

Fond du Lac Band of Lake Superior Chippewa

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April 22, 2019

Re: MPCA Request for comments on planned amendments to rules governing Water Quality Standards— Use Classifications 3 and 4, Minnesota Rules, chapters 7050 and 7053; Revisor's ID Number 04335

Ms. Izzo:

The Fond du Lac Band of Lake Superior Chippewa ("Band") appreciates this opportunity to provide our comments to the Minnesota Pollution Control Agency ("MPCA") on possible amendments to rules governing water quality standards for industrial (Class 3) and agricultural and wildlife (Class 4) designated uses. The Band is a federally recognized Indian tribe that retains hunting, fishing, and other usufructuary rights that extend throughout the entire northeast portion of the state of Minnesota under the 1854 Treaty of LaPointe¹ (the "Ceded Territory"). Within the Ceded Territory, all the signatory Bands have a legal interest in protecting natural resources.

Additionally, the Band has delegated water quality regulatory authority under §303(c) and §401 of the Clean Water Act (CWA), and has comprehensive water quality standards (WQS) approved by the US Environmental Protection Agency (EPA) applicable to the waters of our reservation. The Band implements our water quality standards to be as protective as possible of the designated beneficial uses for our surface water resources, including aquatic life, cultural, recreational, ceremonial and subsistence uses.

MPCA proposes that every water of the state would remain designated for industrial consumptive use, but would be classified under a single industrial consumption use class (Class 3). Similarly, the MPCA proposes that every water of the state, except for wetlands, would remain designated for agricultural use/irrigation (Class 4A). Currently all waters of the state (except wetlands) are designated as 4B waters, and under the proposed rule, every water of the state would retain this livestock/wildlife use. Wetlands are currently designated as Class 4C, but MPCA is proposing to eliminate the 4C use classification and designate all wetlands as 4A and 4B. The agency is also proposing to replace existing numeric standards for the current subclasses 3A-3D with a single narrative standard, and

¹ Treaty with the Chippewa, 1854, 10 Stat. 1109, in Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, Vol. II (Washington: Government Printing Office, 1904), available on-line at <http://digital.library.okstate.edu/kappler/Vol2/treaties/chi0648.htm> (last visited March 15, 2016).

replace numeric standards for Class 4A waters (bicarbonate, boron, pH, specific conductance, total dissolved salts and sodium) with a narrative standard, including a process for translating the narrative standard into a numeric effluent limit(s) for permitted dischargers. MPCA is proposing updated numeric standards for Class 4B waters that purportedly reflect current science.

MPCA clearly recognizes that removing a designated use requires substantial administrative effort and legal justification, and proposes the approach defined above as a means of avoiding that effort and “simplifying this rulemaking process.”² The agency apparently assumes that Class 2 (aquatic life) uses will still be maintained under existing standards for that class, but the reality is that Minnesota Class 2 water quality rules have *no* corresponding numeric standards limiting bicarbonates, total dissolved salts, specific conductance and sulfates to protect fish and other aquatic life. The Band is not aware of any instance where a numeric limit for any of these parameters has been established in state water quality permitting explicitly for the protection of aquatic life. MPCA’s own water quality assessments and stressor identification reports for impaired waters, along with extensive monitoring data, demonstrate that even the numeric limits currently in Class 3 and Class 4 water quality standards are not stringent enough to protect sensitive aquatic insects and fish.³

The MPCA has not proposed transferring any of these existing numeric criteria for salts, sulfate, and ionic pollution to Class 2 where they would protect fish and other aquatic life. However, the agency *is* proposing to move numeric chloride standards to Class 2, and wetland criteria into Class 2D, so clearly this simple mechanism for maintaining protective water quality standards for all applicable uses is evidently recognized as an option. MPCA has made no attempt to review the existing science or conduct the studies necessary to develop protective criteria for these pollutants and adopt them as Class 2 rules. Finally, the MPCA has completely disregarded the need to address the known effects of sulfate on mercury contamination of fish, in accordance with their own policy.

The Band raises the following concerns to MPCA’s proposed Class 3 and Class 4 rule revisions and the scientific and regulatory justifications the agency uses to support them. Our primary objection is that the proposed changes would violate the Clean Water Act (CWA) and its implementing regulations.

Maintaining Standards that Protect All Uses

MPCA’s expectation or assumption that current Class 2 standards would protect aquatic life and other more sensitive uses if the numeric water quality standards for industrial, agricultural and wildlife beneficial uses were removed is fundamentally flawed. Changes to federally approved water quality standards (WQS), such as Minnesota’s existing Class 3 and Class 4 designated uses, are only permissible if the new standard “shall be such as to

² TSD p. 11

³ See, eg. MPCA St. Louis River Stressor ID report

protect the public health or welfare, enhance the quality of water and serve the purposes of” the Clean Water Act. 33 U.S.C. §1313(c). Limits in state-issued permits must control “all pollutants or pollutant parameters... [which] are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” 40 C.F.R. §122.44(d)(1)(i). *Any changes to existing WQS must also prevent the degradation of water quality or biological condition in those waters to which the changes apply* (emphasis added).

Minnesota Rules Chapter 7050.0450, regarding multiple use classifications of state waters, assures that “all surface waters of the state are classified in more than one class and all the water quality standards for each of the classes apply. If the water quality standards for particular parameters for the various classes are different, the more restrictive of the standards apply.” What MPCA is proposing is a de facto removal of water quality standards without replacement with a more protective standard. By removing the existing numeric criteria found in Class 3 and Class 4 waters, without an equally or more stringent standard in place under another designated use class, the agency is failing to protect all designated uses for waters of the state.

For instance, multiple EPA studies and peer-reviewed literature document that salts and ionic pollutants at highly elevated concentrations are toxic to benthic macroinvertebrates and fish, and may also be harmful to wildlife.⁴ Specific conductance is an accurate, low cost, easily-measured water quality parameter that is directly related to salinity, a measure of the combined effect of all ions in water. Under most conditions, measuring specific conductance is relevant for identifying ionic changes in surface water that have been shown to adversely affect aquatic life. Ambient ion concentration levels are necessary to aquatic life, but negative effects from anthropogenic cumulative ionic toxicity are related to higher specific conductance levels. The elimination of specific conductance numeric criteria would constitute backsliding on a water quality standard that is already outdated and excessively high.

Replacement with Narrative standards

The TSD assures that the agency fully recognizes and acknowledges that for some pollutants, Classes 3 and 4 contain the only existing or most stringent numeric standards. They note that, in the 2018 request for comments on the triennial review of Minnesota WQS, stakeholders expressed concern that removal or revision may lead to increases in concentrations of these pollutants in some surface waters. However, the agency claims they do not anticipate there will be significant increases in ionic pollutants or specific conductance relative to existing conditions, because of their plans to develop detailed implementation procedures for the narrative standards under consideration.

⁴ See e.g., EPA, A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams, Final Report, EPA/600/R-10/023F, March 2011; S.A. Mitcham & G. Wobeser, Effects of sodium and magnesium sulfate in drinking water on mallard ducklings, J. Wildlife Diseases, Jan. 1988, Vol. 24, No. 1, pp. 30-44.”

But the Band is not convinced that the MPCA is evaluating existing and natural water quality in a scientifically defensible manner. The extensive state agency data that has been collected over the past decades can be easily compiled and mapped to show statewide conditions such as hardness. In the TSD discussion related to Figure 5 (Surface water hardness concentrations in Minnesota), MPCA notes: “Additionally, many surface waters of the state have hardness naturally higher than the Class 3B 250 mg/L hardness criteria (Figure 5), and some exceed the Class 3C 500 mg/L hardness standard. These waters could be in violation of the Class 3 standard without any wastewater input.” This statement is misleading, if not deliberately deceitful; some areas of the state (for example, where taconite mining has been in operation for decades) exhibit hardness well in excess of the Class 3B hardness criteria *precisely* because industry has not been required to treat their polluted discharge to meet one of the very few numeric limits in their outdated NPDES permits.

Further, the TSD notes in its discussion of options for translating narrative criteria into numeric for permitting purposes (p. 34): “Industrial appropriators have already adapted their water treatment processes to account for the consistent hardness discharged from existing NPDES dischargers upstream of their surface water intake structures.” This rationale sounds suspiciously like the agency is preparing to codify existing industrial dischargers' pollution as "natural conditions" as opposed to evidence of violations of state water quality standards.

Having numerical standards in place is much easier to enforce than narrative criteria. MPCA's history of not enforcing narrative *or* numeric standards does not bode well for future enforcement of more narrative standards. Changing the Class 3 and 4 narrative and numerical standards requires a scientific basis for each change. EPA stated in its preamble, at p. 51028 Federal Register/Vol. 80, No. 162 / Friday, August 21, 2015 / Rules and Regulations:

...states and authorized tribes must adopt criteria that are scientifically defensible and protective of the designated use to ensure that WQS continue to “protect the public health or welfare, enhance the quality of water and serve the purposes of” the Act (CWA section 303(c)(2)(A)).

and states in the federal regulations:

40 CFR Sec. 131.11 (a) (1) States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.”

Removing the existing numeric criteria for Class 3 and Class 4 protection, without concurrently (or first) adopting sufficiently protective numeric standards for Class 2, does not conform to this regulation.

Economic Hardship vs. Conventional Pollutant Permitting requirements

MPCA has ostensibly implemented the current Class 3 and Class 4 regulations, including the numeric criteria, for many decades. This rulemaking appears to be directed towards placating regulated dischargers who claim economic hardship should exempt them from treating wastewater to meet these conventional pollutant criteria – standards that should have been met decades ago.⁵ Regarding the known water quality degradation caused by untreated discharges from taconite mines in Minnesota, MPCA seems poised, with this rulemaking, to completely exempt a new sulfide mine (the PolyMet NorthMet project) from any liability for treatment or mitigation of legacy water pollution from the former LTV tailings basin, fulfilling a ‘relaxed’ WQS scenario defined by retiring Metallic Mining Sector Director Ann Foss.⁶

The Technical Support Document (TSD p. 15) states: “The MPCA has received comments from industrial and municipal wastewater dischargers about the substantial economic hardship that complying with the current Class 3 numeric standards (Chloride, hardness, pH) has already caused and will cause in the future if these standards are not updated.”

The agency continues to make the case on behalf of the regulated dischargers: “There is no record in the MPCA’s or MNDNR’s history of an industrial appropriator submitting a notification to either the MPCA or MNDNR expressing concern with the quality of their appropriation water with respect to chloride, hardness, pH, or any other parameter. This is a strong indicator that industrial appropriators are able to design treatment systems to meet their water quality needs, and that the Class 3 water quality standards regarding pH, chloride, and hardness are not essential to the operation of the industrial appropriators.” (TSD p. 29)

However, the CWA requires that, once approved by the EPA, all states are bound to enforce their water quality standards under the CWA. See 33 U.S.C. § 1313(c), 40 C.F.R. § 131.3(i). The MPCA includes substantial discussion in the TSD regarding industrial users’ ability to treat water they appropriate from waters of the state to meet whatever relevant water quality, on a parameter-by-parameter basis, needed for their particular use or process. Table 2 (TSD p. 12) states: “All industrial water consumers expect to fully treat water to their specific needs and as a result do not need to be categorized into classes of protection.”

⁵ U.S. Steel letter to S. Lotthammer, MPCA re Minntac Tailings Basin – Use Attainability Analysis and Site-Specific Standard Requests, Oct. 2, 2017

⁶ Ann Foss, Metallic Mining Sector Director, MPCA, Legacy Permitting/Financial Assurance for Change in Assignment Former LTV Steel Mining Company (LTVSMC) Tailings Basin and Plant Site, Dec. 12, 2017

MPCA goes on to assert: “The narrative standard would continue to allow for the use of waters of the state for industrial consumption with the understanding that industrial appropriators are willing and able to fund, operate, and maintain treatment systems to meet their specific water quality needs. The narrative standard would not prescribe categories or levels of water treatment technologies industrial consumers require, nor would it define the best or most affordable ways for industries to meet their specific appropriation water quality needs. The narrative standard would define a high-quality water, with respect to industrial consumption, as the water quality that the industrial appropriator is able and willing to appropriate and treat for their specific industrial needs.”(TSD p. 14)

This discussion serves the purpose, if not intentionally, of providing clear evidence that there is existing technology that industry around the nation and in the state of Minnesota currently employs to treat water to meet their process requirements. They have internalized those treatment costs as part of their cost of doing business. It is hard to understand why industry uses economic hardship as an argument for why they cannot use that same technology to treat their effluent and meet state WQS. Minnesota WQS are intended to protect waters of the state for all existing uses, for public good, and to protect human health. Industry cannot simply discharge their pollutants to waters of the state without first employing the necessary treatment to meet *all* existing and downstream uses, not merely Class 3 and 4.

The agency in fact points out: “Many of the water treatment technologies available when the industrial consumption standards were originally created in 1967 are still widely used today. Fundamental wastewater technologies such as coagulation, flocculation, media filtration, ion exchange, and lime softening are still used by industrial water appropriators in Minnesota. However, many of these treatment technologies have been substantially improved since 1967, and many new water treatment technologies are available.

For example, in the 1960s, water treatment engineers used distillation to produce high-purity water devoid of chloride and hardness for use in high-pressure boilers. Distillation is a very expensive, energy-intensive treatment process and by all accounts was difficult to operate and maintain. No Minnesota industrial appropriator uses distillation anymore to produce high-purity water. Instead industrial appropriators use membrane treatment such as reverse osmosis or ultrafiltration. In 1960, membrane treatment was a technology that only existed at the bench scale in advanced academic research laboratories. Since the 1960s, membrane treatment research and design has become one of the most important fields within water treatment, *and the technology has become widely available at a commercial scale* (emphasis added). Modern industrial appropriators use membrane filtration to produce high-purity water because it is more effective, less energy intensive, and substantially easier to operate than any other treatment system.”(TSD p. 29)

EPA Region 5 explicitly advised MPCA that, to satisfy the requirements of Federal regulations at 40 C.F.R. §122.44(d)(1)(i), limitations in state-issued permits “must control all pollutants or pollutant parameters (either conventional, nonconventional or toxic

pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above **any** State water quality standard, including State narrative criteria for water quality.”⁷ MPCA should not be elevating industry’s desire to externalize their costs at the expense of aquatic life and the public’s right to clean water for existing and future uses.

Interpretation/Translation of Class 3 Narrative Criteria to Numeric

The MPCA offers two options for how they may implement the proposed new Class 3 narrative criteria, through interpreting or translating them as numeric criteria:

1. Option 1: MPCA, through this rulemaking, develops a process to translate the narrative standard into a numeric value, and this process is incorporated into rule. This translation process could be either placed into rule directly or incorporated by reference through a document that either can or cannot be revised without further rulemaking.
2. Option 2: MPCA finalizes the changes to the standards but delays developing the process to translate the narrative standard into a numeric value. Instead, after the rulemaking, the MPCA works collaboratively with stakeholders and other to develop the process and publish a guidance document.

The agency’s rationale for Option 2 is that the Class 3 numeric parameters are not toxic pollutants (as defined in 40 CFR 401.15) and therefore the narrative translator process is not required in this rulemaking. But even NPDES permittees have conveyed their opposition to MPCA developing wastewater permitting policy outside of rulemaking. The agency proposes:

“Under this option, the MPCA envisions facilitating a Class 3 narrative translator working group outside of this rulemaking. The working group would include NPDES municipal and industrial permit holders upstream of industrial consumers of surface water and by industrial consumers of water themselves as well as representatives of state, local, and other governments – such as the MNDNR and tribal entities – and stakeholders and other affected parties. The working group would be given charge and authority to consider permitting options for the Class 3 narrative NPDES translator and to recommend a Class 3 narrative translator permitting policy the MPCA would abide by in the future.

This working group approach was used successfully in the past to address municipal permit holder concerns regarding high wastewater chloride dischargers and could be a successful model going into the future to ensure that permit holders’ concerns are incorporated into the MPCA policy.”

The Band is all too aware of how policy-specific working groups can and do fall short of reaching consensus opinions on regulatory approaches. The MPCA has responsibility under

⁷ EPA Class 3 & 4 revisions enclosure 4-8-16, attachment to Electronic Transmittal of EPA’s comments on Minnesota Pollution Control Agency (MPCA) Request for Comments on Planned Amendments to Rules Governing Water Quality Standards-Use Classifications 3 and 4, Minnesota Rules, Chapter 7050

their delegated CWA authorities to determine how water quality standards will be implemented in a manner consistent with state and federal regulations.

Class 4 Narrative Translator

The MPCA is proposing a draft narrative translator process to ensure that waters used for irrigation do not have excess specific conductance attributable to NPDES dischargers. Earlier, in their Class 4A rulemaking discussion (TSD p. 57), they pose:

“It could be argued that the MPCA could simply choose the most sensitive crop type and set the standards at the level needed to protect that crop and soil condition. Certainly, when developing aquatic life standards, we protect for the most sensitive species. However, crops are different. Soil types do not change and the types of crops grown in any given location are relatively stable within a given crop rotation. In addition, the most sensitive species tend to be those that are less commonly grown or grown at scale (such as strawberries or blackberries). Given the availability of data, the MPCA contends that the approach we are putting forward provides an appropriate level of tailored protection for irrigated crops of all types.”

Unfortunately, the agency’s proposed approach does not account for climate change and the unanticipated or unpredictable shifts that Minnesota’s future crop rotations may incur. It is an irresponsible and scientifically indefensible assumption that the most sensitive crops for a given agricultural parcel today will be the same five, ten or fifteen years from now.

Regarding the proposed process for implementing a new narrative standard in NPDES permits using a narrative translator, MPCA discusses their approach for determining reasonable potential (RP) for whether a wastewater discharger may exceed a standard. The RP process is specific to a particular parameter and must be performed for all parameters of concern during the issuance of a permit.

Figure 39 (Flowchart explaining the proposed irrigation narrative translator process) lays out the pathway for determining the need for conducting the RP process and developing water quality based effluent limits or WQBELs. The first step of the process acknowledges the need to meet downstream water quality standards, and uses Fond du Lac’s proposed specific conductance aquatic life use criterion as an example. After listing all NPDES permittees upstream of the Fond du Lac reservation, the agency provides a figure of a load duration curve for specific conductance on the St. Louis River (Figure 40) as measured at the long term USGS gaging station at Scanlon, which is downstream of reservation waters. The TSD notes that 97% of the time, measured specific conductance is below the proposed Fond du Lac criterion, but fails to identify how MPCA would ensure an upstream permittee would not violate the Band’s proposed water quality standard under low flow conditions. Additionally, the load duration curve is a visual representation of the longitudinal decrease in specific conductance with greater distance from active and historic mining sources, so if measured concentrations of specific conductance within the reservation boundaries were

plotted, the curve would be shifted to the left; i.e., a greater proportion of measurements would exceed the Band's proposed criterion under slightly higher flows.

The TSD discussion then takes a sharp turn towards the evaluation of effluent sodium chloride concentrations as the only relevant chemistry parameter for whether a discharger needs a WQBEL in their permit, and proximity of downstream irrigators the only relevant downstream waterbody use to be considered. The two examples (Lakefield WWTP effluent and MN DNR French River Hatchery) are not representative of the majority of NPDES permittees upstream of the Fond du Lac reservation. It is not clear how complying with a chloride limit (if indeed a permittee had a chloride limit for which they were in compliance) would reduce specific conductance sufficiently to be protective of the Band's proposed aquatic life use criterion.

Nowhere in the flowchart or in the TSD discussion does MPCA define how they would account for more stringent aquatic life use criteria in their narrative translator process. Consequently, ***nowhere in this proposed rule does MPCA actually describe how they would ensure NPDES permittee compliance with downstream water quality standards.***

The agency proposes the same two options (Options 1 and 2) for the timing of the development of a narrative translator for the Class 4A narrative standard as for the Class 3. Again, they point out that the criteria in question are not "toxic pollutants" by definition, and the narrative translator process is not required in this proposed rulemaking. MPCA again rationalizes Option 2, delaying the narrative translator process, as:

"Under this option, the MPCA envisions facilitating a Class 4A narrative translator working group outside of this rulemaking. The working group would include NPDES municipal and industrial permit holders upstream of agricultural consumers of surface water and by agricultural consumers of water themselves as well as representatives of state, local, and other governments – such as the MNDNR and tribal entities – and stakeholders and other affected parties. The working group would be given charge and authority to consider permitting options for the Class 4A narrative NPDES translator and to recommend a Class 4A narrative translator permitting policy the MPCA would abide by in the future.

This working group approach was used successfully in the past to address municipal permit holder concerns regarding high wastewater chloride dischargers and could be a successful model going into the future to ensure that permit holders' concerns are incorporated into the MPCA policy."

The Band's concluding comment on the proposed Class 3 Narrative Translator approach holds true for the Class 4A Narrative Translator approach. MPCA alone, not a stakeholder working group, is responsible to determine how water quality standards will be implemented in a manner consistent with state and federal regulations. The Band is more concerned about ensuring that protection of shared water resources, now and for future generations, is incorporated into the MPCA policy.

Inconsistent with Antidegradation Requirements

In the TSD (p. 151), MPCA wrote regarding the need for revisions to Class 3D and 4C standards: “In reviewing the 1993 SONAR, it became apparent that the standards included in these use subclasses were not always put in place with the intention to protect these designated uses, but *to protect the known or perceived quality of the water itself* (emphasis added). Therefore, in revising the Class 3 and 4 standards, MPCA is proposing changes to Classes 3D and 4C to ensure that the waters are designated appropriately to protect all the applicable designated uses.” This action (revision) appears to run contrary to what antidegradation provisions of the CWA⁸ and Minnesota Rules require: the maintenance and protection of existing instream water uses and the level of water quality necessary to protect existing uses. But it is not the only proposed revision that does not protect existing uses and the water quality needed to maintain those uses.

For example, Class 4 standards are also intended to protect wildlife, not just domesticated livestock watering or irrigation. Wildlife drink from untreated natural waters, and likely have a range of sensitivity to salinity. Many wildlife species also consume fish, exposing them to mercury that fish have bioaccumulated. If eliminating numeric standards for specific conductance or sulfate results in the extirpation of sensitive aquatic insects, or accelerates mercury methylation and increased mercury concentrations in fish, they are clearly not protective of wildlife.

As stated earlier, the proposed narrative translator process described for both Class 3 and Class 4 permitting does not provide protection for unanticipated future uses. We cannot predict what land use and water use changes may occur because of, for instance, global climate change. The Band has always interpreted that the CWA obligates implementing agencies to be conservative and broadly protective.

MPCA maintains the legally untenable position that the agency need only consider whether proposed changes will protect Class 3 and 4 designated uses. In order to meet the CWA requirement that existing uses be maintained as an absolute water quality floor (Tier 1)⁹, MPCA must conduct, and provide for public comment, additional and substantial analysis beyond what is currently in the TSD demonstrating that the proposed revisions will not negatively impact existing uses.

Sulfate

In Table 29 (Details of proposed revision to Class 4B standards with rationale for the changes, with requests for input regarding options and additions to these standards.), the MPCA suggests the need for adding a numeric sulfate protective standard and seeks comment from stakeholders regarding how to address the difference in toxicity from sulfate among livestock species. The Band suggests that MPCA consider implementing a

⁸ 40 C.F.R. §131.12(a)(1)

⁹ 47 Fed. Reg. 49, 234,49,238 (col. 3)(Oct. 29, 1982)

sulfate criterion that is consistent with the agency's recognition of the role of sulfate in mercury methylation, as protecting wildlife requires more than simply considering which wildlife species might be more sensitive to sulfate exposure. Wildlife species are not only exposed to sulfate in the untreated water they drink, but may also be exposed to physiologically dangerous levels of mercury through eating fish and other aquatic food web species that bioaccumulate methylmercury.

Conclusion

In questions posed by MPCA to the EPA, requesting responses to questions pertaining to designated uses and criteria¹⁰, the EPA provided:

"As defined at 40 CFR § 131.3(b), Water quality criteria are "elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use." [Emphasis added.] 40 CFR § 131.11 (a)(1) establishes the requirements for states in adopting criteria as follows:

States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use."

EPA stressed emphasized the intent of the CWA is that water quality criteria be maintained and updated to reflect the most current science. Further:

"Per 40 CFR 131.11 (a)(1), states and authorized tribal criteria must:

1. Be based on sound scientific rationale
2. Contain sufficient parameters or constituents to protect the designated use
3. Support the most sensitive designated use of the water body".

Upon review of the MPCA's proposed rule revision, specifically the weakening or elimination of numeric criteria for conventional pollutants such as specific conductance, total dissolved solids, and sulfate, the Band can only conclude that these proposed revisions to state WQS would not meet the purposes of the CWA or be protective of the waters of the state.

These conventional pollutants under question in the proposed rulemaking, while not "toxic" per the regulatory definition, are not benign or without serious adverse effects to

¹⁰ Letter from Christopher Korleski, Director, Water Division, USEPA Region 5, to Shannon Lotthammer, Assistant Commissioner, MPCA (Mar. 5, 2018).

sensitive ecosystems and biota, both plant and animals. They can decrease plant growth, lower crop yields and degrade stock water supplies. Excess salinity can affect overall soil health, reducing productivity, killing plants and leaving bare soil more prone to erosion. As salinity increases over time, wetlands become degraded, endangering wetland species and decreasing biodiversity. Drinking water sources require more extensive and expensive treatment to keep salinity at levels suitable for human use. Salinity damages infrastructure (roads, pipes, mechanical and processing equipment), shortening its life and increasing maintenance costs.¹¹

The expectation or assumption that narrative Class 2 standards would protect aquatic-life and recreation if numeric water quality standards for industrial, agricultural and wildlife beneficial uses were removed is fundamentally flawed. These revisions should not be enacted until protective aquatic life use standards have first been promulgated.

Sincerely,



Nancy Schuldt, Water Projects Coordinator
Fond du Lac Environmental Program

¹¹ See, eg., <https://www.environment.nsw.gov.au/topics/land-and-soil/soil-degradation/salinity>, last visited 4/19/2019