

August 31, 2023

Commissioner Katrina Kessler

By online submission at MPCA portal and email: [Site-Specific Sulfate Standard Framework - Policy Plan \(commentinput.com\)](#)

Re: Grand Portage Band of Lake Superior Chippewa's Comments on MPCA's Proposed Site Specific Sulfate Standards Framework.

Dear Commissioner Kessler:

Grand Portage comments here regarding MPCA's proposed Site Specific Sulfate Standards Framework. We are profoundly disappointed to see MPCA yet again seek to serve industry interests at the cost of the state's wild rice waters—much less by using a method that is little different than that already rejected by the Office of Administrative Hearings (“OAH”) in 2018.¹

In fact, MPCA does not actually propose “site-specific criteria” for the protection of wild rice. Instead this proposal is a permit to pollute for publicly-traded corporations that can afford adequate waste-water treatment. This is in spite of Tribal efforts to coordinate, collaborate, and consult with MPCA on issues related wild rice protection and the enforcement of the 10 milligram per liter sulfate standard (“Wild Rice Sulfate Standard”) for at least 20 years.

As a general matter, this process is fundamentally flawed. “Framework development” has here served as a tactic to delay implementation of Clean Water Act (“CWA”) protection and restoration of wild rice waters in Minnesota. The Wild Rice Sulfate Standard has been a Minnesota Rule since 1973 (50 years) but MPCA has failed to even try to implement it in discharge permits with few exceptions.

Now, in this rule making, MPCA claims that “significant natural variability in hydrology and other features of aquatic environments that support wild rice” prevents the MPCA from prescribing “a fixed, step-by-step approach to developing a SSS [site-specific standard] that

¹ Chief ALJ's Order, In the Matter of the Proposed Rules of the Pollution Control Agency Amending the Sulfate Water Quality Standard Applicable to Wild Rice and Identification of Wild Rice Rivers, Minnesota Rules parts 7050.0130, 7050.0220, 7050.0224, 7050.0470, 7050.0471, 7053.0135, 7053.0205 and 7053.0406 (Apr. 12, 2018) at https://mn.gov/oah/assets/9003-34519-pca-sulfate-water-quality-wild-rice-rules-chief-judge-reconsideration-order_tcm19-335811.pdf.

would suffice in all circumstances.”² But rather than adopt or even consider the established Tribal approach, **MPCA has now proposed to use essentially the same formula and approach to set site-specific sulfate criteria that failed in 2018.**

MPCA’s formula is based on the concentration of sediment iron, organic carbon and sulfide, and hinges on a theory that iron protects wild rice from damage caused by sulfide.³ But **MPCA’s own webpage cites research that contradicts MPCA’s proposed formula.**⁴ Not only is there is no scientific evidence that iron protects wild rice from sulfide damage, **MPCA’s plan would kill wild rice even faster.**

These same mesocosm studies show that iron-sulfide forms a plaque on wild rice roots and smothers the plant:⁵



Fig. 2 Sulfate-amended (left) and unamended (right) roots.

This research plainly confirms:

² See Framework for developing and evaluating site-specific sulfate standards for the protection of wild rice (June 2023) (“Framework”) at 5, at <https://www.pca.state.mn.us/sites/default/files/wq-s6-66.pdf>.

³ *Id.*

⁴ See MPCA, Protecting wild rice waters, *citing* LaFond-Hudson, S., et al., 2018. *Iron sulfide formation on root surfaces controlled by the life cycle of wild rice (Zizania palustris)*. *Biochemistry* 141, 95-106 at <https://doi.org/10.1007/s10533-018-0491-5>, at <https://www.pca.state.mn.us/air-water-land-climate/protecting-wild-rice-waters>.

⁵ LaFond-Hudson, S., et al., 2018. *Iron sulfide formation on root surfaces controlled by the life cycle of wild rice (Zizania palustris)*. *Biochemistry* 141, 95-106 at <https://doi.org/10.1007/s10533-018-0491-5>.

We exposed a model annual wetland plant, *Zizania palustris* [wild rice], to elevated sulfate concentrations (3.1 mM) and quantified the development of iron oxide and iron sulfide precipitates on root surfaces throughout the plant life cycle. During the onset of seed production, root surfaces amended with sulfate transitioned within 1 week from iron (hydr)oxide plaques to iron sulfide plaques . . . Sulfate-amended plants produced fewer and lighter seeds with less nitrogen than unamended plants.

Two years ago, MPCA was required by US EPA to list more than 30 wild rice waters on the impaired waters list—more than a decade after MPCA had promised to do so. MPCA’s clear unwillingness to enforce CWA protection for wild rice has been institutionalized in permitting, and rule-making. The Band views the two years since that time, purportedly to work on this SSS, as more stalling and ongoing prevention of NPDES permit implementation of TMDLs and WLAs rather than restoration of wild rice waters.

Wild rice harvest is one aspect of treaty-retained property rights. Treaties are the “supreme law of the land.”⁶ The CWA at Section 511(a)(3) provides that the Act “shall not be construed as . . . affecting or impairing the provisions of any treaty of the United States.” The CWA established the structure for regulating discharges of pollutants into the surface waters of the US, with primary administration and implementation of the Act by US EPA and US Army Corps of Engineers, in coordination with tribes and states. The objectives of the CWA are to restore and maintain the chemical, physical, and biological integrity of the nation’s waters and wetlands. US EPA, in its role as the primary administrator of CWA laws and regulations has a fiduciary obligation to ensure CWA WQS approvals and disapprovals are consistent with treaties, statutes, executive orders and other sources of federal law reflecting tribal reserved rights.

Further, CWA Section 303(c)(4)(B) authorizes US EPA, even in the absence of a state submission, to add a new or revised standard if it is necessary to ensure unsuppressed levels of harvest and consumption of reserved resources including wild rice. The loss of wild rice waters and productivity has suppressed Tribal harvest and consumption of wild rice. In 1905, Jenks reported that every tributary to the St. Louis River had wild rice. Not only have the number of locations where wild rice can be found been drastically reduced in many instances the quantity of rice available for harvest has been diminished, too. Immediate protection and restoration of this critical resource is needed to ensure viable harvests for future generations.

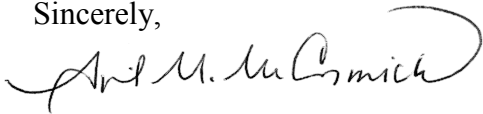
Commissioner Kessler: given your tenure with MPCA, you should know that we have been forced to do this too many times. It is insulting for MPCA to ignore uncontested, peer-reviewed research. It is insulting for MPCA to request again and again that Tribes share their Codes, field data, and knowledge, only for MPCA to ignore and reject it. It is insulting for MPCA to repackage the same SSS as the OAH rejected in 2018, itself all but a guarantee of litigation. It is impossible to view this as a good-faith effort to work with Tribes.

We submit our prior comments on this same topic and incorporate them all again here. We ask that you discard this proposal and immediately begin to enforce the Wild Rice Sulfate Standard as written, in accordance with our long-proposed and scientifically-sound regulatory model,

⁶ US Const., Art. VI, cl.2.

which rests upon requiring polluters to use established and available technologies to clean up their own messes.

Sincerely,

A handwritten signature in cursive script that reads "April M. McCormick". The signature is fluid and includes a large loop at the end of the last name.

April McCormick

Secretary-Treasurer

Encl.

c. Debra Shore, US EPA Region 5 Administrator

Grand Portage List of Prior Comments on Same Topic

Please find below a cursory and incomplete list of written comments provided to MPCA regarding the protection of wild rice from 2010 to present (in some cases including unsigned but final versions where originals have been submitted to MPCA). These comments do not include consultation, coordination, or collaboration that has occurred on-line and face-to-face, nor does it include email correspondence.

1. 2023. April 4. Letter to MPCA from Grand Portage Band of Lake Superior Chippewa regarding MPCA Pesticide General Permits – Wastewater Permit Reissuance.
2. 2021. April 27. Letter to MPCA from US EPA regarding Addition of Water to Minnesota's 2020 List of Impaired Waters under Clean Water Act, Section 303(d).
3. 2021. April 8. Letter to MPCA from Grand Portage Band of Lake Superior Chippewa regarding Comments on MPCA 2020-2021 triennial Standards Review.
4. 2021. March 18. Letter to US EPA Regional Administrator from the Midwest Alliance of Sovereign Tribes regarding EPA Tribal Consultation Regarding MPCA 2020 303(d) List Submission to US EPA.
5. 2021. March 3. Letter to US EPA Regional Administrator from the Minnesota Indian Affairs Council regarding MPCA's 303(d) List Submission to US EPA.
6. 2021. February 24. Letter to the Administrative Law Judge, Office of Administrative Hearings, from ten federally recognized Tribes: Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Lower Sioux Indian Community, Mille Lacs, Minnesota Chippewa Tribe, Prairie Island Indian Community, Red Lake Nation, Shakopee Mdewakanton Sioux Community, White Earth, regarding Comments on Proposed Amendments to Rules Governing Water Quality Standards, Minnesota Rules chapters 7050 and 7053 (MPCA's planned amendments to Class 3& 4 water quality standards).
7. 2020, October 2. Letter to US EPA Regional Administrator from the Minnesota Indian Affairs Council regarding MPCA's 303(d) List Submission to US EPA.
8. 2020. May 8. Letter to MPCA from Grand Portage Band of Lake Superior Chippewa regarding the "Results of Extended Analysis of Data and Listing Wild Rice Waters on MPCA 2020 303(d) List.
9. 2020. April 27. Letter to MPCA from the Minnesota Indian Affairs Council regarding MPCA's Exclusion of Impaired Wild Rice Waters from MPCA 2020 303(d) List.
10. 2020. January 8. Letter to MPCA from the Minnesota Chippewa Tribe regarding Comments on Minnesota's 2020 Draft Clean Water Act § 303(d) Impaired Waters List.
11. 2018. December 18. Tribal Wild Rice Task Force Report. Written by the Twelve Tribes whose homelands lie within the boundaries of MN. The Report responds to the 40th Governor of the State of Minnesota creating a "Wild Rice Task Force" that is *disrespectful and contrary to Executive Order 13-10 ... and directly relegates the Tribes to the status of special interest groups and industry rather than honoring Tribal sovereignty (Minnesota Chippewa Tribe Resolution 107-18)*. The purpose of the Tribal Wild Rice Task Force was to review existing literature, including literature and information based on tradition, culture, and science, that is available to inform the

understanding of the impacts of sulfate or other sulfur compounds on habitat conditions on wild rice, identify information gaps, make recommendations on priorities for wild rice research, and prepare a report with recommendations in a similar fashion to that included in Executive Orders 18-08 and 18-09, providing a report to the Governor by December 15th, 2018.

12. 2018. Expanding the Narrative of tribal Health: The Effects of Wild Rice Water Quality Rule Changes on Tribal Health. Fond du Lac Band of Lake Superior Chippewa Health Impact Assessment.
13. 2018. June 20. Letter to the Governor from the Minnesota Chippewa Tribe regarding Executive Order 18-08 Establishing the Governor's Task Force on Wild Rice.
14. 2017. November 22. Written comments to the Administrative Law Judge, Office of Administrative Hearings from Fond du Lac Bands of Lake Superior Chippewa regarding
15. 2017. October 26. Written Comments to the Administrative Law Judge, Office of Administrative Hearings, in support of oral testimony provided by the Grand Portage Band of Lake Superior Chippewa on the "MPCA's Statement of Need and Reasonableness on its proposed approach for sulfate standards to protect wild rice."
16. 2017. May 25. Letter to MPCA from the Minnesota Indian Affairs Council regarding "Proposed Rule Revision for Minnesota's Sulfate Standard to Protect Wild Rice."
17. 2017. March 15. Letter to MPCA from the Minnesota Chippewa Tribe regarding the MPCAs "Proposed Rule Revision for Minnesota's Sulfate Standard to Protect Wild Rice."
18. 2016. September 6. Letter to MPCA from Grand Portage and Fond du Lac Bands of Lake Superior Chippewa regarding the Draft Technical Support Document: "Refinements to Minnesota's Sulfate Water Quality Standard to Protect Wild Rice, July, 2016."
19. 2016. September 2. Letter to MPCA from Grand Portage regarding the Draft Technical Support Document: "Refinements to Minnesota's Sulfate Water Quality Standard to Protect Wild Rice," July 18, 2016.
20. 2016, August 30. Letter to MPCA from Grand Portage Band of Lake Superior Chippewa regarding the Draft 2016 Minnesota Clean Water Act Section 303(d) Impaired Waters List.
21. 2016. June 28. Letter from US EPA to MPCA regarding "MPCA's Legal Authority to Implement its Authorized NPDES Program While Working Under Laws of Minnesota 2016, Chapter 165, Section 1."
22. 2016. April 5. Letter from US EPA to MPCA regarding "MPCA's Legal Authority to Implement its Authorized NPDES Program While Working Under Laws of Minnesota 2015, 1st Spec. Sess. Chapter 4, Article 4, Section 136"
23. 2015. December 18. Letter to MPCA from Grand Portage and Fond du Lac Bands of Lake Superior Chippewa regarding MPCAs March 2015 Proposed Approach for Minnesota's Sulfate Standard to Protect Wild Rice
24. 2015. June. Earth Economics. The Value of Nature's Benefits in the St. Louis River Watershed.

25. 2014, June 20. Kjerland, T., Handbook of Survey Methods for Monitoring Wild Rice.
26. 2014, February 7. Letter to MPCA from the Minnesota Chippewa Tribe regarding the Definition of “waters used for the production of wild rice”; wild rice water quality standards.
27. 2012, October 16. Letter to MPCA from Bois Forte, Grand Portage and Fond du Lac Bands of Lake Superior Chippewa regarding the Definition of “waters used for the production of wild rice.”
28. 2011, May 13. US EPA letter to Minnesota House and Senate Representatives regarding H.F. 1010 and S.F. 1029 to modify or suspend the current, federally-approved water quality standard for wild rice of 10 mg/L.
29. 2011 MPCA promises to add wild rice waters to the 2014 impaired waters list if EPA approves the 2012 list without any impaired wild rice waters.
30. 2010, December 14. Letter to MPCA from Grand Portage and Fond du Lac Bands of Lake Superior Chippewa regarding MPCA Consultation and Communication with Tribes Regarding the Protection of Wild Rice.
31. 2010, January 25. Letter to MPCA from Fond du Lac Band of Lake Superior Chippewa regarding MPCA December 15, 2009, Request for Historical information on Wild Rice.