

**PROPOSED RULEMAKING**  
**ENVIRONMENTAL QUALITY BOARD**  
**25 Pa. Code Chapter 93**  
**Stream Redesignations (Class A Wild Trout Waters)**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code §§93.9a, 93.9c, 93.9d, 93.9e, 93.9f, 93.9h, 93.9i, 93.9k, 93.9l, 93.9n, 93.9o, 93.9p, 93.9q, and 93.9t (relating to the Designated Uses and Water Quality Criteria for waterbody segments) as set forth in Annex A. The proposed regulations fulfill the Commonwealth's obligations under state and federal law to review and revise, as necessary, water quality standards that are protective of surface waters.

This proposal was adopted by the Board at its meeting of \_\_\_\_\_.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information, contact Rodney Kime, Bureau of Point and Non-Point Source Management (BPNPSM), 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, 400 Market Street, Harrisburg, PA 17105-8774, 717-787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, 717-787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD-users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (Select "Public Participation Center," then "Environmental Quality Board").

**C. Statutory and Regulatory Authority**

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5 (b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P.S. §§ 691.1 – 691.1001), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt, and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards.

**D. Background and Purpose**

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits, and best management practices (BMPs)) on individual sources of pollution. Section 303(c)(1) of the

federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. Water quality standards include designated uses, numeric and narrative criteria and antidegradation requirements for surface waters. The regulatory changes in this proposed rulemaking are the result of stream evaluations conducted by the Department.

The Department may identify candidate streams for redesignation of uses during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Members of the public may submit a rulemaking petition to the Board. The regulatory changes in this proposed rulemaking 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). Section 93.4c(a)(1) pertains to the process for changing a designated use of a stream. In this proposal, redesignations rely on § 93.4b(a)(2)(ii) to qualify streams for High Quality 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 High Quality (HQ) designation. The PFBC published notice and requested comments on the Class A designation of these streams. The PFBC Commissioners approved these waters after public notice and comment.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality, and permitted activities shall ensure the protection of designated and existing uses. The purpose of this rulemaking is to update the designated uses so that the surface waters of the Commonwealth are afforded the appropriate level of protection.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in § 93.3 (relating to protected water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be “redesignated” through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made “designated” uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

## **E. Summary of Regulatory Requirements**

Department staff conducted an independent review of the trout biomass data in the PFBC’s fisheries management reports for streams throughout the Commonwealth. This review was conducted to

ensure that the High Quality criteria were met. The Department gave notice, in the Pennsylvania Bulletin and on its website that an evaluation was to be conducted on all or portions of the subject streams to determine the proper Aquatic Life Use or Special Protection designations in this Commonwealth's Water Quality Standards. Persons who had technical data concerning the water quality, instream habitat or biological conditions of these stream sections were encouraged to make it available to the Department for consideration in the assessment. Potentially affected municipalities were also notified by letter of the stream evaluations and asked to provide any readily available data. No data or comments were received in response to these notices.

The affected municipalities, County Planning Commissions, County Conservation Districts and other State Agencies were later notified of the availability of a draft evaluation report for their review and comment. Six stakeholders offered comments during the 45-day comment period, three in support and three in opposition.

The draft stream evaluation report was also made available on the Department's website and offered an opportunity for 30-day public review and comment.

All data and comments received in response to these notifications were considered in the determination of the Department's recommendations.

Copies of the Department's stream evaluation report for these waterbodies are available on the Department's web site or from the contacts whose addresses and telephone numbers are listed in Section B of this Preamble. Copies of the PFBC fisheries management reports for these streams are available from Rodney Kime whose address and telephone number are listed in Section B of this Preamble. The data and information collected on these waterbodies support the Board's proposed regulation as set forth in Annex A.

During the Department's review of stream data, it discovered listing errors in § 93.9. First, the Board is proposing to correct an error in Chapter 93.9d. The Chapter 93.9d listing for a very short segment of Pohopoco Creek main stem which extends from the mouth of Middle Creek to the SR 209 bridge at Kresgeville says that it is HQ-CWF, MF and it also incorrectly states that the same segment is CWF, MF. The correct designation for this portion of Pohopoco Creek is HQ-CWF, MF based on its current classification by PFBC, and the Department's review of the data, as a Class A Wild Trout Water.

Second, the Board is proposing to correct an error in §93.9k. Portions of Little Nescopeck Creek (above State Route 309) and Creasy Creek were included with the data submittal from the PFBC. However, these portions of the upper Nescopeck Creek basin are already designated HQ-CWF, MF; therefore, no change is necessary. The entire upper Nescopeck Creek basin above State Route 309 Bridge is HQ-CWF, MF according to the first entry for the Nescopeck Creek in Chapter 93.9k. This entry designates the main stem of the Nescopeck Creek and all of its tributaries upstream of SR 309 as HQ-CWF, MF. When reviewing the drainage list, the Department discovered duplicative listings for Creasy Creek, Little Nescopeck Creek, and Oley Creek which are improperly located below the SR 309 bridge in § 93.9k. The listing errors for Creasy, Little Nescopeck, and Oley Creeks should be corrected because their mouths are actually geographically located upstream of the SR 309 bridge and, therefore, should have the High Quality designations.

The Board is also proposing to correct some stream names as they appear in §93.9k. The United States Geologic Survey (USGS) maintains the National Hydrography Dataset (NHD) Flowline. The stream nomenclature and the fluvial geomorphology given in the Pennsylvania Code are governed by the NHD Flowline. These corrections are being proposed to maintain consistency between the Pennsylvania Code and the NHD Flowline. The NHD Flowline now recognizes some portions of the upper Wapwallopen Creek basin as Balliet Run and some of the lower portions of the Wapwallopen Creek are now Big Wapwallopen Creek.

Finally, the Board is proposing that all reference to river mile indexes (RMIs) that are included in the Annex for this proposed rulemaking are to be converted to a set of coordinates (latitude and longitude), with the eventual goal to be the conversion of all RMIs in the drainage lists (chapter 93.9a to 93.9z) to the coordinate system. Agency staff recognizes the RMI system to be antiquated. When determining the RMI, it is possible to derive differing RMIs depending on the technique used. It is easy to consistently determine the latitude and longitude along any point of a stream or river while you are in the field with a hand-held GPS unit; or using a GIS software application (the DEP standard projected coordinate system is PA\_Albers\_Equal\_Area\_Conic; and the geographic coordinate system is North American Datum 1983 or NAD 1983). It is very difficult to determine the RMI while in the field. Referring to the latitude and longitude will make it much easier for the regulated community to apply the zone description in Chapter 93.9 to their particular project and determine whether their project discharges within the referenced stream zone.

## **F. Benefits, Costs and Compliance**

1. **Benefits** – Overall, the Commonwealth, its citizens and natural resources will benefit from these recommended changes because they provide 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 for human consumption, wildlife, irrigation and industrial use; recreational opportunities such as fishing (also for consumption), water contact sports and boating; and aquatic life 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.
2. **Compliance Costs** – The proposed amendments to Chapter 93 may impose additional compliance costs on the regulated community. These regulatory changes are necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

The proposed redesignations will be implemented through the Department's permit and approval actions. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment or best management practices to meet the designated and existing uses of the stream. For example, these increased costs may take the form of higher engineering, construction or operating cost for point source discharges. Treatment costs and best management practices are site-specific and depend upon the size of the discharge in relation to the size of the stream and many

other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes and best management practices may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

3. **Compliance Assistance Plan** - The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit high water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act (33 U.S.C.A §§1251–1387) and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed amendments will be implemented through the Department’s permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the uses of the stream. These permit conditions are established to assure water quality is protected and maintained. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality.

4. **Paperwork Requirements** - The proposed regulatory revisions should have no new direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

## **G. Pollution Prevention**

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§13101-13109) established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives must be implemented and are required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil. In addition, if no environmentally sound and cost-effective alternatives are available, discharges must be nondegrading in most circumstances.

#### **H. Sunset Review**

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

#### **I. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on DATE the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

#### **J. Public Comments**

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by DATE. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by DATE. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments

should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16<sup>th</sup> Floor, 400 Market Street, Harrisburg, PA 17101-2301.

**K. Public Hearings**

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

John Quigley,  
*Chairperson*