



LEECH LAKE BAND OF OJIBWE

DIVISION OF RESOURCE MANAGEMENT

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Re: Reissuance of NPDES/SDS Permits MN0031879, MN0055948, and Preliminary Determination to Deny Variance from Class 4A Sulfate Water Quality Standard

The Leech Lake Band of Ojibwe is a Sovereign Tribal Nation with delegated authorities under Sections 106, 319, 401, & 303(c) of the Clean Water Act and holds usufructuary rights to hunt, gather and fish within the Leech Lake Reservation and 1855 Ceded Territory. Protection of water quality and treaty protected resources in this region is of utmost importance to Leech Lake Band members for their spiritual and physical wellbeing. We appreciate the opportunity to engage in the permit process and provide the following comments regarding the draft NPDES permits for the Keetac mine area and tailings basin.

We are very encouraged by the inclusion of a new PFAS monitoring requirement in these permits. The prevalence of PFAS compounds throughout industrial chemicals and processes has spread them widely and they pose a substantial threat to human health and the environment. The persistence of these compounds and the exceptionally low doses at which some PFAS compounds cause negative health outcomes should be a sign to stop production and use of these chemicals. Monitoring for the presence of PFAS in the discharges from Keetac is a positive first step towards regulating and eliminating this class of pollutant from mining waste.

The Band is also happy to see a requirement to perform a functional equivalency analysis to determine if seepage or other discharges from the tailings basin through groundwater are equivalent to a direct discharge to surface water. This analysis is necessary to ensure compliance with the Supreme Court's *Maui* decision, as well as to identify all sources of pollutant discharge from the tailings basin. This analysis would be improved by the inclusion of groundwater monitoring wells in order to evaluate for seepage beneath the basin caused by hydrostatic pressure, as well as to evaluate the volume and pollutant load of such a discharge. Additionally, the MPCA, rather than the permitted facility, should perform the analysis of data collected to determine if a functionally equivalent direct discharge exists.

The draft permits include a schedule of compliance for discharges of sulfate, including to Hay Lake, which is a wild rice water and is impaired for sulfate. The proposed schedule of compliance requires the applicant to achieve compliance with existing water quality standards for sulfate in 2030. This extension of the 2011 permit compliance schedule is wholly unacceptable and is a violation of anti-backsliding requirements in the Clean Water Act.

Minnesota adopted a 10 mg/L standard for sulfate in 1973. This standard was ignored and not enforced in permits for Keetac facilities until 2011, when a schedule of compliance was implemented requiring the polluter meet the standard in 2019. State laws passed in 2015 and 2016 were intended to modify the Keetac NPDES permit by invalidating the sulfate compliance schedule, but these modifications were not approved by EPA. As a result of the state laws, efforts to reduce sulfate pollution from Keetac ceased. The continued discharge of sulfate in excess of the 2011 permit are currently under investigation by EPA and enforcement action is pending.

Because a schedule of compliance was implemented in the 2011 NPDES permit issued to Keetac, an extension of that timeline constitutes backsliding and is generally not permitted. The circumstances do not meet one of the exceptions to allow backsliding. The draft permits state that the exception at 40 CFR 122.4(l)(2)(B)(1) applies because the 2016 law constitutes new information; this interpretation ignores the second half of the clause, which requires that information “would have justified the application of a less stringent effluent limitation at the time of permit issuance.” Because the 2016 law attempts to invalidate the sulfate standard for the permit, an action which would require EPA approval, the 10 mg/L sulfate standard would be unchanged without that federal approval, which still has not been granted. Thus, without EPA approval of a modification to the sulfate standard or the 2011 permit, the federal requirement to comply with the approved 10 mg/L sulfate standard remains, and no “new information” exists. The final sulfate limits included in the 2011 permit should be implemented immediately; if a schedule of compliance is absolutely necessary, the time allowed should be no more than that required to construct and implement treatment for sulfate.

The denial of the requested variance from the sulfate standard is fully supported by the Leech Lake Band of Ojibwe. The existing 10 mg/L sulfate standard is protective of wild rice and it is crucial that remaining wild rice beds are protected to ensure this relative persists throughout Minnesota. The recent purchase of US Steel by Nippon Steel, planned investments in American steel production by Nippon Steel, and protectionist tariffs implemented to boost domestic steel production are supportive of the conclusion that Keetac will be able to successfully implement sulfate treatment.

Conclusion

The Leech Lake Band of Ojibwe appreciates the opportunity to comment on the draft permits for the Keetac mining area and tailings basin. The inclusion of additional monitoring for PFAS and functionally equivalent direct discharges are positive aspects of this permit, as is the denial of the requested variance from the wild rice sulfate standard. The proposed extension of the 2011 schedule of compliance, which is proposed while EPA is working toward enforcement of violations of the final discharge limits, is gravely concerning. The Clean Water Act includes anti-backsliding regulations specifically to prevent regulators and permitted entities from continually delaying compliance with water quality standards. We look forward to the day when Hay Lake is no longer impaired for sulfate. Please contact me with any questions or to further discuss our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Tangren', with a stylized, cursive script.

Craig Tangren

Deputy Environmental Director, Leech Lake Band of Ojibwe

cc: Brandy Toft, Leech Lake Band of Ojibwe