

**Report to the Joint Standing Committee on Environment and Natural
Resources
127th Legislature, First Session**

Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

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I. Executive Summary

The Maine Department of Environmental Protection (Department) is submitting this report to the Joint Standing Committee on the Environment and Natural Resources pursuant to 38 M.R.S.A. § 638 (Public Law 2013, Chapter 545). This statute requires the Department to list the applications pending for hydropower water quality certification (WQC), and for applications anticipated to be submitted to the Department in the next five years.

The Department is currently reviewing two WQC applications for the following hydropower relicensing projects:

- Brassua
- Vanceboro

The Department anticipates receiving seven WQC applications for FERC re-license projects in the next five years for the following hydropower projects. The dates listed in parentheses are the anticipated dates for receiving a WQC application:

- Williams – (2015)
- West Buxton – (2015)
- Ellsworth – (2016)
- Mattaceunk – (2016)
- Lower Barker – (2017)
- American Tissue – (2017)
- Pennamaquan – (2017)
- Goose River – (2018)

II. Summary of FERC Relicensing Process

In Maine, there are 102 federally-licensed hydropower projects authorized by the Federal Energy Regulatory Commission (FERC). According to Section 401 of the federal Clean Water Act, a federal license may not be issued for a hydropower project unless the state water quality certifying agency has either issued a water quality certification (WQC) for the project or has waived certification. This process affords the states and authorized tribes an opportunity to address the aquatic resource impacts of federally-issued permits and licenses. By Executive Order of the governor of the State of Maine, the Department is the State certifying agency for hydropower projects located wholly, or in part, in organized towns and cities as well as all water

quality certifications, regardless of location. Section 401 provides up to one year for states to issue decisions on WQC applications.

In Public Law 2013, Chapter 545, the Legislature required the Department to submit an annual report on the status of pending WQC applications with the Department, and a list of the relicensing projects anticipated to be submitted to the Department in the next five years. The language of the statutory text is found in 38 M.R.S.A. § 638:

By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department and a short statement describing the department's plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department's plan to address each deadline.

III. Summary of Hydropower Projects Due for Relicensing in 2015-2020

The Department currently has two WQC applications for hydropower projects. Those projects are listed below, with a brief statement of steps the Department is taking to achieve the WQC deadline. Additional project details can be found in Appendix A.

- Brassua – The applicant voluntarily withdrew and resubmitted this WQC application with the Department. The new WQC deadline for a Department decision is February 12, 2016. The Department will be meeting with the applicant to discuss permitting issues on this application.
- Vanceboro – The Department will issue a WQC decision before October 1, 2015. An internal review schedule has been created to ensure intermediate milestones and the statutory deadline are met.

The Department has recently taken a number of steps to improve the internal permitting process for hydropower WQC applications, including:

- Creation of a shared calendar in Microsoft Outlook identifying WQC milestones and statutory deadlines
- Creation of project-specific milestones and timelines for each WQC application
- Increased communication and coordination among DEP staff involved in the review of WQC applications

The Department anticipates receiving seven WQC applications in the next five years for the following hydropower projects. The dates listed in parentheses are the anticipated dates for receiving a WQC application.

- Williams – (2016)
- West Buxton – (2016)
- Ellsworth – (2017)
- Mattaceunk – (2017)
- Lower Barker – (2018)
- American Tissue – (2018)
- Pennamaquan – (2018)
- Goose River – (2019)

The Department will follow the application review process currently in place for WQC applications, and will include any process improvements developed in the future.

Appendix A includes a spreadsheet listing all pending and anticipated WQC applications within the next five years, including a brief description of the steps the Department is taking to achieve the WQC deadlines.

APPENDIX A: Pending and Anticipated WQC Applications

Pending Hydropower Water Quality Certification Applications (As of 1/15/15)							
FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
April 1, 2012 *	2615	Brassua *		February 12, 2015	February 12, 2016	2017	WQC application voluntarily withdrawn and resubmitted by applicant, effective 2/12/2015; will issue WQC prior to February 12, 2016.
February 29, 2016	2492	Vanceboro		October 2, 2014	October 2, 2015	2016	WQC application accepted as complete for processing on October 2, 2014. Agency comments on WQC application due in December 2014. Internal review schedule established. Will issue WQC prior to October 2, 2015.
Anticipated Hydropower Water Quality Certification Applications in the Next Five Years							
FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
December 31, 2017	2335	Williams		December 31, 2015	December 31, 2016	2017	Project in second study year, DEP has received and reviewed the initial study report. Project is on target. Anticipate WQC application in 2016.
December 31, 2017	2531	West Buxton		December 31, 2015	December 31, 2016	2017	Project in second study year, DEP has received and reviewed the initial study report. Project is on target. Anticipate WQC application in 2016.
December 31, 2017	2727	Ellsworth	Graham Lake Dam, Lake Leonard Dam	January 1, 2016	January 1, 2017	2018	Project in second study year, DEP has received and reviewed the initial study report. Project is on target. Anticipate WQC application in 2016.
August 31, 2018	2520	Mattaceunk		August 31, 2016	August 31, 2017	2018	Project in second study year, DEP has received and reviewed the initial study report. Project is on target. Anticipate WQC application in 2016.
January 31, 2019	2808	Lower Barker		January 31, 2017	January 31, 2018	2019	Project in first study year, DEP filed study requests on July 16, 2014. Anticipate WQC application in 2017.
April 30, 2019	2809	American Tissue		April 30, 2017	April 30, 2018	2019	Project in first study year. DEP filed study requests on November 3, 2014. Anticipate WQC application in 2017.
No current FERC license	13884	Pennamaquan Tidal Power Plant Project		2017	2018	2019	FERC issued an extension of time until January 25, 2015 for the applicant to file the revised study plan, moving all subsequent dates in the FERC timeline for this project. DEP anticipates a WQC application in 2017 based on this adjustment to the timeline. Upon acceptance of a WQC application, by statute DEP has one year to issue a WQC .
February 29, 2020	2804	Goose River	Swan Lake Dam Mason's Dam Kelly Dam Mill Dam CMP Dam	March 1, 2018	March 1, 2019	2020	Anticipate applicant will prepare a PAD and file a Notice of Intent with FERC in 2015. DEP will review the PAD and prepare study plan requests as appropriate.
* Currently operating under an annual license.							
Section 15(a)(1) of the Federal Power Act requires FERC, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the Federal Power Act. If the project's prior license waived the applicability of Section 15 of the Federal Power Act, then, if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until FERC acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required to continue project operations until FERC issues someone else a license for the project or otherwise orders disposition of the project.							
Abbreviations							
FERC=Federal Energy Regulatory Commission							
WQC= Water Quality Certification							
DEP = Maine Department of Environmental Protection							
PAD = Pre-Application Document							