

EXECUTIVE SUMMARY
Water Quality Standards; Chester Creek et al. Stream Redesignations
25 Pa. Code Chapter 93

The Department of Environmental Protection (Department) recommends proposed amendments to Chapter 93 (relating to water quality standards) including amendments to §§ 93.9d, 93.9e, 93.9f, 93.9g, 93.9n, 93.9o, and 93.9w (relating to the designated water uses and water quality criteria).

Purpose of the Proposed Rulemaking

Section 303(c)(1) of the Federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. The water quality standards evaluated in this rulemaking are the designated uses of surface waters. The regulatory changes in this proposed rulemaking are the result of stream evaluations conducted by the Department in response to: the United States Environmental Protection Agency's (EPA) partial approval of the Triennial Review of Water Quality Standards final-form rulemaking published at 50 Pa.B. 3426 (July 11, 2020) (Reynolds Run and Chester Creek); a request from The Nature Conservancy (Unnamed Tributary (UNT) 64027 to Sixpenny Creek); the Department's ongoing statewide monitoring activities (Bermudian Creek; UNT 32599 to North Fork Dunkard Fork; and the Middle Lehigh River tributaries, which include Bear Creek (04123), Nesquehoning Creek tributaries (Jeans Run, Broad Run, Dennison Run, Bear Creek (04115), Grassy Meadow Run) and Mahoning Creek tributaries (Stewart Creek, UNT 04055 and UNT 04060)); and permit writers' requests associated with renewals for National Pollutant Discharge Elimination System (NPDES) permits (UNT 03181 to Tohickon Creek, and Logan Spring Run). In this proposed rulemaking, the stream redesignations rely on the definitions and qualifications in §§ 93.3 and 93.4b(a)(2)(ii) and (b)(1)(iii), (v), and (vi) (relating to protected water uses; and qualifying as High Quality or Exceptional Value Waters).

Summary of the Proposed Rulemaking

Based on the available data and appropriate regulatory criteria, the Department developed this package of stream redesignations. The proposed regulations include stream redesignations for 16 stream basins totaling 138.47 stream miles in seven drainage lists.

The Department recommends the Environmental Quality Board (Board) adopt the proposed rulemaking to redesignate those waters described in the Summary Table below, and as set forth in Annex A of the proposed rulemaking. This Summary Table describes only those streams and stream segments being redesignated in this proposed rulemaking. Annex A reflects both the current designated uses and the proposed designated uses for all streams affected by this proposed rulemaking. For example, if a portion of a stream basin is currently designated as High Quality Waters (HQ) and the amendments redesignate the remainder of the basin, Annex A reflects the HQ designated use for the entire basin. As such, zone descriptions may differ between the summary table and Annex A.

The redesignations will be implemented through the Department's permit and approval actions. For example, the NPDES permitting program requires effluent limitations or best management practices for discharges that are protective of the designated uses of the receiving streams. The streams that are proposed for redesignation are currently protected at their existing uses. Permitted discharges that were existing at the time of the Department's evaluation of the stream for special protection designation are considered to be part of the existing water quality of the receiving stream and, therefore, the designated use changes should have no additional impact on existing treatment requirements for these permits. Some new or expanding discharges may be subject to more stringent permit or treatment requirements to meet designated and existing stream uses.

Affected Parties

The Commonwealth's residents and visitors and its natural resources will benefit from this proposed rulemaking because it protects the surface waters in this Commonwealth at appropriate levels. Protecting water quality provides economic and societal value to present and future generations in the form of a clean water supply that can support all current and potential future uses, including: human consumption, wildlife, irrigation and industrial use; recreational opportunities such as fishing (also for fish consumption); water contact sports and boating; and aquatic life protection.

These proposed amendments to Chapter 93 will not impose any new compliance costs on persons engaged in regulated activities under existing individual permits or approvals from the Department since existing discharges are included in any determination of the existing water quality when streams are redesignated to HQ or Exceptional Value Waters (EV). Since the presence of these discharge activities did not preclude the attainment of the HQ or EV use and the water quality of the HQ or EV water will be maintained and protected under existing permit coverage, these discharges are considered to satisfy the antidegradation requirements in § 93.4a(c) as long as the discharge quality and quantity remain the same. Additional compliance costs may arise when permits or approvals are necessary for new or expanded regulated activities to a stream protected as HQ or EV.

Discharges to special protection streams are not eligible for coverage under NPDES general permits, based on § 92a.54(a)(8) (relating to general permits), 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 stream. The individual permits are necessary to track the quality and quantity of existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the Department's review in accordance with the antidegradation regulations.

In addition, stormwater discharges associated with industrial activity to surface waters classified as HQ or EV under Chapter 93 do not qualify for conditional exclusion from an NPDES permit as provided under § 92a.32(b) (relating to stormwater discharges). Some additional cost will be

incurred by facilities required to obtain an individual permit. The Department will implement stream redesignations through permit and approval actions.

Regarding permitted discharges to waters proposed for redesignation to special protection in this rulemaking, the Department identified 11 NPDES general permits (for non-publicly owned sewage and for stormwater associated with either mining or industrial activity) and one “no exposure” conditional exclusion from an NPDES stormwater permit as provided under § 92a.32(b). The Department considers four of these 11 permits to be small businesses based on available information. For context, statewide, approximately 17,850 facilities or activities hold NPDES permits, not including NPDES permits for stormwater associated with construction activity. Existing permitted discharges authorized under an NPDES general permit and entities that have obtained a “no exposure” conditional exclusion may be affected since point source discharges to special protection streams are not eligible for coverage under NPDES general permits or for conditional exclusion from NPDES stormwater permits, based on §§ 92a.32(b) and 92a.54(a)(8) and (e)(9), and therefore require individual permits. Additional cost may be incurred by these facilities required to obtain an individual permit.

The Department’s permit evaluation did not include NPDES permits for stormwater associated with construction activities issued under Chapter 102 (relating to erosion and sediment control). These permits were not included in the permit analyses because of the short-term, temporary nature of these permitted discharges.

The permit count also does not include NPDES permits within the Reynolds Run basin. The permits within this basin are already issued with the HQ designated use recommendation in this proposed rulemaking. In other words, although § 93.9o (relating to Drainage List O) would be updated for this basin from High Quality Waters – Trout Stocking (HQ-TSF) to High Quality Waters – Cold Water Fishes (HQ-CWF), the current EPA-approved designated use for Reynolds Run used for Federal Clean Water Act actions, such as NPDES permits, already includes the HQ designation, which will not change.

In the future, persons adding or expanding a discharge to a stream may need to provide a higher level of treatment or additional best management practices to protect the designated and existing uses of the affected streams. A person who proposes a new, additional or increased point source discharge to a stream with a protected use of EV or HQ would need to satisfy the antidegradation requirements found at § 93.4c(b)(1) (relating to implementation of antidegradation requirements). 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 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, which include cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

The permit applicant shall 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 a stream with a protected use of HQ 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 and 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 streams with a protected use of EV. The water quality of streams with a protected use of EV must be maintained and protected. Due to the technology-specific and location-specific natures of this demonstration, it is not possible to estimate costs associated with new, additional or increased discharges to streams with a designated use of HQ or EV.

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in Chapters 71, 72 and 73 (relating to 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 in waters that are proposed for redesignation to HQ or EV in this rulemaking. Permit applicants of sewage facilities with proposed discharges to surface waters with a protected use of HQ, 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 the Department's *Water Quality Antidegradation Implementation Guidance* (391-0300-002). This proposed rulemaking will not increase costs or trigger adverse effects on existing or planned onlot sewage systems.

Broader estimates of who will be affected by the stream redesignations in this proposed 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; (4) persons currently discharging under a general permit to these waters may or may not continue with their permitted activity after the stream uses are redesignated; and (5) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

Outreach (Advisory Committee/Stakeholder Consultation)

The Department presented an overview of the proposed rulemaking to the Agricultural Advisory Board on April 10, 2025.

Recommendation

The Department recommends the proposed rulemaking be adopted by the Board and published in the *Pennsylvania Bulletin* with a 45-day public comment period including a public hearing to be held during the public comment period.

Summary Table: Proposed Rulemaking
Chester Creek et al., Stream Redesignation Rulemaking Package

Stream Name	County	Zone Description	List	Current Designated Use	Requested Designated Use	Recommended Designated Use
Reynolds Run	Lancaster	Basin	O	HQ-TSF, MF	N/A	HQ-CWF, MF
Chester Creek	Chester	Basin, Source to East Branch Chester Creek	G	WWF, MF	N/A	TSF, MF
Chester Creek	Chester	Basin, Dutton Mills Road Bridge to UNT 00526	G	WWF, MF	N/A	TSF, MF
UNT 32599	Greene	Basin	W	TSF	N/A	EV
UNT 64027	Berks	Basin	F	HQ-CWF, MF	EV, MF	EV, MF
Bermudian Creek	Adams	Basin, Source to UNT 08719	O	WWF, MF	N/A	CWF, MF
Bermudian Creek	Adams	Basin, UNT 08719 to SR 94	O	WWF, MF	N/A	TSF, MF
Logan Spring Run	Huntingdon-Blaire	Basin	N	WWF, MF	N/A	CWF, MF
UNT 03181	Bucks	Basin	E	TSF, MF	N/A	EV, MF
Bear Creek	Carbon	Basin	D	HQ-CWF, MF	N/A	EV, MF
Jeans Run	Carbon	Basin	D	HQ-CWF, MF	N/A	EV, MF
Broad Run	Carbon	Basin	D	HQ-CWF, MF	N/A	EV, MF
Dennison Run	Carbon	Basin	D	HQ-CWF, MF	N/A	EV, MF
Bear Creek	Carbon	Basin	D	HQ-CWF, MF	N/A	EV, MF
Grassy Meadow Run	Carbon	Basin	D	HQ-CWF, MF	N/A	EV, MF
Stewart Creek	Carbon	Basin, Source to Crooked Run	D	CWF, MF	N/A	EV, MF
Stewart Creek	Carbon	Basin, Crooked Run to Source	D	CWF, MF	N/A	EV, MF
UNT 04055	Carbon	Basin	D	CWF, MF	N/A	EV, MF
UNT 04060	Carbon	Basin	D	CWF, MF	N/A	EV, MF

WWF = Warm Water Fishes
CWF = Cold Water Fishes
TSF = Trout Stocking
UNT = unnamed tributary

HQ = High Quality Waters
EV = Exceptional Value Waters
MF = Migratory Fishes