UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

February 2, 2015

Patricia W. Aho, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Review and Decision on Water Quality Standards Revisions

Dear Commissioner Aho:

By letter of January 14, 2013, the Maine Department of Environmental Protection ("DEP") submitted revisions of the State's surface water quality standards ("WQS") to Region 1 of the United States Environmental Protection Agency ("EPA" or "Region") for review and approval or disapproval. The revisions were adopted by the DEP on July 13, 2012. By letter to EPA dated January 9, 2013, Maine's Assistant Attorney General in the Natural Resources Division certified the revisions as having been duly adopted pursuant to state law. By letter of May 16, 2013, EPA approved the revision to the arsenic criteria to protect human health in state waters outside of Indian territories and lands, but did not act on the arsenic criteria for waters in Indian territories and lands. In the approval letter EPA also indicated that the additional revisions submitted by DEP were still under review.

I commend DEP for the 2012 adoption of revisions to its water quality standards that strengthen the ability to protect Maine's waters including the adoption of new aquatic life criteria for acrolein, diazinon, and nonylphenol.

DEP submitted additional revisions of the State's surface water quality standards to the Region for review and approval or disapproval by letter of February 27, 2014. The revisions were certified on February 26, 2014, by Maine's Assistant Attorney General in the Natural Resources Division as having been duly adopted pursuant to state law. Before now, EPA had not acted on any of these revisions for any waters in Maine.

In both of the above-referenced submission letters, DEP requested that EPA approve Maine's WQS in Indian territories and lands ("Indian lands"). As discussed in the attached Decision Support Document (Attachment A), EPA has concluded that the State of Maine has the authority to adopt WQS that are applicable to waters in Indian lands. Accordingly, EPA is herein responding to the remaining unapproved elements of the 2013 and 2014 WQS revisions for waters throughout the State, including in Indian lands.

In addition to the 2013 and 2014 submissions, DEP submitted numerous WQS revisions to EPA from August 26, 2003, through July 8, 2011, for review and approval or disapproval.[1] In EPA's letters approving WQS revisions contained in those submissions, EPA noted that it was not taking action on the WQS with respect to any waters in Indian lands. In light of EPA's determination that the State of Maine has the authority to adopt WQS for waters in Indian lands, EPA is herein responding to those WQS revisions for those waters.[2]

Many of the WQS revisions under review for approval or disapproval for waters in Indian lands are water quality criteria, and the Clean Water Act ("CWA") requires that criteria be protective of designated uses. As discussed in the Decision Support Document, EPA has not yet approved any WQS, including designated uses, for waters in Indian lands.

Therefore, in order to evaluate whether the submitted criteria are protective of designated uses, EPA must first approve designated uses for these waters. Accordingly, EPA is herein approving Maine's surface water classifications and corresponding designated uses for waters in Indian lands.[3] Because EPA has not previously approved these WQS for waters in Indian lands, EPA considers them to be "new" WQS as applied to such waters. EPA is also approving 38 M.R.S. § 6207(4) and (9) (a provision of the Maine Implementing Act, or MIA, which settled the Maine Indian land claims as a matter of Maine law), as an explicit designated use for certain waters in Indian lands.

The following paragraphs state EPA's decisions on Maine's new and revised WQS described above. The decisions include approvals and disapprovals, and the detailed explanations for the decisions are provided in Attachment A. EPA has also identified several provisions that EPA is not taking action on, primarily because DEP is planning to update them soon, and some provisions that EPA is not taking action on because we have concluded that they are not WQS requiring EPA review and approval; these are also explained in Attachment A. EPA is not responding to new or revised Maine WQS other than those explicitly identified in this letter.

Approvals

Pursuant to Section 303(c)(3) of the Clean Water Act and 40 C.F.R. part 131, I hereby approve the following new or revised WQS:

<u>Classifications and Designated Uses</u>

For all waters in Indian lands:

- Maine's standards for classification and corresponding designated uses in 38 M.R.S. § 465(1.A), (2.A), (3.A) and (4.A)(for fresh waters); § 465-A(1.A) (for great ponds and natural lakes and ponds less than 10 acres in size, and impoundments of rivers that are

[1] A list of these submissions is provided in Section 4.10 of Attachment A.
[2] Maine's July 8, 2011 submission was for EPA's review of a reclassification of the Kennebec River. Although EPA's July 20, 2011 letter approving the reclassification included the caveat about not acting with respect to waters in Indian lands, the Kennebec River is nowhere near Indian lands. Therefore, EPA is taking no further action today with respect to that submission.
[3] EPA intends to review and approve or disapprove all remaining Maine WQS that could apply to waters in Indian lands, such as dissolved oxygen criteria, definitions, antidegradation provisions, etc., as soon as possible.

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defined as great ponds pursuant to 38 M.R.S. § 480-B), including the definition of "great ponds" in 38 M.R.S. § 480-B(5); and § 465-B(1.A), (2.A) and (3.A) (for estuarine and marine waters);

- The classification of specific waters in 38 M.R.S. § 467 (Classification of major river basins) and § 468 (Classification of minor drainages); and § 469 (Classification of estuarine and marine waters);
- The addition of agriculture as a designated use to freshwaters (Classes AA, A, B, C, and GPA), submitted to EPA on August 26, 2003; and
- The reclassifications, submitted to EPA on December 7, 2009, of Otter Creek, a tributary of Seboeis Stream, Alder Stream, and South Branch Stream, a tributary to the Mattamiscontis Stream, from Class B to Class A; and of Grand Falls Flowage between Route 1(Princeton and Indian Township) and Black Cat Island from Class B to Class GPA.

Criteria

For waters throughout the State of Maine, including in Indian lands, the following water quality criteria provisions contained in DEP Rule Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, Appendix A, submitted to EPA on January 14, 2013:

- Freshwater and marine aquatic life criteria for diazinon and nonylphenol;
- Freshwater aquatic life criteria for acrolein;
- Corrections of Federal Register Cites/Sources in Tables I and II of Appendix A; clarifications in footnote ll in Table I, and footnotes A and C and Additional Note 4 in Table II; and
- Footnote aME in Table I of Appendix A *except* for the first sentence related to arsenic, which EPA is taking no action on.

For all waters in Maine *except* for waters in Indian lands, the following water quality criteria contained in DEP Rule Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, Appendix A, submitted to EPA on January 14, 2013:

- Human health criteria for the consumption of water plus organisms for acrolein; and
- Human health criteria for the consumption of organisms only for acrolein and phenol.

For all waters in Indian lands, the following water quality criteria provisions:

- The provision regarding dissolved oxygen measurement requirements in riverine impoundments contained in 38 M.R.S. § 464(13), submitted to EPA on August 26, 2003;
- Aquatic life criteria provisions in 38 M.R.S. § 420(1-B.A.(1)),(1-B.C),(1-B.D), and (1-B.E), submitted to EPA on May 14, 2004, *except for* revisions made at in 38 M.R.S. § 420(1-B.C.(1)) and (1-B.C.(2)) that describe the state regulatory procedures for establishing site-specific bioaccumulation factors and which are not WQS (see below);
- The Classification Attainment Evaluation Using Biological Criteria for Rivers and Streams, contained in DEP Rule Chapter 579, submitted to EPA on May 14, 2004;
- All provisions of DEP Rule Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, including Appendix A, submitted to EPA on January 11, 2006, *except for:*
  - All human health criteria in Appendix A, which EPA is disapproving (see below);

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- the ammonia aquatic life criteria in Appendix A and 7.C, on which EPA is taking no action at this time (see below); and
- provisions which are not WQS (see below);

- The 30-day average dissolved oxygen criterion of 6.5 ppm for certain Class C waters, contained in 38 M.R.S. § 465(4.B), submitted to EPA on January 11, 2006;
- The instream design flows for the application of water quality criteria for aquatic life and human health protection, which are consistent with EPA's current guidance (lQ10 low flow for acute aquatic life criteria, 7QlO low flow for chronic aquatic life criteria, and harmonic mean flow for human health criteria), contained in DEP Rule Chapter 530, § 4.B, submitted to EPA on January 11, 2006; and
- Revisions at 38 M.R.S. § 465(3.C.(2)) and § 465-B(2.C) enacted in 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,"), submitted to EPA on April 8, 2008.

General

For all waters in Indian lands:

- The provisions in 38 M.R.S. § 464(3.B) that ensure that a hearing will be held at least once every three years for the purpose of reviewing Maine's water quality standards, and revising them as appropriate, consistent with 40 C.F.R. § 131.20, submitted to EPA for review on May 14, 2004.

Disapprovals

Pursuant to Section 303(c)(3) of the CWA and 40 C.F.R. part 131, I hereby disapprove the following new and revised water quality standards:

For all waters in Indian lands:

- The mercury human health criteria revision at 38 M.R.S. § 420(1-B.A.(2)), submitted to EPA May 14, 2004;
- All human health criteria in DEP Rule Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, Appendix A, submitted to EPA on January 11, 2006; and
- Human health criteria revisions related to arsenic, acrolein, and phenol in DEP Rule Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, Appendix A, and the last sentence in Ch. 584, § 5.C related to the fish consumption rate, submitted to EPA on January 14, 2013.

Revisions for Which EPA is Not Making a Decision at This Time

EPA is not deciding to approve or disapprove the following new or revised WQS at this time:

For all waters in Indian lands:

- The ammonia criteria for protection of aquatic life in DEP Rule Chapter 584, Appendix A, submitted to EPA on January 11, 2006;

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- The recreational (bacteria) numeric criteria for the protection of primary contact recreation for Class B and C waters in 38 M.R.S. § 465(3.B) and (4.B), submitted to EPA on January 11, 2006;
- The revisions made in L.D. 1450 at 38 M.R.S. § 465-B(2.B) and (3.B), which extended the applicability of the bacteria criteria for Class SB and Class SC waters to include bacteria of domestic animal origin, submitted to EPA on January 11, 2006; and
- The first sentence of Footnote aME in Table I of Appendix A and the last sentence in Ch. 584, § 4 (the cancer risk level to be used to calculate human health criteria for inorganic arsenic).

For all waters throughout Maine, including in Indian lands:

- The revision made in L.D. 1304 at 38 M.R.S. § 464(4.A(3)(a)), and § 465((3.C.(1)) and (4.C), related to certain pesticide discharges, submitted to EPA on January 11, 2006;
- The revisions made in L.D. 1304 at 38 M.R.S. § 465(3.B) and (4.B), which extended the applicability of the bacteria criteria for Class B and Class C waters to include bacteria of domestic animal origin, submitted to EPA on January 11, 2006;
- The revision made in L.D. 1778 at 38 M.R.S. § 465-A(1.B), which extended the applicability of the bacteria criteria for Class GPA waters to include bacteria of domestic animal origin, submitted to EPA on April 8, 2008;
- The phenol criteria for the protection of human health consumption of water plus organisms, in DEP Rule Chapter 584, Appendix A, submitted to EPA on January 14, 2013; and
- The revision made in L.D. 1430 at 38 M.R.S. § 464(4.A(3)(b)), related to certain pesticide discharges to tributaries of GPA waters, submitted to EPA on February 27, 2014.

For waters outside of waters in Indian lands:

- The reclassification of a 0.3 mile segment of Long Creek that flows through Westbrook from Class B to Class C, submitted to EPA on December 7, 2009.

Revisions That are not WQS and do Not Require an EPA Decision

I have concluded that the following revisions, which relate to exemptions from discharge prohibitions, testing and licensing provisions related to discharges, updates of federal statutory and regulatory references, and procedural provisions that establish processes for adopting alternative criteria and establishing site-specific bioaccumulation factors, are not water quality standards requiring EPA review and approval or disapproval:

- Revisions made at 38 M.R.S. § 465(1.C.(2)) and (2.C.(2)), enacted as Chapter 574, L.D. 1833 "An Act to Amend Water Quality Laws to Aid in Wild Atlantic Salmon Restoration," submitted to EPA on May 14, 2004;
- Revisions made at 38 M.R.S. § 420(1-B.B) related to discharger compliance, submitted to EPA on May 14, 2004;
- Revisions made at in 38 M.R.S. § 420(1-B.C.(1)) and (1-B.C.(2)) that describe the state regulatory procedures for establishing site-specific bioaccumulation factors, submitted to EPA on May 14, 2004;

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- Revisions made at 38 M.R.S. § 361-A(1-J) and (1-K), enacted as Chapter 330, L.D. 1588, Sections 7 and 8, which updated the definitions of "Code Of Federal Regulations" and "Federal Water Pollution Control Act" to include their amendments through January 1, 2005, submitted to EPA on January 11, 2006;
- Revisions made at 38 M.R.S. § 464(4.A.(1)(c) and (d)); § 465(1.C.(3)) and (2.C.(3)); and § 465-A(1.C), enacted as Chapter 182, L.D. 1304 "An Act Concerning Invasive Species and Water Quality Standards," submitted to EPA on January 11, 2006;
- Revisions made at DEP Rule Chapter 584 § 3, submitted to EPA on January 11, 2006, regarding adoption procedures for alternative statewide and site specific criteria. This includes: the requirement in Chapter 584 § 3(A.(2)) that "statewide criteria must be initiated in accordance with the petition for rulemaking provisions of the State Administrative Procedures Act, 5 M.R.S.A., Section 8055"; the provision in the first paragraph of Chapter 584 § 3(B) that site specific criteria "must only be adopted by the Board as part of a waste discharge license proceeding pursuant to 38 MRSA Sections 413, 414 and 414-A"; and the first two sentences of the second paragraph of Chapter 584 § 3(B);
- Revisions made at 38 M.R.S. § 464(4.A.(1)(e)); § 465(1.C.(4)) and (2.C.(4)); § 465-A(1.C.(4)); and § 465-B(1.C.(2)), enacted as 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," submitted to EPA on April 8, 2008;
- Revisions made at 38 M.R.S. § 420(1-B)(F) and § 464(4)(J) and (K), related to testing and licensing requirements for waste discharges that were included in LD 515, submitted to EPA on January 14, 2013; and
- Revisions made at 38 M.R.S. § 464(4.A.(1)(f)); § 465(1.C.(5)) and (2.C.(5)); § 465-A (1.C.(5)); and § 465-B(1.C.(4)), enacted as Chapter 193, L.D. 1430, "An Act to Clarify the Permitted Use of Aquatic Pesticides," submitted to EPA on February 27, 2014.

EPA looks 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. EPA would like to begin discussions with DEP as soon as possible about the criteria that EPA is disapproving and those about which EPA is making no decision. EPA will contact you next week to schedule such discussions. In the meantime, please contact Ellen Weitzler (at weitzler.ellen@epa.gov or 617-918-1582) if you have any questions.

Sincerely,

H. Curtis Spalding
Regional Administrator

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