

§465. Standards for classification of fresh surface waters

The department shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §61 (AMD).]

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, agriculture, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat must be characterized as free-flowing and natural. [PL 2003, c. 227, §1 (AMD); PL 2003, c. 227, §9 (AFF); PL 2005, c. 561, §10 (AFF).]

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters 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 or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. [PL 2021, c. 551, §9 (AMD).]

C. Except as provided in this paragraph, there may be no direct discharge of pollutants to Class AA waters.

(1) Storm water discharges that are in compliance with state and local requirements are allowed if one or more of the following conditions are met:

(a) The storm water discharge existed prior to the waters' being classified as Class AA with a designation as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2), including storm water discharges that existed prior to designation of the waters as an outstanding national resource and are not licensed by the department or were not relicensed for some duration after the waters' designation as an outstanding national resource. This division does not authorize new or increased storm water discharge;

(b) For storm water discharges requiring a general permit for construction, the discharge is temporary and short term and does not permanently degrade water quality. For the purposes of this division, a discharge is temporary and short term if the discharge occurs only during the time necessary to construct a facility to make it operational. Best management practices must be used during such construction; or

(c) The Class AA water is not designated as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2) and sections 467 and 468.

(2) A discharge to Class AA waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended, is allowed if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic salmon and will return the waters to a state that is closer to historically natural chemical quality.

(3) 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 are allowed.

(4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that

provide for protection of nontarget species are allowed. 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.

(5) Discharges of pesticides approved by the department are allowed that are:

- (a) Unintended and an incidental result of the spraying of pesticides;
- (b) Applied in compliance with federal labeling restrictions; and
- (c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices. [PL 2021, c. 503, §2 (AMD).]

[PL 2021, c. 503, §2 (AMD); PL 2021, c. 551, §9 (AMD).]

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as habitat for fish and other aquatic life. The habitat must be characterized as natural. [PL 2003, c. 227, §2 (AMD); PL 2003, c. 227, §9 (AFF); PL 2005, c. 561, §10 (AFF).]

B. The dissolved oxygen content of Class A 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 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 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 or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. [PL 2021, c. 551, §10 (AMD).]

C. Except as provided in this paragraph, direct discharges to these waters licensed after January 1, 1986 are permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the department shall require the applicant to objectively demonstrate to the department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist.

(1) This paragraph does not apply to a discharge of storm water that is in compliance with state and local requirements.

(2) This paragraph does not apply to a discharge to Class A waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended, if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic salmon and will return the waters to a state that is closer to historically natural chemical quality.

(3) 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.

(4) 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 be equal to or better than the existing water quality of the receiving waters 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.

(5) This paragraph does not apply to discharges of pesticides approved by the department that are:

- (a) Unintended and an incidental result of the spraying of pesticides;
- (b) Applied in compliance with federal labeling restrictions; and
- (c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices. [PL 2021, c. 50, §§3, 4 (AMD).]

D. Storm water discharges to Class A waters must be in compliance with state and local requirements. [PL 2003, c. 318, §4 (NEW).]

E. Material may not be deposited on the banks of Class A waters in any manner that makes transfer of pollutants into the waters likely. [PL 2003, c. 318, §4 (NEW).]

[PL 2021, c. 551, §10 (AMD).]

3. Class B waters. Class B shall be the 3rd highest classification.

A. Class B waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as habitat for fish and other aquatic life. The habitat must be characterized as unimpaired. [PL 2003, c. 227, §3 (AMD); PL 2003, c. 227, §9 (AFF); PL 2005, c. 561, §10 (AFF).]

B. Class B waters must be of sufficient quality to support all aquatic species indigenous to those waters without detrimental changes in the resident biological community. 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 one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between April 15th and October 31st, the number of *Escherichia coli* bacteria in these waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. [PL 2021, c. 551, §11 (AMD).]

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-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. [PL 2017, c. 319, §7 (AMD).]

[PL 2021, c. 551, §11 (AMD).]

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as a habitat for fish and other aquatic life. [PL 2003, c. 227, §4 (AMD); PL 2003, c. 227, §9 (AFF); PL 2005, c. 561, §10 (AFF).]

B. Class C waters must be of sufficient quality to support all species of fish indigenous to those waters and to maintain the structure and function of the resident biological community. The dissolved oxygen content of Class C water may 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 April 15th and October 31st, the number of *Escherichia coli* bacteria in Class C waters may not exceed a geometric mean of 100 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. 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. [PL 2021, c. 551, §12 (AMD).]

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. 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. [PL 2017, c. 319, §9 (AMD).]

[PL 2021, c. 551, §12 (AMD).]

SECTION HISTORY

PL 1985, c. 698, §15 (NEW). PL 1989, c. 890, §§A40,B61-63 (AMD). PL 1999, c. 243, §8 (AMD). PL 2003, c. 227, §§1-4 (AMD). PL 2003, c. 227, §9 (AFF). PL 2003, c. 318, §§3,4 (AMD). PL 2003, c. 574, §§1,2 (AMD). PL 2003, c. 664, §1 (AMD). PL 2005, c. 182, §§2-5 (AMD). PL 2005, c. 409, §§1,2 (AMD). PL 2005, c. 561, §10 (AFF). PL 2007, c. 291, §§2-4 (AMD). PL 2013, c. 193, §§2, 3 (AMD). PL 2017, c. 319, §§4-9 (AMD). PL 2021, c. 50, §§1-4 (AMD). PL 2021, c. 503, §2 (AMD). PL 2021, c. 551, §§9-12 (AMD).

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