

**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
2021 TRIENNIAL REVIEW OF WATER QUALITY STANDARDS
SUMMARY OF PUBLIC COMMENTS AND RESPONSES**

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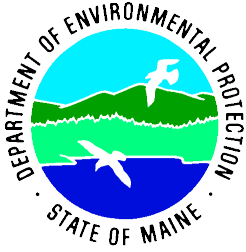
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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION 2021 TRIENNIAL REVIEW OF WATER QUALITY STANDARDS

SUMMARY OF PUBLIC COMMENTS AND RESPONSES

Introduction

The Maine Department of Environmental Protection (the Department or MDEP) posted draft recommendations for water quality standards (WQS) changes, including water quality classification upgrades, considered under the Triennial Review (TR) for public comment on April 26, 2021. The recommendations were posted on the Department's website www.maine.gov/dep/water/wqs/triennial-review.html and public notice was provided as described below. One virtual public meeting was held on May 21, 2021. The Department's presentation from the public meetings was also posted on the website. The Department accepted written public comments until May 26, 2021. For later stages of the TR process, the Board of Environmental Protection will have a public hearing and a public comment phase for written comments. If the Legislature accepts a TR bill for consideration, an additional opportunity for comment will be available in that venue.

Notice of the draft recommendations and public meeting/public comment opportunities were sent by e-mail to approximately 1,650 stakeholders, including all entities that had provided TR proposals in early 2020 or supported them; officials from all cities and towns in Maine; the Land Use Planning Commission (for unorganized towns); State natural resource agencies; a number of non-profit organizations; the four federally recognized Indian tribes in Maine; businesses that were potentially affected by proposals (e.g. dischargers, hydropower owners); Soil and Water Conservation Districts; County commissioners; consultants; and a number of private persons. Follow-up e-mails noting the relevance of the e-mail to recipients were sent to any cities and towns located in the watershed of any upgrade candidate as well as any umbrella organization included in the prior mailing. Electronic GovDelivery notices were sent to interested persons on two Department subscription lists, one for Opportunities for Comment and one specifically for public meetings. These notices also created a tweet to Department Twitter followers. The GovDelivery notice regarding the Opportunities for Comment was sent to all Maine legislators. All of these notices were sent out at the start of the public comment period on April 26, 2021.

The Department received a number of comments during the official public comment period and wishes to thank all persons who provided input. All comments received are briefly listed in Table 1, and presented in more detail in the remainder of the document in the order proposals were included in the [Department's draft recommendations document](#). Where applicable, comments are grouped by proposal and position; comments are also summarized and paraphrased in the interest of brevity. In some cases, typographical or other minor errors in comments have been corrected. A list of proposals for which no public comments were received can be found below Table 1.

Table 1. List of public comments received between April 26 and May 26, 2021.
Note that for the upgrade proposals on the lower Androscoggin and Presumpscot Rivers, 'Support' of the original proposal indicates opposition to the Department's recommendation.

#	Affiliation	Original Proposal	Position on Original Proposal
Written comments received (listed in in order received)			
1	ME Army National Guard	Upgrade tributaries to Medunkeunk Stream	Neutral
2	Green Ellsworth	Develop new WQS for turbidity	Support
3	Maine Rivers	Upgrade lower Androscoggin River	Support
4	Friends of the Presumpscot River	Upgrade lower Presumpscot River	Support
5	Maine Council of Trout Unlimited	Develop new WQS for turbidity	Support
6	Maine Council of Trout Unlimited	Develop new WQS for acid rain	Support
7	Downeast Salmon Federation	Develop new WQS for acid rain Develop new WQS for turbidity All upgrades (esp. those downeast)	Support
8	Grow L+A (River Working Group)	Upgrade lower Androscoggin River	Support
9	Presumpscot Regional Land Trust	Upgrade lower Presumpscot River	Neutral
10	Maine Audubon	Upgrade lower Presumpscot River	Support
11	Citizen	Upgrade lower Presumpscot River	Support
12	White Mountain Paper Co.	Upgrade lower Androscoggin River	Oppose
13	Friends of Merrymeeting Bay	Upgrade lower Androscoggin River	Support
14	Gulf Island Pond Oxygenation Partnership (Pierce Atwood)	Upgrade lower Androscoggin River	Oppose
15	Androscoggin River Watershed Council	Upgrade lower Androscoggin River Other upgrades in Androscoggin River watershed	Neutral Support
16	ND Paper Inc. (Rumford Division)	Upgrade lower Androscoggin River	Oppose
17	Brookfield Renewable	Upgrade lower Androscoggin River	Oppose
18	Sappi North America Inc. (Pierce Atwood)	Upgrade lower Presumpscot River	Oppose
19	Sebago Chapter of Trout Unlimited	Upgrade lower Presumpscot River	Support
20	Town of Rumford	Upgrade lower Androscoggin River	Oppose
21	Shaw Institute	Develop new WQS for acid rain Develop new WQS for turbidity	Support
Oral comments received at May 21, 2021 virtual public meeting			
1	Androscoggin River Watershed Council	Upgrade lower Androscoggin River	Neutral
2	Grow L+A (River Working Group)	Upgrade lower Androscoggin River	Support
3	Sappi North America Inc. (Pierce Atwood)	Upgrade lower Presumpscot River	Oppose
4	Friends of the Presumpscot River	Upgrade lower Presumpscot River	Support
5	Town of Rumford	Upgrade lower Androscoggin River	Oppose
6	Friends of the Presumpscot River	Upgrade lower Presumpscot River	Support

#	Affiliation	Original Proposal	Position on Original Proposal
7	Androscoggin River Watershed Council	Upgrades in Androscoggin River watershed besides lower Androscoggin River	Support
8	Citizen	Develop new WQS for acid rain	Support

Proposals for which no public comments were received:

- Waiver or Modification of Protection and Improvement Laws - Update Statute to Exclude Applicability to WQS
- Update Criteria for pH of Freshwaters due to Discharge of Pollutants
 - Propose to Increase the Lower Limit of Freshwater pH from 6.0 to 6.5
 - Propose to Increase the Upper Limit of Freshwater pH from 8.5 to 9.0
- Expand Definition of Outstanding National Resource Waters - Inclusion of National Monuments in ONRW Definition
- Natural Conditions Provision for Certain Criteria - Amend Natural Conditions Provisions for Criteria Designated to Protect Human Health
- Clarification of Narrative Aquatic Life Criteria - Clarification of Narrative Aquatic Life Criteria for Water Quality Classes B, C, GPA, SB and SC
- Expand Bacteria Units in Water Quality Standards - Add Reportable Bacteria Unit 'MPN'
- Seasonal Applicability of Certain Bacteria Criteria - Review Seasonal Applicability of Recreational Bacteria Criteria in Water Quality Classes B, C, SB and SC
- Shellfish Criteria in Class SA - Add Numeric Criteria by Reference
- Regulations Relating to Temperature - Amend Regulations Relating to Tidal Temperature (deferred rulemaking)
- Regulations Relating to Toxic Pollutants - Amend Surface Water Quality Criteria for Toxic Pollutants Relating to the Protection of Aquatic Life (deferred rulemaking)
- Mixing Zones - Update Mixing Zone Law (development of a new rule)
- Development of New Water Quality Standards - Development or Adoption of Harmful Algal Bloom Criteria (proposal requiring further investigation)
- Correct Erroneous Statutory Section and Clarify Waterbody Name (statutory error correction)
- Correct Spelling Mistake in Waterbody Name ((statutory error correction)

COMMENTS RECEIVED

PARAPHRASED COMMENTS ON PROPOSALS FOR CHANGES TO WATER QUALITY STANDARDS

Development of New Water Quality Standards - Development of Acid Rain-Based Water Quality Standards and Listing of Impaired Waters (Citizen)

Comments in support of original proposal:

- Mark Whiting, Citizen

With respect to the criteria for acid rain, calcium has to be part of the standards, because there has been recovery of pH, but not of alkalinity, so systems have become calcium-limited. I have submitted an article in support of this issue.

- Stephen G. Heinz, Maine Council of Trout Unlimited

On behalf of six chapters and >2,000 members, we express support for this proposal. Acid rain has been studied since the mid-1960s, and while harmful emissions have been greatly reduced, the effects of acid rain continue to affect Maine's indigenous species. The severity and extent of the problem is not well known, but Maine's Downeast rivers are known to be seriously affected. Remediation measures cannot be implemented until priority waters are identified. The National Research Council identified the reversal of acid rain effects as a key factor for Atlantic salmon restoration. We ask MDEP to adopt this citizen proposal to develop long-overdue acid rain-based WQS, develop evaluation methods, and identify and list Maine's impaired waters so that remediation measures can be determined and implemented.

- Dwayne Shaw, Downeast Salmon Federation

We request that MDEP develop an acidity assessment program to begin a list of the Maine waters known to be impaired due to acid rain. We believe that the science is clear, as has been documented by extensive literature reviews submitted to DEP. Acid rain has a long history in Maine and impairments occur at low levels of change, as has been documented literature reviews. It is clear that there are no solutions without clear and measurable standards tied to impairment criteria under Maine's Water Quality Standards and under the strict oversight of MDEP.

- Heather Richard, Shaw Institute

We are eager to support this proposal. While we mostly focus on coastal and ocean acidification issues, we are aware of issues impacting freshwater streams and lakes, and the damage to sensitive species caused by acid rain in our local area. Without acid rain-based standards, local citizens and conservation groups must find solutions on their own, which is difficult given their limited resources. Instead, the MDEP must have a methodology to measure the problem and enforce solutions. Acid rain has had a large impact on our waterways, especially sensitive fish, in part due to reduced ambient calcium levels in freshwater ecosystems. Maine cannot begin to address these effects of acid rain if there are no standards or ways of measuring the impacts. Even if the first step is to consider which methods of measurement to use, it is important to begin to address the impacts of calcium loss/acid rain as soon as possible.

MDEP Response:

As part of the TR process, the Department committed to study the overall issue, which requires investigation of a number of questions that were identified while reviewing the original proposal¹. The Department began the effort in the winter of 2020/2021 and will continue as limited staff and resources allow. As explained in the draft recommendations, WQS have far-reaching implications on several issues and must therefore be developed carefully. For acid rain-based WQS, including calcium, this will likely require a significant, multi-year effort. The Department is committed to working on this task but acknowledges the fact that resource limitations may delay development of new WQS. In the meantime, efforts supporting the assessment of acid rain-related impairments are continuing, such as the development of a bioassessment model for stream fish and aluminum criteria for aquatic life, and the use or creation of diagnostic metrics to help determine causes of impairment in biological assemblages.

It should be noted that the TR includes a recommendation to increase the lower limit of the existing freshwater pH criteria from 6.0 to 6.5, which is more protective of sensitive aquatic life.

Development of New Water Quality Standards - Development of Water Quality Standards to Address Turbidity Problems (Friends of Graham Lake, FOGL)

Comments in support of original proposal:

- Mary Blackstone, Green Ellsworth

We fully support this proposal. The Union River (Graham Lake impoundment to Ellsworth dam) is a disaster for recreational users and fish and other aquatic life and wildlife. We are going to need DEP's help over many years to clean this mess up, and MDEP will need numerical standards for that. Even small amounts of suspended sediment affect recreational activities and aquatic life, which in turn affects property values and movement into the area. Ellsworth derives a significant portion of its tax revenue from properties along the Union River waters. As established by statute, the MDEP needs to be able to protect and restore water quality that is appropriate to particular water bodies like the Union River. We urge you to agree that numerical standards for turbidity need to be established and initiate a process to determining what those will be.

- Stephen G. Heinz, Maine Council of Trout Unlimited

On behalf of six chapters and >2,000 members, we express support for this proposal. Suspended solids settle out and destroy spawning habitat for indigenous species. We ask MDEP to adopt the FOGL proposal to develop turbidity WQS to enable MDEP to protect Maine's water quality from obvious harm.

¹ Including but not limited to natural versus anthropogenically induced levels of acidity; interactions between a number of water quality parameters (including calcium, alkalinity, and aluminum); magnitude, frequency and duration of change in these parameters; differences amongst watershed characteristics (i.e., riparian forest composition, bedrock geology); and implementation regulations.

- Dwayne Shaw, Downeast Salmon Federation

We request that MDEP develop numeric standards for regulating turbidity. Turbidity impairments occur at low levels of change, and this has been documented in literature reviews. It is equally clear that there are no solutions without clear and measurable standards tied to impairment criteria under Maine's Water Quality Standards and under the strict oversight of MDEP.

- Heather Richard, Shaw Institute

Given the importance and pervasiveness of turbidity as a pollutant in our rivers and bays, it is surprising that Maine has no standards which can be enforced. When monitoring the impact of development projects near the shore in our area, it would be essential to have guidance on what constitutes an acceptable change in turbidity. Incorporating new turbidity WQS allows municipalities and landowners to better define best management practices to minimize impact to sensitive habitat as well as important aquaculture enterprises. Having witnessed the turbidity issues in the Union River, I would love to see the MDEP take a step towards having this issue and others like it resolved so we can minimize erosion and sedimentation in Maine's waterway. Even if the first step is to consider which methods of measurement to use, it is important to begin to address the impacts of sedimentation as soon as possible.

MDEP Response:

As part of the TR process, the Department committed to study the overall issue, which requires investigation of a number of questions that were identified while reviewing the original proposal². The Department began the effort in the fall of 2020 and will continue as limited staff and resources allow. Recently, MDEP conducted a literature search and collated nearly 100 articles that review and discuss the nuances of turbidity data collection and use in management and regulation. In addition, the Department has purchased two new Manta sondes with turbidity probes to collect continuous turbidity data.

As explained in the draft recommendations, WQS have far-reaching implications and must therefore be developed carefully. For new turbidity WQS, this will likely require a significant effort. The Department is committed to working on this task but acknowledges the fact that resource limitations may delay development of new WQS for turbidity.

PARAPHRASED COMMENTS ON PROPOSALS FOR WATER QUALITY CLASSIFICATION UPGRADE – RECOMMENDED

All Upgrade Proposals

Comment in support of original proposals:

- Dwayne Shaw, Downeast Salmon Federation

² Including but not limited to natural versus anthropogenically induced levels; the effect of natural waterbody sediment types; absolute versus relative turbidity concentrations; magnitude, frequency and duration of elevated turbidity levels; instantaneous versus average concentrations; flow conditions (i.e. baseflow versus stormflow); differences amongst waterbody types; and implementation regulations.

We endorse all upgrades of water quality classification proposed in this Triennial Review, especially those in our region.

MDEP Response:

This comment support of all proposals where the Department recommends upgrades, and no response is necessary. Proposals in question are as follows (downeast proposals shown in bold):

- Tributaries to the Upper Little Androscoggin River, Greenwood, Woodstock and Albany TWP
- Tributaries to East and West Branches Nezinscot River, Sumner and Other Towns
- South Branch Sandy River and Tributaries, and Cottle Brook and Tributaries, Phillips and TWP 6 North of Weld
- Mount Blue Stream and Tributaries, Avon and Weld (Department)
- Orbeton Stream above Toothaker Pond Rd and Tributaries, Phillips, Madrid TWP Redington TWP and Mount Abram TWP
- **Chain Lakes Stream, Wesley**
- **Fletcher Brook and Tributaries, T36 MD BPP, T37 MD BPP and T42 MD BPP**
- **Magazine Brook, T37 MD BPP and T42 MD BPP**
- **Little Narraguagus River, T28 MD BPP**
- Tributaries to East and West Branches Penobscot River in Katahdin Woods and Waters National Monument, T4 R8 WELS and Other Townships
- West Branch Penobscot River and Tributaries, T2 R10 WELS and Other Townships
- Houston Brook and Tributaries, Katahdin Iron Works TWP, T7 R9 NWP and Elliotsville TWP
- Tributaries to Schoodic Stream and Scutaze Stream, Lake View Plantation and Other Towns and Townships
- Cambolasse Stream, Lincoln
- Southwest Branch St. John River, T9 R17 WELS, T10 R16 WELS and Big Ten TWP
- Long Creek, Westbrook
- **Tributaries to Donnell Pond, T9 SD BPP, T10 SD BPP, Franklin and Sullivan**

For proposals where the Department did not recommend an upgrade in April of 2021 (lower Androscoggin and Presumpscot Rivers), the reasons are provided below following comments in support of the original proposals.

Upgrade Proposals for Tributaries to Androscoggin River

Comment in support of original proposals:

- Ferg Lea, Androscoggin River Watershed Council (ARWC)

We thank the MDEP for recommending the upgrade of a number of tributary streams in the watershed and support these upgrades.

MDEP Response:

This comment supports the Department's recommendation, and no response is necessary. Proposals in question are for tributaries to upper Little Androscoggin River in Greenwood, Woodstock and Albany TWP, and tributaries to East and West Branches Nezinscot River in Sumner and other towns.

Tributaries to Medunkeunk Stream, Woodville, T2 R9 NWP, Chester and Other Towns and Townships (Department)

Comment neither in support of nor opposition to original proposal:

- Andrew Flint, Maine Army National Guard (MEARNG)

MEARNG does not intent to take a position for or against this proposed action. MEARNG's Woodville Training Site occupies over 12% of Medunkeunk watershed and MEARNG has a Site Location of Development Act permit authorizing of impervious/structural development at the Woodville Training Site. It is MEARNG's intent to increase the amount of development over time, potentially significantly. MEARNG has limited water quality data for the tributaries that drain the Training Site. A study report documents the low stream gradients and numerous wetland and beaver impoundments within MEARNG's portion of the watershed, which contribute to dissolved oxygen content well below the Class A and B standards.

MDEP Response:

The Department thanks the commenter for the additional information, which has been included in an updated proposal write-up. MEARNG's Site Location of Development Law permit authorizing impervious/structural development near some streams proposed for upgrade is not expected to be affected by an upgrade because MEARNG did not propose any discharge to any stream as part of the permitted development. If low dissolved oxygen levels occur in a waterbody due to natural wetlands, those excursions are not considered to indicate non-attainment of WQS pursuant to 38 M.R.S. Section 464.4.C.

No changes were made to the upgrade proposal itself in response to this comment.

PARAPHRASED COMMENTS ON PROPOSALS FOR WATER QUALITY CLASSIFICATION UPGRADE – NOT RECOMMENDED

Androscoggin River from Gulf Island Pond Dam to the Mouth of the River in Merrymeeting Bay, Lewiston, Auburn Lisbon, Durham, Topsham and Brunswick (Friends of Merrymeeting Bay and Grow L/A)

Note: During the first regular session of the 130th Maine Legislature (winter/spring 2021), [LD 676, An Act to Reclassify Part of the Androscoggin River to Class B](#) was discussed by the Joint Standing Committee on Environment and Natural Resources (ENR). Some Triennial Review comments included references to this proposed legislation. The Committee voted to carry the LD over to the next legislative session.

Comments in support of original proposal:

- Greg D'Augustine, Maine Rivers

The Androscoggin has experienced huge improvements in water quality since Senator Ed Muskie introduced and fostered the Clean Water Act of 1972. Many others, including Representative John Nutting have also contributed to improvements. But the goals of the Act (namely to meet

the interim 'fishable/swimmable' goal, and to ultimately remove all discharges of pollutants to waterbodies) remain only partially realized. Water quality improvements have brought great economic gain for communities and landowners along the river, and there is public support for continued improvements in water quality. As monitoring below Gulf Island Pond has shown, Class B water quality is met virtually 100% of each year. Yet MDEP declines to recommend an upgrade because "modelling studies" indicate non-compliance with Class B standards during certain theoretical weather conditions and maximum allowable waste discharge from industries and towns on the river. MDEP also has no specific plan to work toward complying with CWA goals for the Androscoggin. It's my belief that testing results should trump "modelling", which is understood to be imprecise and, in this case, apparently out of date. Extensive testing results demonstrates that the river complies with "B" standard virtually 100% of the time. Understanding the economic benefits of such an upgrade has led communities along the river support the concept. The MDEP should not minimize the importance of these facts. A balanced approach between industry, public health, and fresh water organism populations calls for a plan to upgrade the Androscoggin.

- Peter Rubins, Grow L+A River Working Group

Rivers are part of the Public Domain defined as: "the state of belonging or being available to the public as a whole."

In 1942 the Androscoggin River was so polluted that it peeled paint off houses and was harmful to the health of all 100,000 people living along the river. Since that time, many actions have occurred to improve the health of the River, including the 1942 establishment of a River commission to aid the clean-up of noxious wastewater effluent polluting the River, and subsequent change of the paper manufacturing process to a cleaner method. This was followed by the 1970 Clean Air Act and 1972 Clean Water (US Senator Ed Muskie), the 1990 Color, Odor and Foam Bill (Maine Representative Nutting), and 1996 Dioxin and 2004 Phosphorus Bills (Maine Senator Nutting). We note that nothing has happened without legislation. LD 676 recognizes the science of water testing and that data over the past 20 years shows the River from the outflow of Gulf Island Dam down through Brunswick meeting Class B standards of 7 PPM dissolved oxygen (DO) 99% of the time.

The MDEP keeps referring to the inability to upgrade the river because of 7Q10, the minimum 7-day average streamflow with a 10 year recurrence. During low flow in August 2019, MDEP monitored three locations with continuous monitoring devices over 15 days and DO never went below 7 PPM, even at the shallow location. During the drought of September 2020, our data shows Gulf Island Dam outflow at 7.5 to 8.4 PPM and Lewiston Falls Hydro at 8.0 to 8.5 PPM. The flow at that time was below the minimum release required by Brookfield's hydro license for constant flow. If this constitutes a 7Q10 event, the data shows that the outflows meet the Class B standards even under these conditions.

Our data has been collected over hundreds of hours by volunteers under the guidance of the MDEP Volunteer River Monitoring Program. It behooves the MDEP to require industry to install continuous monitoring devices along the river for daily true data collection to support scientific conclusions.

Our premise is that the water below Gulf Island Dam down through Brunswick meets Class B now without any changes. Lewiston and Auburn have spent \$50 million over the past 10 years on CSOs and have dramatically reduced their CSO discharges; one big project (\$25 million) is scheduled to meet their goals. Low flow toilets have reduced wastewater considerably. The

paper companies are all working well below their licensed maximum flows and have the technology to keep them that way through the licensing process.

We ask the MDEP Board to require the Department to work with industry, government and the public to reclassify the Androscoggin below Gulf Island Dam to Class B according to the law that states: "Once a River has met a higher quality, that it cannot be allowed to slip backwards." Muskie's Androscoggin deserves this status on the 50th anniversary of the Clean Water Act. This request is from a coalition including: Friends of Merrymeeting Bay, Androscoggin Land Trust, Androscoggin River Watershed Council, Maine Rivers, Trout Unlimited, the Grow L+A River Working Group, the cities of Lewiston, Auburn, Brunswick and others, representing a Public Domain of over 100,000 Maine citizens.

In conclusion, industry has never self-regulated and legislation has been the only way to convince them that it is not their river to pollute. The Public Domain and the Law does not allow them to add pollutants over their current usage that will reduce DO in the lower Androscoggin. Data collection is science and the MDEP or industry should be required, as stated in the 35-year old Lewiston Falls hydro license, to regular test for DO. To make scientific conclusions, continuous monitoring should occur at all relevant sites over year-long periods. The amount, time and energy spent by volunteers over the last 20 years, that shows DO meeting B Classification, is not being respected. MDEP needs to be in control of scientific measuring with year-round continuous monitoring devices. The 100,000+ Maine citizens that live on the Lower Androscoggin deserve the respect of the MDEP for our desires to live on a Class B River, and that MDEP work with industry to meet their goals without forfeiting one job and never allowing the River to slip backwards.

In support of our comment we are submitting a [Fact Sheet](#) on the proposed upgrade. The Fact Sheet presents the following information for why the River must be upgraded: **Note: only the salient points of the Fact Sheet Summary are presented below, please consult the online version of the document for details.**

- For many years, volunteer water quality monitoring data on the lower river have shown, with very few exceptions, compliance with Class B criteria and yet the DEP seems to conflate statutes (see CLF legal opinion below) and refuses to endorse upgrading the river to Class B, i.e. ambient conditions. DEP biases and industry influence weigh heavy on the river despite widespread support for an upgrade, state and federal laws, and scientific data. We respectfully ask for your support of this upgrade proposal.
- Why upgrade? It's the law! Antidegradation language prohibits backsliding. A cleaner river has well-documented economic and quality of life benefits. 60% of our wildlife species inhabit river corridors and all benefit as we do.
- DEP proposal submission guidelines that "Maine's Water Quality Classification System is **goal-based** (emphasis provided by commenter). When proposing an upgrade in classification, recommend waters that either presently attain, or with reasonable application of improved treatment or Best Management Practices (BMPs) could reasonably be expected to attain, the standards and criteria of a higher proposed class."
- 38 M.R.S. Section 464.4.F.4: "When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification." The data show that the DO geomean in the lower Androscoggin River from 2003-2019 exceed the Class B criterion of 7 ppm

almost all the time. Furthermore, the *E. coli* geomeans from 2006-2015 are far below the Class B criterion of 64 colonies/100 ml in all years. In 2019, continuous data collected for approximately 2 weeks in August at 3 locations never dropped below 7 ppm.

- A cleaner river equals a more vibrant economy and increased quality of life, as evidenced by the Auburn/Lewiston Riverwalk, Androscoggin Bicycle and Pedestrian Path, Androscoggin Riverwalk-Topsham, and a study by the University of Illinois' Northeast-Midwest Institute.
- Why the conflict with MDEP and river industry? They are citing the wrong statute! Reclassification and relicensing are different items falling under different statute section yet MDEP and industry consistently and purposefully conflate the two. Reclassification is designed to drive relicensing and to slowly improve water quality. Modeling has no legal bearing on the classification process (see [‘Water Quality Data Analysis and Review, Lower Androscoggin River’](#) and legal opinion from CLF, next bullet), which is solely based on ambient river conditions. Modeling does play a role in relicensing to ensure discharges meet classification under critical conditions. The purpose for different requirements for classification and relicensing is so that water quality can be slowly improved. This is the goal-oriented purpose of both the Clean Water Act and Maine statute. If a river had to meet the relicensing standard before an upgrade as the MDEP and industry would have you believe, it likely never would and therefore there would be no motivating driver for improvements in water quality.
- 2008 legal opinion from Conservation Law Foundation³ (CLF):
 - CLF strongly disagrees with the Department’s recommendation and rationale for not upgrading this segment. Requiring that proponents provide water quality data and modeling showing “the likelihood of attainment of Class B criteria at maximum licensed loads” makes not logical, legal or economic sense, because nobody operates at maximum licensed load. Thus MDEP is requesting an impossible and unnecessary showing.
 - The Department’s recommendation violates the legal standard in the Clean Water Act that a state shall revise its standards to reflect uses and water quality actually being attained. Thus the Board’s analyses must be based on existing water quality, not hypothetical modeling at maximum discharge levels. Indeed, the Board is specifically prohibited from considering maximum discharge levels because both state and federal regulations prohibit consideration of waste discharge or transport as a designated use.
 - As many dischargers in this watershed have recognized, upgrades are good for surrounding communities, with clean water providing an economic boon, as has happened for example in Boston Harbor, the Portland waterfront and Auburn riverfront, Merrymeeting Bay and the Kennebec River. The Androscoggin River deserves the same.
 - CLF believes that it has been shown that existing uses in the lower uses Androscoggin have improved over time and that Class B bacteria and DO standards are attained, as demonstrated in credible data. Therefore, barring a showing that data is invalid, the Board must recommend upgrading this section

³ As of August 2021, CLF had not provided direct input into the Triennial Review.

- [2020 Greenfire Law, PC memo](#) states that:
 - *MDEP has a nondiscretionary duty to recommend this upgrade because A) field data demonstrate that Class B water quality criteria are attained, and B) the actual uses of this segment are consistent with Class B designation*
 - *MDEP has relied on inappropriate factors to recommend against reclassification in past because A) pollution assimilation modeling cannot be used to overcome classification based on demonstration of uses actually being attained, B) use of the water body to receive waste water discharges is not a permissible consideration in establishing appropriate classification, C) naturally occurring conditions cannot be used as evidence of non-attainment of WQS, and D) upstream conditions must be ameliorated rather than used as an excuse to avoid protecting downstream water quality.*
 - *In conclusion, the MDEP should present to the Board of Environmental Protection and the legislature the factual basis for the lower Androscoggin's attainment of Class B criteria and character and refrain from including within that recommendation any argument that might be construed as a Use Attainability Analysis.*
- **Summary:**
 - *DO and E. coli levels consistently surpass Class B standards.*
 - *Keeping the current Class C allows backsliding from current Class B criteria to Class C and allows more pollution.*
 - *Classification must be based on ambient river conditions, not modeling, while relicensing is based on modeling under critical conditions. Thus, classification and relicensing are different statutes.*
 - *Relicensing is based on modeling under worst case conditions (7Q10) but current license limits are inflated over actual discharges by as much as 90% which can make the standard exceptionally difficult for a discharger to meet.*
 - *During critical conditions (incl. low flow and warm temperature), DO is the lowest and bacteria are typically also low. Bacteria are highest during high flow with a lot of runoff and overload of wastewater systems.*
 - *Hydropower impoundments are exempt from meeting aquatic life (macroinvertebrate) criteria (Section 464-10).*
 - *Does it make sense that a river upgrade be governed by whether or not it meets the new classification during the theoretical worst week in a 10-year period? Of course not. And by law, it need not.*
 - *DEP proposal submission guidelines that "Maine's Water Quality Classification System is **goal-based** (emphasis provided by commenter). When proposing an upgrade in classification, recommend waters that either presently attain, or with reasonable application of improved treatment or Best Management Practices (BMPs) could reasonably be expected to attain, the standards and criteria of a higher proposed class."*
 - *Supporters of the upgrade (previous and/or expected current): towns (Brunswick, Auburn, Topsham, Durham, Lewiston, Lisbon), Auburn Sewage District, Friends of*

Merrymeeting Bay, Conservation Law Foundation⁴, Brunswick Topsham Land Trust, Downeast Salmon Federation, Friends of Casco Bay, Grow L/A, Trout Unlimited, Androscoggin Land Trust, John Nutting, Alewife Harvesters of Maine.

- Ed Friedman, Friends of Merrymeeting Bay (FOMB)

As the Department well knows, we and many other entities (for a list see [here](#)) support this upgrade and believe there is a legal obligation for MDEP and the Board to recommend this to the Legislature (for a 2020 legal analysis from Greenfire Law, PC see [here](#), and for a 2008 legal memo from the Conservation Law Foundation [here](#)). We will comment to the BEP when that opportunity arises. Our water quality monitoring data from the past approximately 20 years on the lower Androscoggin River and other waterbodies have been gathered under EPA and MDEP quality assurance plans and have been used to support an upgrade of the lower Kennebec River. This present upgrade proposal consisted of about 40 exhibits available here: <http://cybrary.fomb.org/chemical.cfm> (3rd plus sign down).

We request that currently lapsed discharge licenses for Lewiston/Auburn, Lisbon and Brunswick be reissued this year under the current classification allowing MDEP and dischargers ample time (5 years) to update licenses as necessary and work towards compliance five years from now.

The reasons for the upgrade are as follows: 1) it is the law; 2) antidegradation statutory language prohibits backsliding in water quality; 3) a cleaner river has well-documented economic and quality of life benefits; and 4) 60% of our wildlife species inhabit river corridors and all benefit as do we.

For nearly 20 years, the river has been meeting Class B conditions virtually all the time (as shown in geometric means for [dissolved oxygen](#) and [E. coli bacteria](#)) but MDEP recommends against an upgrade because modeling indicates that under very rare conditions this section of river will not meet Class B, even if all discharges into the river stopped. We have seen no evidence suggesting that these conditions have occurred any time since the passage of the Clean Water Act (for an example from 1/2012 to 2/2013 see [here](#)). DEP's position is disingenuous because the antidegradation statute at 38 M.R.S. Section 464.4.F.4. requires an upgrade based on actual conditions, not modeling or critical flow, when the actual water quality exceeds the minimum standards of the next highest classification. Thus the Board has a non-discretionary duty to recommend an upgrade. Under the Clean Water Act, and as affirmed by the Supreme Judicial Court of Maine in 1991 and DEP's reclassification guidelines, classification is goal oriented, and standards are aspirational in nature. When ambient conditions are close to, or actually attaining, the next higher classification, a waterbody is upgraded and then discharge licenses are tweaked at the next renewal to meet standards under critical flow. If reclassification continues to be held hostage to critical flow and modeling, there will never be any upgrades (unless discharges disappear). And without an upgrade and updated licenses, the current Class B water quality could degrade significantly and still meet Class C.

Overall, cities in this segment have done a great job cleaning up their discharges (for CSO discharge reductions in Auburn and Lewiston see [here](#)) and an upgrade recognizes and celebrates this. Treatment plants should not be held to an unreasonable standard or be penalized as long as their discharge does not reduce ambient water quality. With increasing temperatures and drought, dams must be managed to support aquatic life. This factor requires the Department's

⁴ As of August 2021, CLF had not provided direct input into the Triennial Review.

attention because the entire segment in question is home to a number of NOAA Trust Species and is Critical Habitat for endangered Atlantic Salmon.

For years the river has met Class B standards under current conditions. There is no evidence to support DEP's premise that upriver dischargers have a measurable effect on classification parameters in the lower river. Indeed, the Department's own modeling suggests that if all dischargers shut down, the river would still not quite meet Class B under critical flow conditions, which never happen. Please obey the law and recommend an upgrade to the Board.

MDEP Response:

The Department appreciates the extensive support this upgrade proposal has received, and the diligence of the primary supporters at FOMB and Grow L+A to provide extensive documentation supporting their proposal and submitting comment letters to the DEP. The Department had addressed most of the key points raised above in the draft [Triennial Review recommendations](#) and in the interest of brevity refers readers to that document for a complete response. In essence, DEP's recommendation against an upgrade was and continues to be based on the Department's long-standing interpretation of Maine's antidegradation policy (38 M.R.S. Section 464.4.F.4) that it must be read in the full context of water quality laws, including those pertaining to waste discharge licensing. Under this interpretation, which is reflected in DEP's Antidegradation Program Guidance, attainment or exceedance of a water quality criterion, such as for DO, must occur under critical water quality conditions (including low flow, high water temperature and licensed loading from point source discharges) to trigger the reclassification requirement pursuant to 38 M.R.S. Section 464.4.F.4. The Department's interpretation of the antidegradation policy does not consider a wastewater discharge to be a designated use or an existing use, but it does recognize the legal conditions created when a waste discharge license is issued. Licenses are issued, amongst other things, based on a determination by the Department that a discharge will not lower the water quality of the receiving water below its classification. That determination is in part based on another statutory provision (38 M.R.S. Section 464.4.D) that specifies critical flow conditions. Therefore, the Department's position is that monitoring data showing that Class B criteria are (largely but not always) attained in the lower Androscoggin River during non-critical flow conditions does not trigger the requirements of 38 M.R.S. Section 464.4.F.4. Furthermore, The Department does not see a clear path forward to ensure Class B water quality standards would be attained under the conditions required by law. Therefore, an upgrade to Class B would likely cause significant regulatory uncertainty.

The Department's position regarding the issuance of waste discharge licenses was confirmed in consultation with EPA in June 2021, where EPA stated that discharge licenses must be written to ensure that applicable water quality standards are attained 100% of the time during critical conditions. Thus, based on existing in-stream as well as modeling data and legal requirements, the Department is unable to support this upgrade.

The Department agrees that water quality in the Androscoggin River has significantly improved and is close to meeting Class B standards. Regarding the concern that without an upgrade and updated licenses, the current water quality could degrade significantly, the Department notes that, as stated above, the requirements of 38 M.R.S. Section 464.4.F.4. are not applicable in this instance. However, water quality within the current Class C classification is subject to antidegradation provisions for any future proposals for new or increased discharges. Any proposal for a new or increased discharge that would use more than 20% of the remaining assimilative capacity could only be approved if the requirements of the Department's antidegradation policy and provisions, as interpreted by the Department and reflected in its

guidance, are met including an alternatives analysis and a finding that the approval is necessary to achieve important economic or social benefits. A concern was raised that water quality modeling is imprecise and inappropriately used in connection with reclassification proposals. Although it is true that all models have some limitations, they can be reduced or accounted for in a variety of ways (for example by selecting a model that is appropriate for the situation at hand; using relevant input values; doing a sensitivity analysis; augmenting model output with other data or information; and applying extensive local experience to inform interpretation of model results). Using water quality models to determine attainment of water quality standards and setting allowable discharge limits in permitting situations accords with MDEP's long-standing practice. Using models, one can estimate the effects of conditions that are not easily found in a waterbody but must be considered pursuant to permitting regulations (e.g. low/7Q10 flow and discharges a full permit levels), which MDEP has historically regarded as being an integral part of assessing reclassification proposals for waters with current discharge licenses. Therefore, models are a critical component of making final permitting decisions. Models also provide important information regarding reclassification decisions by informing interested parties and decision makers such as the Board of Environmental Protection and the Legislature of the likely changes to waste discharge licenses. To be clear, there is no requirement for decision makers to consider potential impacts to waste discharge licenses during a reclassification proceeding. Nor are potential impacts to waste discharge licenses in any way a prohibition on reclassifications. However, changes to waste discharge licenses may have associated social and economic impacts that may be important considerations during the decision-making process.

One commenter noted that continuous monitoring should occur at all relevant sites over year-long periods and that MDEP needs to be in control of scientific measuring with year-round continuous monitoring devices. The Department agrees that a certain limited amount of additional data may be advantageous to inform future upgrade proposals and could also prove useful if the upgrade were to be ultimately approved by the Legislature. The data could then be used to better inform decision making related to additional waste load reductions. The actual level of data collection activities required for this purpose would need to be determined at that time but would most likely be restricted to critical flow conditions.

Greenfire Law, PC stated in a 2020 memo referenced by one commenter that naturally occurring conditions (such as incoming tides from Merrymeeting Bay and Sediment Oxygen Demand, SOD) cannot be used as evidence of non-attainment of WQS (per 38 M.R.S. Section 464.4.C.), and that upstream conditions must be ameliorated rather than used as an excuse to avoid protecting downstream water quality. The Department agrees that incoming tides and SOD are natural conditions but they only contribute to periodic low DO in the lower Androscoggin River and are not the primary driver for MDEP's assessment that Class B DO levels are not attained at all times, which would be required if the upgrade to Class B was made. Thus, that these factors are natural in origin does not change the Department's assessment. The Department cannot ameliorate upstream conditions that are affected by discharges because that segment of the river is Class C and the licenses are written to ensure attainment of that class. MDEP has no legal authority to require discharges to meet a higher standard to protect downstream waters that also have a Class C classification. As stated above, the requirements of 38 M.R.S. Section 464.4.F.4. are not applicable in this instance.

One commenter requested that currently lapsed discharge licenses for Lewiston/Auburn, Lisbon and Brunswick be reissued this year under the current classification, allowing MDEP and dischargers ample time (5 years) to update licenses as necessary and work towards compliance with Class B criteria five years from now. The Department will consider this suggestion based on

existing permitting resources and the other waste discharge licenses that are being processed. Also, the CWA and Maine law allows a compliance schedule to be included in waste discharge licenses to achieve compliance with new license requirements that are due to a new water quality standard. The use of a compliance schedule could achieve the same objective noted by the commenter. The commenter also stated that the entire segment in question is home to a number of NOAA Trust Species and is critical habitat for endangered Atlantic salmon. All Maine freshwater classifications, including Class C, contain standards that are protective of indigenous fish including Atlantic salmon, and of the habitat for other aquatic life.

Comment neither in support of nor opposition to original proposal:

- Ferg Lea, Androscoggin River Watershed Council (ARWC)

The ARWC submitted neither for nor against testimony at the public hearing for LD 676 to upgrade the classification of the lower part of the Androscoggin from Class C to Class B. Our mission is “to continuously improve environmental quality...,” and we encourage all stakeholders, including the State of Maine, to continue to improve the water quality of the Androscoggin River.

The Androscoggin is a “Working River” with a number of mills and dams and also recreation activities. We expect the River to continue to be favorably viewed for aesthetics and recreation, and we expect activities on and around the river to continue to increase. Water quality has continually improved since passage of the Clean Water Act, thanks to the federal law, innovative state laws, efforts of various MDEP staff, and continuing efforts by many of the stakeholders including paper mills and publicly owned treatment facilities. Many are discharging well below their permitted limits. The river over its entire length has improved considerably over the past ~35 years and with the exception of a small area known as “the Deep Hole” the river is now much closer to Class B than Class C. The state and stakeholders should celebrate the gains in water quality on the Androscoggin, but it appears that the current classification system is not well suited to recognize the additional improvements due to the river’s unique characteristics.

The Androscoggin River is a very complex ecosystem, which creates difficulties in both modeling and monitoring. We believe MDEP staff has done their best to model the river as accurately as possible, but every model has inherent drawbacks and a range of accuracy. Good continuous monitoring records exist near the headwaters to Gulf Island Pond and at the Deep Hole and other areas have been sampled periodically by MDEP and extensively by Friends of Merrymeeting Bay. However, this is possibly not enough monitoring to create a thorough understanding of the river. Apparently, DEP’s model shows that under low, critical (7Q10) conditions the river could not meet the Class B dissolved oxygen (DO) standard in some areas even with no point source discharges. We do not necessarily believe that DO in the lower river always meets Class B or that it does not but we believe it does come very close to achieving the standard if it does not meet it 100% of the time. It is very difficult to determine the consequences if DO fell a few tenths of a milligram per liter below the 7.0 class B standard. We believe that the consequences would not be significant nor noticeable.

In addition, a review of the data indicates that the water quality from Gulf Island Dam upriver is much better than Class C with the exception of the Deep Hole. It may well be time to recognize that the entire river is much better than its Class C designation from the Ellis River downriver.

To date, it has only been through effective legislation and the goodwill of the dischargers that the river has attained the water quality that is at the very least, very close to B. The Watershed Council wants to see continuous improvement, but we want to see it done in a responsible manner where all stakeholders understand the complex issues. We submit that the MDEP should work with stakeholders to consider five actions: 1) recognize model limitations, especially for a complex system like the Androscoggin River, and only use models as a guide to water quality and not the final determination; 2) recognize water quality improvements by modifying the classification system; 3) determine permitting and compliance based on a statistical method that would provide for short-term variations below an established standard for DO provided such drops would not adversely impact the overall health of the aquatic environment; 4) establish a more robust monitoring program that helps stakeholders and the MDEP to develop a better understanding of the river from the area known as Twin Bridges in Turner/Leeds (just above what is considered the head of Gulf Island Pond) to Merrymeeting Bay; and 5) accept the "Deep Hole" as stratifying at low flows and recognize that dissolved oxygen in stratified areas may drop below the river classification standards.

MDEP Response:

The Department agrees that water quality in the Androscoggin River has significantly improved and is close to meeting Class B standards. While it is true that all models have some limitations, they can be reduced or accounted for in a variety of ways (for example by selecting a model that is appropriate for the situation at hand; using relevant input values; doing a sensitivity analysis; augmenting model output with other data or information; and applying extensive local experience to inform interpretation of model results). As explained in item 1) below, the use of models is critical for making certain decisions. Non-attainment of Class B standards has been documented in volunteer in-stream data, and also in MDEP in-stream data and modeling results. The effects of DO excursions depend not only on the magnitude of the excursion but also on the duration and frequency, and other factors, such as water temperature and presence of pollutants. Thus, it is difficult to determine what constitutes a 'small' excursion of DO criteria and to predict the consequences of a small excursion for aquatic life.

Regarding ARWC's list of requested actions, the Department offers the following responses:

- 1) *Recognize model limitations, especially for a complex system like the Androscoggin River, and only use models as a guide to water quality and not the final determination.* Although water quality models have some limitations (as acknowledged in the preceding paragraph), their use in determining attainment of water quality standards and setting allowable discharge limits in permitting situations accords with MDEP's long-standing practice. Using models, one can estimate the effects of conditions that are not easily found in a waterbody but must be considered under permitting regulations (e.g. low/7Q10 flow and discharges a full permit levels). Therefore, models are a critical component of making final permitting decisions. As noted more fully above (preceding MDEP Response, p. 16), models also provide important information regarding reclassification decisions by informing interested parties, and decision makers such as the Board of Environmental Protection and the Legislature, on the likely changes to waste discharge licenses.
- 2) *Recognize water quality improvements by modifying the classification system.* Developing new water quality standards (WQS) is typically a large undertaking. Modifying existing standards can be easier but must still be done thoughtfully. WQS have far-reaching implications on several issues (such as pollution prevention, permitting, enforcement, remediation) and must therefore be developed carefully. At this time, the Department is

evaluating several new or modified WQS that were proposed as part of the Triennial Review Process. These proposals create a challenging workload. Any additional modifications to WQS would need to be proposed in a future Triennial Review process or via legislation.

- 3) *Determine permitting and compliance based on a statistical method that would provide for short-term variations below an established standard for DO provided such drops would not adversely impact the overall health of the aquatic environment.* As noted above, the Department's position regarding the issuance of waste discharge licenses was confirmed in consultation with EPA in June 2021, where EPA stated that discharge licenses must be written to ensure that applicable water quality standards are attained 100% of the time during critical conditions. Therefore, pursuant to permitting and compliance regulations, excursions of license limits, including limits to ensure attainment of applicable WQS, even if small in magnitude, frequency or duration, are not allowed. Therefore, allowing for short-term variations as proposed is not permissible.
- 4) *Establish a more robust monitoring program that helps stakeholders and the MDEP to develop a better understanding of the river from Twin Bridges in Turner/Leeds to Merrymeeting Bay.* Although a certain limited amount of additional data may be advantageous to understand river dynamics, the Department does not have the resources to establish a monitoring program. If an entity volunteers to lead a collaborative effort, the Department will consider its ability to participate when details of the effort are known.
- 5) *Accept the "Deep Hole" as stratifying at low flows and recognize that dissolved oxygen in stratified areas may drop below the river classification standards.* This is not relevant to the upgrade proposal because the water from the deep hole of the impoundment does not contribute to downstream flows. However, the Department has stated that if the river below Gulf Island Dam was upgraded to Class B, the Department would be required to establish a boundary condition of at least 7 mg/L DO for water flowing over or through the dam via more stringent limits on the three mills upriver of Gulf Island Dam.

Comments in opposition to original proposal:

- C. Price Howard, White Mountain Paper Co.

The White Mountain Paper Co. facility has been a member of GIPOP, Gulf Island Pond Oxygenation Partnership since the inception of the project (circa 1984). Our company (under different ownerships) has existed for well over a century and is one of New Hampshire's last operating paper mills. Located on the banks of the Androscoggin, its operations have played a vital role in the community and region through direct and indirect job creation. We acquired the mill out of bankruptcy at the end of 2020, preserving 73 jobs that would have otherwise been lost along with millions in regional (incl. Maine) spending with external suppliers & vendors. Our overall objective to transform a historically volatile operation into a stable operation with future scalability is progressing according to plan, preserving critically important jobs, maintaining the utilization of regional suppliers, and creating an opportunity for future expansion benefitting the regional economy. The proposed upgrade could potentially impact future compliance with our discharge permit, putting further economic strain on the ongoing stabilization efforts. Should the upgrade occur, it will create costly expenditures for the GIPOP facility to meet new criteria down river, making a future expansion challenging.

It is our understanding based on testimony given during the hearing on LD 676 that the upgrade will not achieve the desired improvement in water quality, but rather create an unfair burden on operators along the Androscoggin, including municipalities in New Hampshire and Maine as well as the mill, its employees, and vendors, without demonstratively improving the water quality of the river. This would cause negative financial impact to White Mountain, jeopardizing plans for improvements and expansion at the mill. I respectfully ask the Department to not support the upgrade and recognize the importance of our operating paper mill to the community.

- Bill Taylor, Pierce Atwood for Gulf Island Pond Oxygenation Partnership (GIPOP)

Since implementation of the GIPOP's oxygenation system in 1991, Maine MDEP and GIPOP members have worked to bring the dissolved oxygen (DO) levels in Gulf Island Pond (GIP) up to the Class C water quality criterion of 5.0 mg/L. By any measure the oxygenation project has been successful in achieving its original goals. However, if the river segment below GIP is upgraded to Class B, a DO level of 7 mg/L must be achieved at all times and existing dischargers would be in immediate non-compliance. It is unclear how the new DO criteria will be met, but it is clear that with an upgrade MDEP must, under existing law, reopen or amend all waste discharge licenses that were based on the prior Class C criteria, which would no longer be applicable. MDEP would need to reduce license limits or require other costly changes to ensure criteria attainment under worst case conditions. We don't know how MDEP will allocate required reductions but final allocation may include significant and costly changes to the oxygenation system.

It is also unclear whether these required regulatory measures will have any effect on water quality in the lower Androscoggin River. MDEP has told the partnership that they don't know and can't predict how permit changes will affect DO levels. Prior modeling at GIP has shown that the partnership's point sources have very little impact on downstream DO levels. Many other very important factors impact water quality which MDEP doesn't have authority to regulate, or can't regulate or control, such as non-point sources, sediment oxygen demand or normal diurnal DO variations, which by themselves are enough to periodically cause DO to fall below 7 mg/L. There are only two measures MDEP can take, either reduce the BOD load from point sources or increase DO from the oxygenation system, or a combination of those. Either way, point source licensees or the Partnership will bear the full brunt of any change even though other significant factors affect water quality.

I know from my time as a Commissioner on the New England Interstate Water Pollution Control Commission that Maine is recognized as a national leader for its water quality programs, and where appropriate has not hesitated to upgrade water quality segments. However, MDEP has consistently determined that it is not appropriate to upgrade the lower Androscoggin River to Class B when the relevant DO criteria are not met at all times. The Department cannot predict, even with significant and very conservative changes in licensing and operational requirements, whether the lower river will ever meet Class B DO criteria at all times. Based on these considerations, the Maine MDEP should not upgrade the lower Androscoggin River to Class B.

- Scott Reed, ND Paper Inc. (Rumford Division)

We all know that water quality in the lower Androscoggin River has improved significantly. An upgrade would require the Department to implement controls to meet Class B standards at all times and under all conditions. MDEP has concluded that there is no feasible approach to ensure Class B dissolved oxygen (DO) attainment and thus is not recommending this upgrade in the Triennial Review. An upgrade would not guarantee attainment of Class B standards but it will

guarantee significant cuts on municipalities, and industrial and hydro facilities throughout the watershed.

Many comments were submitted to the ENR Committee in opposition to LD 676. As part of our TR comment, we are including comments from the following entities: myself on behalf of ND Paper Inc.; members of the 130th Maine Legislature; Senator Jeffrey Timberlake, District 22; Patrick Strauch, Maine Forest Products Council; Ben Gilman, Maine State Chamber of Commerce; Dean Gilbert, International Brotherhood of Electrical Workers; and Kevin Averill, President of the United Steel Workers Local 900. ND Paper agrees with the Department that there is no feasible approach to ensure attainment of Class B standards in the lower Androscoggin River. (The legislative comments on LD 676 from the entities noted above can be found here: http://www.mainelegislature.org/legis/bills/display_ps.asp?snum=130&paper=SP0263PID=1456#).

- Steve Zuretti, Brookfield Renewable

The lower Androscoggin River has been proposed for upgrade several times over the last decade in different venues, and each time the conclusion was that the data does not support the Class B designation as there would be 'no feasible approach to ensure attainment of Class B dissolved oxygen (DO) criteria in the lower River'. Since the last proposal, no material changes have occurred that would provide a rationale for MDEP to adopt the proposal.

While we support efforts to improve the health and safety of Maine's waterways, including the Androscoggin River, implementing an upgrade based on aspirations and without necessary data to support the change is counter to DEP's established practices. In this case, no data is available that establishes the reductions from point source discharges that would facilitate attainment of Class B standards at all times. In fact, prior modeling indicated that Class B standards were not always attained even without discharges. Thus this upgrade proposal could produce several negative consequences while failing to support Class B attainment, or require dischargers to increase DO levels above what would occur without their discharge. Thus we support DEP's recommendation.

- George O'Keefe, Jr., Town of Rumford

The Town of Rumford supports the Department's position that current water quality models indicate that it is infeasible to upgrade the segment in question. We recommend consideration of intensive collection of water quality data on the entire Androscoggin River in Maine at multiple locations (existing stream gauge stations plus 7 others as listed in our comment letter) over a 5-year period at hourly intervals (at a minimum). Details of the efforts would be determined by the Department in collaboration with stakeholders. We recommend that data would be published live to deliver maximum public benefit. Data would be used to create an updated water quality model for the River which would assist in assessing future upgrade proposals. Data collection efforts would also allow stakeholders to maximize the public relations benefits of the improved water quality conditions under the current regulatory regime. Stakeholders in the data collection efforts would include: the Town of Rumford; relevant New Hampshire state agencies; New Hampshire and Maine towns from the headwaters of the River at Errol, NH to Rumford as well as all communities from Rumford to Merymeeting Bay that discharge into or border the River; all communities in the watershed with treatment plants that discharge to any tributary of the River; all industries that discharge to the River; and all advocacy organizations who participate in the this current upgrade proposal.

We also note our concern for non-point source pollution as a significant source of pollutants in the Androscoggin River and the effects these sources may have on the ability of the Department to consider future upgrade proposals.

MDEP Response:

These comments support the Department's recommendation, and no general response is necessary. The Department nevertheless wishes to respond to the proposal by the Town of Rumford to initiate extensive water quality data collection efforts. The Department does not have the resources to initiate or carry out such efforts. If an entity volunteers to lead a collaborative effort, the Department will consider its ability to participate when details of the effort are known. A certain limited amount of additional data may be advantageous to inform future upgrade proposals, but the amount would likely be less than what the Town proposed. Additional data collection activities could prove useful if the upgrade were to be ultimately approved by the Legislature. The data could then be used to better inform decision making related to additional waste load reductions. The actual level of data collection activities required for this purpose would need to be determined at that time and would most likely be restricted to critical flow conditions.

Presumpscot River from Saccarappa Falls to Head of Tide at Presumpscot Falls, Westbrook, Portland and Falmouth (Friends of the Presumpscot River)

Comments in support of original proposal:

- Will Plumley, Michael Shaughnessy and Peter Stuckey, Friends of the Presumpscot River (FOPR)

We respectfully request that MDEP change its recommendations and recommend in favor of reclassifying the lower Presumpscot to Class B at this time. Maine water-quality classifications are aspirational and a body of water does not need to meet the standards of a higher classification at all times in order to qualify and be approved for an upgrade. That said the lower Presumpscot exceeds Class B standards for dissolved oxygen (DO) in 100% of the monitoring results from May to September 2019 and had only one date when E. coli failed to meet Class B standards. If more data is needed, we ask that MDEP move forward with these efforts.

DEP's 2011 Presumpscot River model included modeling under increased summer low flow at the Eel Weir Dam, which was implemented in the 2015 hydro license. That model showed Class B attainment for all but the most dire circumstances. Using current DO data in the model would surely show Class B attainment in the lower river at all times.

Constant Class B attainment would be ensured if 1) the river was upgraded to Class B; 2) current discharge licenses were maintained at existing levels and enforced; 3) new licenses or expansions to current licenses were issued with terms and conditions allowing continued Class B attainment; 4) the City of Westbrook were encouraged to reduce or eliminate Combined Sewer Overflows (CSOs); 5) currently impaired tributaries to the Presumpscot River were restored in collaboration with stakeholders; and 6) the 2011 model were updated to better inform future decisions related to water quality. If the River is not upgraded now, any requests for new or expanded licenses would be based on Class C criteria. Such action and other events could degrade water quality towards the Class C minimum, eliminating hard-earned gains. Therefore,

we respectfully request that MDEP recommend an upgrade of the lower Presumpscot to Class B at this time.

- Sally Stockwell, Maine Audubon

The Presumpscot River runs past our headquarters at Gilsland Farm in Falmouth, and is a treasured resource by all who visit us or take part in our educational activities. We recognize and celebrate the importance of clean water and connected waterways for healthy fish, other aquatic and terrestrial wildlife, and people, and have long been involved in efforts to restore and improve whole watersheds through a variety of projects. We strongly support a reclassification of the lower Presumpscot River from a Class C to a Class B water as this river reach already meets or exceeds Class B standards nearly all the time. If more data is needed to verify the request for reclassification, then we strongly encourage the MDEP to collect that data as soon as possible.

- Claudia King, Resident of Falmouth

The Presumpscot River has shown remarkable levels of recovery and is now a public resource and an environmental asset in the middle of a relatively densely populated area. If we want the river to be a joy for its visitors and an environmental asset as time goes on, we need to protect its water quality. Upgrading its classification at this time would be a great way to recognize the recovery of the river, and will help protect it as challenges to its health emerge in the years to come. I support this upgrade.

- Scott McAuliffe, Sebago Chapter of Trout Unlimited (TU)

Our organization supports for this upgrade proposal. The Presumpscot River contains beautiful trout habitat, including tributaries with significant wild brook trout populations. Based on data collected by the Presumpscot Regional Land Trust, FOPR demonstrate persuasively that the lower Presumpscot already ready meets or exceeds Class B dissolved oxygen (DO) standards nearly all the time. It seems certain that applying current DO data to the 2011 MDEP model would show Class B attainment at all times, filling information gaps that prevents MDEP from evaluating the current attainment status. Increased minimum summer flow at the Eel Weir Dam upstream and removal of the Saccarappa Dam would only serve to improve DO levels. We therefore urge the Department to support the upgrade now, based on existing data. If additional data must be collected, we strongly urge that this be done with all possible speed and that an upgrade can be considered on an accelerated timetable. By solidifying gains already made, it can be assured that water quality will not degrade to previous levels.

MDEP Response:

The Department appreciates the extensive support this upgrade proposal has received. Primary comments supporting an upgrade were submitted by FOPR and generally echoed by other commenters. The Department's response therefore focuses on FOPR's comments.

As explained in the draft TR recommendations, MDEP does not have enough information at this point to fully evaluate whether the lower Presumpscot River could meet Class B criteria at all times during critical conditions of high water temperature, low flow, and maximum licensed discharge levels. The Department must consider these critical conditions when (re-)issuing waste discharge licenses. The Department needs to collect and evaluate data taken during these conditions before making a determination on a classification upgrade. For this reason, the Department is unable to support the upgrade proposal at this time.

The 2011 model used by MDEP to evaluate water quality conditions in the lower river at that time incorporated continuous monitoring data. Continuous data allow an assessment of DO conditions during a wide range of conditions and are thus critical for a full assessment. Instantaneous data, even if collected during summer months at times of anticipated low DO levels, would not permit a comprehensive evaluation of water quality conditions and thus the approach suggested by FOPR and TU of updating the 2011 model using existing instantaneous data is not adequate. To allow a model update, MDEP staff collected some continuous data in the summer of 2020 at one location and is collecting additional data at one location in the summer of 2021. The new model output, which is expected to be available in 2021/2022, together with other relevant new data [for example from the MDEP's Volunteer River Monitoring Program (VRMP) and biological monitoring program, which will sample biological communities in the summer of 2021 at two locations in the lower river and one reference site upstream] will allow the Department to fully evaluate current water quality conditions. This information will form the basis for an upgrade decision to be made at the next opportunity for re-classification. This opportunity may arise during the next Triennial Review, during a Reclassification Initiative, or in response to a legislative proposal.

Regarding FOPR's list of requested actions, the Department offers the following responses:

- 1) *Upgrade to Class B at this time.* As explained above, the Department does not regard this as a viable option.
- 2) *Maintain and enforce current discharge licenses at existing levels.* For any waste discharge license, discharge limits are usually maintained for the 5-year duration of each license. License limits are enforceable, and the Department works with licensees to ensure that limits are met at all times. If a license is reopened for modification, existing license limits cannot be increased unless the modification meets the antidegradation requirements of 464(4)(F).
- 3) *Issue new licenses or expansions to current licenses with terms and conditions allowing continued Class B attainment.* MDEP issues licenses to ensure compliance with the water quality classification in effect at that time. For example, a discharge to a Class C waterbody would be licensed to ensure attainment of the relevant Class C standards. If the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected by including appropriate limits in a new or renewed license. For example, if all Class B criteria are always attained under critical conditions in a Class C waterbody, a license would be issued to maintain this higher water quality. Water quality within the current Class C classification is subject to antidegradation provisions for any future proposals for new or increased discharges. Any proposal for a new or increased discharge that would use more than 20% of the remaining assimilative capacity could only be approved if the requirements of the Department's antidegradation policy and provisions, as interpreted by the Department and reflected in its guidance are met including an alternatives analysis and a finding that the permit was necessary to achieve important economic or social benefits.
- 4) *Encourage the City of Westbrook to reduce or eliminate Combined Sewer Overflows (CSOs).* In the 2021 CSO Master Plan Update for the CSOs in question, MDEP requests that the permit holder include a closure plan to permanently close four of five existing CSOs by the middle of 2026. The final and most active location will most likely require infrastructure changes, and MDEP staff has requested that a plan be developed to fully abate this CSO within the next two Master Plan cycles or by the middle of 2031. This

would eliminate CSO discharge to the Presumpscot River from the City of Westbrook within a 10-year period.

- 5) *Restore currently impaired tributaries to the Presumpscot River in collaboration with stakeholders.* Numerous efforts have been made or are underway in the watershed by stakeholders and/or the Department, including but not limited to those described in this paragraph. Several Clean Water Act Section 319-funded projects are in progress to address non-point source (NPS) problems on roads and farms affecting certain waterbodies (Black Brook in Windham; Pleasant River in Gray and Windham; Highland Lake in Windham and Falmouth; and Forest Lake in Gray and Windham). Additional collaborative efforts are occurring to improve Highland and Forest Lakes. Extensive stream monitoring and assessments have occurred on streams in Falmouth to identify stressors that aided in drafting protection strategies and will guide future implementation work. As part of MS4 permit requirements, several regulated communities in the watershed (Portland, Gorham, Windham) are carrying out diverse efforts to reduce stormwater impacts to surface waters. Specific MS4 efforts will additionally focus on Mosher Brook in Gorham and Dole Brook in Portland. A watershed-based management plan is being developed to restore Black Brook in Windham, and one has been completed for Highland Lake in Windham and Falmouth. Finally, the Department is working with a contractor to develop Total Maximum Daily Load (TMDL) reports for six streams with DO impairments to identify nonpoint source stressors.
- 6) *Update the 2011 model to better inform future decisions related to water quality.* The Department is actively working towards this goal.

Comment neither in support of nor opposition to original proposal:

- Rachelle Curran Apse, Presumpscot Regional Land Trust

We fully support DEP's proposal to collect new data to evaluate whether the lower Presumpscot River could meet Class B criteria at all times during critical conditions. We remain committed to providing VRMP data to MDEP and support all additional data collection and modeling led by DEP.

MDEP Response:

This comment supports the Department's recommendation and no response is necessary.

Comment in opposition to original proposal:

- Brian Rayback, Pierce Atwood LLP for Sappi North America Inc. (Westbrook Mill)

We support the Department's conclusion that an upgrade is not warranted at this time because it is not clear that the river could meet Class B standards, particularly with respect to dissolved oxygen. We hired HDR Engineering, Inc. to determine whether the river could meet Class B standards. Using the DEP's model, HDR determined that Class B standards would not be met either under current licensed conditions at the Westbrook Mill, or if the mill were to stop discharging entirely. This confirmed our position to agree with the Department.

While the Clean Water Act is aspirational, upgrades to classification are only appropriate when there is a reasonable expectation that the river can comply with the new standards within a reasonable timeframe. This is because there are real consequences to upgrading waterways based on goals alone, particularly with respect to discharge licensing. Licenses are only granted when it can be demonstrated that standards will be met under critical conditions. If that is not the case, licenses must be issued that will result in full compliance, even if the new license limits are unrealistic. This could lead to significant social and economic costs and limit the potential for economic growth. Given that modeling results indicate that the river would not meet Class B standards, we agree with the Department's conclusion to not recommend this upgrade.

It should also be noted that the existing level of water quality in the river must be preserved through the State's antidegradation requirements. Thus, the water quality improvements that have been made over the years will be protected even if the classification remains at Class C.

MDEP Response:

This comment supports the Department's recommendation and no response is necessary.