



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

August 31, 2015

The Honorable Brenda Commander
Chief of the Houlton Band of Maliseet Indians
88 Bell Road, Littleton, ME04730

The Honorable Edward (Charlie) Peter Paul
Chief of the Aroostook Band of Micmacs
8 Northern Road, Presque Isle, ME 04769

The Honorable Fred Moore
Chief of the Passamaquoddy Tribe of Indians
Pleasant Point Reservation
PO Box 343, Perry, ME 04667

The Honorable William Nicholas
Chief of the Passamaquoddy Tribe of Indians
Indian Township Reservation
PO Box 301, Princeton, ME 04668

The Honorable Kirk Francis
Chief of the Penobscot Indian Nation
12 Wabanaki Way, Indian Island, ME 04468

Re: Notification of Consultation and Coordination: Promulgation of Water Quality Standards
in Tribal Waters

Dear Tribal Leaders:

In response to a lawsuit filed by the State of Maine, EPA issued three sets of decisions on Maine's water quality standards as they apply in tribal waters, on the dates of February 2, March 16, and June 5, 2015. EPA approved most of Maine's water quality standards in tribal waters, but determined that some could not be approved, either because they did not protect tribal sustenance fishing uses, which are provided for in state and federal statutes, or were not consistent with other requirements of the Clean Water Act.

As I have stated throughout this process, EPA's preference is for the State of Maine to address the issues by making the necessary revisions to its standards. The Clean Water Act imposes a duty on EPA to promptly propose federal water quality standards if the State does not adequately address the disapprovals within 90 days after any disapproval. The 90-day period has passed for the first two sets of disapprovals, and will pass on the third set of decisions on September 3, 2015. We have informed the State that we are willing to work with the State beyond that 90-day period if the State is diligently working to put protective criteria in place.

However, as a backstop, in the event that Maine DEP decides not to move forward to address these issues, or is unable to do so for reasons beyond its control, EPA is preparing to begin a federal promulgation process to address the issues identified by our disapprovals and ensure a

timely remedy to the issues. EPA received a request for consultation from the Penobscot Indian Nation on May 15, 2015 regarding federal promulgation of water quality standards, and we received early input from your respective tribal environmental directors on this matter during a technical conference call on July 30, 2015.

In recognition of EPA's federal trust responsibility and government-to-government relationship with the five federally recognized tribes in Maine, it is my desire to initiate consultation with the Maine tribes regarding this matter, so that EPA can receive input prior to formulating decisions and taking action. Following the preference expressed by the tribal leaders, I will engage in consultation directly with the tribal leaders in this process if the promulgation raises matters of tribal sovereignty for a tribe, and my staff will consult with your respective environmental departments regarding technical matters relating to the promulgation of the water quality standards.

This consultation and coordination process will be conducted in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (www.epa.gov/tribal/consultation/consult-policy.htm). EPA invites you and your designated consultation representative(s) to participate in this process.

Enclosed for your information is a summary of the disapprovals from the three sets of decisions. Also enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. This information will also be available on EPA's Tribal Portal <http://www.epa.gov/tribal/consultation>.

The official EPA contact person for this consultation and coordination process is Captain Michael Stover, P.E., Indian Program Manager for EPA New England. Please do not hesitate to contact Captain Stover at (617) 918-1123 or stover.michael@epa.gov should you have any questions.

Sincerely,



H. Curtis Spalding
Regional Administrator

Enclosure: Summary of Maine WQS Disapprovals
Tribal Consultation and Coordination Process and Timeline

cc: Tribal Environmental Directors

Summary of Maine WQS Disapprovals

Disapprovals	Disapproval in:	
	Waters in Indian Lands	Waters In State Lands
1. Human Health Criteria	X	
2. 10 ⁻⁴ Cancer Risk Level for arsenic	X	
3. Recreational Criteria (bacteria)	X	
4. Ammonia aquatic life criteria for fresh water	X	
5. Natural Conditions Clause (only as it applies to human health)	X	
6. pH for fresh waters	X	
7. Temperature criteria for tidal waters	X	
8. Mixing zone policy	X	
9. Provisions related to pesticide or chemical discharge that allow impairment of uses	X	X
10. Waiver or modification of protection and improvement laws.	X	X
11. Numeric criteria for DO in Class A waters	X	X
12. Exceptions from discharge prohibition for stormwater discharges to Class AA and SA waters (ONRWs).	X	X
13. Phenol criteria for protection of human health (water + organisms) to correct mathematical error.	X	X
14. Reclassification of Long Creek segment from Class B to Class C		X

Tribal Consultation and Coordination Process and Timeline

Date	Event	Contact Information
August 31, 2015	Letter initiating consultation and coordination	Stover.michael@epa.gov (617) 918-1123
September 9, 2015 from 1-2pm (call-in information will be provided in meeting invitation)	Consultation regarding fish consumption rates (technical call with Tribal Environmental Directors)	Stover.michael@epa.gov (617) 918-1123
September 10, 2015 from 9-10am (call-in information will be provided in meeting invitation)	Consultation on tribal boundaries (Penobscot Indian Nation)	Stover.michael@epa.gov (617) 918-1123
September 10, 2015 from 1-2pm (call-in information will be provided in meeting invitation)	Consultation on tribal boundaries (Passamaquoddy Tribes)	Stover.michael@epa.gov (617) 918-1123
to be determined	Future consultations regarding the promulgation of water quality standards in tribal waters	Stover.michael@epa.gov (617) 918-1123