

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

WATER QUALITY CRITERIA

§ 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] the waterbody or waterbody segment 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 human health and aquatic life criteria for toxic substances) regarding 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 or § 93.8c, Table 5 [(relating to water quality criteria for toxic substances)].

(4) **THERE EXISTS A NEED FOR A SITE-SPECIFIC CRITERION FOR A POLLUTANT TO ADDRESS A CAUSE OF IMPAIRMENT FOR A PROTECTED WATER USE, AS LISTED IN PENNSYLVANIA'S INTEGRATED WATER QUALITY MONITORING AND ASSESSMENT REPORT, AS AMENDED AND UPDATED.**

(a.1) Site-specific criteria may not be developed when one or more of the following apply: A REQUEST IS FOR SURFACE WATERS WITH AN EXISTING OR DESIGNATED USE OF HQ OR EV.

(1) if the request is for a waterbody or waterbody segment where a pollutant is a cause of nonattainment for a protected water use as listed in Pennsylvania's Integrated Water Quality Monitoring and Assessment Report, as amended and updated.

—(2) If the request is for a waterbody or waterbody segment where an aquatic life use is not attained, unless the 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 web site.

—(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, under subsections (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 or factors in subsection (a).

(3) Identification of each waterbody or waterbody segment to which the site-specific criteria would apply, including stream name, municipality or municipalities, county or counties and existing and designated uses of each waterbody or waterbody segment.

(4) Scientific studies, data or other information that demonstrate the qualifying factor or factors in subsection (a) are met, which may include the following:

(i) Peer-reviewed, scientific literature related to the pollutant of concern.

(ii) For a demonstration of the qualifying factor in subsection (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 each waterbody or waterbody segment which demonstrate that the conditions differ from conditions upon which the existing aquatic life water quality criteria were based.

(iii) For a demonstration of the qualifying factor in subsection (a)(2):

(A) Documentation of more sensitive, intervening water uses for each waterbody or waterbody segment.

(B) Documentation of the presence, critical habitat or critical dependence of State-listed or Federally-listed threatened or endangered species in or on a surface water, if applicable.

(iv) 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~~ subsection (a.1) areIS 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) [Scientific studies] Based on the results of a demonstration that the request for site-specific criteria satisfies subsections (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 each waterbody or waterbody segment.

(2) Identification of potentially affected National Pollutant Discharge Elimination System (NPDES)-permitted discharges, water withdrawals, total maximum daily loads (TMDL) and surface water assessments.

(3) 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. 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 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) 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 each requested waterbody or waterbody segment that protect the existing and designated uses of the surface waters in accordance with the criteria development methodologies outlined in subsection (c)(3), or other EPA-approved guidance and methods.

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

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

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
* * * * *				

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 Human Health = 0.05 µg/L</u> <u>Add Methylmercury Human Health = 0.00004 µg/L</u>
<u>2—Deer Creek</u>	<u>Basin (all sections in PA), Ebaughs Creek to Mouth</u>	<u>York</u>	<u>CWF, MF</u>	<u>None</u>
1—Chesapeake Bay (MD)				
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