

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 93 AND 95]

Antidegradation

The Environmental Quality Board (Board) adopts amendments to Chapters 93 and 95 (relating to water quality standards; and wastewater treatment requirements) to read as set forth in Annex A. The final regulatory changes consolidate the antidegradation requirements in Chapter 93. This notice is given under Board order at its meeting of May 19, 1999.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

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C. *Statutory Authority*

These amendments are made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

D. *Background of the Amendments*

The Commonwealth's Water Quality Standards, which are set forth in part in Chapter 93, implement sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (CWA) (33 U.S.C.A. § 1313). Water quality standards consist of the designated uses of the surface waters of this Commonwealth and the specific numeric and narrative criteria necessary to achieve and maintain those uses. In addition to protection of uses, portions of the regulations focus on preventing degradation to High Quality (HQ) Waters.

The Federal antidegradation requirements in 40 CFR 131.12 (relating to antidegradation policy) provide for three tiers of water quality protection. Under Tier 1, existing instream water uses and the level of water quality necessary to protect and maintain the existing uses shall be maintained and protected. This level of protection is defined by meeting established water quality standards and is applicable to all surface waters. Tier 2, or HQ Waters, are to be maintained and protected at existing quality unless lowering of water quality is neces-

sary to accommodate important economic or social development in the area in which the surface water is located. Where surface waters of high quality constitute an Outstanding National Resource Water (ONRW), that water quality shall be maintained and protected (Tier 3). In the long-standing Commonwealth program, Exceptional Value (EV) Waters are more broadly defined than the Federal Tier 3 definition.

The Commonwealth has implemented an effective and protective antidegradation program since 1968, when a "Conservation Area" use designation was included in the water quality standards regulations. The Environmental Protection Agency (EPA) approved the Commonwealth's antidegradation program in 1981. On June 6, 1994, the EPA disapproved a portion of the Commonwealth's antidegradation program. In response to the EPA's disapproval, the Department solicited comments on the Special Protection (Antidegradation) Waters program at a public meeting on January 11, 1995, and a public hearing on April 20, 1995. With the assistance of a professional facilitator, the Department convened a group of interested stakeholders representing conservationists, the regulated community and government in a regulatory negotiation (Reg Neg) process. The Department committed to use all consensus reached by the group in drafting new regulations. Meetings with the Reg Neg group began in June 1995 and continued monthly thereafter until August 1, 1996. In addition, smaller workgroup meetings to address specific issues were held between the main meetings. The group signed a Phase I Interim Report on April 1, 1996, and presented it to Secretary Seif on May 6, 1996. That report describes some issues on which conditional consensus had been reached and the issues remaining to be resolved. At its August 1, 1996, meeting, the Reg Neg group reached the conclusion that they were at an impasse on several outstanding issues. The Reg Neg group agreed to submit separate reports to the Department and the Reg Neg process was concluded. These reports were submitted to the Department during the week of August 19, 1996.

On April 16, 1996, the United States District Court for the Eastern District of Pennsylvania ordered the EPA to promptly promulgate proposed Federal regulations for the Commonwealth's antidegradation program. On May 13, 1996, at a status conference on the matter, EPA proposed, and Judge Louis C. Bechtle, Jr. accepted, a schedule requiring that proposed Federal antidegradation regulations for the Commonwealth be completed and signed by the EPA Administrator by August 26, 1996. Proposed Federal regulations were published in the *Federal Register* on August 29, 1996 (61 F. R. 45379). The EPA provided a public comment period and held a public hearing on the proposed regulation on October 16, 1996. Final Federal regulations were published in the *Federal Register* on December 9, 1996 (61 F. R. 64816).

The Department initially prepared a draft proposed rulemaking based on the Reg Neg group's April 1, 1996, Phase I Interim Report. The Phase I Interim Report was an informed, thoughtful consideration by a representation of diverse public viewpoints on the antidegradation program and served as a good starting point for new regulations because it incorporated extensive public input. The draft regulation was made available for public comment. The public comment period concluded with a public hearing on June 18, 1996, in Harrisburg. Ten

persons provided oral testimony at the public hearing, and 107 persons sent written comments.

Most public comments were provided by members of the conservation community, and expressed a common viewpoint. Many comments urged no weakening of regulations to protect HQ and EV Waters, no degradation or discharge, or both, to these waters, and use of waste minimization and pollution prevention techniques. The comments generally recommended adoption of the Federal Tier 1 language to protect existing uses; recommended a broader definition for HQ Waters that provides for more waters receiving Tier 2 protection, including Class A Wild Trout Streams; expressed concerns with the biological test and use of assimilative capacity in HQ Waters; and expressed support for a stringent EV Waters program. Other comments supported adopting the Federal definition for Tier 3 waters and a stronger public participation process. Following the public hearing, the Department considered the public comments and the reports submitted by the parties participating in the Reg Neg process in the preparation of recommendations to the Board for the proposed rulemaking.

The Department considered the public input it received, as well as the input from the Reg Neg group, in preparing an antidegradation rulemaking proposal. That proposal was adopted by the Board as proposed rulemaking at its January 21, 1997, meeting. The proposal appeared at 27 Pa.B. 1459 (March 22, 1997), with provisions for a 60-day public comment period and a public hearing which was held May 7, 1997, in Harrisburg. The public comment period concluded on May 21, 1997.

Nearly 1,700 comments were received on the proposal. Most commentators objected to the proposal as not being stringent enough. Other commentators believed that the proposal was too stringent. In considering all of the comments received on the proposal, it became obvious that the proposal did not have widespread public support. The Department undertook an extensive effort to revise the proposal in the form of an Advance Notice of Final Rulemaking (ANFR) proposal. Notice of the availability of the ANFR appeared at 29 Pa.B. 455 (January 23, 1999) with provisions for a public comment period open until February 22, 1999, and 3 public meetings/hearings in Harrisburg on February 8, 1999; in Conshohocken on February 10, 1999; and in Pittsburgh on February 18, 1999. The Department received 743 public comments on the ANFR. Many commentators were generally supportive of the ANFR. A summary of these comments and responses is discussed in more detail as follows.

The Board has considered all of the public comments received on both its March 22, 1997, rulemaking proposal, and the Department's January 23, 1999, ANFR, in preparing these final-form regulations. These final-form regulations were presented to the Water Resources Advisory Committee (WRAC), and discussed and approved by that group on March 17, 1999. The valuable input from the public and the collective knowledge and experience drawn from numerous stakeholders, committees, groups, advisory committees and others on these proposals has been utilized to craft a regulation which carefully balances the needs of citizens and the regulated community in assuring the protection of this Commonwealth's waters.

The Department will revise its existing implementation guidance for its antidegradation program. The Department will provide opportunities for full public participation during the development of the revisions, including public information meetings and opportunities for public

comments. The Department will work closely with the Department's WRAC to develop the revised implementation guidance to ensure that the Department receives public input on implementation issues such as reference stream selection criteria, procedures for implementing biological and chemical tests, procedures for stream classification determinations when chemistry and biology data are in conflict, and social and economic justification (SEJ). The Department will provide notice concerning the opportunities for public participation in the near future.

The details of these final-form regulations are set forth as follows.

E. Summary of Regulatory Revisions

Section Description of Amendment

§§ 92.81 and 92.83. General NPDES Permits And Inclusion Of Individual Dischargers In General NPDES Permits.

These existing regulatory provisions currently preclude the use of general NPDES permits in HQ and EV Waters. The March 22, 1997, proposal advocated removing the prohibition on the use of NPDES general permits in HQ waters, and proposed retaining the prohibition in EV waters. The same language advocated in the March 22, 1997, proposal was also set forth in a proposed rulemaking to amend Chapter 92 (Water Quality Amendments—Regulatory Basics Initiative (RBI)) which appeared at 28 Pa.B. 4431 (August 29, 1998). Because this issue must be addressed in the RBI rulemaking package, these final-form regulations contain no changes to §§ 92.81 and 92.83.

§ 93.1. Definitions:

The term "Class A Wild Trout Water" is new and is defined as a surface water classified by the Fish and Boat Commission (PFBC) based on species-specific biomass standards which supports a population of naturally produced trout of sufficient size and abundance to produce a long-term and rewarding sport fishery. This definition is drawn from PFBC's Statement of Policy on the term in 58 Pa. Code § 57.8a (relating to Class A wild trout streams) as well as from the "Management of Trout Fisheries in Pennsylvania Waters," 2nd ed., PFBC (5/87). These waters are listed by the PFBC's Fisheries Management Division.

A definition of "coordinated water quality protective measures" (CWQPM) is added. This term is defined as legally binding, sound land use water quality protective measures coupled with an interest in real estate which expressly provide long-term protection of a watershed corridor. The term is used in the regulation in the definition of "outstanding National, State, local or regional resource water." The term "sound land use" protective measures is drawn from the Governor's 21st Century Environment Commission initiative and supports the Governor's January 7, 1999, Executive Order on Land Use Planning (1999-1). The term includes, but is not limited to, measures which expressly provide extraordinary water quality protection such as: surface or ground-water source protection zones, enhanced stormwater management measures, wetland protection zones and other measures which local or regional governments coordinate to adopt along a watershed corridor. To qualify, the local or regional governments shall also obtain real estate interests in property such as conservation easements, or government owned (county or other local or regional) parks or natural areas, or other interests in real property which enhance water quality in a watershed corridor. The term "CWQPM" reflects the emphasis on, and importance

of, the watershed approach to water quality management, as well as intergovernmental cooperation. Local or regional governments who cooperate on a watershed corridor area to take extraordinary sound land use water quality protective measures, and obtain the requisite interests in real property, can request the Department (as an existing use) or the Board (as a designated use) to protect the corridor as an EV Water.

The proposed definition of the term "exceptional value waters" in the March 22, 1997, proposal has been modified in these final-form regulations to include surface waters of HQ which satisfy § 93.4b(b) (relating to qualifying as high quality or exceptional value waters). The qualifying criteria which appeared in the proposed definition are now set forth in § 93.4b(b). To qualify as an EV Water, a water must (except in the case of "surface waters of exceptional ecological significance") first qualify as an HQ water by meeting either the long-term chemistry test in § 93.4b(a)(1), or the biology test in § 93.4b(a)(2). Next, the water must meet one or more of the factors specified in § 93.4b(b)(1)(i)—(vi). The other pathway to qualify as an EV Water involves qualification as "surface waters of exceptional ecological significance;" this pathway does not require the surface water to meet the HQ Water qualifying criteria because it includes waters such as thermal springs, or EV Wetlands under § 105.17(1) (relating to wetlands), which represent outstanding ecological resources but whose water quality is not indicative of its exceptional attributes when measured by traditional chemical or biological measurements applicable to other surface waters.

The proposed definition of "High Quality Waters" tracks the language in the Federal regulation in 40 CFR 131.12(a)(2) by including surface waters having quality which exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. In addition, language is added in these final-form regulations which ties the definition to the qualifying criteria for HQ Waters which is now in § 93.4b(a).

The proposed definition of "natural quality" is eliminated; the term is no longer needed because it is no longer used in these final-form regulations.

A definition of "nonpoint source" is added which provides that nonpoint sources are those pollution sources which are not "point source discharges," as that term is defined in § 93.1 (relating to definitions).

A definition of "outstanding National, State, regional or local resource water" has been added; the term was used in the proposal but was not defined. The term includes two elements: (1) waters for which National or state government agencies have adopted water quality protective measures in a resource management plan; and (2) waters for which regional or local governments have adopted "coordinated water quality protective measures" along a watershed corridor. The term "coordinated water quality protective measures" is defined in § 93.1 and discussed in further detail previously. The outstanding National and State waters which will qualify under this definition include those waters which do not otherwise qualify as National and State resources under § 93.4b(b)(1)(i), (ii) and (vi). The National and State elements of this definition are further fleshed out in a definition of "water quality protective measures in a resource management plan;" the local and regional element of this definition is fleshed out largely in the definition of "coordinated water quality protective measures."

The Commonwealth's definition of the term is broader than the Federal term "outstanding National resource water" in 40 CFR 131.12(a)(3). The Commonwealth protects outstanding State, regional and local resource waters in addition to outstanding National resource waters in this Commonwealth for several reasons. First, whereas the EPA's focus is only on outstanding National waters, the Board believes that there are also outstanding State, regional and local waters which merit EV protection. Second, the Commonwealth's antidegradation program has included outstanding State, regional and local waters for many years in its existing regulations in § 93.3 (definition of "Exceptional Value Waters"), and the Board continues to believe that these outstanding waters are worthy of EV status even though they may not be outstanding National resource waters. This Commonwealth has 83,000 miles of surface waters, more than any other state except Alaska, and to date approximately 1,700 miles, or less than 2% of these waters, have been classified as EV waters. This percentage is not expected to change markedly under these regulations since these final-form regulations merely continue the existing inclusion of these waters as EV Waters.

A definition of "point source discharge" is added which refers to sources regulated under the Department's NPDES regulations in Chapter 92 (relating to National Pollutant Discharge Elimination System).

The term "State Game propagation and protection area" is new and is defined as an area established by the Pennsylvania Game Commission (PGC) for the propagation and protection of game and wildlife wherein game or wildlife may not be hunted, pursued, disturbed, molested, killed or taken at any time except as authorized by the PGC. The term derives from the use of the term in 34 Pa.C.S. § 728(a) (relating to propagation areas).

A definition of "surface water of exceptional ecological significance" is added. This term provides EV protection for a surface water which is important, unique or sensitive ecologically, but whose water quality as measured by traditional parameters may not be particularly high, or whose character cannot be adequately described by these parameters. These waters include: (1) thermal springs; and (2) EV wetlands defined under § 105.17(1). The need for the term derives from: (1) the preamble to the EPA's antidegradation regulation at 48 FR 51403 (November 8, 1983); (2) the EPA "Water Quality Standards Handbook" (2nd Ed. August, 1994), Chapter 4, Section 4.7; and (3) the EPA's latest pronouncement on the issue in its advanced notice of proposed rulemaking to amend the water quality standards program in 40 CFR Part 131, See 63 FR 36786 (July 7, 1998).

A definition of "surface water of exceptional recreational significance" is added. This definition provides for EV protection for a surface water with HQ attributes or better which provides a water-based, water quality-dependent recreational opportunity because there are only a limited number of naturally occurring areas and waterbodies across this Commonwealth when the activity is available or feasible. Examples of these waters include waters with HQ attributes or better which provide recreational opportunities such as fishing for species with limited distribution.

The definition of "surface waters" from the March, 1997 proposal is deleted from this rulemaking because it was finalized through other amendments to the Department's water quality standards regulations, see 27 Pa. B. 6799 (December 27, 1997), and is contained in § 93.1.

A new definition of "water quality protective measures in a resource management plan" is added which provides that for outstanding National and State waters to qualify as EV Waters, the water shall be the beneficiary of measures in a State or Federally adopted resource management plan which expressly provide extraordinary long-term water quality protection of a watershed corridor. The definition incorporates the Department's existing procedures for National and State waters qualifying for EV status. Examples of these measures include surface or groundwater source protection zones, enhanced stormwater management measures and wetland protection zones.

A definition of "wilderness trout stream" is added. The term is defined as a surface water designated by the PFBC to protect and promote native trout fisheries and maintain and enhance wilderness aesthetics and ecological requirements necessary for the natural reproduction of trout. The definition is based upon PFBC's statement of policy codified in 58 Pa. Code § 57.4 (relating to wilderness trout streams) and the PFBC statement of policy on "Wilderness Trout Streams," 400-17-69 (Rev. 1/71).

§ 93.3. *Protected Water Uses.* The Board has withdrawn its proposal to remove HQ and EV as protected uses. In light of this change, § 93.3 is amended by leaving the HQ and EV categories as uses, but removing the definitions of the terms. The definitions of the terms are now contained in § 93.1.

§ 93.4. *Statewide Water Uses.* Subsection (c) is finalized as proposed by deleting the words "under subsection (b)" to make clear that in no case may waters be redesignated to less restrictive uses than existing uses.

Subsection (d) is finalized as proposed by deleting provisions for the protection of existing uses and placing them elsewhere in a revised form in §§ 93.4a and 93.4c (relating to antidegradation; and implementation of antidegradation requirements).

§ 93.4a. *Antidegradation.* The title of this section is now "Antidegradation"; the section sets forth the scope of antidegradation protection as well as the levels of protection provided. Subsection (a) sets forth the scope of antidegradation as applicable to all surface waters of this Commonwealth. Subsection (b) provides that instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. This language is identical to the Federal antidegradation language in 40 CFR 131.12(a)(1) for existing uses. Subsection (c) provides that the water quality of HQ Waters shall be maintained and protected, except when SEJ is granted under § 93.4c(b)(1)(iii). Again, this language is identical to the Federal antidegradation standard of ensuring that Tier 2 waters (Federal equivalent of HQ) shall be "maintained and protected." Subsection (d) provides that the water quality of EV waters shall be "maintained and protected." This standard of protection is exactly the same as that provided in the Federal antidegradation regulation in 40 CFR 131.12(a)(3), though this Commonwealth's scope of waters protected as EV Waters is broader than the Federal Outstanding National Resource Water (ONRW) classification since the Commonwealth also protects outstanding State, regional and local waters in addition to outstanding National resource waters.

§ 93.4b. *Qualifying as HQ or EV Waters.* The proposed § 93.4b is deleted in its entirety and replaced with language which specifies the criteria for qualifying as an

HQ or EV water. Subsection (a) provides that a surface water qualifies as an HQ water if it meets one or more of the following: (1) a chemistry test; or (2) a biology test.

The Chemistry Test (HQ). To qualify under the chemistry test, the water must have at least 1 year of water quality data which exceeds levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water by being better than the enumerated water quality criteria at least 99% of the time. The Board has chosen a long-term chemistry test because it believes that this test provides the appropriate picture of the water quality of a surface water. The chemical criteria utilized are: dissolved oxygen, temperature, aluminum, pH, iron, dissolved copper, dissolved arsenic, dissolved lead, dissolved nickel, dissolved cadmium, ammonia nitrogen and dissolved zinc. These chemicals are naturally occurring aquatic life substances which have impacts and provide an excellent representation of water quality when used on a long-term basis. The list of chemicals, when reviewed on a long-term basis, tells the "story" of the quality of the stream. Chemicals which were proposed but were not included in these final-form regulation are: nitrate plus nitrogen, manganese, sulfate and total dissolved solids. These chemicals were not included in this final-form regulation because they are designed to protect potable water supply (human health) uses, and therefore are not appropriate for the fish and aquatic life uses specified in the Federal regulation in 40 CFR 131.12(a)(2) and in this section. Additional language in subsection (a)(1) provides that the Department may consider additional chemical or toxicity information in making its determination. The "additional chemical" language does not supplant the long-term chemistry test, but can be considered, on a case-by-case basis, based upon the judgment of field biologists and others familiar with water quality and potential pollutional concerns in the area of the sampled site.

The Biology Test (HQ and EV). To qualify under the biology test, a water must meet one or more of: (1) a biological assessment which indicates HQ Water conditions; or (2) a Class A Wild Trout Stream designated by the PFBC after public notice and comment. The biological methodologies specified in the regulation are based on the EPA's Rapid Bioassessment Protocols (RBP) and have undergone extensive peer review and testing. The specific percentages used in surface water classifications have been added in response to comment to provide a more objective basis for these classifications; the benthic macroinvertebrate integrated metric score of 83% of the reference stream or watershed has been in use since 1992. It has been thoroughly tested by the Department and it distinguishes between average streams and those deserving of Special Protection status. Moreover, the 92% score for EV was determined through best professional judgment, to reflect EV Waters from a biological perspective. Experience with this number since 1992 has proven that it has reflected outstanding waters of ecological significance. The Board also believes the biological selection criteria for HQ and EV Waters will assure that streams deserving Special Protection qualify. HQ Waters must possess water quality better than that needed to support propagation of fish, shellfish, and wildlife and recreation in and on the water. EV Waters must first meet the HQ requirements and then qualify under one of several criteria to merit an "outstanding" designation, worthy of the best streams in this Commonwealth, except for waters of "exceptional ecological significance," whose true ecological value is generally not measured by traditional water quality parameters.

These final-form regulations further allow the Department to use widely accepted and published peer-reviewed biological assessment procedures as science in this area advances. The Department, in cooperation with the PFBC, is currently developing fish metrics and a fishery based Index of Biotic Integrity (IBI) for waters in this Commonwealth. Fishery data is currently being collected by both agencies. It will take a few years to establish a database. Once the fish metrics and IBI are finalized, the Department intends to incorporate them as selection criteria, subject to public review and comment. Additional language provides that the Department may consider additional biological information in making its determination. This information will be considered, on a case-by-case basis, based upon the judgment of field biologists and others familiar with water quality and potential pollutional concerns in the area of the sampled site.

To qualify as a Class A Wild Trout Water, the water must first be classified by the PFBC as such. Next, the Department will look at the data underlying the PFBC decision, and then make a final determination.

Concerns were raised during the public comment period regarding the Board's decision to rely on either the chemistry or biology test, but not both, for establishing the appropriate stream classification. Because of the importance of ensuring proper stream classifications, the Department recognizes that the implementation guidance must include the procedures that the Department will use to determine the proper classification of a stream when chemistry and biology data are in conflict. The Department also recognizes that selection of the appropriate reference stream is important to the valid use of the RBP. These issues will be specifically addressed in the implementation guidance to be developed in consultation with the WRAC.

Qualifying as an EV Water. Section 93.4b(b) sets forth the requirements for qualifying as an EV Water. To qualify as an EV Water, a water must (except in the case of "Surface Waters of Exceptional Ecological Significance") first qualify as an HQ Water by meeting either the long-term chemistry test in § 93.4b(a)(1), or the biology test in § 93.4b(a)(2). Next, the water must meet one or more of the factors specified in § 93.4b(1)(i)–(vi) which include location in: a National Wildlife Refuge, a State Game Propagation and Protection Area, a State Park Natural Area or State Forest Natural Area, a National Natural Landmark, Federal or State Wild River, Federal Wilderness Area or National Recreation Area; qualification as an outstanding National, State, regional or local resource water; qualification as a "surface water of exceptional recreational significance"; qualification under a 92% RBP biology measure; or designation as a Wilderness Trout Stream by the PFBC. The other pathway to qualify as an EV water involves qualification as "surface waters of exceptional ecological significance;" this pathway does not require HQ water quality since it includes waters such as thermal springs, or EV Wetlands under § 105.17(1) (relating to wetlands), which represent outstanding ecological resources but whose water quality is not indicative of its exceptional attributes when measured by traditional chemical or biological measurements.

§ 93.4c. Implementation of Antidegradation Requirements. The proposed § 93.4c, which addressed issues related to EV Waters, is replaced by new language which sets forth specific implementation requirements for the antidegradation program.

Existing Use Protection. Subsection (a) codifies the Department's existing policy and procedures for the pro-

tection of existing uses which have been undertaken in response to implementing the Federal antidegradation regulation promulgated for the Commonwealth in 40 CFR 131.12(a)(1). Subsection (a)(1)(i) provides that existing use protection is provided when the Department's evaluation of information indicates that a surface water attains or has attained an existing use. This language codifies the Department's policy of protecting surface waters based on the best available information regarding a water. Subsection (a)(1)(ii) sets forth a requirement that the Department notify persons who apply for a Department permit or Department approval which may impact a surface water of the results of any evaluation of information undertaken under subsection (a)(1)(i). Subsection (a)(1)(iii) allows interested persons, including the person applying for the Department permit or approval, to provide additional information during the permit or approval review process regarding the existing use of the surface water. Finally, subsection (a)(1)(iv) provides that the Department will make a final determination of the existing use of a surface water at the time it takes an action on the request for a permit or other Department approval; persons aggrieved by the final permit or approval action of the Department can generally challenge the action, including the existing use determination of the surface water, by filing an appeal with the Environmental Hearing Board (EHB). Section (a)(1) ensures the protection of surface waters of this Commonwealth based on the best available information, and ensures that interested persons can provide this information during the public comment period when any permits or approvals are sought. Subsection (a)(2) provides existing use protection for endangered species. The language of this paragraph provides that the Department will ensure the protection of Pennsylvania or Federal threatened and endangered species and their critical habitat if it has confirmed the presence, critical habitat or critical dependence of these species in or on a surface water.

Point Source Discharges Into HQ or EV Waters. Subsection (b)(1) provides special provisions for point source discharges into HQ or EV Waters. Subsection (b)(1)(i)(A) and (B) refine the existing requirement in § 95.1(c) (relating to general requirements) that a person proposing a new, additional or increased discharge to an HQ or EV Water shall evaluate nondischarge alternatives to the discharge and utilize them if they are both environmentally sound and cost-effective. If a nondischarge alternative is not environmentally sound and cost-effective, the person proposing the new, additional or increased discharge shall use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies. Additionally, under subsection (b)(1)(i)(B) a person who demonstrates that no cost-effective and environmentally sound alternative exists shall demonstrate that the discharge will maintain and protect existing quality of receiving surface waters, unless the discharger can obtain SEJ for a discharge to an HQ Water under subsection (b)(1)(iii) in which case no demonstration is required.

Public Participation Requirements for Discharges To HQ or EV Waters. Subsection (b)(1)(ii)(A) provides that the Department will hold a public hearing on a proposed new, additional or increased discharge to EV Waters when requested by an interested person during the public comment period on the proposed discharge. This language modifies the existing requirement in § 95.1(c) which requires that a public hearing be held for every discharge to an EV Water. This requirement has proved administratively burdensome because there have been many dis-

charges proposed to EV Waters when no person has expressed interest, yet a public hearing, with a court reporter, had to be held. The new language ensures that if there is no interest, no hearing need be held; when there is interest, a hearing will be held. This does not mean that every request will result in a hearing. For example, a neighboring property owner who requests a hearing is an interested party, whereas a lone comment from far outside the watershed expressing interest in the proposed discharge and requesting a hearing may not necessarily be that of an "interested" person. Subsection (b)(1)(ii)(B) adds a requirement that an applicant for a new or increased point source discharge in HQ or EV Waters shall note the antidegradation classification of HQ or EV in its public notice of complete application required under § 92.61(a) (relating to public notice of permit application and public hearing).

SEJ in HQ Waters. Subsection (b)(1)(iii) tracks the Federal language in 40 CFR 131.12(a)(2) which allows discharges which degrade the quality of an HQ Water if a proposed discharger demonstrates that the proposed discharge is necessary to accommodate important economic or social developments in the area in which the water is located. In addition, a sentence is added providing that even if a discharger obtains SEJ, it must still attain all applicable water uses (that is, those other than HQ and EV) for its discharge. The Board has removed language from the proposed SEJ test which had provided that the social or economic benefits must "outweigh any water quality degradation which the proposed discharge is expected to cause." This language was intended to provide a "balancing" test, and was criticized as being beyond the scope of the Federal SEJ. In addition, Federal guidance provides that the provision is intended to provide relief only in a few extraordinary circumstances when the economic and social need for the activity clearly outweighs the benefit of maintaining water quality above that required for "fishable/swimmable" waters, and the two cannot both be achieved (EPA's *Questions and Answers on: Antidegradation*, question 17, page 7, August 1985). The Board believes that the word "important," which is not currently in the Department's existing SEJ regulation in § 95.1(b), adds a "balancing" element, and provides authority to enable the Department to perform a balancing test and address the decision in *Big B Mining Co. v. DER*, 1987 EHB 815 (1987) aff'd *Commonwealth of Pennsylvania, Department of Environmental Resources v. Big B Mining Co.*, 123 Pa. Cmwlth. 591, 554 A.2d 1002 (1989) on the Department's authority to balance. In that case, the EHB invited the Board to change its regulations to include a balancing test when it stated that: "[I]f the EQB had intended a balancing test within § 95.1(b)(1), it could have easily included the appropriate words." *Id.* at 853. The Board does so now.

The Department will work with the WRAC to develop appropriate implementation guidance for evaluating and approving the social and economic justification for discharges to high quality waters under these regulations.

Nonpoint Source Control. Subsection (b)(2) provides that the Department will assure that cost-effective and reasonable best management practices (BMPs) for nonpoint source control shall be achieved. This language tracks the Federal language in 40 CFR 131.12(a)(2), and is somewhat different than the nonpoint source language which was contained in the March 22, 1997, proposal in § 93.4d(b) (relating to processing of petitions, evaluations and assessment to change a designated use). The language was changed to more closely match the Federal language in response to concerns raised by the EPA,

among others, that the language was not acceptable. Existing requirements in Chapters 102 and 105 (relating to erosion control; and dam safety and waterway management), the Nutrient Management Act (3 P. S. §§ 1701—1718) and the Manure Management Program, among others, will continue to govern for nonpoint sources. There are no new or additional requirements in the ANFR regarding nonpoint sources in HQ or EV Waters; these sources must continue to implement cost-effective and reasonable BMPs as in existing State regulations.

Special Provisions for Sewage Discharges to HQ Waters. Subsection (c)(1) is a streamlined version of the language in the proposal in § 93.4b(e). This provision specifies that proponents of new, additional or increased sewage discharges in HQ Waters shall include an SEJ analysis as part of its proposed revision to the official municipal sewage facilities plan under Chapter 71 (relating to administration of sewage facilities planning program). The Department's determination of SEJ at the sewage facilities planning stage will constitute SEJ at the NPDES stage unless there is a material change in the project or law between sewage facilities planning and NPDES permitting, in which case sewage facilities planning shall be recommenced. This language eliminates the current duplicative nature of SEJ with regard to sewage dischargers; the dischargers had to complete an SEJ analysis at both the sewage facilities planning stage and the NPDES stage; this was burdensome, with no environmental benefit. The SEJ for sewage facilities is now consolidated.

SEJ for Sewage Facilities in HQ Waters Correcting Existing Public Health or Pollution Hazards. Subsection (c)(2) provides for a streamlined SEJ where a sewage facility which does not have an environmentally sound and cost-effective discharge alternative is designed for the purpose of correcting existing public health or pollution hazards documented by the Department and approved as part of an official sewage facilities plan revision under § 71.32 (relating to Department responsibility to review and act upon official plans). An existing public health or pollution hazard is a situation where there is documented evidence that existing wastewater disposal and pollution control measures either do not currently exist or are no longer functioning in a satisfactory manner, thereby creating a public health or pollution threat. The most common type of hazard usually encountered by the Department in HQ Watersheds is failing onlot sewage disposal systems. Section 93.4c(c)(2) are restricted to sewage facilities, because in these cases the only practicable method of resolving the public health and pollution hazard may be the construction of centralized sewage disposal plants. Moreover, sewage facilities planning is a public process with extensive local and public involvement.

Public Participation Requirements For Official Sewage Facilities Plans in HQ or EV Waters. Subsection (c)(3) provides that proponents of sewage facilities in HQ or EV Waters who are seeking an approval of an official sewage facilities plan or revision shall comply with the public participation requirements in § 71.53(d)(6) (relating to municipal administration of new land development planning requirements for revisions).

§ 93.4d. Processing of Petitions, Evaluations and Assessments to Change a Designated Use. The proposed § 93.4d was replaced by language which sets forth requirements for public participation and the processing of petitions, evaluations and assessments to change a designated use. Designated use changes are made by the

Board through rulemaking; existing uses reflect the use based on the best available information and are evaluated by the Department in the context of a request for a Department permit or Department approval under § 93.4c(a). The public participation and procedural requirements for changing a designated use are described as follows:

Public Notice of Receipt of Evaluation, or Assessment of Waters, for HQ or EV Waters Redesignation. Subsection (a) specifies that the Department will publish in the *Pennsylvania Bulletin* and in a local newspaper of general circulation notice of a receipt of either: (1) a complete surface water evaluation which has been accepted by the Board and is recommending an HQ or EV redesignation; or (2) the Department's intent to assess a surface water for potential redesignation as an HQ or EV Water. The evaluation is an analysis of the surface water in a locale which can be conducted by any person under Department assessment protocols, including quality assurance/quality control (QA/QC). Both types of notices will request submission of information concerning the water quality of waters subject to the evaluation, or to be assessed, to be used by the Department to supplement any studies which have been performed. Both types of notice will be sent by the Department to all municipalities containing waters subject to the evaluation or assessment.

Combined Public Meeting and Fact-Finding Hearing. Subsection (b) provides that the Department may hold a combined public meeting and fact finding hearing as part of its review of an evaluation or performance of an assessment, to discuss the evaluation or assessment. The meeting/hearing may involve discussion of the methodology for the evaluation or assessment, and may solicit information, including technical data, to be considered in the Department's evaluation or assessment.

Submission to Board to Alter Designated Use. Subsection (c) provides that, upon the completion of its assessment, or review of an evaluation, and the satisfaction of other applicable requirements of this section, the Department will submit the results of its assessment, or review of the submitted evaluation, to the Board for proposed rulemaking. If a person is petitioning the Board to change the designated use, the Department's submission to the Board will occur only after the petitioner has had the opportunity to review and comment on the Department's assessment or review of submitted evaluation, in accordance with the Board's petition policy which is codified in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy).

§ 93.4e. *Public Participation in HQ and EV Waters.* The proposed § 93.4e has been modified and integrated into other sections of the final rule.

§ 93.7. *Specific Water Quality Criteria.* Table 5 was proposed to be revised to delete HQ and EV Waters as protected uses, with the addition of a new Table 5a to contain the specific criteria for the antidegradation categories. These proposed changes have not been made at final rulemaking in light of the Board's decision to retain HQ and EV Waters as protected uses.

§§ 93.9a—93.9z. *Drainage lists.* The drainage lists were proposed to be amended to delete "HQ" and "EV" from the Water Uses Protected Column and instead list the designated use (WWF, CWF, TSF, etc.). EV Waters and HQ Waters were proposed to be listed in a new column in the drainage lists. These proposed changes have not been made in this final-form rulemaking in light of the Board's decision to retain HQ and EV Waters as protected uses.

§ 95.1. *General Requirements.* The proposed revisions to subsection (a) are modified to refer to the antidegradation requirements under §§ 93.4a—93.4d, to reflect the retooling of the proposal which had contained a proposed § 93.4e. Subsections (b)—(d) are deleted as was proposed. It should be noted that § 95.1 was also proposed to be amended in a regulatory proposal (Water Quality Amendments—RBI) which was published at 28 Pa.B. 4431 (August 29, 1998).

F. *Summary of Comments and Responses on the Proposed Rulemaking.*

The Department received nearly 1,700 comments on the March 22, 1997, proposal. The major areas of comment, and the Department's response, are summarized as follows. Many commentators objected to the proposal as not being sufficiently protective, noting, among other things, that it: (1) proposed the deletion of HQ and EV Waters as protected uses; (2) required that both a chemistry and biology element be satisfied to qualify as an HQ or EV Water; (3) regulated only discharges, not all activities in HQ and EV Waters; (4) allowed for a de minimis "off ramp" to the SEJ process for certain proposed discharges to HQ Waters; (5) allowed for National Pollutant Discharge Elimination System (NPDES) General Permits in HQ Waters; (6) did not provide sufficient protection for endangered species; (7) did not provide adequate protection for nonpoint source impacts; (8) failed to prohibit all impacts to EV Waters; (9) lessened public hearing requirements for discharges to EV Waters; (10) did not provide for adequate public participation with regard to proposed activities which may impact HQ or EV Waters; and (11) failed to adequately provide a process for protecting existing uses. Other commentators believed that the proposal was too stringent in that it: (1) contained balancing language beyond the scope of the equivalent Federal regulation which requires the balancing of social or economic considerations against the environmental degradation a proposed discharge to HQ Waters would result in; (2) allowed for imprecise general considerations of grab sample chemistry in making HQ and EV determinations; (3) allowed for the classification of outstanding local or regional waters as EV Waters, beyond the scope of the Federal program; (4) contained subjective terminology such as "ecological or recreational significance" which did not contain objective criteria for decision making in regard to classification of a water; (5) did not provide for notification of landowners riparian to EV and HQ Waters; (6) did not provide for adequate public participation in the stream designation process; and (7) did not allow for the use of NPDES general permits in EV Waters.

General Comments. Many commentators suggested that the Department should simply track the language of the Federal antidegradation regulation in 40 CFR 131.12 because it is assertedly more protective than the proposal. In response, the Department has altered several areas of the proposal on final rulemaking to be consistent with the Federal regulation. Moreover, because the antidegradation program in this Commonwealth is implemented by the Commonwealth, not the EPA, the Board believes that it is sound public policy to expand the minimum legal language of the Federal antidegradation regulation and set forth specific implementation provisions. Over 20 years of experience implementing the antidegradation program in this Commonwealth, as well as the input of the public, stakeholders groups, advisory committees and others have provided a more complete means to address the specific needs of Commonwealth citizens.

Another comment requested the term "surface waters" be replaced by the term "watersheds" to emphasize the Department's watershed approach. In response, the Board believes that watersheds are contained in the term "surface waters." Stream classifications will continue to be made on a basin basis. Moreover, the Department has emphasized the watershed approach and the recommendations of the 21st Century Environment Commission in several ways in this regulation, most notably in the definition of "coordinated water quality protective measures," which provides for the protection of watershed corridors as EV Waters where local or regional governments have adopted sound land use water quality protective measures in waters which have the water quality of HQ waters or higher.

HQ/EV Waters as Uses. Many commentators objected to the proposal to eliminate the HQ and EV use categories as protected uses, fearing that these waters would not be protected outside of a use classification scheme, and that waters already classified as HQ or EV would lose their protected status. In response, the Board has decided to maintain HQ and EV Waters as uses. This approach has been in place since 1978 and has proved workable since it integrates antidegradation management categories into the water quality standards program. The existing quality of HQ and EV Waters must be protected regardless of whether the waters are protected uses or not. Moreover, it is less confusing for the public and easier for the Department from a programmatic and administrative viewpoint to include HQ and EV Waters along with all other listed waters in the drainage lists in §§ 93.9a—93.9z rather than to separate them. The retention of uses for HQ and EV Waters was supported by a majority of persons commenting on the proposal.

Chemical/Biological Qualifying Methodology. Many comments were received on the chemical and biological tests for ascertaining whether a water qualifies for HQ or EV protection. The primary objection to the proposal was that the Board was requiring that a water meet both a chemistry and biology test. Others objected that the use of the language "generally" in the chemical test was vague, and that the specific percentages used in the biological test should be provided. In response, the Board has revised the chemical and biological qualifying criteria to provide that either a chemistry or biology test can qualify a water as HQ. To ensure that the chemistry test is sound, the Board has adopted a long-term chemistry test which requires at least 1 year of data, as opposed to the grab sample test which was proposed. Moreover, the Board has provided more certainty to the chemistry test by eliminating the term "generally" and specifically enumerating the chemical factors which will be considered in ascertaining whether a water is an HQ Water. Finally, the specific percentages which qualify a water for HQ (83%) or EV (92%) under the biology test have been specifically enumerated in these final-form regulations. These methodologies were discussed in more detail previously.

Scope of Protection. Several comments stated that the antidegradation regulations need to address not only discharges, but other activities which may impact surface waters. In response, the language requiring the protection of existing uses has been amended, consistent with Federal regulations, to be implemented during the review of an application for a Department permit or Department approval. The Department requires that all existing uses be maintained and protected. This protection occurs during the evaluation of an application for a Department permit or approval which could impact a surface water. By linking the regulation of activities requiring Depart-

ment permits or approvals to existing use protection, all categories of uses (including HQ and EV) receive this protection. This language is needed to address comments from the EPA (and others).

De Minimis "Off Ramp" to SEJ. Several comments criticized the proposed 25% of assimilation capacity "off-ramp" to SEJ as not being sufficiently protective of water quality in HQ Waters. In response to comments, the language allowing for a de minimis off-ramp to SEJ for certain small impact dischargers has been deleted from the final rulemaking.

NPDES General Permits in HQ/EV Waters. Several comments expressed the view that NPDES general permits should not be allowed in HQ Waters; other comments believed that general permits should be able to be utilized in EV Waters as well as HQ Waters. As part of its RBI proposed revisions to Chapter 92 (see 28 Pa.B. 4431), the Board also proposed allowing the use of general NPDES permits in HQ Watersheds. The Board received a substantial number of comments on that proposal and must address those comments in that rulemaking package.

Endangered and Threatened Species Protection. Several commentators believed that the proposed language which provided for the Department to limit mixing areas of discharges to protect aquatic threatened and endangered species identified in the Pennsylvania Natural Diversity Index (PNDI) was insufficient because it fails to address all activities, it only addresses aquatic species, and the PNDI does not include all threatened and endangered species. In response, the Board has reworked the language of § 93.4c(a)(2) to provide that if the Department confirms the presence, critical habitat or critical dependence of endangered or threatened species in a surface water, it will ensure protection of the species and critical habitat. The language relating to "discharges" has been deleted; existing use protection applies to activities requiring Department permits or approvals. Moreover, the qualifier "aquatic" was removed, as were references to the PNDI.

Nonpoint Sources. Several comments asserted that the nonpoint source protection language in the proposal was not as stringent as the Federal language. In response, the final-form regulations require the Department to assure that cost-effective and reasonable BMPs for nonpoint source control be achieved. This requirement tracks language in the Federal regulation in 40 CFR 131.12(a)(2). Existing requirements in Chapters 102 and 105, the Nutrient Management Act and the Manure Management Program will continue to govern. There are no new or additional requirements regarding nonpoint sources.

Prohibition of Activities/Discharges to EV Waters. Several commentators believe that the Board should prohibit all new activities, including new discharges, into EV Waters. In response, the Department mirrors the Federal regulation in 40 CFR 131.12(a)(3) by providing that the existing quality of EV Waters be "maintained and protected." The Board believes that an outright prohibition on regulated activities (including new discharges) in EV Waters would be unduly restrictive of economic development; careful economic development is compatible with excellent water quality so long as the development can ensure no degradation of water quality. Many activities (including point source discharges from construction activities, and new discharges from quarries) have been authorized in EV Waters which have demonstrated that economic development and clean water are not mutually exclusive.

Public Participation for Discharges Which Could Impact HQ or EV Waters. Several comments questioned the need for an additional prepermit 30-day public comment period prior to the submission by an applicant of an application to discharge wastes into Commonwealth waters; others questioned whether the public participation provided for these activities was adequate. In response, the Board has eliminated the prepermit 30-day comment period; this additional public comment period was seen as redundant, and would result in additional paperwork and expense in the permit process. Additional public information and input possibilities are provided in the form of a public hearing requirement for discharges to EV Waters, when requested, as well as a requirement that public notices for discharge permits contain language noting the antidegradation classification of the receiving water.

Existing Use Protection. Several comments questioned the proposed process for existing use protection, stating that the requirement that existing uses not be protected until the Department evaluates technical data is inappropriate to protect existing uses. In response, language is added in § 93.4a(b) which is identical to the Federal language for existing use protection in 40 CFR 131.12(a)(1). Moreover, the amended language of the final-form regulations in § 93.4c(a) provides a procedure for existing use protection; existing use protection is provided by the Department based upon the best available information for a waterbody. The final existing use determination is made in the context of a Department permit or approval action. That action includes the opportunity for the public and the person seeking to conduct the activity requiring the permit or approval to provide water quality information.

SEJ "Balancing" Language. Several comments questioned the need for SEJ language in the proposal which provided that dischargers shall demonstrate that the SEJ for their proposed discharge into HQ Waters must outweigh the proposed environmental degradation from the discharge. The Board has removed the phrase "which outweigh any water quality degradation which the proposed discharge is expected to cause" because it is beyond that contained in the relevant Federal language in 40 CFR 131.12(a)(2) and is not necessary. The term "important" in "important economic or social development" provides sufficient authority to conduct a balancing test which balances the social or economic benefits of a proposed discharge against any water quality degradation the discharge is expected to cause.

Outstanding "State, Regional or Local" Resource Waters. Several comments expressed that the scope of EV waters should be "outstanding National resource waters," which is the scope of the Federal regulation in 40 CFR 131.12(a)(3). The Board's EV Waters definition is broader than EPA's Tier 3 definition. The Commonwealth also protects outstanding State, regional and local resource waters. First, whereas the EPA's focus is only on outstanding National waters, the Board believes that there are also outstanding State, regional and local waters which merit EV protection. Second, the Commonwealth's antidegradation program has included outstanding State, regional and local waters for many years in its existing § 93.3, and the Board continues to believe that outstanding waters are worthy of EV status even though they may not be outstanding National resource waters. This Commonwealth has 83,000 miles of surface waters, more than any other state except Alaska, and to date approximately 1,700 miles, or less than 2% of these waters, have been classified as EV Waters. This percentage is not expected

to change markedly under these regulations since these final regulations merely continue the existing inclusion of these waters as EV Waters.

Terminology/Subjectivity in the Classification of HQ/EV Waters. Several commentators believed that the criteria utilized for defining an EV Water in the proposal, particularly the phrase "other waters of exceptional recreational or ecological significance," was unduly subjective. In response to the comments, the Board has added more objectivity to the regulations by specifically laying out the biological qualifying criteria in more detail (that is, 83% of macroinvertebrate populations of excellent reference waters to qualify as an HQ Water under the biology test), adding several new definitions of terms such as "coordinated water quality protective measures," "outstanding National, State, regional or local resource water," "surface water of exceptional ecological significance," and "surface water of exceptional recreational significance" and specifically enumerating categories of National and State waters which, when accompanied by water quality which qualifies a water as HQ, qualify the water for EV protection. All these changes were designed to provide more objective criteria. Other measures which have been taken, such as deleting the word "generally" from the chemistry qualifying criteria for HQ, and the more precise laying out of criteria for HQ and EV, as well as specific procedures for existing use protection, also provide more objectivity in these final-form regulations.

Landowner Notification of Assessments for HQ/EV Status. Several comments suggested that either the Department, or the proponent of a petition to upgrade a water to HQ or EV status, should be required to notify all landowners in the watershed. In response, although the Department believes that public notification is appropriate, having petitioners or the Department try to search and send individual certified letters to each landowner in a watershed is onerous and burdensome and still may not reach everyone. The Department believes more workable and effective notification options include placing notices in local newspapers within the watershed, public service announcements on local radio or television, and working with municipalities to assist in the notification of the potentially affected local citizens, including landowners.

Adequate Public Participation in the Stream Designation Process. Several comments noted that there were not adequate opportunities for public input in the Board's redesignation of surface waters to HQ or EV status. In response, the Board has modified the proposal to expand public participation requirements. Section 93.4d(a) requires the Department to publish notices of intent to assess a water for potential HQ or EV designation in both the *Pennsylvania Bulletin* and local newspapers. In addition, a notice is also required when a completed evaluation is accepted by the Board. The Department will also notify municipalities in the affected watershed. These notices will request submittal of additional information for use by the Department. Section 93.4d(b) further provides for combined public meeting and fact-finding hearings to discuss the assessment or evaluation and solicit additional data.

G. ANFR

After considering all of the comments received on the proposal, the Department undertook an extensive effort to recraft the proposal in the form of an ANFR proposal, to seek additional public input. The Department developed the ANFR in a multistage process. First, a conceptual description of the ANFR was discussed at several outreach meetings with various stakeholder groups. Next,

the conceptual ANFR was discussed with several advisory groups including the Citizen's Advisory Council (CAC), the WRAC and the Reg Neg group. The input from the stakeholders and the advisory committees was utilized in the development of a formal proposal. Notice of the availability of the ANFR appeared at 29 Pa.B. 455 with provisions for a public comment period which remained open until February 22, 1999. In addition, three public meetings/hearings were held at the following sites and dates: Harrisburg on February 8, 1999; Conshohocken on February 10, 1999; and Pittsburgh on February 18, 1999. The formal proposal was also discussed with the Agricultural Advisory Board (AAB).

The Department received 743 public comments on the ANFR. Many commentators were generally supportive of the ANFR. Several comments addressed issues such as: (1) landowner notification of stream upgrades; (2) SEJ issues such as whether the regulation should contain language "balancing" social or economic justification against environmental degradation; how extensive should the regulation be with regard to spelling out the factors for analyzing SEJ requests; expanding terms such as "existing public health or pollution hazard" and "cost effective and environmentally sound"; and whether the "automatic" SEJ process for sewage facilities with existing public health or pollution hazards should be applied to industrial activities as well; (3) the appropriate chemical and biological methodology for ascertaining HQ and EV stream classifications; (4) whether the regulation should be limited to discharges or apply to more activities; (5) the appropriate language for protecting threatened and endangered species; (6) whether EV and HQ should be protected as uses; (7) the appropriate public hearing requirements for discharges in EV Waters; (8) the use of NPDES general permits in HQ and EV Waters; (9) the appropriate factors and methodology for EV Waters classifications, including where social and economic factors and information should be considered; and (10) the impact of these regulations on agricultural activities and other land uses. These comments are addressed in more detail as follows, except to the extent they are already addressed in Section E or F of this Preamble.

SEJ Issues. Several comments addressed various issues with SEJ terminology and implementation. In response, the Board has adopted the Federal SEJ language in 40 CFR 131.12(a)(2) as the Commonwealth's SEJ language. As such, the Department will look to Federal SEJ guidance on the terminology and its implementation; the guidance will be considered and appropriately tailored to meet the needs of Pennsylvanians.

Public Hearing Requirements for Discharges to EV Waters. Several comments expressed concern with the ANFR proposal to remove mandatory public hearing requirements for proposed discharges to EV Waters. The Board has added language, in response to the comments, which provides that a public hearing will be held on a proposed discharge to EV Waters when requested by an interested person. This language replaces § 95.1(c) which requires mandatory public hearings for all discharges to EV Waters, regardless of public interest. Numerous hearings have been scheduled and held with the expense of Department staff time and court reporters, and no testimony given. The new language assures that hearings are held when requested, while eliminating the necessity for holding a hearing when there is no public interest.

Social and Economic Impacts in Stream Classifications. Several comments requested that the Department consider the social and economic impacts of a stream classifi-

cation during the stream assessment process. In response, the CWA precludes States from considering economic or social factors in developing water quality standards (including water uses and water quality criteria).

Impact of Stream Classifications on Land Uses. Several comments suggested that the antidegradation regulations will impact the ability of farmers to continue farming, and developers and builders to develop their property in areas near HQ/EV streams, and that these regulations may constitute a "taking" of their property rights. In response, Department regulations, including these final-form regulations, are drafted mindful of the takings provisions of the United States and Pennsylvania Constitutions. These final-form regulations represent a reasonable exercise of the Commonwealth's police powers and do not in any way prohibit all economically viable uses of a property owner based on the property owner's reasonable investment-backed expectations. The final-form regulations do not affect the right to dispose of private property, and instead provide protection to this Commonwealth's best waters. Experience has shown that numerous discharge permits have been granted for discharges to HQ and EV Waters. Moreover, there are no new or additional requirements in these final-form regulations regarding farms in HQ or EV Waters; these final-form regulations require the Department to assure that cost-effective and reasonable BMPs for nonpoint source control be achieved. This requirement tracks language in the Federal regulation in 40 CFR 131.12(a)(2). Existing requirements in Chapters 102 and 105, the Nutrient Management Act and the Manure Management Program will continue to govern.

Additional comments which were raised in the ANFR have been addressed in the response to comments on the proposed amendments in Section F of this Preamble, or as part of the description of the final-form regulations in Section E of this Preamble.

H. *Benefits, Costs, and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits—Overall, the citizens of this Commonwealth will benefit from these changes because they will provide appropriate protection of surface waters in this Commonwealth, including existing uses and HQ and EV Waters. The antidegradation program in these final-form regulations addresses the EPA's disapproval of certain antidegradation provisions and provides an antidegradation program which reflects the input of the public, interested stakeholders and others, and addresses concerns specific to the Commonwealth.

Compliance Costs—New, additional or increased discharges to HQ or EV Waters, or those proposing other activities requiring a Department permit or approval in these waters, may require alternate disposal methods, installation of higher technology, or more stringent effluent limitations than discharges to Tier 1 waters, and compliance costs may be higher.

The changes may have some fiscal impact on or create additional compliance costs for the Commonwealth, political subdivisions and the private sector planning new, additional or increased wastewater discharges or other activities requiring a Department permit or approval which may affect HQ or EV Waters. The number of affected discharges or other activities requiring a Department permit or approval cannot be determined because of the uncertainty in which waters will be evaluated as HQ and EV Waters, and because future discharges cannot be known.

Compliance Assistance Plan—The Department plans to educate and assist the public with understanding the newly revised requirements and how to comply with them. The *Special Protection Waters Implementation Handbook* was developed as a multipurpose document in November 1992 to provide information and guidance about the development of acceptable point and nonpoint source control measures and as a general source for antidegradation implementation policies and procedures. An updated version of the *Handbook* will be prepared to reflect changes in the regulations and requirements for antidegradation waters and will be made widely available to the public, with opportunities for public input and comment.

Paperwork Requirements—The regulatory revisions will have limited paperwork impacts on the Commonwealth, its political subdivisions and the private sector.

I. Pollution Prevention

The antidegradation program is a major pollution prevention tool because its objective is to prevent degradation by maintaining and protecting existing water quality. Although wastewater discharges are not prohibited by the antidegradation program, nondischarge alternatives are encouraged and required, when appropriate. Nondischarge alternatives remove impacts to the surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil. Dischargers to HQ and EV Waters shall evaluate alternatives to stream discharge. If no cost-effective and environmentally sound alternative is available, the discharger shall use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

J. Sunset Review

These final-form 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.

K. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 10, 1997, the Department submitted a copy of the proposed rulemaking, published at 27 Pa.B. 1459, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of all comments received on the proposed regulation, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee on June 9, 1999. IRRC met on June 17, 1999, and deemed approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

L. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 1459.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

M. Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 93 and 95, are amended by amending §§ 93.1, 93.3, 93.4, 93.7 and 95.1, and by adding §§ 93.4a—93.4d to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication.

JAMES M. SEIF,
Chairperson

(Editor's Notes: The proposed amendment of §§ 92.81 and 92.83, included in the proposal at 27 Pa.B. 1459 have been withdrawn by the Board. Proposed amendments regarding these sections were included in the proposal at 28 Pa.B. 4431 (August 29, 1998). The proposal to amend §§ 93.9a—93.9z, which also appeared at 27 Pa.B. 1459, has been withdrawn.

For the text of the order of the Independent Regulatory Review Commission relating to this document see 29 Pa.B. 3492 (July 3, 1999.)

Fiscal Note: Fiscal Note 7-310 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Class A wild trout water—A surface water classified by the Fish and Boat Commission, based on species-specific biomass standards, which supports a population of naturally produced trout of sufficient size and abundance to support a long-term and rewarding sport fishery.

* * * * *

Coordinated water quality protective measures—

(i) Legally binding sound land use water quality protective measures coupled with an interest in real estate which expressly provide long-term water quality protection of a watershed corridor.

(ii) Sound land use water quality protective measures include: surface or groundwater source protection zones, enhanced stormwater management measures, wetland protection zones or other measures which provide extraordinary water quality protection. Real estate interests include:

- (A) Fee interests.
- (B) Conservation easements.
- (C) Government owned riparian parks or natural areas.
- (D) Other interests in land which enhance water quality in a watershed corridor area.

* * * * *

Exceptional Value Waters—Surface waters of high quality which satisfy § 93.4b(b) (relating to antidegradation).

* * * * *

High Quality Waters—Surface waters having quality which exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water by satisfying § 93.4b(a).

* * * * *

Nonpoint source—A pollution source which is not a point source discharge.

* * * * *

Outstanding National, State, regional or local resource water—A surface water for which a National or State government agency has adopted water quality protective measures in a resource management plan, or regional or local governments have adopted coordinated water quality protective measures along a watershed corridor.

* * * * *

Point source discharge—A pollutant source regulated under the National Pollutant Discharge Elimination System (NPDES) as defined in § 92.1 (relating to definitions).

* * * * *

State game propagation and protection area—An area established by the Game Commission for the propagation and protection of game or wildlife wherein game or wildlife may not be hunted, pursued, disturbed, molested, killed or taken at any time except as authorized by the Game Commission.

* * * * *

Surface water of exceptional ecological significance—A surface water which is important, unique or sensitive ecologically, but whose water quality as measured by traditional parameters (for example, chemical, physical or biological) may not be particularly high, or whose character cannot be adequately described by these parameters. These waters include:

- (i) Thermal springs.
- (ii) Wetlands which are exceptional value wetlands under § 105.17(1) (relating to wetlands).

Surface water of exceptional recreational significance—A surface water which provides a water-based, water

quality-dependent recreational opportunity (such as fishing for species with limited distribution) because there are only a limited number of naturally occurring areas and waterbodies across the State where the activity is available or feasible.

* * * * *

Water quality protective measures in a resource management plan—Measures in a resource management plan which expressly provide extraordinary long-term water quality protection of a watershed corridor. These measures include surface or groundwater source protection zones, enhanced stormwater management measures or wetland protection zones.

* * * * *

Wilderness trout stream—A surface water designated by the Fish and Boat Commission to protect and promote native trout fisheries and maintain and enhance wilderness aesthetics and ecological requirements necessary for the natural reproduction of trout.

§ 93.3. Protected water uses.

Water uses which shall be protected, and upon which the development of water quality criteria shall be based, are set forth, accompanied by their identifying symbols, in the following Table 1:

Table 1

| <i>Symbol Protected Use</i> | |
|-----------------------------|--|
| Aquatic Life | |
| CWF | <i>Cold Water Fishes</i> —Maintenance or propagation, or both, of fish species including the family Salmonidae and additional flora and fauna which are indigenous to a cold water habitat. |
| WWF | <i>Warm Water Fishes</i> —Maintenance and propagation of fish species and additional flora and fauna which are indigenous to a warm water habitat. |
| MF | <i>Migratory Fishes</i> —Passage, maintenance and propagation of anadromous and catadromous fishes and other fishes which ascend to flowing waters to complete their life cycle. |
| TSF | <i>Trout Stocking</i> —Maintenance of stocked trout from February 15 to July 31 and maintenance and propagation of fish species and additional flora and fauna which are indigenous to a warm water habitat. |
| Water Supply | |
| PWS | <i>Potable Water Supply</i> —Used by the public as defined by the Federal Safe Drinking Water Act, 42 U.S.C.A. § 300F, or by other water users that require a permit from the Department under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.18), or the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641), after conventional treatment, for drinking, culinary and other domestic purposes, such as inclusion into foods, either directly or indirectly. |
| IWS | <i>Industrial Water Supply</i> —Use by industry for inclusion into nonfood products, processing and cooling. |
| LWS | <i>Livestock Water Supply</i> —Use by livestock and poultry for drinking and cleansing. |
| AWS | <i>Wildlife Water Supply</i> —Use for waterfowl habitat and for drinking and cleansing by wildlife. |

IRS *Irrigation*—Used to supplement precipitation for growing crops.

Recreation

B *Boating*—Use of the water for power boating, sail boating, canoeing and rowing for recreational purposes when surface water flow or impoundment conditions allow.

F *Fishing*—Use of the water for the legal taking of fish.

WC *Water Contact Sports*—Use of the water for swimming and related activities.

E *Esthetics*—Use of the water as an esthetic setting to recreational pursuits.

Special Protection

HQ *High Quality Waters*

EV *Exceptional Value Waters*

Other

N *Navigation*—Use of the water for the commercial transfer and transport of persons, animals and goods.

§ 93.4. Statewide water uses.

(a) *Statewide water uses.* The uses set forth in Table 2 were considered in determining the water quality criteria applicable to the particular waters listed in § 93.9 (relating to designated water uses and water quality criteria) except where otherwise indicated in § 93.9.

TABLE 2

Symbol Use

Aquatic Life

WWF Warm Water Fishes

Water Supply

PWS Potable Water Supply
 IWS Industrial Water Supply
 LWS Livestock Water Supply
 AWS Wildlife Water Supply
 IRS Irrigation
Recreation
 B Boating
 F Fishing
 WC Water Contact Sports
 E Esthetics

(b) *Less restrictive uses.* Less restrictive uses than those currently designated for particular water listed in § 93.9 may be adopted when it is demonstrated that the designated use is more restrictive than the existing use and one or more of the following conditions exist:

- (1) The designated use is not attainable because of natural background conditions.
- (2) The designated use is not attainable because of irretrievable man-induced conditions.
- (3) Application of effluent limitations for existing sources more stringent than those required under section 301 of the Water Pollution Control Act (33 U.S.C.A. § 1311), to attain the designated use, would result in substantial and widespread adverse economic and social impact.

(c) *Redesignation of water.* Waters considered for redesignation may not be redesignated to less restrictive uses than the existing uses.

ANTIDegradation REQUIREMENTS

§ 93.4a. Antidegradation.

(a) *Scope.* This section applies to surface waters of this Commonwealth.

(b) *Existing use protection for surface waters.* Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(c) *Protection for High Quality Waters*—The water quality of High Quality Waters shall be maintained and protected, except as provided in § 93.4c(b)(1)(iii) (relating to implementation of antidegradation requirements).

(d) *Protection for Exceptional Value Waters*—The water quality of Exceptional Value Waters shall be maintained and protected.

§ 93.4b. Qualifying as High Quality or Exceptional Value Waters.

(a) *Qualifying as a High Quality Water.* A surface water that meets one or more of the following conditions is a High Quality Water.

(1) *Chemistry.*

(i) The water has long-term water quality, based on at least 1 year of data which exceeds levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water by being better than the water quality criteria in § 93.7, Table 3 (relating to specific water quality criteria) or otherwise authorized by § 93.8a(b) (relating to toxic substances), at least 99% of the time for the following parameters:

| | |
|-------------------|-------------------|
| dissolved oxygen | aluminum |
| iron | dissolved nickel |
| dissolved copper | dissolved cadmium |
| temperature | pH |
| dissolved arsenic | ammonia nitrogen |
| dissolved lead | dissolved zinc |

(ii) The Department may consider additional chemical and toxicity information, which characterizes or indicates the quality of a water, in making its determination.

(2) *Biology.* One or more of the following shall exist:

(i) *Biological assessment qualifier:*

(A) The surface water supports a high quality aquatic community based upon information gathered using peer-reviewed biological assessment procedures that consider physical habitat, benthic macroinvertebrates or fishes based on *Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish*, Plafkin, et al., (EPA/444/4-89-001), as updated and amended. The surface water is compared to a reference stream or watershed, and an integrated benthic macroinvertebrate score of at least 83% shall be attained by the referenced stream or watershed.

(B) The surface water supports a high quality aquatic community based upon information gathered using other widely accepted and published peer-reviewed biological assessment procedures that the Department may approve to determine the condition of the aquatic community of a surface water.

(C) The Department may consider additional biological information which characterizes or indicates the quality of a water in making its determination.

(ii) *Class A wild trout stream qualifier.* The surface water has been designated a Class A wild trout stream by the Fish and Boat Commission following public notice and comment.

(b) *Qualifying as an Exceptional Value Water.* A surface water that meets one or more of the following conditions is an Exceptional Value Water:

(1) The water meets the requirements of subsection (a) and one or more of the following:

(i) The water is located in a National wildlife refuge or a State game propagation and protection area.

(ii) The water is located in a designated State park natural area or State forest natural area, National natural landmark, Federal or State wild river, Federal wilderness area or National recreational area.

(iii) The water is an outstanding National, State, regional or local resource water.

(iv) The water is a surface water of exceptional recreational significance.

(v) The water achieves a score of at least 92% (or its equivalent) using the methods and procedures described in subsection (a)(2)(i)(A) or (B).

(vi) The water is designated as a "wilderness trout stream" by the Fish and Boat Commission following public notice and comment.

(2) The water is a surface water of exceptional ecological significance.

§ 93.4c. Implementation of antidegradation requirements.

(a) *Existing use protection.*

(1) *Procedures.*

(i) Existing use protection shall be provided when the Department's evaluation of information (including data gathered at the Department's own initiative, data contained in a petition to change a designated use submitted to the EQB under § 93.4d(a), or data considered in the context of a Department permit or approval action) indicates that a surface water attains or has attained an existing use.

(ii) The Department will inform persons who apply for a Department permit or approval which could impact a surface water, during the permit or approval application or review process, of the results of the evaluation of information undertaken under subparagraph (i).

(iii) Interested persons may provide the Department with additional information during the permit or approval application or review process regarding existing use protection for the surface water.

(iv) The Department will make a final determination of existing use protection for the surface water as part of the final permit or approval action.

(2) *Endangered or threatened species.* If the Department has confirmed the presence, critical habitat, or critical dependence of endangered or threatened Federal or Pennsylvania species in or on a surface water, the Department will ensure protection of the species and critical habitat.

(b) *Protection of High Quality and Exceptional Value Waters.*

(1) *Point source discharges.* The following applies to point source discharges to High Quality or Exceptional Value Waters.

(i) *Nondischarge alternatives/use of best technologies.*

(A) A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters shall evaluate nondischarge alternatives to the proposed discharge and 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, a new, additional or increased discharge shall use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

(B) A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters, who has demonstrated that no environmentally sound and cost-effective nondischarge alternative exists under clause (A), shall demonstrate that the discharge will maintain and protect the existing quality of receiving surface waters, except as provided in subparagraph (iii).

(ii) *Public participation requirements for discharges to High Quality or Exceptional Value Waters.* The following requirements apply to discharges to High Quality or Exceptional Value Waters, as applicable:

(A) The Department will hold a public hearing on a proposed new, additional or increased discharge to Exceptional Value Waters when requested by an interested person on or before the termination of the public comment period on the discharge.

(B) For new or increased point source discharges, in addition to the public participation requirements in §§ 92.61, 92.63 and 92.65 (relating to public notice of permit application and public hearing; public access to information; and notice to other government agencies), the applicant shall identify the antidegradation classification of the receiving water in the notice of complete application in § 92.61(a).

(iii) *Social or economic justification (SEJ) in High Quality Waters.* The Department may allow a reduction of water quality in a High Quality Water if it finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. A reduction in water quality will not be allowed under this subparagraph unless the discharger demonstrates that the High Quality Water will support applicable existing and designated water uses (other than the high quality and exceptional value uses) in § 93.3, Table 1 (relating to protected water uses).

(2) *Nonpoint source control.* The Department will assure that cost-effective and reasonable best management practices for nonpoint source control are achieved.

(c) *Special provisions for sewage facilities in High Quality or Exceptional Value Waters.*

(1) *SEJ approval in sewage facilities planning and approval in High Quality Waters.* A proponent of a new, additional, or increased sewage discharge in High Quality Waters shall include impact analysis as part of the proposed revision or update to the official municipal sewage facilities plan under Chapter 71 (relating to administration of sewage facilities planning program). The Department will make a determination regarding the consistency of the SEJ impact analysis with subsection (b)(1)(iii). The determination will constitute the subsection (b)(1)(iii) analysis at the National Pollutant Dis-

charge Elimination System (NPDES) permit review stage under Chapter 92 (relating to National Pollutant Discharge Elimination System), unless there is a material change in the project or law between sewage facilities planning and NPDES permitting, in which case the proponent shall recommence sewage facilities planning and perform a new social or economic justification impact analysis.

(2) *SEJ for sewage facilities in High Quality Waters correcting existing public health or pollution hazards.* A sewage facility, for which no environmentally sound and cost-effective nondischarge alternative is available under subsection (b)(1)(i)(A), proposed to discharge into High Quality Waters, which is designed for the purpose of correcting existing public health or pollution hazards documented by the Department, and approved as part of an official plan or official plan revision under § 71.32 (relating to Department responsibility to review and act upon official plans), satisfies the SEJ requirements in subsection (b)(1)(iii).

(3) *Public participation requirements for official sewage facilities plans or revisions to official plans in High Quality or Exceptional Value Waters.* A proponent of a sewage facility in High Quality or Exceptional Value Waters seeking approval of an official plan or revision shall comply with the public participation requirements in § 71.53(d)(6) (relating to municipal administration of new land development planning requirements for revisions).

§ 93.4d. Processing of petitions, evaluations and assessments to change a designated use.

(a) *Public notice of receipt of evaluation, or assessment of waters, for High Quality or Exceptional Value Waters redesignation.* The Department will publish in the *Pennsylvania Bulletin* and in a local newspaper of general circulation notice of receipt of a complete evaluation which has been accepted by the EQB recommending a High Quality or Exceptional Value Waters redesignation, or notice of the Department's intent to assess surface waters for potential redesignation as High Quality or Exceptional Value Waters. The assessments may be undertaken in response to a petition or on the Department's own initiative. The notice will request submission of information concerning the water quality of the waters subject to the evaluation, or to be assessed, for use by the Department to supplement any studies which have been performed. The Department will send a copy of the notice to all municipalities containing waters subject to the evaluation or assessment.

(b) *Combined public meeting and fact-finding hearing.* As part of its review of an evaluation or performance of an assessment, the Department may hold a combined public meeting and fact finding hearing to discuss the evaluation or assessment, including the methodology for the evaluation or assessment, and may solicit information, including technical data, to be considered in the Department's evaluation or assessment.

(c) *Submission to EQB to alter designated use.* Upon the completion of its assessment or review of a complete evaluation, and the satisfaction of the other applicable requirements of this section, the Department will submit the results of its assessment or review to the EQB for proposed rulemaking following review and comment by the petitioner, if applicable, in accordance with Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy).

§ 93.7. Specific water quality criteria.

* * * * *

(e) Table 5 contains groups of specific water quality criteria based upon water uses to be protected. When the symbols listed in Table 5 appear in the *Water Uses Protected* column in §§ 93.9a—93.9z, they have the meaning listed in the Table 5. Exceptions to these standardized groupings will be indicated on a stream-by-stream or segment-by-segment basis by the words "Add" or "Delete" followed by the appropriate symbols described elsewhere in this chapter.

TABLE 5

| <i>Symbol</i> | <i>Water Uses Included</i> | <i>Specific Criteria</i> |
|---------------|-------------------------------------|---|
| WWF | Statewide list | Statewide list plus DO ₂ and Temp ₂ |
| CWF | Statewide list plus Cold Water Fish | Statewide list plus DO ₁ and Temp ₁ |
| TSF | Statewide list plus Trout Stocking | Statewide list plus DO ₅ and Temp ₃ |
| | * * * * * | |

CHAPTER 95. WASTEWATER TREATMENT REQUIREMENTS

§ 95.1. General requirements.

Specific treatment requirements and effluent limitations for each waste discharge shall be established based on the more stringent of antidegradation requirements under §§ 93.4a—93.4d (relating to antidegradation requirements), the water quality criteria specified in Chapter 93 (relating to water quality standards), the applicable treatment requirements and effluent limitations to which a discharge is subject under section 101 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1251) or the treatment requirements and effluent limitations of this title provided that specific treatment requirements and effluent limitations for waste discharges from overflows as defined in § 94.1 (relating to definitions) shall be established based on applicable treatment requirements and effluent limitations to which the discharge is subject under 33 U.S.C.A. §§ 1251—1387).

[Pa.B. Doc. No. 99-1123. Filed for public inspection July 16, 1999, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 135]

Use of ATVs on State Game Lands

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 8, 1999, meeting, adopted the following changes:

Amend Chapter 135, Subchapter C (relating to State game lands) by adding eight new sections to allow the use of all-terrain vehicles (ATVs) on designated State game land roads for persons who hold a valid disabled person permit to hunt from a vehicle.

These regulations are adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

1. *Introduction*

To expand recreational opportunities for sportsmen holding disabled permits, the Commission at its meeting held on April 9, 1999, proposed and at its meeting held on June 8, 1999, finally adopted amending Subchapter C of Chapter 135, to allow holders of disabled person permits to use ATVs on and near designated State game lands roads. This action was taken under authority contained in section 721(a) of the code (relating to control of property).

2. *Purpose and Authority*

As a result of meetings held between representatives of the Commission and representatives of disabled sportsmen, the Commission has decided to allow limited use of ATVs on designated game lands roads by holders of disabled person permits. This will expand accessibility for disabled sportsmen and provide them with more recreational opportunities. The use of ATVs will be restricted to protect wildlife resources. The use of ATVs will be authorized by the addition of §§ 135.49—135.55. Section 721(a) of the code requires the Commission to promulgate regulations necessary to properly manage State game lands.

3. *Regulatory Requirements*

The adopted rules will expand opportunities for hunters with disabilities.

4. *Persons Affected*

Persons holding disabled person permits will have expanded hunting opportunities. Because of limitations, it is anticipated that impact on other hunters will be minimal.

5. *Comment and Response Summary*

Two written comments were received, both of which favored adoption of the regulations.

6. *Cost and Paperwork Requirements*

A towing vehicle placard will be required and issued free of charge. This will be the only additional requirement.

7. *Effective Date*

These regulations will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. *Contact Person*

For further information on the adopted regulations, contact James R. Fagan, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) The public notice of intention to adopt the administrative regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these regulations of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code, Chapter 135, are amended by adding §§ 135.49—135.55 to read as set forth at 29 Pa.B. 2581 (May 15, 1999).

(b) The Executive Director of the Commission shall submit this order and 29 Pa.B. 2581 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order amending Chapter 135, by adding §§ 135.49—135.55 shall become effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-112 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1124. Filed for public inspection July 16, 1999, 9:00 a.m.]