

Executive Summary
Amendments to 25 Pa. Code Section 93.9
Sobers Run, et al., Final Rulemaking

As part of its continuing water quality management program and ongoing review of water quality standards, the Department of Environmental Protection (DEP) recommends that the Environmental Quality Board (EQB) adopt the following amendments to 25 Pa. Code Chapter 93, §§93.9c, 93.9f, and 93.9i to read as set forth in Annex A of this final rulemaking.

Purpose of the Rulemaking

Section 303(c)(1) of the federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. The regulatory changes in this final rulemaking are the result of stream evaluations conducted by DEP to determine the appropriate designated use of the candidate waterbodies. The streams in this rulemaking were all evaluated in response to four petitions as follows:

Stream	County	Petitioner
Swiftwater Creek	Monroe	Brodhead Creek Watershed Association
Sobers Run	Northampton	Bushkill Township
Mill Creek	Berks, Chester	Delaware Riverkeeper Network
Silver Creek	Susquehanna	Silver Lake Association

Summary of the Rulemaking

Department staff evaluated the physical, chemical, and biological characteristics and other information on these waterbodies to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as High Quality (HQ) or Exceptional Value (EV) waters, DEP considers the criteria in § 93.4b (relating to qualifying as HQ or EV Waters). Based on these data and appropriate regulatory criteria, DEP developed this package of stream redesignations for the Board’s consideration. The regulations include DEP’s recommendations for EV stream redesignations in the Delaware and Susquehanna River basins. DEP’s recommendations are described in the Summary Table below and are also set forth in Annex A of the final rulemaking.

These redesignations will be implemented through DEP’s permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program requires effluent limitations for discharges that are protective of the use designations of the stream. The streams that are specified in this final rulemaking for redesignation are currently protected at their existing uses and, therefore, the designated use changes should have no additional impact on existing treatment requirements. Some new or expanding discharges may be subject to more stringent treatment requirements to meet designated and existing stream uses.

Additionally, DEP is recommending corrections to some stream names as they appear in §93.9c. The United States Geologic Survey (USGS) maintains the National Hydrography Dataset (NHD) Flowline. These stream names are being corrected to maintain consistency between the Pennsylvania Code and the NHD Flowline.

Affected Parties

Ten National Pollutant Discharge Elimination System (NPDES) permitted facilities within the portions of the streams are candidates for redesignation in this Sobers Run, et al., Stream Redesignation Package. The types of NPDES discharges identified include industrial stormwater, sewage, and pesticides. Discharges in existence at the time of the stream surveys have been factored into the evaluations of the existing water quality of the 4 streams and the subsequent recommendations for redesignation to exceptional value (EV). Since the presence of such discharge activities did not preclude the attainment of EV status, they are considered grandfathered under the antidegradation policy for as long as the discharge characteristics (both quality and quantity) remain the same. Thus, redesignation to EV does not automatically impose any additional special requirements on the Ten NPDES permitted entities.

Any person, business, small business, or organization proposing a new, additional, or increased point source discharge would need to satisfy the requirements found at 25 Pa. Code § 93.4c(b)(1). Any new, additional or increased point source discharge to special protection waters must evaluate non-discharge alternatives and use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge. The permit applicant must demonstrate in the permit application that their new or expanded activities will not lower the existing water quality of special protection streams. Point source discharge activities to special protection streams typically do not qualify for general permits. Therefore, new discharges will require an individual permit. Where on-lot sewage systems are planned, DEP's sewage facilities planning and permitting process, as implemented by DEP under 25 Pa Code, Chapters 71 (Administration of Sewage Facilities Planning Program); 72 (Administration of Sewage Facilities Permitting Program); and 73 (Standards for Onlot Sewage Treatment Facilities), is protective of water quality.

Other permitted activities and approvals, such as those required under Chapter 102 for erosion and sediment control during construction activities, must utilize BMPs, where applicable to satisfy the requirements found at 25 Pa. Code § 93.4c(b)(2). These sets of BMPs are designed to provide a higher degree of protection than those utilized in non-special protection waters.

DEP cannot accurately estimate who will be affected by these stream redesignations because: (1) persons, businesses and small businesses will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) effluent discharges and receiving stream characteristics are unique; and (3) generic technology or cost equation are not available for purposes of comparing the costs and/or savings for those who are responsible for discharges.

DEP identified three public water supply facilities with raw water intakes that are no further downstream than 17.0 stream miles of the candidate stream sections for redesignation in this rulemaking package. These three public water suppliers which serve over 103,000 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 source water treatment costs for the drinking water will be less costly to customers if less treatment is needed due to the exceptional value of the water in the stream.

Small businesses in the outdoor recreation industry will be positively affected by these regulations. The maintenance and protection of the water quality will ensure the long-term availability of these outdoor recreation opportunities in pristine waters.

Public Comments

The EQB approved the proposed rulemaking for the Sobers Run, et al., Stream Redesignation Package at its April 19, 2016 meeting. The proposed rulemaking was published in the Pennsylvania Bulletin on June 11, 2016 (46 Pa.B. 2970) with provision for a 45-day public comment period that closed on July 25, 2016. Comments were received from five commentators. Two commentators offered support of the entire proposed rulemaking and one commended DEP in its efforts. One commentator offered support for the redesignation of Mill Creek. All public comments were supportive of the proposed regulatory amendments.

DEP recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as a final-form rulemaking.

Summary Table: Final Rulemaking

Sobers Run et al., Stream Redesignation Rulemaking Package

Stream Name	County	Zone Description [†]	List	Current DU*	Requested DU*	Recommended DU*
Swiftwater Creek	Monroe	Basin, Source to but not including UNT 04960	C	HQ-CWF, MF	EV (<i>Petition requested basin upstream of SR 611.</i>)	EV, MF
Sobers Run	Northampton	Basin	C	HQ-CWF, MF	EV	EV, MF
Mill Creek	Berks	Basin, excluding UNT at 40°14'33.8"N; 75°43'49.6"W	F	WWF, MF	EV (<i>Petition requested entire Mill Creek basin.</i>)	EV, MF
Silver Creek	Susquehanna	Basin, Source to Laurel Lake Creek	I	CWF, MF	EV (<i>Petition excluded Laurel Lake Creek basin, except McCormick Run basin.</i>)	EV, MF
McCormick Run	Susquehanna	Basin	I	CWF, MF		EV, MF
Silver Creek	Susquehanna	Basin, From Laurel Lake Creek to Mouth	I	CWF, MF		EV, MF

Proposed Stream Name Corrections that Do Not Affect the Current Designated Use			
Stream	County	List	Proposed Correction
Saw Kill Creek	Pike	C	Sawkill Creek
Raymond Kill	Pike	C	Raymondskill Creek

*WWF = warm water fishes
 *CWF = cold water fishes
 *TSF = trout stocking

*HQ = high quality
 *EV = exceptional value
 *MF = migratory fishes

[†]UNT = unnamed tributary