

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations (Newtown Creek, et al.)

The Environmental Quality Board (Board) proposes to amend §§ 93.7, 93.9d, 93.9e, 93.9g, 93.9l, 93.9o, 93.9q and 93.9v to read as set forth in Annex A.

This proposed rulemaking was adopted by the Board at its meeting of June 21, 2005.

A. Effective Date

This proposed rulemaking will be effective upon final form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Richard H. Shertzer, Acting 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, (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website at www.dep.state.pa.us.

C. Statutory and Regulatory Authority

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, 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 the Federal regulation at 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. Background of the Proposed Rulemaking

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

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other

designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and Statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Then, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

These streams were evaluated in response to one petition, as well as requests from the Commission and the Department's Southeast Regional Office (SERO), Northeast Regional Office (NERO) and Bureau of Water Supply and Wastewater Management (BWSWM) as follows:

Petition: Pine Run

Commission: Messenger Run

SERO: Indian Spring Run

NERO: Unnamed Tributary (UNT) to Lizard Creek

BWSWM: Newtown Creek, Indian Creek

These amendments were developed as a result of aquatic studies conducted by the BWSWM and the Commission. 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 of Exceptional Value Waters). Based upon the Department's analysis of the data collected in these surveys, the Department recommends the designations described in this preamble and as set forth in Annex A.

Copies of the Department's stream evaluation reports for these waterbodies are available from Richard H. Shertzer whose address and telephone number are listed in Section B.

The following is a brief explanation of the recommendations for each waterbody:

UNT 03876 to Lizard Creek—This UNT to Lizard Creek is located in the Lehigh River watershed and flows through East Penn Township, Carbon County. This basin

is currently designated Trout Stocking (TSF) and was evaluated for redesignation based on a request from NERO. The Commission conducted a survey on the stream and documented the presence of a naturally reproducing brook trout population along with blacknose dace and creek chubs. The UNT to Lizard Creek had a biological condition score of 100%. Wild Creek, a nearby EV stream was used as the reference stream. It is a tributary to Pohopoco Creek located in Carbon County. The candidate stream station metrics were compared to those of the reference stream which has a comparable drainage area. The sampling of the two streams was done on the same day to minimize the effects of seasonal variation. Based on applicable regulatory criteria, the Department recommends that the use designation of UNT to Lizard Creek basin be changed from the current TSF to EV based on a biological condition score of greater than 92%.

Newtown Creek—Newtown Creek is a tributary to Neshaminy Creek in the Delaware River drainage. The basin is located in Middletown, Newtown and Wrightstown Townships and the Borough of Newtown, Bucks County. Newtown Creek was inadvertently omitted from Chapter 93 (relating to water quality standards). Six species of fish were captured in Newtown Creek. Species collected are commonly found in warm water habitats. Based on the fishery data, the Department recommends that the entire Newtown Creek basin be designated WWF. The Department also recommends Newtown Creek be designated Migratory Fishes (MF) since it is an unimpeded tributary to Neshaminy Creek, which is designated MF. Turbidity was adopted as special criteria for specific waters in the Neshaminy as early as September 2, 1971. The present turbidity criteria are as follows:

T_1 —Not more than 100 NTU

T_2 —For May 15—September 15 of any year, not more than 40 NTU; for September 16—May 14 of any year, not more than 100 NTU.

Pine Run—Pine Run is a tributary to Chest Creek in Chest Township, Clearfield County near Westover. It is currently designated CWF. The basin was evaluated for redesignation as EV in response to a petition submitted by the Chest Township Road District. The collection of native brook trout indicates that Pine Run supports a coldwater fish community. Rouges Harbor Run is an EV stream that is also a tributary to Chest Creek. It was chosen as the reference station based on proximity, geologic setting and drainage area being most similar to the candidate stream. The Department recommends that the Pine Run basin be redesignated EV based on waters with biological conditions scores at all three sampling stations greater than 92% of the reference, thus satisfying the regulatory criterion for redesignation as EV.

Indian Spring Run—Indian Spring Run is a tributary to Pequea Creek in the Susquehanna River watershed. It is located in West Caln, Sadsbury and West Sadsbury Townships, Chester County and Salisbury Township, Lancaster County. Indian Spring Run is currently designated CWF. As a result of a request from SERO, the basin was evaluated for redesignation as EV. The Commission conducted a survey of the fish community and found a healthy brook trout population and other cold water species such as blacknose dace and creek chubs. Rock Run is a tributary to French Creek in Chester County and was used as the reference stream. It was

used because it has a protected use designation of EV and has a drainage area comparable to Indian Spring Run. The comparison was also based on the metrics of the streams. The Department recommends that the use designation of the Indian Spring Run basin from the source to the SR 10 Bridge be changed from CWF to EV based on biological condition scores greater than 92% of the reference station score and UNT 07540 basin from the source to SR 10 Bridge be changed from CWF to HQ-CWF based on a biological condition score between 83—92% of the reference score. The remaining portion of this stream will retain the CWF designation.

Messenger Run—Messenger Run is a tributary of Tionesta Creek which flows through Sheffield Township south of Warren. Messenger Run was evaluated based on an inquiry by the Commission regarding its Chapter 93 aquatic life use designation. Messenger Run was inadvertently omitted from Chapter 93. The Commission found the presence of a coldwater fishery in the basin. The Commission has identified a Class B wild brook trout fishery in Messenger Run. It also found blacknose dace, mottled sculpin and fantail darter. Jacks Run was chosen as the reference stream based on sub-ecoregion, drainage area and documented biological integrity. Jacks Run is currently designated EV. The Department recommends that the Messenger Run basin, from source to mouth, be designated EV, based on Messenger Run's biological condition score of 100% which exceeds the 92% criterion for EV waters.

Indian Creek—Indian Creek is a fourth-order tributary of the Younghigheny River in Donegal Township, Fayette County. The main stem of Indian Creek between the mouth of Champion Creek and its confluence with the Younghigheny River was evaluated by the Department because it was inadvertently omitted from Chapter 93. The Commission documented the presence of a coldwater fishery in the basin. Species identified include mottled sculpin, brown trout, rainbow trout, blacknose dace and longnose dace. Based on the presence of cold water species, the Department recommends that the mainstem of Indian Creek, from its confluence with Champion Creek to its mouth, be designated as CWF.

Corrections—In addition to these recommended revisions, the Department proposes a spelling correction in § 93.9g (relating to Drainage List G). In the listing for Beaver Creek, a tributary to East Branch Brandywine Creek, the spelling of "Cain" Township will be corrected to "Caln" Township.

In § 93.9l (relating to Drainage List L), the Department proposes to correct the stream listings for McBrides Run and Markles Gap Run, which are incorrectly listed in Chapter 93. Both streams are located in Centre County, and are tributaries to Spring Creek in the West Branch Susquehanna River Watershed. In the Chapter 93 rule-making package from 1979, McBrides Run and Markles Gap Run are listed as the local names for these tributaries. After thoroughly reviewing the PA Stream Directory and the Stream Maps, the Department concluded that McBrides Run is UNT 23007 and is a tributary to Logan Branch. McBrides Run will retain its current designation but will be relocated within the drainage list to the Logan Branch Watershed. Markles Gap is UNT 23057 and is a tributary to Spring Creek. The Markles Gap listing will be changed to UNT 23057. This correction does not affect the current stream designation.

The Department is also proposing a correction to Table 3, Dissolved Oxygen in § 93.7 (relating to specific water quality criteria). In the 2005 Triennial Review of Water Quality Standards a transcription error was made to the DO₃ criterion. The criterion states "For the period February 1 to July 31 . . ." It should state ". . . February 15 to July 31 . . ." The "5" was inadvertently omitted. This error occurred in the preparation of the 2005 final-form rulemaking for the triennial review of water quality standards.

E. *Benefits, Costs and Compliance*

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from this proposed 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 of the stream.

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 these recommendations. Political subdivisions that add a new sewage treatment plant or expand an existing plant in these basins may experience changes in cost as follows in the discussion of impacts on the private sector.

Persons conducting or proposing regulated activities shall comply with the regulatory requirements relating to designated and existing uses. For example, 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. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated to a more protective use.

3. *Compliance Assistance Plan*—This proposed rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980s. This proposed rulemaking is consistent with and based on existing Department regulations. The revisions extend 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.

This proposed rulemaking 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 uses and revised designated water uses.

4. *Paperwork Requirements*—This proposed rulemaking should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. This proposed rulemaking is 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 paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanding discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanding discharges to EV and HQ Waters.

F. *Pollution Prevention*

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanding wastewater discharges, nondischarge alternatives 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.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 5, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301).

Comments submitted by facsimile will not be accepted. Comments must be received by the Board by October 4, 2005. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 4, 2005. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed rulemaking will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposed rulemaking and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by October 4, 2005.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-397. 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
WATER QUALITY CRITERIA

§ 93.7. Specific water quality criteria.

(a) Table 3 displays specific water quality criteria and associated critical uses. The criteria associated with the Statewide water uses listed in § 93.4, Table 2 apply to all surface waters, unless a specific exception is indicated in §§ 93.9a—93.9z. Other specific water quality criteria apply to surface waters as specified in §§ 93.9a—93.9z. All applicable criteria shall be applied in accordance with this chapter, Chapter 96 (relating to water quality standards implementation) and other applicable State and Federal laws and regulations.

TABLE 3

<i>Parameter</i>	<i>Symbol</i>	<i>Criteria</i>	<i>Critical Use*</i>
		* * * * *	
Dissolved Oxygen		The following specific dissolved oxygen criteria recognize the natural process of stratification in lakes, ponds and impoundments. These criteria apply to flowing waters and to the epilimnion of a naturally stratified lake, pond or impoundment. The hypolimnion in a naturally stratified lake, pond or impoundment is protected by the narrative water quality criteria in § 93.6 (relating to general water quality criteria). For nonstratified lakes, ponds or impoundments, the dissolved oxygen criteria apply throughout the lake, pond or impoundment to protect the critical uses.	See the following table.
		* * * * *	
	DO ₃	For the period February [1] 15 to July 31 of any year, minimum daily average 6.0 mg/l; minimum 5.0 mg/l. For the remainder of the year, minimum daily average 5.0 mg/l; minimum 4.0 mg/l.	TSF
		* * * * *	

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9d. Drainage List D.

Delaware River Basin in Pennsylvania
Lehigh River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
3—Fireline Creek	Basin	Carbon	CWF	None
3—Lizard Creek	Basin, Source to T-922 Bridge	Schuylkill	CWF	None
3—Lizard Creek	Basin, T-922 Bridge to [Mouth] confluence of UNT 03876	Carbon	TSF	None
4—UNT 03876	Basin	Carbon	EV	None
3—Lizard Creek	Basin, UNT 03876 to Mouth	Carbon	TSF	None
		* * * * *		

§ 93.9e. Drainage List E.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
2—Neshaminy Creek	Non-Tidal Portion of Main Stem, RM 26.84 to Mouth			Bucks			WWF, MF	Add Tur ₁
3—Mill Creek	Basin, Watson Creek to Mouth			Bucks			WWF, MF	Add [Tur ₃] Tur ₁
3—Newtown Creek	Basin			Bucks			WWF, MF	Add Tur₁
3—Core Creek	Basin, Source PA Rte 620 Dam			Bucks			CWF, MF	Add Tur ₂
		*	*	*	*	*		

§ 93.9g. Drainage List G.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
4—East Branch Brandywine Creek	Main Stem, Shamona Creek to Confluence with West Branch			Chester			WWF, MF	None
5—Beaver Creek	Basin, East Brandywine-[Cain] Caln Township Border to Mouth			Chester			TSF, MF	None
5—Valley Creek	Basin, Source to Broad Run			Chester			CWF, MF	None
		*	*	*	*	*		

§ 93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
4—Rogues Harbor Run	Basin			Clearfield			EV	None
3—Chest Creek	Basin, Rogues Harbor Run to [Mouth] Pine Run			Clearfield			CWF	None
4—Pine Run	Basin			Clearfield			EV	None
3—Chest Creek	Basin, Pine Run to Mouth			Clearfield			CWF	None
3—Miller Run	[Basins] Basin			Clearfield			CWF	None
		*	*	*	*	*		
5—Cedar Run	Basin			Centre			CWF	None
5—UNT 23057 (locally Markles Gap Run)	Basin			Centre			HQ-CWF	None
[5—McBrides Run	Basin			Centre			HQ-CWF	None]
5—Slab Cabin Run	Basin, Source to PA 26 at RM 9.0			Centre			HQ-CWF	None
		*	*	*	*	*		
4—Spring Creek	Main Stem, PA 550 Bridge to Mouth			Centre			HQ-CWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
5—Unnamed Tributaries to Spring Creek	[Basins] Basin, PA 550 Bridge to Mouth	Centre	CWF	None
5—Logan Branch	Basin, Source to [T-371 Bridge] UNT 23007	Centre	CWF	None
6—UNT 23007 (locally McBrides Run)	Basin	Centre	HQ-CWF	None
5—Logan Branch	Basin, UNT 23007 to T 371 Bridge	Centre	CWF	None
5—Logan Branch	Main Stem, T-371 Bridge to Mouth	Centre	HQ-CWF	None
		* * * * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
2—Pequea Creek	Main Stem, PA 897 to Mouth	Lancaster	WWF	None
		* * * * *		
3—Indian Spring Run	Basin, Source to SR 10 Bridge	[Lancaster] Chester	[CWF]EV	None
3—Indian Spring Run	Basin, SR10 to Confluence of UNT 07540	Lancaster	CWF	None
4—UNT 07540 to Indian Spring Run	Basin, Source to SR10 Bridge	Chester	HQ-CWF	None
4—UNT 07540 to Indian Spring Run	Basin, SR10 Bridge to Mouth	Lancaster	CWF	None
3—Indian Spring Run	Basin, UNT 07540 to Mouth	Lancaster	CWF	None
3—White Horse Run	Basin	Lancaster	WWF	None
		* * * * *		

§ 93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
4—Pell Run	Basin	Warren	CWF	None
4—Messenger Run	Basin	Warren	EV	None
4—Mead Run	Basin	Warren	CWF	None
		* * * * *		

§ 93.9v. Drainage List V.

**Ohio River Basin in Pennsylvania
Monongahela River**

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
4—Indian Creek	Basin, Camp Run to Champion Creek	Fayette	HQ-CWF	None
5—Champion Creek	Basin	Fayette	CWF	None
4—Indian Creek	Main Stem, Champion Creek to Mouth	Fayette	CWF	None
5—Unnamed Tributaries to Indian Creek	Basins, Champion Creek to Mouth	Fayette	CWF	None
		* * * * *		

[Pa.B. Doc. No. 05-1562. Filed for public inspection August 19, 2005, 9:00 a.m.]
