

**EXECUTIVE SUMMARY**  
**DESIGNATED WATER USES AND WATER QUALITY CRITERIA**  
**Clarks Creek, et al., Final Rulemaking**

As part of its continuing water quality management program and ongoing review of water quality standards, the Department of Environmental Protection (Department) recommends that the Environmental Quality Board (Board) adopt the following amendments to 25 Pa. Code Chapter 93, §§93.9f, 93.9j, 93.9o and 93.9r as set forth in Annex A of this final rulemaking.

These streams were evaluated in response to four petitions, as well as requests from the Department's Southcentral Regional Office (SCRO), the Pennsylvania Fish and Boat Commission (PFBC), and a corrective amendment by the Bureau of Water Standards and Facility Regulation (BWSFR) as follows:

**Pine Creek** (Schuylkill Co) - Petition: (Friends of Pine Creek)

**Cacoosing Creek** (Berks Co) - SCRO

**Unnamed Tributary 00926 to Schuylkill River; locally Spring Mill Run** (Montgomery Co) - Petition: (Steven S. Brown, Chairman; Whitmarsh Township Environmental Advisory Board)

**Unnamed Tributary 28600 to Lackawanna River; locally Clarks Creek** (Wayne Co) - Petition: (Glen Abello)

**Unnamed Tributary 07792 to Conestoga River** (Lancaster Co) - PFBC

**Hammer Creek** (Lebanon and Lancaster Co) – Petition: (Heidelberg Township)

**Toms Run** (Clarion and Forest Co) – Correction (BWSFR)

These regulatory changes were developed as a result of aquatic studies conducted by the BWSFR. The physical, chemical, and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as High Quality (HQ) or Exceptional Value (EV) waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value waters). Based on these data and appropriate regulatory criteria, the Department has developed this package of stream redesignation evaluations.

In addition to these stream redesignations, the Department recommends corrections to an error that occurred in Drainage List R (Clarion River) during the 2000 Regulatory Basics Initiative Water Quality Standards (RBI WQS) Triennial Review final rulemaking that was published on November 18, 2000 (30 Pa.B. 6059). Toms Run basin (except Little Hefren Run) was initially redesignated from CWF to EV as a result of the French Creek, et al. stream redesignations package which was published as a final rulemaking on September 5, 1998 (28 Pa.B. 4510). Toms Run basin was incorrectly published in the RBI WQS Triennial Review final rulemaking with a designated use of CWF. The final rulemaking erroneously reverted its designated use from EV back to CWF. The Department recommends that Toms Run basin (except Little Hefren Run) be corrected to EV. Little Hefren Run basin will remain CWF.

The EQB approved the proposed rulemaking for the Clarks Creek, et al. package at its February 16, 2010 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on April 24, 2010 (40 Pa.B. 2122) with provision for a 45-day public comment period that closed on June 8, 2010. Comments were received from ten commentators during the official comment period. One commentator was discouraged that Pine Creek did not qualify for special protection

and submitted additional data for consideration. The other nine commentators were largely opposed to redesignating Hammer Creek from HQ-CWF, MF to CWF, MF for the portion of the basin extending from the second Rexmont Road crossing to but not including UNT 07678. All official comments were addressed in the comment / response document that accompanies the final rulemaking. Comments were also submitted by the U.S. Environmental Protection Agency (EPA) Region 3. The EPA commended DEP on its continuing effort to evaluate and properly designate surface waters of the Commonwealth, especially protecting existing water quality and uses through its antidegradation program, but EPA raised questions regarding the Hammer Creek stream report. Those specific questions were addressed in a letter from the Department to the EPA.

On April 14, 2010, the Department submitted a copy of the proposed rulemaking published at 40 Pa.B. 2122 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). IRRC did not raise any comments, recommendations, or objections to any portion of the proposed rulemaking, and no changes were made from the proposed rulemaking to this final-form regulation; therefore under Section 5(g) of Regulatory Review Act, the final rulemaking will be deemed approved by IRRC.

This final-form rulemaking is being 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), which authorizes the Board to develop and adopt rules and regulations to implement the provisions of the Clean Streams Law, 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, Section 303 of the Federal Clean Water Act (33 U.S.C. §1313) sets forth requirements for water quality standards. This final-form regulation is not more stringent than the federal requirements found in the companion federal regulations.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. Dischargers are required to provide effluent treatment and implement best management practices to meet the water quality criteria associated with existing uses and revised designated water uses.

The streams recommended for redesignation in this rulemaking are already protected at their existing use and, therefore, the designated use changes will have no additional impact on treatment requirements. Treatment of existing discharges are unaffected by changes to the designated use of the water body. Some new or expanding discharges may be subject to more stringent treatment requirements to meet designated and existing stream uses.

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as final-form rulemaking.

**Summary Table: Clarks Creek, et al. Stream Redesignations**

<b>Stream**</b>	<b>County</b>	<b>Reach**</b>	<b>List</b>	<b>Current Designation*</b>	<b>Requested Designation*</b>	<b>Recommended Designation*</b>
Pine Creek	Schuylkill	Basin	F	CWF, MF	EV	CWF, MF <i>(no change)</i>
Cacoosing Creek	Berks	Basin (except Little Cacoosing Creek)	F	None	---	CWF, MF
Little Cacoosing Creek	Berks	Basin	F	None	---	WWF, MF
UNT 00926 to Schuylkill River (Spring Mill Run)	Montgomery	Basin	F	WWF, MF	HQ / EV	CWF, MF
UNT 28600 to Lackawanna River (Clarks Creek)	Wayne	Basin	J	CWF, MF	HQ-CWF	EV, MF
UNT 07792 to Conestoga River	Lancaster	Basin	O	WWF, MF	CWF	CWF, MF
Hammer Creek	Lebanon	Basin, source to second Rexamont Road crossing (downstream of the two former water supply reservoirs)	O	HQ-CWF, MF	TSF	HQ-CWF, MF <i>(no change)</i>
Hammer Creek	Lebanon	Basin, second Rexamont Road crossing to but not including UNT 07678	O	HQ-CWF, MF	TSF	CWF, MF
Hammer Creek	Lancaster	Basin, from and including UNT 07678 downstream to Walnut Run	O	HQ-CWF, MF	TSF	HQ-CWF, MF <i>(no change)</i>
Walnut Run	Lancaster	Basin	O	HQ-CWF, MF	TSF	EV, MF
Hammer Creek	Lancaster	Basin, Walnut Run to inlet of Speedwell Forge Lake	O	HQ-CWF, MF	TSF	HQ-CWF, MF <i>(no change)</i>
Hammer Creek	Lancaster	Basin, Inlet of Speedwell Forge Lake to UNT 07671	O	HQ-CWF, MF	TSF	WWF, MF
UNT 07671 to Hammer Creek	Lancaster	Basin	O	HQ-CWF, MF	TSF	HQ-CWF, MF <i>(no change)</i>
Hammer Creek	Lancaster	Basin, UNT 07671 downstream to Speedwell Forge Lake Dam	O	HQ-CWF, MF	TSF	WWF, MF
<b>Corrective Amendment</b>						
Toms Run	Clarion / Forest	Basin (except Little Hefren Run)	R	CWF	---	EV

\* WWF = Warm Water Fishes      HQ = High Quality  
 TSF= Trout Stocking              EV = Exceptional Value  
 CWF= Cold Water Fishes        MF = Migratory Fishes

\*\* UNT = Unnamed Tributary