UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

March 16, 2015

Patricia W. Aho, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Review and Decision on Water Quality Standards Revisions

Dear Commissioner Aho:

On February 2, 2015, EPA issued its decision approving or disapproving many of Maine's new and revised water quality standards ("WQS") as they relate to waters in Indian lands in Maine (and, for some WQS, as they relate to all waters in the State). In that decision, EPA also identified several provisions that EPA did not take action on, primarily because the Department of Environmental Protection ("DEP") was planning to update them soon to ensure their consistency with federal Clean Water Act ("CWA") requirements. However, in response to Maine's subsequent request that EPA nevertheless act on those provisions, EPA is hereby issuing its decision as to those provisions.[1]

Approvals

Pursuant to Section 303(c)(3) of the CWA and 40 C.F.R. part 131, I hereby approve the following new and revised water quality standards:

For estuarine and marine waters in Indian lands:

- The ammonia criteria for protection of aquatic life in saltwater in DEP Rule Chapter 584, Appendix A, submitted to EPA on January 11, 2006.

For all waters outside of waters in Indian lands:

- The revisions made in L.D. 1304 at 38 M.R.S. § 465(3.B) and (4.B), which extended the applicability of the bacteria criteria for Class B and Class C waters to include bacteria of domestic animal origin, submitted to EPA on January 11, 2006; and
- The revision made in L.D. 1778 at 38 M.R.S. § 465-A(1.B), which extended the applicability of the bacteria criteria for Class GPA waters to include bacteria of domestic animal origin, submitted to EPA on April 8, 2008.

[1] For the sake of completeness, EPA is also making its decision with respect to the pre-2004 recreation (bacteria) criteria for Class B, GPA, SB, and SC waters in Indian lands, as explained further below.

Disapprovals

Pursuant to Section 303(c)(3) of the CWA and 40 C.F.R. part 131, I hereby disapprove the following new and revised water quality standards:

For all waters in Indian lands:

- The numeric bacteria criteria for the protection of primary contact recreation in Class B, C, GPA, SB and SC waters in 38 M.R.S. §§ 465(3.B) and (4.B), 465-A(1.B), and 465-B(2.B) and (3.B), submitted to EPA in 1985;
- The revisions to the numeric bacteria criteria for the protection of primary contact recreation for Class B and C waters in 38 M.R.S. § 465(3.B) and (4.B), submitted to EPA on January 11, 2006;
- The revisions made in L.D. 1450 at 38 M.R.S. §§ 465(3.B) and (4.B), and 465-B(2.B) and (3.B), which extended the applicability of the bacteria criteria for the protection of primary contact recreation in Class, B, C, SB and SC waters to include bacteria of domestic animal origin, submitted to EPA on January 11, 2006;
- The revision made in L.D. 1778 at 38 M.R.S. § 465-A(1.B) which extended the applicability of the bacteria criteria for the protection of primary contact recreation in Class GPA waters to include bacteria of domestic animal origin, submitted to EPA on April 8, 2008;
- For fresh waters in Indian lands, the ammonia criteria for protection of aquatic life in fresh water in DEP Rule Chapter 584, Appendix A, submitted to EPA on January 11, 2006; and
- The water quality standards revisions submitted to EPA on January 14, 2013, related to the 10^{-4} cancer risk level to be used to calculate human health criteria for inorganic arsenic, at 38 M.R.S. §420(2.J), as set forth in P.L. 2011, Ch. 194 (L.D. 515) "An Act To Review State Water Quality Standards"; the last sentence in Maine Rule Chapter 584, § 4; and first sentence of Footnote aME in Table I of Appendix A of Ch. 584.

For all waters throughout Maine, including in Indian lands:

- The revisions made in L.D. 1304 at 38 M.R.S. § 464(4.A(3)(a)), and § 465((3.C.(1)) and (4.C), related to certain pesticide discharges, submitted to EPA on January 11, 2006;
- The phenol criteria for the protection of human health consumption of water plus organisms, in DEP Rule Chapter 584, Appendix A, submitted to EPA on January 14, 2013; and
- The revision made in L.D. 1430 at 38 M.R.S. § 464(4.A(3)(b)), related to certain pesticide discharges to tributaries of GPA waters, submitted to EPA on February 27, 2014.

For waters outside of waters in Indian lands:

- The reclassification of a 0.3 mile segment of Long Creek that flows through Westbrook from Class B to Class C, submitted to EPA on December 7, 2009.

Under CWA § 303(c)(3) and EPA's implementing regulations at 40 C.F.R. §§ 131.21 and 131.22, when EPA disapproves a state's new or revised water quality standard, it must "specify

the changes" necessary to meet the applicable requirements of the Act and EPA's regulations. The CWA requires that these disapprovals be addressed in a timely manner. In the first instance, the CWA and EPA's regulations provide the State up to 90 days to revise its WQS, and EPA prefers that Maine address these disapprovals under its regulatory development process. However, if the State does not adopt necessary changes, EPA will propose and promulgate appropriate water quality standards for waters in Maine.

The following paragraphs describe the rationale for the approval and disapproval decisions listed above as well as recommended remedies for each disapproval.

Supporting Discussion of Approvals

For all waters in Indian lands:

Ammonia Criteria for Saltwater

EPA's decision on the saltwater ammonia aquatic life criteria in Chapter 584, Appendix A, Table II, submitted to EPA on January 11, 2006, for estuarine and marine waters in Indian lands is based on whether the criteria protect aquatic life uses, including consideration of EPA's National Recommended Water Quality Criteria published pursuant to Section 304(a) of the CWA. EPA finds that Maine's ammonia criteria for the protection of aquatic life in saltwater are scientifically defensible and are protective of designated uses for the reasons explained in EPA's criteria document for ammonia in saltwater.[2] EPA approved these criteria for estuarine and marine waters outside Indian lands on July 7, 2006, and is now approving them for estuarine and marine waters in Indian lands.

For all waters outside of waters in Indian lands:

Bacteria Criteria for the Protection of Primary Contact Recreation (Recreational Criteria)

EPA is approving the revisions for Class B, C, and GPA waters outside of waters in Indian lands that extended the applicability of the recreational criteria to include bacteria of domestic animal origin, as these revisions incorporate additional protection for the primary contact recreation designated use and are an improvement over the previous criteria. However, as EPA has explained to DEP in the past, the criteria's failure to include bacteria from all fecal sources, including wild animal sources, continues to be a concern. Human pathogens are present in both domestic and wildlife animal fecal sources, and there is, therefore, a potential risk from recreational exposure in animal-impacted waters (2012 Recreational Water Quality Criteria (RWQC), see section 3.5.1-2). EPA strongly recommends that in developing any revised recreational criteria, DEP ensure that they be written to apply to all bacteria sources, or develop site-specific alternative criteria that are scientifically defensible and protective of the primary contact recreation use (see Chapter 6 of the 2012 RWQC document for a discussion about using quantitative microbial risk assessment or other methods for developing alternative site-specific criteria).

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[2] EPA, *Ambient Water Quality Criteria for Ammonia (Saltwater)-1989,* EPA 440/5-88-004, April 1989.

In addition, as explained in our December 2, 2013 letter[3] to DEP, EPA strongly recommends that DEP revise all of Maine's recreational criteria to be consistent with EPA's 2012 recommendations, including the addition of frequency and duration components of the criteria (discussed in more detail below). Also as discussed further below, EPA recommends that Maine apply the criteria to a longer time period than May 15th to September 30th. We understand that DEP is already working on this effort, as indicated in the schedule that Maine's Healthy Beaches Program submitted to EPA on February 17, 2015, and that DEP expects to be requesting informal EPA review of new proposed recreational criteria later this year.

Supporting Discussion of Disapprovals

For all waters in Indian lands:

Ammonia Criteria for Fresh Waters

EPA's disapproval of the ammonia aquatic life criteria in Chapter 584, Appendix A, for fresh waters in Indian lands is based on a review of whether the criteria protect the applicable designated uses and are based on sound scientific rationale. EPA revised its CWA Section 304(a) recommended ammonia criteria for fresh waters in August 2013 and incorporated the latest science for fresh water mussels and snails, which are sensitive to ammonia toxicity and not included in EPA's 1999 ammonia criteria recommendations. Maine's criteria are not protective of the designated use because they are not protective of fresh water mussels and snails. In the absence of supporting scientific information to justify a finding that Maine's current ammonia criteria adequately protect the aquatic life designated use, EPA must disapprove the criteria. To assure compliance with the CWA, Maine must adopt ammonia criteria that protect the designated use, or provide sufficient justification based on sound science that the current ammonia criteria are adequately protective of the use. On December 2, 2013, EPA recommended that DEP update its ammonia criteria for waters outside of Indian lands, in light of EPA's 2013 revised criteria recommendations. We recommend that DEP adopt revised ammonia criteria for all fresh waters, both outside and inside Indian lands, in a single action.

Recreational Criteria

As explained in EPA's February 2, 2015 decision, EPA had not approved any of Maine's water quality standards for waters in Indian lands in Maine prior to that date. Consequently, in reviewing the adequacy of Maine's recreational criteria for those waters now, it is necessary to review those aspects of the criteria that Maine adopted and submitted before 2003 that are still in effect, as well as any revisions submitted since 2003. The geometric means included in Maine's recreational criteria adopted in 1985 for Class B, and the geometric means and instantaneous levels adopted in 1985 for Class GPA, SB, and SC waters, have not been revised. Other aspects of the criteria, for Class B, SB, and SC waters, as well as the numeric and other aspects of the Class C criteria, were revised in 2005, and submitted to EPA in 2006. Revisions to the non-numeric criteria aspects of Class GPA waters were made and submitted to EPA in

[3] See December 2, 2013, letter from EPA Region 1 Office of Ecosystem Protection Director, Ken Moraff to DEP Bureau of Land and Water Quality Director, Michael Kuhns.

2008. EPA has reviewed the 1985 criteria and the 2005 and 2008 revisions in making its decision today.

EPA's disapproval of the 1985 recreational criteria, as revised in 2005 and 2008, in 38 M.R.S. §§ 465(3.B) and (4.B), 465-A(1.B), and 465-B(2.B) and (3.B) for Class, B, C, GPA, SB and SC waters in Indian lands, is based on a review of whether the criteria, as a whole, protect the applicable designated use of primary contact recreation. Until recently, Maine's recreational criteria for Class B, C, GPA, SB and SC waters were, with the exception of the exclusion for bacteria from natural sources, consistent with, or more protective than, EPA's 1986 recreational criteria recommendations. However, EPA published new recreational criteria recommendations in 2012. The new recommendations are comprised of two numeric thresholds (geometric mean and statistical threshold value, or STV), an averaging duration for the geometric mean, and maximum frequency of exceedance for the STV. Table 1 summarizes Maine's recreational criteria and EPA's current recreational criteria recommendations for fresh and salt waters.

Table 1- Maine adopted and EPA Recommended Recreational Criteria

Recreational Criteria Element	**Maine Recreational Criteria**	**2012 EPA Recreational Criteria Recommendations**
Sources	Only applies to bacteria of human and domestic animal origin	Applies to all sources
Geometric Mean	64 *e.coli*/100 ml for Class B 126 *e.coli*/100 ml for Class C 29 *e.coli*/100 ml for Class GPA 8 enterococci/100 ml for Class SB 14 enterococci/100 ml for Class SC	100-126 *e.coli*/100 ml for fresh waters or 30-35 enterococci/100 ml for fresh or marine waters
Averaging Period	None in rule (Maine's assessment guidance[4] specifies 1 year)	30 days
STV	None	320-410 *e.coli*/100 ml for fresh waters or 110-130 enterococci/100 ml for fresh or marine waters
STV exceedance frequency	None	Not more than 10 % of samples in 30 days
Instantaneous maximum	236 *e.coli*/100 ml for Class B and C 194 *e.coli*/100 ml for Class GPA 54 enterococci/100 ml for Class SB 94 enterococci/100 ml for Class SC (only used for beach notifications and not for assessing impairment)	None. (EPA recommends use of a separate Beach Action Value, or BAV, for beach notifications)

While Maine's geometric means for all classes of waters are at least as stringent as EPA's currently recommended geometric mean magnitude, Maine's recreational criteria in their entirety are not fully protective unless they include an explicit duration and frequency of exceedance. EPA is disapproving Maine's recreational criteria in waters in Indian lands

[4] DEP, *2012 Integrated Water Quality Monitoring and Assessment Report*, February 21, 2014, page 67.

because of the lack of an exceedance frequency and undefined averaging period in Maine's current criteria. The duration and frequency of EPA's 2012 recommended criteria are protective, and EPA encourages Maine to adopt the 30-day duration and 10% exceedance frequency when revising the criteria for the protection of primary contact uses.

In addition, as discussed above, Maine's recreation criteria fail to include bacteria from all fecal sources, including wild animals. In developing revised recreational criteria, DEP must either include all bacteria sources, or develop site-specific alternative criteria that are scientifically defensible and protective of the primary contact recreation use.

Finally, EPA recommends that Maine extend the season within which the criteria apply to reflect a longer time period than May 15th to September 30th. Primary recreation includes any activity that people conduct in or on the water. This includes activities such as swimming, windsurfing, waterskiing and diving. EPA is aware that many such activities occur in New England waters in the springtime before May 15th and in the fall after September 30th. EPA recommends that Maine consider extending the season within which the criteria apply to ensure that recreational uses are protected whenever they occur. This could be accompanied by a provision that allows DEP to reduce the seasonal applicability on a site-specific basis if it is demonstrated that such activities do not occur during such longer season.

To assure compliance with the CWA, Maine must either adopt recreational bacteria criteria that are consistent with EPA's recommended criteria, or provide sufficient justification based on sound science that alternate bacteria criteria are adequately protective of the use. On December 2, 2013, EPA recommended that DEP update its recreational criteria for waters outside of Indian lands.[5] We recommend that DEP adopt revised recreational criteria for all waters, both outside and inside Indian lands, in a single action.

Cancer Risk Level for Arsenic

In its February 2, 2015 decision, EPA disapproved all of Maine's human health criteria ("HHC"), including inorganic arsenic, as applied to waters in Indian lands because they were based on an inadequate fish consumption rate.[6] Today EPA is disapproving, as applied to those same waters, the water quality standards revisions related to the 10^{-4} cancer risk level to be used to calculate human health criteria for inorganic arsenic at 38 M.R.S. § 420(2.J), as set forth in P.L. 2011, Ch. 194 (LD 515) "An Act To Review State Water Quality Standards"; the last sentence in Maine Rule Chapter 584, § 4; and the first sentence of Footnote aME in Table I of Appendix A of Ch. 584.

This disapproval is based on a review of whether the cancer risk level ("CRL") of 10^{-4} results in criteria that adequately protect the applicable designated use. As EPA explained in detail in its February 2, 2015 decision, EPA has identified and approved a designated use of sustenance fishing applicable to the waters in Indian lands in Maine. EPA further explained that tribal

[5] See December 2, 2013 letter from EPA Region 1 Office of Ecosystem Protection Director, Ken Moraff to DEP Bureau of Land and Water Quality Director, Michael Kuhns

[6] All of Maine's HHC except arsenic are based on a fish consumption rate ("FCR") of 32.4 g/day, and the arsenic criteria are based on a 138 g/day FCR. Both of these rates are well below the FCRs identified in the Wabanaki Cultural Lifeways Exposure Scenario, which EPA concluded contains the best currently available information for the purpose of deriving an FCR for HHC adequate to protect sustenance fishing for tribal waters.

sustenance fishers are to be considered the target *general* population for the purpose of determining whether human health criteria for tribal waters are adequately protective.

For carcinogenic pollutants, EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (the "2000 Guidance") recommends that states protect the target general population to a level of risk no greater than one in one hundred thousand to one in one million (1×10^{-5} to 10^{-6}) of an additional cancer occurring in that population.[7] The 2000 Guidance also provides that if there are highly exposed groups or subpopulations within that target general population, criteria should protect those consumers to a level of risk no greater than one in ten thousand (1×10^{-4}).[8]

DEP has stated, in its responses to comments on the proposed arsenic criteria, that the final criteria – based on an FCR of 138 g/day and a CRL of 10^{-4} – are adequate to protect sensitive *subpopulations* in Maine. As noted above, EPA previously disapproved the human health criteria, including the arsenic criteria, because the criteria were based on an FCR that is not representative of an unsuppressed sustenance fish consumption rate by tribal members – the target *general* population – in waters in Indian lands. EPA is now also disapproving the requirements to base the arsenic criteria on a 10^{-4} CRL in the context of the criteria already submitted, as applied to waters in Indian lands. The existing record does not support a finding that the use of the 10^{-4} CRL results in human health criteria that adequately protect sustenance fishers in tribal waters as the target general population.

To remedy today's disapproval and EPA's February 2, 2015 disapproval, EPA recommends that Maine revise 38 M.R.S. §420(2.J), the last sentence in Maine Rule Chapter 584, § 4, and first sentence of Footnote aME in Table I of Appendix A of Ch. 584, and adopt arsenic criteria protective of the tribes' sustenance fishing use in waters in Indian lands.

For all waters throughout Maine, including in Indian lands:

Pesticide provisions

EPA's disapproval of the revisions at 38 M.R.S. § 464(4.A(3)(a) and (b)) and § 465((3.C.(1)) and (4.C), related to certain pesticide discharges, is based on a review of whether the revisions protect applicable designated uses.

Section 464(4.A(3)) prohibits discharges to tributaries of GPA waters that would cause water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters, but provides exceptions from the prohibition against impairment in subsections (a) and (b) for discharges of aquatic pesticides and chemicals to control invasive species, and of other pesticides if unintended and incidental to aerial spraying.

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[7] EPA. 2000. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health.* U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA-822-B-00-004, p. 2-6. Available at: http://www.epa.gov/waterscience/criteria/humanhealth/method/complete.pdf

[8] Id.

Similarly, § 465((3.C) provides that discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community, but provides an exception from this level of protection in subsection (1) for certain aquatic pesticides and chemical discharges.

EPA interprets both of these statutory revisions to be authorizations of use impairments when certain types of discharges occur. This is tantamount to a removal of the designated uses without justification by a use attainability analysis, and therefore is inconsistent with 40 C.F.R. 131.10(g). In addition, because they establish circumstances where existing uses do not need to be protected, these revisions are, in effect, an alteration of the State's antidegradation requirements, which require the protection of existing uses consistent with 40 C.F.R. § 131.12(a)(1). This is inconsistent with the federal antidegradation regulation at 40 C.F.R. § 131.12. For these reasons, EPA is disapproving the revisions.

DEP staff has indicated a willingness to work with Maine's legislature to revise the provisions related to pesticide discharges to be consistent with other pesticide provisions that EPA determined in its February 2, 2015 decision are not water quality standards, and to delete any statutory authorization of use impairment. Such changes would sufficiently remedy EPA's disapproval.

Phenol

EPA's disapproval of Maine's phenol criteria for the protection of human health consumption of water plus organisms, for waters throughout Maine, is based on a review of whether the criteria protect the applicable designated uses, including a consideration of EPA's ambient water quality criteria guidance published pursuant to Section 304(a) of the CWA. While DEP based the criteria on EPA's current guidance, DEP made an inadvertent mathematical error that resulted in less stringent criteria than the guidance recommends. Specifically, although DEP used the correct derivation formulation, a computational error resulted in Maine adopting a criterion of 10,514 µg/L rather than the correctly computed result of 10,267 µg/L. EPA alerted DEP to the discrepancy via email on July 22, 2013 and subsequently reviewed DEP's calculations to ensure that all the factors that were used in DEP's calculation were correct and that the error was mathematical, which EPA confirmed to DEP via email on July 23, 2013.[9] In the absence of supporting scientific information to justify a finding that the less stringent criteria adequately protect the designated use, EPA must disapprove the criteria for all waters in Maine.[10] DEP staff acknowledged this error[11] and stated DEP's intention to revise the criteria to correct the error, which would remedy the disapproval.

[9] Email correspondence between Ellen Weitzler, EPA, and Brian Kavanah, DEP, July 22 and July 23, 2013.
[10] In its February 2, 2015 decision, EPA also disapproved these criteria for waters in Indian lands due to the use of an inadequate fish consumption rate.
[11] Email from Brian Kavanah, DEP to Ellen Weitzler, EPA, September 16, 2013.

For waters outside of waters in Indian lands:

Long Creek Reclassification

Maine revised the classification for a 0.3 mile segment of Long Creek in Westbrook, Maine from Class B to Class C in 2009. The effect of the reclassification, if approved, is that the Class B designated use for aquatic life would be supplanted by the less protective aquatic life use assigned to Class C waters, and certain associated criteria would become less stringent.

EPA has carefully reviewed the information provided by DEP in support of the reclassification, as well as public comments submitted by Conservation Law Foundation in opposition to the reclassification. As discussed further below, EPA has concluded that federal regulations at 40 C.F.R. § 131.10(g), which govern the removal of a designated use, apply in this case. Because DEP has not provided a use attainability analysis to demonstrate, based on one or more factors in 40 C.F.R. 131.10(g), that Class B aquatic life uses cannot be met, EPA must disapprove the reclassification.

The drainage area for the 0.3 mile reach of Long Creek in Westbrook includes the upper reaches of Long Creek in South Portland as well as the Blanchard Brook drainage area, wholly located in Westbrook. Prior to 1990, all waters in Cumberland County, including Long Creek and Blanchard Brook, were classified, by default, as Class C. In 1990, there was a statewide overhaul of Maine's classifications to reflect legislated changes to Maine's water quality standards in 1986. The changes were so wide reaching that six public hearings were held across the state. Among other reclassifications, Maine changed the default classification for minor drainages in Cumberland County from Class C to Class B. Exceptions to the Class B default classifications were specifically identified, and Long Creek's upper and lower reaches in South Portland, along with all other minor drainages in South Portland, were classified as Class C. No exceptions were made for the Westbrook section of Long Creek and Blanchard Brook, so those waters were classified as Class B.

The 2009 reclassification was prompted by a proposal by the City of Westbrook. In support of the proposal before the Board of Environmental Protection, DEP staff stated the view that the classification was inadvertently changed due to a "Legislative bill drafting error."[12] In response to comments by CLF, DEP similarly stated that the classification of the segment from Class C to Class B in 1990 was a "mis-labeling" mistake, and that it is reasonable to "assume" that the intent was to maintain all of Long Creek as Class C, since it would not make sense to have multiple classes apply to different segments of the same stream.[13] In its "Supplemental Basis" document, DEP stated that an upgrade of this segment would have been "nonsensical" since management actions could not result in that segment attaining Class B where adjacent segments remained at Class C.[14] DEP additionally noted that since the water body was listed in 1990 on Maine's § 303(d) list of impaired waters for failing to meet Class C standards, and that the

[12] Letter from Maine's Board of Environmental Protection to the Maine Legislature's Joint Standing Committee on Natural Resources, February 17, 2009.
[13] DEP, *Reclassification Proposal and Response to Comments,* December 18, 2008 (as amended January 9, 2009).
[14] DEP, *Supplemental Basis: Long Creek Reclassification Proposal*, submitted to EPA via email, February 2, 2010.

Westbook segment was not meeting Class B biocriteria or Class C dissolved oxygen criteria, it could not have been intended for an upgrade to Class B. [15]

EPA is concerned about basing a reclassification approval decision on speculations about the intentions behind a classification action that occurred nearly 20 years previously. One could equally speculate, as CLF did, that perhaps there was a deliberate decision to assign higher classification goals to waters or segment of waters in towns or areas that were not as heavily developed.[16] Further, Long Creek's impairment status, and the Westbrook segment's nonattainment of Class B biocriteria or Class C dissolved oxygen criteria, are not necessarily indicative of what the Westbrook segment's use goals were intended to be. Meeting the water quality criteria for higher standards is not a prerequisite for a classification upgrade. As noted in materials provided at the July 11, 1989 public hearing in Portland, "The important feature of the classification system is that it does not necessarily describe the present state of the water, but rather that it establishes the goal toward which future management is directed."[17] Finally, this situation is unlike other examples of clear factual mistakes offered by DEP, such as where the same water body was assigned two classifications on the very same segment, or a saltwater was mischaracterized as a fresh water, or where the mistake could be corrected without causing a removal of a use or the application of less stringent criteria. Therefore, we see no basis to conclude that the use attainability requirements of 40 C.F.R. § 131.10(g) do not apply.

As noted above, because Maine did not provide a use attainability analysis consistent with 40 C.F.R. § 131.10(g) and demonstrate that Class B designated uses, particularly aquatic life uses, are unattainable, EPA must disapprove the reclassification. To remedy this disapproval, EPA recommends that DEP either revise the classification of Long Creek in Westbrook back to Class B or provide EPA with a use attainability analysis, based on at least one of the factors listed in 40 C.F.R. 131.10(g), to justify the downgrade.

EPA looks forward to continued cooperation with Maine in the development, review, and approval of water quality standards pursuant to our responsibilities under the Clean Water Act. As stated in the February 2, 2015 letter, EPA would like to begin discussions with DEP as soon as possible about the criteria that EPA has disapproved. EPA will again attempt to work with DEP to schedule such discussions. In the meantime, please contact me (at spalding.curt@epa.gov or 617-918-1012) or Ken Moraff (at moraff.ken@epa.gov or 617-918-1502), or have your staff contact Ellen Weitzler (at weitzler.ellen@epa.gov or 617-918-1582), if you have any questions.

Sincerely,

H. Curtis Spalding
Regional Administrator

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[15] Id.

[16] February 12, 2010 letter from Conservation Law Foundation to EPA regarding the proposed Long Creek reclassification.

[17] DEP, *Reclassification of Maine's Surface Waters A Guide for the Public Hearings (Southern Coastal Basin)*, July 1, 1989.