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**Report to the Joint Standing Committee on Environment and
Natural Resources
131st Legislature, Second Regular Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

January 2024

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I. Overview

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

During calendar year 2023, the Board of Environmental Protection affirmed one WQC decision for the Pejepscot Hydroelectric Project on April 6, 2023.

The Department received two WQC applications in 2023 as part of the Federal Energy Regulatory Commission (FERC) relicensing process:

- Green Lake Hydroelectric Project – received May 19, 2023; WQC deadline May 18, 2024
- Rumford Falls Hydroelectric Project – received August 22, 2023; WQC deadline August 21, 2024

The Department anticipates receiving 16 new WQC applications associated with FERC relicensing in the next five years. In addition, the Department is aware of the proposed Western Passage tidal energy project, which has a FERC preliminary permit to study the feasibility of the proposed project.

II. Summary of FERC Relicensing Process

In Maine, there are 124 hydropower dams administered through 94 federal licenses or exemptions authorized by FERC. Per Section 401 of the federal Clean Water Act (33 U.S.C. § 1341), a federal license may not be issued for a hydropower project unless the state water quality certifying agency has either issued a WQC for the project or has waived certification. This process affords the states an opportunity to address the water resource impacts of federal permits and licenses. By Executive Order of the governor of the State of Maine, the Department is the State certifying agency for the federal licensing of hydropower projects in Maine. Section 401 provides up to one year for states to issue decisions on WQC applications.

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

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

III. Summary of Hydropower Projects Due for Relicensing in 2023-2028

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

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

The Department anticipates receiving 16 new WQC applications for FERC relicensing in the next five years. For these projects, the dates listed are the anticipated dates for receiving a WQC application:

- Ellsworth – 2024
- Shawmut – 2024
- Upper Barker – 2024
- Lowell Tannery – 2024
- West Enfield – 2024
- Hackett Mills – 2024
- Aziscohos – 2024

- Worumbo – 2024
- Lewiston Falls – 2024
- Penobscot Mills – 2024
- Ripogenus – 2024
- Eustis – 2025
- Brunswick – 2027
- Medway – 2027
- Cataract – 2027
- Lower Kezar Falls – 2028

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

APPENDIX A: Pending and Anticipated WQC Applications

Hydropower Licensing Actions Completed in 2023						
FERC License Expiration Date	FERC #	Project / Dam	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
August 31, 2063	4784	Pejepscot	June 9, 2021	June 8, 2022	2022	The Department issued the final approved WQC on June 8, 2022. The WQC was appealed by Friends of Merrymeeting Bay, Grow L+A, The Downeast Salmon Federation, The Maine Chapter of the Native Fish Coalition, and The Maine Council of Trout Unlimited on July 8, 2022. The Maine Board of Environmental Protection affirmed the WQC on April 6, 2023. FERC issued the new license on September 21, 2023.
Water Quality Certifications in Progress						
FERC License Expiration Date	FERC #	Project / Dam	WQC Application Filing Date	Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
March 31, 2024	7189	Green Lake	May 19, 2023	May 18, 2024	2025	The applicant filed a Final License Application in March 2022. Additional information requests from FERC were completed and the application accepted in March 2023. The WQC application was received on May 19, 2023, and the application was accepted for processing on June 12, 2023.
September 30, 2024	2333	Rumford Falls	August 22, 2023	August 21, 2024	2025	The applicant filed a Final License Application in September 2022. Additional information requests from FERC were completed and the application accepted in June 2023. The WQC application was received on August 22, 2023, and the application was accepted for processing on September 11, 2023.
Anticipated Hydropower Water Quality Certification Applications in the Next Five Years						
FERC License Expiration Date	FERC #	Project / Dam	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline

December 31, 2017	2727	Ellsworth*	2024	2025	2025	On March 20, 2019, Black Bear Hydro, LLC withdrew its WQC application and simultaneously submitted a new application. In its reapplication, the applicant modified its proposed operations to address impoundment habitat criteria and proposed to collect additional BMI data. A DEP decision was issued on March 19, 2020 denying certification. That decision was upheld on appeal by the BEP in its decision dated June 3, 2021. On July 6, 2021, Black Bear Hydro, LLC filed a Rule 80C appeal of the Board's decision and sought declaratory relief in the form of an order from the Court that Leonard Lake was Class GPA as a matter of law. The Board moved to dismiss Black Bear's claims and on November 22, 2022, the Superior Court granted that motion with respect to the independent claim for relief and denied the motion as to the Rule 80C portion of the petition. After additional briefing on the merits, on November 20, 2023, the Superior Court denied the applicant's appeal and affirmed the Board Order that Leonard Lake is a Class B waterbody. On December 6, 2023, Black Bear appealed the Superior Court's decision to the Maine Supreme Judicial Court. In the interim, the Project continues to operate via an annual FERC license.
January 31, 2022	2322	Shawmut	2024	2025	2025	The applicant filed a Final License Application in January 2020 and a WQC application in August 2020. The Department issued a draft decision (denying certification) on August 11, 2021. The applicant subsequently withdrew its WQC application and submitted a new WQC application to the Department on October 18, 2021. The new WQC application was accepted for processing on October 21, 2021. The Department issued the final WQC (denial without prejudice) on October 12, 2022. On November 14, 2022, the applicant filed a petition with the Superior Court for review of the Department's decision. The applicant has also brought a challenge in the D.C. Circuit to FERC's determination that the Department did not waive certification. Both matters are pending.
July 31, 2023	3562	Upper Barker*	March 2024	March 2025	2025	Water quality studies were carried out during the 2018 field season. A Draft License Application was filed in summer 2021 for agency comment. A Final License Application was filed in July 2021, but the Project was found not Ready for Environmental Analysis in August 2021. FERC granted the applicant's request for extension of time until December 31, 2023 to respond to FERC's additional information request. The Department anticipates a WQC application will be filed in early 2024. The Project continues to operate via an annual FERC license.
September 30, 2023	4202	Lowell Tannery*	March 2024	March 2025	2025	Water quality studies were carried out during the 2019 field season. Additional fish studies were requested by the federal fish resource agencies and a study dispute resolution was issued by FERC in 2021 calling for additional fish passage study. The Final License Application was filed in September 2021, but as of November 2022 the Applicant requested a delay for issuance of the Ready for Environmental Assessment notice. The applicant is currently in settlement discussions with U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maine Department of Marine Resources, and the Penobscot Nation. A WQC application is expected in Spring 2024.

May 31, 2024	2600	West Enfield	November 2024	November 2025	2026	The applicant filed a PAD and held a joint agency meeting in fall 2019. Water quality studies were conducted during field season 2020. A Final License Application was filed in May 2022 and FERC found the application deficient in June 2022. The applicant is in the process of conducting supplemental fish passage studies to submit an amendment to the Final License Application. The DEP anticipates a WQC application will be filed in Fall or Winter 2024.
August 31, 2024	6398	Hackett Mills	March 2024	March 2025	2025	The applicant filed a PAD and held a joint agency meeting in December 2019. Water quality studies were conducted during field season 2020. A Final License Application was filed in August 2022. The applicant responded to a request for additional information in May 2023. A WQC application is expected in Spring 2024.
March 31, 2025	4026	Aziscohos	February 2024	February 2025	2025	Water Quality Studies were conducted in 2021 and the initial study report was filed in February 2022. A Final License Application was filed in April 2023, but the Project was found not ready for environmental analysis later that month. The applicant filed a response to FERC's additional information request in November 2023. On December 19, 2023, the applicant requested that FERC delay issuance of its Ready for Environmental Assessment (REA) Notice.
November 30, 2025	3428	Worumbo	October 2024	October 2025	2025	Water quality studies occurred in summer 2022, and an Initial Study Report was filed in October 2022. An Updated Study Report was filed in October 2023. A Final License Application was filed in November 2023. The Department anticipates a WQC application in fall 2024.
August 31, 2026	2302	Lewiston Falls	August 2024	August 2025	2026	Applicant filed a PAD in August 2021 and held a joint agency meeting in November 2021. DEP filed study plan requests in January 2022; Water quality studies will be occurred in summer 2022. The Initial Study Report was filed in March 2023 and the Department anticipates a WQC application in fall 2024.
October 1, 2026	2458	Penobscot Mills	October 2024	October 2025	2026	Applicant filed a PAD in June 2021 and held a joint agency meeting in September 2021. DEP filed study plan requests in October 2021 and attended a study plan meeting in December 2021. Water quality studies occurred in summer 2022 and 2023. The Updated Study Report is due in 2024. The Department anticipates a WQC application in fall 2024.
October 1, 2026	2572	Ripogenous	October 2024	October 2025	2026	Applicant filed a PAD in June 2021 and held a joint agency meeting in September 2021. DEP filed study plan requests in October 2021 and attended a study plan meeting in December 2021. Water quality studies occurred in summer 2022 and 2023. The Updated Study Report is due in 2024. The Department anticipates a WQC application in fall 2024.

November 31, 2026	11132	Eustis	November 2025	November 2026	2027	Applicant filed a PAD in November 2021 and anticipate holding a joint agency meeting in winter 2022. The Department submitted comments to the PAD and study requests in May 2022.
February 28, 2029	2284	Brunswick	February 2027	February 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in early 2024. DEP will review the PAD and prepare study plan requests as appropriate.
March 31, 2029	2666	Medway	March 2027	March 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2024. DEP will review the PAD and prepare study plan requests as appropriate.
November 30, 2029	2528	Cataract	November 2027	November 2028	2029	Anticipate applicant will file a PAD and hold a joint agency meeting in 2024. DEP will review the PAD and prepare study plan requests as appropriate.
September 30, 2030	9340	Lower Kezar Falls	September 2028	September 2029	2030	Anticipate applicant will file a PAD and hold a joint agency meeting in 2025. DEP will review the PAD and prepare study plan requests as appropriate.
Other Water Quality Certification Projects						
FERC License Expiration Date	FERC #	Project / Dam				Comments
Preliminary Permit	14743	Western Passage				A preliminary permit for the project was granted by FERC in July 2016. The permit expired on July 1, 2019, and the applicant filed a new preliminary permit application with FERC on August 22, 2022.

* Currently operating under an annual license.

Abbreviations

FERC=Federal Energy Regulatory Commission

WQC=Water Quality Certification

DEP=Maine Department of Environmental Protection

PAD=Pre-Application Document

NMFS=National Marine Fisheries Service

NHDES>New Hampshire Department of Environmental Services

NOI=Notice of Intent to File (an application)

ILP=Integrated Licensing Process

PSP=Proposed Study Plan