

## **EXECUTIVE SUMMARY**

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

The Environmental Quality Board (Board) is amending 25 Pa. Code Chapter 93 (relating to water quality standards). The final-form amendments redesignate surface waters found in 25 Pa. Code § 93.9 (relating to designated water uses and water quality criteria). The specific drainage lists amended by this final-form rulemaking are the following: §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t, and 93.9v.

#### **PURPOSE OF THE FINAL 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 final-form rulemaking are the result of stream evaluations conducted by the Department in response to: rulemaking petitions (Bear Run, Cranberry Creek, Two Lick Creek); a request from the 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 final-form 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 FINAL RULEMAKING**

Based on the available data and appropriate regulatory criteria, the Department developed this package of stream redesignations. This final-form regulation includes stream redesignations in the Delaware, Susquehanna and Ohio River basins.

The Board is redesignating those waters described in the Summary Table below, and as set forth in Annex A. This Summary Table describes only those streams and stream segments being redesignated in this final-form rulemaking. The Annex reflects the final designated uses for all stream portions affected by these revised designations as they appear in their respective drainage lists within Chapter 93. As such, zone descriptions may differ between the Summary Table and the Annex.

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).

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 being redesignated to more restrictive uses are currently protected at their existing uses. Permitted discharges that were existing at the time of the Department's evaluation of the stream for special protection designation are considered to be part of the existing water quality of the receiving stream and, therefore, the 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 designated use will become more restrictive than the current designated use, may also be subject to more stringent treatment requirements.

### **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 redesignated in this final-form rulemaking.

The types of discharges with active NPDES permits located in waters affected by this final-form 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 Exceptional Value Waters (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 being redesignated to special protection uses in this rulemaking package are already individual permits.

Five discharges with NPDES permits discharge into Two Lick Creek, which is being redesignated 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 wastewater 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).

In the future, a person who proposes a new, additional or increased point source discharge to an EV or HQ water would need to satisfy the antidegradation requirements found at § 93.4c(b)(1) (relating to protection of high quality and exceptional value waters). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative that is environmentally sound and cost effective when compared to the cost associated with achieving a nondegrading discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for 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 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 who are responsible for discharges.

The Department identified one public water supply facility with a raw water intake located within the stream sections being redesignated in this final-form 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 final-form 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 this final-form regulation. 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.

### **OUTREACH and ADVISORY COMMITTEES**

The Department provided a regulatory review to the Agricultural Advisory Board (AAB) on October 20, 2022, which included the draft final redesignation recommendations.

### **PUBLIC COMMENT**

The regulation was adopted by the Board as a proposed rulemaking at its April 20, 2021, meeting, and was published in the *Pennsylvania Bulletin* on July 31, 2021 (51 Pa.B. 4062), with a 45-day public comment period that ended September 14, 2021. The Board held one virtual public hearing, for the purpose of accepting comments on the proposed rulemaking, on August 30, 2021.

The Board received comments from 228 commentators, including testimony from three witnesses at the public hearing and a letter from the Independent Regulatory Review Commission (IRRC) indicating the Commission had no objections, comments, or recommendations to offer on the regulation. The comments received on the proposed rulemaking are summarized in Section F of the final preamble and in the comment and response document that accompanies this final-form rulemaking package. All comments and testimony received were supportive of the rulemaking. Several commentators also requested the Department reevaluate and include the headwaters of Cranberry Creek in the EV, MF redesignation for this

basin. EPA submitted a comment reminding the Department that documentation of a use attainability analysis (UAA) will be required for EPA to review and approve the redesignation of UNT 28168 to Oley Creek.

The Department has considered all the public comments received on the proposed rulemaking in preparing this final-form rulemaking.

**RECOMMENDATION TO THE BOARD**

The Department recommends the Board adopt this final-form rulemaking.

**Summary Table: Final-Form 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 ( <i>Petition requested entire Cranberry Creek basin.</i> )                          | EV, MF      |
| UNT 28168 to Oley Creek                 | Luzerne | Basin  | K    | HQ-CWF, MF     | NA  | CWF, MF     |
| Bear Run                                | Indiana | Basin, Source to and including UNT 27063               | L    | CWF, MF        | HQ or EV ( <i>Petition requested entire Bear Run basin.</i> )                           | HQ-CWF, MF  |
| Bear Run                                | Indiana | Basin, UNT 27063 to Brooks Run                         | L    | CWF, MF        | HQ or EV ( <i>Petition requested entire Bear Run basin.</i> )                           | EV, MF      |
| Brooks Run                              | Indiana | Basin, Source to and including UNT 27059               | L    | CWF, MF        | HQ or EV ( <i>Petition requested entire Bear Run basin.</i> )                           | HQ-CWF, MF  |
| Brooks Run                              | Indiana | Basin, UNT 27059 to Mouth                              | L    | CWF, MF        | HQ or EV ( <i>Petition requested entire Bear Run basin.</i> )                           | EV, MF      |
| Bear Run                                | Indiana | Basin, Brooks Run to South Branch Bear Run             | L    | CWF, MF        | HQ or EV ( <i>Petition requested entire Bear Run basin.</i> )                           | EV, MF      |
| UNT 08187 to South Branch Codorus Creek | York    | Basin  | O    | WWF, MF        | NA  | EV, MF      |
| Clyde Run                               | Elk     | Basin  | R    | CWF            | NA  | EV          |
| Two Lick Creek                          | Indiana | Main Stem, Two Lick Reservoir tailrace to Yellow Creek | T    | TSF            | HQ-CWF ( <i>Petition requested Two Lick Creek Reservoir tailrace to Yellow Creek.</i> ) | 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  
NA = Not applicable