



**MILLE LACS BAND OF OJIBWE
DEPARTMENT OF NATURAL RESOURCES**



COMMISSIONER'S ORDER NO. 2024-02

**A COMMISSIONER'S ORDER ESTABLISHING WATER QUALITY STANDARDS OF
THE MILLE LACS BAND OF CHIPPEWA INDIANS**

Section 1. Authority.

- (a) Pursuant to 11 MLBS § 1(a), Mille Lacs Band Statutes Title 11 – Environment, Natural Resources, Animals and Plants is enacted by the inherent aboriginal and sovereign rights of the members of the Mille Lacs Band of Chippewa Indians, also known as the Mille Lacs Band of Ojibwe (“Band”), the Treaties of 1837 and 1855, and by the authority vested in the Mille Lacs Bands of Ojibwe under Article I, Section 3; Article VI, Sections 1 and 2; and Article XIII of the Constitution of the Minnesota Chippewa Tribe.
- (b) Pursuant to 11 MLBS § 1(c), water quality standards as minimum environmental standards established by the laws and regulations promulgated by the United States of America, which includes Water Quality Standards Regulation (40 CFR 131), Water Quality Guidance for the Great Lakes System (40 CFR 132), and sections 303 and 518 of the Clean Water Act (33 U.S.C. §§ 1313 and 1377), are made tribal law, unless supplemented by more restricted standards of Band law.
- (c) Pursuant to 11 MLBS § 2, the reason for Title 11 is to protect the natural resources within the jurisdiction of the Band as defined under the Constitution of the Minnesota Chippewa Tribe, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), amended June 15, 1935 (49 Stat. 3781) and approved by the Secretary of Interior on July 24, 1936.

Section 2. Purpose.

- (a) Pursuant to 11 MLBS § 1, the purposes of these water quality standards are:
 - (1) To achieve a reasonable degree of purity of air, water, land, and natural resources of the Band consistent with the maximum enjoyment and use

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thereof in furtherance of the welfare of all persons within the jurisdiction of the Band.

- (2) To establish and further the environmental policies of the Band 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. Such efforts are necessary for the protection of present and future vital security interests of the Band and its members.
 - (3) To safeguard the air, waters, and lands of the Band from pollution by preventing any new pollution and abating pollution, under a program consistent with the declaration of policy 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.
 - (4) 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.
 - (5) 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.
 - (6) 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.
- (b) Pursuant to 11 MLBS § 102, water quality standards are needed as the Band finds that water is the primary resource of the natural resources system, the protection of the quality and quantity of the water resources is the primary objective of these laws and furthermore, the inter-relationships of water and other natural resources is such that the management of soil, timber, air and mineral resources has both direct and indirect effects upon the quality and quantity of the water, fish, wild rice, and wildlife resources.

Section 3 Scope.

Pursuant to 11 MLBS § 9, these water quality standards shall apply to all waters of the Mille Lacs Band of Chippewa Indians as defined in 11 MLBS § 103(o) as all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifer, irrigation system, drainage systems, and all other accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon Band lands, and which are contained with, flow through or border upon any other lands where Band member's rights of hunting, fishing, trapping, and gathering rice are reserved.

Section 4. Reservation of Rights.

- (a) The Commissioner of Natural Resources reserves the right to amend or repeal all or any part of these water quality standards at any time, as long as requirements of Title 11 are met. Nothing in these water quality standards shall be construed to constitute a waiver of the sovereign immunity of the Mille Lacs Band of Chippewa Indians or consent to jurisdiction by any forum not expressly authorized to exercise jurisdiction per Title 11. These water quality standards are not intended to control, and shall not be invalidated by, natural background phenomena, or natural disasters.
- (b) Any proposed changes or revisions to these standards shall be preceded by a public notice in a local newspaper, and a minimum forty-five (45) consecutive day comment period. During this comment period, any Band member or other interested persons may request in writing a public hearing prior to adoption of such changes or revisions by the Band's Department of Natural Resources. Upon approval of a public hearing request, the Department of Natural Resources shall by public notice in a local newspaper announce the date, time and location of such public hearing and said public notice shall be published at least forty-five (45) consecutive days prior to the public hearing. Any reports, documents, and data relevant to the discussion at the public hearing shall be available at least thirty (30) days before the hearing.
- (c) These standards shall be reviewed and updated, as necessary and appropriate, by the Department of Natural Resources at least once every three years. Prior to such action, any proposed changes or revisions to these standards shall be preceded by a public notice in a local newspaper and a minimum forty-five (45) consecutive day comment period. In addition, the Department of Natural Resources shall conduct a public hearing to obtain comments on these standards and there shall be public notice in a local newspaper to announce the date, time, and location of such public hearing. The public notice shall be published at least forty-five (45) consecutive days prior to the public hearing. Any reports, documents, and data relevant to the discussion at the public hearing shall be available at least thirty (30) days before the hearing.

Section 5. Water Policy and Goals.

(a) Purpose.

- (1) Water has always been integral and sacred in the lives of the Mille Lacs Band of Chippewa Indians. Water ensures survival, identity, and culture. Water is life-supporting, connecting humans to the Earth and to all other living beings. It is the duty of the Mille Lacs Band of Chippewa Indians to protect the health and welfare of its peoples, and the integrity of tribal, aquatic, natural, and cultural resources.
- (2) The waters of the Mille Lacs Band of Chippewa Indians will be protected from permanent detectable alteration or degradation. The quality of the water will be maintained or improved to guarantee the treaty rights of the members of the Mille Lacs Band of Chippewa Indians.

(b) To accomplish its ends, the Mille Lacs Band of Chippewa Indians shall:

- (1) Identify designated and existing uses as well as numeric and narrative criteria to protect all uses;
- (2) Identify an anti-degradation standard which classifies all Band waters as Outstanding Tribal Resource Water (OTRW);
- (3) Prescribe methods and implementation procedures to maintain and protect OTRW classification;
- (4) Preserve and protect all things within the aquatic ecosystem that support the cultural integrity, health, welfare, economic security, environmental quality, safety, treaty rights and inherent sovereignty of the Mille Lacs Band of Chippewa Indians; and
- (5) Ensure adequate water quality to support all aquatic life which includes plants, invertebrates, fish and wildlife, as well as water quality sufficient to support unrestricted recreational uses in and on the water, traditional tribal uses, unrestricted public consumption of surface and ground water and organisms contained therein, and all other uses of the surface waters consistent with the physical, social and economic well-being of the Mille Lacs Band of Chippewa Indians and its members.

(c) These standards will be those as set forth by Water Quality Standards Regulation (40 U.S.C. § 131) and the Clean Water Act (33 U.S.C. § 1251 *et seq.*).

- (d) The standard shall govern all human activities affecting waters of the Mille Lacs Band of Chippewa Indians including, but not limited to: agriculture, aquaculture of fish, wild rice, shellfish, and other organisms, construction, energy generation and distribution, industry, manufacturing, mining, navigation, silviculture, stormwater management, transportation, wastewater treatment and disposal, plus domestic and commercial uses and discharges.

Section 6. Water-Definitions.

In addition to definitions pursuant to 11 MLBS § 103, following definitions shall apply to the terms of this standard:

- (a) **Alkalinity** means the buffering capacity of a water body; a measure of the ability of the water body to neutralize acids and bases and thus maintain a fairly stable pH level.
- (b) **Ambient** means that concentration which exists without point source pollution as established by MLBCI Research Lab.
- (c) **Antidegradation standard** shall mean the standard set forth in the water quality regulations under the Clean Water Act, as established by the United States Environmental Protection Agency, where by existing and future uses and the level of water quality necessary to maintain those uses is maintained and protected. (See 40 CFR § 131.12).
- (d) **Aquatic life** shall mean plants, invertebrates, fish and wildlife in the water.
- (e) **Bacteria** means *Escherichia coli* (*E. coli*) and/ or its indicator fecal coliform.
- (f) **Bioaccumulation** means the net accumulation of a substance by an organism as a result of uptake from all environmental sources.
- (g) **Conductivity** means the ability or power to conduct or transmit heat, electricity, or sound expressed in microsiemens per centimeter ($\mu\text{S}/\text{cm}$).
- (h) **Designated and existing uses** mean those uses, both future and current, set forth in the water quality standards herein.
- (i) **Dissolved oxygen** means the amount of oxygen dissolved in water expressed as a concentration in milligrams per liter (mg/L).

- (j) **Dissolved solids** mean the dissolved (filterable) solids present in a fluid as determined by use of the method specified in Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR § 136).
- (k) **Domestic water supply** means water of the Band that could be used for drinking or culinary purposes after disinfection.
- (l) **Fish consumption** mean 142.4 gram/day fish consumption rate found within United State Environmental Protection Agency literature for the protection of subsistence fishers, as found in the "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health", October 2000. This is supported by the "National Recommended Water Quality Criteria Technical Support Document", November 2002, which lists 148.83 grams/day fish consumption to protect children or women of childbearing age against developmental effects. The MLBCI Research Laboratory shall further break down fish consumption rate into percentages based on trophic levels.
- (m) **Fresh water** means all waters not defined as salt water including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.
- (n) **Hard water** means water containing 17.1 mg/L or greater in hardness of water.
- (o) **Hardness of water** means a measure of the amount of minerals, primarily calcium and magnesium, it contains.
- (p) **Human Health standard** shall mean the standard set forth in the water quality regulations under the Clean Water Act, as established by the United States Environmental Protection Agency, where by initially set by formula from the "Great Lakes Water Quality Initiative Criteria Documents for the Protection of Human Health", EPA-820-B-95-006, March 1995, and periodically reviewed, updated and published in the Federal Register as the "Final Updated Ambient Water Quality Criteria for the Protection of Human Health".
- (q) **LC₅₀** means the concentration of toxicant that is lethal (fatal) to 50 percent (50%) of the sensitive resident species organisms tested under the test conditions in a specific time.
- (r) **Micrograms per Liter (µg/L)** means the concentration at which one microgram is contained in a volume of one liter; one microgram per liter is equivalent to one part per billion (ppb) at unity density.

- (s) **Milligrams per Liter (mg/L)** means the concentration at which one milligram is contained in a volume of one liter; one milligram per liter is equivalent to one part per million (ppm) at unity density.
- (t) **MLBCI Research Laboratory** means the environmental media, multimedia, and natural resources research laboratory operated by the Mille Lacs Band of Chippewa Indians Department of Natural Resources.
- (u) **Narrative Standard** means a standard or criterion expressed in words rather than numerically.
- (v) **Nephelometric Turbidity Unit (NTU)** means the unit of measure for turbidity. Turbidity is a measure of light scatter or absorption caused by suspended or colloidal matter in water. Turbidity is measured as an indicator of the effectiveness of filtration treatment.
- (w) **Numeric Standard** means a standard or criterion expressed numerically rather than in words.
- (x) **Outstanding Tribal Resource Waters (OTRW)** means those waters of the highest quality that are designated by the Commissioner of Natural Resources for their uniqueness or ecological sensitivity. Waters may be designated as OTRW because of their exceptional cultural, aesthetic, recreational, or ecological significance.
 - (1) **Prohibited Class** means discharges and permanent lowering of water quality are prohibited.
 - (2) **Restricted Class** means lowered water quality may be allowed under limited circumstances, and are evaluated parameter-by-parameter basis. Even at a lowered water quality, its quality is still high enough to qualify as an OTRW.
- (y) **pH** shall mean the negative logarithm of the effective hydrogen ion concentration in gram equivalents per liter; a measure of the acidity or alkalinity of a solution, increasing with increasing alkalinity and decreasing with increasing acidity.
- (z) **Pesticide** shall mean any chemical toxicant listed in 11 MLBS § 112(b) that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).
- (aa) **Salinity** means the measure of dissolved salts in water.

- (bb) **Settleable solid** means inorganic or organic particles that are being transported or have been transported by water from the site or sites of origin and are settled or are capable of being settled from suspension.
- (cc) **Soft water** means water containing less than 17.1 mg/L in hardness of water.
- (dd) **Suspended solid** means the total suspended matter that floats on the surface of or is suspended in water, wastewater, or other liquids and which is removable by laboratory filtering.
- (ee) **Toxicant, Toxic Substance** means those pollutants or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the MLBO, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organism or its offspring.
- (ff) **Toxicity** shall mean the state or degree of being a Toxicant, lethal or sub-lethal adverse effects on representative sensitive organisms, due to exposure to Toxic Substances.
- (gg) **Turbidity** means a measure of the amount of suspended material, particles or sediment which has the potential for adverse impacts on aquatic life.

Section 7. Water-Standards

- (a) The primary designated uses are aquatic fish consumption, protection of cold and warm water fish, aquatic recreation, and wild rice production. All standards, including Human Health standards, will be interpreted to mean a maximum allowable limit unless otherwise stated.

- (1) Numeric standards

<u>Constituent</u>	<u>Concentration or Limits</u>
Alkalinity	20 mg/L or more as calcium carbonate (CaCO ₃) for fresh water aquatic life except where natural concentration is less
Ammonia	0.02 mg/L as (un-ionized ammonia) for fresh water aquatic life
Arsenic	50 µg/L for domestic water supply

Bacteria, fecal coliform	126 colonies/100 mL in domestic water supply and aquatic recreation by monthly geometric mean 1260 colonies/100 mL in domestic water supply and aquatic recreation by no more than 10% of all monthly samples 200 colonies/100 mL in waters not designated for domestic water supply and aquatic recreation
Barium	1 mg/L for domestic water supply
Beryllium	11 µg/L for the protection of aquatic life in soft fresh water 1,100 µg/L for the protection of aquatic life in hard fresh water
Boron	750 µg/L
Cadmium	10 µg/L for domestic water supply <u>Aquatic Life</u> Soft Water: 0.4 µg/L Hard Water: 1.2 µg/L
Chloride	230 mg/L for fresh water aquatic life
Chlorine	2.0 µg/L for salmonid fish 10 µg/L for other fresh water fish
Chlorophyll-a	14 µg/L June through September for eutrophication 9 µg/L June through September for eutrophication and fresh water aquatic life for Mille Lacs Lake
Chromium	50 µg/L for domestic water supply 100 µg/L for fresh water aquatic life
Color	75 color units on platinum-cobalt scale for domestic water supplies
Conductivity	1,000 µS/cm
Copper	1 mg/L for domestic water supply 0.1 × 96 hours LC ₅₀ for fresh water aquatic life
Cyanide	5.0 µg/L for fresh water aquatic life
Gasses, total dissolved	110% of saturation at existing atmosphere and hydrostatic pressures

Iron	0.3 mg/l for domestic water supply 1.0 mg/L for fresh water aquatic life
Lead	50 µg/L for domestic water supply 0.1 × 96 hour LC ₅₀ for fresh water aquatic life
Manganese	50 µg/L for domestic water supply and fresh water aquatic life
Mercury	0.144 µg/L for domestic water supply 0.050 µg/L for fresh water aquatic life
Nickel	0.01 × 96 hour LC ₅₀ for fresh water aquatic life
Nitrogen, total	10 mg/L June through September average for eutrophication
Oil and Grease	Domestic water supplies virtually free from oil and grease 0.01 × 96 hour LC ₅₀ for fresh water aquatic life
Oxygen, dissolved	5.0 mg/L daily minimum not less than standard for fresh water aquatic life and aquatic recreation
Pesticides	No measurable amounts of any pesticide or any other toxicant will occur in any surface or groundwater
pH	5.0–9.0 for domestic water supply 6.5–9.0 for fresh water aquatic life 6.5–8.5 for physical condition based on maximum and minimum daily readings
Phenol	1 µg/L for all waters
Phosphorous, dissolved ortho	Detect changes from invasive species for fresh water aquatic life
Phosphorus, total	40 µg/L June through September average for eutrophication for fresh water aquatic life and aquatic recreation 30 µg/L June through September average for eutrophication for fresh water aquatic life and aquatic recreation for Mille Lacs Lake
Phthalate esters	0.1 µg/L for fresh water aquatic life

Polychlorinated Biphenyls (PCB)	0.001 µg/L for all waters
Selenium	10 µg/L for domestic water supply 0.01 × 96 hour LC ₅₀ for fresh water aquatic life
Settleable and Suspended Solids	Fresh water fish and other aquatic life; settleable and suspended solids should not reduce the depth of the compensation point for photosynthetic activity
Silver	50 µg/L for domestic water supply 0.01 × 96 hour LC ₅₀ for fresh water aquatic life
Dissolved Solids and Salinity	250 mg/L for chlorides and sulfates in domestic water supply.

Natural Salinity %	% Variation Permitted
0.0–3.5	1
3.5–3.5	2
13.5–35.0	4

Sulfate	10 mg/L June through September average for fresh water aquatic life, cultural significance, and wild rice
Sulfide	2 µg/L undissociated H ₂ S for fresh water aquatic life
Temperature	No more than 3 °F above natural conditions based on monthly average maximum daily temperatures for aquatic life and cultural significance
Transparency (Secchi depth)	1.4 m not less than standard June through September average for eutrophication, fresh water aquatic life, and aquatic recreation 2 m not less than standard June through September average for eutrophication, fresh water aquatic life, and aquatic recreation for Mille Lacs Lake
Turbidity	25 NTU June through September average for physical condition
Zinc	5 mg/L for domestic water supply 0.01 × 96 hour LC ₅₀ for fresh water aquatic life

(2) Narrative standards

- (i) All waters of the Mille Lacs Band of Chippewa Indians shall be free from pollutants or alterations in quantities that, either alone or as a result of interaction with other pollutants, cause the OTRW classification to become more difficult to attain. These waters shall be suitable for their designated uses including, but not limited to, aquatic life including associated habitats to promote a healthy fishery, wild rice production, drinking water, and aquatic recreation.

Long-term historic data may show a waterbody has a natural concentration or characteristic that chronically exceeds the standard. In a case such as this, the standard for that waterbody will be to maintain and not deviate from the background conditions such that there would be a potential significant adverse impact to the designated uses.

- (ii) The following conditions in waters of the Mille Lacs Band of Chippewa Indians are prohibited:
 - (A) The presence of pollutants in quantities that result in unnatural color, oil films or slicks, floating solids, scum, foams, settled solids, suspended solids or deposits in waters of the Mille Lacs Band of Chippewa Indians or on or within the beds of waters of the Mille Lacs Band of Chippewa Indians;
 - (B) The presence of pollutants in quantities that result in objectionable taste or odor being imparted to either waters of the Mille Lacs Band of Chippewa Indians or organisms living in it or drinking from it;
 - (C) The presence of pollutants in quantities that result in toxicity to aquatic life, wildlife, domestic animals, or humans;
 - (D) The presence of pollutants in quantities that result in bioaccumulation in aquatic life leading to toxicity to consumers of the aquatic life;
 - (E) The presence of pollutants that act as nutrients to plants in quantities that result in the growth of nuisance algae and plants;
 - (F) The presence of bacteria and/or microorganisms at levels that may impair designated and existing uses of waters of the Mille Lacs Band of Chippewa Indians, including but not limited to:

potential drinking water, recreational, subsistence fishing, hunting, and wild rice gathering, and cultural or ceremonial uses;

- (G) Releases of pollutants or human-induced changes to waters of the Mille Lacs Band of Chippewa Indians, the sediments of waters of the Mille Lacs Band of Chippewa Indians or area hydrology that alter natural ambient conditions in waters of the Mille Lacs Band of Chippewa Indians such as, without limitation, flow, stage, dissolved oxygen, pH, and temperature. Natural daily fluctuations of flow, stage, dissolved oxygen, pH, and temperature shall be maintained; and
- (H) Releases of pollutants or human-induced changes to waters of the Mille Lacs Band of Chippewa Indians, the sediments of waters of the Mille Lacs Band of Chippewa Indians or area hydrology that result in changes to species composition in waters of the Mille Lacs Band of Chippewa Indians, on the Reservation or in the off-reservation ceded territory. Naturally occurring assemblages of organisms in waters of the Mille Lacs Band of Chippewa Indians shall be maintained.

(3) Anti-degradation standards

The Band realizes that waterbodies currently meeting water quality standards should be protected against future degradation. The Band will implement non-degradation standard which will make it the Band policy to protect all waters of the Mille Lacs Band of Chippewa Indians from significant degradation and to maintain the current designated uses for each waterbody. The Band will prohibit and control the discharges of new point and nonpoint pollution sources to maintain the water quality within the waters of the Mille Lacs Band of Chippewa Indians.

- (i) Standard shall be applicable to any activity performed by any source, point or nonpoint, of pollutants or alterations that is anticipated to increase loadings of any pollutants or cause physical, chemical or biological alterations to waters of the Mille Lacs Band of Chippewa Indians including, but not limited to the following: new or increased discharges of pollutants, nutrients, bacteria or sediments; anthropogenic changes in flow, temperature or other physical modifications; alteration or removal of indigenous species to or from waters of the Mille Lacs Band of Chippewa Indians; any other changes

that may permanently impair any cultural, sociological, biological, physical or chemical attributes of those waters for which regulatory authority exists requiring compliance with these water quality standards.

- (ii) All waters of the Mille Lacs Band of Chippewa Indians are classified as Outstanding Tribal Resource Waters (OTRW) as defined in 40 CFR 131.12. These waters have exceptional cultural, religious, social, ecological, and recreational attributes of national significance with respect to rare species and the culturally unique Band communities dependent on them. These waters are also classified as OTRW to further protect the downstream Outstanding National Resource Waters or equivalent classification of the Kettle, Mississippi, Rum, and St. Croix Rivers.
 - (iii) No human activity may directly or indirectly discharge, release, or emit pollutants into the OTRW of the Mille Lacs Band of Chippewa Indians, except on a short-term, temporary basis as described in 11 MLBS § 19. All non-aberrational indigenous species, and supporting ecological parameters, shall be protected regardless of prevalence, condition, or use. Quality of these waters shall be unadulterated.
- (b) Any and all human made or human induced regulation of water flow on or through any Reservation of the Mille Lacs Band of Chippewa Indians shall be subject to the stipulations set forth in this subchapter for the provision of adequate water quantities for the preservation and protection of natural resources.
 - (c) No littering, refuse or garbage disposal will be permitted in any waters of the Mille Lacs Band of Chippewa Indians.

Section 8. Effectiveness and Expiration

- (a) This Commissioner's Order will become effect when signed.
- (b) This Commissioner's Order will become Federally Enforceable Water Quality Standards for the Mille Lacs Band of Chippewa Indians upon acceptance by the U.S. Environmental Protection Agency.
- (c) This Commissioner's Order will remain in effect until it is superseded by statute or rescinded by subsequent Commissioner's Order.



Kelly Applegate
Kelly Applegate,
Commissioner of Natural Resources

6/28/2024
Date

As to form and numbering according to Title 25 § 4(f).

Hanna Valento
Hanna Valento,
Revisor of Statutes

June 28, 2024
Date