

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 Certification which are required as part of any application for a federal permit or license 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 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 Water Quality Standards of the Fond du Lac Reservation, Ordinance #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. Pre-Filing Meetings. All applicants must submit a request for a meeting with the Office of Water Protection at least 30 days prior to submitting a certification request. The Office of Water Protection may accept the request at its discretion.
- c. Certification Request. Applicants shall request Tribal Water Quality Certification from the Fond du Lac Reservation by sending 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

- d. Application Contents: Individual Permit. An application for an individual permit shall include the following:
 - (1) The name, address, phone, fax (if applicable), and email (if applicable) of the applicant;
 - (2) A description of the proposed project;
 - (3) A description of the applicable federal license or permit
 - (4) A description of the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters

(including wetlands), 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);

- (5) A description of the methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge, including specification of the degree of treatment expected to be attained;
- (6) A list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;
- (7) Documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
- (8) The following statement: *'The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief'*; and
- (9) The following statement: *'The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.'*

e. Application Contents: General Permit. The application for a general permit shall include the following:

- (1) The name, address, phone, fax (if applicable), and email (if applicable) of the applicant;
- (2) A description of the proposed categories of activities to be authorized by the general license or permit for which certification is requested;
- (3) A draft or proposed general license or permit;
- (4) Estimate the number of discharges expected to be authorized by the proposed general license or permit each year
- (5) Documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;

- (6) The following statement: *‘The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief’*; and
 - (7) The following statement: *‘The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.’*
- f. Applicable Reasonable Period of Time. Once a certification request is sent to the Office of Water Protection and the Federal Agency, the Federal Agency is responsible for determining a reasonable period of time in which the Office of Water Protection must respond. Within 15 days of receiving the request, the Federal Agency must inform the Office of Water Protection in a written communication what the “reasonable period of time” is and the date upon which waiver will occur if the Office of Water Protection fails or refuses to act on the certification request. The Office of Water Protection must make a decision on the certification request within the “reasonable period of time” as determined by the agency.
- g. 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.
 - (A) An application shall be deemed complete and accurate if it meets all the requirements of Section 201(d) and 201(e) of this Ordinance (#01/06) and includes:
 - i. The dates when the activity will begin and end and when the discharge or draw-down will take place;
 - ii. A description of the impact of the discharge on water of the Fond du Lac Reservation;
 - iii. A description of the Best Management Practices that will be used to protect water quality.
 - (B) 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.

C) A determination for completeness and accuracy by the Office of Water Protection will not impact the applicable reasonable period of time in which the Office of Water Protection must make a decision on the request. If an applicant does not provide enough information for the application to be deemed complete and accurate within the reasonable period of time, the Office of Water Protection must deny the request due to insufficient information.

(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.

h. 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 had made a decision, the applicant will be notified of this decision. The decision shall be issued within the reasonable period of time as determined by the Federal Agency.

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 procedures 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 specifications 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. The completeness review and any additional information requested will not impact the reasonable period of time as determined by the Federal Agency.

- (2) Water Quality Impacts Review: After the Office of Water Protection has received formal notification from a Federal Agency that a discharge from the certified project may affect water quality within the Fond du Lac

Reservation, 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. The OWP may continue to request additional information from the applicant as necessary to make an adequate water quality determination.

- (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 of the Fond du Lac Reservation in a manner that will violate the Fond du Lac Water Quality Standards shall be made within the reasonable period of time as determined by the Federal Agency.

Section 203 Actions on Certification Requests

The Office of Water Protection may grant, grant with conditions, or deny a water quality certification request. Any action by the Office of Water Protection must be within the scope of certification, completed within the reasonable period of time, and must otherwise be in accordance with section 401 of the Clean Water Act.

- a. Grant. If the Office of Water Protection determines that a discharge from a proposed project will comply with water quality requirements, it may issue certification.
 - 1) Any grant of certification shall be in writing and shall include a statement that the discharge from the proposed project will comply with water quality requirements.
 - 2) If the certifying authority determines that no water quality requirements are applicable to the waters receiving the discharge from the proposed project, the certifying authority shall grant certification.

- b. Grant with Conditions. Any grant of certification with conditions shall be in writing and shall, for each condition, include, at a minimum:
- 1) For certification conditions on an individual license or permit:
 - (A) A statement explaining why the condition is necessary to assure that the discharge from the proposed project will comply with water quality requirements; and
 - (B) A citation to federal, state, or tribal law that authorizes the condition.
 - 2) For certification conditions on issuance of a general license or permit:
 - (A) A statement explaining why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements; and
 - (B) A citation to federal, state, or tribal law that authorizes the condition.
 - C) If the condition does not include both a statement explaining why the condition is necessary and a citation to federal, state, or tribal law that authorizes the condition, EPA or USACE will waive the condition for failure or refusal to satisfy the requirements of § 121.7(d).
- c. Deny. If the Office of Water Protection cannot certify that the discharge from a proposed project will comply with water quality requirements it may deny.
- 1) Any denial of a certification shall be in writing and shall include:
 - (A) The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply;
 - (B) A statement explaining why discharges that could be authorized by the general license or permit will not comply with the identified water quality requirements; and
 - 2) If the denial is due to insufficient information, the denial must describe the specific water quality data or information, if any, that would be needed to assure that the discharge from the proposed project will comply with water quality requirements.

- (A) The Office of Water Protection will deny, due to insufficient information, any general license or permit with any new discharges into Outstanding Reservation Resource Waters (ORRW) as described in 105b.3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended) for the following reasons:
- (B) Aquatic resources are extremely important to the Fond du Lac Band of Lake Superior Chippewa and are quite extensive, comprising approximately 47% of the area within the external boundaries of the Fond du Lac Reservation.
- (C) Although the locations of these aquatic resources are known and mapped, the locations of potential projects are not known. Therefore, the potential impacts to the aquatic resources cannot be quantified unless the actual project scope and location is known.
- (D) While a set of generic conditions may be adequate to protect water quality, until a specific utility project is proposed, it is difficult to determine what site-specific conditions may be appropriate to truly protect the water quality and aquatic resources that Fond du Lac Band Members depend upon.
- (E) Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs.
- (F) New dischargers wishing to discharge to an ORRW must obtain an individual permit from EPA and USACE.

Section 204

Certification Conditions

OWP may place any condition in the certification necessary to assure that the discharge from the proposed project will comply with water quality requirements. Water quality requirements are defined as applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States. This section lists examples and explains various conditions that can be imposed on a certification request to ensure the proposed discharge complies with water quality requirements.

- a. Administrative Conditions. These conditions help the Office of Water Protection track the applicant's filings with the permit issuer, such as a Notice of Intent for EPA's Construction General Permit. They also provide limits to the applicants project once they have obtained a certification and require the applicant notify the Office of Water Protection of certain procedures of their project.
- 1) A copy of the Storm Water Pollution Prevention Plan (SWPPP) must be submitted to the Office of Water Protection at least fifteen (15) days in advance of sending the Notice of Intent to EPA. This condition is meant to help applicants in identifying flaws in their SWPPP that may be detrimental to water quality prior to the commencement of construction activity. The Office of Water Protection will work with the applicant to identify all proposed receiving waters.
 - 2) Copies of the Notice of Intent (NOI) and the Notice of Termination (NOT) must be sent to the Office of Water Protection at the same time they are submitted to EPA. The condition helps the Office of Water Protection keep track of when a project is about to start and when it has ended.
 - 3) A copy of the Pre-Construction Notification (PCN) must be sent to the Office of Water Protection at the same time it is sent to the St. Paul District, Corps of Engineers. The PCN must include all applicable drawings, plans, and specifications for the project. The Office of Water Protection must be invited to participate in any meetings between the St. Paul District, the Local Government Unit, Technical Evaluation Panel and the applicant. This condition helps the Office of Water Protection stay informed of the project as it progresses and gives information to evaluate whether the project requires a Wetland Activity Permit under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance.
 - 4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials, and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein. This condition keeps the applicant from changing the scope and extent of the project without requiring a new certification.
 - 5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work. This condition allows the Office of Water Protection to know when a project will begin.

- 6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited. All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during, and after construction until the area is stabilized. This condition limits the discharge to only the waters that were identified at the time of the application and subsequent certification.
- 7) All work shall be carried out in such a manner as will prevent violation of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, commercial, and wetlands. It also includes the designated uses of wetlands including, but not limited to, baseflow discharge, cultural opportunities, flood flow attenuation, groundwater recharge, indigenous floral and faunal diversity and abundance, nutrient cycling, organic carbon export/cycling, protection of downstream water quality, recreation, resilience against climactic effects, sediment/shoreline stabilization, surface water storage, wild rice, and water dependent wildlife. In addition to listing the designated uses of waters of the Fond du Lac Reservation, this condition also limits the applicant to discharges that will not violate our Water Quality Standards.
- 8) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors, and sub-contractors. This condition requires the applicant to inform everyone under their control of the conditions of the certification so that all can aid in compliance of those conditions.
- 9) A copy of this Certification must be kept by the contractor on-site at all times and be available for viewing by all personnel, including inspectors. This condition ensures that the information contained in the certification, especially the conditions, is readily available onsite for reference.
- 10) All General Conditions and Special Conditions specified in the Standard Wetland Activity Permit (or Letter-of-Permission Wetland Activity

Permit, if applicable) must be followed, as well as any condition stated in the Department of the Army Permit(s) issued by the St. Paul District of the U.S. Army Corps of Engineers. This condition applies if the applicant had also applied for a permit under the provisions of the Fond du Lac Wetlands Protection and Management Ordinance, Ordinance #03/06.

- b. Water Quality Conditions. These conditions help the Office of Water Protection confirm the applicant is protecting water quality or directly aid the applicant in on-the-ground water quality protection while conducting their project.
- 1) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall not exceed 10% of natural background within any receiving water(s) as determined by the Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½ inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within seven (7) days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. Nationwide Permit applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling. This condition helps both the Office of Water Protection and the applicant in knowing whether or not their erosion control efforts are effective.
 - 2) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by the Office of Water Protection staff. This requirement only applies to receiving waters in which no ambient turbidity data exists. This condition allows the Office of Water Protection to obtain a baseline turbidity sample in which to compare to other samples.
 - 3) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size. This condition helps protect water quality and also reminds applicants of their responsibility in reporting spill events.

- c. Erosion Control Conditions. These conditions dictate to the applicant certain erosion control practices to help ensure water quality is protected.
- 1) All erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, repaired or replaced if defective, and removed once the area has been properly stabilized or re-vegetated. All BMPs shall be inspected at least once per week and within 24-hours after a ½-inch or greater rainfall event. This condition places the burden on the applicant to ensure that their BMPs are functioning properly to prevent erosion and sedimentation, thus preventing degradation of water quality.
 - 2) All appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible. This condition reminds applicants that propose temporary impacts (usually in wetlands) of their responsibilities in restoring the site so the impacts are truly temporary in nature.
 - 3) To prevent soil erosion in upland forested areas, which in turn protects water quality, contractors and sub-contractors shall make their best efforts to segregate top soil (keeping any organic material in the top 12 inches) in the upland forested areas. This will contribute to the better establishment of trees (in the Temporary Work Space) and other vegetation (in the Permanent Right-of-Way) and therefore, prevent soil erosion. This condition requires an applicant whose project entails the installation of a pipeline through forested uplands areas to segregate top soil (the organic layer) from the subsoil. This upper organic layer of the forest is important because it contains many microbes that are important for many plants to germinate and/or grow. This includes many tree species, which are important for holding soil material in place to prevent erosion of the forest soil.
- d. Protection of Streams/Ditches and Banks Conditions. These conditions dictate certain construction techniques or limits to the applicant in order to protect stream and/or ditch water quality or protect the stream and/or ditch banks from damage.
- 1) For waterbody crossings, a dry, open cut, dam-and-pump crossing method using sheet piling will be utilized. Staff from the Office of Water Protection must be present during sheet piling installation and dam-and-

pump operation. A minimum of 48 hours prior notice must be given to the Office of Water Protection before either of these two operations shall begin. This condition requires the applicant of a pipeline installation project to utilize the above described method of installation. It also requires Office of Water Protection staff to be present during key operations of the installation. Having knowledgeable staff onsite helps ensure that the pipeline installation is conducted in compliance with all applicable Water Quality Standards and conditions of the Water Quality Certification.

- 2) The type of equipment bridge for each waterbody crossing must be approved by the Office of Water Protection prior to its installation. Efforts must be taken to prevent compressing the stream banks by placing the lower most support at least five (5) feet away from the banks and elevating the span above the stream channel. No excavation of the banks to “key in” the supports shall be allowed. Staff from the Office of Water Protection must be present during both the installation and dismantling of the bridges. A minimum of 48 hours prior notice must be given to the Office of Water Protection of these two procedures. This condition limits the installation of equipment bridges across streams/ditches and helps protect the stream/ditch banks from damage. It also requires Office of Water Protection staff to be present during installation and dismantling of the bridge. Having knowledgeable staff onsite helps ensure the installation is conducted properly and the stream/ditch banks are protected from damage.
- 3) Sediment under-curtains and stiff sidewalls (plywood or fixed in place triangular silt dikes) must be installed on all bridges. This condition ensures that dirt and other material from equipment and vehicles crossing the bridge will not drop into the stream/ditch below the bridge.
- 4) Equipment shall not be allowed to cross waterbodies (streams/ditches) without bridges. A “one-time” pass through the waterbody is not authorized. This condition is used to prevent the applicant from crossing through the waterbody with a piece of equipment to make it easier to construct a bridge or continue on to another location without a bridge.

e. Protection of Wetlands Conditions. These conditions aid the applicant in protecting wetlands from damage during construction activities and also protect water quality in the wetland.

- 1) Equipment access through wetlands may be accomplished through the use of timber/equipment mats and/or ice roads. All mats must be removed

after construction activities have been completed. This condition protects wetlands from rutting in non-frozen conditions or when during frozen conditions do exist, but continued use of the ice road causes the ground to soften requiring the use of timber mats in some areas.

- 2) Pipeline installation in saturated wetlands may be accomplished using the push-pull method and/or traditional trenching method. This condition applies to applicants who's project includes the installation of a pipeline through saturated wetlands. It allows the applicant flexibility in installation methods depending upon site conditions.
- 3) Pipeline installation in saturated wetlands must be accomplished using the traditional trenching method only. This condition applies to applicants whose project includes the installation of a pipeline through saturated wetlands. It will be used when Office of Water Protection staff have determined that traditional trenching is the best method to use through the wetland.
- 4) The placement of rock/gravel material in wetlands for ground stabilization purposes in or adjacent to the excavation is not authorized unless the material is placed on geo-textile matting or similar material to aid in its complete removal. No rock or gravel material is to remain in the excavation pit after project completion. This condition prevents rock material from being left in wetlands after project completion. The introduction of rock material in wetlands can potentially disrupt subsurface water flow.
- 5) Dewatering structures shall be placed in upland location whenever practicable. However, if not practicable, then a double filtration system approved by the Office of Water Protection may be used in wetlands. The locations of all dewatering structures must be approved by the Office of Water Protection prior to installation. This condition allows for the installation of a dewatering structure to be placed in wetlands where the activity requiring dewatering is taking place in a large wetland too far removed from an upland location, making it impossible to pump the water from the dewatering location to the dewatering filtration structure. Because the dewatering structure is to be located in a wetland, the Office of Water Protection requires its staff to select the dewatering structure location to ensure that the impacted wetland is of a type that can handle the discharge with minimal impact.

- 6) Portable chemical toilets shall not be placed in wetlands unless no suitable upland location is available and the Office of Water Protection has approved its placement in a wetland. Portable chemical toilets placed in wetlands shall have adequate containment and tip-over protection. In large wetland complexes, the workers need their portable chemical toilet to be placed in the wetland near the work site. This condition allows for this, but requires that the structure have containment and tip-over protection to prevent spills of the chemical contents into the wetland.
 - 7) Woody plant species may be cleared for site access provided cut material is not piled in wetlands. The material is to be scattered in wetlands or if piled, must be placed on upland locations. The piling of woody material in wetlands is considered fill material. This ensures that the material is not fill, but is scattered or piled in uplands where it does not affect wetlands.
- f. Seed Mix Conditions. These conditions dictate seed mixes to be used on the Fond du Lac Reservation to ensure that certain plant species are not introduced on the Reservation. It also helps prevent the inadvertent introduction of invasive species.
- 1) All seed mixes, whether used for temporary stabilization or permanent seeding, shall not contain any annual ryegrass (*Lolium* species). Canadian Wild Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval provided by do not contain annual ryegrass. Seed mixes 21-111 (Oats Cover Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation. This condition prevents the use of annual ryegrass on the Reservation. Annual ryegrass is allelopathic, which means it produces biochemicals in its roots that inhibit the growth of other native plants. If used in seed mixes, annual ryegrass could contribute to erosion, especially on slopes. However, the condition also specifies substitute grasses that germinate almost as fast as annual ryegrass for use as a cover crop to help prevent erosion.
 - 2) Seed mixes used in wetlands must be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do not contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast), and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac

Reservation. The use of mulch is not allowed in wetlands. This condition requires the approval of wetland seed mixes by Office of Water Protection staff. The BWSR seed mixes listed have already been reviewed by Office of Water Protection staff and are pre-approved. Mulch is not allowed in wetlands because it often reduces germination of wetland plants and also does not break down the same as in upland situations.

- g. Invasive Species Prevention Condition. This condition prevents the inadvertent introduction of invasive species on the Fond du Lac Reservation.
- 1) To prevent the introduction of invasive species, all contractors and sub-contractors must disclose information stating prior equipment location(s) and all known invasive species potentially being transported from said location(s). All equipment must undergo a high-pressure wash (including equipment mats) before entering the Fond du Lac Reservation. Personal equipment, such as work boots, gloves, vests, etc. must be clean of debris, dirt, and plant and animal material before entering the Fond du Lac Reservation. Equipment being transported from known infested areas must undergo a high pressure wash as soon as possible after leaving the infested site and again before entering the Fond du Lac Reservation to avoid transport of invasive species into areas surrounding the Reservation. Written certification of such must be provided to the Fond du Lac Office of Water Protection. Upon arrival, all contractor and sub-contractor equipment will be inspected by appointed Fond du Lac staff (or an applicant designated inspector). If equipment is deemed unsatisfactory, the equipment must undergo a high-pressure wash until the equipment is cleared by the inspector, until such time, minimal travel will be allowed through the Reservation. The applicant shall be held responsible for the control of any invasive species introduced as a result of the project. This condition requires the applicant to prevent the inadvertent introduction of invasive species by taking an active role in cleaning all vehicles, equipment, and equipment mats before entering the Reservation. This condition has been placed in certifications since 2012, due to the introduction of Wild Parsnip in 2011 from a pipeline contractor. It is much easier to prevent the introduction of an invasive species than it is to eradicate it once it has been introduced. Many invasive plant species form monocultures, preventing native plants from growing. This situation often leads to causes of erosion, which in turn effects water quality.

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Section 205. Waiver of Certification Authority

The applicable Federal Agency may find that the Office of Water Protection's failure or refusal to act on a certification request constitutes a waiver of certification authority when the Office of Water Protection:

- a. Fails or refuses to act on a certification request within the reasonable period of time;
- b. Fails or refuses to satisfy the requirements of 40 C.F.R. § 121.7(c);
- c. Fails or refuses to satisfy the requirements of 40 C.F.R. § 121.7(e); or
- d. Fails or refuses to comply with other procedural requirements of section 401 of the CWA.

Section 206. Enforcement Authority

The Fond du Lac Band of Lake Superior Chippewa retains its civil regulatory authority over actions and discharges impacting waters within the boundaries of the Reservation.

- a. The Office of Water Protection is authorized to inspect activities that result in a discharge into waters located within the boundaries of the Reservation and to ensure the activity or discharge complies with certification conditions.
- b. The Fond du Lac Band of Lake Superior Chippewa and the Office of Water Protection has the authority to enforce any water quality certification, certification condition, or violation of a tribal water quality standard in Tribal Court.

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 and subsequently amended by Resolution #1513/20 on December 16, 2020.



Kevin R. Dupuis, Sr.,
Chairman



Ferdinand Martineau, Jr.,
Secretary/Treasurer