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Environmental Group Files Suit to Lock in Improved Water Quality on Androscoggin River

Lawsuit challenges Maine's practice of letting discharge permits, instead of water quality, drive classification

PORTLAND, ME – The environmental group Friends of Merrymeeting Bay (FOMB) filed suit in federal court Thursday afternoon challenging the Maine Department of Environmental Protection's (DEP) misuse of antidegradation policy under the Clean Water Act (CWA). Antidegradation policies were designed to improve water quality, lock in existing quality, and prevent backsliding of water quality.

In virtually all states, administration of this part of the CWA is delegated by the Environmental Protection Agency (EPA) to the states under continued supervision of the federal agency. As such, the FOMB suit also includes a claim against the EPA for failing to adequately monitor Maine's implementation of antidegradation policy and allowing, according to the group, this unlawful policy to continue in violation of the CWA.

FOMB claims the Maine Board of Environmental Protection (BEP) violated the plain language of state statute ("*shall recommend*") by failing to recommend to the legislature a classification upgrade on the Androscoggin River section between Worumbo and Gulf Island Pond dams. The agency's failure to reclassify the river does not accurately reflect its present water quality, leaving it under an inadequate protective tier that legally permits increased pollution.

FOMB is represented by the Sells Law Firm and Greenfire Law.

All Maine waters are classified C, B, A or AA, from lowest to highest quality, based on several parameters including dissolved oxygen, bacteria, aquatic life, and the uses of the water. Every three years the BEP and DEP solicit nominations for possible reclassifications through a Triennial Review process.

"The way the clean water statutes are supposed to work" explained Ed Friedman, Chair of FOMB, "is that when the quality of a water body is close to or meeting the standards of the next highest classification, it should be upgraded so the classification reflects actual quality and locks in the improved conditions. The next time discharger permits

come up for renewal, the permits are tweaked to comply with the reclassification and in this way water quality is ratcheted up while pollutants are ratcheted down, and the water moves ever towards the national goal of ending water pollution.”

Attorney Scott Sells pointed out that the CWA does not allow a water’s designated use to be waste reception and transport. Dumping pollutants into waters is regulated by National Pollution Discharge Elimination System (NPDES) permits which are administered by the states.

“Permits must be renewed every 5 years” Sells said, “to facilitate improvements in pollution control technologies. Reclassification should be driving this regular technology-forcing of dischargers to reduce or eliminate water pollution through use of best available technologies.”

“Maine’s got it backwards” said Greenfire Law principal Rachel Doughty who worked at EPA in the Office of Water early in her career. “The state DEP uses a worst case modeled scenario of simultaneous 10-year low flows, high temperatures and all NPDES dischargers operating at full discharge capacity (which never happens), as a barrier to reclassification. Rather than basing water body classification on actual water quality as the law requires, the Department imposes this modeled ‘Trifecta of Horribles,’ to prioritize pollution capacity. That’s the precise inversion of what the CWA and Maine law requires.”

Peter Rubins of Grow L+A filed the most recent upgrade proposal for this section of the Androscoggin, supported by past Brookfield, CMP, DEP and FOMB data. Adding to this was the recent comprehensive 2025 sampling data collected by FOMB. Since 1999, FOMB has had an active water sampling program under EPA or DEP auspices.

“The Board is required to recommend a reclassification upgrade to the legislature based on actual data and they refused to follow their statutory requirements during this past Triennial Review,” Rubins said.

Additional Information

The CWA establishes strict requirements for maintaining water quality in our nation’s waters. Maine has many comparable statutes enshrined in state law, but the state’s improper administration of these statutes has prevented codifying improved water quality on the Androscoggin (a poster child for the CWA), the Presumpscot and other rivers. 70-80% of species live in riparian areas-in or along rivers. Clean rivers are necessary not only for fish and wildlife but for our aesthetic, recreational, and economic pursuits.

Friends of Merrymeeting Bay works to preserve, protect and enhance the unique ecosystems of Merrymeeting Bay and the Gulf of Maine through research, advocacy, education and land conservation.

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