Executive Summary
Water Quality Standards – Dunbar Creek et al. Stream Redesignations
25 Pa. Code Chapter 93

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 §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v to read as set forth in Annex A of this proposed rulemaking.

Purpose of the Rulemaking

Section 303(c)(1) of the Federal Clean Water Act (33 U.S.C.A. § 1313(c)) requires states to periodically review and revise, as necessary, water quality standards. The water quality standards evaluated in this rulemaking are the designated uses of surface waters. The regulatory changes in this proposed rulemaking are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); a request from the Pennsylvania Fish and Boat Commission (PFBC) (Dunbar Creek); the Department's ongoing statewide monitoring activities (UNT 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek). In this proposed rulemaking, the stream redesignations rely on the special protection qualifiers found at §§ 93.4b(a)(2)(i)(A), 93.4b(a)(2)(ii), 93.4b(b)(1)(iii), 93.4b(b)(1)(v), and 93.4b(b)(2). The stream redesignations also include evaluation of the protected water uses specified in § 93.3 (relating to protected water uses) (UNT 08187 to South Branch Codorus Creek) and the less restrictive use qualifiers specified in § 93.4(b) (relating to less restrictive uses) (UNT 28168 to Oley Creek).

Summary of the Rulemaking

Based on the available data and appropriate regulatory criteria, the Department developed this package of stream redesignations. The proposed regulations include stream redesignations in the Delaware, Susquehanna and Ohio River basins.

The Department recommends the Board adopt the proposed rulemaking to redesignate those waters described in the Summary Table below, and as set forth in Annex A of the proposed rulemaking. This Summary Table describes only those streams and stream segments being redesignated in this proposed rulemaking. The Annex reflects both the current designated uses and the proposed designated uses for all streams affected by this proposed rulemaking. As such, zone descriptions may differ between the Summary Table and the Annex.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program requires effluent limitations for discharges that are protective of the designated uses of the receiving streams. The streams that are proposed for redesignation to more restrictive uses are currently protected at their existing uses. Permitted discharges to special protection waters are considered to be part of the existing water quality and, therefore, the proposed designated use changes should have no additional impact on existing treatment requirements for these permits. Some new or expanding discharges to special protection waters may be subject to more stringent

treatment requirements to meet designated and existing stream uses. Permitted discharges to non-special protection waters, where the proposed designated use is more restrictive than the current designated use, may also be subject to more stringent treatment requirements.

The Department is also recommending the correction of an error that was inadvertently introduced in the Sobers Run final rulemaking published at 48 Pa. B. 866. The correction to § 93.9c clarifies that the mainstem and tributaries of Swiftwater Creek downstream of UNT 04960 continue to be designated as High Quality Waters-Cold Water Fishes, Migratory Fishes (HQ-CWF, MF).

Affected Parties

There are approximately 10,300 facilities across the Commonwealth that hold permits issued pursuant to Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). This statewide number of approximately 10,300 includes NPDES permits for concentrated animal feeding operations, industrial waste, municipal separate storm sewer systems (MS4), treated sewage and stormwater associated with industrial activities. Out of this statewide total of approximately 10,300 permits, only nine facilities currently hold active NPDES permits for discharges to the stream segments being considered for redesignation in this proposed rulemaking.

The types of discharges with active NPDES permits located in waters affected by this proposed rulemaking include sewage, industrial wastewater and industrial stormwater. Where applicable, discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these waters may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose additional special treatment requirements on existing permitted discharges. However, discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8) (relating to general permits), and therefore, require individual permits. The individual permits are necessary to track any additional or increased discharges of pollutants to a special protection water. The four NPDES permits for discharges to waters recommended for redesignation to special protection uses in this rulemaking package are already individual permits.

Five discharges with NPDES permits discharge into Two Lick Creek, which is recommended for redesignation from Trout Stocking (TSF) to CWF, a non-special protection aquatic life use. The types of discharges with active NPDES permits located in the Two Lick Creek basin include industrial waste and stormwater associated with industrial activities. These permits will not be affected by the redesignation of Two Lick Creek from TSF to CWF.

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for stormwater discharges associated with construction activities issued under 25 Pa. Code Chapter 102 (relating to erosion and sediment control). These permits were not included in the preceding permit analyses because of the short-term, temporary nature of these permitted discharges. A person proposing a new earth disturbance activity requiring a

permit under Chapter 102 with a discharge to an HQ or EV water must comply with the antidegradation provisions, as applicable. Where a permitted discharge existed prior to the receiving waterbody attaining an existing or designated use of HQ or EV, those persons may continue to operate using BMPs that have been approved by the Department and implemented. Any new discharges to the waterbody would be required to comply with the antidegradation provisions, as applicable, and must undergo an antidegradation analysis. Based on the analysis, additional construction and post-construction BMPs may need to be implemented on the remaining area that will be disturbed. The administrative filing fee for an individual permit is $1,500 compared to $500 for a general permit as set forth in § 102.6(b)(1) (relating to permit applications and fees).

Any person proposing a new, additional or increased point source discharge to the streams being considered for redesignation to HQ or Exceptional Value Waters (EV) in this proposed rulemaking would need to satisfy the requirements found at § 93.4c(b)(1). Any new, additional or increased point source discharge to special protection waters must be evaluated for nondischarge alternatives that are environmentally sound and cost-effective when compared to the costs associated with achieving a nondegrading discharge. Nondischarge alternatives must be implemented if they are available. If a nondischarge alternative is not environmentally sound and cost-effective, the permittee of a new, additional or increased discharge must utilize antidegradation best available combination of technologies (ABACT), which include cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

The permit applicant must demonstrate in the permit application that their new or expanded activities will not lower the existing water quality of special protection streams. If an applicant cannot meet nondegrading discharge requirements, a person who proposes a new, additional or increased discharge to an HQ water is given an opportunity to demonstrate there is a social or economic benefit of the project that would justify a lowering of the water quality. The demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that other, non-special protection, water uses will be supported. Social or economic justification (SEJ) is not available for proposed discharges to EV waters. The water quality of EV streams must be maintained and protected.

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 (relating to the administration of sewage facilities planning program; administration of sewage facilities permitting program; and standards for onlot sewage treatment facilities) will continue to satisfy § 93.4c (relating to the implementation of antidegradation requirements). Permit applicants of sewage facilities with proposed discharges to HQ waters, subject to antidegradation requirements, may demonstrate SEJ at the sewage facilities planning stage and need not redemonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and non-sewage discharge applicants for any naturally occurring substances identified in accordance with the Department's *Water Quality Antidegradation Implementation Guidance* (391-0300-002).

Any estimates of which NPDES permit holders will be affected by these proposed stream redesignations and how they will be affected would be speculative at this time since: (1) persons

and businesses, both large and small, will not be impacted until a future activity requires a new or modified NPDES permit; (2) effluent discharges and receiving stream characteristics are unique; (3) SEJ may be available to modify the requirements; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons that are responsible for discharges.

The Department identified one public water supply facility with a raw water intake located within the candidate stream sections for redesignation in this proposed rulemaking package. This public water supplier, which serves over 22,300 citizens, will benefit from this rulemaking package because their raw source water will be afforded a higher level of protection. This proposed rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. By maintaining clean surface water, public water suppliers may avoid the costly capital investments that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. In turn, the public water suppliers' customers will benefit from reduced fees for clean drinking water.

Residents, visitors, and businesses requiring a high quality of water will be positively affected by these proposed regulations. The maintenance and protection of the water quality will ensure clean water supplies for human consumption, wildlife, irrigation and industrial use; aquatic life protection; and the long-term availability of a variety of outdoor recreational activities including fishing, boating and water contact sports.

Public Comments and Board Hearings

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as proposed rulemaking with a 45-day public comment period. A virtual public hearing will be scheduled during the public comment period to receive additional comments.

Summary Table: Proposed Rulemaking

Dunbar Creek et al., Stream Redesignation Rulemaking Package

Stream Name	County	Zone Description	List	Designated Use		
				Current	Requested	Recommended
Cranberry Creek	Monroe	Basin, From and including UNT 04948 to Mouth	C	HQ-CWF, MF	EV *(Petition requested entire Cranberry Creek basin.)*	EV, MF
UNT 28168 to Oley Creek	Luzerne	Basin	K	HQ-CWF, MF		CWF, MF
Bear Run	Indiana	Basin, Source to and including UNT 27063	L	CWF, MF	HQ or EV *(Petition requested entire Bear Run basin.)*	HQ-CWF, MF
Bear Run	Indiana	Basin, UNT 27063 to Brooks Run	L	CWF, MF	HQ or EV *(Petition requested entire Bear Run basin.)*	EV, MF
Brooks Run	Indiana	Basin, Source to and including UNT 27059	L	CWF, MF	HQ or EV *(Petition requested entire Bear Run basin.)*	HQ-CWF, MF
Brooks Run	Indiana	Basin, UNT 27059 to Mouth	L	CWF, MF	HQ or EV *(Petition requested entire Bear Run basin.)*	EV, MF
Bear Run	Indiana	Basin, Brooks Run to South Branch Bear Run	L	CWF, MF	HQ or EV *(Petition requested entire Bear Run basin.)*	EV, MF
UNT 08187 to South Branch Codorus Creek	York	Basin	O	WWF, MF		EV, MF
Clyde Run	Elk	Basin	R	CWF		EV
Two Lick Creek	Indiana	Main Stem, Two Lick Reservoir tailrace to Yellow Creek	T	TSF	HQ-CWF (Petition requested Two Lick Creek Reservoir tailrace to Yellow Creek.)	CWF

Dunbar Creek	Fayette	Basin, Source to Glade Run	V	HQ-CWF	EV (PFBC requested the Dunbar Creek basin, from source to Gist Run.)	EV
Glade Run	Fayette	Basin, From the boundary of SGL 51 to Mouth	V	HQ-CWF	EV (PFBC requested the Dunbar Creek basin, from source to Gist Run.)	EV
Dunbar Creek	Fayette	Basin, From Glade Run to Gist Run	V	HQ-CWF	EV (PFBC requested the Dunbar Creek basin, from source to Gist Run.)	EV

WWF = Warm Water fishes
CWF = Cold Water Fishes
TSF = Trout Stocking
UNT = unnamed tributary

HQ = High Quality Waters
EV = Exceptional Value Waters
MF = Migratory Fishes