



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 26 2018

REPLY TO THE ATTENTION OF:

WQ-16J

Shannon Lotthammer, Assistant Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Dear Ms. Lotthammer:

The U.S. Environmental Protection Agency (EPA) has completed its review of the water quality standards revisions adopted and published in the Minnesota *State Register* on October 16, 2017. The revisions were submitted to EPA Region 5 for approval with a letter dated December 16, 2017. The submission package included a letter from the State's legal counsel's office certifying that the standards were duly adopted pursuant to State law. Receipt of the newly adopted standards on January 2, 2018 initiated EPA's review pursuant to §303(c) of the Clean Water Act (CWA). These revisions pertained to the State's rules governing water quality: Minnesota Rules, Chapter 7050 (Water Quality Standards for Protection of Waters of the State) and 7052 (Lake Superior Basin Water Standards) and specifically pertained to rules relating to Tiered Aquatic Life Uses (TALU) and modification of Class 2 beneficial use designations and associated numeric biological criteria (biocriteria).

By this letter, EPA approves in accordance with Section 303(c)(2) of the CWA and 40 CFR 131.21(a)(1) the following new or revised water quality standards that were included in Minnesota's amendments as published in the Minnesota *State Register* on October 16, 2017:

Minn. R. ch. 7050.0140, Subp. 3; 7050.0150, Subps. 3,4 and 6; 7050.0155; 7050.0217, Subp. 1; 7050.0218; Subps. 3,4,9, and 10; 7050.0219, Subp. 11; 7050.0220, Subps. 1 and 3-6; 7050.0222, Subps. 2-5; 7050.0227, Subp. 2; 7050.0430; 7050.0460, Subp. 1; 7050.0470, Subps. 1-9; 7052.0100, Subps. 5 and 6; and 7052.0110, Subp. 3.

Except for 141 waterbodies as listed in 7050.0470, the adopted revisions assign a default General Use designation to all waters where the level of protection is equivalent to the existing non-tiered Class 2 beneficial use. For 141 waterbodies in 12 watersheds, Exceptional or Modified Use designations were assigned and are approved by EPA.

The basis for EPA's approval is set forth in the enclosed document entitled "EPA's Review of Revisions to Minnesota's Water Quality Standards: Tiered Aquatic Life Uses and Biological Criteria." The approvals in today's letter apply only to waterbodies in the State of Minnesota, and do not apply to waters that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA, or eligible Tribes, as appropriate, will retain responsibilities for water quality standards for waters within Indian Country.

Section 7 of the Endangered Species Act (ESA) requires federal agencies to consult with the United States Fish and Wildlife Service to ensure that any federal action does not jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. The rules adopted by Minnesota revise Minnesota's existing system of aquatic life uses for surface waters based on biological performance and potential. These changes do not affect the chemical-specific criteria applicable to any of the waters. Because the criteria applicable to Minnesota surface waters are not affected by these rules, permissible water quality and the level of protection afforded aquatic organisms in Minnesota will not be affected by the rules adopted by Minnesota. Therefore, EPA concludes that approval of these WQS designated use rules will have no effect on any ESA-listed species or their critical habitat.

Following Executive Order 13175 and EPA's policy on consultation and coordination with Indian Tribes, Region 5 extended an invitation to consult to the 11 tribal leaders in Minnesota on December 28, 2017. A teleconference to present the Minnesota rule revisions and to take comments was held on January 23, 2018. One tribe, Shakopee Mdewakanton Sioux Community, attended the call for information purposes and not to initiate formal consultation. Grand Portage Band of Minnesota Chippewa later requested official consultation and a second conference call with just Grand Portage was held on February 5, 2018. Written comments were received by EPA on February 15, 2018 from Shakopee Mdewakanton Sioux Community. Consultation was concluded with a letter sent from EPA Region 5, to the chairpersons of the Grand Portage Band and the Shakopee Mdewakanton Sioux Community that summarized the issues identified by the Tribes during consultation and provided EPA's responses to the Tribal comments.

EPA congratulates the MPCA on these significant enhancements to Minnesota's water quality standards and to improved protection and management of aquatic life that will result through implementation of TALU and biocriteria. The Region looks forward to working with the State as you continue to implement the new TALU framework.

If you or your staff would like to discuss this matter further, please do not hesitate to contact me at (312) 886-6758 or Tom Poleck, the review coordinator at (312) 886-0217.

Sincerely yours,


Linda Holst
Acting Director, Water Division

Enclosure

cc: Catherine Neuschler, Minnesota Pollution Control Agency – *via email*
William Cole, Minnesota Pollution Control Agency – *via email*
William Bouchard, Minnesota Pollution Control Agency – *via email*