



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Water Quality Standards Class A Stream Redesignations

25 Pa. Code Chapter 93
46 Pa.B. 1205 (March 5, 2016)
Environmental Quality Board Regulation #7-528
(Independent Regulatory Review Commission #3140)

COMMENT AND RESPONSE DOCUMENT

Introduction

Water Quality Standards - Class A Stream Redesignations

The Environmental Quality Board approved the proposed rulemaking for the Class A Wild Trout Stream Redesignation Package at its November 17, 2015 meeting. On February 23, 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 March 5, 2016 (46 Pa.B. 1205) with provision for a 45-day public comment period that closed on April 18, 2016. Comments were received from 308 commentators and 307 of them supported either the entire proposed rulemaking; or one or more local streams in the proposed rulemaking. No opposing comments were submitted. IRRC also 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:** DEP received 302 comments indicating strong support for the redesignation of all of the streams and stream segments in this rulemaking package to HQ-CWF. (1-11, 13,14, 17-32, 35-307)
 - ***Redesignation is appropriate:*** These streams should be redesignated because they meet the qualification for High Quality water according to Chapter 93.4b. (1)
 - ***Multiple Uses:*** These candidate waters have a variety of important uses including drinking water supplies for humans, livestock, and wildlife; fish consumption; irrigation for crops; aquatic life; recreation; and industrial water supplies. These streams deserve the strongest level of protection in order to protect all of their uses. (37)
 - ***Supports the federal Clean Water Act (CWA):*** The proposed redesignations will help Pennsylvania meet requirements of the CWA to protect the public health or welfare and enhance the quality of water. (37)
 - ***Interstate protection of water quality:*** Protecting our water, everyone's water, regardless of the state they live in, should be a top priority. Streams do not stop at state lines but each state should do everything in their power to protect the quality of the water. (45)
 - ***Supports Article 1 Section 27 of Pennsylvania Constitution:*** Stream redesignations along with other functions of DEP preserve Pennsylvanians' constitutionally protected right to "pure water". (1, 38-307)

- ***Continue with Stream Redesignations:***
 - I/We are glad that DEP is moving forward with stream redesignations. DEP should continue to redesignate streams to their appropriate designated use. (1,4,5,7,8,9,10,11,19,20,28,38-307)
 - I/We commend DEP and the EQB for beginning to eliminate the backlog of Class A Wild Trout waters that ought to be redesignated to HQ-CWF. (13,14,17,18,19,21,22)
 - The rulemaking is overdue. (25)
 - Please make sure you are not overlooking other bodies of water that might meet the same requirements and should likewise be considered for protection. (53)

- ***Protection of streams:***
 - Protect these waters. (52)
 - We need to protect this valuable resource. This rule will protect these watersheds as the land is developed. (2,10)
 - The rulemaking will give the cold water streams the protection they deserve. (25)
 - Water Quality should be a priority for every citizen and governing/regulating body! Protect these streams from degradation! (26)
 - These streams should be protected from the ill effects of drilling activities. (32)
 - We support the EQB taking action to approve this rulemaking and providing special protection to the waters that deserve it based on their excellent health and their capability of supporting diverse aquatic life. (37)
 - Pennsylvania's water resources are essential to the Commonwealth's health and economic well-being, and they should be given the strongest possible level of protection. (38 - 307)
 - Pennsylvania is blessed with many beautiful streams. They should be of high water quality too. (42)
 - As someone who lives near a high quality stream, I have seen over the years how important it is to protect our waters. (43)
 - There are many threats to our streams including pollution, climate change, development, commercial water extraction, and gas pipelines. I ask that you finalize this rulemaking to provide these special waters with the special protection they deserve. (49)
 - One needs look no further than Flint, Michigan to understand the importance of keeping our waterways as pristine as possible. (50)

- ***Protection of aquatic biota:***
 - These cold clean streams are essential for the survival of native brook trout (*Salvelinus fontinalis*). The brook trout is our state fish. (7)
 - Conservation, restoration, protection and improving wild trout and their habitat is important. (23)
 - Objective scientific data reveal that these streams are among the best of Pennsylvania's wild trout fisheries. Designating these streams "high quality" will help provide them with an additional layer of protection to ensure that they continue to serve as a viable habitat for aquatic life. (38 - 307)
 - All streams should be a viable habitat for aquatic life. (44)

- ***Recreational Opportunities:***
 - These trout streams are a good resource for anglers and other outdoor enthusiasts and should be protected. (3,5,6,7)
 - The overall quality of life in Pennsylvania is increased by the many recreational opportunities available in the state. The level of recreational activity is influenced by the quality of these streams and any improvements to the quality of these streams. (29)

- ***Provides cultural benefit:*** Protecting these wild trout streams ensures angling opportunities will continue. Trout angling is important culturally to our commonwealth. (7)

- ***Provides Economic Benefit:***
 - I visit Pennsylvania regularly for its angling opportunities. Each visit from me and thousands of other out of state visiting anglers generates revenue for Pennsylvania from license fees, road tolls, gas, food, hotels, guide services and products purchased from tackle shops. These streams need to be protected so they continue to entice anglers from out of state to visit Pennsylvania. (24)
 - Protecting water quality provides economic value to present and future generations in the form of a clean water supply. This clean water supply has many uses including clean water for human consumption, wildlife, irrigation, industrial uses and outdoor recreational opportunities. Healthy vital waterways are the source of life for our economy. (3,6,7,24)
 - Class A streams should be protected so that they can continue to be a self-sustaining (naturally reproducing) angling opportunity as compared to the cost intensive alternative of raising and stocking fish. (25)

- ***Benefits to the larger watershed:*** By protecting the smaller streams, the health of the larger watershed is promoted. (6,20)

- ***Protect the water supply:*** As human populations continue to grow, we put a heavy burden on our water supply. (40)

- ***Future Generations:***
 - Protecting our state's natural heritage for future generations is important. (7)
 - Pennsylvania DEP should continue to grant special protection status to qualifying waters (e.g. Upper Delaware River), thereby protecting their unique ecosystems for future generations. (20)
 - Protecting these waterways will assure clean water for future generations of both citizens and wildlife. (20,24)
 - The rulemaking will ensure these streams will provide fishing enjoyment for future generations. (25)
 - These streams are a valuable resource for all citizens, now and for future generations. Once lost the cost of recovery is severe; PROTECT CLEAN WATER NOW! (26)

- I've lived all over the country and still consider these waters to be the best I've ever seen. I cherish them. Please upgrade these 50 Class A trout streams to High Quality status so that we may preserve this amazing area for generations to come. (35)
- We are concerned with the conservation of Pennsylvania's surface waters for future generations. (38, 47)
- I have 3 grandchildren, ages 10 – 14. I insist that they have access to drinkable water when they grow up! These new water resources will give access to clean water in many areas of the state. (39)
- Pennsylvania is rich in natural resources many of which have been degraded by lack of care and attention from our legislative bodies in the past. Our children and our grandchildren deserve to have a regenerated natural environment and all the natural life that it brings with it. (46)
- As a mother of four and a high school science teacher, I see firsthand how nature can spark an enthusiasm for learning. Clean water and healthy fauna and flora are not something that should be questioned. Everyone should be supportive of these measures to ensure environmental health for future generations. It is our responsibility to be stewards on this Earth and be thankful for what we are provided with. How we can sit around and watch our world become so polluted and do nothing about it disgusts me. When I look into the eyes of a child I want them to know that I have done everything I could to provide them with a clean and healthy environment. I highly urge you to think about what you can do to make our world a better place. Many lives depend on our decisions. (54)

Response: DEP appreciates the commentators' support of this rulemaking. These streams and stream segments have been designated as Class A wild trout streams by the Pennsylvania Fish and Boat Commission following public notice and comment and, therefore, they all qualify as High Quality Waters in accordance with 25 Pa. Code § 93.4b. The designation of these waters to High Quality will ensure that the appropriate level of protection will be provided to maintain existing water quality and that the uses of these waters will be protected. Article 1, Section 27 of the Pennsylvania Constitution protects Pennsylvanians' right to pure water and the stream redesignations in this rulemaking help ensure that right. Pennsylvania's water quality standards program, along with the water quality standards of other states and tribes, are established under the Federal Clean Water Act and state law. The Commonwealth has authority to promulgate water quality standards for waters within the Commonwealth's borders; however, all waters of the United States are protected under the Clean Water Act.

DEP additionally appreciates the commentators' support, which highlights the importance of protecting the streams, the biota associated with the streams, and the recreational opportunities that will be maintained and enhanced by protecting the streams and their biota. DEP acknowledges that angling is not only important recreationally, but it is also an important part of the culture of Pennsylvania.

DEP also appreciates the commentators' support in describing the economic benefit of affording these streams the appropriate level of protection. Supportive comments were received which pertain to the potential benefits for the larger watershed when the existing

high quality of its smaller tributaries are protected. DEP also appreciates the commentators' support in protecting our water supply and preserving our waters for future generations.

Letort Spring Run, Big Spring Creek, Middle Spring Creek, Furnace Run, and Gum Run – Comments

- 2. Comment:** I support the upgrade of these segments in Drainage List O. These streams meet the qualification for High Quality water according to Chapter 93.4b. (1)

It is important to designate these streams as Class A and HQ. I endorse the upgrade of the Letort Spring Run and Big Spring Creek to HQ status. Our CVTU Organization has strived to prevent water quality degradation in these streams. (15)

I care particularly about Letort Creek and Big Spring Creek due to their exceptional legacy as angling destinations. (31)

I strongly urge the EQB to upgrade the water quality designations of Letort Spring Run and Big Spring Creek. (36)

Response: DEP appreciates the commentators' 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.

Cedar Run and Laurel Run –Comments

- 3. Comment:** We support the upgrade of Cedar Run and Laurel Run in Centre County. Both of these streams are local to our region and deserve the protection afforded by the designation of HQ. (8)

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.

Streams in Berks County –Comments

- 4. Comment:** I support the redesignation of the five streams in the Berks County area. (9,19)

I am a Berks County resident and high school biology teacher. My students have conducted field studies under my supervision at local streams including Cacoosing Creek. We have identified wild brook trout, black-nosed dace, and cut-lips minnows. The students are very

interested in protecting and preserving the creek. I encourage you to continue your review and approval of the 5 Berks County streams in this package. (11)

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.

(Note: Cacoosing Creek is not included in this package.)

Saucon Creek – Supportive Comments

- 5. Comment:** We are pleased that a section of Saucon Creek is recommended for HQ status, given the fact that the creek flows through or close to urban and suburban landscapes, has many parks open to public use and offers a fantastic wild trout fishery. (10)

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.

Sherman Creek – Supportive Comment

- 6. Comment:** I support the redesignation of Sherman Creek to a high quality water for the following reasons: (a.) Downstream water quality is dependent upon the headwater streams (b.) This habitat for spawning wild trout and char should be protected (c.) It meets the PFBC requirements for Class A qualification. (d.) The Sherman Creek basin provides excellent food and habitat for the larger West Branch Delaware River (e.) The local economy receives millions of dollars from fishing and tourism in and along the West Branch Delaware River. (12)

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.

(Note: the candidate section includes all portions of the Sherman Creek basin in Pennsylvania from and including Starboard Creek to the point where the mainstem of Sherman Creek crosses the state line.)

Mill Creek – Supportive Comment

- 7. Comment:** I/We support the proposed redesignation to HQ-CWF for Mill Creek from its source to North Hollow. (13, 14, 16, 17, 18, 22)

The strong and abundant trout population demonstrates the excellent water quality and robust food source. (13, 14)

The high population of wild trout in this stream reflects its excellent water quality and the food web it supports. (17,22)

The density of the wild trout population as well as the diversity of macro-invertebrate life present in Mill Creek reflects its excellent water quality. (18)

This stream deserves the protection afforded by the HQ designated use. (13,14,17,18,22)

Changing designation from Class A wild trout waters to HQ-CWF would significantly provide the additional regulatory protections afforded by the HQ use designation. (16)

It is important to me and my community to see that our local streams and waterways are protected. I support the redesignation of Mill Creek's upper section. (34)

Response: DEP appreciates the commentators' 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.

(Note: the candidate portion of Mill Creek lies downstream of North Hollow. The portion of Mill Creek basin upstream of North Hollow is currently designated HQ-CWF in §93.9P.)

Logan Run – Supportive Comment

- 8. Comment:** I especially support the redesignation of Logan Run which is a small native brook trout stream that flows through a beautiful valley in the Allegheny National Forest. Logan Run should be protected from the ill effects of nearby drilling activities. (32)

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.

Burgess Brook – Supportive Comment

9. Comment: The Mehoopany Creek Watershed Association (MCWA) has completed several natural stream restoration projects through Growing Greener Grants over the last several years. Our members monitor stream water quality, participate in litter pickup days, lime the South Branch at least annually, and participate in habitat improvement activities jointly with a local deer management group. We also hold an Annual Trout Day Fundraiser and assist with the North Branch Trout Derby for our area youth. Burgess Brook has been listed by the PFBC as a Class A wild trout stream and therefore qualifies for HQ designation in accordance with the PA Code. The remote, natural and unspoiled headwaters of Burgess Brook lie within State Game Land 57. I/We strongly support the redesignation of Burgess Brook to HQ-CWF, MF. (33)

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.

Inquiries pertaining to Status of other Stream Evaluations

10. Comment: DEP has not evaluated any streams within our watershed in 5 years. We request that DEP schedule evaluations on Kasson Brook, Oppossum Brook and Somers Brook as these streams had sufficient data warranting another evaluation. (33)

Response: DEP collected samples from these three streams in March 2016 and the results of the evaluations are pending.

11. Comment: Additionally, MCWA is unaware of any evaluation completed on the North Branch Mehoopany Creek, Farr Hollow Run, or Little Mehoopany. We request that DEP conduct an evaluation of these three streams. We are quite interested in DEP evaluating these three streams. Our watershed has been affected by the legacy industries of timber, coal mining, shallow oil drilling, and presently, shale gas drilling. Information on these streams along with all streams in our watershed will greatly assist us as we strive to improve water quality. (33)

Response: DEP continually evaluates all of the streams in the Commonwealth in a rotational fashion. Often, given limited available resources and the nearly 86,000 miles of streams in Pennsylvania, evaluation efforts are necessarily focused on those streams where a particular issue is known; or those streams for which a petition has been submitted to redesignate a particular waterbody. Any person, agency, group, organization, municipality or industry may submit a rulemaking petition to the Environmental Quality Board to request a stream redesignation.

Whether the regulation is supported by acceptable data

12. Comment: As part of the determination of whether a regulation is in the public interest, IRRC must consider whether the regulation is supported by acceptable data. IRRC is concerned that acceptable data was not made directly available and the supporting information does not directly establish acceptable data as required by the Regulatory Review Act. Also, one cannot discern the square miles of property affected within the drainage area from the Preamble, RAF, or Annex A. (308)

Response: These amendments are the result of stream evaluations conducted by DEP 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 Class A Wild Trout Stream Redesignations rulemaking package, all of the 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. The PFBC collected data for these streams. The PFBC then determined that the data supported its qualifications for Class A Wild Trout streams, in accordance with its biomass standards. 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.

DEP staff conducted an independent review of the trout biomass data in the PFBC's fisheries management reports for the streams in this rulemaking to ensure that the HQ criteria were indeed met. The results of DEP's review of the PFBC fisheries management reports are included in DEP's Stream Evaluation Report. This report can be found at http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Class_A_Streams_Report.pdf. An addendum to this report contains basin maps for the streams in this rulemaking package, and is available at http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Class_A2Final_ADDENDUM.pdf. Additionally, the Board indicated in the Preamble that the PFBC fisheries management reports were available. No additional information or data was requested, including the PFBC fisheries management reports, prior to submitting comments on the proposed rulemaking.

The aforementioned data can be found at:

- (1) electronic copies of all of the PFBC fisheries management reports http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Class_A_PFBC_Reports/, and
- (2) the PFBC's sampling protocols for wadeable streams http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/SamplingProtocols_WadeableStreams_Final.pdf.

DEP staff reviewed the protocols and stream reports and found them to be scientifically sound.

A measurement of the drainage area is not representative of the affected properties because linear stream segments, rather than entire basins, are candidates for redesignation. The usual method employed to measure the land area of a drainage basin is to calculate the total area of land where all surface water converges to a single point at a lower elevation, usually the exit (mouth) of the basin. Within this rulemaking, only a smaller downstream portion of a basin is a Class A Wild Trout stream in some instances; only the main stem (no tributaries) is a Class A Wild Trout stream in other instances; or a portion of the drainage area lies in another state. DEP did include a measurement of linear stream miles with this proposal.

Addressing Economic Impact

13. 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 11 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. (308)

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

14. 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. (308)

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

15. 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. (308)

Response: Responses to questions included in the RAF were revised to address these comments. Please see the RAF that accompanies the final-form rulemaking. Also, the referenced list is included in the Water Quality Standards Review Stream Redesignation Evaluation report. The report is included with the final-form rulemaking documents.