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2017 FEB -7 AM 9:24

**ENVIR. APPEALS BOARD**  
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MARK M. NOLAN\*  
RANDY V. THOMPSON  
ROBERT J. LEIGHTON, JR.

February 6, 2017

**VIA FEDERAL EXPRESS**

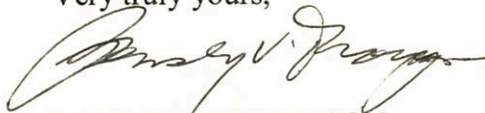
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
WJC East Building, Room 3334  
Washington, DC 20004

**RE: Mille Lacs Band of Ojibwe  
Request for an Eligibility Determination Under the CAA Tribal Authority Rule  
CAA Appeal No. 17-01M**

Dear Clerk:

Enclosed for filing find Response from County of Mille Lacs, Minnesota - Consent to Dismiss for Lack of Jurisdiction with Certificate of Service filed on behalf of the County of Mille Lacs, Minnesota.

Very truly yours,



RANDY V. THOMPSON

RVT:ljm/Enc.

c: **Via U.S. Mail (w/enc.)**  
Barbara L. Wester  
Associate Regional Counsel  
Office of the Regional Counsel  
United States Environmental Protection Agency, Region 5  
77 West Jackson Blvd., (C-14J)  
Chicago, IL 60604

Susan Klapel  
Commissioner of Natural Resources  
Mille Lacs Band of Ojibwe  
43408 Oodena Drive  
Onamia, MN 56359

Todd R. Matha  
Solicitor General  
Mille Lacs Band of Ojibwe  
43408 Oodena Drive  
Onamia, MN 56359

**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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ENVIR. APPEALS BOARD

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**In re:**

**Mille Lacs Band of Ojibwe**

**CAA Appeal No. 17-01M**

**Request for an Eligibility Determination  
under the CAA Tribal Authority Rule**

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**RESPONSE FROM COUNTY OF MILLE LACS, MINNESOTA  
CONSENT TO DISMISS FOR LACK OF JURISDICTION**

**Background**

On January 12, 2017 the County of Mille Lacs, Minnesota (“County”) filed a Motion before the Environmental Appeals Board (“Board”) requesting an extension of time to appeal a determination by the U.S. EPA Region 5 (“Region”) pursuant to 40 C.F.R. § 49.7 granting a request by the Mille Lacs Band of Ojibwe for “treatment as a state” status for two programs under the Clean Air Act. The County explained that while on December 12, 2016 it received a copy of the Region’s Response to Comments in this matter, it had not been able to obtain a copy of the Decision Document. In the Motion, the County requested an extension of time to file an appeal “until 30 days after either it receives the Decision Document or receives confirmation on which document or information is in fact the Decision Document.”

### **Procedural Background**

The Environmental Appeals Board on January 27, 2017 issued an Order to Show Cause why the Motion filed by the County should not be dismissed for lack of jurisdiction since the action the County seeks to potentially appeal did not appear to fall under the regulatory provisions or other authorities that support jurisdiction for an appeal before the Board. The County was given until Tuesday, February 7, 2017 to file its response to the Order to Show Cause.

### **Subsequent Developments**

On February 2, 2017 the County received the Freedom of Information Act Response from the EPA in response to the County's FOIA Request for the Decision Document that determined that the Mille Lacs Band of Ojibwe is eligible for two programs under the Clean Air Act Tribal Authority Rule. That response indicated that a link would be sent via email for the Decision Document published separately online along with an Index of the record the EPA was releasing. Shortly thereafter, on February 2, 2017, the County received the link to the Decision Document.

Receipt of the information on the Decision Document on February 2, 2017 makes the Motion filed by the County on January 12, 2017 unnecessary since the County now has the Decision Document and can appeal in accordance with EPA regulations.

### **Argument**


The County advises the Environmental Appeals Board that it does not wish to assert that the Appeals Board has jurisdiction to hear the Motion that the County filed on January 12, 2017 seeking an extension of time to file an appeal. Furthermore, subsequent

developments have made such a motion request unnecessary and moot, since the County now has the Decision Document as of February 2, 2017 and can proceed to file an appeal to the Decision Document in accordance with EPA rules and regulations. The County therefore concurs that the Motion filed by the County on January 12, 2017 should be dismissed for lack of jurisdiction, and without prejudice to the County's ability to timely appeal from the Decision Document made available to the County on February 2, 2017.

Dated: February 6, 2017

Respectfully Submitted,

**NOLAN, THOMPSON & LEIGHTON, PLC**

By   
Randy V. Thompson, Reg. No. 122506  
Attorneys for County of Mille Lacs, Minnesota  
5001 American Blvd. West, Suite 595  
Bloomington, MN 55437  
Telephone No. 952-405-7171  
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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response from County of Mille Lacs, Minnesota – Consent to Dismiss for Lack of Jurisdiction, was served by United States First Class Mail on the following persons this 6th day of February, 2017:

Barbara L. Wester  
Associate Regional Counsel  
Office of the Regional Counsel  
United States Environmental Protection Agency, Region 5  
77 West Jackson Blvd., (C-14J)  
Chicago, IL 60604

Susan Klapel  
Commissioner of Natural Resources  
Mille Lacs Band of Ojibwe  
43408 Oodena Drive  
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Todd R. Matha  
Solicitor General  
Mille Lacs Band of Ojibwe  
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