

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations; Buck Hill Creek, et al.

The Environmental Quality Board (Board) proposes to amend §§ 93.9c, 93.9f, 93.9l, 93.9p, 93.9t and 93.9v to read as set forth in Annex A.

This order was adopted by the Board at its meeting of January 20, 1998.

A. *Effective Date*

These proposed amendments are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory and Regulatory Authority*

These proposed amendments are made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement The Clean Streams Law. In addition, the Federal regulation at 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Proposed Amendments*

Pennsylvania's Water Quality Standards, which are set forth in part in Chapter 93 (relating to water quality standards), implement sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals which are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for Special Protection status or redesignation, or both, in its ongoing review of water quality standards. In general, Special Protection waters (High Quality (HQ) and Exceptional Value (EV) waters) must be maintained at their existing quality, and wastewater treatment requirements must comply with § 95.1 (relating to general requirements). Candidates may be identified by the Department based on routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as

the Pennsylvania Fish and Boat Commission (PFBC), and by the general public through a rulemaking petition to the Board.

The Department evaluated the following streams in response to requests from Department and PFBC staff, as well as two petitions:

Roaring Run and Owl Creek: Department

Sinnemahoning Portage Creek and Cowley Run, Swamp Creek, Dunbar Creek, Cush Creek, and South Branch Oswayo Creek: PFBC

Buck Hill Creek: Buck Hill Conservation Foundation

Trout Run: Blairsville Municipal Authority

The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current designations. Aquatic surveys of these streams were conducted by the Department's Bureau of Watershed Conservation. Based upon the data collected in these surveys and information gathered from Department records and other sources, the Board recommends the designations described in Section E of this Preamble.

Copies of the Department's aquatic survey evaluation reports referred are available from Edward Brezina whose address and telephone number are listed in Section B of this Preamble.

In reviewing whether waterbodies are subject to the Special Protection Waters Program, the Department is utilizing applicable State and Federal regulatory criteria.

E. *Summary of Proposed Regulatory Revisions*

Following is a brief explanation of the recommendations for each stream or segment in the proposal. The proposed recommendations are based on the Department's evaluations considering applicable regulatory definitions and Federal requirements.

Buck Hill Creek—This basin is currently designated High Quality-Cold Water Fishes (HQ-CWF). The Buck Hill Conservation Foundation petitioned the Board to redesignate the upper watershed, down to Snow Shoe Run, as Exceptional Value Waters (EV). The Department evaluated the entire basin, and recommends redesignation of the Buck Hill Creek basin from the source to Margaret's Falls to EV. This recommendation is based on the presence of outstanding ecological attributes. This EV recommendation extends further downstream than requested in the petition. The remainder of the basin will retain its HQ-CWF designation. The Migratory Fishes (MF) designation will be added from Buck Hill Falls to the mouth to recognize use of this reach by the American eel.

Owl Creek—The Department found that this tributary to Tulpehocken Creek is not listed in the Chapter 93 drainage list. A field survey indicated that the Owl Creek Fishery is dominated by warm water fish species. The Department recommends that the Owl Creek Basin be included in Chapter 93 and be designated Warm Water Fishes (WWF).

Swamp Creek—The PFBC requested that the current TSF designation upstream of the Route 100 crossing be evaluated for upgrade to CWF and that the basin above the dam in Bechtelsville be evaluated for designation as HQ-CWF. The Department's recommendations conform to this request. The Swamp Creek basin upstream from the

dam in Bechtelsville is designated a Class A wild trout water and thus contains attributes which merit an HQ designation. The basin from the dam to Route 100 supports brown trout and other species indigenous to cold water habitats and is therefore recommended for redesignation to CWF. American eels are found throughout the basin, so the MF designation should be added to the entire Swamp Creek basin, source to mouth.

Sinnemahoning Portage Creek and Cowley Run—The Sinnemahoning Portage Creek basin from the source to and including Cowley Run is recommended for designation as EV (currently CWF). At all stations sampled in this portion of the basin, the ecological significance score was 92% or greater than that of the reference station, thus exhibiting outstanding ecological attributes. This proposed designation would provide more protection than the original HQ-CWF request from the PFBC.

South Branch Oswayo Creek—The South Branch Oswayo Creek basin was evaluated for redesignation from CWF to HQ-CWF at the request of the PFBC. The ecological condition score at all stations sampled in the basin exceeded 92% of that of the reference; thus exhibiting outstanding ecological attributes. The Department is recommending EV for the basin. This exceeds the original PFBC request for HQ-CWF.

Roaring Run—The Roaring Run basin is currently designated HQ-CWF, and a portion was evaluated for redesignation to EV on the basis of a request from the Department's Southwest Regional Office. Roaring Run is located primarily on public lands and demonstrates excellent water quality. The PFBC has included the Roaring Run basin upstream from the Boswell Reservoir in its Wilderness Trout Stream program. The Department is recommending EV for this portion of the basin.

Trout Run—The Blairsville Municipal Authority petitioned the Board to include the portion of Trout Run upstream from their reservoir in the Special Protection Waters program. The PFBC requested that the entire basin be evaluated. The sampling above the reservoir showed an ecological comparison of 100%, thus exhibiting outstanding ecological attributes. An upgrade from CWF to EV is proposed. The basin downstream from the reservoir will retain the existing CWF designation.

Dunbar Creek—The PFBC requested an EV evaluation for Dunbar Creek from the source to Gist Run. This section is currently designated HQ-CWF. This proposed rulemaking recommends portions of this watershed to be redesignated EV based on the presence of outstanding ecology. These portions are: Dunbar Creek basin, source to Glade Run; Dunbar Creek main stem, Glade Run to Elk Rock Run; the Tucker Run basin; and the Elk Rock Run basin. The remainder of the basin will retain the HQ-CWF designation. These proposed recommendations apply the EV designation to much less of the basin than requested by the PFBC.

Cush Creek was evaluated for inclusion in this proposed rulemaking, but was found to be correctly designated. A portion of Cush Creek, currently CWF, was evaluated for redesignation as HQ-CWF based on a PFBC request. The portion of the basin upstream from Horton Run exhibited signs of degradation due to past coal mining, and the designation is recommended to remain unchanged.

These changes allow wastewater treatment requirements for dischargers to these streams to be consistent with the water uses to be protected. These proposed

regulatory amendments do not contain any standards or requirements which exceed requirements of the companion Federal regulations.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

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

2. *Compliance Costs*—Generally, the proposed changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth or its political subdivisions. Except as noted, no costs will be imposed directly upon local government by this proposed recommendation. However, indirect costs may result from newly proposed activities which result in revisions to Act 537 Sewage Facilities Plans due to consultant and other administrative fees. Political subdivisions which add a new sewage treatment plant or expand an existing plant in the basin may experience changes in cost as noted in the discussion of impacts on the private sector.

Persons proposing activities or projects which result in discharges to streams must comply with the regulatory requirements relating to current stream designations. Persons could be adversely affected by the recommended changes that increase the level of protection provided to a stream if they expand the discharge or add a new discharge point since they may need to provide a higher level of treatment for the new or expanded discharge. These increased costs take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site specific and may depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. In addition, nonpoint source controls necessary to protect High Quality and Exceptional Value Waters may add to the cost of planning and development for new or expanded nonpoint source discharges. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams which are upgraded, and potentially lower treatment costs for discharges to streams which are downgraded.

3. *Compliance Assistance Plan*—The proposed amendments will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting program since the stream use designation is a major basis for determining allowable stream discharge effluent limitations. These permit conditions are established to assure water quality criteria are achieved and designated uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with the proposed revised designated water uses. The Department has developed extensive guidance documents to aid permittees with the permitting process.

For those waters which are redesignated as Special Protection (HQ or EV) waters, the Department has developed a "Special Protection Waters Implementation Handbook" to guide persons conducting or proposing to conduct activities in watersheds on appropriate measures which should be taken to protect the waters.

4. *Paperwork Requirements*—The proposed regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivi-

sions, or the private sector. These proposed regulatory revisions are based on existing Department programs and policies. There may be some indirect paperwork requirements for new or expanding discharges to streams upgraded to Special Protection (HQ or EV). For example, NPDES general permits are not currently available for new or expanded discharges to Special Protection streams. Thus an individual permit and its associated additional paperwork would be required. Additionally, paperwork associated with demonstrating social and economic justification, and the nonfeasibility of nondischarge alternatives, may be required for new or expanded discharges to certain Special Protection waters.

G. *Pollution Prevention*

The antidegradation program, which applies to streams designated as HQ and EV waters, is a major pollution prevention tool because its objective is to prevent degradation by maintaining and protecting existing water quality. Although new or expanded wastewater discharges are not prohibited by the antidegradation program, nondischarge alternatives are encouraged and required, when appropriate. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 23, 1998, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the Governor and the General Assembly of objection raised.

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 3, 1998 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 3, 1998 (within 60 days following publication in the *Pennsylvania Bulletin*). The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

Electronic Comments—Comments may be submitted electronically to the Board at Reg Comments A1.dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 3, 1998.

JAMES M. SEIF,
Chairman

Fiscal Note: 7-333. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9c. **Drainage List C.**

Delaware River Basin in Pennsylvania

Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
3—Buck Hill Creek	Basin, Source to Margaret's Falls (RM 1.73)	Monroe	[HQ-CWF] EV	None
3—Buck Hill Creek	Basin, Margaret's Falls to Buck Hill Falls (RM 0.75)	Monroe	HQ-CWF	None

PROPOSED RULEMAKING

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3—Buck Hill Creek	Basin, Buck Hill Falls to Mouth	Monroe	HQ-CWF, MF	None
	* * * * *			

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
4—Unnamed Tributaries to Tulpehocken Creek	Basins, T 560 to Tailwaters of Blue Marsh Reservoir	Berks	TSF	None
4—Owl Creek	Basin	Lebanon	WWF	None
	* * * * *			
4—Swamp Creek	Basin, Source to Dam in Bechtelsville (RM 15.5)	[Montgomery] Berks	[TSF] HQ-CWF, MF	None
4—Swamp Creek	Basin, Dam in Bechtelsville to Route 100 Bridge	Berks	CWF, MF	None
4—Swamp Creek	Basin, Route 100 Bridge to Mouth	Montgomery	TSF, MF	None
	* * * * *			

§ 93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
5—Sinnemahoning Portage Creek	Basin, Source to Cowley Run	Cameron	[CWF] EV	None
6—Cowley Run	Basin	Cameron	EV	None
5—Sinnemahoning Portage Creek	Basin, Cowley Run to Mouth	Cameron	CWF	None
	* * * * *			

§ 93.9p. Drainage List P.

Ohio River Basin in Pennsylvania
Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
4—South Branch Oswayo Creek	Basin	Potter	[CWF] EV	None
	* * * * *			

§ 93.9t. Drainage List T.

Ohio River Basin in Pennsylvania
Kiskiminetas River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
7—Roaring Run	Basin, Source to Boswell Municipal Authority Dam	Somerset	[HQ-CWF] EV	None
	* * * * *			

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
5—McGee Run	Main Stem, Farthest Upstream Crossing of Derry [Borough] Township Border to Mouth	Westmoreland	TSF	None
	* * * * *			
6—Trout Run	Basin, Source to Inlet of Blairsville Reservoir	Westmoreland	[CWF] EV	None
6—Trout Run	Basin, Inlet of Blairsville Reservoir to Mouth	Westmoreland	CWF	None
	* * * * *			

93.9v. Drainage List V.

Ohio River Basin in Pennsylvania
Monongahela River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
4—Dunbar Creek	Basin, Source to [Gist] Glade Run	Fayette	[HQ-CWF] EV	None
[5—Gist Run]	[Basin]	[Fayette]	[TSF]	[None]
5—Glade Run	Basin	Fayette	HQ-CWF	None
4—Dunbar Creek	Main Stem, Glade Run to Elk Rock Run	Fayette	EV	None
5—Limestone Run	Basin	Fayette	HQ-CWF	None
5—Tucker Run	Basin	Fayette	EV	None
5—Elk Rock Run	Basin	Fayette	EV	None
4—Dunbar Creek	Basin, Elk Rock Run to Gist Run	Fayette	HQ-CWF	None
	* * * * *			

[Pa.B. Doc. No. 98-527. Filed for public inspection April 3, 1998, 9:00 a.m.]