Regulatory Analysis Form

(Completed by Promulgating Agency)

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

INDEPENDENT REGULATORY REVIEW COMMISSION

(1) **Agency**
Environmental Protection

(2) **Agency Number**: 7

Identification Number: 557

IRRC Number**: 3309**

(3) **PA Code Cite**: 25 Pa. Code Chapter 93

(4) **Short Title**:

Water Quality Standards – Dunbar Creek et al. Stream Redesignations

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

Primary Contact: Laura Griffin; 717.772.3277; laurgriffi@pa.gov
Secondary Contact: Brian Chalfant; 717.783.8727; bchalfant@pa.gov

(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)**

The amendments to 25 Pa. Code Chapter 93 (relating to water quality standards) reflect the list of recommended stream redesignations as described in the attached Water Quality Standards Review Stream Redesignation Evaluation Reports. The final-form regulation updates and revises stream use designations in §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v (relating to designated water uses and water quality criteria). These changes do not impose any new operating requirements on existing wastewater discharges or other existing activities regulated by the Department under existing individual permits or approvals. If a new, increased or additional discharge is proposed by a permit applicant, more stringent treatment requirements and enhanced best management practices (BMPs) may be necessary to maintain and protect the existing quality of the receiving waters. Additionally, as a result of these regulations, discharge activities to special protection streams are not eligible for coverage under National Pollutant Discharge Elimination System (NPDES) general permits, and therefore, require individual permits.

(8) **State the statutory authority for the regulation. Include <u>specific</u> statutory citation.**

This 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 Environmental Quality Board (Board) to develop and adopt rules and regulations to implement 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.

(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.**

Sections 101(a)(2) and 303(c)(2)(A) of the Federal Clean Water Act (CWA) (33 U.S.C.A. §§ 1251(a)(2) and 1313(c)(2)(A)) set forth requirements for water quality standards. States must adopt water quality standards and the standards must be reviewed and approved by the U.S. Environmental Protection Agency (EPA) to be effective for purposes of implementing CWA actions. The water quality standards must be reviewed for consistency with the mandates under the CWA. Section 1251(a)(2) of the CWA establishes the national goal that wherever attainable, water quality should provide for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water. Section 1313(c)(2)(A) requires water quality standards to include designated uses of waters, taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes. Section 1313(d)(4)(B), establishes an antidegradation policy for waters where the quality of the water equals or exceeds levels necessary to protect the designated uses for such waters. The designated uses in this rulemaking are consistent with these mandates.

(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 water quality standards is to protect Pennsylvania's surface waters. Each of Pennsylvania's surface waters have specific goals for how the waterbody is used. These goals are dependent upon water quality and they are amended through the redesignation process when they are incongruent with the designated uses as listed in §§ 93.9a—93.9z. Pennsylvania's surface waters, through the water quality standards program, are protected for a variety of uses relating to aquatic life, water supply, recreation and fish consumption, special protection and navigation. It is in the public interest to redesignate surface waters so that the appropriate protections are in place to maintain the uses of the surface waters.

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 the residents of and visitors to 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 related illnesses. 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. This final-form regulation benefits not only local residents but those from outside the affected areas who come to enjoy the benefits and aesthetics of outdoor recreation. Refer to Question 17 for a more detailed description of the economic and social benefits provided by the final-form regulation.

(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 regulation is 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 of the CWA as described in Question 9.

Therefore, the amendments do not put Pennsylvania at a competitive disadvantage to other states. On the contrary, if Pennsylvania's water quality is sufficiently better than that found in other states, it may attract industries which rely on high quality water to do business within the Commonwealth. Higher water quality may also support the Commonwealth as a preferred tourist destination for various outdoor recreational activities and related business.

(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 final-form 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.)**

These amendments are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); a request from the Pennsylvania Fish and Boat Commission (PFBC) (Dunbar Creek); the Department's ongoing statewide monitoring activities (UNT 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek).

As part of the stream redesignation process, and in accordance with 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements), the Department offered opportunities for the public to provide data and other information during the review of the uses of the streams. The Department provided public notice of its intent to assess Bear Creek, Clyde Run, Cranberry Creek, Dunbar Creek, Two Lick Creek, UNT 28168 to Oley Creek and UNT 08187 to South Branch Codorus Creek and requested water quality data for these streams through publications in the *Pennsylvania Bulletin* as summarized in Table 1.

Table 1. *Pennsylvania Bulletin* publication dates for notices of stream evaluation.

Stream Name	*PA Bulletin*	Publication Date
Bear Run	37 Pa. B. 4490	August 11, 2007
	46 Pa. B. 3328	June 25, 2016
Clyde Run	40 Pa. B. 5643	October 2, 2010
Cranberry Creek	44 Pa. B. 6149	September 27, 2014
	48 Pa. B. 5924	September 22, 2018
Dunbar Creek	30 Pa. B. 2071	April 22, 2000
Two Lick Creek	34 Pa. B. 1520	March 13, 2004
UNT 28168 to Oley Creek	45 Pa. B. 2676	May 30, 2015
UNT 08187 to S. Br. Codorus Creek	42 Pa. B. 2539	May 12, 2012

Additionally, notices of intent to assess these streams were posted on the Department website. The Department directly notified all affected municipalities, planning commissions, conservation districts, and Commonwealth agencies of these redesignation evaluations in letters dated as summarized in Table 2.

Table 2. Letters of notification to affected governmental organizations and agencies.

Stream Name	Date of Letter
Bear Run	May 22, 2007
	July 8, 2016
Clyde Run	November 5, 2010
Cranberry Creek	September 15, 2017
Dunbar Creek	April 19, 2000
Two Lick Creek	March 2, 2004
UNT 28168 to Oley Creek	May 11, 2015
UNT 08187 to S. Br. Codorus Creek	April 2, 2012

In response to these notifications, one letter in support of the redesignation was received for Bear Run. The Department received no additional water quality data for Bear Run, Clyde Run, Dunbar Creek, Two Lick Creek, UNT 28168 or UNT 08187. Temperature data was provided by Karl M. Weiler for Cranberry Creek.

Following the period for data submission described in the notices of intent to assess, the Department evaluated all available water quality data and other applicable information for these streams, drafted stream evaluation reports and published the draft reports on its website for public review and comment as summarized in Table 3. If members of the public are interested in receiving notifications of stream evaluations, including the notices of intent to assess and draft stream evaluation reports, they may subscribe to the Department's Electronic Notification System, eNotice.

Table 3. Stream Evaluation Draft Report Publication for Public Comment

Stream Name	Draft Report Publication Date	Petitioner (if applicable)
Bear Run	February 24, 2017	Ken Sink Chapter of Trout Unlimited
Clyde Run	July 14, 2018	
Cranberry Creek	July 14, 2018	Brodhead Creek Watershed Association
Dunbar Creek	July 14, 2018	
Two Lick Creek	February 24, 2017	Ken Sink Chapter of Trout Unlimited
UNT 28168 to Oley Creek	July 14, 2018	
UNT 08187 to S. Br. Codorus Creek	February 24, 2017	

Each report was open for public comment for no less than a 30-day period.

For Bear Run, one comment was received in support of the Exceptional Value Waters (EV) and High Quality Waters--Cold Water Fishes (HQ-CWF) recommendations.

For Clyde Run, one comment was received in support of the recommendations.

For Cranberry Creek, approximately 159 comments were received in response to the draft report. Ten comments expressed opposition and 148 comments expressed support for the recommendations. A macroinvertebrate survey conducted by Normandeau Associates was submitted.

For Dunbar Creek, the Department received 46 comments in support of the recommendations.

For Two Lick Creek, the Department received three comments in response to the draft report. One comment was in support of the recommendation, and two comments were in opposition.

No comments were received on the draft report for UNT 28168 to Oley Creek.

One comment was received in support of the EV recommendation for UNT 08187 to South Branch Codorus Creek.

Copies of the stream evaluation reports for these waterbodies are available on the Department's website and are included with this regulatory analysis form.

The Board adopted the proposed regulation at its April 20, 2021 meeting, which was published in the *Pennsylvania Bulletin* on July 31, 2021 (51 Pa.B. 4062) with a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021 for the purpose of accepting comments on the proposed rulemaking. The Board received comments from 228 commentators including testimony from three witnesses at the public hearing and a letter from the Independent Regulatory Review Commission (IRRC) indicating that the Commission had no objections, comments, or recommendations to offer on the regulation.

The data and information collected on these waterbodies support the Board's final-form rulemaking as set forth in Annex A.

The Department presented a summary of the final-form rulemaking package to the Department's Agriculture Advisory Board (AAB) on October 20, 2022.

(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?**

NPDES Permittees

Only nine facilities currently hold active, individual NPDES permits for discharges to the stream segments being redesignated in this final-form rulemaking, and only four of those nine facilities have discharges to stream segments being considered for redesignation to HQ or EV. There are approximately 10,300 facilities across the Commonwealth that hold permits issued pursuant to 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). This statewide number of approximately 10,300 includes NPDES permits for concentrated animal feeding operations (CAFO), industrial waste, municipal separate storm sewer systems (MS4), treated sewage, and stormwater associated with industrial activities. This total does not include NPDES permits for stormwater associated with construction activities, which is discussed in Question 19.

The types of the nine discharges with active NPDES permits located in waters affected by this final-form rulemaking include industrial wastewater and stormwater associated with industrial activities.

The Department considers five of these nine permitted facilities to be small businesses based on available information. Discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these waters may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose additional special treatment requirements on existing permitted discharges.

In general, if a person has an individual NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit will not be affected by the stream redesignations to HQ or EV, and no new costs will be incurred. If, however, a permittee proposes to change the quality or quantity of an NPDES permitted discharge after a stream is redesignated to HQ or EV, any subsequent permit action will take the redesignation into account when establishing permit conditions.

Discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8) (relating to general permits), and therefore, require individual permits. As described in the responses to Questions 17, 19 and 20, higher application fees have been established for individual permits for certain activities as compared with the application fees for coverage under the general permits for those same activities, when general permits are available.

The Department's antidegradation analysis requires any person, including individuals, small businesses, large businesses, local and state government agencies and public or private corporations and associations, proposing a new, additional, or increased point source discharge to satisfy the antidegradation requirements found in 25 Pa. Code § 93.4c(b)(1) (relating to point source discharges). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative if it is environmentally sound and cost-effective when compared to the cost associated with achieving a nondegrading discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must utilize antidegradation best available combination of technologies (ABACT), which include cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies. 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 these nondegrading discharge requirements, a person who proposes a new, additional, or increased discharge to HQ waters is given an opportunity to demonstrate there is a social or economic benefit of the project that would justify a lowering of the water quality. The social or economic justification (SEJ) demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that a lower water quality will protect all other applicable water uses for the waterbody. SEJ is not available for proposed discharges to EV waters. The water quality of EV streams must be maintained and protected.

Costs associated with new, increased or additional discharges to surface waters may include increased consulting fees to complete the additional antidegradation analyses and permit application requirements that address antidegradation of surface waters. Based on the site-specific nature of these antidegradation evaluations and the variety of potential discharges, costs and savings to the regulated community will depend

upon technologies chosen to address new, additional or increased pollutants; effluent discharge and receiving stream characteristics; and demonstrations of SEJ for less stringent limitations.

Any estimates of who will be affected by the stream redesignations in this final-form rulemaking and how they will be affected would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) the characteristics of each receiving stream and each effluent discharge are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

Please refer to the response to Questions 19 and 20 for more detailed economic information.

Public Water Supply Facilities

The Department identified one public water supply facility with a raw water intake located within the stream sections being redesignated in this final-form regulation. This one public water supplier, which serves over 22,300 citizens, will benefit from this final-form rulemaking because their raw source water will be afforded a higher level of protection. This final-form rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. By maintaining clean surface water, public water suppliers may avoid the costly capital investments that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. In turn, the public water suppliers' customers will benefit from reduced fees for clean drinking water. A similar case could generally be made for other water supply uses benefiting from the availability of better source water quality.

Recreation Industry

Small businesses in the recreation industry will also be positively affected by this final-form regulation. The maintenance and protection of the water quality that will result from this final-form rulemaking will ensure the long-term availability of sport fishing, wildlife watching, and other forms of outdoor recreation.

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

Only four facilities have active, individual NPDES permits for discharges to the stream segments being redesignated to HQ or EV, which will not be impacted by this regulation unless the discharges are increased or new discharges are added. An additional five facilities currently hold active, individual NPDES permits for discharges to the stream segments being redesignated to non-special protection uses in this final-form rulemaking. The types of the nine discharges with active NPDES permits located in waters affected by this final-form rulemaking include industrial waste and stormwater associated with industrial activities. The Department considers five of these nine permitted facilities to be small businesses based on available information. A person who applies for a new, additional or increased point source discharge to a special protection water must comply with this regulation and must satisfy the requirements of the antidegradation regulation in § 93.4c(b)(1).

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for discharges of stormwater associated with construction activities issued under 25 Pa. Code Chapter 102 (relating to erosion and sediment control). Any person proposing a new earth disturbance

activity requiring a permit under Chapter 102 must comply with this final-form regulation and the antidegradation provisions, as applicable.

Any approximation of the number of future activities within these waters that may require an NPDES permit for a new, additional or increased point source discharge would be speculative. See the discussion in response to Question 19 for additional details.

(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.**

Financial and Economic Impacts:

The stream redesignations in this final-form rulemaking will not have any negative financial or economic impact on those persons currently engaged in an activity that is regulated by the Department under an individual permit. Discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, they are considered to satisfy the antidegradation requirements as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not automatically impose additional new treatment requirements or financial impacts on NPDES permitted entities and other existing permitted discharges.

The Department's antidegradation analysis requires any person, including individuals, small businesses, large businesses, local and state government agencies and public or private corporations and associations, proposing a new, additional, or increased point source discharge to satisfy the requirements found in § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative that is environmentally sound and cost-effective when compared to the costs associated with achieving a nondegrading discharge. See further discussion in the response to Question 15 regarding SEJ, nondegrading discharge and nondischarge alternatives.

Only when a person proposes a new, additional or increased discharge would it be necessary to satisfy the requirements of the antidegradation regulation in § 93.4c(b)(1). For nonpoint source control, pursuant to 25 Pa. Code § 93.4c(b)(2), cost-effective and reasonable BMPs must be achieved for pollution sources to HQ and EV waters. Discharges to special protection waters do require additional permit application evaluations and considerations and may require the use of additional technologies or BMPs to address pollution that was not present at the time of the stream redesignation. Costs associated with new, increased or additional discharges to surface waters may include increased consulting fees to complete the additional antidegradation analyses and permit application requirements that address antidegradation of surface waters as well as increased treatment and operations and maintenance expenses. Presently, four discharges with active NPDES permits are located on waters that are being redesignated to HQ or EV in this final-form rulemaking. It is not known at this time whether these facilities will expand, or whether a new application for a discharge permit will be filed with the Department, possibly triggering compliance with the antidegradation regulation.

When earth disturbance activities occur within the basins of the stream segments being redesignated in this rulemaking, additional construction and post-construction BMPs may be necessary to protect water quality

under 25 Pa. Code Chapter 102. It is not known at this time whether any new earth disturbance activities will be proposed that would require a Chapter 102 permit or other approval from the Department.

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code 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 implementation of antidegradation requirements). This final-form rulemaking will not increase costs or trigger adverse effects on existing or planned sewage systems.

Discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, require individual permits. Additional cost may be incurred by facilities required to obtain an individual permit.

In general, any evaluation of the financial and economic impacts of this final-form regulation on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) the characteristics of each receiving stream and each effluent discharge are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

Social Impacts and Economic and Social Benefits:

Overall, the Commonwealth, its residents and visitors, and its natural resources will benefit from this final-form rulemaking because it provides 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. Water uses in the Commonwealth include water supplies for human consumption, wildlife, irrigation, and industrial use; recreational opportunities such as fishing (also for consumption); water contact sports and boating; and aquatic life and special protection. It is important for the Commonwealth to ensure opportunities and activities continue in a manner that is environmentally, socially and economically sound. Protection and maintenance of water quality ensures its future availability for all uses. The following paragraphs describe the economic and social benefits of clean water that are protected by this final-form regulation.

Increased property values

A reduction in toxics found in Pennsylvania's waterways may lead to increased property values for properties located near rivers or lakes. The study, *The Effect of Water Quality on Rural Nonfarm Residential Property Values*, (Epp and Al-Ani, American Journal of Agricultural Economics, Vol 61, No. 3 (Aug. 1979), pp. 529-534 (www.jstor.org/stable/1239441), used real estate prices to determine the value of improvements in water quality in small rivers and streams in Pennsylvania. Water quality, whether measured in pH or by the owner's perception, has a significant effect on the price of adjacent property. The analysis showed a positive correlation between water quality and housing values. They concluded that buyers are aware of the environmental setting of a home and that differences in the quality of nearby waters affect the price paid for a residential property.

A 2010 report from the Delaware Riverkeeper Network (www.delawareriverkeeper.org/sites/default/files/River_Values_Report_0.pdf) discusses a case study from the Maine Agricultural and Forest Experiment Station which compared water-front property values based on

whether the water that the homes faced was considered clean. Properties located near higher quality waters had higher market value than if the waterbody was lower in water quality. It was shown in some cases that a decline in water quality can completely abate the market value premium associated with a home being a waterfront property.

A 2006 study from the Great Lakes region estimated that property values were significantly depressed in two regions associated with toxic contaminants (polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and heavy metals). The study showed that a portion of the Buffalo River region (approximately 6 miles long) had depressed property values of between $83 million and $118 million for single-family homes, and between $57 million and $80 million for multi-family homes as a result of toxic sediments. The same study estimated that a portion of the Sheboygan River (approximately 14 miles long) had depressed property values of between $80 million and $120 million as the result of toxics. "*Economic Benefit of Sediment Remediation in the Buffalo River AOC and Sheboygan River AOC: Final Project Report,"* (www.nemw.org/Econ). While this study related to the economic effect of contaminated sediment in other waters in the Great Lakes region, the idea that toxic pollution depresses property values applies in Pennsylvania. A reduction in toxic pollution in Pennsylvania's waters has a substantial economic benefit to property values in close proximity to waterways.

Maintenance of abundant and healthy fish and wildlife populations and support for outdoor recreation

Businesses in the recreation industry will be positively affected by this final-form regulation. The maintenance and protection of the water quality will ensure the long-term availability of trout fisheries, water contact recreation, wildlife watching and other recreational opportunities. The purpose of these stream redesignations is to preserve these resources for current and future sportspersons, outdoor recreators and wildlife enthusiasts so that the social and economic benefits are maintained in the local areas. As recreation demands increase in the future, the preservation of unique resources will undeniably add economic value to the local areas and, importantly, provide a valuable social function for outdoor recreation. Specific revenue-related benefits associated with outdoor trout fishing 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," (www.rural.palegislature.us/documents/reports/hunting.pdf) that examined such economic values and impacts between the years 1995 to 1997. The report provides 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. The total net annual benefit to anglers was $2.49 billion.

According to the "Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania," (R. Greene, et al. 2005) (www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf), the PFBC 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. PFBC found, based on the results of this study, that angling on wild trout streams contributed over $7.16 million to Pennsylvania's economy during the regular trout season in 2004.

According to the "2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation" (www.census.gov/prod/2012pubs/fhw11-nat.pdf) 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 (that is, equipment rental, bait, 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 Industry Association, Pennsylvania's outdoor recreation generates 251,000 direct Pennsylvania jobs, $8.6 billion in wages and salaries, and $1.9 billion in state and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. The association reports that 56% of Pennsylvania residents participate in outdoor recreation each year. (See Outdoor Industry Association (2017), "The Outdoor Economy: Take it Outside for American Jobs and a Strong Economy," https://outdoorindustry.org/resource/pennsylvania-outdoor-recreation-economy-report).

Southwick Associates prepared a report for the Theodore Roosevelt Conservation Partnership that analyzed the economic contribution of outdoor recreation in Pennsylvania. This 2018 report, "The Power of Outdoor Recreation Spending in Pennsylvania: How hunting, fishing, and outdoor activities help support a healthy state economy" (www.trcp.org/wp-content/uploads/2018/12/TRCP-and-Southwick-PA-Economic-Analysis-12-6-18.pdf), states that during 2016 there were greater than 390,000 jobs supported by outdoor recreation activities in Pennsylvania, and for comparison, this is greater than the number of jobs in Pennsylvania that supported the production of durable goods. Outdoor recreation had an economic contribution in Pennsylvania of almost $17 billion in salaries and wages paid to employees and over $300 million in federal, state and local tax revenue.

Maintenance of the current green infrastructure along streams and the associated avoided costs

The findings of a 2014 Lehigh Valley Planning Commission report entitled "Lehigh Valley Return on Environment" demonstrates the benefits when clean water and natural areas are preserved. The report (www.lvpc.org/pdf/2014/ReturnOnEnvironment_Dec_18_2014.pdf) discusses that $110.3 million in taxes is annually avoided by maintaining the current green infrastructure along streams in the Lehigh Valley. This reduction in taxes includes expenditures for water supply ($45.0 million), disturbance (flood) mitigation ($50.6 million) and water quality ($14.7 million). This report describes how investing in green infrastructure to improve water quality (that is, watershed conservation, forest buffers, and wetlands construction) can be much more cost effective than more traditional gray infrastructure approaches (that is, pipes and treatment plants).

Savings in water treatment for downstream communities that rely on surface waters for water supplies and availability of unpolluted water for domestic, agricultural and industrial uses

The Department identified one public water supply facility with a raw water intake located within the stream sections being redesignated in this final-form regulation. This one public water supplier, which serves over 22,300 citizens, will benefit from this final-form rulemaking because their raw source water will be afforded a higher level of protection. This final-form rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. Safe drinking water is vital to maintaining healthy and sustainable communities. Protecting sources of drinking water can reduce the incidence of illness and reduce health care costs, ensure a continuous supply of safe drinking water, enable communities to plan and build future capacity for economic growth, and ensure their long-term sustainability for years to come. By maintaining clean surface water, public water suppliers may avoid the costly capital investments that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. In turn, the public water suppliers' customers will benefit from reduced fees for clean drinking water.

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

The stream redesignations in this final-form rulemaking will benefit residents of and visitors to the Commonwealth, both present and future, by maintaining and protecting water quality. Protecting water quality provides economic value to present and future generations in the form of clean water. For example, by maintaining clean surface water, public water suppliers may avoid costly capital investments associated with advanced water treatment processes and the higher annual operations and maintenance costs associated with effective operation of these processes. Additional examples of benefits to be gained by the stream redesignations include increased property values, maintenance of abundant and healthy fish and wildlife populations, and support for outdoor recreation. Restoring the water quality of a stream once it has become impaired by contaminants is often a lengthy and costly process. It is generally more cost-effective to prevent water quality degradation than to restore it after it has become degraded.

It is important for the Commonwealth to realize these benefits of clean water and to ensure that associated opportunities and activities continue in a manner that is environmentally, socially and economically sound. Protection and maintenance of water quality ensures its future availability for all uses.

Protection of HQ and EV waters does not automatically impose additional special treatment requirements on NPDES permittees because their existing discharges are factored into these redesignations. Furthermore, the Department has an obligation prior to rulemaking to provide existing use protection to surface waters when data indicates that a surface water attains or has attained an existing use. Information regarding the HQ and EV waters identified in this final-form rulemaking have been compiled for use in Department permit or approval actions. Notice of the availability of this data is posted on the Department's Existing Uses List Summary Table found at: www.dep.pa.gov/Business/Water/CleanWater/WaterQuality/StreamRedesignations/Pages/Statewide-Existing-Use-Classifications.aspx.

While a discharge to an HQ or EV water does require additional evaluations and may require the use of additional treatment technologies or BMPs, it does not prohibit activities. Discharge permits to HQ or EV waters may be issued if a permit applicant can sufficiently demonstrate to the Department that the activity will protect existing water quality.

The costs and benefits of this final-form rulemaking are described further in the responses to Questions 17 and 19.

On balance, the certain benefits of this final-form rulemaking outweigh any potential costs and potential adverse impacts.

(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.**

Only nine facilities currently hold active NPDES permits for discharges to the stream segments being redesignated in this final-form rulemaking, and only four of those nine facilities have discharges to stream segments being redesignated to HQ or EV. The types of the four discharges with active NPDES permits located in waters being redesignated to HQ or EV in this final-form rulemaking include stormwater associated with industrial activities. The remaining five NPDES permits discharge into Two Lick Creek, which is being redesignated from Trout Stocking (TSF) to CWF. The types of the five discharges with active

NPDES permits located in waters within this basin include industrial waste and stormwater associated with industrial activities. These permits will not be affected by the redesignation.

The Department considers five of these nine permitted facilities to be small businesses based on available information. Discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these streams may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose additional special treatment requirements on the existing discharges from the four NPDES permitted discharges located in waters being redesignated to HQ or EV in this final-form rulemaking.

As stated previously, discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, require individual permits. Individual permits are required in special protection waters because the existing quality of the water must be protected. Therefore, each discharge must be evaluated individually for each stream. Site-specific characteristics of the stream water quality are used to determine effluent limitations for discharges to a special protection stream. Individual NPDES permits are necessary to track the quality and quantity of any existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the required antidegradation review in accordance with the antidegradation regulations.

There are no NPDES general permits available for discharges to special protection waters. In addition, there are no general permits available for discharges of treated sewage effluent or industrial waste, with the exception of the PAG-04 (general permit for small flow sewage treatment facilities (SFTFs)). The application fee for a new first-time individual permit for discharges of stormwater associated with industrial activities is $2,000 compared to $500 for the general permit; the fee to renew the individual permit for discharges of stormwater associated with industrial activities is $1,000. These permit application fees are set by the NPDES regulations found at 25 Pa. Code § 92a.26 (relating to application fees).

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 will continue to satisfy § 93.4c in these waters that are being redesignated to HQ or EV in this final-form rulemaking. Permit applicants of sewage facilities with proposed discharges to HQ waters, subject to antidegradation requirements, may demonstrate SEJ at the sewage facilities planning stage and need not redemonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and nonsewage discharge applicants for any naturally occurring substances identified in accordance with the Department's *Water Quality Antidegradation Implementation Guidance* (391-0300-002; available at www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=4664).

Although no stormwater discharges from MS4s have been identified in the waters being redesignated, in general, any MS4s that discharge to an HQ or EV water will be required to obtain an individual permit. The application fee for a new individual permit is $5,000 compared to $500 for the general permit (that is, NPDES General Permit for Stormwater Discharges from Small MS4s (PAG-13)). If there is an existing MS4 permit (whether it is currently a general permit or an individual permit) to discharge into one of the HQ or EV waters in this final-form rulemaking, any subsequent permit application fee for an individual permit is $2500. The annual fee for all MS4 permits is $500, whether it is for coverage under the general permit or an individual permit. There is a difference in cost between the initial issuance of an individual permit and approval of coverage under the general permit due to increased staff time needed to review permit applications and implementation oversight that is associated with individual permits. An individual permit

allows for the tailoring of an MS4's stormwater management program and its implementation of the minimum control measures.

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for discharges of stormwater associated with construction activities issued under Chapter 102. These permits for stormwater discharges associated with construction activities were not included in the permit analyses because of the short-term, temporary nature of these permitted discharges. A person proposing a new earth disturbance activity requiring a permit under Chapter 102 with a discharge to an HQ or EV water must comply with the antidegradation provisions, as applicable. Where a permitted discharge existed prior to the receiving waterbody attaining an existing or designated use of HQ or EV, those persons may continue to operate using BMPs that have been approved by the Department and implemented. Any new discharges to the waterbody would be required to comply with the antidegradation provisions, as applicable, and must undergo an antidegradation analysis. Based on the analysis, additional construction and post-construction BMPs may need to be implemented on the remaining area that will be disturbed. The administrative filing fee for an individual permit is $1,500 compared to $500 for a general permit as set forth in § 102.6(b)(1) (relating to permit applications and fees). The erosion and sediment (E&S) BMPs and their ABACT rating, if applicable, are identified in the Department's *Erosion and Sedimentation Pollution Control Manual* (363-2134-008) and the Department's Alternative E&S and Post Construction Stormwater Management (PCSM) BMPs list. The Department may also approve alternative BMPs that maintain and protect the existing water quality and water uses.

In addition to permitted earth disturbance activities, any person proposing a new, additional or increased point source discharge associated with a CAFO, industrial wastewater, MS4, treated sewage or stormwater associated with industrial activities would need to satisfy the antidegradation requirements found in § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative if it is environmentally sound and cost-effective when compared with the cost of the proposed nondegrading discharge. See further discussion in the response to Question 15 regarding SEJ, nondegrading discharge and nondischarge alternatives.

Special protection designations do require additional permit application evaluations and considerations and may require the use of additional technologies or BMPs to address pollution that was not present at the time of the stream redesignation. Costs associated with new, increased or additional discharges to surface waters may include increased consulting fees to complete the additional antidegradation analyses and permit application requirements that address antidegradation of surface waters as well as increased treatment and operations and maintenance expenses. Based on the site-specific nature of these antidegradation evaluations and the variety of potential discharges, costs and savings to the regulated community will depend upon technologies chosen to address new, additional or increased pollutants; effluent discharge and receiving stream characteristics; and demonstrations of SEJ for less stringent limitations.

Any estimates of who will be affected by the stream redesignations in this final-form rulemaking and how they will be affected would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) the characteristics of each receiving stream and each effluent discharge are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

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

No publicly-owned treatment works (POTW) with an NPDES permit to discharge treated sewage to the streams being redesignated were identified. A new POTW may be impacted by this final-form rulemaking in the future if the POTW proposes to discharge to waters identified in this final-form rulemaking. For existing discharges, if a person proposes to change the quality or quantity of their permitted discharge(s) after a stream is redesignated, any subsequent permit action will take the redesignation into account when establishing permit conditions. See the responses to Questions 15 and 19 for more detailed information on antidegradation requirements, SEJ, nondegrading discharge and nondischarge alternatives.

Although no stormwater discharges from MS4s have been identified in the waters being redesignated, in general, local governments that are MS4s will most likely have additional costs associated with MS4 permitting requirements for discharges to HQ or EV waters. Any MS4 that discharges to an HQ or EV water will be required to obtain an individual permit. Discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, require individual permits. See the response to Question 19 for additional information on costs to MS4s.

In general, if an MS4 has an NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit will not be affected by the stream redesignations to HQ or EV, and no new costs will be incurred. If, however, the MS4 proposes to change the quality or quantity of their permitted discharge(s) after a stream is redesignated to HQ or EV, any subsequent permit action will take the redesignation into account when establishing permit conditions.

Any evaluation of adverse effects on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) effluent discharge and receiving stream characteristics are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

Local governments may gain income from the redesignations due to potential tourism and recreational revenue. For those local governments that receive income from the tourism industry, the redesignations may help maintain local revenue and employment. In addition, local land values may increase in the future as homes that are near areas of clean water and protected resources become more desirable places to live. Local governments that use these waters as a public water supply may also gain an economic benefit by reduced source water treatment requirements. See the response to Questions 17 and 19 for additional details.

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

In general, if a Commonwealth agency has an NPDES permit to discharge pollutants into waters of the Commonwealth, the costs and savings would be the same as those described in Question 20 for local government. However, no permits have been issued to a Commonwealth agency for a discharge to any of the streams that are being redesignated in this final-form rulemaking.

No other costs will be imposed directly upon Commonwealth government by this final-form rulemaking. This regulation will be implemented through existing Department programs, procedures and policies.

(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.**

Existing Department paperwork, procedures and guidance will be used to implement antidegradation requirements for discharges to the streams being redesignated to HQ and EV in this final-form rulemaking. No new forms, reports or implementation procedures are necessary. A permit applicant who proposes to discharge new, additional or increased pollutants might need the assistance of a consultant to evaluate certain elements of the antidegradation requirements such as nondischarge alternatives and nondegrading treatment options or BMPs. A permit applicant for a new or renewed permit must apply for an individual permit; however, a permit renewal does not trigger antidegradation review until new, additional or increased pollutants are proposed in the permit application.

(22a) **Are forms required for implementation of the regulation?**

No new forms are required to implement this regulation. For a permit applicant who proposes to discharge new, additional or increased pollutants, the appropriate permit applications are needed when applying for a permit. The permit application should include an antidegradation module, if available, corresponding to the appropriate Department permitting program.

Permit application modules for discharges to special protection waters can be found at the links listed below in the response to Question 22b. If a permit application lacks an antidegradation module, the permit applicant must still provide the required antidegradation analyses and evaluations as required by § 93.4c(b)(1).

(22b) **If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The following are links to existing antidegradation permit application modules or forms that include antidegradation requirements:

Antidegradation Supplement for Mining Permits
http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3713

Mining SEJ module
www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3872

Oil and Gas Program Erosion and Sediment (E&S) Control General Permit
www.depgreenport.state.pa.us/elibrary/GetDocument?docId=11501&DocName=8000-PM-OOGM0005 NOI Intent.pdf

Industrial Waste Antidegradation Module (including Industrial Waste (IW) Stormwater Only Discharges)
www.depgreenport.state.pa.us/elibrary/GetDocument?docId=11982&DocName=3800-PM-BCW0008g Module 4 and Module 4 Instructions.pdf

Pesticides Permit Antidegradation Module
www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3675

Erosion and Sediment Control Individual Permit
http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=105622

(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 2022/23	FY +1 2023/24	FY +2 2024/25	FY +3 2025/26	FY +4 2026/27	FY +5 2027/28
SAVINGS:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Savings	"	"	"	"	"	"
COSTS:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Costs	"	"	"	"	"	"
REVENUE LOSSES:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	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 (2019/20)	FY -2 (2020/21)	FY -1 (2021/22)	Current FY (2022/23)
160-10381 Enviro Protection Operations	$84,023,000	$94,202,000	$98,036,000	$102,719,000
161-10382 Enviro Program Management	$27,920,000	$32,041,000	$34,160,000	$35,739,000

(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.

According to the Regulatory Review Act, small businesses are defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations). The Small Business Administration defines a small business as less than 500 employees. Persons who propose to discharge new, additional or increased pollutants into surface waters of the Commonwealth must comply with the regulation. Also, please see the response to Question 15. When this final-form regulation goes into effect, no existing discharges will be immediately affected. The Department considers five out of nine NPDES-permitted facilities in waters affected by this final-form rulemaking to be small businesses based on available information.

(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.

Existing Department paperwork, procedures, and guidance will be used to implement the antidegradation requirements that apply to discharges to the streams being redesignated to HQ or EV in this final-form rulemaking. No new forms, reports, or implementation procedures are necessary. NPDES permit application modules for discharges to HQ or EV waters can be found at the links listed in the response to Question 22b. A permit applicant who proposes to discharge new, additional, or increased pollutants might need the assistance of a consultant to evaluate certain elements of the antidegradation requirements such as nondischarge and nondegrading treatment options or BMPs.

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

In general, if a person has an NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit limits will not be affected by the stream redesignations in this final-form rulemaking, and no new costs will be incurred. If, however, a person proposes to change the quality or quantity of their permitted discharge(s) after a stream is redesignated to HQ or EV, any subsequent permit action will take the redesignation into account when establishing permit conditions.

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

The regulations at 25 Pa. Code Chapter 93 provide the opportunity for examination of the least costly alternative treatment method for a person or entity seeking a new, additional or increased discharge of pollutants through the permit application process. This examination is performed when an applicant evaluates whether nondischarge alternatives (that is, alternatives to the discharge) exist that are cost-effective and environmentally sound; and, if not, whether a nondegrading discharge is possible. Since this final-form rulemaking involves redesignations of streams to HQ, Chapter 93 allows a reduction of water quality if lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(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.**

While no special provisions are included in this final-form rulemaking, it is important to note that this regulation will afford the protection of water quality necessary to ensure clean water for residents of and visitors to this Commonwealth.

(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.**

This final-form regulation meets the Commonwealth's obligations under The Clean Streams Law and the CWA to protect water uses. The final-form regulation reflects the results of a scientific evaluation of regulatory criteria. No alternative regulatory schemes are available to achieve the correct level of protection for the waters of the Commonwealth.

(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;

This final-form regulation does not establish or revise compliance or reporting requirements for small businesses. Those requirements would be addressed through the applicable permitting program. No alternative regulatory schemes are available to achieve the correct level of protection for the waters of the Commonwealth. The final-form regulation reflects 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;

This final-form regulation does not establish or revise schedules or deadlines for compliance or reporting requirements for small businesses. Schedules of compliance and reporting requirements are considered when permit or approval actions are taken, in accordance with 25 Pa. Code Chapter 92a or other applicable permitting programs.

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

This final-form regulation does not establish or revise compliance or reporting requirements for small businesses. Compliance and reporting requirements are considered when permit or approval actions are taken, in accordance with 25 Pa. Code Chapter 92a or other applicable permitting programs.

d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and

Any evaluation of treatment technologies or BMPs for persons who discharge pollutants to HQ or EV streams would be speculative at this time since (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) the characteristics of each receiving water and each effluent discharge are unique; and (3) SEJ may be available to modify the compliance requirement.

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

No such exemptions of small businesses are available in this case.

(28) **If data is the basis for this regulation, please provide a description of the data, explain <u>in detail</u> 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.**

These amendments are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); the Department's ongoing statewide monitoring activities (UNT 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek). The stream redesignations rely on the special protection qualifiers found at §§ 93.4b(a)(2)(i)(A), 93.4b(a)(2)(ii), 93.4b(b)(1)(iii), 93.4b(b)(1)(v) and 93.4b(b)(2). The redesignations also include evaluation of the protected water uses specified in 25 Pa. Code § 93.3 (relating to protected water uses) (UNT 08187) and the less restrictive use qualifiers specified in 25 Pa. Code § 93.4(b) (relating to statewide water uses) (UNT 28168). This final-form rulemaking was developed by the Bureau of Clean Water following a comprehensive evaluation of the physical, chemical and biological characteristics and other information available on these waterbodies. The data and information evaluated for these waterbodies support the Board's final-form regulation as set forth in Annex A.

The results of the Department's review can be found in the Department's Stream Evaluation Reports for each stream included in this final-form rulemaking and are available on the Department's website at:

Bear Run
http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/Bear_Run_Report.pdf

Clyde Run
https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/Clyde_Run_Report.pdf

Cranberry Creek
https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/Cranberry_Creek_Report.pdf

Dunbar Creek
https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/Dunbar_Creek_Report.pdf

Two Lick Creek
https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/Two_Lick_Creek_Report.pdf

UNT 08187 to South Branch Codorus Creek
https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/UNTSB_Report.pdf

UNT 28168 to Oley Creek
https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream_Packages/Dunbar_Creek/UNT28168_Oley_Creek_Report.pdf

The Department readily accepts and values all data from outside agencies and the public for use in stream evaluations. These data are evaluated and considered in the development of the recommendations for redesignation.

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

A. The length of the public comment period:	45 days
B. The date or dates on which any public meetings or hearings will be held:	August 30, 2021
C. The expected date of delivery of the final-form regulation:	Quarter 2, 2023
D. The expected effective date of the final-form regulation:	Upon publication in *Pennsylvania Bulletin* as final-form rulemaking for CSL permit and approval actions, or as approved by EPA for purposes of implementing the CWA.
E. The expected date by which compliance with the final-form regulation will be required:	Upon issuance or renewal of NPDES permits or other approvals of the Department – subsequent to publication of the final-form rulemaking in the *Pennsylvania Bulletin*.
F. The expected date by which required permits, licenses or other approvals must be obtained:	When permits or approvals are issued or renewed – subsequent to publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

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

The Board is not proposing to establish a sunset date for this final-form regulation because it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor this regulation for its effectiveness and recommend updates to the Board as necessary.

Also, since the CWA requires review and revision of water quality standards as necessary, but at least once every three years, a schedule for review is inherently established.