephone number and received by March 1, 2010, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Department at the above telephone number at least one day prior to the public hearing.

Dated this 24th day of December 2009.



L. David Glatt
Environmental Health Section