

# 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:** 7  
Identification Number: 548

IRRC Number:

(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)**

The amendments to Chapter 93 reflect the list of recommended redesignations of streams as embedded in the attached Water Quality Standards Review Stream Redesignation Evaluation Report. The proposed regulation will update and revise stream use designations in 25 Pa. Code §§ 93.9d, 93.9f, 93.9j, 93.9k, 93.9l, 93.9m, 93.9p, 93.9q, 93.9r, and 93.9t. These changes will not impose any new operating requirements on existing wastewater discharges or other existing activities regulated by the Department under existing permits or approvals. If a new, increased or additional discharge is proposed by a permit applicant, more stringent treatment requirements and enhanced best management practices (BMPs) may be necessary to maintain and protect the existing quality of those waters.

(8) **State the statutory authority for the regulation. Include specific statutory citation.**

Sections 5(b)(1) and 402 of the Pennsylvania Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394) as amended, 35 P.S. §§ 691.5(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.**

Water quality standards must be reviewed and approved by the U.S. Environmental Protection Agency for consistency with the mandates under the Federal Clean Water Act. Section 101(a)(2), 33 U.S.C.A. § 1251(a)(2) of the Act establishes the national goal that wherever attainable, water quality should provide for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water. Section 303(c)(2)(A), 33 U.S.C.A. § 1313(c)(2)(A), requires water quality standards to include designated uses of waters, taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes. Section 303(d)(4)(B), 33 U.S.C.A. § 1313(d)(4)(B), establishes an antidegradation policy for waters where the quality of the water equals or exceeds levels necessary to protect the designated uses for such waters. The designated uses proposed in this rulemaking are consistent with these mandates.

**(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 proposed regulation benefits not only local residents but those from outside the area who come to enjoy the benefits and aesthetics of outdoor recreation.

**(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 proposed 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, 33 U.S.C.A. § 1313(c), and 40 CFR Subpart B.

The proposed 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 proposal.

**(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.)**

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 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements). In this proposed rulemaking, redesignations rely on 25 Pa. Code § 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. Department staff conducted an independent review of the trout biomass data in the PFBC’s fisheries management reports for the streams proposed for redesignation. This review was conducted to ensure that the HQ criteria were met.

The Department offered opportunities for the public to provide data and information during the review of the uses of the streams. First, the Department provided public notice of its intent to assess the Class A wild trout stream data. The Department’s notices requesting additional water quality data for the streams were published in the *Pennsylvania Bulletin* on January 23, 2016 (46 Pa.B. 503); March 5, 2016 (46 Pa.B. 1287); and June 25, 2016 (46 Pa.B. 3328). Additionally, the notices were posted on the Department’s website. No water quality data were received. The Department directly notified all affected municipalities, county planning commissions, conservation districts, and Commonwealth agencies of these redesignation evaluations in letters dated January 5, May 27 and July 8, 2016. No data or comments were received in response to these notices.

Once the data solicitation was completed, the Department prepared a draft streams evaluation report and made it available to all affected municipalities, county planning commissions, county conservation districts and other Commonwealth agencies on April 26, 2017. This draft report was mailed to these same entities and posted on the Department’s website, for a 45-day public comment period. Two letters of support were received. The Department considered these comments in drafting the final Class A Wild Trout Streams Evaluation Report. A copy of the stream evaluation report for these waterbodies is available on the Department's website or from the contact persons listed in Section B of the Preamble. 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 the Preamble. The data and information collected on these waterbodies support the Board's proposed rulemaking as set forth in Annex A.

The public will be afforded the opportunity to comment on this proposed regulation, which will include a public hearing during a 45-day public comment period.

The Department presented a summary of the details of this proposed rulemaking package at the August 16, 2018 Joint Meeting of the Department's Agriculture Advisory Board and the State Conservation Commission's Nutrient Management Advisory Board (under the Department of Agriculture).

The Department is coordinating with the Small Business Ombudsman to ensure the small business community will be notified of their opportunity to submit comments on this proposed rulemaking during the 45-day public comment period following publication in the *Pennsylvania Bulletin*.

**(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?**

There are approximately 10,300 facilities across the Commonwealth that hold permits issued pursuant to 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance). This statewide number of approximately 10,300 includes NPDES permits for Concentrated Animal Feeding Operations, industrial waste, municipal separate storm sewer systems, sewage, and industrial storm water. Out of this statewide total of approximately 10,300 permits, only 19 facilities are known to hold NPDES permits within the boundaries of the watersheds of the stream segments being considered for redesignation in this proposed rulemaking. The types of NPDES discharges identified that have watershed involvement in this proposed rulemaking include industrial waste, sewage, municipal stormwater, and industrial 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 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 treatment requirements on the existing discharges from these 19 NPDES permitted entities. However, discharge activities to special protection streams do not qualify for NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8) (relating to general permits), and therefore, will require individual permits. The individual permits are necessary to track any additional or increased discharges to a special protection water.

There are thousands of general and individual NPDES permits for Stormwater Discharges Associated With Construction Activities issued under 25 Pa. Code Chapter 102 (relating to erosion and sediment control) that were not included in the statewide total of NPDES permits. These construction permits were not included in the permit counts because of their temporary nature. However, if the construction permit was issued as a general permit, and if the permitted activity is not completed by the expiration date on the permit and the permittee seeks to renew the permit, must be renewed as an individual permit. Additionally, when earth disturbance activities occur within the basins of the stream segments proposed to be redesignated in this rulemaking, additional BMPs may be necessary to protect water quality under Chapter 102.

Any person proposing a new, additional, or increased point source discharge would need to satisfy the antidegradation requirements found at 25 Pa. Code § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives and the applicant must use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies. 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 these non-

degrading discharge requirements, the applicant proposing a new, additional or increased discharge to HQ waters is given an opportunity to demonstrate a social and economic justification (SEJ) for allowing lower water quality. The demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that other water uses will be supported.

Where on-lot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 (relating to the administration of sewage facilities planning program; administration of sewage facilities permitting program; and standards for on-lot sewage treatment facilities) will continue to satisfy 25 Pa. Code § 93.4c (relating to the implementation of antidegradation requirements) in these waters that are being considered for redesignation to HQ. Permit applicants of sewage facilities in HQ waters who demonstrate SEJ at the sewage facilities planning stage need not redemonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and nonsewage discharge applicants.

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

The Department identified eleven public water supply facilities with raw water intakes within 30 stream miles downstream of the candidate stream sections for redesignation in this proposed rulemaking package. These eleven public water suppliers, which serve over 175,000 citizens, will benefit from this proposed 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 proposed 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.**

There are approximately 10,300 facilities across the Commonwealth that hold permits issued pursuant to 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance). This statewide number of approximately 10,300 includes NPDES permits for Concentrated Animal Feeding Operations, industrial waste, municipal separate storm sewer systems, sewage, and industrial storm water. Out of this statewide total of approximately 10,300 permits, only 19 facilities are known to hold NPDES permits within the boundaries of the watersheds of the stream segments being considered for redesignation in this proposed rulemaking. The types of NPDES discharges identified that have watershed involvement in this proposed rulemaking include industrial waste, sewage, municipal stormwater, and industrial 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 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

immediate, additional special treatment requirements on the existing discharges from these 19 NPDES permitted entities. A person who applies for a new, additional or increased point source discharge to a special protection water must comply with this regulation and must satisfy the requirements of the antidegradation regulation at 25 Pa. Code § 93.4c(b)(1).

There are thousands of general and individual NPDES permits for Stormwater Discharges Associated With Construction Activities issued under 25 Pa. Code Chapter 102 that were not included in the statewide total of NPDES permits. These construction permits were not included in the permit counts because of their temporary nature. However, if the construction permit was issued as a general permit, and if the permitted activity is not completed by the expiration date on the permit and the permittee seeks to renew the permit, it must be renewed as an individual permit. Additionally, when earth disturbance activities occur within the basins of the stream segments proposed to be redesignated in this rulemaking, additional BMPs may be necessary to protect water quality under Chapter 102.

Since a person will not be required to comply with this proposed 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 those affected, and who would need to comply is speculative. Based on current information, the regulation might affect 19 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 proposed regulation will not have any financial or economic impact on those 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 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 treatment requirements or financial impacts on NPDES permitted entities and other existing entities.

The antidegradation analysis requires any individuals, small businesses, businesses and labor communities and other public and private organizations proposing a new, additional, or increased point source discharge to satisfy the requirements found at 25 Pa. Code § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives and the applicant must use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies. 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 these nondegrading discharge requirements, a person who proposes a new, additional or increased discharge to HQ waters is given an opportunity to demonstrate a social and economic justification (SEJ) for allowing lower water quality. The demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that other water uses will be supported. Discharge activities to special protection streams do not qualify for NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, will require individual permits.

Where on lot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 will continue to satisfy 25 Pa. Code § 93.4c in these waters that are candidates for redesignation to HQ. Permit applicants of sewage facilities in HQ waters who demonstrate SEJ at the sewage facilities planning stage need not redemonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and nonsewage discharge applicants.

When earth disturbance activities occur within the basins of the stream segments that are proposed to be redesignated in this rulemaking, additional BMPs may be necessary to protect water quality under 25 Pa. Code Chapter 102.

#### Social Impacts and Economic and Social Benefits:

Overall, the Commonwealth, its citizens and natural resources will benefit from this proposed rulemaking because it provides 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. Water uses in the Commonwealth include water supplies for human consumption, wildlife, irrigation, and industrial use; recreational opportunities such as fishing (also for consumption); water contact sports and boating; and aquatic life and special 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.

*Increased property values are an economic and social benefit of clean water protected by this proposed regulation.*

A reduction in toxics found in Pennsylvania's waterways may lead to increased property values for properties located near rivers or lakes. The study, *The Effect of Water Quality on Rural Nonfarm Residential Property Values*, (Epp and Al-Ani, American Journal of Agricultural Economics, Vol 61, No. 3 (Aug. 1979), pp. 529-534 (<https://www.jstor.org/stable/1239441>)), used real estate prices to determine the 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.

*Maintenance of abundant and healthy fish and wildlife populations and support for outdoor recreation are social and economic benefits of clean water protected by this proposed regulation.*

Businesses in the recreation industry will be positively affected by these proposed regulations. The maintenance and protection of the water quality will ensure the long-term availability of Class A wild trout fisheries. Because the focus of this proposal relates directly to the protection of fisheries, sportsmen in Pennsylvania will benefit by the preservation of the existing Class A fisheries. Class A wild trout 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 these proposed stream redesignations 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 wild 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 values and impacts between the years 1995 to 1997. The report provides 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. The total net annual benefit to anglers was \$2.49 billion.

According to the “Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania,” (R. Greene, et al. 2005) (<http://www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf>), the PFBC 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. PFBC found, based on the results of this study, that 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 251,000 direct Pennsylvania jobs, \$8.6 billion in wages and salaries, and \$1.9 billion in state and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. The association reports that 56% of Pennsylvania residents participate in outdoor recreation each year. (See Outdoor Industry Association (2017), “The Outdoor Economy: Take it Outside for American Jobs and a Strong Economy,” (<https://outdoorindustry.org/resource/pennsylvania-outdoor-recreation-economy-report/>))

*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 proposed regulation.*

The Department identified eleven public water supply facilities with raw water intakes that are no further downstream than 30 stream miles of the candidate stream sections for redesignation in this proposed rulemaking package. These eleven public water suppliers, which serve over 175,000 citizens, will benefit from this proposed rulemaking 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. 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 treatment requirements on NPDES permittees because their existing discharges are factored into these proposed redesignations. Prior to rulemaking, the Department has an obligation to provide existing uses protection when data indicates that a surface water attains or has attained an existing use. Information regarding the HQ waters identified in this proposal have been compiled for use in Department permit or approval actions. Notice of the availability of this data is posted on the Agency's Existing Uses List Summary Table found at:

<http://www.dep.pa.gov/Business/Water/CleanWater/WaterQuality/StreamRedesignations/Pages/Statewide-Existing-Use-Classifications.aspx>.)

Only when an NPDES permittee proposes a new, additional, or increased discharge would it be necessary 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, 19 NPDES discharges are located on waters identified in this proposed rulemaking. The Board does not know whether these facilities will expand, or whether a new application for a discharge permit will be filed with the Department, possibly triggering compliance with the antidegradation regulation.

Discharge permits to HQ or EV waters may be issued if a permit applicant can sufficiently demonstrate to the Department that the activity will protect existing water quality. Compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 will continue to satisfy 25 Pa. Code § 93.4c in these recommended HQ Waters. This proposed 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 proposed for redesignation in this rulemaking, additional BMPs may be necessary to protect water quality under 25 Pa. Code Chapter 102. The Board does not know if any new activities will be proposed that would require an earth disturbance permit or other approval from the Department.

Several examples of benefits to be gained by the stream redesignations 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 Question #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 requires a new or modified NPDES permit; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

The proposed stream redesignations will benefit all citizens of the Commonwealth, both present and future, by maintaining and protecting water.

On balance, the certain 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 economic 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 conditions.

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. An affordability analysis of the alternatives is also performed to select the best option. Additionally, if an applicant cannot meet the non-degrading discharge requirements, a person who proposes a new, additional or increased discharge to HQ waters is given an opportunity to demonstrate a social and economic justification (SEJ) for allowing lower water quality. The demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that other water uses will be supported. Discharge activities to HQ streams do not qualify for NPDES general permits and will require individual permits to allow for this customized review.

While a discharge to a HQ water 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 waters if 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 requires a new or modified NPDES permit; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the requirement; and (4) generic technology or cost equations 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.**

Local governments will most likely have additional costs associated with municipal separate storm sewer system (MS4) permitting requirements. A permittee that discharges to an HQ water will be required to obtain an individual permit when the permit is up for renewal. Any new first-time MS4 permits in these waters will be required to obtain individual permits. The cost of a new first-time individual permit is \$5,000 compared to \$500 for a general permit. There is a difference in cost between the initial issuance of an individual permit and a general permit due to increased staff time needed to review permit applications and implementation oversight that is associated with individual permits. An individual permit allows for the tailoring of a municipality's stormwater management program and its implementation of the minimum control measures. If there is an existing permit (whether it is currently a general permit or an individual permit) on a water that has been redesignated to special protection, the fee to renew it to an individual permit is \$2500. The annual fee is the same for a general permit and an individual permit (\$500). Individual permits will require an application and general permits will no longer be required to submit a Notice of Intent (NOI) as the annual report submittal and annual fee payment will serve the purpose of past NOIs. In general, there are no special consulting services fees that are needed for a new permittee when applying for the individual permit.

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 conditions.

Costs associated with new, increased or additional discharges, associated with publicly owned treatment works, would include consulting to complete a new portion of a permit application that addresses antidegradation of surface waters. The application requires the permittee to evaluate environmentally sound and cost-effective nondischarge alternatives. If none are available, the applicant evaluates the various treatment technologies or BMPs that will maintain the existing water quality of the stream. An affordability analysis of the alternatives is also performed to select the best option. Additionally, if an applicant cannot meet the non-degrading discharge requirements, a municipality who proposes a new, additional or increased discharge to HQ waters is given an opportunity to demonstrate a social and economic justification (SEJ) for allowing lower water quality. The demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that other water uses will be supported. Discharge activities to HQ streams do not qualify for NPDES general permits and will require individual permits to allow for this customized review.

While a discharge to a HQ water does require these additional evaluations, and may require the use of additional treatment technologies or BMPs, no activities are prohibited. Any discharge may occur to HQ waters if 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 requires a new or modified NPDES permit; (2) effluent discharge and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the requirement; and (4) generic technology or cost equations 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 and recreational revenue. For those local governments that receive income from the tourism industry, the redesignations will help maintain the local revenue and employment. 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.**

In general, if a Commonwealth agency has a NPDES permit to discharge pollutants into waters of the Commonwealth, the costs and savings would be the same as those described in Question #20 for local government.

No other costs will be imposed directly upon Commonwealth government by this proposed regulation. This proposed regulation will be implemented through existing Department programs, procedures and policies.

One permit has been issued to a Commonwealth Agency that discharges to one of the streams that is proposed for redesignation in this rulemaking.

**(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 HQ streams. No new forms, reports, or implementation procedures are necessary. A permit applicant who proposes to discharge new, additional or increased pollutants might need the assistance of a consultant to evaluate certain elements of the antidegradation requirements such as nondischarge and nondegrading treatment options or BMPs. A permit applicant for a new or renewed permit must apply for an individual permit; however, a permit renewal does not trigger antidegradation review until new, additional or increased pollutants are proposed in the permit application.

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

For a permit applicant 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.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3713>

Mining SEJ module

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3872>

Oil and Gas Program Erosion and Sediment (E&S) Control General Permit

<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=11501&DocName=8000-PM-OOGM0005 NOI Intent.pdf>

Industrial Waste Antidegradation Module (including Industrial Waste (IW) Stormwater Only Discharges)

<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=11982&DocName=3800-PM-BCW0008g Module 4 and Module 4 Instructions.pdf>

Act 537 Planning Checklist

<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=8431&DocName=3850-FM-BCW0003.pdf>

Pesticides Permit Antidegradation Module

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3675>

E&S Control Individual Permit

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3678>

(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 2018/19</b>	<b>FY +1 2019/20</b>	<b>FY +2 2020/21</b>	<b>FY +3 2021/22</b>	<b>FY +4 2022/23</b>	<b>FY +5 2023/24</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 (2015/16)</b>	<b>FY -2 (2016/17)</b>	<b>FY -1 (2017/18)</b>	<b>Current FY (2018/19)</b>
160-10381 Enviro Protection Operations	\$87,172,000	\$86,462,000	\$86,910,000	\$93,190,000
161-10382 Enviro Program Management	\$28,277,000	\$26,885,000	\$29,413,000	\$30,932,000

**(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.**

According to the Regulatory Review Act, small businesses are defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations). The US Small Business Administration defines a small business as less than 500 employees. 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 under Question #15. When this proposed regulation goes into effect, no existing discharges will be affected. There are approximately 2 small businesses that currently possess NPDES permits to discharge into waters that are being considered for redesignation in this proposed rulemaking.

**(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 HQ streams. No new forms, reports, or implementation procedures are necessary. NPDES permit application modules for discharges to HQ waters can be found at the links listed in (22b). A permit applicant who proposes to discharge new, additional or increased pollutants might need the assistance of a consultant to evaluate certain elements of the antidegradation requirements such as nondischarge and nondegrading treatment options or BMPs.

**(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 limits 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 conditions.

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

The 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 the proposed 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 proposed rulemaking, it is important to note that this proposal will afford the protection of water quality necessary to ensure clean water for all citizens of this Commonwealth.

**(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 proposed regulation will meet the Commonwealth's obligations under The Clean Streams Law and the Clean Water Act to protect water uses. The proposed 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 proposed regulation does not establish or revise compliance or reporting requirements for small businesses. Those requirements would be addressed through the applicable permitting program. No alternative regulatory schemes are available to achieve the correct level of protection for the waters of the Commonwealth. The proposed 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 proposed 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 or other applicable permitting programs.

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

This proposed 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 or other applicable permitting programs.

**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 BMPs for persons who discharge pollutants to HQ 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 are 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 PFBC under § 93.4c (relating to implementation of antidegradation requirements). In this proposed rulemaking, redesignations rely on § 93.4b(a)(2)(ii) (relating to qualifying as High Quality or Exceptional Value Waters) to qualify streams for 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. Department staff conducted an independent review of the trout biomass data in the PFBC's fisheries management reports for the streams proposed for redesignation. This review was conducted to ensure that the HQ criteria were 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/ClassA3\\_Draft\\_Stream\\_Report.pdf](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/ClassA3_Draft_Stream_Report.pdf).

In addition, links to all of the PFBC fisheries management reports are included in the Department's Stream Evaluation Report at the previous link, 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. 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/ClassA3\\_ADDENDUM.pdf](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/ClassA3_ADDENDUM.pdf).

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

- A. The length of the public comment period: 45 days
- B. The date or dates on which any public meetings or hearings will be held: TBD
- C. The expected date of delivery of the final-form regulation: Quarter 2, 2019
- D. The expected effective date of the final-form regulation: Upon publication of the final-form rulemaking.
- E. The expected date by which compliance with the final-form regulation will be required: Upon publication of the final-form rulemaking
- F. The expected date by which required permits, licenses or other approvals must be obtained: No expectation that a permit must be obtained.  
New, additional, or increased discharges will be subject to the regulation that is in effect at the time a permit application is filed and a Department decision is made..

**(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 proposed regulations because they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these proposed regulations for their effectiveness and recommend updates to the Board as necessary.

Also, since the Federal Clean Water Act requires review and revision of water quality standards as necessary, but at least once every three years, a schedule for review is inherently established.