



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 1**  
**1 Congress Street, Suite 1100**  
**BOSTON, MA 02114-2023**

September 18, 2007

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

RE: Maine's 2006 §303(d) List

Dear Commissioner Littell:

Thank you for Maine's final submittal of Maine's 2006 §303(d) list received by EPA on July 24, 2007. In accordance with §303(d) of the Clean Water Act and 40 CFR §130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of Maine's 2006 §303(d) list. Based on this review, EPA has determined that Maine's 2006 §303(d) list of water quality limited segments still requiring total maximum daily loads (TMDLs) meet the requirements of §303(d) of the Clean Water Act (CWA) and EPA's implementing regulations. Therefore, EPA hereby approves Maine's decision to include the waters in the Categories 5-A, 5-B, 5-C, and 5-D on its §303(d) list, as well as Maine's decision to remove specific waters from the 2006 list.

The submittal includes a list of those waters for which technology-based and other required controls for point and nonpoint sources are not stringent enough to attain or maintain compliance with the State's Water Quality Standards. The submittal presents Maine's TMDL strategy which describes a priority setting approach and identifies those waters for which TMDLs will be completed and submitted over time. The statutory and regulatory requirements, and EPA's review of Maine's compliance with each requirement, are described in detail in the enclosed approval document.

The Maine Department of Environmental Protection (ME DEP) also successfully completed a public participation process in 2006-7 during which the public was given the opportunity to review and comment on the §303(d) list. As a result of this effort, Maine has considered public comments in the development of the final list. A summary of the public comments and ME DEP's response to comments were included in the July 24, 2007 submittal.

My staff and I look forward to continued cooperation with ME DEP in implementing the requirements under Section 303(d) of the CWA. Please feel free to contact me or Jennie Bridge at 617-918-1685, if you have any questions or comments on our review.

Sincerely,

Stephen S. Perkins, Director  
Office of Ecosystem Protection

Enclosures

cc: Andrew Fisk, ME DEP  
Susan Davies, ME DEP

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## **ME §303(d) Approval Documentation**

### **I. INTRODUCTION**

EPA has conducted a complete review of Maine's 2006 Section 303(d) list and supporting documentation and information and, based on this review, EPA has determined that Maine's list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby approves Maine's 2006 Section 303(d) list. The statutory and regulatory requirements, and EPA's review of Maine's compliance with each requirement, are described in detail below.

### **II. STATUTORY AND REGULATORY BACKGROUND**

#### **Identification of WQLSs for Inclusion on 303(d) List**

Section 303(d)(1) of the Act directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local, or federal authority. See 40 CFR §130.7(b)(1).

#### **Consideration of Existing and Readily Available Water Quality-Related Data and Information**

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR §130.7(b)(5). In addition to

these minimum categories, States are required to consider any other data and information that is existing and readily available. EPA's Guidance for 2006 Assessment, Listing and Reporting Requirements describes categories of water quality-related data and information that may be existing and readily available. See Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act – EPA Office of Water-- July 29, 2005. While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR §130.7(b)(6) require States to include as part of their submissions to EPA documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

### **Priority Ranking**

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR §130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's Guidance for 2006 Assessment, Listing and Reporting Requirements.

### III. REVIEW OF MAINE'S §303(d) SUBMISSION

The Maine Department of Environmental Protection (ME DEP) issued a draft 2006 §303(d) list for public review on December 21, 2006. ME DEP then revised the list based on comments received during the public comment period including EPA comments sent by email on January 16, 2007. On July 24, 2007, ME DEP submitted to EPA-New England Maine's final 2006 §303(d) list which is included in Maine's 2006 *Integrated Water Quality Monitoring and Assessment Report*, or Integrated Report (IR). This EPA approval action pertains to all subcategories of Category 5 within the IR: 5-A, 5-B, 5-C, and 5-D of Maine's 2006 §303(d) list, as well as Maine's decision to remove specific waters from the 2006 §303(d) list, as described below. These sub-categories of the §303(d) list are included in the following sections of Maine's Integrated Report:

- Appendix II (rivers and streams, pages 49-53 IR);
- Appendix III (lakes, page 85 IR);
- Appendix IV (estuarine and marine waters, pages 100-111 IR).

For purposes of §303(d) review and approval, EPA evaluated the following components of Maine's 2004 Integrated Report (IR):

- *Maine's Data Sources and Acknowledgements* (pages 9-10, Chapter 1, IR)
- *Maine's Listing Methodology and Assessment Criteria* (pages 49-58, Chapter 4, IR);
- *Maine's Process to Solicit Public Comments and Summary of Public Comments and Responses* (pages 14-20, Chapter 2, IR)

#### Public Review

ME DEP conducted a public participation process in which it provided the public the opportunity to review and comment on the 2006 draft Section 303(d) list. A public comment period was opened upon the release of the draft list on December 21, 2006 and was closed on January 19, 2007. ME posted the draft list on the Department's website, mailed notices directly to approximately 150 persons and entities on the DEP subscription service for rulemaking changes.

A legal notice was run in four major daily newspapers (Bangor Daily News, Kennebec Journal, Lewiston Sun, and Portland Press Herald). ME DEP also issued a press release on list availability on December 21st to roughly 15-18 radio, television and print outlets around the state and to the Associated Press. The release was also electronically linked to a news headline on the Department's homepage. EPA concludes that Maine's public participation process was consistent with its Continuing Planning Process (CPP), and that Maine provided sufficient public notice and opportunities for public involvement and response.

The final submittal took into account, and in many instances incorporated, suggested changes to the draft list from interested parties. ME DEP prepared a summary of public comments and responses which paraphrases each comment and provides the State's response. EPA reviewed ME DEP's summary responses as well as the original comment letters and concludes that Maine adequately responded to the comments.

#### **IV. IDENTIFICATION OF WATERS AND CONSIDERATION OF EXISTING AND READILY AVAILABLE WATER QUALITY-RELATED DATA AND INFORMATION**

EPA has reviewed Maine's submission, and has concluded that the State developed its §303(d) list in compliance with §303(d) of the Act and 40 CFR §130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

ME DEP has several departmental monitoring programs, and routinely works cooperatively with various professional and volunteer monitoring groups on projects yielding surface water quality data that are taken into consideration during the §303(d) list preparation. Sources of data include other state agencies and resources, federal and other government agencies, Tribes, volunteer watershed groups / conservation organizations that work with DEP staff and "employ approved monitoring practices" (for a specific list of sources of assessment data for rivers and streams, lakes and estuarine and marine resources, see pages 9-10, Chapter 1, *Data Sources and Acknowledgements*, IR). Maine uses the latest available information generated by ME DEP's and other state resource agencies' monitoring and assessment activities to update the §303(d) list.

Maine identified the pollutants (when known) causing or expected to cause violations of the applicable water quality standards, including those pollutants for which there were no corresponding numeric criteria in the State's standards (e.g., nutrients). In the cases where the identity of the pollutant was unknown, ME DEP identified the listing cause as the water quality standards impairment (e.g., dissolved oxygen, benthic macroinvertebrate assessments, habitat assessment).

Maine's 2006 §303(d) list is part of *Maine's 2006 Integrated Water Quality Monitoring and Assessment Report* which includes the most recent §305(b) report. As ME DEP explains in the 2006 listing methodology, three criteria for listing waters in category 5 are as follows (page 52, Chapter 4, IR):

- 1. Current data (collected within five years) for a standard indicating impaired use, or a trend toward expected impairment within the listing period [threatened], and where quantitative or qualitative data/information from professional sources indicates that the cause of impaired use is from a pollutant(s),*
- 2. Water quality models that predict impaired use under current loading for a standard, and where quantitative or qualitative data/information from professional sources indicates that the cause of impaired use is from a pollutant(s), or,*
- 3. Those waters have been previously listed on the State's 303(d) list of impaired waters, based on current or old data that indicated the involvement of a pollutant(s), and where there has been no change in management or conditions that would indicate attainment of use.*

ME DEP appropriately considered all existing and readily available information in the development of the 2006 §303(d) list, consistent with Maine's 2006 listing methodology. In

Maine, “A determination of nonattainment is only made when there is documented evidence (e.g. monitoring data) indicating that one or more criteria are not attained. Such data are also weighed against evidence that there are plausible human-caused factors that may contribute to the violation of criteria (38 MRSA Section 464.4.C).” (page 53, Chapter 4, IR) As long as assessment data were collected using approved monitoring practices, there were no cases where ME DEP made a decision to not use any readily available information.

In summary, Maine considered the most recent §305(b) assessments, as required by EPA’s regulations, and used information obtained primarily through monitoring as the basis for adding water quality impairments to the 2004 §303(d) list. EPA concludes that the State properly assembled and evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 CFR §130.7(b)(5).

**Priority Ranking**

Maine established a priority ranking for listed waters which includes detailed rankings for Category 5A waters, as well as assigning varying levels of priority for TMDL development to four other subcategories of category 5 waters. Category 5A waters are Maine’s highest priority for TMDL development and each waterbody is assigned a schedule for TMDL development (both in Chapter 8, Tables 8-4, 8-5, and 8-6 as well as in Appendices II-IV of the IR). As described in Chapter 4 (page 52 IR): *“TMDL schedules are assigned based on the value of a water (considering size, public use, proximity to population centers, and level of public interest for water quality improvement), the nature of the impairment and the source(s) of the problem, available information to complete the TMDL, and availability of staff and contractual resources to acquire information and complete the TMDL study.”*

As part of the prioritization process, Maine also continues to use other subcategories of category 5 waters with varying levels of priority for TMDL development, as explained in Table 2.

Table 2. Maine’s 2006 TMDL Development Priority

Category	Title/Description	TMDL development Priority	Applicable to:
5-A	Impairment caused by pollutants (other than those listed in 5-B through 5-D). A TMDL is required and will be conducted by the State of Maine.	A projected schedule is included for each listing.	<u>Specific:</u> Rivers & streams Lakes Marine & Estuarine
5-B	Impairment is caused solely by bacteria contamination. A TMDL is required.	Low priority if other actions are already in progress that will correct the problem in advance of TMDL development (e.g. better compliance), or where recreation (swimming) is impractical. A projected schedule is included where applicable. Waters impaired only by CSOs with Master	<u>Specific:</u> Rivers & streams Marine & Estuarine

		Plans will be monitored for water quality and for provisions being in place for both funding and compliance timetables.	
5-C	Impairment caused by atmospheric deposition of mercury.	ME is participating in development of regional scale TMDL for mercury control.	<u>All:</u> Rivers & streams Lakes
5-D	Impairment caused by a “legacy” pollutant ((1) PCBs, DDT, or other substance already banned from production or use, )2) coastal waters with consumption advisory for lobster tomalley due to presence of persistent bioaccumulating toxics found in that organ).	Low priority for TMDL development.	<u>Specific:</u> Rivers & streams <u>All:</u> Marine & Estuarine

EPA finds that the waterbody prioritization and targeting method used by Maine is reasonable and sufficient for purposes of §303(d). Maine properly took into account the severity of pollution and the uses to be made of listed waters, as well as other relevant factors described above. EPA acknowledges that the schedule of TMDL completion establishes a meaningful priority ranking system.

### **Delistings**

Maine did not include on its 2006 §303(d) list forty-one waters included on the 2004 list, and provided rationales for its decisions not to list these previously (category 5) listed waters. The State has demonstrated, to EPA’s satisfaction, good cause for not listing these waters, as provided in 40 CFR §130.7(b)(6)(iv). EPA recognizes that Maine’s delisting in 2006 of these previously §303(d)-listed waterbodies has been done in accordance with EPA’s 2006 Listing Guidance, Maine’s 2006 listing methodology, and consistent with Maine’s water quality standards. Maine’s detailed lists and explanations providing justifications for the delistings are included in Chapter 8, Tables 8-1 (rivers & streams) 8-2 (lakes) and 8-3 (estuarine and marine), as described below.

### Category 5 in 2004 to Category 2 in 2006

In all fourteen cases of delisting to category 2, more recent data or information indicate attainment of water quality standards (with the exception of the narrative listing for mercury from atmospheric deposition). The following three streams, three lakes, and eight estuarine/marine waters were previously impaired (category 5) and now attain standards:

Mattanawcook Stream in Lincoln (ME0102000502\_220R\_01) was impaired due to dissolved oxygen and bacteria levels. The CSO, which had been the source of the pollutants, has been removed, and data from multiple sampling events collected by the Penobscot Indian Nation during the summer 2004 confirm attainment of numeric criteria for dissolved oxygen and bacteria. (This segment is also listed in Category 3, insufficient data, for potential sediment contamination and fish consumption use impairment.)

Penobscot River, main stem, from Cambolasse Stream to Piscataquis River (ME0102000502\_231R) was listed as impaired due to benthic-macroinvertebrate bioassessments due to an administrative error made prior to the 2002 listing cycle. There are no data to support impaired biocriteria assessment, and more recent biomonitoring indicates attainment of the applicable Class B criteria in 1992, 1993, 1994, 1995. All samples were collected within the influence of the plume of the paper mill discharge. (Negotiations for a new discharge license are in progress to address remaining DO and nutrient issues listed in category 5A.)

Royal River (ME0106000102\_603R05) was listed for impaired drinking water use due to violations of ambient water quality criteria for trichloroethylene (TCE) from a RCRA-regulated hazardous waste site. June 2006 surface water monitoring showed that the TCE standards and all other water quality criteria are being met in the Royal River at sites down-gradient of the contaminated site.

Upper Narrows Pond in Winthrop (Midas 98), Highland Lake in Bridgton (Midas 3454), and Long Lake in Bridgton (Midas 5780) were all listed for nutrient enrichment with a low priority for TMDL development. TMDLs for total phosphorus for each lake were approved in 2005, 2004, and 2005, respectively (thus qualifying delistings of each lake to category 4A in 2006), and monitoring now shows a stable trophic trend for each lake, thus attainment of water quality standards.

The following eight estuarine/marine waters were previously listed solely for non-attainment of bacteria criteria (category 5-B-1 in 2004). Subsequent intensive monitoring for the following shellfish harvesting areas by the Maine Department of Marine Fisheries shows attainment of Class SB for fecal coliform bacteria and water quality standards: Ovens Mouth, Sherman Creek in Boothbay, Edgecomb (730-7 DMR 22-F), St. George River (724-10 DMR 27), Western Cove, Stinson Neck, Deer Isle (722-33 DMR37-I), Bass Harbor and Eastern Duck Cove (707-6 DMR 42), Thomas Bay in Bar Harbor (714-7 DMR 48), Back Bay in Milbridge (705-2 DMR 53-C), Canal Cove, Seward Neck in Lubec (701-3 DMR 56-I), Sipp Bay in Perry and Robinston (701-4 DMR 56-J).

EPA approves these delistings because the State has provided adequate information to support the assessment that waters are in attainment for pollutants related to the delistings, as described above.

#### Category 5 in 2004 to Category 3 in 2006

Maine delisted three streams and one lake from category 5 to IR category 3. Waters in category 3 are defined as having insufficient data and information to determine if designated uses are attained (with presumption that one or more uses may be impaired). These waters all require re-sampling to reconcile conflicting attainment results and confirm attainment.

Bobbin Mill Brook (Lake Auburn Outlet in Auburn) (ME0104000208\_413R08) was listed as impaired based on one determination of non-attainment of Class B biocriteria in 1998. In 1998, the Class B stream did meet Class C numeric biocriteria, and biomonitoring in August 2003 showed attainment of Class B biocriteria. Best professional judgment (BPJ) findings indicated that prior biocriteria non-attainment was probably caused by natural conditions attributable to the nutrient enriching lake outlet effect (Chapter 579 3.G.1, ME DEP Biocriteria Rule, provisions for use of BPJ where lake outlet effect is a factor). The stream is the outlet of Lake Auburn and flows through a well-buffered area west of the Androscoggin River; the watershed is extensively forested. Re-sampling is required.

Caribou Stream in Caribou is a Class B stream and was originally listed in 1998 for aquatic life criteria impairment on the basis of one, 1994 determination of biocriteria non-attainment of Class B (attained Class C). Prior and subsequent sampling results indicated attainment of Class B in 1985, attainment of Class A in 1999, upstream samples attained Class A in 2004 (downstream samples were lost). The one non-attainment result is thought to be attributable to an atypical flow year. Re-sampling is required.

Norton Brook in Falmouth is a Class B stream that attained standards in the 2002 list, and was listed by administrative error in 2004, based on an incomplete biological assessment. Best professional judgment (BPJ) findings indicate that the non-attainment may have been caused by natural low velocity and soft substrate conditions (Chapter 579 3.G.1, ME DEP Biocriteria Rule, provisions for use of BPJ). More data are required to support an impaired assessment; re-sampling is required.

Duckpuddle Pond in Nobleboro (Midas 5702) was impaired due to nutrient enrichment. Although a TMDL for total phosphorus was approved in 2005 (thus justifying de-listing to category 4A), the lake experienced an algal bloom in 2005. Re-sampling is required.

EPA agrees that the delistings for the three streams discussed above are reasonable because the State presented an adequate explanation that there is not sufficient information available to determine impairment, as well as information for each delisting that suggests the original listing was not accurate, and that resampling is needed. In the case of Duckpuddle Pond, EPA's approval of the delisting is based on the fact that a TMDL was completed by the State and approved by EPA.

#### Category 5 to Category 4A

Consistent with EPA's regulations and EPA's Guidance for 2006 Assessment, Listing and Reporting Requirements, Maine did not include on the §303(d) list sixteen waters for which TMDLs have been approved by EPA. These waters which were moved into IR category 4A include the following six rivers and streams: Dickey Brook (nutrients, DO), Daigle Brook (nutrients, DO), Fish Brook (benthics, DO), Androscoggin River//Livermore impoundment (benthics), Androscoggin River/Gulf Island Pond (BOD, DO, phosphorus, TSS), Carleton Stream (benthics, iron); and ten lakes: Lilly Pond, Daigle Pond, Cross Lake, Toothaker Pond, Sabattus Pond, Unity Pond, Lovejoy Pond, Little Cobbosseecontee, Togus Pond, and Sewall Pond.

EPA approves these delistings.

#### **Waters which are not listed on Maine's 2006 §303(d) List which are expected to meet WQS**

#### Category 5 to Category 4-B

The State's decision to include several waters in IR category 4-B rather than on its 2006 Section 303(d) list is consistent with EPA regulations at 40 CFR 130.7(b)(1). In all cases, either permits have been issued or other controls are in place which are expected to result in the waterbodies (described below) attaining water quality standards within a reasonable amount of time (consistent with 40 CFR §130.7(6)(1)(ii) and (iii)). EPA concurs with ME DEP's decision to not list these waters on Maine's 2006 Section 303(d) list, and to instead place these waters on its category 4-B list (impaired surface waters – no TMDL required).

Monitoring should be scheduled for these waters to verify that the water quality standards are attained as expected in a reasonable time frame, and the results of this monitoring should be submitted with the next §303(d) list. If water quality standards are not attained through the selected controls within a reasonable time, the waters should be placed back onto the §303(d) list for TMDL development. If the data submitted by the state in its next listing cycle support a determination that water quality standards are being met, it will be appropriate for the State to remove the water(s) from the list at that time.

Maine has proposed that six water body segments not be listed on the §303(d) list based on the criteria described in §130.7(b)(1)(ii) and EPA's Guidance for 2006 Assessment, Listing and Reporting Requirements. For all of these segments, ME DEP has issued MEPDES permits to sources causing the impairments, and the permits contain effluent limits sufficient to ensure that water quality standards will be met. Five stream segments are located downstream of State fish hatcheries and are listed for impairment of benthic macroinvertebrate bioassessments due to pollutants in previously unpermitted wastewater discharges from the hatcheries. Pollutants include phosphorus, biochemical oxygen demand, total suspended solids, and formalin. For these streams, pollution control requirements are new MEPDES discharge permits issued in 2006 to each facility which include effluent limits for BOD, TSS, total phosphorus, formalin, and

dissolved oxygen, all calculated to ensure compliance with water quality standards. Controls also include requirements for the construction of wastewater treatment plants. To date, a four million dollar bond issue has funded new treatment facility construction at four of the State hatcheries. ME DEP believes that compliance with the new permits for all hatcheries will result in attainment of water quality standards within one year of completion of hatchery staff training and all planned construction. Although schedules vary by facility, completion of construction and attainment of final limits and water quality standards are generally anticipated by summer of 2010, as noted below. On June 13, 2007, ME DEP sent a letter outlining current compliance, sampling and testing issues with the State hatcheries. If the streams do not attain all water quality standards by the end of the new permit, ME DEP will revise the permit limits to achieve compliance.

The fish hatchery on Cold Stream in Enfield (ME0102000503\_221R01) discharges to a Class A stream and is impaired due to non-attainment of biocriteria (attained Class B biocriteria). The new hatchery permit was issued 3/31/06 and expires 3/31/11. The facilities upgrade is completed and the new effluent limit for formalin must be met by 1/1/09. The new effluent limit for phosphorus must be met by 6/1/09. Some improvements have been seen in the discharge quality.

The fish hatchery on Mile Brook in Casco (ME0106000101) discharges to a Class B stream (attains Class C biocriteria). The new hatchery permit was issued 5/8/06 and expires 5/8/11. The facilities upgrade is completed and the new effluent limit for formalin must be met by 6/1/09.

The fish hatchery on Mill Stream in Embden (ME0103000304) discharges to a Class B stream (attained Class C biocriteria in 2000). The new hatchery permit was issued 1/30/06 and expires 1/30/11. The facilities upgrade is completed and the new effluent limit for formalin must be met by 1/1/09.

The Avon-Dunham Hatchery on Unnamed Stream tributary to the Sandy River (ME0103000305\_315R\_02) discharges to a Class B stream (attains Class C biocriteria). A valid hatchery permit was issued 10/18/05 and expires 10/18/10. The new effluent limit for formalin must be met by 6/1/08. The hatchery is currently closed.

The Palermo Hatchery on Sheepscot River below Sheepscot Lake (ME0105000305\_528R08\_02) discharges to a Class B stream (attains Class C biocriteria). Hatchery permit provisions are expected to result in attainment and the permit expires 2/20/11. The facilities upgrade is completed and the new effluent limit for formalin must be met by 1/1/09.

The sixth stream segment in this delisting approval category is Martin Stream in Dixmont (ME0103000308)331R01) which is impaired by pollutants from livestock feeding operations that cause non-attainment of biocriteria. Pollutants include bacteria, ammonia, total suspended solids and nutrients. All permit requirements for this concentrated animal feeding operation (CAFO) became effective upon issuance of the permit on 8/15/06 (described in more detail below). Attainment of all water quality standards is expected within one year following full

implementation of BMPs, nutrient and livestock management plans, and employee training, or by 8/15/07.

This facility is in gross violation of its permit. The facility has been sued in federal court U.S. District Court (*Case Number 07-CV-00007*) and is under a Court Order to ensure the permit provisions are implemented. The new Maine Pollutant Discharge Elimination System (MEPDES) Permit [*#ME0036821 Maine Waste Discharge License (WDL) Application #W008243-5S-A-N, issued 8/15/06*] prohibits the discharge of process water to Martin Stream and places requirements for the treatment of any stormwater discharged to Martin Stream. The permit requires the permittee to work with the Maine Department of Agriculture (operating under a Memorandum of Agreement with Maine DEP) to develop and implement best management practices (BMP's). The BMPs are to prevent discharges to waters of the State of Maine. BMPs include buffers, diversion of clean water away from feedlots, holding pens and manure storage areas, and restricting livestock access to surface waters. The facility is also required to work with the Maine Department of Agriculture (operating under a Memorandum of Agreement with Maine DEP) to develop and implement a Nutrient Management Plan and obtain a Livestock Operation Permit (LOP) pursuant to Maine law, 7 M.R.S.A., §4204 and §4205 respectively. The Nutrient Management Plan must be developed and implemented in accordance with Maine Department of Agriculture, Food and Rural Resources (DAFRR) regulation Chapter 565, Nutrient Management Rules, §6. The permit further requires monitoring and reporting of any inadvertent discharges to Martin Stream.

EPA approves these delistings consistent with 40 CFR §130.7(b)(1)(ii) since, in each case, a permit sufficient to meet water quality standards has been issued.

The one stream segment that is listed in category 4B with other pollution controls that will result in attainment of water quality standards is the Penobscot River from Cambolasse Stream to the Piscataquis River (ME0102000502\_231R) which is listed for fish consumption impairment due to dioxin contamination of fish tissue. Maine's dioxin law requires "no discharge" of dioxin from pulp and paper facilities after December 31, 2003 (38 MRSA §420). Statutory compliance is measured by (1) no detection of dioxin in any internal waste stream (at 10 pg/l detection limit), and (2) no detection in fish tissue sampled below a mill's outfall greater than upstream reference. The current MEPDES permit limit for the Lincoln Pulp & Paper discharge to this segment of the Penobscot River includes the statutory internal waste stream limit, but not the ambient fish tissue requirement. Internal waste stream monitoring confirms permit limitation compliance by Lincoln Pulp and Paper. Ambient fish tissue monitoring indicates improvement over time with levels very nearly attaining the requirement that there be no detection of dioxin in downstream fish tissue greater than in upstream reference fish tissue. This segment is expected to attain water quality standards by 2011.

(This segment is still 5A listed for dissolved oxygen and nutrients. This segment is also listed in category 5d- legacy pollutant for PCBs.)

EPA approves this delisting consistent with 40 CFR § 130.7(b)(1)(iii), since other pollutant requirements (namely, the statutory requirements which apply directly to the dischargers) sufficient to meet water quality standards are in place (in conjunction with a discharge permit).

## **Waters showing water quality improvement**

Although not subject to formal §303(d) review and approval, EPA notes that five of Maine's previously impaired waters that were delisted to categories 4-A and 4-B in the past have been re-listed in category 2 because they now attain water quality standards, and one pond has been re-listed in category 3, as explained below.

### Category 4A to 2

The Presumpscot River, main stem below Sacarappa Dam (ME0106000103\_609R\_01) was impaired and had TMDLs approved for BOD and TSS in 1998. Over time, sources were removed, a paper mill's pulping operation closed, the Smelt Hill Dam has been breached, and monitoring shows DO and biocriteria are now attained.

Three formerly impaired lakes with TMDLs for total phosphorus were also moved from category 4A to category 2. The following lakes now exhibit persistent improvement and/or stable trophic status, and attain water quality standards: Madawaska Lake, Mousam Lake, and Cobbossecontee Lake.

### Category 4B to 2

North Branch Presque Isle Stream between Mapleton and Presque Isle (ME 0101000412\_140R01) was impaired for DO and BOD and delisted to 4B in 2004. The Removal of the Mapleton POTW is complete and August 2004 biomonitoring showed attainment of Class A biocriteria and DO standards at a distance of 0.2 km downstream of the former Mapleton POTW.

### Category 4A to 3

Threecornered Pond in Augusta (Midas 5424) had a TMDL approved for total phosphorus in 2003. This lake was re-listed in category 3 in 2006 because of improvement in water quality and the absence of recent blooms. Additional time and/or data are needed to verify attainment.

## **Waters impaired by nonpoint sources of pollution**

The State properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that Section 303(d) applies to waters impacted by point and/or nonpoint sources. In 'Pronsolino v. Marcus,' the District Court for Northern District of California held that Section 303(d) of the Clean Water Act authorizes EPA to identify and establish total maximum daily loads for waters impaired by nonpoint sources. Pronsolino v. Marcus, 91 F. Supp. 2d 1337, 1347 (N.D.Ca. 2000). This decision was affirmed by the 9th Circuit court of appeals in Pronsolino v. Nastri, 291 F.3d 1123 (9th Cir. 2002). See

also EPA=s Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act – EPA Office of Water-- July 29, 2005.

## **V. TRIBAL WATERS**

In submitting the 2006 §303(d) list, ME DEP assumes that Maine’s water quality standards apply statewide. EPA’s approval of Maine’s §303(d) list extends to all waterbodies on the list with the exception of those waters, if any, that are within Indian territories and lands. EPA is taking no action to approve or disapprove the State’s list with respect to those waters at this time. EPA will retain responsibility under §303(c) and §303(d) of the Clean Water Act for those waters.

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