AROOSTOOK BAND OF MICMACS
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September 9, 2013

Ms. Ellen Weitzler
U.S. EPA New England
5 Post Office Square, Suite 100
Mailcode: OEP06-02
Boston, MA 02109-2912

Re: EPA's Review of Maine Water Quality Standard Revisions as they Apply in Indian Territories

Dear Ms. Weitzler:

Please accept this correspondence as the Aroostook Band of Micmacs' official comments regarding EPA's review of Maine Water Quality Standard Revisions as they Apply in Indian Territories. While we disagree with the assertion that Maine has adequate authority to implement its water quality standards program in the territories of the Aroostook Band of Micmacs, we are particularly concerned with regard to potential environmental impacts and the effect of this decision on Tribal natural resources, upon which the health of Tribal members and the cultural heritage of the Tribe depends.

In particular, we are concerned that Maine is utilizing inaccurate and outdated fish consumption information that does not pertain to the Aroostook Band of Micmacs. According to EPA's review, Maine utilized a 1990 survey of licensed Maine anglers to set the fish consumption rates, however the Aroostook Band of Micmacs was not even federally recognized at that time (the Tribe did not receive federal recognition until 1991), and it is unclear if Micmac Tribal members under-reported their status as Native Americans, or their fish consumption rates. In addition, we are unclear how the survey accounted for suppressed fish consumption rates due to contaminant concerns and the poor condition of some of Maine's fisheries. Since receiving federal recognition in 1991, the demographics of the Aroostook Band of Micmacs (including fishing and fish consumption activities) have changed significantly, but this has also not been considered in the proposed water quality standards revisions.

Concomitant with our concern that Maine is utilizing inaccurate and outdated fish consumption information, we are puzzled that EPA and Maine did not consider the 2009 Wabanaki Traditional Cultural Lifeways Exposure Scenario that resulted from a joint EPA/Tribal Direct Implementation Cooperative Agreement (DITCA) that was commissioned

by EPA to inform the water quality standard process. For this project, EPA worked cooperatively with the Maine Tribes to collect sound scientific data documenting Tribal cultural practices and resource utilization patterns in the form of Tribal exposure scenarios. This report was also thoroughly peer-reviewed by a panel of subject matter experts including risk assessors, anthropologists, toxicologists, ecologists, and Tribal cultural experts. In fact, the panel of peer reviewers included representatives of Maine's Centers for Disease Control and other state agencies. Finally, this report is also easily accessible via EPA's website (see: http://www.epa.gov/region1/govt/tribes/pdfs/DITCA.pdf). Since EPA is required by law to have sufficient information to protect designated Tribal uses when reviewing or approving water quality standards applications why was this relevant, contemporary, and thoroughly reviewed information not considered in the water quality standard setting process?

Along with our concerns regarding the use of inaccurate and outdated fish consumption information, we are also concerned about arsenic contamination in heavily consumed commercial foods, including brown rice and apple juice. Since rice cereal constitutes a primary food of infants, and apple juice is widely consumed by children, and these foods have recently been documented to contain unacceptable concentrations of arsenic, how has this information been considered in calculating the arsenic water quality standard?

Also with regard to arsenic, the Clean Water Act requires discharge limits to be established to conform to best-practicable treatment standards, and Maine discharges have apparently met the previously standards. Therefore, why is Maine not compliant with the anti-degradation standard of the Clean Water Act?

As an example of why we are concerned about protection of our natural resources by the State of Maine, the State of Maine has allowed an abutting property owner to spill raw domestic sewage on Tribal trust lands of the Aroostook Band of Micmacs on at least two occasions, and in both instances, the Tribe was not notified about the spills for several days subsequent to the spills. This presented a serious health risk for Tribal members and employees of the Aroostook Band of Micmacs because the location of the sewage spills is the site of an active water quality monitoring location (employees come in direct contact with the affected stream during water sample collection activities and while conducting water quality physical measurements), and Tribal members gather aquatic plants and other resources at this location for cultural activities.

In addition, without notifying the Aroostook Band of Micmacs, at a location adjacent to the domestic sewage spills, the State of Maine has granted an abutting property owner a stormwater discharge permit to discharge onto Tribal lands. This particular discharge is of significant concern for the Aroostook Band of Micmacs because the discharge originates at a military vehicle rebuild facility (vehicles are disassembled at the site for refurbishment), and has resulted in the contamination of Tribal land with oily waste, solvents, and other chemicals. Although this area was previously remediated by the United States Air Force, it is now in need of additional remediation due to the stormwater discharge.

Please note that upon learning of both the sewage spills and the stormwater permit issue, the local (Presque Isle) office of the Maine Department of Environmental Protection worked to develop a mechanism to ensure that the occurrence of future similar situations is avoided, and the Maine Governor's office has expressed a similar desire to work to avoid future such

issues. However, we are now concerned that despite the best intentions of the local office of the Maine Department of Environmental Protection and the Maine Governor's office, there is no formal or institutional mechanism to ensure that this spirit of cooperation will continue in the future. In fact, until the current Maine gubernatorial administration, in the past there was no interest on behalf of the Maine Governor's office in protecting Tribal resources or in even engaging in environmental issues dialogue with the Aroostook Band of Micmacs. Given that gubernatorial administrations change, and state environmental protection staff change, the Aroostook Band of Micmacs is very concerned that in the future Tribal resources may once again be threatened by activities sanctioned by the State of Maine. Therefore, we do not believe that it is protective of Tribal resources, nor appropriate for EPA to approve the State of Maine's request to implement its water quality standards program in the territories of the Aroostook Band of Micmacs.

Finally, as we have previously communicated to EPA, as a federal trustee for Tribal resources, EPA has a fiduciary responsibility to ensure that Tribal resources are protected from environmental degradation for the benefit of the Aroostook Band of Micmacs. Consistent with this trust doctrine, it is not appropriate nor does EPA have the authority to delegate its federal trust responsibility to another entity, or in this case, the State of Maine. Accordingly, we respectfully request that EPA deny the State of Maine's request to implement its water quality standards program in the territories of the Aroostook Band of Micmacs, and that EPA maintain water quality standard authority in the territories of the Aroostook Band of Micmacs.

Thank you for considering our comments and for your attention to this extremely important matter.

Sincerely,

Edward Peter Paul
Tribal Chief