



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Office of Water Programs

Final Rulemaking - Triennial Review of Water Quality Standards (25 Pa. Code, Chapter 93)

Environmental Quality Board Meeting

November 19, 2019

Tom Wolf, Governor

Patrick McDonnell, Secretary

▶ Triennial Review of Water Quality Standards

DEP is required to review, revise and update, as needed, at least once every three years, water quality criteria and standards to reflect the latest scientific information and new federal guidelines for criteria development, and other implementation guidance.

▶ Pennsylvania Water Quality Standards

- WQS are codified in Title 25 Pa. Code:
 - Chapter 93 – Water Quality Standards
- Designed to implement Sections 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water Act
 - Consist of designated uses and specific numerical and narrative criteria needed to protect those uses, and an antidegradation policy.
 - In-stream water quality goals implemented by pollution control measures and specific regulatory requirements

▶ Related WQS Policy and Implementation

Additional WQS provisions and implementation requirements are described in 25 Pa. Code:

- Chapter 16 – Water Quality Toxics Management Strategy - Statement of Policy

Revisions and updates are made, as needed, to reflect changes in the WQS regulations, so the chapters are consistent and support one another.

Triennial Review Proposed Rulemaking

- Adopted by EQB at the April 18, 2017 meeting
- Published in the *Pennsylvania Bulletin* on October 21, 2017 (47 Pa.B. 6609)
 - originally with 70-day public comment period to end December 29, 2017
 - with 3 public hearings on December 6, 8, and 14, 2017 at DEP's NE, SC & SW Regional Offices

Public Comment Period Extended

EQB received comments requesting the public comment period be extended, and an additional public hearing be held in southeastern Pennsylvania

- Notice of public comment period extension and additional public hearing published in the *Pennsylvania Bulletin* on December 30, 2017 (47 Pa.B. 7852)
- Additional public hearing held on January 30, 2018, at DEP's Southeast Regional Office (SERO) in Norristown
- Extended public comment period ended February 16, 2018

Public Comments

EQB received comments from 776 commenters including comments from:

- U.S. Environmental Protection Agency (EPA Region 3)
- Testimony from 7 witnesses at the 4 public hearings
- Independent Regulatory Review Commission (IRRC)

The comments received and DEP's responses are summarized in the Comment and Response Document that accompanies this rulemaking.

- DEP considered all public comments received on the proposed rulemaking in preparing the final rulemaking

Summary of Changes in Final Rulemaking

§ 93.1. Definitions

- New definition added for *7-day average*

§ 93.7. Specific water quality criteria - Table 3

- Updates to aquatic life water quality criteria for
 - Ammonia (Am)
 - Bacteria (Bac₁)

Criteria to be wholly consistent with U.S. EPA's national CWA Section 304(a) recommendations

Summary of Changes (continued)

§ 93.8c. Table 5 – Water Quality Criteria for Toxic Substances

- Updated human health criteria to be consistent with the national CWA Section 304(a) recommendations from U.S. EPA
- Withdrawing several proposed changes for further review

Summary of Changes (continued)

- Water Quality Criteria Development Rationale Documents for
 - Ammonia
 - Bacteria
 - Human Health

Criteria are updated to reflect the changes from proposed to final rulemaking, in response to comments received in the proposed rulemaking

Summary of Changes (continued)

§ 93.8d(c). Development of site-specific water quality criteria.

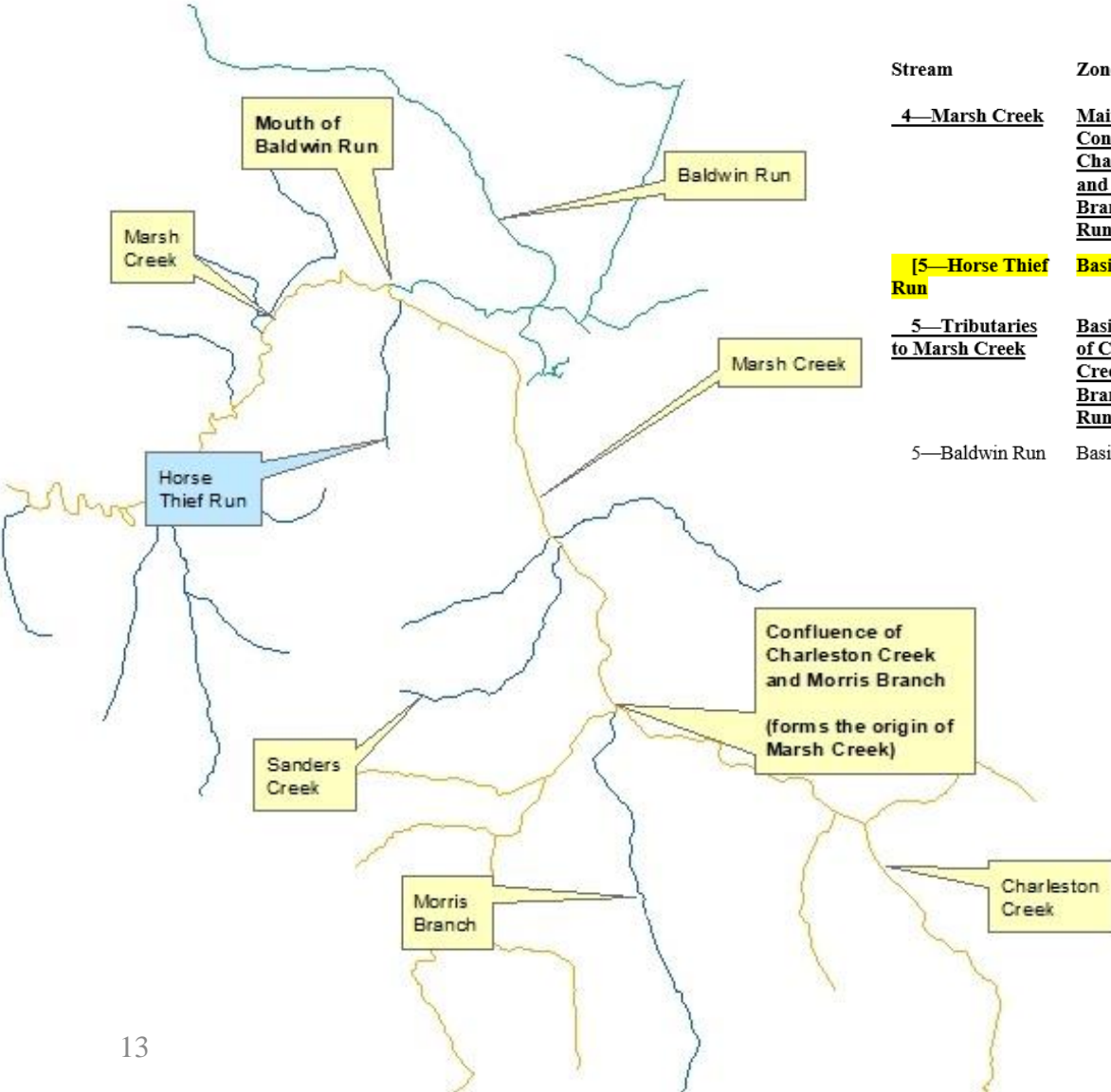
- To clarify that the Biotic Ligand Model (BLM) being added as option in proposed rulemaking, will now indicate that the BLM will be used (rather than may be) for the development of new or updated site-specific criteria for copper in freshwater systems

Corrections to Drainage Lists

Adding further clarifications, in response to public comments received on the corrections to the Drainage Lists at §§ 93.9b – 93.9g, 93.9j – 93.9t, 93.9v – 93.9x, and 93.9z.

- Reinforce that these changes to the drainage lists are presented to clarify stream names, segment boundaries, reformat the drainage lists, and to correct typographical and other errors associated with prior rulemaking or publication activities, and are not imposing any changes to the applicable protected uses

▶ Corrections to Drainage Lists (example)



Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
<u>4—Marsh Creek</u>	<u>Main Stem, Confluence of Charleston Creek and Morris Branch to Straight Run</u>	<u>Tioga</u>	<u>WWF, MF</u>	<u>None</u>
[5—Horse Thief Run	Basin	Tioga	CWF, MF	None
<u>5—Tributaries to Marsh Creek</u>	<u>Basins, Confluence of Charleston Creek and Morris Branch to Baldwin Run</u>	<u>Tioga</u>	<u>CWF, MF</u>	<u>None</u>
5—Baldwin Run	Basin	Tioga	HQ-CWF, MF	None

▶ Non-Fishable/Non-Swimmable Waters

Need to Reaffirm the existing exclusions of the “fishable/swimmable” use for portions of the Delaware River and Lake Erie basins in Drainage Lists E, G, and X are still applicable

- Several zones within a portion of the Delaware Estuary (§§ 93.9e & 93.9g)
- Harbor Basin and entrance channel to Outer Erie Harbor/ Presque Isle Bay (§ 93.9x)

▶ Non-Swimmable Waters – Lake Erie

Lake Erie, Outer Erie Harbor/Presque Isle Bay

(§ 93.9x)

- No change proposed to the designated use because the same conditions and hazards exist today, for the exclusion of the water contact sports (WC) designated in § 93.9x

Exclusions on Delaware Estuary

Water contact sports (WC) use remains excluded from the designated uses for river miles 108.4 to 81.8 because of continuing significant impacts from combined sewer overflows (CSOs), and hazards associated with commercial shipping and navigation.

- No change was proposed, but EQB received comments about water contact activities occurring on the Estuary
 - DEP will initiate efforts with DRBC and the other member states to reevaluate the applicable WC standards, to be considered in a future rulemaking

Exclusions on Delaware Estuary

WWF (Maintenance Only) and **MF (Passage Only)** limited uses for Zones 3, and 4 of the Delaware Estuary basin do not meet the Section 101(a)(2) fishable uses, described for Pennsylvania's portions of the tidal portions of the basin, from river mile 108.4 to the PA-DE State Border, in Drainage Lists E and G

- Recent data and observations suggest recovery is occurring in propagation for some species in portions of these Zones
- Collaboration (DEP, DRBC, and its member states) will continue. Objective is to determine appropriate dissolved oxygen (D.O.) criteria.
- Future rulemaking will include recommendations regarding the designated uses and the appropriate D.O. criteria.

WRAC Meeting

On May 23, 2019, a motion was approved concurring with the Department's recommendation to move the rulemaking forward for EQB consideration.

Recommendation

The Department recommends that the Board adopt this final-form rulemaking.



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Office of Water Programs

Aneca Atkinson

Deputy Secretary, Water Programs

aneatkinso@pa.gov

Gary Walters

Bureau of Clean Water

gawalters@pa.gov

Michelle Moses

Bureau of Regulatory Counsel

mmoses@pa.gov