



GRAND PORTAGE BAND OF CHIPPEWA
Department of Water Quality
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September 22, 2025

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

Dear Ms. Handeland:

The Grand Portage Band of Chippewa (the “Band”) hereby submits these comments in connection with the draft NPDES permits for U.S. Steel Keetac’s mining area and tailings basin. The Band is a federally recognized Indian tribe, and a sovereign member Band of the Minnesota Chippewa Tribe (MCT). Grand Portage, along with other MCT-member Bands the Fond du Lac Band of Lake Superior Chippewa and the Bois Forte Band of Chippewa, retain 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”). The Band has delegated water quality regulatory authority under § 303(c) and § 401 of the Clean Water Act (CWA) approved by the U.S. Environmental Protection Agency (EPA) that are applicable to all waters of the reservation.

Federal precedent affirms that states are obligated to uphold tribal treaty rights and co-manage shared resources with tribal governments.² Minn. Stat. § 10.65, Government-to-Government Relationship with Tribal Governments, recognizes the state’s obligations to tribes, with regular consultation requirements and tribal-state relations training. The Band appreciates that MPCA has upheld their obligations under Minn. Stat. § 10.65 prior to issuing these draft permits.

I. Wild Rice Impacts

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 <https://dc.library.okstate.edu/digital/collection/kapplers/id/29627>.

² See, e.g., *U.S. v. Washington*, 694 F.2d 1374 (9th Cir. 1982) (“[W]hen considering projects that may have a significant environmental impact, both the State and the Tribes must take reasonable steps commensurate with the respective resources and abilities of each to preserve and enhance the fishery.”); *Lac Courte Oreilles Band v. Wisconsin*, 668 F.Supp. 1233, 1242 (W.D. Wis. 1987) (requiring cooperation “necessary to the common state and tribal goals of preserving the resource and ensuring public health and safety”).

We commend the MPCA for recently rejecting USS's application for site-specific standards (SSS) and subsequent request for variance from MN water quality standards at this same site. USS' attempts to avoid compliance with the Wild Rice Rules began long ago. As far back as 2000 MPCA issued letters of warning, including at least one to U.S. Steel, regarding the need to comply with the Sulfate Standard. See *In the Matter of the Reissuance of a NPDES/SDS Permit to United States Steel Corp. for its Minntac Facility...* ("Minntac NPDES"), 937 N.W.2d 770, 775 (Minn. Ct. App. 2019) (detailing history of letter of warning and schedules of compliance for U.S. Steel's Minntac operation), *partially rev'd on other grounds*, 954 N.W.2d 572 (Minn. 2021). USS can make no showing that it should be allowed to profoundly exceed (or continue its decades-long exceedance of) Minnesota's 10 mg/L wild rice sulfate standard (the "Sulfate Standard"). See Minn. R. 7050.0224 subp. 2.

Many of the state's remaining, abundant wild rice waters are on the Iron Range.³ Wild rice can only grow under certain conditions, in clean water between one and three feet deep and with soft, organic bottoms. See, e.g., 1854 Authority, *Biology of Wild Rice*.⁴ Existing wild rice waters today are much diminished from decades past, and are under profound pressure, primarily due to industrial discharge, especially due to mining operations. See MCT, *2018 Tribal Wild Rice Task Force Report* ("MCT Rep.") at 47⁵ (per MPCA data, as of in 2018, 13 of the top 16 sulfate dischargers to wild rice waters were industrial, with 10 of those being mining operations—including Keetac). This profoundly limits tribal members' ability to exercise reserved rights as well as the ability of other Minnesotans to harvest wild rice, and that also work to the detriment of wildlife, especially waterfowl, that depend upon the resource.⁶

Over the past 30 years of monitoring the Arrowhead Region, the 1854 Treaty Authority has documented the loss of wild rice waters. In 10 key wild rice waters in the 1854 Ceded Territory, what was in 1999 over 3,000 acres of wild rice shrunk to just 500 acres in 2022. See Wild Rice Monitoring and Abundance in the 1854 Ceded Territory (1998-2023), at fig. 3, Total Abundance Index and Wild Rice Acreage on All Waters in Monitoring Prog. (1998-2023).⁷

While enforcement of the Wild Rice Rules is an extremely important step, there remain other issues that remain to be addressed in these Permits. We discuss these in turn.

³ See Univ. of Minn. Duluth, Minn. Natural Resource Atlas, *Wild Rice—1854 Treaty Authority*, at <https://mnatlas.org/resources/wild-rice-1854-treaty-authority/>; MPCA Wild Rice Waters Map, at https://public.tableau.com/app/profile/mpca.data.services/viz/wild_rice_v4/Information.

⁴ Available at <https://www.1854treatyauthority.org/wild-rice/biology-of-wild-rice.html>.

⁵ At <https://www.mnchippewatribe.org/wildricetaskforce.html>.

⁶ *Id.* at 17-20.

⁷ Available at https://www.1854treatyauthority.org/index.php?option=com_edocman&task=document.viewdoc&id=315&Itemid=165. See also MPCA Dec. at 5 (citing earlier 1854 report for years 1998-2022).

II. All 48 Downstream Impairments Must be Addressed.

Again, we commend the MPCA for requiring monitoring of parameters that are known to have caused impairments downstream of the facility. Requirements in both permits to conduct an inventory to establish whether PFAS have been used at the facility and/or discharged into the environment are long overdue and appropriate. However, using sulfate limits as a proxy to control all other exceedances in the downstream waters obfuscates the fact that many other parameters are uncontrolled and have and will continue to contribute to downstream exceedances of water quality standards. This approach unreasonably singles out wild rice waters as *the* reason for pollution control requirements instead of addressing the many other known impairments downstream of the facility that will not be rectified by achieving the sulfate standard. MPCA must establish waste load allocations for all pollutants that have caused impairments to downstream waters per EPA's written comments in 2011 (discussed below).

MPCA states:

[t]he... Keetac Mining Area discharges to an unnamed tributary to Welcome Creek and to O'Brien Creek in the Mississippi River – Grand Rapids Watershed. There are 48 impairments downstream for the following parameters: aluminum, Escherichia coli (E. coli), fecal coliform, mercury in fish tissue, mercury in water column, nutrients, PCBs in fish tissue, perfluorooctane sulfonate (PFOS) in water, perfluorooctane sulfonate (PFOS) in fish tissue, sulfate, total suspended solids and turbidity. There are no draft or final waste load allocations found for this facility at the time of this review.⁸

Yet, the Clean Water Act requires states to identify impaired waters and the “priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.” 33 U.S.C. § 1313(d)(1)(A). The state must then establish a TMDL “in accordance with the priority ranking.” *Id.* at § 1313(d)(1)(C). Regulations implementing the Act clarify that states must plan for all impaired waters still requiring wasteload allocations (WLAs), load allocations (LAs) and total maximum daily loads (TMDLs). 40 C.F.R. § 130.7(a). States must “include a priority ranking for all listed water quality-limited segments still requiring TMDLs” based on the “severity of the pollution and the uses to be made of such waters” and must establish TMDLs “in accordance with the priority ranking.” 40 C.F.R. § 130.7(b)(4) and (c)(1). This “priority ranking including waters targeted for TMDL development within the next two years” must be submitted biennially to EPA. 40 C.F.R. § 130.7(d). 40 C.F.R. §122.47(a) also requires MPCA to consider how much time the permittee has already had to meet the WQBELs under prior permits, or the extent to which the permittee has made good faith efforts to comply with the WQBELs and other requirements in its prior permits.

⁸ MN00031879 Fact Sheet at 38.

Moreover, postponing Keetac's requirement to attain the final sulfate effluent limits established in the 2011 permits until 2030 constitutes backsliding. The interim sulfate effluent limits provided in this permit are less stringent than the final effluent limits specified in the previous permit, which is not allowed under the backsliding prohibitions at 33 U.S.C. §1342(o) and 40 C.F.R. §122.44(l)(1).

EPA conducted a compliance investigation in 2024 finding that Keetac had violated permit effluent limits for sulfate on nearly 300 occasions over a three-year period. Resolution of this enforcement action is still pending. Discussion of EPA's investigation is not included in either fact sheet, instead MPCA only provides a list of permit violations and administrative orders issued by the State. A revision is needed here.

III. Sulfate Standard Compliance Timeline

The timeline for compliance with the Sulfate Standard provided in the Fact Sheets for both permits omit a decade of comments from EPA during a period of time when MPCA routinely administratively extended underprotective NPDES permits, including schedules of compliance for sulfate and other pollutants to address permittees' persistent failures to clean up their discharges.⁹ The compliance timeline should be amended.

2011

- MPCA issued new NPDES permits to USS for Keetac requiring compliance with the Sulfate Standard, under a generous seven-year schedule of compliance, giving USS until August 14, 2018. USS did not appeal MPCA's decision.
- The Minnesota Chamber of Commerce (of which USS is a member, along with other taconite producers) filed suit against MPCA to avoid any application of the law to its members and challenging its constitutionality (which the Court of Appeals dismissed as premature).¹⁰
- A session law requiring MPCA to conduct research and amend the Wild Rice Rules was passed by the Legislature.
- Regarding the session law, the EPA sent a letter directing MPCA to enforce the Wild Rice Rules as written until and unless they were properly amended (May 11, 2011) stating:

⁹ MN0055948 Fact Sheet at 37.

¹⁰ USS makes a number of the same arguments as the Chamber made 12 years ago, including challenging that the Wild Rice Rules do not apply to natural stands of wild rice--despite both MPCA's and EPA's controlling interpretation to the contrary, along with the plain language of Rules themselves, the rulemaking history, and the entire purpose of the regulatory scheme being to protect the natural resource.

...the effect of these respective provisions will be to prevent MPCA from including [WQBELs] based on the federally approved criterion in permits issued under the state's authorized NPDES program. A state with a federally authorized NPDES program is required to issue permits that ensure the protection of federally approved [WQS].

Additionally, should EPA determine that a state is not administering its federally approved NPDES program in accordance with requirements of the CWA. EPA has the authority to require a state to take corrective action, and if necessary, to withdraw authorization of the program, pursuant to 33U.S.C. §§1342(c)(2)-(3).

- Also addressing the 2011 law, EPA has recently noted “that law’s curtailment of sulfate controls in permits was limited to the ‘extent allowable under the [CWA],’ and thus does not appear to have modified Minnesota’s approved NPDES program.”¹¹ In other words, there was nothing in the 2011 Session Law that could legally prohibit enforcement of any and all of Minnesota’s validly enacted, EPA-approved, CWA-compliant water quality standards—including the Wild Rice Rules.

2016

- Likewise, regarding the 2016 law, EPA advised MPCA:

Because the session law both limits MPCA’s authority to implement its approved NPDES program and improperly modify a facility’s existing permit in contravention of the CWA, they constitute an improper modification to MPCA’s authority to implement the NPDES program. 40 C.F.R. § 123.62(b)(3). As a result, the effluent limits and permit compliance schedules invalidated by the 2016 Sulfate Law remain subject to any federal enforcement and citizen action as provided for under the CWA.

This law appears to modify and or revise the authority of the State to administer its NPDES program and implement its federally approved water quality standards. Under 40 C.F.R. §

¹¹ Letter from EPA Region 5 to Theresa Haugen, Manager, Water and Mining Section, Re: Review of Two Draft NPDES Permits, U.S. Steel Keetac Mining Area (MN0031879) and U.S. Steel Keetac Tailings Basin (MN0055948), Keewatin, Minnesota. September 6, 2024.

123.62, any revision to an approved state NPDES program must be reviewed and approved by EPA before it becomes effective.¹²

- EPA also wrote:

On May 31, 2016, the Governor of Minnesota signed a measure entitled, "Sulfate Effluent Compliance," Laws of Minnesota 2016, Chapter 165, Section 1 (see enclosure). This legislation appears to invalidate water quality based effluent limits and compliance schedules for sulfate that were included in certain NPDES permits issued by the MPCA. Thus, this legislation appears to be a legislative action that strikes down or limits MPCA's authority under its approved NPDES program. Pursuant to 40 C.F.R. 123.63 (a)(ii), such an action may constitute grounds for EPA's determination that the MPCA's legal authority no longer meets the requirements of a federally approved program. Additionally, this legislative action could be construed as a de facto major modification to affected permits, which would necessitate the process, including public review, specified in 40 C.F.R. §322.62.¹³

2018

- MPCA proposed a new equation-based wild rice rule, but the Office of Administrative Hearings (OAH) rejected it because it failed to "protect the public health or welfare, enhance the quality of water and serve the purposes of" the CWA. 33 U.S.C. §1313(c).¹⁴ The proposed rule failed for a host of reasons, including because the equation was underprotective—which is now further affirmed by peer-reviewed research on which MPCA itself relied in denying USS' SSS proposal.¹⁵ Moreover, the

¹² US EPA letter to MPCA, April 5, 2016, Re: 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, available at <https://www.epa.gov/npdes-permits/npdes-petition-program-withdrawal-minnesota>; STATE OF MINNESOTA 1st SPECIAL SESSION 2015, Chapter 4 -- S.F. No. 5, Article 4 Sec. 136. WILD RICE WATER QUALITY STANDARDS.

¹³ US EPA letter to MPCA, June 28, 2016, re: MPCA's Legal Authority to Implement its Authorized NPDES Program While Working Under Laws of Minnesota 2016, Chapter 165, Section 1, at <https://www.epa.gov/npdes-permits/npdes-petition-program-withdrawal-minnesota>.

¹⁴ OAH 80-9003-34519, Revisor R-4324 at 75.

¹⁵ Pastor Technical Review 2017, *supra*, pp. 3-5. Additional discussion of the UMD iron and sulfide research is contained in Attachments as follows: J. Pastor, Iron and Sulfur Cycling in the Rhizosphere of Wild Rice (*Zizania palustris*), slide presentation to MPCA Wild Rice Standards Study Advisory Committee, Aug. 18, 2016 ; J. Pastor, The Biogeochemical Habitat of Wild Rice, Sea Grant Research Annual Report, May 5, 2016; J. Pastor, Progress Report on Effects of Sulfate and Sulfide on Wild Rice, June 28, 2017; S. LaFond-Hudson, Iron and Sulfur Cycling in the Rhizosphere of Wild Rice (*Zizania palustris*), May 2016.

proposed rule would have excluded wild rice waters that were a legally protected “existing use” under the CWA.¹⁶

IV. Specific Conductance Criteria

EPA studies and peer-reviewed literature document that salts and ionic pollutants at highly elevated concentrations (especially as compared to ambient conditions) are toxic to benthic macroinvertebrates and fish and may also be harmful to wildlife.¹⁷ Yet, in the tailings basin fact sheet, MPCA suggests that compliance with the final sulfate effluent limits will “protect Minnesota’s class 2 aquatic life narrative standard from excess total salts and specific conductance, no additional specific conductance limits are needed in this permit.” The agency states that “...compliance with sulfate limits would reduce those levels by over 10, 6, 2-fold. After compliance with sulfate limits, it is unlikely that specific conductance would be a stressor for aquatic life in downstream waters.” This is in spite of EPA recommendations that the agency “add to the record an analysis of the discharge of specific conductance or constituent ions to determine whether pollutants will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standards, including narrative water quality standards.”¹⁸

Further, the fact sheets state incorrectly that “*MPCA does not have a specific process in rule to translate the narrative aquatic life standard into numeric effluent limitations in NPDES permits to protect total salts using specific conductance. EPA has not established a national guidance document to perform this translation that is applicable to Minnesota’s Northern Lakes and Forest Ecoregion.*”¹⁹ (emphasis added) In fact, EPA has established national guidance to develop criteria for Specific Conductance that was first published in 2011.²⁰ Both Fond du Lac and Grand Portage Bands of Lake Superior Chippewa used this published EPA method to calculate protective specific conductance criteria for our federally approved water quality standards in 2018 and 2023 respectively. This should be corrected.

¹⁷ 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, Available at <https://assessments.epa.gov/risk/document/&deid%3D233809>; 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.

¹⁸ Letter from EPA Region 5 to Theresa Haugen, Manager, Water and Mining Section, Re: Review of Two Draft NPDES Permits, U.S. Steel Keetac Mining Area (MN0031879) and U.S. Steel Keetac Tailings Basin (MN0055948), Keewatin, Minnesota. September 6, 2024.

¹⁹ MN0055948 Fact Sheet at 33.

²⁰ EPA (2011a) A field-based aquatic life benchmark for conductivity in Central Appalachian streams...; EPA (2011b) Review of field-based aquatic life benchmark for conductivity in Central Appalachian streams. Washington, DC: Science Advisory Board, Office of the Administrator, available at [https://yosemite.epa.gov/sab/sabproduct.nsf/0/EEDF20B88AD4C6388525785E007331F3/\\$File/EPA-SAB11-006-unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/0/EEDF20B88AD4C6388525785E007331F3/$File/EPA-SAB11-006-unsigned.pdf)

V. Ascertaining if Tailings Basin Seepage is a Point-Source Discharge

There are many ways to quickly determine if seepage to groundwater from the tailings basin is equivalent to a point-source discharge to surface waters including the use of aerial photography in the winter to identify open water around the tailings basin, and confirming the open water is seepage from the tailings basin by using chloride and other stable isotope data. In addition, monitoring requirements for chloride and other stable isotopes collected from groundwater wells near SW 001, SW 005 and SW 006 should be included in the permit.

VI. Summary

The permits must be updated to reflect the decade of comments by EPA regarding the state's failures to uphold the CWA and properly apply WLAs and TMDLs to permits where water quality impairments have been identified.

Furthermore, it is essential to edit the permits to make clear that sulfate cannot be used as the proxy to justify cleaning up waters surrounding Keetac to comply with MN WQS. This is not only incorrect as a matter of fact and law but creates political division and obscures the relevant history. This creates a perception that wastewater treatment is only necessary to protect wild rice, when in fact wastewater treatment is also necessary to protect human health and aquatic life and there are many other downstream impairments.

This includes impairments for Aluminum, Escherichia coli (E. coli), fecal coliform, mercury in fish tissue, mercury in water column, nutrients, PCBs in fish tissue, perfluorooctane sulfonate (PFOS) in water, perfluorooctane sulfonate (PFOS) in fish tissue, total suspended solids and turbidity, among others, all of which are important in their own right, particularly in the Upper Mississippi River. Addressing all of these issues is critical to safeguarding both treaty-reserved rights and the health of Minnesota's downstream communities.

Sincerely,



Margaret Watkins
Grand Portage Water Quality Specialist