



JANET T. MILLS
GOVERNOR



GERALD D. REID
COMMISSIONER

Memorandum

To: Board of Environmental Protection

From: Cindy Dionne, Bureau of Water Quality

Date: February 6, 2020

Re: Chapter 584: Surface Water Quality Criteria for Toxic Pollutants

The Department is recommending that the Board adopt amendments to the existing 06-096 C.M.R. Chapter 584: Surface Water Quality Criteria for Toxic Pollutants. This rule establishes ambient water quality criteria for toxic pollutants in the surface waters of the State and sets forth procedures that may be used to determine alternative statewide criteria or site-specific criteria adopted as part of a licensing proceeding.

The purpose of these revisions is to: calculate and establish human health criteria for toxic pollutants (HHC) to protect the new sustenance fishing designated use (SFDU) established as a subcategory of the applicable fishing designated use for certain specified segments of waterbodies in the State within Maine's water classification program, 38 M.R.S. 464-470, as specified by P.L. 2019 ch. 463 (An Act to Protect Sustenance Fishing, or LD 1775); institute water effect ratios (WERs) for the Androscoggin and St. Croix rivers; promulgate new ambient water quality criteria (AWQC) for copper in the Little Androscoggin River based on the Biotic Ligand Model (BLM); and introduce carbaryl in the non-priority pollutant list. Further, these revisions also establish updated Maine AWQC for 94 existing human health criteria for all waters not expressly subject to the new SFDU using the methodology and final values from the EPA Human Health Ambient Water Quality Criteria 2015 updates (2015 HHC updates), except for aluminum, copper, and selenium, which are not being updated at this time, and by also using Maine-specific fish consumption rates (FCRs) as applicable.

Public notice of this rulemaking was initially published on October 2, 2019, to comply with CWA notice requirements, and on October 30, 2019, to comply with the Maine APA notice requirements. The Board held a public hearing on the proposed rulemaking on November 21, 2019, and the period for submitting public comments closed on December 6, 2019. The Department received comments from 46 interested persons or organizations prior to the close of the comment period. These comments are summarized, and the Department's responses are set forth in the Basis Statement and Response to Comments included in the Board materials. The Department is proposing two minor changes to the draft rule, one in response to a public

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comment and one that is a clarification that was proposed at the time of the original posting. These changes are described on page 13 of the response to comments and indicated on page 5 in the mark-up version of the rule by double-strikeout and double-underline.

The following materials are enclosed with this memorandum:

- Clean copy of the rule with all proposed changes incorporated
- Copy of the rule with proposed changes shown in legislative mark-up
- Basis statement and response to comments
- Copies of the comments received during the comment period

Regulatory Framework:

The amendments regarding human health criteria to protect sustenance fishing were authorized by Public Law 2019, Chapter 463, which amended 38 M.R.S. §466, sub-§10-A and designated a number of surface water bodies to be protected. General statutory authority for Chapter 584 is provided by 38 M.R.S. §§ 341-H, 420, and 464(5).

Requested Action:

The Department recommends that the Board adopt the proposed amendments as proposed with two minor changes as described in the response to comments.

Estimated time of agenda item:

One hour