STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Rec'd
12/15/2009

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

December 7, 2009

Jennie Bridge
CME
USEPA Region 1
1 Congress Street
Suite 1100
Boston, MA 02114-2023

Dear Ms Bridge:

Enclosed are materials concerning changes to water quality standards administered by the Bureau of Land and Water Quality (Maine DEP). These materials are provided for EPA's review as required by 33 U.S.C. 1313(c). This packet includes:

- A memo describing changes to statutes and indicating hearing dates.
- Copies of the changes described.
- A letter from Gerald D. Reid of the Maine Attorney General's Office.

We look forward to EPA's timely review and action, pursuant to 40 CFR § 131.21, which provides in part that:

(a) After the State submits its officially adopted revisions, the Regional Administrator shall either:

(1) Notify the State within 60 days that the revisions are approved, or
(2) Notify the State within 90 days that the revisions are disapproved. Such notification of disapproval shall specify the changes needed to assure compliance with the requirements of the Act and this regulation, and shall explain why the State standard is not in compliance with such requirements. Any new or revised State standard must be accompanied by some type of supporting analysis.

Thank you for your assistance in this matter. Please contact Hetty Richardson (207-287-7799) if you have any questions or concerns as soon as is reasonably possible.

Sincerely,

Andrew Fisk, Director
Bureau of Land and Water Quality

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Maine Department of Environmental Protection
Memo concerning an Act to Change the Classification of Certain Waters of the State
December 7, 2009

Reclassification of Certain Waters of the State

I. Introduction

Changes to the classification of waters of the State are governed by Title 38, section 464 et seq. This statute requires the Department of Environmental Protection to conduct water quality studies, and the Board of Environmental Protection to hold hearings to receive public comment on proposals made by the Department. The public also has an opportunity to propose changes in water classification for the Department's consideration. The Board's recommendations are forwarded to the Legislature for its review and decision. The Legislature has sole authority to change the classification of State waters.

II. Process

In developing its recommendations to the Board, Department staff sought input from a variety of sources including the following governmental agencies: Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, and the U.S. Environmental Protection Agency. Staff also sought input from the Native American tribes, municipalities, various watershed councils and associations, the Portland Water District, and many organizations including: Friends of Merrymeeting Bay, Friends of the Basin, Western Foothills Land Trust, The Nature Conservancy, Maine Rivers and its affiliates, and the Natural Resources Council of Maine. Staff hosted three public meetings to obtain input from the interested public, two in Lewiston and one in Presque Isle. Finally, the Board held a public hearing in Augusta on September 18, 2008. With the exception of Long Creek in Westbrook, the enclosed recommendations were approved unanimously by the Board at its regularly scheduled meeting on December 18, 2008. At that time, the Board re-opened the record to receive additional comment on Long Creek. On February 5, 2009, the Board voted to recommend and the Legislature subsequently approved, a correction to the classification of a 0.3 mile segment of Long Creek in Westbrook.

III. Recommendations

The Board recommended and the Maine State Legislature approved 17 upgrades in water quality classification, amounting to approximately 167 miles of rivers and streams and 214 acres of estuarine waters, with details as follows: marine Class SB to Class SA (1 waterbody), Class A to Class AA (2 waterbodies), Class B to Class A (12 waterbodies), and Class C to Class B (2 waterbodies). Descriptions of these classification changes can be found in Appendix A. The Board also recommended and the Legislature approved changes to clarify the water quality classification of six waterbody segments – these are not substantive changes, but rather corrections of unintentional errors or ambiguaous language in the classification law. The Board recommended against three citizen initiated proposals for upgrade: Androscoggin River main stem from Worumbo Dam to Merrymeeting Bay, Aroostook River from Washburn to Caribou, and Aroostook River from Caribou to the international border. These segment proposals were also discussed at the Legislative hearing and were not added as amendments to the final bill.

Highlighted below are several changes approved by the Legislature to correct inconsistencies in statutory classification language.

IV. Statutory clarification of assigned classification

Statutory language was changed for six waterbodies to correct ambiguous or erroneous classifications. Increased monitoring activity and stream restoration work in smaller waterbodies is increasingly revealing issues of illogical classification transitions for short segments of streams that pass between towns of differing default classes. This is most common in the Greater Portland area but similar administrative issues can occur in any part of the State. Classification transitions that occur within too short a stream segment create unrealistic management scenarios due to conflicts in the goal condition. Several examples of this problem are corrected in the new bill and are summarized below.
Waterbodies for which the Legislature approved changes are:

- the Westbrook segment of the main stem of **Long Creek** –
  - Issue: town-designation default language caused stream to go from Class C- to Class B for 0.3 miles-to Class C; clarify Class C applies to the mainstem
- section of **Trout Brook** that flows between Cape Elizabeth and South Portland –
  - Issue: town-designation default language caused Class B on the Cape Elizabeth side of the stream and Class C on the So. Portland side; clarify that Class C applies on both sides of the stream
- certain tributaries to the **Stroudwater River** –
  - Issue: certain tributaries carried a C classification by town-designation default language whereas other statuory language specified all Stroudwater tributaries Class B; clarify Class B applies to tributaries
- **Nonesuch River** –
  - Issue: town-designation default language caused inconsistent classes within a distance of < 1 mile causing Class C- to Class B -to Class C; clarify Class B applies
- **Grand Falls Flowage** –
  - Issue: a lake-like impoundment, wastewater discharge discontinued; changed from riverine Class B to lake Class GPA.
- Tidal sections of tributaries to the **Kennebec River** near Augusta
  - Issue: mainstem and tributaries previously upgraded from Class B to C but statute still retained language specifying Class C for tidal sections of tributaries; clarify that Class B applies to tidal sections.

A more complete discussion of the history of language in the classification law and the Department's recommendations for clarifying the classification of these waters appears in the Response to Public Comments.

V. Legislative process

The proposed amendments appeared in LD 330, and were referred to the Committee on Natural Resources. A public hearing was held on February 17, 2009 at 1:00 pm. Work sessions on LD 330 were held on March 5, March 10, and March 20. There were three committee reports (A, B, and C).

The House and Senate enacted Committee Amendment A. The LD as amended was passed to be enacted by the House on April 28, 2009 and by the Senate on May 13, 2009. The LD was signed by the Governor, and became effective September 12, 2009.

Additional information related to this reclassification effort is on the DEP website at:
http://www.maine.gov/dep/blwq/docmonitoring/classification/reclass/index.htm

PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Change the Classification of Certain Waters of the State

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §467, sub-§1, ¶C, as amended by PL 2003, c. 317, §2, is further amended to read:

C. Androscoggin River, Upper Drainage; that portion within the State lying above the river's most upstream crossing of the Maine-New Hampshire boundary - Class A unless otherwise specified.

(1) Cupsuptic River and its tributaries - Class AA.

(2) Kennebago River and its tributaries except for the impoundment of the dam at Kennebago Falls - Class AA.

(3) Rapid River, from a point located 1,000 feet downstream of Middle Dam to its confluence with Umbagog Lake - Class AA.

(4) Magalloway River and tributaries above Aziscohos Lake in Lynchton Township, Parmachenee Township and Bowmantown Township - Class AA.

(4-A) Abbott Brook and its tributaries in Lincoln Plantation - Class AA.

(5) Little Magalloway River and tributaries in Parmachenee Township and Bowmantown Township - Class AA.

(6) Long Pond Stream in Rangeley - Class AA.

(7) Dodge Pond Stream in Rangeley - Class AA.

Sec. 2. 38 MRSA §467, sub-§1, ¶D, as amended by PL 2003, c. 317, §3, is further amended to read:

D. Androscoggin River, minor tributaries - Class B unless otherwise specified.

(1) All tributaries of the Androscoggin River that enter between the Maine-New Hampshire boundary in Gilead and its confluence with, and including, the Ellis River and that are not otherwise classified - Class A.

(2) Bear River - Class AA.

(3) Sabattus River from Sabattus Lake to limits of the Lisbon urban area - Class C.

(4) Webb River - Class A.

(5) Swift River, and its tributaries, above the Mexico-Rumford boundary - Class A.

(6) Nezinscot River, east and west branches above their confluence in Buckfield - Class A.

(7) Wild River in Gilead, Batchelders Grant - Class AA.

(8) Aunt Hannah Brook and its tributaries in Dixfield - Class A.

Sec. 3. 38 MRSA §467, sub-§4, ¶A, as amended by PL 2003, c. 317, §6 and affected by §25, is further amended to read:

A. Kennebec River, main stem.

(1) From the east outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(2) From the west outlet of Moosehead Lake to a point 1,000 feet below the lake - Class A.

(3) From a point 1,000 feet below Moosehead Lake to its confluence with Indian Pond - Class AA.

(4) From Harris Dam to a point located 1,000 feet downstream from Harris Dam - Class A.

(5) From a point located 1,000 feet downstream from Harris Dam to its confluence with the Dead River - Class AA.

(6) From its confluence with the Dead River to the confluence with Wyman Lake, including all impoundments - Class A.

(7) From the Wyman Dam to its confluence with the impoundment formed by the Williams Dam - Class A.

(8) From the confluence with the Williams impoundment to the Route 201A bridge in Anson-Madison, including all impoundments - Class A.

(9) From the Route 201A bridge in Anson-Madison to the Fairfield-Skowhegan boundary, including all impoundments - Class B.

(10) From the Fairfield-Skowhegan boundary to ~~its confluence with Messalonskee Stream, including all impoundments~~the Shawmut Dam - Class C.

(10-A) From the Shawmut Dam to its confluence with Messalonskee Stream, excluding all impoundments - Class B.

(a) Waters impounded by the Hydro-Kennebec Dam and the Lockwood Dam in Waterville-Winslow - Class C.

(11) From its confluence with Messalonskee Stream to the Sidney-Augusta boundary, including all impoundments - Class B.

(12) From the Sidney-Augusta boundary to the Father John J. Curran Bridge in Augusta, including all impoundments - Class B.

(13) From the Father John J. Curran Bridge in Augusta to a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. Further, the license limits for total residual chlorine and bacteria for existing direct discharges of wastewater to this segment as of January 1, 2003 must remain the same as the limits in effect on that date and must remain in effect until June 30, 2009 or upon renewal of the license, whichever comes later. Thereafter, license limits for total residual chlorine and bacteria must be those established by the department in the license and may include a compliance schedule pursuant to section 414-A, subsection 2.

(14) From a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, to a line across the southwesterly area of Merrymeeting Bay formed by an extension of the Brunswick-Bath boundary across the bay in a northwesterly direction to the westerly shore of Merrymeeting Bay and to a line drawn from Chop Point in Woolwich to West Chop Point in Bath - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

Sec. 4. 38 MRSA §467, sub-§4, ¶I, as repealed and replaced by PL 1989, c. 228, §2, is amended to read:

I. Kennebec River, minor tributaries - Class B unless otherwise specified.

(1) All minor tributaries entering above Wyman Dam that are not otherwise classified - Class A.

(2) All tidal portions of tributaries entering between ~~Edwards Dam~~the Sidney-Vassalboro-Augusta town line and a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point - Class ~~C~~B, unless otherwise specified.

(a) Eastern River from head of tide to its confluence with the Kennebec River - Class C.

(3) Cold Stream, West Forks Plantation - Class AA.

(4) Moxie Stream, Moxie Gore, below a point located 1,000 feet downstream of the Moxie Pond dam - Class AA.

(5) Austin Stream and its tributaries above the highway bridge of Route 201 in the Town of Bingham - Class A.

Sec. 5. 38 MRSA §467, sub-§7, ¶E, as amended by PL 1999, c. 277, §11, is further amended to read:

E. Piscataquis River Drainage.

(1) Piscataquis River, main stem.

(a) From the confluence of the East Branch and the West Branch to the Route 15 bridge in Guilford - Class A.

(b) From the Route 15 bridge in Guilford to the Maine Central Railroad bridge in Dover-Foxcroft - Class B.

(c) From the Maine Central Railroad bridge in Dover-Foxcroft to its confluence with the Penobscot River - Class B.

(2) Piscataquis River, tributaries - Class B unless otherwise specified.

(a) Except as otherwise provided, East and West Branches of the Piscataquis River and their tributaries above their confluence near Blanchard - Class A.

(b) East Branch of the Piscataquis River from 1,000 feet below Shirley Pond to its confluence with the West Branch - Class AA.

(c) Pleasant River, East Branch and its tributaries - Class A.

(d) Pleasant River, West Branch, from the outlet of Fourth West Branch Pond to its confluence with the East Branch - Class AA.

(e) Pleasant River, West Branch tributaries - Class A.

(f) Sebec River and its tributaries above Route 6 in Milo - Class A.

(g) West Branch of the Piscataquis River from 1,000 feet below West Shirley Bog to its confluence with the East Branch - Class AA.

(h) Black Stream - Class A.

(i) Cold Stream - Class A.

(j) Kingsbury Stream - Class A.

(k) Schoodic Stream - Class A.

(l) Scutaze Stream - Class A.

(m) ~~Sebois~~Seboeis Stream, including East and West Branches, and tributaries - Class A.

(n) Alder Stream and its tributaries - Class A.

Sec. 6. 38 MRSA §467, sub-§7, ¶F, as amended by PL 2003, c. 317, §13, is further amended to read:

F. Penobscot River, minor tributaries - Class B unless otherwise specified.

(1) Cambolasse Stream (Lincoln) below the Route 2 bridge - Class C.

(2) Great Works Stream (Bradley) and its tributaries above the Route 178 bridge - Class A.

(3) Kenduskeag Stream (Bangor) below the Bullseye Bridge - Class C.

(4) Mattanawcook Stream (Lincoln) below the outlet of Mattanawcook Pond - Class C.

(5) Olamon Stream and its tributaries above the bridge on Horseback Road - Class A.

(6) Passadumkeag River and its tributaries - Class A, unless otherwise specified.

(a) Passadumkeag River from the Pumpkinhill Dam to its confluence with the Penobscot River - Class AA.

(b) Ayers Brook - Class AA.

(7) Souadabscook Stream above head of tide - Class AA.

(7-A) Souadabscook Stream, tributaries of - Class B, unless otherwise specified.

(a) West Branch Souadabscook Stream (Hampden, Newburgh) - Class A.

(b) Brown Brook (Hampden) - Class A.

(8) Sunkhaze Stream and its tributaries - Class AA.

(9) Birch Stream - Class A.

(10) Hemlock Stream - Class A.

(11) Mattamiscontis Stream and its tributaries - Class A.

(12) Medunkeunk Stream - Class A.

(13) Rockabema Stream - Class A.

(14) Salmon Stream - Class A.

(15) Salmon Stream in Winn - Class A.

(16) Little Salmon Stream in Medway - Class A.

(17) Narrimissic River in Bucksport and Orland, including all impoundments - Class B.

Sec. 7. 38 MRSA §467, sub-§9, ¶B, as amended by PL 1991, c. 499, §16, is further amended to read:

B. Presumpscot River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the outlet of Sebago Lake - Class B.

(2) Crooked River and its tributaries, except as otherwise provided, excluding existing impoundments ~~and excluding that area of the river previously impounded at Scribners Mill~~ - Class AA.

(3) Stevens Brook (Bridgton) - Class B.

(4) Mile Brook (Casco) - Class B.

Sec. 8. 38 MRSA §467, sub-§12, ¶B, as amended by PL 2003, c. 317, §15, is further amended to read:

B. Saco River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) All tributaries entering above the confluence of the Ossipee River lying within the State and not otherwise classified - Class A.

(2) Wards Brook (Fryeburg) - Class C.

(3) Buff Brook (Waterboro) - Class A.

(4) Ossipee River Drainage, those waters lying within the State - Class B unless otherwise specified.

(a) Emerson Brook in Parsonsfield - Class A.

(b) South River and its tributaries (Parsonsfield), those waters lying within the State - Class A.

Sec. 9. 38 MRSA §467, sub-§13, ¶A, as repealed and replaced by PL 1989, c. 764, §14, is amended to read:

A. St. Croix River, main stem.

(1) Except as otherwise provided, from the outlet of Chiputneticook Lakes to its confluence with the Woodland Lake impoundment, those waters lying within the State - Class A.

(2) Those waters ~~of~~impounded in the Grand Falls Flowage including those waters between Route 1 (Princeton and Indian Township) and ~~Black Cat Island~~Grand Falls Dam - Class ~~B~~GPA.

(3) Woodland Lake impoundment - Class C.

(4) From the Woodland Dam to tidewater, those waters lying within the State, including all impoundments - Class C.

Sec. 10. 38 MRSA §467, sub-§15, ¶C, as amended by PL 2003, c. 317, §17, is further amended to read:

C. Aroostook River Drainage.

(1) Aroostook River, main stem.

(a) From the confluence of Millinocket Stream and Munsungan Stream to the Route 11 bridge - Class AA.

(b) From the Route 11 bridge to the Sheridan Dam - Class B.

(c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B.

(d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C.

(e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B.

(f) From a point located 100 yards downstream of the intake of the Caribou water supply to the international boundary, including all impoundments - Class C.

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Caribou-Connor Township line - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Aroostook River - Class AA.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above the Mapleton-Presque Isle town line - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

(j) Squa Pan Stream from the outlet of Squa Pan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

(l) Beaver Brook and its tributaries (T.14 R.6 W.E.L.S., T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Portage Lake, Ashland, Castle Hill) - Class A.

(m) Gardner Brook and its tributaries (T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Wade) - Class A.

Sec. 11. 38 MRSA §467, sub-§15, ¶F, as amended by PL 2003, c. 317, §18, is further amended to read:

F. St. John River, minor tributaries, those waters lying within the State - Class A unless otherwise specified.

(1) Except as otherwise classified, all minor tributaries of the St. John River entering below the international bridge in Fort Kent, those waters lying within the State - Class B.

(2) Baker Branch, from the headwaters at the St. John Ponds to its confluence with the Southwest Branch - Class AA.

(3) Big Black River, from the international boundary to its confluence with the St. John River - Class AA.

(4) Northwest Branch, from the outlet of Beaver Pond in T.12, R.17, W.E.L.S. to its confluence with the St. John River - Class AA.

(5) Prestile Stream from its source to Route 1A in Mars Hill - Class A.

(6) Southwest Branch, from a point located 5 miles downstream of the international boundary to its confluence with the Baker Branch - Class AA.

(7) Violette Stream and its tributaries, from its source to the confluence with Caniba Brook - Class A.

Sec. 12. 38 MRSA §467, sub-§16, ¶B, as amended by PL 1999, c. 277, §22, is further amended to read:

B. Salmon Falls River, tributaries, those waters lying within the State - Class B unless otherwise specified.

(1) Chicks Brook (South Berwick, York) - Class A.

(2) Little River and its tributaries (Berwick, North Berwick, Lebanon) - Class A.

Sec. 13. 38 MRSA §468, sub-§1, ¶A-1 is enacted to read:

A-1. Cape Elizabeth.

(1) Trout Brook, those waters that form the town boundary with South Portland - Class C.

Sec. 14. 38 MRSA §468, sub-§1, ¶B, as repealed and replaced by PL 1989, c. 764, §21, is amended to read:

B. Portland.

(1) All minor drainages unless otherwise specified - Class C.

(2) Stroudwater River from its origin to tidewater, including all tributaries - Class B.

Sec. 15. 38 MRSA §468, sub-§1, ¶C, as repealed and replaced by PL 1989, c. 764, §21, is amended to read:

C. Scarborough.

(1) All minor drainages - Class C unless otherwise specified.

(2) Finnard Brook - Class B.

(3) Stuart Brook - Class B.

(4) Nonesuch River from the headwaters to a point 1/2 mile downstream of Mitchell Hill Road crossing - Class B.

(5) Stroudwater River from its origin to tidewater, including all tributaries - Class B.

Sec. 16. 38 MRSA §468, sub-§1, ¶D, as repealed and replaced by PL 1989, c. 764, §21, is amended to read:

D. South Portland.

(1) All minor drainages - Class C.

(2) Trout Brook downstream of the first point where the brook becomes the town boundary between South Portland and Cape Elizabeth - Class C.

Sec. 17. 38 MRSA §468, sub-§1, ¶J is enacted to read:

J. Westbrook.

(1) Long Creek, main stem - Class C.

Sec. 18. 38 MRSA §468, sub-§4, ¶D is enacted to read:

D. Bristol.

(1) Pemaquid River and its tributaries, all freshwater sections below Pemaquid Pond - Class A.

Sec. 19. 38 MRSA §468, sub-§7, ¶D is enacted to read:

D. Black Brook in Lincolnville - Class A.

Sec. 20. 38 MRSA §468, sub-§7, ¶E is enacted to read:

E. Kendall Brook in Lincolnville - Class A.

Sec. 21. 38 MRSA §468, sub-§7, ¶F is enacted to read:

F. Tucker Brook in Lincolnville - Class A.

Sec. 22. 38 MRSA §469, sub-§5, ¶B, as enacted by PL 1989, c. 764, §27, is amended to read:

B. Phippsburg.

(1) Tidal waters east of longitude 69`-50'-05" W. and west of longitude 69`-47'-00" W. - Class SA.

(2) Tidal waters of The Basin, including The Narrows east of a line drawn between 69`-51'-57" W. and 43`-48'-14" N. - Class SA.

Sec. 23. Report concerning procedures for reclassification. The Department of Environmental Protection shall review the current procedures for reclassification contained in the Maine Revised Statutes, Title 38, section 464, subsection 2 and suggest any changes or clarifications needed to make the procedures more consistent and efficient while maintaining a full public review process. The recommendations may include draft legislation. The report must be submitted to the Joint Standing Committee on Natural Resources by January 15, 2010 and the committee may submit legislation related to this report to the Second Regular Session of the 124th Legislature.

Sec. 24. Lower Androscoggin River water quality sampling; report; legislation. The Department of Environmental Protection, with the assistance of and in consultation with volunteer river monitors, shall establish and implement a water quality sampling program for the lower Androscoggin River from Gulf Island Dam to the line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction.

1. Timing. The water quality sampling program must occur during the 2009 sampling season.

2. Purpose. The purpose of the water quality sampling program implemented under this section is to allow additional water quality data to be collected to determine if the section of the Androscoggin River from Worumbo Dam in Lisbon Falls to the line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction meets, or can reasonably be expected to meet, the criteria for reclassification from Class C to Class B.

3. Reclassification procedures. Unless the Department of Environmental Protection is unable to obtain the required monitoring data due to excessive rainfall or other unforeseen events, or unless the monitoring data indicate an upgrade is unwarranted, the department shall initiate the procedures for reclassification in accordance with the Maine Revised Statutes, Title 38, section 464, subsection 2 to upgrade the lower Androscoggin River from Worumbo Dam in Lisbon Falls to the line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction from Class C to Class B.

4. Report. By February 15, 2010, the Department of Environmental Protection shall submit a report, including recommendations and any necessary implementing legislation, in connection with the water quality sampling program required under this section to the Joint Standing Committee on Natural Resources.

5. Legislation authorized. The Joint Standing Committee on Natural Resources may report out legislation relating to the subject matter of this section to the Second Regular Session of the 124th Legislature.

Effective September 12, 2009

JANET T. MILLS
ATTORNEY GENERAL

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October 27, 2009

Ann H. Williams
Senior Assistant Regional Counsel
U.S. EPA, Region I
One Congress St., Suite 110 (RAA)
Boston, MA 02114

Re: **Water Quality Legislation**

Dear Ann:

I have been asked by the MEDEP to review several amendments to Maine statutes in order to certify changes to Maine's water quality standards. As required by 40 CFR § 131.6(e), I certify that the following statutory amendments were duly adopted pursuant to State law.

2009 Legislative Session

- PL 2009, c. 163 (LD 330), "An Act to Change the Classification of Certain Waters of the State." This law became effective September 12, 2009.

As you know, it has now been established that Maine's environmental regulatory jurisdiction, in particular regarding water resources, applies uniformly throughout the State, and that jurisdiction applies to all of Maine's waters including those in the Penobscot River basin. *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007). Thus, it is clear that these standards apply to those areas previously disputed by the Maine tribes. In acting on the water quality standards set forth above, therefore, EPA should expressly confirm their applicability throughout Maine without exception.

Pursuant to 40 CFR 131.21, we look forward to EPA's review and approval. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Gerald D. Reid
Assistant Attorney General
Chief, Natural Resources Division