

GRAND PORTAGE BAND OF CHIPPEWA WATER RESOURCES ORDINANCE
*As Amended**

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GRAND PORTAGE BAND OF CHIPPEWA WATER RESOURCES ORDINANCE

TITLE I. AUTHORITY, PURPOSE, AND DEFINITIONS

Section 1.01 Policy.

- (A) Protecting the waters of the Grand Portage Reservation is a primary goal of the Grand Portage Band of Chippewa. Water pollution endangers the health and welfare of both Grand Portage Band members and residents of the Grand Portage Reservation. A comprehensive program directed at all present and potential sources of water pollution, whether residential, farm, recreational, municipal, industrial or commercial is necessary to protect human life and health, fish and aquatic life, scenic and ecological values, and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.
- (B) The Grand Portage Environmental Resources Board ("Board") shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Grand Portage Reservation, ground and surface, public and private. The Board shall work closely with and be advised by the Grand Portage Environmental Department ("Department"). To the end that these vital purposes may be accomplished, this Section and all rules and orders promulgated under this Section shall be liberally construed in favor of the policy objectives set forth in this Section.
- (C) The Grand Portage Environmental Department shall continue to oversee the day-to-day operations of Grand Portage Band environmental programs. The Department's duties include, but are not limited to:
 - (1) collecting, compiling, and analyzing environmental data concerning water quality, wetlands, solid waste, underground storage tanks, Title III of SARA and safe drinking water;
 - (2) developing plans to eliminate or control sources of pollution, to mitigate adverse impacts of pollution and to minimize risks to public health;

- (3) drafting and developing environmental grant proposals and managing the work effort and reporting required by grants obtained;
- (4) providing assistance and information to the Grand Portage Reservation Tribal Council (“RTC”) and the Board regarding environmental decisionmaking; and
- (5) serving as the primary staff contact with the U.S. Environmental Protection Agency (“EPA”) and other agencies on all environmental matters.

Nothing in this Ordinance is intended to limit the duties or authority of the Department.

Section 1.02 Authority. This Ordinance is adopted pursuant to Article VI, Section 1(c) of the Minnesota Chippewa Tribe Constitution; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; and the inherent authority of the Grand Portage Band to regulate matters affecting the political integrity, economic security, and the health and welfare of the Grand Portage Reservation. Any regulatory activity authorized herein that the Band cannot exercise under the Federal Water Pollution Control Act will be exercised as a matter of the Band’s inherent authority.

Section 1.03 Adoption, Amendment, Repeal.

- (A) This Ordinance may be adopted by the RTC.
- (B) This Ordinance may be amended by the RTC upon the recommendation of the Grand Portage Environmental Department.
- (C) If a provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision of this Ordinance, the remainder of which shall continue in full force and effect.

Section 1.04 Definitions.

- (A) "Antidegradation Standards" shall mean the minimum water quality standards for a particular water body or segment defined by identifying the existing use or uses of the water body or segment and setting criteria that protect and maintain those uses. Where the quality of a water body or segment exceeds the level necessary to support existing uses, that quality shall be maintained and protected by the antidegradation standards unless a determination is made that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water body or segment is located. Antidegradation standards shall be developed and implemented in a manner consistent with the federal antidegradation policy expressed in 40 C.F.R. § 131.12 and 40 C.F.R. Part 132 Appendix E as applicable.
- (B) "Applicable Federal Standards" means federal water quality standards, if any, promulgated by the EPA that are or become applicable to Waters of the Reservation.
- (C) "Band" shall mean the Grand Portage Band of Chippewa.
- (D) "Board" shall mean the Grand Portage Band of Chippewa Environmental Resources Board.
- (E) "Criteria" shall mean those elements of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.
- (F) "CWA" shall mean the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.
- (F) "Department" shall mean the Grand Portage Environmental Department.
- (G) "Designated Uses" shall mean those uses for a water body or segment specified in the water quality standards for each water body or segment whether or not they are being attained.
- (H) "Environmental Pollution" shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health,

harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.

- (I) "Existing Uses" shall mean those uses actually attained in the water body or segment after November 28, 1975, whether or not they are included in the water quality standards.
- (J) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.
- (K) "Hazardous Substance" shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form that may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances that are toxic, corrosive, flammable, irritants, strong sensitizers, or explosives, as determined by the Department.
- (L) "Industrial Waste" shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
- (M) "Nonpoint Source" means a land management activity that contributes to runoff, seepage or percolation that adversely affects or threatens the quality of Waters of the Reservation and that is not a point source as defined in this Ordinance.
- (N) "Other Waste" shall include all other substances, except industrial wastes and sewage, as the latter term is defined in Section 1.04(V), which are polluting or could pollute any of the Waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.
- (O) "Owner" means the Grand Portage Band of Chippewa, the State of Minnesota, any political subdivision thereof, and any sewerage district, corporation, firm, company, institution or individual owning or operating any construction site, industrial

facility, water supply, sewerage or water system, or sewage and refuse disposal plant or facility.

- (P) "Person" means an individual; owner; operator; corporation chartered under federal, state, or tribal law; limited liability company; partnership; association; municipality; township; interstate agency; tribal agency; county agency; state agency; or federal agency.
- (Q) "Point Source" means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged either into Waters of the Reservation or into a publicly owned treatment works. "Point Source" specifically includes any discernible, confined, and discrete conveyance of storm water.
- (R) "Pollution" means contaminating or rendering unclean or impure the Waters of the Reservation, or making the same injurious to public health, harmful for any of the uses described in Section 1.01, or deleterious to fish, bird, animal or plant life.
- (S) "Public Building" shall mean any structure, including exterior parts of such buildings, such as porches, exterior platforms, and steps providing ingress and egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by three or more tenants.
- (T) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.
- (U) "Reservation" shall mean the Grand Portage Reservation and all trust lands held by the United States for the Band or for the Minnesota Chippewa Tribe, designated for use by the Band.
- (V) "Reservation Tribal Council" or "RTC" shall mean the governing body of the Grand Portage Band of Chippewa, as defined in the Minnesota Chippewa Tribe Constitution, Article III.
- (W) "Sewage" shall mean the water-carried wastes created in and to be conducted away from residences, industrial establishments,

and public buildings as defined in this Ordinance, together with such surface and groundwater as may be present.

- (X) "Sewage system" shall mean all structures, conduits, and pipelines by which sewage is collected or disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.
- (Y) "Shoreline Waters" shall mean that part of Lake Superior described as follows: beginning at the intersection of the west line of Range 5 East and the shoreline of Lake Superior, thence to a point in Lake Superior one half mile south as measured along the southerly extension of the west line of Range 5 East, thence northeasterly to a point on the Minnesota-Michigan boundary line at latitude 47 degrees, 58 minutes, 40 seconds, thence northerly along the Minnesota-Michigan boundary to the point that forms the common boundary between Minnesota, Michigan, and the Province of Ontario, Canada, and thence westerly along the International Boundary line to the confluence of the Pigeon River. The Shoreline Waters are the subject of a Cooperative Agreement between the Band and the Minnesota Pollution Control Agency dated July 16, 1996, and any authority exercised by the Band over the Shoreline Waters under the Clean Water Act shall be in accordance with that Cooperative Agreement, so long as it is in effect.
- (Z) "Solid Waste" shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under the CWA.
- (AA) "State" shall mean the State of Minnesota.
- (BB) "System" or "Plant" shall mean water and sewerage systems and refuse disposal plants.
- (CC) "Wastewater" shall mean all sewage and industrial wastes.

- (DD) "Water Quality Standards" or "WQS" shall mean the water quality standards to be attained for a particular water body or segment defined by designating the use or uses of the water body or segment and by setting criteria necessary to protect those uses. Water quality standards should serve to protect public health or welfare, enhance the quality of the Waters of the Reservation, and serve the purposes of the CWA.
- (EE) "Water Supply" means the sources and their surroundings from which water is supplied for drinking and domestic purposes.
- (FF) "Waters of the Reservation" means any accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof that are wholly or partially within, flow through, or border upon the Grand Portage Reservation. "Waters of the Reservation" includes wetlands as that term is defined at 40 C.F.R. § 230.3(t), and the Shoreline Waters.
- (GG) "Waterworks" or "Water System" shall mean all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served, and service pipelines from building to street main or water source.

TITLE II.
GRAND PORTAGE BAND OF CHIPPEWA
ENVIRONMENTAL RESOURCES BOARD

Section 2.01. Composition. The Grand Portage Environmental Resources Board ("Board") shall be composed of five voting members and one advisory member, who shall be an employee of the Grand Portage Band of Chippewa Environmental Department.

- (A) One voting member of the Board shall be a member of the Reservation Tribal Council.
- (B) At least three of the remaining voting members of the Board must be enrolled members of the Band, and all voting members must have resided on the Grand Portage Reservation for at least 30 days prior to being appointed by the Board.
- (C) No two members of the Board shall be immediate family members. "Immediate family members" shall include parents, children, and siblings.

- (D) Until the RTC appoints the voting members of the Board, the members of the RTC shall serve as the voting Board members.

Section 2.02. Appointment.

- (A) The voting members of the Board shall be appointed to the Board by a majority vote of the RTC.
- (B) The advisory member of the Board shall be selected by the Director of the Grand Portage Environmental Department, who may choose to personally sit on the Board.

Section 2.03. Terms.

- (A) Terms of voting members of the Board shall be for two years, provided that two of the first four voting members of the Board other than the-RTC member shall be appointed for one-year terms.
- (B) Terms shall begin on August 1, 2001, and every August 1 thereafter.

Section 2.04. Operation.

- (A) At the first Board meeting after the appointment or re-appointment of any Board member(s), the Board shall, by majority vote, select a Chairperson and a Vice-Chairperson from among the voting members of the Board.
- (B) The Board Chairperson shall preside over all Board meetings and hearings, provided that the Vice-Chairperson may preside in the absence of the Chairperson.
- (C) Decisions of the Board shall be by majority vote, provided that a quorum of at least three voting members is present.

TITLE III.
POWERS AND DUTIES OF THE GRAND PORTAGE BAND OF CHIPPEWA
ENVIRONMENTAL RESOURCES BOARD

Section 3.01 Generally. The Board shall have general supervision and control over the Waters of the Reservation. It shall carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of this Ordinance, with advice from the Department. The Board shall also formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality, in cooperation with the Department.

Section 3.02 Water Quality Standards.

- (A) With the advice of the Department, the Board shall establish, review, and revise standards of water quality to be applicable to the Waters of the Reservation, recognizing that different standards may be required for different waters or portions thereof. Water Quality Standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon the designated use. The Board may adopt subcategories of a use or a seasonal use approach as appropriate. Water Quality Standards shall protect the public interest, which includes the protection of the public health and welfare and the present and prospective future use of such 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.

- (B) In adopting or revising any Water Quality Standards for the Waters of the Reservation or any designated portion thereof, the Board shall, with the advice of the Department, do all of the following:
 - (1) The Board shall, in consultation with the Department, adopt Water Quality Standards (including the antidegradation policy, designated uses and water quality criteria) for the Waters of the Reservation. Prior to the adoption of the WQS the Board will provide public notice of, and hold a public hearing in conformance with the notice and hearing requirements in 40 C.F.R. Part 25. Any supporting analyses used in the development of the WQS shall be made available to the public prior to the hearing. In establishing these Water Quality Standards the Board will:

- (a) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.
 - (b) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.
 - (c) Take into consideration the water quality standards of downstream waters and ensure that the Band's Water Quality Standards provide for the attainment and maintenance of the Water Quality Standards of downstream waters.
 - (d) Review water quality data and information on discharges to identify specific water bodies where hazardous substances may be adversely affecting water quality or the attainment of the designated water use or where the levels of hazardous substances are at a level to warrant concern and adopt criteria for such hazardous substances applicable to the water body and sufficient to protect its designated use.
- (2) From time to time, but at least once every three years after the initial adoption of the WQS, the Board will conduct a comprehensive review of the WQS (including the antidegradation policy, designated uses and water quality criteria). As part of this review the Board will provide public notice of, and hold a public hearing regarding Water Quality Standards to be adopted, revised or reviewed in the following three year(s). Any supporting analyses used in the course of the review shall be made available to the public prior to the hearing. The Board shall comply with the notice and hearing requirements in 40 C.F.R. Part 25.
- (3) At times other than the triennial WQS review, the Board may determine that one or more specific criteria need to be updated or clarified, to ensure protection of aquatic systems or human health. This could occur, for example, when new studies are released on human health impacts of certain pollutants. When the Board determines that such criteria updates or clarifications

are needed, the Board shall provide notice of the proposed change(s), and seek comments from interested parties on the proposed change(s). If a public hearing is requested during the comment period, the Board shall hold a hearing in conformance with the requirements in 40 C.F.R. Part 25. Following the notice, comment period, and hearing (if conducted), the Board shall consider any comments received and take action to adopt, modify, or decline to adopt the updated or clarified criteria.

- (4) The Board will submit the Water Quality Standards initially adopted, criteria that are updated or clarified, and the results of the WQS reviews, including any supporting analyses, a description of the methodologies used for criteria development, and any general policies applicable to Water Quality Standards, to the EPA Regional Administrator within 30 days of the final Band action to adopt the initial or revised standards. For the triennial reviews, if no revisions or new standards are adopted as a result of the review, such information shall be submitted within 30 days of the completion of the review.

(C) *Form of Criteria:* In establishing criteria, the Board shall (with the advice of the Department):

- (1) Establish numeric values based on:
 - (a) 40 C.F.R. § 132, Water Quality Guidance for the Great Lakes System; and
 - (b) Other scientifically defensible and/or culturally appropriate methods.
- (2) Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established, or to supplement numerical criteria.

Section 3.03 Certification. The Board shall be responsible for the application, processing, and review of tribal water quality certifications required by Section 401 of the CWA and for making determinations regarding off-Reservation discharges that may affect the Waters of the Reservation.

- (A) *Scope:* This Ordinance shall authorize the Board to certify compliance with the Band's Water Quality Standards and Applicable Federal Standards when required by tribal, state or federal law.

(B) *Procedure:*

- (1) The Board, after issuing notice and holding a public hearing as described in Section 3.03(B)(3)(e) of this Ordinance shall be empowered to issue water quality certification(s) for discharges that may result in any violation of the Band's Water Quality Standards or Applicable Federal Standards or that may adversely impact the quality and quantity of Waters of the Reservation. Water quality certification is required to provide a reasonable assurance that the proposed activity will not violate the Band's Water Quality Standards or any Applicable Federal Standards.
- (2) Water Quality certification reviews, pursuant to Section 401 of the CWA shall be applied to discharges, including, but not limited to:
 - (a) "Dredge & Fill" Permit Program – Section 404 of the CWA, including Nationwide Permits, General Permits, Letters of Permission, and Individual Permits; and
 - (b) "Discharge" Permit Program – Section 402 of the CWA, including permits for discharges from point sources (National Pollution Discharge Elimination System) and permits for industrial activity and construction greater than 5 acres.
 - (c) The Board is also authorized to provide determinations and notification under Section 401(e) of the Clean Water Act that a discharge from another State or Tribe may affect waters within the reservation in a manner that will violate applicable Water Quality Standards.
- (3) The Board shall evaluate requests for water quality certification according to the following process:
 - (a) *Federal or State Permits:* Applicants for federal or state permits or licenses that may result in any discharge into navigable waters, adversely impact the quality or quantity of Waters of the Reservation or violate the Band's Water Quality Standards or any Applicable Federal Standards, shall obtain water quality certification from the Grand Portage Environmental Board. The U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and other federal or state agencies with jurisdiction in

the matter shall direct said applicants to comply with the terms of this ordinance.

- (b) *Certification Request:* Applicants shall request water quality certification from the Grand Portage Band by sending a written application to the Board at the following address:

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

- (c) *Application Contents:* The application shall include the following:

- (i) The name and address of the applicant;
- (ii) A description of the activity, and the potential discharge into or draw-down of ground or surface waters that may result from upstream activity including, but not limited to, the construction or operation of a facility, pumping of ground or surface waters, the biological, chemical, thermal, quantity and concentration of the discharge and the locations at which such discharge may enter surface or ground waters;
- (iii) A description of the function and operation of equipment or facilities to treat wastes or other effluents that may be discharged, including specification of the degree of treatment expected to be attained;
- (iv) The dates when the activity will begin and end and when the discharge or draw-down will take place;
- (v) 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.

- (d) *Technical Review:* Upon receipt of the application, the Board shall order the Department to conduct a technical review of the request for water quality

certification, which review shall include the following steps:

- (i) *Completeness determination.* The Environmental Department staff shall evaluate the completeness of all applications for water quality certification. If the application is not complete, a request for additional information will be sent to the applicant within 30 days of receipt of the application.
- (ii) *Compliance determination.* After a completeness determination has been made, Department staff shall conduct a compliance review to analyze whether the proposed facility or activity will violate the Band's Water Quality Standards or any Applicable Federal Standards.
- (iii) *Director's Recommendation.* After considering the application and supporting materials and such other information and data as the Environmental Department staff deems relevant, the Department Director will evaluate whether there is a reasonable probability that the proposed activity will violate the Band's Water Quality Standards or any Applicable Federal Standards and recommend one of the following preliminary determinations:
 - (a) Grant certification unconditionally;
 - (b) Issue certification with conditions;
 - or
 - (c) Deny certification.
- (iv) *Notice and Hearing:* Within 30 days of the Director's recommendation, the Board will provide public notice of the application for certification and the Environmental Director's recommendations and, if requested, schedule a hearing as provided in 40 CFR Part 25.
- (f) *Certification:* If, after considering the evidence provided at the hearing and the entire record, the Board determines by a preponderance of the evidence that the

proposed activity will violate the Band's Water Quality Standards or any Applicable Federal Standards, the Board shall not grant certification unless there is a reasonable certainty that compliance can be achieved by the applicant's adherence to reasonable conditions. If the Board finds insufficient evidence to show that the proposed activity will violate the Band's Water Quality Standards or any Applicable Federal Standards, it shall grant the certification.

(g) *Appeals*: Appeals related to water quality certification decisions or permits shall be heard by the Grand Portage Tribal Court.

(C) *Off-Reservation Discharges*: The Board shall respond to all notifications from EPA under Section 401 of the CWA regarding off-Reservation discharges that may affect the quality of Waters of the Reservation.

Section 3.04 General Orders. The Board may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods, and means for preventing and abating pollution of the waters of the Grand Portage Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties. The Board shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order. Under extraordinary circumstances, the Board may grant a variance to a general order upon petition by an affected owner.

Section 3.05 Special/Emergency Orders.

(A) The Board may issue special orders directing particular owners to secure such operating results toward the control of pollution of the Waters of the Reservation as the Board prescribes, within a specific time. Pending efforts to comply with any order, the Board may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, the owner may, before the date set in the order, petition the Board to modify the order. The Board may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the Board may commence an action in the Grand Portage Tribal Court to enforce compliance with said order.

- (B) The Board may issue temporary emergency orders without prior hearing when the Board determines that the protection of the Waters of the Reservation necessitates such immediate action. Such emergency orders shall take effect at such time as the Board determines. As soon as is practicable, the Board shall schedule a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under Section 3.05(A).

Section 3.06 Signature. Orders issued by the Board shall be signed by the Chairperson of the Board, or in her/his absence, by the Vice-Chairperson of the Board.

Section 3.07 Investigations and Inspections. At the direction of the Board, the Department shall make investigations and inspections to ensure compliance with any general or special order or rule issued by the Board.

Section 3.08 Agreements. The Board may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to written approval by the RTC.

Section 3.09 Nuisance. The Board may order or cause the abatement of any nuisance affecting the waters of the Grand Portage Reservation.

Section 3.10 Non-Compliance. In cases of noncompliance with any order issued by the Board, the Board may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The Board shall have all the necessary powers to carry out this Section.

Section 3.11 Safe Drinking Water. The Board may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660 (42 U.S.C. §§ 300f et seq.).

Section 3.12 Water Pollution. The Board may order or cause the abatement of pollution that the Board has determined to be significant and caused by a Nonpoint Source, including pollution that causes the violation of a Water Quality Standard, pollution that generally impairs the aquatic habitat or organisms, pollution that restricts navigation due to sedimentation, pollution that is deleterious to human health, pollution that interferes with cultural or religious uses of Waters of the Reservation, or pollution that otherwise significantly impairs water quality.

Section 3.13 Priorities. The Board, subject to the written approval of the RTC, may designate priority watersheds and priority lakes where the need for Nonpoint Source water pollution abatement is the most critical.

TITLE IV. ENFORCEMENT

Section 4.01 Board Authority to Enforce. The Board shall have all necessary powers to enforce the programs over which it is given authority by this Ordinance to create and maintain. Such powers shall include, but not be limited to the power to issue administrative orders, to fine violators up to \$5,000 per day, to conduct factfinding (or to have the Department conduct factfinding), and to conduct hearings.

Section 4.02 Hearing Procedures. All hearings by the Board to enforce this Ordinance shall be conducted as adjudicatory proceedings, with an opportunity given the affected party to be represented by counsel at her or his own expense, to present testimony, exhibits, and any other evidence the affected party feels will support the party's position. In all cases such hearings shall be held on the record, and witnesses shall be required to testify under oath.

Section 4.03 Penalties. Any person who violates this Ordinance, or any rule promulgated or any order, certification, or approval issued under this Ordinance, shall forfeit not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) for each violation. Each day of continued violation is a separate offense. The Board may, in its discretion, stay its administrative orders, and while any order is suspended, stayed or enjoined, this penalty will not accrue.

Section 4.04 Grand Portage Environmental Fund Established. The Grand Portage Environmental Fund is hereby established. Any and all monies collected pursuant to this Ordinance shall be deposited in the Grand Portage Environmental Fund. This fund shall be used by the Band to defray the expense of administering this Ordinance, and to fund pilot projects and provide pollution control and prevention grants to persons at the discretion of the Board and subject to the availability of funds.

Section 4.05 Environmental Assessment. In addition to any fine or forfeiture imposed for a violation of this Ordinance, or for the violation of any rule promulgated or for the violation of the terms of any special or emergency order, approval, license or permit issued under this Ordinance, the Board shall impose an environmental assessment equal to ten percent (10%) of the fine or forfeiture.

- (A) If a fine or forfeiture is suspended in whole or in part, the environmental assessment shall be reduced in proportion to the suspension.

- (B) All amounts collected pursuant to the terms of this Ordinance shall be transmitted to the Secretary/Treasurer of the Band. The Secretary/Treasurer shall deposit all such amounts into the Grand Portage Environmental Fund.
- (C) If any deposit is made for an offense to which this Section applied, the person making the deposit shall also deposit a sufficient amount to include the environment assessment prescribed in this Section. If the deposit is forfeited, the amount of the environmental assessment shall be transmitted to the Secretary/Treasurer of the Band. If the deposit is returned, the environmental assessment shall also be returned.

Section 4.06 Sovereign Immunity. The Grand Portage Band of Chippewa hereby waives its sovereign immunity from suit for the express and limited purpose of enforcing this Water Resources Ordinance, and the Water Quality Standards adopted under its authority. This waiver of sovereign immunity is expressly limited to the enforcement procedures contained in this Section 4.06, which are exclusively as follows:

- (A) administrative enforcement by the Board through:
 - (1) the issuance of notices of violation;
 - (2) the issuance of cessation orders;
 - (3) civil penalties; and
- (B) judicial enforcement by the Board through the issuance of declaratory and injunctive relief in the Grand Portage Band of Chippewa Tribal Court.

No other relief shall be available under this express and limited waiver of sovereign immunity. This waiver *shall not* extend to enforcement of this Water Resources Ordinance or the Water Quality Standards adopted under its authority in any forum other than the Grand Portage Band of Chippewa Tribal Court nor for any purpose other than the specific enforcement procedures cited in this Section 4.06. The limited waiver of sovereign immunity in this Section 4.06 *shall* extend to the agencies, departments, committees, and other sub-entities of the Grand Portage Band of Chippewa.

TITLE V. REVIEW

Section 5.01 Appeal. Any person aggrieved by any action taken or order issued by the Board may challenge such action in the Grand Portage Band of Chippewa Tribal

Court in accordance with the Rules of Procedure for that Court, provided that all tribal administrative remedies have been exhausted.

Section 5.02 Stay. The filing of an appeal shall not stay an order of the Board unless a stay is granted by the Tribal Court, in accordance with the Grand Portage Band of Chippewa Judicial Code.

Section 5.03 Standard of Review. The Tribal Court may reverse or modify a decision of the Board only if the appealing party can show by clear and convincing evidence that the Department abused its discretion in the decisionmaking process, or acted arbitrarily or capriciously.

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