

**NOTICE OF PROPOSED RULEMAKING  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD  
(25 PA. Code, Chapter 93)  
Triennial Review of Water Quality Standards**

**Preamble**

The Environmental Quality Board (Board) proposes to amend Chapter 93 (relating to water quality standards) to read as set forth in Annex A.

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

**A. Effective Date**

These proposed amendments will be effective upon publication in the Pennsylvania Bulletin as final-form rulemaking.

**B. Contact Persons**

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**C. Statutory Authority**

These proposed amendments are 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 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.A. § 1313) sets forth requirements for water quality standards and the Federal regulations in 40 CFR 131.32 (relating to Pennsylvania) set forth certain requirements for portions of the Commonwealth's antidegradation program and the Federal regulation in 40 CFR 131.41 (relating to Bacteriological criteria for those states not complying with Clean Water Act section 303(i)(1)(A)) sets forth bacteria criteria for coastal recreation waters in the Commonwealth.

#### **D. Background and Purpose of the Amendment**

The water quality standards, which are generally codified in Chapter 93, are designed to implement the requirements of Section 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water (33 U.S.C.A. § 1313). This proposed rulemaking fulfills the federally required triennial review of water quality standards as mandated by the Federal Clean Water Act. The water quality standards consist of the existing and designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses, and an antidegradation policy. Thus, water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements, best management practices, and effluent limitations, on individual sources of pollution.

Water quality standards are an important element of the Commonwealth's water quality management program. Some type of water quality standard has been in use for approximately 75 years in this Commonwealth. One of the early actions after the Sanitary Water Board (SWB) was created in 1923 was to classify streams by priority for water quality management actions. In 1947, the SWB classified all streams in this Commonwealth by the degree of treatment that had to be provided before discharge could occur. Article 301 – Water Quality Control, which specifically contained water uses, general and specific water quality criteria, and designated water uses, was added to the SWB's Rules and Regulations on June 28, 1967. The SWB was then abolished on January 19, 1971 following the formation of the new Pennsylvania Department of Environmental Resources (PA DER) in 1968. Responsibilities for developing and maintaining the water quality criteria and standards, and other related regulations were transferred to PA DER. New or revised specific water quality criteria and standards were developed by PA DER for all Pennsylvania surface waters, and formally adopted into 25 Pennsylvania Code, Chapter 93 – Water Quality Standards on September 10, 1971.

PA DER completed its first major review and complete overhaul of the water quality criteria and standards in 1979. After a series of public hearings and extensive public participation, revisions to the water quality criteria and uses were incorporated into Chapter 93. U.S. EPA Region III formally approved the revisions to Pennsylvania's water quality standards on January 26, 1981. Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every three years, review and revise as necessary, their water quality standards. As such, additional reviews and revisions were made to Pennsylvania's water quality standards during 1985, 1989, and 1994. The then newly formed Department of Environmental Protection (DEP), which was created in June 1995 after splitting DER into two agencies by approval of The Conservation and Natural Resources Act (Act 18 of 1995), began to conduct its first comprehensive review of water quality standards regulations, policies, and implementation procedures which became the basis for the next Triennial Review. Additional reviews and revisions were made to Pennsylvania's water quality standards during 1998, 1999, 2000, 2002 and 2004 to address amendments for the Great Lakes Initiative (GLI), Antidegradation policies, the Water Quality Standard (WQS) Regulatory Basics Initiative (RBI) Triennial, and several other corrective amendments.

On May 9, 2007, the Department's Water Resources Advisory Committee voted to present this rulemaking package to the EQB. In addition, the Department presented this rulemaking package to the Agricultural Advisory Board on August 22, 2007. This proposal constitutes Pennsylvania's current triennial review of its water quality standards.

#### **E. Summary of Issues and Proposed Regulatory Revisions**

Issues being considered in this triennial review are: updating the water quality criteria; merging sections of Chapter 16 (Water Quality Toxics Management Strategy – Statement of Policy) into Chapter 93 (Water Quality Standards); adding a definition in § 93.1 to clarify the term “conventional treatment” for potable water supply (PWS) that is used in § 93.3, Table 1 and clarifying in the footnote to Table 3 in § 93.7 that other more sensitive “critical uses” may apply; verifying current exceptions to fishable/swimmable waters; making corrections and changes to drainage lists; and other typographic and grammatical corrections.

*Detailed Description of Proposed Revisions in Chapter 93 by Section.*

#### **Chapter 93. WATER QUALITY STANDARDS, Table of Contents**

The table of contents is being amended to show the incorporation of sections of Chapter 16 (relating to the Water Quality Toxics Management Strategy – Statement of Policy) into Chapter 93. The sections proposed to be merged include the criteria tables. The merging of these sections will consolidate the water quality standards by allowing all of Pennsylvania's water quality criteria to reside in one regulation. The remaining sections of Chapter 16 will be retained in the Statement of Policy, with some modifications, corrections and updates.

Also, the location and title for the current Section 93.8 in the table of contents will be corrected to match the relocation and title within the chapter. It is proposed that this section will become Section 93.8c and read, “Development of site-specific water quality criteria”. The title in the chapter was changed in the previous triennial review of water quality standards, but was inadvertently missed in the table of contents.

#### **Section 93.1 Definitions.**

The Board proposes to clarify that the substances referred to in the definition for *Toxic Substances* will be identified in Chapter 93, rather than Chapter 16.

A new definition is proposed to clarify and define the reference to “conventional treatment” in the description of the potable water supply use (PWS) in Table 1 at Section 93.3 (protected water uses). This definition incorporates the practices identified by the drinking water program that are commonly understood to provide “conventional” treatment.

A definition for Water Effect Ratio (WER) will be added to Chapter 93 using language from § 16.31(e) that currently describes a WER.

### **Section 93.3. Protected water uses.**

The Board proposes to clarify the definition of *Migratory Fishes* (MF) in Table 1. The proposed definition will explain that the fishes move to and from flowing waters to complete their life cycle in other waters.

The Board will also clarify that the definition of *Irrigation* (IRS) also includes golf courses, athletic fields and other commercial horticultural activities.

### **Section 93.7 Specific water quality criteria. Table 3:**

Changes to the use notation in the Critical Use column for the Ammonia-nitrogen (Am) criterion was inadvertently missed during the previous triennial review when the numerical system was replaced by the protected use symbols identified in § 93.3, Table 1. The proposed change replaces the “1” with the aquatic life use symbols that it had previously intended to represent (CWF, WWF, TSF, MF).

The Board proposes to change the footnote in § 93.7, Table 3, for “*Critical Use*” to clarify that other intervening uses may become the most sensitive use if it is determined that the specified *Critical Use* is not providing adequate protection for all statewide and protected uses, identified in sections 93.3 and 93.4, in or on the waterbody. Additional language will be added to the footnote as follows: “Other intervening more sensitive uses may apply at a given location on the waterbody.”

### **Section 93.8 Development of site-specific water quality criteria.**

The Board proposes to relocate this section to a new section 93.8c following the proposed incorporation of sections and criteria tables from Chapter 16. The Board is also proposing to refine the procedure for informing the public of how site-specific water quality criteria will be incorporated into the water quality standards.

The Department has considered and approved NPDES permitted dischargers’ requests for site-specific water quality criteria for facilities in Pennsylvania when it has been demonstrated that there exist site-specific biological or chemical conditions of the receiving waters, which differ from conditions upon which the water quality criteria were based. This was accomplished by performing site-specific chemical and toxicological studies through a water effects ratio (WER) study or through criteria recalculation methods following EPA’s “Guidance on the Determination and Use of Water-Effect Ratios for Metals” (EPA-823-B-94-001, February 1994). A WER is a factor that expresses the difference between the measures of the toxicity of a substance in laboratory water and the toxicity in site water. The WER provides a mechanism to account for that portion of a metal or other applicable chemical, which is toxic under certain physical, chemical or biological conditions. A criterion recalculation considers the appropriateness of the toxicity data used to develop the national or state recommended criterion as compared to conditions at a specific site.

### **Section 93.8a Toxic substances.**

This section is being relocated and retitled as section 93.8. The new title will read, “Water quality criteria for toxic substances.” The language in paragraph (b) of the current section relating to Chapter 16 and the toxics criteria will be replaced with references to Chapter 93. The new entry will read, “Water quality criteria for toxic substances shall be established as set forth in this Chapter. The analytical procedures will be listed in Chapter 16 (relating to water quality toxics management strategy—statement of policy).”

The Board proposes to delete, “At intervals not exceeding 1 year” in paragraph (h) of this section because the regulatory process will generally extend longer than one year, and this function will now become part of the triennial review process.

The Board proposes to clarify in subparagraph (j)(3) of this section the location of the antidegradation requirements. The antidegradation requirements are now in Chapters 93 and 96. The current reference to Chapter 95 (relating to water quality standards; and wastewater treatment requirements) is obsolete and will be replaced with Chapter 96 (relating to water quality standards implementation).

The Board proposes to create four new sections in Chapter 93 to accommodate sections and tables being moved from Chapter 16. These new sections are: § 93.8a (relating to metals criteria); § 93.8b (relating to human health and aquatic life criteria for toxic substances); § 93.8c (relating to development of site-specific water quality criteria); and § 93.8d (relating to special criteria for the Great Lakes system).

The water quality criteria for toxic substances that are national recommended water quality criteria currently contained in Chapter 16, Appendix A, Table 1 will be moved into § 93.8b, Table 5. New site-specific water quality criteria that are developed or approved by the Department will be placed and remain in Chapter 16 Appendix A Table 1, until such time that they can be moved into Chapter 93 during a triennial review or other review of water quality standards.

### **New Section 93.8b. Human health and aquatic life criteria for toxic substances.**

Many of the human health criteria in the “EPA National Recommended Water Quality Criteria: 2002 (EPA-822-R-02-047, November 2002)” compilation have been revised based on EPA’s new methodology for deriving human health criteria (*Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*, EPA-822-B-00-004, October 2000) or based on new scientific data not previously available for calculating water quality criteria.

The national recommended water quality criteria revisions include a compilation of: previously published criteria that are unchanged, criteria that have been recalculated from earlier criteria and newly calculated criteria based on peer-reviewed assessments and data.

A summary of the Boards proposed toxics criteria revisions is listed below:

The following revised human health criteria incorporate EPA's new human health criteria methodology from October 2000. A new national default fish consumption rate of 17.5 grams/day replaces the previous 6.5 grams/day fish consumption rate, to adequately protect the general population of fish consumers. In addition, the cancer potency factor for PCB's has been updated according to the best available toxics data located in the Integrated Risk Information System (IRIS) database, which is the national preferred information source. Following are the present and proposed criteria changes to the human health water quality criteria for toxic substances:

<b>Chemical name</b>	<b>Present Criteria ug/L</b>	<b>Proposed Criteria ug/L</b>
<b>2-CHLOROPHENOL</b>	<b>121</b>	<b>81</b>
<b>2,4-DICHLORO-PHENOL</b>	<b>93</b>	<b>77</b>
<b>2,4-DIMETHYL-PHENOL</b>	<b>540</b>	<b>380</b>
<b>4,6-DINITRO-o-CRESOL</b>	<b>13.4</b>	<b>13</b>
<b>2,4-DINITRO-PHENOL</b>	<b>70</b>	<b>69</b>
<b>PENTACHLORO-PHENOL</b>	<b>0.28</b>	<b>0.27</b>
<b>2,4,6-TRICHLORO-PHENOL</b>	<b>2.1</b>	<b>1.4</b>
<b>ACROLEIN</b>	<b>320</b>	<b>190</b>
<b>ACRYLONITRILE</b>	<b>.059</b>	<b>.051</b>
<b>CARBON TETRACHLORIDE</b>	<b>0.25</b>	<b>0.23</b>
<b>CHLORODIBROMO-METHANE</b>	<b>0.41</b>	<b>0.40</b>
<b>DICHLOROBROMO- METHANE</b>	<b>0.56</b>	<b>0.55</b>
<b>METHYL BROMIDE</b>	<b>48.0</b>	<b>47.0</b>
<b>METHYLENE CHLORIDE</b>	<b>4.7</b>	<b>4.6</b>
<b>TETRACHLORO ETHYLENE</b>	<b>0.8</b>	<b>0.69</b>
<b>TOLUENE</b>	<b>6800</b>	<b>1300</b>
<b>1,1,2-TRICHLOROETHANE</b>	<b>0.60</b>	<b>0.59</b>
<b>TRICHLOROETHYLENE</b>	<b>2.7</b>	<b>2.5</b>
<b>VINYL CHLORIDE</b>	<b>2.0</b>	<b>0.025</b>
<b>ACENAPHTHENE</b>	<b>1200</b>	<b>670</b>
<b>ANTHRACENE</b>	<b>9600</b>	<b>8300</b>
<b>BENZIDINE</b>	<b>.00012</b>	<b>.000086</b>
<b>BENZO(a)ANTHRACENE</b>	<b>.0044</b>	<b>.0038</b>
<b>BENZO(a)PYRENE</b>	<b>.0044</b>	<b>.0038</b>
<b>3,4-BENZOFUORANTHENE</b>	<b>.0044</b>	<b>.0038</b>
<b>BENZO(k)FLUORANTHENE</b>	<b>.0044</b>	<b>.0038</b>
<b>BIS(2-CHLOROETHYL)ETHER</b>	<b>.031</b>	<b>.030</b>
<b>BIS(2-ETHYLHEXYL)PHTHALATE</b>	<b>1.8</b>	<b>1.2</b>
<b>2-CHLORONAPHTHALENE</b>	<b>1700</b>	<b>1000</b>
<b>CHRYSENE</b>	<b>.0044</b>	<b>.0038</b>

<b>DIBENZO(a,h)ANTHRACENE</b>	<b>.0044</b>	<b>.0038</b>
<b>3,3-DICHLOROBENZIDINE</b>	<b>.04</b>	<b>.021</b>
<b>DIETHYL PHTHALATE</b>	<b>23000</b>	<b>17000</b>
<b>DIMETHYL PHTHALATE</b>	<b>313000</b>	<b>270000</b>
<b>DI-N-BUTYL PHTHALATE</b>	<b>2700</b>	<b>2000</b>
<b>1,2-DIPHENYLHYDRAZINE</b>	<b>.04</b>	<b>.036</b>
<b>FLUORANTHENE</b>	<b>300</b>	<b>130</b>
<b>FLUORENE</b>	<b>1300</b>	<b>1100</b>
<b>HEXACHLOROBENZENE</b>	<b>.00075</b>	<b>.00028</b>
<b>HEXACHLOROETHANE</b>	<b>1.9</b>	<b>1.4</b>
<b>INDENO(1,2,3cd)PYRENE</b>	<b>.0044</b>	<b>.0038</b>
<b>ISOPHORONE</b>	<b>36</b>	<b>35</b>
<b>N-NITROSODI-N-PHENYLAMINE</b>	<b>5</b>	<b>3.3</b>
<b>PYRENE</b>	<b>960</b>	<b>830</b>
<b>1,2,4-TRICHLOROBENZENE</b>	<b>330</b>	<b>35</b>
<b>ALDRIN</b>	<b>.00013</b>	<b>.000049</b>
<b>alpha-BHC</b>	<b>.0039</b>	<b>.0026</b>
<b>beta-BHC</b>	<b>.014</b>	<b>.0091</b>
<b>CHLORDANE</b>	<b>0.0021</b>	<b>.00080</b>
<b>4,4-DDT</b>	<b>.00059</b>	<b>.00022</b>
<b>4,4-DDE</b>	<b>.00059</b>	<b>.00022</b>
<b>4,4-DDD</b>	<b>.00083</b>	<b>.00031</b>
<b>DIELDRIN</b>	<b>.00014</b>	<b>.000052</b>
<b>alpha-ENDOSULFAN</b>	<b>110</b>	<b>62</b>
<b>ENDRIN ALDEHYDE</b>	<b>0.76</b>	<b>0.29</b>
<b>HEPTACHLOR</b>	<b>.00021</b>	<b>.000079</b>
<b>HEPTACHLOREPOXIDE</b>	<b>.0001</b>	<b>.000039</b>
<b>PCBs</b>	<b>.000044</b>	<b>.000064</b>
<b>TOXAPHENE</b>	<b>.00073</b>	<b>.00028</b>
<b>2,3,7,8-TCDD</b>	<b>1.3 E-8</b>	<b>5.0 E-9</b>

Similar to those above, the toxics criteria listed below are also calculated using EPA's 2000 methodology for deriving human health criteria, but because these toxics can also be found in other media (such as in food, air, etc.), the federally recommended criterion contains a relative source contribution (RSC) to account for non-water sources of exposure.

<b>Chemical Name</b>	<b>RSC</b>	<b>Present Criteria ug/L</b>	<b>Proposed Criteria ug/L</b>
<b>ANTIMONY</b>	<b>.40</b>	<b>14</b>	<b>5.6</b>
<b>THALLIUM</b>	<b>.20</b>	<b>1.7</b>	<b>.24</b>
<b>CYANIDE, FREE</b>	<b>.20</b>	<b>700</b>	<b>140</b>

<b>CHLOROBENZENE</b>	<b>.20</b>	<b>680</b>	<b>130</b>
<b>ETHYLBENZENE</b>	<b>.20</b>	<b>3100</b>	<b>530</b>
<b>TOLUENE</b>	<b>.20</b>	<b>6800</b>	<b>1300</b>
<b>1,2-trans-DICHLOROETHYLENE</b>	<b>.20</b>	<b>700</b>	<b>140</b>
<b>1,2-DICHLOROBENZENE</b>	<b>.20</b>	<b>2700</b>	<b>420</b>
<b>HEXACHLOROCYCLOPENTADIENE</b>	<b>.20</b>	<b>240</b>	<b>40</b>
<b>ENDRIN</b>	<b>.20</b>	<b>0.76</b>	<b>.059</b>

The criteria for the following toxics were developed based on EPA's 2000 methodology for deriving human health criteria and other toxicity data as follow:

<b>Chemical name</b>	<b>RSC</b>	<b>Present Criteria ug/L</b>	<b>Proposed Criteria ug/L</b>
<b>ARSENIC</b>		<b>50</b>	<b>10</b>
<b>1,1-DICHLOROETHYLENE</b>	<b>0.2</b>	<b>0.057</b>	<b>33</b>
<b>BUTYLBENZYL PHTHALATE</b>		<b>300</b>	<b>150</b>
<b>gamma-BHC (LINDANE)</b>	<b>0.2</b>	<b>.019</b>	<b>0.098</b>

Arsenic – EPA is in the process of an extensive evaluation of the ambient water criterion for Arsenic. The Department's present criterion for arsenic is 50 ug/L, which was the maximum contaminate level (MCL) allowed in drinking water. On January 22, 2001 EPA adopted the MCL for arsenic in drinking water at 10 ug/L, replacing the old MCL of 50 ug/L. The rule became effective on February 22, 2002. The date by which systems had to comply with the new 10 ug/L standard was January 23, 2006.

At this time the Board is proposing to adopt 10 ug/L for the arsenic ambient water quality criterion. Upon EPA's completion of the arsenic evaluation, and in the event of incorporation of a new recommended ambient water quality human health criterion, the Department will re-evaluate the criterion for arsenic and make a recommendation to the Board on whether to incorporate it into the Commonwealth's water quality standards.

1,1-Dichloroethylene (1,1-DCE)– EPA has determined after comprehensive review that the toxicity data for 1,1-DCE exhibits suggestive evidence of carcinogenicity but not sufficient evidence to assess human carcinogenic potential. Therefore 1,1-DCE has been labeled a possible human carcinogen. The cancer potency factor has been removed from the Integrated Risk Information System (IRIS) database, which is the national preferred information source. The Board is proposing this re-calculated human health criterion as a threshold level toxic, as recommended by EPA. The criterion is calculated using a reference dose, which accounts for non-cancer effects and a RSC that accounts for non-water sources of exposure. In addition, because this toxic substance exhibits suggestive evidence of carcinogenicity the criterion was developed using an addition margin of safety (divided by a factor of 10) to protect human health from carcinogenic effects. The guidelines for development of human-based criteria with threshold level toxic effects are presently found in Chapter 16 (relating to water quality toxics management strategy – statement of policy).



Butylbenzyl Phthalate – This compound is also calculated as a human health threshold level toxic substance. The proposed criterion retains an additional margin of safety (divided by a factor of 10) to account for it being a possible human carcinogen, according to established protocols presently found in Chapter 16 (relating to water quality toxics management strategy – statement of policy).

Gamma-BHC (LINDANE) – The cancer potency factor for lindane has been removed from IRIS. The Board is proposing the calculated human health criterion as a threshold level toxic as recommended by EPA. The criterion was calculated using a reference dose, which accounts for non-cancer effects and a RSC that accounts for non-water sources of exposure. In addition, because this toxic substance exhibits suggestive evidence of carcinogenicity the criterion includes a margin of safety (divided by a factor of 10) to protect human health from carcinogenic effects.

#### **New criteria being added to Table 5.**

New criteria that have been developed or approved by the Department are being proposed for adoption by the Board and added to Table 5. The Board is proposing to add ambient water quality human health criteria for molybdenum (210 ug/L) and metolachlor (69 ug/L) to the water quality standards since these compounds are expected to be present in discharges.

The Board proposes to adopt the freshwater aquatic life criterion that was recently developed by EPA for diazinon where both the criteria continuous concentration (CCC) and criteria maximum concentration (CMC) are not to exceed 0.17 ug/L (EPA-822-R-05-006, Dec. 2005). This criterion replaces a similar guidance value that was previously developed by the Department based on limited available toxicological data. Formally adopting this new diazinon criterion is needed to support TMDLs and for use in other NPDES permits where needed.

#### **New Section 93.8c. Development of site-specific water quality criteria.**

This new section 93.8c is proposed to contain the provisions for developing site-specific water quality criteria, which were previously contained in Section 93.8 prior to merging the criteria tables from Chapter 16.

#### **New Section 93.8d. Special criteria for the Great Lakes System.**

The Board is proposing to incorporate portions of the Special Provisions for the Great Lakes System from Chapter 16 into a new Section 93.8d, including the Great Lakes Aquatic Life and Human Health Criteria Table (as a new Table 6) and the Great Lakes Wildlife Criteria Table (as a new Table 7) from § 16.61 (relating to special provisions for the Great Lakes System).

#### **Section 93.9. Designated water uses and water quality criteria.**

Clarification is being added to describe that the County being referenced in the stream drainage lists in §§ 93.9a. - 93.9z is the county in which the mouth “or the downstream limit of the zone being described for that entry” is located. It currently only refers to it being the location of the

mouth of the waterbody. In addition, an amendment to § 93.9(b) clarifies that the most stringent water quality standard applies between the Department's standards and interstate or international agencies' standards under an interstate compact or international agreement.

## **Corrections to Drainage Lists**

### **Sections 93.9a. – 93.9o and 93.9z. Add MF to Drainage Lists A – O and Z.**

The three major eastern drainage basins within Pennsylvania; the Delaware, Susquehanna, and Potomac River basins, which make up the Commonwealth's contribution to the greater Mid-Atlantic slope, have historically supported the passage, maintenance and propagation of migratory fish. Migratory fish are characterized as anadromous and catadromous fishes and other fishes, which travel to or from flowing waters to complete their life cycle. Anadromous fishes spend most of their lives in saltwater, but migrate to flowing freshwaters to spawn, while catadromous fishes spend most of their lives in freshwater, and spawn in saltwater. The construction of large hydroelectric dams, smaller milldams, other lowhead dams or obstructions, and overfishing, which started in the 1800's, has led to the decline of Pennsylvania's migratory fish populations. Since that time, restoration efforts have been and continue to be successfully implemented in an effort to restore migratory fish populations into their historical ranges. The presence and/or potential for passage, maintenance and propagation of native migratory fishes can be substantiated through fish passage restoration projects that currently facilitate the recovery of species to a significant portion of their historical range and proposed projects with the potential to restore populations to the entire historical range. This proposal would apply a migratory fishes (MF) designation to the Mid-Atlantic slope drainages, and has taken into consideration the presence and/or potential for passage, maintenance and propagation of American eel, American shad, hickory shad, blueback herring, alewife, Atlantic striped bass, shortnose sturgeon, Atlantic sturgeon and other fish species that migrate locally within the watershed to complete their life cycles. Therefore, a basin-wide migratory fishes (MF) designation is proposed for drainage lists A through O and Z, unless there are specific exceptions noted for certain waterbodies or stream segments within one of these drainage lists. Drainage lists A through G are located within the Delaware River Basin. Drainage lists H through O are located within the Susquehanna River Basin. Drainage list Z is located within the Potomac River Basin. It should be noted, however, that this particular revision will not be shown in the proposed Annex that accompanies this rulemaking, but will be incorporated into the Code at final rulemaking.

The following additional changes to the drainage lists are proposed by the Board to clarify stream names and segment boundaries and designations. These corrections do not change the current stream use designations, and only serve as clarifications:

### **Section 93.9d. Drainage List D.**

The zone description for the headwaters of the Black Creek basin is currently written in section 93.9d as 'Basin, Source to Beaver Creek'. This zone description, however, actually defines the Hazle Creek basin since the confluence of Hazle Creek and Beaver Creek form Black Creek. Hazle Creek is currently missing from this drainage list. To correct this, an entry for Hazle Creek basin will be inserted before the Beaver Creek entry. The 'Main Stem' entry for Black Creek will be corrected to reference the confluence of Hazle Creek and Beaver Creek, which forms Black Creek. The Unnamed Tributaries entry for Beaver Creek to the Mouth will also be corrected to reference the confluence of Hazle Creek and Beaver Creek. This action will not affect the current stream use designations for these waters.

Additionally, Koons Creek and Brushy Hollow Run are listed as tributaries to Black Creek in the Department's stream directory. To clarify their proper location within Drainage List D, the Board proposes to add Koons Creek before the Quakake Creek entries and add Brushy Hollow Run after Quakake since these two streams are named tributaries within this section. This action will not affect the current stream use designations.

### **Section 93.9f. Drainage List F.**

The Board proposes to correct an error that was made during the most recent Triennial Review of Water Quality Standards (TR04) concerning Drainage List F. Before TR04, which was published as Proposed Rulemaking at 33 PaB 5192 on October 18, 2003 and Final Rulemaking at 35 PaB 1197 on February 12, 2005, there were two entries for the unnamed tributaries (UNTs) to the Schuylkill River from the Berks-Chester-Montgomery County border to Valley Creek. One entry designated all of the UNTs to the Schuylkill River on the Chester County shore as HQ-TSF (except those in Spring City and Phoenixville). The other entry designated all of the UNTs to the Schuylkill River on the Montgomery County shore as WWF. The UNTs to the Schuylkill River in Spring City and Phoenixville were not listed in Chapter 93. The result of the last triennial review was to incorrectly list all of the UNTs to the Schuylkill River (on both the Chester and Montgomery County shores) from the Berks-Chester-Montgomery County border to Valley Creek (except those in Spring City and Phoenixville) as HQ-TSF in § 93.9F. The UNTs to the Schuylkill River in Spring City and Phoenixville were designated WWF. Further corrective action is necessary because all of the UNTs to the Schuylkill River on the Montgomery County shore should not be HQ-TSF, but rather should be WWF. Also, the entry for reference to UNTs from 'Valley Creek to Tide' should be changed so that it reads from 'Valley Creek to Head of Tide'. The county listed for this entry should not be Chester-Montgomery since the 'Head of Tide' for the Schuylkill River is actually located in Philadelphia County (Fairmont Dam).

It was brought to the Department's attention that Mellshamic Creek is listed in the Department's stream directory as an unnamed tributary (UNT) to the Schuylkill River. After extensive review the Department has determined that Mellshamic Creek is a local name given to one of two unnamed tributaries (UNTs) in this reach of the Schuylkill River. To clarify this, the Board proposes to remove the stream entry containing the local name Mellshamic Creek from this drainage list. This action will not affect the current stream use designations since this stream will be covered by the unnamed tributaries entry.

Additionally, the Department recently received information that suggests Trout Creek and Monocacy Creek may be improperly designated in Section 93.9f. Both streams are currently designated warm water fishes (WWF) and they will both undergo separate reviews for redesignation to cold water fishes (CWF). The Department will conduct its review of available information pertaining to these two streams during the proposed phase of this rulemaking. The public is encouraged to make available to the Department any technical data concerning the water quality, instream habitat or biological condition of either of these two streams. After the Department's review has been completed, the appropriate designated use for Monocacy Creek and Trout Creek will be included in the final rulemaking. The Department will protect any more stringent existing use, as indicated on the Department's Existing Use List which is posted on the Department's website and maintained by the Bureau of Water Standards and Facility Regulation.

#### **Section 93.9i. Drainage List I.**

It was determined that the name of North Fork Mehoopany Creek is incorrect in the drainage list. After thorough review of the PA Gazetteer of Streams and the PA Stream Directory it was determined that North Branch Mehoopany Creek is the correct name. The Board proposes to correct the name of North Fork Mehoopany Creek, to North Branch Mehoopany Creek.

Nine Partners Creek is a tributary to the Tunkhannock Creek. Nine Partners Creek was historically known as Leslie Creek and was referenced in the *Water Resources Bulletin*, Gazetteer of Streams (June 1984) as being the same stream as Leslie Creek. To clarify the stream name, the Board proposes to change the name of Leslie Creek to Nine Partners Creek.

These actions will not affect the current stream use designations for these waters.

#### **Section 93.9l. Drainage List L.**

The Board proposes to clarify that the origin of Rauchtown Creek is the confluence of Rocky Run and Gottshall Run. This action will not affect the current stream use designations.

#### **Section 93.9m. Drainage List M.**

Currently, Buddys Run is an incorrect name for a tributary to Shamokin Creek. This stream name should be Bennys Run. This action will not affect the current stream use designation for this tributary.

#### **Section 93.9q. Drainage List Q.**

Shirley Run is a tributary to Thompson Creek in the Ohio River basin (Drainage List Q). The entry, which designates Shirley Run basin as HQ-CWF, is missing from Chapter 93.9 Drainage List Q. Shirley Run basin was redesignated from CWF to HQ-CWF in the Tincum Creek et. al, final rulemaking (published in the Pennsylvania Bulletin on October 11, 1997). As a result of the RBI (Regulatory Basics Initiative) Triennial Review final rulemaking, which was published in the Pennsylvania Bulletin on November 18, 2000, the designation for Shirley Run was inadvertently and erroneously reverted back to CWF as it was prior to the Tincum Creek, et. al

rulemaking. This proposed amendment to Chapter 93 is intended to restore the HQ-CWF designation for Shirley Run, which was originally established by the Tinicum Creek, et. al., rulemaking package of 1997.

To clarify that the mouth of West Branch Caldwell Creek lies in Warren County, the Board will change the county entry in section 93.9q from Crawford County to Warren County. This action will not affect the current stream use designations.

**Section 93.9v. Drainage List V.**

The Board proposes to clarify the county listings for two of the entries that comprise the Tenmile Creek basin. The downstream boundary for the zone that describes the headwaters of Tenmile Creek (Basin, Source to South Fork Tenmile Creek) lies along the boundary between Greene and Washington Counties and therefore both Greene and Washington Counties should be listed with this entry in section 93.9v. Similarly, Greene, Washington and Fayette Counties should be listed with the entry for the downstream portion of Tenmile Creek (Basin, South Fork Tenmile Creek to Mouth) since the mouth of Tenmile Creek lies at the border of these three counties. These corrections will not affect the current stream use designations.

**Section 93.9x. Drainage List X.**

The Board proposes to add reference to both the PA Department of Health's regulations and the Federal regulation at 40 CFR 131.41, which sets forth new bacteria criteria within the Commonwealth for coastal recreation waters on Lake Erie.

**Exceptions for Fishable/Swimmable Waters**

Part of the triennial review requires that states reexamine water body segments that do not meet the fishable or swimmable uses specified in Section 101(a)(2) of the Federal Clean Water Act. The Department evaluated the two Pennsylvania water bodies where the uses are not currently met: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/Presque Isle Bay (Drainage List X, § 93.9x) and (2) several zones in the Delaware Estuary (Drainage Lists E and G, §§ 93.9e and 93.9g).

The swimmable use designation was deleted from the Harbor Basin and entrance channel demarcated by U.S. Coast Guard buoys and channel markers on Outer Erie Harbor/ Presque Isle Bay because pleasure boating and commercial shipping traffic pose a serious safety hazard in this area. This decision was further supported by a Use Attainability (UAA) study conducted by the Department in 1985. Because the same conditions and hazards exist today, no change to the designated use for Outer Erie Harbor/Presque Isle Bay is proposed.

In April 1989 the Department cooperated with the Delaware River Basin Commission (DRBC), EPA and other DRBC signatory states on a comprehensive UAA study in the lower Delaware River and Delaware Estuary. This study resulted in appropriate recommendations relating to the swimmable use, which DRBC included in water use classifications and water quality criteria for portions of the tidal Delaware River in May 1991. The appropriate DRBC standards were referenced in Sections 93.9e and 93.9g (Drainage Lists E and G) in 1994. The primary water

contact use remains excluded from the designated uses for river miles 108.4 to 81.8 because of continuing significant impacts from combined sewer overflows, and hazards associated with commercial shipping and navigation.

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

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 has economic values provided to present and future generations in the form of clean water, recreational opportunities, and aquatic life protection. It is important to realize all benefits and to ensure that activities that depend on surface water or that may affect its chemical, biological and physical integrity may 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 more stringent criteria for selected parameters or there are changes in 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. Therefore, it is 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 from technologically improved treatments may be offset over time by potential savings from and increased value of improved water quality through these improved and possibly more effective or efficient treatments.

3. *Compliance Assistance Plan*—The proposed 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 proposed amendments will be implemented, in part, through the National Pollutant Discharge Elimination System (NPDES) permitting program. No additional compliance actions are anticipated. Staff is available to assist regulated entities in complying with the regulatory requirements if questions arise.

4. *Paperwork Requirements*—The proposed revisions should have no significant paperwork impact on the Commonwealth, its political subdivisions, or the private sector.

### **G. Pollution Prevention**

Water quality standards are a major pollution prevention tool because they protect water quality and designated and existing uses. The proposed amendments will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) bases effluent limitations on the designated use of the stream and the water quality criteria necessary to achieve designated and existing uses.

### **H. Sunset Review**

The regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

### **I. 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 and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. 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 rulemaking within 30 days of the close of the public comment 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, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

### **J. Public Comments**

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16<sup>th</sup> Floor, 400 Market Street, Harrisburg, PA 17105-8477). Comments submitted by facsimile will not be accepted. The Board must receive comments 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. 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) and must be received by the Board by \_\_\_\_\_. A subject heading of the proposal and a return name and address must be included in each transmission.

#### **K. Public Hearings**

The Environmental Quality Board will hold a public hearing for the purpose of accepting comments on the proposed rulemaking. The hearing will be held at \_\_\_\_ p.m. on \_\_\_\_\_, at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. Other public hearings may be scheduled if sufficient interest is generated.

Persons wishing to present testimony at the hearing are requested to contact Michele Tate at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of oral testimony to the testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Michele Tate at (717) 787-4526 or through the Pennsylvania AT&T Relay Services at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY  
Chairperson  
Environmental Quality Board