

EXECUTIVE SUMMARY

Amendment to 25 PA. Code, Chapter 93 (Water Quality Standards) Triennial Review

The Department of Environmental Protection recommends the Environmental Quality Board (EQB) propose amendments to 25 Pa. Code Chapter 93 regarding water quality standards.

Purpose of the Proposed Rulemaking

Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every three years, review and revise as necessary, their water quality standards. This proposal constitutes Pennsylvania's current triennial review of its water quality standards.

Pennsylvania's water quality standards, which are codified in Chapters 93 and 16, are designed to implement the requirements of Sections 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water (33 U.S.C.A. § 1313). The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and an antidegradation policy. Thus, water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution.

Summary of the Proposed Rulemaking

The following is a summary of the proposed revisions, updates, and amendments for the Commonwealth's triennial review of water quality standards.

In Section 93.1, clarification would be added to the definition of *Outstanding National, State, regional or local resource water* to indicate this also includes waters that are protected by one or more conservation easements that are held in perpetuity by certain entities.

~~In Section 93.6(a), the word "discharges" would be removed, as it is redundant when referring to point and non-point sources.~~

In Table 3, at Section 93.7, the aquatic life criterion for ammonia would be updated, and an aquatic life criterion for chloride would be added. The chloride aquatic life criterion is based on state specific data. In addition, the bacteria criteria would be updated by replacing the current fecal coliform-based criteria for water contact sports (WC) during the swimming season (May 1 to September 30), with United States Environmental Protection Agency's (U.S. EPA) 2012 Recreational Water Quality Criteria (RWQC) in Pennsylvania's surface waters.

In Section 93.3a(j)(3) (relating to antidegradation requirements for the Great Lakes System), the reference to the Federal regulation in 40 CFR 131.32(a) would be deleted, since this federal promulgation had been removed by the U.S. EPA.

Language in Sections 93.8c(a) and 93.8c(b), would be updated to clarify that the criteria in Table 5 may apply to the Great Lakes System for those substances not listed in Table 6. The toxic substances at Section 93.8c, Table 5, (relating to water quality criteria for toxic substances) would be updated using the latest scientific information and policies developed by the U.S. EPA under the Clean Water Act, section 304(a).

In Section 93.8d(c), language would be added to clarify the use of the Biotic Ligand Model (BLM) for the development of new or updated site-specific criteria for copper in freshwater systems.

In Section 93.8d(f)(2), language would be added to identify a new on-line resource to maintain a publicly available list of site-specific criteria that have been developed, and are being used by the Department in permitting and other pollution control measures.

In addition, corrections would be made to the water quality standards chapters for typographical and translation errors, and missed references associated with prior rulemaking and/or publication activities. This includes corrections to use designations and stream entries found in Drainage Lists at Sections 93.9a-93.9z, which are not being addressed by separate stream redesignation rulemakings, including consolidating and reformatting several drainage lists to address the continual changes and updates occurring to the National Hydrography Dataset (NHD) flowline. The NHD flowline forms the basis of DEP's Designated and Existing Use Geographic Information System (GIS) layers. Reformatting large basins to consolidate portions of the code that have the same designated use enables readers to view that entire basin within a page or two. In addition, a condensed drainage list reduces the likelihood that errors will occur in transcription of the code during rulemaking procedures. In addition, all river mile indexes (RMIs) in the drainage lists (Sections 93.9a to 93.9z) that are included in this triennial review will be converted to (x,y) coordinates for latitude and longitude. All of these conversions of RMIs in all of the drainage lists will not be included in this rulemaking package. Going forward, whenever changes are proposed to the Pennsylvania Code, associated RMIs will be converted to latitude and longitude. Eventually all reference to RMIs in Sections 93.9a to 93.9z will be converted to latitude and longitude. The proposed corrections do not change the current stream use designations, and only serve as clarifications and corrections.

Confirm Removing CWA 101(a)(2) Fishable/Swimmable Use on select Pennsylvania waters:

The Department routinely re-evaluates, as part of its triennial review of water quality standards, the two water bodies where the fishable or swimmable uses specified in Section 101(a)(2) of the federal Clean Water Act required uses are not being met: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/ Presque Isle Bay (93.9x), and (2) several zones within a portion of the Delaware Estuary (§§93.9e & g). Because the same conditions and hazards exist today as during the original use attainability assessments (UAA's), no change to the designated use removal (delete WC – Water Contact) is anticipated for these waters, during this triennial.

In addition, limited use for Zones 3, 4, and upper Zone 5 of the Delaware Estuary basin were also incorporated into Drainage Lists E and G, which do not meet the Section 101(a)(2) fishable uses. These are described as WWF (Maintenance Only) and MF (Passage Only) for tidal portions of the basin, from river mile 108.4 to the PA-DE State Border. The current designated uses within these Zones do not include propagation, and thus refer to DRBC's standards which were

developed to protect fish maintenance and passage only. Recent data and observations, however, suggest recovery is occurring in propagation for some species in portions of these Zones. Therefore, DRBC initiated an evaluation of available data for resident and anadromous fishes collected since 2000, in an attempt to quantify spawning and early life stages, and the extent of successful reproduction for estuarine species. DEP continues to work in cooperation with the DRBC, U.S. EPA, and other DRBC signatory states to prepare a resolution describing the Commission's next steps for improving the recovery taking place in the lower river and estuary. It should be recognized that the demonstrated recovery in the propagation use for these Zones has occurred under the long term implementation of the current criteria.

Attached are rationale and other documentation that support the recommended amendments, revisions, and additions for this proposed rulemaking.

Affected Parties

This proposed rulemaking involves revisions to water quality criteria and corrections or clarifications to designated uses. Facilities with point source discharges of treated wastewater to waters of the Commonwealth may be affected since all discharges are assigned effluent limits consistent with achieving water quality standards, including all applicable water quality criteria and designated uses. The proposal will be implemented through the Department's permit and approval actions.

Advisory Groups

Drafts of the criteria changes were given to Regional Offices for review and comment. The Department's Water Resources Advisory Committee (WRAC) was briefed on these proposed amendments to Chapter 93 Water Quality Standards at its February 18, 2015 and November 18, 2015 meetings. On March 24, 2016, the Department's WRAC voted to present this rulemaking package to the EQB. In addition, the Department provided to the Agricultural Advisory Board (AAB) on February 25, 2016, a regulatory review that included the triennial review of water quality standards. Also, DEP provided to the Citizens Advisory Council (CAC) on June 21, 2016, an overview of the triennial review and development of the chloride criteria.

Public Comments and Board Hearings

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as a proposed rulemaking with a 60-day public comment period including three public hearings to be held in the Harrisburg, Pittsburgh, and Wilkes-Barre areas. Other public hearings and/or meetings will be scheduled if sufficient interest is shown during the public comment period.