



Water Quality Standards Sobers Run, et al., Stream Redesignations

25 Pa. Code Chapter 93
46 Pa.B. 2970 (June 11, 2016)
Environmental Quality Board Regulation #7-535
(Independent Regulatory Review Commission #3150)

COMMENT AND RESPONSE DOCUMENT

COMMENTATOR LIST

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Introduction

Water Quality Standards - Sobers Run, et al., Stream Redesignations

The Environmental Quality Board approved the proposed rulemaking for the Sobers Run, et al., Stream Redesignation Package at its April 19, 2016 meeting. On May 26, 2016, the Department of Environmental Protection (DEP) submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)). 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; one commended DEP in its efforts; and one commentator offered support for the redesignation of Mill Creek. No opposing comments were submitted. IRRC submitted comments requesting amendments to the regulatory analysis form (RAF) when drafting the final-form rulemaking. The RAF was amended accordingly and is included as part of this final-form rulemaking package.

Comments Supporting Proposed Stream Redesignations

- 1. Comment:** We have no comment on these proposed modifications, but we commend DEP in its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program. (4)

We support the proposed stream redesignations to exceptional value. We ask that the Board finalize this rulemaking to provide these special waters with the deserved protection. (3,2).

Pennsylvania's water resources are essential to the Commonwealth's health and economic well-being, and they should be protected. Redesignating these streams to EV will give them added protection so they can continue to provide viable habitat for aquatic life. Each of these stream redesignations was originated with a petition submitted by a municipality or a citizens group. We appreciate the willingness of the Board and DEP to work with municipalities and citizens groups to bring about improved water quality protection. We are encouraged to see that state government is working with communities to achieve this beneficial result for the citizens of the Commonwealth. We commend the efforts of all involved, and we hope that this will serve as a model for future mutual endeavors. Thank you for considering these comments and thank you for your efforts to ensure Pennsylvanian's right to "pure water" protected under the Article 1; Section 27 of the Pennsylvania Constitution. (3)

We owe it to future generations to protect these outstanding streams. (2)

Response: DEP appreciates the commentators' support of this rulemaking. The streams and stream segments included in this rulemaking qualify for the exceptional value (EV) designation because they have met the appropriate criteria under 25 Pa. Code §93.4b.

Redesignating these waters to EV will ensure that the appropriate level of protection will be provided and that the uses of these waters will be protected.

Mill Creek – Supportive Comments

- 2. Comment:** I support the Board’s recommendation that Mill Creek basin excluding the unnamed tributary at 40°14' 33.8"N; 75°43`49.6"W be redesignated to EV, MF. (1)

Response: DEP appreciates the commentator’s support of the proposed redesignations. DEP encourages on-going local environmental stewardship efforts. Local efforts in the watershed are very important in protecting and promoting the stream quality and habitat, especially when combined with the redesignation of streams to the appropriate use affording these waters the proper level of protection under the Commonwealth’s water quality standards program.

Addressing Economic Impact

- 3. Comment:** The Board did not sufficiently explain how the benefits of the regulation outweigh any cost and adverse effects on question 18 of the Regulatory Analysis Form ((referred to as RAF (18)). The response also references responses to RAF (15) and (17). The Board should readdress the benefits of the amendments in this regulation (e.g. how will this regulation incrementally affect the overall \$3.7 billion per year sport fishing industry or any of the other benefits presented in the RAF?).

The information given by the Board pertaining to cost is vague. Response to RAF (15) indicates that increased protection may result in higher design, engineering, construction and treatment costs and that there are 10 known pollution control facilities affected. The responses to RAF (19), (20), and (23) do not provide any dollar estimates and state either that the costs cannot be determined because they are site-specific or that there are no costs. The RAF (20) response is inconsistent. It states, “No costs will be imposed directly upon local governments,” then states “certain municipalities...may be affected,” then concludes that the costs would be site-specific. The Board should clarify the impact of the redesignations on existing discharges and provide estimates of costs. Additionally, the redesignations limit future land use but there is no discussion of that impact on current landowners.

A conclusion that the benefits of this specific regulation outweigh the costs and adverse effects should be based on numbers specific to this regulation. We ask the EQB to amend the RAF responses to provide information specific to this regulation. In support of its determination that benefits outweigh any cost and adverse effects, we ask the Board to provide more thorough and specific explanations of benefits, costs, and adverse effects in the RAF submitted with the final-form regulation. (5)

Response: Responses to questions included in the RAF were revised to address these comments. Please see the RAF that accompanies the final-form rulemaking.

4. Comment: Both the Board's response to RAF (22) and the Preamble's Section F.4. Paperwork Requirements explain that some permits and paperwork will be required. However, the response to RAF (22) did not include the detail requested in RAF (22). We ask the EQB to provide a more thorough response to RAF (22) in the final-form regulation submittal. (5)

Response: Responses to questions included in the RAF were revised to address these comments. Please see the RAF that accompanies the final-form rulemaking.

Addressing Impact to Small Businesses

5. Comment: RAF Questions (15), (16), and (17) ask the agency to identify, list, and identify the impact on several entities, including small businesses. We ask the EQB to directly address small businesses in these responses. (5)

Response: Responses to questions included in the RAF were revised to address these comments. Please see the RAF that accompanies the final-form rulemaking.

The Regulation needs added Clarity

6. Comment: As part of our determination of whether a regulation is in the public interest, the IRRC must consider whether the regulation is written with sufficient clarity. The first sentence of the second paragraph of the Board's response to RAF (7) states, "This proposal modifies Chapter 93 to reflect the recommended redesignation of streams shown on the attached list." We did not find an attachment and are not clear regarding what this response references. (5)

Response: The proposed RAF incorrectly stated that a list was attached. The response was changed in the final-form RAF to correctly refer to the stream redesignation evaluation reports.