

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: 7-535

IRRC Number: 3150

(3) PA Code Cite: 25 Pa. Code, Chapter 93

(4) Short Title:

Water Quality Standards – Sobers Run, et al., 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 of Environmental Protection's (DEP) ongoing review of Pennsylvania's water quality standards. The regulation will update and revise water quality standards that are designated uses for surface waters of the Commonwealth.

This rulemaking modifies Chapter 93 to reflect the recommended redesignations of streams in the attached stream redesignation evaluation reports. The regulation will update and revise stream use designations in 25 Pa. Code §§ 93.9c, 93.9f, and 93.9i. These changes may, upon implementation, result in the application of more stringent treatment requirements for new or expanded wastewater discharges, to the streams, for the protection of existing and designated water uses.

These changes may, upon implementation, result in the application of more stringent and increased best management practices (BMP) to control non-point sources of pollution, such as stormwater runoff from construction projects.

(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 (b)(1) and 691.402.

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.

By protecting the water uses, and the quality of the water necessary to maintain these 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. 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. This regulation benefits not only local residents but those from outside the area who come to enjoy the benefits and aesthetics of outdoor recreation and those downstream users of these waters.

(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 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 amendments will therefore 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 rulemaking.

(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 (or portions of streams) in this rulemaking that are candidates for redesignation to EV were all evaluated in response to petitions that were submitted to the Environmental Quality Board (EQB) 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

DEP reviewed the petitions and determined that they were complete, and the petitioners were notified that the petitions were appropriately submitted. The petitions were presented to the EQB, and the petitioners had an opportunity to deliver a 5-minute presentation regarding why the EQB should accept the petition. The EQB accepted these petitions and notifications of their acceptance were published in the *Pennsylvania Bulletin*.

DEP gave notice, in the *Pennsylvania Bulletin* and on its website, that an evaluation was to be conducted on all or portions of the subject streams to determine the proper Aquatic Life Use or Special Protection designations for this Commonwealth's Water Quality Standards. Persons who had technical data concerning the water quality, instream habitat or biological conditions of these stream sections were encouraged to make it available to DEP for consideration in the assessment. Potentially affected municipalities were also notified by letter about these stream evaluations and these municipalities were asked to provide any readily available data.

Responses were generated from this outreach for data. No data were received for Swiftwater Creek. DEP received comments regarding Swiftwater Creek including a notice from Tobyhanna Township stating that they do not support the petition to upgrade Swiftwater Creek. DEP received data from Bushkill Township to augment DEP's assessment of Sobers Run. Hanover Engineering Associates submitted the latest (2009) Coldwater Conservation Plan completed for the Upper Bushkill Creek Watershed and the Northampton County Conservation District submitted water chemistry results collected by the Retired Senior Volunteer Program. This data was used as documentation and support for the Sobers Run special protection assessment. The Delaware Riverkeeper Network provided DEP with water quality data for Mill Creek including a copy of the 1994 Pennsylvania Fish and Boat Commission Report, information pertaining to the Pennsylvania Fish and Boat Commission 'Natural Trout Reproduction Layer', and information pertaining to local angler observations. This submitted data was used as supporting documentation of the water quality of the Mill Creek basin in conjunction with the findings of DEP's survey. DEP also received two supportive responses from local citizens regarding the redesignation of Mill Creek. DEP did not receive any data regarding Silver Creek. DEP did receive one letter of support for the redesignation of Silver Creek.

The potentially affected municipalities, County Planning Commissions, County Conservation Districts, other State Agencies, and petitioners were later notified of the availability of a draft evaluation report for their review and comment. The draft stream evaluation reports were also made available on DEP's website and were available for a minimum 30-day public review and comment period.

DEP did receive some comments on the draft stream evaluation reports during the 30-day public review and comment period. No comments were received in response to this notice for either Swiftwater Creek or Silver Creek. Nine commentators offered their supportive comments for DEP's recommendation to redesignate Sobers Run. Three stakeholders offered comments pertaining to the Mill Creek report, one in support and two in opposition. In addition, the Delaware Riverkeeper requested an extension of the original 30-day public comment period. In response, DEP provided a 30-day extension to the comment period for the Mill Creek stream report. The Delaware Riverkeeper provided additional comments in support of the EV recommendation and in opposition of the recommendation for the unnamed tributary to Mill Creek at 40°14'33.8"N; 75°43'49.6"W to remain unchanged.

All data and comments received in response to these notifications were considered in the determination of DEP's recommendations as described in the four stream reports and included in the proposed rulemaking that was approved by the EQB at its meeting on April 19, 2016.

The public was afforded the opportunity to comment on the proposed rulemaking during a 45-day public comment period that closed on July 25, 2016. Comments were received from 5 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. There were no opposing comments. The Independent Regulatory Review Commission (IRRC) submitted comments specifying which regulatory review criteria have not been met. The IRRC requested that the regulatory analysis form should be completed with more thorough responses. A detailed discussion of the comments received during the public comment period and the Board's responses are provided in the Comment/Response Document that accompanies this final rulemaking. Responses to IRRC are contained in this revised RAF.

(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?

Over 7,000 facilities across the Commonwealth hold permits issued pursuant to 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring, and compliance). Only 10 of these facilities are known to hold NPDES permits within the stream segments redesignated in this rulemaking. The types of NPDES discharges identified include industrial waste, sewage and industrial stormwater. Discharges in existence at the time of the stream surveys were factored into the evaluations of the existing water quality of the four streams and the subsequent recommendations for redesignation to exceptional value (EV). Because the presence of such discharge activities did not preclude the attainment of EV status, the discharges 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 technology requirements on the 10 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. 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. If no cost-effective and environmentally sound alternative to the discharge is available, the discharge must be non-degrading. 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 do not qualify for general permits. Therefore, new discharges and renewals of permits currently operating under a general permit 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. These sets of BMPs are designed to provide a higher degree of protection than those utilized in non-special protection waters.

Any evaluation regarding the types and numbers of persons, businesses, small businesses and organizations that will be affected by the need for new technology or special protection BMPs, due to changes resulting from this regulation would be speculative at this time because (1) those potentially affected would not be impacted until a future activity requiring a new or modified permit is proposed, (2) each effluent discharge and receiving stream characteristics are unique, and (3) there is no generic technology or cost equation that can be applied for purposes of comparing the costs and/or savings for those that 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.

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

As mentioned in the response to question 15, there are currently 10 NPDES permitted facilities within the portions of the streams that are candidates for redesignation in this Sobers Run, et al. Stream Redesignation Package. However, the existing discharges from these facilities will be considered grandfathered under the antidegradation policy for as long as the discharge characteristics (both quality and quantity) remain the same. Thus, these 10 facilities will not be held to any new technology requirements caused by the stream redesignations to EV in the immediately foreseeable future, but the regulation might affect these discharge permits if the characteristics of either the discharge or the receiving stream should change.

Any person, group, entity, or small business proposing a new, additional, or increased point source discharge would need to satisfy the requirements of the antidegradation regulation at 25 Pa. Code § 93.4c. In addition, any person proposing earth disturbance activities that meet the minimum acreage threshold to require a permit or approval must utilize BMPs in accordance with § 93.4c.

Any approximation of the number of new persons who would need to comply would be speculative, because a person, group, entity, or small business will not be required to comply with this regulation until a future activity requiring a new, additional or increased point source discharge, which may include new earth disturbance activities involving enough acreage to require an NPDES permit or approval is proposed.

(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.

Financial and Economic Impacts: Discharges in existence at the time of the stream surveys have been considered in the evaluations of the existing water quality of the streams and the subsequent recommendation for redesignation to EV. Because the presence of such discharge activities did not preclude the attainment of EV status, the discharges 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 technology requirements or financial impacts on NPDES permitted entities.

Any person proposing a new, additional, or increased point source discharge would need to satisfy the requirements of the antidegradation regulation at 25 Pa. Code § 93.4c. 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. Point source discharge activities to special protection streams do not qualify for general permits. Therefore, new discharges and renewals of permits currently operating under a general permit will require an individual permit, which includes a higher application fee. Also, there may be a financial impact on the permittee to prepare a permit application that relies on appropriate best management practices or treatment technology to protect water quality.

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. No financial impact will be incurred for on-lot systems associated with the final regulations.

Other permitted activities, or ones requiring Department approval, such as those required under 25 Pa. Code Chapter 102 for erosion and sediment control during construction activities must utilize antidegradation BMPs. These BMPs are designed to provide a higher degree of protection than those utilized in non-special protection waters. It may be surmised that additional expense may come in the preparation of permit applications, but because it is unknown what potential activities may occur in the watershed, it is impossible to quantify the actual increased cost.

Social Impacts and Economic and Social Benefits: This regulation benefits the Commonwealth by furthering the General Assembly’s policy declaration for clean water, established in Section 4 of the Clean Streams Law (see below). All present and future citizens of the Commonwealth will benefit from the regulation because it will provide the appropriate level of water quality protection for all water uses.

Section 4. Declaration of Policy.

- (1) Clean, unpolluted streams are absolutely essential if Pennsylvania is to attract new manufacturing industries and to develop Pennsylvania's full share of the tourist industry;
- (2) Clean, unpolluted water is absolutely essential if Pennsylvanians are to have adequate outdoor recreational facilities in the decades ahead;
- (3) It is the objective of the Clean Streams Law not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted;
- (4) The prevention and elimination of water pollution is recognized as being directly related to the economic future of the Commonwealth; and
- (5) The achievement of the objectives herein set forth requires a comprehensive program of watershed management and control.

(CSL Section 4 amended July 31, 1970, P.L.653, No. 222)

No specific social impacts and benefits studies exist for the specific waterways in this redesignation package. However, examples abound of social impacts and benefits afforded by this regulation. This includes:

1. Increased property values are an economic and social benefit of clean water protected by this regulation. A reduction in toxics found in Pennsylvania's waterways may lead to increased property values for properties located near rivers or lakes. The study, *The Effect of Water Quality on Rural Nonfarm Residential Property Values*, (Epp and Al-Ani, American Journal of Agricultural Economics, Vol 61, No. 3 (Aug. 1979)), used real estate prices to determine value of improvements in water quality in small rivers and streams in Pennsylvania. Water quality, whether measured in pH or by the owner's perception, has a significant effect on the price of adjacent property. Their analysis showed a positive correlation between water quality and housing values. They concluded that buyers are aware of the environmental setting of a home and that differences in the quality of nearby waters affect the price paid for a residential property.

A 2006 study from the Great Lakes region estimated that property values were significantly depressed in two regions associated with toxic contaminants (PAHs, PCBs, and heavy metals). The study showed that a portion of the Buffalo River region (approx. 6 miles long) had depressed property values of between \$83 million and \$118 million for single-family homes, and between \$57 million and \$80 million for multi-family homes as a result of toxic sediments. The same study estimated that a portion of the Sheboygan River (approx. 14 miles long) had depressed property values of between \$80 million and \$120 million as the result of toxics. "*Economic Benefits of Sediment Remediation in the Buffalo River AOC and Sheboygan River AOC: Final Project Report*," (<http://www.nemw.org/Econ>). While this study related to the economic effect of contaminated sediment in other waters in the Great Lakes region, the idea that toxic pollution depresses property values applies in Pennsylvania. A reduction in toxic pollution in Pennsylvania's waters has a substantial economic benefit to property values in close proximity to waterways.

2. Maintenance of abundant and healthy aquatic communities and other wildlife populations and support for outdoor recreation are also benefits of clean water protected by this regulation. Sportsmen and others recreating in Pennsylvania's outdoors will benefit by the preservation of the EV waters. EV waters provide a pristine environment for fishing and outdoor recreation. As recreation demands increase in the future, the preservation of unique resources such as EV waters will no doubt add economic value to the local areas and, importantly, provide a valuable social function for outdoor recreation. 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 Economy,”
https://outdoorindustry.org/pdf/OIA_OutdoorRecEconomyReport2012.pdf.)

3. Savings in water filtration for downstream communities that rely on surface waters for water supplies and availability of unpolluted water for domestic, agricultural and industrial uses are benefits of clean water protected by this regulation. By maintaining cleaner water, public water suppliers will incur the benefits of lower water treatment costs. In addition, cleaner intake water will reduce consumer costs for purchasing clean drinking water.

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

Protection of EV waters does not automatically impose any additional special requirements on NPDES permittees; their existing discharges are factored into these redesignations. The EV protection afforded to waters identified in this rulemaking has been in place, representing the existing uses of these waters, since the date of evaluation for each of the candidate streams. For the existing use dates of all of the candidate streams, refer to the Date of Evaluation column in the Statewide Existing Use Classifications Table found at: (<http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortals/Existing%20Use/EU%20table%20list.pdf>). When a person proposes a new, additional, or increased point source discharge that requires a DEP permit or approval he or she needs to satisfy the requirements of the antidegradation regulation at 25 Pa. Code § 93.4c. Special protection designations do require additional permit application evaluations and considerations and may require the use of additional technologies or BMPs to address pollution that was not present at the time of the stream redesignation. Presently, there are 10 NPDES discharges located on waters identified in this rulemaking. It is not known at this time whether these facilities will modify their discharges, possibly triggering the antidegradation regulation. It is also unknown at this time if there are persons who will propose an activity that would require a permit or other approval from DEP.

Discharge permits to EV waters may be issued if an entity can sufficiently demonstrate to DEP that the activity will protect existing water quality. 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. This final rulemaking will not increase costs or trigger adverse effects on existing or planned on-lot sewage systems.

Several examples of benefits to be gained include property value increases, lower drinking water treatment costs, lower customer delivery costs for drinking water, and maintenance of abundant and healthy fish and wildlife populations and support for outdoor recreation. These benefits are described in greater detail in #17, above.

Any evaluation of the adverse effects of this regulation on dischargers that may need to add technology or BMPs would be speculative at this time because (1) a discharger will not be impacted until a future activity requiring a new or modified permit is proposed, (2) each effluent discharge and receiving stream characteristics are unique, and (3) there is no generic technology or cost equation that can be applied for purposes of comparing the costs and/or savings for those entities that are responsible for discharges.

The stream redesignations benefit all citizens of the Commonwealth, both present and future, by maintaining and protecting water. Providing this benefit is consistent with Article 1, Section 27 of the Pennsylvania

Constitution which provides that the people have a right to “pure water” and to the “preservation of the natural, scenic, historic and esthetic values of the environment.”

Based on these assessments, the benefits outweigh any potential costs and potential adverse impacts.

(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.

Please refer to the response to Question 17 for more detailed information.

In general, if a person has a NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit will not be affected by the stream redesignations, and no new costs will be incurred. If, however, the discharge changes in quality or quantity after the use (either existing use or designated use) of a stream is changed, any subsequent permit action will take the change in use into account when establishing permit limits.

Costs associated with new, increased or additional discharges would include the assistance of a consultant to complete a new portion of a permit application that addresses antidegradation of surface waters. The application requires the permittee to select the various non-discharge alternatives, treatment technologies or best management practices (BMPs) that will maintain the existing water quality of the stream. The permittee will choose the best combination of cost-effective treatment if non-discharge alternatives are not environmentally sound and cost effective.

While a special protection designation does require these additional evaluations, and may require the use of additional treatment technologies or BMPs, it does not prohibit activities. Any discharge may occur to EV waters as long as the activity will protect existing water quality.

Any evaluation of costs and/or savings for persons who discharge pollutants to special protection streams would be speculative at this time because (1) a discharger will not be impacted until a future activity requiring a new or modified permit is proposed, (2) each effluent discharge and receiving stream characteristics are unique, and (3) there is no generic technology or cost equation that can be applied for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

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

In general, if a municipality has an NPDES permit to discharge pollutants into waters of the Commonwealth, the existing discharge limits will not be affected by a change to the use (either designated use or existing use), and no new technology costs will be incurred. If, however, the discharge changes in quality or quantity after the use of a stream is changed, any permit action will take the change in use into account when establishing permit limits.

Costs associated with new, increased or additional discharges might require the assistance of a consultant to complete a new portion of a permit application that addresses antidegradation of surface waters, as described in question #19.

While a special protection designation does require these additional evaluations, and may require the use of additional treatment technologies or BMPs, it does not prohibit activities. Any discharge may occur to EV waters as long as the activity will protect existing water quality.

Any evaluation of costs and/or savings for local governments who discharge pollutants to special protection streams would be speculative at this time because (1) a local government's discharge will not be impacted until a future activity requiring a new or modified NPDES permit is proposed, (2) each effluent discharge and receiving stream characteristics are unique, and (3) there is no generic technology or cost equation that can be applied for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

Local governments may gain an income stream from the redesignations due to potential tourism revenue and landowner attraction to clean water. For those local governments that receive income from the outdoor recreation industry, the redesignations will protect the local revenue and employment from the tourism industries that are attracted to recreation associated with surface waters, such as fishing and other outdoor recreational uses. In addition, local land values may increase in the future as homes that are situated near EV watersheds become more desirable places to live. Local governments that use these waters as a public water supply may also gain an economic benefit by reduced source water treatment requirements.

(21) Provide a specific estimate of the costs and/or savings to the 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.

Currently no state agencies discharge to these streams. If a new discharge by a state agency is proposed, the costs and savings would be the same as those described in question 20 for local government.

No other costs will be imposed directly upon state governments by this regulation. This regulation is based on and will be implemented through existing Department programs, procedures and policies.

(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.

There are existing Department paperwork, procedures and guidance that will be used to implement antidegradation requirements for discharges to the exceptional value streams. No new forms, reports, or implementation procedures are necessary. A person who proposes to discharge new, additional or increased pollutants might need the assistance of a consultant to evaluate nondischarge and nondegrading treatment options or best management practices.

(22a) Are forms required for implementation of the regulation?

For a person who proposes to discharge new, additional or increased pollutants, the appropriate permit applications are needed when applying for a permit. The permit application should include an antidegradation module corresponding to the appropriate Department permitting program. Permit application modules for discharges to special protection waters can be found at the links listed below in (22b).

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

The following are links to antidegradation permit application modules or forms that include antidegradation requirements:

Antidegradation supplement for Mining permits

<http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-12474>

Oil and Gas program E&S control general permit

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-99033/8000-PM-OOGM0005%20NOI%20Intent.pdf>

Industrial waste antidegradation module (including IW stormwater only discharges)

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-115734/3800-PM-BCW0008g%20Module%204%20and%20Module%204%20Instructions.pdf>

Act 537 Planning checklist

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-112901/3850-FM-BCW0003.pdf>

Pesticides permit antidegradation module

<http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-10892>

E&S control individual permit

<http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-9432>

(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.

	Current FY 2016/17	FY +1 2017/18	FY +2 2018/19	FY +3 2019/20	FY +4 2020/21	FY +5 2021/22
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	“	“	“	“	“	“
State Government	“	“	“	“	“	“
Total Savings	“	“	“	“	“	“
COSTS:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	“	“	“	“	“	“
State Government	“	“	“	“	“	“
Total Costs	“	“	“	“	“	“

REVENUE LOSSES:						
Regulated Community	Not Measurable					
Local Government	“	“	“	“	“	“
State Government	“	“	“	“	“	“
Total Revenue Losses	“	“	“	“	“	“

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

Program	FY -3 (2013/14)	FY -2 (2014/15)	FY -1 (2015/16)	Current FY (2016/17)
160-10381 Enviro Protection Operations	\$75,184,000	\$84,438,000	\$87,172,000	\$89,066,000
161-10382 Enviro Program Management	\$25,733,000	\$28,517,000	\$28,277,000	\$30,025,000

(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.

A small business that proposes to discharge new, additional or increased pollutants into surface waters of the Commonwealth must comply with the regulation. Also, see response #15. When the regulation goes into effect, no existing discharges will be affected.

(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.

There are existing Department paperwork procedures and guidance that will be used to implement the antidegradation requirements that apply to discharges to the Exceptional Value streams. No new forms, reports, or implementation procedures are necessary. Permit application modules for discharges to special protection waters can be found at the links listed in (22b). A person who proposes to discharge new, additional or increased pollutants may need the assistance of a consultant to evaluate nondischarge and nondegrading treatment options or best management practices.

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

In general, if a small business has a permit to discharge pollutants into waters of the Commonwealth, the existing permit will not be affected by a change in use (either the existing use or designated use). If the discharge changes in quality or quantity after a change in the use of a stream, then any subsequent permit action will take the change in use into account when establishing permit limits.

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

The existing regulations, in 25 Pa. Code Chapter 93, provide the opportunity for examination of the least costly alternative treatment method for a person or entity seeking a new, additional, or increased discharge of pollutants through the permit application process. This examination is performed when an applicant evaluates whether nondischarge alternatives (to the discharge) exist that are cost effective and environmentally sound; and, if not, the applicant must use the best available combination of cost-effective treatment that will result in a non-degrading discharge.

(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.

While there are no such specific provisions included in this rulemaking, it is important to note that this rulemaking affords the protection of surface water supply sources for a multitude of uses and helps to ensure clean water for all citizens of this Commonwealth. This will positively impact affected groups such as those listed above.

(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.

This regulation will meet the Commonwealth's obligations under the Pennsylvania Clean Streams Law and the Federal Clean Water Act to protect water uses. The regulations reflect the results of a scientific evaluation of regulatory criteria. There are no alternative regulatory schemes to consider in achieving the appropriate level of protection for the waters of the Commonwealth.

(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;

This regulation does not establish or revise compliance or reporting requirements for small businesses. There were no alternative regulatory schemes to consider in achieving the correct level of protection for the waters of the Commonwealth. The 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;

This regulation does not establish or revise schedules or deadlines for compliance or reporting requirements for small businesses. Schedules of compliance and reporting requirements are considered when permit or approval actions are taken, in accordance with 25 Pa. Code Chapter 92a.

c) The consolidation or simplification of compliance or reporting requirements for small businesses;

This regulation does not establish or revise compliance or reporting requirements for small businesses. Compliance and reporting requirements are considered when permit or approval actions are taken, in accordance with 25 Pa. Code Chapter 92a.

d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and

Any evaluation of treatment technologies or best management practices for persons who discharge pollutants to Exceptional Value streams would be speculative at this time because (1) a discharger will not be impacted until a future activity requiring a new or modified permit is proposed, and (2) each effluent discharge and receiving stream characteristics are unique.

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 four attached stream reports. These reports document how data was obtained and analyzed.

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

- | | |
|---|---|
| A. The length of the public comment period: | <u>45 days</u> |
| B. The date or dates on which any public meetings or hearings were held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 4, 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 4, 2017</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Quarter 4, 2017</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>Upon publication of the final-form rulemaking.</u> |

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

The Board is not proposing to establish a sunset date for these regulations because they are needed for DEP to carry out its statutory authority. DEP will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

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