



Hancock County Soil & Water Conservation District

474 Bucksport Road (US Route 1A)

Ellsworth, ME, 04605

207-667-8663

www.hancockcountyswcd.org

June 26, 2024

Meagan Sims
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Dear Ms. Sims:

We (the Board of Supervisors of Hancock County Soil & Water Conservation District) and our partner organizations (filing separately) request that the Board of Environmental Protection and DEP adopt Nutrient Criteria for Maine waters. As a pollution control organization, **DEP needs to control all pollutants**, especially three of the most common and important ones, namely: pH, turbidity, and nutrients. This proposal will focus on Freshwater Nutrient Criteria.

Citation of Standard: 38 MRS Article 4-A §464 1, 4.A (4). and 4.B and 38 MRS Article 4-A §465

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare; in preventing disease; in promoting health; in providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and as a resource for commerce and industry.

4.A (4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; ...

Chapter 583 Nutrient Criteria for Class AA, A, B, and C Fresh Surface Waters (Draft 2021)

Table 1. Copy of summary table of DEP proposed nutrient criteria from Chapter 583

Table 1. Nutrient criteria for Class AA, A, B, and C surface waters of the State.

Nutrient criteria	Statutory Class		
	AA & A	B	C
	$\leq 18.0 \mu\text{g/L (ppb) TP}^a$ <i>and</i> if the waterbody has a site-specific value for another nutrient, the mean concentration of that nutrient is less than or equal to the site-specific value <i>and</i> all applicable response indicator ^b values in this column OR all applicable response indicator ^b values in this column	$\leq 30.0 \mu\text{g/L (ppb) TP}^a$ <i>and</i> if the waterbody has a site-specific value for another nutrient, the mean concentration of that nutrient is less than or equal to the site-specific value <i>and</i> all applicable response indicator ^b values in this column OR all applicable response indicator ^b values in this column	$\leq 40.0 \mu\text{g/L (ppb) TP}^a$ <i>and</i> if the waterbody has a site-specific value for another nutrient, the mean concentration of that nutrient is less than or equal to the site-specific value <i>and</i> all applicable response indicator ^b values in this column OR all applicable response indicator ^b values in this column
Percent Nuisance Algal Cover	≤ 18.0	≤ 24.0	≤ 35.0
Water Column Chl <i>a</i> ($\mu\text{g/L, ppb}$)	≤ 3.5 (≤ 5.0 for low gradient streams with velocity $< 2.0 \text{ cm/sec}$ or impoundments)	≤ 8.0 (impoundments must have spatial mean ≤ 8.0 and no value > 10.0)	≤ 8.0 (impoundments must have spatial mean ≤ 8.0 and no value > 10.0)
Secchi Disk Transparency (m)	≥ 2.0		
Patches of Bacteria and Fungi	None observed		
pH	6.5 – 9.0		
Dissolved Oxygen (mg/L, ppm)	In accordance with 38 M.R.S. § 465 (2020) ^c		
Aquatic Life	In accordance with 38 M.R.S. §§ 464 and 465 (2020) ^c , and <i>Classification Attainment Evaluation Using Biological Criteria for Rivers and Streams</i> , 06-096 C.M.R. ch. 579 (effective May 27, 2003)		

a – Site-specific TP values developed pursuant to Section 5(B) shall be substituted for and supersede default TP values of the statutory classes. Site-specific values for other non-TP nutrients pursuant Section 5(C)(3)(b) must also be attained in addition to applicable TP values.

b – The Department may exclude response indicators that are not appropriate based on indicator descriptions in Section 3(B) or cannot be measured with Department sampling methods for the type of waterbody being assessed.

c – The statute is available at <http://www.mainelegislature.org/legis/statutes/38/title38ch3sec0.html> and the rule is available at <https://www.maine.gov/sos/cec/rules/06/chaps06.htm>. Also, they could be obtained by calling the Department at 1-800-452-1942 or 1-207-287-7688.

Details of proposed change:

I do not propose any changes from DEP's 2021 version of Chapter 358. I just want DEP to finalize and adopt nutrient criteria for freshwater. This draft of Chapter 358 has pH and turbidity (clarity) criteria, but my understanding is that these are a part of a decision tree about nutrient impairment and are not stand-alone criteria. My other Triennial Review proposals for 2024 are for stand-alone pH and turbidity criteria.

Reasons for Proposal:

EPA says on its water quality criteria website: "Nutrient pollution is one of America's most widespread, costly, and challenging environmental problems. When too many nutrients, mainly nitrogen and phosphorus, enter our waterbodies they cause excessive algal growth. Excess algae can reduce or deplete dissolved oxygen available to aquatic life and, in many instances, produce toxins that can harm people, animals, and aquatic life."

EPA guidelines for states recommended region-specific nutrient criteria. So, EPA has divided the US into ecological regions. Maine is part of the Eastern Highlands, a region of the country that presents "the most concerns, with only 18% of stream length in good biological condition and 52% in poor biological condition." The Key Stressors are:

- The most widespread stressors observed across the country and in each of the three major regions are nitrogen, phosphorus, riparian disturbance, and streambed sediments.
- Increases in nutrients, like nitrogen and phosphorus, and streambed sediments have the highest impact on biological condition.

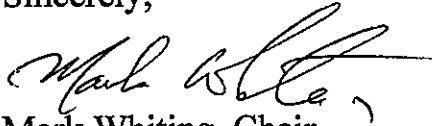
DEP has been working on state-specific standards for at least 20 years. It is time to decide on a final version and adopt suitable standards. The Water Quality Criteria are not an end of themselves but are tools to help us to evaluate the health of our waters. We need to adopt nutrient criteria so that we can move on to evaluate the thousands of lakes, rivers, and streams in Maine.

Financial Impact:

The financial impact of nutrient criteria has been discussed by DEP and is not repeated here.

We think DEP and the BEP should support the adoption of nutrient criteria that benefits the public, fisheries and wildlife, and supports federally protected treaty fishing rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Whiting". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Mark Whiting, Chair
Board of Supervisors, HCSWCD