



December 28, 2016

United States Environmental Protection Agency  
Office of Water, Water Quality Standards Program  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue NW  
Mail Code: 4305T  
Washington, DC 2046

**RE:** Docket ID: EPA-HQ-OW-2016-0405, United States Environmental Protection Agency proposed rulemaking on baseline water quality standards for Indian reservations

Submitted at: <https://www.regulations.gov/comment?D=EPA-HQ-OW-2016-0405-0001>

Dear Office of Water:

The North Dakota Department of Health (department) appreciates the opportunity to respond to the U.S. Environmental Protection Agency's (EPA) advance notice to the proposed rulemaking for baseline water quality standards for Indian reservations. The department supports the efforts to restore and maintain the integrity of the nation's waters, including establishing water quality standards (WQS) for reservations not treated as a state (TAS) within and bordering North Dakota.

The department also recognizes that establishing WQS on border and shared waters has the potential to result in regulatory complications and conflicts between tribal and state governments. We support the establishment of appropriate standards that are compatible with the regional and site-specific natural conditions of a regulated water body. While adoption of baseline water quality standards for tribes without TAS may have some positive outcomes, it may also create implementation and administrative challenges. One area of concern relates to how conflicting standards or their implementation will be addressed between the state and tribes when there does not appear to be an avenue to arbitrate these disputes like there is for tribes with TAS (40 CFR §131.7).

One of the challenges of shared waters revolves around the potential for EPA to select baseline water quality criteria that are not compatible with established EPA-approved state standards, especially in cases where they could be more restrictive or not recognized in approved state standards. Promulgating baseline nationwide criteria from EPA-recommended water quality criteria in Clean Water Act (CWA) §304(a), prior to the state being ready to implement them, does not recognize the established state standards and runs the risk of not recognizing regional or site-specific water body criteria.

The department believes that doing either of these would complicate the state's ability to administer the CWA under §303 (e.g., triennial review, antidegradation, list of impaired waters), §401 and §402 (e.g., effluent limits, compliance schedules). Another issue is the lack of a mechanism/requirement for updating any baseline WQS adopted as required under CWA §303(c). The result of not reviewing and responding to the current science has the potential to result in shared waters with conflicting criteria and to have criteria that are either over- or under-protective.

Communities throughout the nation rely on water to fulfill many different beneficial uses which traditionally have been related to municipal, agricultural, industrial and recreational uses. We recognize these uses and strive to maintain water quality standards that support their use. Unconventional beneficial uses (i.e., cultural and ceremonial) and criteria to protect them pose challenges with shared waters, ranging from a limited understanding of what they are to what constitutes appropriate protections. Cultural and ceremonial differences between tribes and groups within tribes also can create challenges in their implementation. Allowing narrative criteria for the protection of non-101(a) uses creates opportunities for conflicts between states and tribes. Additionally, the department questions EPA's authority to promulgate WQS beyond the 304(a) criteria.

As an alternative to promulgating a one-size-fits-all WQS for reservations not TAS the department proposes that the EPA give tribes the option of assuming WQS criteria similar to the state they reside in or border, whichever they choose. While imperfect, this solution is practical in that it would reduce the potential conflict(s) on shared waters, provide WQS that are already EPA-approved, be updated periodically as required under §303, and seamlessly fit into the supporting CWA sections designed to provide the intricate symbiotic web of coverage to maintain, protect and restore the integrity of the nation's waters.

Again the North Dakota Department of Health appreciates the opportunity to comment at the beginning of the rulemaking process regarding the baseline water quality standards for tribes/reservations not being treated as a state. It is during these early stages that we believe the EPA is most likely to hear our voice and address our concerns.

Sincerely,



Karl Rockeman  
Director, Division of Water Quality  
North Dakota Department of Health