

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 86]

Small Operator Assistance Program

The Environmental Quality Board (Board) proposes to amend Chapter 86, Subchapter C (relating to small operator assistance program). The amendments are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative to revise its regulations to provide clarity and eliminate redundant language. The amendment will also correct regulatory citations used in cross references which the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) has indicated are beyond the scope of services authorized by the Small Operator Assistance Program (SOAP).

This proposal was adopted by the Board at its meeting of January 21, 1997.

A. *Effective Date.*

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rule-making.

B. *Contact Persons*

For further information contact David C. Hogeman, Chief, Division of Environmental Analysis and Support, Bureau of Mining and Reclamation, P. O. Box 8461, Room 213 Executive House, Harrisburg, PA 17105-8461, (717) 787-4761, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

These amendments are promulgated under the authority of sections 4.2, 4.3 and 18.7 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4b, 1396.4c and 1396.18g) which provide for the creation of the Small Operator Assistance Fund and generally set forth the rulemaking authority of the Department to regulate coal mining; section 5 of The Clean Streams Law (35 P. S. § 691.5) which sets forth the rulemaking authority of the Department in order to implement The Clean Streams Law and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which sets forth the rulemaking authority of the Board to adopt regulations in order for the Department to carry out its responsibilities.

D. *Background and Purpose*

Sections 86.81—86.95 are being restructured and changed to provide better clarity, eliminate redundant language and correct regulatory citations used in cross references which the Federal OSMRE has indicated are beyond the scope of services authorized by SOAP. Four sections of the existing regulations have been eliminated

through this restructuring. No substantial changes to the content of these regulations have been made.

Under the Regulatory Basics Initiative, the Department solicited public input through a notice in the *Pennsylvania Bulletin* and the Department's Web site (<http://www.dep.state.pa.us>). The amendments being proposed at this time are the result of suggestions from the public and the Department's own review of its regulations.

The proposed amendments were discussed with the Mining and Reclamation Advisory Board (MRAB) at its meeting on October 3, 1996. The MRAB recommended that these regulations be approved for proposed rule-making.

E. *Summary of Amendments*

Sections 86.81 and 86.83 (relating to program services; and eligibility for assistance) are being changed to delete references to regulatory requirements which OSMRE had found to be beyond the scope of the services authorized by the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C.A. § 507) and in Federal regulations in 30 CFR 795 (See 60 FR 63 (April 3, 1995)). The proposed changes make these regulations consistent with Federal requirements.

Numerous nonsubstantive changes are being made throughout these regulations which restructure and reorganize the regulatory requirements under appropriate subject headings.

Section 86.81 is proposed to be changed to add portions of regulations from §§ 86.82 and 86.94 (relating to responsibilities; and applicant liability).

Section 86.82 is proposed to be changed to add portions of the regulations from § 86.91 (relating to definitions and responsibilities). Section 86.91 is proposed to be deleted.

Section 86.83 (relating to eligibility for assistance) is proposed to be changed to add the regulatory language from § 86.95 (relating to measurement). Section 86.95 is proposed to be deleted.

Section 86.84 (relating to application for assistance) is proposed to be changed to delete outdated program language and to clarify organizational structure.

Section 86.85 (relating to application approval) is proposed to be changed to delete redundant language and to add regulatory language from §§ 86.86 and 86.87 (relating to notice; and determination of data requirements). Sections 86.86 and 86.87 are proposed to be deleted.

Section 86.94 is proposed to be changed to clarify that an operator who received assistance is liable for reimbursement of costs if the operator fails to begin mining within 3 years after obtaining a permit. Changes to this section also include deletion of language which has been moved to other sections.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of these proposed amendments.

Benefits

The benefits contained in these proposed amendments are primarily to provide clarity and consistency with Federal language for any person having reason to reference the SOAP regulations. Some minor procedural and administrative changes are also being made.

Compliance Costs

The proposed changes will impose no additional compliance costs on the regulated community.

Compliance Assistance Plan

Since SOAP is an established program in this Commonwealth, and no substantive changes are proposed, compliance assistance will be limited to a simple effort to inform the industry of the specific changes in the Program. This can be accomplished by mailing fact sheets directly to coal mine operators. If necessary, the proposal will be discussed with the industry at roundtable meetings.

Paperwork Requirements

The proposed amendments will impose no additional paperwork on the regulated community.

G. Sunset Review

These regulations 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)), the Department submitted a copy of the proposed amendments on March 10, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House 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.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before final publication of the regulations.

I. Public Comments

Written Comments—Interested persons are invited to submit written 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, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 21, 1997 (within 30 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 April 21, 1997 (within 30 days of publication in the Pennsylvania Bulletin). 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 final regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by April 21, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic com-

ments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-308. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter C. SMALL OPERATOR ASSISTANCE PROGRAM

§ 86.81. Program services.

(a) To the extent that funds are available in the Small Operators' Assistance Fund, the Department will [for qualified small operators who request assistance]:

(1) Review requests for assistance.

[(1)] (2) * * *

* * * * *

(iii) Provide a description of the existing resources within and adjacent to the proposed permit area in accordance with [either §§ 87.41—87.50, 87.52—87.54, 88.21—88.33 or §§ 89.33—89.38, 89.71—89.74, 89.102, 89.121, 89.122, 89.141, 89.142(a).] one of the following:

(A) Sections 87.41—87.47, 87.50 and 87.54.

(B) Sections 88.21—88.27 and 88.31.

(C) Sections 89.33—89.36, 89.38 and 89.74.

(iv) Provide a detailed description, to include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with [the requirements of either §§ 87.68—87.84, §§ 88.41—88.44, § 88.46, §§ 88.48—88.62 or § 89.31, § 89.32, §§ 89.36—89.38, §§ 89.71—§ 89.74, § 89.102, § 89.122(b), § 89.141, § 89.142(a).] one of the following:

(A) Sections 87.69, 87.77 and 87.84 (relating to protection of hydrologic balance; protection of public parks and historic places; and, fish and wildlife protection and enhancement plan).

(B) Sections 88.49, 88.56 and 88.62 (relating to protection of hydrologic balance; protection of public parks and historic places; and fish and wildlife protection and enhancement plan).

(C) Sections 89.33—89.36, 89.38 and 89.74.

* * * * *

[(2)] (3) * * *

(b) If funds allocated by the Department for the payment of services provided to the applicant are less than those required to pay for the services, the

applicant is responsible for costs exceeding the amount of funds allocated for the services provided to the applicant.

§ 86.82. Responsibilities.

(a) The Department will:

(1) [Review requests for assistance and determine qualified operators.

(2)] Develop and maintain a list of qualified consultants and qualified laboratories, and select and pay consultants for services rendered.

(i) As used in this subchapter, "qualified consultant" and "qualified laboratory" mean a designated public agency, private consulting firm, institution or analytical laboratory which can provide the required services under this Program.

(ii) Persons who desire to be included in the list of qualified consultants or qualified laboratories established by the Department shall apply to the Department and provide the information necessary to establish the qualifications required by § 86.92 (relating to basic qualifications).

[(3)] (2) * * *

[(4)] (3) * * *

[(5)] (4) * * *

* * * * *

§ 86.83. Eligibility for assistance.

(a) An applicant is eligible for assistance if the applicant:

* * * * *

(2) Establishes that the probable total [and] attributed annual production from [the applicant's operations during the 12-month period immediately following the date] all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons.

* * * * *

(c) For the purpose of this subchapter, measurement of coal production will be based on the production reported to the office of surface mining reclamation and enforcement for the purpose of the reclamation fee payment.

§ 86.84. Applications for assistance.

(a) [Persons wishing to receive assistance shall file a Small Operator Assistance Program application with the Department at any time after initiation of the program.]

[(b) The] An application for assistance shall contain the following information:

* * * * *

(2) The names and addresses of:

* * * * *

[(iii) The surface mining operator's license number, if applicable.]

* * * * *

(7) The mine operator's license number.

[(c)] (b) [Two copies of the] The application shall be [submitted, one of which shall be] attested by a notary public or district justice.

§ 86.85. Application approval and notice.

(a) If the Department finds the applicant eligible for assistance and does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it will [:

(1) Determine the minimum data requirements necessary to meet the provisions of § 86.81 (relating to program services).

(2) Select the service of one or more qualified consultants to perform the required work.]

determine the minimum data collection requirements to meet the objectives of the Program for each applicant or group of applicants.

(b) The development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.

(c) The data requirements will be based on:

(1) The extent of currently available hydrologic and core analysis data for the applicable area provided by the Department.

(2) The data collection and analysis guidelines developed by the Department.

(d) The Department will provide the applicant a copy of the contract or other appropriate work order for the qualified consultants' services and the final application approval report.

(e) The Department will inform the applicant in writing if the application is denied and will state the reason for denial.

[(b)] (f) The granting of assistance under this [program may not be a factor in decisions by] Program does not imply that the Department [on] will approve a subsequent permit application.

§ 86.86. [Notice] (Reserved).

[(a) The Department will provide the applicant a copy of the contract or other appropriate work order for the consultants' services and the final application approval report.

(b) The Department will inform the applicant in writing if the application is denied and will state the reason for denial.]

§ 86.87. [Determination of data requirements] (Reserved).

[(a) The Department will determine the data collection requirements to meet the objectives of the program for each applicant or group of applicants. If specifically authorized by the Department in an approved work order, the development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities.

(b) The data requirements will be based on:

(1) The extent of currently available hydrologic and core analysis data for the applicable area provided by the Department.

(2) The data collection and analysis guidelines developed and provided by the Department.]

§ 86.91. [Definitions and responsibilities] (Reserved).

[(a) As used in this subchapter, "qualified consultant" and "qualified laboratory" mean a designated public agency, private consulting firm, institution or analytical laboratory which can provide the required services under this program.

(b) Persons who desire to be included in the list of qualified consultants or qualified laboratories established by the Department shall apply to the Department and provide the information necessary to establish the qualifications required by § 86.92 (relating to basic qualifications).

(c) The Department will designate and maintain a list of qualified consultants and qualified laboratories who demonstrate that they meet the qualifications of § 86.92.]

§ 86.94. Applicant liability.

(a) The applicant shall reimburse the Department for the cost of the consultant and laboratory services performed under this subchapter, including interest from the date the Department requests reimbursement, if the applicant does one of the following:

- * * * * *

(3) Fails to [mine] commence mining within 3 years after obtaining a permit.

- * * * * *

(c) [If funds allocated for the services are less than those required to pay for the services, the applicant is responsible for costs exceeding the amount of funds allocated for the services provided to the applicant.

(d)] The Department may waive the reimbursement liability requirements of subsection (a)(2) or (3) if the applicant has demonstrated a good faith effort to comply with these provisions. For the purpose of this determination, "good faith" means that the applicant has promptly notified the Department of the conditions and circumstances which have precluded the completion of the Small Operator Assistance Program Project, the submission of a mine permit application or the initiation of mining within the prescribed time period and the circumstances which preclude compliance with the liability requirements include one of the following:

- * * * * *

§ 86.95. [Measurement] (Reserved).

[For the purpose of this program, measurement of coal production will be based on the production reported to the Office of Surface Mining Reclama-

tion and Enforcement for the purpose of the reclamation fee payment.]

[Pa.B. Doc. No. 97-441. Filed for public inspection March 21, 1997, 9:00 a.m.]

[25 PA. CODE CH. 93]

Stream Redesignations; French Creek, et al.

The Environmental Quality Board (Board) proposes to amend §§ 93.9f, 93.9g, 93.9i, 93.9k, 93.9l, 93.9n—93.9r and 93.9z to read as set forth in Annex A.

This order was adopted by the Board at its meeting of January 21, 1997.

A. Effective Date

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

B. Contact Persons

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555 (717) 787-9637 or William J. Gerlach, 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 (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department's) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These proposed amendments are made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law.

D. Background of the Amendment

Pennsylvania's Water Quality Standards, which are set forth in part at Chapter 93 (relating to water quality standards) implement the provisions of sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals which are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for Special Protection status or redesignation, or both, in its ongoing review of water quality standards. In general, Special Protection waters must be maintained at their existing quality, and wastewater treatment requirements must comply with § 95.1 (relating to general requirements). Candidates may be identified by the Department based on routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission (Commission), and by the general public through a rulemaking petition to the Board.

The Department evaluated the following streams in response to requests from Department and Commission staff, and from five petitioners submitting petitions to the Board:

West Branch Brandywine Creek and Tributaries, Grimes Run, Milligan Run, South Branch Little Aughwick Creek, Sugar Valley Run, Indiantown Run and Muddy Run: Department

Stony Brook, Mill Creek, South Branch Cole Creek, Browns Run and Toms Run: Commission

French Creek: Green Valleys Association

Sutton Creek: Keep Sutton Creek Clean Committee

Cedar Run and Slate Run: PA Environmental Defense Foundation

Cove Creek: Friends of Cove Creek

Trout Run: Greg McCarren and Jackie Greenfield

The physical, chemical and biological characteristics and other information on these waterbodies were evaluated in order to determine the appropriateness of the current designations. Aquatic surveys of these streams were conducted by the Department's Bureau of Watershed Conservation and others. Based upon the data collected in these surveys and information gathered from Department records and other sources, the Board has made the designations described in Section E of this Preamble.

Copies of the Department's aquatic survey evaluation reports are available from Edward Brezina whose address and telephone number are listed in Section B of this Preamble.

In reviewing whether waterbodies are subject to the Special Protection Waters Program, and meet the definitions of "High Quality Waters" or "Exceptional Value Waters" in § 93.3 (relating to protected water uses), the Department is utilizing guidance titled "Special Protection Waters Selection Criteria." This guidance appears in the Department's "Special Protection Waters Implementation Handbook."

E. Summary of Regulatory Revisions

Following is a brief explanation of the recommendations for the proposed amendments, which are based on the Department's evaluations considering applicable regulatory definitions and the Department's Special Protection Waters Selection Criteria that are referenced in the explanations:

French Creek—The French Creek basin from its source to the confluence with South Branch French Creek should be redesignated from HQ-CWF to EV Waters based on EV categories II.1 (Waters in designated State Forests or Park Natural Areas), I.5 (Waters in National Parks designated in management plans for EV protection), IV.2 (Outstanding Ecology), and IV.1 (Endangered or Threatened aquatic and semi-aquatic species). The French Creek basin, from and including the South Branch French Creek basin to and including the Beaver Run basin should be redesignated from HQ-TSF to EV Waters based on EV category IV.2 (Outstanding Ecology). The French Creek basin, from the confluence of Beaver Run to the junction of the West Vincent, East Vincent and East Pikeland Township borders, with the exclusion of the Birch Run subbasin, should retain the current HQ-TSF designation. The Birch Run subbasin, within this reach, should be redesignated from HQ-TSF to EV Waters based on EV category IV.2 (Outstanding Ecology). The lower French Creek basin, from the junction of these township borders to the mouth, should retain its current TSF

designation. Migratory Fishes (MF) designations should be added to the current or proposed designated uses for the French Creek basin from the confluence of Beaver Run to the mouth, based on the presence of American eel.

West Branch Brandywine Creek and Tributaries—The Department evaluated 3.1 miles of the main stem of West Branch Brandywine Creek (between river mile 20.6 and 23.7), including Birch Run and seven unnamed tributaries. The main stem, Birch Run, and UNT # 00215 are currently designated as TSF, MF, while the remaining unnamed tributaries are designated WWF, MF. The main stem of West Branch Brandywine Creek should retain the current TSF, MF designations. However, the upper basin of Birch Run, from the source to the new Hibernia Park Dam at river mile 0.3, should be redesignated as HQ-CWF. The MF designation should be deleted for this reach because of the newly constructed dam. The remainder of the Birch Run basin, downstream from this dam, should retain its current TSF, MF designations. The unnamed tributary to West Branch Brandywine Creek at river mile 21.2 (# 00215) should be redesignated from TSF, MF to HQ-CWF, MF. Unnamed tributaries # 00193, # 00130, # 00126, # 124, and # 00119 should be redesignated from WWF, MF to CWF, MF, while UNT # 00194 and # 00108 should be redesignated as EV Waters from their current WWF, MF designations.

Sutton Creek—Water quality in the Sutton Creek basin appears to be better than applicable water quality criteria. However, the basin does not support attributes which meet the Department's Special Protection Waters Selection Criteria or meet applicable regulatory definitions. Therefore, based on the Department's evaluation and applicable criteria, the Sutton Creek basin is currently appropriately designated and should remain CWF.

Stony Brook—The Stony Brook basin should be redesignated EV Waters, based on an overall benthic macroinvertebrate metric score which is 100% of the reference station's score, (EV Category IV-2 Outstanding Ecological attributes).

Grimes Run—Grimes Run should be redesignated CWF because of water quality degradation which existed prior to its designation as a Conservation Area, and prior to that being translated into an HQ-CWF designation. Historical water chemistry data clearly show a trend of degradation and impairment which occurred before November 28, 1975. Federal regulations require that "existing uses" be protected and that the Department demonstrate that a currently designated use did not exist on or after November 28, 1975, in order to remove that use.

Milligan Run—Although there are anecdotal references that Milligan Run had always been degraded by acid mine drainage, and that most of the mining activity within the basin had occurred during the 1950's and 1960's, the Department was unable to discover substantial file information on aquatic surveys or chemical sampling which had been conducted in the Milligan Run basin prior to November 28, 1975, and demonstrates impairment prior to that date. Therefore, the current HQ-CWF designation of Milligan Run should remain unchanged.

Cedar Run and Slate Run—Cedar and Slate Runs are adjacent tributaries to Pine Creek in the West Branch Susquehanna River basin. Both basins are currently designated HQ-CWF, except for the upper portion of Cushman Branch from the source to Bear Run, which is a Wilderness Trout Stream and designated EV Waters.

Both the Slate Run and Cedar Run designations should be changed to reflect that both entire basins be designated EV Waters. The Cedar Run basin designation is based on EV Category IV.2 (waters with outstanding ecological attributes). The Slate Run redesignation is also based on EV Category IV.2, and is also based on EV Categories II.1 (waters in Natural and Wild Areas) and IV.1 (presence of PA endangered and threatened aquatic species).

Cove Creek—The upper basin of Cove Creek, from its source to the Juliet Lane bridge (T-433) at river mile 2.0, should be redesignated as EV Waters based on EV Categories IV.1 (endangered semi-aquatic species, backward sedge) and IV.2 (outstanding ecology). The remainder of the basin, downstream from T-433 to the mouth, should retain its current CWF designation.

South Branch Little Aughwick Creek—Based on the presence of glade spurge, an endangered semi-aquatic species (EV Category IV.1) in the vicinity above Cowans Gap Lake, the South Branch Little Aughwick Creek basin, from its source to the inlet of Cowans Gap Lake, should be redesignated EV Waters. The remainder of the basin, including the lake, should retain the current HQ-CWF designation.

Sugar Valley Run—The use designation for this basin was inadvertently omitted from § 93.9n (relating to drainage list N). The Department's stream evaluation found water quality was generally good with probably some limestone influence. Benthic macroinvertebrate taxonomic diversity was good, with good representation of mayfly, stonefly and caddisfly taxa. The only fish species observed was blacknose dace, but was abundant. This condition appears to result from low flow (0.7 cfs) and poor habitat quality, (highly channelized and small amounts of shade). The Sugar Valley Run basin should be designated as CWF.

Indiantown Run—This tributary to Swatara Creek was also inadvertently omitted from § 93.9o (relating to drainage list O). Water chemistry results show that the water quality of the basin is better than water quality criteria, or in a natural state. Naturally reproducing brown trout were found in Indiantown Run upstream of Marquette Lake. The reach between Marquette Lake and Memorial Lake contained stocked trout and warm water species. Indiantown Run downstream from Memorial Lake contained warm water species. Therefore, Indiantown Run basin should be designated CWF from the source to the inlet of Marquette Lake. Marquette Lake and the Indiantown Run basin from Marquette Lake to Memorial Lake should be designated TSF. Memorial Lake and the Indiantown Run basin downstream to the mouth should be WWF.

Trout Run—A tributary to Codorus Creek in Hellam Township, York County, Trout Run is currently designated WWF. However, the small tributary meets EV Category IV.2 with outstanding ecological attributes supporting wild brook trout and biological condition scores which are better than 92% of the reference station scores. The Trout Run basin should be redesignated from WWF to EV Waters.

Mill Creek—The mainstem of Mill Creek is managed as a Class A Brown Trout fishery by the Commission. The Mill Creek basin from the source to the confluence with North Hollow is recommended to be redesignated HQ-CWF based on HQ Category 3 (Class A Trout Waters). The Trout Run subbasin within this reach is already

designated HQ-CWF. The remainder of the Mill Creek basin, including North Hollow, should retain the current CWF designation.

South Branch Cole Creek—The entire South Branch Cole Creek basin should be redesignated from its current CWF designation to EV Waters based on EV Category IV.2 (Outstanding Ecology) since all stations on South Branch Cole Creek had macroinvertebrate metrics scores which exceed 92% of the two representative metrics scores of the reference stations on Cathers Run.

Browns Run—The Browns Run basin, with the exception of the basins of two unnamed tributaries in the Dutchman Run subbasin, should be redesignated EV Waters, based on EV Category IV.2 (Outstanding Ecology) by earning scores greater than 92% of the reference stations scores. The unnamed tributaries to Dutchman Run at river mile 0.17 (UNT # 56500) and at river mile 1.6 (UNT # 56501) should retain the current CWF designations since the four stations on these unnamed tributaries earned less than 83% of the reference station scores. These unnamed tributaries are also impacted by sewage, or fugitive oil, or lacked appropriate habitat or an adequate riparian zone.

Toms Run—The Toms Run basin, with the exception of the Little Hefren Run subbasin, should be redesignated from CWF to EV Waters on the basis of EV Category IV.2 (Outstanding Ecology). The Little Hefren Run basin should retain its current CWF designation.

Muddy Run—Despite the degraded conditions found in Muddy Run, the basin should remain designated HQ-CWF. The Department was unable to find evidence to show that these degraded conditions existed prior to November 28, 1975, which is required by Federal regulations to allow the removal of a designated use. Furthermore, since Muddy Run is a limestone influenced basin, it is difficult to discern between the adverse impacts that are related to agricultural activities within the basin and the benthos and water quality conditions inherent to limestone ecosystems.

These changes allow wastewater treatment requirements for dischargers to these streams to be consistent with the water uses to be protected. These proposed regulatory amendments do not contain any standards or requirements which exceed requirements of the companion Federal regulations.

F. *Benefits, Costs, and Compliance*

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

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in question.

2. *Compliance Costs*—Generally the changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth, or its political subdivisions. Except as noted below, no costs will be imposed directly upon local government by this recommendation. However, indirect costs may result from revisions to Act 537 Sewage Facilities Plans due to consultant and other administrative fees. Political subdivisions which add a new sewage treatment plant or expand an existing plant in the basin may experience changes in cost as noted in the discussion of impacts on the private sector.

Persons proposing activities or projects which result in discharges to streams must comply with the regulatory

requirements relating to current stream designations. These persons could be adversely affected by the recommended changes that increase the level of protection provided to a stream, if they expand their discharge, or add a new discharge point, since they may need to provide a higher level of treatment for their new or expanded discharge. These increased costs take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and may 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. In addition, nonpoint source controls necessary to protect High Quality and Exceptional Value Waters may add to the cost of planning and development for new or expanded nonpoint source discharges. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams which are upgraded, and potentially lower treatment costs for dischargers to streams which are downgraded.

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 1980's. The proposal is consistent with and based on existing Department programs and current policies. Therefore, no policy changes are anticipated. The proposal extends additional protection to selected waterbodies that exhibit exceptional water quality and environmental features, and is consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. Surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards which prevents pollution and protects existing water uses.

The proposed amendments will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting program since the stream use designation is a major basis for determining the allowable stream discharge effluent limitations. These permit conditions are established to assure the water quality criteria are achieved and the designated 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 the proposed revised designated water uses.

The Department has developed technical guidance to assist the potentially affected and regulated community in understanding the impacts and requirements of the Special Protection Stream Designation Process. The *Special Protection Waters Implementation Handbook* (1992) provides guidance on the regulatory designation process, protection of candidate streams, and most importantly, general considerations for proposed new or expanded discharges to Special Protection Waters. This handbook also contains appendices which present management practices and technologies relevant for point and nonpoint source discharges to Special Protection Waters. The Department has conducted various workshops, seminars and public meetings on the Special Protection Waters program. Public meetings have been held for specific stream redesignation concerns. Permitted point source discharges are regularly evaluated through discharger self-monitoring reports (DMR's) and Department inspections, to assure they are complying with permit conditions. The

Handbook sets forth recommended Best Management Practices (BMP's) for nonpoint sources.

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 programs and policies. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to Special Protection (HQ or EV). For example, NPDES general permits are not available for new or expanded discharges to Special Protection streams. Thus, an individual permit, and its associated additional paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification (SEJ), and the nonfeasibility of nondischarge alternatives, may be required for new or expanded discharges to certain Special Protection waters.

G. *Sunset Review*

These regulations 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)), the Department submitted a copy of the proposed rulemaking on March 10, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House 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.

If the Commission has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the amendments.

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, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by May 6, 1997 (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 May 6, 1997 (within 45 days following publication in the *Pennsylvania Bulletin*). 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 final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.

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 May 6, 1997.

(Editor's Note: A proposal to amend §§ 93.9f, 93.9g, 93.9l, 93.9n, 93.9o, 93.9q and 93.9r remains outstanding at 26 Pa.B. 3637 (August 3, 1996).)

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-306. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuykill River

Stream	Zone * * * *	County *	Water Uses Protected	Exceptions To Specific Criteria
3—French Creek	Basin, Source to [South Branch French Creek] Beaver Run	Chester	[HQ-CWF] EV	None
3—French Creek	Basin, [South Branch French Creek] Beaver Run to [the Junction of West Vincent, East Vincent and East Pikeland] Birch Run	Chester	HQ-TSF, MF	None
4—Birch Run	Basin	Chester	EV	None
3—French Creek	Basin, Birch Run to the Junction of West Vincent, East Vincent and East Pikeland Township Borders	Chester	HQ-TSF, MF	None
3—French Creek	Basin, Junction of West Vincent, East Vincent and East Pikeland Township Borders to Mouth * * * *	Chester	TSF, MF	None

§ 93.9g. Drainage List G.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone * * * *	County *	Water Uses Protected	Exceptions To Specific Criteria
4—West Branch Brandywine Creek	Main Stem, T 437 Bridge to Dam at Valley Station * * * *	Chester	TSF, MF	None
5—Birch Run	Basin, Source to Hibernia Park Dam	Chester	[TSF, MF] HQ-CWF	None

PROPOSED RULEMAKING

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
5-Birch Run	Basin, Hibernia Park Dam to Mouth	Chester	TSF, MF	None
5—Unnamed Tributary to West Branch Brandywine Creek at RM 21.2 (UNT # 00215)	Basin	Chester	HQ-CWF, MF	None
5—Rock Run	Basin	Chester	TSF, MF	None
4—West Branch Brandywine Creek	Main Stem, Dam at Valley Station to [Confluence with East Branch] Dennis Run	Chester	WWF, MF	None
5—Unnamed Tributaries to West Branch Brandywine Creek	Basins, Dam at Valley Station to [Confluence with East Branch] Dennis Run	Chester	WWF, MF	None
5—Sucker Run	Basin	Chester	WWF, MF	None
5—Dennis Run	Basin	Chester	WWF, MF	None
4—West Branch Brandywine Creek	Main Stem, Dennis Run to Buck Run	Chester	WWF, MF	None
5—Unnamed Tributaries to West Branch Brandywine Creek	Basins, Dennis Run to Buck Run, except Unnamed Tributary to West Branch Brandywine at RM 12.3 (UNT # 00193)	Chester	WWF, MF	None
5—Unnamed Tributary to West Branch Brandywine Creek at RM 12.3 (UNT # 00193)	Basin, Source to Unnamed Tributary to UNT # 00193 at RM 0.3 (UNT # 00194)	Chester	CWF, MF	None
6—Unnamed Tributary to UNT # 00193 at RM 0.3 (UNT # 00194)	Basin	Chester	EV, MF	None
5—Unnamed Tributary to West Branch Brandywine Creek at RM 12.3 (UNT # 00193)	Basin, Unnamed Tributary to UNT # 00193 at RM 0.3 (UNT # 00194) to Mouth	Chester	CWF, MF	None
5—Buck Run	Basin	Chester	TSF, MF	None
4—West Branch Brandywine Creek	Main Stem, Buck Run to Confluence with East Branch	Chester	WWF, MF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
5—Unnamed Tributaries to West Branch Brandywine Creek	Basins, Buck Run to Confluence with East Branch, except Unnamed Tributaries to West Branch Brandywine at RM'S 10.0, 9.48, 9.14, 8.0 & 5.2 (UNT'S # 00130, 00126, 00124, 00119, 00108)	Chester	WWF, MF	None
5—Unnamed Tributaries to West Branch Brandywine Creek at RM'S 10.0, 9.48, 9.14 & 8.0 (UNT'S # 00130, 00126, 00124, 00119)	Basins	Chester	CWF, MF	None
5—Unnamed Tributary to West Branch Brandywine Creek at RM 5.2 (UNT # 00108)	Basin	Chester	EV, MF	None
5—Broad Run	Basin	Chester	EV, MF	None
	* * * * *			

§ 93.9k. Drainage List K.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Stony Brook	Basin	Columbia	[CWF] EV	None
	* * * * *			

§ 93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4—Grimes Run	Basin	Clearfield	[HQ-] CWF	None
	* * * * *			
4—Cedar Run	Basin	Lycoming	[HQ-CWF] EV	None
	* * * * *			
4—Slate Run				
5—Francis Branch Slate Run	Basin, Source to Confluence with Cushman Branch	Tioga	[HQ-CWF] EV	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
5—Cushman Branch Slate Run	Basin, Source to [Bear Run]	Tioga	EV	None
[6—Bear Run]	[Basin]	[Tioga]	[HQ-CWF]	[None]
[5—Cushman Branch] [Slate Run]	[Basin, Bear Run to] Confluence with Francis Branch	[Tioga]	[HQ-CWF]	[None]
4—Slate Run	Basin, Confluence of Francis and Cushman Branches to Mouth	Lycoming	[HQ-CWF]EV	None
	* * * * *			

§ 93.9n. Drainage List N.

Susquehanna River Basin in Pennsylvania
Juniata River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4—Cove Creek	Basin, Source to [Unnamed Tributary at RM 3.93] T 433 bridge	Bedford	[CWF]EV	None
[5—Unnamed Tributary to Cove Creek at RM 3.93 (at Ott Town)]	[Basin]	[Bedford]	[HQ-CWF]	[None]
4—Cove Creek	Basin, [Unnamed Tributary at RM 3.93] T 433 bridge to Mouth	Bedford	CWF	None
	* * * * *			
5—South Branch Little Aughwick Creek	Basin, Source to [Confluence with North Branch] Inlet of Cowans Gap Lake	Fulton	[HQ-CWF]EV	None
5—South Branch Little Aughwick Creek	Basin, Inlet of Cowans Gap Lake to Confluence with North Branch	Fulton	HQ-CWF	None
	* * * * *			
3—West Licking Creek	Basin	Huntingdon	HQ-CWF	None
3—Sugar Valley Run	Basin	Mifflin	CWF	None
3—Beaverdam Run	Basin	Mifflin	HQ-CWF	None
	* * * * *			

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Little Swatara Creek	Basin, Berks-Lebanon County Border to Mouth	Lebanon	WWF	None
3—Indiantown Run	Basin, Source to Inlet of Marquette Lake	Lebanon	CWF	None
3—Indiantown Run	Basin, Inlet of Marquette Lake to Inlet of Memorial Lake	Lebanon	TSF	None
3—Indiantown Run	Basin, Inlet of Memorial Lake to Mouth	Lebanon	WWF	None
3—Quittapahilla Creek	Basin	Lebanon	TSF	None
3—Trout Run	Basin	York	[WWF]EV	None

§ 93.9p. Drainage List P.

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Mill Creek	[Main Stem] Source to North Hollow	Potter	HQ-CWF	None
[4—Unnamed Tributaries to Mill Creek]	[Basins]	[Potter]	[CWF]	[None]
[4—Nelson Run]	[Basin]	[Potter]	[CWF]	[None]
[4—Bates Hollow]	[Basin]	[Potter]	[CWF]	[None]
[4—Trout Run]	[Basin]	[Potter]	[HQ-CWF]	[None]
[4—Lyman Creek]	[Basin]	[Potter]	[CWF]	[None]
4—North Hollow	Basin	Potter	CWF	None
3—Mill Creek	Basin, North Hollow to Mouth	Potter	CWF	None
[4—South Hollow]	[Basin]	[Potter]	[CWF]	[None]
3—Dingman Run	Basin	Potter	HQ-CWF	None
4—Cole Creek	Basin, Source to South Branch Cole Creek	McKean	CWF	None
5—South Branch Cole Creek	Basin	McKean	EV	None
4—Cole Creek	Basin, South Branch Cole Creek to Mouth	McKean	CWF	None

PROPOSED RULEMAKING

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			

§ 93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Browns Run	Basin, Source to Dutchman Run	Warren	[CWF]EV	None
4—Dutchman Run	Basin, Source to Unnamed Tributary at RM 1.6 (UNT # 56501)	Warren	EV	None
5—Unnamed Tributary at RM 1.6 (UNT # 56501)	Basin	Warren	CWF	None
4—Dutchman Run	Basin, Unnamed Tributary at RM 1.6 (UNT # 56501) to Unnamed Tributary at RM 0.17 (UNT # 56500)	Warren	EV	None
5—Unnamed Tributary at RM 0.17 (UNT # 56500)	Basin	Warren	CWF	None
4—Dutchman Run	Basin, Unnamed Tributary at RM 0.17 (UNT # 56500) to Mouth	Warren	EV	None
3—Browns Run	Basin, Dutchman Run to Mouth	Warren	EV	None
	* * * * *			

§ 93.9r. Drainage List R.

Ohio River Basin in Pennsylvania
Clarion River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4—Toms Run	Basin, Source to Little Hefren Run	[Forest] Clarion	[CWF]EV	Add TON
5—Little Hefren Run	Basin	Clarion	CWF	Add TON
4—Toms Run	Basin, Little Hefren Run to Mouth	Forest	EV	Add TON
	* * * * *			

[Pa.B. Doc. No. 97-442. Filed for public inspection March 21, 1997, 9:00 a.m.]

[25 PA. CODE CHS. 92, 93 AND 95]**Water Quality Amendments—Antidegradation**

The Environmental Quality Board (Board) proposes to amend Chapters 92, 93 and 95 (relating to National Pollutant Discharge Elimination System; water quality standards; and wastewater treatment requirements) to read as set forth in Annex A. The proposed regulatory changes consolidate the antidegradation requirements in the water quality standards regulations in Chapter 93.

This notice is given under Board order at its meeting of January 21, 1997.

A. Effective Date

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, P. O. Box 8555, Rachel Carson State Office Building, 10th Floor, 400 Market Street, Harrisburg, PA 17105-8555, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, 9th Floor, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. This proposal is available electronically through the Department of Environmental Protection's (Department's) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These proposed amendments are made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law.

D. Background of the Amendment

The Commonwealth's Water Quality Standards, which are set forth in part in Chapter 93, implement the provisions of sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards consist of the designated uses of the surface waters of this Commonwealth and the specific numeric and narrative criteria necessary to achieve and maintain those uses. In addition to protection of uses, portions of the regulations focus on preventing degradation to high quality and natural quality waters.

The Federal antidegradation requirements at 40 CFR 131.12 provide for three tiers of water quality protection. Under Tier 1, existing instream water uses and the level of water quality necessary to protect and maintain the existing uses must be maintained and protected. This level of protection is defined by meeting established water quality criteria and is applicable to all surface waters. Tier 2 or High Quality Waters are to be maintained and protected at existing quality unless lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface water is located. Where surface waters of high quality constitute an Outstanding National Resource Water (ONRW), that water quality shall be maintained and

protected (Tier 3). In the current Commonwealth program, Exceptional Value Waters are more broadly defined than the Federal Tier 3 definition.

The Commonwealth has implemented an effective and protective antidegradation program since 1968, when a "Conservation Area" use designation was included in the water quality standards regulations. The Environmental Protection Agency (EPA) approved the Commonwealth's antidegradation program in 1981.

On February 12, 1994, the then Department of Environmental Resources completed its Triennial Review of Water Quality Standards. The EPA generally lauded the Commonwealth's antidegradation program as an "excellent vehicle to protect valuable resources" but disapproved portions of it on June 6, 1994. In response to the EPA's disapproval, the Department solicited comments on the Special Protection (Antidegradation) Waters program at a public meeting on January 11, 1995, and a public hearing on April 20, 1995. With the assistance of a professional facilitator, the Department convened a group of interested stakeholders representing conservationists, the regulated community and government in a regulatory negotiation (Reg Neg) process. The Department committed to use all consensus reached by the group in drafting new regulations. Meetings with the Reg Neg group began in June 1995 and continued monthly thereafter until August 1, 1996. In addition, smaller workgroup meetings to address specific issues were held between the main meetings. The group signed a Phase I Interim Report on April 1, 1996, and presented it to Secretary Seif on May 6, 1996. That report describes some issues on which conditional consensus had been reached and the issues remaining to be resolved. At its August 1, 1996, meeting, the Reg Neg group reached the conclusion that they were at an impasse on several outstanding issues. The Reg Neg group agreed to submit separate reports to the Department and the Reg Neg process was concluded. These reports were submitted to the Department during the week of August 19, 1996.

On April 16, 1996, the United States District Court for the Eastern District of Pennsylvania ordered the EPA to promptly promulgate proposed Federal regulations for the Commonwealth's antidegradation program. On May 13, 1996, at a status conference on the matter, the EPA proposed, and Judge Louis C. Bechtel, Jr. accepted, a schedule requiring that proposed Federal antidegradation regulations for the Commonwealth be completed and signed by the EPA Administrator by August 26, 1996. The EPA met that obligation. Proposed Federal regulations were published in the *Federal Register* on August 29, 1996 (61 FR 45379). The EPA provided a public comment period and held a public hearing on the proposed regulations on October 16, 1996. Final Federal regulations were published in the *Federal Register* on December 9, 1996 (61 FR 64816).

The Department initially prepared a draft proposal based on the Reg Neg group's April 1, 1996, Phase I Interim Report. The Phase I Interim Report was an informed, thoughtful consideration by a representation of diverse public viewpoints on the antidegradation program and served as a good starting point for new regulations because it incorporated extensive public input. The draft proposal was made available for public comment. The public comment period concluded with a public hearing on June 18, 1996, in Harrisburg. Ten persons provided oral testimony at the public hearing, and 107 persons sent written comments.

Most public comments were provided by members of the conservation community, and expressed a common viewpoint. Many comments urged no weakening of regulations to protect High Quality and Exceptional Value Waters, no degradation and/or no discharge to these waters, and use of waste minimization and pollution prevention techniques. The comments generally recommended adoption of the Federal Tier 1 language to protect existing uses; a broader definition for High Quality Waters that provides for more waters receiving Tier 2 protection, including Class A Wild Trout Streams; expressed concerns with the biological test and use of assimilative capacity in High Quality Waters; and expressed support for a stringent Exceptional Value Waters program. Other comments supported adopting the Fed-

eral definition for "Tier 3" waters and a stronger public participation process.

Following the public hearing, the Department considered the public comments and the reports submitted by the parties participating in the Reg Neg process in the preparation of recommendations to the Board for these proposed amendments.

The Department also has prepared an accompanying Proposed Statement of Policy (Chapter 15) that contains implementation procedures for antidegradation in support of the proposed amendments. Notice of the Proposed Statement of Policy appears at 27 Pa.B. 1473 (March 22, 1997).

E. Summary of Regulatory Revisions

Section	Brief Description of Proposed Revision
92.81 & 92.83	<i>General NPDES permits and inclusion of individual dischargers in general NPDES permits.</i> These sections currently preclude the use of general NPDES permits in "special protection" waters. Following consideration of discussions of the Reg Neg group, these sections are proposed to be amended to allow limited use of certain general permits in High Quality Waters. The restriction on the use of general permits in Exceptional Value Waters is not proposed to be changed.
93.1	<i>Definitions.</i> The Federal definition for "High Quality Waters (HQ)" is proposed to be added. The proposed definition for "Exceptional Value Waters (EV)" is very similar to the current Pennsylvania definition and includes outstanding National, State, regional and local waters. The "Exceptional Value Waters" definition is more encompassing than the Federal definition which focuses only on Outstanding National Resource Waters (ONRW). A definition of "surface waters" is added to clarify the scope of Pennsylvania waters subject to the water quality antidegradation standards. "Natural quality" is defined as conditions in the absence of human related activities. Neither the definition of "Exceptional Value Waters" nor any other part of the proposal resolves the EPA disapproval issue whereby the EPA policy interprets that protection of ONRWs must be accomplished by prohibiting all but certain temporary discharges to these waters. In response to the EPA's disapproval on this point, the Department stated that there is no legal, regulatory or statutory basis for that policy.
93.3	<i>Protected water uses.</i> High Quality and Exceptional Value Waters are proposed for deletion as protected uses. This is consistent with Federal regulations which do not require antidegradation categories to be defined as protected uses. Under the proposed regulation, HQ and EV Waters would be antidegradation management categories. The Department would continue to assess waters, evaluate the technical data, and make recommendations to the Board under the existing regulatory process for formal designation as HQ or EV Waters. The Department evaluated options for varying levels of Board participation in the antidegradation classification, but determined that, since the Department already protects the surface water under consideration after evaluation of technical data, there would be no benefit in removing the designation process from the Board.
93.4	<i>Statewide water uses.</i> Subsection (c) is proposed for amendment by deleting the words "under subsection (b)" to make clear that in no case may waters be redesignated to less restrictive uses than existing uses. Subsection (d) is proposed to be deleted from this section and placed in the new § 93.4a to address protection of existing uses (Tier 1) and interim protection for High Quality and Exceptional Value Waters as part of the antidegradation requirements.
93.4a—93.4e	<i>Antidegradation requirements.</i> These proposed new sections include all elements of the antidegradation requirements, including the portions currently housed in various sections in this chapter and Chapter 95 (relating to wastewater treatment requirements).
93.4a	<i>Existing uses.</i> This section provides a description of the level of protection for surface waters and states that existing uses are protected when the Department establishes, after evaluation of technical data, that an existing use is being or has been attained. The language has been developed to respond to EPA's disapproval of the current language regarding protection of existing uses. Protection of Federal and Pennsylvania threatened and endangered aquatic species and their critical habitat is assured by explicitly stating the Department's authority to use all necessary measures, specifically limiting mixing areas, in permitting discharges that may impact these species. This replaces the current practice of using endangered species as a qualifier for Exceptional Value Waters. The EPA holds that the water quality criteria are protective of endangered species and there is no explicit Federal antidegradation regulation for special protection of endangered species. With the additional language, endangered and threatened species will, therefore, be adequately protected under Tier 1.

Section	Brief Description of Proposed Revision
93.4b	<p><i>High Quality Waters:</i> This section addresses High Quality Waters. Subsection (a) establishes chemical (generally better than water quality criteria or natural quality) and biological tests as qualifiers for High Quality Waters. The chemistry test is water quality better than criteria for a list of chemical parameters or natural quality. The biology test is based on the EPA's Rapid Bioassessment Protocol or other peer-reviewed procedures, or a Class A Wild Trout Stream which has been publicly participated and designated by the Fish and Boat Commission. Subsection (b) describes the level of protection (maintain and protect water quality) for HQ Waters unless there is important social or economic justification to lower water quality and the benefits to the public outweigh any expected water quality degradation. Subsection (c) provides that the combination of discharges to HQ Waters shall meet water quality standards. Subsection (d) specifies that sewage treatment facilities designed to correct documented public health or pollution hazards are deemed to satisfy the social or economic justification (SEJ) requirement. Subsection (e) specifies that newly proposed sewage facilities which satisfy the SEJ requirements at the planning stage need not redo the demonstration at the discharge permitting stage unless the project has materially changed, or the technology, applicable laws or regulations have changed. Subsection (f) provides that the use of up to 25% of the water's assimilative capacity from all existing and anticipated sources maintains and protects water quality, and dischargers utilizing that portion of assimilative capacity or under NPDES General Permits need not comply with the SEJ requirements.</p> <p>The Board specifically seeks comment and suggestions on the following issues: (1) implementation of the proposed balancing between lowering water quality and the social or economic benefit in High Quality Waters and (2) the criteria used for determining SEJ.</p>
93.4c	<p><i>Exceptional Value Waters:</i> This section addresses Exceptional Value Waters. Subsection (a) establishes chemical and biological tests as qualifiers for Exceptional Value Waters that include the same criteria and procedures as the qualifiers for High Quality Waters, except the biology test must indicate "outstanding" aquatic communities, and the alternate biology test is designation as a Wilderness Trout Stream by the Fish and Boat Commission. Subsection (b) provides that water quality in EV Waters be maintained and protected.</p>
93.4d	<p><i>General requirements for High Quality and Exceptional Value Waters:</i> This section includes provisions common to High Quality and Exceptional Value Waters. Subsection (a) provides that discharges to HQ or EV Waters must evaluate and use alternatives to stream discharge that are environmentally sound and cost-effective, and use best technologies. Subsection (b) provides that the Department will implement programs that promote cost-effective and reasonable best management practices for nonpoint sources. Subsection (c) provides that HQ and EV Waters shall be listed following completion of regulatory designation by the Board. Finally, subsection (d) provides interim protection for waters determined by the Department's technical evaluation to qualify for HQ or EV Waters, pending their designation.</p>
93.4e	<p><i>Public participation in High Quality and Exceptional Value Waters:</i> This section adds specific public participation requirements to the antidegradation program. Public participation is provided on five separate occasions: 1) with a provision for submittal to the Department of a complete antidegradation evaluation report at the same time a redesignation petition is submitted to the Board; a complete report may take the place of the Department's field evaluation of a water and the Department will determine if the report supports the requested antidegradation classification; 2) prior to the Department's assessment of waters to seek input and comments; 3) during the sewage facility planning process; 4) at the time of a proposed discharge; and 5) by requiring a public hearing for proposed discharges to Exceptional Value Waters. This "early and often" public participation expands the opportunities for public input to the antidegradation process.</p> <p>The Board seeks comment on if and in what way the public participation provisions for EV Waters should be expanded.</p>
93.7	<p><i>Specific water quality criteria:</i> Table 5 is proposed to be revised to delete High Quality and Exceptional Value Waters as protected uses, and to add a new Table 5a to contain the specific criteria for the antidegradation categories.</p>
93.9a—93.9z	<p><i>Drainage lists:</i> The drainage lists are proposed to be amended to delete "HQ" and "EV" from the Water Uses Protected Column and instead list the designated use (WWF, CWF, TSE, and the like). Exceptional Value Waters and High Quality Waters are proposed to be listed in a new column in the drainage lists.</p>
95.1	<p><i>General wastewater treatment requirements:</i> Subsections (b)—(d), which discuss High Quality and Exceptional Value Waters, are proposed to be deleted and repositioned as modified in the new §§ 93.4a—93.4e.</p>

The purpose of these regulatory amendments is to address the concerns upon which the EPA based its June 6, 1994, disapproval, and to be consistent with Federal requirements, while, at the same time, using the public input from the Reg Neg effort and public comments to

re-engineer an antidegradation program which addresses concerns specific to this Commonwealth.

The Reg Neg process has involved and informed the public of the purpose, requirements, costs and consequences of adoption of the proposed regulations. Further

public input was solicited through the public comment period and public hearing held by the Department prior to preparation of the proposed regulations. Additional public comments will be requested as part of the rule-making process.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulations.

Benefits—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will provide appropriate protection of surface waters in the Commonwealth, including existing uses and High Quality and Exceptional Value waters. The proposed antidegradation program addresses the EPA's disapproval of certain antidegradation provisions and provides an antidegradation program which reflects the input of the Reg Neg stakeholders and public comment and addresses concerns specific to this Commonwealth.

Compliance Costs—New, additional or increased discharges to special protection waters may require alternate disposal methods, installation of higher technology, or more stringent effluent limitations than discharges to Tier 1 waters, and compliance costs may be higher for those proposing new, additional or increased discharges to such waters.

The changes may have some fiscal impact on or create additional compliance costs for the Commonwealth, political subdivisions, local governments and the private sector planning new, additional or increased wastewater discharges to High Quality or Exceptional Value Waters. The number of affected discharges cannot be determined because of the uncertainty in which waters will be evaluated as High Quality and Exceptional Value Waters, and because future discharges cannot be known.

Compliance Assistance Plan—The Department plans to educate and assist the public with understanding the newly revised requirements and how to comply with them. The Special Protection Waters Implementation Handbook was developed as a multipurpose document in November 1992 to provide information and guidance about the development of acceptable point and nonpoint source control measures and as a general source for antidegradation implementation policies and procedures. An updated version of the Handbook will be prepared to reflect changes in the regulation and requirements for antidegradation waters and will be made widely available to the public.

Paperwork Requirements—The regulatory revisions will have some paperwork impacts on the Commonwealth, its political subdivisions and the private sector primarily based on development and additional processing of requests for SEJ which will be necessary because of the increased number of High Quality Waters which will likely result from implementation of this regulatory proposal.

G. *Pollution Prevention*—The antidegradation program is a major pollution prevention tool because its objective is to prevent degradation by maintaining and protecting existing water quality. Although wastewater discharges are not prohibited by the antidegradation program, nondischarge alternatives are encouraged and required, when appropriate. Nondischarge alternatives remove impacts to the surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

H. *Sunset Review*

These regulations 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.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on March 10, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House 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.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the regulations.

J. *Public Comments*

The Board specifically seeks comment and suggestions on the following issues: (1) implementation of the proposed balancing between lowering water quality and the social or economic benefit in High Quality Waters; (2) the criteria used for determining SEJ; and (3) if and in what way the public participation provisions for EV Waters should be expanded.

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, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by May 21, 1997 (within 60 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 May 21, 1997 (within 60 days following publication in the *Pennsylvania Bulletin*). 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 final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.-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 May 21, 1997.

K. *Public Hearing*

The Board will hold a public hearing for the purpose of accepting comments on this proposal. The hearing will be held at 1 p.m. as follows:

May 7, 1997 Department of Environmental Protection
1st Floor Meeting Room, Rachel Carson State Office Bldg.
400 Market Street Harrisburg, PA

Persons wishing to present testimony at the hearing are requested to contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony.

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

JAMES M. SEIF, Chairperson

Fiscal Note: 7-310. (1) General Fund; (2) Implementing Year 1996-97 is \$ Minimal; (3) 1st Succeeding Year 1997-98 is \$; 2nd Succeeding Year 1998-99 is \$; 3rd Succeeding Year 1999-00 is \$; 4th Succeeding Year 2000-01 is \$; 5th Succeeding Year 2001-02 is \$;

(4) Fiscal Year 1995-96 \$13,343,278; Fiscal Year 1994-95 \$14,684,546; Fiscal Year 1993-94 \$14,504,928;

(7) Environmental Protection Management; (8) recommends adoption. This proposed action revises antidegradation regulations for Pennsylvania's streams to address Federal requirements. Requests for new, expanded or additional discharges to certain High Quality Waters will require additional treatment efforts and documentation.

Annex A

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 92. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

§ 92.81. General NPDES permits.

(a) Coverage and purpose. The Director may issue a general NPDES permit, in lieu of issuing individual NPDES permits, for a clearly and specifically described category of point source discharges, if the point sources meet all of the following paragraphs:

* * * * *

(8) Do not discharge to waters classified as ["special protection"] "Exceptional Value Waters" under Chapter 93 (relating to water quality standards).

* * * * *

§ 92.83. Inclusion of individual dischargers in general NPDES permits.

* * * * *

(b) Denial of coverage. The Director shall deny any application for coverage under a general permit when one or more of the following conditions exist:

* * * * *

(8) The discharge would be to waters classified as ["special protection"] "Exceptional Value Waters" under Chapter 93 (relating to water quality standards).

* * * * *

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Exceptional Value Waters—Surface waters of high quality which constitute an outstanding National, State, regional or local resource. Examples which qualify for Exceptional Value Waters designation if they meet the conditions specified in § 93.4c (relating to Exceptional Value Waters) are as follows:

(i) Waters located in National, State or county parks or forests.

(ii) Waters in wildlife refuges or State game lands.

(iii) Waters which have been designated by the Fish and Boat Commission as "Wilderness Trout Streams."

(iv) Other waters of exceptional recreational or ecological significance.

* * * * *

High Quality Waters—Surface waters having quality which exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water.

* * * * *

Natural quality—The water quality conditions that exist or that would reasonably be expected to exist in the absence of human related activity.

* * * * *

Surface waters—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries. The term does not include water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

* * * * *

§ 93.3. Protected water uses.

Water uses which shall be protected, and upon which the development of water quality criteria shall be based, are set forth, accompanied by their identifying symbols, in the following Table 1:

Table 1

Table with 2 columns: Symbol, Protected Use. Row 1: * * * * *

[Special Protection

<i>Symbol</i>	<i>Protected Use</i>
HQ	High Quality Waters —A stream or watershed which has excellent quality waters and environmental or other features that require special water quality protection.
EV	Exceptional Value Waters —A stream or watershed which constitutes an outstanding national, State, regional or local resource, such as waters of national, State or county parks or forests, or waters which are used as a source of unfiltered potable water supply, or waters of wildlife refuges or State game lands, or waters which have been characterized by the Fish Commission as “Wilderness Trout Streams,” and other waters of substantial recreational or ecological significance.]

* * * * *

§ 93.4. Statewide water uses.

* * * * *

(c) *Redesignation of waters.* Waters considered for redesignation [under subsection (b)] may not be redesignated to less restrictive uses than the existing uses.

[(d) *Protection of water bodies.*

(1) When the Department’s evaluation of technical data establishes that a waterbody attains the criteria for an existing use which is more protective of the waterbody than the designated use, that waterbody shall be protected at its existing use until the conclusion of rulemaking action as a result of the evaluation. At the conclusion of the rulemaking procedure, the waterbody shall be protected at its designated use.

(2) When the Department’s evaluation under paragraph (1) establishes that a waterbody attains the criteria for “High Quality Waters,” as defined in § 93.3 (relating to protected water uses), that waterbody shall be protected at its existing use. Proposed new and expanded discharges to the waterbody shall maintain and protect the existing quality of the waterbody unless the person proposing the new or expanded discharge demonstrates the criteria in § 95.1(b)(1) and (2) (relating to general requirements).]

ANTIDegradation REQUIREMENTS

§ 93.4a. Existing uses.

Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected when the Department’s evaluation of technical data establishes that a surface water attains or has attained an existing use. If the Department has confirmed the presence or critical habitat of endangered or threatened, Federal or Pennsylvania aquatic species listed in “The Pennsylvania Natural Diversity Inventory” (PNDI), discharges to these waters shall be limited to ensure protection of these species and critical habitat.

§ 93.4b. High Quality Waters.

(a) *Qualifying as High Quality Waters.* For a surface water to qualify as High Quality Waters, the

Department must determine that the water quality meets the conditions set forth in paragraphs (1)–(3).

(1) *Chemistry test.* One of the following shall exist:

(i) Water quality shall be generally better than the water quality criteria in § 93.7, Table 3 (relating to specific water quality criteria) and in Chapter 16, Appendix A, Table 1 (relating to water quality criteria for toxic substances) based on water quality analysis obtained from one or more grab samples collected at representative stream flow conditions for the following parameters:

pH	alkalinity	dissolved oxygen
total dissolved solids	ammonia nitrogen	nitrite—nitrogen
nitrate—nitrogen	hardness	nitrogen chloride
sulfate	iron	manganese
aluminum	arsenic*	cadmium*
chromium VI*	copper*	lead*
nickel*	zinc*	

(where “*” means dissolved analyses are to be performed).

(ii) The water is determined by the Department to be of natural quality.

(2) *Biology test.* One or more of the following shall exist:

(i) The water quality shall support nonimpaired, high quality aquatic communities as determined by the Department using peer-reviewed biological assessment procedures that consider physical habitat and one or both of benthic macroinvertebrates and fishes. These procedures shall be based on *Rapid Bioassessment Protocols for Use in Streams and Rivers; Benthic Macroinvertebrates and Fish*, Plafkin, et al., (EPA/444/4-89-001).

(ii) The water quality satisfies other peer-reviewed biological assessment procedures that the Department may approve to determine the condition of the aquatic community of a surface water.

(iii) The surface water has been designated a Class A Wild Trout Stream by the Fish and Boat Commission following public notice and comment.

(3) *Additional information.* The Department may consider additional chemical or biological information which characterizes or indicates the quality of a water in making its determination.

(b) *Level of protection/social or economic justification (SEJ).* The quality of High Quality Waters shall be maintained and protected unless a person proposing a new, additional or increased discharge of sewage, industrial waste or other pollutants demonstrates, and the Department finds, after public notification and participation as described in § 93.4e(d) (relating to public participation in high quality and Exceptional Value Waters). The proposed discharge is necessary to accommodate important economic or social development in the area in which the surface water is located and will result in economic or social benefits to the public which outweigh any water quality degradation which the proposed discharge is expected to cause.

(c) *Compliance with water quality standards.* A proposed discharge to High Quality Waters, alone

or in combination with other existing and anticipated discharges, may not preclude any use in the waters and downstream from the waters, nor result in a violation of any of the water quality criteria which are applicable to the receiving waters.

(d) *Special provisions for sewage facilities correcting public health or pollution hazards.* A proposed sewage facility that the Department determines is designed for the purpose of correcting public health or pollution hazards shall be deemed to satisfy subsection (b).

(e) *Social or economic justification approval in sewage facilities planning and approval.* For a proponent of a new sewage facility in High Quality waters who seeks to demonstrate social or economic justification for lowering water quality as part of the application for an official sewage facilities plan or an official plan revision under Chapter 71 (relating to administration of sewage facilities planning program), the following conditions shall apply:

(1) The proponent shall evaluate discharge alternatives in accordance with § 93.4d(a) (relating to general requirements for high quality and exceptional value).

(2) The proponent shall complete and submit an SEJ impact analysis as part of the sewage facilities planning submittal.

(3) The Department will make a determination regarding the SEJ impact analysis for consistency with subsection (b) during its review of the official plan or plan revision.

(4) Upon the submission of a wastewater discharge permit application, the applicant shall document that none of the following has occurred:

(i) There has been a material change in the scope or characteristics of the project.

(ii) There has been a change in the laws or regulations affecting the sewage facilities planning, wastewater discharge or other related aspects of the proposed project.

(iii) There has been a change in technology which makes a nondischarge alternative or combination of discharge and nondischarge alternatives, environmentally sound and economically feasible.

(5) If one or more of the changes in paragraph (4) has occurred, the applicant shall submit a revised SEJ impact analysis to the Department for review and approval as part of the wastewater discharge permit application.

(f) *Special provisions for minimal impact discharges.* If a proposed discharge to High Quality Waters meets one or more of the following conditions, that discharge maintains and protects water quality and is not subject to subsection (b).

(1) The discharge of any pollutant, alone or in combination with other discharges into those waters, utilizes 25% or less of the surface water's assimilative capacity. To comply with this condition, the proposed discharge shall maintain and protect water quality by satisfying an effluent limit established by the Department through mathematical modeling based on an antidegradation allowance for the regulated parameter as calculated by the following formula:

$$C_A = 0.25(C_{WQ} - C_{RS}) + C_{RS}$$

Where C_A = antidegradation allowance for the parameter

C_{WQ} = water quality criterion for the parameter and

C_{RS} = natural quality of the parameter in the receiving stream or in the reference stream if receiving stream data is not available

(2) The discharge of pollutants qualifies for a general permit under §§ 92.81 and 92.83 (relating to general NPDES permits; and inclusion of individual dischargers in general NPDES permits) and the terms and conditions of the permit.

§ 93.4c. Exceptional Value Waters.

(a) *Qualifying as Exceptional Value Waters.* For a surface water to qualify as Exceptional Value Waters, the Department must determine that the water quality meets conditions set forth in this subsection.

(1) *Chemistry test.* One or more of the following shall exist:

(i) Water quality shall be generally better than the water quality criteria in § 93.7, Table 3 (relating to specific water quality criteria) and in Chapter 16, Appendix A, Table 1 (relating to water quality criteria for toxic substances) based on water quality analysis obtained from one or more grab samples collected at representative stream flow conditions for the following parameters:

pH	alkalinity	dissolved oxygen
total dissolved solids	ammonia nitrogen	nitrite—nitrogen
nitrate—nitrogen	hardness	chloride
sulfate	iron	manganese
aluminum	arsenic*	cadmium*
chromium VI*	copper*	lead*
nickel*	zinc*	

(where "*" means dissolved analyses are to be performed).

(ii) The water is determined by the Department to be of natural quality.

(2) *Biology test.* One of the following shall exist:

(i) The water quality shall support nonimpaired, outstanding aquatic communities as determined by the Department using peer-reviewed biological assessment procedures that consider physical habitat, benthic macroinvertebrates, or fishes based on *Rapid Bioassessment Protocols for Use in Streams and Rivers; Benthic Macroinvertebrates and Fish*. Plafkin, et al. (EPA/444/4-89-001);

(ii) The water quality satisfies other peer-reviewed biological assessment procedures that the Department may approve to determine the condition of the aquatic community of a surface water.

(iii) The surface water has been designated a wilderness trout stream by the Fish and Boat Commission following public notice and comment.

(3) *Additional information.* The Department may consider additional chemical or biological information which characterizes or indicates the quality of a water in making its determination.

(b) *Level of protection for Exceptional Value Waters.* The quality of Exceptional Value Waters shall be maintained and protected.

§ 93.4d. General requirements for High Quality and Exceptional Value Waters.

(a) *Discharge alternatives/use of best technologies.* A person planning or proposing a new, additional or increased discharge to high quality or Exceptional Value Waters shall evaluate alternatives to the discharge and use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed stream discharge. A proposed discharge shall use the best available combination of cost-effective treatment, land disposal and wastewater reuse technologies.

(b) *Nonpoint sources.* The Department will implement programs that will promote cost-effective and reasonable best management practices for nonpoint source control.

(c) *Designation and listing.* High Quality and Exceptional Value Waters are listed in §§ 93.9a—93.9z following designation through the regulatory process.

(d) *Protection pending designation.* When the Department's evaluation of technical data establishes that a surface water qualifies as High Quality or Exceptional Value Waters, that surface water shall be protected as High Quality or Exceptional Value Waters, respectively, pending designation.

§ 93.4e. Public participation in High Quality and Exceptional Value Waters.

(a) *Submission of antidegradation evaluation reports and petitions.* A person who petitions the EQB for stream redesignation under Chapter 23, Appendix A (relating to special procedures for petitions for stream redesignations under The Clean Streams Law and Chapter 93—statement of policy) may submit to the Department complete documentation of an antidegradation evaluation conducted by a non-Department entity with a conclusion concerning eligibility for antidegradation protection. The Department will review the antidegradation evaluation for completeness and will consider if the evaluation supports the proposed redesignation without additional information.

(b) *Assessment of waters for High Quality or Exceptional Value Waters Classification.* The Department will publish in the *Pennsylvania Bulletin* and in a local newspaper of general circulation notice of its intent to assess surface waters for potential classification as High Quality or Exceptional Value Waters. The notice will request submittal of technical and scientific information concerning the water quality of the waters to be assessed for use by the Department to supplement its technical evaluation. The Department will send a copy of the notice to all municipalities containing waters subject to the assessment.

(c) *Public participation requirements for official sewage facilities plans or revisions to official plans in High Quality or Exceptional Value Waters.* A proponent of a sewage facility in High Quality or Exceptional Value Waters seeking approval of an official plan or revision shall comply with the

public participation requirements in Chapter 71 (relating to administration of sewage facilities planning program) regarding notice of antidegradation classification of the receiving waters.

(d) *Public participation requirements for proposed discharges to High Quality or Exceptional Value Waters.* In addition to the public participation requirements in §§ 92.61, 92.63 and 92.65 (relating to public notice of permit application and public hearing; public access to information; and notice to other government agencies), the following requirements apply to a proposed discharge to High Quality or Exceptional Value Waters.

(1) Proof of publication of a notice in a local newspaper of general circulation that the applicant intends to apply for a permit to discharge into High Quality or Exceptional Value Waters, and seeks comment for a 30-day period on the proposal. The notice shall state the name of the receiving water and its antidegradation classification, and shall provide the address of an accessible public location, such as a public library, where interested persons may review information regarding the discharge, including social or economic justification analyses, and public comments submitted to the applicant regarding its proposal.

(2) The applicant shall provide the Department with a copy of public comments received and a response to the comments prior to the Department's review of the proposal.

(3) The Department's notice of complete application in § 92.61(a) (relating to public notice of permit application and public hearing) will note the antidegradation classification of the receiving water.

(e) *Public hearings for discharges to Exceptional Value Waters.* The Department will hold public hearings on proposed discharges, into waters designated as Exceptional Value Waters.

§ 93.7. Specific water quality criteria.

* * * * *

(e) Table 5 contains groups of specific water quality criteria based upon water uses to be protected. When the symbols listed in Table 5 appear in the *Water Uses Protected* column in [§ 93.9] §§ 93.9a—93.9z, they have the meaning listed in [the] Table 5. Exceptions to these standardized groupings will be indicated on a stream-by-stream or segment-by-segment basis by the words "Add" or "Delete" followed by the appropriate symbols described elsewhere in this chapter.

Table 5

Symbol	Water Uses Include					Specific Criteria
	*	*	*	*	*	
[HQ-WWF	Statewide list plus High Quality Waters					Statewide list plus DO1 and Temp ₂
HQ-CWF	Statewide list plus High Quality Waters and Cold Water Fish					Statewide list plus DO6 and Temp ₁

<i>Symbol</i>	<i>Water Uses Include</i>	<i>Specific Criteria</i>
HQ-TSF	Statewide list plus High Quality Waters and Trout Stocking	Statewide list plus DO1 and Temp ₃
EV	Statewide list plus Exceptional Value Waters]	Existing quality
	* * * * *	

<i>Symbol</i>	<i>Water Uses Include</i>	<i>Category Specific Criteria</i>
HQ-CWF	Statewide List Plus High Quality Waters and Cold Water Fish	Statewide List Plus DO6 and Temp ₁
HQ-TSF	Statewide List Plus High Quality Waters and Trout Stocking	Statewide List Plus DO1 and Temp ₃
EV	Statewide List Plus Exceptional Value Waters	Existing Quality

(g) Table 5a contains groups of specific water quality criteria for High Quality and Exceptional Value Waters.

Table 5a

<i>Symbol</i>	<i>Water Uses Include</i>	<i>Category Specific Criteria</i>
HQ-WWF	Statewide List Plus High Quality Waters	Statewide List Plus DO1 and Temp ₂

Editor's Note: Sections 93.9a—93.9z are proposed to be amended like the following example of an amended drainage list. "HQ" and "EV" would no longer be listed in the "Water Uses Protected" column, but in a new column titled "Antidegradation Classification." "EV" in the "Water Uses Protected" column would be replaced with the designated use of the water (in most cases, CWF) See Editor's Note as follows:

§ 93.9c. Drainage List C.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria	Antidegradation Classification
1—Delaware River	Main Stem, Lackawaxen River to Tocks Island	Pike	WWF, MF	Delete Bac ₁ , pH ₁ , and TDS, Add Bac ₅ , pH ₄ , Temp ₄ , Temp ₉ , TON, TDS ₃ Tur ₅ upstream of RM 254.75 and Tur ₆ , downstream of RM 254.75, MBAS ₁ and Rad	
2—Unnamed Tributaries to Delaware River	Basins Lackawaxen River to Tocks Island	Pike	[HQ-CWF] CWF	None	HQ
2—Panther Creek	Basin	Pike	[HQ-CWF] CWF	None	HQ
2—Shohola Creek	Basin	Pike	[HQ-CWF] CWF	None	HQ
2—Twin Lakes Creek	Basin	Pike	[HQ-CWF] CWF	None	HQ
2—Pond Eddy Creek	Basin	Pike	[HQ-CWF] CWF	None	HQ
2—Bush Kill	Basin	Pike	[EV] CWF	None	EV
2—Rosetown Creek	Basin	Pike	[HQ-CWF] CWF, MF	None	HQ

Editor's Note: Sections 93.9a—93.9z are proposed to be amended as follows:

In the "Water Uses Protected" column, "HQ" and "EV" are deleted and relocated in a new column and titled "Antidegradation Classification"; the designated uses (that is, CWF, WWF or TSF and MF, if listed) are retained in the column.

The entry for the "Water Uses Protected" column for EVs is "CWF" for all except the following streams:

<i>Drainage List</i>	<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>
(§ 93.9f Pa. Code p. 93-53)	4—Peters Creek	Basin	Berks	WWF
(§ 93.9g Pa. Code p. 93-62)	5—Broad Run	Basin	Chester	TSF, MF
(§ 93.9o Pa. Code p. 93-129)	5—Elders Run	Basin	Lancaster	TSF
(§ 93.9o Pa. Code p. 93-134)	3—Black Run	Basin, Source to Unnamed Tributary at RM 2.50	Chester	TSF, MF
(§ 93.9o Pa. Code p. 93-134)	3—Unnamed Tributary to Octoraro Creek at RM 13.60	Basin	Chester	TSF, MF
(§ 93.9o Pa. Code p. 93-135)	4—Jordan Run	Basin	Chester	TSF, MF
(§ 93.9o Pa. Code p. 93-135)	4—Barren Brook	Basin	Chester	TSF, MF

CHAPTER 95. WASTEWATER TREATMENT REQUIREMENTS

§ 95.1. General requirements.

[(a)] Specific treatment requirements and effluent limitations for each waste discharge shall be established based on the more stringent of [subsections (b) and (c)] **antidegradation requirements under §§ 93.4a—93.4e (relating to antidegradation requirements)**, the water quality criteria specified in Chapter 93 (relating to water quality standards), the applicable treatment requirements and effluent limitations to which a discharge is subject under 33 U.S.C.A. § 1251 or the treatment requirements and effluent limitations of this title provided that specific treatment requirements and effluent limitations for waste discharges from overflows as defined in § 94.1 (relating to definitions) shall be established based on applicable treatment requirements and effluent limitations to which [such] the discharge is subject under 33 U.S.C.A. § 1251 [et seq].

[(b) Waters having a water use designated as "High Quality Waters" in § 93.6 and 93.9 (relating to general water quality criteria; and designated water uses and water quality criteria) shall be maintained and protected at their existing quality or enhanced, unless the following are affirmatively demonstrated by the proposed discharger of sewage, industrial wastes, or other pollutants:

(1) The proposed new, additional or increased discharge or discharges of pollutants is justified as a result of necessary economic or social development which is of significant public value.

(2) The proposed discharge or discharges, alone or in combination with other anticipated discharges of pollutants to the waters, will not preclude any use presently possible in the waters and downstream from the waters, and will not result in a violation of any of the numerical water quality criteria specified in § 93.9 which are applicable to the receiving waters.

(c) Waters having a use designated as "Exceptional Value Waters" in § 93.9 shall be maintained and protected at a minimum at their existing quality. The Department will hold a public hearing on

any proposed discharge into waters having a water use designated as "Exceptional Value Waters" in § 93.9.

(d) A project or development which would result in a new, additional or increased discharge or discharges of sewage, industrial wastes or other pollutants into waters having a water use designated as "High Quality Waters" in § 93.9 will be permitted only in compliance with the requirements of (b) and, furthermore, shall be required to:

(1) Utilize the best available combination of treatment and land disposal technologies and practices for the wastes, where the land disposal would be economically feasible, environmentally sound and consistent with other provisions of this title; or

(2) If the land disposal is not economically feasible, is not environmentally sound, or cannot be accomplished consistent with other provisions of this title, utilize the best available technologies and practices for the reuse and discharge of the wastes.]

[Pa.B. Doc. No. 97-443. Filed for public inspection March 21, 1997, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 65, 67 AND 69]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 65, 67 and 69 (relating to special fishing regulations; nursery waters; and fishing in Lake Erie and boundary lakes). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments relate to fishing.

A. *Effective Date*

These proposed amendments will, if approved on final rulemaking, go into effect on January 1, 1998, or upon publication of an order adopting the regulations, whichever comes later.

B. *Contact Person*

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000.

C. *Statutory Authority*

These proposed amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose for the various amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

(1) Sections 65.1 and 65.7 (relating to select harvest program; and trophy trout program). The Commission is proposing to clarify these regulations to include a specific reference to the time (8 a.m.) that trout season opens each year.

(2) Sections 65.24, 67.1 and 69.13—69.15. 3CU has requested the Commission to modify existing steelhead and salmon fishing regulations and to develop new ones for Lake Erie and associated tributary streams. Upon consideration of 3CU's request, the Bureaus of Fisheries and Law Enforcement jointly recommended that the season for salmon and steelhead be extended until the opening day of the regular trout season because steelhead frequent the streams from late summer to mid April. The Bureaus further recommend that wading be prohibited in Crooked Creek, Peck Run and Orchard Beach Run and that the disturbance of fish in nursery waters be a violation.

A separate special regulation is needed for Conneaut Creek (Erie and Crawford Counties) because of the approved trout water designation. The Bureaus accordingly recommended that fishing in Conneaut Creek be extended from March 1 to midnight the Thursday before the opening day of the regular trout season. The creel limit should be three trout/salmon with a minimum size of 15 inches. Although Conneaut Creek and Turkey Creek are tributaries to Lake Erie, they historically have been treated as "inland waters" for regulatory purposes rather than as part of the Commission's Lake Erie tributary program.

In Erie and Crawford Counties, additional angling opportunities would be available if special regulations were adopted for Turkey Creek (Erie County); East Branch of Conneaut Creek (Erie County); Temple Run (Erie County); Marsh Run (Erie County); West Branch of Conneaut Creek (Erie and Crawford Counties); Stone Run (Erie and Crawford Counties); Mud Run (Erie and Crawford Counties); East Branch (Erie and Crawford Counties); Middle Branch (Erie and Crawford Counties); and Crazy Run (Crawford County). The Bureaus therefore recommended that the catching of steelhead and salmon should be permitted from 12:01 a.m. the day after Labor Day to midnight the Thursday before the opening day of the regular trout season. The creel limit should be three trout/salmon with a minimum size of 15 inches.

Current regulations applicable to the Lake Erie tributaries, § 69.13 (relating to seasons, sizes and creel limits—Lake Erie), provide that the extended season closes at midnight on the Friday before opening day of trout season in April. Staff proposed that this wording be changed to midnight of the Thursday before opening day. Traditionally, these streams have been stocked on the Friday before opening day. This has been the practice for at least 15 years. Allowing fishing on the Friday before opening day is inconsistent with the Commission's stocking schedule.

At its meeting on January 25, 1997, the Commission approved the publication of a notice of proposed rulemaking consistent with staff's recommendations.

F. *Fiscal Impact*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

G. *Paperwork*

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

(Editor's Note: An amendment to § 65.24, proposed to be amended in this document, appeared at 27 Pa.B. 1155 (March 8, 1997) and will be codified in the May 1997 Pennsylvania Code Reporter MTS 270. A proposal to amend § 69.13, proposed to be amended in this document, appeared at 26 Pa.B. 6098 (December 21, 1996) and remains outstanding.)

Fiscal Note: 48A-65. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.1. Selective Harvest Program.

* * * * *

(b) It is unlawful to fish in designated and posted selective harvest areas except in compliance with the following requirements:

* * * * *

(5) The daily creel limit is two trout—combined species—except during the period from the day after Labor Day to **8 a.m.** of the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.

* * * * *

§ 65.7. Trophy [trout program] Trout Program.

* * * * *

(b) It is unlawful to fish in designated and posted trophy trout areas except in compliance with the following requirements:

* * * * *

(5) The daily creel limit is two trout—combined species—except during the period from the day after Labor Day to 8 a.m. of the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.

* * * * *

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * *
Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the opening day of trout season in April. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Crawford	Crazy Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the opening day of trout season in April. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
		* * *
Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the opening day of trout season in April. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
		* * *

CHAPTER 67. NURSERY WATERS

§ 67.1. Nursery waters and exhibition areas.

* * * * *

(c) It is unlawful to disturb fish or other aquatic life in nursery waters or exhibition areas by any means, including wading, throwing stones, rocks or other objects or otherwise agitating the waters.

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

§ 69.13. Seasons, sizes and creel limits—Lake Erie Tributaries.

* * * * *

(d) Except as provided in §§ 69.14 and [§]69.15 (relating to special regulations applicable during the [fall] salmon and steelhead trout season; and miscellaneous special regulations) and for those waters listed as nursery waters, the following seasons, sizes and [creek] creel limits apply to the tributary streams of Lake Erie in this Commonwealth:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
		* * *	
TROUT and SALMON	12:01 a.m. the day after Labor Day until [the first Saturday after] midnight Thursday before the opening day of trout season in April [11].	15 inches	3 (combined species only 2 of which may be lake trout)
		* * *	

§ 69.14. Special regulations applicable during the [fall] salmon and steelhead trout season.

(a) *Season.* This section applies from [midnight on Labor Day until midnight on November 30] 12:01 a.m. the day after Labor Day until midnight the Thursday before the opening day of trout season in April.

(b) *Restrictions.* The following specific restrictions apply to streams marked with an "X" during salmon and steelhead trout season described in subsection (a). It is unlawful for a person to fish in violation of these restrictions:

<i>Fishing permitted, no time restrictions</i>	<i>Fishing permitted except closed from 10 p.m. to 5 a.m.</i>	<i>Fishing permitted [except closed from 10 p.m. to 5 a.m. south of Route 5], no time restrictions north of Route 5, closed from 10 p.m. to 5 a.m. south of Route 5</i>	<i>Fishing prohibited</i>	<i>Fishing prohibited from 10 p.m. to 5 a.m. in areas of Lake Erie shoreline within 50 yards of mouth of stream</i>	<i>Fishing prohibited in portions designated as nursery waters</i>	<i>Remarks</i>
		* * *	* * *			
Crooked Creek		X			X	Wading Prohibited
		* * *	* * *			
Peck Run			X			Wading Prohibited
Orchard Beach Run			X			Wading Prohibited
		* * *	* * *			

§ 69.15. Miscellaneous special regulations.

The following miscellaneous special regulations apply to the named waters, marked with an "X." It is unlawful to fish in violation of the following restrictions:

<i>Archery and spearing permitted in compliance with § 63.8 in areas north of Route 5 only during hours 7 a.m. to 7 p.m. only, from Jan. 1 to Labor Day. Archery and spearing prohibited at all other times and places</i>	<i>Fishing prohibited</i>	<i>Inland regulations for trout and salmon apply</i>	<i>Fishing prohibited in areas designated as nursery waters</i>
[Conneaut Creek]			[X]
[W. Branch Conneaut Creek]			[X]
[E. Branch Conneaut Creek]			[X]
	* * *		

[Pa.B. Doc. No. 97-444. Filed for public inspection March 21, 1997, 9:00 a.m.]