

*A Review of Pennsylvania's
Water Quality Standards*

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August 2004

**WATER QUALITY IS PROTECTED
UNDER BOTH FEDERAL AND
STATE LAW**

- The Federal Water Pollution Control Act (AKA the Clean Water Act) 33 U.S.C. § 1251 et seq.
Regulations: 40 CFR Part 130
Regulations: 40 CFR Part 131
- The Clean Streams Law 35 P.S. § 691.1 et seq.
Regulations: 25 Pa. Code Chapters 93 and 96
Statement of Policy: 25 Pa. Code Chapter 16

BROAD OVERVIEW

- WATER QUALITY STANDARDS, APPLY TO SURFACE WATER AND CONSIST OF THE FOLLOWING:
- CRITERIA (Numeric and Narrative)
- USES (Designated and Existing)
- ANTIDegradation

SCOPE

The water quality standards in Chapter 93 are the standards that are used whenever an environmental statute authorizes the Department to make decisions relating to protecting surface water quality from "pollution."

SCOPE

- Caselaw:
- *PUD No. 1 of Jefferson County and City of Tacoma v. Washington Department of Ecology*, 511 U.S. 700, 114 S.Ct. 1900 (1994)
- *Oley Township, et al. v Commonwealth of Pennsylvania, Department of Environmental Protection and Wissahickon Spring Water inc.*, (1996 EHB 1098)
- *Consol Pennsylvania Coal Company v. Commonwealth of Pennsylvania, Department of Environmental Protection*. (2002 EHB 1038)

CRITERIA

- List of *Numeric* Criteria in Chapters 93 and 16 are in-stream concentrations that must be met to protect water uses. They are used to develop effluent limits for permitted discharges, which are generally referred to as "point source" discharges.
- *Narrative* Criteria are applied to both point and nonpoint source discharges (i.e., substances in water may not be discharged in concentrations harmful to the uses.)

WATER USES

- Types of water uses that must be protected include:
 - warm water fishes, cold water fishes, migratory fishes, trout stocking, potable water supply, water supply for livestock, industrial and wildlife uses, irrigation, boating, fishing, water contact sports and esthetics, high quality and exceptional value

WATER USES

- DESIGNATED USES – enumerated in Chapter 93 by drainage lists.
- EXISTING USES – determined on a case-by-case basis, usually in connection with a permit application review. Any use attained on or after November 28, 1975.

ANTIDEGRADATION

- *Existing Use Protection* – existing instream water uses and the level of water quality necessary to protect those uses must be maintained and protected.
- *High Quality Waters* – the water quality must be maintained and protected *except* when a social or economic justification has been made.
- *Exceptional Value Waters* – water quality must be maintained and protected.

ANTIDEGRADATION

- **IMPLEMENTATION:**
 1. *Existing Use Protection* – DEP evaluates and assesses the existing use of a stream in conjunction with a permit or approval action.
 2. *Endangered or Threatened Species Protection* – DEP must ensure protection of the species and critical habitat.

ANTIDEGRADATION

- **IMPLEMENTATION:** (For new, additional or increased point source discharges)
- 3. *High Quality Waters and EV Waters Hierarchy:*
 - nondischarge alternatives
 - ABACT
 - nondegrading discharge

ANTIDEGRADATION

- **Exception for HQ Waters only:**
 - DEP may allow a reduction of water quality if allowing lower quality is *necessary to accommodate important economic or social development in the area in which the waters are located.*
 - However, any reduction must support the other existing and designated water uses.

ANTIDEGRADATION

- **IMPLEMENTATION:** (For nonpoint sources)
 - DEP will assure that cost-effective and reasonable BMPs are achieved.

IS WATER QUALITY IMPROVING?

- **305(b) Report on Water Quality** (33 U.S.C. § 1315(b)) and 40 CFR § 130.8
 - Biennial
 - Description of water quality in the preceding year
 - Analysis of whether certain uses are being met

IS WATER QUALITY IMPROVING?

- **303(d) – Total Maximum Daily Loads**
 1. List impaired waters
 2. Allocate pollutant loads among point and nonpoint sources
 3. Public participation
 4. Implementation of TMDLs (i.e., through effluent limits and BMPs)

IS WATER QUALITY
IMPROVING?

- **303(d) – Total Maximum Daily Loads**
33 U.S.C. § 1313(d) and 40 CFR §130.7
 - Waste load allocations = point sources
 - +
 - Load allocations = nonpoint sources
 - +
 - Margin of safety
