

FACT SHEET

FACT SHEET FOR THE REISSUANCE OF A NPDES PERMIT

U.S. Environmental Protection Agency
Region 5, NPDES Programs Branch - WN-15J
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6106

Permit No.: MN-0025887-6

Public Notice No.: 17-05-01-A

Application No.: MN-0025887-6

Public Notice Issued On: May 31, 2017
Comment Period Ends: June 30, 2017

Name and Address of Applicant:

Grand Portage Band of
Lake Superior Chippewa
P.O. Box 428
Grand Portage, Minnesota 55605

**Name and Address of Facility
Where Discharge Occurs:**

Grand Portage Wastewater Stabilization Lagoon
Grand Portage Reservation
182 Upper Road
Grand Portage, Minnesota
Cook County

Receiving Water: Grand Portage Bay in Lake Superior

DESCRIPTION OF APPLICANT'S FACILITY AND DISCHARGE

The above-named applicant has applied for an NPDES Permit to discharge into the designated receiving water. The facility is located within the exterior boundaries of the Grand Portage Indian Reservation. The permit will be issued by the U.S. Environmental Protection Agency. The permit is based on a NPDES application dated December 1, 2015, and subsequent information found in the administrative record. This permit is proposed to be effective for approximately five years from the date of issuance as allowed by 40 CFR 122.46.

The application and plans indicate that the treatment system consists of a 4-cell stabilization lagoon that has three primary cells 1.6, 2.0, and 4.5 acres in area and one secondary cell that is 3.7 acres in area. The ponds are designed for an average influent flow of 74,000 gallons per day and allow for 210 days of storage. The discharge is controlled to Grand Portage Bay in Lake Superior. Wastewater is from domestic sources only, including a casino and a hotel.

The draft permit requires the applicant to meet the following effluent limitations:

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>			
	Concentration (Specified Units)			
Parameter	Daily Minimum	Monthly Average	Weekly Average	Daily Maximum
Flow (mgd)	-	-	-	-
Dissolved Oxygen (mg/L)	Report	-	-	-
pH (SU)	6.0	-	-	9.0
Total Suspended Solids (TSS) (mg/L)	-	30	45	-
Carbonaceous Biochemical Oxygen Demand (CBOD ₅) (mg/L)	-	25	40	-
Phosphorus, Total (mg/L)	-	0.5	-	1.0
Ammonia Nitrogen, Total (as N) (mg/L)	-	Report	-	-
E. coli (#/100ml)	-	126*	-	235
Mercury, Total (ng/L)	-	2.39	-	-
CBOD ₅ percent removal (%)	≥85	-	-	-
TSS percent removal (%)	≥85	-	-	-
Outfall observation (yes/no)	-	-	-	-

*geometric mean

Discharge flow was calculated as follows:

$$3.7 \text{ acres} \times 0.5 \text{ feet/day (6 inches/day)} \times 325,900 \text{ gallons per acre-ft} = 0.6 \text{ mgd}$$

Loading limits in the permit were calculated using the following formula:

$$0.6 \text{ mgd} \times \text{limit (mg/l)} \times 3.78 = \text{Loading (kg/d)}.$$

Section 401 Water Quality Certification

Where states or tribes have federally approved water quality standards that are applicable at the point of discharge, federal NPDES permits cannot be issued unless water quality certification for the discharge is granted or waived pursuant to Section 401 of the Clean Water Act. The tribal Section 401 authority within the Grand Portage Reservation is the Grand Portage Environmental Resources Board (Board). EPA has provided a copy of the permittee's NPDES permit application and a copy of the draft NPDES permit to the Board.

The Band is a federally recognized Indian tribe and has Treatment-in-the-same-Manner-As-a-State ("TAS") for purposes of enforcement of federal water quality standards on the Band's Reservation in northern Minnesota. Therefore, in accordance with Section 401 of the Clean Water Act, the Grand Portage Water Quality Standards ("Water Quality Standards") and the Grand Portage Water Resources Ordinance (as amended in 2004, the "Water Resources

Ordinance”), the Board has examined the draft NPDES permit. The Board has determined that there is reasonable assurance that the discharges authorized under the NPDES permit will not violate the Water Quality Standards. The Band’s Water Quality Standards can be obtained at:

<https://www.epa.gov/sites/production/files/2014-12/documents/grandportageband.pdf>

The Water Resources Ordinance and Cooperative Agreement can be found at:

<https://www.epa.gov/wqs-tech/water-quality-standards-regulations-grand-portage-band-minnesota-chippewa-tribe>

Therefore, the Board has determined that no additional conditions are necessary to protect: (a) the public health and welfare of the Band, its members, and others living on the Band’s Reservation; and (b) the present and future use of Reservation Waters for public and private water supplies; propagation of fish, aquatic life, and wildlife; domestic and recreational purposes; and for agricultural, cultural, religious, commercial, industrial, and other legitimate uses. This certification applies only to those activities specifically authorized by NPDES permit MN-0025887-6 once issued.

The Board will be taking public comment on its tentative determination to grant 401 certification during the public notice period of the permit.

ESA and NHPA Compliance

EPA has satisfied its requirements under the National Historical Preservation Act. This is an existing facility. Though construction may occur at the facility, the construction is expected to be within the same footprint of the existing facility. Therefore, it is believed that the reissuance of the permit and the continued operation of the facility and associated discharge will have no impact on historical, archeological, or cultural resources.

Regarding Endangered Species Act compliance, the permit contains a variance from water quality standards for mercury. The ESA requires EPA to evaluate whether approval of the variance affects federally listed threatened or endangered species or designated critical habitat. Based on our review of the variance submittal, EPA concluded that approval of the variance will have no effect on federally listed species or critical habitat. See the discussion after the table below. Using that information, which can be found in the administrative record, it is also believed that the issuance of the permit and the continued operation of the facility and associated discharge will have no effect on endangered or threatened species or their critical habitat.

Basis for Limits

The limits were developed to ensure compliance with 40 CFR Part 133 and Grand Portage Reservation water quality standards and Minnesota water quality standards where they are applicable. In accordance with the Grand Portage Reservation water quality standards, Grand Portage Bay of Lake Superior has the following designated uses: B1 (cold water fisheries), B3 (subsistence fishing), C (wildlife), D1 (primary contact recreational, Lake Superior coastal waters), F (forestry water supply), G industrial water supply), and H (navigation).

The permit also requires monitoring for ammonia and dissolved oxygen to collect data for the next permit issuance.

CBOD₅, TSS and pH

The limits are consistent with 40 CFR Part 133. Because of the dilution provided by the receiving water, discharging at these levels will not cause or contribute to an exceedance of water quality standards.

E. coli

The 30-day average and daily maximum limits for E. coli are based on the Grand Portage Reservation's water quality standards.

Phosphorus

Phosphorus is a common constituent in many wastewater discharges and a pollutant that has the potential to negatively impact the quality of the Tribe's and Minnesota's lakes, wetlands, rivers, and streams. Phosphorus promotes algae and aquatic plant growth often resulting in decreased water clarity and oxygen levels. In addition to creating general aesthetic problems, these conditions can also impact a water body's ability to support healthy fish and other aquatic species. Therefore, phosphorus discharges are being carefully evaluated throughout the state. The limits from the previous permit have been carried over to this permit. The limits will ensure compliance with the Tribe's water quality standards.

Mercury Variance

During the term of the previous permit, the Grand Portage Environmental Department monitored the low-level concentrations of mercury in water at: 1) the drinking water intake; 2) the wastewater discharge pond; 3) the end of the wastewater discharge pipe in Grand Portage Bay, and; 4) ambient water of Grand Portage Bay. Additionally, the wastewater influent has been tested to determine the concentration of mercury entering the wastewater treatment plant. The effluent data indicates that the discharge has the reasonable potential to violate the Tribe's human health and wildlife criteria of 0.196 ng/L and 1.3 ng/L, respectively.

On June 17, 2016, in accordance with the Tribe's WQS and 40 CFR part 132, the Grand Portage Band submitted a proposed variance from mercury wildlife and human health criterion for the permittee's discharge. Consistent with section 303(c) of the Clean Water Act and federal regulations at 40 CFR 131.21, EPA reviewed the information submitted by the Tribe and approved the variance on August 26, 2016. The variance establishes a mercury effluent limit of up to 2.39 ng/L of mercury, as a monthly average for the permittee's discharge to Grand Portage Bay in Lake Superior. This mercury effluent limit has been incorporated into the permit. Supporting documentation for the variance is contained in the administrative record for this permit and in the administrative record for the variance approval.

Asset Management – Operation & Maintenance Plan

Regulations regarding proper operation and maintenance are found at 40 CFR § 122.41(e). These regulations require, "that the permittee shall at all times operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit." The treatment plant and the collection system are included in the definition of "facilities and systems of treatment and control" and are therefore subject to the proper operation and maintenance requirements of 40 CFR § 122.41(e).

Similarly, a permittee has a “duty to mitigate” pursuant to 40 CFR §122.41(d), which requires the permittee to “take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.”

The draft permit requirements are the first steps of an asset management program which contains goals of effective performance, adequate funding, adequate operator staffing and training. Asset management is a planning process that ensures that you get the most value from each of your assets and have the financial resources to rehabilitate and replace them when necessary, and typically includes five core elements which identify: 1) the current state of the asset; 2) the desired level of service (e.g., per the permit, or for the customer); 3) the most critical asset(s) to sustain performance; 4) the best life cycle cost; and 5) the long term funding strategy to sustain service and performance.

EPA believes that requiring a certified wastewater operator and adequate staffing is also essential to ensure that the treatment facilities will be properly operated and maintained. Mapping the collection system with the service area will help the operator better identify the assets that he/she is responsible for and consider the resources needed to properly operate and maintain them. This will help in the development of a budget and a user rate structure that is necessary to sustain the operation. The development and implementation of a proactive preventive maintenance program is one reasonable step that the permittee can take to demonstrate that it is at all times, operating and maintaining all the equipment necessary to meet the effluent limitations of the permit.

Special Conditions

- The permit requires the development and implementation of an Operation & Maintenance Plan. The plan covers the use of a certified operator to oversee the facility, having adequate staff to help ensure compliance with the permit, mapping the treatment system, developing a preventive maintenance program and other items.
- The draft permit requires the continued implementation of a Pollutant Minimization Program for mercury to help identify sources of mercury to the system.
- The draft permit contains Industrial Waste Pretreatment Program requirements in accordance with 40 CFR parts 122 and 403.
- The draft permit contains requirements related to sludge disposal in accordance with 40 CFR parts 122 and 503. It is not expected that sewage sludge will be disposed of during the permit term.
- Dikes must be maintained and vegetation cut.

Significant Changes from the Previous Permit

The draft permit contains the following changes from the last issued permit:

1. Added 'Summary of Regular Reporting'.
2. A new mercury limit has been included based on an approved variance.
3. The permit requires weekly observations of the outfall to look for unusual characteristics of the discharge.
4. The Reporting requirements have been updated to require electronic submittal of DMRs (Part I.E.2).
5. Requirements related to Asset Management have been added (Part I.E.5).
6. The Industrial Waste Pretreatment Program language has been updated (Part I.E.7).
7. The 'Sludge Disposal Requirements' have been updated (Part I.C.8).
8. The "Standard Conditions" have been revised (Part II).

Tentative Determination

On the basis of preliminary staff review and application of applicable standards and regulations, the Acting Regional Administrator of EPA, Region 5 proposes to reissue a permit for the discharge subject to certain effluent limitations and special conditions.

Comment Procedures

The determination to issue an NPDES permit is tentative. Interested persons are invited to submit written comments on the draft permit. EPA's Comment and Public Hearing procedures may be found at 40 CFR 124.10, 124.11, 124.12, and 124.13. The following is a summary of those procedures:

1. The comment period during which written comments on the draft permit may be submitted extends to June 30, 2017.
2. During the comment period, any interested person may request a public hearing for each permit by filing a written request which must state the issues to be raised. The last day for filing a request for public hearing is June 30, 2017.
3. In appropriate cases, including those where there is significant public interest, the EPA Regional Administrator may hold a public hearing. A decision has not yet been made as to whether a public hearing will be held for either of the permits. Public notice of such a hearing will be circulated in at least one newspaper in the geographical area of the discharge and to those persons on the EPA mailing list at least 30 days prior to the hearing.
4. Comments received after June 30, 2017, will not be considered in the formulation of

final determinations.

5. Written comments or requests for a public hearing must be delivered or mailed to: John A. Colletti, U.S. Environmental Protection Agency, Region 5, NPDES Programs Branch - WN-15J, 77 West Jackson Blvd, Chicago, Illinois 60604 or emailed to colletti.john@epa.gov.

The application and Public Notice numbers should appear next to the EPA address on the envelope and on each page of any submitted comments. It is important that all viewpoints are considered before taking action. Therefore, we greatly appreciate your time and effort in participating in the public participation process. EPA will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision.

Petition to Review

Within 30 days following the service of notice of the Regional Administrator's final permit decisions, any person who filed comments on the draft permits or participated in a public hearing, if held, may petition the Environmental Appeals Board to review any condition of the permit decision. All documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be sent to the following address: Clerk of the Board, U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue, NW, Mail Code 1103M, Washington, DC 20460-0001.

All mail sent to the Environmental Appeals Board may be delayed by a random sterilization procedure. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board to avoid potential delays.

Documents that are hand-carried in person, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to: Clerk of the Board, U.S. Environmental Protection Agency, Environmental Appeals Board, 1201 Constitution Avenue, NW, U.S. EPA East Building, Room 3334, Washington, DC 20004

Documents that are hand-carried may be delivered to the Clerk of the Board between 8:30 a.m. and 4:30 p.m., Monday through Friday (excluding federal holidays).

Availability of Documents

The application, draft permit, including proposed effluent limitations and special conditions, statement of basis, and other documents contained in the administrative record, are available for inspection and may be copied at a cost of 15 cents per page at the Chicago Regional offices of the Environmental Protection Agency anytime between 9:00 a.m. and 4:00 p.m., Monday through Friday. You may also view the public notice, statement of basis, and draft permit on Region 5's website at "<https://www.epa.gov/publicnotices/grand-portage-wwsl-npdes-permit-mn-0025887-6>". All data submitted by the applicant is available as part of the administrative record. For more information, please contact John Colletti at (312) 886-6106 or by e-mail at colletti.john@epa.gov.

Unless a public hearing is scheduled, the EPA will issue a final determination as to the

reissuance of the permit in a timely manner after the expiration of the public comment period. If you would like to receive a copy of the final determination, please submit a request during the comment period to the above address. Please bring the foregoing to the attention of persons whom you know would be interested in this matter.

Written By: John Colletti

May 2017

U.S. EPA, Region 5, WN-15J
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