



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Office of Water Management

Water Quality Standards Site-Specific Criteria and Development

Draft Final-Form Rulemaking

Water Resources Advisory Committee

May 16, 2024

Josh Shapiro, Governor

Jessica Shirley, Acting Secretary

Purpose of the Rulemaking

- Update the Commonwealth's water quality standards to reflect current scientific methods and guidance with respect to the development of site-specific criteria
- Update the mercury water quality criterion for Ebaughs Creek

Proposed Rulemaking

DEP met with WRAC on March 16, 2023 to present information on the draft proposed Water Quality Standards—Site-Specific Water Quality Criteria.

Proposed Rulemaking

The proposed regulation was adopted by the Environmental Quality Board (EQB) at its July 11, 2023 meeting and was published in the *Pennsylvania Bulletin* on November 4, 2023 (53 Pa.B. 6854).

- 45-day public comment period that ended on December 19, 2023
- 1 virtual public hearing held on December 5, 2023

Proposed Rulemaking

EQB received comments from 2 commentators including:

- United States Environmental Protection Agency (EPA)
Region 3
- Independent Regulatory Review Commission (IRRC)

No testimony was received at the public hearing.

The comments received, and DEP's responses are summarized in the DEP's Comment and Response Document.

- DEP considered all public comments received on the proposed rulemaking in preparing the final rulemaking.

Proposed Rulemaking

Comments included the following requests:

- Additional explanation for the proposed changes to the regulation.
- Clarification on the development of site-specific criteria for human health protection under subsection (a).
- Addition of clarifying language to indicate that site-specific aquatic life criteria for aluminum will be developed using multiple linear regression based on EPA's latest Clean Water Act Section 304(a) criteria recommendations.
- Clarification on how DEP will meet the public participation requirements of federal regulation.

Final-Form Rulemaking

Two changes were made to Annex A between proposed and final-form rulemaking. The first change adds a 4th condition to subsection (a), which specifies when the Department will consider a request for site-specific criteria, as shown here:

(4) THERE EXISTS A NEED FOR A SITE-SPECIFIC CRITERION FOR A POLLUTANT TO ADDRESS A CAUSE OF IMPAIRMENT FOR A PROTECTED WATER USE, AS LISTED IN PENNSYLVANIA'S INTEGRATED WATER QUALITY MONITORING AND ASSESSMENT REPORT, AS AMENDED AND UPDATED.

Final-Form Rulemaking

The second change modifies (a.1). Subsections (1) and (2) were deleted, and subsection (3) was renumbered as shown here:

(a.1) Site-specific criteria may not be developed when ~~one or more of the following apply:~~ **A REQUEST IS FOR SURFACE WATERS WITH AN EXISTING OR DESIGNATED USE OF HQ OR EV.**

Site-Specific Criteria Development

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

(a) The Department will consider a request for site-specific criteria, **or the Department may develop site-specific criteria on its own initiative**, when one or more of the following apply:

(1) There exist site-specific biological or chemical conditions of receiving waters which differ from conditions upon which the **aquatic life** water quality criteria were based.

(2) More stringent criteria are needed for a **[parameter]pollutant** listed in § 93.7, **Table 3 (relating to specific water quality criteria)** or § 93.8c, **Table 5 (relating to water quality criteria for toxic substances)** to protect more sensitive, intervening uses.

(3) There exists a need for a site-specific criterion for a **[substance]pollutant** not listed in **§ 93.7, Table 3 or § 93.8c, Table 5 (relating to water quality criteria for toxic substances)**.

(4) THERE EXISTS A NEED FOR A SITE-SPECIFIC CRITERION FOR A POLLUTANT TO ADDRESS A CAUSE OF IMPAIRMENT FOR A PROTECTED WATER USE, AS LISTED IN PENNSYLVANIA'S INTEGRATED WATER QUALITY MONITORING AND ASSESSMENT REPORT, AS AMENDED AND UPDATED.

Site-Specific Criteria Development

(a.1) Site-specific criteria may not be developed when one or more of the following apply: A REQUEST IS FOR SURFACE WATERS WITH AN EXISTING OR DESIGNATED USE OF HQ OR EV.

(1) If the request is for a waterbody or waterbody segment where a pollutant is a cause of nonattainment for a protected water use as listed in Pennsylvania's Integrated Water Quality Monitoring and Assessment Report, as amended and updated.

(2) If the request is for a waterbody or waterbody segment where an aquatic life use is not attained, unless the causes of nonattainment are due to causes other than pollutants as determined by the Department in an assessment. Assessments are publicly available on the Department's web site.

(3) If the request is for surface waters with an existing or designated use of HQ or EV.

Site-Specific Criteria Development

§ 93.8d(b) describes the information to be submitted regarding requests for site-specific criteria.

Requests must include the following, at a minimum:

- Identification of pollutant of concern.
- Identification of the qualifying factor in § 93.8d(a).
- Identification of the receiving waterbody.
- Scientific studies, data or information to demonstrate the qualifying factor in § 93.8d(a) is met.
- Information that demonstrates § 93.8d(a.1) is not applicable.
- Information that demonstrates a water-quality-based effluent limitation based on a Table 3 or Table 5 criterion is not achievable.

Site-Specific Criteria Development

§ 93.8d(c) describes additional information that may need to be submitted regarding requests for site-specific criteria, including:

- Definition of the aerial boundaries for the site-specific criterion.
- Identification of all potentially affected National Pollutant Discharge Elimination System (NPDES)-permitted discharges, water withdrawals, total maximum daily loads (TMDLs) and surface water assessments.
- All peer-reviewed scientific literature or other Department approved data to be used in criterion development.
- Signed copies of all reports, if applicable.
- Any additional data or information requested by the Department.

Site-Specific Criteria Development

The new § 93.8d(c.1) states the following:

(e) If the required data and information is submitted, the Department will evaluate the information and may develop site-specific criteria for the receiving waterbody(s) or waterbody segment(s) that protect the appropriate existing and designated uses of the surface water(s) in accordance with the criteria development methodologies outlined in § 93.8d(c)(3), or other EPA-approved guidance and methods.

Site-Specific Criteria Development

The new § 93.8d(c.2) and (c.3) will appear in Chapter 93 as follows:

(c.2) The Department will incorporate all approved site-specific criteria into this chapter and maintain a publicly available table of all EPA-approved site-specific criteria.

(c.3) Site-specific criteria are not effective for Clean Water Act purposes until approved by EPA.

Site-Specific Methylmercury Criterion – Ebaughs Creek (York County)

▶ Site-Specific MeHg Criteria – Proposed Rule

No public comments or testimony were received on the proposed methylmercury criterion for Ebaughs Creek.

No changes were made to the recommendation between the proposed and final-form rulemaking.

▶ Site-Specific MeHg Criteria – Ebaughs Creek

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Stone Run	Basin (all sections in PA)	Chester	TSF, MF	None
2—Deer Creek	Basin (all sections in PA), <u>Source to Ebaughs Creek</u>	York	CWF, MF	None
<u>3—Ebaughs Creek</u>	<u>Basin (all sections in PA)</u>	<u>York</u>	<u>CWF, MF</u>	<u>Delete Mercury HH = 0.05 µg/L, Add MeHg HH = 0.00004 µg/L;</u>
<u>2—Deer Creek</u>	<u>Basin (all sections in PA), Ebaughs Creek to Mouth</u>	<u>York</u>	<u>CWF, MF</u>	<u>None</u>
1—Chesapeake Bay (MD)				

Tentative Timeline

Rulemaking Activity	Date
Agricultural Advisory Board (AAB) Presentation – Draft Final-Form Rulemaking	June 18, 2024
EQB Presentation – Final-Form Rulemaking	Q3 2024
IRRC Presentation – Final-Form Rulemaking	Q3 2024
Publish in PA Bulletin – Final-Form Rulemaking	Q3 2024

Recommendation

The Department requests WRAC's concurrence on this draft final-form rulemaking.



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Office of Water Management

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