

**FINAL RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[ 25 PA. CODE CH. 93]  
Water Quality Standards; Class A Stream Redesignations**

The Environmental Quality Board (Board) amends §§ 93.9a, 93.9c, 93.9d, 93.9e, 93.9f, 93.9h, 93.9i, 93.9k, 93.9l, 93.9n, 93.9o, 93.9p, 93.9q and 93.9t to read as set forth in Annex A. The rulemaking fulfills the Commonwealth's obligations under State and Federal law to review and revise, as necessary, water quality standards that are protective of surface waters.

This final-form rulemaking is given under Board order at its meeting of \_\_\_\_\_.

*A. Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

*B. Contact Persons*

For further information, contact Thomas Barron, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P. O. Box 8774, 400 Market Street, Harrisburg, PA 17105-8774, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

*C. Statutory Authority*

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C. § 1313) sets forth requirements for water quality standards.

*D. Background and Purpose*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices (BMP)) on individual sources of pollution. Section 303(c)(1) of the Federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. Water quality standards include designated uses, numeric and narrative

criteria, and antidegradation requirements for surface waters. These regulatory changes are the result of stream evaluations conducted by the Department.

The Department may identify candidate streams for redesignation of uses during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Members of the public may submit a rulemaking petition to the Board as well. These amendments are the result of stream evaluations conducted by the Department in response to a submittal of data from the Pennsylvania Fish and Boat Commission (PFBC) under § 93.4c (relating to implementation of antidegradation requirements). Section 93.4c(a)(1) pertains to the process for changing a designated use of a stream. In this final-form rulemaking, redesignations rely on § 93.4b(a)(2)(ii) (relating to qualifying as High Quality or Exceptional Value Waters) to qualify streams for High Quality (HQ) designations based upon their classifications as Class A wild trout streams. A surface water that has been classified a Class A wild trout stream by the PFBC, based on species-specific biomass standards, and 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 Commissioners of the PFBC approved these waters after public notice and comment.

The Department considers candidates for HQ or Exceptional Value (EV) Waters (collectively referred to as special protection waters) and all other designations in its ongoing review of water quality standards. In general, HQ and EV Waters must be maintained at their existing quality, and permitted activities must ensure the protection of designated and existing uses. The purpose of this rulemaking is to update the designated uses so that the surface waters of the Commonwealth are afforded the appropriate level of protection.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in § 93.3 (relating to protected water uses). Examples of water uses protected include Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF prior to a rulemaking. After the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

Prior to the development of the proposed rulemaking, Department staff conducted an independent review of the trout biomass data in the PFBC's fisheries management reports for streams throughout this Commonwealth. This review was conducted to ensure that the HQ criteria were met. The Department 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 in the 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 the data available to the Department for consideration in the assessment. Potentially affected municipalities were also notified by letter of the stream evaluations and asked to provide any readily available data. No data were received in response to these notices. The affected municipalities, county planning commissions, County Conservation Districts and other State agencies were later notified of the availability of a draft stream evaluation report for their review and comment. The draft stream evaluation report was also made available on the Department's website for public review and comment. All data and comments received in response to these notifications were considered in the determination of the Department's recommendations for regulatory amendments included in this rulemaking.

Copies of the Department's stream redesignation evaluation report for these waterbodies are available on the Department's website or from the contact persons listed in Section B of this Order. Copies of the PFBC fisheries management reports for these streams and the PFBC's sampling protocols for wadeable streams are available on the Department's website or from Thomas Barron, whose address and telephone number are listed in Section B of this Order. The data and information collected on these waterbodies support the Board's final-form rulemaking as set forth in Annex A.

#### *E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

##### *Rulemaking Summary*

During the Department's review of stream data, listing errors were discovered in § 93.9. As such, the Board is correcting an error in § 93.9d (relating to Drainage List D). The current listing in § 93.9d for a very short segment of Pohopoco Creek main stem which extends from the mouth of Middle Creek to the SR 209 bridge at Kresgeville says that it is HQ-CWF, MF and it also incorrectly states that the same segment is CWF, MF. The correct designation for this portion of Pohopoco Creek is HQ-CWF, MF based on its current classification by the PFBC, and the Department's review of the data, as a Class A Wild Trout Water.

The Board is also correcting an error in § 93.9k (relating to Drainage List K). Portions of Little Nescopeck Creek (above State Route 309) and Creasy Creek were included with the data submittal from the PFBC. However, these portions of the upper Nescopeck Creek basin are already designated HQ-CWF, MF; therefore, a change is not necessary. The entire upper Nescopeck Creek basin above State Route 309 Bridge is HQ-CWF, MF according to the first entry for the Nescopeck Creek in § 93.9k. This entry designates the main stem of the Nescopeck Creek and all of its tributaries upstream of SR 309 as HQ-CWF, MF. When reviewing the drainage list, the Department discovered duplicative listings for Creasy Creek, Little Nescopeck Creek and Oley Creek which are improperly located below the SR 309 bridge in § 93.9k. The listing errors for Creasy, Little Nescopeck and Oley Creeks are amended because their mouths are geographically located upstream of the SR 309 bridge and, therefore, already have the HQ designated use.

The Board is additionally correcting some stream names as they appear in § 93.9k. The United States Geologic Survey maintains the National Hydrography Dataset (NHD) Flowline. The

stream nomenclature and the fluvial geomorphology given in the *Pennsylvania Code* are governed by the NHD Flowline. These corrections will maintain consistency between the *Pennsylvania Code* and the NHD Flowline. The NHD Flowline now recognizes some portions of the upper Wapwallopen Creek basin as Balliet Run and some of the lower portions of the Wapwallopen Creek are now Big Wapwallopen Creek.

Finally, the Board is converting all references to river mile indexes (RMI) in this final-form rulemaking to a set of coordinates (latitude and longitude), with the eventual goal to be the conversion of all RMIs in the drainage lists in §§ 93.9a—93.9z to the coordinate system. Department staff recognizes the RMI system to be antiquated. When determining the RMI, it is possible to derive differing RMIs depending on the technique used. In contrast, it is easy to consistently determine the latitude and longitude along any point of a stream or river while an individual is in the field with a hand-held GPS unit or using a GIS software application (the Department standard projected coordinate system is PA\_Albers\_Equal\_Area\_Conic; and the geographic coordinate system is North American Datum 1983 or NAD 1983). It is very difficult to determine the RMI while in the field. Referring to the latitude and longitude will make it much easier for the regulated community to apply the zone description in § 93.9 to their particular project and determine whether their project discharges within the referenced stream zone.

#### *Changes from Proposed to Final-Form Rulemaking*

One minor edit in Drainage List F is being made to the redesignations recommended in the proposed rulemaking. Department staff noted that the Annex references T 707 Bridge in the zone descriptions for both of the Willow Creek entries. This is actually the T 708 Bridge that crosses Willow Creek. Both entries for Willow Creek in Drainage List F are corrected in the final-form rulemaking.

#### *F. Summary of Major Comments and Responses*

The Environmental Quality Board approved the proposed rulemaking for the Class A Stream Redesignation Package at its November 17, 2015 meeting. On February 23, 2016, the Department 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 March 5, 2016 (46 Pa.B. 1205) with provision for a 45-day public comment period that closed on April 18, 2016.

The Department received 307 supportive comments for the proposed regulatory amendments. Commentators provided many reasons for their support of this rulemaking either for specific stream redesignations included in the rule or for all of the regulatory amendments included in the rule. Commentators highlighted the following: these streams have met the necessary qualification for High Quality; citizens support the redesignation of streams in order to protect all of their uses; redesignations help Pennsylvania meet requirements of the Clean Water Act; redesignations preserve Pennsylvanians' constitutionally protected right to "pure water"; the aquatic biota and the recreational opportunities are supported by the redesignations; economic benefit results from maintaining these resources; trout angling opportunities and the community

that engages in angling will be additionally supported by the redesignations; protection of smaller streams promotes the health of the larger watershed; and redesignations protect the water supply. Further, commentators encouraged the Department to continue to be diligent in evaluating other streams that are potential candidates for redesignation and to prioritize the protection of water quality for both those within and outside of this Commonwealth.

All public comments were supportive of the proposed regulatory amendments. IRRC also submitted comments requesting amendments to the regulatory analysis form (RAF) for the final-form rulemaking. The RAF was amended accordingly and is included as part of this final-form rulemaking package. A more detailed summary of the comments submitted to the Board and the Department's responses to those comments are available in the comment and response document that also accompanies this final-form rulemaking package.

### *G. Benefits, Costs and Compliance*

#### *Benefits*

Overall, the Commonwealth, its citizens and natural resources will benefit from these changes because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of a clean water supply for human consumption, wildlife, irrigation, and industrial use; recreational opportunities such as fishing (also for consumption), water contact sports and boating; and aquatic life protection. It is important to realize these benefits and to ensure opportunities and activities continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

The Department identified three public 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 public 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 source water treatment costs for the drinking water may be less costly to customers if less treatment is needed due to the high quality of the water in the stream.

Businesses in the recreation industry will be positively affected by these regulations. The maintenance and protection of the water quality will ensure the long-term availability of Class A wild trout fisheries.

#### *Compliance costs*

This final-form rulemaking is necessary to maintain existing water quality and effective control of potential pollution in the stream segments being redesignated in Chapter 93 (relating to water quality standards). The amendments to Chapter 93 will not impose any new compliance costs on persons engaged in regulated activities under existing permits or approvals from the Department. Additional compliance costs may arise when permits or approvals are necessary for new or expanded regulated activities.

The Department will implement the stream redesignations through permit and approval actions. Persons adding or expanding a discharge to a stream may need to provide a higher level of treatment or additional BMPs to meet the designated and existing uses of the stream, which could result in higher engineering, construction or operating costs. Treatment costs and BMPs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. The Department cannot accurately estimate such costs because of the variability associated with each discharge. The initial costs resulting from the installation of technologically advanced wastewater treatment processes and BMPs may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

Over 7,000 facilities across the Commonwealth hold permits issued pursuant to Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance). Only 39 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 stormwater. Discharges in existence at the time of the stream survey have been considered in the evaluation of the existing water quality of the stream and the subsequent recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of special protection status, the discharges may continue as long as the discharge characteristics (both quality and quantity) remain the same. Thus, redesignation to special protection does not impose any additional special requirements on the existing discharges from these 39 NPDES permitted entities.

Any person 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. If an applicant cannot meet nondegrading discharge requirements, a person who proposes a new, additional or increased discharge to High Quality Waters is given an opportunity to demonstrate that there is a social or economic justification (SEJ) for lowering the quality of the stream, rather than maintaining the existing water quality.

Discharge activities to special protection streams typically do not qualify for general permits and, therefore, will require individual permits. Where on-lot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in Chapters 71, 72 and 73 (relating to the administration of sewage facilities planning program; administration of sewage facilities permitting program; and standards for onlot sewage treatment facilities) will continue to satisfy § 93.4c (relating to the implementation of antidegradation requirements) in these redesignated HQ Waters. Proponents of sewage facilities in HQ waters who demonstrate SEJ at the sewage facilities planning stage need not re-demonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and non-sewage discharge applicants.

When earth disturbance activities occur within the basins of the stream segments redesignated in this rulemaking, additional BMPs may be necessary to protect water quality under Chapter 102 (relating to erosion and sediment control).

### *Compliance assistance plan*

This final-form rulemaking will not impose any new compliance requirements on persons engaged in regulated activities under existing permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges, the Department will provide compliance assistance.

### *Paperwork requirements*

This final-form rulemaking will not impose any new paperwork requirements on persons engaged in regulated activities under existing permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges, additional information may need to be submitted to the Department as part of the permit application or approval request to demonstrate how the proposed activity will be conducted to maintain existing water quality. If water quality cannot be maintained, additional paperwork to provide a social and economic justification for the proposed activity would be necessary. NPDES general permits are not currently available for new or expanded discharges to these streams. Thus, an individual permit, and its associated paperwork, would be required.

### *H. Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. These regulatory revisions have incorporated the following pollution prevention incentives.

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanding wastewater discharges, nondischarge alternatives must be evaluated and are required to be used when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil. In addition, if no environmentally sound and cost-effective alternatives are available, discharges must be nondegrading except when in accordance with § 93.4c(b)(1)(iii).

### *I. Sunset Review*

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

### *J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 23, 2016, the Department submitted a copy of the notice of proposed rulemaking, published at 46 Pa. B. 1205, to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on \_\_\_\_\_, 2017, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 2017, and approved the final-form rulemaking.

### *K. Findings*

The Board finds that:

- (1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) This final-form regulation does not enlarge the purpose of the proposal published at 46 Pa.B. 1205 (March 5, 2016).
- (4) This final-form regulation is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.
- (5) This final-form regulation does not contain standards or requirements that exceed requirements of the companion federal regulations.

### *L. Order*

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9a, 93.9c, 93.9d, 93.9e, 93.9f, 93.9h, 93.9i, 93.9k, 93.9l, 93.9n, 93.9o, 93.9p, 93.9q and 93.9t to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees, as required by the Regulatory Review Act.

(d) The Chairperson shall certify this order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,  
*Chairperson*