

Upgrade the Lower Androscoggin from Class C to Class B Fact Sheet (Executive Summary)

The Androscoggin was Muskie's river and impetus for passage of the Clean Water Act. It is now much improved thanks to various state and federal laws and to the cooperation of various dischargers along the river. This success should be celebrated and recognized by codifying improvements as they occur and as required by law.

For many years Friends of Merrymeeting Bay's EPA and DEP approved water quality monitoring data on the lower river have shown with very few exceptions, compliance with Class B conditions and yet the DEP, conflating statutes we believe (see CLF legal opinion), refuses to endorse upgrading the lower river from Class C our minimum standard, to Class B, the standard reflecting actual ambient conditions. The biases of the DEP and influence of industry weigh heavy on the river despite support from riverside communities for an upgrade, state and federal clean water laws and scientific data. We respectfully ask for your support of our current upgrade proposal.

Why Upgrade?

It's the law!

Anti-degradation language prohibits backsliding in water quality.

A cleaner river has well-documented economic and quality of life benefits.

Sixty percent of our wildlife species inhabit river corridors and all benefit as do we.

DEP classification proposal submission guidelines state:

*“Maine's Water Quality Classification System is **goal-based**. When proposing an upgrade in classification, recommend waters that either presently attain or with reasonable application of improved treatment or Best Management Practices (BMPs), could reasonably be expected to attain, the standards and criteria of a higher proposed class.”*



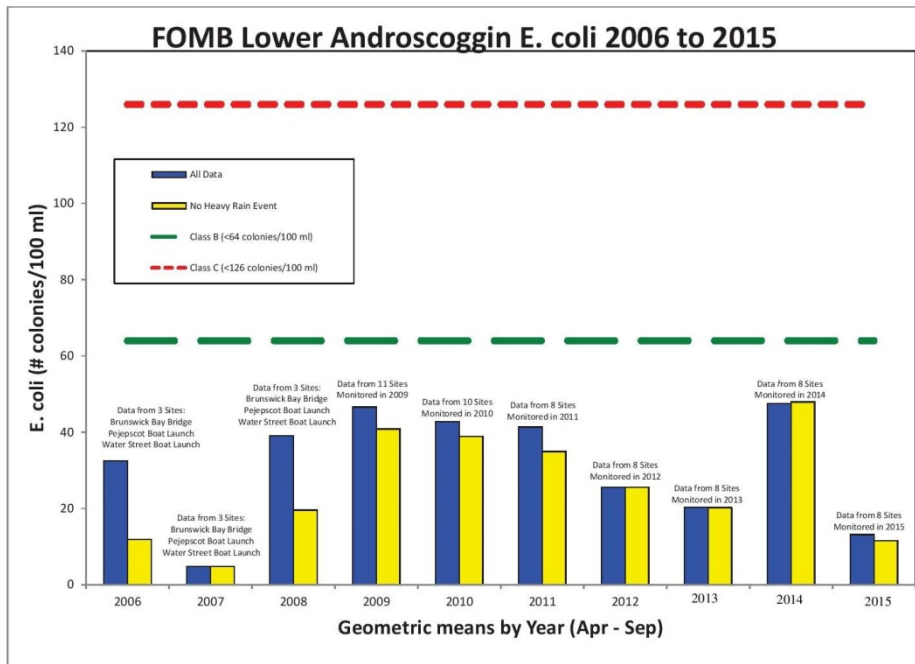
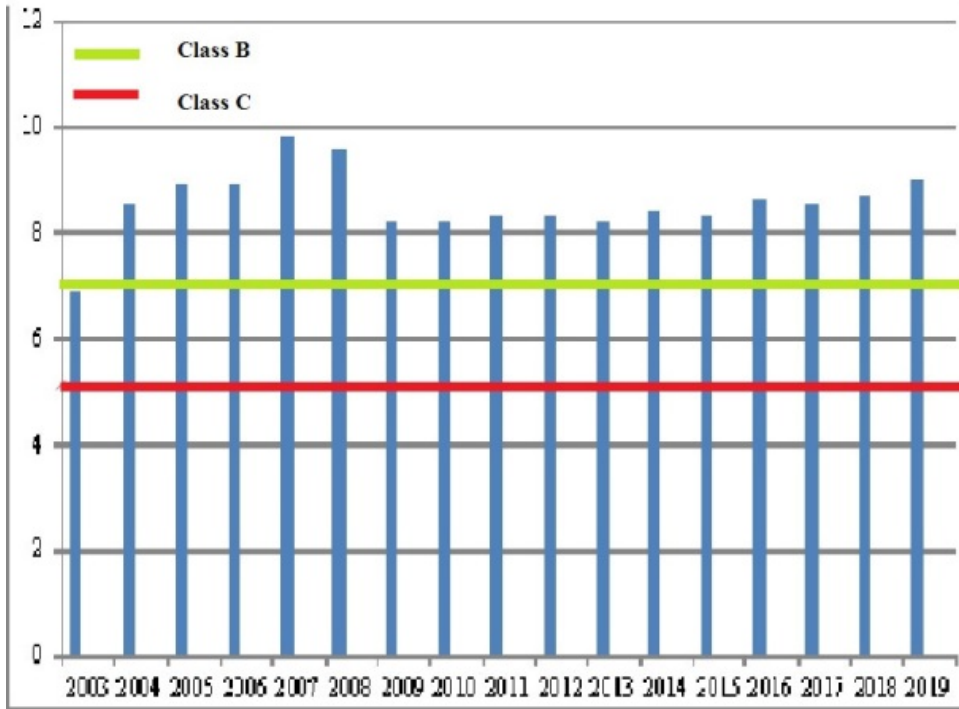
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38 M.R.S.A. § 464 (4) (F) (4)

*“When **the actual quality** of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board **shall recommend** to the Legislature that water be reclassified in the next higher classification.”*

What do the data show?

Dissolved Oxygen-Geometric Means Lower Androscoggin 2003-2019 Class C 5ppm, Class B 7ppm



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A cleaner river equals a more vibrant economy and increased quality of life.

Auburn/Lewiston Riverwalk:

“The river section of Lewiston-Auburn features boat launches, fishing areas, canals, and dams. The Cities of Lewiston and Auburn have developed parts of the river and businesses are flourishing along its banks and canals, from outdoor decks at Gritty’s Brew Pub and Pat’s Pizza, to Fishbones. The Cities of Lewiston and Auburn have dedicated considerable resources to its beautification with the Riverwalk, which connects Railroad Park in Lewiston to Festival Plaza in Auburn, the site of numerous outdoor events and summer concerts.”
[www.laitshappeninghere.com]

Androscoggin Bicycle and Pedestrian Path:

“Gorgeous views of the Androscoggin, a major Maine river, make exercising fun and exhilarating!” [www.suite101.com]

Androscoggin Riverwalk-Topsham:

“Ranked #2 of 6 attractions in Topsham” [Tripadvisor]

Northeast-Midwest Institute, University of Illinois Study

“*Buffalo, NY.* Residential property values near the Buffalo River could increase as much as 140 million if contamination in the river is eliminated, according to a study conducted by the University of Illinois and the Northeast-Midwest Institute.

Researchers collected data from housing sales in Erie County in the years 2002-2004, and directly surveyed 850 recent home buyers in Erie County. Results of the study of housing sales data indicate that **the polluted state of the river currently is depressing single-family, owner-occupied property values by \$80 to \$140 million**, or six to nine percent of the assessed residential property values in the area studied. Clean-up could be expected to raise the property values commensurately.”

Sheboygan, WI. Residential property values near the Sheboygan River could increase as much as 108 million if contamination in the river is eliminated, according to a study conducted by the University of Illinois and the Northeast-Midwest Institute.

Researchers collected data from housing sales in Sheboygan County in the years 2002-2004, and directly surveyed 850 recent home buyers in Erie County. Results of the study of housing sales data indicate that **the polluted state of the river currently is depressing single-family, owner-occupied property values by \$8 to \$108 million**, or one to seven percent of the assessed residential property values in the area studied. Clean-up could be expected to raise the property values commensurately.”

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Why the conflict with DEP and river industry? They are citing the wrong statute!

Reclassification vs. Relicensing

These are two different items falling under two different statute sections yet the DEP and industry consistently and purposefully conflate the two. Reclassification is designed to drive relicensing. As slight changes are made to license renewals to comply with classification upgrades, water quality is slowly improved. Discharge and river condition modeling both used in relicensing, have no legal bearing on classification. This is discussed on page 2 of our 2011-2012 Androscoggin River Monitoring Report [Water Quality Data Analysis and Review, Lower Androscoggin River](#) at www.fomb.org and again in a legal opinion from the Conservation Law Foundation (see below).

According to Maine statutes, modeling has no bearing on the classification process §464 (4) (F) (4) which is based solely on actual ambient river conditions. In contrast to classification, modeling does play a role in relicensing (§464 (4) (D)) when dischargers are to meet the river classification under minimum seven-day low flow conditions expected to take place once every ten years (a theoretical value known as 7Q10).

The purposeful policy reason for the difference in requirements for classification and relicensing is so that water quality conditions may slowly be improved or ratcheted up. This is the goal-oriented purpose both of the Clean Water Act and Maine statute. If a river had to meet the relicensing standard before an upgrade as the DEP and industry would have you believe, it likely never would and therefore there would be no motivating driver for improvements in water quality.



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A Legal Opinion: Excerpt from Conservation Law Foundation BEP Comments 10/2/2008*

The Lower Androscoggin

CLF strongly disagrees with the Department's recommendation and rationale for not upgrading this river segment. The Department has stated that proponents must provide water quality data and modeling showing "the likelihood of attainment of Class B water quality criteria at maximum licensed loads." See Reclassification Memorandum at 29. This makes no logical, legal or economic sense. First, no one operates at maximum licensed loads; rather a large buffer is generally built into all permits to avoid violations. Thus, DEP is requesting an impossible and unnecessary showing.

Second, the Department's recommendation violates the legal standard in the Clean Water Act that a state shall revise its standards to reflect uses and water quality actually being attained. 40 C.F.R. § 131.10(i). See also *id.* § 131.6(d); 38 MRSA § 464(4)(F). Thus, the Board's analyses must be based on *existing* water quality-not hypothetical modeling with point sources operating at maximum licensed discharge. Indeed, the Board is specifically prohibited from considering maximum licensed loads because both state and federal regulations prohibit consideration of waste discharge or transport as a designated use. 40 C.F.R. § 131.1(a); 38 MRSA § 464(4)(F)(1)(d).

Third, as many of the dischargers in this watershed have already recognized, water quality upgrades are generally good for surrounding communities. As has been shown over and over again, clean water is an economic boon. Examples abound throughout New England, including the recent revival of Boston Harbor, the Portland Waterfront, the Auburn Riverfront and the resurgence of Merrymeeting Bay and the Kennebec River. The Androscoggin River deserves the same.

CLF believes that the data, including both dissolved oxygen levels and recreational uses shows that existing uses in the lower Androscoggin have improved over time and that the river currently attains the higher bacteria and dissolved oxygen standards set forth in the Class B designation. As noted by the Department, it has no reason to question the data; indeed it has relied upon data supplied by the proponent in prior reclassifications. Therefore, barring a showing that the data is invalid, the Board must recommend upgrading this section.

* Further extensive legal analyses have been submitted by Greenfire Law as part of the 2020 proposal.

* (From page 2) 2016-2019 *E. coli* geometric means-not graphed. Class B <64 colonies/100ml, Class C <126 colonies/100 ml

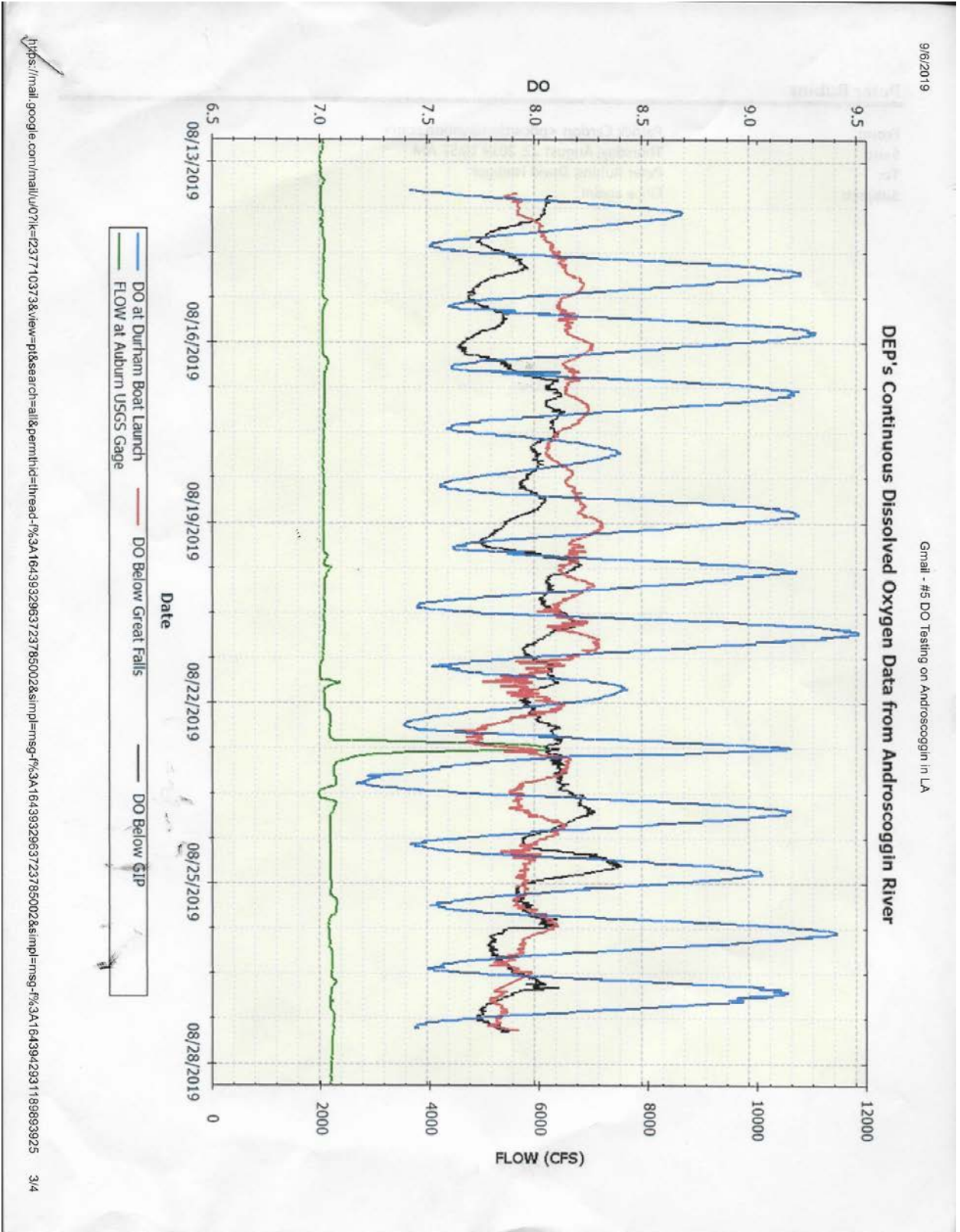
| | E.coli |
|------|--------|
| 2016 | 13.5 |
| 2017 | 17.5 |
| 2018 | 38.2 |
| 2019 | 42.5 |

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Summary Fact Sheet

- DO & *E. coli* levels consistently surpass Class B standards [see graphs in #2].
- Keeping the levels at current Class C allows backsliding from the current high oxygen and bacteria levels [more than 7ppm] to those which are the minimum for Class C [5ppm]. Ditto for bacteria. Geometric mean levels don't exceed 64 colonies/100ml [the Class B maximum] but staying in Class C they could legally rise to 126 colonies.
- Keeping Class C means more room to pollute [and be legal].
- Classifications must be based on ambient river conditions. They cannot be based on modeling. Classification = one statute; Relicensing = a different statute.
- Relicensing is based on modeling under worst case conditions [7Q10-theoretical minimum 7-day flow in a 10 year period] however current license limits are inflated over actual discharges by as much as 90% which can make the standard exceptionally difficult for a discharger to meet. Relicensing = a different statute from classification.
- 7Q10 means low warm flow conditions that typically lead to lowest DO. However, these same conditions are typically lowest in bacteria [a good thing], the other main criteria. Bacteria are highest as high flows cause a lot of runoff and overload wastewater systems.
- Hydropower impoundments get exemptions from meeting aquatic life [macro-invertebrates] criteria [§464-10].
- Does it make any sense that a river upgrade be governed by whether or not it meets the new classification during the theoretical worst week in a 10 year period? Of course not. And by law, it need not.
- DEP classification proposal submission guidelines state:
“Maine’s Water Quality Classification System is goal-based. When proposing an upgrade in classification, recommend waters that either presently attain or with reasonable application of improved treatment or Best Management Practices (BMPs), could reasonably be expected to attain, the standards and criteria of a higher proposed class.”
- **Supporters of the Upgrade:** (previous and or expected current)
 - The towns of Brunswick • Auburn • Topsham • Durham • Lewiston • Lisbon • the Auburn Sewage District • Friends of Merrymeeting Bay • Conservation Law Foundation • Brunswick Topsham Land Trust • Downeast Salmon Federation • Friends of Casco Bay • Grow L/A • Trout Unlimited Androscoggin Land Trust • John Nutting • Alewife Harvesters of Maine

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**Section 3 CSO Improvements - Nineteen Years of Progress
(2000-2018)**

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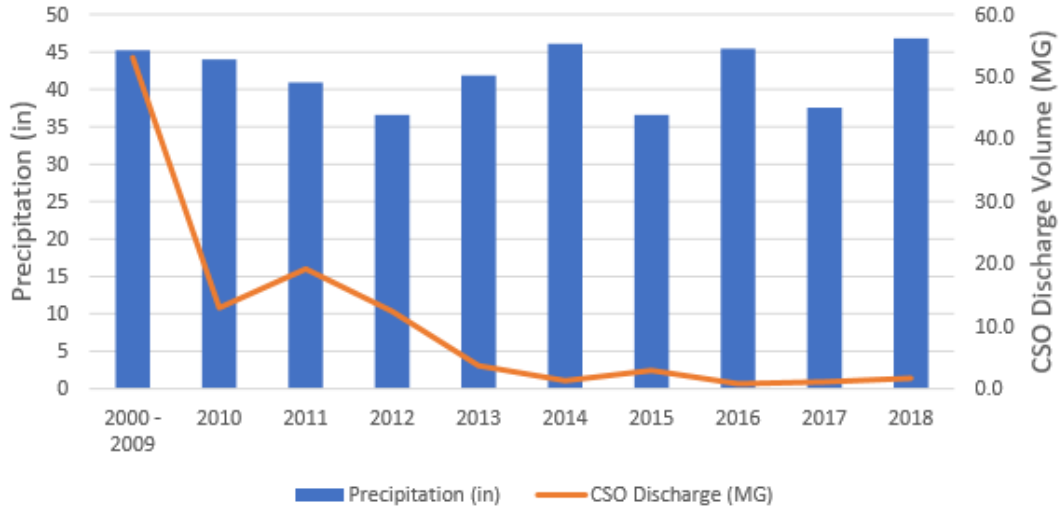


FIGURE 3-6
Auburn Sewer District 2000-2018 Precipitation vs. CSO Discharge

**Section 3 CSO Improvements - Nineteen Years of Progress
(2000-2018)**

Tighe&Bond

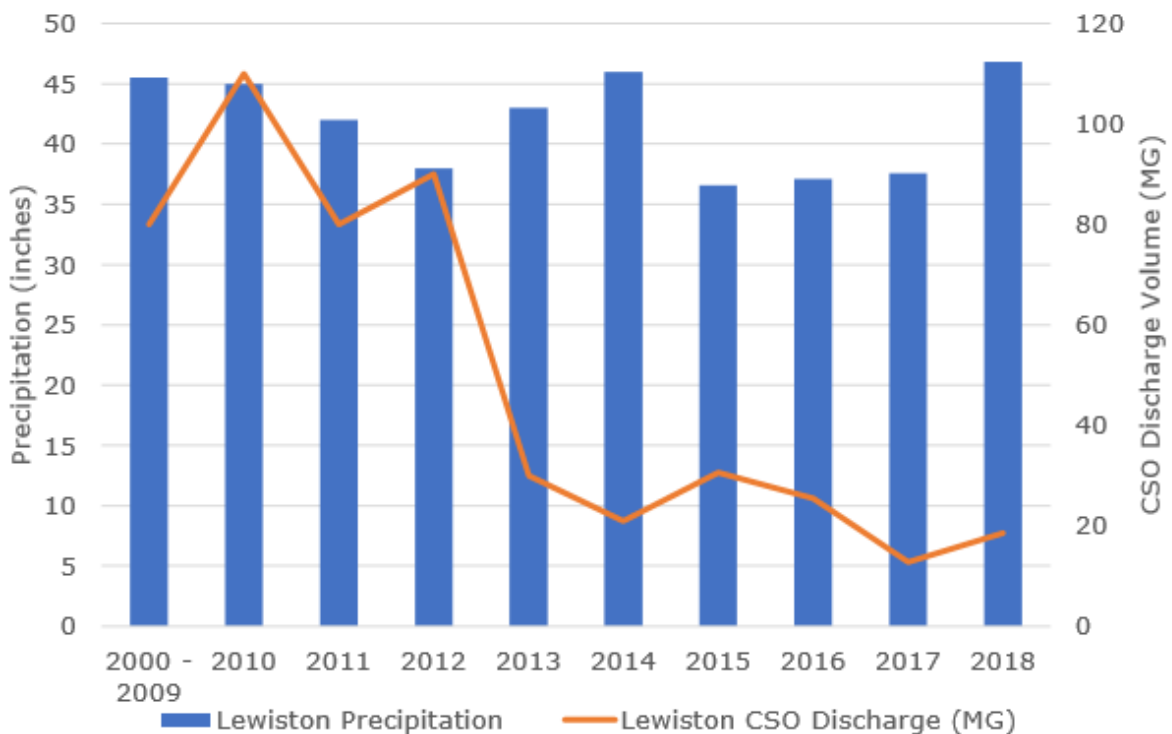


FIGURE 3-13
City of Lewiston 2000-2018 Precipitation vs. CSO Discharge