

# Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: Department of Environmental Protection, Bureau of Land and Water Quality

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:  
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CHAPTER NUMBER AND RULE TITLE: Chapter 583. Nutrient Criteria for Fresh Surface Waters.

STATUTORY AUTHORITY: 38 M.R.S.A §§ 341-D(1-B) and 464(5)

DATE AND PLACE OF PUBLIC HEARING:  
June 18, 2009 @ 9:30 A.M.; Holiday Inn/Ground Round, 110 Community Drive, Augusta, ME

COMMENT DEADLINE: 5:00 P.M. on July 31, 2009

## PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The U.S. Environmental Protection Agency is requiring states to adopt nutrient criteria. Excess nutrients can damage waterbodies by causing algal blooms, reducing the amount of oxygen available to aquatic life, making recreation less enjoyable, and causing fish kills. The proposed rule will help the Department of Environmental Protection better identify and manage waterbodies impaired by nutrient enrichment. The proposed rule describes numeric criteria and a decision framework for determining attainment of water quality standards.

## ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The rule will establish a clear and transparent process for determining if a waterbody has impaired water quality standards and if nutrients caused the impairment. Several of the proposed criteria have been used for years to interpret narrative water quality criteria and this rule will make them official numeric criteria. The proposed rule will also establish several additional numeric criteria to determine attainment of water quality standards. The nutrient criteria will be implemented in the same way that the Department implements other water quality criteria, such as toxic chemicals, bacteria, dissolved oxygen, aquatic life support (aka, biological criteria).

## FISCAL IMPACT OF THE RULE:

The proposed rule would only cause a fiscal impact if a waterbody did not attain water quality standards and nutrients caused the impairment. Several factors make it difficult to estimate the fiscal impact of the rule. First, the proposed rule codifies several indicators that have been used in practice for years. The impacts of some criteria are not "new" because current policy and procedures would likely have the same impact. Second, an analysis of historic data showed that most waterbodies that would not attain nutrient criteria were already listed as impaired because of another water quality criterion. Many waterbodies that might fail to attain nutrient criteria in the future would also fail to attain other existing criteria. Further, the amount of fiscal impact is dependent on how a waterbody is listed in the Integrated Water Quality Monitoring and Assessment Report. The Department could require entities with discharge permits to collect a small number of in-stream nutrient samples for waterbodies that need additional monitoring to confirm impairment, which would cost several hundred dollars. Alternatively, the Department could impose phosphorus limits on discharge licenses if a waterbody is clearly impaired, which could cost several thousand dollars for facilities that just need to modify procedures to hundreds of thousands of dollars for new equipment. The Department does not foresee this impact on many facilities. The Department also runs a loan program (currently 0% loans) to help municipalities to obtain new equipment and make improvements. The cumulative statewide impact over a period of 5-10 years could potentially exceed \$1 million.

***FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

**ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:**

It is not quantifiable because of the great level of uncertainties.

**INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:**

As noted above, if a waterbody is impaired by nutrients, then entities with point source discharges could be required to collect in-stream nutrient samples or meet nutrient discharge limits depending on the severity of the impairment. Other land owners discharging nutrients through diffuse, non-point source runoff to waterbodies impaired by nutrients could be required to take steps to reduce nutrient loads by using vegetated buffer strips, stormwater detention and treatment, or other best management practices. It is impossible to predict which entities could be impacted, but it is likely that current policies and procedures would have a similar impact as the proposed rule.

**BENEFITS OF THE RULE:**

The rule could have tremendous ecological and recreational benefits in fresh surface waters by protecting aquatic life and recreational opportunities in fresh surface waters. The rule could also prevent algal blooms, low dissolved oxygen concentrations, and fish kills. In addition, the rule could benefit estuarine waters by reducing nutrient loads and potentially improving conditions for fish and shellfish.

**A BRIEF SUMMARY OF THE RELEVANT INFORMATION CONSIDERED DURING THE DEVELOPMENT OF THE RULE:**

The Department collected and analyzed a considerable amount of water quality data to develop meaningful nutrient and environmental response criteria. The Department reviewed U.S. EPA guidance and numerous scientific journal articles about nutrient criteria, ecological responses of nutrient enrichment, and methods of analyzing data and setting criteria. A report that summarizes relevant information as well as the data and analytical approaches for setting the criteria is available at the following web site: <http://www.maine.gov/dep/blwq/rule.htm>.