

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

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§ 93.8d. Development of site-specific water quality criteria.

(a) The Department will consider a request for site-specific criteria, **or the Department may develop site-specific criteria on its own initiative,** when one or more of the following apply:

(1) There exist site-specific biological or chemical conditions of receiving waters which differ from conditions upon which the **aquatic life** water quality criteria were based.

(2) More stringent criteria are needed for a **[parameter]pollutant** listed in § 93.7, **Table 3 (relating to specific water quality criteria)** or § 93.8c, **Table 5 (relating to water quality criteria for toxic substances)** to protect more sensitive, intervening uses.

(3) There exists a need for a site-specific criterion for a **[substance]pollutant** not listed in § 93.7, **Table 3** § 93.8c, **Table 5** **(relating to water quality criteria for toxic substances)**.

(a.1) Site-specific criteria may not be developed when one or more of the following apply:

(1) If the request is for a waterbody, or waterbody segment, where a pollutant is a cause of nonattainment for any protected water use as listed in Pennsylvania's Integrated Water Quality Report.

(2) If the request is for a waterbody, or waterbody segment, where an aquatic life use is not attained, unless all causes of nonattainment are due to causes other than pollutants as determined by the Department in an assessment. Assessments are publicly available on the Department's website.

(3) If the request is for surface waters with an existing or designated use of HQ or EV.

(b) The **[request]applicant's demonstration** for **consideration of** site-specific criteria, **pursuant to (a) and (a.1),** must include the **[results of scientific studies for the purpose of]following information, at a minimum:**

(1) **[Defining the areal boundaries for application of the site-specific criteria which will include the potentially affected wastewater dischargers identified by the Department, through various means, including, but not limited to, the total maximum daily load (TMDL) process described in Chapter 96 (relating to water quality standards implementation) or biological assessments.] Reserved.**

(1.1) Identification of the pollutant of concern.

(2) [Developing site-specific criteria which protect the surface water's existing and designated uses.] Reserved.

(2.1) Identification of the qualifying factor(s) in § 93.8d(a).

(3) Identification of the receiving waterbody(s) or waterbody segment(s), including stream name, municipality(s), county(s), and all existing and designated uses of the waterbody(s) or waterbody segment(s).

(4) Scientific studies, data or other information that demonstrates the qualifying factor(s) in § 93.8d(a) is met, which may include the following:

- i. Peer-reviewed, scientific literature related to the pollutant of concern.
- ii. For a demonstration of qualifying factor (a)(1),
 - A. Department or federal water quality criteria rationale documents and regulations related to the pollutant of concern.
 - B. Water quality and other relevant data collected on the receiving waterbody(s) or waterbody segment(s) which demonstrate that the conditions of the receiving water differ from conditions upon which the existing aquatic life water quality criteria were based.
- iii. For a demonstration of qualifying factor (a)(2),
 - A. Documentation of more sensitive, intervening water uses for the receiving waterbody(s) or waterbody segment(s).
 - B. Documentation of the presence, critical habitat, or critical dependence of state- or federally-listed threatened or endangered species in or on a surface water, if applicable.
- iv. Any additional data or information as requested by the Department or that demonstrates the applicable qualifying factor is met.

(5) Information that demonstrates the factors in § 93.8d(a.1) are not applicable.

(6) Information that demonstrates a water-quality-based effluent limitation based on a water quality criterion found in § 93.7, Table 3 or § 93.8c, Table 5 is not achievable.

(c) Based on the results of a demonstration that the request for site-specific criteria satisfies (a), (a.1) and (b), the Department may require the applicant to undertake studies and submit additional information to develop site-specific criteria that includes the following, at a minimum:

- (1) Definition of the areal boundaries for application of the site-specific criteria which will include a description of the waterbody(s) or waterbody segment(s).
- (2) Identification of all potentially affected NPDES-permitted discharges, water withdrawals, total maximum daily loads (TMDL), and surface water assessments.
- (3) All peer-reviewed scientific literature or other Department-approved data to be used in the development of the site-specific criterion. If data will be collected, a copy of the

proposed plan for data collection shall be submitted for review, consideration, and approval by the Department prior to commencement of data collection. [Scientific studies]Data collection shall be [performed]completed in accordance with the Department's data collection protocols and the following procedures and guidance[in the], as amended and updated: Water Quality Standards Handbook (EPA 1994),[as amended and updated, including:] “Guidance on the Determination and Use of Water-Effect Ratios for Metals” (February 1994); [and]the “Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health” (2000), and the “Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses” (1985). Other guidance approved by the [department]Department, which is based on EPA-approved or scientifically defensible methodologies, may be used. The development of new or updated site-specific criteria for copper in freshwater systems shall be performed using the biotic ligand model (BLM).

(4) Copies of all reports including toxicity test data signed by the consultant or entity that performed the work. Signed copies shall be submitted to the Department within 60 days of completion of the tests.

(5) Any additional data or information as requested by the Department.

(c.1) If the required data and information is submitted, the Department will evaluate the information and may develop site-specific criteria for the receiving waterbody(s) or waterbody segment(s) that protect the appropriate existing and designated uses of the surface water(s) in accordance with the criteria development methodologies outlined in § 93.8d(c)(3), or other EPA-approved guidance and methods.

(c.2) The Department will incorporate all approved site-specific criteria into this chapter and maintain a publicly available table of all EPA-approved site-specific criteria.

(c.3) Site-specific criteria are not effective for Clean Water Act purposes until approved by EPA.

(d) [Prior to conducting studies specified in subsections (b) and (c), a proposed plan of study shall be submitted to the Department for review, consideration and approval.]Reserved.

(e) [Signed copies of all reports including toxicity test data shall be submitted to the Department within 60 days of completion of the tests.]Reserved.

(f) [If the Department determines that site-specific criteria are appropriate in accordance with subsection (a), the Department will do the following:

(1) Publish the site-specific criterion in the *Pennsylvania Bulletin*, along with other special conditions under § 92a.82(b)(3) (relating to public notice of permit applications and draft permits) and provide for public participation and public hearing in accordance with §§ 92a.81, 92a.82, 92a.83 and 92a.85.

(2) Maintain a publicly available online table of site-specific criteria.

(3) Submit the methodologies used for site-specific criteria development to the EPA's Regional Administrator for review and approval, within 30 days of Department's final action.

(4) Prepare a recommendation to the EQB in the form of proposed rulemaking, incorporating that criterion for the water body segment.]Reserved.

(g) [If the Department determines that new Statewide criteria or modifications to Statewide criteria are appropriate, the Department will prepare a recommendation to the EQB in the form of proposed rulemaking, incorporating the criteria into this chapter. The new criteria and changes to the criteria will become effective following adoption by the EQB as final rulemaking and publication in the *Pennsylvania Bulletin.*]Reserved.

(h) A person challenging a Department action under this section shall have the burden of proof to demonstrate that the Department's action does not meet the requirements of this section.

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§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
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3—Stone Run	Basin (all sections in PA)	Chester	TSF, MF	None
2—Deer Creek	Basin (all sections in PA), <u>Source to Ebaughs Creek</u>	York	CWF, MF	None
<u>3—Ebaughs Creek</u>	<u>Basin (all sections in PA)</u>	<u>York</u>	<u>CWF, MF</u>	<u>Delete Mercury</u> <u>HH = 0.05 µg/L,</u> <u>Add MeHg</u> <u>HH = 0.00004</u> <u>µg/L;</u>
<u>2—Deer Creek</u>	<u>Basin (all sections in PA), Ebaughs Creek to York Mouth</u>	<u>York</u>	<u>CWF, MF</u>	<u>None</u>
1—Chesapeake Bay (MD)				

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