

03-01-13-89
BAND ASSEMBLY BILL ~~02-03-16-88~~

A bill of tribal government to provide for the amendment of Band Statute 1091-MLC-24, the Environmental Protection Laws of the Non-Removable Mille Lacs Bands of Chippewa Indians.

The District I Representative introduced the following bill on the 19th day of APRIL, 1988.

Preamble

Be it enacted by the Band Assembly of the Mille Lacs Bands of Chippewa Indians for the purpose of amending the environmental laws to establish minimum requirements for air, water, land and natural resource pollution control within the territorial jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians.

TITLE I

Governance

Section 1. Purpose. The purpose of this Act is to achieve a reasonable degree of purity of air, water, land, and natural resources of the Band consistent with the maximum enjoyment and use thereof in furtherance of the welfare of all persons within the jurisdiction of the Band. This Statute is enacted by the inherent aboriginal and sovereign rights of the members of the Non-Removable Mille Lacs Bands of Chippewa Indians, the Treaties of 1837 and 1855, and by the authority vested in the Non-Removable Mille Lacs Bands of Chippewa Indians under Article I, Section 3; Article VI, Sections 1 and 2; and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

Section 1.01. It is the purpose of this act to establish and further the environmental policies of the Bands to provide for the prevention, control and abatement of the pollution of the air, water, and land, so far as feasible and practical, in furtherance of conservation of the natural resources and public health and safety of all territories subject to the jurisdiction of the Band. It is hereby declared that such efforts are necessary for the protection of present and future vital security interests of the Band and its members.

Section 1.02. It is the purpose of this Act, to safeguard the air, waters and lands of the Band from pollution by preventing any new pollution and abating pollution existing upon enactment of this Band Statute, under a program consistent with the declaration of policy hereinafter stated and the minimum environmental standards established by the laws and regulations promulgated by the United States of America, unless supplemented by more restricted standards of Band law.

Section 1.03. It is the purpose of this Act, to perpetuate commonly held traditional beliefs, amongst American Indian people that human beings have a duty to peacefully co-exist within the natural environment. Human beings further have a natural duty to protect the environment which provides humans with life-sustaining natural resources.

Section 1.04. It shall be the public policy of the Non-Removable Mille Lacs Bands of Chippewa Indians that each person has an inalienable right to the protection, preservation, and enhancement of air, water, land and other natural resources located within the jurisdiction of the Band and that each person has a legal duty to aid in the protection, preservation and enhancement of air, water, land and other natural resources located within the jurisdiction of the Band, so that all human beings may live in harmony with nature.

Section 1.05. It shall be the public policy of the Non-Removable Mille Lacs Bands of Chippewa Indians to enact and enforce a series of environmental protection measures which shall, at a minimum equal the environmental protection laws of the United States of America and, if necessary and prudent exceed the minimum standards established by federal law.

Section 2. Scope of Amendment: Creation of Environmental Protection Commission. There is hereby created within the Natural Resources Administration, a separate administration to be known as the Environmental Protection Commission of the Non-Removable Mille Lacs Bands of Chippewa Indians.

Section 3. Selection, Terms of Office and Governance of Environmental Protection Commission. The Environmental Protection Commission shall be comprised of a five member commission chaired by the Commissioner of Natural Resources. The remaining members of the Commission shall be nominated by the Chief Executive and confirmed by the Band Assembly to a four year term of office to expire on June 30, 1992, and every four years henceforth from this date.

Section 3.01. The members of the Commission shall be nominated as a consequence of their individual education, abilities, knowledge of nature, concern and commitment demonstrated for the environmental resources of the Band. The composition of the Commission shall not be restricted to members of the Band and at least one seat shall be filled by a person from the community surrounding the lands subject to the jurisdiction of the Band.

- Section 3.02. The public acts and deeds of the Agency shall be published in the form of Environmental Protection Directives. Such written Directives shall be in uniform format, numbered consecutively and have expiration dates. The Commissioner of Natural Resources is authorized to execute such Directives in the name of the Commission, and to act in the name of the Commission when public necessity so dictates a documented need to do so, or as set forth in Section 21 of Title I.
- Section 4. Powers and Duties of the Environmental Protection Commission. The Environmental Protection Commission shall have the following powers and responsibilities:
- Section 4.01. To administer and enforce all environmental protection regulations, herein enacted, of the United States of America and the Non-Removable Mille Lacs Bands of Chippewa Indians;
- Section 4.02. To investigate the extent, character and effect of pollution of the air, water, land or natural resources of the Band and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the air, water, land or natural resources of the Band as it may deem advisable; and, to take such measures as necessary to abate pollution;
- Section 4.03. To establish and alter such reasonable standards and regulations for quality air, water, lands and other natural resources of the Band in relation to the public use and enjoyment of the members as necessary to implement the purposes of this act;
- Section 4.04. To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, regulations, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate pollution of the air, waters, lands, or natural resources subject to the jurisdiction of the Band;
- Section 4.05. To exercise all powers, duties and responsibilities, which are reasonably necessary for the protection of the air, water, lands, and natural resources of the Band. All such authorities so exercised pursuant to this sub-section, shall be consistent, in scope and nature with authorities delegated to the United States Environmental Protection Agency by act of Congress or federal judicial interpretation of such act.
- Section 4.06. To enter into cooperative agreements with any environmental protection agency of the United States, the State of Minnesota or any other federally recognized Indian tribe relating to the purposes of this Band Statute.

Section 4.07. To receive and accept money, property or services from any person or from any agency described in Section 4.06 or from any other source for any purpose within the scope of its functions, in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians. All monies so received are hereby appropriated for such purposes in like manner and subject to like provisions of law as the corresponding appropriations of all Band revenue. The Commission shall have no authority to waive the sovereign immunity of the Non-Removable Mille Lacs Bands of Chippewa Indians as a requisite to receipt of any domestic assistance or private funding.

Section 4.08. To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emission of either air or noise pollution on lands subject to the jurisdiction of the Band.

Section 4.09. To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof related to the storage, collection, transportation, processing, or disposal of waste.

Section 4.10. To prohibit the introduction, storage, collection, processing, disposal, or transportation of hazardous waste on lands subject to the jurisdiction of the Band.

Section 4.11 To hold public hearings as it may deem necessary or advisable for the discharge of its duties under this act. All hearings conducted by the Environmental Protection Commission shall be recorded and transcribed. All final records, studies, reports and other documents prepared in final form by order of, or for consideration of, the Commission, are confidential records of the Non-Removable Mille Lacs Bands of Chippewa Indians. Notwithstanding the foregoing, the Commission may disclose any such information in order to comply with federal law and regulation, to the extent and for the purposes of such federally required disclosure.

Section 4.12. Whenever the Commission deems it necessary for the purposes of this Act, the Commission or any member, employee, or agent thereof, when authorized by it, may enter upon any property subject to the jurisdiction of the Band or public lands not subject to the jurisdiction of the Band, for the purpose of obtaining information or conducting surveys or investigations.

Section 5. Jurisdictional Authority. The Environmental Protection Commission shall exercise all the environmental jurisdiction possessed by the Non-Removable Mille Lacs Bands of Chippewa Indians as stated herein.

Section 5.01. The Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise concurrent environmental jurisdiction with the United States of America over the air space encompassing all lands and waters subject to the jurisdiction of the Band.

Section 5.02. The Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise concurrent environmental jurisdiction with the United States of America over all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation system, drainage systems and all other accumulations of water, surface or or underground, natural or artificial, public or private, which are contained within, flow through or border upon lands of the Mille Lacs Bands of Chippewa Indians.

Section 5.03. The Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise concurrent environmental jurisdiction with the United States of America over:

- a) all lands within the exterior boundaries of the Mille Lacs Reservation and Sandy Lake Reservation as established by the Treaty of 1855;
- b) all lands held in trust by the United States of America for the benefit of the Minnesota Chippewa Tribe, which are lawfully delegated to the jurisdiction of the Mille Lacs Bands; and, all lands held in trust by the United States of America for the benefit of the Non-Removable Mille Lacs Bands of Chippewa Indians;
- c) all lands subject to the jurisdiction of the Band pursuant to federal law, notwithstanding the issuance of any patent, and including rights-of-way running through said lands;
- d) all individual allotments for the benefit of any member of the Non-Removable Mille Lacs Bands of Chippewa Indians which are located within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as established by the Treaty of 1855;
- e) all lands held in fee status in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians which are located within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as established by the Treaty of 1855.

Section 5.04. The criminal and civil jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall extend to all enrolled members of the Mille Lacs Bands of Chippewa Indians, enrolled members of the Minnesota Chippewa Tribe who reside within the territorial jurisdiction of the Mille Lacs Bands of Chippewa Indians, Indians from other tribes who enter the territorial jurisdiction, including Indian Country, of the Mille Lacs Bands of Chippewa Indians., Indians from other tribes who enter the territorial jurisdiction of the Mille Lacs Bands of Chippewa Indians by virtue of residency, employment or violation of Mille Lacs Band Statute(s) within the territorial jurisdiction of the Mille Lacs Bands of Chippewa Indians.

Section 5.05. The exercise of civil jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians over non-Indians, in environmental protection causes of action shall exist to the extent authorized by the laws of the United States of America. The criminal jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall not extend to non-Indians.

Section 5.06. The jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall extend to all persons, political sub-divisions and their officers and agents, public or private corporations, associations, partnerships and any other individuals or entities who shall violate the environmental protection laws of the Band within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations or on lands held in trust or fee status in the name of the Band, as authorized pursuant to the laws of the United States of America.

Section 6. Judicial Authority. The Court of Central Jurisdiction shall have original jurisdiction over any civil or criminal violation of the environmental protection laws of the Non-Removable Mille Lacs Bands of Chippewa Indians, subject to the provisions of Section 5.

Section 6.01. The Court of Central Jurisdiction is hereby authorized to dismiss and transfer any cause of action where jurisdiction can not be lawfully exercised, to any court of competent jurisdiction entitled to adjudicate said cause of action.

Section 7. Enforcement. The provisions of this act and all regulations, standards, orders, stipulation agreements, schedules of compliance and permits adopted or issued by the Environmental Protection Commission for the prevention, control, or abatement of pollution of the air, water, lands or natural resources subject to the jurisdiction of the Mille Lacs Bands of Chippewa Indians may be enforced by any one or any combination of the following:

- a) criminal prosecution;
- b) action to recover civil penalties;
- c) injunctions;
- d) action to compel performance; or,
- e) other appropriate action in accordance with other provisions of this act.

Section 7.01. Any duly authorized law enforcement officer or natural resources officer of the Non-Removable Mille Lacs Bands of Chippewa Indians is hereby authorized to take all action to the extent of their authority that may be necessary or proper for the enforcement of the provisions of this Act, regulations, standards, directives, stipulation agreements, variances, schedule of compliance or permits.

Section 8. Duty to Notify and Avoid Pollution. It is the duty of every person subject to the jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians to notify the Environmental Protection Commission immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of the air, waters, lands or natural resources of the Band, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or materials, and take immediately, such other action as may be reasonably possible to minimize or abate pollution of the air, waters or lands of the Band.

Section 9. Criminal Penalties. Any Indian who willfully or negligently violates any provision of this Act, or any standard, regulation, variance, directive, stipulation agreement, schedule of compliance or permit issued or adopted by any environmental protection agency or government which violation is not included in Section 9.01, shall upon conviction be guilty of an environmental offense and may be sentenced to imprisonment for no longer than ^{one hundred eighty} ~~ninety~~ days and/or a fine not to exceed five ^{thousand} ~~hundred~~ dollars.

Section 9.01. Any Indian who willfully or negligently violates any provision of any Title of this Act or the provision of any federal law enacted for the protection of the environment which is incorporated by reference into the laws of the Mille Lacs Bands of Chippewa Indians, shall upon conviction, be guilty of an environmental offense and may be punished by a fine ^{Schedule as promulgated by the Comm. of N.R.} ~~of not less than two thousand five hundred~~ ~~dollars in the event of a willful violation or not less than five hundred dollars in the event of a negligent violation.~~ ~~In any case, the penalty shall not be more than three thousand dollars per day of violation or by imprisonment for not more than six months, or both. If the conviction is for conduct committed after a first conviction of such person under this section, punishment shall upon conviction be by fine of not more than five thousand dollars per day of violation, or by imprisonment for not more than one year, or both.~~

Section 10. Civil Penalties. Any person subject to the jurisdiction of the Band who violates any provision of any Title of this Act or any provision of any federal law enacted for the protection of the environment which is incorporated by reference into this Act, or any standard regulation, variance, directive, stipulation agreement, schedule of compliance or permit issued or adopted by any environmental protection agency of government shall forfeit and pay to the Band a penalty, in an amount to be determined by the court, of not more than five thousand dollars per day of violation.

Section 10.01. In addition, in the discretion of the court, the defendant may be required to forfeit and pay to the Band a sum which will adequately reimburse any vendor for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accidental, and;

Section 10.02. Forfeit and pay to the Band an additional sum to constitute just compensation for any loss or destruction of wildlife, fish or other aquatic life, and birds and for other proven actual damages to the Band caused by an unauthorized discharge of pollutants.

Section 10.03. As a defense to any said damages, the defendant may prove that the violation was caused solely by (a) natural causes, (b) negligence on the part of the Mille Lacs Bands of Chippewa Indians of some other unit of government or, (c) an act or failure to act which constitutes sabotage or vandalism, or any combination of the foregoing clauses.

Section 10.04. The civil penalties and damages provided for in Section 10 through 10.03 may be recovered by a civil action brought by the Solicitor General in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians in the Court of Central Jurisdiction or in any other court of competent jurisdiction of the State of Minnesota or Wisconsin provided that this Act is utilized to commence and determine the rights and obligations of the parties, pursuant to the provisions of 28 USC 1360 (d) or any other applicable federal law.

Section 11. Civil Actions. Any person residing on trust land subject to the jurisdiction of the Band, the Solicitor General, on behalf of the Band or any instrumentality or administration of the Band may maintain a civil action in the Court of Central Jurisdiction for declaratory or equitable relief in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians against any person, for the protection of the air, water, land or other natural resources located within the jurisdiction of the Band, whether publicly or privately owned, from pollution, impairment or destruction.

Section 11.01. No action shall be permitted pursuant to the provisions of Section 11 for acts taken by a person which do not and can not reasonably be expected to pollute, impair, or destroy any other air, water, land or natural resources located within the jurisdiction of the Band. Neither, shall actions be permitted under Section 11 for conduct taken by a person pursuant to established environmental quality standards of Band law, any regulation, rule, declaration, license, stipulation agreement or permit issued by the Mille Lacs Environmental Protection Commission.

Section 11.02. Within seven days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the Solicitor General and the Commissioner of Natural Resources.

Section 11.03. In any action maintained under Section 11, the Solicitor General may intervene as a matter of right and may appoint special counsel where as a result of such intervention he may represent conflicting or adverse interests. Other interested parties may be permitted to intervene on such terms as the court may deem just and equitable in order to effectuate the purposes and policies of this act.

Section 11.04. Where any action maintained pursuant to Section 11 results in a judgment in favor of the defendant that no violation of this Act has occurred by said defendant, the judgment shall not estop the Band from relitigation any or all of the same issues with the same or other defendants unless the Band brought the prior action against the same or other defendant.

Section 11.05. Where any action maintained pursuant to Section 11 results in a judgment in favor of the plaintiff, the judgment shall be res judicata between the parties in any action the Band may bring against the same defendant.

Section 12. Burden of Proof. In an action maintained pursuant to Section 11, where the subject of the action is conduct governed by any provision of this act or an action by the Environmental Protection Commission, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant violates or is likely to violate any provisions of this Act or any action by the Environmental Protection Commission, the defendant may rebut the prima facie showing by the submission of evidence to the contrary.

Section 12.01. In any other action maintained pursuant to Section 11, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resource located within the jurisdiction of the Band, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the Band's paramount concern for the protection of the overall environment from pollution, impairment or destruction. Economic considerations alone shall not constitute a defense hereunder.

Section 12.02. In an action maintained under Section 11, the plaintiff shall have the burden of proving that the environmental quality standard, limitation, regulation, rule, directive, license, stipulation agreement or permit is inadequate to protect the air, water, land or other natural resources located within the jurisdiction of the Band from pollution, impairment or destruction by showing material evidence of such inadequacy.

- Section 13. Relief. The Court of Central Jurisdiction may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions on the party as are necessary or appropriate to protect the air, water, land or other natural resource located within the jurisdiction of the Band from pollution, impairment or destruction. When the court grants temporary equitable relief, it may require the plaintiff, except where the Band is plaintiff, to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.
- Section 14. Service of Process. As to any cause of action arising under Section 11, the Court of Central Jurisdiction may exercise personal jurisdiction to the extent permissible by the laws of the Mille Lacs Bands and the United States and service of process on any person who is subject to the jurisdiction of the Court of Central Jurisdiction may be made by personally serving the summons upon the defendant who may be outside of the jurisdiction of the Band with the same effect as though the summons had been personally served within the jurisdiction of the Band.
- Section 15. Rights and Remedies Non-Exclusive. No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by this Act. The rights and remedies herein shall be in addition to any administrative, regulatory, statutory or common law right and remedies now or hereafter available.
- Section 16. Recovery of Litigation Costs and Expenses. In any action brought by the Solicitor General, in the name of the Band, pursuant to any Title of this Band Statute, for civil penalties, injunctive relief, or in an action to compel compliance, if the Band shall finally prevail, and if the proven violation was willful, the Band, in addition to other penalties provided in Section 10, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the Band. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.
- Section 17. Statute of Limitations. Proceedings in respect of an environmental offense pursuant to any provisions of this Act, may be instituted at any time within three years after the time when the subject matter of the proceedings was discovered.
- Section 18. Construction/Severability. The Solicitor General or exterior legal counsel and the Court of Central Jurisdiction whichever is applicable, shall liberally construe the provisions of this Act so as to provide for the full force and effect of the purposes therein stated.

- Section 18.01. If any provisions of the Band Statute, or the application thereof, to any person, business, corporation or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions or application and to this end, the provisions of this Band Statute are declared severable.
- Section 19. Sovereign Immunity. The Non-Removable Mille Lacs Bands of Chippewa Indians shall not be subject to any environmental suit in any court of competent jurisdiction without the expressed enactment of law by the Band Assembly.
- Section 20. Reports to Band Assembly. The Environmental Protection Commission shall, before December 1 of each year, prepare a report of progress on abatement and control of air, water, land or natural resource pollution with recommendations for legislation in furtherance of the Band's environmental policies.
- Section 21. Emergency Powers. In the event that there is imminent and substantial danger to health and welfare of the members of the Band as a result of the pollution of air, water, land or natural resources; upon such finding, the Environmental Protection Commission may by emergency directive order the immediate discontinuance of abatement of such pollution without notice and without a hearing, or at the request of the Commission, the Solicitor General of the Band may bring an action in the name of the Band in any court of competent jurisdiction for a temporary restraining order to immediately abate or prevent such pollution. Such Commission directive or temporary restraining order shall remain effective until notice, hearing and determination are effected pursuant to other provisions of law, or, in the interim, as otherwise ordered. Such Commission directive shall be appealable to the Court of Central Jurisdiction.

TITLE II
Clean Water

Section 1. Adoption of _____ USC _____: Clean Water Act. The provisions of the laws of the United States of America relate to _____ as set forth in _____ USC _____; et seq., shall apply as the _____ laws of the Non-Removable Mille Lacs Bands of Chippewa Indians. The Environmental Protection Commission and justices of the Court of Central Jurisdiction shall be bound thereby to the provisions of said act.

Section 2. Adoption of Implementation regulations of _____ USC _____: The provisions of administrative regulations promulgated and published by the United States Environmental Protection Agency in the Federal Register as _____ to implement the provisions of _____ USC _____ are hereby established as administrative regulations of the Non-Removable Mille Lacs Bands of Chippewa Indians. The Environmental Protection Commission and the justices of the Court of Central Jurisdiction shall be bound thereby to the provisions of such regulations, unless the Commission shall promulgate stricter regulations, which in such event, the stricter regulations shall apply.