

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #01/06

WATER QUALITY CERTIFICATION STANDARDS

Adopted by Resolution #1033/06, as amended, of the Fond du Lac
Reservation Business Committee on March 28, 2006.

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CHAPTER 1

AUTHORITY, PURPOSE AND SCOPE

Section 101 Authority

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq., Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and Sections 303, 401 and 518 of the Clean Water Act, 33 U.S.C. §§ 1313, 1341 and 1377.

Section 102 Purpose

The purpose of this Ordinance is to establish standards for the review of applications for Tribal Water Quality Certifications which are required as part of any application for a federal permit for activities which may result in the discharge of pollutants into the waters of the Fond du Lac Reservation.

Section 103 Delegation and Scope of Responsibility of the Fond du Lac Office of Water Protection

- a. The Office of Water Protection (OWP) for the Fond du Lac Band of Lake Superior Chippewa, operating within the Fond du Lac Resource Management Division, shall be responsible for the application, processing, and review of Tribal Water Quality Certifications for proposed federal permits or licenses for activities that may result in a discharge of pollutants to the waters of the Fond du Lac Reservation, as provided for under Section 401 of the Clean Water Act (33 U.S.C. § 1341).

b. The Office of Water Protection (OWP) is authorized to issue Tribal Water Quality Certification(s) to any applicant for a federal permit or license for discharges which originate or will originate within the Fond du Lac Reservation when there is reasonable assurance that the activity in question will be conducted in a manner which will not violate Fond du Lac's Water Quality Standards and to determine any conditions deemed necessary or desirable with respect to the discharge. This authority pertains to all activities within the external boundaries of the Fond du Lac Reservation regardless of land ownership; both non-band members as well as band members will be required to obtain this certification. Tribal Water Quality Certification reviews, pursuant to Section 401 of the CWA shall be conducted to assess potential water quality impacts associated with Federal permits or licenses related to discharges which originate or will originate within the Fond du Lac Reservation including, but not limited to the following:

- (1) Dredge & Fill Permit Program (Clean Water Act Section 404, 33 U.S.C. § 1344), including Nationwide Permits, General Permits, Letters of Permission, and Individual Permits; and
- (2) Discharge Permit Program (Clean Water Act Section 402, 33 U.S.C. § 1342), including permits for discharges from point sources (NPDES Phase I) and permits for industrial and construction activities disturbing one (1) or more acres (NPDES Phase II).

Section 104 Reservation of Rights

The Fond du Lac Band reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

Section 105 Interpretation

The provisions of this Ordinance shall be interpreted in a manner which is consistent with the Fond du Lac Reservation Water Quality Ordinance, FDL Ord. #12/98, as amended, and with applicable provisions of the Clean Water Act and derivative regulations.

CHAPTER 2

ADMINISTRATION

Section 201 Procedures for the Evaluation of Tribal Water Quality Certification Requests

The OWP shall evaluate requests for Tribal Water Quality Certification according to the following process:

- a. Federal Permits. Applicants for federal licenses or permits shall obtain Tribal Water Quality Certification from the Office of Water Protection. The OWP shall advise the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency (USEPA), and other federal or state agencies with jurisdiction in the matter to direct said applicants to submit application materials to the OWP and to otherwise comply with the applicable terms of this decree.
- b. Certification Request. Applicants shall request Tribal Water Quality Certification from the Fond du Lac Reservation by sending a written application to the Office of Water Protection at the following address:

Office of Water Protection
Fond du Lac Reservation
1720 Big Lake Road
Cloquet, Minnesota 55720

- c. Application Contents. The application shall include the following:
 - (1) The name, address, phone, fax (if applicable), and email (if applicable) of the applicant;
 - (2) A description of the applicant's activity;
 - (3) A description of the potential discharge into or draw-down of ground or surface waters (including wetlands) that may result from the activity, including, but not limited to, the construction or operation of a facility, pumping of ground or surface waters (including wetlands), the biological, chemical, thermal, quantity, and concentration of the discharge and the location at which such

discharge may enter ground or surface waters (including wetlands);

- (4) A description of the function and operation of equipment or facilities to treat wastes or other effluents that may be discharged, including specification of the degree of treatment expected to be attained;
- (5) The dates when the activity will begin and end and when the discharge or draw-down will take place;
- (6) A description of the methods and means being used or proposed to monitor the quality and quantity of the discharges or draw-downs and the operation of equipment or facilities employed in the treatment or control of wastes or other effluents;
- (7) A description of the impact of the discharge on water of the Fond du Lac Reservation; and
- (8) A copy of the application for a federal permit or license.

d. Application Review. Upon receipt of the application the following reviews shall be conducted:

- (1) Administrative Review: The Office of Water Protection shall review the application for completeness and accuracy. If the application is deemed to be incomplete and/or inaccurate, it will be returned to the applicant or the additional information will be requested from the applicant; this will occur within 10 days of the receipt of the application. If the application is deemed to be complete and accurate, the request for Tribal Water Quality Certification shall be issued in a Public Notice for a 30-day comment period. All comments received by the OWP will be sent to the applicant for a satisfactory response.
- (2) Technical Review: During the 30-day comment period, the Office of Water Protection will conduct a technical review to evaluate whether the activity is in compliance with applicable federal regulations and the Fond du Lac Water Quality Standards.

e. Recommendation and Decision. After both the Technical Review and the 30 day comment period and response(s) have been completed, the OWP will make a recommendation to the Director of the Resource Management Division regarding

the request. The Director will then issue one of three possible decisions: (1) Grant Certification Unconditionally; (2) Grant Certification with Conditions; or (3) Deny Certification. Once the Director has made a decision, the applicant will be notified of this decision. The decision shall be issued within 60 days from when the application is deemed complete and accurate.

f. Appeals. The applicant may appeal the Director's decision utilizing the following process:

- (1) A Notice of Appeal is sent to the Office of Water Protection, in writing, by the applicant within ten (10) days of receiving the Tribal Water Quality Certification Decision.
- (2) Upon receiving a Notice of Appeal from the applicant, the Office of Water Protection shall present the applicant's file to the Environmental Program Director for procedural and technical review.
- (3) After the Environmental Program Director's review is completed, the appeal will be presented to the Fond du Lac Reservation Business Committee (RBC) for the final decision. The Reservation Business Committee's decision is binding.

Section 202 Procedures for Off-Reservation Discharges

The Office of Water Protection is authorized to make determinations and provide notifications regarding off-Reservation discharges which may affect the waters of the Fond du Lac Reservation in a manner that will violate the Fond du Lac Water Quality Standards, as provided for under Section 401(a)(2) of the Clean Water Act.

The following procedure will be followed for off-Reservation discharges:

- a. The USEPA, USACE, and the Minnesota Pollution Control Agency (MPCA) are responsible for notifying the Office of Water Protection if a permit is requested for a discharge which may affect the quality of the waters of the Fond du Lac Reservation.
- b. Upon receipt of such notification, or upon the Office of Water Protection becoming aware that such a permit is requested even absent of notification from the USEPA, USACE, or MPCA, the Office of Water Protection shall

undertake a review of the permit request in order to make a determination regarding whether the potential discharge would adversely affect the quality of the waters of the Fond du Lac Reservation. This review shall include the following steps:

- (1) Completeness Determination: The Office of Water Protection shall evaluate the completeness of the information available regarding the off-Reservation discharge. At a minimum, the following information will be needed to evaluate the proposed off-Reservation discharge:
 - (A) The name and address of the applicant;
 - (B) A description of the activity, and the potential discharge into or draw-down of ground or surface waters (including wetlands) that may result from upstream activity including, but not limited to, the construction or operation of a facility, pumping of ground or surface waters (including wetlands), the biological, chemical, thermal, quantity, and concentration of the discharge and the locations at which such discharge may enter ground or surface waters (including wetlands);
 - (C) A description of the function and operation of equipment or facilities to treat wastes or other effluents that may be discharged, including specification of the degree of treatment expected to be attained;
 - (D) The dates when the activity will begin and end, and when the discharge or draw-down will take place; and
 - (E) A description of the methods and means being used or proposed to monitor the quality and quantity of the discharges or draw-downs and the operation of equipment or facilities employed in the treatment or control of wastes or other effluents.

If any of the above-noted information has not been provided, the Office of Water Protection shall request the needed information from the USEPA, USACE, or MPCA. The completeness review shall be completed within 15 calendar days of receipt of notification of proposed off-Reservation discharge.

- (2) Water Quality Impacts Review: After a completeness determination has been made, the Office of Water Protection shall conduct a water quality impacts review to analyze whether the proposed off-Reservation discharge will result in a violation(s) of the Fond du Lac Water Quality Standards.
- (3) Recommendation and Determination: After considering the application, supporting materials, and such other information and data as the Office of Water Protection deems relevant, the OWP will evaluate whether the proposed off-Reservation discharge will violate the Fond du Lac Water Quality Standards and will make a recommendation to the Director of the Resource Management Division regarding the request. The Director will then make one of two possible determinations: (1) No Tribal action necessary; or (2) Notify the applicable agency or agencies (USEPA, USACE, and/or MPCA) of Fond du Lac's objection to the issuance of the permit for the proposed off-Reservation discharge. The objection will be in writing, and will include a request for a public hearing on the matter.

In accordance with the Clean Water Act, the Director's determinations regarding whether a proposed off-Reservation discharge will affect waters within the Fond du Lac Reservation in a manner that will violate the Fond du Lac Water Quality Standards shall be made within 60 days of receipt of notification of the proposed off-Reservation discharge.

CHAPTER 3

AMENDMENT OR REPEAL

Section 301 Amendment or Repeal

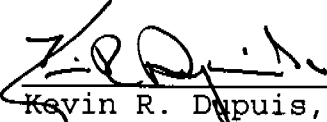
This Ordinance, and any provision herein, may be amended or repealed by resolution of the Reservation Business Committee.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #01/06 was duly presented and adopted by Resolution #1033/06, as amended, by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on March 28, 2006 on the Fond du Lac Reservation.



Peter J. Defoe Chairman



Kevin R. Dupuis, Sr., Sec./Treas.

laws:2006 01(032806)

Fond du Lac Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

RESOLUTION #1033/06, as amended



Chairman
Peter J. Defoe

Secretary/Treasurer
Kevin R. Dupuis, Sr.

Dist. I Councilman
Eugene Reynolds

Dist. II Councilman
V.R. "Butch" Martineau

Dist. III Councilman
Roger "Bouda" Smith, Sr.

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the permanent home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and

WHEREAS, the Reservation Business Committee adopted the Fond du Lac Water Quality Ordinance, FDL Ord. #12/98, in order to assume and exercise regulatory authority over water quality on the Fond du Lac Reservation; and

WHEREAS, Section 401 of the Clean Water Act, 33 U.S.C. § 1341, provides for the Fond du Lac Band's assumption of the issuance of federal permits and licenses for activities which may involve the discharge of pollutants into the waters of the Fond du Lac Reservation; and

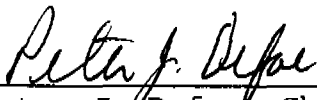
WHEREAS, the Reservation Business Committee has developed a proposed ordinance establishing "Water Quality Certification Standards" for the Fond du Lac Reservation, and has determined that the adoption of said Ordinance is in the best interests of the Fond du Lac Band; and

WHEREAS, the Reservation Business Committee has determined that the application fee identified in Section 210(c)(9) of the proposed "Water Quality Certification Standards" is unnecessary, and directs that it be stricken from the Ordinance;

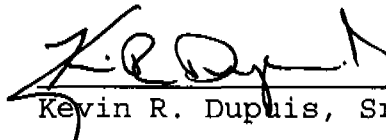
NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby adopt Fond du Lac Ordinance #01/06, entitled "Water Quality Certification Standards", with the removal of Section 210(c)(9) in its entirety, as the law of the Fond du Lac Band.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on March 28, 2006 on the Fond du Lac Reservation.



Peter J. Defoe, Chairman



Kevin R. Dupuis, Sr., Sec./Treas.