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

August 19, 2009

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

Re: Review and Action on Water Quality Standards Revisions

Dear Commissioner Littell,

By letter of April 8, 2008, the Maine Department of Environmental Protection, Bureau of Land and Water Quality (DEP) submitted revisions to its surface water quality standards for United States Environmental Protection Agency (EPA) review. The revisions, by statute, were adopted and became effective September 20, 2007, and were certified on March 3, 2008 by Maine's Assistant Attorney General in the Natural Resources Division as having been duly adopted pursuant to state law. EPA has completed its review 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 water quality standards revisions in Legislative Chapter 291 (L.D. 1274), "An Act to Allow the Discharge of Aquatic Pesticides Approved by the Department of Environmental Protection for the Control of Mosquito-borne Diseases in the Interest of Public Health and Safety" which changes the standards for waters having a drainage area less than 10 square miles as well as Class AA, Class A, Class B, Class GPA, Class SA and Class SB waters. The revisions add an exception to existing prohibitions to allow discharges of aquatic pesticides, approved by DEP, for the control of mosquito-borne diseases in the interest of public health and safety using methods and materials that provide for the protection of nontarget species. The exception is added to the existing prohibitions on discharges contained in the following provisions: Waters having a drainage area of less than 10 square miles, 38 MRSA 363(4)(A); Class AA waters, 38 MRSA 465(1)(C); Class A waters, 38 MRSA 465(2)(C); Class B waters, 38 MRSA 465(3)(C); Tributaries of GPA waters, 38 MRSA 465-A(1)(C); Class SA waters, 38 MRSA 465-B(1)(C); and Class SB waters, 38 MRSA 465-B(2)(C).

Other than listed exceptions, Maine Water Quality Standards currently:

- prohibit any discharges of pollutants to waters having a drainage area less than 10 square miles and Class AA waters (Outstanding Natural Resource Waters);
- prohibit discharges of pollutants to Class A waters unless the discharged effluent is equal to or better than the existing water quality of the receiving water;
- prohibit discharges of pollutants to Class B waters that cause adverse impact to aquatic life;
- prohibit any new direct discharges of pollutants to Class GPA waters;
- prohibit direct discharges of pollutants to Class SA waters; and

- prohibit discharges to Class SB waters that cause adverse impact to estuarine and marine life.

EPA's approval of the revisions is based on a review of whether the exception to allow licensed discharge of aquatic pesticides for the control of mosquito-borne diseases will protect the applicable designated and existing uses and is consistent with the requirements of the Clean Water Act. Given the requirement that the methods and materials used be protective of non-target species, EPA anticipates that no degradation of water quality would occur due to the discharge of aquatic pesticides authorized under this revision. Maine DEP will implement this provision and ensure that non-target species are protected through its discharge approval and licensing process. Therefore, EPA finds that the WQS revisions are protective of applicable designated and existing uses and are consistent with the requirements of the Clean Water Act.

It is important to note that federal antidegradation regulations require that water quality in Outstanding National Resource Waters (ONRW) be "maintained and protected" (*See* 40 CFR §131.12(a)(3)). EPA has interpreted that language to mean that states may only allow "some limited activity which may result in temporary and short-term changes in water quality" (*See* 48 FR 51402, Nov. 8, 1983 preamble to changes in 40 CFR Part 131). The revisions that EPA is approving today do not alter antidegradation requirements. Accordingly, in any review of a request to apply aquatic pesticides to Class AA or other ONWR waters, DEP must ensure that such application is protective of non-target species *and* will result in no more than temporary and short term changes in water quality.

We have determined that the following provisions 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 Chapter 65 (L.D. 587) in its entirety, and Legislative Chapter 292 (L.D. 1778) Sections 16, 18 and 20.

We are still reviewing Legislative Chapter 292 (L.D. 1778), Section 23, which would add "and domestic animal" to the bacteria standard for Class GPA waters. Therefore we are not taking any action with respect to that provision at this time.

EPA's approval of Maine's surface water quality standards revision does not extend to waters that are within Indian territories and lands. EPA is taking no action to approve or disapprove the State's revision 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 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 Ellen Weitzler (617-918-1582) if you have any questions.

Sincerely,

Ken

Ken Moraff, Acting Director
Office of Ecosystem Protection

cc: Andrew Fisk, MEDEP
Susan Davies, MEDEP
Dave Courtemanch, MEDEP
Vernon Lang, USFWS
Mary Colligan, Protected Resources, NMFS
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