Fond du Lac Reservation
Business Committee

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September 15, 2000

Francis X. Lyons, Administrator
USEPA Region V
77 West Jackson Blvd.
Chicago, IL 60604-3590

Dear Administrator Lyons:

The Fond du Lac Band of Lake Superior Chippewa has received the documents sent by your office, dated August 28, 2000, regarding the Band's opportunity to recommend an 8-hour ozone air quality standard designation for the Fond du Lac Reservation by September 30, 2000. This letter serves as my recommendation that the Reservation be designated as "unclassifiable" for this standard. Although the State of Minnesota has recommended that all lands within the state be designated "attainment" for the new standard, the state has no authority to speak for tribal lands.

In July 1997, the United States Environmental Protection Agency (EPA) promulgated a new 8-hour ozone National Ambient Air Quality Standard (NAAQS) and is obligated to designate all areas of the country by July 2000, as established by the Clean Air Act (CAA). Since this is a new opportunity for many tribes, the EPA issued further guidance on this topic on March 28, 2000 and added a 120-day consultation period that will end on September 30, 2000. As you know, the federal government has a trust responsibility to consult with and consider the interests of federally recognized tribes when taking actions that may affect tribal rights or trust resources. Furthermore, the March 28 guidance regarding designation findings under this standard provides the tribes with an opportunity to submit Reservation designation recommendations to EPA, as authorized by the Tribal Authority Rule (TAR). If tribes choose not to make their own recommendations, EPA will promulgate the designations it deems appropriate for these lands after consultation

Fond du Lac has reviewed the guidance on developing recommendations for designating tribal lands as "attainment/unclassifiable" or "non-attainment" under the 8-hour ozone NAAQS. It is my assertion that, according to Section 107(d)(1) of the CAA, Fond du Lac must be designated as unclassifiable for the 8-hour ozone standard because no ozone monitoring has been performed on Reservation land. According to the CAA, three years of monitoring with a Federal Reference Monitor is required to make a definite "attainment" or "non-attainment" determination. As part of the Fond du Lac Environmental Program's work plan for the year 2000/2001 we plan to purchase and operate an ozone monitor within Reservation boundaries in order to gather data which will help us to make a more detailed assessment of Reservation air quality.

Although the Fond du Lac Reservation is located in a rural area, the Band does have some concerns with regard to ozone. A major source of nitrogen oxide emissions, which

are ozone precursors, is located only a few miles off the Reservation. Also, monitoring data obtained several miles south of the Reservation indicates that pollutants from the Minneapolis-St. Paul metropolitan area may be traveling north and impairing air quality in areas that were previously thought to be unaffected. Highway 35, located just a few miles from the Reservation, may also be a contributor to ozone formation due to vehicle emissions. As an additional requirement of its 2000/2001 work plan, the Fond du Lac Environmental Program will prepare an emission inventory to determine the amounts of pollutants being released on or near the Reservation which could reasonably be expected to contribute to ozone formation. This inventory will help us to further assess air quality issues on the Reservation.

In summary, we feel that our Reservation Air Quality Program is too new to be able to make a definite "attainment" or "non-attainment" designation at this time. Our ongoing efforts in monitoring and creating an emissions inventory will play an integral part toward developing our capacity in this area. We feel that the delay during the monitoring and data-gathering phase should not be a problem given the uncertain status of the revised ozone NAAQS during its review by the Supreme Court and the fact that tribes are not subject to the same CAA deadlines as states.

Fond du Lac would like to thank EPA for providing guidance in this matter and is pleased that EPA is acting to fulfill its trust obligation towards tribes. We look forward to continuing our relationship with your agency as we work towards co-regulating environmental quality on the Reservation. If you have any further questions, please call Joy Wiecks of the Fond du Lac Environmental Program at (218) 879-1494, ext. 39.

Sincerely,

Robert Peacock
Chairman, Reservation Business Committee

c.c. Ferdinand Martineau, Fond du Lac Natural Resources Director
Chris Borini, Fond du Lac Environmental Program Manager

Bharat Mathur, EPA Region V
Steven Rothblatt, EPA Region V
Karen Studders, Commission - Minnesota Pollution Control Agency
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