

Testimony of William Taylor
on Behalf of the Gulf Island Pond Oxygenation Partnership
LD 676

Senator Brenner, Representative Tucker and Members of the Energy and Natural Resources Committee, my name is Bill Taylor. I am an attorney from Yarmouth, Maine and I am speaking today on behalf of the Gulf Island Pond Oxygenation Partnership in opposition to L.D. 676. The Partnership has four partners: ND Paper Inc., White Mountain Paper Co., Pixelle Specialty Solutions and Brookfield Renewable Power, Inc.

The Gulf Island Pond Oxygenation Partnership was formed in 1991 for the purpose of introducing oxygen into the lower levels of Gulf Island Pond to improve water quality and to bring the oxygen levels in the pond up to the Class C water quality criterion which is 5.0 mg/L. The oxygenation system became operational in 1991. For the last 30 years, Maine DEP and the Partnership have worked to fine-tune the oxygenation system to maximize its beneficial impacts. By any measure the oxygenation project has been successful in achieving its original goals.

Now the goal posts could be changed. Gulf Island Pond is at the upstream boundary of the proposed Class B river segment. A Class B designation requires that 7 mg/L of dissolved oxygen be achieved at all times. Existing dischargers would therefore be in immediate non-compliance as soon as the classification change was made. How the new oxygen criteria will be achieved is not clear. What is clear is that if the lower Androscoggin River is upgraded to Class B, DEP must, under existing law, reopen or amend all waste discharge licenses that were based

on the prior Class C criteria, since those criteria would no longer be applicable. DEP would be required to reduce license limits or change prior operating conditions.

Under the law, the new limits and conditions must be based on worst case conditions which never actually occur. These conditions include 7Q10 flow, summer time temperatures and full license loads.

That is what we know for certain. There will be immediate, significant and costly regulatory changes that must be made. What we don't know is exactly how DEP will allocate the reductions required. Final allocation may include significant and costly changes to the Gulf Island Pond oxygenation system.

Another and more important question that we don't know the answer to is whether any of these required regulatory measures will have any effect whatsoever on water quality in the lower Androscoggin River. DEP has told the partnership that they don't know and can't predict what the effect of permit changes will have on dissolved oxygen loads. We know from prior modeling at Gulf Island Pond that the partnership's point sources have very little impact on dissolved oxygen levels downstream. There are many other very important factors impacting water quality that DEP doesn't have authority to regulate or can't regulate. For example, DEP cannot regulate non-point sources and they cannot control sediment oxygen demand or normal diurnal variations of dissolved oxygen. Diurnal dissolved oxygen levels swing about 1 mg/L in the lower Androscoggin River. In the early morning hours, this variation is enough to periodically cause DO to fall below 7 mg/L.

In effect, there are only two measures that are available to the Maine DEP. One is reducing the BOD load from point sources and the other is increasing dissolved oxygen to the Partnership oxygenation system or a combination of each of those. Therefore, point source licensees or the Partnership will bear the full brunt of any change even though there are other significant contributing factors affecting water quality.

I had the privilege of serving as a Commissioner on the New England Interstate Water Pollution Control Commission from 1991 until 2012. In that capacity, I was able to compare Maine's water quality programs with other state programs. Maine is recognized as a leader in the nation for its water quality programs and where appropriate has not hesitated to upgrade water quality segments. However, DEP has consistently determined that it is not appropriate to upgrade the lower Androscoggin River to Class B when this segment does not meet the Class B dissolved oxygen criteria at all times. The Department cannot predict, even with significant and very conservative changes in licensing and operational requirements cannot predict whether the lower Androscoggin will ever meet Class B dissolved oxygen criteria at all times. Based on these considerations, the Committee should follow the recommendation of Maine DEP and not upgrade the lower Androscoggin River to Class B.