

Regulatory Analysis Form

(Completed by Promulgating Agency)

*INDEPENDENT REGULATORY
REVIEW COMMISSION*

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Environmental Protection

(2) Agency Number:

Identification Number: 7-535

IRRC Number:

(3) PA Code Cite:

25 Pa Code, Chapter 93

(4) Short Title:

Water Quality Standards – Sobers Run, et al., Stream Redesignations

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Section 303(c)(1) of the federal Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. This regulation is undertaken as part of the Department's ongoing review of Pennsylvania's water quality standards. The proposed regulation will update and revise water quality standards that are designated uses for surface waters of the Commonwealth.

This proposal modifies Chapter 93 to reflect the recommended redesignation of streams shown on the attached list. The proposed regulation will update and revise stream use designations in 25 Pa. Code §§ 93.9c, 93.9f, and 93.9i. These changes may, upon implementation, result in more stringent treatment requirements for new and/or expanded wastewater discharges to the streams in order to protect the existing and designated water uses.

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

The Pennsylvania Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394) as amended, 35 P.S. § 691.1 et seq.

Section 1920-A of The Administrative Code of 1929, as amended, 71 P.S. § 510-20.

Section 303(c) of the Federal Clean Water Act, 33 U.S.C.A. § 1313(c).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

Section 303(c) of the federal Clean Water Act and 40 CFR § 131.10 require states to develop water quality standards that consist of designated uses. Such standards must “protect the public health or welfare and enhance the quality of water.” In addition, such standards must take into consideration water uses including public water supplies, propagation of fish and wildlife, recreational purposes, agricultural purposes and industrial purposes.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The purpose of developing the water quality standards is to protect Pennsylvania’s surface waters. Pennsylvania’s surface waters, through the water quality standards program, are protected for a variety of uses including: drinking water supplies for humans, livestock and wildlife; fish consumption; irrigation for crops; aquatic life uses; recreation; and industrial water supplies. All the citizens of this Commonwealth will benefit from the regulation since it will provide the appropriate level of water quality protection for all water uses.

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. Additionally, by maintaining water quality standards, clean surface water is available for irrigation of livestock and for use in industrial processes. 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.

(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 federal Clean Water Act and 40 CFR § 131.10.

The proposed amendments will 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. State agencies that may cause pollution in surface waters will likely be affected by this regulation. For example, if an agency’s activity involves the discharge of pollutants into surface waters, the discharge must meet the water quality standards identified by this regulation.

(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.)

The streams (or portions of streams) in this proposed rulemaking that are candidates for redesignation to EV were all evaluated in response to petitions that were submitted to the Environmental Quality Board (EQB) as follows:

Stream	County	Petitioner
Swiftwater Creek	Monroe	Brodhead Creek Watershed Association
Sobers Run	Northampton	Bushkill Township
Mill Creek	Berks, Chester	Delaware Riverkeeper Network
Silver Creek	Susquehanna	Silver Lake Association

The Department reviewed the petitions and determined that they were complete, and the petitioners were notified that the petitions were appropriately submitted. The petitions were presented to the EQB and the petitioners had an opportunity to deliver a 5 minute presentation regarding why the EQB should accept the petition. The EQB accepted these petitions and notifications of their acceptance were published in the Pennsylvania Bulletin.

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 for 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 were received for Swiftwater Creek. The Department received comments regarding Swiftwater Creek including a notice from Tobyhanna Township stating that they do not support the petition to upgrade Swiftwater Creek. The Department did receive data from Bushkill Township to augment the Department's assessment of Sobers Run. Hanover Engineering Associates submitted the latest (2009) Coldwater Conservation Plan completed for the Upper Bushkill Creek Watershed and the Northampton County Conservation District submitted water chemistry results collected by the Retired Senior Volunteer Program. This data was used as documentation and support for the Sobers Run special protection assessment. The Delaware River Keeper Network provided the Department with water quality data for Mill Creek including a copy of the 1994 Pennsylvania Fish and Boat Commission Report, information pertaining to the Pennsylvania Fish and Boat Commission 'Natural Trout Reproduction Layer', and information pertaining to local angler observations. This submitted data was used as supporting documentation of the water quality of the Mill Creek basin in conjunction with the findings of the Department's survey. The Department also received two supportive responses from local citizens regarding the redesignation of Mill Creek. The Department did not receive any data regarding Silver Creek. The Department did receive one letter of support for the redesignation of Silver Creek.

The affected municipalities, County Planning Commissions, County Conservation Districts, other State Agencies and petitioners were later notified of the availability of a draft evaluation report for their review and comment. The draft stream evaluation reports were also made available on the Department's website and were offered for an opportunity for a minimum 30-day public review and comment period.

(14) Continued response

No comments were received in response to this notice for either Swiftwater Creek or Silver Creek. Nine commentators offered their supportive comments for the Department's recommendation to redesignate Sobers Run. Three stakeholders offered comments pertaining to the Mill Creek report, one in support and two in opposition. In addition, the Delaware Riverkeeper requested an extension of the original 30-day public comment period. In response, the Department provided a 30-day extension to the comment period for the Mill Creek stream report. The Delaware Riverkeeper provided additional comments in support of the EV recommendation and in opposition of the recommendation for the unnamed tributary to Mill Creek at 40°14'33.8"N; 75°43'49.6"W to remain unchanged.

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

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

(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?

Persons proposing new or expanded activities or projects which result in pollution to waters of the Commonwealth may be affected by the proposed regulations. For example, dischargers of pollutants will be required to provide effluent treatment or best management practices that will protect and maintain the designated uses identified in this proposed regulation. Such treatment and practices may result in higher design engineering, construction, and treatment costs. The proposed regulation will be implemented through the Department's permit and approval actions.

The Department identified 3 potable water supply facilities with raw water intakes that are no further downstream than 17.0 stream miles of the candidate stream sections for redesignation in this rulemaking package. These three potable water suppliers which serve over 103,000 citizens will benefit from this rulemaking package because their raw source water will be afforded a higher level of protection. This is an economic benefit because the treatment costs are less when the source water is of higher quality.

Out of over 7,000 pollution control facilities across the Commonwealth, only 20 of them are known to hold discharge permits within close proximity to the portions of the streams that are candidates for redesignation in this Sobers Run Package.

It is not possible to identify the total number of persons, businesses and organizations that will be affected by the regulation.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

Persons with proposed or existing discharges into surface waters of the Commonwealth must comply with the regulation. Also, see response #15.

(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.

The streams proposed for redesignation are already protected at their existing uses, and therefore the designated use revision will have no impact on existing discharges.

All citizens of the Commonwealth, both present and future, will benefit from having clean water that is protected and maintained. Because this proposal also relates to the protection of fisheries, specific revenue-related benefits associated with outdoor recreation 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,” that examined such economic impacts between the years 1995 to 1997. The report provided a snapshot of how much money these sporting activities bring to the state and how they affect employment in rural areas. A major finding of that report is the total annual value of \$3.7 billion for sport fishing was almost three times the \$1.26 billion spent in travel costs to use fishing resources during the same 12-month period of time.

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

According to the “2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation” for Pennsylvania, prepared by the U.S. Fish and Wildlife Service, approximately 1,101,000 anglers, participated in fishing and 3,598,000 persons participated in wildlife watching in the year 2011. In addition, all fishing-related expenditures in Pennsylvania totaled \$485 million in 2011. Such expenditures include food and lodging, transportation and other expenses (equipment rental, bait and cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in Pennsylvania. Expenditures include trips-related costs and equipment.

According to the Outdoor Recreation Industry Association, Pennsylvania’s outdoor recreation generates 219,000 direct Pennsylvania jobs, \$7.2 billion in wages and salaries, and \$1.6 billion in state and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. (See Outdoor Industry Association (2012), “The Outdoor Economy: Take it Outside for American Jobs and a Strong Community,” http://www.outdoorindustry.org/pdf/OIA_Outdoor-RecEconomyReport2012.pdf.)

Also, see response #15.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Health and welfare benefits to all citizens of the Commonwealth accrue from protecting the surface waters of the Commonwealth at the appropriate level. The benefits from substantial revenue and jobs associated with popular fisheries, and other industries that rely on clean water, outweigh the cost and adverse effects associated with selective effluent treatment technology and best management practices for those who cause pollution of the waters.

Also, see response #15 and #17.

(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.

Specific estimates of costs and savings cannot be determined because each activity that will result in pollution to a special protection water must be reviewed based on site-specific considerations. These site-specific considerations include, but are not limited to the size, flow volume, and the chemical, biological and physical properties of both the receiving water and the effluent discharge. These unique parameters result in site-specific requirements. Individual permits will be required for National Pollutant Discharge Elimination System (NPDES) discharges to waters identified in the proposed regulations.

(20) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No costs will be imposed directly upon local governments by this proposed regulation. This proposal is based on and will be implemented through existing Department programs, procedures and policies. However, certain municipalities that discharge pollutants to surface waters may be affected by this proposed regulation. The costs associated with permits and performance or design requirements will be site-specific and will be based on effluent limitations or best management practices and the appropriate protections for a particular waterbody.

The municipality may derive additional revenue and employment from the tourism industries that are attracted to recreation associated with surface waters, such as anglers.

(21) Provide a specific estimate of the costs and/or savings to 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.

No costs will be imposed directly upon state governments by this proposed regulation. This proposal is based on and will be implemented through existing Department programs, procedures and policies. However, certain state agencies that discharge pollutants to surface waters may be affected by this proposed regulation. The costs associated with permits and performance or design requirements will be site-specific and will be based on effluent limitations or best management practices and the appropriate protections for the particular waterbody.

The state may derive additional revenue and employment from the tourism industries that are attracted to recreation associated with the surface waters, such as anglers. Also, see response #17.

(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.

Each activity that will result in pollution to a special protection water requires a review that is based on site-specific considerations. Existing Department procedures will be used to implement this proposed regulation. Persons proposing new or expanded activities or projects which result in discharges to waters of the Commonwealth will be required to implement treatment of effluent or best management practices and the appropriate protections for a particular waterbody.

(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.

	Current FY Year 15/16	FY+1 Year 16/17	FY+2 Year 17/18	FY+3 Year 18/19	FY+4 Year 19/20	FY+5 Year 20/21
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not Measurable					
Local Government	“					
State Government	“					
Total Savings	“					
COSTS:						
Regulated Community	Not Measurable					
Local Government	“					
State Government	“					
Total Costs	“					
REVENUE LOSSES:						
Regulated Community	Not Measurable					
Local Government	“					
State Government	“					
Total Revenue Losses	“					

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

Program	FY -3 (2012-13)	FY -2 (2013-14)	FY -1 (2014-15)	Current FY (2015-16)
160-10381 Enviro Protection Operations	74,547,000	75,184,000	84,438,000	87,172,000
161-10382 Enviro Program Management	24,965,000	25,733,000	28,517,000	28,277,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

Persons with proposed or existing discharges into surface waters of the Commonwealth must comply with the regulation. Also, see response #15.

(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.

Each activity that will result in pollution to a special protection water requires a review that is based on site-specific considerations. Individual permits will be required for National Pollutant Discharge Elimination System (NPDES) discharges to waters identified in the proposed regulations. Existing Department procedures will be used to implement this proposed regulation.

(c) A statement of probable effect on impacted small businesses.

Each activity that will result in pollution to a special protection water requires a review that is based on site-specific considerations. Individual permits will be required for National Pollutant Discharge Elimination System (NPDES) discharges to waters identified in the proposed regulations. Existing Department procedures will be used to implement this proposed regulation.

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

The existing regulations, in Chapter 93, provide some relief for a person who applies for a permit and proposes to discharge pollutants, and who has evaluated the following: whether nondischarge alternatives (to the discharge) exist that are cost effective and environmentally sound; and, if none exist, a person may be permitted to discharge if it is nondegrading.

(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.

There are no such provisions in this proposed regulation.

(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.

There were no non-regulatory alternatives available to consider in this case.

There were no alternative regulatory schemes to consider in achieving the correct level of protection for the waters of the Commonwealth. The proposed regulations reflect the results of a scientific evaluation of regulatory criteria.

(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.

There were no less stringent compliance or reporting requirements to consider in this case.

There were no alternative regulatory schemes to consider in achieving 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.

There were no non-regulatory alternatives available to consider in this case.

Schedules of compliance and reporting requirements are considered when permit or approval actions are taken and cannot be considered as part of this scientific evaluation of the correct designated uses of surface waters.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

Compliance and reporting requirements are considered when permit or approval actions are taken and cannot be considered as part of this scientific evaluation of the correct designated uses of surface waters.

(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.

The proposed regulations represent performance standards. They identify the instream goals for water quality protection and do not identify the design or operational standards that must be used to meet the goals.

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

There were no such exemptions of small businesses to consider 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.

Please see the attached stream evaluation reports.

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

- A. The date by which the agency must receive public comments:** Quarter 3, 2016
- B. The date or dates on which public meetings or hearings will be held:** during 45-day comment period, (if requested)
- C. The expected date of promulgation of the proposed regulation as a final-form regulation:** Quarter 2, 2017
- D. The expected effective date of the final-form regulation:** Quarter 2, 2017
- E. The date by which compliance with the final-form regulation will be required:** Quarter 2, 2017
- F. The date by which required permits, licenses or other approvals must be obtained:** whenever permits or approvals are issued or renewed

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation 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.

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