



State of Utah

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**MEMORANDUM**

TO: Water Quality Standards Workgroup

FROM: Chris Bittner, Standards Coordinator

DATE: April 5, 2022

SUBJECT: Informational Item: Update of EPA Activities

**Aluminum.** The comment period for the draft technical support document ended March 9, 2022. This was the second draft and updated the 2019 technical support document. The review document is available as the [Draft Technical Support Document: Implementing the 2018 Recommended Aquatic Life Water Quality Criteria for Aluminum \(pdf\)](#) (November 2021, EPA 800-D-21-001)

**Selenium.** In 2016, EPA released recommendations for selenium criteria that recommend hierarchal fish tissue and water criteria. In 2021, errata were issued and the [criteria document](#) updated. The errata recommend that “When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.” EPA is reviewing comments received by January 3, 2022 on the [draft technical support documents](#) regarding implementation of the 2016 selenium criteria.

DWQ continues to review the EPA documents and has commenced preparing an implementation plan for updating Utah’s selenium criteria. DWQ reviewed Idaho’s recalculated selenium criteria that is based on the absence of white sturgeon. White sturgeon were the most sensitive species to selenium in the toxicity database. Sturgeon do not inhabit Utah and are not needed as a surrogate for Utah fish species which supports recalculated and less stringent fish-tissue criteria for Utah.

When fish-tissue concentrations are unavailable, EPA recommends water-based criteria that are more stringent than Utah’s current 4.6 µg/l chronic criterion. The EPA water-based criteria will impact existing reasonable potential determinations for Utah discharge permits. Site-specific translators (translator between the concentration of selenium in fish tissue and water) may support different water-based criteria than the EPA defaults. Derivation of site-specific translators are discussed in the EPA technical support documents. Utah’s implementation guidance will be public noticed. DWQ anticipates releasing a review draft of the implementation guidance by the end of 2022.

**Financial Capability.** The EPA released the [Proposed 2022 Clean Water Act Financial Capability Assessment Guidance](#) and the comment period ends April 25, 2022. When finalized, it will replace the existing [1997 Guidance for Financial Capability Assessment and Schedule Development](#). These are the procedures recommended for evaluating a community's capability to fund Clean Water Act control measures in both the permitting and enforcement context. EPA is no longer considering the 2020 Financial Capability Assessment Guidance and the 2021 Financial Capability Assessment Guidance for Clean Water Act Obligations.

**Montana Nutrient Criteria.** In 2021, Montana passed new legislation ([SB 358](#)) that eliminates Montana's numeric nutrient criteria and substitutes the Narrative Standards. On January 11, 2022, The Upper Missouri River Waterkeeper filed a [Notice of Intent](#) to sue the EPA because the EPA failed to comply with its mandatory duty to review and approve or disapprove changes to a state's water quality standards under the Clean Water Act.