

# 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: 7-528

**IRRC Number: 3140**

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

**(4) Short Title:**

Water Quality Standards – Class A 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 (33 U.S.C. § 1313(c)(1)) requires that states periodically, but at least once every three 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's 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 list of recommended redesignations of streams as embedded in the attached Water Quality Standards Review Stream Redesignation Evaluation report. The regulation will update and revise stream use designations in §§ 93.9a, 93.9c - 93.9f, 93.9h, 93.9i, 93.9k, 93.9l, 93.9n - 93.9q, and 93.9t. These changes will not impose any new requirements on existing wastewater discharges or other existing activities regulated by the Department under existing permits or approvals. These changes may, upon implementation, result in the application of more stringent treatment requirements for new and/or expanded wastewater discharges, as well as the use of best management practices (BMP) to control non-point sources of pollution, such as stormwater runoff from construction projects, to the streams in order to protect the existing and designated water uses.

**(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 the 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 downstream users of the clean water.

**(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 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.)**

Prior to the development of the proposed rulemaking, the streams included in this rulemaking for redesignation were all evaluated in response to a submittal from the Pennsylvania Fish and Boat Commission (PFBC) under § 93.4b (relating to qualifying as High Quality or Exceptional Value waters). Section 93.4b(a)(2)(ii) pertains to the process for a stream to qualify for High Quality (HQ) designation based upon its classification as a Class A Wild Trout stream. It states that a surface water that has been designated a Class A Wild Trout stream by the PFBC, 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 PFBC Commissioners approved these waters, as Class A Wild Trout streams, after public notice and comment. Department staff conducted an independent review of the trout biomass data in the fisheries management reports for these streams. This review was conducted to ensure that the Class A Wild Trout criteria were met.

The Department provides public notice of its intent to assess the Class A stream data prior to any resulting redesignation recommendations. The Department's notice requesting additional water quality data was published in the *Pennsylvania Bulletin* on May 26, 2012 (42 Pa.B. 3027) and on the Department website. No water quality data were received. In addition, all affected municipalities, county planning commissions, conservation districts, and Commonwealth agencies were notified of this redesignation evaluation in a letter dated May 2, 2012. No data or comments were received in response to these notices.

After the Department's final draft streams evaluation report was completed, it was made available to all affected municipalities, county planning commissions, county conservation districts and other Commonwealth agencies on March 20, 2015. This final draft report was mailed to these entities and posted on the Department website, for a 45-day public comment period. Six stakeholders offered comments. The Department considered these comments in drafting the final Class A Wild Trout Streams Evaluation Report.

After this initial review period was complete, the proposed rulemaking was developed. The public was afforded the opportunity to comment on the proposed rulemaking during a 45-day public comment period, which closed on April 18, 2016. Comments were received from 308 commentators and most supported either the entire proposed rulemaking or one or more local streams in the proposed rulemaking. There were no opposing comments. The Independent Regulatory Review Commission (IRRC) also submitted

comments requesting amendments to the regulatory analysis form (RAF) when drafting the final-form rulemaking. This RAF was amended accordingly.

**(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 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).

The Department cannot accurately estimate who will be affected by these stream redesignations because: (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the compliance requirement; and (4) generic technology or cost equation are not available for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

The Department identified three public water supply facilities with raw water intakes within 16.5 stream miles downstream 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 will be less costly to customers if less treatment is needed due to the high quality of the water in the stream.

Small 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.

**(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.**

Out of over 7,000 NPDES permitted facilities across the Commonwealth, only 39 of them are known to hold discharge permits within the portions of the streams that are candidates for redesignation in this rulemaking. The types of NPDES discharges identified include industrial wastewater, sewage and stormwater. These permittees will not be required to comply with any new requirements for their existing discharges. 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, they are considered to satisfy the antidegradation requirements as long as the discharge characteristics (both quality and quantity) remain the same.

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(b)(1). In addition, any person proposing future earth disturbance activities may be required to implement additional BMPs consistent with the requirements in Chapter 102.

Since a person will not be required to comply with this regulation until a future activity requiring a new, additional or increased point source discharge, or new earth disturbance activities, any approximation of the number of persons who would need to comply would be speculative. Based on current information, the regulation might affect 39 discharge permits if expansions to these facilities are 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: The stream redesignations in this regulation will not have any financial or economic impact on anyone currently engaged in an activity regulated by the Department. 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, they are considered to satisfy the antidegradation requirements as long as the discharge characteristics (both quality and quantity) remain the same. Thus, redesignation to special protection does not automatically impose any additional new requirements or financial impacts on NPDES permitted entities and other existing 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).

#### 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 CSL (see below). All present and future citizens of the Commonwealth, will benefit from the regulation since 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)

1. *Increased property values are an economic and social benefit of clean water protected by this regulation. There are many benefits to having clean water. 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 Rice 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 fish and wildlife populations and support for outdoor recreation are benefits of clean water protected by this regulation.* Because the focus of this regulation relates directly to the protection of fisheries, sportsmen in Pennsylvania will benefit by the preservation of the existing Class A fisheries. Class A streams should be protected so that they can continue to be a self-sustaining angling opportunity as compared to the cost-intensive alternative of raising and stocking fish. The purpose of the stream redesignation is to preserve this resource for current and future sportsmen so that the social and economic benefits are maintained in the local area. As recreation demands increase in the future, the preservation of unique resources such as Class A trout waters will no doubt add economic value to the local areas and, importantly, provide a valuable social function for outdoor recreation. Specific revenue-related benefits associated with outdoor trout fishing in Pennsylvania are outlined below.

The Center for Rural Pennsylvania prepared a report titled "Economic Values and Impacts of Sport Fishing, Hunting and Trapping Activities in Pennsylvania," (<http://www.rural.palegislature.us/documents/reports/hunting.pdf>) that examined such economic impacts between the years 1995 to 1997. The report provided a snapshot of how much money these sporting activities bring to the state and how they affect employment in rural areas. A major finding of that report is the total annual value of \$3.7 billion for sport fishing was almost three times the \$1.26 billion spent in travel costs to use fishing resources during the same 12-month period of time.

According to the "Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania," (R. Greene, et al. 2005) ([http://www.outdoorrecreationdata.com/Stats/PA\\_wildtrout\\_05.pdf](http://www.outdoorrecreationdata.com/Stats/PA_wildtrout_05.pdf)), the Pennsylvania Fish and Boat Commission collected information to assess the economic impact of wild trout angling in Pennsylvania, during the 2004 regular trout season, April 17 through September 3, 2004. "Based on the results of this study, angling on wild trout streams contributed over 7.16 million dollars to Pennsylvania's economy during the regular trout season in 2004."

According to the "2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation" (<https://www.census.gov/prod/2012pubs/fhw11-nat.pdf>) for Pennsylvania, prepared by the U.S. Fish and

Wildlife Service, approximately 1,101,000 anglers, participated in fishing and 3,598,000 persons participated in wildlife watching in the year 2011. In addition, all fishing-related expenditures in Pennsylvania totaled \$485 million in 2011. Such expenditures include food and lodging, transportation and other expenses (equipment rental, bait and cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in Pennsylvania. Expenditures include trips-related costs and equipment.

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](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 HQ waters does not automatically impose any additional special requirements on NPDES permittees; their existing discharges are factored into the redesignations. The High Quality 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 Recommendations Table in the attached Stream Report (see Date of Evaluation). Only when a person proposes a new, additional, or increased point source discharge would they need to satisfy the requirements of the antidegradation regulation at 25 Pa. Code § 93.4c(b)(1) and (2). 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, 39 NPDES discharges are located on waters identified in this rulemaking. It is not known at this time whether these facilities will expand, possibly triggering the antidegradation regulation.

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

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). It is also unknown at this time if any persons will propose an activity that would require an earth disturbance permit or other approval from the Department.

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

Any evaluation of adverse effects on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the compliance requirement; and (4) generic technology or cost equation are not available for purposes of comparing the costs and/or savings for local governments 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.”

On balance, 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 a stream is redesignated, any subsequent permit action will take the redesignation into account when establishing permit limits.

Costs associated with new, increased or additional discharges would include consulting to complete a new portion of a permit application that addresses antidegradation of surface waters. The application requires the permittee to select the various treatment technologies or BMPs that will maintain the existing water quality of the stream and then does an affordability analysis to select the best option.

While a high quality 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 HQ or EV waters as long as the activity will protect existing water quality.

Any evaluation of adverse effects on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the compliance requirement; and (4) generic technology or cost equation are not available 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 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 a stream is redesignated, any permit action will take the redesignation 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. The application requires the permittee to select the various treatment technologies or BMPs that will maintain the existing water quality of the stream and then does an affordability analysis to select the best option.

While a high quality 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 HQ or EV waters as long as the activity will protect existing water quality.

Any evaluation of adverse effects on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the compliance requirement; and (4) generic technology or cost equation are not available 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 this 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 anglers and other recreational uses. In addition, local land values may increase in the future as homes that are near areas of clean water and protected resources such as the trout fishery 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 Commonwealth agencies have discharges to these streams. If a new discharge by a Commonwealth agency is proposed, the costs and savings would be the same as those described in #20 for local government.

No other costs will be imposed directly upon Commonwealth 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.**

Existing Department paperwork, procedures and guidance will be used to implement antidegradation requirements for discharges to the High Quality 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 existing 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>

Mining SEJ module

<http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-12475>

Oil and Gas program Erosion and Sediment (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 Industrial Waste (IW) stormwater only discharges)

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

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

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

<b>Program</b>	<b>FY -3 (2013/14)</b>	<b>FY -2 (2014/15)</b>	<b>FY -1 (2015/16)</b>	<b>Current FY (2016/17)</b>
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.**

Persons who propose to discharge new, additional or increased pollutants into surface waters of the Commonwealth must comply with the regulation. Also, please 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.**

Existing Department paperwork procedures and guidance will be used to implement the antidegradation requirements that apply to discharges to the High Quality streams. No new forms, reports, or implementation procedures are necessary. NPDES 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 might 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 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 a stream is redesignated, any subsequent permit action will take the redesignation 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, whether a nondegrading discharge is possible. Since all of the regulations involve designations of High Quality-Cold Water Fishes, Chapter 93 allows a reduction of water quality if lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

**(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 no special provisions are included in this rulemaking, it is important to note that this rulemaking affords the protection of water quality sources, which 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. No alternative regulatory schemes are available to achieve the correct 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. No alternative regulatory schemes are available to achieve 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 High Quality streams would be speculative at this time since (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed, (2) effluent discharge and receiving stream characteristics is unique, and (3) social and economic justification may be available to modify the compliance requirement.

**e) The exemption of small businesses from all or any part of the requirements contained in the regulation.**

No such exemptions of small businesses are available 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.**

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 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 reclassification of these waters 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. Department staff conducted an independent review of the trout biomass data in the PFBC's fisheries management reports for the streams in this rulemaking in order to ensure that the HQ criteria were indeed met. The results of the Department's review of the PFBC fisheries management reports are included in the Department's Stream Evaluation Report available at [http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream\\_Packages/Class\\_A\\_Streams\\_Report.pdf](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Class_A_Streams_Report.pdf). An addendum to the Department's Stream Evaluation Report has been created that includes basin maps of the candidate watersheds. The addendum is located at [http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream\\_Packages/Class\\_A2Final\\_ADDENDUM.pdf](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Class_A2Final_ADDENDUM.pdf). In addition, electronic copies of all of the PFBC fisheries management reports are available at [http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Class\\_A\\_PFBC\\_Reports/](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Class_A_PFBC_Reports/), and the PFBC's sampling protocols for wadeable streams are available at [http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/SamplingProtocols\\_WadeableStreams\\_Final.pdf](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/SamplingProtocols_WadeableStreams_Final.pdf). Department staff reviewed the protocols and stream reports and found them to be scientifically sound.

**(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 will be held:               | <u>N/A</u>             |
| C. The expected date of delivery of the final-form regulation:                            | <u>Quarter 3, 2017</u> |
| D. The expected effective date of the final-form regulation:                              | <u>Quarter 3, 2017</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Quarter 3, 2017</u> |

F. The expected date by which required permits, licenses or other approvals must be obtained: Upon publication of the final-form rulemaking.

**(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 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.

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