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REVIEW COMMISSION

February 19, 1999

Edward R. Brezina, Chief  
Division of Water Quality  
P.O. Box 8555  
Rachel Carson State Office Building  
10th Floor - 400 Market Street  
Harrisburg, PA 17105-8555

**Re: Water Quality Standards - Antidegradation  
Comments on Draft Final Regulations**

Dear Mr. Brezina:

The Pennsylvania Chamber of Business and Industry (the Chamber) is the largest, broad based business association in Pennsylvania. Our more than 6,000 members employ about 50% of Pennsylvania's private workforce or approximately 1.5 million people. 80% of our members have less than 100 employees. The Chamber is dedicated to advocating reasonable regulations that encourage economic growth while protecting the environment.

We are providing comments on the Advanced Notice of Final Rulemaking for Water Quality Standards - Antidegradation because we are very concerned with this package as it is currently written. We hope that you will give serious consideration to the detailed comments that follow.

Please feel free to call Sharon Roth of our staff should you have any questions. Thank you.

Sincerely,

**Fred A. Sembach,**  
**Vice President, Government Affairs**

Attachment

**Comments on the Advanced Notice of Final Rulemaking for  
The Water Quality Standards - Antidegradation**

**GENERAL COMMENTS**

**1. The Advanced Notice of Final Rulemaking (ANFR) should be withdrawn until the U.S. EPA's revisions to the federal antidegradation program**

At the present time, the U.S. EPA is in the midst of developing extensive revisions to its water quality standards -- including the antidegradation program. The agency has received comments on an advance notice of proposed rulemaking and is anticipating the publication of proposed rulemaking later this year.

First, while the Department's desire to avoid "starting over" this late in the Rulemaking process is understandable, proceeding to finalize the ANFR while EPA is considering changes to the federal program will undoubtedly require additional revisions to the new regulations. The federal standards imposed by U.S. EPA are providing special protection for Pennsylvania's Tier 2 and Tier 3 waters in the interim until the state develops acceptable revisions to its program. Consequently, the public interest is better served by a single rulemaking proceeding with adequate opportunities for public participation, rather than rushing to adopt and implement a regulatory system that may have to be revised no sooner than it is finalized.

Second, proceeding to final rulemaking before the federal regulations have been revised is inconsistent with the spirit of Executive Order 1 of 1996, the Regulatory Basics Initiative ("RBI"). It appears from the preamble to the ANFR that DEP has not adequately taken this Executive Order into account in developing this proposal. The substantial deviations from the federal program should be explained and justified, a task that is obviously more difficult when the federal program is in a state of flux.

Finally, the rush to beat the approaching deadline for the proposed Rulemaking has resulted in substantial changes which will not receive the full public attention they deserve. The ANFR is fundamentally different from the proposed rulemaking, yet even the minimal 30-day comment period is deemed "unnecessary" by the Department.

Pennsylvania Chamber of Business and Industry  
February 19, 1999

**2. DEP should give more thoughtful consideration to the economic implications of the ANFR.**

The ANFR provides a powerful means for state and national environmental groups and even local government to block or restrict development. It also gives little credence to the protections already available under the Tier 1 program -- despite frequent public pronouncements concerning the effectiveness of these standards in protecting human health and aquatic organisms. The water quality standards can be a highly effective tool to direct economic development and opportunity while at the same time protecting and enhancing water quality, yet there is no recognition of this role in this proposal. If the Department believes it must proceed with this approach, then it must subject it to adequate public scrutiny.

**3. The Department Should Adopt Regulations that Conform to the Antidegradation Regulations Promulgated for the Commonwealth by the Environmental Protection Agency.**

On December 9, 1996, the Environmental Protection Agency ("EPA") promulgated antidegradation regulations for the Commonwealth. *See*, 61 F.R. 64816-64822 (December 9, 1996); 40 C.F.R. § 131.32. The antidegradation regulations promulgated by EPA for the Commonwealth conform to the federal antidegradation regulations at 40 C.F.R. § 131.12. The Department should withdraw its proposed final antidegradation regulations (on which it has received hundreds of critical comments from numerous interest groups with diverse and conflicting interests) and adopt regulations that simply conform to the antidegradation regulations that EPA has promulgated for the Commonwealth. Such an action would satisfy many of the objectives of Executive Order No. 1 of 1996.

**SPECIFIC COMMENTS**

**1. Social or Economic Justification in High Quality Waters. Proposed § 93.4c(b)(iii)**

The proposal to require an applicant for a permit for a discharge to a high quality water to demonstrate that allowing lower water quality (through discharges from the applicant's project) "will result in economic or social benefits to the public which outweigh any reduction in water quality which the new, additional, or increased discharge is expected to cause" should be deleted as it goes beyond the requirements of the federal antidegradation regulations at 40 C.F.R. § 131.12(a)(2). The proposed Section 93.4c(b)(iii) was consistent with the federal language which requires a permit applicant to demonstrate that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

Pennsylvania Chamber of Business and Industry  
February 19, 1999

The balancing test provision should also be deleted because it is vague and subjective. The Department has failed to develop adequate guidance for the existing antidegradation program and the language of the ANFR is such that much will be left to agency guidance or the interpretations of individual permit reviewers. Ultimately, these interpretations will be litigated before the Environmental Hearing Board or the Commonwealth Court. In the meantime, neither the public nor the regulated dischargers will have any certainty regarding the meaning of this regulatory standard.

**2. Withdrawal of Proposal to Allow the Use of NPDES General Permits in High Quality Waters. Section 92.81**

The Department should not withdraw the proposal to allow the use of NPDES general permits in high quality waters. As it has done in other regulatory programs where general permits are authorized, the Department can design permit conditions to assure protection of high quality waters. Moreover, the use of general permits will permit economic development while at the same time ensuring water quality protection. The Department has had adequate time to evaluate this issue and there is no reason to defer it the RBI final rulemaking amendments for Chapter 92

**3. Definition of "Outstanding National, State or Local Resource Water." Section 93.1**

This definition should be deleted and replaced with a definition of "Outstanding National Resource Water" so the Pennsylvania antidegradation regulations do not exceed federal standards. The new definition should state:

"Outstanding National Resource Waters" are high quality waters that constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and water of exceptional recreational and ecological significance.

If the ANFR definition is not deleted, it should be amended so it truly defines outstanding waters. The current definition merely requires a government agency at any level to adopt water quality protective measures for the surface water. It includes *no* chemical or biological criteria and no criteria to assure that only truly outstanding waters qualify, which is particularly troublesome given the severe limitations on discharges to such waters. As discussed below, not only are chemical and biological criteria absent from the definition, but any local government may "upgrade" a water from high quality status to exceptional value status simply by adopting "coordinated water quality protective measures along the corridor of the water" -- whatever that may require.

Pennsylvania Chamber of Business and Industry  
February 19, 1999

Additionally, there are no standards to define "coordinated water quality protective measures." There appears to be no mechanism for determining whether such measures are adequate to meet the definition or any means to compile such "designations." In the absence of such standards and implementing mechanisms, a permit applicant has no certainty on how DEP will determine that the requirement has been satisfied. How will the Department limit this once the regulations have been approved? These are important issues that should be addressed within the Rulemaking, yet it appears that the Department is determined to proceed without any opportunity for review and comment on this approach.

While the definition focuses on coordinated protective measures within a watershed, many watersheds may lie entirely within one municipality. As a result, there would be no need to coordinate with other municipalities. Consequently, one municipal governing body, such as a township board of supervisors, could upgrade a surface water from HQ to EV, through its own unilateral action, without any consideration of scientific or technical data, much less consideration of broader impacts.

Allowing municipal governments to make these designations is an improper delegation of authority under the Clean Streams law that will have unintended negative consequences. By allowing local governments to impose the strict EV standard, DEP is empowering them to block unpopular development activities. This provision will become, in effect, a "super zoning" ordinance that may conflict with the Municipal Planning Code, as well as with other state laws that pre-empt local action.

**4. Definition of "Surface Water of Exceptional or Ecological Significance."  
Section 93.1**

This definition does not provide any guidance to ensure that only truly exceptional waters qualify. The definition should therefore be revised as follows:

A surface water whose importance, environmental characteristics or ecological sensitivity are demonstrably unique or rare, based on objective and measurable criteria, but whose water quality . . . .

**5. Definition of "Surface Water of Exceptional Recreational Significance."  
Section 93.1**

Again, this definition is somewhat vague and should be revised as follows so that only truly exceptional waters qualify:

Pennsylvania Chamber of Business and Industry  
February 19, 1999

A surface water which provides a unique water-based, water quality-dependent recreational opportunity (such as fishing for species with exceptionally limited distribution) because the distribution of areas and water bodies across the state where the activity is available or feasible is extremely rare.

**6. Definition of "Surface Waters." Section 93.1**

If the final rules are to contain a definition of surface waters as is set forth in the ANFR, the terms "perennial streams" and "intermittent streams" should also be defined to avoid any confusion concerning the applicability of the regulatory program. The definitions from the federal surface mining regulations at 30 C.F.R. § 701.5 provide useful guidance:

**Intermittent stream means --**

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

**Perennial stream** means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include *intermittent stream* or *ephemeral stream*.

**7. Withdrawal of Proposal to Eliminate Exceptional Value Waters ("EV") and High Quality Waters ("HQ") as Protected Uses. Section 93.3 Table 1**

EV and HQ waters are management categories not uses. Fishing, boating, and water supply are uses. EPA does not consider its Tier 2 and Tier 3 categories to be protected uses. Including HQ and EV as protected uses is not logical and it creates ambiguity in the regulation. If HQ is a use and uses must be protected at their existing level (proposed Section 93.4a(b)), then an argument can be made that including HQ as a use voids the social or economic justification ("SEJ") provisions of the proposed regulations that allow lowering of water quality if SEJ is demonstrated. One cannot maintain the existing high quality of a water and lower it at the same time. Such ambiguity and opportunity for misinterpretation should be eliminated by eliminating HQ and EV as uses.

Pennsylvania Chamber of Business and Industry  
February 19, 1999

**8. Standards for Qualifying as a High Quality Water. Section 93.4b(a)**

**a. Chemical and Biological Criteria**

The requirement to require long-term water quality which is better than the water quality criteria of § 93.7 is an improvement over the March 22, 1997 proposed amendments. However, the Department has neutered this improvement by making the chemistry criteria essentially irrelevant. A surface water should be required to meet *both* chemical and biological criteria in order to qualify as HQ water.

**b. Chemical Criteria**

The list of chemical parameters to be evaluated should include all the parameters listed in the March 22, 1997 proposed amendments. Given the limitations on discharges to HQ waters and the difficulty in demonstrating that a stream is improperly classified as HQ, the criteria for qualifying as HQ waters should be rigorous.

**c. Biological Criteria**

The biological criteria should include evaluation of macroinvertebrates and fish. Using reference designation as a Class A Wild Trout Stream by the Fish and Boat Commission, as a basis for designation as an HQ water proposed in Section 93.4b(a)(ii) should be deleted. The EHB has held that the Department cannot rely solely on the Fish and Boat Commission for surface water classifications and must exercise independent judgment. Proposed final Section 93.4b(a)(ii) does just that. This Section should also be deleted because statutory authority to implement the Clean Streams Law is vested in the Department, not the Fish and Boat Commission. DEP should consider that the Fish and Boat Commission is exempt from the regulatory review process, and that public review and comment on its regulations is limited.

**9. Standards for Qualifying as an EV Surface Water. Section 93.4b(b)**

a. Waters should have to meet both chemical and biological criteria to qualify as EV. Only the best of the best waters should qualify as EV. Therefore, the criteria should be stringent and should include both long-term, comprehensive chemical standards and biological standards. Thus, proposed Section 93.4b(b)(1)(v) should be amended to include chemical criteria that are indicative of exceptional surface water chemistry.

b. HQ Waters should not automatically qualify as EV simply by virtue of their location in, e.g., national wildlife refuges, or their designation federal or state wild or scenic rivers. Otherwise, the state regulations will exceed federal requirements. In addition, these waters should also be "high quality waters" within the definition of "outstanding national resource waters." Unless such designations are reserved for the streams of the most outstanding characteristics, the severe limitations on discharges would prohibit minor discharges, such as

Pennsylvania Chamber of Business and Industry  
February 19, 1999

discharges from sewage treatment facilities in state or national parks. In most cases, the HQ status of these waters will protect their uses and allow discharges necessary to accommodate important economic or social development in the area.

c. Proposed Section 93.4b(b)(1)(iii) should be revised to cover only outstanding national resource waters. Otherwise, it is not consistent with Executive Order No. 1 of 1996. The federal antidegradation regulations only include outstanding national resource waters in the federal Tier 3 category. If Section 93.4(b)(1)(iii) is not amended to conform it to the corresponding federal regulations, then the definition of Outstanding, National, State Regional or Local Resource Water should be amended as discussed above. Otherwise, the upgrading of surface waters from HQ to EV will result from votes of municipal bodies rather than from sound scientific and esthetic grounds.

d. The definitions of "Surface Water of Exceptional Recreational Significance" and "Surface Water of Exceptional Ecological Significance" should be amended as discussed above.

e. Subsection 93.4b(b)(1)(iv) should be deleted for the same reasons that Section 93.4(a)(ii) should be deleted. The Department does not have authority to rely solely on Fish and Boat Commission stream designations as the basis for upgrading a stream from HQ to EV. Also, the Department should not defer such a designation to another agency. Instead, Fish and Boat Commission designations should only be factors that are considered by the Department in its evaluation of surface waters.

**10. Existing Use Protection. Section 93.4c(a)**

This proposed section should be deleted in its entirety and replaced with language that conforms to the federal language for protecting existing uses, which follows:

Existing in-stream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

*See* 40 C.F.R. § 131.12(a)(1).

Unless the proposed regulations are amended to eliminate HQ and EV as uses, this Section will exceed the corresponding federal requirements for protection of existing uses. Consequently, the proposed regulations will result in an overlap of protection of existing uses and the limitations on discharges to HQ and EV streams, which are treated separately under the federal regulations. For example, if an unknown but existing use of cold water fishes is identified for a stream during review of a permit application, that use must be maintained and protected under the federal regulations. That can be accomplished by setting effluent limits that are adequate to protect the cold water habitat. There should be no delay in processing the permit

Pennsylvania Chamber of Business and Industry  
February 19, 1999

application. However, if HQ is a "use," then anyone opposed to a permit application can assert that the presence of cold water fishes is sufficient evidence that the stream is a HQ stream. Thus, permit processing would have to be delayed pending a proper assessment of the stream or submission of evidence to support a finding of social or economic justification. A better procedure would be to keep uses and management categories separate. Then, permit applicants would know whether a stream is HQ or EV before they invest thousands of dollars in a permit application. This is clearly permissible under the federal language, which requires protection of *both* "existing in-stream uses" *and* "level[s] of water quality" necessary to protect those uses. Thus, nothing is gained by retaining the "use" designations for EV and HQ waters unless one's objective is confusion, redundancy or delay in the permitting process. Furthermore, the Department has failed to justify the necessity for its more expansive approach, as is required by the Executive Order. Retaining such an approach also blurs the distinction between rulemaking and permitting and fosters de facto rulemaking without the protections of the Regulatory Review Act and the Commonwealth Documents Law. While the Department believes that maintaining existing uses through evaluation in the permitting process does not require rulemaking, its position can only contribute to chaos in the regulatory system.

#### **11. Non-Discharge Alternatives / Use of Best Technologies. Section 93.4c(b)(1)**

This section further blurs the distinction between HQ and EV waters. The entire section should be deleted and replaced with language that conforms to 40 C.F.R. § 131.12(a)(2) in order to avoid promulgating state regulations that exceed federal requirements. In the alternative, the amendments addressed below should be made.

The requirements for protection of HQ and EV surface waters should be separated. Measures that are necessary to protect EV waters might not necessarily be required for HQ waters.

If additional public participation requirements will be provided for proposed discharges to HQ and EV streams, those requirements should be coordinated with existing public participation requirements for permits issued under statutes administered by the Department. Inconsistent public notice requirements will result in redundancies, unnecessary expenses and unnecessary delays, as well as serve to confuse the public.

#### **12. Presumed Social or Economic Justification**

The concept of presumed social or economic justification for projects that will correct existing public health or pollution hazards should not be limited to sewage facilities.

Pennsylvania Chamber of Business and Industry  
February 19, 1999

Consideration should be given to other types of projects, such as re-mining abandoned mines with pollutional discharges, as well as voluntary remediation projects under the Land Recycling Act.

### **13. Public Participation in Surface Water Redesignation Proceedings.**

Public participation by local residents should not be limited to "submission of technical and scientific information concerning the water quality of the waters subject to the evaluation," as is currently provided in proposed Section 93.4d(a). Local residents should also be able to submit information on the social and economic impacts of the proposed redesignation. *See* 35 P.S. § 691.5(a)(5); DER v. Borough of Carlisle, 16 Pa. Commw. 341, 330 A.2d 293 (1974) (in taking actions pursuant to the Clean Streams Law the Department must consider the immediate and long-range economic impact upon the Commonwealth and its citizens); Mathies Coal Co. v. DER, 522 Pa. 7, 559 A.2d 506 (1989) (the economic impact to be considered under the Clean Streams Law and DER v. Carlisle, *supra*, relates to the impact on the community and the public at large, not on the individual discharger).

The ANFR should include a requirement that DEP notify, by mail, all landowners, permit holders and applicants whenever a stream assessment for an HQ or EV designation is initiated in their area. This notification needs to include an explanation of the impact an HQ or EV stream designation will have on the use of their property. Currently there is no such requirement in the ANFR.

### **14. Identification of Landowners in Watersheds Subject to Upgrading.**

The Department should require petitioners seeking upgrading of surface waters to HQ or EV status to provide the names and addresses of landowners in the watershed from tax records or other reasonably available resources. These landowners must include *all* those with a recorded interest in the land, such as those who own the mineral estate or utility rights of way. In order for all the potentially affected landowners to have an opportunity to participate in the redesignation process, reasonable efforts should be made to provide direct notice to "all those with a recorded interest in the lands within the watershed."

### **Conclusion:**

We recommend that DEP review our comments carefully and take serious steps to ensure this ANFR does not simply become a tool to stop growth. There needs to be an understanding that manufacturing and other industries provide the greatest positive impact to our Commonwealth and a stated belief that continued growth of these industries is vital to Pennsylvania. Business and industry provide the necessary tax base and needed capital resources to pay for the environmental improvements our state demands and deserves.

**Pennsylvania Chamber of Business and Industry**  
**February 19, 1999**

**Economic stability is a major, if not the most critical, quality of life issue for most Pennsylvanians. It is also a major provider of resources to further improve the environment. Both DEP and the 21<sup>st</sup> Century Commission have repeatedly emphasized that environmental protection and economic development cannot be mutually exclusive. This should also be reflected in regulation, *without apology*.**

Pennsylvania Chamber of Business and Industry

February 18, 1999

Testimony

**Pennsylvania Chamber of Business and Industry**

**Testimony on the Advanced Notice of Final Rulemaking for the Water  
Quality Standards – Antidegradation Program**

**Presented to the Environmental Quality Board**

**February 18, 1999**

**Southwest Regional Office of DEP**

**Pittsburgh, Pennsylvania**

Good evening. I want to thank the Environmental Quality Board and the Department of Environmental Protection for the opportunity to provide testimony on Pennsylvania's proposed changes to the water quality standards for anti-degradation. My name is John Onuska of INMETCO. I am here today on behalf of the Pennsylvania Chamber of Business and Industry.

The Pennsylvania Chamber of Business and Industry (the Chamber) is the largest, broad based business association in Pennsylvania. Our more than 6,000 members employ about 50% of Pennsylvania's private workforce or approximately 1.5 million people. 80% of our members have *less than* 100 employees. The Chamber

is dedicated to advocating reasonable regulations that encourage economic growth while protecting the environment.

The package before you greatly concerns the Chamber's membership. On August 9, 1995 DEP Secretary James Seif announced the "regulatory basics initiative" (Executive Order 1996-1) at the Chamber's DEP Quarterly meeting. He challenged the Chamber to identify regulations or policy that were more stringent than federal standards, overly burdensome or costly, outdated or unclear. On November 15, 1995 the Chamber met the challenge and delivered a 156 page document full of regulations that qualified for the regulatory basics initiative with recommendations for improvement. One of the issues we raised was regarding anti-degradation. To our members, this initiative signified the dawning of a common sense approach to the regulatory process and a recognition that environmental protection and economic prosperity were not mutually exclusive.

While we have seen improvement over the past few years in various areas, this particular package appears to be a deviation from the spirit of the regulatory basics initiative.

I will cover our general comments today. The Chamber will provide more detail in our written comments.

General Comments:

**1. The Proposed Rulemaking should be withdrawn pending the U.S. EPA's revisions to the federal antidegradation program**

Even as DEP rushes to finalize the ANFR, the U.S. EPA is moving ahead with substantial revisions to the federal water quality regulations -- including the antidegradation program. EPA has published and received comments on an advance notice of proposed rulemaking and should be submitting proposed rulemaking for comment within the year.

DEP should withdraw the ANFR for three reasons. First, the Department's desire to avoid "starting over" this late in the Rulemaking process is understandable; however, revisions to federal regulations may require DEP to revise the new regulations anyway. The public interest would be better served by a single rulemaking. The federal standards imposed by U.S. EPA have effectively provided special protection for Pennsylvania's Tier 2 and Tier 3 waters and will continue to do so.

Second, proceeding to final rulemaking before the federal regulations have been revised drains the vitality from Executive Order 1 of 1996, the Regulatory Basics Initiative ("RBI"). In this ANFR, the DEP has not adequately taken this Executive Order into account in developing this proposal. The substantial deviations from the federal program should be explained and justified. Obviously, this is very difficult when the federal program is in a state of flux.

Finally, the rush to beat the approaching deadline for the proposed Rulemaking has resulted in substantial changes which will not receive the full public attention they deserve. The ANFR is *fundamentally different* from the proposed rulemaking, yet even the minimal 30-day comment period is deemed "unnecessary" by the Department. DEP should reconsider its position on this point.

**2. DEP should give more thoughtful consideration to the economic implications of the ANFR.**

The ANFR provides a powerful means for state and national environmental groups and even local governments to block or restrict development. It also gives little credence to the protections already available under the Tier 1 program -- despite frequent public pronouncements concerning the effectiveness of these standards in protecting human health and aquatic organisms. In other words, streams are

currently protected in this state and continue to be protected regardless of whether or not they are “reclassified.” The water quality standards can be a highly effective tool to direct economic development and opportunity while at the same time protecting or enhancing water quality, yet there is no recognition of this role in this proposal. If the Department believes it must proceed with this approach, then it must subject it to adequate public scrutiny.

**3. The Department Should Adopt Regulations that Conform to the Antidegradation Regulations Promulgated for the Commonwealth by the Environmental Protection Agency.**

On December 9, 1996, the Environmental Protection Agency (“EPA”) promulgated antidegradation regulations for the Commonwealth. *See*, 61 F.R. 64816-64822 (December 9, 1996); 40 C.F.R. § 131.32. The antidegradation regulations promulgated by EPA for the Commonwealth conform to the federal antidegradation regulations at 40 C.F.R. § 131.12. The Department should withdraw its proposed final antidegradation regulations (on which it has received hundreds of critical comments from numerous interest groups with diverse and conflicting interests) and adopt regulations that simply conform to the antidegradation regulations that EPA has promulgated for the Commonwealth. Such an action would satisfy many of the objectives of Executive Order No. 1 of 1996.

- 4. All Landowners, permit holders and applicants should be notified by mail whenever a stream assessment for high quality (HQ) or exceptional value (EV) is initiated in their area**

The ANFR must include a requirement that DEP notify, by mail, all landowners, permit holders and applicants whenever a stream assessment for a high quality (HQ) or exceptional value (EV) is initiated in their area. This notification needs to include an explanation of the impacts an HQ or EV stream designation will have on the use of their property. Currently there is no such requirement in the ANFR.

- 5. Business Has Become a Leader in Environmental Stewardship**

Industry has been part of impressive cooperative efforts to protect the environment through many initiatives that far exceed state and federal environmental standards. For example, many Pennsylvania companies were the first of any in their industry in the entire country to achieve ISO 14000 certification (such as Warner-Lambert for pharmaceuticals, Wilton-Armetale for foundries). Yet this ANFR takes a step back to the old way of thinking by: 1) making it easier to place waters within the Commonwealth into the most restrictive water management categories; 2) call those

categories “uses” to further impede development; and 3) encourage continued use of the stream designation process as a tool to stop growth.

Conclusion:

We recommend the EQB and DEP take serious steps in this program to ensure it does not simply become a tool to stop growth. This regulation could have the appearance of an overall bias against industry. There needs to be an understanding that manufacturing and other industries provide the greatest positive economic impact to our Commonwealth and a stated belief that continued growth of these industries is *vital* to Pennsylvania in the 21<sup>st</sup> century. These industries provide high paying jobs, the necessary tax base and needed capital resources to pay for the environmental improvements our state demands and deserves.

Economic stability is a major, if not the most critical, quality of life issue for most Pennsylvanians. It is also a major provider of resources to further improve the environment. Both DEP and the 21<sup>st</sup> Century Commission have repeatedly emphasized that environmental protection and economic development cannot be mutually exclusive. This should also be reflected in regulation, *without apology*.

We hope that the EQB and DEP will give serious consideration to written comments they receive from industry.

**Thank you for the opportunity to speak today. We will be providing you with much more detail in our written comments.**

**Executive Director**  
**717-657-4515**  
**FAX: 717-657-4033**



**Commonwealth of Pennsylvania**  
**PENNSYLVANIA FISH & BOAT COMMISSION**  
 P.O. Box 67000  
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February 19, 1999

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 Division of Water Quality Assessment and Standards  
 Bureau of Watershed Conservation  
 P.O. Box 8555  
 Rachel Carson State Office Building, 10<sup>th</sup> Floor  
 400 Market Street  
 Harrisburg, PA 17105-8555

Re: Water Quality Standards-- Antidegradation

Dear Mr. Brezina:

I am pleased to provide you with the attached written comments in response to the subject Draft Advance Notice of Final Rulemaking on behalf of the PA Fish and Boat Commission. While the attached comments provide specific recommendations on areas where we believe the regulations could be strengthened or clarified, we believe that the regulatory package advanced by the Department is generally acceptable. We also believe that it is better than existing Commonwealth regulations and the present federal program that is in effect. Therefore, we encourage the Department and the Environmental Quality Board to act swiftly on approving these regulations for the benefit of the Commonwealth's citizenry and natural resources. Should you have questions about the attached comments, please contact Mr. John Arway of our Environmental Services Division, 450 Robinson Lane, Bellefonte, PA 16823, phone 814/359-5147 or email [jarway@fish.state.pa.us](mailto:jarway@fish.state.pa.us).

Thank you for the opportunity to comment on this important rulemaking package.

Sincerely,

*Pete*

Peter A. Colangelo  
 Executive Director

Attachments



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PA Fish & Boat Commission Comments  
Department of Environmental Protection's *Draft Advance Notice of Final Rulemaking*  
February 19, 1999  
Page 2

The following comments reflect the PFBC's position on specific issues contained in the subject rulemaking:

**Chapter 92. National Pollutant Discharge Elimination System**

**§92.81. General NPDES permits.**

The decision to not allow for general permits in Special Protection Waters (HQ and EV) is appropriate since the intent of the antidegradation program is to keep clean waters clean. The PFBC fully supports this change.

**Chapter 93. Water Quality Standards**

**§93.1. Definitions.**

**Class A Wild Trout Water--** We recommend using "designated by the Fish and Boat Commission" instead of "classified by the Fish and Boat Commission." This terminology better describes the PFBC listing process. This is also consistent with the language used in §93.4b (a)(2)(i)(C)(ii).

**Surface Water of Exceptional Ecological Significance--** The definition appears to be too narrow to allow for the inclusion of all surface water with exceptional ecological traits. The suggestion that they be limited to areas where water quality may be below standard but the ecology may be particularly significant would exempt areas that would truly qualify just on the basis of ecology. It is important to extend EV water protection to EV wetlands but not at the exclusion of other ecologically significant areas. An ecologist's definition of this phrase would be much broader than the proposed definition. In reality, the benthic tests that are prescribed in §93.4b (a)(2)(i)(A) for HQ waters and in §93.4b (b)(1)(v) for EV waters are actually tests for ecological significance and could be included within this definition. It can also be argued that Class A Trout Waters are also ecologically exceptional and should be included within this definition as well as water quality-dependent federal and state listed Threatened and Endangered Species. In fact, it is the position of the PFBC that Class A Trout Waters should actually qualify for EV protection because of their ecological and recreational significance. Although this change may be beyond the scope of this rule package, it should be evaluated in concert with the development of a Pennsylvania Fish IBI for inclusion in the next Triennial review. Although the benthos and Class A Wild Trout are individually addressed in their separate provisions in this rule package, T&E species are subjectively addressed in §94.4c (a)(2). It is recommended that water quality-dependent state and federally listed T&E species be included within this definition so that they are afforded the necessary protection provided by §93.4b(b)(1)(v). The inclusion of T&E species in this definition would obviate the need for the implementation language in §93.4c (a)(2).

**PA Fish & Boat Commission Comments**Department of Environmental Protection's *Draft Advance Notice of Final Rulemaking*

February 19, 1999

Page 3

**Surface Water of Exceptional Recreational Significance--** This definition is also too narrow. Exceptional recreational significance should not be based upon rarity of "naturally occurring areas" as suggested but should be based upon either the quantity and/or quality of the recreational experience. Although recreational significance has been a part of the EV water definition for some time, to our knowledge, it has never been used to designate a water EV. In order for the term to be applied as it is intended, there must be some objective meaning assigned to the definition. It is recommended that the Department be charged with developing an inventory of recreationally significant areas from which other areas may be compared. This approach would work much the same way as the ecological comparison's for benthic communities and would provide some objectivity and meaning to this important determination.

**Surface Waters--** The definition includes the term's perennial and intermittent streams that have many different meanings to many different people. Other regulatory programs have struggled with defining these terms for their respective programs. The Department needs to be consistent with how it defines these terms so that it does not create regulatory confusion. Rather than redefine terms that are already defined and codified in Pennsylvania regulation, it is recommended that this definition cite reference to 25 PA Code §87.1 (Surface Mining of Coal) and 25 PA Code §271.1 (Municipal Waste).

**Wilderness Trout Stream--** We recommend that "...Native Trout..." be changed to "Wild Trout" since some Wilderness Trout Streams contain brown trout that are not truly native to Pennsylvania streams.

**§93.3. Protected Water Uses.**

We fully support keeping HQ and EV as protected water uses.

**§93.4a. Antidegradation.****§93.4a.(b) Existing Use Protection For Surface Waters.**

The Department's recognition that existing uses must be protected once they are identified will greatly improve the Commonwealth's ability to protect water quality and the natural and human resources that depend upon it to survive.

**§93.4b. Qualifying As High Quality or Exceptional Value Waters.****§93.4b (a). Qualifying As A High Quality Waters.**

We commend the Department for deciding that meeting the chemistry or biology test allows a surface water to qualify for HQ.

**PA Fish & Boat Commission Comments****Department of Environmental Protection's Draft Advance Notice of Final Rulemaking****February 19, 1999****Page 4**

**§93.4b (a)(2)(i)(A).**— The biological test explained within this section appears to limit the reference stream to candidate stream comparison to “a reference stream or watershed.” This language limits the comparison to one stream or watershed when the ideal comparison should be to a reference dataset that contains data from a variety of reference streams. Although §93.4b (a)(2)(i)(B) provides an option for the Department to use other methods, this section should be explicit in allowing the use of one stream dataset or a dataset from a series of reference streams.

**§93.4b (a)(2)(i)(C).**— It is unclear how the Department plans to use fish tissue or “other biological information” in its determination. The Department took the position on the redesignation of Spring Creek, Centre County that mirex contaminated fish should have overridden the Class A Wild Trout fishery population levels and prevented it from being designated HQ. Fortunately the wisdom of the Environmental Quality prevailed and the watershed was redesignated HQ but it appears that this language would allow fish tissue contamination to overrule true water quality or ecological significance whether measured by the chemistry, biology or trout tests. Further clarification of the intent of this provision as it relates to fish tissue is necessary especially since it was not included in the March 1997 Proposed Rule Notice.

**§93.4b (a)(2)(i)(C)(ii).**— Although we continue to support using the PFBC Class A Wild Trout Stream designations as a criterion for HQ-CWF, we believe that the Department should consider this designation for EV protection. Our analysis shows that there are only 1142.4 miles of designated Class A Trout water in the Commonwealth. These waters represent the best trout streams that we have and are only 1.4% of our total stream miles (83,261). Therefore, it is obvious that Class A trout streams are rare in their occurrence and distribution. They are a valuable component of the Commonwealth's natural resources and provide unique recreational opportunities. We recommend that the Department consider EV status for Class A Wild Trout Streams during the next Triennial review and also using the PFBC Wild Trout Stream designation as a criterion for HQ-CWF. The Wild Trout Stream List is now used in 25 PA Code Chapter 105 to designate Exceptional Value Wetlands and we believe would be an appropriate criterion for HQ. We estimate that there are 10,250 miles of Wild Trout water in the Commonwealth, which is about 12% of our total stream miles.

**§93.4b (b)(1)(iv).**— We agree that surface waters of exceptional recreational significance should be included in the EV test but refer to our discussion in §93.1. *Definitions*, which offers recommendations that would make this criterion more meaningful.

**§93.4b (b)(1)(vi).**— Wilderness Trout streams have been recognized as an appropriate indicator of Exceptional Value since the inception of the Water Quality standards program. They represent a unique class of streams that contain various levels of wild trout production in a wilderness setting. This PFBC designation represents more of a social designation than a science-based designation. There are 374 miles of Wilderness

**PA Fish & Boat Commission Comments****Department of Environmental Protection's Draft Advance Notice of Final Rulemaking****February 19, 1999****Page 5**

streams which represents only 0.4% of our total 83,261 miles of streams. A total of 87.7 miles (23%) of these Wilderness streams are Class A. Therefore, while the Wilderness Trout stream designation is most likely appropriate for EV, it should not be confused and offered as a science-based criterion. The best science-based fishery criterion is the PFBC Class A Wild Trout Stream designation and should be considered for use as an EV criterion during the next Triennial review.

**§93.4b (b)(2).**-- We agree that surface waters of exceptional ecological significance should be included in the EV test but refer to our discussion in §93.1. *Definitions.* which offers recommendations that would broaden the definition and make this criterion more meaningful.

**§93.4c. Implementation of Antidegradation Requirements.**

**§93.4c (a)(2).**-- This section appears to attempt to protect federally and state listed threatened and endangered species and their critical habitats by providing an opportunity for DEP staff to limit discharges during the permit review process. This implementation provision could work in cases where pollutant concentrations could be further restricted in mixing zones below outfall pipes and in other situations where predicted toxicities of certain chemicals may be expected to be greater for a particular T&E species when compared to a resident or test species. Unfortunately, there is not much information in toxicity databases on T&E species because they are so rare and difficult to test. Therefore, the burden is shifted from the permit applicant to the state or federal agency that has jurisdiction over the species to demonstrate that they are at risk. We propose that the Department continue to use T&E species in a proactive fashion in much the same manner that they do now. We agree that only the occurrence of water quality-dependent T&E species or their critical habitats should trigger an EV or HQ designation. Adding these species to the definition of Surface Waters of Exceptional Ecological Significance could solve this concern.

**§93.4c (b)(1)(iii).**-- The discussion within the Social and Economic Justification (SEJ) section provides for a lowering of water quality that will result in economic or social benefits to the public that will outweigh the harm caused by any reduction in water quality. Although this exception is contained in the Clean Water Act and has been used in Pennsylvania's for a long time, we are hopeful to see new policy that will provide for a meaningful review. The existing policy has been used by DEP staff to rubber stamp SEJ reviews since the Environmental Hearing Board decided the Big B Mining Company case. Any resultant policy must contain provisions that quantify natural resource and recreational value losses associated with the lowering of water quality in the SEJ balancing equation.

**PA Fish & Boat Commission Comments****Department of Environmental Protection's Draft Advance Notice of Final Rulemaking****February 19, 1999****Page 6*****§93.4d. Processing of petitions, Evaluations, and Assessments to Change a designated Use.***

**§93.4d (a).--** This section discusses that "assessments may be undertaken in response to a petition or on the Department's own initiative." Historically, PFBC staff have provided the Department candidate streams for redesignation which the Department has accepted based upon an informal understanding among agencies. PFBC staff submitted 42 separate stream sections for redesignation in 1993 and 72 in 1997 which, to our knowledge, have not been acted upon. Many of these recommendations include information that show waters which have a CWF or WWF designated use but should actually be protected by the antidegradation program because of their existing use. We are hopeful based upon the stated rule changes that the Department will be more responsive to future information and will use the previously supplied information on existing uses in future decision making.

In summary, we wish to commend the Department for assembling a Final Rule package that improves the Commonwealth's antidegradation program and demonstrates that Pennsylvania continues to be a leader in the fight for clean water. The comments submitted herein are intended to be constructive ones that we believe should strengthen the rulemaking package. The PFBC is committed to working with the Department in moving these ideas ahead and looks forward to working with the Department in the implementation of this rule.

### PA Fish and Boat Commission

3532 Walnut Street  
P.O. Box 67000  
Harrisburg, PA 17106-7000  
(717) 657-4525  
FAX: (717) 657-4033

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From: *John Anway*

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PASTEUR MÉRIEUX CONNAUGHT  
PRESIDENT AND CHIEF OPERATING OFFICER

Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
Harrisburg 2  
33 Market Street  
Harrisburg, PA 17101

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February 19, 1999

Dear Executive Director:

Pasteur Mérieux Connaught supports the PA Chamber in their challenge to the EPA's anti-degradation rules. The program exceeds the Federal standards placing Pennsylvania companies at a disadvantage. The current controls on point source discharge assure the protection of Pennsylvania waters. These proposed new rules for Exceptional Value waters would also eliminate discharge of storm water to the stream which would severely hamper our ability to grow.

The Commonwealth has made significant effort to help business but this program will reverse that effort. Pasteur Mérieux Connaught is very environmentally responsible and we have devoted significant financial and human resources to this effort. For example, while our company has increased our number of employees by 400% our effluent has increased by only 40%. In addition, Pasteur Mérieux Connaught has spent considerable funds to effectively treat our effluent so that it can be safely discharged to the stream. We have had an independent firm study the stream over the past five years and the studies demonstrate no negative effects.

These new rules will make it very costly to expand operations in Pennsylvania. They will require business to evaluate all alternative options to dispose of effluent even if they are not practical. In addition to the cost, these studies require significant time to complete and, therefore, could delay timely expansion and create a competitive disadvantage.

Best regards,



Enclosure

DJW:sh



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February 19, 1999

Edward R. Brezina, Chief  
 Division of Water Quality Assessment and Standards  
 Bureau of Watershed Conservation  
 Rachel Carson Office Building  
 400 Market Street, 10<sup>th</sup> Floor  
 Harrisburg, Pa. 17105-8555

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**Re: Advance Notice of Final Rulemaking-Water Quality Standards: Antidegradation**

Dear Mr. Brezina:

The Pennsylvania Farm Bureau (PFB) appreciates the opportunity to comment on the draft final regulation relating to the antidegradation provisions of the Commonwealth's water quality standards. Farm Bureau believes that the final draft regulation will have serious management and financial implications for farmers in Pennsylvania.

For informational purposes, it should be noted that Farm Bureau is Pennsylvania's largest general farm organization with membership exceeding 26,100 family farm members. At the national level, Farm Bureau is affiliated with the American Farm Bureau Federation (AFBF). My comments regarding the draft final regulation reflect policy as developed by our members.

The Pennsylvania Farm Bureau has long viewed Pennsylvania's stream redesignation program with some concern. We have seen it evolve from a well-intended water quality protection program to a potential tool designed to hamper farm expansion.

The following are Farm Bureau concerns regarding the final draft regulation:

1. The Governor's Executive Order No. 96-1 indicates that "If federal regulations exist, regulations of the Commonwealth may not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by State law." Critics assert that the final draft violates this Executive Order. Farm Bureau has yet to find a definitive DEP response to this valid concern.

2. Section 93.4d should be amended to expand public participation. Farm Bureau firmly believes that all landowners should be notified by mail when a high quality (HQ) or exceptional value (EV) stream redesignation process is initiated in their area. The Department should require petitioners seeking upgrading of surface waters to HQ or EV status to provide the names and addresses of landowners in the affected watershed. This mailing should include an explanation of the possible economic and property rights implications of stream upgrades.

February 19, 1999  
Page Two

Section 93.4d(a) limits public participation by local residents. As presently written, public comment is restricted to scientific and technical areas. Local landowners have the most to gain and the most to lose in this process. Local residents should be able to submit information on the social and economic implications of the proposed redesignation. The department should take into consideration that local residents are often few in number and their comments can be "outnumbered" by mass mailing campaigns promoted by groups supporting redesignation. These groups and individuals are often located outside the watershed and will not be affected by the upgrade.

3. Under the current program, threatened or endangered species are only considered in the context of EV designations. Section 93.4c(a)(2) of the final draft goes beyond this criteria and expands the endangered species and habitat protection issue to all waters. Section 93.4c(a)(2) reads; "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) in a surface water, discharges to such water shall be limited to ensure protection of such species and critical habitat."

Farm Bureau has several concerns regarding the PNDI in this section. The Bureau of Forestry within the Department of Conservation and Natural Resources (DCNR) administers the PNDI. Species on the PNDI are classified as endangered, threatened or rare by the DCNR, Pennsylvania Game Commission, Pennsylvania Fish and Boat Commission and the United States Fish and Wildlife Service. "Communities of concern" or lesser categories can also be placed on the PNDI. It is Farm Bureau's understanding that not all species on the PNDI are federally or state endangered or threatened. This section is far too expansive. Farm Bureau would also question if any research has been done as to determine what listings are currently on the PNDI.

4. Section 93.4b(a) should be revamped. A surface water should be required to meet both chemical and biological criteria in order to qualify as HQ water. The list of chemical parameters should include all parameters listed in the March 22, 1997 proposed amendments.

5. Section 93.4b(b)(1)(iii) allows an HQ stream to attain EV status if it meets the definition of Outstanding National, State, Regional or Local Resource Water. The current definition requires a government agency at any level to adopt water quality protective measures for surface water. This is disturbing for Farm Bureau. Any local government could "upgrade" a stream to EV status by adopting "water quality protective measures". These measures are not defined in the final draft. In effect, upgrade would be made without consideration of scientific or technical data, much less economic considerations.

6. Section 93.1 should be amended. The definition of "Outstanding National, State or Local Resource Water" should be deleted and replaced with a definition of "Outstanding National Resource Water" so Pennsylvania antidegradation regulations do not exceed federal standards.

February 19, 1999  
Page Three

7. Economic and social impacts should be considered during the stream assessment process.
8. The requirement that permit applicants request public comment before submitting their discharge permit to DEP should be examined. A public comment period during DEP's review of the application is already required. This demand is redundant, costly, time consuming without any benefit.
9. Candidates for EV designations should have to meet both chemical and biological criteria. Section 93.4b(b)(1)(v) should be modified to reflect this requirement.
10. Section 93.b(b)(1)(iv) allows a stream to qualify for EV status if it is designated as a "wilderness trout stream" by the Pennsylvania Fish and Boat Commission. Farm Bureau believes that this section should be deleted. The EV designation process should rest with the Department. Fish and Boat designations should be regarded as factors to be reviewed by the Department.

Once again, the Pennsylvania Farm Bureau appreciates the opportunity to supply agricultural insight to this important issue.

Yours truly,



William Adams  
Director, Natural Resources

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**Pennsylvania Farm Bureau  
Governmental Relations Division  
510 South 31st Street  
P.O. Box 8736  
Camp Hill, PA 17001-8736  
717-761-2740**

**Facsimile Transmission**

To: John H. Jewett

From: Bill Adams

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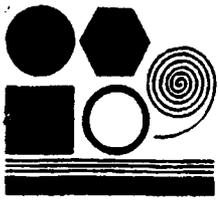
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DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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February 19, 1999

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Specialty Steel  
Industry of  
North America

The Honorable James M. Seif  
Secretary, Pennsylvania Department of Environmental Protection  
P.O. Box 2063  
Harrisburg, PA 17105-2063

Subject: Advance Notice of Final Rulemaking for the Department of  
Environmental Protection's Anti-degradation Program

Dear Secretary Seif:

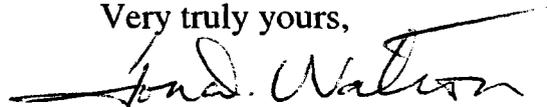
On behalf of the Specialty Steel Industry of Pennsylvania (SSIPA), I am writing to voice our concerns regarding the Advance Notice of Final Rulemaking for the Department of Environmental Protection's Anti-degradation Program. The draft final regulations relating to the anti-degradation provisions of the water quality standards (29 Pa.B. 455 – January 23, 1999) are more stringent than and inconsistent with existing federal regulations. Enactment of these regulations would be contrary to the state's Regulatory Basics Initiative (RBI) and Executive Order 1996-1 which require that Pennsylvania's regulations shall not exceed federal regulations unless state law or other compelling reasons require a more stringent program.

Because the proposed regulations differ significantly from the proposed rulemaking of March 22, 1997, more time is warranted to allow for a thorough evaluation by the public. Hasty passage of final regulations would be ill-advised and contrary to the best interests of the Commonwealth. Further, modification of existing regulations should await the substantial revisions currently being made to the federal water quality regulations by the United States Environmental Protection Agency.

The Honorable James M. Seif  
February 19, 1999  
Page Two

SSIPA respectfully urges you to table the subject draft final regulations and have new regulations developed based upon federal regulations, as they now exist and as they might be modified, as well as Executive Order 1996-1. SSIPA has submitted specific comments on the proposed regulations directly to Edward R. Brezina, Chief of the Division of Water Quality.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jon D. Walton", with a long horizontal flourish extending to the left.

Jon D. Walton  
Chairman

cc: David E. Hess  
Senate Environmental Resources & Energy Committee  
House Environmental Resources & Energy Committee  
Independent Regulatory Review Commission

74



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

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INDEPENDENT REGULATORY REVIEW COMMISSION

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February 19, 1999

Mr. Edward R. Brezina, Chief
Division of Water Quality Assessment and Standards
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8555
Harrisburg, PA 17105-8555

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Dear Mr. Brezina,

The United States Environmental Protection Agency (EPA) is pleased to provide comments on the draft final regulation relating to the antidegradation provisions of the Commonwealth's water quality standards which was published in the Pennsylvania Bulletin on January 23, 1999. Overall, the draft final version represents a major improvement over the previous version and we are pleased to inform you that most of EPA's concerns have been addressed. Changes which we strongly support include:

- Removal of language which would have allowed general permits in High Quality and Exceptional Value waters.
Provisions which allow biological or chemical data to be used to justify designation into the Special Protection Waters Program.
Retention of Special Protection Waters as designated uses.
Increased emphasis on early and more public participation in the process.
Permanent protection of existing uses as soon as they are confirmed by the Department.
Retention of the broad protection allowed by the Commonwealth's Exceptional Value Waters designation.

Our major concern with the regulation from the standpoint of EPA approval and ultimate removal of the Federal promulgation remains the need to absolutely protect water quality in Outstanding National Resource Waters. EPA's disapproval of Pennsylvania's regulations in June 1994 and promulgation in December 1996 were based on the fact that Pennsylvania's level of protection for EV waters, as described in the Special Protection Waters Handbook, did not meet the Federal intent of Tier III. We did not believe that comparison of the water quality impacts of a proposed discharge to the "long term annual average" water quality was sufficient. Major variations in pollutant concentrations can occur during storm events, seasonally, and throughout the year which could potentially affect the unique quality of an EV waterbody. EPA has acknowledged that there are situations across the country where EPA has approved antidegradation policies which did not prohibit new or expanded discharges. We acknowledged that a variety of formulations could be acceptable. In order to take a final action to approve or

disapprove Pennsylvania's ultimate submittal, the regulations adopted must be accompanied implementation procedures which describe how these decisions will be made. Other concerns and comments are described below.

#### §93.1. Definitions

- The phrase EXCEPTIONAL VALUE WATERS - SURFACE WATERS OF HIGH QUALITY WHICH does not appear to be followed by replacement text.

#### §93.4b. Qualifying as High Quality or Exceptional Value Waters

(1) Chemistry - We note that the chemistry test still requires that certain parameters be screened whose criteria level supports the public water supply use only (such as nitrite/nitrate-nitrogen and total dissolved solids). Chemicals which afford risks to human health are often quite different than those which affect aquatic life. Compliance with these drinking water criteria should not be expected to limit high quality protection of streams for the purposes of aquatic life use. This appears to be especially restrictive when PADEP's current practice does not expect the discharger to comply with these criteria until the point of first use.

(2) Biology - EPA applauds PADEP's commitment to use scientifically defensible methods to evaluate biological integrity. We are also very pleased with the State's effort and progress to evaluate all of the unassessed waters of the Commonwealth using biologically-based methods. However, because this is a new program in the Commonwealth, EPA cannot at this time confirm or deny the validity of the integrated benthic macroinvertebrate threshold scores set in Pennsylvania's EPA's rapid bioassessment protocol was not developed specifically as an antidegradation tool and EPA does not have data available to support that "nonimpaired" is the direct equivalent of "high quality." We do believe that it is the best option available to the Department at this time. We request that PADEP provide a rationale when this package is submitted to EPA for formal action which supports these scores as indicators of waters which meet the intent of the Federal definition of high quality waters in Pennsylvania.

#### §93.4c. Implementation of Antidegradation Requirements

We have received questions regarding how antidegradation protection will be provided to unassessed waters. The Unassessed Waters Project was designed to evaluate Pennsylvania waters with regard to placement on the Section 303(d) list for impaired waters. We strongly suggest that PADEP develop a strategy to evaluate those waters which the Unassessed Waters Project identified as "unimpaired" relative to the "nonimpaired" threshold for antidegradation. We also suggest that the implementation procedures define how new discharges to unassessed waters will be handled. An alternative would be to provide default protection to unassessed waters as HQ for new discharges unless proven otherwise.

**(a) Existing Use Protection**

(iv) This section notes that the Department will make a final determination of existing use protection as part of the final permit or approval action. This appears to apply existing use protection only to those situations where a final permit or approval action actually occurs. Existing use protection, including modification of designated uses to reflect higher existing uses, should occur even when a final permit action does not occur.

We also note that U.S. Fish and Wildlife Service's (USFWS) concerns regarding the accuracy of PNDI as a source for endangered species information and the need to protect aquatic-dependent species have not been addressed. In order to approve PADEP's final submittal and eventually remove the Federal promulgation in place, EPA will be conferring with USFWS and will need to confirm to USFWS that the regulations have no potential effect on endangered species. We suggest that PADEP discuss these concerns with USFWS so that an agreement can be reached. EPA would be willing to participate in those discussions.

**(b) Protection of High Quality and Exceptional Value Waters**

This section includes requirements which apply to point source discharges and nonpoint sources. It is important to note that the Antidegradation Policy must apply to all activities which have the potential to affect water quality. It is not clear from the language provided whether Pennsylvania's Policy applies to the wide variety of activities which could affect water quality, including wetlands fill, encroachment, hazardous site cleanups, certain agricultural operations, municipal and industrial stormwater controls, mining and construction-related erosion and sedimentation, and other activities which may not directly be perceived as qualifying for an NPDES permit. We suggest that Section (1) be preceded by language which describes broad protection from all activities which have the potential to affect Special Protection Waters. Of course, we expect the application of antidegradation to NPDES discharges to be most clear cut, but that should not preclude protection from other pollutant sources.

This section relies on phrases whose definition and implementation will be critical to the success of Pennsylvania's program. They include: cost-effective nondischarge alternative, social or economic justification, and public benefit. We suggest that these be clarified.

(2) Nonpoint Source Pollutant Control - This section includes a version of the Federal language which describes the level of nonpoint source control to be applied *where a decision to lower water quality has already been made*. Certain

nonpoint source activities are expected themselves to be subject to antidegradation review. Implementation of cost-effective and reasonable Best Management Practices does not guarantee that water quality will be maintained and protected. While antidegradation is not expected to provide *de facto* regulation of nonpoint sources where those sources are already regulated, antidegradation does apply.

**Wet Weather Impacts** - We have seen a number of instances where storm water controls and construction-related impacts have been a concern to water quality. We are especially concerned that these sources receive adequate evaluation and treatment to protection EV waters where there is an absolute requirement to maintain and protect water quality. We suggest that these sources should be addressed in the regulation or at least fully in the handbook.

#### §93.4d. Processing of Petitions

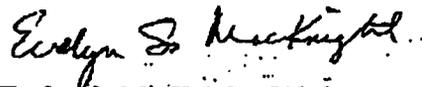
The public notice requests comment on whether the applicant for a petition to designate a water as High Quality or Exceptional Value should be required to submit a list of landowners and their owners in the watershed to be upgraded. There is no Federal analogy for this type of notice. It appears to be very burdensome when compared with the fact that dischargers who seek to lower water quality are not subject to this requirement.

#### Public Participation

We are pleased with the Department's efforts to enhance public participation. We suggest that public participation be sought in the decision to allow lowering of water quality. Previous public notices for permits in Special Protection Waters have only identified the designated use of the receiving stream. We suggest that the public notice include the basis for approving the social and economic benefit for HQ waters and the basis for allowing any discharge to EV waters be included in the public notice and fact sheet for the permit.

Thank you for the opportunity to review the draft final regulation. We look forward to completion of the process. If you have any questions, please contact me at (215) 814-5717.

Sincerely,

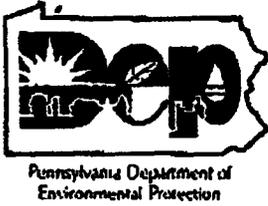


Evelyn S. MacKnight, Chief  
PA/DE Branch (3WP11)  
Office of Watersheds

cc: Dr. Hugh Archer, PADEP

PA Dept. of Environmental Protection 15th Fl., RCSOB 400 Market St. PO Box 2063. Harrisburg PA 17105-2063

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Number of pages including cover sheet: 5

To: Chuck Toprell

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Phone: \_\_\_\_\_

Fax phone: \_\_\_\_\_

CC: \_\_\_\_\_

From: Shawn Johnson

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Phone: 717- \_\_\_\_\_

Fax phone: 717-783-8470

REMARKS:  Urgent  For your review  Reply ASAP  Please comment

*Sorry for the delay - here are EPA's comments on the Antideq. ANFR.*

**Kim Garner**

**To:** Charles A. Tyrrell, Jr.; jjewett; Mary S. Wyatte; Richard M. Sandusky  
**Cc:** Kris Shomper  
**Subject:** FW: Advanced Notice of Final Rulemaking, DEP, Antidegradation, Regulation #7-310 (#1799)

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**Sent:** Tuesday, February 23, 1999 9:54 AM  
**To:** IRRRC  
**Cc:** Kris Shomper  
**Subject:** FW: Advanced Notice of Final Rulemaking, DEP, Antidegradation, Regulation #7-310 (#1799)

-----Original Message-----

**From:** John Wilmer [SMTP:jwilmer@ix.netcom.com]  
**Sent:** Tuesday, February 23, 1999 12:21 PM  
**To:** jjewett  
**Subject:** Re: Advanced Notice of Final Rulemaking, DEP, Antidegradation, Regulation #7-310 (#1799)



RPFREV.ASC

RAYMOND PROFFITT FOUNDATION REVISED COMMENTS ON  
PENNSYLVANIA'S PROPOSED ANTIDEGRADATION REGULATIONS

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Tyrrell  
Jewett  
Sandusky, Legal  
Foundation and

I. INTRODUCTION

The following comments are on behalf of the Raymond Proffitt Foundation and the Delaware Riverkeeper Network. These comments replace the comments submitted at the DEP public meeting held on February 10, 1999 at the DEP Southeastern Office.

If Pennsylvania makes the changes requested in this letter, then the Raymond Proffitt Foundation and the Delaware Riverkeeper Network will give "conditional approval" to the proposed regulations. After a period of no more than three years the revised regulations should be evaluated to determine if they have indeed kept Pennsylvania's clean streams clean.

II. HISTORY OF PENNSYLVANIA'S ANTIDEGRADATION REGULATIONS

The Raymond Proffitt Foundation sued EPA in 1993 for its failure to require Pennsylvania to have antidegradation standards at least as stringent as minimum federal requirements. EPA finally agreed with the Proffitt Foundation and settled the lawsuit by denying Pennsylvania's long overdue Triennial Review in June 1994.

Denial of that Triennial Review, however, was the only thing done by EPA. The Pennsylvania DEP had 90 days to make the changes, or EPA was supposed to promulgate its own regulations. DEP, instead, formed a "stakeholders" group made up of business; conservation and public interest groups; and resource agencies. This group broke up in August 1996 without a final agreement.

EPA waited for the stakeholders' group rather than make changes for Pennsylvania, although the Clean Water Act required EPA to act "promptly" if the state did not. The Proffitt Foundation sued EPA, for the second time, and was successful in forcing EPA to promulgate regulations for Pennsylvania, which went into effect on January 8, 1997. These regulations have been in place for two years, and provide the type of water quality protection envisioned by the federal Clean Water Act.

After the stakeholders' group broke up, DEP accepted final reports from two factions: 1) business, and 2) conservation and public interest groups; and resource agencies. Some stakeholders did not sign either report.

DEP solicited public comments in May 1996, when it proposed the first package of antidegradation regulations that supposedly reflected input from the stakeholders' sessions. DEP, however, took the side of business and ignored the views of conservationists and the public.

DEP wanted to replace the tougher federal regulations with weaker, less stringent ones, that gave DEP almost absolute discretion to refuse to protect existing uses

of streams and to keep high quality and exceptional value streams from receiving the protection they now receive. In addition, DEP wanted to give itself the power to undo the previous protection that all of us fought so hard to achieve.

The public outrage was loud and numerous. DEP took the first proposed regulations off the table for almost two years. It is now offering a second package of proposed antidegradation regulations.

### III. REGULATIONS MUST BE CONSISTENT WITH MINIMUM FEDERAL REQUIREMENTS AND MUST KEEP CLEAN WATERS CLEAN

While we agree that this package is an improvement upon the first package, there are still areas that need improvement. Before we comment on specific areas, however, we must discuss two important guidelines that should color the logic behind every regulation DEP proposes in this package. First, the regulations must meet minimum federal requirements. Second, the regulations must fulfill the goal of antidegradation: to keep clean waters clean. We are evaluating these regulations under the above two guidelines, as should DEP

#### A. Regulations must meet minimum federal requirements

The best way to meet minimum federal requirements is to simply incorporate them word for word into the new package. DEP does this only to a certain extent. Its language in Section 93.4a(b) for Existing Uses meets Tier 1 federal requirements. We agree with this language.

DEP's language for Tiers 2 and 3, however, does not repeat the federal language. We understand that DEP feels a need to write the regulations in its own language, but when it does so it runs the risk of not meeting minimum federal standards. DEP has created a confusing document because it includes part of the federal language in one part of the regulations, and different versions of the remaining parts elsewhere. It is very difficult to compare this package with minimum federal requirements.

It also is difficult to believe that DEP's versions of the federal language are more protective or even meet the minimum requirements. Because of DEP's history and current attitudes, we must examine its language carefully. Remember, it was DEP that fought EPA and citizen groups for over twenty years to keep Pennsylvania's antidegradation laws from meeting the federal requirements, and the only reason this Commonwealth is meeting those requirements today is because of the above two lawsuits.

We would ask, therefore, that in Section 93.4a (b), (c) and (d) DEP simply recite the

federal language found at 61 FR 64816. This will insure that it meets federal requirements.

Certainly, reciting the federal language will do no harm to the regulations.

We will look closely at any language different from the federal language, and we will

look closely at any approval by EPA. If state language weakens federal requirements, then we

will consider going back to federal court to reopen the previous lawsuit.

We cannot say this strongly enough: DEP's antidegradation regulations must meet

minimum federal requirements for antidegradation.

- B. Regulations must advance the goal of antidegradation  
which is to keep clean waters clean

The goal of antidegradation is to keep clean waters clean. It is not to find a way for

industry to discharge into waters. We certainly know this administration's attitude toward the

environment is less protective than it should be. The Regulatory Basics Initiative alone has

resulted in less environmental protection by eliminating regulations more stringent than the

federal law, which in itself was only meant to be the minimum level of protection while leaving

the job of passing tougher laws to the states.

DEP must write regulations that keep clean waters clean because that is the law, no

matter how much the administration may wish to favor industry. A choice was made in this

country over twenty-five years ago to favor protection of clean waters over industry. If DEP

wants to change the law, then it must do so through the Clean Water Act. DEP has no problem

taking federal money for much of its programs. It should have no problem complying with the

goal of federal law. DEP must obey the rule of law.

Every part of these regulations, therefore, must be analyzed by whether they satisfy the

goal of keeping clean waters clean. If these regulations will extend environmental protection to

our best streams, then we will support them. If these regulations fail in that goal, then we will

oppose them.

#### IV. AGREEMENT WITH CERTAIN CHANGES

Certain changes between this second package and the first package are acceptable to the

Foundation and the Riverkeeper. These are changes that we requested, and DEP has listened to

our collective voices. Specifically, we agree with the following decisions:

1. Withdrawal of provision allowing general permits in HQ waters;
2. Withdrawal of provision to eliminate HQ and EV as protected uses;
3. Withdrawal of 25% assimilative capacity provision;
4. Change of HQ qualifying test from chemical and biological to chemical

or biological;

5. EV test that requires either 1) meeting HQ criteria and a specified objective criteria

such as in a National Wildlife Refuge or 2) Meet certain definitions;

6. The process for protecting existing uses when such a stream is considered for permits, approvals or petitions; and

7. The public participation opportunities.

## V. DEP'S REQUEST FOR COMMENTS ON CHEMICAL PARAMETERS AND CONTACTING LANDOWNERS

### A. Chemical parameters

First, DEP has asked for comments on the chemical parameters to be used in evaluating a stream under the chemistry test. We would refer DEP to our two guidelines in answering these questions. Federal antidegradation laws allow a stream to be HQ when it exceeds water levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water. This should be a very easy standard for a stream to meet in Pennsylvania, since we have so many high quality waters.

This federal standard looks at different ways of measuring the value of a stream. The waterbody could be wonderful for fishing, but not so good for swimming or boating. The stream could be just the opposite: great for water skiing, but no fish. A stream could be a valuable resource for wildlife, but not near human habitation or use. In other words, the federal standard has envisioned different uses of a stream that would qualify for HQ.

DEP, however, is requiring all streams to pass every test for all uses. Two of the parameters, nitrate plus nitrate nitrogen and manganese, are used to protect drinking water. They do not adversely affect the ability of the stream to support propagation of fish. Therefore, a stream that was being proposed for HQ because of a healthy fish population would be denied that designation if it did not meet parameters unnecessary for fish propagation.

We would recommend that DEP formulate specific parameters for specific uses, rather than use the current shotgun approach. In the above example, these two parameters would be eliminated if HQ is sought because of fish. If, on the other hand, a stream is proposed HQ because it is a source of drinking water, then the above parameters should be included.

The response from DEP at the public meeting that a good fishing stream could always qualify under the biological criteria is not an acceptable answer. Each requirement should stand on its own and should meet the twin guidelines of meeting minimum federal requirements and keeping clean waters clean.

## B. Contacting landowners

DEP also wanted comments on its provision requiring petitioners requesting upgrades to provide a list of adjacent landowners. We would object to this requirement as too burdensome on the public. Streams such as Valley Creek in Chester County may have thousands of landowners. When DEP issues a permit it is only required to publish notice in the Pennsylvania Bulletin, or sometimes in a local newspaper. The same standard should apply to the public.

## VI. COMMENTS ON SPECIFIC REGULATIONS

### A. Antidegradation applies to activities, not just to discharges

The biggest single correction that must be made is that DEP must reformat its antidegradation language so that it covers more than just discharges. The United States Supreme Court and Pennsylvania's Environmental Hearing Board have held that antidegradation applies to diminution of water quantity. Reductions in water quantity from dewatering operations or drying up of streams in valley fills by eliminating recharge areas are just two glaring examples of how non-discharge activities can destroy the Commonwealth's streams. Antidegradation applies to activities, not just to discharges.

DEP can correct this major problem in one of two ways. First, in subsections 93.4a (b), (c) and (d), it can recite the exact language found in the federal regulations for Pennsylvania. That language does not limit antidegradation to discharges, but applies to any activities.

The second way DEP can correct this fatal flaw is by keeping the above sections as they are written, but rewriting other sections of its regulations to include activities as well as discharges. Subsection 93.4c (b) (1) would be changed to read: "(1) Point source discharges and other activities - The following applies to point source discharges and other activities to . . . waters." Next, all the subsections that use the phrase "discharge" would be changed to either "activities," or the phrase "and other activities" would be added. Subsections' 93.4c (b) (1) (iii) is the most important one that needs this change. It should contain similar language and read: "new, additional, or increased discharge or other activity." In addition, the phrase "unless the discharger demonstrates" would be changed to "unless it is demonstrated."

### B. Qualifying streams for EV designation

Another glaring problem occurs in Section 93.4b (b) (1), where DEP has excluded "National and state parks" from the requirements for EV. This is language that is in the federal requirements, and cannot be excluded.

We understand that DEP may not want to give EV protection to a HQ water merely

because it flows through a park. But federal antidegradation requires that such a stream receive EV protection; that is the law. We would agree with this concept because more people would use a stream that is flowing through a park than if it flowed through some isolated pristine area. Thus, this concept gives more protection to a stream used by people for recreation---and that is the purpose of antidegradation protection. Valley Forge Park would be eliminated from this proposed deletion, and that is unacceptable.

#### C. Qualifying streams for HQ designation

A major problem we have with qualifying waters as HQ lies in verifying that the requirements to be met are, in fact, reasonable requirements. In the federal language, a stream must only "exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water." If a stream's water quality was only slightly better than what would be necessary to support the propagation of warm water fish, then it would qualify. Most unpolluted streams would probably fall in that category.

##### 1. Chemical parameters

The chemical test is a long-term test, but DEP does not say how long. In our meeting, DEP said that it was still determining the length of time to meet this requirement. This lack of specificity does not give us comfort.

We also have commented on using specific parameters for specific streams. Please see those comments in Section III. A., above.

##### 2. Biological parameters

The biological test, likewise, raises concern. We do not know if 83% is too high or too low. We would suggest that DEP delete the use of a specific number in these regulations, and instead use that number in its policy. We would further suggest that DEP use the 83% number for three years to see how well it works for qualifying HQ streams. DEP could then issue a report at the end of three years that demonstrates the effectiveness of its numbers.

If the report demonstrates that 83% is a good number, then DEP could make the change permanent by proposing it as regulation during the next Triennial Review. This way, all sides of the issue would have facts on which to base their evaluation. Right now, neither the environmental community nor the regulated community know whether 83% is a workable number.

We believe that if DEP is going to ask the public to support absolute numbers, then DEP must provide the scientific justification for that data. So far, we have only seen conclusions, not

research.

If, however, DEP insists on using the 83% level for its biological parameters, then we would still like to see a report in three years. It is important that the public know whether this system is working.

In addition, we would expect that if a stream is not impaired, then it should qualify for special protection. If we start to see many streams fail the biological test, yet not be listed on the 303d list for impaired streams, then we will know that the 83% number is too high. If the 83% number is too high, then we would expect DEP to offer a lower number at the next Triennial Review.

D. All wild trout streams should be High Quality

In Section 93.4b (a) (2) (ii), DEP limits HQ protection to Class A Wild Trout Stream.

We believe that all wild trout streams should qualify as HQ. After all, trout are an indicator of a healthy stream.

E. Existing Use protection should include more data

Section 93.4c (a) (1) (i) should be rewritten to say the following: "(including, but not limited to, data . . . action)." This will allow data from other sources, such as other agencies, to be used in evaluating the existing use of a stream.

This additional language also will allow data from activities that may affect stream quality, but are not discharges or approvals. Valley fills, for example, might not fit under the current definition of what data will be examined.

F. The public should not be required to submit comments to the applicant

The public should only be required to submit comments to the DEP. Requiring the public to submit comments to the applicant will have a chilling effect on public participation. Relations between the public and an applicant are frequently not good, and sometimes almost violent. The public would feel safer submitting comments to government, and such comments would have a better chance of reaching government. After all, it is government that must review the comments.

F. The SEJ language does not meet federal requirements for public participation and intergovernmental review

The federal requirements require "public participation and intergovernmental review."

Section 93.4c (b) (1) (iii) only requires "full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's planning process." DEP is requiring less than the federal requirements, therefore, this language must be changed to conform to federal language.

G. The SEJ language must allow for benefits to the local area

A stream will benefit its local community in many ways, from aesthetics to recreation to commercial enterprises. The federal requirements only allow for such degradation if there is some return to the local community. This becomes a balancing test between the lowering of water quality and economic or social development to the local area.

If DEP wants to add language that includes economic and social benefits as well, then these benefits also should be to the local area. DEP should eliminate the phrase "and will result in economic or social benefits to the public" and simply add the phrase "benefits" to the existing federal language. The new language would read as follows: "that allowing lower water quality is necessary to accommodate important economic or social development and benefits in the area in which the waters are located." H. Bonding should be required for discharges or activities that affect EV streams

EPA denied DEP's last Triennial Review for antidegradation and required, among other things, that DEP not allow any new or additional discharges to EV streams. DEP objected and said that as long as the regulations required water quality to be maintained and protected then federal requirements were being met.

The reason for having no new or additional discharges to EV streams is simple. They are our best streams, and operations on these streams will eventually fail. When, for example, a sewage plant fails, DEP does not have a reputation for being the fastest enforcement agency in the area. Problems typically go on until the stream is harmed far longer than necessary.

We would suggest that if DEP does not want to limit new or additional discharges, then it require dischargers, or any activity to an EV stream, to post a bond that would cover the cost of a cleanup should the operation fail and lower water quality. Each bond would have to be individually determined.

## VII. CONCLUSION

The Raymond Proffitt Foundation and the Delaware Riverkeeper Network hereby give "conditional approval" to Pennsylvania's proposed antidegradation regulations, but only if the above recommendations are incorporated into the regulations. Final approval will be given only after three years, and only after a satisfactory showing by DEP that the proposed regulations meet minimum federal requirements and keep clean waters clean.

JOHN WILMER  
21 Paxon Hollow Road  
Media, PA 19063  
(610) 565-2736

Date: February 16, 1999

**Kim Garner**

**From:** Kim Garner  
**Sent:** Thursday, February 18, 1999 11:24 AM  
**To:** Charles A. Tyrrell, Jr.; jjewett; Richard M. Sandusky; Mary S. Wyatte  
**Cc:** Kris Shomper  
**Subject:** FW: Chamber's Comments on Water Regs

ORIGINAL: 1799/COCCODRILLI  
FORWARDED FROM IRRC E-MAIL: Tyrrell  
Jewett  
Sandusky  
Wyatte

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INDEPENDENT  
REVENUE COMMISSION

-----Original Message-----

**From:** Charles A. Tyrrell, Jr.  
**Sent:** Thursday, February 18, 1999 11:18 AM  
**To:** IRRC  
**Cc:** jjewett; Richard M. Sandusky; Kris Shomper  
**Subject:** FW: Chamber's Comments on Water Regs

These comments were submitted directly to me. They related to regulation number 1799. As noted, I informed Sharon that comments should be submitted to the general irrc e-mail address.

-----Original Message-----

**From:** Charles A. Tyrrell, Jr.  
**Sent:** Thursday, February 18, 1999 11:11 AM  
**To:** 'sroth@pachamber.org'  
**Subject:** RE: Chamber's Comments on Water Regs

Sharon,

Thank you for providing the Chamber's Comments on EQB's draft final regulation on water quality. For your information, when submitting comments to the Commission, please use the general IRRC e-mail address. This address is [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us). Thanks again for your input.

Chuck Tyrrell

-----Original Message-----

**From:** [sroth@pachamber.org](mailto:sroth@pachamber.org) [SMTP:[sroth@pachamber.org](mailto:sroth@pachamber.org)]  
**Sent:** Thursday, February 18, 1999 10:32 AM  
**To:** [chuckt@irrc.state.pa.us](mailto:chuckt@irrc.state.pa.us)  
**Subject:** Chamber's Comments on Water Regs

Chuck:

Hi. I am sending you the Chamber's official comments on DEP's Water Quality Standards - Antidegradation regs and also a copy of our testimony. Our members have expressed strong concern with this package.  
<<anti-deg commentsII.doc>> <<anti-deg testimonyIII.doc>>

Sharon Roth

Pa Chamber of Business and Industry

<< File: anti-deg commentsII.doc >> << File: anti-deg testimonyIII.doc >>

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Jewett  
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## ***Key Elements of the ANFR on Antidegradation***

The Department of Environmental Protection's (DEP) existing antidegradation program is substantially more stringent than its federal counterpart regulations. Despite the requirements of the Governor's Executive Order No. 1995-1 and the agency's own Regulatory Basis Initiative, the newly released Advanced Notice of Final Rulemaking (ANFR) makes the antidegradation elements of the department's water quality program even more stringent than the existing program. It does so in spite of the fact that no Pennsylvania law requires such a stringent program and without articulating a clear, overriding Pennsylvania interest that compels the department to dismiss the mandate of the Executive Order.

The draft final rule revising the antidegradation elements of Pennsylvania's water quality program is significantly different from the proposal that it originally published in March 1997. In the latest draft, the department greatly simplified the structure of the antidegradation requirements and substantially alters the existing program. DEP also jettisoned any effort to include some of the compromises tentatively reached during the failed 14-month regulatory negotiation on the antidegradation program that preceded its proposed rulemaking.

In violation of the Executive Order, the draft final rulemaking:

- ◆ liberalizes the standards DEP will use to qualify streams and wetlands for High Quality (HQ) or Exceptional Value (EV) protection; and
- ◆ imposes substantial new National Pollutant Discharge Elimination System (NPDES) burdens on permit applicants who wish to discharge effluents to Special Protection waters.

### **Summary of the major ANFR provisions**

#### **Antidegradation categories as "uses"**

The proposed rule removed the HQ and EV category from the list of protected uses. Instead, HQ and EV designations would be handled as "antidegradation management categories." The draft final rule abandons the proposal and restores the current approach that considers HQ and EV designations as water uses.

#### **Existing use protection**

The draft final rule adds federal Tier I language at §93.4c(a) (existing use protection) to clarify that existing uses and the associated levels of water quality should be maintained and protected. The subsection stipulates that DEP will evaluate possible use designations using technical data either gathered on its own or submitted in a redesignation petition.

The draft final rule also states that "interested persons" may provide the department with any information pertinent to the protection of existing uses during its evaluation of a permit application. DEP will make a final determination on the uses that a permit applicant must protect as part of the final permit or approval action.

#### **Threatened or endangered species**

Under the current program, threatened and endangered species are only considered in the context of EV designations. Instead, the ANFR would protect listed species whenever their presence or the presence of their critical habitat is confirmed. New §93.4c(a)(2) ensures the protection of threatened or endangered species and their critical habitat by requiring the department to limit discharges to protect such species and their habitat. DEP will protect such species by controlling the scope and extent of effluent mixing zones in the receiving streams.

## ***Key Elements of the ANFR on Antidegradation***

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### **HQ waters**

The current regulation and the proposed rule allow streams to qualify for High Quality protection if the candidate stream satisfies both a chemistry and a biology test. The proposal required water chemistry to be evaluated through an analysis of a suite of parameters in one or more grab samples taken from the HQ candidate stream at representative stream flow conditions. The biology is based on EPA's Rapid Bioassessment Protocol or other peer-reviewed procedures. Class A Wild Trout Streams designated by the Pennsylvania Fish and Boat Commission (PFBC) also qualify as HQ waters under the DEP proposal if they meet the chemistry test.

DEP substantially liberalized the HQ qualifying criteria in its new draft final rule at §93.4b(a). Instead of satisfying both tests, the draft only requires a candidate stream to meet either the chemistry or the biology standard.

DEP expects petitioners seeking a HQ designation for a stream to rely principally on the RBP benthic macroinvertebrate test. The RBP test is much simpler and less expensive to conduct than a long-term analysis of a stream's chemistry.

The new chemistry test requires that long-term water quality be better than the criteria for certain chemical parameters listed in §93.7, Table 3 at least 99 percent of the time. The list of chemicals that must be evaluated is shortened by more than half from the original proposal and contains only a few metals. In the preamble to the draft final rule, DEP asks readers for comments on which particular chemicals or parameters should be used in the chemistry test to qualify waters for a High Quality designation.

The HQ biology test is based on EPA's Rapid Bioassessment Protocol (RBP). The EPA RBP is a peer-reviewed methodology that establishes a streamlined procedure for evaluating three different biological standards, water chemistry, and watershed habitat to determine the health of a stream's biological community.

The ANFR requires a candidate stream to evaluate only one of the metrics used in the RBP to demonstrate that the stream's biological community is unimpaired and therefore eligible for protection as a HQ stream. Under the ANFR, if the macroinvertebrate community in the candidate stream achieves a score of at least 83 percent of a reference stream score, the stream qualifies for HQ protection.

### **Social and economic justification (SEJ)**

The current program requires permittees seeking authorization to discharge into HQ waters to maintain and protect the water quality in the stream unless there is important social or economic justification to lower water quality. The proposed rule added a new "balancing" test to clarify how permit applicants can demonstrate SEJ. The test required the benefits to the public that accrue from the proposed stream discharge to "outweigh" any expected water quality degradation before a permit can be issued.

The foregoing revisions remain in the draft final rule. DEP has yet to develop guidance or policy documents that spell out the criteria and procedures it will use to conduct the proposed SEJ balancing test.

### **de minimis SEJ exemption**

Proposed §93.4a(b)(6) provided that discharges that use less than 25 percent of the HQ water's assimilative capacity when considered alone or in combination with all existing and anticipated discharges to the stream are exempt from satisfying the SEJ requirements.

## ***Key Elements of the ANFR on Antidegradation***

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DEP abandoned the provision in the draft final rule in response to criticism received during the public comment period. DEP believes that the provision was crafted in a way that would have had very little relevance to most dischargers.

### **General permits**

§§92.81 and 92.83 currently preclude the use of NPDES general permits in Special Protection waters. Following a reg-neg recommendation, the proposal modified the sections to allow the use of NPDES general permits in High Quality Waters. The restriction on the use of general permits in Exceptional Value Waters remained in place.

DEP deleted the provision allowing the use of general permits on HQ streams in response to environmentalist opposition it received during the comment period. DEP told CAC that the question is still open, however, and that it will come forward with a final resolution of the matter in the context of the general water quality program Regulatory Basics Initiative rulemaking that was approved by the EQB in June of last year.

### **EV waters**

The proposed changes to the current EV program were minimal. The proposed definition for Exceptional Value Waters in §93.1 was very similar to the current Pennsylvania definition, and the regulation contained the specific chemistry and biology tests that an EV candidate must satisfy to achieve the designation. Generally, EV waters were required to meet the same water chemistry test used to evaluate HQ waters. The biology test was different, however. To qualify as an EV stream, the water body must contain “outstanding” aquatic communities as demonstrated by a RBP macroinvertebrate score of 92 percent when compared to a reference stream. A stream could also qualify if it is designated by the PFBC as a Wilderness Trout Stream.

The draft final rule alters the EV standards, which are now contained in new §93.4b(b). To qualify for an EV designation, a stream must first qualify as High Quality Waters as outlined above. Then it must meet one of six other criteria spelled out in new §93.4b(b)(1).

Under the draft final rule, a stream that scores 83 percent on the RBP macroinvertebrate test can be elevated to EV status if it qualifies as either:

- ◆ waters in a National Wildlife Refuge or a State Game Propagation and Protection Area;
- ◆ waters in a designated National Natural Landmark, Federal or State Wild or Scenic River, Federal Wilderness Area, or National Recreational Area;
- ◆ waters that are an “outstanding national, state, regional, or local resource water”, which are defined in the draft regulation as “a surface water for which a national or state government agency has adopted water quality protective measures in a resource management plan, or regional or local governments have adopted coordinated water quality protective measures along a watershed corridor by zoning or other ordinances”;
- ◆ waters that are of “exceptional recreational significance”, which are defined in the regulation as “a surface water which provides a water-based, water quality dependent recreational opportunity (such as fishing for species with limited distribution) because there are only a limited number of naturally occurring areas or waterbodies across the state where the activity is available or feasible”;
- ◆ waters that achieve a score of at least 92 percent or its equivalent using the RBP benthic macroinvertebrate methods and procedures; or
- ◆ a water that is designated by the Pennsylvania Fish and Boat Commission as a “Wilderness Trout Stream.”

## ***Key Elements of the ANFR on Antidegradation***

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Alternatively, a water body can qualify for the EV designation without meeting the HQ standard if it qualifies as a “surface water of exceptional ecological significance.” The draft regulation included the EV classification primarily to allow wetlands to receive an EV designation based on a classification made under *Chapter 105*.

### **Pollution prevention**

The proposed rule also included a number of other antidegradation provisions that affect both permitting and the designation of Special Protection waters. One provision stipulated that applicants attempting to permit a discharges to HQ or EV Waters must first evaluate and use alternatives to stream discharge that are environmentally sound and cost-effective, and use best technologies. The draft final rule retains the provision in §93.4c(b).

### **Nonpoint source controls**

The proposed rule also stipulated that the department will “implement programs that promote” cost-effective and reasonable best management practices for nonpoint sources in Special Protection watersheds. The draft final rule strengthens the provision by stipulating that the department will “assure that cost-effective and reasonable best management practices for nonpoint source control shall be achieved.”

### **Public participation in the designation process**

The proposed rule added new public participation requirements to the antidegradation program for redesignating streams.

One provision allowed persons submitting petitions for stream upgrades to submit a complete antidegradation evaluation report along with a redesignation petition to the department. The petitioner’s antidegradation report may take the place of DEP’s field evaluation of an upgrade candidate.

Another provisions stipulated that the department would publish notice of its intent to assess surface waters for potential classification as High Quality or Exceptional Value Waters in the Pennsylvania Bulletin and in a local newspaper of general circulation. DEP would also send a copy of the notice to all municipalities containing waters subject to the assessment. The notice would request submittal of technical and scientific information concerning the quality of the waters to be assessed to supplement the department’s technical evaluation of the Special Protection candidate.

The proposed rule also required the department to conduct a public hearing on any proposed discharge into EV waters.

Section 93.4d of the draft final rule contains a modified version of the foregoing public participation elements. It stipulates that the department will publish in the Pennsylvania Bulletin and in the local newspaper notice of receiving a complete evaluation accepted by DEP from an outside party with the recommended designation along with a notice of intent to assess the water for redesignation. All municipalities contained in the watershed would also receive a copy of the notice, and the department would be able to conduct a fact-finding meeting or hearing to collect further information and comment in those areas being assessed for special protection.

In the preamble to the draft final rule, DEP is also soliciting comments on whether a person petitioning the EQB to change a designated use to HQ or EV waters should be required to submit a list of landowners in the watershed as part of the petition so that they could be notified by the department directly whenever a Special Protection redesignation is being considered.

## ***Key Elements of the ANFR on Antidegradation***

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### **Special public participation requirements for permit applicants**

The proposal also established significant new requirements that potential permit applicants must address before submitting an NPDES permit application for discharges to HQ or EV waters. The new requirements supplement existing public participation mandates contained in §§92.61, 92.63, and 92.65. The proposed public participation provisions are retained essentially unchanged in §93.4c(b)(1)(i).

Under the draft final rule, the potential permittee must publish a notice in a local newspaper of general circulation that the applicant intends to apply for a permit to discharge into HQ or EV waters. The purpose of the notice is to solicit public comment on the proposed discharge. The comment period must be open for 30 days.

The notice must state the name of the receiving water and its antidegradation classification, and it must provide the address of an accessible public location, such as a public library, where interested persons may review information regarding the discharge, any social or economic justification analyses, and any public comments submitted to the applicant regarding the proposal.

The permit applicant must provide proof of publication of the notice, a copy of all public comments received, and a response to the comments to DEP prior to the department's review of the discharge proposal.

Finally, when the department publishes notice of complete application, the notice will include the antidegradation classification of the receiving waters.

**COMPARISON OF EPA AND DEP ANTIDEGRADATION REQUIREMENTS**

<b>Issue</b>	<b>EPA</b>	<b>DEP ANFR</b>
<b>TIER 1 PROTECTED WATER USES</b>	Existing uses maintained and protected	Existing uses maintained and protected
<b>TIER 2 HIGH QUALITY WATERS</b>	<p>Water quality exceeds standards required to support aquatic life, wildlife and recreational uses</p> <p>Allow degradation when lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located</p> <p>Water quality cannot be degraded below criteria required to protect existing uses</p>	<p>Water quality exceeds level necessary to support uses or</p> <p>Stream supports macroinvertebrate life at a level below that of a HQ reference stream</p> <p>Allow degradation when lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located and</p> <p>The public benefit of discharge must outweigh expected reduction in water quality</p> <p>Water quality cannot be degraded below criteria required to protect existing uses</p> <p>SEJ granted for municipal sewage project to correct existing public health problem</p> <p>Nondischarge alternatives evaluation required</p>
<b>TIER 3 EXCEPTIONAL VALUE WATERS</b>	<p>High quality waters (as defined above)</p> <p>and</p> <p>The waters qualify as an Outstanding National Resource</p> <p>Maintain and protect existing quality</p>	<p>High quality waters (as defined above)</p> <p>and</p> <p>The waters qualify as an Outstanding National, State, Regional or Local Resource</p> <p>Maintain and protect existing quality</p> <p>Nondischarge alternatives evaluation required</p>
<b>NONPOINT SOURCE PROTECTION</b>	Cost effective and reasonable BMPs for nonpoint source protection (HQ)	Cost effective and reasonable BMPs for nonpoint source protection (HQ and EV)

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INDEPENDENT REGULATORY  
REVIEW COMMISSION



**Kim Garner**

**To:** Charles A. Tyrrell, Jr.; jjewett; Richard M. Sandusky; Mary S. Wyatte  
**Cc:** Kris Shomper  
**Subject:** FW: ATTN: Chuck Tyrrell - Antidegradation Comments

ORIGINAL: 1799

COCCODRILLI

Forwarded e-mail to: Tyrrell  
Jewett  
Sandusky  
Legal

-----Original Message-----

**From:** Steve Rhoads [SMTP:srhoads@per.com]

**Sent:** Monday, February 22, 1999 1:01 PM

**To:** [IRRC@irrc.state.pa.us](mailto:IRRC@irrc.state.pa.us)

**Subject:** ATTN: Chuck Tyrrell - Antidegradation Comments

Attached are the cover letter and comments of POGAM on the ANFR on antidegradation.



Antidegradation ANFR  
- POGAM C...



Antidegradation ANFR  
- Brezina...

# **PENNSYLVANIA OIL & GAS ASSOCIATION**

106 Locust Grove Road, Bainbridge, PA 17502

Tel: 717-426-0067

Fax: 717-426-3010

February 23, 1999

Edward R. Brezina, Chief  
Division of Water Quality  
P.O. Box 8555  
Rachel Carson State Office Building  
10th Floor - 400 Market Street  
Harrisburg, PA 17105-8555

ORIGINAL: 1799/COCCODRILLI

E-mail forwarded to: Tyrrell  
Jewett  
Sandusky  
Legal

## **Re: Water Quality Standards – Antidegradation**

Dear Mr. Brezina:

I write on behalf of the Pennsylvania Oil and Gas Association to express our grave concerns with the aforementioned draft final regulation.

As written, the draft final rulemaking represents a repudiation of the long hours and hard work put forth by the participants in the department's regulatory negotiation on the antidegradation program. True, no consensus was reached in that 14-month effort, but that is beside the point. The regulatory negotiation was initiated and carried forward on the premise that we and the new Department of Environmental Protection were committed to striking a reasonable balance between the strong desire to protect our highest quality and truly exceptional streams and the obvious need for continuing economic development.

The draft final rulemaking dismisses that common sense principle. No effort appears to have been made to reform the existing program to eliminate its excesses. To the contrary, the most egregious elements of the existing program appear to be written to accommodate even more abuse and mischief.

The draft final rule also ignores the mandates of Governor Ridge's Executive Order 1996-1. We all know that Pennsylvania's current antidegradation regulation is substantially broader and more stringent in application than the US Environmental Protection Agency program, yet no effort is made in the draft final rule to align the program more closely with the federal rule. On the contrary, the draft final rule imposes new permitting hurdles and burdens that are not required by the federal program. It extends Exceptional Value protection to a range of streams that was never envisioned when EPA established its Tier 3 program. And it proposes a High Quality waters standard that blurs the line between Tier 1 and Tier 2 so that many streams with water quality that does not exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water will become eligible for the HQ designation. Unfortunately, all of these revisions are proposed with absolutely no attempt to articulate a compelling Pennsylvania reason for them or to justify them by pointing to a specific mandate of state law.

The attached comments on the draft final rulemaking address the foregoing concerns in more detail. I hope you will consider the issues we raise, and if you proceed to final rulemaking in the next month or two, I urge you to rewrite the rule so that it faithfully reflects the basic principles underlying the work of the reg-neg team and to address the mandates of the Governor's Executive Order.

**For the Pennsylvania Oil and Gas Association:**

Stephen W. Rhoads

## **Comments of the Pennsylvania Oil and Gas Association on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation**

*25 Pennsylvania Code Chapters 92, 93 and 95*

### **GENERAL COMMENTS**

**The Department should postpone action on the antidegradation rulemaking until US Environmental Protection Agency finally promulgates revisions to the federal water quality program.**

In December 1996, the US Environmental Protection Agency (EPA) promulgated an antidegradation rule for Pennsylvania to rectify deficiencies in the state program. (*See*, 61 FR 64816-64822 (December 9, 1996); 40 CFR §131.32.) The federal rule is meant to ensure that the state's program adequately protects Pennsylvania's waters until the Environmental Quality Board can promulgate acceptable revisions to its program. The draft final rulemaking represents the Department's attempt to address that need.

Last year, EPA published an advance notice of proposed rulemaking to solicit public comment on a wide range of issues it hopes to address in revisions to its water quality regulations, including the antidegradation program. The federal agency is expected to publish a proposed rulemaking to update the program later this year.

While we appreciate the Department's desire to complete the current rulemaking effort before May, we question the wisdom of promulgating a regulation that may soon be out of date and in need of revision once again. We believe that the public interest may be better served if the Department wait until it has a clear understanding of what the EPA intends to do with the federal water quality program before it proceeds to final rulemaking. The Department could add modified antidegradation elements to its recently proposed Regulatory Basics Initiative (RBI) rulemaking for the water quality program (No. 7-338) along with other changes needed to accommodate the federal revisions after the EPA completes its work.

A delay would also give the public a much better opportunity to comment on the antidegradation elements of the rulemaking. The ANFR contains substantial and major revisions from the version of the rule that the EQB published in proposed form, and a longer comment period should be provided to ensure that the public adequately understands the scope of the changes and their effect. By delaying the current rulemaking, the Department would allow the interested public enough time not only to offer the Department thoughtful commentary on the final amendments but also to understand and respond to the emerging federal revisions.

**The Department should postpone action on the antidegradation elements of its water quality program to properly respond to Executive Order 1996-1.**

The Department should delay promulgating the final antidegradation rule so that it has an opportunity to respond to the mandates of the Governor's Executive Order 1996-1 and the RBI. It appears from the preamble to the ANFR that DEP has not adequately taken either of the two directives into account when it developed the draft. The Department should provide the public with a full explanation and justification of all of the substantial deviations from the federal program that are included in the draft final rule.

## **PENNSYLVANIA OIL & GAS ASSOCIATION**

### **Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation**

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#### **The Department should consider the economic implications of the ANFR.**

The stream designation components of the existing antidegradation program serve as a powerful tool for anti-growth groups, environmental organizations and local governments who wish to block or restrict economic development under the guise of environmental protection. The ANFR strengthens that tool considerably by lowering the threshold for designating streams as High Quality or Exceptional Value and by blurring, if not eliminating the distinction between existing use protection and High Quality water protection.

The ANFR does not take into account the substantial implications that the antidegradation program can have on the economic health of human communities residing in a watershed that is being considered for elevated water quality protection. The Department made a strong commitment to the goal of striking a balance between the economic development and environmental protection implications of its antidegradation program in 1995 when it formed the regulatory negotiation effort to address the program. It seems to have discarded that commitment in the ANFR.

#### **SPECIFIC COMMENTS**

#### **The Department should allow the use of NPDES general permits in High Quality waters.**

The Department should not withdraw the proposed amendments to §§92.81 and 92.83 to allow the use of NPDES general permits in high quality waters unless it intends to postpone action on the entire antidegradation program. The issue has been under consideration since 1995 when the regulatory negotiation group endorsed the proposal as part of its preliminary consensus on the High Quality component of the antidegradation program. The Department has had adequate time to evaluate this issue and there is no reason to defer it any longer.

The Pennsylvania Oil and Gas Association continues to endorse changes to *Chapter 92* that would allow the use of general NPDES permits on High Quality waters. General permits provide the Department and the permittee with an efficient tool to regulate stream discharges so that High Quality waters are properly protected and the compliance burden placed on the discharger is reduced.

#### **The Department should not regulate the Exceptional Value Waters and High Quality Waters designations as protected uses.**

The EV and HQ waters designations are management categories, not “uses.” The Department understood this distinction when it prepared the proposed rulemaking for EQB consideration. In the preamble to the proposed rule, the Department explicitly stated that it proposed to delete the classification of HQ and EV as uses to be “consistent with federal regulations which do not require antidegradation categories to be defined as protected uses.”

The regulation creates great confusion by classifying HQ and EV as protected uses. For example, §93.4a(b) of the draft final rule requires the Department to maintain an instream use and the level of water quality necessary to protect it. The draft rule also states at §93.4a(c) that the water quality of HQ waters must be maintained and protected unless the discharger can provide social and economic justification (SEJ) pursuant to §93.4c(b)(1)(iii) to lower it. The Department cannot satisfy the existing use protection standard of §93.4a(b), if it allows the degradation of the water quality in a HQ stream after a discharger demonstrates SEJ.

## **PENNSYLVANIA OIL & GAS ASSOCIATION**

### **Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation**

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There are only two possible solutions to this dilemma: Either eliminate the SEJ provisions because of their potential to allow for violations of the existing use protection requirement, or reclassify the HQ and EV designations as antidegradation management categories and not as uses.

Elimination of the SEJ option would not only make the Department's High Quality waters regulation more stringent than EPA's Tier 2 standard, it would essentially remove the classification from the program. Without the SEJ element, High Quality waters would be regulated in a manner that is identical to Exceptional Value waters pursuant to §93.4a(c). Therefore, if the Department is sincere about providing a HQ waters element in its regulation, the only viable option available to eliminate the conflict would be to treat HQ and EV designations as management categories.

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The designation of HQ and EV status as stream uses also creates confusion in the context of the Department's consideration and issuance of NPDES permits pursuant to the existing use protection provisions of §93.4c(a) by blurring the distinction between effluent limits needed to protect existing uses and the limitations imposed to protect HQ and EV streams. In doing so, it sets the stage for mischievous meddling by third parties that may oppose, for whatever reason, the issuance of a permit to a given project.

Section 93.4c(a) stipulates that data supporting the presence of an existing use must be considered in the context of the Department's deliberations on a NPDES permit application. It is a relatively straightforward matter to protect a receiving stream that is designated as a cold water fishery if a new stream use (e.g., migrating fishes) is identified. The Department can modify the permit applicant's effluent limits accordingly, and there would be no delay in the issuance of the permit.

If the HQ designation is regulated as a "use," however, anyone opposed to a permit application could assert that the presence of cold water fishes is sufficient evidence that the stream is a HQ stream. If the assertion is made during consideration of a permit application, it would delay the processing of the permit until a proper assessment of the stream is completed or until the permit applicant completes a satisfactory SEJ demonstration.

Such meddling in the permit process could easily be avoided if the Department promulgated its antidegradation regulation to regulate the HQ and EV designations as management categories instead of uses. By drawing a categorical distinction between antidegradation classifications and stream uses, the Department would also help permit applicants make rational decisions about when to invest the considerable time and effort needed to develop a permit application because they would know up front the antidegradation status of the receiving stream they are considering.

By insisting on regulating HQ and EV designations as uses, the ANFR only creates confusion and the opportunity for mischief in the permitting process. We agree with other commentators who have asserted that the approach advocated in the ANFR also blurs the distinction between rulemaking and permitting and fosters de facto rulemaking without the protections of the *Regulatory Review Act* and the *Commonwealth Documents Law*.

To address this matter, §93.4c(a) should be replaced in its entirety with language that conforms to the federal language for protecting existing uses in 40 CFR §131.12(a)(1) and proposed amendments to Table 1 at §93.3 and the complimentary changes to the drainage lists in §§93.9a – 93.9z should be restored.

## PENNSYLVANIA OIL & GAS ASSOCIATION

### Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation

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#### **The Department should adopt appropriate standards for qualifying streams as High Quality waters.**

Section 93.4b(a) significantly liberalizes the standards that a waterbody candidate must satisfy in order to qualify for protection as a High Quality stream. While the subsection contains some notable improvements over the existing program, it will result in the elevation of antidegradation protection on the basis of an incomplete characterization of a stream's chemistry and biological integrity.

**Chemistry test.** The chemistry test included in the ANFR, which measures the stream's long-term water quality against a bright-line standard, is a substantial improvement over the test the Department currently uses in its assessment of streams. However, it relies on the analysis of too few chemicals to present an adequate characterization of water quality. Unless the chemistry test requires the analysis of a substantially expanded list of parameters, it will not result in a characterization that is adequate to demonstrate that the stream contains water quality that actually "exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water."

The list of chemical parameters to be evaluated should include all the parameters listed in the March 22, 1997 proposed rulemaking to ensure that the water quality of the stream exceeds the standards necessary to fully support the relevant aquatic life functions. The regulatory negotiation participants endorsed that list as part of their preliminary consensus on key program elements.

In addition, the chemistry test should be expanded to include an analysis of fecal coliform to demonstrate that the quality of water in the HQ candidate exceeds levels necessary to support recreation in and on the water. The fecal coliform standard would serve as an excellent surrogate for determining the adequacy of the stream for human contact recreation, e.g., swimming.

**Biology test.** The ANFR calls for an analysis of the integrity of the aquatic biota supported by the stream to evaluate the stream's eligibility for the HQ classification. The proposed biology test, however, is not sufficient to demonstrate that the stream contains water quality that actually "exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water."

To qualify for the HQ classification, a stream must support a "non-impaired, high quality" aquatic community based on an evaluation of one of the metrics required by EPA's *Rapid Bioassessment Protocols for Use in Streams and Rivers (RBP)*. The RBP, however, consists of protocols for three aquatic assemblages (algae, benthic macroinvertebrates and fish) and habitat assessment. The protocols for each metric are designed to evaluate a different characteristic of the biota that changes in some predictable way with increased human influence. The RBP anticipates that all four protocols will be used together because they each provide different but complimentary information on the biological integrity of the stream's aquatic community.

According to the most recent version of the RBP document, "the value of surveying more than one metric is to obtain a more complete assessment of biological condition. The different assemblages respond differently to certain stressors or to recovery from restoration activities." (See [www.epa.gov/ceisweb1/ceishome/atlas/bioindicators/rapidbioprotocol.html](http://www.epa.gov/ceisweb1/ceishome/atlas/bioindicators/rapidbioprotocol.html) for the latest information on EPA's RBP.)

EPA's discussion of the RBP explains the function of each metric:

- ◆ The periphyton assemblage, primarily algae, functions as a valuable indicator of short-term impacts because it is most directly affected by physical and chemical parameters and is sensitive to pollutants that may not visibly affect benthic and fish communities.

## PENNSYLVANIA OIL & GAS ASSOCIATION

### Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation

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- ◆ Benthic macroinvertebrates are a useful assessment tool because they are abundant in most streams, they function as good indicators of localized conditions, and they integrate the effects of short-term environmental variations.
- ◆ Fish serve as good indicators of long-term effects and broad habitat conditions. Because they directly relate to the status of a water body as a fishery resource, they also provide a direct evaluation of “fish propagation” and “fishability”.
- ◆ Habitat characterization is an integral component of final evaluation of impairment and according to EPA, it is “particularly important for proper interpretation of biosurvey results.”

If, as EPA suggests, the RBP is designed to function as a multiple metric tool to assess the characteristics of the stream’s biota and its relationship with the stream condition, the Department should not undermine its methodological integrity by singling out only one protocol for use in an antidegradation analysis. Proper application of the RBP requires an integrated evaluation of all of its metrics.

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Even if the RBP is applied properly as a multi-metric analysis of aquatic biota, its proposed use as the preferred standard for evaluating the HQ candidacy of a stream is inadequate. The RBP protocols competently describe whether the level of water quality in the HQ candidate supports the propagation of fish and shellfish, but they cannot provide an accurate assessment of whether the water quality of the HQ candidate actually “exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.”

The RBPs were designed as inexpensive screening tools for determining if a stream is supporting or not supporting a designated aquatic life use. In addition to playing an important role in use attainability analysis, the RBPs can also be applied to a variety of related program areas. They can be used:

- ◆ to characterize the existence and severity of impairment to the water resource;
- ◆ to identify causes and sources of impairment;
- ◆ to evaluate restoration activities or the effectiveness of controls;
- ◆ to support §305(b) reporting;
- ◆ to evaluate cumulative impacts from nonpoint sources in support of the §319 program;
- ◆ to evaluate the effectiveness of the Total Maximum Daily Load process;
- ◆ to support the development and use of biological criteria in the water quality standards program; and
- ◆ to refine aquatic life use classifications.

The RBPs cannot, however, function as the sole criterion for an antidegradation evaluation. While the protocols can be used to determine whether the aquatic community in a stream is “non-impaired,” they provide no direct evidence of whether the non-impaired aquatic community or the stream that supports it is “high quality.” In its discussion of the RBP, the EPA clearly states:

“Unlike chemical-specific water quality analysis, biological data do not measure the concentrations or levels of chemical stressors. Instead, they directly measure the impacts of any and all stressors on the resident aquatic biota.”

When properly applied, the RBP can indicate whether the state’s water quality program satisfies the existing use protection requirements of proposed §93.4a(b). For example, if a stream attains an integrated benthic macroinvertebrate score of at least 83 percent of a reference stream or

## PENNSYLVANIA OIL & GAS ASSOCIATION

### Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation

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watershed, it clearly demonstrates that the aquatic community is “non-impaired” when compared to the healthy biological community of a reference stream. The score only means that the aquatic use of the stream is attained. It does not offer unequivocal evidence that the stream’s water chemistry satisfies the EPA Tier 2 antidegradation standard, however.

The Department’s reliance on the RBP test in the context of the HQ evaluation, even if properly applied, inappropriately blurs the distinction in the antidegradation program between Tier 1 and Tier 2. To eliminate the ambiguity, the Department should supplement a rigorous multi-metric RBP evaluation with other measures to make the Tier 2 determination.

**Chemical and biological criteria.** The ANFR only requires a HQ candidate stream to satisfy either the rigorous chemistry test or an imprecise biology test. As such, it neuters the value of the improved long-term water chemistry test by making the chemistry criteria essentially irrelevant, and it opens the door to the HQ designation for streams that may only meet the Tier 1 standard. Surface water should be required to meet both a rigorous chemical test and a complete multi-metric RBP analysis in order to qualify as HQ water. Together, the two tests will demonstrate that the appropriate aquatic life uses are supported and that the water quality of the candidate stream actually exceeds the levels needed to maintain such support.

**Class A wild trout streams.** The ANFR provides at §93.4b(a)(2)(ii) that a stream classified as a Class A Wild Trout Stream by the Pennsylvania Fish and Boat Commission automatically qualifies as High Quality waters. By allowing the provisions to function as a stand-alone HQ qualifier, the Department is illegally relinquishing its statutory authority to implement the *Clean Streams Law* to another state agency. The Department cannot rely solely on the PFBC for surface water classifications. It must exercise independent judgment on such matters in the context of full public scrutiny and the regulatory review process. The provision should either be deleted or coupled with the proposed long-term chemistry test.

#### **The Department should eliminate the new “balancing” test from the Social or Economic Justification requirements.**

Proposed §93.4c(b)(1)(iii) establishes two separate tests that a permit applicant must satisfy in order to qualify to discharge an effluent to a High Quality stream. One test, which is identical to EPA’s SEJ requirements at 40 CFR §131.12(a)(2), is already included in the Department’s antidegradation program. It requires the applicant to demonstrate that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. The second test is a new requirement. It stipulates that an applicant seeking a permit to discharge to a high quality must demonstrate that the proposed project “will result in economic or social benefits to the public which outweigh any reduction in water quality which the new, additional, or increased discharge is expected to cause.”

The new balancing test is not a part of the federal program. It was created by the Department to overcome an adverse Environmental Hearing Board decision rendered in Big B Mining Company v. DER (1987 EHB 815) where the Board held that the Department had no regulatory authority for a balancing test. To impose such a test, the Board said, the Department would have to promulgate an appropriate regulation modifying its antidegradation program.

The Department violates Executive Order 1996-1 by including the new balancing test without offering a compelling reason for supplementing and expanding the basic SEJ requirements of the federal program. If the Department had a compelling reason to overturn the EHB’s Big B Mining Company decision, it would not have waited 12 years to amend the balancing test into the

## **PENNSYLVANIA OIL & GAS ASSOCIATION**

### **Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation**

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regulation. Without justification pursuant to the standards established in Executive Order 1996-1, the balancing test should be deleted from the final form regulation.

The new balancing test should also be deleted because the Department has failed to develop the guidance needed to ensure consistent application of the vague and subjective standard it establishes. Without explicit criteria and standards against which to evaluate a permit applicant's response to the balancing test, Department permit writers will be free to impose their own subjective value judgements on the applicant's submission. If the permit application is turned down on the basis of a permit writer's unguided interpretation of the balancing test, the applicant will have no recourse but to litigate the matter before the Environmental Hearing Board or the Commonwealth Court. In the meantime, neither the public nor the regulated dischargers will have any certainty regarding the meaning of this regulatory standard.

Regulations should foster clarity and consistency in the application of law. They should not be written to muddle difficult issues or encourage expensive litigation. The balancing test provision in the ANFR is vague and unjustified. Consequently, it should be deleted.

#### **The regulation should presume satisfaction of the Social or Economic Justification standard whenever a proposed project remediates an existing environmental problem or removes a potential threat to the environment.**

The ANFR includes a provision at §93.4c(c)(3) that stipulates that sewage facilities with proposed discharges to HQ waters are presumed to have satisfied the SEJ tests in proposed §93.4c(b)(1)(iii) if the project will correct existing public health or pollution hazards. The final regulation should not limit the SEJ presumption to sewage facilities. Such consideration should be extended to any project that results in the remediation of an existing environmental problem or the removal of a threat to the waters of the Commonwealth. Other projects that could easily qualify under such a standard include the plugging of an unplugged orphan oil or gas well, the re-mining of abandoned mines with pollutional discharges, or voluntary remediation projects under the *Land Recycling Act*.

#### **The Department should adopt appropriate standards for qualifying streams as Exceptional Value water.**

The ANFR substantially liberalizes the Exceptional Value waters program by extending the classification to many more streams than would be eligible for coverage under both the Department's existing rules and the EPA program. This is contrary to Executive Order No. 1996-1, which requires the Department to rein in all regulations that are more stringent than federal rules unless there is a state law specifically mandating a different standard or the Department can articulate a compelling Pennsylvania need that justifies it. There are no state laws that expressly require the Department's Exceptional Value Waters program to be more stringent than federal requirements, and no compelling state need for a higher standard has ever been established.

EPA's Tier 3 antidegradation program protects the highest quality waters in the nation. The Exceptional Value waters designation should be reserved for streams that exhibit truly unique ecological characteristics that are of national or statewide significance.

The Department should amend the final rulemaking to restrict the Exceptional Value waters designation to outstanding national and state waters that flow through publicly owned watersheds. Public ownership is an obvious indicator that the watershed has some special significance, but by itself, it is not sufficient to award a stream the EV designation. Streams on public lands should

## PENNSYLVANIA OIL & GAS ASSOCIATION

### Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation

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qualify for the EV designation only if the waters meet the long-term chemistry test discussed above and they satisfy a rigorous RBP evaluation that demonstrates that the aquatic life of the stream is among the best of the best.

The Department should not impose Exceptional Value protection on waters that flow through private lands because of the extreme restrictions the designation places on individuals and communities who reside in the affected watersheds. Waters that qualify for Tier 3 status are protected against any activities that could change their ambient quality. In effect, a Tier 3 designation means that activities that use the surface water to satisfy a human need are prohibited. By extending the Exceptional Value Waters program beyond outstanding streams in public parks and forests, the Department's ANFR will continue to impose unnecessary roadblocks on activities that could enhance the quality of life for individuals and communities who happen to live and work in watersheds through which the streams flow.

#### **The Department should provide enhanced opportunities for public participation in the Exceptional Value designation decision.**

If the final regulation allows the Exceptional Value designation to be placed on private watershed lands, the Department should provide for robust public participation in the decision to designate Exceptional Value waters.

First, the Department should require petitioners seeking to upgrade surface waters flowing through private land to HQ or EV status to provide the names and addresses of landowners in the watershed from tax records or other reasonably available resources. The list must include the names and addresses of *all* persons with a recorded interest in the land, including those who own the mineral estate or utility rights of way. In order for all the potentially affected landowners to have an opportunity to participate in the redesignation process, reasonable efforts should be made to provide direct notice to "all those with a recorded interest in the lands within the watershed."

Second, the ANFR asks for more public input on technical issues, but it brushes aside any serious consideration of the substantial economic and social impacts that the Exceptional Value designation can have for the people who live and work in the affected watershed. The Department should amend the final regulation to encourage full discussion of the implications of the EV designation. By providing opportunities for a comprehensive discussion of the EV designation and its ramifications, the Department will ensure that the people affected by an Exceptional Value upgrade have an opportunity to buy into it.

To facilitate such a discussion:

- The Department should be required to inform the owners of private property interests in watershed lands that would be affected by a new Exceptional Value designation how it will affect what they can do on their property.
- The regulations should allow the affected property owners to decide whether they want the Exceptional Value designation.
- The Department should be required to get a formal commitment from the owners of property interests in the affected watershed lands to preserve the resource at the strict Exceptional Value standard before recommending the designation to the EQB through a proposed rulemaking.

Pennsylvania's Exceptional Value regulations can be improved substantially if they are modified to allow the Department to take the time to ensure that the people directly affected by a potential

## PENNSYLVANIA OIL & GAS ASSOCIATION

### Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation

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decision to regulate a water body under strict Exceptional Value standards understand and endorse that level of governmental control. The Department should not blindly extend the federal Tier 3 dictate to streams running through private holdings on the basis of technical measures of the stream's intrinsic characteristics or the presence of aquatic species. When human communities are part of the watershed through which an Exceptional Value candidate flows, their interests and needs must also be taken into account.

By turning to the property owners in the watershed – the people most directly affected by the implications of the Exceptional Value designation – the Department can ensure that the resource to be protected is truly “outstanding” in the sense envisioned by the federal Tier 3 program because it will guarantee that those who rely on the watershed to sustain their economy and community recognize the resource as such and are committed to preserving it.

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By creating such opportunities for public involvement in this most significant decision, the Department is not only rationalizing its decision-making process for the EV designation, it is also complying with the specific requirements of state law. Section 5 of the *Clean Stream Law* imposes a requirement that the Department in adopting rules and regulations must consider, where applicable, the immediate and long-range economic impact upon the Commonwealth and its citizens.

We have heard much lately that the Department is not required to consider economic issues in the context of an EV evaluation because of a Pennsylvania Supreme Court case, Mathies Coal Company v. DER, 522 Pa. 7; 559 A.2d 506 (1989). The Supreme Court decision in Mathies does not relate to the issue of whether the Department should consider economic impacts in its antidegradation decisions. In Mathies, the Supreme Court characterized the matter before it as follows:

“The issue presently before us is specific and narrow: Is the DER required, as a matter of law, to consider the economic consequences to the discharger in establishing effluent limitations for discharges in issuing or amending a NPDES permit?”

In deciding against the coal company, the Court held that neither the *Clean Streams Law* nor an earlier Commonwealth Court decision in DER v. Borough of Carlisle, 16 Pa. Commw. 341, 330 A.2d 293 (1974) require consideration of the economic impact of its decisions on an individual discharger. The Court explicitly noted, however, that

“The economic impact which must be considered under the *Clean Streams Law* and under Carlisle relates to the impact on the community and public at large, not on the individual discharger.”

Clearly, the Court decision in Mathies makes it plain that the Department must consider the economic impacts of a decision to designate a stream as Exceptional Value waters. Such considerations are certainly applicable in this context because of the economic ramifications that the EV designation has on communities occupying the affected watershed.

**Outstanding National, State or Local Resource Water.** The ANFR allows High Quality waters that also qualify as “outstanding national, state or local resource water” to be elevated to Exceptional Value status. The ANFR’s definition of “outstanding national, state or local resource water” should be replaced with a definition of “Outstanding National Resource Water” so the Pennsylvania antidegradation regulations do not exceed federal standards. The new definition should state:

## PENNSYLVANIA OIL & GAS ASSOCIATION

### Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation

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“Outstanding National Resource Waters” (ONRW) are high quality waters that constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and water of exceptional recreational and ecological significance.

If the definition is not rewritten to limit its application to ONRW, it should be amended substantially. The current definition merely requires a government agency at any level to adopt coordinated water quality protective measures for the surface water to elevate a stream to EV status. The definition does not contain any standards to define “coordinated water quality protective measures,” and it does not address the situation where a watershed may lie entirely within one municipality. The definition also does not include any chemical and biological criteria to assure that only truly outstanding waters qualify. In its current form, one municipal governing body, such as a township board of supervisors, could upgrade a surface water from HQ to EV through its own unilateral action, without any consideration of scientific or technical data, much less consideration of broader economic or social impacts on the community or its residents.

Allowing municipal governments to make these designations is an improper delegation of authority under the *Clean Streams Law* that will have unintended negative consequences. By allowing local governments to impose the strict EV standard, DEP is empowering them to block unpopular development activities. This provision will become, in effect, a “super zoning” ordinance that may conflict with the *Municipalities Planning Code*, as well as with other state laws that preempt local action.

The definition should at least be rewritten to eliminate the authority of local governments to impose the EV standard by the enactment of local ordinances.

**Surface Water of Exceptional Ecological Significance.** The ANFR also allows HQ waters that qualify as “surface waters of exceptional ecological significance” to be elevated to EV status. The ANFR’s definition of “surface waters of exceptional ecological significance” does not provide any guidance to ensure that only truly exceptional waters qualify. The definition should be revised as follows:

“Surface Waters of Exceptional Ecological Significance” are thermal springs and wetlands which are designated as exceptional value wetlands pursuant to 25 Pa. Code §105.17(1) whose importance, environmental characteristics or ecological sensitivity are demonstrably unique or rare, based on objective and measurable criteria, but whose water qualify as measured by traditional parameters may not be particularly high, or whose character cannot be adequately described by such parameters.”

**Surface Water of Exceptional Recreational Significance.** Because HQ waters that qualify as “surface waters of exceptional recreational significance” are also eligible for elevation to EV status, the final rule should ensure that the definition of the phrase is clear and restricted to truly exceptional water. The definitions should be revised as follows:

“Surface Water of Exceptional Recreational Significance” are surface waters which provides a unique water-based, water quality-dependent recreational opportunity (such as fishing for species with exceptionally limited distribution) because the distribution of areas and water bodies across the state where the activity is available or feasible is extremely rare.”

**Wilderness Trout Streams.** Subsection 93.4b(b)(1)(iv) should be either deleted or modified in the same way that §93.4(a)(2)(ii) should be changed. The Department does not have authority

## **PENNSYLVANIA OIL & GAS ASSOCIATION**

### **Comments on the on the Advance Notice of Final Rulemaking Water Quality Standards – Antidegradation**

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to rely solely on PFBC stream designations as the basis for upgrading a stream from HQ to EV. PFBC designations should only be one of many factors that is considered by the Department in its evaluation of surface waters.

#### **The Department should eliminate the requirement for two public comment periods for permits on Special Protection streams.**

The ANFR retains provisions from the proposed rulemaking that require NPDES permit applicants to solicit public comment on proposed discharges to High Quality and Exceptional Value streams before applying for the permit. This is an unnecessary burden on the permit applicant that is not required by the federal regulations. It also serves no purpose because the department will also ask for public comments after the application is submitted.

The Department should eliminate the requirement that permit applicants must ask for public comments from the final regulation because it is costly, time-consuming and redundant.

#### **The Department should retain the “de minimis” permit threshold to ease the permitting burden.**

The Department should retain the special provisions in the proposed rulemaking for minimal impact discharges to ease the permitting burden for minor discharges to High Quality streams. EPA has approved such an approach in other states in Region III. We believe that the streamlined approach to regulating minor discharges to High Quality streams strikes a reasonable balance between the goals of the antidegradation program and continuing economic growth in the Commonwealth.

**Kim Garner**

**From:** Kim Garner  
**Sent:** Wednesday, March 24, 1999 9:20 AM  
**To:** Charles A. Tyrrell, Jr.; jjewett; Mary S. Wyatte; Richard M. Sandusky  
**Cc:** Kris Shomper  
**Subject:** FW: Ohio antidegradation requirements

ORIGINAL: 1799  
COCCODRILLI  
COPIES: Coccodrilli  
Tyrrell  
Jewett  
Sandusky  
Legal

-----Original Message-----

**From:** jjewett  
**Sent:** Tuesday, March 23, 1999 1:08 PM  
**To:** IRRC  
**Cc:** Charles A. Tyrrell, Jr.  
**Subject:** FW: Ohio antidegradation requirements

Please file this as a public comment for Regulation file #1799. Thanks!

-----Original Message-----

**From:** Barb Kooser [SMTP: [BKooser@savethebay.cbf.org](mailto:BKooser@savethebay.cbf.org)]  
**Sent:** Tuesday, March 23, 1999 1:04 PM  
**To:** John Jewett (E-mail)  
**Subject:** Ohio antidegradation requirements

When we were meeting about PA's antidegradation proposal, you asked about other states' requirements. Here is a web site to go to about Ohio's antidegradation program.

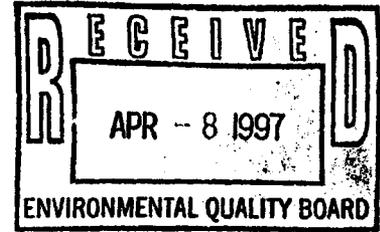
<http://chagrin.epa.state.oh.us/rules/antidegguide.html>

Barb Kooser  
Chesapeake Bay Foundation  
The Old Water Works Building  
614 North Front Street, Suite G  
Harrisburg, PA 17101  
phone: 717-234-5550  
fax: 717-234-9632

07:17 09:16

07:17 09:16

From the desk of  
**Steven Waldman**  
175 Vincent Road  
Paoli Pa. 19301



ORIGINAL: #1799  
COPIES: NONE  
(PER CAT)

3/4/97

Environmental Quality Board  
DEP  
PO Box 8465  
Harrisburg, PA., 17105

To the appropriate parties Most Able to Make A Difference,

As a father of three girls, and as citizen of this country, it is my right and my duty to write you with my concerns about the degradation of our area's waterways. It is imperative to maintain those regulations in force as of this writing, to protect our waterways from future chemical discharges. Any change in regulations that would lower water quality standards is unacceptable to my family now, and to all future generations.

Any reasonable potential increase in the cost of goods and services that comes as a result of maintaining the stringent water quality standards now in effect (or even further stringent regulations) is a price that I'd rather pay for now, as opposed to watching a child or other family member pay the price with the suffering that could come from some chemically induced illness.

Furthermore, this same logic is applicable to maintaining the integrity of all wildlife that coexists with us without choice in our domain.

Please write back to confirm that you will reject the DEP's current anti-degradation proposal, and that you will endorse the standards of the EPA. If you do not plan to reject DEP's proposal, then as a courtesy to my family and me, I respectfully request that you respond with a letter explaining your position.

Sincerely,

A handwritten signature in cursive script that reads "Steven Waldman".

Steven Waldman

RECEIVED PA DEP  
DIV OF W O ASSESS & STDS

97 MAR 25 PM 12:48

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JEWETT  
TYRRELL  
SANDUSKY  
WYATTE  
RRRSCCHAK

Craig Jensen  
39 High Rd.  
Levittown, Pa.  
19056

Thank you  
G.A.

Please reject the D.E.P.'s current  
anti-degradation proposal.

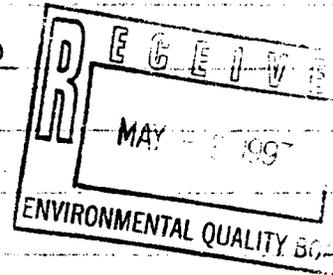
3/18/97

97 MAR 25 PM 12:48

9710127 00292

1810 Paxford Rd  
Allentown Pa 18103  
March 14, 1997

Environmental Quality Board  
DEP PO BOX 8465  
Horseshoe Pa 17105



Gentlemen:

Would you please  
reject the DEP's current  
anti degradation proposal.

I do not believe our water  
standards should be lowered  
and additional discharges be  
allowed into our waterways.

Please reply

Sincerely,  
Mrs. Holoman

DERESCHAK

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TYRRELL  
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WYATTE  
DERESCHAK

3-17-97

To Environmental Quality Board

FR Tim & Debra Kusters  
215 Norsam Drive  
Langhorne PA 19047

Pls reject the DEPs current anti degradation proposal

Thank you.

*Debra Kusters*

RECEIVED PA DEP  
DIV OF W D ASSESS & STDS  
97 MAR 25 PM 12:52

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LEGISLATORS, EPA & EQB

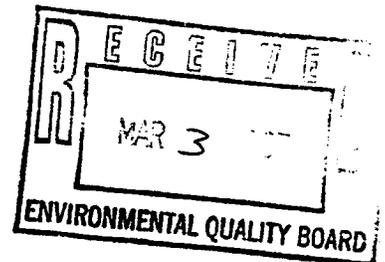
To Whom it may concern.

3/29/97

Let's ~~not~~ not make Penna any more of a national joke than it is now. Environmental laws need strengthening not weakening. Please don't add our clean air & water to the sorry list of values that the buffers we seem to elect have ruined. The air, water & forest land is a national treasure. Don't ruin what's left.

Robert R. Sheppard

Bob Sheppard  
19 Seckelpear Rd.  
Levittown, PA 19056  
215-949-1677



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BERESCHAK

Sharon Ottinger  
5 Harvest Rd.  
Levittown, PA 19056

March 18, 1997

To Whom it May Concern,

I am writing for the Clean Water Action in protest to the new regulations that would lower our water quality standards. I am asking you to reject the DEP's current anti-degradation proposal. We need standards that protect our waterways from any more degradation and keep our drinking water safe!

Sincerely,  
Sharon M. Ottinger

3  
ENVIRONMENTAL QUALITY BOARD

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1976-3-18

Diane Ottinger  
5 Harvest Rd.  
Levittown, PA 19056

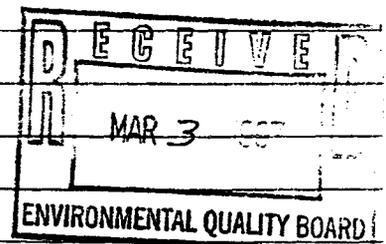
March 18, 1997

To Whom it May Concern,

I am writing for the Clean Water Action in protest to the new regulations that would lower our water quality standards. I am asking you to reject the DEP's current anti-degradation proposal. We need standards that protect our waterways from any more degradation and keep our drinking water safe!

Sincerely,

Diane Ottinger



Ms. Susan Seif  
Chairman E. Board  
P.O. Box 2003  
Harrisburg, Pa  
17110

DEREGULATION 3-18-97

ORIGINAL: #1799  
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JEWETT  
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SANDUSKY  
WYATTE

Dear Mrs. Seif,

May I, in this letter express my displeas-  
ure with the proposed antidegradation regulations,  
adopted by the E. Board as "proposed" rules on Jan. 21, 1997.  
These regulations do not meet minimum Federal require-  
ments and are plainly "weaker" than the program currently  
in place. If simply put, will not protect Pa.'s waters.  
Existing standards should be protected, unconditionally, as in  
Federal Regulations, not after a "D.E.P. Review" of technical de-  
tails. Water chemistry should be extended to all  
water chemistry is better than state  
test is not mandated by Fed. regula-  
tions might fail the Biology test because of  
these changes in violation. E.P.A. state  
rule that a violation of one  
should not disqualify a stream from  
High Quality Protection. Therefore this rule with  
a Chemistry/Biology test can't be approved by E.P.A.  
Overall, streams have less chance to become High  
Quality under this program than under the current one.  
Streams also have less ways to become E.V. than they do  
under current program, despite numerous examples.  
In the definition, there is only one way for a stream  
to become E.V. D.E.P. removal of considering Pa. & U.S. en-  
dangered species is disturbing, as is the removal of any  
consideration of public ownership of the land. D.E.P. did not  
address EPA concerns with discharges into ENRW's  
D.E.P. sided with the polluters, ignored public comment after  
May 1994 draft proposal. These proposed regulations should  
be rejected and new proposal prepared & voted on as proposed  
rule making. - Please Protect our Waters, Yours, for a job well done

P.E.D.F. - Trustee  
Committee Chair

Sincerely,  
Elizabeth Leary

55 Spring Hill, Ed  
Levittown, PA  
March 18, 1997

To the  
ENVIRONMENTAL Quality Board:

Please reject the

DEP'S current

anti-degradation proposal

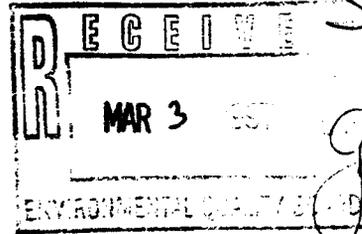
Please adopt the

better standards of the

EPA.

Sincerely,

Gayle M Stewart



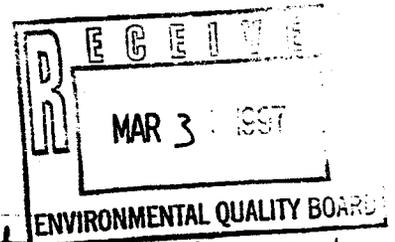
97 APR -9 AM 10:17  
MAIL ROOM

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JEWETT  
SANDUSKY  
WYATTE  
BERESCHAK

Board,

Please reject the DEP'S current anti-degradation  
proposal.

Thank you  
Jack Washnow



Mar. 18, 1997

Please reject the DEP's current  
anti-degradation proposal.

Thank you,

Mr. Lawrence Gungor  
70 Highland Park Dr.  
Levittown, Pa. 19056

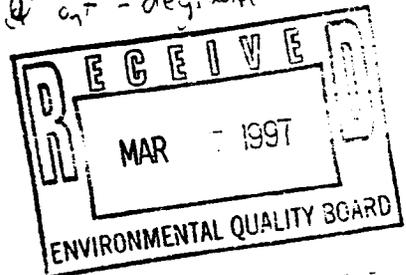
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DEBESCHAY



Reject the DEP's  
current anti-degradation  
proposal



.....

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16 Harbor Rd.  
Levittown, PA 19056

97 APR -9 10:10:19

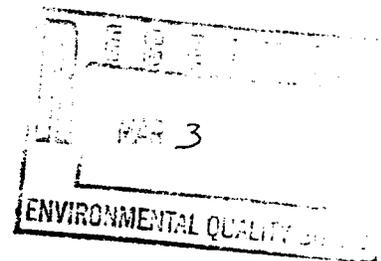
March 18, 1997

Environmental Quality Board  
DEP  
P.O. Box 8465  
Harrisburg, PA 17105

This letter is to request that you reject the DEP's current anti-degradation proposal, and adopt the simpler, better standards of the EPA in order to protect our water.

Sincerely,

*Lorraine Kerchusky*  
Lorraine Kerchusky



March 18, 1997

97 APR -9 11:10

To: Environmental Quality Board

DEP

P.O. Box 8465

Harrisburg, P.A. 17105

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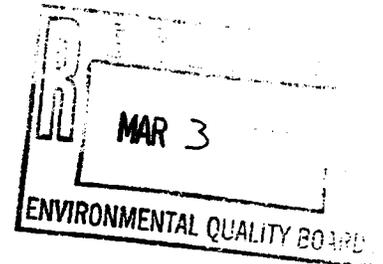
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BERESCHAK

As a concerned citizen and parent I am asking you to reject the DEP'S current anti-degradation proposal.

Please adopt the simpler better standards of the EPA.  
We all need to have safe and pollutant free waters.

*Jynda A. Sprague*  
21 Forsythia Dr. North  
Levittown, P.A. 19056

*Please Reply*



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3-18-97

STAMP-9 11:19

RECEIVED

*Dear Sir,*

I'm writing to request  
you to reject the DEP's  
current anti-degradation  
proposal. Please adopt  
the simpler, better standards  
of the E.P.A.

*Sincerely,  
Mark O. Johnston*

1 FORSYTHIA DRIVE N  
LEWISTOWN, PA 19057

3/18/97

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ENVIRONMENTAL QUALITY BOARD (EQB).

Gentlemen:

Please reject THE DEP'S Current Anti-degradation Proposal.  
Please adopt THE Simpler, Better STANDARDS OF THE EPA.  
YOUR FAVORABLE CONSIDERATION AND ACTION IN THIS REQUEST  
IS APPRECIATED. Please Favor me with a Reply.  
Thank you for your Courtesy.

Sincerely  
Michael E Dodd  
(215) 945-2938

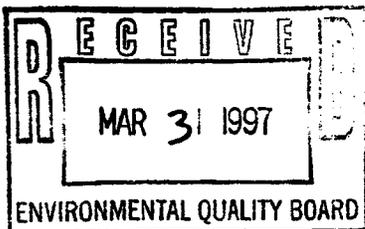
MAR 3

ENVIRONMENTAL QUALITY BOARD

To: EQB

From: P. Lyne Morris  
10 Forsythia Dr. N.  
Lewistown, PA-19057

REJECT THE DEP'S  
CURRENT ANTI-DEGRADATION  
PROPOSAL.





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BERESCHAK

PA ENVIRONMENTAL QUALITY BOARD  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
HARRISBURG, PA 17105

PA Environmental Quality Board  
DEP  
PO Box 8465  
Harrisburg, PA 17105

March 18, 1997

To Whom It May Concern:

Reject the DEP's current anti-degradation proposal!

Please reply to: 27 Harvest Rd.  
Levittown, PA 19056

Thank You

no name  
(Dear Sir  
or  
Madam)

PA ENVIRONMENTAL QUALITY BOARD  
MAR 23 1997  
ENVIRONMENTAL QUALITY BOARD

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SANDUSKY  
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BERESCHAK

March 18, 1997

57 APR -9 11:10 AM

Environment Quality Board  
PO Box 8465  
Harrisburg, PA 17105

RE: DEP's current anti-degradation proposal

To Who it May Concern,

It has been brought to my attention that the current DEP's current anti-degradation proposal has not raised the standards but lowered them to make current levels legal.

I simple ask you to raise the quality of water standards and protect our streams.

Thank you for your time, any information you may have to help me better understand this situation would be appreciated.

Yours truly,



Darren Bethke

cc: Mike McCabe, EPA Regional Administrator  
Tommy Tomlinson, Senator  
Matt Wright, State Representative

3  
ENVIRONMENTAL QUALITY BOARD

March 18, 1997

Environment Quality Board  
PO Box 8465  
Harrisburg, PA 17105

RE: DEP's current anti-degradation proposal

To Who it May Concern,

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I simple ask you to raise the quality of water standards and protect our streams.

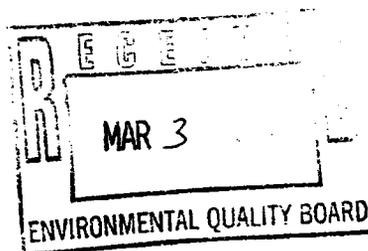
Thank you for your time, any information you may have to help me better understand this situation would be appreciated.

Yours truly,



Susanne Bethke

cc: Mike McCabe, EPA Regional Administrator  
Tommy Tomlinson, Senator  
Matt Wright, State Representative



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BERESCHAK

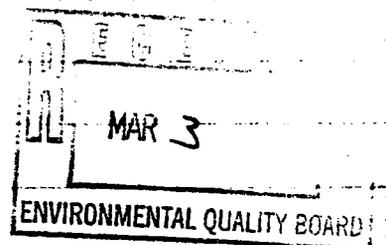
97 MAR -9 11:13:18

RECEIVED

March 19, 1997

Reject the DEPs  
current anti-degradation  
proposal.

Thank you!  
Alice Cortez  
298 Flint Rd  
Langhorne PA  
'190417



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97 APR -9 11:17

REC'D  
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Mr. & Mrs. Edward Trappie

79 Flint Rd.  
Langhorne, PA 19047

MAR 31 1977

Dear EOB,

I am opposed to new  
regulations which would  
lower the quality standards  
for water.

The formation of the EPA  
and the DEP was to protect  
the environment and to  
make polluters accountable.  
Further degradation would  
augment an already  
serious problem.

Please reject the  
proposed legislation  
for anti-degradation.

Sincerely,  
Mrs. Dorothy Trappie

ENVIRONMENTAL QUALITY

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SANDUSKY  
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97 MAR -8 PM 2:15

March 19, 1997

Reject the DEP's current  
anti-degradation proposal.

Cathy Pastor  
252 Kosman Dr  
Langhorne, PA  
19047

RECEIVED PA DEP  
DIV OF WQ ASSESS & STDS  
97 MAR 25 PM 12:50

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HARRISBURG, PA

201 Trappe Lane  
Langhorne, PA 19047-1432

March 19, 1997

Environmental Quality Board, DEP  
P.O. Box 8465  
Harrisburg, PA 17105

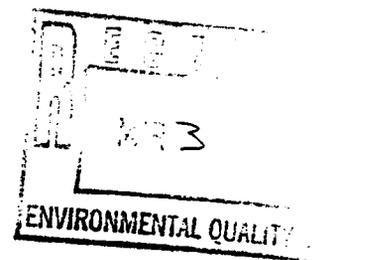
Dear Board Members:

We understand that the DEP is proposing new regulations that would lower water quality standards. The proposal would allow additional discharges into our best streams and would eliminate many streams from qualifying for strong protection. The Clean Water Act requires states to protect waterways from further degradation. We need standards that protect our waterways from any more degradation. Please reject the DEP's current anti-degradation proposal and instead adopt the simpler, better standards of the EPA.

Very truly yours,

*Cynthia K. Stroud*

*David A. Stroud*  
CYNTHIA K. STROUD  
DAVID A. STROUD



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BERESCHAK

DENISE H. WALTER  
40 Trappe Lane  
Langhorne, Pennsylvania 19047  
(215) 752-0386

MARCH 19 1997

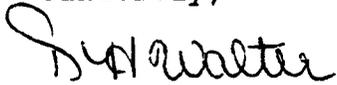
Environmental Quality Board  
DEP  
P.O. Box 8465  
Harrisburg, Pa. 17105

Gentlemen:

We need standards that protect our waterways from any more degradation. Please reject the DEP's current anti-degradation proposal and adopt the simpler, better standards of the EPA.

Please reply to the above request.

Sincerely,



Denise H. Walter

MAR 3  
ENVIRONMENTAL

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JEWETT  
SANDUSKY  
WYATTE  
BERESCHAK

March 19, 1997

TO EQB:

STANDARD AND: 10

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We need safer water, higher standards. Reject the DEP's current anti-degradation proposal.

Please respond to my letter.

E. B. Wolfe

Mrs Eileen B Wolfe  
169 Trappe Ln  
Langhorne PA 19047-1432



PAGE 3

ENVIRONMENTAL QUALITY BOARD

07 APR - 0 11 3:45

RECEIVED PA DEP  
DIVISION OF WATER & AIR

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JEWETT  
TYRRELL  
SANDUSKY  
WYATTE  
BERESCHAK

19 March 97  
235 Norsam Drive  
Langhorne, PA 19047

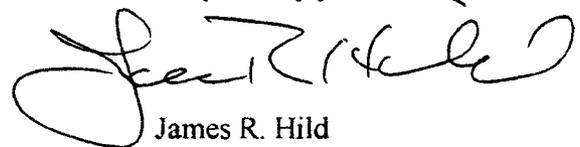
Environmental Quality Board  
DEP PO Box 8465  
Harrisburg, PA 17105

Dear EQB,

The DEP is proposing water standards which will lower our water quality. The proposal will allow additional discharges into our best streams and would eliminate many streams from qualifying for strong protection.

We need standards which protect our water ways. I ask you to reject the DEP's current anti-degradation proposal. Would you please reply to my letter and let me know where you stand on this issue.

Respectfully yours,



James R. Hild

RECEIVED PA DEP  
DIV OF W & A ASSESS & STDS  
97 MAR 25 PM 12:51

Dear

Environmental Quality Board,

3/17/97

ORIGINAL: #1799  
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TYRRELL  
JEWETT  
SANDUSKY  
WYATTE  
BERESCHAK

07 APR -9 AM 10:18

RECEIVED

We want clean water in  
the Muskegon School District.

Please reject the DEP'S  
Current anti-degradation proposal.

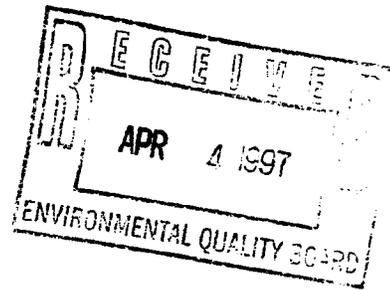
Thank-you,  
Linda S. Nelson

3

ENVIRONMENTAL QUALITY BOARD

07 APR 19 11:52

REVIEW SECTION



March 19, 1997

Environmental Quality Board  
DEP,  
PO BOX 8465  
Harrisburg, PA 17105

ORIGINAL: #1799  
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TYRRELL  
JEWETT  
SANDUSKY  
WYATTE  
BERESCHAK

Dear Sir:

Water quality is not improving according to recent reports. Please reject the DEP's current anti-degradation proposal. Adopt the simpler, better standards of the EPA. Please do the right thing for the next generation or it may be too late for them.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Regina &amp; Rick Kukulski".

Regina & Rick Kukulski  
54 Paxson Lane  
Langhorne, PA 19047

PS. Please respond.

Environmental Quality Board  
DEP  
Harrisburg, Pa.

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SANDUSKY  
WYATTE  
BERESCHAK

97 MAR -8 11 0115

March 19, 1997

Dear Sir or Madam:

I am writing to request your support in rejecting the DEP's anti-degradation proposal.

Please consider adopting <sup>the</sup> simpler, better standards of the EPA. We should not be lowering the water quality standards for our beautiful state.

Sincerely,

Steven Meyer Swiss  
229. Norsam Drive  
Langhorne, Pa. 19047

97 MAR 25 PM 12:49  
RECEIVED PA DEP  
DIV OF W Q ASSESS & STDS

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JEWETT  
SANDUSKY  
WYATTE  
BERESCHAK

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97 APR -9 AM 10: 10

STATE OF DELAWARE  
DEPARTMENT OF ENVIRONMENTAL CONTROL

ENVIRONMENTAL CONTROL

March 20, 1997

Alonso F. Napoli

44 Chancery Road

Langhorne Pa. 19047

The Pennsylvania Environmental Quality Board  
To Whom It May Concern:

I'm writing to you concerning  
the DEP's current anti-  
degradation proposal.

Please reject this proposal,  
we need stronger protection of  
water quality standards, not  
more lenient ones.

Last summer my daughter  
and her boyfriend went fishing  
in the Delaware river near Washing-  
ton Ave in Philadelphia. They caught fish,  
but none could be eaten. The  
three fish caught were deformed,  
one had 3 eyes, the other two had  
sores and slime covering them.