

RULES AND REGULATIONS

Title 17—CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 45]

Conservation of Pennsylvania Native Wild Plants

The Department of Conservation and Natural Resources (Department) adopts amendments to Chapter 45 (relating to conservation of Pennsylvania native wild plants). The final-form rulemaking moves the beginning of the ginseng harvest season from August 1 to September 1 in § 45.69 (relating to vulnerable plant harvest seasons and conditions). In addition, in describing mature ginseng plants, the final-form rulemaking corrects reference to “seeds” by replacing this term with “berries.”

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Rebecca H. Bowen, Chief, Ecological Services Section, Bureau of Forestry, Department of Conservation and Natural Resources, P. O. Box 8552, Harrisburg, PA 17105-8552, (717) 787-3444. Persons with a disability may use (800) 654-5984 (TTY).

This final-form rulemaking is posted on the Department's web site at <http://www.dcnr.state.pa.us/forestry/plants/vulnerableplants/ginseng/index.htm>.

C. *Statutory Authority*

This final-form rulemaking is made under the authority of section 7 of the Wild Resource Conservation Act (WRCA) (32 P. S. § 5307) and sections 305 and 313 of the Conservation and Natural Resources Act (CNRA) (71 P. S. §§ 1340.305 and 1340.313).

It should be noted that the Department of Environmental Resources was assigned to administer the WRCA. Subsequently, section 305(a)(9) of the CNRA transferred this authority to the Department.

D. *Background and Purpose*

Statutory and regulatory framework

The WRCA was enacted in 1982 to enhance the protection of native wild plants and nongame animals in this Commonwealth. Under the WRCA, the Department established a classification system for native wild plants in Chapter 45. The classifications, such as extirpated, endangered, rare, threatened and vulnerable, are defined in § 45.2 (relating to definitions). The lists of species within each classification are in Subchapter B (relating to classified plants).

Vulnerable plants are defined in § 45.2 as plant species “which are in danger of population decline within this Commonwealth because of their beauty, economic value, use as a cultivar or other factors which indicate that persons may seek to remove these species from their native habitats.” Ginseng (*Panax quinquefolius*) is one of the three species listed in § 45.15 (relating to Pennsylva-

nia Vulnerable) as a vulnerable plant. Ginseng is a forest plant that is native to the eastern half of the United States and Canada. Parts of the ginseng plant, particularly its root, are valued for their therapeutic qualities and have been traded commercially, both domestically and internationally, for centuries.

Under the WRCA, the Department is responsible for the protection and management of native wild plants. With respect to vulnerable plants, section 9 of the WRCA (32 P. S. § 5309) provides as follows:

(a) Species classified as vulnerable shall be subject to the following restrictions:

(1) The [Department] upon designation of vulnerable species shall establish regulations over the digging, harvesting, sale and exploitation of said species.

(2) The regulations shall:

(i) consider the distribution, abundance, economic value, growing and reproduction cycle;

(ii) establish seasons for the digging and harvesting of plants or plant parts; and

(iii) provide for the commercial licensing of persons who buy with the intent to sell vulnerable plants within the Commonwealth or export said plants therefrom and to require the licensees to maintain records of their transactions.

(3) The [Department] shall establish the license fee.

Under section 9(a)(1) of the WRCA, the Department has promulgated regulations “over the digging, harvesting, sale and exploitation” of vulnerable plants. These regulations in Subchapter E (relating to vulnerable plants) require persons who buy, trade or barter vulnerable plants with the intent to sell them in, or export them from, this Commonwealth to obtain a commercial license from the Department. The regulations require licensees to submit to the Department records of transactions including information about the licensee's purchase of the plants, sale of the plants, county of origin of the plants, form of plants (for example, whole plant, root or seeds), year of harvest, weight of the plants, destination and date of export and whether the plants are wild or cultivated.

In addition to covering vulnerable plants in general, the Department's regulations establish special requirements for ginseng plants. These are a result of an international trade agreement known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 (CITES) signed by the United States and many other countries, administered in the United States by the United States Fish and Wildlife Service (USFWS). See <http://www.cites.org/> and <http://www.fws.gov/international/plants/american-ginseng.html>. The relationship between the Department's ginseng harvesting regulation and CITES is discussed as follows.

Purposes of this Final-Form Rulemaking

Section 45.69 addresses certain activities regarding the harvest of vulnerable plants in general and ginseng in particular. This section establishes a harvest season for ginseng that runs from September 1 to November 30 and prohibits the possession of harvested green ginseng roots between April 1 and the start of harvest season. This final-form rulemaking moves the start of harvest season forward by 1 month to September 1 and, consistent with this change, prohibits possessing harvested green roots

between April 1 and September 1. The amendments also correct the terminology in § 45.69(a)(2) for the ginseng berry.

Harvest date

The intent of § 45.69(a) is to ensure the sustainability of ginseng. It takes a ginseng plant at least 5 years to mature. Ginseng seeds have the best chance of producing new plants if they come from a mature plant and are planted near the site of the harvested plant. Section 45.69(a), therefore, allows only mature plants to be harvested and requires that the seeds of these plants be planted in the immediate vicinity of the collection site. To ensure that only mature plants are harvested, § 45.69(a) puts collectors on notice of the physical characteristics of a mature ginseng plant—it has at least three leaves of five leaflets each and red berries. In addition, this section prohibits collection of the plant before the start of the harvest season as defined in the section. Therefore, to comply with the Department's ginseng harvesting requirements, a collector may harvest ginseng plants only if: 1) they have at least three leaves of five leaflets each; 2) they have red seeds (berries); 3) they are collected during harvest season; and 4) their seeds are planted in the immediate vicinity of the collection site.

The purpose of this final-form rulemaking is to move the start date of the ginseng harvest season from August 1 to September 1. There is general agreement within both the scientific community and the ginseng industry that an August 1 start date is too early to ensure that ginseng plants that meet the description of mature plants in terms of their leaves and berries are fully mature and can safely be harvested without threatening the survival of the ginseng population.

The harvesting of ginseng plants in ginseng-exporting states, such as this Commonwealth, is subject to special restrictions imposed by the USFWS. The USFWS's involvement is due to the regulation of the export of ginseng from the United States by CITES. The purpose of CITES is to monitor and regulate the international trade of certain plant and animal species to prevent detrimental impacts to their populations so as to ensure the continued existence of the species in their native habitat. The CITES authority in the United States is the USFWS.

CITES requirements, as administered by the USFWS, for permitting the export of species subject to CITES are codified in 50 CFR Part 23 (relating to Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)). Section 23.68 of 50 CFR (relating to how can I trade internationally in roots of American ginseng) contains the specific requirements for the export of ginseng. The USFWS has established an export program for states that export ginseng. Under this program, on an annual basis, before the USFWS will allow export from a state, it must determine that ginseng harvested in that state is legally acquired and that export will not be detrimental to the survival of the species in that state. See 50 CFR 23.68. The USFWS will make a “non-detriment” finding for export of ginseng plants from a state only if it is satisfied that the state has taken measures to ensure the plants were mature when harvested. See <http://www.fws.gov/international/pdf/archive/workshop-american-ginseng-cites-non-detriment-findings.pdf>. The USFWS determined that the survival of ginseng plant populations could be detrimentally affected if a state allows harvesting to begin as early as August 1. Therefore, the USFWS urged the Commonwealth and the Department to adopt a later harvest season and it is specifically recommending September 1 as the start date.

The USFWS made it clear to the Department that unless the change in harvest season is adopted soon, the USFWS will be unable to make a “non-detriment” finding under CITES with regard to the harvesting of ginseng in this Commonwealth. Copies of correspondence from the USFWS are available from the Bureau of Forestry. The absence of a nondetriment finding would mean that the USFWS would cease issuing export permits for ginseng harvested in this Commonwealth. See the USFWS 2012 findings report on ginseng at http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_20026618.pdf. Adopting the USFWS's recommendation of a September 1 harvest date brings this Commonwealth in line with nearly all of the ginseng-exporting states surrounding Pennsylvania.

This Commonwealth was the only ginseng-exporting state with a harvest season date as early as August 1. Variations in the yearly growing seasons and growing conditions in different parts of this Commonwealth could cause ginseng berries to turn red slightly before or slightly after September 1. However, as is recognized by harvesters, dealers and botanical researchers in this Commonwealth, the clear trend in Pennsylvania and surrounding states is for berries to be red by September 1.

It should be noted that the export of another species of plant classified in Chapter 45 as vulnerable, Golden-Seal (*Hydrastis Canadensis*), is also subject to regulation by CITES as administered by the USFWS. However, unlike ginseng, specific harvest season dates are not required for this species.

Correction of terminology

Section 45.69(a)(2) formerly stated as follows regarding the harvesting of ginseng plants: “Only mature ginseng plants with at least three leaves of five leaflets each may be harvested and only when the *seeds* are red.” Emphasis added.

This final-form rulemaking replaces “seeds” with the correct term “berries.” The reason for this amendment is to distinguish between seeds and berries. When a ginseng plant is mature, it has red berries. The red berries contain seeds that are ready to plant.

E. Summary of Comments and Responses

The proposed rulemaking was published at 43 Pa.B. 1419 (March 16, 2013) with a 30-day public comment period. The Department did not make changes to the proposed rulemaking. One comment was received from the public.

Comment

“The proposed rulemaking is reasonable and is necessary for this Pennsylvania Vulnerable species to remain part of Pennsylvania's flora. WPC supports DCNR's effort to update the ginseng management program with this change.”

Response

The Department acknowledges the comment and appreciates the support of this final-form rulemaking.

F. Benefits, Costs and Compliance

Benefits

The benefit of moving the beginning date of the ginseng harvest season from August 1 to September 1 is to help sustain the populations of ginseng in this Commonwealth by allowing the plants to mature so that when their seeds are planted, new plants will grow and the ginseng

population will continue to survive. In addition, it would bring this Commonwealth's harvest season in line with those of the other ginseng-exporting states, thereby discouraging poaching across state borders. Finally, and most immediately, it will allow the USFWS, under CITES, to continue to find that the export of ginseng harvested in this Commonwealth will not be detrimental to the survival of the species and thus avoid a ban on the export of ginseng from this Commonwealth.

The correction of terminology to distinguish between "seed" and "berry" will remove confusion caused by the former language in the harvesting provisions of § 45.69 and consequently support compliance with its provisions.

Compliance costs

This final-form rulemaking will not impose additional compliance costs on the regulated community.

Compliance Assistance Plan

This is not applicable.

Paperwork requirements

There will not be an increase in the amount of required paperwork.

G. Sunset Review

Chapter 45 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 March 5, 2013, the Department submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1419, 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 House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 19, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective June 19, 2013.

I. Findings

The Board finds that:

(1) Public notice of intention to adopt the administrative amendments 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 amendments to the Department's regulations in the manner provided in this order are necessary and appropriate for the administration of the authorizing statutes.

J. Order

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

(a) The regulations of the Department, 17 Pa. Code Chapter 45, are amended by amending § 45.69 to read as set forth at 43 Pa.B. 1419.

(b) The Department shall submit this order and 43 Pa.B. 1419 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 Department shall submit this order and 43 Pa.B. 1419 to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Department shall certify this order and 43 Pa.B. 1419 and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ELLEN FERRETTI,
Acting Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3857 (July 6, 2013).)

Fiscal Note: Fiscal Note 7B-6 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-1325. Filed for public inspection July 19, 2013, 9:00 a.m.]

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[Correction]

[22 PA. CODE CH. 4]

Academic Standards and Assessment; Reading, Writing, Speaking and Listening and Mathematics

The ordering language in the final-omitted rulemaking published at 40 Pa.B. 5903, 5906 (October 16, 2010) was incomplete. The correct version of the ordering language is as follows.

Appendix A of 22 Pa. Code Chapter 4 (relating to academic standards for reading, writing, speaking and listening) was effective through June 30, 2013. This appendix will be reserved in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 467, October 2013). Pages 4-33—4-110 will be removed and the following pages will not be renumbered.

Appendix B of 22 Pa. Code Chapter 4 (relating to Common Core State Standards for English Language Arts & Literacy in History/Social Studies, Science, and Technical Subjects), as published at 40 Pa.B. 5907—5999, was renumbered upon codification in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 434, January 2011). This appendix appears as Appendix A-1 in the *Pennsylvania Code*. The following ordering language refers to this appendix as A-1.

Order

The Board, acting under the authority of the code, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 4, are amended by amending §§ 4.3, 4.11, 4.12 and by adding Appendix A-1 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board will 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 Executive Director of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the *Pennsylvania Bulletin*. Appendix A-1 will take effect on July 1, 2013. Appendix A will be deleted on June 30, 2013.

[Pa.B. Doc. No. 13-1326. Filed for public inspection July 19, 2013, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Triennial Review of Water Quality Standards

The Environmental Quality Board (Board) is amending Chapter 93 (relating to water quality standards) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of April 16, 2013.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Rodney A. Kime, Chief, Division of Water Quality Standards, Bureau of Point and Non-Point Source Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8774, Harrisburg, PA 17105-8774, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us.

C. *Statutory Authority*

The final-form rulemaking is made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (act) (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the act, 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 131.41 (relating to bacteriological criteria for those states not complying with Clean Water Act section 303(i)(1)(A)) sets forth bacteria criteria for coastal recreation waters in the Commonwealth.

D. *Background and Summary*

Section 303(c)(1) of the Clean Water Act requires that states periodically, but at least once every 3 years, review

and revise as necessary their water quality standards. This final-form rulemaking constitutes the Commonwealth's current triennial review of its water quality standards.

The Commonwealth's water quality standards, which are codified in Chapter 93 and portions of Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), are designed to implement the requirements of sections 5 and 402 of the act and section 303 of the Clean Water Act. The water quality standards consist of the designated and existing uses of the surface waters of the Commonwealth, along with the specific numeric and narrative criteria necessary to achieve and maintain those uses, and an antidegradation policy. Thus, water quality standards are instream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements, best management practices and effluent limitations, on individual sources of pollution.

This final-form rulemaking clarifies requirements and updates the regulations to be consistent with Federal guidance where indicated. These regulations may affect persons who discharge wastewater into surface waters of the Commonwealth or otherwise conduct activities, which may impact these waters.

Part of the triennial review requires that states reexamine water body segments that do not meet the fishable or swimmable uses specified in section 101(a)(2) of the Clean Water Act (33 U.S.C.A. § 1251(a)(2)). The Department evaluated the two Pennsylvania water bodies where the uses are not currently met: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/Presque Isle Bay (§ 93.9x (relating to Drainage List X)), and (2) several zones in the Delaware Estuary (§§ 93.9e and 93.9g (relating to Drainage Lists E and G)).

The swimmable use designation was deleted from the Harbor Basin and entrance channel demarcated by United States Coast Guard buoys and channel markers on Outer Erie Harbor/Presque Isle Bay because pleasure boating and commercial shipping traffic pose a serious safety hazard in this area. This decision was further supported by a Use Attainability (UAA) study conducted by the Department of Environmental Resources (DER) in 1985. Because the same conditions and hazards exist today, there is not a change to the designated use for Outer Erie Harbor/Presque Isle Bay in this final-form rulemaking.

In April 1989, DER cooperated with the Delaware River Basin Commission (DRBC), the United States Environmental Protection Agency (EPA) and other DRBC signatory states on a comprehensive UAA study in the lower Delaware River and Delaware Estuary. This study resulted in appropriate recommendations regarding the swimmable use, which the DRBC included in water use classifications and water quality criteria for portions of the tidal Delaware River in May 1991. The appropriate DRBC standards were referenced in §§ 93.9e and 93.9g in 1994. The primary water contact use remains excluded from the designated uses for river miles 108.4 to 81.8 because of continuing significant impacts from combined sewer overflows, and hazards associated with commercial shipping and navigation.

The Department discussed the proposed triennial rulemaking with the Water Resources Advisory Committee (WRAC) five times in 2011, including at the April, June, July, October and December meetings. On January 11, 2012, WRAC voted to present the proposed rulemaking

package to the Board. The Agricultural Advisory Board declined the need for their consideration on the proposed triennial review of water quality standards that was scheduled for its regular October 19, 2011, meeting.

The regulations were adopted by the Board as a proposed rulemaking at its April 17, 2012, meeting. The proposed rulemaking was published at 42 Pa.B. 4367 (July 7, 2012) with a 45-day public comment period that ended on August 21, 2012. The Board held a public hearing for the purpose of accepting comments on the proposed rulemaking on August 8, 2012, in Conference Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board received public comments from 197 commenters including testimony from 2 witnesses at the public hearing. The comments received on the proposed rulemaking are summarized in Section E.

The Board considered the public comments received on the proposed rulemaking in preparing this final-form rulemaking. WRAC, in coordination with the Department, initiated an ad hoc workgroup to discuss two aspects of the triennial review proposed rulemaking. The ad hoc workgroup met on August 27, 2012, to discuss the proposed sulfate aquatic life criterion and on August 29, 2012, to allow for scientific information to be presented on the aquatic life and human health criterion for molybdenum. These publicly noticed ad hoc workgroup meetings were held in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, and offered presenters the opportunity to participate by conference call.

The draft final regulation was discussed with WRAC at its November 28, 2012, meeting. WRAC approved the final rulemaking and recommended the Department present the final rulemaking to the Board for adoption.

E. Summary of Responses to Comments and Changes to the Proposed Rulemaking

As a result of the public hearing and public comment period, the Board received comments from 197 commentators including the Independent Regulatory Review Commission (IRRC) and EPA Region 3. The majority of commentators expressed opposition to the proposed water quality criteria for molybdenum, sulfates and chlorides. Specifically, commentators questioned whether the Statewide criteria for these contaminants would impact the economy and the regulated community, and also questioned the scientific studies the Department relied upon in the development of the criteria. Commentators also requested that the Department perform additional instream monitoring and provide further justification on the need for the proposed Statewide criteria for molybdenum, sulfates and chlorides.

A more detailed summary of the comments submitted to the Board, and the Department's responses to those comments are available in the Report to the Environmental Quality Board Comment and Response Document (February 2013).

A detailed description of the revisions to the Chapter 93 follows.

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

The Board received a comment requesting that all property owners affected by a potential stream redesignation be directly notified of the petition and assessment.

While the Department acknowledges that notifying the public of stream redesignation rulemaking activities is important, it would be onerous and costly to require the Department to directly notify all property owners, as

suggested by the commentator. Therefore, the Board is not including direct property owner notification requirements in this final-form rulemaking. The Department believes it has effective measures in place to ensure the public is informed of stream redesignation activities. For example, the Department posts all of its stream redesignation rulemaking activities on its web site at http://www.portal.state.pa.us/portal/server.pt/community/water_quality_standards/10556 (under "Monitoring," select "Stream Redesignations"). Interested members of the public can visit the Department's web site to get the latest and most up-to-date information regarding the Department's actions pertaining to stream redesignations. The Department will continue to post its stream redesignation rulemaking activities on its web site. As an additional opportunity for notice, the Department is considering the issuance of a press release whenever an activity occurs regarding stream redesignations. Currently, a member of the public who is interested about stream redesignation activities may register on the Department's web site to receive direct electronic notification of press releases issued by the Department. The Department believes these outreach measures will be more effective in notifying the public about stream redesignation rulemaking activities and will increase the effectiveness of the public notification provisions in § 93.4d (relating to processing of petitions, evaluations, and assessments to change a designated use) in comparison to relying on one-time notices published in local newspapers that often go unnoticed by the public. However, the Department may rely on newspaper notices to inform the public of stream redesignation rulemaking activities when it may be more appropriate to do so.

§ 93.7. Specific water quality criteria

Chloride—There were several comments received by the Board in opposition to the chloride aquatic life equation-based criterion. The Board is withdrawing the proposed equation-based aquatic life criteria for chloride, including both the acute and chronic equations.

The overall proportion of ions (ion matrices) in the water affects the toxicity of individual ions such as chloride. There is now more recent and ongoing research, much of it funded by the EPA, examining the relationship between various ion matrices and toxicity. A workshop attended by major researchers in April 2012 titled "Effects of Major Ions on Aquatic Organisms" focused on ion matrices and their effects on sensitive aquatic species. The ion matrices could be most problematic in the Commonwealth's calcium dominated limestone streams or where the source of chlorides is other than sodium chloride.

The Department is now aware of several studies currently being undertaken to determine chloride toxicity. The Canadian Council of Ministers of the Environment released guidelines for chloride criteria development in 2011. The Stroud Water Research Center also prepared an expert report on ambient water quality criteria for chlorides (Stroud Report #2010004, June 14, 2010). The report concluded that the criteria proposed by the Department may not be protective of sensitive species and as a result they recommended other more protective criteria.

The Department recognizes it needs to conduct a review and evaluation of recent data before adopting a standard, but that it must be done in a timely manner. By a majority vote of 13 to 0 with 1 abstention, WRAC passed the following motion at its November 28, 2012, meeting, encouraging the Department to continue working on chloride criteria: "WRAC encourages DEP to continue

evaluating the chloride criteria with the goal of proposing new criteria preferably prior to the next Triennial review.”

Dissolved Oxygen—In this final-form rulemaking, the Board is revising the proposed language in DO₁ to provide clarity to when § 93.7(b) (relating to specific water quality criteria) should be applied. Specifically, “applied in accordance with subsection (b)” is moved so that it is clear that both the 7-day average and minimum criteria for naturally reproducing salmonids should be applied in accordance with § 93.7(b).

The Board would like to further clarify that the final regulations for dissolved oxygen criteria apply to flowing, freshwater and the epilimnion of naturally stratified lakes, ponds or impoundments.

Also, in response to a comment received by the Board, “Salmonid” is changed to “salmonid” since the word is no longer a proper noun and does not need to be capitalized.

Sulfate—The Board is withdrawing the proposed equation-based aquatic life criteria for sulfate. Dr. David Soucek, Ph.D. with the Illinois Natural History Survey is the primary investigator in the research that led to the development of the proposed equation-based sulfate criteria. Dr. Soucek and other leading researchers cautioned that although the toxicological results supporting the proposed sulfate criterion are valid, the test conditions used in the toxicity tests, which led to the development of the sulfate criterion, may not be applicable to all of the Commonwealth’s waters. The ionic composition of the test water compared to the natural ionic composition of portions of the Commonwealth’s waters differs and that difference is the cause for concern. Sodium (Na²⁺) was the dominant cation associated with the sulfate (SO₄²⁻) anion under the test conditions. In Commonwealth streams, natural sodium (Na²⁺) concentrations are low while calcium (Ca²⁺) and magnesium (Mg²⁺) are more prevalent.

It has been demonstrated that varying the cations affects the toxicity of the sulfate anion in solution. This toxicity difference in response to ionic composition leads to doubts regarding whether the proposed sulfate criteria provides the appropriate level of aquatic life protection from the toxic effects that have been scientifically proven to be associated with elevated sulfate levels. Additionally, Dr. Soucek and other researchers stated that a chronic standard is needed to adequately protect the aquatic life and the proposed standard only included an acute standard.

Although the Board is withdrawing the sulfate proposed criteria, the Department will continue to monitor the quantities of sulfate discharged from various sources and measure stream concentrations while reviewing the developing science on sulfate.

Temperature—The Board is removing the rate of temperature change language from this section. A rate of temperature change provision remains applicable in § 96.6 (relating to heated wastewater discharges) to help control adverse impacts that may result from rapid changes in temperature. The Department continues to be interested in evaluating new science that pertains to a rate of temperature change to protect aquatic organisms.

§ 93.8c. *Human health and aquatic life criteria for toxic substances*

1,4-Dioxane—Based on comments received that a Statewide criterion is not warranted, the Board is removing the proposed Statewide criterion. The Department will continue to evaluate 1,4-dioxane in this Commonwealth. Additionally, the Department will continue to develop site-specific criteria, as needed, using the best available science.

Molybdenum—The Board is removing the proposed Statewide criterion for molybdenum based on comments received that a Statewide criterion for molybdenum is not warranted. The Department will continue to evaluate molybdenum in this Commonwealth. Additionally, the Department will continue to develop site-specific criteria, as needed, using the best available science.

§ 93.8d. *Development of site-specific water quality criteria*

The Board is adding language to subsection (f)(1) to be consistent with the revisions to Chapter 92a. This change merely updates cross references.

§ 93.9k. *Drainage List K*

Staff from the Fish and Boat Commission submitted comments during the public comment period of this triennial review regarding a possible omission of four named streams in § 93.9k: Packers Run, Raups Run, Gaskins Run and Kipps Run.

Gaskins Run, Kipps Run, Raups Run and Packers Run are all currently designated CWF, MF. To be even broader, all tributaries to the (North Branch) Susquehanna River between Mahoning Creek and the West Branch Susquehanna River are CWF, MF. These four tributaries (Gaskins Run, Kipps Run, Raups Run and Packers Run) are included under the current entry for UNTs to Susquehanna River; Basins; Lackawanna River to West Branch Susquehanna River; Luzerne, Columbia, Montour, Northumberland; CWF, MF; None.

After reviewing the history associated with designation in this watershed, all tributaries to the Susquehanna River, both named and unnamed, between Mahoning Creek and West Branch Susquehanna River will be included in a single listing for “Tributaries to Susquehanna River.” This is a new change following the proposed rulemaking published at 42 Pa.B. 4367. A more complete discussion of the designation history can be found in the Report to the Environmental Quality Board: Comment and Response Document (February 2013).

F. *Benefits, Costs and Compliance*

Benefits—Overall, the Commonwealth, its citizens and natural resources will benefit from this final-form rulemaking because it provides the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality also provides economic value to present and future generations in the form of clean water for multiple water supply uses, recreational opportunities, and human health and aquatic life protection. It is important to realize all benefits and to ensure that activities that depend on surface water or that may affect its chemical, biological and physical integrity may continue in a manner that is environmentally, socially and economically sound.

Compliance costs—The final-form rulemaking may impose additional compliance costs on the regulated community. This final-form rulemaking is necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

Persons conducting or proposing activities or projects shall comply with the regulatory requirements regarding designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment to meet the more stringent criteria for selected parameters. These increased costs may take the form of higher engineering, construction or operating

costs for facilities. Treatment costs and best management practices are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. Therefore, it is 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. The initial costs from technologically improved treatments or best management practices may be offset over time by potential savings from and increased value of improved water quality.

Compliance Assistance Plan—This final-form rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980s. The amendments are consistent with and based on existing Department regulations regarding compliance.

This final-form rulemaking will be implemented, in part, through the National Pollutant Discharge Elimination System (NPDES) permitting program. Additional compliance actions are not anticipated. Staff is available to assist regulated entities in complying with the regulatory requirements if questions arise.

Paperwork requirements—This final-form rulemaking should not have significant paperwork impact on the Commonwealth, its political subdivisions or the private sector.

G. *Pollution Prevention*

Water quality standards are a major pollution prevention tool because they protect water quality and designated and existing uses. The final-form rulemaking will be implemented through the Department's permit and approval actions. For example, the NPDES bases effluent limitations and best management practices on the water uses of the stream and the water quality criteria necessary to protect and maintain those 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 regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 22, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 4367, 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 House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 19, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 20, 2013, and approved the final-form rulemaking.

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. In addition, a Board hearing was held. All comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 42 Pa.B. 4367.

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

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 §§ 93.1, 93.4c, 93.4d, 93.7, 93.8b, 93.8c, 93.8d, 93.9b—93.9i, 93.9k—93.9o, 93.9s, 93.9w and 93.9z 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 upon publication in the *Pennsylvania Bulletin*.

E. CHRISTOPHER ABRUZZO,
Acting Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3857 (July 6, 2013).)

(Editor's Note: For a statement of policy relating to this final-form rulemaking, see 43 Pa.B. 4103 (July 20, 2013).)

Fiscal Note: Fiscal Note 7-475 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
GENERAL PROVISIONS**

§ 93.1. Definitions.

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

* * * * *

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.

(iii) 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.

Daily average—The arithmetic average of the samples collected during a continuous 24-hour period.

* * * * *

Point source discharge—A pollutant source regulated under the National Pollutant Discharge Elimination System (NPDES) as defined in § 92a.2 (relating to definitions).

* * * * *

ANTIDegradation Requirements

§ 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) (relating to processing of petitions, evaluations and assessments to change a designated use), 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 §§ 92a.81, 92a.82, 92a.83 and 92a.85, the applicant shall identify the antidegradation classification of the receiving water in the notice of complete application in § 92a.82 (relating to public notice of permit applications and draft permits).

(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 an SEJ 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 Discharge Elimination System (NPDES) permit review stage

under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), 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 petition, or assessment of waters, for High Quality or Exceptional Value Waters redesignation.* The Department will publish in the *Pennsylvania Bulletin* and by other means designed to effectively reach a wide audience notice of receipt of a complete petition 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 petition 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).

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. These exceptions 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. 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 freshwater 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.	
	DO ₁	For flowing waters, 7-day average 6.0 mg/l; minimum 5.0 mg/l. For naturally reproducing salmonid early life stages, applied in accordance with subsection (b), 7-day average 9.0 mg/l; minimum 8.0 mg/l. For lakes, ponds and impoundments, minimum 5.0 mg/l.	CWF
	DO ₂	7-day average 5.5 mg/l; minimum 5.0 mg/l.	WWF
	DO ₃	For the period February 15 to July 31 of any year, 7-day average 6.0 mg/l; minimum 5.0 mg/l. For the remainder of the year, 7-day average 5.5 mg/l; minimum 5.0 mg/l.	TSF

<i>Parameter</i>	<i>Symbol</i>	<i>Criteria</i>	<i>Critical Use*</i>
Fluoride	F	Daily average 2.0 mg/l. * * * * *	PWS
Temperature		Maximum temperatures in the receiving water body resulting from heated waste sources regulated under Chapters 92a, 96 and other sources where temperature limits are necessary to protect designated and existing uses. * * * * *	See the following table.

(b) For naturally reproducing salmonids, protected early life stages include embryonic and larval stages and juvenile forms to 30 days after hatching. The DO₁ standard for naturally reproducing salmonid early life stages applies October 1 through May 31. The DO₁ standard for naturally reproducing salmonid early life stages applies unless it can be demonstrated to the Department's satisfaction, that the following conditions are documented: 1) the absence of young of the year salmonids measuring less than 150 mm in the surface water; and 2) the absence of multiple age classes of salmonids in the surface water. These conditions only apply to salmonids resulting from natural reproduction occurring in the surface waters. Additional biological information may be considered by the Department which evaluates the presence or absence of early life stages.

(c) The list of specific water quality criteria does not include all possible substances that could cause pollution. For substances not listed, the general criterion that these

substances may not be inimical or injurious to the existing or designated water uses applies. The Department will develop a criterion for any substance not listed in Table 3 that is determined to be inimical or injurious to existing or designated water uses using the best available scientific information, as determined by the Department.

(d) If the Department determines that natural quality of a surface water segment is of lower quality than the applicable aquatic life criteria in Table 3 or 5, the natural quality shall constitute the aquatic life criteria for that segment. All draft natural quality determinations will be published in the *Pennsylvania Bulletin* and be subject to a minimum 30-day comment period. The Department will maintain a publicly available list of surface waters and parameters where this subsection applies, and will, from time to time, submit appropriate amendments to §§ 93.9a—93.9z.

§ 93.8b. Metals criteria.

Dissolved criteria are footnoted in Table 5, and have been developed by applying the most current EPA conversion factors to the total recoverable criteria. The EPA factors are listed in the following Conversion Factors Table.

Conversion Factors Table

	<i>Chronic</i>	<i>Acute</i>	<i>Source</i>
Arsenic	1.000 (As3+)	1.000 (As3+)	1,2
Cadmium	1.101672- (ln[H] × 0.041838)	1.136672- (ln[H] × 0.041838)	2
Chromium III	0.860	0.316	1,2
Chromium VI	0.962	0.982	1,2
Copper	0.960	0.960	1,2
Lead*		1.46203- (ln[H] × 0.145712)	2
Mercury	0.85	0.85	1,2
Nickel	0.997	0.998	1,2
Selenium	0.922	0.922	1
Silver	N/A	0.85	2
Zinc	0.986	0.978	1,2

* Conversion factor applies to both acute and chronic criteria.

Source 1—Final Water Quality Guidance for the Great Lakes System (60 FR 15366, March 23, 1995)

Source 2—Establishment of Numeric Criteria for Priority Pollutants; Revision of Metals Criteria—Interim Final Rule (60 FR 22229, May 4, 1995)

§ 93.8c. Human health and aquatic life criteria for toxic substances.

* * * * *

TABLE 5
WATER QUALITY CRITERIA FOR TOXIC SUBSTANCES

Fish and Aquatic Life Criteria

PP NO	Chemical Name	CAS Number	Criteria Continuous Concentrations (ug/L)	Criteria Maximum Concentration (ug/L)	Human Health Criteria (ug/L)	
		*	* * * *			
9A	PENTACHLORO-PHENOL	00087865	Exp(1.005×[pH]-5.134) @pH= 6.5 7.8 9.0 Crit= 4.1 15 50	Exp(1.005×[pH]-4.869) @pH= 6.5 7.8 9.0 Crit= 5.3 19 65	0.27	CRL
10A	PHENOL	00108952	N/A	N/A	10400	H
11A	2,4,6-TRICHLOROPHENOL	00088062	91	460	1.4	CRL
1V	ACROLEIN	00107028	3.0	3.0	6.0	H
2V	ACRYLONITRILE	00107131	130	650	0.051	CRL
		*	* * * *			
26V	1,2 trans-DICHLORO-ETHYLENE	00156605	1400	6800	140	H
—	1,2 cis-DICHLORO-ETHYLENE	00156592	N/A	N/A	12	H
27V	1,1,1-TRICHLORO-ETHANE	00071556	610	3000	N/A	-
		*	* * * *			
—	ACETONE	00067641	86000	450000	3500	H
—	ACRYLAMIDE	00079061	N/A	N/A	0.07	CRL
—	ALUMINUM	07429905	N/A	750	N/A	-
—	BARIUM	07440393	4100	21000	2400	H
—	BENZENE METADISULFONIC ACID	00098486	1600000	2600000	N/A	-
—	BENZENE MONOSULFONIC ACID	00098113	1200000	2000000	N/A	-
—	BENZYL CHLORIDE	00100447	N/A	N/A	0.2	CRL
—	BORON	07440428	1600	8100	3100	H
—	2-BUTOXY ETHANOL	00111762	N/A	N/A	700	H
—	COBALT	07440484	19	95	N/A	-
—	p-CRESOL	00106445	160	800	N/A	-
—	CYCLOHEXYLAMINE	00108918	N/A	N/A	1000	H
—	DIAZINON	00333415	0.17	0.17	N/A	-
—	FORMALDEHYDE	00050000	440	2200	700	H
—	2-HEXANONE	00591786	4300	21000	N/A	-
—	LITHIUM	07439932	N/A	N/A	N/A	-
—	METHYLETHYL KETONE	00078933	32000	230000	21000	H
—	METHYLISO-BUTYL KETONE	00108101	5000	26000	N/A	-
—	METOLACHLOR	51218452	N/A	N/A	69	H
—	NONYLPHENOL	00104405	6.6	28	N/A	-
—	P-PHENOL SULFONIC ACID	00098679	1400000	3500000	N/A	-
—	I-PROPANOL	00071238	46000	230000	N/A	-
—	2-PROPANOL	00067630	89000	440000	N/A	-
—	RESORCINOL	01084603	7200	28000	2700	H
—	STRONTIUM	07440246	N/A	N/A	4000	H
—	1,2,3-TRICHLORO-PROPANE	00096184	N/A	N/A	210	H

<i>PP NO</i>	<i>Chemical Name</i>	<i>CAS Number</i>	<i>Criteria Continuous Concentrations (ug/L)</i>	<i>Criteria Maximum Concentration (ug/L)</i>	<i>Human Health Criteria (ug/L)</i>	
—	1,2,4-TRIMETHYLBENZENE	00095636	N/A	N/A	72	H
—	1,3,5-TRIMETHYLBENZENE	00108678	N/A	N/A	72	H
—	VANADIUM	07440622	100	510	N/A	-
—	XYLENE	01330207	210	1100	70000	H
		*	*	*	*	*

§ 93.8d. Development of site-specific water quality criteria.

* * * * *

(f) If the Department determines that site-specific criteria are appropriate in accordance with subsection (a), the Department will do the following:

(1) Publish the site-specific criterion in the *Pennsylvania Bulletin*, along with other special conditions under § 92a.82(b)(3) (relating to public notice of permit applications and draft permits) and provide for public participation and public hearing in accordance with §§ 92a.81, 92a.82, 92a.83 and 92a.85.

* * * * *

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9b. Drainage List B.

Delaware River Basin in Pennsylvania
Lackawaxen River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
1—Delaware River				
2—Lackawaxen River				
3—West Branch Lackawaxen River	Basin, Source to Prompton Reservoir	Wayne	HQ-CWF, MF	None
3—West Branch Lackawaxen River	Main Stem, Prompton Reservoir to Confluence with Lackawaxen River and Van Auken Creek	Wayne	HQ-TSF, MF	None
4—Tributaries to West Branch Lackawaxen River	Basins, Prompton Reservoir to Confluence with Lackawaxen River and Van Auken Creek	Wayne	HQ-CWF, MF	None
3—Van Auken Creek	Basin	Wayne	HQ-TSF, MF	None
2—Lackawaxen River	Mainstem, confluence of West Branch Lackawaxen River and Van Auken Creek to Dyberry Creek	Wayne	HQ-TSF, MF	None
3—Tributaries to Lackawaxen River	Basins, confluence of West Branch Lackawaxen River and Van Auken Creek to Dyberry Creek	Wayne	HQ-CWF, MF	None
3—Dyberry Creek				
4—West Branch Dyberry Creek	Basin	Wayne	HQ-CWF, MF	None
4—East Branch Dyberry Creek	Basin	Wayne	EV, MF	None
3—Dyberry Creek	Basin, Confluence of West Branch Dyberry Creek and East Branch Dyberry Creek to Big Brook	Wayne	HQ-CWF, MF	None
4—Big Brook	Basin	Wayne	EV, MF	None
3—Dyberry Creek	Basin, Big Brook to Mouth	Wayne	HQ-CWF, MF	None
2—Lackawaxen River	Main Stem, Dyberry Creek to Mouth	Wayne	HQ-TSF, MF	None
3—Tributaries to Lackawaxen River	Basins, Dyberry Creek to Wallenpaupack Creek	Wayne	HQ-CWF, MF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
3—Wallenpaupack Creek	Basin, Source to Lake Wallenpaupack Dam	Wayne-Pike	HQ-CWF, MF	None
3—Wallenpaupack Creek	Basin, Lake Wallenpaupack Dam to Mouth	Wayne-Pike	HQ-WWF, MF	None
3—Tributaries to Lackawaxen River	Wallenpaupack Creek to Mouth	Pike	HQ-CWF, MF	None

§ 93.9c. Drainage List C.

Delaware River Basin in Pennsylvania
Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
	* * * * *			
3—Pine Mountain Run	Basin	Monroe	HQ-CWF, MF	None
3—Leas Run	Basin	Monroe	HQ-CWF, MF	None
3—Paradise Creek	Basin, source to Devils Hole Creek	Monroe	HQ-CWF, MF	None
4—Devils Hole Creek	Basin, Source to South Boundary of State Game Lands No. 221 (about 0.25 mile north of Erie-Lackawanna R. R.)	Monroe	EV, MF	None
4—Devils Hole Creek	Basin, South Boundary of State Game Lands No. 221 to Mouth	Monroe	HQ-CWF, MF	None
3—Paradise Creek	Basin, Devils Hole Creek to Mouth	Monroe	HQ-CWF, MF	None
3—Michael Creek	Basin	Monroe	HQ-CWF, MF	None
	* * * * *			
3—McMichael Creek	Basin, T434 to Pocono Creek	Monroe	HQ-CWF, MF	None
4—Pocono Creek				
5—Dry Sawmill Run	Basin, Source to Sand Spring Run	Monroe	HQ-CWF, MF	None
6—Sand Spring Run	Basin	Monroe	EV, MF	None
5—Dry Sawmill Run	Basin, Sand Spring Run to confluence with Wolf Swamp Run	Monroe	HQ-CWF, MF	None
5—Wolf Swamp Run	Basin, Source to a Confluence Point (41°3'35.2" N; 75°22'2.4"W) approximately 185 meters upstream of the mouth	Monroe	EV, MF	None
5—Wolf Swamp Run	Basin, Point of Confluence (41°3'35.2" N; 75°22'2.4"W) Downstream to Confluence with Dry Sawmill Run	Monroe	HQ-CWF, MF	None
4—Pocono Creek	Basin, Confluence of Dry Sawmill Run and Wolf Swamp Run to Mouth	Monroe	HQ-CWF, MF	None
3—McMichael Creek	Basin, Pocono Creek to Mouth	Monroe	TSF, MF	None
	* * * * *			
2—Slateford Creek	Basin, Source to T 735 Bridge	Northampton	EV, MF	None
2—Slateford Creek	Basin, T 735 Bridge to Mouth	Northampton	CWF, MF	None
	* * * * *			

§ 93.9d. Drainage List D.

Delaware River Basin in Pennsylvania
Lehigh River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
3—Saucon Creek	Main Stem, Black River to SR 412 Bridge	Northampton	HQ-CWF, MF	None
4—Unnamed Tributaries to Saucon Creek	Basins, Black River to SR 412 Bridge	Northampton	CWF, MF	None
3—Saucon Creek	Basin, SR 412 Bridge to Mouth	Northampton	CWF, MF	None
	* * * * *			

§ 93.9e. Drainage List E.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Little Neshaminy Creek	Basin	Bucks	WWF, MF	Add Tur ₁
3—Mill Creek				
4—Lahaska Creek	Basin	Bucks	CWF, MF	Add Tur ₂
4—Watson Creek	Basin	Bucks	CWF, MF	Add Tur ₂
3—Mill Creek	Basin, Confluence of Lahaska Creek and Watson Creek to Mouth	Bucks	WWF, MF	Add Tur ₁
	* * * * *			

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
3—Little Schuylkill River	Basin, Rattling Run to Mouth	Schuylkill	CWF, MF	None
2—Schuylkill River	Main Stem, Little Schuylkill River to Valley Creek	Montgomery-Chester	WWF, MF	None
3—Unnamed Tributaries to Schuylkill River	Basins, Little Schuylkill River to Berks-Chester-Montgomery County Border	Schuylkill-Berks	WWF, MF	None
	* * * * *			
3—Monocacy Creek	Basin	Berks	WWF, MF	None
3—Leaf Creek	Basin	Berks	WWF, MF	None
3—UNTs Schuylkill River	Basins (all UNTs along Montgomery County shore), Berks-Chester-Montgomery County Border to Valley Creek	Montgomery	WWF, MF	None
	* * * * *			
3—Pickering Creek	Basin, Philadelphia Suburban Water Company Dam to Mouth	Chester	WWF, MF	None
3—Crossmans Run	Basin	Montgomery	WWF, MF	None
3—Perkiomen Creek	Basin, Source to SR 1010 Bridge at Hereford	Berks	HQ-CWF, MF	None
	* * * * *			

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
3—Valley Creek	Basin	Montgomery-Chester	EV, MF	None
2—Schuylkill River	Basin, Valley Creek to Stony Creek	Montgomery	WWF, MF	None
3—Stony Creek	Basin	Montgomery	TSF, MF	None
2—Schuylkill River	Basin, Stony Creek to UNT 00926	Montgomery	WWF, MF	None
3—UNT 00926 at RM 18.9 (locally Spring Mill Run)	Basin	Montgomery	CWF, MF	None
2—Schuylkill River	Basin, UNT 00926 downstream to Mill Creek	Montgomery-Philadelphia	WWF, MF	None
3—Mill Creek	Basin	Montgomery	TSF, MF	None
2—Schuylkill River	Basin, Mill Creek to Wissahickon Creek	Montgomery-Philadelphia	WWF, MF	None
3—Wissahickon Creek	Basin	Philadelphia	TSF, MF	None
2—Schuylkill River	Basin, Wissahickon Creek to Head of Tide	Philadelphia	WWF, MF	None

§ 93.9g. Drainage List G.

Delaware River Basin in Pennsylvania
Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
	* * * * *			
3—White Clay Creek				
4—East Branch White Clay Creek	Basin, Source to Northern Border of Avondale Borough	Chester	EV, MF	None
4—East Branch White Clay Creek	Basin, Northern Border of Avondale Borough to Confluence with Middle Branch	Chester	CWF, MF	None
	* * * * *			
5—Unnamed Tributaries to West Branch Brandywine Creek	Basins, T 437 Bridge to Dam at Valley Station (except those in West Brandywine Township)	Chester	TSF, MF	None
5—Tributaries to West Branch Brandywine Creek	Basins, all portions in West Brandywine Township	Chester	HQ-TSF, MF	None
5—Birch Run	Basin, Source to Hibernia Park Dam	Chester	HQ-CWF, MF	None
	* * * * *			

§ 93.9h. Drainage List H.

Susquehanna River Basin in Pennsylvania
Tioga River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
	* * * * *			
2—Tioga River	Basin, Mill Creek to Crooked Creek	Tioga	CWF, MF	None
3—Crooked Creek	Basin, Source to Norris Brook	Tioga	WWF, MF	None
3—Crooked Creek	Main Stem, Norris Brook to Mouth	Tioga	WWF, MF	None
4—Unnamed Tributaries to Crooked Creek	Basins, Norris Brook to Mouth	Tioga	WWF, MF	None
4—Norris Brook	Basin	Tioga	TSF, MF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
4—Sweet Hollow	Basin	Tioga	WWF, MF	None
	* * * * *			

§ 93.9i. Drainage List I.

Susquehanna River Basin in Pennsylvania
Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
	* * * * *			
3—Alba Creek	Basin	Bradford	CWF, MF	None
3—Beech Flats Creek	Basin	Bradford	CWF, MF	None
3—Wallace Brook	Basin	Bradford	CWF, MF	None
3—Gulf Brook	Basin	Bradford	CWF, MF	None
3—North Branch Towanda Creek	Basin	Bradford	CWF, MF	None
	* * * * *			
3—Schrader Creek	Basin, Coal Run to Mouth	Bradford	HQ-CWF, MF	None
3—French Run	Basin	Bradford	CWF, MF	None
3—South Branch Towanda Creek	Basin	Bradford	CWF, MF	None
	* * * * *			

§ 93.9k. Drainage List K.

Susquehanna River Basin in Pennsylvania
Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
1—Susquehanna River	Main Stem, Lackawanna River to West Branch Susquehanna River	Northumberland	WWF, MF	None
2—Unnamed Tributaries To Susquehanna River	Basins, Lackawanna River to Mahoning Creek	Luzerne-Columbia-Montour-Northumberland	CWF, MF	None
2—Abrahams Creek	Basin	Luzerne	CWF, MF	None
	* * * * *			
2—Toby Run	Basin	Montour	CWF, MF	None
2—Mahoning Creek	Main Stem, Source to PA 54 Bridge	Montour	TSF, MF	None
3—Unnamed Tributaries to Mahoning Creek	Basins, Source to PA 54 Bridge	Montour	CWF, MF	None
3—Kase Run	Basin	Montour	CWF, MF	None
3—Mausies Creek	Basin	Montour	CWF, MF	None
2—Mahoning Creek	Main Stem, PA 54 Bridge to Mouth	Montour	WWF, MF	None
3—Unnamed Tributaries to Mahoning Creek	Basins, PA 54 Bridge to Mouth	Montour	CWF, MF	None
3—Sechler Run	Basin	Montour	CWF, MF	None
2—Tributaries to Susquehanna River	Basins, Mahoning Creek to West Branch Susquehanna River	Montour-Northumberland	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—Commissioners Run	Basin						Clinton	HQ-CWF, MF	None
4—Wistar Run	Basin						Clinton	HQ-CWF, MF	None
4—Moccasin Run (Moccasin Falls Run)	Basin						Clinton	HQ-CWF, MF	None
		*	*	*	*	*			
4—Mill Creek	Basin						Tioga	HQ-CWF, MF	None
4—Roaring Branch	Basin						Tioga	HQ-CWF, MF	None
4—Abbott Run	Basin						Lycoming	HQ-CWF, MF	None
		*	*	*	*	*			
5—Mock Creek	Basin						Lycoming	HQ-CWF, MF	None
5—Noon Branch	Basin, Source to Wolf Run						Lycoming	EV, MF	None
6—Wolf Run	Basin						Lycoming	HQ-CWF, MF	None
5—Noon Branch	Basin, Wolf Run to Mouth						Lycoming	HQ-CWF, MF	None
5—King Run	Basin, Source to Engle Run						Lycoming	HQ-CWF, MF	None
		*	*	*	*	*			

§ 93.9m. Drainage List M.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone						County	Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*			
2—Penns Creek	Main Stem, Laurel Run to Mouth						Snyder	WWF, MF	None
3—Unnamed Tributaries to Penns Creek	Basins, Laurel Run to RM 26.50						Union	CWF, MF	None
		*	*	*	*	*			
3—Crab Run	Basin						Schuylkill	CWF, MF	None
3—Zerbe Run	Basin						Northumberland	CWF, MF	None
3—Schwabens Creek	Basin						Northumberland	TSF, MF	None
		*	*	*	*	*			

§ 93.9n. Drainage List N.

Susquehanna River Basin in Pennsylvania
Juniata River

Stream	Zone						County	Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*			
5—Stone Creek	Basin, UNT 14908 to Mouth						Bedford	CWF, MF	None
5—Bobs Creek	Basin, Source to Pavia Run						Bedford	HQ-CWF, MF	None
6—Pavia Run	Basin						Bedford	HQ-CWF, MF	None
5—Bobs Creek	Basin, Pavia Run to Mouth						Bedford	CWF, MF	None
5—Adams Run	Basin						Bedford	WWF, MF	None
		*	*	*	*	*			

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
3—Unnamed Tributaries to Conodoguinet Creek	Basins, PA 997 at Roxbury to Mouth	Franklin-Cumberland	WWF, MF	None
3—Muddy Run	Basin, Source to Rowe Run	Franklin	WWF, MF	None
4—Rowe Run	Basin	Franklin	CWF, MF	None
3—Muddy Run	Basin, Rowe Run to Mouth	Franklin	WWF, MF	None
3—Middle Spring Creek	Basin	Franklin-Cumberland	CWF, MF	None
	* * * * *			
3—Stoverstown Branch	Basin	York	WWF, MF	None
3—South Branch Codorus Creek	Basin, source to UNT from Glen Rock Valley at RM 16.85	York	WWF, MF	None
4—UNT to South Branch Codorus Creek Through Glen Rock Valley	Basin	York	CWF, MF	None
3—South Branch Codorus Creek	Basin, UNT from Glen Rock Valley to East Branch Codorus Creek	York	WWF, MF	None
4—East Branch Codorus Creek	Basin, Source to PA 214	York	HQ-CWF, MF	None
4—East Branch Codorus Creek	Basin, PA 214 to Inlet of Lake Redman	York	CWF, MF	None
4—East Branch Codorus Creek	Main Stem, Inlet of Lake Redman to Mouth	York	WWF, MF	None
5—UNTs to East Branch Codorus Creek	Basins, Inlet of Lake Redman to Mouth	York	CWF, MF	None
5—Inners Creek	Basin	York	CWF, MF	None
3—South Branch Codorus Creek	Basin, East Branch Codorus Creek to Mouth	York	WWF, MF	None
3—Willis Run	Basin	York	WWF, MF	None
	* * * * *			
2—Pequea Creek	Main Stem, Source to PA 897	Lancaster	HQ-CWF, MF	None
3—Unnamed Tributaries to Pequea Creek	Basins, Source to PA 897	Lancaster	HQ-CWF, MF	None
3—Indian Spring Run	Basin, Source to SR 10 Bridge	Chester	EV, MF	None
3—Indian Spring Run	Basin, SR 10 Bridge to Confluence of UNT 07540 at RM 1.95	Lancaster	CWF, MF	None
4—UNT 07540 at RM 1.95 to Indian Spring Run	Basin, Source to SR 10 Bridge	Chester	HQ-CWF, MF	None
4—UNT 07540 at RM 1.95 to Indian Spring Run	Basin, SR 10 Bridge to Mouth	Lancaster	CWF, MF	None
3—Indian Spring Run	Basin, UNT 07540 at RM 1.95 to Mouth	Lancaster	CWF, MF	None
2—Pequea Creek	Main Stem, PA 897 to Mouth	Lancaster	WWF, MF	None
3—Unnamed Tributaries to Pequea Creek	Basins, PA 897 to Eshleman Run	Lancaster	CWF, MF	None
3—White Horse Run	Basin	Lancaster	WWF, MF	None
	* * * * *			
2—Peters Creek	Basin	Lancaster	HQ-WWF, MF	None
2—Haines Branch	Basin	Lancaster	HQ-WWF, MF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
2—Michael Run	Basin (all sections in PA)	York	WWF, MF	None
	* * * * *			

§ 93.9s. Drainage List S.

Ohio River Basin in Pennsylvania
Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
	* * * * *			
5—Reisinger Run	Basin	Clearfield	CWF	None
5—Pentz Run	Basin	Clearfield	CWF	None
5—Beaver Run	Basin	Clearfield	CWF	None
	* * * * *			
4—North Fork Redbank Creek	Basin, Source to South Branch of North Fork Redbank Creek	Jefferson	HQ-CWF	None
5—South Branch of North Fork Redbank Creek	Basin	Jefferson	EV	None
4—North Fork Redbank Creek	Basin, South Branch of North Fork Redbank Creek to Shippen Run	Jefferson	HQ-CWF	None
5—Shippen Run	Basin	Jefferson	EV	None
4—North Fork Redbank Creek	Basin, Shippen Run to Craft Run	Jefferson	HQ-CWF	None
5—Craft Run	Basin	Jefferson	EV	None
4—North Fork Redbank Creek	Basin, Craft Run to Mouth	Jefferson	HQ-CWF	None
3—Redbank Creek	Main Stem, Confluence of Sandy Lick Creek and North Fork to Mouth	Armstrong	TSF	None
	* * * * *			

§ 93.9w. Drainage List W.

Ohio River Basin in Pennsylvania
Ohio River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
	* * * * *			
3—Enlow Fork	Main Stem, Source to PA-WV State Border	Washington-Greene	TSF	None
4—Tributaries to Enlow Fork	Basins, Source to Templeton Fork	Washington-Greene	WWF	None
4—Templeton Fork	Basin	Washington	TSF	None
4—Tributaries to Enlow Fork	Basins, Templeton Fork to PA-WV State Border (all sections in PA)	Washington-Greene	WWF	None
3—Enlow Fork (WV)				
	* * * * *			

§ 93.9z. Drainage List Z.

Potomac River Basin in Pennsylvania
Potomac River

Stream	Zone						County	Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*			
2—Antietam Creek (MD)									
3—Unnamed Tributaries to Antietam Creek	Basins (all sections in PA), PA-MD State Border to Mouth					Franklin	WWF, MF	None	
3—Marsh Run	Basin (all sections in PA)					Franklin	WWF, MF	None	
2—Monocacy River (MD)									
3—Marsh Creek	Basin, Source to Willoughby Run					Adams	CWF, MF	None	
4—Willoughby Run	Basin					Adams	WWF, MF	None	
3—Marsh Creek	Basin, Willoughby Run to PA-MD State Border					Adams	CWF, MF	None	
3—Marsh Creek MD									
4—Unnamed Tributaries to Marsh Creek	Basins (all sections in PA) PA-MD State Border to confluence with Marsh Creek and Monocacy River					Adams	CWF, MF	None	
3—Rock Creek	Basin (all sections in PA), source to confluence with Marsh Creek and Monocacy River					Adams	WWF, MF	None	
3—Alloway Creek	Basin (all sections in PA)					Adams	WWF, MF	None	
3—Cattail Branch	Basin (all sections in PA)					Adams	WWF, MF	None	
		*	*	*	*	*			

[Pa.B. Doc. No. 13-1327. Filed for public inspection July 19, 2013, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 437a AND 441a]

Gaming Service Providers and Slot Machine Licenses

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1317.2 and 1321 (relating to gaming service provider; and additional licenses and permits and approval of agreements) amends Chapters 401a, 437a and 441a (relating to preliminary provisions; gaming service provider certification and registration; and slot machine licenses) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

With this final-form rulemaking, the Board is amending several sections to limit the types of agreements that operators are required to file with the Board, specify which types of agreements require Board approval prior to implementation and exempt professional sports teams from the gaming service provider certification and registration requirements.

Explanation of § 401a.3

In § 401a.3 (relating to definitions), the definition of “nongaming employee” is amended to reflect that not only certified but also registered gaming service providers as well as manufacturers, designers and suppliers may have

nongaming employees. Additionally, a nongaming employee may now have contact with a slot machine provided that the contact does not affect play of the game. This was added because servers clear food and beverage requests generated from the slot machine, which was not previously allowed.

Explanation of Chapter 437a

Section 437a.1 (relating to general gaming service provider requirements) is amended to exempt professional sports teams of Major League Baseball, the National Football League, the National Basketball Association and the National Hockey League from the gaming service provider registration and certification requirements. Several licensed facilities have recently contracted with professional teams to purchase tickets for patron use and to provide advertising during sporting events.

After reviewing the agreements and the requirements and exemptions in other gaming jurisdictions, the Board does not believe it is necessary for the protection of the public or the integrity of gaming to require professional sports teams to file for registration or certification as a gaming service provider.

Additionally, § 437a.9(a)(3) (relating to permission to conduct business prior to certification or registration) is amended to reflect that the Bureau of Licensing is informed, but does not determine, that an applicant’s suitability may be at issue.

Explanation of Chapter 441a

In § 441a.12 (relating to maintaining agreements; filing of agreements), the types of agreements are amended

so that slot machine licensees are now required to file. Specifically, operators are required to maintain written agreements and the records associated with oral agreements with licensed manufacturers, suppliers, franchisees and gaming service providers but are no longer required to file all agreements with the Board. However, the Board may require operators to submit agreements or records upon request.

Section 441a.13 (relating to Board approval of agreements) specifies which agreements require Board approval, such as corporate overhead agreements, shared services agreements and agreements that provide for the management of all or part of the gaming operations of a licensed facility.

Section 441a.14 (relating to master purchasing and disbursement report) is amended for clarity and to reflect Board practice. Operators are versed on the reporting, coding and submission process in this section.

Language added to § 441a.16 (relating to slot machine license term and renewal) specifies that a license is valid for 3 years from the date of issuance of an initial license. This was added because the initial license is not issued immediately after it is approved by the Board but is issued only after the Board's order awarding the license becomes final, binding, nonappealable and not subject to pending legal challenge. See 4 Pa.C.S. § 1103 (relating to definitions).

Section 441a.20 is rescinded as it was inconsistent with or duplicative of §§ 441a.12 and 441a.13.

Comment and Response Summary

Notice of the proposed rulemaking was published at 42 Pa.B. 2962 (May 26, 2012). The Board did not receive comments from the public during the comment period. On July 25, 2012, the Board received comments from the Independent Regulatory Review Commission (IRRC) on the proposed rulemaking.

IRRC comments

In regard to § 441a.12, IRRC raised a concern that deleting the requirement that licensees submit contracts to the Board, which was required under former § 441a.12(c), would not be consistent with the objectives of 4 Pa.C.S. Part II (relating to gaming).

For clarity and in response to IRRC's comments, language was added in subsection (b), which mirrors the amended language in § 441a.13 regarding approval of agreements, specifying which contracts shall be filed with the Board. Those contracts include the following: agreements regarding slot machines, table games and associated equipment; corporate overhead agreements or shared services agreements whereby a slot machine licensee's holding company or affiliate is acting as a gaming service provider; management contracts whereby another entity is controlling or managing gaming operations; agreements that are tied to profits or earnings of the licensee; and amendments thereto.

Additionally, with respect to the submission of contracts, when slot machine licensees enter into contracts with gaming service providers, gaming related gaming service providers, manufacturers, suppliers or management companies, the gaming service provider, gaming related gaming service provider, manufacturer or supplier submits with its application materials a copy of the tentative agreement. Thereafter, slot machine licensees provide a monthly disbursement report which lists all disbursements to every gaming service provider (and those exempt from gaming service provider require-

ments), gaming related gaming service provider, manufacturer, supplier and management company. If there is a question regarding a disbursement amount that is not associated with a contract that was submitted to the Board, Board staff may request additional information. With these mechanisms in place, and based on the Board's experience to date, the Board believes that the integrity of gaming will be protected.

IRRC also commented that proposed language in subsection (b) (final-form subsection (c)) contains language that states that the Board may require a slot machine licensee to submit a copy of an agreement to the Board. As previously specified, if there is a question regarding a disbursement amount, Board staff may request that the contract or description of the oral agreement be submitted for review.

Additional revisions

In § 401a.3, the definition of "gaming employee" is amended. The edits were necessary in light of the amendments made to the definition of "nongaming employee" because when read together, both definitions appeared to cover some of the same individuals.

In § 441a.13, the "submit to the Board" language was deleted in subsection (a). That language is unnecessary in this section in light of the amendments to § 441a.12(b), which now requires that the enumerated agreements be submitted to the Board.

Section 441a.13(a)(3) was amended for clarity to reflect that contracts whereby a person has a right to receive payment contingent upon profits or earnings from a slot machine licensee require Board approval.

Affected Parties

Professional sports teams of Major League Baseball, the National Football League, the National Basketball Association and the National Hockey League are no longer required to file for gaming service provider registration or certification. Additionally, operators are no longer required to file certain agreements with the Board.

Fiscal Impact

Commonwealth. It is not anticipated that this final-form rulemaking will have a fiscal impact on the Board or other Commonwealth agencies.

Political subdivisions. This final-form rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector. Professional sports teams will benefit from the exemption as they are no longer required to apply and submit to an investigation as a gaming service provider. Additionally, operators will benefit as they are no longer required to file with the Board every agreement entered into with a licensed manufacturer, supplier, franchisee or gaming service provider.

General public. This final-form rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

This final-form rulemaking eliminates the need to file with the Board every agreement entered into with a licensed manufacturer, supplier, franchisee or gaming service provider unless the agreement is related to: the acquisition of slot machines, table games and associated equipment; corporate overhead agreements or shared services agreements; management contracts; agreements that are tied to profits or earnings of the licensee; or requested by Board staff.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 16, 2012, the Board submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 2962, to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 19, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 20, 2013, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments 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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 437a and 441a, are amended by deleting § 441a.20 and amending §§ 401a.3, 437a.1, 437a.9, 441a.12, 441a.13, 441a.14 and 441a.16 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(Editor's Note: Amendments to § 435a.5 included in the proposed rulemaking published at 42 Pa.B. 2962 have been withdrawn by the Board.)

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

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

WILLIAM H. RYAN, Jr.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3857 (July 6, 2013).)

Fiscal Note: Fiscal Note 125-161 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Gaming employee—

- (i) An employee of a slot machine licensee, including:
 - (A) Cashiers.
 - (B) Change personnel.
 - (C) Count room personnel.
 - (D) Slot attendants.
 - (E) Dealers of croupiers.
 - (F) Machine mechanics, computer machine technicians or table game device technicians.
 - (G) Security personnel.
 - (H) Surveillance personnel.
 - (I) Personnel with SLOTS Link security administrator access and responsibilities.

(J) Hosts or other individuals authorized to extend complimentary services, including employees performing functions similar to those performed by a gaming junket representative.

(K) Promotional play supervisors, credit supervisors, pit supervisors, cashier supervisors, shift supervisors, table game managers and assistant managers and other supervisors and managers, except for those specifically identified in this part as key employees.

- (L) Boxpersons.
- (M) Floorpersons.
- (N) Personnel authorized to issue promotional play.
- (O) Personnel authorized to issue credit.
- (P) Directors of the following departments:
 - (I) Food and beverage.
 - (II) Facilities.
 - (III) Construction.

(ii) Employees of a licensed supplier, manufacturer, manufacturer designee or gaming related gaming service provider whose duties:

(A) Are directly involved with the repair, service or distribution of slot machines, table game devices or associated equipment sold or provided to a licensed facility within this Commonwealth.

(B) Require the employee's presence on the gaming floor or in a restricted area of a licensed facility.

(iii) Employees of a gaming service provider whose duties require:

(A) The employee's presence on the gaming floor or in a restricted area of a licensed facility.

(B) The employee to access the slot machines, table game devices or associated equipment in a manner that does not affect the play of the game.

(iv) Gaming junket representatives.

(v) Other employees or individuals who the Board determines, after a review of the work being performed, require permits for the protection of the integrity of gaming.

* * * * *

Nongaming employee—An employee of a slot machine licensee, manufacturer, manufacturer designee, supplier or gaming service provider who is not included within the definition of “principal,” “key employee” or “gaming employee,” and:

(i) Whose job duties require the employee to be:

(A) On the gaming floor but do not require the employee to touch or have contact with slot machines, table game devices or associated equipment other than exterior contact that does not affect the play of the game.

(B) In a restricted area and the employee:

(I) Is under the constant supervision of an employee of the slot machine licensee who is licensed or permitted and has appropriate access clearance to be in the restricted area.

(II) Is not required to touch or have contact with slot machines, table game devices or associated equipment other than exterior contact that does not affect the play of the game.

(ii) Who the Board determines, after a review of the work being performed, requires registration for the protection of the integrity of gaming.

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Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 437a. GAMING SERVICE PROVIDER CERTIFICATION AND REGISTRATION

§ 437a.1. General gaming service provider requirements.

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(d) The following persons are exempt from the gaming service provider registration and the gaming service provider certification requirements of this chapter:

* * * * *

(15) Professional sports teams of Major League Baseball, the National Hockey League, the National Football League and the National Basketball Association.

(16) Any person not otherwise exempt under this subsection that is licensed by a Federal or state agency if the agency’s licensing requirements are determined by the Bureau of Licensing to be substantially similar to those of the Board.

(e) The Board may request information or assurances from any person listed in subsection (d) to determine the validity of the person’s exempt status.

* * * * *

§ 437a.9. Permission to conduct business prior to certification or registration.

(a) Notwithstanding § 437a.1 (relating to general gaming service provider requirements), the Bureau of Licensing may authorize an applicant for a gaming service provider certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the gaming service provider applicant if the following criteria are met:

(1) A completed Gaming Service Provider Registration Form—Un-sponsored has been filed by the gaming service

provider, a completed Gaming Service Provider Registration Form—Sponsored has been filed by the slot machine applicant or licensee or a completed Gaming Service Provider Certification Application and Disclosure Information Form has been filed by the slot machine applicant or licensee in accordance with § 437a.2 or § 437a.3 (relating to gaming service provider registration applications; and gaming service provider certification applications).

(2) The slot machine applicant or licensee certifies that it has performed due diligence on the gaming service provider.

(3) The applicant for gaming service provider registration or certification agrees, in writing, that the grant of permission to conduct business prior to registration or certification does not create a right to continue to conduct business and that the Bureau of Licensing may rescind, at any time, the authorization granted pursuant to this section, with or without prior notice to the applicant, if the Bureau of Licensing is informed that the suitability of the applicant may be at issue or the applicant fails to cooperate in the application or investigatory process.

(b) If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to an applicant for certification or registration, the Bureau of Licensing may rescind the permission granted to the applicant for certification or registration to conduct business with a slot machine applicant or licensee under subsection (a). If the permission is rescinded, the applicant for certification or registration shall cease conducting business with the slot machine applicant or licensee by the date specified in the notice of the rescission by the Bureau of Licensing under subsection (c).

(c) The Bureau of Licensing will notify the applicant for certification or registration and the slot machine applicant or licensee by registered mail that permission for the applicant for certification or registration to conduct business with the slot machine applicant or licensee under subsection (a) has been rescinded and that the slot machine applicant or licensee shall cease conducting business with the applicant for certification or registration by the date specified in the notice.

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

§ 441a.12. Maintaining agreements; filing of agreements.

(a) *Maintaining agreements.* Each approved slot machine licensee shall maintain the following:

(1) A copy of every executed agreement with licensed manufacturers, manufacturer designees, suppliers, tenant businesses or franchises located within the licensed facility, and persons required to file a notification or be registered or certified with the Board in accordance with § 437a.1(a), (b) or (h) (relating to general gaming service provider requirements) or Chapter 613a (relating to gaming related gaming service providers). Agreements relating to slot machines, table games, table game devices and associated equipment must be in writing.

(2) Records associated with an oral agreement with licensed manufacturers, manufacturer designees, suppliers, tenant businesses or franchises located within the licensed facility and persons required to file a notification or other request for authorization with the Board in accordance with § 437a.1(a), (b), (g) or (h) or Chapter 613a.

(3) A copy of all executed land and real estate agreements relating to racing or gaming operations.

(4) A copy of all amendments to agreements listed in paragraphs (1)—(3).

(b) *Filing agreements.* Each approved slot machine licensee shall file with the Board:

(1) Agreements with manufacturers, suppliers, manufacturer designees or gaming related gaming service providers relating to slot machines, table games, table game devices and associated equipment.

(2) Corporate overhead assessment agreements, shared service agreements, centralized service agreements or an agreement under which an affiliate, intermediary, subsidiary or holding company of an approved slot machine licensee provides goods or services to the approved slot machine licensee.

(3) Agreements that provide for the management of all or part of the gaming operations of a licensed facility.

(4) Agreements under which a person's right to receive payment is based or contingent upon a licensee's earnings, profits or receipts from the slot machines, table games or associated equipment.

(5) Amendments to agreements described in paragraphs (1)—(4).

(c) *Content of filings.* In addition to the agreements in subsection (b)(1)—(4), the Board may require an approved slot machine licensee to submit a copy of a written agreement or documents reflecting or relating to any oral agreement. Documentation of an oral agreement submitted to the Board must include the following:

(1) A description of the goods or services to be provided and the person that will provide the goods or services to the approved slot machine licensee.

(2) The name and business address of the parties to the agreement.

(3) The duration of the agreement or the expected date or dates of performance.

(4) The financial terms of the agreement.

§ 441a.13. Board approval of agreements.

(a) An approved slot machine licensee shall receive Board approval prior to executing, relying upon or taking an action under the following:

(1) Corporate overhead assessment agreements, shared service agreements, centralized service agreements or an agreement under which an affiliate, intermediary, subsidiary or holding company of an approved slot machine licensee provides goods or services to the approved slot machine licensee.

(2) Agreements that provide for the management of all or part of the gaming operations of a licensed facility.

(3) Agreements under which a person's right to receive payment is based or contingent upon a licensee's earnings, profits or receipts from the slot machines, table games or associated equipment.

(4) Amendments to agreements described in paragraphs (1)—(3).

(b) If the Board finds that an agreement is not in the public interest or is inimical to the interest of gaming in this Commonwealth, the Board may deny approval, require the termination of the agreement, the divestiture of any person associated with the agreement, or may pursue any remedy or combination of remedies provided for in the act or this part. If the agreement or association is not promptly terminated in accordance with the Board's order, the Board may pursue any remedy or combination of remedies provided for in the act or this part.

(c) An agreement maintained or filed under § 441a.12 (relating to maintaining agreements; filing of agreements) or this section must include a provision for its termination without liability on the part of the slot machine licensee, or any party to the agreement or any related agreement, if the Board orders the termination of the agreement in accordance with subsection (b).

(d) Each agreement maintained or filed under § 441a.12 or this section must include a provision requiring that the person who has contracted with the slot machine licensee comply with the act and this part, including obtaining required licenses, permits, certifications and registrations.

§ 441a.14. Master purchasing and disbursement report.

(a) Each approved slot machine licensee shall generate a monthly Master Purchasing and Disbursement Report for expenditures. The report shall be submitted to the Bureau of Licensing no later than the 22nd calendar day of the following month and include the following information:

(1) A register listing alphabetically by payee expenditures paid by the approved slot machine licensee, including transfers of funds or credits to payees, and the following information next to the name of each payee:

(i) The description code as set forth by the Bureau of Licensing.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

(2) A register listing alphabetically by payee expenditures paid by any affiliate, intermediary, subsidiary, holding company, management company or agent of the approved slot machine licensee for goods or services that benefit the approved slot machine licensee, including transfers of funds or credits to payees, and the following information next to the name of each payee:

(i) The description code as set forth by the Bureau of Licensing.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

(b) The reports shall be transmitted to the Bureau of Licensing by means of electronic data transmission in a format prescribed by the Board.

§ 441a.16. Slot machine license term and renewal.

(a) The slot machine license will be valid for 3 years from the date on which the initial license is issued or the renewal is approved by the Board.

(b) A Category 1, Category 2 or Category 3 Slot Machine Renewal Application Form shall be submitted to the Board at least 60 days prior to the expiration of a slot machine license.

(c) A slot machine license for which a completed renewal application has been received by the Board will continue in effect until the Board sends written notification to the holder of the slot machine license that the Board has approved or denied the slot machine license renewal application.

§ 441a.20. (Reserved).

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