

**Report to the Joint Standing Committee on Environment and
Natural Resources
132nd Legislature, First Regular Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

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I. Overview

The Maine Department of Environmental Protection (Department) is submitting this report to the Joint Standing Committee on Environment and Natural Resources pursuant to 38 M.R.S. § 638. This statute requires the Department to describe the applications pending for hydropower water quality certification (WQC) and applications anticipated to be submitted to the Department in the next five years.

During the calendar year 2024, the Department issued two WQC decisions, for the Green Lake Hydroelectric Project completed on May 9th, 2024, and Rumford Falls Hydroelectric Project completed on August 16th, 2024.

The Department received two WQC applications in 2024 as part of the Federal Energy Regulatory Commission (FERC) relicensing process:

- Shawmut – 2024
- Lowell Tannery – 2024

The Department anticipates receiving 17 new WQC applications associated with FERC relicensing in the next five years. In addition, the Department is aware of the proposed Western Passage tidal energy project, which has a FERC preliminary permit to study the feasibility of the proposed project.

II. Summary of FERC Relicensing Process

In Maine, there are 109 hydropower dams administered through 93 federal licenses or exemptions authorized by FERC. Per Section 401 of the federal Clean Water Act (33 U.S.C. § 1341), a federal license may not be issued for a hydropower project unless the state water quality certifying agency has either issued a WQC for the project or has waived certification. This process affords the states an opportunity to address the water resource impacts of federal permits and licenses. By Executive Order of the governor of the State of Maine, the Department is the State certifying agency for the federal licensing of hydropower projects in Maine. Section 401 provides up to one year for states to issue decisions on WQC applications.

Title 38, Section 638 requires the Department to submit an annual report on the status of pending WQC applications and a list of the relicensing projects anticipated to be submitted to the Department in the next five years. Section 638 states:

By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department, and a short statement describing the department's plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department's plan to address each deadline.

III. Summary of Hydropower Projects Due for Relicensing in 2025-2030

The Department maintains steps to improve the permitting process for hydropower WQC applications, including:

- Maintenance of a calendar identifying WQC milestones and statutory deadlines;
- Communication and coordination among Department staff involved in the review of WQC applications.

The Department anticipates receiving 17 new WQC applications for FERC relicensing in the next five years. For these projects, the dates listed are the anticipated dates for receiving a WQC application:

- Ellsworth-Pending
- Upper Barker-2025
- Hacket Mills-2025
- Lockwood-2025
- Hydro Kennebec-2025
- Weston-2025
- West Enfield-2025
- Penobscot Mills-2025
- Ripogenus-2025
- Lewiston Falls-2025
- Aziscohos-2025

- Worumbo- 2025
- Eustis-2025
- Brunswick – 2027
- Medway – 2027
- Cataract – 2027
- Lower Kezar Falls – 2028

Appendix A includes a spreadsheet listing all pending and anticipated WQC applications within the next five years, including a brief description of the steps the Department is taking to achieve the WQC deadlines.

APPENDIX A: Pending and Anticipated WQC Applications

Hydropower Licensing Actions Completed in 2024

FERC License Expiration Date	FERC #	Project / Dam	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
March 31, 2024	7189	Green Lake	May 19, 2023	May 18, 2024	2025	The applicant filed a Final License Application in March 2022. Additional information requests from FERC were completed and the application was accepted in March 2023. The WQC application was received on May 19, 2023, and the application was accepted for processing on June 12, 2023. The WQC became effective on May 9, 2024.
September 30, 2024	2333	Rumford Falls	August 22, 2023	August 21, 2024	2025	The applicant filed a Final License Application in September 2022. Additional information requests from FERC were completed and the application was accepted in June 2023. The WQC application was received on August 22, 2023, and the application was accepted for processing on September 11, 2023. The WQC became effective on August 16, 2024. The WQC was appealed on September 12, 2024, and is currently pending before the Maine Board of Environmental Protection.

Water Quality Certifications in Process

FERC License Expiration Date	FERC #	Project / Dam	WQC Application Filing Date	Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
September 30, 2023	4202	Lowell Tannery*	August 2024	July 2025	2025	Water quality studies were carried out during the 2019 field season. Additional fish studies were requested by federal resource agencies and a study dispute resolution was issued by FERC in 2021 calling for additional fish passage study. The Final License Application was filed in September 2021, in November 2022 the Applicant requested a delay for issuance of the Ready for Environmental Assessment notice. The Applicant submitted the WQC application on July 29, 2024, and the Department accepted it for processing on August 7, 2024. The statutory deadline for the Department to reach a final decision on the application is July 28, 2025.

January 31, 2022	2322	Shawmut	October 2024	October 2025	2025	The Applicant filed a Final License Application in January 2020 and a WQC application in August 2020. The Department issued a draft decision (denying certification) on August 11, 2021. The Applicant subsequently withdrew its WQC application and submitted a new WQC application to the Department on October 18, 2021. The new WQC application was accepted for processing on October 21, 2021. The Department issued a WQC decision, denying certification without prejudice, on October 12, 2022. On November 14, 2022, the Applicant filed a petition with the Superior Court for review of the Department's decision. By Order dated January 17, 2024, the Superior Court denied this petition and the Applicant did not appeal. The Applicant also brought a challenge in the D.C. Circuit to FERC's determination that the Department did not waive certification. The D.C. Circuit denied the Applicant's appeal by Order dated July 5, 2024, and the Applicant did not appeal this Order. The Applicant submitted a new WQC application to the Department on October 21, 2024. On October 23, 2024, the Department determined the application was acceptable for processing.
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Anticipated Hydropower Water Quality Certification Applications in the Next Five Years

FERC License Expiration Date	FERC #	Project / Dam	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
December 31, 2017	2727	Ellsworth*	Pending	Pending	Pending	On March 20, 2019, Black Bear Hydro, LLC withdrew its WQC application and simultaneously submitted a new application. In its reapplication, the applicant modified its proposed operations to address impoundment habitat criteria and proposed to collect additional BMI data. A DEP decision was issued on March 19, 2020, denying certification. That decision was upheld on appeal by the BEP in its decision dated June 3, 2021. On July 6, 2021, Black Bear Hydro, LLC filed a Rule 80C appeal of the Board's decision and sought declaratory relief in the form of an order from the Court that Leonard Lake was Class GPA as a matter of law. The Board moved to dismiss Black Bear's claims and on November 22, 2022, the Superior Court granted that motion with respect to the independent claim for relief and denied the motion as to the Rule 80C portion of the petition. After additional briefing on the merits, on November 20, 2023, the Superior Court denied the applicant's appeal and affirmed the Board Order that Leonard Lake is a Class B waterbody. Black Bear appealed the Superior Court's decision to the Maine Supreme

						Judicial Court and the case was heard on September 11, 2024. The decision is pending. In the interim, the Project continues to operate via an annual FERC license.
July 31, 2023	3562	Upper Barker*	January 2025	January 2026	2026	Water quality studies were carried out during the 2018 field season. A Draft License Application was filed in the summer of 2021 for agency comment. A Final License Application was filed in July 2021, but the Project was found not Ready for Environmental Analysis in August 2021. FERC granted the applicant's request for an extension of time until December 31, 2023, to respond to FERC's additional information request. The initial extension of time has been further extended to December 31, 2024. The Department anticipates a WQC application will be filed in early 2025. The Project continues to operate via an annual FERC license.
August 31, 2024	6398	Hackett Mills*	February 2025	February 2026	2026	The Applicant filed a PAD and held a joint agency meeting in December 2019. Water quality studies were conducted during field season 2020. A Final License Application was filed in August 2022. The applicant responded to a request for additional information in May 2023. On September 13, 2024, FERC issued a notice of authorization for continued project operation effective September 1, 2024, through August 31, 2025, or until the issuance of a new license. A WQC application is expected in early 2025.
October 31, 2036	2574	Lockwood	February 2025	February 2026	2026	On March 28, 2024, the Applicant filed a draft environmental impact statement for amendment of licenses to incorporate a final species protection plan for the Weston, Lockwood, and Hydro Kennebec Projects. On September 12, 2024, the FERC sent a letter to Brookfield White Pine Hydro, LLC, requesting correspondence between the Applicant and the DEP regarding whether 401 Water Quality Certifications are necessary for the Projects. On October 16, 2024, the Department responded to the FERC that the Projects may require a WQC. The Department anticipates a cumulative WQC for the Weston, Lockwood, Hydro Kennebec, and Shawmut Projects.
September 30, 2036	2611	Hydro Kennebec	February 2025	February 2026	2026	On March 28, 2024, the Applicant filed a draft environmental impact statement for amendment of licenses to incorporate a final species protection plan for the Weston, Lockwood, and Hydro Kennebec Projects. On September 12, 2024, the FERC sent a letter to Brookfield White Pine Hydro, LLC, requesting correspondence between the Applicant and the DEP regarding whether 401 Water Quality Certifications are necessary for the Projects. On October 16, 2024, the Department responded to the

						FERC that the Projects may require a WQC. The Department anticipates a cumulative WQC for the Weston, Lockwood, Hydro Kennebec, and Shawmut Projects.
October 10, 2036	2325	Weston	February 2025	February 2026	2026	On March 28, 2024, the Applicant filed a draft environmental impact statement for amendment of licenses to incorporate a final species protection plan for the Weston, Lockwood, and Hydro Kennebec Projects. On September 12, 2024, the FERC sent a letter to Brookfield White Pine Hydro, LLC, requesting correspondence between the Applicant and the DEP regarding whether 401 Water Quality Certifications are necessary for the Projects. On October 16, 2024, the Department responded to the FERC that the Projects may require a WQC. The Department anticipates a cumulative WQC for the Weston, Lockwood, Hydro Kennebec, and Shawmut Projects.
May 31, 2024	2600	West Enfield*	March 2025	March 2026	2026	The Applicant filed a PAD and held a joint agency meeting in the fall of 2019. Water quality studies were conducted during field season 2020. A Final License Application was filed in May 2022 and FERC found the application deficient in June 2022. The Applicant is in the process of conducting supplemental fish passage studies to submit an amendment to the Final License Application. The DEP anticipates a WQC application will be filed in Spring of 2025.
October 1, 2026	2458	Penobscot Mills	March 2025	March 2026	2026	The Applicant filed a PAD in June 2021 and held a joint agency meeting in September 2021. DEP filed study plan requests in October 2021 and attended a study plan meeting in December 2021. Water quality studies occurred in summer 2022 and 2023. The FLA was filed on September 30, 2024.
October 1, 2026	2572	Ripogenus	March 2025	March 2026	2026	The Applicant filed a PAD in June 2021 and held a joint agency meeting in September 2021. DEP filed study plan requests in October 2021 and attended a study plan meeting in December 2021. Water quality studies occurred in summer 2022 and 2023. The FLA was filed on September 30, 2024.
August 31, 2026	2302	Lewiston Falls	March 2025	March 2026	2026	The Applicant filed a PAD in August 2021 and held a joint agency meeting in November 2021. DEP filed study plan requests in January 2022; Water quality studies occurred in the summer of 2022. The Initial Study Report was filed in March 2023, and the FLA was filed on August 28, 2024.

March 31, 2025	4026	Aziscohos	May 2025	May 2026	2026	Water Quality Studies were conducted in 2021, and the initial study report was filed in February 2022. A Final License Application was filed in April 2023, but the Project was found not ready for environmental analysis later that month. The applicant filed a response to FERC's additional information request in November 2023. On December 19, 2023, the applicant requested that FERC delay issuance of its Ready for Environmental Assessment (REA) Notice. On October 2, 2024, the FERC granted the Applicant's request to delay issuance of its REA. The Applicant intends to file a revised licensing proposal with the FERC by March 31, 2025.
November 30, 2025	3428	Worumbo	August 2025	August 2026	2026	Water quality studies occurred in summer 2022, and an Initial Study Report was filed in October 2022. An Updated Study Report was filed in October 2023. A Final License Application was filed in November 2023. A delay of issuance of the REA has been granted until June 30, 2025. The Department anticipates a WQC application in August 2025.
November 31, 2026	11132	Eustis	November 2025	November 2026	2027	The Applicant filed a PAD in November 2021 and held a joint agency meeting in winter 2022. The Department submitted comments to the PAD and study requests in May 2022.
February 28, 2029	2284	Brunswick	February 2027	February 2028	2029	On February 21, 2024, the Applicant submitted the Notice of Intent to File License Application and Pre-Application Documents. On June 13, 2024, the Department submitted comments on the PAD and accompanying study requests.
March 31, 2029	2666	Medway	March 2027	March 2028	2029	On March 28, 2024, the Applicant submitted the Notice of Intent to File License Application, Pre-Application Documents, and request to use the Traditional Licensing Process. On August 16, 2024, the Department submitted comments on the PAD and accompanying study requests.
November 30, 2029	2528	Cataract	November 2027	November 2028	2029	On August 20, 2024, the Applicant submitted the Notice of Intent to File License Application, Pre-Application Documents and requests for comments. The PAD was filed on August 20, 2024, and the Department sent comments and study requests on December 17, 2024.
September 30, 2030	9340	Lower Kezar Falls	September 2028	September 2029	2030	Anticipate that the Applicant will file a PAD and hold a joint agency meeting in 2025. DEP will review the PAD and prepare study plan requests as appropriate.
FERC License Expiration Date	FERC #	Project / Dam				Comments

Preliminary Permit	14743	Western Passage				A preliminary permit for the project was granted by FERC in July 2016. The permit expired on July 1, 2019, and the applicant filed a new preliminary permit application with FERC on August 22, 2022.
Preliminary Permit	15340	Pembroke Tidal				A preliminary permit for the project was granted by FERC on September 19, 2024.
* Currently operating under an annual license.						
<p>Section 15(a)(1) of the Federal Power Act requires FERC, at the expiration of a license term, to issue an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the Federal Power Act. If the project's prior license waived the applicability of Section 15 of the Federal Power Act, then, if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.</p>						

* Currently operating under an annual license.

Abbreviations

FERC=Federal Energy Regulatory Commission

WQC=Water Quality Certification

DEP=Maine Department of Environmental Protection

PAD=Pre-Application Document

NMFS=National Marine Fisheries Service

NHDES=New Hampshire Department of Environmental Services

NOI=Notice of Intent to File (an application)

ILP=Integrated Licensing Process

PSP=Proposed Study Plan