

**NOTICE OF PROPOSED RULEMAKING**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**ENVIRONMENTAL QUALITY BOARD**  
**25 Pa. Code, Chapter 93**  
**Stream Redesignations (Big Brook, et al.)**

**Preamble**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code §§93.9b, 93.9f, 93.9g, 93.9n, 93.9o, and 93.9r to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of \_\_\_\_\_.

**A. Effective Date**

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

**B. Contact Persons**

For further information, contact Richard H. Shertzer, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P.O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, 717-787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, 717-787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD-users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) Web site (<http://www.depweb.state.pa.us>).

**C. Statutory and Regulatory Authority**

This proposed 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 authorize 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 and the federal regulation at 40 CFR § 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

**D. Background of the Proposed Amendments**

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Organizations, businesses, or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in regulations at 25 Pa. Code sections 93.3 and 93.4. Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be “redesignated” through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made “designated” uses, through rulemaking, and be added to the list of uses identified in the regulation at 25 Pa. Code section 93.9.

These streams were evaluated in response to five petitions, as well as requests from the Department’s Regional and Central Offices as follows:

Petition:

- Big Brook - (Lebanon Twp. (Wayne Co.) Board of Supervisors)
- Brooke Evans Creek - (Larry Piasecki)
- Wissahickon Creek - (Upper Gwynedd Twp; Montgomery Co.)
- Furnace Run - (students from Conestoga Valley High School, Lancaster County)
- Clarion River - (Iron Furnace Chapter of Trout Unlimited, the Alliance for Wetlands and Wildlife, the Commissioners of Clarion County, and Reliant Energy Mid-Atlantic Power Holding LLC)

Department:

- Beaver Creek
- Mill Creek
- Stone Creek

These regulatory changes were developed as a result of aquatic studies conducted by the Department. 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 HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality of Exceptional Value Waters). Based upon the data collected in these surveys, the Department recommends the designations described in this Preamble and as set forth in Annex A.

Copies of the Department's stream evaluation reports for these waterbodies are available on the Department's website or from the contacts whose addresses and telephone numbers are listed in Section B.

The following is a brief explanation of the recommendations for each waterbody:

*Big Brook* – Big Brook is a tributary to Dyberry Creek in the Delaware River drainage. The basin is located in Dyberry, Oregon, Lebanon, and Damascus Townships in Wayne County. The Big Brook basin is currently designated High Quality – Cold Water Fishes (HQ-CWF) and was evaluated for redesignation based on a petition submitted by the Lebanon Township (Wayne County) Board of Supervisors. The reference station was located on Sawkill Creek. Sawkill Creek is an EV stream in Pike County. Sawkill Creek was used because of its close proximity, similar drainage area, and similar geologic setting. The Department recommends that the Big Brook basin be redesignated EV based on waters with biological conditions scores at all five sampling stations greater than 92% of the reference, thus satisfying the regulatory criterion for redesignation as EV.

*Mill Creek* – Mill Creek is a tributary to Tulpehocken Creek in the Schuylkill River watershed. The stream is located in Jefferson and Tulpehocken Townships, Berks County. Mill Creek was inadvertently omitted from Chapter 93. The Department documented the presence of a coldwater fishery in the basin. Species identified include blacknose dace and creek chub. Based on the presence of cold water species, the Department recommends that the Mill Creek basin be designated as CWF. Since there are two Mill Creeks that are tributary to Tulpehocken Creek within Berks County, and both were inadvertently omitted from drainage list F in Chapter 93, it is proposed that the stream code and river mile location (Stream Code 01936 at RM 20.3) be added to the stream name within the Chapter 93 drainage list to clarify which Mill Creek is being added through this rulemaking. The other Mill Creek, which originates and has most of its basin within Lebanon County (Stream Code 1956 at RM 29.6) needs further evaluation and will be subject of a future rulemaking action once that use determination has been completed.

*Brooke Evans Creek* – Brooke Evans Creek is a tributary to the Schuylkill River in the Delaware River watershed. The candidate basin is a freestone stream located in Limerick Township, Montgomery County. Brooke Evans Creek is currently designated Warm Water Fishes (WWF) and was evaluated for redesignation in response to a petition from Mr. Larry Piasecki. Rock Run is an EV stream in the French Creek basin, which was chosen as a reference stream because both are freestone streams, have similar drainage area, are close in proximity to each other and are found in similar geologic settings. The candidate basin failed to meet the 83% comparison standard required to qualify as High Quality (HQ) Waters; a pre-requisite for redesignation to EV waters. The Department recommends that Brooke Evans Creek basin retain its current warm water fishes (WWF) designation.

*Wissahickon Creek* – The Wissahickon Creek is a tributary to the Schuylkill River in the Delaware River basin. The Wissahickon Creek watershed is located in Landsdale, Montgomery, Upper Gwynedd, Horsham, Worchester, Lower Gwynedd, Whitpain, Upper Dublin, Abington, Whitemarsh, Springfield, and Cheltenham Townships in Montgomery and Philadelphia Counties and the Boroughs of North Wales, Landsdale, and Ambler. The Wissahickon Creek basin is currently designated Trout Stocking (TSF), and was evaluated based on the petition submitted by

Upper Gwynedd Township. American eel have been found throughout the main stem of the Wissahickon Creek. Based on applicable regulatory criteria, the Department recommends that the Wissahickon Creek basin from its source to the Route 73 Bridge remain designated TSF. The Department also recommends that Migratory Fishes (MF) designation be added due to the presence of the migratory American eel.

*Beaver Creek* – Beaver Creek is a tributary to the East Branch Brandywine Creek in the Delaware River Basin and flows through East and West Brandywine and Caln Townships of Chester County. The designated use of the upper Beaver Creek basin (upstream of the east Brandywine / Caln Township border) is not defined in Chapter 93, whereas downstream of the referenced border, the designated use is Trout Stocking, Migratory Fishes (TSF, MF). In order to correct this omission, Department and Pennsylvania Fish & Boat Commission (Commission) staff members conducted an evaluation which extended to the entire basin. The presence of a reproducing trout population was confirmed by these surveys. American eel were found at all five sample stations, including upstream of the impoundment at Bondsville Road, which indicates that the impoundment is not a barrier to the migration of this species. Based on these survey findings, the Department recommends that the Beaver Creek basin be designated Cold Water Fishes, Migratory Fishes (CWF, MF).

*Stone Creek* – Stone Creek is a tributary to Dunning Creek in East St. Clair Township, Bedford County and it is included in the Susquehanna River Basin. It was determined that during the compilation of Chapter 93, the Stone Creek basin was not assigned a designated use. The Department recommends that the Stone Creek basin from its source to its confluence with UNT 14908 at river mile 0.34 be designated warm water fishes (WWF) as these stream segments are normally dry during the summer months. The Department recommends that the remainder of Stone Creek basin be designated CWF based upon temperature data and the established use of these waters by the Reynoldsdale Hatchery for the maintenance and propagation of brook trout.

*Furnace Run* – Furnace Run is located in the Susquehanna River Basin. Furnace Run originates in Heidelberg Township, Lebanon County and flows through Elizabeth and Clay Townships, Lancaster County where it enters Middle Creek. Furnace Run basin is currently designated Trout Stocking (TSF), except for Segloch Run, a tributary which is designated EV. Furnace Run basin was evaluated for redesignation based on a petition that was submitted by students from Conestoga Valley High School. The presence of an established, naturally reproducing brook trout population was documented in the headwaters of Furnace Run. The HQ integrated benthic macroinvertebrate scoring criterion of >83% was met for the headwaters of Furnace Run. Segloch Run is an EV stream and was used as reference because it is an adjacent watershed with the same geologic setting and similar drainage area to the upper reaches of Furnace Run. The Department recommends that the protected use of the upper portion of the Furnace Run basin from its source to the SR 1026 road crossing be designated High Quality – Cold Water Fishes (HQ-CWF). The lower portion of Furnace Run downstream from SR 1026 should remain TSF.

*Clarion River* – The Clarion River is a large tributary to the Allegheny River located in the Ohio River basin. The Clarion River mainstem from the confluence of the East and West Branches downstream to the mouth is currently designated Cold Water Fishes (CWF). The section of the Clarion River from the inlet of Piney Lake to the mouth was evaluated for redesignation based on the petition submitted jointly by the Iron Furnace Chapter of Trout Unlimited, the Alliance for Wetlands and Wildlife, the Commissioners of Clarion County, and Reliant Energy Mid-

Atlantic Power Holding LLC. The segment of the Clarion River that is being considered for redesignation flows through or borders the Clarion County townships of Clarion, Highland, Monroe, Paint, Piney, Beaver, Licking, Perry, and Richland and is located in close proximity to Clarion and Callensburg boroughs. Species composition data from the Clarion River in and below the impoundment created by Piney Dam reveals that warm water fish species are predominant. Data was collected which indicates that this reach of the Clarion River frequently exceeds CWF criteria. The Department recommends that the designated use of the Clarion River from the inlet of Piney Lake downstream to the mouth be changed from CWF to WWF. All tributaries to this reach will retain their current designation.

### **E. Benefits, Costs and Compliance**

Executive Order 1996-1 provides for a cost/benefit analysis of the proposed amendments.

1. **Benefits** – Overall, the Commonwealth, its citizens and natural resources will benefit from these recommended changes because they provide the appropriate level of protection in order to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities, and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.
2. **Compliance Costs** – The proposed amendments to Chapter 93 may impose additional compliance costs on the regulated community. These regulatory changes are necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

Persons conducting or proposing activities or projects must comply with the regulatory requirements relating to designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

3. **Compliance Assistance Plan** - The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation

requirements established by the Federal Clean Water Act and Pennsylvania Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed amendments 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. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. **Paperwork Requirements** - The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification (SEJ) may be required for new or expanded discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

#### **F. Pollution Prevention**

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

#### **G. Sunset Review**

These proposed amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### **H. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on \_\_\_\_\_, the Department submitted a copy of the proposed rulemaking 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 addition to submitting the proposed amendments, IRRC and the Committees have been provided a detailed regulatory analysis form prepared by the Department, in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments recommendations or objections to the proposed regulations within 10 days of the close of the Committees' review period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor prior to final-form publication of the regulations.

## **I. Public Comments**

*Written Comments* – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed amendments to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments must be received by the Board by \_\_\_\_\_ (within 45 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by \_\_\_\_\_. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed amendments will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

*Electronic Comments* – Comments may be submitted electronically to the Board at [RegComments@state.pa.us](mailto:RegComments@state.pa.us). A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by \_\_\_\_\_.

BY:

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Kathleen A. McGinty  
Chair  
Environmental Quality Board