

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Amendments to the Rules of Practice and Procedure Concerning Regulatory Program Fees and to the Basin Regulations—Water Supply Charges Concerning Rates; Public Hearing

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the *Rules of Practice and Procedure* to adopt a new project review fee structure and to the *Basin Regulations—Water Supply Charges* to provide for automatic inflation adjustments. These changes also are proposed to be incorporated into the Commission's Comprehensive Plan.

Dates: The public hearing will be held at 1:00 P.M. on Wednesday, July 27, 2016. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, August 12, 2016.

Addresses: The public hearing will be held at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.nj.gov; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Friday, August 12, 2016. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "Fees Rulemaking" in the subject line.

For Further Information, Contact: An FAQ document explaining this proposal in further detail is available on the Commission's website, www.drbc.net. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

Supplementary Information:

Background. The Delaware River Basin Commission ("DRBC" or "Commission") is a federal interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. DRBC is proposing a comprehensive revision of its project review fee structure, including an automatic annual indexed inflation adjustment for most fees. The inflation adjustment is also

proposed for DRBC's water supply charges rates applicable to consumptive and non-consumptive surface water withdrawals.

Current fees. DRBC's current project review fee structure was adopted by the Commission in 2009 by (uncodified) Resolution No. 2009-2. For projects involving total costs of \$250,000 or less, it consists of a flat project review fee of \$1,000 for privately sponsored projects and \$500 for publicly sponsored projects. For projects with total costs greater than \$250,000, DRBC's current project review fee is based upon a percentage of the costs of the project attributable to project components physically located within the basin, and is capped at \$75,000. However, projects for which the review is exceptionally involved may be charged DRBC's actual costs, which may exceed \$75,000. The current fee structure generates an uneven revenue stream that produced average annual revenues of \$610,843 for the years 2011 through 2015. The Commission's total cost associated with project reviews required by the *Delaware River Basin Compact* and DRBC regulations is estimated to equal \$1.15 million annually. This estimate takes into consideration administrative cost savings expected to accompany implementation of the One Process/One Permit Program (also "One Process/One Permit"), recently authorized by the Commission through its adoption of the one permit program rule, 18 CFR 401.42.

DRBC's water supply charges are used to pay debt service, annual operation and maintenance costs, and the costs of required improvements, repairs and replacements associated with water supply storage owned by the Commission in two reservoirs—Blue Marsh and Beltzville—located in Pennsylvania and operated by the U.S. Army Corps of Engineers. Water supply charges revenues also support DRBC activities related to water supply planning and operations. DRBC's current water supply charges rates, in effect since January 1, 2011, are \$80 per million gallons for consumptive use and \$0.80 per million gallons for non-consumptive use. The previous rates, \$60 per million gallons for consumptive use and \$0.60 per million gallons for non-consumptive use, were adopted in 1978 and remained unchanged for more than 30 years. DRBC's water supply charges revenues have lagged significantly behind inflation.

Proposed changes. The proposed project review fee restructuring includes: for wastewater discharge projects, elimination of DRBC project review fees for applications that undergo coordinated review pursuant to the One Process/One Permit Program; and for water withdrawal projects, (1) for those projects for which DRBC continues to act as lead review agency, replacement of the current fee structure with fees based on monthly water allocation limits; and (2) for renewals subject to coordinated review under One Process/One Permit, elimination of the project review fee. DRBC is simultaneously proposing an Annual Monitoring and Coordination Fee for all water withdrawal and wastewater discharge projects subject to DRBC review and approval, including projects that receive permits from a signatory party agency under the One Process/One Permit Program. The annual fee will range from \$300 to \$1,000 per year, depending upon the permitted discharge capacity or monthly water allocation.

The fee for DRBC's review of "Other" projects—those that involve no ongoing withdrawals or discharges—will continue to be calculated on the basis of project cost. The Annual Monitoring and Coordination Fee will not apply to such "Other" projects. In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, the Executive Director will continue under the proposed rule to have the discretion to impose an Alternative Review Fee equal to the Commission's actual costs. Finally, an annual, indexed, automatic inflation adjustment is proposed for most project review fees.

The proposed regulatory program fees structure is expected to provide a more predictable and sustainable source of revenues and to help close the annual gap in funding needed to support DRBC's project review program.

No increase is proposed to DRBC's current water supply charges rates, set forth at 18 CFR 420.41. However, an annual, indexed, automatic inflation adjustment is proposed, applicable to both the consumptive and non-consumptive use rates for surface water withdrawals.

Additional information. An FAQ document explaining DRBC's fee restructuring proposal in greater detail is available on the Commission's website, www.drbc.net.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend parts 401 and 420 of title 18 of the *Code of Federal Regulations* (incorporated by reference into the *Pennsylvania Code* at 25 Pa. Code Ch. 901.1 and 901.3) as set forth below.

Part 401—Rules of Practice and Procedure, is proposed to be amended by the addition of a new § 401.43 to read as follows:

§ 401.43 Regulatory program fees.

(a) *Purpose.* The purpose of this section is to provide an adequate, stable and reliable stream of revenue to cover the cost of the Commission's regulatory program activities, an important means by which the Commission coordinates management of the shared water resources of the Basin. Activities to be covered by the fees include the review of applications for projects that are subject to review under the *Delaware River Basin Compact* and implementing regulations; and ongoing activities associated with such projects, including but not limited to, effluent and ambient monitoring, data analysis, hydrodynamic and water quality modeling, and coordination with state and federal agencies.

(b) *Types of fees.* The following types of fees are established by this section:

(1) *Docket Application Fee.* Except as set forth in paragraph (b)(1)(iii) of this section, the Docket Application Fee shall apply to:

(i) Any project that, in accordance with the *Delaware River Basin Compact* and DRBC regulations, requires a Commission-issued docket or permit, whether it be a new or existing project for which the Commission has not yet issued an approval or a project for which the renewal of a previous Commission approval is required.

(ii) Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive

Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the *Compact* are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is changed substantially from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

(iii) *Exemptions.* The Docket Application Fee shall not apply to:

(A) Any project for which the Signatory Party Agency serves as lead under the one permit program rule (§ 401.42), unless such project must be added by the Commission to the Comprehensive Plan.

(B) Any project for which an agency, authority or commission of a signatory to the *Compact* is the primary sponsor. Projects sponsored by political subdivisions of the signatory states shall not be included in this exemption. For purposes of this section "political subdivisions" shall include without limitation municipalities, municipal utility authorities, municipal development corporations, and all other entities not directly under the budgetary and administrative control of the Commission's members.

(2) *Annual Monitoring and Coordination Fee.* An Annual Monitoring and Coordination Fee shall apply to each withdrawal and/or discharge project for which a water allocation or wastewater discharge approval issued pursuant to the *Compact* and implementing regulations is in effect, regardless of whether the approval was issued by the Commission in the form of a docket, permit or other instrument, or by a Signatory Party Agency under the one permit program rule (§ 401.42). The fee shall be based on the amount of a project's approved monthly water allocation and/or approved daily discharge capacity.

(3) *Alternative Review Fee.* In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, an Alternative Review Fee equal to the Commission's actual costs may be imposed. The Executive Director shall inform the project sponsor in writing when the Alternative Review Fee is to be applied and may require advance payment in the amount of the Commission's projected costs. Instances in which the Alternative Review Fee may apply include, but are not limited to, matters in which:

(i) DRBC staff perform a detailed pre-application review, including but not limited to the performance or review of modeling and/or analysis to identify target limits for wastewater discharges;

(ii) DRBC staff perform or review complex modeling in connection with the design of a wastewater discharge diffuser system;

(iii) DRBC manages a public process for which the degree of public involvement results in extraordinary effort and expense, including but not limited to costs associated with multiple stakeholder meetings, special public hearings, and/or voluminous public comment.

(iv) DRBC conducts or is required to engage third parties to conduct additional analyses or evaluations of a project in response to a court order.

(4) *Additional fees.*

(i) *Emergency approval.* A request for an emergency certificate under § 401.40 to waive or amend a docket condition shall be subject to a minimum fee in accordance with paragraph (e) of this section. An Alternative Review Fee also may be charged in accordance with paragraph (b)(3) of this section.

(ii) *Late filed renewal application.* Any renewal application submitted fewer than 120 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a Late Filed Renewal Application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional Docket Application Fee calculated in accordance with paragraph (e) of this section and subject to an Alternative Review Fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change.* Each project with a docket or permit issued by the DRBC or by a Signatory Party Agency pursuant to the one permit program rule (§ 401.42) will be charged an administrative fee as set forth in paragraph (e) of this section.

(v) *Change of ownership.* Each project that undergoes a “change in ownership” as that term is defined in section 5.2.1 E.2 of the Commission’s *Water Supply Charges*

Regulations will be charged an administrative fee as set forth in paragraph (e) of this section.

(c) *Indexed adjustment.* On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the Docket Application Fee and Annual Monitoring and Coordination Fee will remain unchanged. Following any indexed adjustment made under this paragraph, a revised fee schedule will be posted on the Commission’s website. Interested parties may also obtain the current fee schedule by contacting the Commission directly during business hours.

(d) *Late payment charge.* When any fee established by this section remains unpaid 30 calendar days after the payment due date provided on the Commission’s invoice, an incremental charge equal to 2% of the amount owed shall be automatically assessed. Such charge shall be assessed every 30 days thereafter until the total amount owed, including any late payment charges *has been paid in full.*

(e) *Fee schedules.* The fees described in this section shall be as follows.

¹ Consumer Price Index—U/Series ID: CWURA102SA0/Not Seasonally Adjusted/ Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD/Item: All items/Base Period: 1982-84=100.

DOCKET APPLICATION FILING FEE

<i>Project Type</i>	<i>Docket Application Fee</i>	<i>Fee Maximum</i>
Water Withdrawal	\$400 per million gallons/month of allocation ¹ , not to exceed \$15,000 ¹ Fee is doubled for any portion to be exported from the basin.	Greater of: \$15,000 ¹ or Alternative Review Fee
Wastewater Discharge	Private projects: \$1,000 ¹ Public projects: \$500 ¹	Alternative Review Fee
Other	0.4% of project cost up to \$10,000,000 plus 0.12% of project cost above \$10,000,000 (if applicable), not to exceed \$75,000 ¹	Greater of: \$75,000 ¹ or Alternative Review Fee

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

ANNUAL MONITORING AND COORDINATION FEE

	<i>Annual Fee</i>	<i>Allocation</i>
Water Withdrawal	\$300 ¹	< 4.99 mgm
	\$450 ¹	5.00 to 49.99 mgm
	\$650 ¹	50.00 to 499.99 mgm
	\$825 ¹	500.00 to 9,999.99 mgm
	\$1,000 ¹	> or = to 10,000 mgm
Wastewater Discharge	<i>Annual Fee</i>	<i>Discharge Design Capacity</i>
	\$300 ¹	< 0.05 mgd
	\$610 ¹	0.05 to 1 mgd
	\$820 ¹	1 to 10 mgd
	\$1,000 ¹	>10 mgd

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

ADDITIONAL FEES

<i>Proposed Action</i>	<i>Fee</i>	<i>Fee Maximum</i>
Emergency Approval Under 18 CFR 401.40	\$5,000	Alternative Review Fee
Late Filed Renewal Surcharge	\$2,000	—
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee
Name change	\$1,000 ¹	—
Change of Ownership	\$1,500 ¹	—

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

Part 420—Basin Regulations—Water Supply Charges

is proposed to be amended by revising § 420.41 to read as follows:

§ 420.41 Schedule of water charges.

The schedule of water charges established in accordance with § 420.22 shall be as follows:

(a) \$80 per million gallons for consumptive use, subject to paragraph (c) of this section; and

(b) \$0.80 per million gallons for non-consumptive use, subject to paragraph (c) of this section.

(c) On July 1 of every year, beginning July 1, 2017, the rates established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the water charges rates will remain unchanged. Following any indexed adjustment made under this paragraph, revised consumptive and non-consumptive use rates will be posted on the Commission's website. Interested parties may also obtain the current rates by contacting the Commission directly during business hours.

Dated: May 5, 2016

PAMELA M. BUSH, Esq.,
Secretary

Fiscal Note: 68-59. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.1. Rules of Practice and Procedure.

The rules of practice and procedure as set forth in 18 CFR Part 401 (2016) are hereby incorporated by reference and made a part of this title.

§ 901.3. Water supply charges.

The Basin Regulations—Water Supply Charges as set forth in 18 CFR Part 420 [(1994)] (2016) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 16-977. Filed for public inspection June 10, 2016, 9:00 a.m.]

¹ Consumer Price Index—U/Series ID: CWURA102SA0/Not Seasonally Adjusted/Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD/Item: All items/Base Period: 1982-84=100.

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations (Sobers Run, et al.)

The Environmental Quality Board (Board) proposes to amend §§ 93.9c, 93.9f and 93.9i (relating to Drainage List C; Drainage List F; and Drainage List I) to read as set forth in Annex A. This proposed rulemaking fulfills the Commonwealth's obligations under State and Federal laws to review and revise, as necessary, water quality standards that are protective of surface waters.

This proposed rulemaking was adopted by the Board at its meeting on April 19, 2016.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Rodney Kime, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, 400 Market Street, Harrisburg, PA 17105-8774, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory and Regulatory Authority*

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement The Clean Streams Law (35 P.S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards.

D. *Background and Purpose*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regula-

tory requirements (such as treatment requirements, effluent limits and best management practices (BMP)) on individual sources of pollution. Section 303(c)(1) of the Federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. Water quality standards include designated uses, numeric and narrative criteria, and antidegradation requirements for surface waters. These proposed amendments are the result of stream evaluations conducted by the Department.

The Department may identify candidate streams for redesignation of uses during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Members of the public may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality, and permitted activities shall ensure the protection of designated and existing uses. The purpose of this proposed rulemaking is to update the designated uses so that the surface waters of the Commonwealth are afforded the appropriate level of protection.

Existing use protection is provided when the Department determines, based on its evaluation of the best

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

The streams in this proposed rulemaking that are candidates for redesignation were all evaluated in response to petitions as follows:

<i>Stream</i>	<i>County</i>	<i>Petitioner</i>
Swiftwater Creek	Monroe	Brodhead Creek Watershed Association
Sobers Run	Northampton	Bushkill Township
Mill Creek	Berks and Chester	Delaware Riverkeeper Network
Silver Creek	Susquehanna	Silver Lake Association

These proposed amendments are the result of stream evaluations conducted by the Department in response to four petitions that were submitted. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). Based upon the data and information collected on these waterbodies, the Department recommends the Board adopt this proposed rulemaking as described in this preamble and as set forth in Annex A.

E. Summary of Regulatory Requirements

The Department gave notice, in the *Pennsylvania Bulletin* and on its web site, that an evaluation was to be conducted on all or portions of the subject streams to determine the proper Aquatic Life Use or Special Protection designations for the Commonwealth’s Water Quality Standards. Persons who had technical data concerning the water quality, instream habitat or biological conditions of these stream sections were encouraged to make it available to the Department for consideration in the assessment. Potentially affected municipalities were also notified by letter of the stream evaluations and asked to provide any readily available data.

Data was not received for Swiftwater Creek. The Department received comments regarding Swiftwater Creek including a notice from Tobyhanna Township stating that they do not support the petition to upgrade

Swiftwater Creek. The Department did receive data from Bushkill Township to augment the Department’s assessment of Sobers Run. Hanover Engineering Associates submitted the latest Coldwater Conservation Plan (2009) completed for the Upper Bushkill Creek Watershed and the Northampton County Conservation District submitted water chemistry results collected by the Retired Senior Volunteer Program. This data was used as documentation and support for the Sobers Run special protection assessment. The Delaware Riverkeeper Network provided the Department with water quality data for Mill Creek including a copy of the 1994 Fish and Boat Commission Report, information pertaining to the Fish and Boat Commission “Natural Trout Reproduction Layer” and information pertaining to local angler observations. This submitted data was used as supporting documentation of the water quality of the Mill Creek basin in conjunction with the findings of the Department’s survey. The Department also received two supportive responses from local citizens regarding the redesignation of Mill Creek. The Department did not receive data regarding Silver Creek. The Department did receive one letter of support for the redesignation of Silver Creek.

The affected municipalities, county planning commissions, county conservation districts, other State agencies and petitioners were later notified of the availability of a draft evaluation report for review and comment. The draft stream evaluation reports were also made available on the Department’s web site and were offered for an opportunity for a minimum 30-day public review and comment period.

Comments were not received in response to this notice for either Swiftwater Creek or Silver Creek. Nine commentators offered supportive comments for the Department's recommendation to redesignate Sobers Run. During the initial comment period, three stakeholders offered comments pertaining to the Mill Creek report, one in support and two in opposition. In addition, the Delaware Riverkeeper Network requested an extension of the original 30-day public comment period. In response, the Department provided a 30-day extension to the comment period for the Mill Creek stream report. The Delaware Riverkeeper Network provided additional comments in support of the Department's EV recommendation; but stated opposition of the recommendation for the unnamed tributary to Mill Creek at 40°14'33.8"N; 75°43'49.6"W to remain unchanged.

All data and comments received in response to these notifications were considered in the determination of the Department's recommendations to the Board.

Copies of the Department's stream evaluation reports for these waterbodies are available on the Department's web site or from the contacts whose addresses and telephone numbers are listed in Section B of this preamble. The data and information collected on these waterbodies support the Board's proposed amendments as set forth in Annex A.

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

Swiftwater Creek (stream code 04954)—The Brodhead Creek Watershed Association submitted a petition requesting that the upper portion of Swiftwater Creek be considered for redesignation to EV. The petition describes the candidate portion of Swiftwater Creek basin as that portion that lies upstream of SR 611. This upstream portion of Swiftwater Creek basin flows through Tobyhanna Township, Pocono Township and Mount Pocono Borough, Monroe County. Swiftwater Creek is in the Brodhead Creek basin, which is a tributary to the Delaware River. The indigenous aquatic community is an excellent indicator of long-term water quality conditions and is used as a measure of both water quality and ecological significance. The integrated benthic macroinvertebrate score test in § 93.4b(b)(1)(v) was applied to Swiftwater Creek. Dimmick Meadow Brook (05244) served as the EV reference for stream metrics comparisons. The two stations farthest upstream both met the 92% comparison required to qualify for EV Waters. Therefore, the Board recommends that the Swiftwater Creek basin from its source to (but not including) UNT 04960 be redesignated as EV, Migratory Fishes (MF). The remainder of the Swiftwater Creek basin should remain HQ-CWF, MF.

Sobers Run (stream code 04646)—Sobers Run basin lies entirely in Bushkill Township, Northampton County. Bushkill Township submitted a petition that requested that the entire Sobers Run basin be redesignated from HQ-CWF, MF to EV. Sobers Run is a tributary to the Bushkill Creek which flows into the Delaware River. Based on applicable regulatory definitions and requirements of § 93.4b, the Board recommends that the entire Sobers Run basin be redesignated EV based on § 93.4b(b)(2). Sobers Run basin qualifies for the exceptional ecological significance criterion based on the presence of endemic plant communities dependent on water quality or hydrology and their rarity in this Commonwealth. This redesignation recommendation includes the surface waters that additionally meet other qualifiers for

outstanding local resource waters and the Department's integrated benthic macroinvertebrate scoring test.

Mill Creek (stream codes 01714, 01715, 01716)—Mill Creek is currently designated WWF, MF and it flows through two townships in two different counties. Mill Creek originates in North Coventry Township, Chester County and its mouth lies in Union Township, Berks County where Mill Creek empties into the Schuylkill River. The Schuylkill River is part of the Delaware River watershed. The entire Mill Creek basin was evaluated for potential redesignation to EV in response to a petition submitted by the Delaware Riverkeeper Network. The indigenous aquatic community is an excellent indicator of long-term water quality conditions and is used as a measure of both water quality and ecological significance. The integrated benthic macroinvertebrate score test in § 93.4b(a)(2)(i)(A) and (b)(1)(v) was applied to Mill Creek. Metrics scores obtained from stations in the Mill Creek basin were compared to a reference station located at UNT 64027 to Sixpenny Creek. The reference station was located in Union Township, Berks County. The macroinvertebrate communities were evaluated at four stations in the Mill Creek basin. Three of the four stations had biological condition scores that ranged from 93—100% of the reference station score. As a result, these stations exceeded the threshold of 92% required to qualify for an EV designation under the Department's regulatory criterion. The remaining station was located on stream code 01714 just upstream of the confluence of 01714 and 01715. That is, the station with the lowest score was located on the unnamed tributary to Mill Creek just upstream of its mouth. The latitude and longitude coordinates of the mouth of unnamed tributary are 40°14'33.8"N; 75°43'49.6"W. The Board recommends that Mill Creek basin excluding the unnamed tributary at 40°14'33.8"N; 75°43'49.6"W should be redesignated to EV, MF. The remaining unnamed tributary at 40°14'33.8"N; 75°43'49.6"W should retain its current designated use of WWF, MF.

Silver Creek (stream code 31879)—Silver Creek flows through Silver Lake, Forest Lake, Bridgewater, Liberty and Franklin Townships, Susquehanna County before it enters Snake Creek. Silver Creek is in the Susquehanna River basin. The Silver Lake Association submitted a petition requesting that portions of Silver Creek basin be redesignated from CWF, MF to EV. The portion of the Silver Creek basin that was excluded from the study is the Laurel Lake Creek basin except McCormick Run, which is a tributary to Laurel Lake Creek. The indigenous aquatic community is an excellent indicator of long-term water quality conditions and is used as a measure of both water quality and ecological significance. The integrated benthic macroinvertebrate score test in § 93.4b(a)(2)(i)(A) and (b)(1)(v) was applied to Silver Creek. Department staff collected habitat and benthic macroinvertebrate data at seven locations within the petitioned area and from one reference station on West Branch Fishing Creek (28020), Sullivan County. All stations had Biological Condition Scores that exceeded the threshold to qualify for an EV designation under the Department's regulatory criterion. The Board recommends that the designated use of Silver Creek basin, excluding Laurel Lake Creek basin, but also including McCormick Run basin, be changed from the current CWF, MF designated use to EV, MF.

The Board is also proposing to correct two stream names as they appear in § 93.9c. The United States Geologic Survey maintains the National Hydrography Dataset (NHD) Flowline. The stream nomenclature and the fluvial geomorphology given in the *Pennsylvania Code*

are governed by the NHD Flowline. These corrections are proposed to maintain consistency between the *Pennsylvania Code* and the NHD Flowline. Saw Kill Creek and Raymond Kill Creek will be corrected to Sawkill Creek and Raymondskill Creek, respectively, to be consistent with the NHD Flowline.

The Board proposes that all references to river mile indexes (RMI) in Annex A be converted to a set of coordinates (latitude and longitude), with the eventual goal to be the conversion of all RMIs in §§ 93.9a–93.9z to the coordinate system. Department staff recognizes the RMI system to be antiquated. When determining the RMI, it is possible to derive differing RMIs depending on the technique used. It is easy to consistently determine the latitude and longitude along any point of a stream or river while in the field with a hand-held GPS unit or using a GIS software application (the Department standard projected coordinate system is PA_Albers_Equal_Area_Conic; the geographic coordinate system is North American Datum 1983 or NAD 1983). It is very difficult to determine the RMI while in the field. Referring to the latitude and longitude will make it much easier for the regulated community and others to apply the zone description in § 93.9 to a particular project or activity, and determine whether the project discharges within or the activity is otherwise related to the referenced stream zone.

F. *Benefits, Costs and Compliance*

Benefits

Overall, the Commonwealth, its citizens and natural resources will benefit from these recommended changes because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of a clean water supply for human consumption, wildlife, irrigation and industrial use; recreational opportunities such as fishing (also for consumption), water contact sports and boating; and aquatic life protection. It is important to realize these benefits and to ensure opportunities and activities continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

Compliance costs

This proposed rulemaking may impose additional compliance costs on the regulated community. This proposed rulemaking is necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

The proposed redesignations will be implemented through the Department's permit and approval actions. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment or BMPs to meet the designated and existing uses of the stream. For example, these increased costs may take the form of higher engineering, construction or operating cost for point source discharges. Treatment costs and BMPs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of techno-

logically advanced wastewater treatment processes and BMPs may be offset by potential savings from an increased value of improved water quality through more cost-effective and efficient treatment over time.

Compliance assistance plan

This proposed rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980s. This proposed rulemaking is consistent with and based on existing Department regulations. This proposed rulemaking extends additional protection to selected waterbodies that exhibit high water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act (33 U.S.C.A. §§ 1251–1388) and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed amendments will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the uses of a stream. These permit conditions are established to assure water quality is protected and maintained. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality standards.

Paperwork requirements

This proposed rulemaking should not have new direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. This proposed rulemaking is based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus, an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with evaluating nondischarge alternatives and nondegrading discharges is required for all new or expanded discharges to HQ or EV Waters.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101–13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has incorporated the following pollution prevention incentives.

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives must be evaluated and are required when

environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil. In addition, if environmentally sound and cost-effective alternatives are not available, discharges must be nondegrading in most circumstances.

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)), on May 26, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of a rulemaking by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board

by July 25, 2016. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by July 25, 2016. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final-form rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. *Public Hearings*

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

PATRICK McDONNELL,
Acting Chairperson

Fiscal Note: 7-535. 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

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9c. Drainage List C.

**Delaware River Basin in Pennsylvania
*Delaware River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
2—Vandermark Creek	Basin, Deep Brook to Mouth	Pike	HQ-CWF, MF	None
2—[Saw Kill] Sawkill Creek	Basin, Source to Vantine Brook	Pike	EV, MF	None
3—Vantine Brook	Basin	Pike	HQ-CWF, MF	None
2—[Saw Kill] Sawkill Creek	Basin, Vantine Brook to Mouth	Pike	EV, MF	None
2—[Raymond Kill] Raymondskill Creek	Basin	Pike	HQ-CWF, MF	None
2—Conashaugh Creek	Basin	Pike	HQ-CWF, MF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
4—Devils Hole Creek	Basin, South Boundary of State Game Lands No. 221 to Mouth	Monroe	HQ-CWF, MF	None
3—Paradise Creek	Basin, Devils Hole Creek to [Mouth] Forest Hills Run	Monroe	HQ-CWF, MF	None
4—Forest Hills Run	Basin, Source to Swiftwater Creek	Monroe	HQ-CWF, MF	None
5—Swiftwater Creek	Basin, Source to UNT 04960 at 41°5'58.5"N; 75°20'4.8"W	Monroe	EV, MF	None
6—UNT 04960	Basin	Monroe	HQ-CWF, MF	None
5—Swiftwater Creek	UNT 04960 to Mouth	Monroe	HQ-CWF, MF	None
4—Forest Hills Run	Basin, Swiftwater Creek to Mouth	Monroe	HQ-CWF, MF	None
3—Paradise Creek	Basin, Forest Hills Run to Mouth	Monroe	HQ-CWF, MF	None
3—Michael Creek	Basin	Monroe	HQ-CWF, MF	None
	* * * *	*		
2—Mud Run	Basin	Northampton	CWF, MF	None
2—Bushkill Creek	[Main Stem] Basin, Source to Sobers Run	Northampton	HQ-CWF, MF	None
[3—Unnamed Tributaries to Bushkill Creek	Basins	Northampton	HQ-CWF, MF	None
3—Little Bushkill Creek	Basin	Northampton	HQ-CWF, MF	None]
3—Sobers Run	Basin	Northampton	EV, MF	None
2—Bushkill Creek	Basin, Sobers Run to Shoeneck Creek	Northampton	HQ-CWF, MF	None
3—Shoeneck Creek	Basin	Northampton	WWF, MF	None
2—Bushkill Creek	Basin, Shoeneck Creek to Mouth	Northampton	HQ-CWF, MF	None

§ 93.9f. Drainage List F.

**Delaware River Basin in Pennsylvania
Schuylkill River**

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
3—Leaf Creek	Basin	Berks	WWF, MF	None
3—Mill Creek	Basin, Source to UNT at 40°14'33.8"N; 75°43'49.6"W	Berks	EV, MF	None
4—UNT at 40°14'33.8"N; 75°43'49.6"W	Basin	Berks	WWF, MF	None
3—Mill Creek	Basin, UNT at 40°14'33.8"N; 75°43'49.6"W to Mouth	Berks	EV, MF	None
3—UNTs Schuylkill River	Basins[,] (all UNTs along Montgomery County shore), Berks-Chester-Montgomery County Border to Valley Creek	Montgomery	WWF, MF	None
	* * * *	*		

§ 93.9i. Drainage List I.

Susquehanna River Basin in Pennsylvania
Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
2—Unnamed Tributaries to Susquehanna River	Basins (all sections in PA), PA-NY State Border near Great Bend to PA-NY State Border near Milltown	Susquehanna-Bradford	CWF, MF	None
2—Snake Creek	Basin, Source to Silver Creek	Susquehanna	CWF, MF	None
3—Silver Creek	Basin, Source to Laurel Lake Creek	Susquehanna	EV, MF	None
4—Laurel Lake Creek	Basin, Source to McCormick Run	Susquehanna	CWF, MF	None
5—McCormick Run	Basin	Susquehanna	EV, MF	None
4—Laurel Lake Creek	Basin, McCormick Run to Mouth	Susquehanna	CWF, MF	None
3—Silver Creek	Basin, Laurel Lake Creek to Mouth	Susquehanna	EV, MF	None
2—Snake Creek	Basin, Silver Creek to PA-NY State Border (all sections in PA)	Susquehanna	CWF, MF	None
2—Little Snake Creek	Basin (all sections in PA)	Susquehanna	CWF, MF	None
	* * * *	*		

[Pa.B. Doc. No. 16-978. Filed for public inspection June 10, 2016, 9:00 a.m.]