



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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GOVERNOR

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COMMISSIONER

Date: January 7, 2010
To: Susan Lessard, Chair
Members of the Board of Environmental Protection
From: Susan Davies, Division of Environmental Assessment
Bureau of Land and Water Quality, Maine Dept. Environmental Protection
Subject: L.D. # 330 Section 23- Report concerning procedures for reclassification

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Background:

L.D. # 330 directs the Department to review the current procedures for water quality re-classification contained in 38 M.R.S.A. Title 38 § 464.2 and to suggest any changes or clarifications needed to make the procedures more consistent and efficient, while maintaining a full public review process. The report is to be submitted to the Joint Standing Committee on Natural Resources by January 15, 2010.

The Department, in cooperation with BEP staff, has completed its review and determined that revised language is needed to better reflect current and expected future re-classification procedures. Changes in statutory language are meant to correct the following issues: The existing statutory language was adopted in May 1987 in conjunction with a major revision in Maine's water quality classification law. Since 1987 a series of reclassification initiatives in large geographic areas of the State have been completed. In practice, the Department has always taken the initiative to conduct needed reclassification studies and to hold public hearings near affected areas. However, current opportunities for reclassification are fewer and more widely dispersed, making the conduct of public hearings near affected areas difficult. The revised re-classification procedures described by the proposed language will more accurately reflect the present reclassification process. Proposed language follows:

2. Procedures for reclassification. Reclassification of state waters shall be governed by the following provisions.

A. Upon written petition by any person, or on its own motion, of the board may initiate, following public notice or by initiative of the commissioner, and the commissioner shall conduct classification studies and investigations. Information collected during these studies and investigations must be made available to the public in an expeditious manner.

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B. After consultation To initiate reclassification of state waters the commissioner shall consult with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, ~~the board may propose changes in water classification~~ in order to compile a list of proposed changes in water quality classification which includes the basis for each change. The commissioner shall consider all studies and investigations conducted under the authority of subsection 2 (A) in developing a list of proposed changes. This list, and all supporting information, shall be made available to the public for review and comment following public notice and the conduct of one or more public meetings held to describe, and take public comment on, the proposed changes. Following this the commissioner may propose changes in water classification to the board.

BC. The board shall hold a public hearings ~~in the affected area, or reasonably adjacent to the affected area,~~ for the purposes of presenting to all interested persons the proposed reclassification for each particular water body and obtaining public input.

CD. The board may recommend changes in classification that it deems ~~necessary~~ appropriate to the Legislature.

DE. The Legislature shall have sole authority to make any changes in the classification of the waters of the State.