



# Bois Forte

TRIBAL GOVERNMENT

Minnesota Pollution Control Agency

c/o Stephanie Lyons

525 Lake Avenue South, Ste. 400

Duluth, MN 55802

May 21 2024

RE: Draft NPDES permit and variance from mercury water quality standards for the City of Grand Marais wastewater treatment facility, permit MN0020010

Dear Ms. Lyons:

The Bois Forte Band of Chippewa ("the Band") is providing comments regarding the draft NPDES permit variance issuance pending for the city of Grand Marais wastewater treatment facility, permit MN0020010.

We understand that the facility treatment capacity to treat and discharge 990,000 gallons of water per day, in to Lake Superior. The reason for mercury variance explained is that a variance would allow the Grand Marais facility to develop appropriate controls to minimize mercury levels before discharge. The variance, if allowed, also requires the facility to explore and minimize mercury sources, investigate mercury removal technology and comply with mercury attainment limits.

Bois Forte as a federally-recognized Indian Tribe retains hunting, fishing and usufructuary rights on lands and waters in northeastern Minnesota through the 1854 Treaty of LaPointe (the Ceded Territory"). The 1854 Ceded Territory agreement ceded more than six million acres of land to the United States, but usufructuary rights for natural resources were retained by tribes, including Bois Forte. Within the Ceded Territory, Tribes are co-managers and stewards of the land, and have legal interest in protecting and sustaining natural resources.

Mercury is a bio-accumulative chemical that leads to substantial developmental health concerns for children and fetuses and neurological damage in adults as result of mercury ingestion through tainted fish consumption. Within the Lake Superior basin, Minnesota water quality standards prohibit new or

expanded point source discharges of bio-accumulative chemicals or biochemical precursors of immediate concern, including mercury (MN WQS 7052). The current EPA-approved approved TMDL non-exceedance target for mercury in northeast Minnesota is 0.2 mg total mercury per kg of fish tissue. In water, this the exceedance limit is 1.3 ng/L for the Lake Superior Basin, and 6.9 ng/L for the remainder of the state of Minnesota.

Lake Superior fish consumption recommendations are below subsistence levels. Any persons who rely on the fish resource for sustenance are put at higher risk through implementing this variance, and Tribal usufructuary rights as mentioned are tarnished as well.


Between 2018-2023, average mercury levels reported did not exceed the wildlife criteria of 1.3 ng/L for in Lake Superior. However, it appears to Bois Forte that in 2023, MPCA projected an effluent quality daily maximum concentration of mercury as a worst-case concentration to be 9.8 ng/L, and possibly based the variance approval on that worst-case concentration.

Providing a variance for discharge at an order of magnitude higher than the lowest concentration of mercury measured in the previous five years seem inappropriate in terms of protecting the water and wildlife resource; it weakens health and safety protections to the persons and communities living adjacent to and utilizing sustenance food supply from the resource; and it undermines adjacent community efforts to reduce mercury contamination in Lake Superior wildlife that those communities have worked long and hard to achieve.

Bois Forte respectfully requests that a variance mercury discharge from the Grand Marais water treatment facility be limited to the average high mercury concentration measured between 2018-2023 of 6.12 ng/L. We also request that the proposed pollutant mitigation plan be provided to MPCA for review concurrent with variance submittal to EPA.

Thank you for your consideration of Bois Forte comments on this issue.

Sincerely,

DocuSigned by:  
  
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Cathy Chavers

Chairperson, Bois Forte Band of Chippewa

Cc. Melanie Nowin, MN Tribal Liaison, US EPA, Region 5

Bois Forte Tribal Council

Bois Forte Executive Director