

Memorandum Describing Recent Changes to Maine's Water Quality Criteria

2004-2005 Legislative Session (PL 2005)

Ch. 159 (LD 1497). An Act to Amend the Laws Governing Water Quality Standards for Ragged and Seboomook Lakes. Effective September 17, 2005. This legislation resulted from a bill proposed by the Maine Department of Environmental Protection (DEP).

This chapter amended the laws governing the water quality standards for aquatic life and habitat in regards to Ragged Lake and Seboomook Lake, located in the Penobscot River, West Branch drainage, based on a use attainability analysis (UAA) approved by the Board of Environmental Protection (BEP).

Ch. 182 (LD 1304). An Act Concerning Invasive Species and Water Quality Standards. Effective September 17, 2005. This legislation resulted from bill text originating with DEP, and sponsored by a legislator to whom it was recommended.

The State of Maine Action Plan for Managing Invasive Aquatic Species outlines State efforts to prevent the spread and control infestations of invasive aquatic species. Maine's plan was developed by the Maine's Interagency Task Force on Invasive Aquatic Plants and Nuisance Species (38 MRSA, Chap 20-B, §1871), adopted by Governor King, and approved by the federal Aquatic Nuisance Species Task Force in 2002. One strategy of this plan is to develop and maintain a flexible rapid response system for new infestations of aquatic plants (DEP's responsibility) and aquatic animals (Department of Inland Fisheries and Wildlife's or DIFW's responsibility).

Maine received federal funds in 2003 and 2004 to begin developing DEP's and DIFW's rapid response capability. Each agency identified aquatic pesticide applications as one of several techniques available for rapid response to new infestations; the technique of choice depends on the circumstances of the specific infestation. The agencies also identified statutory and regulatory changes needed to allow for potential use of aquatic pesticides across a range of environmental circumstances.

The amendments are a first step. They allow a rapid response to new infestations, thereby limiting the biological damage done by invasive plants and animals, and make it possible for the agencies to restore biological communities and water quality in waters where it would not currently be allowed.

Current statute permits DEP-approved treatments of aquatic pesticides or chemicals for restoring water quality in GPA waters. The amendments clarify the reasons for such potential treatments, specifically:

- chemical discharges for restoring for water quality, e.g., an alum treatment for controlling nuisance algae growth, and
- aquatic pesticide or chemical discharges for the purpose of restoring biological communities affected by an invasive species

The amendments broaden potential issuance of a waste discharge license (WDL) from only GPA previously to add tributaries of GPA waters and Class AA, A, B, and C waters for the purpose of restoring biological communities affected by an invasive species. There may be cases where treatment of the tributaries to and/or from a GPA water is needed to achieve desired results of the response program.

The amendments also allow discharges into waters with drainage areas less than 10 square miles, which was previously prohibited, when the discharges are for the purpose of restoring either water quality or biological communities affected by an invasive species. This change is particularly important because relatively small water bodies (usually with relatively small watersheds) are also vulnerable to infestation and may offer the highest likelihood of successful control.

Any WDL issued for the purpose of restoring biological communities affected by an invasive species may be issued only to the Maine Department of Environmental Protection (DEP), Maine Department of Inland Fisheries and Wildlife (DIFW), or an agent of either agency.

Ch. 330 (LD 1588). An Act to Amend Certain Laws Administered by the Department of Environmental Protection. Effective September 17, 2005. This legislation was proposed by DEP.

Sections 7 and 8. These sections update the definitions of "Federal Water Pollution Control Act" and "Code of Federal Regulations" to include amendments and regulations effective on or before January 1, 2005.

Section 11. Section 11 amends the waterbody Classification law to clarify that the "Clifford Brook" referred to in the list of East Machias tributaries is the Clifford Brook in Marion Township. There is also an additional change to address some contradictory text. The amendment does not change the substance of the previous language.

Section 12. Section 12 enacts a provision to replace one that is sunseting. The effect is to allow more time for accomplishment of a previously required rulemaking concerning flows. The amendment requires DEP to undertake rulemaking to establish water use standards that are protective of aquatic life and other uses and that establish criteria for designing watersheds most at risk from cumulative water use. The standards in the rules adopted must be based on the natural variation of flows and water levels, allowing for variances if the use will still be protective of water quality within the classification.

Ch. 409 (LD 1450). An Act to Amend Water Quality Standards (Emergency). This legislation resulted from a bill proposed by DEP. Emergency legislation, effective June 20, 2005.

Sections 1, 3 and 4. Amendments to bacteria standards. These sections of Chapter 409 amend the bacteria standards for Classes B and C (rivers and streams) and Classes SB and SC (marine) waters. In 1986, Maine became the first state to adopt an *E. coli* bacteria standard. The criteria adopted were in advance of EPA issuing their guidelines. DEP calculated that Maine's criteria provided a risk factor of 6-10 disease events per 1000 exposures for Class C waters and less than 6/1000 for Class B waters for full contact recreation. EPA later issued its guidance with recommendations for use of a risk factor of 8/1000 for contact recreation, with associated criteria of a geometric mean of 126/100 ml and an instantaneous criteria of 236/100 ml. Maine's Department of Human Services (DHS) has adopted this for their swimming guidelines.

The purpose of this legislation was to bring DEP's and DHS's standards into conformance. As context, note that Maine's geometric mean criteria for Class C is already quite close to the EPA value, and already more stringent for Class B. The enactment of the EPA recommended instantaneous value is about a 2-fold decrease in our present Class B criteria and about a 4-fold decrease for Class C. These changes give Maine criteria that best characterize the risk factor that was intended in the 1986 law, and increase consistency with criteria adopted by DHS to protect swimming -- a use that is protected in all Maine's water quality classes.

The other change to note in this legislation is the inclusion of domestic animals as potential sources of concern. New information from EPA clearly implicates domestic animals as a source of human pathogens. The legislation also includes new language directing the department to consider all sources of bacteria contamination when making a water quality assessment. New technology is emerging that can distinguish sources of bacteria. Maine has used these methods on an experimental basis and expects that they may become more routine in the future.

Section 2. Corrections and clarifications to new dissolved oxygen standard. Section 2 makes corrections and clarifications to changes to the new dissolved oxygen standard that was enacted during the 2003-2004 legislative session. The previously enacted standard was inaccurate because it did not specify that the dissolved oxygen criteria of 6.5 ppm was to be attained as a 30-day average. Because of this error, the previously enacted amendment was not submitted to EPA for inclusion in the water quality standards docket.

Note: additional amendments in this chapter address changes that do not amend water quality standards. These sections deal with the department's authority to enter into agreements in order to further protection for the growth of indigenous fish (Section 2), water quality modeling (Section 5), an operations study (Section 6), and a legislative report (Section 7).

2004-2005 Rulemaking

06-096 CMR 530, Surface Waters Toxic Control Program. Effective October 9, 2005. Chapter 530 establishes applicability and effluent testing requirements for the discharge of toxic pollutants by certain municipal, industrial and other sources. Test types, frequencies and waivers to testing are covered. Procedures for establishment and expression of effluent limits are described. Most of these elements are carried forward from the existing Chapter 530.5 with modifications based on past experience. The rule also creates new procedures for allocation pollutant loads among multiple discharge sources into the same fresh receiving water or its tributaries. In doing so, provisions are made for background concentrations of pollutants and reserve assimilative capacity for new and non-point discharges.

06-096 CMR 530.5, Environmental Evaluation: Surface Waters Toxic Control Program. Repeal effective October 9, 2005. This chapter was repealed by the rulemaking that enacted 06-096 CMR 530 and 06-096 CMR 584.

06-096 CMR 532, Large Commercial Passenger Vessels. Effective May 25, 2005. This chapter describes standards related to the discharge to coastal waters of graywater, or discharge of a mixture of blackwater and graywater, from a large commercial passenger vessel.

06-096 CMR 584, Surface Water Quality Criteria for Toxic Pollutants. Effective October 9, 2005. Chapter 584 contains statewide ambient water quality criteria for various toxic pollutants, set based on EPA information and methodology. Adjustments are made for fish consumption rates and physical water characteristics in Maine. The rule also has procedures for establishment of alternate statewide and site-specific water quality criteria.

Additional Changes for Your Information

These changes affect sections previously submitted as part of the "Docket", but do not require EPA approval as changes to Maine's water quality standards. They concern discharges to groundwater or non-substantive changes, and are included for your information in order to provide for complete and current texts.

2003-2004 Legislative Session -- additional amendments (PL 2003)

Statute. Most amendments from the 2003-2004 session were previously submitted to EPA. Some additional changes were found when cross-reference indices became available some time after the close of the session. All of the following amendments are minor clarifications, corrections and updates with little or no substantive effect.

Ch. 534 (LD 1653), An Act to Authorize the Town of Verona to Change its Name. Effective upon approval (emergency) pending referendum. See Sections 3 and 5. These amendments change the name of a Town, which would affect the name of a location in the Classification Law. There is no substantive effect on classification.

Ch. 614 (LD 1743), An Act to Make Technical Corrections to Maine's Fish & Wildlife Laws. Effective April 12, 2004.

Section 9 inserts an actual effective date in place of text describing an effective date in an unallocated law provision (PL 2003, ch. 414(D-7)).

Ch. 688 (LD 1916), An Act to Correct Errors and Inconsistencies in the Laws of Maine. Effective July 1, 2004. Repeals and replace 38 MRSA 423 (Discharge of waste from watercraft). The corrections to this provision were necessary in order to reconcile a number of previous amendments.

Ch. 689 (LD 1913), An Act to Establish the Department of Health and Human Services. Effective July 1, 2004. See Sections B-6 and B-7.

Section B-6 updates the name of an agency. This amendment affects text in 38 M.R.S.A. 413(3), 414-A(1-B)(A), 420(2)(E), and 420-(2)(F). Section B-7 updates the title of the commissioner of an agency. This amendment affects text in 38 M.R.S.A. 464(7) second paragraph.