

**Executive Summary**  
**Amendments to 25 Pa. Code Chapter 93**  
**Class A Stream Designations**

As part of its continuing water quality management program and ongoing review of water quality standards, the Department of Environmental Protection (Department) recommends that the Environmental Quality Board (Board) adopt the following amendments to 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 to read as set forth in Annex A of this final rulemaking.

**Purpose of the Rulemaking**

Section 303(c)(1) of the federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. The regulatory changes in this final 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 final-form rulemaking, 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, 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.

**Summary of the Rulemaking**

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. Based on these data and appropriate regulatory criteria, the Department developed this package of stream redesignations for the Board's consideration. The regulations include High Quality stream redesignations in the Delaware, Susquehanna and Ohio River basins.

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

Second, the Department recommends correcting 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 and therefore no change is necessary. 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 geographically located above the SR 309 bridge and, therefore, already have High Quality designations.

Third, the Department is recommending corrections to some stream names as they appear in §93.9k. The United States Geologic Survey (USGS) maintains the National Hydrography Dataset (NHD) Flowline. These corrections are being made to maintain consistency between the Pennsylvania Code and the NHD Flowline.

Finally, the Department recommends the High Quality waters redesignations, based on the Class A wild trout qualifier, described in the Summary Table, below, and as set forth in Annex A of the final-form rulemaking.

These redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program requires effluent limitations for discharges that are protective of the use designations of the stream. The streams that are specified in this final rulemaking for redesignation are currently protected at their existing uses and, therefore, the designated use changes should have no additional impact on existing treatment requirements. Some new or expanding discharges may be subject to more stringent treatment requirements to meet designated and existing stream uses.

#### **Affected Parties**

Over 7,000 facilities across the Commonwealth hold permits issued pursuant to Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance). Only 39 of these facilities are known to hold NPDES permits within the stream segments redesignated in this rulemaking. The types of NPDES discharges identified include industrial waste, sewage and stormwater. Discharges in existence at the time of the stream survey have been considered in the evaluation of the existing water quality of the stream and the subsequent recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of special protection status, the discharges may continue as long as the discharge characteristics (both quality and quantity) remain the same. Thus, redesignation to special protection does not impose any additional special requirements on the existing discharges from these 39 NPDES permitted entities.

Any person proposing a new, additional, or increased point source discharge would need to satisfy the requirements found at 25 Pa. Code § 93.4c(b)(1). Any new, additional or increased point source discharge to special protection waters must evaluate non-discharge alternatives and use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge. The permit applicant must demonstrate in the permit application that their new or expanded activities will not lower the existing water quality of special protection streams. If an applicant cannot meet nondegrading discharge requirements, a person who proposes a new, additional or increased discharge to High Quality Waters is given an opportunity to demonstrate that there is a social or economic justification (SEJ) for lowering the quality of the stream, rather than maintaining the existing water quality.

Discharge activities to special protection streams typically do not qualify for general permits and, therefore, will require individual permits. Where on-lot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in Chapters 71, 72 and 73 (relating to the administration of sewage facilities planning program; administration of sewage facilities permitting program; and standards for onlot sewage treatment facilities) will continue to satisfy § 93.4c (relating to the implementation of antidegradation requirements) in these redesignated HQ Waters. Proponents of sewage facilities in HQ waters who demonstrate SEJ at the sewage facilities planning stage need not re-demonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and non-sewage discharge applicants.

When earth disturbance activities occur within the basins of the stream segments redesignated in this rulemaking, additional BMPs may be necessary to protect water quality under Chapter 102 (relating to erosion and sediment control).

The Department cannot accurately estimate who will be affected by these stream redesignations because: (1) persons, businesses and small businesses will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) effluent discharges and receiving stream characteristics are unique; (3) social and economic justification may be available to modify the compliance requirement; and (4) generic technology or cost equation are not available for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

The Department identified three public water supply facilities with raw water intakes within 16.5 stream miles downstream of the candidate stream sections for redesignation in this rulemaking package. These three public water suppliers, which serve over 115,000 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 source water treatment costs for the drinking water will be less costly to customers if less treatment is needed due to the high quality of the water in the stream.

Small businesses in the recreation industry will be positively affected by these regulations. The maintenance and protection of the water quality will ensure the long-term availability of Class A wild trout fisheries.

### **Public Comments**

The EQB approved the proposed rulemaking for the Class A Wild Trout Stream Redesignation Package at its November 17, 2015 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on March 5, 2016 (46 Pa.B. 1205) with provision for a 45-day public comment period that closed on April 18, 2016. The Department received 307 supportive comments for the proposed regulatory amendments. Commentators provided many reasons for their support of this rulemaking either for specific stream redesignations included in the rule or for all of the regulatory amendments included in the rule. Commentators highlighted the appropriateness of the redesignation, as these streams have met the necessary qualification for High Quality; support of redesignation of streams in order to protect all of their uses; redesignations helping Pennsylvania meet requirements of the Clean Water Act; redesignations preserving Pennsylvanians' constitutionally protected right to "pure water"; the aquatic biota and

the recreational opportunities supported by the redesignations and the economic benefit of maintaining these resources; trout angling opportunities and the community that engages in angling that will be additionally supported by the redesignations; protection of smaller streams promotes the health of the larger watershed; and redesignations protecting the water supply. Further, commentators encouraged the Department to continue to be diligent in evaluating other streams that are potential candidates for redesignation and to prioritize the protection of water quality for both those within and outside of this Commonwealth. All comments were supportive of the proposed regulatory amendments.

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as a final-form rulemaking.

**Summary Table: Final Rulemaking  
Class A Stream Redesignations Package**

<i>Stream Name<sup>†</sup></i>	<i>County</i>	<i>List</i>	<i>Zone<sup>†</sup></i>	<i>Current Designated Use*</i>	<i>Recommended Designated Use*</i>
Sherman Creek	Wayne	A	Basin, from Starboard Creek to PA/NY border; and including all sections of Starboard Creek in PA	CWF, MF	HQ-CWF, MF
Martins Creek	Northampton	C	Main Stem, from UNT 63237 (40°47'36.9"N; 75°11'32.0"W) to Mouth	TSF, MF	HQ-CWF, MF
Pohopoco Creek	Monroe	D	Main Stem, from Middle Creek to SR 209	CH 93 ERROR	HQ-CWF, MF
Hunter Creek	Carbon	D	Basin	CWF, MF	HQ-CWF, MF
Catasauqua Creek	Lehigh	D	Main Stem, East Wood St Bridge to 40 meter downstream of Lehigh St Bridge	CWF, MF	HQ-CWF, MF
Saucon Creek	Lehigh	D	Main Stem, Source to 0.92KM Downstream of Township Road 410 (Chestnut Hill Road) Bridge	CWF, MF	HQ-CWF, MF
UNT 03333 to Delaware River	Northampton	E	Basin	TSF, MF	HQ-CWF, MF
UNT 02299 to Bear Creek (West)	Schuylkill	F	Basin	CWF, MF	HQ-CWF, MF
Willow Creek	Berks	F	Basin, from a point at (40°25'39.2"N; 75°55'26.3"W) to Mouth	CWF, MF	HQ-CWF, MF
UNT 01950 to Tulphehocken Creek (Womelsdorf)	Berks	F	Main Stem, SR 3002 to Mouth	TSF, MF	HQ-CWF, MF
Sleepy Hollow Run	Berks	F	Main Stem	CWF, MF	HQ-CWF, MF
Hay Creek	Berks	F	Basin, from UNT 63882 to UNT 62990	CWF, MF	HQ-CWF, MF
UNT 01762 Monocacy Creek	Berks	F	Basin, Alsace and Oley Township border to Mouth	WWF, MF	HQ-CWF, MF
Big Rift Creek	Tioga	H	Basin	CWF, MF	HQ-CWF, MF
Satterlee Run	Bradford	I	Basin	CWF, MF	HQ-CWF, MF

<b>Stream Name<sup>†</sup></b>	<b>County</b>	<b>List</b>	<b>Zone<sup>†</sup></b>	<b>Current Designated Use*</b>	<b>Recommended Designated Use*</b>
Gaylord Creek	Susquehanna	I	Basin, Source to Bradford/Susquehanna County Line	CWF, MF	HQ-CWF, MF
Burgess Brook	Wyoming	I	Basin	CWF, MF	HQ-CWF, MF
Rock Creek	Susquehanna	I	Basin	CWF, MF	HQ-CWF, MF
Lewis Creek	Luzerne	I	Basin	CWF, MF	HQ-CWF, MF
UNT 62998 to Laurel Run "Wheelbarrow Run"	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
Big Wapwallopen Creek	Luzerne	K	Main Stem, SR 437 to Powerline Crossing Upstream of Nuangola Road (41°08'58.7"N; 75°54'48.1"W)	CWF, MF	HQ-CWF, MF
Bow Creek	Luzerne	K	Main Stem, SR 309 to Mouth	CWF, MF	HQ-CWF, MF
Balliet Run	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
Big Wapwallopen Creek	Luzerne	K	Main Stem, Balliet Run to a Point 380 Meters Downstream of SR 3012 (41°03'42.1"N; 76°05'51.2"W)	CWF, MF	HQ-CWF, MF
Nescopeck Creek	Luzerne	K	Basin, Source to PA 309 Bridge	CH 93 ERROR	HQ-CWF, MF
Long Run	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
UNT 28152 to Nescopeck Creek	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
UNT 28138 to Nescopeck Creek	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
Kester Creek	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
Coles Creek	Columbia, Luzerne, Sullivan	K	Basin, Source to Marsh Run	CWF, MF	HQ-CWF, MF
UNT 27964 to Coles Creek "Fallow Hollow"	Columbia	K	Basin	CWF, MF	HQ-CWF, MF
UNT 27963 to Coles Creek "Hess Hollow"	Columbia	K	Basin	CWF, MF	HQ-CWF, MF
Wasp Branch	Luzerne	K	Basin	CWF, MF	HQ-CWF, MF
Lick Run	Columbia	K	Basin, Source to and including UNT 27727 (41°11'20.4"N; 76°31'18.0"W)	CWF, MF	HQ-CWF, MF

<b>Stream Name<sup>†</sup></b>	<b>County</b>	<b>List</b>	<b>Zone<sup>†</sup></b>	<b>Current Designated Use*</b>	<b>Recommended Designated Use*</b>
Laurel Run (Port Matilda)	Centre	L	Basin, Source to (40°49'3.5"N, 78°5'52"W)	CWF, MF	HQ-CWF, MF
Cedar Run	Centre	L	Main Stem	CWF, MF	HQ-CWF, MF
Harveys Run	Clinton	L	Basin, Castenea Reservoir Water Supply Intake To Mouth	CWF, MF	HQ-CWF, MF
Rock Run	Tioga	L	BASIN, Source to but not including UNT 21760 (41°38'16.2"N, 77°14'34.7"W)	CWF, MF	HQ-CWF, MF
Plum Creek	Blair	N	Main Stem, from SR 164 Bridge Crossing to Mouth	WWF, MF	HQ-CWF, MF
Halter Creek	Blair	N	Main Stem, from Plum Creek to Mouth	WWF, MF	HQ-CWF, MF
Sandy Run	Blair	N	Basin, UNT 16026 (40°32'53.2"N, 78°20'43.9"W) to Mouth	CWF, MF	HQ-CWF, MF
Little Juniata River	Blair, Huntingdon	N	Main Stem, from Logan Spring Run to McLain Run	CWF, MF	HQ-CWF, MF
Middle Spring Creek	Cumberland	O	Basin, Confluence of Gum Run and Furnace Run to T-303 (Avon Rd)	CWF, MF	HQ-CWF, MF
Big Spring Creek	Cumberland	O	Basin, SR 3007 (T 333) to Nealy Road	CWF, MF	HQ-CWF, MF
Letort Spring Run	Cumberland	O	Basin, T-710 Bridge (Post Road) to Mouth	CWF, MF	HQ-CWF, MF
Mill Creek	Potter	P	Basin, from "North Hollow" to Mouth	CWF	HQ-CWF
Logan Run	Forest	Q	Basin	CWF	HQ-CWF
Bear Run	Venango	Q	Basin	CWF	HQ-CWF
Higgins Run	Somerset	T	Main Stem, from UNT 45416 to RMI 1.37	CWF	HQ-CWF
UNT 44808 to Freeman Run	Westmoreland	T	Basin	TSF	HQ-CWF

\*WWF = warm water fishes

\*CWF = cold water fishes

\*TSF = trout stocking

†UNT = unnamed tributary

\*HQ = high quality

\*EV = exceptional value

\*MF = migratory fishes

†RMI = river mile index