

**NOTICE OF PROPOSED RULEMAKING**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**ENVIRONMENTAL QUALITY BOARD**  
**25 Pa. Code, Chapter 93**  
**Stream Redesignations**  
**Blue Eye Run, et al. (Water Quality Network (WQN) Package)**

**Preamble**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code §§93.9b, 93.9d, 93.9f, 93.9g, 93.9i, 93.9l, 93.9p and 93.9q 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 quality or uses. 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.

The Department operates the Surface Water Quality Network (WQN) – a long-term, fixed station network of monitoring stations on rivers and streams throughout the state. This network was initially designed to monitor water quality conditions on a broad scale. Most stations are located on major streams with large drainage areas. However, recent water quality monitoring trends emphasize the importance of identifying and defining biological reference conditions characteristic of no or minimal disturbance. As part of the process to establish biological reference conditions, smaller watersheds with minimal land disturbance were added to the water quality network to collect data representative of reference water quality conditions and to support biological metric protocol development. WQN streams are selected from various areas across the state and monitored for five years. Following the close of the 5-year inventory period, the studied sites are replaced with a new set of stations.

After reviewing the WQN monitoring data, several of the stations displayed existing use stream conditions indicative of EV waters. Physical, chemical, and biological characteristics along with other information on these waterbodies were considered to determine the appropriateness of the current and recommended 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 or Exceptional Value Waters). According to the Department’s regulatory criteria, a Biological Condition Score (BCS) greater than or equal to 92% of the reference station score supports an EV designation (Title 25, § 93.4(b)(1)(v)).

All reference streams were selected because they were representative of excellent EV conditions based on the macroinvertebrate community and were of similar stream types, comparable geologic

settings, and reasonable proximity with respect to their compared candidate stream. Both the candidate stream and the reference streams were sampled within a similar time frame to minimize the effects of seasonal variation.

All of the recommended redesignations in this proposed regulation for the WQN stations are candidates for EV, based upon data and appropriate regulatory criteria. All of the waterbodies in this regulatory package which are being recommended for EV qualify based on their BCS being greater than or equal to 92% of the reference station score. Copies of the Department's stream evaluation report for these waterbodies is available on the Department's website or from the contacts whose addresses and telephone numbers are listed in Section B. The Department recommends the Board adopt this proposed regulation as described in this preamble and as set forth in Annex A.

Also note that a basin-wide migratory fishes (MF) designation to drainage lists A through O and Z, is currently being considered as part of the Triennial Review of Water Quality Standards final rulemaking. The MF designated use has been added to those waters that appear in the Annex of this proposed rulemaking to be consistent with the Triennial Review final rulemaking, which may not be published as final in the Pa Bulletin by this April 2009 EQB meeting.

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

*East Branch Dyberry Creek* – East Branch Dyberry Creek is a tributary to Dyberry Creek in the Delaware River drainage basin. The basin is located in Dyberry and Lebanon Townships, Wayne County. The majority of East Branch Dyberry Creek basin is located in State Game Land (SGL) 159. Land use in the floodplain is mostly deciduous forest with a dirt road. There is some agriculture and low-density residential development on the surrounding hillsides. East Branch Dyberry Creek basin is currently designated HQ-CWF, MF and the Department recommends that the basin be redesignated EV, MF. Three stations on the East Branch Dyberry Creek were compared to Little Bush Kill and all 3 stations scored 100% of the reference station.

*Unnamed Tributary (UNT) 29200 to Tunkhannock Creek* – UNT 29200 to Tunkhannock Creek lies in the Susquehanna River watershed. The basin lies in Ararat, Gibson, Jackson, and Thompson Townships, Susquehanna County. The UNT Tunkhannock Creek basin is a mixture of deciduous forest along with agriculture, low-density residential development, and several roads. A small portion of the headwaters of one of the tributaries is located in SGL 236. UNT 29200 to Tunkhannock Creek mainstem is classified by the Pennsylvania Fish and Boat Commission as Class A wild trout waters. The Department recommends that the basin be redesignated from CWF to EV, MF. Wild Creek was the reference station for UNT 29200 to Tunkhannock Creek. UNT 29200 to Tunkhannock Creek scored 93% of the reference station score.

*Young Womans Creek* – Young Womans Creek is also a tributary to the West Branch Susquehanna River and flows through Chapman, Stewardson, and Brown Townships in Clinton, Potter, and Lycoming Counties, respectively. Most of the Young Womans Creek watershed is located within the Sproul State Forest. Land use in this basin is almost entirely forested with several roads and seasonal camps. Young Womans Creek basin is currently designated HQ-CWF. Two stations on Young Womans Creek were compared to Cross Fork Kettle Creek and scored 93 and 100% of the reference station. The Department recommends that Young Womans

Creek basin, from its source to and including Left Branch Young Womans Creek, be redesignated EV, MF.

*Muncy Creek* – Muncy Creek is a tributary to the West Branch Susquehanna River within the Susquehanna River basin. The Muncy Creek mainstem from its source to the second SR2002 Bridge upstream of Sonestown at RM 26.4 is currently designated as CWF. Ellick Run is a tributary to Muncy Creek in the affected area and is currently designated EV. All of the other tributaries (both named and unnamed) to the Muncy Creek from the source to the second SR2002 Bridge upstream of Sonestown at RM 26.4 are currently designated HQ-CWF. This portion of the Muncy Creek basin lies in Davidson and Laporte Townships in Sullivan County and is mostly forested except for a narrow corridor that runs along the main stem. This area contains a paved road and low-density residential development. The headwaters of Muncy Creek originate in SGL 13. Muncy Creek was compared to Little Fishing Creek and scored 100% of the reference station. The Department recommends that the headwaters of the Muncy Creek basin, from the source to the second SR2002 Bridge upstream of Sonestown at RM 26.4, be redesignated as EV, MF.

*Spruce Run* – Spruce Run flows through or along the boundaries of Hartley, Lewis, West Buffalo, White Deer and Buffalo Townships in Union County and then enters Buffalo Creek which is a tributary to the West Branch Susquehanna River. Nearly the entire watershed of Spruce Run is located in Bald Eagle State Forest. Land use in this basin is almost entirely forested with several roads and seasonal camps. The Spruce Run basin is currently designated HQ-CWF. Wild Creek was the reference station for Spruce Run. Spruce Run scored 100% of the reference station score. The Department recommends that Spruce Run basin, from its source to the eastern boundary of Bald Eagle State Forest at RM 5.09, be redesignated as EV, MF.

*Blue Eye Run* - Blue Eye Run flows through Columbus, Spring Creek and Pittsfield Townships in Warren County and is a tributary to the Brokenstraw Creek in the Ohio River Drainage basin. Blue Eye Run basin is currently designated CWF. Roughly one-half of the Blue Eye Run watershed is located in State Game Land (SGL) 143. West Branch Caldwell Creek was the reference station for Blue Eye Run. Blue Eye Run scored 95% of the reference station score. The Department recommends that the Blue Eye Run basin from its source to SR0027 Bridge be redesignated EV.

*East Hickory Creek* – East Hickory Creek is a tributary to the Allegheny River in the Ohio River watershed. East Hickory Creek basin from the source to Middle Hickory Creek has a designated use of EV. The remainder of the East Hickory Creek basin from and including the Middle Hickory Creek basin to the mouth is currently designated HQ-CWF. The East Hickory Creek basin from and including the Middle Hickory Creek basin to Forest Highway 119 is a candidate for redesignation to EV. The candidate portion of the basin flows through Watson and Limestone Townships in Warren County and is located in the Allegheny National Forest. Middle Hickory Creek enters East Hickory Creek in Limestone Township. The portion of the basin which is a candidate for redesignation is mostly forested with very little human disturbance except for hiking trails. East Hickory Creek was compared to West Branch Caldwell Creek. The two stations in East Hickory Creek basin scored 95 and 100% of the reference station. The Department recommends that the East Hickory Creek basin from and including the Middle Hickory Creek basin to Forest Highway 119 should be redesignated from HQ-CWF to EV.

*Other Changes* - In addition to these recommended redesignations, the Department proposes corrections to eight stream names as they currently appear in Sections 93.9b, 93.9d, 93.9g, 93.9l, and 93.9p. Tadyuskung Creek, a tributary to the Lackawaxen River in Drainage List B, will be corrected to Teedyuskung Creek. In Drainage List D, the stream names for Upper Tunkhanna Creek and Hokendagua Creek, both in the Lehigh River basin, will be corrected to Upper Tunkhannock Creek and Hokendauqua Creek. The current spelling of Mahanhon Creek, a tributary to the Schuylkill River in Drainage List F, will be corrected to Mahannon Creek. The Department is proposing to replace the stream name listing for UNT to East Branch Chester Creek at RM 0.4 (“Goose Creek”) in Drainage List G with the correct name for this stream, which is Westtown Run. Three corrections are proposed in the West Branch Susquehanna River watershed in Drainage List L. Woodley Hollow, a tributary to Drury Run, is proposed to be corrected to Woodley Draft. Harrington Hollow and Burdie Run, both tributaries to Pine Creek will be corrected to Herrington Hollow and Burdic Run. In Drainage List P, Bayer Brook will be corrected to Boyer Brook. Boyer Brook is a tributary to Potato Creek.

### **E. 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 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     (blank)    , the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. 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 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 Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final 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:

John Hanger  
Acting Chairperson  
Environmental Quality Board