

# Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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March 12, 2013



John Linc Stine  
Commissioner  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194

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Tribal Enterprises  
**Michael Himango**

Dear Commissioner Stine:

The Fond du Lac Band of Lake Superior Chippewa has worked collaboratively for many years with the Minnesota Pollution Control Agency on a broad array of issues related to the restoration and protection of natural resources and the environment. Recently, we have been engaged with the MPCA, the Wisconsin Department of Natural Resources, and EPA Region 5 in a toxics Total Maximum Daily Load (TMDL) study of the St. Louis River - perhaps one of the most critical unfinished actions left among the concerted efforts to remove multiple beneficial use impairments from the largest US tributary to Lake Superior. Over the past three years, the TMDL study partners have worked with EPA and their contractors to identify the most promising options or approaches for developing the TMDL. We had reached consensus to prioritize mercury reductions ahead of the other toxics impairments, and to identify critical data gaps to be addressed during the study. After extensive work by the contractors and partners, and outreach to other regional and national mercury experts, we were on the brink of preliminary model development and a initiating a significant field data collection program for 2013 when your agency abruptly put a halt to the process.

On February 4, MPCA staff provided the other TMDL partners with a brief summary of their concerns for the modeling approach that had been previously agreed upon and selected (per the "Options Summary Report" provided by the EPA contractors) in early 2012. On February 8, 2013, a slightly expanded summary of MPCA concerns called attention to the statewide mercury TMDL, and acknowledged that 10% of Minnesota's waters that are impaired for mercury in fish would "need additional efforts beyond those specified in the existing TMDL to achieve the fish tissue standard." The St. Louis River is one of those waters, and the Fond du Lac Band has formally concurred with the MPCA's assessment of this impairment over the last four biennial impaired waters listing processes.

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Section 303(d) of the Clean Water Act requires that states develop TMDLs to address water quality impairments. To date, no federally recognized Indian tribes have been authorized to implement an impaired waters program. Although we have been delegated authority to implement a water quality standards program, and conduct monitoring and assessment of reservation waters, we are not yet in a position to independently develop TMDLs for any aquatic resource impairments identified through our program. However, given the sheer size of the St. Louis River watershed and the multiple regulatory jurisdictions, we did not see the value in pursuing a stand-alone mercury TMDL for the 23 river miles within which we share jurisdiction with the state. Fond du Lac has aggressively investigated and actively participated in multiple efforts to address our mercury in fish impairment, as Band members have traditionally consumed far more fish than the general population, and are at a proportionately greater risk for experiencing the well-documented neurological and developmental effects of mercury toxicity.

For nearly six years, we participated in a leadership capacity within a regional stakeholder partnership, the St. Louis River TMDL Partnership, along with representatives from local governments, affected industries, and environmental groups, working towards developing a potential third-party TMDL. From our perspective, the MPCA was not making discernible progress in addressing the mercury impairment of this important state and tribal resource. When the MPCA decided to pursue a statewide approach for reducing mercury emissions, our local partnership weighed in with comments supporting the emissions reduction plan, but concern for the fact that St. Louis River fish would still have unacceptable levels of mercury. The MPCA acknowledged that more work would need to be done for these remaining mercury impairments, and the local partnership went on hiatus as we were assured the agency would indeed work to identify the necessary additional actions to further reduce fish tissue mercury in these remaining mercury impaired waters. Fond du Lac then participated in the TMDL Implementation Plan Strategy Work Group to define sector reduction targets and timelines, and clearly communicated our expectations to the MPCA that additional efforts must be made to address the remaining mercury impairment of the St. Louis River.

Because of the paramount importance of being able to one day again safely consume fish without restriction, Minnesota tribes met with Assistant Commissioner David Thornton at Fond du Lac in May 2006 to

discuss our common concerns for reducing mercury in fish, and opportunities to coordinate and communicate on this critical issue. Following that meeting, Mr. Thornton shared an internal strategy document that was finalized by the MPCA in October 2006, "*MPCA Strategy to Address Indirect Effects of Elevated Sulfate on Methylmercury Production and Phosphorus Availability*". This strategy was approved by the MPCA Risk Managers and the MPCA WQ Policy Forum, and defined specific actions the agency would take over the next 3-5 years. MPCA was to continue research in the Marcell Experimental Forest, permanently add sulfate, TOC, total mercury and methylmercury to the agency's ambient water quality monitoring sites, continue to track other research, compile and map ambient water quality and effluent data, implement environmental review and NPDES permitting actions, and ultimately complete an evaluation of the hypotheses relating sulfate loading, mercury methylation and phosphorus mobilization. There were specific timelines and accountable personnel associated with the tasks, focusing on **developing an agency sulfate permitting strategy** "...so that defensible quantitative permitting limits on sulfate discharge can be established". To our knowledge, the MPCA has not followed through on this important charge - nearly seven years later. It was widely anticipated that a mercury TMDL for the St. Louis River might identify sulfate load reductions to reduce mercury methylation as one key component of implementation.

When EPA Region 5 approached Fond du Lac about initiating the St. Louis River TMDL study, we were pleased to be part of a multijurisdictional TMDL, as appropriate for shared waters. While there have been challenges moving forward with this complex study, we had solicited substantial input from not only the intergovernmental partners but also outside agency and academic experts for developing the *multiple* models and determining data needs, and were planning for an ongoing scientific peer review process to ensure defensible conclusions. New data collection was focused on the bioaccumulation of methylmercury, and better characterization of estuary dynamics, where legacy contamination is a significant contributing factor. These are precisely the categories of data collection that were recommended by MPCA staff in their summary of concerns. However, MPCA staff did not provide clear recommendations for an alternative approach that would lead to actions to reduce mercury bioavailability, only a recommendation to acquire the same kind of site-specific data that had been agreed upon previously.

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There has been some discussion among the partners, during this time of great uncertainty, that perhaps the TMDL efforts could be redirected towards the other toxic impairments within the estuary. From the perspective of the Fond du Lac Band, that would not be an acceptable direction. While we are hard at work alongside our state and federal partners to fully restore the St. Louis River AOC, including the remediation of legacy contaminants, an estuary-only TMDL would not address the longstanding mercury impairment for our 23 miles of the St. Louis River. This outstanding resource water is the reservation's most important fishery, and it is simply not an option to further postpone the actions needed to fully restore our ability to safely practice subsistence fishing.

EPA has committed significant resources - nearly \$1,000,000 to date - and has indicated their willingness to seek additional funding as needed (and available) to ensure a scientifically defensible TMDL for the St. Louis River. This project is exemplary of their objectives under the Great Lakes Restoration Initiative, to make real and substantive progress towards AOC delisting and ecosystem restoration. MPCA had committed \$200,000 towards the field sampling activities needed to verify the modeling efforts, a substantial contribution. Wisconsin DNR did not have financial resources to contribute, but were prepared to assist in field data collection and had allocated significant staff time with technical expertise in complex modeling. Fond du Lac had committed financial and staff resources towards field data collection, and for implementing a robust public process for the TMDL development. You can appreciate that convergence of chance and opportunity does not happen often; this opportunity will not likely present itself again.

Given the comments in your March 1 editorial in the Duluth News Tribune, "Leading by example: Minnesota's mercury reductions", we sincerely hope that this disruption to the St. Louis River mercury TMDL process is only temporary. While the State has certainly been on the leading edge of mercury reduction efforts nationwide, the work is not yet done. We urge your agency to work with the other partners and find a mutually acceptable path forward that includes actions to reduce mercury in the fish of the St. Louis River.

Sincerely,



Karen R. Diver  
Chairwoman

cc: Nancy Larson, Wisconsin DNR  
Alie Muneer, Matt Gluckman, Peter Swenson, EPA Region 5  
Rebecca Flood, Assistant Commissioner, MPCA

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FOND DU LAC, R.B.C.