09/20/11

ME §303(d) Approval Documentation

I. INTRODUCTION

EPA has conducted a complete review of Maine's 2010 Section 303(d) list and supporting documentation and information and, based on that 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 2010 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) of the Act 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 2006 Integrated Report Guidance describes categories of water quality related data and information that may be existing and readily available. See EPA's May 5, 2009 memorandum on *Information Concerning 2010 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions*, which recommended that the 2010 integrated water quality reports follow the Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act (2006

Integrated Report Guidance (IRG)) issued July 29, 2005 (available at http://www.epa.gov/owow/tmdl/2006 IRG/) as supplemented by the October 12, 2006 memo and attachments and the May 5, 2009 memo and attachments. All guidance, memoranda and attachments may be found at: http://www.epa.gov/owow/tmdl/guidance.html. 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), EPA's 2006 Integrated Report Guidance, and the 2006 and 2009 memoranda and attachments.

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

The Maine Department of Environmental Protection (ME DEP) issued a draft 2010 §303(d) list of impaired waters for public review on July 29, 2010. ME DEP then revised the list based on comments received during the public comment period, including EPA comments sent by email on August 10, 2010. On December 8, 2010, ME DEP submitted to EPA-New England Maine's final 2010 §303(d) list (revised on September 15, 2011), which is included in Maine's 2010 *Integrated Water Quality Monitoring and Assessment Report*, or Integrated Report (IR) and its appendices. This EPA approval action pertains to Maine's inclusion of waters in Maine's 2010 §303(d) list, Maine's removal of specific waters from the §303(d) list in 2010, and Maine's decision not to list certain impaired waters in 2010. The relevant water segments are identified in Maine's 2010 IR and the following appendices:

- Appendix II (rivers and streams, pages 61-77 IR);
- Appendix III (lakes, page 89 IR);
- Appendix IV (wetlands, page 99);
- Appendix V (estuarine and marine waters, page 120 IR).

For purposes of evaluating Maine's §303(d) list, EPA also reviewed the following portions of Maine's 2010 IR relating to data sources and acknowledgements; listing methodology, assessment criteria, and data interpretation; and Maine's process for solicitation of public comments and Maine's responses to

those comments:

- Maine's *Data Sources and Acknowledgements* (pages 8-9, Chapter1, IR);
- Maine's *Listing Methodology, Assessment Criteria,* and *Data Interpretation* (pages 38-47, 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, providing the public with an opportunity to review and comment on Maine's draft 2010 §303(d) list. A public comment period was opened upon the release of Maine's draft list on July 29, 2010, and was closed on August 27, 2010. On July 29, 2010, ME DEP posted Maine's draft list on ME DEP's website, and issued a press release designed to inform the public of the availability of Maine's draft 2010 IR, to roughly 15-18 radio, television and print outlets around the state and to the Associated Press. During the week of July 29, 2010, ME DEP mailed notices directly to approximately 150 persons and entities on the Agency Rulemaking Subscription Service List, and ran a legal notice in four daily newspapers located in the state (Bangor Daily News, Kennebec Journal, Lewiston Sun Journal, and The Portland Press Herald). 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, where appropriate, incorporated changes to Maine's draft 2010 list in response to suggestions by interested parties. ME DEP prepared a summary of public comments received, and provided the State's response. EPA reviewed ME DEP's responses and the original comment letters, and concludes that Maine responded to the comments adequately.

One comment, however, submitted by the Androscoggin River Alliance ("ARA") was not explicitly addressed by ME DEP. ARA commented in strong disagreement "with the proposal to delist this [Gulf Island Pond] segment to Category 4A based upon the EPA-approved 2010 Gulf Island Pond TMDL." ARA's opposition was explained to stem from the fact that there remains excessive algal growth in Gulf Island Pond ("GIP") that continues to deter the use and enjoyment of the waters of the Androscoggin River at Gulf Island Pond. EPA notes that the placement of the GIP segment in Category 4A is appropriate because waters in Category 4A are impaired waters with an approved TMDL. In the case of GIP, the segment was initially delisted in 2006 following the TMDL approval on July 18, 2005. On June 1, 2010, the modified TMDL was approved, and the segment's continued placement in Category 4A is appropriate. The §303(d) list is comprised of impaired waters for which a TMDL must be established. See CWA §303(d) and 40 C.F.R. §130.7. Where, as here, a TMDL has been established, the water segment is moved to a different list, "Category 4A," for waters that are still impaired but for which TMDLs have been established. See also page 54 of EPA's "Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act," dated July 29, 2005.

EPA informed all five Indian Tribes in Maine of the availability of ME DEP's draft 2010 §303(d) list, and, on November 10, 2010, consulted with the Penobscot Indian Nation ("PIN") about ME DEP's draft responses to the PIN's comments relating to the Penobscot River. After consulting with the PIN prior to ME DEP's final list submittal, EPA determined that the PIN was satisfied with the way in which ME DEP addressed the PIN's concerns. EPA concludes the ME DEP addressed the PIN's comments in a

satisfactory way.

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, estuarine and marine resources, and, for the first time, wetlands (see pages 8-9, Chapter 1 of the IR, *Data Sources and Acknowledgements*, and pages 75-83, Chapter 5 of the IR, *Wetlands*). 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.

ME DEP 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 2010 §303(d) list is part of *Maine's 2010 Integrated Water Quality Monitoring and Assessment Report* which includes the most recent §305(b) report. As ME DEP explains in its 2010 IR listing methodology, three criteria for listing waters in Category 5 (impaired waters for which a TMDL must be established) are as follows (page 41, Chapter 4 of the IR):

> *1. Current data (collected within five years) for a standard either indicates 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 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 2010 §303(d) list, consistent with Maine's 2010 listing methodology. The IR explains (page 43) that *"A determination of nonattainment is only made when there is documented, quality assured, 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)."

In summary, ME DEP 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 2010 §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 that includes detailed rankings for some Category 5A waters and also assigns varying levels of priority (high, medium, or low) for TMDL development to Category 5A and 5D waters. See Table below. Category 5A waters are Maine's highest priority for TMDL development and each waterbody is assigned a schedule or priority (high or medium) for TMDL development. As described in Chapter 4 (page 41 of the 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 continues to use two subcategories of Category 5 waters with varying levels of priority for TMDL development, as explained in the Table below. (Maine no longer places waters into categories 5B or 5C.)

Table. Maine's 2010 TMDL Development Priority

Category	Title/Description	TMDL development Priority	Applicable to:
5A	Impairment caused by pollutants (other than those listed in 5D). A TMDL is required and will be conducted by the State of Maine.	A projected schedule or priority level of high or medium is included for each listing.	Specific: Rivers & streams Lakes Wetlands Marine & Estuarine
5D	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.	Specific: Rivers & streams All: Marine & Estuarine capable of supporting American lobster

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.

Waters not listed on Maine's 2010 §303(d) list, but which were listed on Maine's 2008 §303(d) list.

EPA requested that Maine provide a rationale for its decision not to include previously listed waters. As discussed below, the State has demonstrated, to EPA's satisfaction, good cause for not listing those waters, as provided in 40 C.F.R. §130.7(b)(6)(iv).

Category 5 in 2008 to Category 2 in 2010

In the following seven cases of delisting previously impaired waterbody segments from Category 5 to Category 2, more recent data or information indicate attainment of water quality standards:

West Branch Sheepscot River in Windsor (formerly referred to as "below Halls Corner") (ME 0105000305_528R02) was initially listed in 1998 and 2002 as impaired for dissolved oxygen (DO) (affecting aquatic life use), and for bacteria (affecting recreational use) informed by data collected by the Sheepscot River Conservation Association (SVCA) volunteers. More recent monitoring data (2004 through 2006) demonstrates that this water segment partially supports uses, and now attains Class AA water quality standards for DO. Accordingly, the water segment is being delisted from Category 5 to Category 2 for DO only.[1]

The following six streams were originally listed in Category 5B as impaired for Escherichia coli bacteria contamination. During the statewide TMDL development process for bacteria-impaired waters, newer data collected in 2007 for streams previously listed as impaired for bacteria indicated each stream segment now attains the relevant Maine water quality standards for E. coli bacteria, due to changes in land use, or watershed nonpoint source removal efforts (such as septic system maintenance or improved agricultural practices): [2]

Webster Brook in Limestone (ME 0101000413_146R01) attains Class B bacteria criteria; listed in 2002 based on DEP evaluation; causes "unknown/untreated waste?/NPS (unspecified).

Kenduskeag Stream in Bangor (ME 0102000510_224R02) attains Class B bacteria criteria; listed in 2002 based on 1999 monitoring data; causes "unknown, untreated waste?/ NPS (unspecified).

Unnamed Brook in Rockport (ME0105000220_522R03) attains Class B bacteria criteria; listed in 2002 based on DEP evaluation; causes "urban NPS".

Piscataqua River in Falmouth (ME0106000103_607R04) attains Class B bacteria criteria; listed in 2002 based on 1999 monitoring data; causes "NPS (unspecified).

Saco River in Fryeburg (ME0106000204_618R01) attains Class AA bacteria criteria; listed in 2004 based on 2003 monitoring data; causes "NPS (unspecified).

[1] Additionally, this water segment was inadvertently omitted from Maine's 2009 statewide bacteria TMDL approval, and therefore is being listed for the 2010 listing cycle in category 5A for E. coli pending review of more recent bacteria data review, and/or the next update of Maine's statewide bacteria TMDL.
[2] Monitoring data for these waters are available in Appendix I of Maine's Statewide Bacteria TMDL, which was approved by U.S. EPA on September 28, 2009.

Ossippee River in Hiram (ME 0106000209_614R01) now attains Class B bacteria criteria; listed in 2004 based on 2003 monitoring data; causes "NPS (unspecified).

EPA approves the seven waterbody delistings identified above, because Maine has provided adequate information to support its assessment that the waters are in attainment for pollutants related to their original listings.

Category 5 in 2008 to Category 3 in 2010

Penobscot River Estuary, Winterport, Reeds Brook to Marsh River (ID 812-1; DMR Area 1) is a tidal segment of the Penobscot River upper estuary that was included in Maine's 2008 narrative coast-wide listing for all estuarine and marine waters in Category 5D (shellfish consumption impairment due to lobster tomalley). In 2010, ME DEP has listed this specific water segment in Category 3 due to insufficient information and a low likelihood that the segment can provide suitable habitat for lobster. The initial Category 5D determination was not made specific to this particular estuarine location. Survey data from 1992 suggests that the occurrence of harvestable lobster is unlikely in this Winterport segment of the estuary. However, additional information is needed to confirm the water segment's attainment status.

EPA has reviewed the technical reports and other information submitted by ME DEP indicating doubt as to whether the low salinity and lack of hard substrate in the Winterport tidal segment provide suitable habitat for lobster. More detailed information on tags and landings from Maine Division of Marine Resources (DMR) is needed to preclude or confirm conclusively the presence of lobster in that area. Accordingly, EPA believes that ME DEP's delisting from Category 5 to Category 3 is reasonable and is therefore approving it.

Category 5 in 2008 to Category 4A in 2010

Consistent with EPA's regulations and EPA's Integrated Report Guidance, Maine did not include on its §303(d) list the following 203 individual waters for which TMDLs have been approved by EPA. The majority of these waters were moved from Category 5B (impaired by bacteria) in 2008 into Category 4A in Maine's 2010 IR, and include the following:

(a) 56 rivers and streams (not including the 6 (six) river and stream segments listed earlier that were found to attain water quality standards and are being delisted to Category 2 instead of Category 4A), and

(b) *143 estuarine and marine waters.*

The *Maine Statewide Bacteria TMDL* approved by EPA on September 28, 2009 applies to all the above-referenced waters, and, therefore, the waters no longer need to be on Maine's §303(d) list for bacteria (see discussion on pages 6 and 7, above). Complete lists of the waters addressed by the TMDL are also included in Appendix IV of the TMDL in Tables 2-1, *2-2, and 2-3.*

The following two streams were moved from Category 5A to Category 4A:

Dudley Brook in Chapman (ME0101000412 140R02), TMDL approved on April 26, 2010 to address benthics.

Prestile Stream above the dam in Mars Hill (ME0101000501_149R01), TMDLs approved May 10, 2010 to address benthics, nutrients, and dissolved oxygen; however, this segment remains in Category 5D for legacy DDT sources.

The following two lakes were moved from Category 5A into Category 4A (eutrophication):

Christina Reservoir in Aroostook County (0101000501_Lake ID 9525), TMDL approved on May 10, 2010.

Long Pond in Belgrade (0103000310_Lake ID 5272), TMDL approved on April 29, 2008.

EPA has reviewed and approved the TMDLs for the above-referenced waterbodies, and therefore approves the above-referenced delistings from Category 5 to Category 4A.

Category 5 in 2008 to Category 4B in 2010; and Category 4B for water segments that had not appeared in either non-attainment Category 4 or 5 before the 2010 §303(d) list.

The State's decision to include the waters described below in Category 4B rather than on its 2010 Section 303(d) list is consistent with EPA regulations at 40 CFR 130.7(b)(1). In all cases, permits have been issued or other controls are in place which are expected to result in the waterbodies 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 2010 Section 303(d) list, and to instead place these waters into Category 4B (impaired surface waters – no TMDL required).

Monitoring should be scheduled for these waters to verify that the water quality standards are attained as expected within a reasonable period of time, and the results of that monitoring should be submitted to EPA consistent with the State's assessment of waters under its rotating basin approach. 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 not listed the following six water body segments on the §303(d) list based on the criteria described in §130.7(b)(1)(ii) and EPA's Guidance for Assessment, Listing and Reporting Requirements. For all segments, ME DEP has either issued MEPDES permits to sources causing the impairments, and the permits contain effluent limits sufficient to ensure that water quality standards will be met, or other controls are in place which are expected to result in attainment of water quality standards. The two wetland areas included in the delisting proposal are both associated with stream segments either proposed for or already approved for 4B listing, and both wetland segments are being listed for the first time:

West Branch Penobscot River, main stem, below confluence with Millinocket Stream (ME0102000109_205R01); and *Penobscot River*, main stem, above confluence of Mattawamkeag River (ME0102000512_229R). More intensive analysis of 2007 Penobscot River monitoring data confirmed that additional river segments were not attaining nutrient/eutrophication and dissolved oxygen criteria. The two Penobscot stream segments identified above were assessed as impaired for Class C nutrients/

eutrophication.[3] ME DEP placed both segments in Category 4B of the 2010 IR instead of Category 5A because the State had, in 2008, entered into an Administrative Consent Agreement and Enforcement Order (ACAEO) with Katahdin Paper Company, LLC (Katahdin West)), which required reductions in phosphorus loading. In evaluating whether it is appropriate to list these segments in Category 4B, EPA considered additional information. In May, 2011, Maine DEP completed a Penobscot River Phosphorus Wasteload Allocation ("WLA"). The WLA report identified two industrial dischargers that contribute phosphorus to these segments (Katahdin East and Katahdin West), and a municipal discharger (Millinocket POTW).[4] The WLA establishes phosphorus loads for the industrial dischargers, since they generally represent 85-90 percent of the point source phosphorus loads. ME DEP determined that these loads would be sufficient to eliminate eutrophic conditions. The load allocated to Katahdin West is more stringent than the load required by the ACAOE. Also in May, 2011, ME DEP issued MEPDES permits to both Katahdin East and Katahdin West, which established phosphorus limits consistent with the WLA. EPA has determined that placement of these segments in Category 4B is appropriate in light of the analysis contained in the WLA regarding necessary phosphorus load reductions from all sources and the issuance of permits that imposed phosphorus limits consistent with the WLA. The stream segments are expected to attain by 2014.

Long Creek, in South Portland (ME0106000105_610R03), is impaired for Class C aquatic life use based on benthic macroinvertebrate bioassessment and habitat assessment. An active stakeholder and watershed restoration process is underway involving landowners in South Portland, Westbrook, Scarborough, and Portland, under the direction of a new Long Creek Management District. ME DEP's stormwater *General Permit – Post Construction Discharge of Stormwater in the Long Creek Watershed* (License number W-9052-5Y-A-N / MEPDES MEG190000) was issued on October 29, 2009, and contains conditions designed to achieve compliance with Maine's water quality standards. The stream is expected to attain all water quality standards by 2020.

Lord's Brook, in Lyman (ME0106000301_622R02), is impaired for Class B biochemical oxygen demand, dissolved oxygen, and nutrient/eutrophication based on biological indicators. A 2008 State permit was issued for the operation of a surface wastewater disposal system (slow-rate land irrigation treatment) at Winterwood Farm (License number: W008250 / MEU508250) for the seasonal disposal of wastewater generated at this commercial composting facility. The wastewater is comprised of leachate from composting piles as well as of contaminated stormwater runoff. Receiving water quality standards to meet are Class GW-A (highest class of Maine's groundwater designations). Treatment was designed based on soils and vegetation within the irrigation area, and will provide adequate filtration and absorption to preserve the integrity of the soil and both surface and groundwater quality in the area. Monitoring will be conducted by 2012, to allow for adequate annual high flow flushing of accumulated organic matter and nutrient wastes. Direct discharge to the stream has been eliminated and the stream is expected to attain all standards by 2014.

Wetland - Lord's Brook Pond, in Lyman (ME0106000301_622_W176), is closely associated with the River and Stream Category 4B waterbody listing in 2010 of Lord's Brook (ME0106000301 622R02). The slow-rate land irrigation treatment system at Winterwood Farm (License number: W008250 / MEU508250) is designed to provide adequate filtration and absorption to preserve the integrity of both

[3] Three Class B Penobscot River segments were added to Category 5A in the 2010 list.

[4] The WLA report also addresses phosphorus loads from additional sources to segments of the River further downstream.

surface and groundwater quality in the area. Because the wetland and the pond are essentially a sub-habitat of the stream, the actions that will restore the stream are expected to also be effective for the wetland. However, due to the wetland's function as a sink with slower flushing rates, recovery is expected to be slower. The wetland is expected to attain all standards by 2016.

Wetland - East Branch Sebasticook River, from Corundel Pond to Sebasticook Lake (ME0103000308_325R01_W080), is associated with the River and Stream Category 4B listing for the East Branch Sebasticook River approved in Maine's 2002 IR. The toxics thought by ME DEP to be the cause of aquatic life non-attainment in the listed river segment were in the wastewater discharges from the wastewater treatment plant (WWTP) in Corinna, ME (also the location of the Eastern Woolen Mill Superfund Site). The wastewater is now applied to the land rather than discharged directly to the river. This wetland fringes the listed river segment and thus is expected to respond in a similar way as the river to source controls. Since the discharge has been removed from the river, new monitoring data are expected to show attainment by 2012.

EPA has reviewed the relevant ME DEP permits and factsheets, and has concluded that Maine's placement of the above-referenced waters into Category 4B is appropriate either because the permits contain effluent limits that are stringent enough to achieve attainment of water quality standards and there are no other sources of pollutants that would prevent attainment, or because other control requirements are stringent enough to implement applicable water quality standards within a reasonable period of time. EPA is therefore approving those delistings.

ME DEP initially listed the following two stream segments in Category 4B in this 2010 cycle, but subsequently decided to include them on the Section 303(d) list:

Sandy River, main stem segment below Farmington WWTP (ME0103000305_319R_02), is currently impaired for Class B aquatic life use based on benthic macroinvertebrate bioassessment results. Although ME DEP issued a new wastewater license for the Farmington WWTP in 2006, establishing a process for subsequently determining appropriate effluent limits for total phosphorus and orthophosphorus that may be causing or contributing to the proliferation of algal growth, which, in turn, may be causing low dissolved oxygen levels in the segment, those effluent limits have not yet been established and included in the WWTP's wastewater license. Therefore, EPA and ME DEP agree that the segment should remain on the §303(d) list for impairment of Class B aquatic life use and nutrient issues (i.e., benthic macroinvertebrate bioassessment (stream), and phosphorus (total)). The appropriate change was made to ME DEP's Integrated Report. The revised 2010 list was submitted to EPA on September 15, 2011.

Spring Brook, located in Augusta from the Gov Hill fish hatchery to Mt. Vernon Road (ME 0103000324_333R02), not previously §303(d) listed, is impaired for Class B aquatic life use based on benthic macroinvertebrate bioassessment, and for nutrient problems. ME DEP issued a new wastewater license in 2006 for the Maine Department of Inland Fisheries and Wildlife's fish hatchery in Augusta (License number: W002032 / ME0001091). The license includes limits for BOD, TSS, total phosphorus, orthophosphate, formalin, potassium permanganate and dissolved oxygen. In addition to the limits contained in the 2006 license, use of an upgraded settling basin was just underway when biomonitoring in 2007 indicated Class C attainment of benthic biocriteria for this Class B stream. Subsequent benthic monitoring results obtained in 2010 still indicate only Class C attainment. Therefore, EPA and ME DEP agree that this segment should be on the §303(d) list for impairment of Class B aquatic life use and nutrient issues (i.e., benthic macroinvertebrate bioassessment (stream), and phosphorus (total)). The

appropriate change was made to ME DEP's Integrated Report. The revised 2010 list was submitted to EPA on September 15, 2011.

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 a 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 2006 Integrated Report Guidance.

V. TRIBAL WATERS

In submitting the 2010 §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.