



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

May 4, 2023

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

RE: Action Letter on the State of Maine's Surface Water Quality Standard Revisions contained in Chapter 584 and P.L. 2021, Ch. 551 and Chapter 584.

Dear Commissioner Loyzim:

By letter dated October 11, 2022, the Maine Department of Environmental Protection (DEP) submitted new and revised Water Quality Standards (WQS) contained in P.L. 2021, Ch. 551 (LD 1964) to EPA for review in accordance with Section 303(c) of the Clean Water Act (CWA). The WQS revisions are a result of the State's Triennial Review pursuant to 40 C.F.R. § 131.20. The Maine Board of Environmental Protection (BEP) held a public comment period on proposed WQS revisions from August 18 through October 25, 2021, with a public hearing held on October 7, 2021. On December 16, 2021, the Maine BEP submitted final recommendations to the Maine Legislature. The Maine Legislature held a public hearing on February 28, 2022, and a working session on March 2, 2022. The revisions were certified by Scott Boak, Office of the Attorney General, Assistant Attorney General, on September 12, 2022, as having been duly adopted pursuant to state law.

By letter dated April 24, 2020, the DEP submitted new and revised WQS contained in Chapter 584 in accordance with Section 303(c) of the CWA. Public notice of this rulemaking was published on October 2, 2019, and October 30, 2019. The BEP held a public hearing on the proposed rulemaking on November 21, 2019. The public comment period closed on December 6, 2019. The BEP voted on, and approved, the Chapter 584 WQS revisions on February 6, 2020. They were filed with the Maine Secretary of State and became effective on February 16, 2020. On April 22, 2020, the Attorney General certified that the 06-096 Chapter 584, Surface Water Quality for Toxic Pollutants amendments were duly adopted as WQS pursuant to state law.

Pursuant to Section 303(c)(3) of the CWA and 40 CFR Part 131, in letters dated June 23 and July 13, 2020, EPA approved numerous items and took no action on two items for Chapter 584. In a letter dated November 16, 2022, EPA approved all but one item contained in P.L. 2021, Ch. 551 (LD 1964). As more specifically described below, EPA is now approving the following two items on which no action was previously taken:

- 38 MRSA § 464 sub-section 4, paragraph A.(5), which changes the pH range for discharges to freshwater from 6.0 - 8.5 to 6.5 - 9.0 (P.L. 2021,Ch. 551).
- Carbaryl – Acute and chronic aquatic life criteria for freshwater and acute aquatic life criteria for estuarine/marine water in Appendix A, Table II – Criteria for Non-Priority Pollutants (Chapter 584).

Consistent with the requirements of the Endangered Species Act (ESA), EPA evaluated the potential impacts of this current action on federally protected species and their critical habitat and determined that consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) was necessary. EPA initiated consultation with USFWS in letters dated November 15, 2022, and February 3, 2023, for carbaryl and pH, respectively. In letters dated November 21, 2022, and March 31, 2023, the USFWS, Maine Field Office concurred with EPA’s findings that Maine’s revised criteria carbaryl and pH are not likely to adversely affect listed species under its jurisdiction.

Similarly, EPA initiated consultation with NMFS in letters dated November 15 and December 16, 2022, for carbaryl and pH, respectively. In a letter dated February 3, 2023, NMFS concurred with EPA’s finding that Maine’s revised criteria for carbaryl and pH were not likely to adversely affect listed species under its jurisdiction.

Carbaryl

Maine has updated its acute and chronic criteria for carbaryl to be consistent with EPA’s nationally recommended 2012 CWA Section 304(a) freshwater and estuarine/marine carbaryl aquatic life criteria, which reflect the latest science for the protection of aquatic life. Pursuant to 40 CFR § 131.11(a), EPA’s review of Maine’s revised carbaryl aquatic life criteria is based on whether the criteria protect aquatic life uses and are based on sound scientific rationale. EPA finds that Maine’s revised criteria are scientifically defensible and protective of designated uses for the reasons explained in the EPA’s 2012 carbaryl criteria document.¹ EPA approves the adoption of the 2012 304(a) recommended carbaryl criteria.

pH

Maine revised 38 MRSA § 464 sub-section 4, paragraph A.(5) as follows:

“(A) Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

(5) Discharge of pollutants to any water of the State that violations sections 465, 465-A and 465-B, except as provided in section 451; causes the pH of fresh water to fall outside of the range 6.5 to 9.0 range; or causes the pH of estuarine and marine waters to fall outside of the 7.0 to 8.5 range;”

¹ https://www.epa.gov/sites/default/files/2015-08/documents/aquatic_life_ambient_water_quality_criteria_for_carbaryl_-_2012.pdf

The range of pH for discharges to freshwater has been changed from 6.0 - 8.5 to 6.5 - 9.0. This revision is consistent with EPA's 304(a) recommendation for pH in freshwaters. For the reasons described in EPA's Quality Criteria for Water 1986 (EPA 440/5-86-001)², EPA approves the revision of 38 MRSA § 464 sub-section 4, paragraph A.(5) to be consistent with the 304(a) recommendation for pH in freshwaters.

EPA continues to take no action on site specific criteria for the Androscoggin River contained in Chapter 584, Appendix A, Table I at this time.

We look forward to continued cooperation with Maine in the development and review of WQS pursuant to our responsibilities under the CWA. If you have any questions, please contact Dan Arsenault (617-918-1562) or Mike Knapp (617-918-1053).

Sincerely,

For Ken Moraff, Director
Water Division
EPA Region 1

Cc:

Brian Kavanah, Director, Bureau of Water Quality, Maine DEP
Wendy Garland, Director, Environmental Assessment, Bureau of Water Quality, Maine DEP
Susanne Meidel, Water Quality Standards Coordinator, Bureau of Water Quality, Maine DEP

² <https://www.epa.gov/sites/default/files/2018-10/documents/quality-criteria-water-1986.pdf>