

MEMORANDUM

TO: Board of Environmental Protection  
FROM: Tom Danielson, Bureau of Land & Water Quality, Augusta  
DATE: May 7, 2009  
RE: Chapter 538. Nutrient Criteria for Fresh Surface Waters

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Statutory and Regulatory Reference: The applicable regulatory framework for this rule is the Water Classification Program 38 M.R.S.A. §§ 464, 465, and 465-A.

Scope: This chapter establishes criteria for ecological responses of nutrient enrichment for Class AA, A, B, C, and GPA surface waters of the State. The rule will establish numeric criteria for interpreting existing water quality standards and a decision framework for making decisions about attainment of classification and water quality standards

Description: The Department requests permission to post to public hearing Chapter 583: *Nutrient Criteria for Fresh Surface Waters*. The Water Classification Program has several sections, specifically 38 M.R.S.A. §§ 464(4), 465, and 465-A, that describe water quality standards for fresh surface waters. The water quality standards include designated uses and criteria used to determine attainment of the designated uses. Department staff currently relies on existing numeric and narrative criteria related to habitat, recreation, and aquatic life uses to document impairment of water quality standards due to the impacts of excess nutrients. Chapter 583 establishes several new numeric criteria that interpret narrative criteria related to habitat, recreation, and aquatic life. Chapter 583 also establishes a decision framework for determining if phosphorus caused or contributed to a water quality impairment. This rule was drafted with input from professionals with training in water quality management and documents and staff from other states considering similar issues.

Environmental issues: Although there is currently authority to reach regulatory decisions based on existing water quality standards, the numeric indicators and the decision framework will assist the Department, the Board, and the public in determining attainment of water quality standards and determining if nutrients caused or contributed to impairments. The rule will help establish a more transparent and predictable process for regulatory decision-making involving water quality standards and nutrient enrichment.

Department Recommendation: The Department recommends the Board post this rule to public hearing on June 18, 2009. The Department also requests a comment deadline of July 30, 2009 to accommodate summer field sampling schedules and subsequent deadlines of the rulemaking process.

Estimated Time of Presentation: Approximately 15 minutes.