MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

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H.P. 840 House of Representatives, March 4, 2003

An Act Regarding Riverine Impoundments

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative PINEAU of Jay.
Cosponsored by Senator WOODCOCK of Franklin and
Representatives: CARR of Lincoln, CLARK of Millinocket, JENNINGS of Leeds, PATRICK of Rumford, SAVIELLO of Wilton, Senators: BLAIS of Kennebec, DAVIS of Piscataquis, STANLEY of Penobscot.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §464, sub-§4, ¶J is enacted to read:

J. Licensed discharges existing on or after the effective date of this paragraph that do not increase the phosphorus concentration in the receiving water body more than one part per billion are considered de minimis and any such discharges are not considered to be causing or contributing to any water quality impairment or to a failure of the receiving water body to meet the standards of classification. If a water quality-based effluent limitation for phosphorus is necessary, the department shall allow, at a minimum, a monthly average mass loading in pounds per day of total phosphorus equal to a one part per billion increase in the receiving water body. The monthly average mass loading must be calculated using a phosphorus concentration of one part per billion at the 7-day low flow that can be expected to occur with a frequency of once in 10 years at the point of discharge.

Sec. 2. 38 MRSA §465-D is enacted to read:

§465-D. Standards for classification of riverine impoundments

The department shall have one standard for the classification of riverine impoundments that thermally stratify. Impoundments of rivers that are defined as great ponds pursuant to section 480-B and are classified as GPA under section 467 remain subject to the standards in section 465-A.

1. Class RI waters. Class RI is the sole classification of riverine impoundments that thermally stratify.

A. Class RI waters are of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation except as prohibited under Title 12, section 403; and navigation; and as habitat for fish and other aquatic life.

B. Discharges to Class RI waters may cause some changes to aquatic life, as long as the receiving waters are of sufficient quality to support all applicable life stages of species of fish that are indigenous to the receiving waters and maintain the structure and function of the resident biological community. In determining whether water is of sufficient quality to support indigenous fish, water quality must support fish populations in those seasons, and in those

specific habitats within the impoundment, needed for passage, spawning, egg incubation and survival of early life stages. In determining whether water quality is sufficient to support other aquatic life, the department shall consider the effects of thermal stratification to be a natural condition and those waters may not be considered to be failing their classification.

C. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters may not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters.

Sec. 3. 38 MRSA §466, sub-§8, as enacted by PL 1985, c. 698, §15, is repealed and the following enacted in its place;

8. Indigenous. "Indigenous" means historically or currently present naturally in the State's waters without having been brought directly or indirectly to the State's waters.

Sec. 4. 38 MRSA §466, sub-§10-A is enacted to read:

10-A. Thermal stratification. "Thermal stratification" means a change in temperature of at least one degree Celsius per meter of depth, causing waters below this temperature gradient to remain isolated and not to mix with waters above the temperature gradient.

Sec. 5. 38 MRSA §467, sub-§1, ¶A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §68, is further amended to read:

A. Androscoggin River, main stem, including all impoundments.

(1) From the Maine-New Hampshire boundary to its confluence with the Ellis River - Class B.

(2) From its confluence with the Ellis River to ~~a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction~~ Turner Bridge in Turner - Class C.

(3) From the Turner Bridge in Turner to Gulf Island Pond Dam - Class RI.

(4) From Gulf Island Pond Dam to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction - Class C.

Sec. 6. 38 MRSA §467, sub-§4, ¶H, as repealed and replaced by PL 1989, c. 228, §2, is amended to read:

H. Sebasticook River Drainage.

(1) Sebasticook River, main stem, including all impoundments.

(a) From the confluence of the East Branch and the West Branch to its confluence with ~~the Kennebec River~~ Burnham Pond - Class C.

(b) From its confluence with Burnham Pond to the Burnham Pond Dam - Class RI.

(c) From the Burnham Pond Dam to its confluence with the Fort Halifax impoundment - Class C.

(d) From its confluence with the Fort Halifax impoundment to the Fort Halifax Dam - Class RI.

(e) From the Fort Halifax Dam to its confluence with the Kennebec River - Class C.

(2) Sebasticook River, tributaries - Class B unless otherwise specified.

(a) Sebasticook River, East Branch main stem, from the outlet of Lake Wassookeag to its confluence with Corundel Lake - Class B.

(b) Sebasticook River, East Branch main stem, from the outlet of Corundel Lake to its confluence with the West Branch - Class C.

(c) Sebasticook River, West Branch main stem, from the outlet of Great Moose Lake to its confluence with the East Branch, including all impoundments - Class C.

Sec. 7. 38 MRSA §467, sub-§7, ¶C, as amended by PL 1999, c. 277, §10, is further amended to read:

C. Penobscot River, West Branch Drainage.

(1) West Branch of the Penobscot River, main stem.

(a) From the dam at the outlet of Seboomook Lake to a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake - Class B.

(b) From a point located 1,000 feet downstream from the dam at the outlet of Seboomook Lake to its confluence with Chesuncook Lake - Class A.

(b-1) From its confluence with Chesuncook Lake to Ripogenus Dam - Class GPA as modified by section 464, subsection 9.

(c) From Ripogenus Dam through Ripogenus Gorge to the McKay powerhouse - Class B.

(d) From the McKay powerhouse to its confluence with Ambajejus Lake - Class A.

(e) From the outlet of Elbow Lake to the outlet of Ferguson and Quakish Lakes - Class B.

(f) From the outlet of Ferguson and Quakish Lakes to its confluence with ~~the East Branch of the Penobscot River, including all impoundments~~ Dolby Pond - Class C.

(g) From its confluence with Dolby Pond to the Dolby Pond Dam - Class RI.

(h) From Dolby Pond Dam to its confluence with the East Branch of the Penobscot River, including all impoundments - Class C.

(2) West Branch of the Penobscot River, tributaries - Class A unless otherwise specified.

(a) Those segments of any tributary that are within the boundaries of Baxter State Park - Class AA.

(b) Those tributaries above the confluence with the Debsconeag Deadwater, any portion of which is located within the boundaries of Baxter State Park - Class AA.

(c) Millinocket Stream, from the railroad bridge near the Millinocket-T.3 Indian Purchase boundary to its confluence with the West Branch Canal - Class B.

(d) Millinocket Stream from the confluence of the West Branch Canal to its confluence with the West Branch of the Penobscot River - Class C.

SUMMARY

This bill creates a new classification for riverine impoundments that thermally stratify during some portion of the year. Currently, these waters are classified as Class C water bodies, and are limited to 4 impoundments: Gulf Island Pond, Dolby Pond, Burnham Pond and the Fort Halifax impoundment. The bill does not apply to impoundments classified as GPA.

Historically, impoundments were classified as either Class C or Class GPA depending upon the presence of upstream point sources. Impoundments downstream from point sources were classified as riverine waters, for example, Class C, because discharges were prohibited to GPA waters.

A riverine designation, however, does not accurately reflect the physical characteristics of some of these impoundments. Unlike free-flowing rivers, some riverine impoundments exhibit important lake-like characteristics, such as thermal stratification. The RI Class provides appropriate criteria reflective of these physical characteristics while, at the same time, ensuring maintenance of existing water quality.

For purposes of determining whether water quality is sufficient to support habitat for fish and aquatic life, water quality is to be measured when existing fish populations are present and at locations in the water body necessary to support all life stages of existing fish populations. In determining whether the water is of a quality to support other aquatic life, effects associated with thermal stratification, including inhibited mixing, are considered natural conditions.

This bill establishes a de minimis level for total phosphorus discharges. The de minimis level is based on the minimum detectable total phosphorus concentration using low detection limit analyses and clean sampling techniques.

This bill repeals and replaces the existing definition of "indigenous" by specifying that introduced species are not indigenous to waters of the State. A new definition of thermal stratification has been added.