



Grand Portage Band of Lake Superior Chippewa

RESERVATION TRIBAL COUNCIL

83 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605
Tel. (218) 475-2277 • Fax (218) 475-2284

Resolution No. 31-22

GRANTING CONDITIONAL 401 CERTIFICATION FOR THE US ARMY CORPS OF ENGINEERS REGIONAL GENERAL PERMITS

The Grand Portage Reservation Tribal Council, on behalf of the Grand Portage Band of Chippewa, enacts the following resolution:

WHEREAS, the Minnesota Tribe Constitution, Article III, Section 2, established the Reservation Business Committee (also known as the Reservation Tribal Council ("RTC")) as the governing body of the Grand Portage Band of the Minnesota Chippewa Tribe ("Band"); and

WHEREAS, as a federally recognized Indian tribe, the Band, through the RTC, has the inherent sovereign authority to make its own laws and be ruled by them, and the power to regulate its internal and social relations; and

WHEREAS, the RTC has determined that water pollution endangers the health and welfare of Grand Portage members and residents of the Grand Portage Reservation, and adversely impacts tribal treaty fishing rights as well as cultural, religious, domestic, recreational, agricultural and other uses of the Reservation water resources;

WHEREAS, as an exercise of the Band's inherent authority, the RTC enacted the Grand Portage Band of Chippewa Water Resources Ordinance ("Ordinance") on July 25, 2001 and amended it on January 15, 2004 to protect the waters of the Grand Portage Reservation ("Waters of the Reservation"); and

WHEREAS, under the Ordinance, the RTC is empowered to act as the Grand Portage Band of Chippewa Environmental Resources Board ("Board") created by the Ordinance; and

WHEREAS, in its capacity the Board, after consultation with the Band's Environmental Department, finds that conditional certification of the RGPs is necessary to protect (a) the public health and welfare of the Band, its members, and others living on its Reservation, and; (b) the present and future use of Reservation waters for public and private water supplies; propagation of fish and aquatic life and wildlife; domestic and recreational purposes and agricultural; cultural, religious, commercial, industrial and other legitimate uses; and

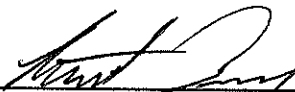
WHEREAS, in its capacity as Board, the RTC has taken all steps required under the Ordinance and federal law to grant conditional 401 certification for the



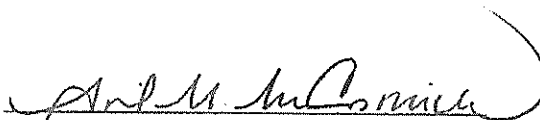
NOW, THEREFORE, BE IT RESOLVED, that the RTC, in its capacity as the Board, adopts the attached conditional certification of the RGPs, and directs the Water Quality Department to submit the conditional certification to the U.S. Army Corps of Engineers for inclusion in the final permit in accordance with the Federal Clean Water Act.

CERTIFICATION

We do hereby certify that the foregoing resolution was duly adopted by a vote of 4 for, 0 against' 0 silent, at a Special meeting of the Reservation Tribal Council, a quorum present, held on the 17 day of November 2022.



Robert Deschampe, Chairman



April McCormick, Secretary-Treasurer

**Grand Portage Conditional Certification of
U.S. Army Corps of Engineers 2023 Regional General Permits**

In accordance with the Clean Water Act, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (“US ACE”) on August 30, 2022 publicly noticed its revision and renewal of certain Regional General Permits (“RGPs”) necessary for work in streams, wetlands and other waters of the United States under Section 404 of the Clean Water Act. The new RGPs will take effect February 23, 2023, and are set to expire on February 23, 2028.

The Grand Portage Band of Lake Superior Chippewa (the “Band”) is a federally recognized Indian tribe and has Treatment-in-the-same-manner-As-a-State (“TAS”) for purposes of enforcement of federal water quality standards on the Band’s Reservation in Northern Minnesota. Therefore, in accordance with Section 401 of the Clean Water Act, the Grand Portage Water Quality Standards (“Water Quality Standards”) and the Grand Portage Water Resources Ordinance (as amended in 2004, the “Water Resources Ordinance”), the Grand Portage Environmental Resources Board (“Board”) has examined the proposed RGPs. The Board has determined that there is reasonable assurance that the discharges authorized under the RGPs will not violate the Water Quality Standards. The Water Quality Standards and Water Resources Ordinance can be obtained from the email listed below or at:
www.1854treatyauthority.org/grand-portage.html

The Board has determined that certain additional conditions are necessary to protect the following: (a) the public health and welfare of the Band, its members, and others living on the Band’s Reservation; and (b) the present and future use of Reservation waters for public and private water supplies; propagation of fish, aquatic life, and wildlife; domestic and recreational purposes; and for agricultural, cultural, religious, commercial, industrial, and other legitimate uses. Accordingly, the following conditions apply to all RGPs which authorize the discharge of dredge or fill material into the waters of the Grand Portage Reservation. Grand Portage is responsible for interpretation of the requirements of these conditions as defined in the Water Resources Ordinance.¹

In accordance with Water Quality Standards, RGPs are denied within the no discharge zone of Lake Superior designated as Outstanding Resource Value Waters-Prohibited. These waters are located in the Grand Portage Zone of Lake Superior in “that portion of the Shoreline Waters north of latitude 47 degrees, 57 minutes, 13 seconds and east of Hat Point.”²

Except as otherwise provided by federal law, this certification is valid until the RGPs expire:

1. This certification applies only to those activities specifically authorized by the RGPs.

¹ Grand Portage Water Resources Ordinance, as amended, 2004, section 1.02 Authority.

² Cooperative Agreement between the Grand Portage Band of Lake Superior Chippewa and the Minnesota Pollution Control Agency, 1996. Attachment 1, Grand Portage Water Quality Standards.

2. All discharges of dredged and/or fill material authorized by the RGPs must comply with the Water Quality Standards and Water Resources Ordinance, as well as Applicable Federal Standards (as defined in the Water Resources Ordinance).³
3. Grand Portage is responsible for interpretation of the requirements of these conditions.
4. All appropriate steps must be taken to ensure that petroleum products or other chemical pollutants are prevented from entering the waters of the Reservation. All spills must be reported to the appropriate emergency-management agency, and measures must be taken to prevent the pollution of the waters of the Reservation, including groundwater.⁴
5. Dewatering activities must not cause nuisance conditions as defined in the Grand Portage Water Quality Standards.⁵
6. The burden is on the applicant to demonstrate compliance with the Water Quality Standards, the Water Resources Ordinance, and Applicable Federal Standards whether or not the application is ultimately eligible for an RGP.⁶
7. The Board retains full authority to ensure compliance with and to enforce the provisions of the Water Resource Ordinance and Water Quality Standards, Applicable Federal Standards, and these Certification Conditions. Nothing herein affects the scope or applicability of other controlling tribal or federal requirements, including but not limited to impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, 54 U.S.C. §§ 300101 *et seq.* To ensure the protection of cultural, historical, archeological features or sites, and properties that may be eligible for listing on the National Register of Historic Places, all applicants must provide the Grand Portage Environmental Resources Board with a 30-day pre-construction notice.
8. Appeals related to Board actions taken in accordance with any of the preceding conditions may be heard by the Grand Portage Tribal Court.

As provided by the Water Resources Ordinance, any interested party may request that a public hearing be scheduled regarding the Board's decision to grant conditional certification to the RGPs. Such a request must be directed to the following address within 30 days of this notice:

Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605

³ *Id.*, Section 3.03(A).

⁴ Grand Portage Water Quality Standards, section XI. General Standards. Grand Portage Water Resources Ordinance as amended, Section 3.04 General Orders, and section 3.05 Special/Emergency Orders.

⁵ Grand Portage Water Quality Standards, section XI. General Standards.

⁶ Grand Portage Water Quality Standards, section XIV. Enforcement, Grand Portage Water Resources Ordinance, sections 4.01 and 5.01.

Public notice and comment period for Grand Portage 401 certification of the RGP begins October 3, 2022, ending on November 2, 2022.

Electronic versions of the proposed RGPs are available at the US ACE's Web site at:
<https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Special%20Notices/St%20Paul%20District%20-20Proposed%202023%20RGPs.pdf?ver=qXEDaoA6wxuwSZRO2DNfmA%3d%3d>

Questions regarding the RGPs can be directed to:
US ACE District Office at Department of the Army, St. Paul District, Corps of Engineers,
Brookfield Field Office
250 N. Sunnyslope Road, Suite 296
Brookfield, Wisconsin 53005

The US ACE St. Paul District contact for the RGPs:
A.J. Kitchen
Phone: (651) 290-5340
Email: Anthony.J.Kitchen@usace.army.mil