

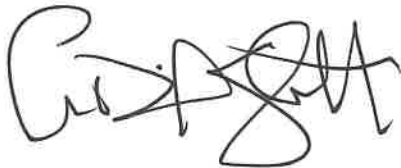
April 10, 2023

Liz Fordahl
Counsel
Legislative Council
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Ms. Fordahl:

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

Sincerely,



L. David Glatt, P.E.
Director, North Dakota Department of Environmental Quality

Enclosures

FULL NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES RELATING TO STANDARDS OF QUALITY FOR WATERS FOR THE STATE

TAKE NOTICE that the North Dakota Department of Environmental Quality (NDDEQ) will hold a public hearing to address proposed amendments to the Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33.1-16-02.1 at 5:30 p.m. CST. The hearing will be held on June 21, 2023, at the NDDEQ, 4201 Normandy St., Bismarck, ND 58503-1324, or remotely by video conference by emailing pwax@nd.gov for details.

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

The proposed amendments to the Standards of Quality for Waters of the State, N.D. Admin. Code ch. 33.1-16-02.1, are the result of the NDDEQ's period review of the Standards of Quality for Waters of the State, as required by 33 U.S.C. § 1313(c). As proposed, the NDDEQ's amendments will provide clarification in the standards and include changes to the narrative and numeric criteria. Specifically, NDDEQ is proposing the following amendments.

Summary of Proposed Changes to the Standards

1. N.D. Admin. Code § 33.1-16-02.1-08. General water quality standards:

- Minor grammatical edits to 33.1-16-02.1-08(2)(a) and (c).

2. N.D. Admin. Code § 33.1-16-02.1-09. Surface water classifications, mixing zones, and numeric standards:

- Edited formatting of 33.1-16-02.1-09 Table 1: (1) Currently the text in the column heading is underlined and it should not be underlined, and (2) revised font in the acute and chronic ammonia criteria formulas for consistency.
- Add Cyanotoxin numeric criteria to Table 1 for Cylindrospermopsin of 15 µg/L and Microcystins of 8 µg/L for the protection of the beneficial use of recreation.
- Add E. Coli criterion to protect Secondary Contact Recreation uses to Table 1 for Class III streams of not to exceed 344 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 1,118 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.

- Add the USEPA 2018 CWA Section 304(a) recommended aluminum national criteria¹ (2018 Aluminum Criteria) to Table 1 to be used as appropriate for site specific needs. The Aluminum criteria is based upon multiple linear regression (MLR) models for fish and invertebrate species. Data requirements are pH, dissolved organic carbon, and total hardness to quantify the effects of these water chemistry parameters on the bioavailability and associated toxicity of aluminum to aquatic organisms.
- Withdraw chronic mercury criterion of 0.88 µg/L in Table 2.
- Minor grammatical edit to footnote 6 in Table 1.

3. Appendix I

- Edit “Little Muddy Creek” to “Little Muddy River.”

The proposed amendments may be reviewed at the office of the NDDEQ, 4201 Normandy St., Bismarck, ND 58503-1324 or on its website at: <https://deq.nd.gov/PublicNotice.aspx>. A copy of the proposed rules, supporting information and/or a regulatory analysis may be requested by writing the above address, emailing pwax@nd.gov, or calling 701-328-5268.

Written or oral comments on the proposed rules sent to the above address or telephone number and received by July 3, 2023, will be fully considered.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access information. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5150 or deqEJ@nd.gov. TTY users may use Relay North Dakota at 711 or 1-800-366-6888. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the NDDEQ Non-discrimination Coordinator at least five business days prior to the public hearing.

Dated this 12 day of April 2023.

Karl Rockeman, Director
Division of Water Quality
NDDEQ

¹ See *Fact Sheet: Final 2018 Aquatic Life Ambient Water Quality Criteria for Aluminum in Freshwaters*, Office of Water, USEPA (Dec. 2018), available at <https://www.epa.gov/sites/default/files/2018-12/documents/aluminum-criteria-final-factsheet.pdf>.

Proposed Amendments to the Standards (Strikeouts are proposed deletions and underlined proposed additions)

CHAPTER 33.1-16-02.1

Subsection 2 of Section 33.1-16-02.1-08 is amended as follows:

2. Narrative biological goal.

- a. Goal. The biological condition of surface waters shall be similar to ~~that of~~ sites or water bodies determined by the department to be regional reference sites.
- c. Implementation. The intent of the state in adopting a narrative biological goal is solely to provide an additional assessment method that can be used to identify impaired surface waters. Regulatory or enforcement actions based solely on a narrative biological goal, such as the development and enforcement of North Dakota pollutant discharge elimination system permit limits, are not authorized. However, adequate and ~~adequate and~~ representative biological assessment information may be used in combination with other information to assist in determining whether designated uses are attained and to assist in determining whether new or revised chemical-specific permit limitations may be needed. Implementation will be based on the comparison of current biological conditions at a particular site to the biological conditions deemed attainable based on regional reference sites. In implementing a narrative biological goal, biological condition may be expressed through an index composed of multiple metrics or through appropriate statistical procedures.

Subsection 3 of Section 33.1-16-02.1-09 is amended as follows:

3. Numeric standards.

- a. Class I streams. The physical and chemical criteria for class I streams are listed in table 1 and table 2.
- b. Class IA streams. The physical and chemical criteria shall be those for class I streams, with the exceptions for E. coli, chloride, percent sodium, and sulfate as listed in table 1.
- c. Site-specific sulfate standard. The physical and chemical criteria for the Sheyenne River from its headwaters to one-tenth of a mile downstream from Baldhill Dam shall be those for class IA streams, with the exception of sulfate as listed in table 1.
- d. Class II streams. The physical and chemical criteria shall be those for class IA, with the exceptions for E. coli, chloride and pH and sulfates as listed in table 1.

None	E. coli ³⁴ (d)	<p><u>Class I, IA, and II:</u> Not to exceed 126 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 409 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.</p> <p><u>Class III:</u> Not to exceed 344 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 1,118 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.</p>
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Section 33.1-16-02.1-09, Table 1 is amended as follows:

TABLE 1 MAXIMUM LIMITS FOR SUBSTANCES IN
OR CHARACTERISTICS OF CLASSES I, IA, II, AND III STREAMS

<u>CAS¹ No.</u>	<u>Substance or Characteristic (a = aquatic life) (b = municipal & domestic drinking water) (c = agricultural, irrigation, industrial) (d = recreation)</u>	<u>Maximum Limit</u>
<u>CAS¹ No.</u>	<u>Substance or Characteristic (a = aquatic life) (b = municipal & domestic drinking water) (c = agricultural, irrigation, industrial) (d = recreation)</u>	<u>Maximum Limit</u>
<u>None</u>	<u>Cylindrospermopsin (d)</u>	<u>15 µl For Clean Water Act water quality criterion, no more than 3 excursions (10-day assessment periods) within a single recreational season in a single year.</u>
<u>None</u>	<u>Microcystins (d)</u>	<u>8 µl For Clean Water Act water quality criterion, no more than 3 excursions (10-day assessment periods) within a single recreational season in a single year.</u>

²The US EPA 2018 recommended national criteria (304(a) criteria) for aluminum can be used for site specific chronic and acute criteria when appropriate and data is available. The criteria is based upon multiple linear regression (MLR) models for fish and invertebrate species. Data requirements are pH, DOC, and total hardness to quantify the effects of these water chemistry parameters on the bioavailability and associated toxicity of aluminum to aquatic organisms.

Section 33.1-16-02.1-09, Table 2 is amended as follows:

7439-97-6	Mercury	1.7	0.88 <u>0.012</u>	0.050	0.051
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⁶Hardness dependent criteria. Value given is an example ~~only and is~~ based on a CaCO₃ concentration of 400 mg/l. Criteria for each case must be calculated using the following formula:

Chapter 33.1-16-02.1, Appendix I is amended as follows:

RIVER BASINS

SUBBASINS

TRIBUTARIES

CLASSIFICATION

Missouri River, including Lake Sakakawea and Oahe Reservoir
 Yellowstone
 Little Muddy-~~Creek~~ River near Williston

I
 I
 II