

# PROPOSED RULEMAKING

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CHS. 92, 93 AND 95]

### Water Quality Standards—Antidegradation

The Department of Environmental Protection (Department) is soliciting comments on draft final regulations relating to the antidegradation provisions of the water quality standards, and is holding three public meetings/hearings for the purpose of discussing the proposal and accepting comments from the public. The draft final regulations were developed based on comments and other information received during the public comment period on the proposed amendments to 25 Pa. Code Chapters 92, 93 and 95 (relating to National Pollutant Discharge Elimination System; water quality standards; and wastewater treatment requirements) which were published as proposed rulemaking at 27 Pa.B. 1459 (March 22, 1997).

The draft final regulations contain changes in several major areas, which are summarized as follows. These changes were made in response to comments received during the public comment period on the proposed rule. The draft final regulations have been reorganized and reformatted to make the antidegradation policy more objective and easier to understand, and to more closely mirror Federal antidegradation regulations.

The Department is withdrawing its proposal to allow the use of National Pollutant Discharge Elimination System (NPDES) general permits in High Quality (HQ) waters to allow the Department additional time for further evaluation. This issue will be addressed as part of the Regulatory Basics Initiative (RBI) final rulemaking amendments to Chapter 92.

Several new definitions have been added to § 93.1 and several of the definitions from the March 22, 1997, proposal have been revised to accommodate other revisions to the draft final regulations.

The Department, in response to numerous comments, is withdrawing its proposal to eliminate Exceptional Value Waters (EV) and High Quality Waters (HQ) as protected uses. Therefore, the draft final regulations retain EV and HQ as protected uses in § 93.3, Table 1 and in the drainage lists.

The draft final regulations withdraw the proposal to allow de minimis discharges (those that utilize less than 25% of the assimilative capacity of a stream, or are subject to an NPDES general permit) to an HQ stream without satisfying Social or Economic Justification (SEJ) provisions.

The draft final regulations do not require a surface water to meet both a chemistry and a biology test to qualify as an HQ Water. A water may qualify by meeting either the chemistry or biological test. Moreover, the chemistry test in the draft final regulations is a long-term test, rather than a grab sample test.

The test for qualifying as an EV water provides that a water either: (1) satisfy the HQ criterion and meet one or more objective criteria (for example, the water is in a National Wildlife Refuge) or (2) be a water of "Exceptional Ecological Significance."

As required by Federal regulations, the draft final regulations establish a process (including public participation opportunities) to protect existing uses when available data indicates that a surface water attains such use. The protection is primarily accomplished through a permitting (for example, NPDES) or approval (for example, sewage facilities planning) process.

Finally, additional opportunities for public input have been added in the draft final regulations. These opportunities are provided in existing use determinations, and in the processing of petitions, evaluations and assessments to change a designated use.

While there is no legal requirement to provide an opportunity to comment on the Department's recommendations for final rulemaking, the Department believes further discussion would serve the public interest in this instance.

#### *Copies of the Proposal*

A copy of the draft final regulations is available from Mary Houghton of the Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation at (717) 787-9637. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. The draft final regulations are also available electronically through the DEP Web site (<http://www.dep.state.pa.us>) (choose: Public Participation Center). Written comments on the draft final regulations must be received by February 22, 1999.

#### *Submitting Comments*

The Department specifically seeks comment on two aspects of the antidegradation program in this Commonwealth. First, the Department requests comment on the appropriate chemicals which qualify a water for HQ protection under § 93.4b(a) of the draft final regulations. Second, the Department seeks comment as to whether persons petitioning the Environmental Quality Board (EQB) to change the designated use of a water to HQ or EV should be required to provide, as part of the petition, a list of landowners (and their addresses) in the watershed sought to be upgraded, from tax maps or other sources, for the purpose of notifying landowners, or whether there are other methods of notification which are acceptable.

Comments should be addressed or delivered to Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, P. O. Box 8555, Rachel Carson State Office Building, 10th Floor, 400 Market Street, Harrisburg, PA 17105-8555. Comments may be transmitted electronically to [Brezina.Edward@a1.dep.state.pa.us](mailto:Brezina.Edward@a1.dep.state.pa.us), and must be received by February 22, 1999. A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt. Comments submitted by facsimile will not be accepted.

#### *Public Meetings/Hearings*

The Department will hold three public meetings/hearings for the purpose of accepting comments and discussing the proposal with the public. No formal record of the meetings will be kept; however, a transcript of each

hearing will be made. These meetings/hearings will be held from 6:30 p.m. to 9:30 p.m. as follows:

- February 8, 1999 Department of Environmental Protection  
Southcentral Regional Office  
909 Elmerton Avenue  
Harrisburg, PA
- February 10, 1999 Department of Environmental Protection  
Southeast Regional Office  
Main Conference Room  
Lee Park  
555 North Lane  
Conshohocken, PA
- February 18, 1999 Department of Environmental Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA

Persons wishing to present testimony at the hearings are requested to contact Mary Houghton at (717) 787-9637 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the time of the hearing. Each organization is limited to designating one witness to present testimony on its behalf.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Mary Houghton at (717) 787-9637 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Secretary*

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