

Testimony
Administrative Rules Committee
Thursday, June 10, 2010
North Dakota Department of Health

Good morning, Chairman Klein and members of the Administrative Rules Committee. My name is L. David Glatt, chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to request approval of the amendments to the Standards of Quality for Waters of the State, N.D. Administrative Code Chapter 33-16-02.1.

In response to the Committees questions relating to the development and content of the rules, I provide the following:

1. The rules were not a requirement of statutory changes made by the legislative assembly.
2. The purpose of the amendments is to complete a triennial review of the Standards for Quality for Waters of the State as required by federal statute 33 U.S.C. 1313(c). Pursuant to the requirements of the Clean Water Act (CWA), each state must develop and adopt water quality standards for the maintenance of beneficial uses of surface water. These standards must be reviewed and amended as necessary once every three years and are not considered final until approved by the U.S. Environmental Protection Agency (EPA). If water quality standards are not establish by a state, EPA has the authority to establish standards as appropriate.
3. The standards review/adoption process included the following notifications, approvals and hearings:

Emergency Rule :

- a. July 15, 2009 – Pursuant to NDCC 28-32-03, an Emergency Rule was approved modifying the standards for sulfate in a portion of the Sheyenne River from 450 milligrams per liter (mg/l) to 750 mg/l.
- b. August 11, 2009 – North Dakota State Health Council approved the Emergency Rule and authorized the Department of Health to proceed to public comment.
- c. August 28, 2009 – Public Notice of Hearing

- d. October 5, 2009 – Conducted Public Hearing in Bismarck
- e. October 6, 2009 – Conducted Public Hearing in Valley City
- f. October 7, 2009 – Conducted Public Hearing in Devils Lake
- g. October 23, 2009 – Public Notice Extending Comment Period to November 9, 2009

Responding to comments received from the EPA, the department combined the Emergency Rule and Water Quality Standard triennial review. This action will allow EPA to review all comments relating to the modifications to Water Quality Standards associated with the Sheyenne River. The Water Quality Standards triennial review public comment process was as follows:

- a. December 30, 2009 – North Dakota State Health Council approved incorporating the Emergency Rule comments into the Water Quality Standards Triennial Review.
 - b. January 4, 2010 – Public Notice of Intent to amend administrative rules relating to Standards of Water Quality.
 - c. February 17, 2010 – Public hearing conducted in Bismarck
 - d. March 1, 2010 – Public comment period ended.
 - e. April 28, 2010 – North Dakota State Health Council adopted rule amendments.
 - f. April 28, 2010 – North Dakota Attorney General's Opinion
4. Pursuant to the public notification, the department received 58 (30 associated with the triennial review and 28 with the Emergency Rule) responses from individuals, cities, groups or government agencies providing 44 different comments. A response to comments document has been provided in your rule information packet. Most of the comments related to the change in the sulfate standard for a portion of the Sheyenne River from its headwaters to 0.1 mile downstream of the Baldhill Dam. Applicable comments primarily related to the impact of a water quality standard change on beneficial uses, need for additional study, establishing the sulfate concentration as a maximum and the authority for the Department to modify the standards.
5. The cost to provide public notice through publication in the appropriate newspapers totaled \$3,775.20.

6. The North Dakota Department of Health is required by the EPA to periodically review the Standards of Quality for Waters of the State of North Dakota. This review is necessary to ensure all designated beneficial uses of the water are maintained at a quality necessary for these purposes. The North Dakota Department of Health revised several parts of the Standards. The significant changes to the Water Quality Standards are as follows:

- a. Numeric Criteria: There are several changes to numeric criteria in the revised Standards. Most numeric criteria remain the same; however, the allowable concentrations for some parameters either increase or decrease. These changes in concentrations reflect the application of best available science to the understanding of impacts to human health and aquatic life.
- b. Site-specific criterion for sulfate on the Sheyenne River from its headwaters to 0.1 mile downstream from Baldhill Dam. The change allows for a maximum concentration of 750 mg/l sulfate (total). The municipal use designation is removed from that reach of the Sheyenne River.

All other designated "water usages" for this reach of the Sheyenne River including protection of fish and aquatic biota, recreation, agricultural and industrial use will be maintained.

- c. The option of using fecal coliform bacteria for compliance purposes is removed. E. coli bacteria concentration must be used for regulatory compliance. Regulated entities were allowed three years to transition to this requirement. Upon final adoption of this rule, E. coli bacteria will be the only accepted parameter.
- d. For a lake not specifically listed in Appendix II, a default classification of Class 4 applies.

The parameter limitations designated for Class I streams apply to Class 4 lakes, whether listed or not.

7. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

8. A regulatory and economic analysis has been prepared and found no adverse impacts on small entities. A copy of the analysis has been provided to the Committee for review.
9. A takings assessment was prepared and found no adverse impact. A copy of the analysis has been provided to the Committee for review.
10. The Standards of Water Quality for the State are not being adopted pursuant to NDCC 28-32-03.

This concludes my testimony. I am happy to answer your questions concerning the proposed amendments in the Water Quality Standards.