

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 93 ]

### Water Quality Standards; Class A Stream Redesignations

[49 Pa.B. 1367]

[Saturday, March 23, 2019]

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 93 (relating to water quality standards). The amendments will modify the drainage lists at §§ 93.9d, 93.9f, 93.9j, 93.9k, 93.9l, 93.9m, 93.9p, 93.9q, 93.9r and 93.9t to read as set forth in Annex A. The purpose of this proposed rulemaking is to update the designated uses so that the surface waters of the Commonwealth are afforded the appropriate level of protection. This proposed rulemaking fulfills the Commonwealth's obligations under State and Federal law to review and revise, as necessary, water quality standards that are protective of surface waters.

This proposed rulemaking was adopted by the Board at its meeting of December 18, 2018.

#### A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as a final rulemaking. Once approved by the United States Environmental Protection Agency (EPA), water quality standards are used to implement the Federal Clean Water Act (CWA) (33 U.S.C.A. §§ 1251ô 1388).

#### B. *Contact Persons*

For further information, contact Thomas Barron, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, 400 Market Street, Harrisburg, PA 17105-8774, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

#### C. *Statutory Authority*

This proposed 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 Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P.S. §§ 691.1ô 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. In addition, section 303 of the CWA (33 U.S.C.A. § 1313) sets forth requirements for water quality standards.

#### *D. Background and Purpose*

The purpose of developing the water quality standards is to protect waters of the Commonwealth. Waters of the Commonwealth, through the water quality standards program, are protected for a variety of uses including: drinking water supplies for humans, livestock and wildlife; fish consumption; irrigation for crops; aquatic life uses; recreation; and industrial water supplies. The purpose of this proposed rulemaking is to update the designated uses so that the surface waters of this Commonwealth are afforded the appropriate level of protection.

Section 5 of The Clean Streams Law, 35 P.S. § 691.5, instructs the Department to consider water quality management and pollution control in the watershed as a whole, and the present and possible future uses of waters when adopting rules and regulations. In addition to these requirements, the Commonwealth has responsibilities under the CWA that require water quality standards to be reviewed and approved by the EPA for consistency with the mandates under that act. Section 101(a)(2) of the CWA, (33 U.S.C.A. § 1251(a)(2)), 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 303(c)(2)(A), (33 U.S.C.A. § 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 303(d)(4)(B), (33 U.S.C.A. § 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 proposed rulemaking are consistent with these State and Federal statutory mandates.

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices (BMPs)) on individual sources of pollution. Section 303(c)(1) of the CWA, (33 U.S.C.A. § 1313(c)(1)), requires states to periodically review and revise, as necessary, water quality standards. Water quality standards include designated uses, numeric and narrative criteria, and antidegradation requirements for surface waters. These proposed amendments are the result of new information presented for stream evaluations of designated uses.

The Department may identify candidate streams for redesignation of uses during routine waterbody investigations. Requests for consideration may be initiated by other agencies, or members of the public may submit a rulemaking petition to the Board. These proposed amendments are the result of stream evaluations conducted by the Department in response to a submittal of data from the Pennsylvania Fish and Boat Commission (Commission) under § 93.4c (relating to implementation of antidegradation requirements).

In this proposed rulemaking, redesignations rely on § 93.4b(a)(2)(ii) (relating to qualifying as High Quality or Exceptional Value Waters) to qualify streams for High Quality (HQ) designations based upon their classifications as Class A wild trout streams. A surface water that has been classified a Class A wild trout stream by the Commission, based on species-specific biomass standards, and following public notice and comment, qualifies for HQ designation. The Commission published notice and requested comments on the Class A designation of these streams. The Commissioners of the Commission approved these waters after public notice and comment. Department staff conducted an independent review of the trout biomass data in the

Commission's fisheries management reports for the streams proposed for redesignation. This review was conducted to ensure that the HQ criteria were met.

Prior to rulemaking, the Department has an obligation to provide existing uses protection when data indicates that a surface water attains or has attained an existing use. Section 93.1 (relating to definitions) defines "existing uses" as "those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards." Section 93.4c requires the Department to make a final determination of existing uses protection for the surface water as part of a final permit or approval action. During a review of a permit application and a draft permit, interested persons may provide the Department with additional information regarding existing uses protection for the surface water. The Department also presents available information in a draft report that is made available for public comment.

Where the existing uses are different than the designated uses for a surface water, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. For example, if the designated use of a stream is listed as protecting Cold Water Fishes (CWF) but the Department's evaluation of available existing use information indicates that the water attains the use of HQ-CWF, the stream would be protected for this HQ-CWF existing use, prior to a rulemaking. A stream redesignation proposal will then be initiated through the rulemaking process to match the existing uses with the designated uses in the drainage lists found in §§ 93.9a-93.9z. See Section E for a detailed explanation of the public participation process preceding the development of this proposed rulemaking.

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 all citizens of this 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 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 proposed rulemaking benefits not only local residents but those from outside the area who come to enjoy the benefits and aesthetics of outdoor recreation.

#### E. *Summary of Proposed Rulemaking*

##### *Proposed Redesignations of Class A Wild Trout Waters*

As part of this stream redesignation process, the Department offered opportunities for the public to provide data and information during the review of the uses of the streams. First, the Department provided public notice of its intent to assess the Class A wild trout stream data. The Department's notices requesting additional water quality data for the streams were published at 46 Pa.B. 503 (January 23, 2016); 46 Pa.B. 1287 (March 5, 2016); and 46 Pa.B. 3328 (June 25, 2016). Additionally, the notices were posted on the Department web site. No water quality data were received. The Department directly notified all affected municipalities, county planning commissions, conservation districts and Commonwealth agencies of these redesignation evaluations in letters dated January 5, May 27 and July 8, 2016. No data or comments were received in response to these notices.

Once the data solicitation was completed, the Department prepared a draft streams evaluation report and made it available to all affected municipalities, county planning commissions, county conservation districts and other Commonwealth agencies on April 26, 2017. This draft report was mailed to these same entities and posted on the Department's web site, for a 45-day public comment period. Two letters of support were received. The Department considered these

comments in drafting the final Class A Wild Trout Streams Evaluation Report.

Department staff delivered two separate presentations to the Agricultural Advisory Board (AAB). The first presentation was delivered at the August 16, 2018, joint meeting of the AAB and the Nutrient Management Advisory Board. That presentation was focused on this proposed rulemaking consisting of Class A stream redesignations. In response to a request from the AAB following the first presentation, a second presentation was delivered to the AAB on October 25, 2018, which included a broader scope of the stream redesignations rulemaking process and then more specifically how AAB is involved in the process.

A copy of the stream evaluation report for these waterbodies is available on the Department's web site or from the contact persons listed in Section B of this preamble. Copies of the Commission fisheries management reports for these streams and the Commission's sampling protocols for wadeable streams are available on the Department's web site or from Thomas Barron, whose address and telephone number are listed in Section B of this preamble. The data and information collected on these waterbodies support the Board's proposed rulemaking as set forth in Annex A. The Board's proposed HQ redesignations associated with Class A wild trout waters is summarized in the following table.

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

<b>Stream Name</b>	<b>County</b>	<b>List</b>	<b>Zone</b>	<b>Current Designated Use</b>	<b>Recommended Designated Use</b>
Beaver Run	Carbon	D	Basin	CWF, MF	HQ-CWF, MF
Wash Creek	Schuylkill	D	Basin	CWF, MF	HQ-CWF, MF
UNT 04074 to Mahoning Creek	Schuylkill	D	Basin	CWF, MF	HQ-CWF, MF
UNT 04088 to Lehigh Canal (Weisport)	Carbon	D	Basin, Source to Phifer Ice Dam Inlet	CWF, MF	HQ-CWF, MF
UNT 03913 to Lehigh River	Carbon	D	Main Stem	CWF, MF	HQ-CWF, MF
Fireline Creek	Carbon	D	Main Stem, UNT 03907 to Mouth	CWF, MF	HQ-CWF, MF
UNT to Little Schuylkill River	Schuylkill	F	Basin	CWF, MF	HQ-CWF, MF
UNT 02248 to Little Schuylkill River "Rabbit Run"	Schuylkill	F	Basin	CWF, MF	HQ-CWF, MF
UNT 02204 to Little Schuylkill River	Schuylkill/Berks	F	Basin	CWF, MF	HQ-CWF, MF
Sixpenny Creek	Berks	F	Basin, UNT 64027 to Mouth	CWF, MF	HQ-CWF, MF

Aylesworth Creek	Lackawanna	J	Basin, Source to UNT 28567	CWF, MF	HQ-CWF, MF
Brace Brook	Susquehanna/Wayne	J	Basin	CWF, MF	HQ-CWF, MF
Glen Brook	Columbia	K	Main Stem, UNT 28087 to Foundryville Road	CWF, MF	HQ-CWF, MF
Douglas Run	Cambria/Indiana	L	Basin	CWF, MF	HQ-CWF, MF
Emeigh Run	Cambria	L	Basin	CWF, MF	HQ-CWF, MF
Beaver Run	Cambria/Clearfield	L	Basin, Source to and including UNT 27182	CWF, MF	HQ-CWF, MF
Patchin Run	Clearfield	L	Basin	CWF, MF	HQ-CWF, MF
North Run	Clearfield	L	Basin	CWF, MF	HQ-CWF, MF
UNT 26735 to West Branch Susquehanna River	Clearfield	L	Basin	CWF, MF	HQ-CWF, MF
Hogback Run	Clearfield	L	Basin	CWF, MF	HQ-CWF, MF
UNT 26562 to Bradley Run	Cambria	L	Basin	CWF, MF	HQ-CWF, MF
Little Dent Run	Cameron	L	Basin	CWF, MF	HQ-CWF, MF
Laurel Run	Centre	L	Basin, from a point at 40°49'3.5"N; 78°5'52.0"W to Mouth	CWF, MF	HQ-CWF, MF
Gap Run	Centre	L	Main Stem, Source to the sink hole located at 40°51'59"N; 77°44'4"W	CWF, MF	HQ-CWF, MF
Council Run	Centre	L	Main Stem	CWF, MF	HQ-CWF, MF
Salt Lick Run	Centre	L	Basin	CWF, MF	HQ-CWF, MF
Sand Run	Tioga	L	Basin	CWF, MF	HQ-CWF, MF
Rauchtown Creek	Lycoming/Clinton	L	Basin, Confluence of Rocky Run and Gottshall Run to Mouth	CWF, MF	HQ-CWF, MF
Mosquito Creek	Lycoming	L	Basin	CWF, MF	HQ-CWF, MF
Potter Run	Centre	M	Basin	CWF, MF	HQ-CWF, MF
Kettle Run	Centre	M	Basin	CWF, MF	HQ-CWF, MF
UNT 18312 to Penns Creek	Centre	M	Basin	CWF, MF	HQ-CWF, MF
Peet Brook	Potter	P	Basin	CWF	HQ-CWF
UNT 57738 to Blacksmith Run	McKean	P	Basin	CWF	HQ-CWF

UNT 54466 to Marsh Run	Crawford	Q	Basin	CWF	HQ-CWF
Spencer Creek	Erie	Q	Main Stem	CWF	HQ-CWF
Benson Run	Erie	Q	Main Stem	TSF	HQ-CWF
Water Tank Run	Elk	R	Basin	CWF	HQ-CWF
UNT 45591 to Stonycreek River	Somerset	T	Basin	CWF	HQ-CWF
UNT 46054 to Trout Run	Cambria	T	Basin	CWF	HQ-CWF
UNT 46033 to North Branch Little Conemaugh River	Cambria	T	Basin	CWF	HQ-CWF

CWF = cold water fishes                      HQ = high quality

TSF = trout stocking                          MF = migratory fishes

UNT = unnamed tributary

#### *Proposed Corrections to Drainage Lists*

In addition to the recommended changes to stream designations, the Board is proposing other amendments to the drainage lists in §§ 93.9d, 93.9f, 93.9j, 93.9k, 93.9l, 93.9m, 93.9p, 93.9q, 93.9r and 93.9t to clarify stream names and segment boundaries and to reformat portions of drainage lists. In addition, the Board is recommending changes consistent with the National Hydrography Dataset (NHD) flowline. These additional changes are nonsubstantive in nature, because they do not change any current water quality designations to the drainage lists.

The NHD flowline forms the basis of the Department's Designated and Existing Use Geographic Information System (GIS) layers. The NHD flowline is established using the United States Geological Survey (USGS) Geographic Names Information System (GNIS), which is the Federal and National standard for geographic nomenclature. The Department strives to maintain consistency with the GNIS database and the NHD flowline.

The Department routinely receives internal and external communications concerning streams that appear to be missing from Chapter 93. Often, these streams were considered unnamed at the time the drainage list was established and therefore were captured under unnamed tributaries entries. These streams currently have a designated use even though they do not appear as named entries in Chapter 93. In contrast, there are a number of named tributaries in Chapter 93 that are not currently recognized by the USGS and are not represented by the NHD flowline. These may be unofficial local names. Consolidation within drainage lists will greatly reduce these issues.

In many parts of the drainage lists, the current format consists of a main stem entry for a stream, followed by unnamed tributaries to that stream, and then individually named tributaries within the basin. Often, most of the tributaries, both named and unnamed, have the same designated use. In some cases, an entire basin is the same designated use except for a few streams. Large stream basins may take up several pages within a drainage list and can be difficult

for individuals to navigate and understand. Reformatting large basins to consolidate portions of Chapter 93 that have the same designated use enables readers to view that entire basin within a page or two. In addition, a condensed drainage list reduces the likelihood that errors will occur in transcription of Chapter 93 during rulemaking procedures. The Department currently has several GIS mapping tools available (e.g. eMapPA) to assist staff, members of the public and the regulated community in locating streams in this Commonwealth, and they should be used in conjunction with the *Pennsylvania Code* to determine designated uses. The Board proposes to reformat § 93.9j (relating to Drainage List J) and the Stonycreek River basin in § 93.9t (relating to Drainage List T) as described in this paragraph.

Furthermore, all river mile indexes (RMI) proposed to be added in this proposed rulemakingô §§ 93.9d, 93.9f, 93.9j, 93.9k, 93.9l, 93.9m, 93.9p, 93.9q, 93.9r and 93.9tô will be converted to (x,y) coordinates for latitude and longitude. Going forward, whenever changes are proposed to Chapter 93, associated locational information will be inserted as latitude and longitude. Eventually, all reference to RMI in §§ 93.9aô 93.9z will be converted to latitude and longitude.

Additionally, all "unnamed tributaries" included in this proposed rulemaking will be abbreviated to UNTs. Going forward, the abbreviation UNTs will eventually replace "unnamed tributaries" in the *Pennsylvania Code*.

#### *Section 93.9d. Drainage List D*

Additional changes to § 93.9d (relating to Drainage List D) were proposed at 47 Pa.B. 6609 (October 21, 2017), including a stream name correction from "Beaverdam Run to Beaver Run." Beaver Run is a candidate for redesignation in this Class A stream package. The Board recommends making this change.

#### *Section 93.9k. Drainage List K*

The Board recommends correcting the spelling for Huntington Creek in § 93.9k (relating to Drainage List K) to be consistent with the NHD flowline.

#### *Section 93.9t. Drainage List T*

Additional changes to § 93.9t were proposed at 47 Pa.B. 6609, including a proposed correction to the hydrological order because Trout Run is a tributary to Kane Run. According to the GNIS database and the NHD flowline, Trout Run is not a direct tributary to the Little Conemaugh River. It is a tributary to Kane Run, which is a tributary to the Little Conemaugh River. An unnamed tributary to Trout Run (UNT 46054) is a candidate for redesignation in this proposed rulemaking. The Board recommends making this change.

### *F. Benefits, Costs and Compliance*

#### *Benefits*

Overall, this Commonwealth, its citizens and natural resources will benefit from this proposed 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 to realize

these benefits and to ensure opportunities and activities continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

*Increased property values are an economic and social benefit of clean water protected by this proposed regulation.*

A reduction in toxics found in the Commonwealth'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 (<https://www.jstor.org/stable/1239441>)), used real estate prices to determine the value of improvements in water quality in small rivers and streams in this Commonwealth. Water quality, whether measured in pH or by the owner's perception, has a significant effect on the price of adjacent property. Their 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 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 multifamily 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 Benefits of Sediment Remediation in the Buffalo River AOC and Sheboygan Rice AOC: Final Project Report, (<http://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 this Commonwealth. A reduction in toxic pollution in this Commonwealth'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 are social and economic benefits of clean water protected by this proposed rulemaking.*

Businesses in the recreation industry will be positively affected by these proposed regulations. The maintenance and protection of the water quality will ensure the long-term availability of Class A wild trout fisheries. Because the focus of this proposal relates directly to the protection of fisheries, sportsmen in this Commonwealth will benefit by the preservation of the existing Class A fisheries. Class A wild trout streams should be protected so that they can continue to be a self-sustaining angling opportunity as compared to the cost-intensive alternative of raising and stocking fish. The purpose of these proposed stream redesignations is to preserve this resource for current and future sportsmen so that the social and economic benefits are maintained in the local area. As recreation demands increase in the future, the preservation of unique resources such as Class A wild trout waters will no doubt 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 this Commonwealth are outlined as follows.

The Center for Rural Pennsylvania prepared a report titled "Economic Values and Impacts of Sport Fishing, Hunting and Trapping Activities in Pennsylvania," (<http://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 of time. 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) (<http://www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf>), the Commission collected information to assess the economic impact of wild trout angling in this Commonwealth, during the 2004 regular trout season, April 17 through September 3, 2004. The Commission found, based on the results of this study, that angling on wild trout streams contributed over \$ 7.16 million to this Commonwealth's economy during the regular trout season in 2004.

According to the "2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation" (<https://www.census.gov/prod/2012pubs/fhw11-nat.pdf>) for this Commonwealth, prepared by the United States 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 this Commonwealth totaled \$485 million in 2011. The expenditures include food and lodging, transportation and other expenses (equipment rental, bait and cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in this Commonwealth. Expenditures include trips-related costs and equipment.

According to the Outdoor Recreation Industry Association, this Commonwealth's outdoor recreation generates 251,000 direct jobs in this Commonwealth, \$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 residents in this Commonwealth 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/>)).

*Savings in water filtration for downstream communities that rely on surface waters for water supplies and availability of unpolluted water for domestic, agricultural and industrial uses are benefits of clean water protected by this proposed rulemaking.*

The Department identified 11 public water supply facilities with raw water intakes that are no further downstream than 30 stream miles of the candidate stream sections for redesignation in this proposed rulemaking package. These 11 public water suppliers, which serve over 175,000 citizens, will benefit from this proposed rulemaking because their raw source water will be afforded a higher level of protection. This is an economic benefit because the source water treatment costs for the drinking water may be less costly to customers if less treatment is needed due to the high quality of the water in the stream. By maintaining cleaner water, public water suppliers will incur the benefits of lower water treatment costs. In addition, cleaner intake water will reduce consumer costs for purchasing clean drinking water.

### *Compliance Costs*

This proposed rulemaking is necessary to maintain the existing water quality and effectively control discharges of pollutants into the stream segments. These amendments to Chapter 93 will not impose any new compliance costs on persons engaged in regulated activities under existing permits or approvals from the Department. Additional compliance costs may arise when permits or approvals are necessary for new or expanded regulated activities. The Department will

implement the proposed stream redesignations through permit and approval actions.

Persons adding or expanding a discharge to a stream may need to provide a higher level of treatment or additional BMPs to meet the designated and existing uses of the stream, which could result in higher engineering, construction or operating costs. Treatment costs and BMPs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. The Department cannot accurately estimate such costs because of the variability associated with each discharge.

Any person proposing a new, additional or increased point source discharge would need to satisfy the antidegradation requirements found at 25 Pa. Code § 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 with the cost of the proposed discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must use the best available combination of 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 a social and economic justification (SEJ) for allowing lower water quality. The 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 other water uses will be supported. Discharge activities to special protection streams do not qualify for National Pollutant Discharge Elimination System (NPDES) general permits, based on 25 Pa. Code § 92a.54(a)(8) (relating to general permits), and therefore, will require individual permits.

There are approximately 10,300 facilities across this Commonwealth that hold permits issued under 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, industrial waste, municipal separate storm sewer systems (MS4), sewage and industrial storm water. Out of this Statewide total of approximately 10,300 permits, only 19 facilities are known to hold NPDES permits within the boundaries of the watersheds of the stream segments being considered for redesignation in this proposed rulemaking.

The types of NPDES discharges identified that have watershed involvement in this proposed rulemaking include industrial waste, sewage, MS4 and industrial stormwater. Discharges in existence at the time of the stream survey have been considered in the evaluation of the existing water quality of the stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of special protection status, the discharges may continue as long as the discharge characteristics (both quality and quantity) remain the same. Thus, redesignation to special protection does not impose any additional special treatment requirements on the existing discharges from these 19 NPDES permitted entities. However, discharge activities to special protection streams do not qualify for NPDES general permits and, therefore, will require individual permits. The individual permits are necessary to track any additional or increased discharges to a special protection water.

There are thousands of general and individual NPDES permits for Stormwater Discharges Associated with Construction Activities issued under 25 Pa. Code Chapter 102 (relating to

erosion and sediment control) that were not included in the Statewide total of NPDES permits. These construction permits were not included in the permit counts because of their temporary nature. However, if the construction permit was issued as a general permit, and if the permitted activity is not completed by the expiration date on the permit and the permittee seeks to renew the permit, then it must be renewed as an individual permit. Additionally, when earth disturbance activities occur within the basins of the stream segments redesignated in this proposed rulemaking, additional BMPs may be necessary to protect water quality under Chapter 102.

Local governments will most likely have additional costs associated with MS4 permitting requirements. Any permittees that discharge to an HQ water will be required to obtain an individual permit when the permit is up for renewal. Any new first-time MS4 permits in these waters will be required to obtain individual permits. The cost of a new first-time individual permit is \$5,000 compared to \$500 for a general permit. There is a difference in cost between the initial issuance of an individual permit and a 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 a municipality's stormwater management program and its implementation of the minimum control measures.

If there is an existing permit (whether it is currently a general permit or an individual permit) on a water that has been redesignated to special protection, the fee to renew it to an individual permit is \$2,500. The annual fee is the same for a general permit and an individual permit. Individual permits will require an application and general permits will no longer be required to submit a Notice of Intent (NOI) as the annual report submittal and annual fee payment will serve the purpose of past NOIs. In general, there are no special consulting services fees that are needed for a new permittee when applying for the individual permit.

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 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 these redesignated HQ waters. Permit applicants for sewage facilities in HQ waters who demonstrate SEJ at the sewage facilities planning stage need not re-demonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and nonsewage discharge applicants.

#### *Compliance Assistance Plan*

This proposed rulemaking will not impose any new compliance requirements on persons engaged in regulated activities under existing permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges, the Department will provide compliance assistance.

#### *Paperwork Requirements*

This proposed rulemaking will not impose any new paperwork requirements on persons engaged in regulated activities under existing permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges, additional information may need to be submitted to the Department as part of the permit application or approval request. As previously discussed, the permit applicant will complete an antidegradation analysis. The applicant will describe how the proposed activity will be conducted to maintain existing water quality. If water quality cannot be maintained, the applicant will describe an SEJ for the proposed activity. NPDES general permits are not available for discharges to these

streams. Thus, an individual permit, and its associated paperwork, would be required.

### G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101-13109) established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has incorporated the following pollution prevention incentives.

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanding wastewater discharges, nondischarge alternatives must be evaluated and are required to be used when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil. In addition, if no environmentally sound and cost-effective alternatives are available, discharges must be nondegrading except as provided in § 93.4c(b)(1)(iii).

### H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 4, 2019, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

### J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding this proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by May 7, 2019.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

#### K. *Public Hearings*

The Board will hold one public hearing for the purpose of accepting comments on this proposal. The hearing will be held at 1 p.m. on the following date:

April 26, 2019 Department of Environmental Protection  
Southcentral Regional Office  
Susquehanna Room A  
909 Elmerton Avenue  
Harrisburg, PA 17110

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Verbal testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

PATRICK McDONNELL,  
Chairperson

**Fiscal Note:** 7-548. No fiscal impact; (8) recommends adoption.

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