



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 17, 2006

David P. Littell, Commissioner
Maine Department of Environmental Protection
#17 State House Station
Augusta, Maine 04333-0017

Re: Approval of Water Quality Standards Revisions

Dear Commissioner Littell:

By letter of January 11, 2006, the Maine Department of Environmental Protection, Bureau of Land and Water Quality (DEP) submitted revisions to its surface water quality standards for EPA review. The revisions, some by statute and some by rule, were adopted and became effective in 2004 and 2005, and were certified on November 23, 2005 by Maine's Assistant Attorney General in the Natural Resources Division as having been duly adopted pursuant to state law. The Environmental Protection Agency (EPA) has completed its review of a number of the submitted revisions as further described below.

Pursuant to Section 303(c)(2) of the Clean Water Act and 40 CFR Part 131, I hereby approve the following water quality standards revisions:

- ▶ Legislative Chapter 159 (L.D. 1497), Section 2, specifically the enactment of 38 MSRA §464 9-A(B) and (C), which establish revised water quality standards for habitat and aquatic life for Ragged Lake and Seboomook Lake, in the Penobscot River, West Branch drainage, consistent with a use attainability analysis.
- ▶ Legislative Chapter 330 (L.D. 1588), Sections 7 and 8 which updated the definitions of "Code of Federal Regulations" and "Federal Water Pollution Control Act" at 38 MSRA §361-A(1-J) and (1-K) to include their amendments through January 1, 2005. We are approving these revisions in the context of the definitions' applicability to water quality standards.
- ▶ Legislative Chapter 330 (L.D. 1588), Section 11, which revised the waterbody classification law to clarify that "Clifford Brook" as referred to in the list of East Machias River tributaries at 38 MSRA §467(3)(B) is the Clifford Brook in Marion Township and is classified as Class AA.
- ▶ Legislative Chapter 534 (L.D. 1653), Section 3, which revised the waterbody classification law at 38 MSRA §469(2)(H) describing certain tidal waters to be consistent with a change in the

name of the Town of Verona to the Town of Verona Island. No reclassification of waters occurred.

► DEP Rule Chapter 530, Section 4.B, which contains instream design flows for the application of water quality criteria for aquatic life and human health protection that are consistent with EPA's current guidance (1Q10 low flow for acute aquatic life criteria, 7Q10 low flow for chronic aquatic life criteria, and harmonic mean flow for human health criteria).

EPA's approval of Maine's surface water quality standards revisions does not extend to waters that are within Indian territories and lands. EPA is taking no action to approve or disapprove the State's revisions with respect to those waters at this time. EPA will retain responsibility under Sections 303(c) and 303(d) of the Clean Water Act for those waters.

We have determined that the following legislative and rule chapters are not new or revised water quality standards and therefore are not subject to EPA review and action under Section 303(c) of the Clean Water Act: Legislative Chapters 534 (L.D. 1653), Section 5; 614 (L.D. 1743); 688 (L.D. 1916); 689 (L.D. 1913); Rule Chapter 532. We are still reviewing the additional legislative and rule chapters referred to in DEP's January 11, 2006 memorandum, as well as the remaining amended portions of the legislative and rule chapters identified above. Therefore we are not taking action with respect to those provisions at this time.

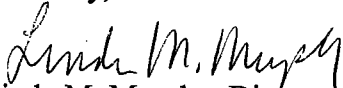
EPA's approval of 38 MSRA §464 9-A(B) and (C), enacted by Legislative Chapter 159 (L.D. 1497), Section 2, is based on our determination that the revised water quality standards for Ragged Lake and Seboomook Lake are consistent with a use attainability analysis (UAA) which documented that attainment of the applicable designated uses for habitat and aquatic life before revision was not feasible for these waters for the reason provided in 40 CFR §131.10(g)(3), "Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place." Consistent with the UAA, the revised standards require that the aquatic life requirements of Class GPA hydropower impoundments, i.e., the requirements of 38 MSRA §465(4)(C), be met for Ragged Lake and Seboomook Lake except that habitat and aquatic life in the portions of these waters affected by specified annual drawdowns may reflect the effects of such drawdowns. The specified drawdowns are "up to 20 feet" and "up to 17 feet" for Ragged Lake and Seboomook Lake, respectively.

Satisfaction of 40 CFR §131.10(g)(3) involved a demonstration that lake drawdown limitations that would be necessary to meet the water quality standards without revision would lead to the abandonment of the project and the upstream movement of invasive non-native species above Seboomook Lake. The adverse environmental damage that would be caused by the movement of invasive non-native species was the basis for our finding that §131.10(g)(3) was satisfied. Further discussion of EPA's review of the UAA for Ragged Lake and Seboomook Lake, with regard to both its support for a water quality standard revision and its limitations, is contained in EPA's letters of April 6, 2005 and October 26, 2005 to DEP. EPA's approval of 38 MSRA §464 9-A(B) and (C) is made with the understanding that "existing impoundment" as used in §464 9-A(B) and (C) means Ragged Lake and Seboomook Lake, respectively, rather than the

respective impoundments absent alteration of their operation in accordance with the drawdown limitations.

We look forward to continued cooperation with Maine in the development, review, and approval of water quality standards pursuant to our responsibilities under the Clean Water Act. Please contact me or either Bill Beckwith (617-918-1544) or Jennie Bridge (617-918-1685) of my staff if you have any questions.

Sincerely,


Linda M. Murphy, Director
Office of Ecosystem Protection

cc: Andrew Fisk, DEP
Susan Davies, DEP
Dave Courtemanch, DEP
Vernon Lang, USF&WS
Mary Colligan, NOAAF
Peter Colossi, NOAAF
Gregory Stapleton, EPA SSB