



NEWS RELEASE

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SUBJECT: State of Wisconsin objects to Lac du Flambeau Treatment as a State

MADISON – Department of Natural Resources Secretary Scott Hassett, on behalf of Governor Jim Doyle, yesterday (Feb. 21) filed an objection to the Lac du Flambeau (LDF) Treatment as a State (TAS) application to set water quality standards on its Vilas County reservation. The application for the TAS status was made by the tribe to the U.S. EPA in accordance with federal law. February 21 was the deadline for the state to file comments on the application.

The State of Wisconsin has objected to the application on the grounds that the tribe has not demonstrated the necessary authority under the federal law.

The LDF requested TAS status for the purpose of setting water quality standards under two provisions of the Clean Water Act (CWA). If this application is granted by the US EPA, the tribe would then proceed to propose water quality standards pursuant to Section 303c and Section 401 of the CWA. The state's primary concern in this matter is the potential for the Treatment as a State (TAS) designation to create a duplicative, patchwork of regulations and the potential to have the designation misapplied in an expansive way unintended by the Clean Water Act.

The State of Wisconsin noted several specific reasons for objecting including:

- The water quality standards that the tribe seeks would impact two point source dischargers upstream of the reservation on the Tomahawk River, facilities that are already properly regulated by the State of Wisconsin.
- In their application, the tribe suggests that yet-to-be established water quality standards could be applied to everything from boating, shoreland zoning and other state level regulatory activity to cranberry operations. While the State of Wisconsin maintains that the U.S. EPA has no authority to grant such requests for authority under the Clean Water Act, the potential for TAS status to be construed in this incorrectly expansive manner left the state no choice but to object to the application.

There are some limited areas under the Clean Water Act where the State of Wisconsin has no authority to set water quality standards, regardless of a TAS designation. Under federal law, the state has no authority to set water quality standards for point source discharges on the reservation or to make water quality certifications for wetland fills on the reservation. The state's objection is therefore primarily aimed at the water quality standards authority sought by the tribe beyond these two narrow areas.

When submitting the State of Wisconsin's comments, the state also forwarded several hundred comments from individuals and organizations. Approximately 75% of those commenting opposed the Lac du Flambeau Treatment as a state application.