

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 92a ]

#### National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance

The Environmental Quality Board (Board) amends Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) to amend § 92a.51(a) (relating to schedules of compliance) to allow for the implementation of Long-Term Control Plans (LTCP) for combined sewer overflow (CSO) dischargers to achieve State water quality standards (WQS) by a period that may exceed 5 years, but that may not exceed the implementation period specified in an approved LTCP.

This final-form rulemaking was adopted by the Board at its meeting of November 15, 2022.

#### A. *Effective Date*

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

#### B. *Contact Persons*

For further information, contact Sean M. Furjanic, PE, Environmental Program Manager, Bureau of Clean Water, P.O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-2137, or Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105, (717) 783-8261. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (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.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of November 15, 2022).

#### C. *Statutory Authority*

This final-form rulemaking is authorized under sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorize the Board to promulgate rules and regulations necessary for the Department to perform its work.

#### D. *Background and Purpose*

Many municipalities across this Commonwealth have combined sewer systems (CSS), in which sewage and stormwater are collected and conveyed together during precipitation events. Depending on factors such as the intensity of a precipitation event, the flow in CSSs may exceed the dry weather carrying capacity of those systems, resulting in CSO discharges from the CSS to surface waters prior to reaching a wastewater treatment facility. Wet weather CSO discharges are authorized under the Federal Clean Water Act (33 U.S.C. §§ 1251—1389), the Commonwealth's Clean Streams Law (35 P.S. §§ 691.1—691.1001) and Chapter 92a, when approved under a National Pollutant Discharge Elimination System (NPDES) permit.

In 1994, the United States Environmental Protection Agency (EPA) issued its Combined Sewer Overflow Control Policy, 59 FR 18688 (April 19, 1994), that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with an LTCP to achieve WQS. In this Commonwealth, LTCPs are implemented through NPDES permits. Permittees have several options for achieving and demonstrating achievement of WQS in an LTCP. Each permittee must develop and submit an LTCP for approval by the Department, which is delegated to administer the Federal NPDES program in this Commonwealth.

A permittee's CSO discharges are presumed to be in non-compliance with WQS until an approved LTCP is implemented. Neither Federal regulations nor policy require that LTCPs be implemented and WQS be achieved by a specific date, other than within the shortest feasible period of time. Due to the scale of infrastructure modifications and financial commitments involved with implementing LTCPs, implementation schedules exceeding 20 years are common. However, prior to this final-form rulemaking, the Department's regulation at § 92a.51(a) required that any discharge not in compliance with WQS and effluent limitations or standards must achieve compliance as soon as practicable, but in no case longer than 5 years.

The EPA expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the previous language in § 92a.51(a) that required compliance within 5 years for all dischargers. Consequently, the Department had paused reissuing NPDES permits for CSO dischargers with these longer LTCP implementation schedules until the inconsistency was resolved. To resolve the inconsistency and address the EPA's concerns, this final-form rulemaking amends § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

#### E. *Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

The Department's regulation at § 92a.51(a) authorizes schedules of compliance for existing discharges that are not in compliance with WQS or effluent limitations or standards. This regulation is more stringent than equivalent Federal regulations because the Department's regulation establishes a maximum period of time to come into compliance of 5 years (unless a court of competent jurisdiction issues an order allowing a longer time for compliance), while Federal regulations do not. CSO dischargers, however, typically require more than 5 years to implement LTCPs to achieve compliance with WQS due to the scale of infrastructure modifications and financial commitments needed to implement LTCPs. The Department has approved many LTCPs with implementation schedules exceeding 5 years.

This final-form rulemaking amends subsection (a) to allow compliance schedules for CSO dischargers to exceed 5 years, but not to exceed the period of implementation specified in an approved LTCP.

This final-form rulemaking will not result in any degradation of public health or environmental protection. Conversely, this final-form rulemaking is expected to

improve public health and the environment by allowing the Department to move forward with reissuing long overdue NPDES permits to CSO dischargers and incorporating new conditions to minimize the discharge of pollutants to surface waters. Ultimately, the revision recognizes the Department's longstanding practice of approving LTCPs with implementation schedules exceeding 5 years.

No changes have been made between the proposed rulemaking and this final-form rulemaking.

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

The proposed rulemaking was published in the *Pennsylvania Bulletin* at 52 Pa.B. 361 (January 15, 2022), opening a 45-day public comment period that ended on March 1, 2022. One public hearing was held virtually on February 16, 2022, with no testimony offered by the public.

The Board received three sets of comments from the public as well as comments from the EPA's Region 3 office. The EPA's comments supported the rulemaking, noted that the rulemaking was in accordance with agreements between the EPA and the Department on how to address the issue, and discussed the procedural steps necessary to seek approval of the modified § 92a.51(a) as part of the Commonwealth's approved WQS.

One commentator opposed the proposed rulemaking because they believe it would extend and eliminate compliance schedules or allow for compliance periods on a case-by-case basis, and therefore perpetuate pollution. In response, this final-form rulemaking does not allow for an extension to compliance periods. The compliance period to implement LTCPs has always been proposed by CSO permittees and reviewed by the Department in light of the EPA's requirement that compliance be achieved in the shortest feasible period of time. Depending on a permittee's proposed solution to reduce or eliminate CSOs, the compliance period could range from a few years to a few decades. It is when the compliance period exceeds 5 years that the EPA believed the Department's approval of the schedule conflicted with § 92a.51(a) as written prior to the amendments in this final-form rulemaking. By amending § 92a.51(a) to recognize that LTCP implementation schedules may exceed 5 years, the Department can be authorized by the EPA to resume reissuing NPDES permits to CSO dischargers. This is important for public health and the environment because reissued permits will include updated milestones to keep permittees on track to achieve compliance with their overall LTCP implementation schedule. When permits are outdated, the milestone dates pass and there are no new milestones for permittees to adhere to.

One commentator noted that this regulatory change should not be a stepping stone for all NPDES-permitted dischargers to request longer compliance schedules. The Department is not providing an exception under § 92a.51(a) to any class of dischargers other than CSO dischargers and is doing so in the interests of public health and the environment.

One commentator supported the proposed rulemaking and stated their belief that schedules of compliance exceeding 5 years should also apply to systems other than CSSs. The Department is not making an exception for any other class of dischargers through this final-form rulemaking.

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

##### *Benefits*

NPDES permits have a fixed term not exceeding 5 years. If a timely application is submitted for reissuance of an NPDES permit, the permit may be administratively extended after the permit expiration date to allow a discharger to continue operating under the terms and conditions of the permit. The EPA has objected to or otherwise expressed concerns to the Department over the reissuance of NPDES permits for CSO dischargers because the EPA perceived that the Department's approval of LTCPs with implementation schedules longer than 5 years conflicted with § 92a.51(a) as written prior to this final-form rulemaking. As a result, there are many administratively extended NPDES permits for CSO dischargers across this Commonwealth. By amending § 92a.51(a) as described previously, the Department will be able to move forward with reissuing these permits, providing the Department the opportunity to update the permits to ensure the most up-to-date standards and pollution control measures are included in the permits, benefiting public health and the environment.

##### *Compliance costs*

This regulatory revision does not impose any additional costs on the regulated community.

##### *Compliance assistance plan*

A compliance assistance plan is not considered necessary for this final-form rulemaking.

##### *Paperwork requirements*

The amendment to Chapter 92a clarifies existing processes but does not add to or change the existing paperwork requirements for the submission of NPDES permit applications and Notices of Intent to the Department.

#### *H. Pollution Prevention*

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

Pollution prevention is not applicable to this final-form rulemaking.

#### *I. Sunset Review*

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

#### *J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (RRA) (71 P.S. § 745.5(a)), on January 4, 2022, the Department submitted a copy of the notice of proposed rulemaking, published at 52 Pa.B. 361, and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House

and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the RRA (71 P.S. § 745.5a(j.2)), on May 17, 2023, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the RRA, this final-form rulemaking was deemed approved by IRRC effective May 17, 2023.

*K. Findings of the Board*

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), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A 45-day public comment period was provided and a public hearing was held as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 52 Pa.B. 361.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

*L. Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 92a, are amended by amending § 92a.51 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 final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the RRA.

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RICHARD NEGRIN,  
*Acting Chairperson*

*(Editor's Note: See 53 Pa.B. 3055 (June 3, 2023) for IRRC's approval order.)*

**Fiscal Note:** Fiscal Note 7-563 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE II. WATER RESOURCES**

**CHAPTER 92a. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING, MONITORING AND COMPLIANCE**

**Subchapter C. PERMITS AND PERMIT CONDITIONS**

**92a.51. Schedules of compliance.**

(a) With respect to an existing discharge that is not in compliance with the water quality standards and effluent limitations or standards in § 92a.44 or § 92a.12 (relating to establishing limitations, standards, and other permit conditions; and treatment requirements), the applicant shall be required in the permit to take specific steps to remedy a violation of the standards and limitations in accordance with a legally applicable schedule of compliance, in the shortest, reasonable period of time, the period to be consistent with the Federal Act. Except as otherwise set forth in this subsection, a schedule of compliance specified in the permit must require compliance with final enforceable effluent limitations as soon as practicable, but in no case longer than 5 years, unless a court of competent jurisdiction issues an order allowing a longer time for compliance. Compliance schedules granted to CSO dischargers may exceed 5 years but may not exceed the period of implementation specified in an approved long-term control plan (LTCP).

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[Pa.B. Doc. No. 23-813. Filed for public inspection June 23, 2023, 9:00 a.m.]

**Title 25—ENVIRONMENTAL PROTECTION**

**ENVIRONMENTAL QUALITY BOARD**

**[ 25 PA. CODE CH. 93 ]**

**Water Quality Standards; Dunbar Creek et al. Stream Redesignations**

The Environmental Quality Board (Board) amends Chapter 93 (relating to water quality standards). This final-form rulemaking amends the drainage lists at §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v as set forth in Annex A. The purpose of this final-form rulemaking is to update the designated uses so the surface waters of this Commonwealth are afforded the appropriate level of protection. This final-form rulemaking fulfills the Commonwealth's obligations under Federal and State law to review and revise, as necessary, water quality standards that are protective of surface waters.

This final-form rulemaking was adopted by the Board at its meeting of April 11, 2023.

*A. Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. Once approved by the United States Environmental Protection Agency (EPA),

water quality standards are used to implement the Federal Clean Water Act (CWA) (33 U.S.C. §§ 1251—1388).

#### B. *Contact Persons*

For further information, contact Michael (Josh) Lookenbill, Program Manager, Water Quality Division, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, 400 Market Street, Harrisburg, PA, 17105-8774, (717) 787-9637, or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA, 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (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.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of April 11, 2023).

#### C. *Statutory Authority*

This final-form rulemaking is authorized under sections 5(b)(1) and 402 of The Clean Streams Law (CSL) (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the CSL (35 P.S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, sections 101(a)(2) and 303(c)(2)(A) of the CWA (33 U.S.C. §§ 1251(a)(2) and 1313(c)(2)(A)) set forth requirements for water quality standards.

#### D. *Background and Purpose*

The purpose of developing water quality standards is to protect this Commonwealth's surface waters. Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices (BMP)) on individual sources of pollution. Water quality standards include designated uses, numeric and narrative criteria to protect those uses, and antidegradation requirements for surface waters. The Commonwealth protects its surface waters for a variety of uses relating to aquatic life, water supply, recreation and fish consumption, special protection and navigation.

The continued development of water quality standards, including revisions and updates, is required by Federal and State law. Section 5 of the CSL (35 P.S. § 691.5) instructs the Department to consider water quality management and pollution control in the watershed as a whole, and the present and possible future uses of waters when adopting rules and regulations. In addition to these requirements, the Commonwealth has responsibilities under the CWA that require water quality standards to be reviewed and approved by the EPA for consistency with the mandates under that act. Section 101(a)(2) of the CWA (33 U.S.C. § 1251(a)(2)) establishes the National goal that, wherever attainable, water quality should provide for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water. Section 303(c)(2)(A) of the CWA (33 U.S.C. § 1313(c)(2)(A)) requires water quality standards to include designated uses of waters, taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes. Section 303(d)(4)(B) of the CWA (33 U.S.C. § 1313(d)(4)(B)) establishes an

antidegradation policy for waters where the quality of the water equals or exceeds levels necessary to protect the designated uses for these waters. Section 303(c)(1) of the CWA (33 U.S.C. § 1313(c)(1)) requires states to periodically review and revise, as necessary, their water quality standards. The designated uses included in this final-form rulemaking are consistent with these Federal and State statutory mandates.

The Department also has an obligation to protect existing uses when data indicates that a surface water attains or has attained an existing use. Section 93.1 (relating to definitions) defines "existing uses" as "those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards." Where the existing uses are different than the designated uses for a surface water, the waterbody will receive the water quality protection identified by either the existing uses or the designated uses, whichever use is most protective.

For example, if the designated use of a stream is listed as Cold Water Fishes (CWF) but the Department's evaluation of available existing use information indicates that the water also attains the use of High Quality Waters (HQ), the stream would be protected for this HQ-CWF existing use through Department permit or approval actions. Section 93.4c (relating to implementation of antidegradation requirements) requires the Department to make a final determination of existing use protection for a surface water as part of a final permit or approval action. During the review of a permit application and draft permit, interested persons may provide the Department with additional information regarding existing use protection for the surface water. This additional information is considered prior to a final determination of existing use protection and is included in the draft stream evaluation reports that are published on the Department's web site for public review and comment.

In addition to existing use determinations made during a Department permit or approval process, stream use evaluations may be initiated in other ways. The Department may identify candidate streams for redesignation of uses during routine waterbody investigations. Other agencies may request use evaluations to be considered, and members of the public may submit a rulemaking petition to the Board in accordance with § 93.4d (relating to processing of petitions, evaluations and assessments to change a designated use). When an evaluation of the data demonstrates that existing uses are incongruent with the designated uses, a stream redesignation proposal will be initiated through the rulemaking process to ensure the designated uses in the drainage lists found in §§ 93.9a—93.9z are consistent with the existing uses of the stream.

By protecting the water uses, and the quality of the water necessary to maintain the uses, benefits may be gained in a variety of ways by all residents and visitors of this Commonwealth. For example, clean water used for drinking water supplies benefits the consumers by lowering drinking water treatment costs and reducing medical costs associated with drinking water-related illnesses. Clean surface waters benefit this Commonwealth by providing for increased tourism and recreational use of the waters. Clean water provides for increased wildlife habitat and more productive fisheries. Furthermore, clean water attracts businesses and industry that require a high quality of surface water for production or operation.

The purpose of this final-form rulemaking is to update the designated uses so that the surface waters of this Commonwealth are afforded the appropriate level of

protection. These amendments to the designated uses of streams benefit not only local residents but those persons from outside the areas affected by this final-form rulemaking who come to enjoy the benefits and aesthetics of outdoor recreation.

The amendments are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); a request from the Pennsylvania Fish and Boat Commission (PFBC) (Dunbar Creek); the Department's ongoing Statewide monitoring activities (Unnamed tributary (UNT) 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek). The stream redesignations rely on the special protection qualifiers found at §§ 93.4b(a)(2)(i)(A), 93.4b(a)(2)(ii), 93.4b(b)(1)(iii), 93.4b(b)(1)(v) and 93.4b(b)(2) (relating to qualifying as High Quality or Exceptional Value Waters). The redesignations also include evaluation of the protected water uses specified in § 93.3 (relating to protected water uses) (UNT 08187 to South Branch Codorus Creek) and the less restrictive use qualifiers specified in § 93.4(b) (relating to Statewide water uses) (UNT 28168 to Oley Creek). The specific qualifiers applied for each of the stream redesignation recommendations are detailed in the individual stream evaluation reports available on the Department's web site. This final-form rulemaking was developed by the Bureau of Clean Water following a comprehensive evaluation of the physical, chemical and biological characteristics of these waterbodies and other information available on these waterbodies. The data and information evaluated support this final-form rulemaking as set forth in Annex A.

In addition to the changes to designated uses, the Board is correcting an error that was inadvertently introduced in a prior rulemaking to the drainage list in § 93.9c (relating to Drainage List C), published at 48 Pa.B. 866 (February 10, 2018). The correction clarifies that the mainstem and tributaries of Swiftwater Creek downstream of UNT 04960 continue to be designated as HQ-CWF, Migratory Fishes (MF).

The Board adopted the proposed rulemaking at its April 20, 2021, meeting, and it was published in the *Pennsylvania Bulletin* at 51 Pa.B. 4062 (July 31, 2021) with a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021, for the purpose of accepting comments on the proposed rulemaking. The Board received comments from 228 commentators, including testimony from three witnesses at the public hearing and a letter from the Independent Regulatory Review Commission (IRRC) indicating IRRC had no objections, comments or recommendations to offer on the regulation. The comments received on the proposed rulemaking are summarized in section F.

The Board has considered all public comments received on the proposed rulemaking in preparing this final-form rulemaking.

*E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

This final-form rulemaking amends the drainage lists at §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v set forth in Annex A. The purpose of this final-form rulemaking is to update the designated uses so that the surface waters of this Commonwealth are afforded the appropriate level of protection. Other than a change to Drainage List L discussed as follows, there are no changes made to the amendments described as follows from the proposed rulemaking to this final-form rulemaking.

As part of this stream redesignation process and in accordance with § 93.4c, the Department offered opportunities for the public to provide data and information during the review of surface water uses prior to drafting the proposed rulemaking. The Department provided public notice of its intent to assess Bear Creek, Clyde Run, Cranberry Creek, Dunbar Creek, Two Lick Creek, UNT 28168 to Oley Creek and UNT 08187 to South Branch Codorus Creek and requested water quality data for these streams through publications in the *Pennsylvania Bulletin* as summarized in Table 1.

**Table 1. Pennsylvania Bulletin publication dates for notices of stream evaluation.**

<i>Stream Name</i>	<i>Pennsylvania Bulletin</i>	<i>Publication Date</i>
Bear Run	37 Pa.B. 4490	August 11, 2007
	46 Pa.B. 3328	June 25, 2016
Clyde Run	40 Pa.B. 5643	October 2, 2010
	44 Pa.B. 6149	September 27, 2014
Cranberry Creek	48 Pa.B. 5924	September 22, 2018
	30 Pa.B. 2071	April 22, 2000
Two Lick Creek	34 Pa.B. 1520	March 13, 2004
UNT 28168 to Oley Creek	45 Pa.B. 2676	May 30, 2015
UNT 08187 to South Branch Codorus Creek	42 Pa.B. 2539	May 12, 2012

Additionally, notices of the intent to assess these streams were posted on the Department's web site. The Department directly notified affected municipalities, planning commissions, conservation districts and Commonwealth agencies of these redesignation evaluations in letters dated as summarized in Table 2.

**Table 2. Letters of notification to affected governmental organizations and agencies.**

<i>Stream Name</i>	<i>Date of Letter</i>
Bear Run	May 22, 2007
	July 8, 2016
Clyde Run	November 5, 2010

<i>Stream Name</i>	<i>Date of Letter</i>
Cranberry Creek	September 15, 2017
Dunbar Creek	April 19, 2000
Two Lick Creek	March 2, 2004
UNT 28168 to Oley Creek	May 11, 2015
UNT 08187 to South Branch Codorus Creek	April 2, 2012

In response to these notifications, the Department received one letter in support of the redesignation for Bear Run. The Department received no additional water quality data for Bear Run, Clyde Run, Dunbar Creek, Two Lick Creek, UNT 28168 to Oley Creek or UNT 08187 to South Branch Codorus Creek. Karl M. Weiler provided temperature data for Cranberry Creek.

Following the period for data submission described in the notices of intent to assess, the Department evaluated all available water quality data and other applicable information for these streams, drafted stream evaluation reports and published the draft reports on its web site for public review and comment as summarized in Table 3. If members of the public are interested in receiving notifications of stream evaluations, including the notices of intent to assess and draft stream evaluation reports, they may subscribe to the Department's Electronic Notification System, eNotice.

**Table 3. Stream evaluation draft report publication for public comment.**

<i>Stream Name</i>	<i>Draft Report Publication Date</i>	<i>Petitioner (if applicable)</i>
Bear Run	February 24, 2017	Ken Sink Chapter of Trout Unlimited
Clyde Run	July 14, 2018	
Cranberry Creek	July 14, 2018	Brodhead Creek Watershed Association
Dunbar Creek	July 14, 2018	
Two Lick Creek	February 24, 2017	Ken Sink Chapter of Trout Unlimited
UNT 28168 to Oley Creek	July 14, 2018	
UNT 08187 to South Branch Codorus Creek	February 24, 2017	

Each draft report was open for public comment for no less than a 30-day period.

For Bear Run, one comment was received in support of the Exceptional Value Waters (EV) and HQ-CWF recommendations.

For Clyde Run, one comment was received in support of the recommendations.

For Cranberry Creek, approximately 159 comments were received in response to the draft report. Ten comments expressed opposition and 148 comments expressed support for the recommendations. A macroinvertebrate survey conducted by Normandeau Associates was submitted.

For Dunbar Creek, the Department received 46 comments in support of the recommendations.

For Two Lick Creek, the Department received three comments in response to the draft report. One comment was in support of the recommendation and two comments were in opposition.

No comments were received on the draft report for UNT 28168 to Oley Creek.

One comment was received in support of the EV recommendation for UNT 08187 to South Branch Codorus Creek.

Copies of the stream evaluation reports for these waterbodies are available on the Department's web site or from the contact persons listed in section B of this preamble. All data and comments received in response to these notifications were considered in the review of the surface water evaluations for these streams. The data and information collected on these waterbodies support the Board's final-form rulemaking as set forth in Annex A.

Department staff delivered a presentation of the proposed rulemaking to the Agricultural Advisory Board on November 7, 2019. Staff provided a brief overview of the stream redesignation process and the Department's recommendations for the streams included in this final-form rulemaking. The following is a brief summary of the Department's recommendations for each waterbody.

#### § 93.9c. Drainage List C

*Cranberry Creek*—The Brodhead Creek Watershed Association submitted a petition requesting that Cranberry Creek, from its source to mouth, be considered for redesignation to EV. The indigenous aquatic community is an excellent indicator of long-term water quality conditions and is used as a measure of both water quality and ecological significance. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to Cranberry Creek. Dimmick Meadow Brook (05244) served as the EV reference for stream metrics comparisons. Three of four stations met the 92% comparison required to qualify for EV. Therefore, the Department recommended that the Cranberry Creek basin, from and including UNT 04948 to its mouth, be designated as EV, MF in § 93.9c (relating to Drainage List C). The remainder of the Cranberry Creek basin, from its source to UNT 04948, should maintain the current designated use of HQ-CWF, MF.

#### § 93.9k. Drainage List K

*UNT 28168 to Oley Creek*—The Department conducted an evaluation of UNT 28168 to Oley Creek due to an error discovered in § 93.9k (relating to Drainage List K) that affected the Oley Creek basin and UNT 28168. The error listed these surface waters with two conflicting use designations. A correction to § 93.9k was made in the stream redesignation rulemaking published at 47 Pa.B.

7029 (November 18, 2017), which lists the designated use of UNT 28168 as HQ-CWF consistent with the 1979 rulemaking. UNT 28168 is also currently listed on the Commonwealth's CWA section 303(d) list of impaired waters. The aquatic life use of UNT 28168 is impaired, and the source has been identified on the CWA section 303(d) list as Abandoned Mine Drainage. The Department evaluated the stream to determine if the human-caused conditions that created the impairment occurred before the special protection designation and whether or not the current designated use of HQ-CWF is attainable. As required by § 93.4(b), a use attainability analysis (UAA) was conducted to determine the appropriate designated aquatic life use of the water. A survey of UNT 28168 indicated that it is appropriately listed on the section 303(d) list of impaired waters. Furthermore, historical aerial photography confirms that significant mining activity as early as 1939 caused conditions that prevented UNT 28168 from meeting the Conservation Area designated use in 1973 and the HQ designated use in 1979. Due to current limitations in available treatment technologies, land availability and remediation, for both point and nonpoint source control of the specific pollutants of concern, UNT 28168 will not attain the HQ-CWF use. Therefore, the Department recommended that UNT 28168 to Oley Creek be designated as CWF, MF in § 93.9k.

§ 93.9l. *Drainage List L*

*Bear Run*—The Ken Sink Chapter of Trout Unlimited submitted a petition requesting that the Bear Run basin, from its source to its confluence with South Branch Bear Run, be considered for redesignation to HQ or EV. On April 16, 2016, the PFBC added Bear Run, from its source to its confluence with South Branch Bear Run, to the List of Class A Wild Trout Waters following public notice and comment (46 Pa.B. 1977 (April 16, 2016)). The Bear Run basin, from its source to its confluence with South Branch Bear Run, qualifies as HQ based on § 93.4b(a)(2)(ii) regarding Class A wild trout stream qualifier. In addition, the portions of the Bear Run basin located entirely within State Game Land (SGL) 174 meet the definition in § 93.1 for an “outstanding National, State, regional or local resource water.” These waters satisfy the HQ qualifiers in § 93.4b(a) and are located within SGLs managed by the Pennsylvania Game Commission (PGC). The PGC has established coordinated water quality protective measures in its resource management plans that provide protection to substantial reaches of the watershed corridor. As such, these stream segments qualify as EV waters under § 93.4b(b)(1)(iii). Therefore, the Department recommended that: the Bear Run basin, from UNT 27063 to South Branch Bear Run excluding the headwaters of Brooks Run, be designated as EV in § 93.9l (relating to Drainage List L); and that the Bear Run basin, from its source to and including UNT 27063, and the Brooks Run basin from its source to and including UNT 27059, be designated as HQ-CWF in § 93.9l.

Drainage List L is amended between the proposed rulemaking and this final-form rulemaking to clarify that the South Branch Bear Run basin retains its current designated use of CWF, MF and is not included in the EV redesignation of Bear Run—Basin, Brooks Run to South Branch Bear Run.

§ 93.9o. *Drainage List O*

*UNT 08187 to South Branch Codorus Creek*—The Department evaluated the UNT 08187 to South Branch Codorus Creek basin as part of ongoing Statewide monitoring efforts. Biological data were collected to evaluate

UNT 08187 since the indigenous aquatic community is an excellent indicator of long-term water quality conditions. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to UNT 08187. Carbaugh Run (60248) served as the EV reference for stream metrics comparisons. Both stations on UNT 08187 met the 92% comparison required to qualify for EV. Therefore, the Department recommended the entire basin of UNT 08187 to South Branch Codorus Creek be designated as EV, MF in § 93.9o (relating to Drainage List O).

§ 93.9r. *Drainage List R*

*Clyde Run*—The Department evaluated the Clyde Run basin as part of ongoing Statewide monitoring efforts. Biological data were collected to evaluate Clyde Run since the indigenous aquatic community is an excellent indicator of long-term water quality conditions. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to Clyde Run. Korb Run (54831) served as the EV reference for stream metrics comparisons. The Clyde Run station met the 92% comparison required to qualify for EV. Therefore, the Department recommended the entire basin of Clyde Run be designated as EV in § 93.9r (relating to Drainage List R).

§ 93.9t. *Drainage List T*

*Two Lick Creek*—The Ken Sink Chapter of Trout Unlimited submitted a petition requesting that the Two Lick Creek main stem, from the tailrace of the Two Lick Reservoir to Yellow Creek, be considered for redesignation to HQ-CWF. The Two Lick Creek main stem is currently designated Trout Stocking (TSF). The indigenous aquatic community is an excellent indicator of long-term water quality conditions. The integrated benthic macroinvertebrate score test described at § 93.4b(a)(2)(i)(A) was applied to Two Lick Creek. Cross Fork (23765) and Kettle Creek (23661) served as the EV references for stream metrics comparisons. Data collected at two stations on Two Lick Creek in 2005 were compared to Cross Fork while data collected at one of the same stations in 2009 were compared to Kettle Creek. None of the Two Lick Creek samples exceeded the 83% comparison required to qualify for HQ. As a result of data collection, the Department documented the presence of a naturally reproducing Salmonidae community and other flora and fauna indigenous to a cold water habitat in Two Lick Creek. Therefore, the Department recommended the Two Lick Creek main stem, from the Two Lick Reservoir tailrace to the confluence of Yellow Creek, be designated as CWF in § 93.9t (relating to Drainage List T).

§ 93.9v. *Drainage List V*

*Dunbar Creek*—The PFBC submitted information to the Department requesting that the Dunbar Creek basin, from its source to Gist Run, be considered for redesignation to EV. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to Dunbar Creek. Clear Shade Creek (45293) served as the EV reference for stream metrics comparisons. Six of 12 stations on Dunbar Creek met the 92% comparison required to qualify for EV. In addition, the portions of the Dunbar Creek basin located entirely within SGL 51 meet the definition in § 93.1 for an “outstanding National, State, regional or local resource water.” These waters are currently designated HQ and are located within SGLs managed by the PGC. The PGC has established coordinated water quality protective measures in its resource management plans that provide protection to substantial reaches of the watershed corridor. As such, these stream segments qualify as EV waters under § 93.4b(b)(1)(iii).

The PGC water quality protective measures combined with reasonable acid mine drainage remediation and recovery projects demonstrate that an EV designated use for the Glade Run basin as set forth in Annex A is appropriate. Therefore, the Department recommended EV designations in § 93.9v (relating to Drainage List V) for: the Dunbar Creek basin, from its source to Glade Run; the Glade Run basin, from the boundary of SGL 51 to mouth; and the Dunbar Creek basin, from Glade Run to Gist Run.

#### *Correction to Drainage List C*

In the Sobers Run rulemaking published at 48 Pa.B. 866 (February 10, 2018), Swiftwater Creek basin retained its HQ designation with the exception of adding an EV designation for the source of Swiftwater Creek to, but not including, UNT 04960 to Swiftwater Creek. The word “basin” was inadvertently omitted with the listing of UNT 04960 to Mouth, thereby eliminating listings for tributaries to that section of Swiftwater Creek. This final-form rulemaking restores the original HQ listing for those tributaries by adding the “basin” designation.

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

All public comments received on the proposed rulemaking supported the stream redesignation recommendations as set forth in Annex A.

The Board received comments from 65 commentators in support of redesignating the surface waters contained in this final-form rulemaking.

The Board received a comment from 57 commentators highlighting a 2014 Lehigh Valley report that outlines the economic value of protecting clean water and natural areas.

The Board also received comments from 161 commentators supporting the Cranberry Creek redesignation recommendation to EV, MF. In addition to their support for the redesignation, several commentators requested the Department reevaluate the basin from its source to UNT 04948 stating that the scores necessary to qualify for EV designation were close to being achieved.

Six commentators submitted comments in support of the Dunbar Creek basin redesignation recommendation.

The EPA provided one comment with respect to the redesignation of UNT 28168 to Oley Creek from HQ-CWF, MF to CWF, MF and noted that a UAA is required for redesignations to less restrictive uses. Two additional commentators echoed the EPA's comment.

The Board appreciates these comments in support of this final-form rulemaking. The Board does not agree that the headwaters of Cranberry Creek warrant additional evaluation at this time and is not recommending redesignation of the Cranberry Creek basin from its source to UNT 04948 in this final-form rulemaking. With respect to the EPA's comment, the stream report for UNT 28168 to Oley Creek includes the required UAA component, and a copy of each stream report is available on the Department's web site.

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

##### *Benefits*

Overall, this Commonwealth's residents and visitors and its 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 provides economic value to pres-

ent and future generations in the form of a clean water supply for human consumption, wildlife, irrigation and industrial use; recreational opportunities such as fishing (also for consumption); water contact sports and boating; and aquatic life protection. It is important for the Commonwealth to ensure that the associated opportunities and activities continue in a manner that is environmentally, socially and economically sound. Protection and maintenance of water quality ensures its future availability for all potential uses. The following paragraphs describe the economic and social benefits of clean water that are protected by this final-form rulemaking.

##### *Increased property values*

A reduction in toxics found in the waterways of this Commonwealth may lead to increased property values for properties located near rivers or lakes. The study “The Effect of Water Quality on Rural Nonfarm Residential Property Values,” (Epp and Al-Ani, *American Journal of Agricultural Economics*, Vol. 61, No. 3 (Aug. 1979), pp. 529—534 ([www.jstor.org/stable/1239441](http://www.jstor.org/stable/1239441)), used real estate prices to determine the value of improvements in water quality in small rivers and streams in this Commonwealth. Water quality, whether measured in pH or by the owner's perception, has a significant effect on the price of adjacent property. The analysis showed a positive correlation between water quality and housing values. They concluded that buyers are aware of the environmental setting of a home and that differences in the quality of nearby waters affect the price paid for a residential property.

A 2010 report from the Delaware Riverkeeper Network ([www.delawareriverkeeper.org/sites/default/files/River\\_Values\\_Report\\_0.pdf](http://www.delawareriverkeeper.org/sites/default/files/River_Values_Report_0.pdf)) discusses a case study from the Maine Agricultural and Forest Experiment Station which compared waterfront property values based on whether the water that the homes faced was considered clean. Properties located near higher quality waters had higher market value than if the waterbody was lower in water quality. It was shown in some cases that a decline in water quality can completely abate the market value premium associated with a home being a waterfront property.

A 2006 study by Braden et al. from the Great Lakes region estimated that property values were significantly depressed in two regions associated with toxic contaminants (polyaromatic hydrocarbons, polychlorinated biphenyls and heavy metals). The study showed that a portion of the Buffalo River region (approximately 6 miles long) had depressed property values of between \$83 million and \$118 million for single-family homes, and between \$57 million and \$80 million for multifamily homes as a result of toxic sediments. The same study (Braden et al. 2006) estimated that a portion of the Sheboygan River (approximately 14 miles long) had depressed property values of between \$80 million and \$120 million as the result of toxics. “Economic Benefit of Sediment Remediation in the Buffalo River AOC and Sheboygan River AOC: Final Project Report,” ([www.nemw.org/Econ](http://www.nemw.org/Econ)). While this study related to the economic effect of contaminated sediment in other waters in the Great Lakes region, the idea that toxic pollution depresses property values applies in this Commonwealth. A reduction in toxic pollution in this Commonwealth's waters has a substantial economic benefit to property values in close proximity to waterways.



*Maintenance of abundant and healthy fish and wildlife populations and support for outdoor recreation*

Businesses requiring a high-quality source water and those in the recreation industry will be positively affected by this final-form rulemaking. The maintenance and protection of the water quality will ensure the long-term availability of recreational fisheries and other activities. The purpose of these stream redesignations is to preserve these resources for current and future sportspersons, outdoor recreators and wildlife enthusiasts so that the social and economic benefits are maintained in the local areas. As recreation demands increase in the future, the preservation of unique resources will undeniably add economic value to the local areas and, importantly, provide a valuable social function for outdoor recreation. Specific revenue-related benefits associated with outdoor trout fishing in this Commonwealth are outlined as follows.

The Center for Rural Pennsylvania prepared a report titled "Economic Values and Impacts of Sport Fishing, Hunting and Trapping Activities in Pennsylvania" (Shafer et al. 1998, [www.rural.palegislature.us/documents/reports/hunting.pdf](http://www.rural.palegislature.us/documents/reports/hunting.pdf)) that examined the economic values and impacts between the years 1995 to 1997. The report provides a snapshot of how much money these sporting activities bring to this Commonwealth and how they affect employment in rural areas. A major finding of that report is the total annual value of \$3.7 billion for sport fishing was almost three times the \$1.26 billion spent in travel costs to use fishing resources during the same 12-month period. The total net annual benefit to anglers was \$2.49 billion.

According to the "Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania," (R. Greene et al., 2005, [www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf](http://www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf)), the PFBC collected information to assess the economic impact of wild trout angling in this Commonwealth during the 2004 regular trout season, April 17 through September 3, 2004. The PFBC found, based on the results of this study, that angling on wild trout streams contributed over \$7.16 million to this Commonwealth's economy during the regular trout season in 2004.

According to the "2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation" (U.S. Fish and Wildlife Service 2011, [www.census.gov/prod/2012pubs/fhw11-nat.pdf](http://www.census.gov/prod/2012pubs/fhw11-nat.pdf)) for this Commonwealth, approximately 1,101,000 anglers participated in fishing and 3,598,000 persons participated in wild life watching in the year 2011. In addition, all fishing-related expenditures in this Commonwealth totaled \$485 million in 2011. These expenditures include food and lodging, transportation and other expenses (that is, equipment rental, bait, cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in this Commonwealth. Expenditures include trip-related costs and equipment.

According to a 2017 report by the Outdoor Industry Association, this Commonwealth's outdoor recreation generated 251,000 direct in-State jobs, \$8.6 billion in wages and salaries, and \$1.9 billion in State and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. The association reported that 56% of Commonwealth residents participate in outdoor recreation each year. "The Outdoor Economy: Take it Outside for American Jobs and a Strong Economy," (<https://outdoorindustry.org/resource/pennsylvania-outdoor-recreation-economy-report>).

Southwick Associates has prepared several reports for the Theodore Roosevelt Conservation Partnership that analyze the economic contribution of outdoor recreation in this Commonwealth. A 2018 report, "The Power of Outdoor Recreation Spending in Pennsylvania: How hunting, fishing, and outdoor activities help support a healthy state economy," ([www.trcp.org/wp-content/uploads/2018/12/TRCP-and-Southwick-PA-Economic-Analysis-12-6-18.pdf](http://www.trcp.org/wp-content/uploads/2018/12/TRCP-and-Southwick-PA-Economic-Analysis-12-6-18.pdf)), states that during 2016 there were more than 390,000 jobs supported by outdoor recreation activities in this Commonwealth and, for comparison, this is more than the number of jobs in this Commonwealth that supported the production of durable goods. In 2016, outdoor recreation had an economic contribution in this Commonwealth of almost \$17 billion in salaries and wages paid to employees and over \$300 million in Federal, State and local tax revenue. An updated 2020 report for the Theodore Roosevelt Conservation Partnership, "Estimating the economic contributions of outdoor recreation in Pennsylvania: an analysis of 2020 state-level economic contributions made by hunting, fishing, and other outdoor recreation activities," ([www.trcp.org/wp-content/uploads/2022/04/TRCP-PA-Economic-Report-2020-FINAL.pdf](http://www.trcp.org/wp-content/uploads/2022/04/TRCP-PA-Economic-Report-2020-FINAL.pdf)), revealed that economic contributions from outdoor recreation increased from nearly \$17 billion in salaries and wages paid to employees in 2016 to nearly \$20 billion in 2020. The 2020 report also continues to highlight the fact that "more Pennsylvania jobs are supported by outdoor recreation than by the production of durable goods (U.S. Bureau of Labor Statistics, 2020)." In 2020, outdoor recreation activities supported more than 430,000 jobs and contributed more than \$32 billion to this Commonwealth's state gross domestic product and over \$6.5 billion in tax revenue at the Federal, State and local levels, which is a significant increase from the 2016 tax revenue total of over \$300 million.

*Maintenance of the current green infrastructure along streams and the associated reduction in tax expenditures*

The findings of a 2014 Lehigh Valley Planning Commission report entitled "Lehigh Valley Return on Environment," ([www.lvpc.org/pdf/2014/ReturnOnEnvironment\\_Dec\\_18\\_2014.pdf](http://www.lvpc.org/pdf/2014/ReturnOnEnvironment_Dec_18_2014.pdf)), demonstrates the benefits when clean water and natural areas are protected. The report states, "the current green infrastructure along streams in the Lehigh Valley reduces tax dollars by avoiding more than \$110.3 million annually in expenditures for water supply (\$45.0 million), disturbance (flood) mitigation (\$50.6 million) and water quality (\$14.7 million)." This report describes how investing in green infrastructure to improve water quality (such as watershed conservation, forest buffers and wetlands construction) can be much more cost effective than more traditional gray infrastructure approaches (such as pipes and treatment plants).

*Savings in water treatment for downstream communities that rely on surface waters for water supplies and availability of unpolluted water for domestic, agricultural and industrial uses*

The Department identified one public water supply facility with a raw water intake located within the candidate stream sections for redesignation in this final-form rulemaking package. This public water supplier, which serves over 22,300 citizens, will benefit from this final-form rulemaking because their raw source water will be afforded a higher level of protection. This final-form rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. By maintaining clean surface water, public water suppliers may avoid the costly capital investments

that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. Safe drinking water is vital to maintaining healthy and sustainable communities. Protecting the quality of drinking water sources can reduce the incidence of illness and reduce health care costs, help ensure a continuous supply of safe drinking water, enable communities to plan and build future capacity for economic growth and ensure their long-term sustainability for years to come. Public water suppliers' customers will also benefit from reduced fees for clean drinking water.

#### *Compliance costs*

This final-form rulemaking is necessary to protect and maintain the existing water quality of the HQ and EV waters, to protect existing water uses and to effectively control discharges of pollutants into the affected streams. These amendments to Chapter 93 do not impose any new compliance costs on persons engaged in regulated activities under existing individual permits or approvals from the Department since existing discharges are included in any determination of existing water quality when streams are redesignated to HQ or EV. Additional compliance costs may arise when permits or approvals are necessary for new or expanded regulated activities in HQ or EV waters, or when streams are redesignated to different non-special protection designations (such as WWF to CWF). Discharges to special protection streams are not eligible for coverage under National Pollutant Discharge Elimination System (NPDES) general permits, based on § 92a.54(a)(8) (relating to general permits), and therefore, require individual permits. Some additional cost will be incurred by facilities required to obtain an individual permit. The Department will implement stream redesignations through permit and approval actions.

Persons adding or expanding a discharge to a stream may need to provide a higher level of treatment or additional BMPs to protect the designated and existing uses of the affected streams, which could result in higher engineering, construction or operating costs. Treatment costs and BMPs are based on the specific design and operation of a facility, which also requires consideration of the size of the discharge in relation to the size of the stream and many other factors.

In the future, a person who proposes a new, additional or increased point source discharge to an EV or HQ water would need to satisfy the antidegradation requirements found in § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative that is environmentally sound and cost effective when compared to the costs associated with achieving a nondegrading discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must utilize anti-degradation best available combination of technologies (ABACT), which include cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

The permit applicant must demonstrate in the permit application that their new or expanded activities will not lower the existing water quality of special protection streams. If an applicant cannot meet these nondegrading discharge requirements, a person who proposes a new, additional or increased discharge to HQ waters is given an opportunity to demonstrate there is a social or eco-

nomical benefit of the project that would justify a lowering of the water quality. The social and economic justification (SEJ) demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that a lower water quality will protect all other applicable water uses for the waterbody. SEJ is not available for proposed discharges to EV waters. The water quality of EV streams must be maintained and protected.

There are approximately 10,300 facilities across this Commonwealth that hold permits issued under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). This Statewide number of approximately 10,300 includes NPDES permits for concentrated animal feeding operations, industrial waste, municipal separate storm sewer systems (MS4), treated sewage and stormwater associated with industrial activities. This total does not include NPDES permits for stormwater associated with construction activities, which is discussed as follows. Out of this Statewide total of approximately 10,300, only 9 facilities currently hold active NPDES permits for discharges to the stream segments redesignated in this final-form rulemaking.

The types of discharges with active NPDES permits located in waters affected by this final-form rulemaking include industrial wastewater and industrial stormwater. There is also one Chapter 91 (relating to general provisions) pesticide permit within the waters affected by this final-form rulemaking. Since the presence of these discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these waters may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose any additional special treatment requirements on existing permitted discharges.

As previously stated, discharge activities to special protection streams are not eligible for coverage under NPDES general permits and, therefore, require individual permits. Individual permits are required in special protection waters because the existing quality of the water must be protected. Therefore, each discharge must be evaluated individually for each stream. Site-specific characteristics of the stream water quality are used to determine effluent limitations for discharges to a stream. The individual permits are necessary to track the quality and quantity of any existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the Department's review in accordance with the antidegradation regulations.

There are no NPDES general permits available for discharges to special protection waters. In addition, there are no general permits available for discharges of treated sewage effluent or industrial waste effluent with the exception of the PAG-04 (general permit for small flow sewage treatment facilities). The Department identified four NPDES permits for discharges to waters proposed for redesignation to special protection, and all four permits are currently individual permits. Consequently, there would be no change in the permitting requirements for these activities.

The remaining five NPDES permits discharge into Two Lick Creek, which is recommended for redesignation from TSF to CWF. The types of discharges with active NPDES permits located in the Two Lick Creek basin include

industrial waste and industrial stormwater. These permits will not be affected by the redesignation.

Although no stormwater discharges from MS4s have been identified in the waters being redesignated, in general, local governments that are MS4s will most likely have additional costs associated with MS4 permitting requirements for discharges to HQ or EV waters. An MS4 that discharges to an HQ or EV water will be required to obtain an individual permit. The application fee for a new individual permit is \$5,000 compared to \$500 for the general permit (that is, NPDES General Permit for Stormwater Discharges from Small MS4s (PAG-13)). If there is an existing MS4 permit (whether it is currently the general permit or an individual permit) to discharge into one of the HQ or EV waters redesignated in this final-form rulemaking, any subsequent permit application fee for an individual permit is \$2,500. The annual fee for all MS4 permits is the same, whether it is for coverage under the general permit or for an individual permit. There is a difference in cost between the initial issuance of an individual permit and approval of coverage under the general permit due to increased staff time needed to review permit applications and implementation oversight that is associated with individual permits. An individual permit allows for the tailoring of an MS4's stormwater management program and its implementation of the minimum control measures.

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for stormwater discharges associated with construction activities issued under Chapter 102 (relating to erosion and sediment control). These permits for stormwater discharges associated with construction activities were not included in the preceding permit analyses because of the short-term, temporary nature of these permitted discharges.

A person proposing a new earth disturbance activity requiring a permit under Chapter 102 with a discharge to an HQ or EV water must obtain an individual permit and comply with the antidegradation provisions, as applicable. Where a permitted discharge existed prior to the receiving waterbody attaining an existing or designated use of HQ or EV, those persons may continue to operate using BMPs that have been approved by the Department and implemented. New discharges to the waterbody would be required to comply with the antidegradation provisions, as applicable, and must undergo an antidegradation analysis. Based on the analysis, additional construction and post-construction BMPs may need to be implemented on the remaining area that will be disturbed.

The administrative filing fee for an individual earth disturbance permit is \$1,500 compared to \$500 for a general permit, as set forth in § 102.6(b)(1) (relating to permit applications and fees). A person proposing a new earth disturbance activity requiring a permit under Chapter 102 must comply with the antidegradation provisions, as applicable. The erosion and sediment (E&S) BMPs and their ABACT rating, if applicable, are identified in the Department's *Erosion and Sedimentation Pollution Control Manual*, 363-2134-008, (2012) and the Department's Alternative E&S and Post-Construction Stormwater Management BMPs list, Version 2.2. (March 18, 2022). The Department may also approve alternative BMPs that maintain and protect the existing water quality and water uses.

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 (relating to

the administration of Sewage Facilities Planning Program; administration of Sewage Facilities Permitting Program; and standards for onlot sewage treatment facilities) will continue to satisfy § 93.4c. Permit applicants of sewage facilities with proposed discharges to HQ waters, subject to antidegradation requirements, may demonstrate SEJ at the sewage facilities planning stage and need not re-demonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and non-sewage discharge applicants for any naturally occurring substances identified in accordance with the Department's *Water Quality Antidegradation Implementation Guidance*, 391-0300-002, (DEP 2003).

A more detailed description of cost is discussed in the Regulatory Analysis Form, required under the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.14), that accompanies this final-form rulemaking.

#### *Compliance assistance plan*

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

#### *Paperwork requirements*

NPDES general permits are not available for discharges to HQ or EV waters. Applications for individual permits will require additional paperwork. The individual permits are necessary to track the quality and quantity of any existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the Department's review in accordance with the antidegradation regulations.

This final-form rulemaking does not, however, impose any new paperwork requirements on persons engaged in regulated activities under existing individual permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges to HQ or EV waters, additional information may need to be submitted to the Department as part of the permit application or approval request. As discussed previously, the permit applicant will complete an antidegradation analysis. The applicant will describe how the proposed activity will be conducted to maintain existing water quality. If water quality cannot be maintained and the proposed discharge will be to an HQ water, the applicant may submit an SEJ demonstration for the lowering of water quality.

#### *H. Pollution Prevention*

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

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Al-

though the antidegradation program does not prohibit new or expanding wastewater discharges, nondischarge alternatives must be implemented when environmentally sound and cost-effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil. In addition, if no environmentally sound and cost-effective alternatives are available, discharges must be nondegrading except as provided in § 93.4c(b)(1)(iii) regarding SEJ in HQ waters.

**I. Sunset Review**

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

**J. Regulatory Review**

Under section 5(a) of the RRA (71 P.S. § 745.5(a)), on June 24, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 4062, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the RRA (71 P.S. § 745a(j.2)), on May 17, 2023, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the RRA, IRRC met on May 18, 2023, and approved this final-form rulemaking.

**K. Findings of the Board**

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), referred to as the Commonwealth Documents Law, and regulations

promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A 45-day public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 4062.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

(5) These regulations are reasonably necessary to maintain the Commonwealth's water quality standards and to satisfy related CWA requirements.

**L. Order of the Board**

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93 are amended by amending §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v, 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 final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the RRA.

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RICHARD NEGRIN,  
*Acting Chairperson*

*(Editor's Note: See 53 Pa.B. 3055 (June 3, 2023) for IRRC's approval order.)*

**Fiscal Note:** Fiscal Note 7-557 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  
DESIGNATED WATER USES AND WATER QUALITY CRITERIA**

**§ 93.9c. Drainage List C.**

**Delaware River Basin in Pennsylvania**

***Delaware River***

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
	* * * * *			
3—Paradise Creek	Basin, Devils Hole Creek to Forest Hills Run	Monroe	HQ-CWF, MF	None

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
4—Forest Hills Run	Basin, Source to Swiftwater Creek	Monroe	HQ-CWF, MF	None
5—Swiftwater Creek	Basin, Source to UNT 04960 at 41°5'58.5"N; 75°20'4.8"W	Monroe	EV, MF	None
6—UNT 04960	Basin	Monroe	HQ-CWF, MF	None
5—Swiftwater Creek	Basin, UNT 04960 to Mouth	Monroe	HQ-CWF, MF	None
4—Forest Hills Run	Basin, Swiftwater Creek to Mouth	Monroe	HQ-CWF, MF	None
3—Paradise Creek	Basin, Forest Hills Run to Cranberry Creek	Monroe	HQ-CWF, MF	None
4—Cranberry Creek	Basin, Source to UNT 04948 at 41°8'28.6"N; 75°16'58.7"W	Monroe	HQ-CWF, MF	None
5—UNT 04948	Basin	Monroe	EV, MF	None
4—Cranberry Creek	Basin, UNT 04948 to Mouth	Monroe	EV, MF	None
3—Paradise Creek	Basin, Cranberry Creek to Mouth	Monroe	HQ-CWF, MF	None
3—Michael Creek	Basin	Monroe	HQ-CWF, MF	None
* * * * *				

§ 93.9k. Drainage List K.

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

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
2—Salem Creek	Basin	Luzerne	CWF, MF	None
2—Nescopeck Creek	Basin, Source to Oley Creek	Luzerne	HQ-CWF, MF	None
3—Oley Creek	Basin, Source to UNT 28168 at 41°3'7.1"N; 75°54'40.8"W	Luzerne	HQ-CWF, MF	None
4—UNT 28168	Basin	Luzerne	CWF, MF	None
3—Oley Creek	Basin, UNT 28168 to Mouth	Luzerne	HQ-CWF, MF	None
2—Nescopeck Creek	Basin, Oley Creek to PA 309 Bridge at 41°2'14.7"N; 75°57'11.9"W	Luzerne	HQ-CWF, MF	None
2—Nescopeck Creek	Main Stem, PA 309 Bridge to Mouth	Luzerne-Columbia	TSF, 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
* * * * *				
3—Tributaries to West Branch Susquehanna River	Basins, North Run to Bear Run	Clearfield	CWF, MF	None
3—Bear Run	Basin, Source to UNT 27063 at 40°54'5.1"N; 78°50'51.0"W	Indiana	HQ-CWF, MF	None
4—UNT 27063	Basin	Indiana	HQ-CWF, MF	None
3—Bear Run	Basin, UNT 27063 to Brooks Run	Indiana	EV, MF	None

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
4—Brooks Run	Basin, Source to UNT 27059 at 40°54'10.5"N; 78°49'41.6"W	Indiana	HQ-CWF, MF	None
5—UNT 27059	Basin	Indiana	HQ-CWF, MF	None
4—Brooks Run	Basin, UNT 27059 to Mouth	Indiana	EV, MF	None
3—Bear Run	Basin, Brooks Run to South Branch Bear Run	Indiana	EV, MF	None
4—South Branch Bear Run	Basin	Indiana	CWF, MF	None
3—Bear Run	Basin, South Branch Bear Run to Mouth	Indiana	CWF, MF	None
3—Tributaries to West Branch Susquehanna River	Basins, Bear Run to Chest Creek	Clearfield	CWF, MF	None
3—Chest Creek	Basin, Source to Patton Water Supply	Cambria	HQ-CWF, 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—Stoverstown Branch	Basin	York	WWF, MF	None
3—South Branch Codorus Creek	Basin, Source to UNT 08187 at 39°46'26.7"N; 76°43'15.2"W	York	WWF, MF	None
4—UNT 08187	Basin	York	EV, MF	None
3—South Branch Codorus Creek	Basin, UNT 08187 to UNT from Glen Rock Valley at 39°47'36"N; 76°43'49"W	York	WWF, MF	None
4—UNT to South Branch Codorus Creek Through Glen Rock Valley	Basin	York	CWF, MF	None
* * * * *				

§ 93.9r. Drainage List R.

**Ohio River Basin in Pennsylvania**  
*Clarion River*

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
3—Clarion River	Basin, Maxwell Run to Clyde Run	Elk	CWF	None
4—Clyde Run	Basin	Elk	EV	None
3—Clarion River	Basin, Clyde Run to Callen Run	Elk-Jefferson	CWF	None
4—Callen Run	Basin	Jefferson	HQ-CWF	None
* * * * *				

§ 93.9t. Drainage List T.

Ohio River Basin in Pennsylvania  
*Kiskiminetas River*

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
6—Two Lick Creek				
7—South Branch Two Lick Creek	Basin, Source to Confluence with North Branch	Indiana	HQ-CWF	None
7—North Branch Two Lick Creek	Basin, Source to Confluence with South Branch	Indiana	CWF	None
6—Two Lick Creek	Main Stem, Confluence of North and South Branches to Two Lick Reservoir tailrace	Indiana	TSF	None
7—Tributaries to Two Lick Creek	Basins, Confluence of North and South Branches to Two Lick Reservoir tailrace	Indiana	CWF	None
6—Two Lick Creek	Basin, Two Lick Reservoir tailrace to Yellow Creek	Indiana	CWF	None
7—Yellow Creek	Basin, Source to Little Yellow Creek	Indiana	CWF	None
8—Little Yellow Creek	Basin	Indiana	HQ-CWF	None
7—Yellow Creek	Basin, Little Yellow Creek to Yellow Creek State Park Dam	Indiana	CWF	None
7—Yellow Creek	Main Stem, Yellow Creek State Park Dam to Mouth	Indiana	TSF	None
8—Tributaries to Yellow Creek	Basins, Yellow Creek State Park Dam to Mouth	Indiana	CWF	None
6—Two Lick Creek	Main Stem, Yellow Creek to Mouth	Indiana	TSF	None
7—Tributaries to Two Lick Creek	Basins, Yellow Creek to Mouth	Indiana	CWF	None
6—Weirs Run	Basin	Indiana	CWF	None
* * * * *				

§ 93.9v. Drainage List V.

Ohio River Basin in Pennsylvania  
*Monongahela River*

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
4—Dunbar Creek	Basin, Source to Glade Run	Fayette	EV	None
5—Glade Run	Basin, Source to Boundary of SGL 51	Fayette	HQ-CWF	None
5—Glade Run	Basin, Boundary of SGL 51 to Mouth	Fayette	EV	None
4—Dunbar Creek	Basin, Glade Run to Gist Run	Fayette	EV	None
5—Gist Run	Basin	Fayette	TSF	None
* * * * *				

[Pa.B. Doc. No. 23-814. Filed for public inspection June 23, 2023, 9:00 a.m.]

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

#### [ 25 PA. CODE CH. 218 ]

#### Radiological Health Fees

The Environmental Quality Board (Board) amends Chapter 218 (relating to fees). This final-form rulemaking amends the annual fees for radiation-producing machine registrations, vendor registrations, accelerator licenses, radioactive material licenses and the professional hourly rate.

This final-form rulemaking was adopted by the Board at its meeting of April 11, 2023.

#### A. Effective Date

This final-form rulemaking will be effective 30 days after publication in the *Pennsylvania Bulletin*.

#### B. Contact Persons

For further information contact John Chipppo, Chief, Division of Radiation Control, P.O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 787-2480, or Nicholas Pistory, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-9372. Persons with a disability may use the Pennsylvania Hamilton 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.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of April 11, 2023).

#### C. Statutory Authority

This final-form rulemaking is authorized under sections 301, 302 and 401 of the Radiation Protection Act (RPA) (35 P.S. §§ 7110.301, 7110.302 and 7110.401), which direct the Board and the Department to establish fees in amounts at least sufficient to cover the costs of the radiation protection programs mandated by the RPA and review of those fees every 3 years, and under section 1920-A of The Administrative Code (71 P.S. § 510-20), which directs the Board ". . . to formulate, adopt and promulgate such rules and regulations as may be determined by the board for the proper performance of the work of the Department. . . ."

#### D. Background and Purpose

The Department's Radiation Protection Program (RPP) was established to carry out the comprehensive program of radiation protection in this Commonwealth as required by the RPA (35 P.S. §§ 7110.101—7110.703). Section 401 of the RPA and section 8 of the Radon Certification Act (63 P.S. § 2008) require that fees be established to cover the Department's RPP costs. Section 302(b) of the RPA (35 P.S. § 7110.302(b)) requires the Board to review the radiation protection fee structure every 3 years.

On February 15, 2022, the Department presented its Three-Year Regulatory Fee and Program Cost Analysis Report (Report) in accordance with § 218.11(l) (relating to registration, renewal of registration and license fees) and Chapter 240, Appendix A (relating to radon certification fee schedule) to the Board. The Report covered the period of 2018—2021 and analyzed costs for three program areas: Accelerator, Radiation-Producing Machines, and

Vendors/Service Providers; Radioactive Materials and Decommissioning; and Radon. The Department concluded that fee increases are necessary for the Accelerator, Radiation-Producing Machines, and Vendors/Service Providers Program and for the Radioactive Materials and Decommissioning Program to ensure both program areas are fully funded.

#### *Accelerator, radiation-producing machines and vendors / service providers analysis*

Through a staff of 71 located in the Department's central and regional offices, the RPP's Radiation Control Division administers the radiation-producing machine registration and inspection program, the Mammography Quality Standards Act Program, the particle accelerator licensing and inspection program and the vendor/service provider registration program.

The Radiation Control Division is responsible for the registration and inspection of over 11,000 facilities possessing about 33,000 X-ray units. These facilities include hospitals, clinics and medical and dental offices. Users of radiation-producing machines are required to register with the Radiation Control Division, indicate the number and type of units possessed and designate an individual responsible for radiation safety. Users pay registration fees based on the type of facility and the number of X-ray units they have. The fee amounts are listed in § 218.11(a).

Section 354 of the Federal Mammography Quality Standards Act (MQSA) (42 U.S.C. § 263b) was signed into law on October 27, 1992. The MQSA ensures that women and men receive high-quality mammography services for early breast cancer detection through the establishment of a Federal certification and inspection program. The statute authorizes the United States Food and Drug Administration (USFDA) to obtain state and local assistance in enforcing the MQSA requirements, including annual inspections of all certified mammography facilities. The Department, under a \$588,000 reimbursement contract with the USFDA, conducts inspections of each of this Commonwealth's more than 300 facilities which perform mammographic X-ray procedures. This contract is modified most years due to the changing number of facilities. The average amount is \$575,000.

The Department requires licensing of all particle accelerators within this Commonwealth for industrial use, research or medical purposes. A person who intends to purchase, construct or acquire an accelerator shall notify the Department of this intent by filing the appropriate application for a specific license within 30 days after the initial order is issued to obtain any or all parts of the accelerator. Annual fees for licensed particle accelerators are listed in § 218.11(d). About 150 facilities have approximately 250 licensed accelerators within this Commonwealth.

The Department also administers a registration program for vendors/service providers who sell, lease, install or service, or both, radiation-producing machines. Department regulations require that each vendor/service provider doing business within this Commonwealth must be registered prior to providing these services. To register, each vendor/service provider must complete a registration application and return that application with the associated fee to the Bureau of Radiation Protection. The registration is renewable for 12-month periods following submission of the applicable fee as listed in § 218.11(k).

In analyzing the annual costs and revenue associated with the Accelerator, Radiation-Producing Machines, and



Vendors/Service Providers RPP fee category, the Department found that despite substantial increases in personnel and program costs, the Chapter 218 fees, which support the registration of radiation-producing machines and vendors/service providers and the licensing of accelerators, have not been revised since 2009. As a result, the Radiation Protection Fund is decreasing annually in operating reserves, and the fund balance will be negative in Fiscal Year (FY) 2023-2024. Without the fee increase in this final-form rulemaking, the Department would be required to curtail spending for needed equipment, infrastructure upgrades, and training and hiring of qualified personnel.

#### *Radioactive materials and decommissioning analysis*

The RPP's Radiation Control Division is also responsible for the regulation, licensing and inspection of radioactive material user operations and, along with the Decommissioning Section of the Decommissioning and Surveillance Division, is responsible for termination of radioactive material licenses (such as for by-product, source and special nuclear material).

Users of all by-product, source and special nuclear material are required to obtain a license from the Department prior to obtaining those radioactive materials. This material is used in hospitals, colleges and industries for medical, research and industrial purposes. The Department issues specific, general and reciprocity licenses for the use of radioactive material in this Commonwealth. The objective of the licensing program is to ensure radioactive material is used safely, disposed of properly and facilities are free from contamination when licensed operations are terminated. Annual license fees for radioactive material are listed in Chapter 218, Appendix A (relating to fees for radioactive material licenses).

The Decommissioning Section performs technical reviews of decontamination and decommissioning (D&D) activities for radioactive materials licensees and non-licensed radiologically contaminated sites in accordance with appropriate Commonwealth regulations. Typical reviews include site characterization plans, health and safety plans, decommissioning plans, survey reports, and the evaluation of decommissioning funding plans and financial assurance mechanisms. The Decommissioning Section also performs onsite reviews and inspections of D&D activities for occupational, public and environmental radiation protection concerns. These activities include performing confirmatory surveys and sampling to ensure the cleanup levels established for the site have been met. The Decommissioning Section would also perform independent oversight and sampling at decommissioning nuclear power plant sites (for example, Three Mile Island Unit 2). This work is performed at full cost recovery.

Fee collections for radioactive material licensing have been trending down since the National economic recession of 2008. Universities and industries that use radioactive material have been consolidating or finding other operational methods that do not require a license. Many licensees have opted to be licensed under a small business fee category at a lower cost, which is specified in Chapter 218, Appendix A. During this same time, actual RPP personnel costs (salaries and benefits) have increased approximately 14% since the last fee increase for this fee area took effect in 2017.

The Department's fiscal analysis showed that with existing reserve funds and current fees, the fund balance will be negative in FY 2024-2025 for the Radioactive Materials and Decommissioning area.

#### *Summary of RPP funding needs*

Based on the findings of the Report, this final-form rulemaking is necessary to address the discrepancy between anticipated fees and needed revenue for the Accelerator, Radiation-Producing Machines, and Vendors/Service Providers program area and the Radioactive Materials and Decommissioning program area.

In March 2008, then-Governor Edward Rendell signed an agreement with the Chairperson of the United States Nuclear Regulatory Commission (NRC) for the Commonwealth to become an Agreement State. This allows the Department to oversee and regulate licensure of radioactive materials for entities in this Commonwealth. These duties are funded through the Chapter 218 fees. As part of the agreement, the Commonwealth committed to implementing a radiation protection program comparable to the NRC's program and ensured that Department regulations would be compatible with NRC regulations.

The amendments to the Chapter 218 fees for radiation-producing machines, vendors and accelerators are necessary to ensure adequate funding is available for the Commonwealth to carry out its duties under the RPA. The amendments to the Chapter 218 fees for radioactive material licenses are necessary to ensure adequate funding is available for the Commonwealth to carry out its duties under the NRC's Agreement State program. If the Commonwealth were forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would experience higher costs per NRC's fee regulations.

To ensure there is adequate funding for these program areas and for the Commonwealth to maintain its status as an NRC Agreement State, the Board is increasing the fees associated with the Accelerator, Radiation-Producing Machines, and Vendors/Service Providers program area by 30% to provide sufficient revenue through FY 2027-2028 and the fees associated with the Radioactive Materials and Decommissioning program area by 10%, except for the full cost recovery hourly rate that is increased by 22% to \$275, to ensure sufficient funding through FY 2027-2028.

#### *Outreach*

The amendments to the Chapter 218 fees for radiation-producing machines, vendors, and accelerators and for radioactive materials and decommissioning were reviewed with the Department's Radiation Protection Advisory Committee (RPAC). RPAC represents various stakeholders, including radiation-producing machine registrants, radioactive materials licensees and radon service providers, as well as the general public. The Department discussed the need for fee revisions and presented the draft proposed amendments to Chapter 218 to RPAC on March 3, 2022, and RPAC endorsed moving forward with the proposed rulemaking. The Department presented the draft final amendments to Chapter 218 to RPAC on December 9, 2022, and RPAC again endorsed moving forward with this final-form rulemaking.

#### *E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

##### *§ 218.11. Registration, renewal of registration and license fees*

In subsection (a), the annual administrative fees and annual fees per X-ray tube or radiation generating device for radiation-producing machines are increased by approximately 30% to provide adequate funding to support the oversight of X-ray machines in hospitals, dental

offices, veterinary clinics and other facilities. Additionally, “Chiropractors” have been moved out of the “Other” fee category and are now added to “Chiropractors, dentists, podiatrists, veterinarians.” This change was made because chiropractors’ equipment is comparable with the equipment used by dentists, podiatrists and veterinarians.

In subsection (d)(1), the fee amounts for accelerators, below 50 MeV, other than for ion implantation are increased by 30% from \$2,100 to \$2,730 for the first accelerator at a facility and from \$700 to \$910 for each additional unit at the facility.

In subsection (d)(2), the fee amounts for accelerators used for ion implantation are increased from \$700 to \$910 and from \$70 to \$90 for each additional unit at the same facility.

In subsection (d)(3), the fee amounts associated with accelerators 50 MeV and above are increased by 30%. This includes the hourly rate considered for staff time to review license applications and to conduct inspections being increased from \$150 per hour to \$195 per hour; the minimum annual fee being increased from \$2,100 to \$2,730 for the first accelerator at a facility; and the fee for each additional unit being increased from \$700 to \$910.

In subsection (i), the annual fee amounts for electronic brachytherapy devices are increased by 30% from \$1,000 to \$1,300 for the first unit at a facility and from \$100 to \$130 for each additional unit at the facility.

In subsection (k), the annual registration fee for radiation-producing machine service providers is increased by 30% from \$140 to \$180.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

#### *Chapter 218, Appendix A. Fees for radioactive material licenses*

The Board proposed to increase the 39 different fee categories for radioactive material licenses by 10% based on the findings of the Report to ensure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. In this final-form rulemaking 38 different fee categories for radioactive material licenses are increased by 10%. One fee category, Category 6A—Nuclear Laundry, is being kept at the current rate of \$43,200 in this final-form rulemaking and is not increased to \$47,520 as originally proposed. There is currently one licensee in this category, who submitted comments on the proposed rulemaking requesting this fee be decreased based on the licensee’s comparison of the Commonwealth’s fee to the fees charged by other states where the licensee operates. However, these comparison states have other funding streams to help cover their program costs, while the Commonwealth’s program is required by statute to be funded solely through the license, registration and certification fees.

Decreasing the fee is not feasible. Regulatory oversight for this license category is different from other categories and requires more Department resources, such as specialized training, more frequent sampling and increased financial assurance. However, the Board has determined that keeping this license category at the current rate for this 3-year fee review cycle is not expected to be detrimental to the RPP at this time, as currently there is only one nuclear laundry license in the Commonwealth. During the next 3-year fee review cycle, the Department will compile more detailed information and understanding of

the complexities and uniqueness of this license category, which will allow the Board to assess if an additional adjustment to the nuclear laundry license fee category is appropriate.

Additionally, the full cost recovery fee, identified by the asterisk in this final-form rulemaking, is increased by 22% from \$225 per hour to \$275 per hour, which is below the NRC’s current FY 2022 hourly rate of \$290 per hour. This hourly rate is applicable to fee categories 4A (Waste Storage, Processing or Disposal), 5B (Well Logging Field Flood Tracer Studies) and 14 (Decontamination, Decommissioning, Reclamation or Site Restoration). The fee increase is needed to compensate for the increase in Department staff salaries, which have risen more than 22% since the last fee increase in 2017, as well as increases in the costs for infrastructure to support the radiation protection program staff. There was only one change made to this fee section from the proposed rulemaking to this final-form rulemaking to keep the Category 6A—Nuclear Laundry fee at the current rate.

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

The Independent Regulatory Review Commission (IRRC) and a commentator questioned whether the nuclear laundry license fee should be increased. The commentator submitted a comparison of nuclear laundry fees they pay in other states for this license category to explain why they feel an increase is not reasonable for this category. IRRC also asked the Board to explain why this fee and the proposed increase are reasonable and how they comply with the requirement in the RPA.

As noted in the previous section, the Board has declined to make the proposed change to the nuclear laundry fee in this final-form rulemaking and will keep the fee at its current rate. The Board will use the next 3-year fee review cycle to conduct further analysis. A nuclear laundry license is a complex license involving numerous requirements in addition to the inspection, license amendment and review of reports mentioned by the commentator. As discussed in more detail as follows, there are environmental monitoring requirements, financial assurance requirements and special training for RPP staff to review the licenses and perform the monitoring. In addition, there are infrastructure costs that must be maintained independent of the number of operational licenses.

Under license condition, a nuclear laundry is required to perform annual routine monitoring of the environment near and downstream of their wastewater discharge pipe into the river. This monitoring includes sampling of sediment (3 times per year), plant (2 times per year), fish (2 times per year) and clams (1 time per year) to monitor the radiological contaminants that they are discharging to the environment. The radiological results of this sampling must be reviewed by staff with Federally required, specialized training on radiological contaminants in the environment. Annual data is then compiled in a final report and evaluated against public dose limits. That report is also reviewed by this specially trained staff to evaluate their compliance.

Additionally, the RPP periodically collects or obtains split samples from the licensee to perform its own independent analysis. This sampling requires specific equipment to collect and submit samples. Each sample has a cost for radiological analysis.

By Federal regulation at 10 CFR 30.35 (relating to financial assurance and recordkeeping for decommission-

ing) incorporated by reference in § 217.131 (relating to incorporation by reference), a nuclear laundry is required to maintain financial assurance to ensure funds are available should the licensee become unable to properly maintain the site prior to termination of its license. This financial assurance requires a cost-specific review of what it would take for a third party to come in and properly clean up the facility and the surrounding environment, both surface and subsurface. This cost estimation is required to be submitted at least every 3 years. The cost estimate and associated financial assurance mechanisms require detailed review and approvals and require special training for the individuals who perform those reviews.

At a minimum, the reviews mentioned previously require at least one technical staff and one manager to complete the review for each submission. The financial assurance reviews typically involve at least one additional staff member to make sure the review is thorough. Therefore, two or three RPP staff's time is required for each of these compliance activities.

The RPP maintains a section of staff specifically trained for decommissioning and environmental monitoring. The NRC Agreement State Program requires that this staff receives specialized training to be qualified to implement these decommissioning and environmental monitoring requirements. Currently, the commentator's nuclear laundry facility is the sole license in this Commonwealth requiring environmental monitoring—not just the only license in the nuclear laundry license category but the only license out of all radioactive material license categories. Therefore, the commentator's nuclear laundry facility license fee is the only funding source to support this specialized training.

There is a cost for the infrastructure that must be maintained independent of the number of operational licenses. These infrastructure costs include indirect and administrative services, including rulemaking, maintaining guidance for licensees and maintaining procedures for staff, training and travel, the cost of information management, information technology, security, facilities management, rent, utilities, financial management, acquisitions, human resources and policy support.

The commentator has compared the Commonwealth's license fees with states that are able to supplement their fees with other funds to administer their programs. Section 401 of the RPA states that “. . . [t]hese fees shall be in an amount at least sufficient to cover the department's costs of administering the programs.” Consequently, the Commonwealth's RPP is funded entirely through its license, registration and certification fees.

As noted in the funding Report for the RPP and in the preamble to the proposed rulemaking, the Radiation Protection Fund balance will go into the negative in FY 2023-2024. Therefore, the Department cannot afford a delay in promulgating this final-form rulemaking and decreasing the fee is not feasible. However, the Board has determined that keeping this license category at the current rate for this 3-year fee review cycle is not expected to be detrimental to the RPP at this time, as currently there is only one nuclear laundry license in the Commonwealth. During the next 3-year fee review cycle, the Department will compile more detailed information on this unique license category, including but not limited to, training, sampling and staff hours, which will allow the Board to assess if an additional adjustment to the nuclear laundry license fee category is appropriate.

IRRC noted the full cost recovery fee for licenses in categories 4A, 5B and 14 was proposed to be increased by

22% but the Preamble and Regulatory Analysis Form (RAF) stated the fees in Chapter 218, Appendix A are increased by 10% and requested the documents be revised. IRRC also asked the Board to explain why the increase was needed and reasonable. As IRRC noted, the full cost recovery fee is an hourly rate charged for D&D activities performed by Department staff. This fee is rarely utilized because it only applies in two situations. One is the extraordinary circumstance that a non-licensee possesses radioactive material requiring D&D and therefore has not paid any license fee to the Department. The other case is when a licensee requests termination of their operating license and conversion to a decommissioning-only license. In this case, the Department would only charge the hourly rate if Program staff had completed enough work to exceed the annual fee paid by the licensee. This allows the Department to recover the full cost of staff time spent on unplanned work that is not included in the Program's revenue projections. In addition to covering personnel salaries, there is a cost for the infrastructure that must be maintained independent of the number of operational licenses, which was discussed in detail previously in this section of the preamble. As this is an hourly professional rate for a license category with an unpredictable number of licensees, the fee increase is needed to compensate for the increase in Department staff salaries and infrastructure costs, which have risen more than 22% since the last fee increase in 2017. The preamble and RAF for this final-form rulemaking have been updated to provide an explanation for the fee increase and the correct percentage increase of 22%.

IRRC noted the estimates of costs to local governments and State government in questions 20 and 21 of the RAF conflict with estimates given for question 23. The responses to questions 20 and 21 are correct, and the response to question 23 has been revised accordingly.

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

##### *Benefits*

The Chapter 218 fee increases for radioactive material licenses are necessary to ensure that adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program and the RPA. If the Commonwealth were forced to cede its authority to regulate radioactive materials back to the NRC, the regulated community would be subject to higher NRC fees. Radioactive material controls under the Agreement State program guard against the potential for unnecessary public radiation exposure from the use of radioactive material benefitting the health of all residents in this Commonwealth.

The Chapter 218 fees for registration of X-ray facilities, licensing of accelerators and registration of vendors have not been increased since 2009, although costs have steadily increased. These fee increases are necessary to ensure oversight of radiation safety-related activities are not diminished and the replacement of obsolete survey equipment is not delayed, which would reduce the assurance that regulated activities are being conducted safely.

For these reasons, the Department benefits from this final-form rulemaking by having the needed additional revenue to cover the costs of the programs mandated by the RPA, and the general public will benefit from this final-form rulemaking by the continued safety with the use of radioactive materials, the safety of radiation-producing machines and additional quality assurance that will be provided.

*Compliance costs*

The cost of compliance with the fee amendments for the Accelerator, Radiation-Producing Machines, and Vendors/Service Providers program area are increased by 30% to provide sufficient revenue through FY 2027-2028. The cost of compliance with the fee amendments for the Radioactive Materials and Decommissioning program area are increased by 10% for licensing and 22% for the full cost recovery fee to ensure sufficient funding through FY 2027-2028. Considering increases in inflation since the last time these fee categories were increased (2009 for the Accelerator, Radiation-Producing Machines, and Vendors/Service Providers program area and 2017 for the Radioactive Materials and Decommissioning program area), the cost of compliance is increased in line with inflation rates.

*Compliance assistance plan*

The Department will notify the regulated community of the increased fees by informing RPAC, issuing an Information Notice to relevant licensees and publishing notification in the *Pennsylvania Bulletin*.

*Paperwork requirements*

This final-form rulemaking does not require additional recordkeeping or reporting requirements as a result of the fee increases in Chapter 218.

*H. Pollution Prevention*

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

This final-form rulemaking is designed to support the safe and effective use of licensed radioactive materials and radiation-producing machines to protect the health and safety of residents, workers and the environment in this Commonwealth. By increasing fees to keep the Radiation Protection Fund solvent in the coming years, this final-form rulemaking ensures the Department's ability to implement radiological pollution prevention.

*I. Sunset Review*

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

*J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (RRA) (71 P.S. § 745.5(a)), on August 10, 2022, the Department submitted a copy of the notice of proposed rulemaking, published at 52 Pa.B. 5500 (August 27, 2022), and a copy of an RAF to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the RRA (71 P.S. § 745.5a(j.2)), on May 17, 2023, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the RRA, IRRC met on May 18, 2023, and approved this final-form rulemaking.

*K. Findings of the Board*

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), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 52 Pa.B. 5500.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

*L. Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 218, are amended by amending § 218.11 and Chapter 218, Appendix A 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 final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

RICHARD NEGRIN,  
*Acting Chairperson*

(*Editor's Note:* See 53 Pa.B. 3055 (June 3, 2023) for IRRC's approval order.)

**Fiscal Note:** Fiscal Note 7-574 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

**Subpart D. ENVIRONMENTAL HEALTH AND  
SAFETY**

**ARTICLE V. RADIOLOGICAL HEALTH**

**CHAPTER 218. FEES**

**PAYMENT OF FEES**

**§ 218.11. Registration, renewal of registration and license fees.**

(a) Annual registration fees for radiation-producing machines are the sum of an annual administrative fee and an annual fee for each X-ray tube or radiation generating device and shall be paid as follows:

Type Facility	Annual Administrative Fee	Annual Fee per X-ray Tube or Radiation Generating Device
Chiropractors, dentists, podiatrists, veterinarians	\$130	\$65
Hospitals	\$940	\$65
Other Facilities	\$455	\$65

\* \* \* \* \*

(d) Particle accelerators are licensed under Chapter 228 (relating to radiation safety requirements for particle accelerators). Annual fees are as follows:

(1) Accelerators, below 50 MeV, other than for ion implantation—\$2,730 for the first accelerator at the facility plus \$910 for each additional unit at that facility.

(2) Accelerators used for ion implantation—\$910 plus \$90 for each additional unit at the same facility.

(3) Accelerators 50 MeV and above—full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is \$195 per hour). For the purpose of anticipating costs and compliance with subsections (e) and (f), a minimum annual fee of \$2,730 for the first accelerator at the facility plus \$910 for each additional unit is established. Additional invoices will be issued by the Department at regular intervals at least quarterly when net costs are incurred above the minimum annual fee.

\* \* \* \* \*

(i) Electronic brachytherapy devices are licensed under Chapter 221 (relating to X-rays in the healing arts). The annual fee is \$1,300 for the first unit (controller) at the facility plus \$130 for each additional unit at that facility.

(j) Emerging technology devices require Department safety review and approval prior to use. The registrant shall pay a fee equal to the full cost of Department staff time, as specified in Appendix A, for the review and approval process.

(k) A radiation-producing machine service provider shall pay an annual registration fee of \$180.

(l) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and must contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

**APPENDIX A**

**Fees for Radioactive Material Licenses**

Fee Category <sup>5,6</sup>	Description	Annual Fee (\$) <sup>1,2,3,4,7</sup>
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	3,465
1D	Special Nuclear Material—Other	9,570
2A(2)(c)	Source Material—Metal Extraction	49,610
2A5	Removal of Radioactive Contaminants from Drinking Water	18,480
2B	Source Material as Shielding	1,240
2C	Source Material—Other (not 11e2)	22,110
3A	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	48,015
3B	Manufacturing, Refurbishing & Distribution Commercial Specific License—10 CFR 30	13,695
3C	Manufacturing & Distribution Pharmaceuticals—10 CFR 32.72—32.74	19,635
3D	Pharmaceuticals—Distribution Only—10 CFR 32.7x	11,220
3E	Irradiator—Shielded Source	6,930
3F	Irradiator—Unshielded < 10kCi	12,870
3G	Irradiator—Unshielded >= 10kCi	51,480
3I	Distribution As Exempt—No Review of Device	17,655
3J	Distribution—SSD Devices to Part 31 GLs	4,125
3K	Distribution—No Review-Exempt Sealed Source	3,135
3L	Research & Development Broad Scope	24,915

<i>Fee Category</i> <sup>5,6</sup>	<i>Description</i>	<i>Annual Fee (\$)</i> <sup>1,2,3,4,7</sup>
3M	Research & Development	9,240
3N	Services other than Leak Testing, Waste Disposal or Calibration	14,025
3O	Radiography	23,265
3P	Other Byproduct Material	4,455
3Q	Generally licensed devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	530
3R1	Greater than the General License Limits in 10 CFR 31.12(a)(3), (4) or (5) but not more than ten times those Limits	3,465
3R2	Greater than ten times the General License Limits in 10 CFR 31.12(a)(3), (4) or (5)	4,455
3S	Manufacturing & Distribution Pharmaceuticals—Accelerator Produced Only	19,470
4A	Waste Storage, Processing or Disposal	Full Cost *
4B	Waste Packaging or Repackaging	19,800
4C	Waste Receipt of Prepackaged for Disposal	15,180
5A	Well Logging & Non Field Flood Tracers	7,260
5B	Well Logging Field Flood Tracer Studies	Full Cost *
6A	Nuclear Laundry	43,200
7A	Human Use—Teletherapy	22,605
7B	Human Use—Broad Scope (except Teletherapy)	39,875
7C	Human Use (except Teletherapy)	8,085
8A	Specifically licensed sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	3,465
14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *
16	Reciprocity (180 days/year)	2,475
SB1 <sup>5</sup>	Small Business—Category 1	3,795
SB2 <sup>6</sup>	Small Business—Category 2	825

<sup>1</sup> A license may include as many as four noncontiguous sites at the base fee. Sites that are within 5 miles of the main radiation safety office where the license records are kept will be considered contiguous. An additional fee of 25% of the base fee will be added for each noncontiguous site above four.

<sup>2</sup> All fees will be effective upon publication of the final rules in the *Pennsylvania Bulletin*. Existing NARM licenses will be changed to the corresponding category of byproduct material license in Appendix A upon publication of the final rule.

<sup>3</sup> Annual fees for categories of NRC licenses that are not included in this table will be calculated as follows: PA Fee = (NRC Annual Fee + 0.10 NRC Application or Renewal fee).

<sup>4</sup> Annual fees charged to holders of transferred NRC licenses with multiple sites will not exceed the fees charged by the NRC for the same licenses that are in effect in the year of transfer, provided the number of noncontiguous sites does not increase.

<sup>5</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Manufacturing Entities that have an average of 35–500 employees with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Small Government Jurisdictions (including publicly supported, nonmedical educational institutions) with a population between 20,000 and 50,000; and nonmedical Educational Institutions that are not State or publicly supported and have 35–500 employees.

<sup>6</sup> Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of less than \$350,000; Manufacturing Entities that have an average of less than 35 employees and less than \$350,000 in Gross Annual Receipts; Small Government Jurisdictions (including publicly supported nonmedical educational institutions) with a population less than 20,000; and nonmedical Educational Institutions that are not State or publicly supported and have less than 35 employees.

<sup>7</sup> Full cost recovery licensees and licensees required to provide financial assurance for decommissioning are not eligible for reduced fees under category SB1 or SB2.

\*Full cost recovery consists of a professional fee, to cover the activities and support of Department personnel, and any other additional incidental charges incurred, such as related contracted services or laboratory costs. The professional fee component (Hourly Rate) is \$275 per hour. Other costs are recovered at 100% of actual cost. Invoices shall be issued by the Department at regular intervals but at least quarterly when net costs are incurred.

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