

# Regulatory Analysis Form

(Completed by Promulgating Agency)

*INDEPENDENT REGULATORY  
REVIEW COMMISSION*

(All Comments submitted on this regulation will appear on IRRC's website)

**(1) Agency**

Environmental Protection

**(2) Agency Number:**

Identification Number:

**IRRC Number:**

**(3) PA Code Cite:**

25 Pa Code, Chapter 93

**(4) Short Title:**

Water Quality Standards – Class A Stream Redesignations

**(5) Agency Contacts (List Telephone Number and Email Address):**

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**(6) Type of Rulemaking (check applicable box):**

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation

Certification by the Governor

Certification by the Attorney General

**(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)**

Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. Further, states are required to protect existing uses of their waters. This regulation is undertaken as part of the Department's ongoing review of Pennsylvania's water quality standards. The proposed regulation will update and revise water quality standards that are designated uses for surface waters of the Commonwealth.

This proposal modifies Chapter 93 to reflect the recommended redesignation of streams shown on the attached list. The proposed regulation will update and revise stream use designations in §§ 93.9a, 93.9c - 93.9f, 93.9h, 93.9i, 93.9k, 93.9l, 93.9n - 93.9q, and 93.9t. These changes may, upon implementation, result in more stringent treatment requirements for new and/or expanded wastewater discharges to the streams in order to protect the existing and designated water uses.

**(8) State the statutory authority for the regulation. Include specific statutory citation.**

The Pennsylvania Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394) as amended, 35 P.S. § 691.1 et seq.

Section 1920-A of The Administrative Code of 1929, as amended, 71 P.S. § 510-20.

Section 303(c) of the Federal Clean Water Act, 33 U.S.C.A. § 1313(c).

**(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.**

Section 303(c) of the federal Clean Water Act and 40 CFR § 131.10 require states to develop water quality standards that consist of designated uses. Such standards must “protect the public health or welfare and enhance the quality of water.” In addition, such standards must take into consideration water uses including public water supplies, propagation of fish and wildlife, recreational purposes, agricultural purposes and industrial purposes.

**(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.**

The purpose of developing the water quality standards is to protect Pennsylvania’s surface waters. Pennsylvania’s surface waters, through the water quality standards program, are protected for a variety of uses including: drinking water supplies for humans, livestock and wildlife; fish consumption; irrigation for crops; aquatic life uses; recreation; and industrial water supplies. All the citizens of this Commonwealth will benefit from the regulation since it will provide the appropriate level of water quality protection for all water uses.

By protecting the water uses, and the quality of the water necessary to maintain the uses, benefits may be gained in a variety of ways by all citizens of the Commonwealth. For example, clean water used for drinking water supplies benefits the consumers by lowering drinking water treatment costs and reducing medical costs associated with drinking water illnesses. Additionally, by maintaining water quality standards, clean surface water is available for irrigation of livestock and for use in industrial processes. Clean surface waters also benefit the Commonwealth by providing for increased tourism and recreational use of the waters. Clean water provides for increased wildlife habitat and more productive fisheries.

**(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.**

No. The proposed regulations are not more stringent than federal standards.

**(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?**

Other states are also required to maintain water quality standards, based on the federal mandate at section 303(c) of the federal Clean Water Act and 40 CFR § 131.10.

The proposed amendments will not put Pennsylvania at a competitive disadvantage to other states.

**(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

No other regulations are affected by this proposal. State agencies that may cause pollution in surface waters will likely be affected by this regulation. For example, if an agency’s activity involves the discharge of pollutants into surface waters, the discharge must meet the water quality standards identified by this regulation.

**(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)**

The streams in this proposed rulemaking that are candidates for redesignation were all evaluated in response to a submittal from the Pennsylvania Fish and Boat Commission (PFBC) under § 93.4b (relating to qualifying as High Quality or Exceptional Value waters). Section 93.4b(a)(2)(ii) pertains to the process for a stream to qualify for HQ designation based upon its classification as a Class A wild trout stream. It states that a surface water that has been designated a Class A Wild Trout stream by the PFBC, following public notice and comment, qualifies for HQ designation. The PFBC published notice and requested comments on the Class A designation of these streams. The PFBC Commissioners approved these waters, as Class A wild trout streams, after public notice and comment. Department staff conducted an independent review of the trout biomass data in the fisheries management reports for these streams. This review was conducted to ensure that the Class A criteria were met.

The Department provides public notice of its intent to assess the Class A stream data prior to any resulting redesignation recommendations. The Department’s notice requesting additional water quality data was published in the Pennsylvania Bulletin on May 26, 2012 (42 PaB 3027) and also on the Department website. No water quality data were received. In addition, all affected Municipalities, County Planning Commissions, Conservation Districts, and State Agencies were notified of this redesignation evaluation in a letter dated May 2, 2012. No data or comments were received in response to these notices.

Once the Department’s final draft report was completed, it was made available to all municipalities, County Planning Commissions, County Conservation Districts and other State Agencies on March 20, 2015. This final draft report was mailed to these entities and it was also posted on the Department’s website, with an initial public comment period ending 45-days later. Six stakeholders offered comments during the comment period, three in support and three in opposition. The Department considered these comments in drafting the final Class A Wild Trout Streams Evaluation Report.

The public will be afforded the opportunity to comment on this proposed regulation during a 45-day public comment period.

**(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?**

It is not possible to identify the total number of persons, businesses and organizations that will be affected by the regulation. Persons proposing new or expanded activities or projects which result in pollution to waters of the Commonwealth may be affected by the proposed regulations. For example, dischargers of pollutants will be required to provide effluent treatment or best management practices that will protect and maintain the designated uses identified in this proposed regulation. Such treatment and practices may result in higher design engineering, construction, and treatment costs. The proposed regulation will be implemented through the Department’s permit and approval actions.

The Department identified 3 potable water supply facilities with raw water intakes that are no further downstream than 16.5 stream miles of the candidate stream sections for redesignation in this rulemaking package. These three potable water suppliers which serve over 115,000 citizens, will benefit from this rulemaking package because their raw source water will be afforded a higher level of protection. This is an economic benefit because the treatment costs are less when you begin with higher quality water.

Out of over 7,000 pollution control facilities across the Commonwealth, only 11 of them are known to hold discharge permits within close proximity to the portions of the streams that are candidates for redesignation in this Class A Package.

**(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.**

Persons with proposed or existing discharges into surface waters of the Commonwealth must comply with the regulation. Also, see response to question 15.

**(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.**

All citizens of the Commonwealth, both present and future, will benefit from having clean water that is protected and maintained. Because the focus of this proposal also relates to the protection of fisheries, specific revenue-related benefits associated with outdoor recreation in Pennsylvania are outlined below.

The Center for Rural Pennsylvania prepared a report titled “Economic Values and Impacts of Sport Fishing, Hunting and Trapping Activities in Pennsylvania,” that examined such economic impacts between the years 1995 to 1997. The report provided a snapshot of how much money these sporting activities bring to the state and how they affect employment in rural areas. A major finding of that report is the total annual value of \$3.7 billion for sport fishing was almost three times the \$1.26 billion spent in travel costs to use fishing resources during the same 12-month period of time.

According to the “Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania,” (R. Greene, et al. 2005) ([http://www.outdoorrecreationdata.com/Stats/PA\\_wildtrout\\_05.pdf](http://www.outdoorrecreationdata.com/Stats/PA_wildtrout_05.pdf)), the Pennsylvania Fish and Boat Commission collected information to assess the economic impact of wild trout angling in Pennsylvania, during the 2004 regular trout season, April 17 through September 3, 2004. “Based on the results of this study, angling on wild trout streams contributed over 7.16 million dollars to Pennsylvania’s economy during the regular trout season in 2004.”

According to the “2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation” for Pennsylvania, prepared by the U.S. Fish and Wildlife Service, approximately 1,101,000 anglers, participated in fishing and 3,598,000 persons participated in wildlife watching in the year 2011. In addition, all fishing-related expenditures in Pennsylvania totaled \$485 million in 2011. Such expenditures include food and lodging, transportation and other expenses (equipment rental, bait and cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in Pennsylvania. Expenditures include trips-related costs and equipment.

According to the Outdoor Recreation Industry Association, Pennsylvania’s outdoor recreation generates 219,000 direct Pennsylvania jobs, \$7.2 billion in wages and salaries, and \$1.6 billion in state and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. (See Outdoor Industry Association (2012), “The Outdoor Economy: Take it Outside for American Jobs and a Strong Community,” [http://www.outdoorindustry.org/pdf/OIA\\_Outdoor-RecEconomyReport2012.pdf](http://www.outdoorindustry.org/pdf/OIA_Outdoor-RecEconomyReport2012.pdf).)

Also, see response to question 15.

**(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.**

Health and welfare benefits to all citizens of the Commonwealth accrue from protecting the surface waters of the Commonwealth at the appropriate level. The benefits from substantial revenue and jobs associated with popular fisheries, and other industries that rely on clean water, outweigh the cost and adverse effects associated with selective effluent treatment technology and best management practices for those who cause pollution of the waters.

Also, see responses to questions 15 and 17.

**(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.**

Specific estimates of costs and savings cannot be determined because each activity that will result in pollution to a special protection water must be reviewed based on site-specific considerations. These site-specific considerations include, but are not limited to the size, flow volume, and the chemical, biological and physical properties of both the receiving water and the effluent discharge. These unique parameters result in site-specific requirements. Individual permits will be required for National Pollutant Discharge Elimination System (NPDES) discharges to waters identified in the proposed regulations.

**(20) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.**

No costs will be imposed directly upon local governments by this proposed regulation. This proposal is based on and will be implemented through existing Department programs, procedures and policies. However, certain municipalities that discharge pollutants to surface waters may be affected by this proposed regulation. The costs associated with permits and performance or design requirements will be site-specific and will be based on effluent limitations or best management practices and the appropriate protections for a particular waterbody.

The municipality may derive additional revenue and employment from the tourism industries that are attracted to recreation associated with surface waters, such as anglers.

**(21) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.**

No costs will be imposed directly upon state governments by this proposed regulation. This proposal is based on and will be implemented through existing Department programs, procedures and policies. However, certain state agencies that discharge pollutants to surface waters may be affected by this proposed regulation. The costs associated with permits and performance or design requirements will be site-specific and will be based on effluent limitations or best management practices and the appropriate protections for the particular waterbody.

The state may derive additional revenue and employment from the tourism industries that are attracted to recreation associated with the surface waters, such as anglers. Also, see response #17.

**(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.**

Each activity that will result in pollution to a special protection water requires a review that is based on site-specific considerations. Existing Department procedures will be used to implement this proposed regulation. Persons proposing new or expanded activities or projects which result in discharges to waters of the Commonwealth will be required to implement treatment of effluent or best management practices and the appropriate protections for a particular waterbody.

**(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.**

	<b>Current FY Year 15/16</b>	<b>FY+1 Year 16/17</b>	<b>FY+2 Year 17/18</b>	<b>FY+3 Year 18/19</b>	<b>FY+4 Year 19/20</b>	<b>FY+5 Year 20/21</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	Not Measurable					
<b>Local Government</b>	“					
<b>State Government</b>	“					
<b>Total Savings</b>	“					
<b>COSTS:</b>						
<b>Regulated Community</b>	Not Measurable					
<b>Local Government</b>	“					
<b>State Government</b>	“					
<b>Total Costs</b>	“					
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	Not Measurable					
<b>Local Government</b>	“					
<b>State Government</b>	“					
<b>Total Revenue Losses</b>	“					

**(23a) Provide the past three year expenditure history for programs affected by the regulation.**

<b>Program</b>	<b>FY -3 (2012-13)</b>	<b>FY -2 (2013-14)</b>	<b>FY -1 (2014-15)</b>	<b>Current FY (2015-16)</b>
160-10381 Enviro Protection Operations	\$74,547,000	\$75,184,000	\$84,438,000	\$90,100,000
161-10382 Enviro Program Management	\$24,965,000	\$25,733,000	\$28,517,000	\$29,967,000

**(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:**

**(a) An identification and estimate of the number of small businesses subject to the regulation.**

Persons with proposed or existing discharges into surface waters of the Commonwealth must comply with the regulation. Also, see response to question 15.

**(b) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**

Each activity that will result in pollution to a special protection water requires a review that is based on site-specific considerations. Individual permits will be required for National Pollutant Discharge Elimination System (NPDES) discharges to waters identified in the proposed regulations. Existing Department procedures will be used to implement this proposed regulation.

**(c) A statement of probable effect on impacted small businesses.**

Each activity that will result in pollution to a special protection water requires a review that is based on site-specific considerations. Individual permits will be required for National Pollutant Discharge Elimination System (NPDES) discharges to waters identified in the proposed regulations. Existing Department procedures will be used to implement this proposed regulation.

**(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

The existing regulations, in Chapter 93, provide some relief for a person who applies for a permit and proposes to discharge pollutants, and who has evaluated the following: whether nondischarge alternatives (to the discharge) exist that are cost effective and environmentally sound; and, if not, whether a nondegrading discharge is possible. Since all of the proposed regulations involve designations of High Quality-Cold Water Fishes, Chapter 93 allows the Department to allow a reduction of water quality if it finds that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

**(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.**

There are no such provisions in this proposed regulation.

**(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.**

There were no non-regulatory alternatives available to consider in this case.

There were no alternative regulatory schemes to consider in achieving the correct level of protection for the waters of the Commonwealth. The proposed regulations reflect the results of a scientific evaluation of regulatory criteria.

**(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:**

**(a) The establishment of less stringent compliance or reporting requirements for small businesses.**

There were no less stringent compliance or reporting requirements to consider in this case.

There were no alternative regulatory schemes to consider in achieving the correct level of protection for the waters of the Commonwealth. The proposed regulations reflect the results of a scientific evaluation of regulatory criteria.

**(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.**

There were no non-regulatory alternatives available to consider in this case.

Schedules of compliance and reporting requirements are considered when permit or approval actions are taken and cannot be considered as part of this scientific evaluation of the correct designated uses of surface waters.

**(c) The consolidation or simplification of compliance or reporting requirements for small businesses.**

Compliance and reporting requirements are considered when permit or approval actions are taken and cannot be considered as part of this scientific evaluation of the correct designated uses of surface waters.

**(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.**

The proposed regulations represent performance standards. They identify the instream goals for water quality protection and do not identify the design or operational standards that must be used to meet the goals.

**(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.**

There were no such exemptions of small businesses to consider in this case.

**(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.**

Please see the attached stream evaluation report.

**(29) Include a schedule for review of the regulation including:**

- A. The date by which the agency must receive public comments:** 45-day comment period
- B. The date or dates on which public meetings or hearings will be held:** during 45-day comment period, (if requested)
- C. The expected date of promulgation of the proposed regulation as a final-form regulation:** by winter 2016/17
- D. The expected effective date of the final-form regulation:** Publication in the PA Bulletin
- E. The date by which compliance with the final-form regulation will be required:** Publication in the PA Bulletin
- F. The date by which required permits, licenses or other approvals must be obtained:** When permits or approvals are issued or renewed

**(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

Additionally, the Clean Water Act includes a requirement to review, and revise as necessary, the Commonwealth's water quality standards at least once every three years. As such, there is a schedule built in for continual review of this regulation.