

that Broadwing met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty (\$137,500) and proposed a settlement penalty amount of eight thousand, one hundred and eight (\$8,108). This is the amount of the economic benefit gained by Broadwing, attributable to their delayed compliance with the SPCC regulations. Broadwing Communications Services Inc. has agreed to pay this amount in civil penalties. EPA and Broadwing negotiated and signed an administrative consent agreement, following the Consolidated Rules of Procedure, 40 CFR section 22.13, on January 30, 2001 (*In Re: Broadwing Communications Services Inc.*, Docket No. MM-HQ-2001-0015). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. section 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311 (b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311 (j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is March 30, 2001. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

## List of Subjects

Environmental protection.

Dated: February 5, 2001.

**David A. Nielsen,**

*Director, Multimedia Enforcement Division,  
Office of Enforcement and Compliance  
Assurance.*

[FR Doc. 01-4878 Filed 2-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6938-3]

### State Program Requirements; Approval of Application by Maine To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Final approval of the Maine Pollutant Discharge Elimination System under CWA.

**SUMMARY:** On January 12, 2001, the Regional Administrator for the Environmental Protection Agency, Region I, approved the application by the State of Maine to administer and enforce the Maine Pollutant Discharge Elimination System (MEPDES) Program, for all areas within the State, other than Indian country regarding which EPA has not yet made a final decision about the applicability of State law. The authority to approve State programs is provided to EPA in section 402(b) of the Clean Water Act (CWA). The State will administer the approved program through its Department of Environmental Protection (DEP), subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge Elimination System (NPDES) program previously administered by the EPA in Maine. The program is a partial program to the extent described in the section of this Notice entitled "Scope of the MEPDES Program." In making its decision, the EPA considered and addressed all comments and issues raised during the public comment period, except for those relating to jurisdiction over Indian country which remain under review as described below.

**DATES:** Pursuant to 40 CFR 123.61(c), the MEPDES program was approved and became effective on January 12, 2001.

**ADDRESSES:** Questions or requests for additional information may be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114-2023 or Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 04333-0017.

Copies of documents Maine has submitted in support of its program approval and copies of the comments received on this request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1 Congress Street—Suite 1100,

Boston, MA 02114-2023, 617-918-1990 or 1-888-372-5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

### FOR FURTHER INFORMATION CONTACT:

Stephen Silva at the address listed above or by calling (617) 918-1561 or Dennis Merrill at the address listed above or by calling (207) 287-7788. Part of the State's program submission and supporting documentation is available electronically at the following Internet address: <http://www.state.me.us/dep/blwq/delegation/delegation.htm>.

**SUPPLEMENTARY INFORMATION:** Maine's application was described in the **Federal Register** (64 FR 73552) on December 30, 1999 in which EPA requested comments. Notices of Maine's application were published in the Bangor Daily News, Lewiston Sun Journal and Portland Press Herald newspapers on January 12, 2000. A public hearing on the application was held on February 16, 2000 in Augusta, ME. EPA extended the comment period on June 28, 2000 (65 FR 3989) and August 4, 2000 (65 FR 6845) through August 21, 2000, solely for the purpose of taking further comment on the Indian law issues.

In response to public comments, Maine submitted a revised Memorandum of Agreement on April 25, 2000 and a Supplemental Attorney General's Statement on June 2, 2000. In addition, by letter dated September 19, 2000, the EPA proposed revisions to Attachment A to the Memorandum of Agreement. By letter from DEP Commissioner Martha Kirkpatrick dated September 26, 2000, the State agreed to the revisions.

A summary of those public comments received which relate to the final action EPA has taken on the portion of Maine's program outside Indian country and the EPA's responses to those comments are discussed below in the section of this Notice entitled "Responsiveness Summary." (In this notice the term Indian country refers to the land and territory reserved or taken into trust for the federally recognized Maine Indian tribes pursuant to the Maine Indian Claims Settlement Act, 25 U.S.C. 1721 *et seq.*, and the Aroostook Bank of Micmacs Settlement Act, Public Law 102-171, Nov. 26, 1991, 105 Stat. 1143, including any disputed areas as discussed further in this document.)

The State and EPA agreed to extend the CWA section 402(c)(1) deadline for EPA to make a decision on the application through September 26, 2000, pursuant to 40 CFR 123.21(d). However, because of the many complex issues that were raised with respect to the State's program and the need to

address them in a comprehensive and thoughtful manner, the EPA did not make a final decision by September 26, 2000. Thus the EPA suspended issuance of NPDES permits in Maine on September 26, 2000 as required by section 402(c)(1) of the CWA. However, failure to make a decision by the September 26, 2000 deadline did not mean that the State automatically gained NPDES authority. It is EPA's interpretation that a State agency does not gain NPDES authority unless and until EPA approves the State program, consistent with CWA section 402(b) and 40 CFR 123.1. As of January 12, 2001, the State DEP is now authorized to issue MEPDES permits under the CWA in all areas of the State except for Indian country. As discussed below, EPA remains the permitting authority for the NPDES program in Indian country during the interim period, but must suspend issuing such permits pursuant to CWA section 402(c)(1).

#### A. Scope of the MEPDES Program

Maine is being approved to administer both the NPDES permit program covering point source dischargers to State waters and the pretreatment program covering industrial sources discharging to publicly owned treatment works. The EPA and State initially had contemplated that the State would assume program responsibility in phases, first for the permit program and subsequently for the pretreatment program. But in light of the delay in approving the State's program and since it always was contemplated that the State would assume responsibility for the pretreatment program by now, both components of the State's program are being approved now, to start at the same time.

Maine is not being approved at this time to regulate cooling water intake structures under CWA section 316(b). In response to a public comment, the EPA has determined that the State currently lacks the necessary statutory authority to administer this NPDES program element. Thus the State is being approved to operate a partial permit program, pursuant to CWA section 402(n)(4). At first, the State program will cover all NPDES permitting responsibilities other than under CWA section 316(b). Sources with cooling water intake structures subject to CWA section 316(b) will need to obtain permits from the State regulating their discharges (including thermal discharges regulated under CWA section 316(a)), but also will need to obtain supplemental permits from the EPA regulating their cooling water intake

structures pursuant to CWA section 316(b). The State has committed to promptly seeking legislation to obtain the needed additional statutory authority. When such statutory authority is obtained, the EPA will determine after a further opportunity for public comment whether to approve the State to operate the CWA section 316(b) program element.

The State is not applying for authorization for the municipal sewage sludge program at this time. EPA will continue to regulate sewage sludge in Maine in accordance with section 405 of the Act and 40 CFR part 503.

Pursuant to CWA section 402(d), EPA retains the right to object to MEPDES permits proposed by MEDEP, and if the objections are not resolved, to issue the permits itself. EPA also will retain jurisdiction over all NPDES permits it has issued in Maine until MEDEP reissues them as MEPDES permits. Finally, the EPA and State have agreed that the EPA may retain permitting authority over draft permits for which EPA has issued public notice at the time of program approval, until final issuance. A list of these permits that the EPA may issue following the approval of the State program is set forth in Attachment A to the EPA-State Memorandum of Agreement, as amended.

To address questions from the regulated community, EPA also has prepared a guidance document entitled "Status of EPA Issued NPDES Permits After Maine Program Approval." Copies of this document are available upon request.

As part of operating the approved program, the Maine DEP generally will have the lead responsibility for enforcement. However, the EPA will retain its full statutory enforcement authorities under CWA sections 308, 309, 402(i) and 504. Thus the EPA may continue to bring federal enforcement action under the CWA in response to any violation of the CWA. In particular, if the EPA determines that the State has not taken timely enforcement action against a violator and/or that its action has not been appropriate, the EPA may take its own enforcement action in Maine.

#### B. Responsiveness Summary

The EPA received numerous public comments concerning the Maine program. However, EPA is not addressing the many comments concerning the State's assertion of jurisdiction and the applicability of State law in Indian country, because the Agency is taking no final action on these issues at this time, as described below.

Other commenters urged the EPA to approve the State's program. The EPA agrees that the State program should be approved at this time outside Indian country.

Several commenters who expressed concerns about possible State administration of the program in Indian country also indicated some concern about State administration of the program outside those areas. These comments are addressed in a memorandum from Stephen Silva, Director of EPA's Maine Program, entitled "Responses to Comments on Maine General Program," dated January 12, 2001.

Finally, the National Environmental Law Center of the United States Public Interest Group ("NELC") submitted extensive comments urging that the EPA reject Maine's program application on a variety of grounds. These comments are addressed in the following memoranda from Jeffry Fowley of the EPA Office of Regional Counsel: (i) "Response to Comments Opposing Approval of Maine to Administer the NPDES Program," dated April 2000, (ii) "Further Response to Comments Opposing Approval of Maine to Administer the NPDES Program," dated May 9, 2000, and (iii) "Further Response to Comments Opposing Approval of Maine to Administer the NPDES Program," dated January 12, 2001.

The EPA Regional Administrator hereby concurs with and adopts the responses to comments set forth in the four memoranda referenced above. These memoranda, together with this **Federal Register** Notice, constitute EPA's Responsiveness Summary. Copies of the memoranda are available upon request.

#### C. Status of Indian Country

EPA is not taking final action at this time on Maine's application to administer its program in Indian country. Maine has argued that the Maine Indian Claims Settlement Act, 25 U.S.C. 1721-1735 (MICSA), makes State law applicable and grants the State jurisdiction to implement its program in Indian country. EPA invited comment on this question, and received strongly conflicting views from the Maine Indian tribes, the State, and interested parties on both sides of the issue. On May 16, 2000 EPA received an opinion from the Department of Interior (DOI) interpreting how MICSA applies to the question of the State's jurisdiction over water quality regulation in Indian lands and territories. EPA made DOI's opinion available for public review, and invited further comment on the question of State jurisdiction in Indian lands and

territories, as well as comment on the geographic scope of those areas. *See* 65 FR 3989 (June 28, 2000) and 65 FR 6845 (August 4, 2000). In response to this invitation, EPA received even more extensive comments on both sides of the question of the State's jurisdiction.

In addition, the parties contested the geographic scope of Indian country in Maine. While there appears to be several disputes about the boundaries of Indian country, it appears that the only dispute which implicates existing NPDES permitted dischargers is the question of the scope of the Penobscot Nation's reservation on the Penobscot River. DOI has concluded that the Penobscot Nation's reservation includes the bed and banks of the Penobscot River. Letter from Edward B. Cohen to John P. DeVillars, September 2, 1997 at 6. The Penobscot Nation asserts that its reservation includes the Penobscot River and its branches from Indian Island northward to the headwaters of the river and its tributaries, including the east and west branches, the Mattawamkeag, and the Piscataquis River. *See* Supplemental Public Comments of the Penobscot Nation, August 21, 2000 at 30. The State of Maine argues that the reservation does not include the Penobscot River bank to bank, and is limited to the area from Indian Island northward to the fork where the east and west branches divide, the so-called "Main Stem" of the Penobscot River. Letter from Paul Stern to Stephen Silva, August 18, 2000 at 1-2.

In light of the difficulty of determining jurisdiction in Indian country in Maine, EPA is further considering the question of the State's jurisdiction in Indian lands and territories. EPA will consult with the U.S. Department of Justice in addition to continuing to consult with DOI regarding the interpretation of MICSA. EPA is working to resolve this question promptly. If EPA's conclusion concerning the jurisdictional question makes it necessary to define the geographic boundaries of Indian country, EPA will work with DOI to clarify which areas are within Indian country in Maine and, thus, which dischargers are covered by the State's program. But until EPA takes final action on these issues, as an interim step, EPA is not authorizing the State's program in Indian country, including disputed areas.

EPA has not reached any final conclusion concerning the boundaries of Indian country, but for the purposes of clarifying which facilities are covered by the State program EPA has approved, EPA has listed in Appendix 1 of this

notice the facilities that are not included in the program EPA has authorized due to the dispute over the applicability of State law in Indian country. This list includes all the currently permitted NPDES facilities that appear to discharge into waters where EPA has received substantial arguments disputing the status of those waters. Generally speaking, EPA is temporarily withholding trust lands for all the Maine tribes, the reservations for the Passamaquoddy Tribe at Pleasant Point and Indian Township and for the Penobscot Nation, and any disputed areas. We are withholding the Penobscot River extending from bank to bank of the river, starting at Indian Island and proceeding northward to the headwaters, including all tributaries. EPA has taken this approach to preserve the status quo in Indian country until the Agency takes final action on these issues. In addition, we are temporarily withholding the land owned by the Aroostook Band of Micmac Indians which the Band has applied to DOI to place into trust. Temporarily withholding this land will avoid the disruption of removing this land from the State's program if EPA ultimately determines that state environmental law will not apply to the Micmac's land once it is taken into trust. Moreover, temporarily withholding the Micmac's lands does not affect Maine's program substantially, because EPA is not aware of any dischargers in Micmac lands. This cautionary approach to withholding action temporarily while resolving jurisdictional disputes in Indian country is consistent with the federal government's trust responsibility to protect Indian interests in land and jurisdiction. *See HRI, Inc. v. E.P.A.*, 298 F.3d 1224, 1245 (10th Cir. 2000), amended on denial of rehearing (March 30, 2000). Similarly, any new facilities in Indian country that require an NPDES permit while EPA is considering the question of Maine's jurisdiction in Indian country are not included in the program EPA has authorized.

The State of Maine has not agreed to extend EPA's deadline for acting on the State's program application in Indian country in Maine. Therefore, pursuant to CWA section 402(c)(1), EPA will continue to suspend issuing or modifying NPDES permits in these areas. This suspension will remain in effect until the Agency takes final action in these areas or the State agrees to extend the Agency's deadline for action.

## D. Other Federal Statutes

### Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 33 U.S.C. 1536(a)(2), requires that federal agencies insure, in consultation with the United States Fish & Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS), that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed threatened or endangered species (listed species) or result in the destruction or adverse modification of critical habitat. Additionally, section 7(a)(4) of the ESA, 33 U.S.C. 1536(a)(4), requires federal agencies to confer with FWS and/or NMFS on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed as threatened or endangered (proposed species) or result in the destruction or adverse modification of proposed critical habitat.

EPA consulted with both FWS and NMFS (the Services) under section 7(a)(2) of the ESA regarding the effects of the MEPDES program approval on listed species. Additionally, EPA engaged in a conference with the Services pursuant to section 7(a)(4) of the ESA regarding the effects of the action on the Gulf of Maine distinct population segment of Atlantic salmon (*salmo salar*), which had been a proposed species. Following the Services' final listing of the wild Atlantic salmon, EPA and the Services converted that conference into a consultation under section 7(a)(2) of the ESA. EPA addressed issues raised during the conference and consultation by establishing coordination procedures between EPA and the Services and by providing assurances to the Services that endangered species, and in particular the recently listed wild Atlantic salmon, will be protected. After careful consideration, the Services concluded in a biological opinion that approving the MEPDES program is not likely to jeopardize the continued existence of the wild Atlantic salmon. Further, the Services concluded that approval of the MEPDES program is not likely to adversely affect any other listed species or critical habitat. The Services' conclusion is based in part on assurances provided by EPA to the Services as described below that EPA will coordinate its review of MEPDES permits with the Services and use its CWA oversight authority to assure that water quality standards are met.

First, EPA intends to follow the procedures described in the draft Memorandum of Agreement Between

the Environmental Protection Agency—New England, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act, the Endangered Species Act, and the Magnuson-Stevens Fishery Conservation and Management Act for NPDES Permits Issued by the State of Maine (April 19, 2000) (“Draft EPA—New England—Services MOA”), or any subsequently negotiated MOA for all species. In addition, the Services sought specific coordination procedures and further assurances from EPA-Region 1 with regard to the recently listed wild Atlantic salmon. On December 4, 2000, the EPA Regional Administrator sent a letter to the Regional Administrator of the National Marine Fisheries Service and the Acting Regional Director of the U.S. Fish and Wildlife Service specifying the oversight measures that the EPA intends to implement with respect to MEPDES permits to be issued to salmon fish farms and hatcheries by Maine. This letter affirmed EPA’s commitment, based on EPA’s analysis of current information including that contained in the Services’ listing documents, to utilize its CWA authorities to ensure compliance with Maine water quality standards by ensuring that conditions to protect the wild Atlantic salmon are included in MEPDES permits for salmon fish farms and hatcheries. Specifically, EPA committed, in accordance with 40 CFR 123.44(c) and section 402(d) of the CWA, that it will object to any permit proposed by MEDEP authorizing activities that would adversely affect the wild Atlantic salmon where such adverse effects would cause or contribute to a failure of a water body to meet State water quality standards, unless such adverse effects are avoided by incorporating permit conditions that would protect the wild Atlantic salmon. In the event EPA objects to a proposed permit, and where that objection is not resolved such that effects on the wild Atlantic salmon resulting in a failure to meet water quality standards are avoided, EPA will assume permitting authority for the subject facility. Any permit issued by EPA will, following consultation under section 7 of the ESA, include conditions necessary to protect the Wild Salmon. The EPA’s December 4, 2000 letter to the Services is included in the record.

In addition, with respect to bald eagles, the FWS sought assurances that any permits issued by Maine would require the monitoring plan included in the Services’ August 18, 2000 biological opinion on the EPA’s proposed

reissuance of NPDES permits for six kraft pulp and paper mills in Maine. The monitoring plan is designed to analyze bird samples downstream of the mills for pollutants which either have historically or may still be discharged by the mills in quantities likely too low to be detected by direct effluent sampling. In a letter dated May 2, 2000, EPA provided the requested assurance and will require, consistent with its CWA oversight authority, that Maine include the plan within permits it issues to the mills. This letter, and the biological opinion, are included in the record.

On January 12, 2001, the Services issued a biological opinion concluding that in light of the EPA’s oversight commitments, the approval of the Maine State NPDES program is not likely to jeopardize the continued existence of the endangered wild Atlantic salmon. No critical habitat has been designated for this species; therefore none will be affected. Further, the Services concluded that approval of the Maine NPDES program is not likely to adversely affect any other listed species or critical habitat. Issuance of the biological opinion with these findings concludes the consultation process required by ESA section 7(a)(2) and reflects the Services’ agreement with EPA that the approval of the State program meets the substantive requirements of that provision.

#### *The Magnuson-Stevens Fishery Conservation and Management Act*

Section 305(b)(3) of the Magnuson-Stevens Fishery Conservation and Management Act requires all Federal agencies to consult with NMFS on actions undertaken by the Agency that may affect Essential Fish Habitat (EFH). EPA consulted with NMFS regarding EFH in reviewing the MEPDES program approval request, and responded to NMFS recommendations for avoiding, mitigating, or offsetting any impact from EPA’s action in a letter dated March 28, 2000. This letter is included as part of the record. As noted in that letter, as part of EPA’s response to NMFS recommendations EPA agreed to follow the procedures described in the Draft EPA—New England—Services MOA or any subsequently negotiated MOA to specifically take into account EFH when coordinating its MEPDES permit review with NMFS.

#### *National Historic Preservation Act*

Section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the

Advisory Council on Historic Preservation (AChP) an opportunity to comment on such undertakings. Under the AChP’s regulations (36 CFR part 800), the Agency consults with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places. During EPA’s review of the Maine NPDES application, EPA engaged in discussions with the Maine SHPO and sought public comment regarding EPA’s determination that approval of the State permitting program would have no effect on historic properties. As noted below, the EPA also has held discussions with Indian Tribes in Maine regarding any potential effects of MEPDES program approval on historic properties of interest to Tribes.

On July 7, 1999, EPA sought the Maine SHPO’s concurrence with its determination that EPA’s approval of Maine’s application would have No Effect on historic properties in Maine. The Maine SHPO provided EPA with a determination that there would be “No Historic Properties Affected” or “No Adverse Effect” to historic properties in Maine from EPA’s approval, on the condition that MEDEP provides relevant notice and information regarding draft permits to the SHPO and coordinates with the SHPO. On November 26, 2000 the SHPO and MEDEP entered into a Memorandum of Understanding (MOU) assuring the SHPO that it would receive the requested notices. This MOU further provides for coordination between MEDEP and the SHPO to resolve any identified issues to ensure that MEPDES permits will comply with Maine water quality standards and Maine laws protecting historic properties. For those permits with the potential to adversely affect historic properties, MEDEP and the SHPO agreed to seek ways to avoid, minimize or mitigate any adverse effects to historic properties stemming from the proposed permit. Thus, EPA believes that the agreement between MEDEP and the SHPO satisfies the conditions underlying the SHPO’s determination of “No Historic Properties Affected” or “No Adverse Effect” as a result of EPA’s approval of Maine’s application.

In addition, EPA has engaged in extensive discussions with the Maine Tribes regarding any potential effects on Tribal historic properties. In light of certain complex jurisdictional issues still being evaluated by EPA, today’s program approval does not include Indian country within the State of Maine. EPA intends to continue

discussions with the Maine Tribes regarding any issues related to historic properties of interest to the Tribes prior to reaching a final decision on Maine's application within Indian country.

#### *Coastal Zone Management Act*

Pursuant to section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource within the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the State agency responsible for implementation of the Plan for review. Maine's approved Coastal Zone Management Plan is administered by the Maine Office of State Planning. Maine's permit actions are themselves subject to consistency review under State law; thus approval of the MEPDES program would not affect Maine's coastal zone and would be consistent with the enforceable requirements of Maine's Coastal Zone Management Plan.

#### *Regulatory Flexibility Act*

Based on General Counsel Opinion 78-7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an "approval," within the meaning of the APA, constitutes a "license," which, in turn, is the product of an "adjudication." For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed MEPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an

NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional

Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

#### **E. Notice of Decision**

I hereby provide public notice that EPA has taken final action authorizing Maine to implement the NPDES program in the areas outside disputed Indian territory to the extent described in this notice, and review of the issues related to this action is available as provided in CWA section 509(b)(1)(D). EPA has not taken final action on the issues related to the State's jurisdiction and the applicability of State law in Indian country for the purposes of implementing the NPDES program in those areas, and review of those issues is not available until EPA takes final action on Maine's program as it applies in those areas.

**Authority:** This action is taken under the authority of section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: January 12, 2001.

**Mindy S. Lubber,**  
*Regional Administrator, Region I.*

#### **Appendix 1—Permitted Facilities in Areas of Indian Country, Where EPA Is Not Acting on Maine's Program (NPDES Permit Numbers/State Discharge License Numbers)**

##### **Penobscot River Basin**

###### *Main Stem of the Penobscot River From Indian Island to Fork*

Howland (Municipal) (ME0101788/2632)  
Mattawamkeag (Municipal) (ME0102245/7568)  
Lincoln (Municipal) (ME0101796/1479)  
Lincoln Pulp and Paper (ME0002003/0381)  
Bangor Hydro in West Enfield (ME0023388/7529)  
Beaver Wood Joint Venture (ME0023078/6436)

Penobscot Indian Nation Indian Island (ME0101311/2672)

Indeck Maine Energy (ME0023213/6116)

###### *West Branch of the River Above the Fork*

Bowater Great Northern in Millinocket ME0000167/2227  
Bowater Great Northern in East Millinocket ME0000175/2228  
Millinocket (Municipal) ME0100803/2680  
East Millinocket (Municipal) ME0100196/2683

###### *Piscataquis Tributary*

Guilford-Sangerville POTW ME0102032/6792

Dover-Foxcroft POTW ME0100501/2633  
Dover-Foxcroft Water District ME0102229/7330

Milo POTW ME0100439/0865  
Brownville POTW (Pleasant River) ME0100099/0829  
Unity College Inc. (Pleasant River) ME0110167/1718

###### *Mattawamkeag Tributary*

Danforth (Municipal) ME0100161  
Wheelabrator—Sherman Energy ME0023191

#### **St. Croix River Basin**

Passamaquoddy Tribal Council (ME0100773/2561)  
Passamaquoddy Water District (ME0102211/7568)

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**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-6941-6]**

#### **Public Water System Supervision Program Revision for the State of North Carolina**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of North Carolina is revising its approved Public Water System Supervision Program. North Carolina has adopted drinking water regulations requiring consumer confidence reports from all community water systems. EPA has determined that this revision is no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve this State program revision.

**DATES:** All interested parties may request a public hearing. A request for a public hearing must be submitted by March 30, 2001 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by March 30, 2001, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on March 30, 2001. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a