

MAINE STATE LEGISLATURE

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AUGUSTA, MAINEOFFICE OF
THE GOVERNORNO. 8FY 85/86
DATE December 24, 1985DESIGNATING THE STATE AGENCIES
RESPONSIBLE FOR WATER QUALITY CERTIFICATION

WHEREAS, Section 401 of the federal Clean Water Act provides that applicants for federal licenses and permits to conduct any activities that "may result in any discharge into the navigable waters shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate that any such discharge will comply with the applicable provisions" of the Clean Water Act; and

WHEREAS, the construction of hydropower facilities is an activity that may result in discharges to navigable waters and requires a license or exemption from the Federal Energy Regulatory Commission; and

WHEREAS, the Legislature, through the 1983 Maine Waterway Development and Conservation Act (38 MRSA §§630-636), has declared that "hydropower justifies singular treatment"; and that "it is the policy of the State to support and encourage the development of hydropower projects by simplifying and clarifying requirements for permits, while assuring reasonable protection of natural resources and the public interest in use of the waters of the State"; and

WHEREAS, the Maine Waterway Development and Conservation Act consolidated State permitting authority for hydropower development into a single hydropower project permit to be issued by either the Board of Environmental Protection or the Land Use Regulation Commission; and

WHEREAS, the Governor of the State is authorized to designate the agency within the State that will certify compliance with applicable water quality standards developed by the State pursuant to the federal Clean Water Act, which agency is termed the "certifying agency"; and

WHEREAS, the Maine Department of Environmental Protection has been designated as the "certifying agency" for all projects and activities in the State needing federal permits or licenses for which certification is required pursuant to Section 401 of the Federal Clean Water Act, including projects for which the Land Use Regulation Commission issues a hydropower permit pursuant to the Maine Waterway Development and Conservation Act;

NOW, THEREFORE, I, JOSEPH E. BRENNAN, Governor of the State of Maine do hereby designate the Maine Land Use Regulation Commission the "certifying agency" for issuance of Section 401 water quality certification for hydropower projects for which it has permitting authority pursuant to the Maine Waterway Development and Conservation Act, 38 MRSA §§630-636; and

FURTHER, I do hereby re-designate the Maine Board of Environmental Protection the "certifying agency" for issuance of Section 401 water quality certification for hydropower projects for which it has permitting authority pursuant to the Maine Waterway Development and Conservation Act, 38 MRSA §§630-636 and for all other projects or activities of whatever kind within the State needing federal permits for which such certification is required.

FURTHER, I direct that the Maine Department of Environmental Protection shall provide staff analyses and assistance needed in all State water quality certification proceedings before the Land Use Regulation Commission and the Board of Environmental Protection.

This order shall be effective January 15, 1986. This order shall not apply to any project for which either a request for certification under Section 401 or an application for a State hydropower permit under the Maine Waterway Development and Conservation Act has been deemed acceptable for processing before January 15, 1986.



JOSEPH E. BRENNAN
Governor