

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

#### Stream Redesignation (Browns Run)

The Environmental Quality Board (Board) by this order amends § 93.9q (relating to Drainage List Q) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of July 15, 2003.

#### A. *Effective Date*

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

#### C. *Statutory Authority*

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

#### D. *Background of the Final-Form Rulemaking*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) waters and all other use designations in its ongoing review of water quality standards. In general, HQ and EV waters shall be maintained at their existing quality, and permitted activities, such as wastewater treatment requirements, shall ensure the attainment of all designated and existing uses.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies,

such as the Fish and Boat Commission (Commission). Organizations, businesses or individuals may submit a rulemaking petition to the Board.

Browns Run was evaluated in response to a request from the Commission, which requested that the stream be redesignated HQ-Cold Water Fishes (CWF).

Browns Run had been included in the French Creek, et al. proposed rulemaking package in January 1997, based on a field study conducted in 1994. During the public comment period on that proposed rulemaking, objections were raised to the recommendation for redesignation of most of the Browns Run basin to EV waters. These objections were based in part on the use of Cathers Run as the reference stream because it is designated HQ-CWF. It had been selected as the reference station because it was part of a "reference network" within the Water Quality Network, the Department's routine surface water monitoring system. The reference network contains streams minimally impacted by human activities. As a result of these public concerns, the Department agreed to resurvey Browns Run and compare it to a higher quality reference stream. The Department conducted the second field survey on June 2—4, 1998, and used East Hickory Creek, designated EV, as the reference. The redesignations in this final-form rulemaking are the result of this resurvey and comparison to the EV reference.

These aquatic surveys were conducted by the Department's Bureau of Water Supply and Wastewater Management. The physical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. Based upon the data collected in these surveys, the Board has revised the designations to read as set forth in Annex A.

The Department's stream evaluation report is available from Edward R. Brezina whose address and telephone number are listed in Section B of this preamble.

#### E. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board approved the proposed rulemaking on March 20, 2001, and it was published at 31 Pa.B 2375 (May 5, 2001) with provision for a 45-day public comment period that closed on June 19, 2001. A number of requests for a public hearing regarding Browns Run were received during the public comment period. A hearing was scheduled and announced at 31 Pa.B 3956 (July 21, 2001), at which time the public comment period for Browns Run was reopened. The public hearing was held in the Warren County Courthouse in Warren on September 4, 2001, and the public comment period closed 1 week later, on September 11, 2001.

Comments were received from 52 commentators and the Independent Regulatory Review Commission (IRRC) as a result of the public comment period and the hearing. Fifteen commentators expressed support for the redesignation. Opposing comments included concerns with economic impacts and personal rights because of the redesignation, the choice of a reference water and that redesignation may cause impacts to the water because of increased use. The comment and response document explains that the EV redesignation is based on the current quality of the water, protection of EV waters is

accomplished through the Department's permitting and approval processes and current activities are not generally restricted.

No changes were made to the proposed rulemaking following the public comment period.

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

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in accordance with the existing use.

2. *Compliance Costs*—Generally, the changes should have no fiscal impact on, or create additional compliance costs for, the Commonwealth or its political subdivisions. The streams are already protected at their existing use, and therefore the designated use changes will have no impact on treatment requirements. No costs will be imposed directly upon local governments by this recommendation. Political subdivisions that add a new sewage treatment plant or expand an existing plant in these basins may experience changes in cost as noted in the discussion of impacts on the private sector.

Persons conducting or proposing activities or projects that result in new or expanded discharges to streams shall comply with the regulatory requirements relating to designated and existing uses. These persons could be adversely affected if they expand a discharge or add a new discharge point since they may need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to predict the actual change in costs.

Oil and gas and timbering operations may be required to implement antidegradation Best Management Practices to protect water quality. These practices are site-specific, so it is not possible to determine a precise estimate of costs. In addition, permit application fees for individual rather than general permits for stream encroachments or erosion and sedimentation control will be required.

3. *Compliance Assistance Plan*—The regulatory revision has been developed as part of an established program that has been implemented by the Department since the early 1980s. The revision is consistent with and based on existing Department regulations. The revision extends additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The redesignation will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanding dischargers with water quality based effluent limitations are required to provide

effluent treatment according to the water quality criteria associated with existing and designated water uses.

4. *Paperwork Requirements*—The regulatory revision should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. This regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus, an individual permit, and its associated additional paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ waters, and the nonfeasibility of nondischarge alternatives will be required for new or expanded discharges to certain HQ and EV waters.

#### G. *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 and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost-effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

#### H. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the final-form rulemaking effectively fulfills the goals for which it was intended.

#### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B 2375, to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing the final-form rulemaking, the Department has considered all comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

Under section 5.1(j.2) the Regulatory Review Act, this final-form rulemaking was deemed approved by the House and Senate Committees on September 11, 2003. IRRC met on September 12, 2003, and approved the final-form rulemaking in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

#### J. *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, 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) The final-form rulemaking does not enlarge the purpose of the proposal published at 31 Pa.B 2375.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) This regulatory amendment does not contain standards or requirements that exceed requirements of the companion Federal regulations.

**K. Order**

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending § 93.9q to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(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 in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 4865 (September 30, 2003).)*

**Fiscal Note:** 7-362. No fiscal impact; (8) recommends adoption.

**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**

**ANTIDEGRAATION REQUIREMENTS**

**§ 93.9q. Drainage List Q.**

**Ohio River Basin in Pennsylvania  
*Allegheny River***

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria					
					*	*	*	*	*
3—Browns Run	Basin, Source to Dutchman Run	Warren	EV	None					
4—Dutchman Run	Basin, Source to T-413 Bridge	Warren	EV	None					
4—Dutchman Run	Basin, T-413 Bridge to UNT 56501	Warren	CWF	None					
5—UNT 56501 to Dutchman Run	Basin, Source to UNT 56502	Warren	CWF	None					
6—UNT 56502 to UNT 56501	Basin	Warren	EV	None					
5—UNT 56501 to Dutchman Run	Basin, UNT 56502 to Mouth	Warren	CWF	None					
4—Dutchman Run	Basin, UNT 56501 to Mouth	Warren	CWF	None					
3—Browns Run	Basin, Dutchman Run to Morrison Run	Warren	CWF	None					
4—Morrison Run	Basin	Warren	EV	None					
3—Browns Run	Basin, Morrison Run to Mouth	Warren	CWF	None					
3—Glade Run	Basin, Source to Concrete Channel	Warren	CWF	None					
					*	*	*	*	*

[Pa.B. Doc. No. 03-2110. Filed for public inspection October 31, 2003, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

## [25 PA. CODE CH. 93]

## Stream Redesignation (East Branch Codorus Creek)

The Environmental Quality Board (Board) by this order amends § 93.9o (relating to Drainage List O) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of May 21, 2003.

A. *Effective Date*

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, Harrisburg, PA 17105-8464, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. *Statutory and Regulatory Authority*

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Final-Form Rulemaking*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The lower reaches of the East Branch Codorus Creek, including Lake Redman and Lake Williams, were evaluated in response to a rulemaking petition submitted by The York Water Company. The petition requested redesignation of the main stem of the East Branch Codorus Creek from the inlet of Lake Redman to the mouth from Cold Water Fishes (CWF) to Warm Water Fishes (WWF).

The Department's evaluation involved review of data in the petition and data obtained from the Fish and Boat Commission. The data shows that Lake Redman, Lake Williams and the East Branch Codorus Creek downstream from Lake Williams support a WWF community. The existence of a warm water fishery in Lake Redman has been documented since 1970. Surveys beginning in

1983 have shown a warm water community in Lake Williams. The warm water fishery in the lower main stem was documented in 1996. The hydrologic modification of the stream—the construction of the lakes—preclude attainment of the CWF use.

The Department's evaluation report is available from Edward R. Brezina whose address and phone number are listed in Section B.

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

The United States Environmental Protection Agency (EPA) Region 3 office provided the only comments on the proposed rulemaking. The EPA's comments were: "The Department of Environmental Protection has documented to EPA's satisfaction that this redesignation is appropriate. In accordance with Federal regulation at 40 CFR 131.10(g), DEP has demonstrated that attaining the cold water fisheries designated use is not feasible because dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use."

F. *Benefits, Costs and Compliance*

*Benefits*—Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because it will reflect the appropriate designated use and maintain the most appropriate degree of protection for this stream. In addition, the York Water Company will benefit by being able to meet projected future water demands and ensuring an adequate water supply for its customers. The change in designation would allow water withdrawn from the Susquehanna River to be pumped, as needed, into Lake Redman for water supplies.

*Compliance Costs*—Generally, the final-form rulemaking should have no fiscal impact on or create additional compliance costs for the Commonwealth or its political subdivisions. No costs will be imposed directly upon local governments by this redesignation.

Persons conducting or proposing activities or projects that result in new or expanded discharges to streams must comply with the regulatory requirements relating to the designated use. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors.

*Compliance Assistance Plan*—The final-form rulemaking has been developed as part of an established program and is consistent with water quality standards requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect designated water uses.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanding dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing and designated water uses.

*Paperwork Requirements*—This final-form rulemaking should have no direct paperwork impact on the Commonwealth, local governments, political subdivisions or the private sector. This final-form rulemaking is based on existing Department regulations.

G. *Pollution Prevention*

The water quality standards program is a major pollution prevention tool because the objective is to protect in-stream water uses.

H. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the final-form rulemaking effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 24, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 4866 (October 5, 2002), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 27, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. The final-form rulemaking was deemed approved under section 5(g) of the Regulatory Review Act, effective August 27, 2008.

J. *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, 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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 4866.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) This final-form rulemaking does not contain standards or requirements that exceed requirements of the companion Federal regulations.

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending § 93.9o 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 review and approval 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 in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 4643 (September 13, 2003).)*

**Fiscal Note:** 7-379. No fiscal impact; (8) recommends adoption.

**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  
ANTIDegradation Requirements**

**§ 93.9o. Drainage List O.**

**Susquehanna River Basin in Pennsylvania  
*Susquehanna River***

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
4—East Branch Codorus Creek	Basin, PA 214 to Inlet of Lake Redman				York		CWF	None
4—East Branch Codorus Creek	Main Stem, Inlet of Lake Redman to Mouth				York		WWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
5—Unnamed Tributaries to East Branch Codorus Creek	Inlet of Lake Redman to Mouth	York	CWF	None
5—Inners Creek	Basin	York	CWF	None
3—Willis Run	Basin	York	WWF	None
		* * * * *		

[Pa.B. Doc. No. 03-2111. Filed for public inspection October 31, 2003, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD  
[25 PA. CODE CH. 93]**

**Stream Redesignations (Oysterville Creek, et al.)**

The Environmental Quality Board (Board) by this order amends §§ 93.9(a), 93.9f, 93.9g, 93.9n and 93.9o to read as set forth in Annex A.

This order was adopted by the Board at its meeting of May 21, 2003.

*A. Effective Date*

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

*B. Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, Harrisburg, PA 17105-8464, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

*C. Statutory and Regulatory Authority*

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

*D. Background of the Final-Form Rulemaking*

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) waters designation in its ongoing review of water quality standards. In general, HQ and EV waters shall be maintained at their existing quality. The Department may identify candidates for

redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission (Commission). Organizations, businesses or individuals may submit a rulemaking petition to the Board.

These streams were evaluated in response to five petitions, as well as a request from the Commission:

*Petitions:* Oysterville Creek (Berks County); West Branch Perkiomen Creek (Berks County); Unnamed Tributary to Chester Creek (Delaware County); Cove Creek (Bedford County); and Trout Run (York County)

*Commission:* Rambo Run (York County)

The Department's Bureau of Water Supply and Wastewater Management conducted aquatic surveys on these streams. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). Based on the data collected in these surveys, the Board has made the designations in Annex A.

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

The Board approved the Oysterville Creek, et al. proposed rulemaking package at its March 19, 2002, meeting. The proposed rulemaking was published at 32 Pa.B. 2219 (May 4, 2002) with provision for a 45-day public comment period that closed on June 18, 2002. A request for a public hearing regarding Oysterville Creek and the West Branch Perkiomen Creek was received during the public comment period. A Board hearing was scheduled and an announcement was published at 32 Pa.B. 2994 (June 22, 2002), at which time the public comment period for these two streams was reopened. The public hearing was held in the Brandywine Heights High School in Topton (Berks County) on August 7, 2002, and the public comment period closed 2 weeks later, on August 21, 2002. Because of the public interest, the Department held a public informational meeting immediately preceding the hearing. The purposes of the meeting were to present information on the antidegradation program and the recommended redesignations of the two streams and to answer questions from the public.

Comments were received from 72 commentators and the Independent Regulatory Review Commission (IRRC) as a result of the public comment period and the public hearing. Comments were received concerning Cove Creek, Oysterville Creek, West Branch Perkiomen Creek, Rambo Run and Trout Run.

IRRC was concerned that no new biological sampling was conducted on Cove Creek. The recommended redesignation of the lower reaches of the stream to EV is based on a revised implementation method for the Percent Dominant Taxon metric. The lower portion of Cove Creek was not initially recommended for EV designation because of the dominance of a single species, a pollution-sensitive mayfly. Dominance by one taxon often indicates an aquatic community stressed by pollution. Both the Department and the Commission recognized that biological communities may be naturally dominated by one or two species or temporarily dominated by one or two taxa because their reproductive cycle has yielded large numbers of individuals over a very brief interval. The revised implementation gives this metric the highest score in a candidate stream reach if the aquatic community is dominated by a single taxon that is a pollution-sensitive species, because this condition does not indicate a pollution problem. The new scoring method was applied to the data already collected from lower Cove Creek.

A total of 50 commentators provided comments on Oysterville and West Branch Perkiomen Creeks. Of these, 38 were in favor of the proposed redesignation of portions of these basins, 8 were in opposition and 4 provided general comments. Those opposed were concerned with the possible costs of redesignation to landowners and the potential loss of property rights. The comment and response document explains that redesignation will primarily affect new or expanding point source discharges and that current activities will generally not be restricted.

There were 21 comments concerning the redesignation of Rambo Run. All supported the redesignation of the Rambo Run basin to EV.

Four commentators addressed Trout Run. Two specifically endorsed the redesignation, while the other two commentators questioned the change in the Department's recommendation from that proposed in 1997. The comment and response document explains that Trout Run was resurveyed using a more appropriate cold water reference stream. As a result, the biological condition score comparison for the upper portion of the stream fell in the regulatory range for HQ designation.

#### F. *Summary of Changes to the Proposed Rulemaking*

No changes were made to the redesignations recommended in the proposed rulemaking.

#### G. *Benefits, Cost and Compliance*

*Benefits*—Overall, the citizens of this Commonwealth will benefit from the final-form rulemaking because it will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in accordance with the existing use.

*Compliance Costs*—Generally, the final-form rulemaking should have no fiscal impact on or create additional compliance costs for the Commonwealth or its political subdivisions. The streams are already protected at their existing use, and therefore the designated use changes will have no impact on treatment requirements. No costs will be imposed directly upon local governments by the final-form rulemaking. Political subdivisions that add a new sewage treatment plant or expand an existing plant in these basins may experience changes in costs.

Persons conducting or proposing activities or projects that result in new or expanded discharges to streams must comply with the regulatory requirements regarding designated and existing uses. These persons could be adversely affected if they expand a discharge or add a

new discharge point since they may need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs.

*Compliance Assistance Plan*—The final-form rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980s. The final-form rulemaking is consistent with and based on existing Department regulations. The final-form rulemaking extends additional protection to selected water bodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanding dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing and designated water uses.

*Paperwork Requirements*—The final-form rulemaking should have no direct paperwork impact on the Commonwealth, local governments, political subdivisions or the private sector. The final-form rulemaking is based on existing Department regulations and simply mirrors the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanded discharges to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ waters and the nonfeasibility of nondischarge alternatives will be required for new or expanded discharges to certain HQ and EV waters.

#### H. *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 and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

#### I. *Sunset Review*

This final-form rulemaking 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.

*J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 2219, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 27, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. IRRC met on August 28, 2003, and approved the final-form rulemaking.

*K. 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, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of the proposal published at 32 Pa.B. 2219.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) This final-form rulemaking does not contain standards or requirements that exceed requirements of the companion Federal regulations.

*L. Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9, 93.9f, 93.9g, 93.9n and 93.9o 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 in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 4643 (September 13, 2003).)*

**Fiscal Note:** 7-377. No fiscal impact; (8) recommends adoption.

**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  
ANTIDegradation Requirements**

**§ 93.9. Designated water uses and water quality criteria.**

(a) The tables in §§ 93.9a—93.9z display designated water uses and water quality criteria in addition to the water uses and criteria specified in Tables 2 and 3. Designated uses shall be protected in accordance with Chapters 95 and 96 (relating to wastewater treatment requirements; and water quality standards implementation) and any other applicable State and Federal laws and regulations. The tables also indicate specific exceptions to Tables 2 and 3 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. The county column in §§ 93.9a—93.9z indicates the county in which the mouth of the stream is located. Abbreviations used in the “Zone” column are as follows:

- T—Township Road
- LR—Pennsylvania Legislative Route
- SR—Pennsylvania State Route
- FAS—Federal Aid Secondary Highway
- US—United States Federal Route
- I—Interstate Highway
- RM—River Mile; river miles are used to indicate the distance from a point on the waterbody to its mouth and are based on the Department’s River Mile Index
- UNT—Unnamed Tributary

\* \* \* \* \*

**§ 93.9f. Drainage List F.**

**Delaware River Basin in Pennsylvania  
*Schuylkill River***

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		



Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
4—Oysterville Creek	Basin, Source to T 634 Bridge (RM 2.6)	Berks	EV	None
4—Oysterville Creek	Basin, T 634 Bridge to Confluence of UNT 01680	Berks	HQ-CWF	None
5—UNT 01680 to Oysterville Creek	Basin	Berks	CWF	None
4—Oysterville Creek	Basin, UNT 01680 to Mouth	Berks	HQ-CWF	None
4—Furnace Run	Basin	Berks	CWF	None
		* * * * *		
4—West Branch Perkiomen Creek	Basin, Source to SR 1022 Bridge (RM 12.9)	Berks	CWF	None
4—West Branch Perkiomen Creek	Basin, SR 1022 Bridge to SR 2069 Bridge (RM 8.0)	Berks	EV	None
4—West Branch Perkiomen Creek	Basin, SR 2069 Bridge to Mouth	Montgomery	CWF	None
3—Perkiomen Creek	Mainstem, Green Lane Reservoir Dam to Mouth	Montgomery	WWF, MF	None
		* * * * *		

§ 93.9g. Drainage List G.

**Delaware River Basin in Pennsylvania**  
*Delaware River*

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
2—Chester Creek	Basin, Source to East Branch Chester Creek	Chester	TSF, MF	None
3—East Branch Chester Creek	Basin, Source to UNT at RM 0.4 (“Goose Creek”)	Chester	TSF, MF	None
4—UNT to East Branch Chester Creek at RM 0.4 (“Goose Creek”)	Basin	Chester	WWF, MF	None
3—East Branch Chester Creek	Basin, UNT at RM 0.4 to Mouth	Chester	TSF, MF	None
2—Chester Creek	Basin, East Branch Chester Creek to Rocky Run	Delaware	TSF, MF	None
3—Rocky Run	Basin	Delaware	HQ-CWF, MF	None
2—Chester Creek	Basin, Rocky Run to Confluence with West Branch	Delaware	TSF, MF	None
3—West Branch Chester Creek	Basin, Source to Green Creek	Delaware	TSF, MF	None
4—Green Creek	Basin	Delaware	CWF, MF	None
		* * * * *		

§ 93.9n. Drainage List N.

**Susquehanna River Basin in Pennsylvania**  
***Juniata River***

<b>Stream</b>	<b>Zone</b>	<b>County</b>					<b>Water Uses Protected</b>	<b>Exceptions To Specific Criteria</b>
		*	*	*	*	*		
4—Cove Creek	Basin			Bedford			EV	None
4—Snakespring Valley Run	Basin			Bedford			WWF	None
		*	*	*	*	*		

§ 93.9o. Drainage List O.

**Susquehanna River Basin in Pennsylvania**  
***Susquehanna River***

<b>Stream</b>	<b>Zone</b>	<b>County</b>					<b>Water Uses Protected</b>	<b>Exceptions To Specific Criteria</b>
		*	*	*	*	*		
2—Codorus Creek	Main Stem, Oil Creek to Mouth			York			WWF	None
		*	*	*	*	*		
3—Dee Run	Basin			York			WWF	None
3—Trout Run	Basin, Source to UNT at RM 0.3			York			HQ-CWF	None
4—UNT to Trout Run at RM 0.3	Basin			York			CWF	None
3—Trout Run	Basin, UNT at RM 0.3 to Mouth			York			CWF	None
2—Wildcat Run	Basin			York			WWF	None
		*	*	*	*	*		
3—North Branch Muddy Creek	Basin, Source to Rambo Run			York			CWF	None
4—Rambo Run	Basin			York			EV	None
3—North Branch Muddy Creek	Basin, Rambo Run to Confluence with South Branch			York			CWF	None
3—South Branch Muddy Creek	Basin, Source to Confluence with North Branch			York			HQ-CWF	None
		*	*	*	*	*		

[Pa.B. Doc. No. 03-2112. Filed for public inspection October 31, 2003, 9:00 a.m.]