L.D. 1298

Date: 1/29/18 (Filing No. H-574)

ENVIRONMENT AND NATURAL RESOURCES

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STATE OF MAINE

HOUSE OF REPRESENTATIVES

128TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 895, L.D. 1298, Bill, "An Act To Update Maine's Water Quality Standards"

Amend the bill by striking out all of sections 4 to 10 and inserting the following:

'**Sec. 4. 38 MRSA §465, sub-§1, ¶B,** as enacted by PL 1985, c. 698, §15, is amended to read:

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters ~~shall~~ must be as naturally occurs, except that the number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 5. 38 MRSA §465, sub-§2, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The dissolved oxygen content of Class A waters ~~shall be~~ may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. The aquatic life and bacteria content of Class A waters ~~shall~~ must be as naturally occurs, except that the numbers of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 6. 38 MRSA §465, sub-§3, ¶B, as amended by PL 2005, c. 409, §1, is further amended to read:

B. The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of

indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the ~~1-day~~ one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between ~~May~~ April 15th and ~~September 30th~~ October 31st, the number of Escherichia coli bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or ~~an instantaneous level of~~ 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.~~

Sec. 7. 38 MRSA §465, sub-§3, ¶C, as amended by PL 2007, c. 291, §4, is further amended to read:

C. 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.

~~(1) This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.~~

(1-A) For the purpose of allowing the discharge of aquatic pesticides or chemicals approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency to restore resident biological communities affected by an invasive species, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used do not cause a significant loss of any nontarget species and allow restoration of nontarget species. The department may find that an unavoidable, temporary loss of nontarget species does not constitute a significant loss of nontarget species.

(2) For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Sec. 8. 38 MRSA §465, sub-§4, ¶B, as repealed and replaced by PL 2005, c. 409, §2, is amended to read:

B. The dissolved oxygen content of Class C water may ~~be~~ not be less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must

be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water.

This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.

Between ~~May~~ April 15th and ~~September 30th~~ October 31st, the number of Escherichia coli bacteria ~~of human and domestic animal origin~~ in Class C waters may not exceed a geometric mean of ~~126~~ 100 CFU per 100 milliliters over a 90-day interval or ~~an instantaneous level of~~ 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.~~ The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

Sec. 9. 38 MRSA §465, sub-§4, ¶C, as amended by PL 2005, c. 182, §5, is further amended to read:

C. Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. ~~This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.~~ For the purpose of allowing the discharge of aquatic pesticides or chemicals approved by the

department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency to restore biological communities affected by an invasive species, the department may find that the discharged effluent will not cause unacceptable changes to aquatic life as long as the materials and methods used will ensure the support of all species of indigenous fish and the structure and function of the resident biological community and will allow restoration of nontarget species.

Sec. 10. 38 MRSA §465-A, sub-§1, ¶B, as amended by PL 2017, c. 137, Pt. B, §2, is further amended to read:

B. Class GPA waters must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters must have a stable or decreasing trophic state, subject only to natural fluctuations, and must be free of culturally induced algal blooms that impair their use and enjoyment. The number of Escherichia coli bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 29 CFU per 100 milliliters over a 90-day interval or ~~an instantaneous level of~~ 194 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 11. 38 MRSA §465-B, sub-§1, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters ~~shall~~ must be as naturally occurs, except that the number of enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU per 100 milliliters in any 90-day interval or 54 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

Sec. 12. 38 MRSA §465-B, sub-§2, ¶B, as amended by PL 2005, c. 409, §3, is further amended to read:

B. The dissolved oxygen content of Class SB waters ~~must be~~ may not be less than 85% of saturation. Between ~~May~~ April 15th and ~~September 30th~~ October 31st, the ~~numbers~~ number of enterococcus bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 8 CFU per 100 milliliters in any 90-day interval or ~~an instantaneous level of~~ 54 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.~~ The ~~numbers~~ number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

Sec. 13. 38 MRSA §465-B, sub-§3, ¶B, as amended by PL 2005, c. 409, §4, is further amended to read:

B. The dissolved oxygen content of Class SC waters ~~must be~~ may not be less than 70% of saturation. Between ~~May~~ April 15th and ~~September 30th~~ October 31st, the ~~numbers~~ number of enterococcus bacteria ~~of human and domestic animal origin~~ in these waters may not exceed a geometric mean of 14 CFU per 100 milliliters in any 90-day interval or ~~an instantaneous level of~~ 94 CFU per 100 milliliters in more than

10% of the samples in any 90-day interval. ~~In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.~~ The ~~numbers~~ number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.'

SUMMARY

This amendment amends the provisions of the bill that update Maine's water quality standards by aligning state law with federal Clean Water Act requirements for pesticide application to control invasive plants and mosquito-borne disease and adds provisions to align state law with such requirements for dissolved oxygen. The amendment further updates Maine's water quality standards to be consistent with guidance issued by the United States Environmental Protection Agency regarding recreational water quality criteria for bacteria. The amendment retains the provision of the bill that authorizes the Department of Environmental Protection to use an alternative low-flow requirement when assessing the impact of nutrients on water quality, contingent upon the department's adopting nutrient rules.

FISCAL NOTE REQUIRED

(See attached)

Approved: 01/23/18 mac

128th MAINE LEGISLATURE

LD 1298 **LR 738(02)**

An Act To Update Maine's Water Quality Standards

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-574)
Committee: Environment and Natural Resources
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

This bill will update Maine's water quality standards by aligning state law with federal Clean Water Act requirements for water quality standards. Any additional costs to the Department of Environmental Protection to conduct rulemaking and implement the changes are anticipated to be minor and can be absorbed within existing budgeted resources.