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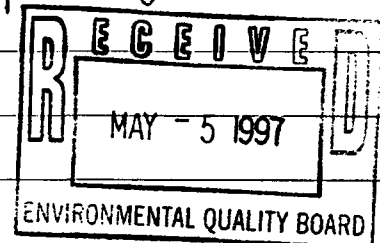
Attn:
PA Environment Quality
Board

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

Thank you.

Elizabeth Hogan
1 Nolan Drive
Malvern, PA 19355

Please acknowledge
receipt of this letter.



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Mr. James Seif
Chairman
Environmental Quality Board
16th Floor, Rachel Carson Building
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Antidegradation Regulations (Revisions to PA Code Chapters 92, 93,
and 95 published on January 21, 1997

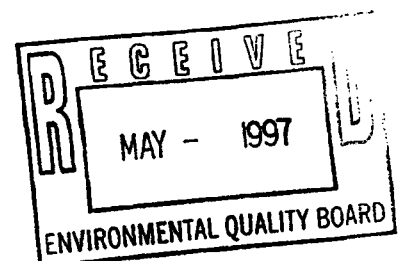
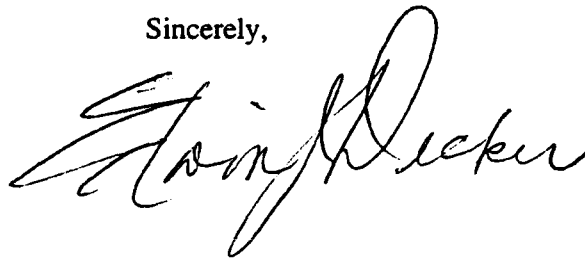
Dear Mr. Seif:

I am writing to express my opposition to the proposed new antidegradation regulations for Pennsylvania. The proposal weakens the protections that exist under the current regulations promulgated for Pennsylvania by the U.S. Environmental Protection Agency and does not ensure that this state's highest quality waters will not be degraded.

As a member of Trout Unlimited, I am acutely aware of the ecological damage that can be done by any degradation of water quality. Pennsylvania is home to many outstanding trout streams that attract anglers from all over the world. These waters and their fisheries are threatened from a variety of sources, including coal mining and its after effects, increased development, polluted run-off, and industrial pollution. These sources are so pervasive and diverse that unless we make protecting high water quality a top priority, we will lose it.

I understand that Pennsylvania Trout is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing regulation is vastly preferable to the new proposal as it is now written.

Sincerely,



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MAY - 5 1997

ENVIRONMENTAL QUALITY BOARD

to the EQB,

I hope your rejecting
the DEP's current anti-degradation
proposal. Our water is bad enough
Please adopt the better standards
of the EPA.

THANKS,

Diana Cole

Please reply

Diana Cole

829 Derby Dr.
W. Chester Pa 19380

Mr. James Seif
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

97 MAY 21 11 30 AM
DEPARTMENT OF ENVIRONMENTAL PROTECTION
RECEIVED

Dear Mr. Seif:

I oppose the antidegradation proposal published in the March 22, 1997 Pennsylvania Bulletin. There are several bad provisions which are addressed in my following comments.

General Provisions:

DEP proposes to get rid of High Quality and Exceptional Value as "protected water uses." This will remove the redesignation of streams from EPA oversight. Once our streams are designated for greater protection, they should stay that way. Under the proposal, polluters could damage them, then claim that they don't meet the standards, and then ask for a roll back. The proposal intends to make receiving the HQ or EV designations much tougher. Dischargers will petition DEP to re-assess these streams with the new standards. With this proposal, DEP will help polluters to roll back protection on our best streams.

Also, DEP only plans on extending antidegradation protection in HQ and EV watersheds when considering "discharges." Proper antidegradation protection would require that DEP consider all activities, not just discharges.

I am also disappointed that DEP did not mention wetlands in their antidegradation proposal. The current regulation, put into place by EPA, gives this protection to wetlands. How can wetlands be given HQ or EV protection if the criteria to designate a "surface water" HQ or EV are based on streams, lakes and rivers? DEP needs to integrate wetland protection and antidegradation.

I see where DEP has recently settled a lawsuit, and plans to "assess" the one-half of our streams that are currently

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
RECEIVED

"unassessed." Even with DEP's "best efforts," that is estimated to take 10 years. The proposal does not address the 29,000 miles of unassessed streams. DEP plans on continuing only basic protection for these streams. DEP should instead protect these unassessed streams at a Tier 2 level, unless a permit applicant can demonstrate otherwise. The public's resources should get the benefit of the doubt.

Currently DEP designates "watersheds" as HQ or EV. The proposal makes it easier to ignore, springs, seeps, wetlands and tributaries, because HQ and EV are defined as "surface waters" rather than "watersheds." While seeps, springs, and wetlands are in the definition of surface waters, DEP also has no mechanism for these other surface waters (springs, seeps, and wetlands) to pass the biological test needed for an HQ or EV designation.

Tier 1 (Existing Uses)

The proposal tinkers with the current regulation protecting the "existing uses" of our waters. Right now, we have language protecting existing uses because DEP failed to include such language, and EPA was ordered to write a regulation by a Federal judge. At last we have protection that the Clean Water Act intended. Unfortunately, the proposal says that the existing use will be protected only after DEP evaluates the technical data. Until then, DEP is under no obligation to protect the existing uses. With DEP's misguided "money back guarantee," DEP will not have time to evaluate "existing uses" and will simply not do so. Under the regulation, the protection is qualified, so the regulation will not be violated.

DEP only plans on protecting endangered species from discharges. Endangered species merit protection from any activity that will eliminate them. Existing use protection applies to activities, not just discharges. Endangered species habitat needs to be protected also.

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The new rules make it more difficult for streams to receive an HQ designation. DEP wants only to give the HQ designation to streams that pass a chemistry and biology test. EPA considers only a water chemistry test. How will wetlands, seeps, and springs be assessed when the methods were designed for streams?

DEP now proposes to allow "general NPDES permits" in HQ streams. These are not tracked by DEP, and will allow degradation of these waters without any type of social or economic justification. This is not permitted by the current regulation.

DEP also plans on allowing the first 25% of the stream to be degraded without any social or economic justification. This has no basis in federal regulation. One of the points of High Quality is to ensure that the degradation has a good reason, and that the public interest is served. DEP included social or economic justification language that mentions the public interest, but then exempted many dischargers from it.

Also, the language mentioning non-point source pollution is weaker than the current language for HQ streams. Our good streams are under pressure from developments and agriculture, so strong non-point source language is essential.

Tier 3 (Exceptional Value)

The definition of "Exceptional Value" streams still mentions State Parks, Forests, Game Lands and other public lands, but the "selection criteria" in the proposed Chapter 15 does not consider public lands in any way. The old "Special Protection Waters Implementation Handbook" considered all these things and more. It is vastly superior than the present proposal. Currently, we are under Federal regulations that consider many streams on public lands to be "Outstanding National Resource Waters." Why are we giving our best streams less consideration than before?

EPA believes that DEP's EV program does not "protect and maintain" water quality. DEP should close the major loophole that allows water quality degradation, but calls it "no measurable change." It is hocus-pocus.

As far as "public participation" in EV waters is concerned, the guidance should be set up and the streams given the designation if they merit it. We don't need polluters and profiteers wanting to degrade our streams having a "veto" power over protecting our best streams.

Summary:

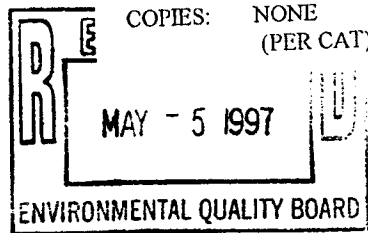
This regulation should be rejected or re-written so that it is as good as the old DER's regulations and guidance, but incorporates the minimum Federal features that we have now. The EQB should reject this regulation.

Sincerely,

Dennis W. McCune

U.S. Army - Corps of Engineers

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Please reject the DEP's
current anti-degradation proposal.
We need standards to protect our
waterways. Please reply.

Deborah Thompson
205 Hazel St
Zelienople, PA 16063

Env. Quality Board
PO Box 8447
Harrisburg PA 17105

97121 91 21 9:00
RECEIVED

David Head
225 Harsham Rd
Hatboro PA
19040

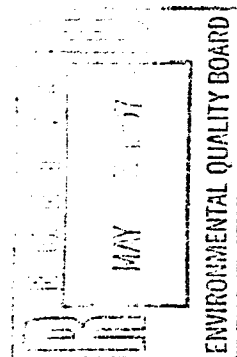
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Dear Sirs,

I am writing to voice my opposition to the
~~the~~ removal of "Exceptional Value" as a "protected
water use", as proposed on March 22.
Our polluted streams need more protection,
not less.

Public participation as proposed will be an
invitation for polluter participation.

Thank you
David Head





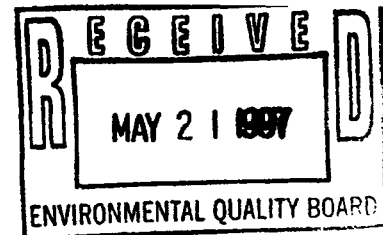
225 Horsham Rd
Hatboro PA
19040



Environmental Quality Board
PO Box 8447
Harrisburg PA 17105

171 18997 97 lullulu.





Independent Oil & Gas Association of Pennsylvania

May 21, 1997

ORIGINAL: #1799
COPIES: COCCODRILLI
TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: 25 PA Code, Chapters 92, 93, and 95, Water Quality Amendments – Antidegradation

Dear Board Members:

On behalf of the Environmental Committee of the Independent Oil and Gas Association of Pennsylvania, please accept the following comments on the proposed Water Quality (Antidegradation) Regulations.

IOGA is a non-profit trade association that represents Pennsylvania's natural gas producing industry, including exploration and production companies, marketers, service operations, and royalty owners. Our members spend millions of dollars each year to help protect the environment while meeting society's energy needs. We are concerned that the proposed regulations will not only inhibit economic growth, but also that they do not meet special protection criteria set forth by the EPA, not do they comply with policies and directives of the Ridge administration.

The following recommendations should be considered in the final regulation:

The Tier 2 and 3 (High Quality and Exceptional Value waters) designation process could halt growth without providing any environmental benefit if it prevents all new or increased discharges, even discharges that do not degrade water quality. All discharges do not inherently cause or lead to water quality degradation. Development can and must coexist with the environment. Some discharges will be necessary to meet the needs of industry and society. Only areas that are uninhabited can exist without discharges. This is why sound scientific criteria as well as Social and Economic Justification criteria should be used at all levels in the decision-making process for stream designations and permitting allowable discharges. Therefore, we recommend that Sec. 92.81 and 92.83 be revised to prohibit discharges that would degrade the water quality of those classified as "Exceptional Value Waters" under Chapter 93. *Degradation* should be the limiting qualifier for permitting discharges in Exceptional Value Waters.

Also, the proposed regulations do not but *should* provide for the protection and maintenance of existing permitted discharges. These discharges that are meeting current water quality standards and protected uses should not be eliminated, even if a stream's designation classification is changed.

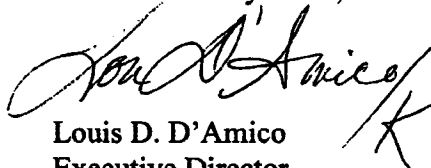
For stream designations, the regulations should rely on scientific methods of evaluation as the basis for determinations. Measurable standards, including both biological and chemical criteria, as proposed, should be required to protect the needs of society and the environment. Furthermore, protection of EV-designated streams should be reserved for streams that are truly unique or which exhibit exceptional statewide benefit or national significance.

The regulations at Sec. 93.4(e) should also require the direct notification of landowners of private watershed lands affected by an EV designation, including information about how the designation could limit their land-use activities. Otherwise, the proposed regulation could result in the potential for taking of property without consideration or compensation. As stated, the proposed regulations do not address the serious economic and social impacts that the EV-designation can have on the people and communities that live and work in the affected watershed. The regulations should require the formal commitment from the owners of the affected watershed lands to abide by the restrictions that accompany the EV-designation before that designation is established. Otherwise the designation is pointless.

Further, the regulations as proposed contradict Governor Ridge's Executive Order 1996-1 which requires any state regulation that is more stringent than its federal counterpart to be brought into line with the federal standards. DEP's proposal allows streams to qualify for HQ status if they have water quality that is "generally" better than water quality standards. The EPA regulation, on the other hand, requires a stream to "exceed" water quality standards before it can be elevated to HQ designation. A stream should not qualify for Special Protection if *any* of its water quality parameters violate the required standards. This is only common sense, since the deviation in one standard of quality alone can make a stream unpotable or uninhabitable, and therefore of little value.

Thank you for the opportunity to comment.

IOPA of Pennsylvania,



Louis D. D'Amico
Executive Director

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MAY 21 1997
MINERAL RESOURCES MGMT

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TYRRELL
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SANDUSKY
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BERESCHAK

INTEROFFICE MEMORANDUM

Date: 21-May-1997 07:20am EST
From: BowersJL
BowersJL@aol.com@PMDF@DER003
Dept:
Tel No:

TO: RegComments (RegComments@a1.dep.state.pa.us@PMDF@
CC: j_bowers (j_bowers@mail.co.chester.pa.us@PMDF@
Subject: Proposed rulemaking - Water Quality Standards - Antidegradation

County of Chester
Chester County Water Resources Authority
Government Services Center
601 Westtown Road, Suite 270
West Chester, PA 19382

May 20, 1997

Mr. James M. Seif, Chairman
Environmental Quality Control Board
P.O. Box 8477
Harrisburg, PA 17101-8477

RE: Proposed Rulemaking - Water Quality Amendments - Antidegradation

Dear Mr. Seif:

These comments are in response to the proposed rulemaking on Water Quality Standards - Antidegradation published in the "Pennsylvania Bulletin" on March 22, 1997. The Board of Directors of the Chester County Water Resources Authority (CCWRA) is concerned that the proposed regulations may allow increased degradation and less protection of streams than were allowed by previous state or existing Federal regulations. CCWRA opposes relaxation of the water quality standards or reduced protection of streams and waters of the state. The final regulations adopted by Pennsylvania should afford protections as least as stringent as the previous PA-DEP regulations, but incorporating the minimum Federal features currently in effect.

Thank you for the opportunity to comment. I can be reached at (610) 344-5400, or the return address given above.

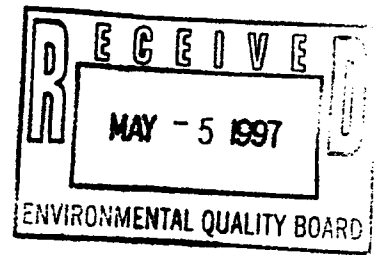
Sincerely,

Janet L. Bowers, P.G.

Executive Director

97 MAY 23 11 01 AM

18000000000000000000



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Dear EQB,

Please reject the DEP's
current anti-degradation
proposal! PA needs cleaner,
safer water!

Lisa A. Bergey

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DEAR SI :
PLEASE REJECT THE
PRESENTANTI-DEGRADATION
PROPOSAL THINK OF THE
FUTURE GENERATION.

SINCERELY
LIHAN COLE

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MAY - 5 1997
ENVIRONMENTAL QUALITY BOARD

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Date

Edward R. Brezina
Bureau of Watershed Conservation
P.O. Box 8555
Harrisburg, PA 171055-8555

RECEIVED PA DEP
DIV OF WD ASSESS & STDS
97 MAY - 5 AM 10: 54

RE: Proposed Antidegradation Regulations

Dear Mr Brezina:

I am completely opposed to your gutting everything that is good about the current antidegradation regulations and replacing them with weaker laws that will not protect our streams. These new regs will not protect existing uses, will make it harder for streams to get protection as high quality and exceptional value streams, and worst of all, will allow the redesignation of existing streams to lower categories that offer less protection.

The few good elements of your proposed scheme cannot be separated from the overall bad language. I would suggest, therefore, that you withdraw the entire package and rewrite it so that it protects the environment. In the alternative, keep the regulations now in place.

In addition, these proposed regulations do not meet minimum federal requirements, and you know that they do not. You were hired to protect the environment, so please do your job and stop wasting taxpayer money by refusing to comply with the law.

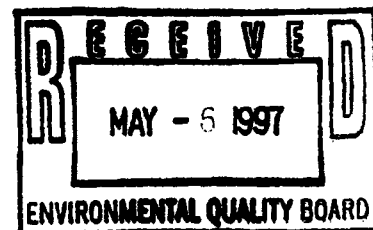
Sincerely,

L. Arthur Watres

Name: L. ARTHUR WATRES

Address: RR#1 Box 518 LAKE ARIEL, PA. 18436

cc: Michael McCabe,
EPA Regional Administrator
841 Chestnut Building
Philadelphia, PA 19107



RECEIVED

Mr. James Seif
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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ENVIRONMENTAL PROTECTION
SECRETARY'S OFFICE

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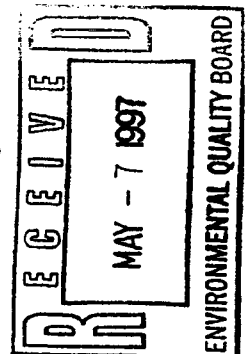
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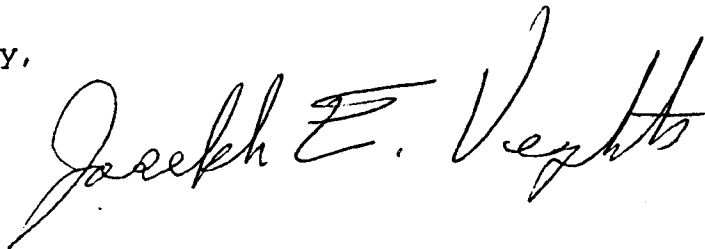
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Summary:

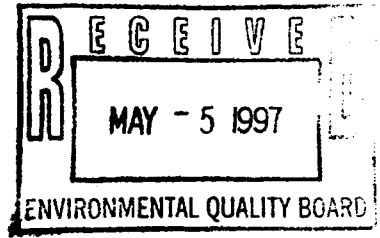
This regulation should be rejected or re-written so that it is as good as the old DER's regulations and guidance, but incorporates the minimum Federal features that we have now. The EQB should reject this regulation.

Sincerely,

A handwritten signature in cursive script, reading "Joseph E. Veight". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

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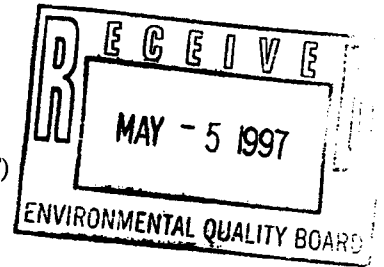
Reject the DEP's
Current degradation
proposal.

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Sincerely
Keely and Craig
Back

Environmental Quality Board (EQB)
DEP, PO Box 8465
Harrisburg PA 17105

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To who it may concern,

I was outraged to hear that the Department of Environmental Protection is proposing new regulations that will lower water quality standards. Water is one of our most precious resources; one that we cannot afford to harm or waste. Therefore I urge you to adopt the simpler, better standards of the Environmental Protection Agency. Please keep the Clean Water Act completely in tact.

Sincerely,

A handwritten signature in cursive script that reads "Julia Haltiwanger".

Julia Haltiwanger

Julia Haltiwanger
1262 Bridgewater Dr.
West Chester PA 19380

I am very concerned that the
newly proposed DEP Regulations
will not protect our water ways.

Please send me information
about what is being done to
stop future water ways degradation.
I support the standards set by the
EPA.

Sincerely,
Mary Kane

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PENNSYLVANIA BUILDERS ASSOCIATION

600 N. Twelfth St. • Lemoyne, Pennsylvania 17043
717-730-4380 or Toll Free (in PA) 800-692-7339 • 717-730-4396 (Fax)

President: Edward S. Nikles, Sr. (Pike County BA)
Vice President: Charles L. Kasko (BIA of Northeast PA)
Associate Vice President: Mary C. Puocciarella (Blair County BA)
Treasurer: Dennis L. Brislin (BIA of Northeastern PA)
Secretary: Michael J. Schultz (Washington County BA)
Executive Vice President: David F. Sheppard, Jr., CAE

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MAY 21 1997

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TYRRELL
JEWETT
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BERESCHAK

Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

May 21, 1997

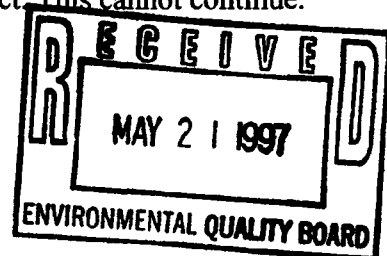
Dear Chairman Seif:

Thank you for the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed antidegradation regulations as published in the Pennsylvania Bulletin on March 22, 1997. The following comments are in addition to those the Pennsylvania Builders Association provided at the May 7, 1997 Environmental Quality Board public hearing on this issue.

The Pennsylvania Builders Association (PBA) represents over 12,000 builder, remodeler, and associate member firms and 350,000 employees throughout Pennsylvania involved in the housing industry. PBA believes reasonable water quality regulations and protection are essential.

All streams in Pennsylvania are protected, at a minimum, for potable water supply, recreation and fishery uses and specific water quality criteria is maintained (tier one). The focus of our comments is on the DEP's special protection waters program and its implementation (tiers two and three). We offer several general comments followed by specific recommendations.

- 1. The current stream designation process is increasingly used as a tool to halt future economic growth and development in particular watersheds. In many cases, a person or interest group will petition DEP to upgrade a stream to special protection status for the primary reason to prevent potential economic growth or to stop projects that have already been initiated. These streams may or may not possess the water quality that merits the requested designation. Many times, it appears, that stream designation upgrades to exceptional value status have been granted based more on politically-driven anti-growth sentiment rather than empirical knowledge and scientific fact. This cannot continue.



2. PBA participated in the regulatory negotiation process that focused on these regulations. During that process we negotiated positions and came to some consensus on high quality issues, some of which are contained in this proposal, with the understanding that this opportunity would also occur with the exceptional value program. It did not. Proposed changes to the existing exceptional value program are few.
3. The final regulation must include a provision that requires the Department to consider, during the stream assessment process, the current and future land use and economic development issues of the surrounding area.
4. This regulatory proposal fails to meet the standards established in Governor Ridge's Executive Order 1996-1. One of the key positions of Governor Ridge's administration is that no state-run program should be more stringent than required by federal law, unless justified. The more stringent requirements contained in this proposal have not been explained.

While PBA supports the Department's efforts to propose a more objective antidegradation program, this proposal does not go far enough. Here are our specific comments on the proposal:

Chapter 92. National Pollutant Discharge Elimination System

Section 92.81 General NPDES Permits

We recommend the deletion of 92.81(a)(8) in its entirety.

PBA believes this requirement is unnecessarily restrictive. We support DEP's realization that discharges associated with general permits have minimal impacts and are appropriate for use on high quality streams. Likewise, because of the limited impacts associated with general permits, we also strongly urge DEP to allow their use on exceptional value streams.

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

Again, we recommend the deletion of 92.83(b)(8) in its entirety for the same reasons as discussed under Section 92.81(a)(8).

Chapter 93 Water Quality Standards

Section 93.1 Definitions

The proposed definition of exceptional value waters must be revised to be consistent with the federal regulation. This definition should only apply to those surface waters of high quality that constitute an outstanding national resource water. Regional and local waters should not be included in the final definition.

All streams are “local” or “regional” to some interest group, and the Department’s proposed and existing vague selection criteria and petition process allow opponents of economic development and growth to continue to abuse this program. Inclusion of “regional” and “local” in the final definition will only perpetuate the abuse of this program.

The federal tier three program was designed to protect and strictly regulate only those waters on lands which are considered outstanding on a national scale. Currently in Pennsylvania, the selection of “exceptional value” waters is inherently subjective. Many of Pennsylvania’s streams currently classified as exceptional value cannot meet the federal standard. Even DEP staff admit this. This proposal, as currently written, will allow DEP to continue to designate streams that would never meet federal standards.

The federal regulation severely restricts activities only on “high quality waters which constitute an outstanding national resource, such as waters of national or state parks and wildlife refuges and waters of exceptional recreational or ecological significance.” The decision by the Department to include additional categories of waters in the state program warrants careful evaluation.

PBA recommends the proposed definition be revised as follows:

Exceptional value waters- surface waters of high quality which constitute an outstanding national or state resource. Examples which may qualify for exceptional value waters designation if they meet the criteria specified in 93.4c (relating to exceptional value waters) are as follows: waters located in national or state parks or forests or waters in wildlife refuges or state game lands or waters which have been designated by the Fish and Boat Commission as “wilderness trout streams”, and other waters of national or statewide recreational or ecological significance.

Section 93.3 Protected water uses.

PBA supports the Department’s removal of high quality and exceptional value waters as protected uses. As stated in the preamble to this proposal, this change is consistent with federal regulations since they do not require antidegradation categories to be defined as protected uses.

Section 93.4b High Quality Waters

PBA recommends DEP remove the word "generally" from this provision so that the high quality water chemistry threshold is at least as high as the minimum federal standard. The federal regulations require that stream criteria be better than standards in order to qualify as high quality. Such a standard is clearly more appropriate and removes any subjectivity from the assessment and ultimate designation. Maintaining the term "generally" in the final regulations indicates that not all water quality parameters necessarily have to be met in order to attain special protection status. This is unacceptable. The DEP must ensure that all health and aquatic life standards are met before a stream can qualify as high quality.

The Department must also use assessment protocols that provide a true picture of the waterbody's chemistry. While one grab sample may be expedient for each stream segment, it certainly does not provide an accurate or reliable characterization of the stream. Adequate and sound scientific background information must be obtained prior to placing lasting impacts on a community that are associated with special protection stream designations.

More than one grab sample must be obtained and the grab samples should be collected at average stream flows along multiple defined reaches of the stream or waterbody.

93.4b(a)(2)(ii)

Any other peer-reviewed biological assessment procedures that the Department may use must be available for public review and comment prior to adoption by DEP.

93.4b(b)

This proposed section is of great concern to PBA. First, this is another proposed section that contains language that goes beyond federal standards without justification. Second, the Department has offered no guidance detailing the criteria, standards or conditions that will be evaluated under this section. The absence of this guidance is a serious flaw in the proposal. It is difficult to comment on something that does not yet exist. DEP should solicit public comment the proposed process for providing social and economic justification prior to the final adoption of these regulations. The final regulatory language should take the public comment received into consideration.

In addition, PBA feels that social and economic justification should be conducted prior to alternatives analysis. Performing alternative analysis before social and economic justification presumes no discharge alternative (i.e. Tier 3). The federal regulations provide the applicant with the opportunity to provide social and economic justification for a discharge to a high quality water. If alternative analysis is conducted first, it eliminates the opportunity for the applicant to justify a discharge to a high quality stream.

93.4b(e)

PBA supports DEP's efforts to eliminate the redundancy that occurs with social and economic justification during the sewage facilities planning process. DEP should have the authority to grant a conditional social and economic justification approval when an Act 537 plan is approved that includes a proposed discharge to a high quality stream. Upon review of the permit for the discharge, if the permit application is consistent with the conditional social and economic justification approval, DEP social and economic justification approval should be granted.

93.4b(f)(1) and 93.4b(f)(2)

The "de minimus" permit threshold contained in the proposal to ease the permitting burden for applicants with minor discharges is supported and commended. These discharges with minimal impact as well as minor discharges associated with general permits should not be subject to social and economic justification and alternatives analysis requirements.

Section 93.4c Exceptional value waters

93.4c(1)(i)

PBA recommends DEP remove the word "generally" from this provision so that the exceptional value water chemistry threshold is at least as high as the minimum federal standard. Such a standard is clearly more appropriate and removes any subjectivity from the assessment and ultimate designation. The DEP must ensure all health and aquatic life standards are met before any stream can be designated as exceptional value.

93.4c(2)(ii)

Any other peer-reviewed biological assessment procedures that the Department may use must be available for public review and comment prior to adoption by DEP.

Section 93.4d General Requirements for High Quality and Exceptional Value Waters

93.4d(a)

This proposed provision must be modified to indicate the permit applicant, when performing the alternatives analysis, is to include as one of the alternatives a stream discharge alternative based on best available technology. This will allow for a valid comparison of the various options, including the discharge option.

93.4d(d)

PBA recommends this proposed provision be deleted. Interim protection should not be provided. Only when the high quality or exceptional value designation is adopted as final should the protection be afforded. Otherwise, there is the potential for placing unjustified limitations on a stream that may or may not be classified at its proposed designation. Pending permit applications associated with a stream being considered for a redesignation should be reviewed based on the stream's existing designation.

Section 93.4e Public participation in High Quality and Exceptional Value Waters

93.4e(b)

We commend the Department's efforts to improve the public participation process. We recommend this provision be expanded further, however, for the public to truly be informed.

Additional public involvement is necessary in the petition, assessment and designation process. The residents of the affected watershed must recognize and understand the ramifications of the high quality or exceptional value designation on future community and economic development. We recommend the following steps be incorporated into the proposed public participation process:

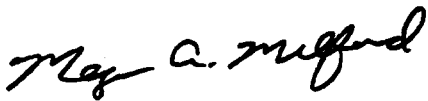
1. Enhance the notice in the local paper identifying the stream(s) to be assessed, by including the reason for the assessment, the impact of specific designations on watershed land use, the opportunity for the public to request a workshop concerning the assessment, and request that any pertinent information to be forwarded to DEP,
2. notify local municipal and county governments and planning commissions of DEP's intention to conduct the assessment,
3. notify by first class mail pending permit applicants, permit holders, and all applicants that have received planning or subdivision and land development planning approval within the previous 5 years, of DEP's intent to conduct the assessment,

4. DEP may hold a workshop to inform the local community about the assessment and the impacts any specific designation may have on that community, and
5. prepare and release to local media a press release concerning the assessment and its potential impacts on the local community.

In conclusion, the Pennsylvania Builders Association believes that the incorporation of our comments into the final regulation will provide the objectivity and balance that is essential to this important program.

Again, thank you for the opportunity to provide comments on this important regulatory proposal. If you have any questions or I can provide you with any additional information, please feel free to contact me at (717) 730-4380.

Sincerely,

A handwritten signature in black ink that reads "Megan A. Milford". The signature is written in a cursive, flowing style.

Megan A. Milford
Regulatory Specialist



ORIGINAL: #1799
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(PER CAT)

Environmental Quality Board
Mr. James Seif, Chairman
P.O. Box 8477
Harrisburg, PA 17105-8477

STANDARD
RECEIVED

Dear Mr. Seif:

I am writing in regard to the proposed rulemaking on antidegradation as published in the March 22, 1997 Pennsylvania Bulletin. There is insufficient antidegradation protection for wetlands in this proposal.

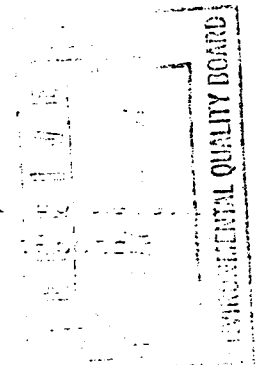
The current regulation, put into place by EPA, gives this protection to wetlands. How can wetlands be given HQ or EV protection if the biological criteria to make a "surface water" HQ or EV are based on streams?

It is disappointing that the DEP did not take this opportunity to write regulations so that our wetlands could begin to receive antidegradation protection.

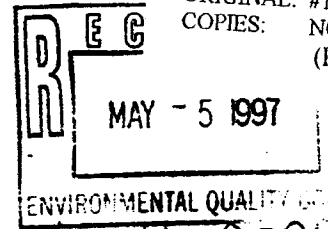
This regulation falls short in protecting one of our most valuable resources - wetlands. It should be rejected by the Board.

Sincerely,

Theo F. Luria
resident: Bear Creek, Pa.
May 18th '97 -



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(PER CAT)



Dear EPA,

Please reject the DEP's
current anti-degradation
proposal. I would also like
a reply.

The Contry Family

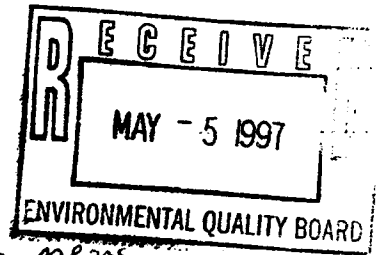
The Contry Family
1235 Spring Valley Lane
West Chester, PA 19380

Scott Torney

744 Eathan Ave

Pgh. PA 15226 Environmental Quality Board.

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Are you any kind of human beings?

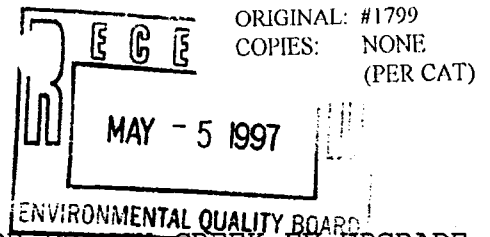
If so, then you must have feelings. That means
you care. Since you care you will reject the
Dep's current anti-degradation proposal. You will also
remember that there is a Clean water act that requires
States to protect water ways from further degradation. By
allowing more discharge you will be killing all types of wildlife.
Don't you want your kids, grandchildren, and great-grandchildren
to enjoy beautiful blue water for Recreation and beauty alone.
What beauty is there in gray murky water -- NONE.

Please show us that you are human beings and that
you do have a heart. Please Reply to me so I know
that you have received this letter and what your intentions are

a concerned citizen

Scott m Torney

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



RE: NEW PROPOSAL/WATER QUALITY RULES & SUPPORT FOR FRENCH CREEK EV UPGRADE

To the attention of EVERYONE in DEP,

What is wrong with this picture? I am writing a letter to the group charged with "Environmental Protection" about their blatant inability to protect the most precious environmental resource in the Commonwealth: water. The recent DEP proposal is an embarrassment to the Commonwealth and I strongly urge that you, either, find other employment (coal mining, waste disposal, deforestation, etc.) or get on the bandwagon and PROTECT THE DAMNED THINGS YOU ARE CHARGED WITH PROTECTING. It must be OBVIOUS to anyone within the DEP who has any semblance of an environmental resources background that the DEP's proposed regulations regarding water quality clearly lowers protection for high quality (HQ) and exceptional value (EV) streams. Consequently, I urge you to support the following proposed changes to the proposal.

-All streams currently meeting HQ or EV standards should be protected to maintain their existing water quality.

-All streams designated Class A Wild Trout Streams should automatically receive, at the very least, an HQ designation.

-Protection for HQ and EV streams should apply to the watershed and not just the waterway. Without such a provision, feeder streams, wetlands, tributaries, etc. that support the ecosystem of the waterway are not protected.

-HQ streams should not be allowed to have a discharge into them that exceeds 10% of the streams ability to assimilate those discharges. The proposed 25% is much to high.

-The biological/chemical tests used to qualify HQ streams are exceedingly stringent. As a result of these tests, many outstanding streams are left unprotected.

-Applicants for permits to discharge into HQ streams should be required to use waste minimization and pollution prevention techniques to decrease their impact on the stream.

-No new or expanded discharges should be permitted on EV streams. General permits for discharge should not be permitted at all. (Please note that EV streams are the very best this commonwealth has to offer. PA's EV streams are recognized worldwide - it is unfathomable that we would let degradation of any sort take place in these waters).

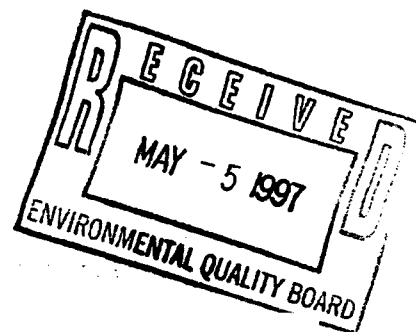
Thank you for your consideration. By the way, a truly "exceptional" stream, French Creek, is being considered for EV status. In an effort to protect a spectacular resource within the Commonwealth, I urge you to do "something" good and support this process in any way possible. Please forward my comments to the appropriate individuals for public record.

Respectfully,

Philip E. Pyle Jr., 19 White Clay Drive, Landenberg, PA 19350

Mr. James Seif
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

STAFF OF SEN. J. B. COOPER
P.O. BOX 1000
HARRISBURG, PA 17105-1000



Dear Mr. Seif:

ORIGINAL: #1799
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I oppose the antidegradation proposal published in the March 22, 1997 Pennsylvania Bulletin. There are several bad provisions which are addressed in my following comments.

General Provisions:

DEP proposes to get rid of High Quality and Exceptional Value as "protected water uses." This will remove the redesignation of streams from EPA oversight. Once our streams are designated for greater protection, they should stay that way. Under the proposal, polluters could damage them, then claim that they don't meet the standards, and then ask for a roll back. The proposal intends to make receiving the HQ or EV designations much tougher. Dischargers will petition DEP to re-assess these streams with the new standards. With this proposal, DEP will help polluters to roll back protection on our best streams.

Also, DEP only plans on extending antidegradation protection in HQ and EV watersheds when considering "discharges." Proper antidegradation protection would require that DEP consider all activities, not just discharges.

I am also disappointed that DEP did not mention wetlands in their antidegradation proposal. The current regulation, put into place by EPA, gives this protection to wetlands. How can wetlands be given HQ or EV protection if the criteria to designate a "surface water" HQ or EV are based on streams, lakes and rivers? DEP needs to integrate wetland protection and antidegradation.

I see where DEP has recently settled a lawsuit, and plans to "assess" the one-half of our streams that are currently

"unassessed." Even with DEP's "best efforts," that is estimated to take 10 years. The proposal does not address the 29,000 miles of unassessed streams. DEP plans on continuing only basic protection for these streams. DEP should instead protect these unassessed streams at a Tier 2 level, unless a permit applicant can demonstrate otherwise. The public's resources should get the benefit of the doubt.

Currently DEP designates "watersheds" as HQ or EV. The proposal makes it easier to ignore, springs, seeps, wetlands and tributaries, because HQ and EV are defined as "surface waters" rather than "watersheds." While seeps, springs, and wetlands are in the definition of surface waters, DEP also has no mechanism for these other surface waters (springs, seeps, and wetlands) to pass the biological test needed for an HQ or EV designation.

Tier 1 (Existing Uses)

The proposal tinkers with the current regulation protecting the "existing uses" of our waters. Right now, we have language protecting existing uses because DEP failed to include such language, and EPA was ordered to write a regulation by a Federal judge. At last we have protection that the Clean Water Act intended. Unfortunately, the proposal says that the existing use will be protected only after DEP evaluates the technical data. Until then, DEP is under no obligation to protect the existing uses. With DEP's misguided "money back guarantee," DEP will not have time to evaluate "existing uses" and will simply not do so. Under the regulation, the protection is qualified, so the regulation will not be violated.

DEP only plans on protecting endangered species from discharges. Endangered species merit protection from any activity that will eliminate them. Existing use protection applies to activities, not just discharges. Endangered species habitat needs to be protected also.

Tier 2 (High Quality)

The new rules make it more difficult for streams to receive an HQ designation. DEP wants only to give the HQ designation to streams that pass a chemistry and biology test. EPA considers only a water chemistry test. How will wetlands, seeps, and springs be assessed when the methods were designed for streams?

DEP now proposes to allow "general NPDES permits" in HQ streams. These are not tracked by DEP, and will allow degradation of these waters without any type of social or economic justification. This is not permitted by the current regulation.

DEP also plans on allowing the first 25% of the stream to be degraded without any social or economic justification. This has no basis in federal regulation. One of the points of High Quality is to ensure that the degradation has a good reason, and that the public interest is served. DEP included social or economic justification language that mentions the public interest, but then exempted many dischargers from it.

Also, the language mentioning non-point source pollution is weaker than the current language for HQ streams. Our good streams are under pressure from developments and agriculture, so strong non-point source language is essential.

Tier 3 (Exceptional Value)

The definition of "Exceptional Value" streams still mentions State Parks, Forests, Game Lands and other public lands, but the "selection criteria" in the proposed Chapter 15 does not consider public lands in any way. The old "Special Protection Waters Implementation Handbook" considered all these things and more. It is vastly superior than the present proposal. Currently, we are under Federal regulations that consider many streams on public lands to be "Outstanding National Resource Waters." Why are we giving our best streams less consideration than before?

EPA believes that DEP's EV program does not "protect and maintain" water quality. DEP should close the major loophole that allows water quality degradation, but calls it "no measurable change." It is hocus-pocus.

As far as "public participation" in EV waters is concerned, the guidance should be set up and the streams given the designation if they merit it. We don't need polluters and profiteers wanting to degrade our streams having a "veto" power over protecting our best streams.

Summary:

This regulation should be rejected or re-written so that it is as good as the old DER's regulations and guidance, but incorporates the minimum Federal features that we have now. The EQB should reject this regulation.

Sincerely,

Robert G. Munchower
68 Corbett Dr.
Irwin, Pa.
15642



Pennsylvania Environmental Council

Investment Building 239 4th Avenue Suite 1808 Pittsburgh, PA 15222
412/471.1770 FAX 412/471.1661

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BERESCHAK

Davitt B. Woodwell, Esq.
Director
Western Pennsylvania Office

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17101-2301

VIA OVERNIGHT DELIVERY

May 21, 1997

Dear Sir or Madam;

Enclosed, please find a copy of the Pennsylvania Environmental Council's comments on the proposed amendments to the Commonwealth's Antidegradation program.

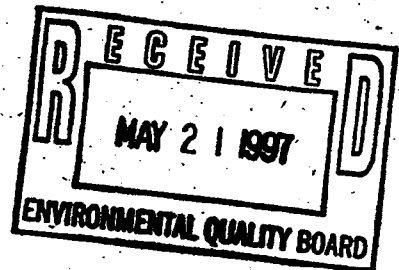
Comments were submitted electronically to RegComments@A1.dep.state.pa.us at 4:30 pm on May 21, 1997 per the guidelines published with the rulemaking in the Pennsylvania Bulletin.

This submittal is being made as a back-up, in case the e-mail did not make it.

If you have any questions, please feel free to contact our Western PA Office at 412-471-1770.

Sincerely,

Davitt B. Woodwell, Esq.
Director, Western PA Office



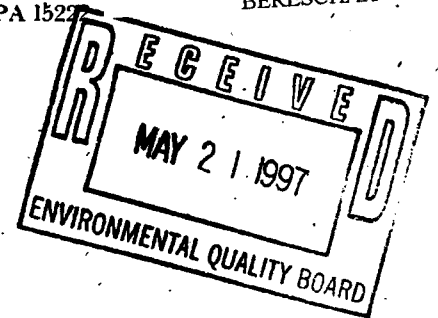
1211 Chestnut Street Suite 900 Philadelphia, PA 19107
c/o Killian & Gephart 216-218 Pine Street Harrisburg, PA 17108
Wilkes University Wilkes-Barre, PA 18766



Pennsylvania Environmental Council

Investment Building 239 4th Avenue Suite 1808 Pittsburgh, PA 15222
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Pennsylvania Environmental Council

Comments to the

Environmental Quality Board
and

Department of Environmental Protection

Proposed Rulemaking
Water Quality Amendments - Antidegradation

May 21, 1997

Submitted Electronically

The Pennsylvania Environmental Council is taking this opportunity to comment on the proposed amendments to Pennsylvania's Special Protection Waters an Antidegradation Program as published in the Pennsylvania Bulletin on March 22, 1997.

The Council is a statewide, nonprofit environmental education and advocacy group with offices in Philadelphia, Pittsburgh, Wilkes-Barre, and Harrisburg. Since 1970, the Council has worked on a wide-range of environmental issues affecting the Commonwealth. Chief among these has been water quality and river conservation. Currently, the Council is proud to continue its water-related work through such projects as the Allegheny Watershed Network, French Creek Project, and work on a number of projects in the Susquehanna and Delaware drainages.

The "Reg-Neg"

During 1995 and 1996, the Council participated as a member of the Special Protection Waters Regulatory Negotiation ("reg-neg") convened by the Department of Environmental Protection. That process, while not resulting in a final consensus among all stakeholders, did, we believe, allow diverse parties to become immersed in questions of water quality protection and to better understand divergent viewpoints and positions. It also provided a great opportunity for DEP water quality staff to go into the rulemaking process with a clearer vision of what issues would be the most important during this process.

1211 Chestnut Street Suite 900 Philadelphia, PA 19107
c/o Killian & Gephart 216-218 Pine Street Harrisburg, PA 17108
Wilkes University Wilkes-Barre, PA 18766

In the proposed rulemaking, the Department puts great stock in the interim report issued by the reg-neg group. In considering the interim report, it must be understood that the recommendations in that document were, in a number of instances, contingent upon resolution of outstanding questions. The central issues that were yet to be resolved at that time were the design and implementation of “social and economic justification” (“SEJ”) and the definition of “exceptional value” waters.

While the interim report is instructive and reflects the thought of the group at the time of its release, it should not be taken as a document that all parties stand behind.

Sections 92.81 and 92.83 ***General NPDES Permits***

In a number of cases, general permits are clearly the most effective and efficient way to deal with NPDES permitting. General Permits garnered a great deal of attention during the reg-neg, both from those who would like to see wider use of them and from those who felt that such permits should not be allowed in High Quality or Exceptional Value waters. It was the Council’s position during those negotiations, and is today, that some application of general permits in High Quality waters would be appropriate but that no general permits should be issued for Exceptional Value waters.

However, the issuance of general permits for discharges into High Quality waters must be looked at more stringently than for the issuance of general permits for discharges into Tier 1 waters. The Department should develop a mechanism whereby applicants for general permits for High Quality waters must show no degradation to the waters and the Department should ascertain that all discharges under the general permit will not cumulatively degrade the water quality.

In addition, general permits in High Quality waters should be subjected to vigorous annual review to assure that their impacts are not lowering water quality in the Commonwealth’s rivers and streams.

Section 93.1 ***Definitions***

Including definitions of Exceptional Value and High Quality Waters “up-front” is commendable. The definitions for these two types of waters are acceptable not only to the Council, but, hopefully to the EPA. One possible suggestion for consideration is that the Department investigate the possibility of including all waters in state parks and forests as Exceptional Value waters. These inclusions would not necessarily be based on water quality, but because the Commonwealth should, as Trustee of these resources, set the standard for controlling discharges to the maximum extent possible.

The question of how to define the “waters” to which antidegradation protection applies was another contentious issue in the reg-neg. Much discussion revolved around the issue of “watershed” versus “waterbody” as the appropriate term for determining application. While the Council still strongly supports the use of “watershed” as the appropriate definition, we believe

that the “surface waters” language proposed addresses the concerns raised by all stakeholders during the reg-neg.

Section 93.3

Protected Water Uses

Removing High Quality and Exceptional Value designations as Protected Water Uses makes sense because High Quality and Exceptional Value are not “uses” themselves but, rather, mechanisms to protect uses. The argument *against* doing so states that protection is weakened for these waters if the Special Protection designation is not included as a protected use. The Council does not agree with this argument because 1) including the designation as a protected use is confusing; 2) Antidegradation designations will now be listed separately in Chapter 93; and 3) protection is given to these waters through the rest of the special protection program.

Section 93.4

Statewide Water Uses

Simplifying the language in this section makes the intent much clearer.

Section 93.4a

Existing Uses

This section does not lay out exactly what is meant by “the Department’s evaluation of technical data . . .” It is hoped that, when it revises the Implementation Handbook for Antidegradation, the Department will allow for a variety of collection measures for the technical data, including citizen monitoring.

Endangered species are addressed in this section, as well as elsewhere in the rulemaking. Generally, the protection offered to these species in the proposed rulemaking is lessened over the Commonwealth’s previous program. All aspects of the proposed rulemaking relating to endangered species should be reviewed and strengthened.

Section 93.4b(a)

High Quality Waters

The Commonwealth’s experience with High Quality Waters requirements should indicate that EPA will likely have difficulty with any program that includes an “and” in determining water quality. The reg-neg group spent months on the discussion of biological and chemical tests for determining High Quality Waters.

The Council agrees that the chemistry test, the biology test, and designation as a Class A Wild Trout Stream are all reasonable indicators of High Quality Waters. However, we can not agree that, for a High Quality designation, a water must satisfy both the biological and chemical tests. Rather, a surface water of the Commonwealth should be required to meet either the biology or the chemistry test.

Section 93.4b(b), (c)
High Quality Waters
Social or Economic Justification

The Council agrees with the language proposed by the Department. However, it is incumbent upon the Department to assure that the intent of this language is carried through when it comes to implementation. The current DEP program allows for the finding of SEJ whenever there is virtually any economic value to a project. The new program must be designed so that it takes water quality as the more important value when determining whether a permit should be issued to degrade a High Quality Water.

Section 93.4b(f)
Special Provisions for Minimal Impact Discharges

This provision, although included in the Reg-Neg Interim Report, was never agreed to in fact by the entire group. The genesis for this idea was that the conservation stakeholders were very concerned about the ease with which SEJ was found and permits issued. In exchange for a real tightening of the SEJ program, we were willing to discuss an "off-ramp," somewhat akin to a general permit in theory, that would allow smaller dischargers to forego the SEJ process. The reg-neg group did not come up with a final SEJ proposal, but DEP held on to the idea of the "off-ramp" and has included it in the proposed rulemaking.

That being said, the idea of the "off-ramp" does have merit, if DEP assures that SEJ becomes a real requirement for discharges into High Quality Waters rather than the current paper tiger. The 25% level of assimilative capacity that is proposed is high; a better level would be 15% with even tighter restrictions on toxic chemicals.

An issue that was raised in relation to this proposed process was whether dischargers taking advantage of this "off-ramp" would be required to follow the alternatives analysis and pollution prevention requirements that apply to other discharges into High Quality Waters. We strongly believe that this should be required.

Section 93.4c
Exceptional Value Waters

The Council supports DEP's current program of protection for Exceptional Value Waters: only allowing discharges that do not degrade water quality. While we understand that such a position does not fully agree with the EPA position on Exceptional Value (Tier 3) Waters, it is our belief that, by allowing for non-degrading discharges, Pennsylvania actually ends up with a more robust program, more waters that can be designated as Exceptional Value, and less negative reaction to designations while still protecting water quality.

It is not evident from the Clean Water Act that Tier 3 waters (Exceptional Value in Pennsylvania) need to meet the water quality requirements of Tier 2 waters (High Quality) before they can be designated. Therefore, we believe that a different set of parameters should be

developed for determining Exceptional Value Waters. Such a test would include evaluation of the water as an "outstanding resource" not limited to water quality but including such factors as recreation, the presence of threatened or endangered species, historic values, and important natural resources.

If the rulemaking is approved as published, the Council believes, as for High Quality Waters, that the chemistry and biology tests should not be linked and that satisfying either one is enough to qualify as an Exceptional Value Water.

Again, much of the success or failure of this program will ride on the way in which the Department implements the final rules. We urge the Department to again work with various stakeholders in developing implementation protocols.

Section 93.4d

General Requirements for High Quality and Exceptional Value Waters

The Council supports the language on discharge alternatives with the addition of language on pollution prevention. Again, implementation is the key. The Department is strongly encouraged to develop proactive pollution programs for dischargers and to encourage the use of alternative practices to discharge.

Nonpoint sources are generally ignored in the rulemaking as they were during the reg-neg. In both instances this is unfortunate as the impact of these sources on water quality is both undeniable and extensive. We urge the department to continue its efforts to focus on nonpoint sources as directed by the language in the proposed rulemaking.

Section 93.4e

Public Participation in High Quality and Exceptional Value Waters

Public participation is a key to any effective designation program. It is incumbent upon the Department to educate the public about the program in general and specific permit applications and decisions in particular. A great deal of time and effort went into the issue of public participation during the reg-neg. We refer the Department to the public participation reports from the group, as well as offer some additional comments.

First, the proposed requirements put the role of conducting public meetings not on the Department, but on the applicant. This appears to be a preposterous proposal. It should be the Department that conducts these meetings to better assess all sides of a permit. The proposal does not even require that the Department be present at a public meeting. The review of comments should be done by the Department, not the applicant.

Assessing Unassessed Waters

An issue taken up at great length by the reg-neg, yet ignored by the proposed rulemaking, is that of assessing the waters of the Commonwealth to determine what level of protection they require. Currently, the designation of Tier 1, High Quality, or Exceptional Value is based in large part on guesses made by the Department. More than fifty percent of the 50,000 miles of rivers and streams in the Commonwealth have not had a water quality assessment performed.

It is suggested that the Department strongly consider a proposal made during the reg-neg to review all antidegradation designations and, for those waters that have not yet been assessed, assign a "default" designation of High Quality. This would be a rebuttable presumption that parties wishing to assert that the water was either Tier 1 or Exceptional Value could challenge with the proper data.

State or Federal Program?

It is our understanding that there are a number of comments being received by the Department stating that Pennsylvania should not amend its own program to comply with EPA's requirements but, rather, should simply adopt the federal program that is currently in place in Pennsylvania.

We strongly disagree with that position and believe that a "one size fits all" approach like EPA's is not appropriate for the Commonwealth. While we do not agree with all the provisions in the proposed rulemaking, we do believe that the citizens of the Commonwealth will be better served with a well-thought-out Pennsylvania specific program that addresses the special concerns of the Keystone State.

For example, if the EPA program were adopted, Class A Wild Trout streams could not automatically receive High Quality designation; Wilderness Trout streams would not be considered Exceptional Value; and no biological test would be available to determine a stream's water quality. In addition, an Exceptional Value program that allowed no discharges of any kind would, we believe, seriously undermine the ability of Pennsylvania to achieve Exceptional Value designations in the future as this would encourage increased opposition to such designations.

Respectfully Submitted,


Davitt B. Woodwell, Esq.

Director, Western Pennsylvania Office

Pennsylvania Environmental Council

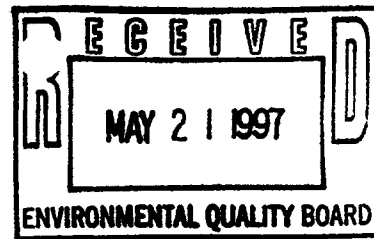
239 Fourth Avenue, Suite 1808

Pittsburgh, PA 15222

Tel. (412) 471-1770

Fax. (412) 471-1661

e-mail: davitt@ix.netcom.com



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INTEROFFICE MEMORANDUM

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Date: 21-May-1997 11:50pm EST
From: Peter C. Pinchot
peterpin@snet.net@PMDF@DER003
Dept:
Tel No:

TO: RegComments

(RegComments@A1.dep.state.pa.us@PMDF@

Subject: Comments on Proposed Rulemaking: 25 PA Code CHS. 92, 93 and 95. Water
May 21, 1997

Dear Environmental Quality Board:

My name is Peter Pinchot, former director of the Pocono Streams Project. I live at 225 Moose Hill Road, Guilford, CT 06437, and also have a house in Milford, PA. I appreciate the chance to enter comments in the proposed rulemaking "25 PA CODE CHS. 92, 93 and 95: Water Quality Amendments - Antidegradation".

My father, Dr. Gifford B. Pinchot, submitted a petition for the upgrade of the Sawkill Creek in Pike County ten years ago. He was concerned that intensive development in the Sawkill watershed, if permits for wastewater and stormwater discharges into the stream were granted, would threaten the Milford Borough water supply. He also wanted to preserve the integrity of the Sawkill gorge, which is part of the National Historic Landmark on the former estate of his father, Gifford Pinchot.

I became involved in both the stream redesignation and in the policy issues of implementing the E.V. on this stream. I am concerned that the rulemaking as currently written may weaken the Pennsylvania antidegradation program. In addition, there are several long-standing policy problems in the Special Protection program which should be addressed in this revision.

ANTIDEGRADATION GOALS:

The proposed rulemaking should contain a much clearer statement of the goals of the antidegradation program. Nowhere in the proposal is there a straightforward statement of the purpose to protect the existing water quality of HQ and EV watersheds.

Instead the proposal includes the ambiguous wording under Antidegradation Requirements in Section 93.4a "...existing uses are protected when the Department establishes, after evaluation of technical data, that an existing use is being or has been attained." Section 93.4c presents considerable detail about the criteria that must be met for a stream to be designated EV, but under "Level of protection for Exceptional Value Waters" states only "the quality of Exceptional Value waters shall be maintained and protected." Under Section 93.4b "High Quality Waters Level of protection/social or economic justification," it states "The quality of High Quality Waters shall be maintained and protected unless

... a new, additional or increased discharge is necessary to accommodate important economic or social development" These very weak goal statements do not set the tone for a strong stream protection program.

EXCEPTIONAL VALUE AND OUTSTANDING NATURAL RESOURCE WATERS:

It is not clear whether Pennsylvania will be compelled to adopt the Outstanding National Resource Waters classification in addition to HQ and EV. Is this possibility leading to a softening of the protection standards in EV watersheds?

Section 93.4d seems to indicate that EV no longer carries the stringent requirement of no measurable change in water quality. Rather EV along with HQ is subject to the selected discharge alternative "that is environmentally sound and cost-effective when compared with the cost of the proposed stream discharge. A proposed discharge shall use the best available combination of cost-effective treatment, land disposal and wastewater reuse technologies." This seems to imply that in an EV watershed, if the most cost-effective land treatment alternative is more expensive than a stream discharge system, then the stream discharge could be implemented, even if it produced a measurable change to the stream. Until now, cost has not been a factor in permitting projects in EV watersheds. Will it be under the new rule making? If not, then section 93.4d should make it clear that achieving no-measurable change in water quality is the primary criteria for selection of a discharge technology in EV watersheds.

NON POINT-SOURCE DISCHARGES:

Of much greater concern is how non-point discharges will be treated in the permitting process. In many watersheds the total contaminate loading entering streams from non-point sources is far greater than that coming from point-source wastewater treatment systems. How will surface flows from parking lots that may enter the stream as a sheet flow be handled? How about sediment from construction, will higher standards be required in EV and HQ watersheds? How about groundwater discharge systems for stormwater or wastewater? We know that, for nitrates and some toxics, soil and bedrock provide very little attenuation before the groundwater plume enters the stream. If these sources of contamination are not given the same scrutiny as direct discharges of wastewater effluent, then the objective of preserving existing water quality will inevitably be unachievable.

After the Sawkill was reclassified EV, Mike Adsit, the mall developer whose project was a pivotal issue in the stream upgrade, attempted to develop a wastewater and stormwater system that would be compatible with EV. DER officials at the time (1990-1991) laid out the ground rules that the non-point source groundwater plume from his project would have to meet the no measurable degradation objective of the EV regulation. That requirement provided an endpoint for the engineers to design for and was completely analogous to the requirement that effluent from a discharge pipe produce no measurable change.

This proposed rule making apparently is suggesting a major step backwards. Rather than designing systems from an explicit water quality

standard, a best management practices policy is being suggested as adequate to preserve EV and HQ streams. BMPs are certainly a good starting point, but if they are not designed to accomplish a specific end water quality level, there is no reason to believe that Special Protection streams can be maintained at their existing water quality. Imagine a 200 house subdivision being built with individual septic systems. The impact of that project may be far greater than most commercial or residential projects with a direct discharge. It may take years for the contaminant plume to reach the stream, but when it does water quality will plummet.

The lack of endpoint criteria may be exacerbated by the proposal to allow non-point source group permits. Under a group permit even the choice of BMPs may not be site specific. Group permits will only make sense if they are part of watershed planning that works toward achieving specific water quality goals.. If the cumulative impacts of all the point and non-point source contaminants are considered, then planning for several projects in a group permit makes considerable sense.

SOCIO-ECONOMIC JUSTIFICATION:

The most significant policy problem in the Special Protection program is how to ensure that legitimate economic needs get addressed in HQ watersheds without undermining the stringent stream protection goals of the program. The crux of SEJ is that a project that will degrade existing water quality must show, according to section 93.4b, that it "will result in economic or social benefits to the public which outweigh any water quality degradation which the proposed discharge is expected to cause." A noble idea, but how does one compare economic benefits, social outcomes and water quality degradation? Only one of the three is easily quantifiable. How do you place a numerical value on invertebrate species diversity, water turbidity, the smell of a stream, shorebird abundance, or even the health and size of trout? If you have no quantitative values for the results of water quality, then how can a clean stream be compared with the number of jobs a project will produce? In the absence of analytical solutions to this problem, there is no objective way to solve SEJ analyses: Consequently, in far too many cases they are a subjective value-driven process. This undermines the validity of SEJ as a method of determining social policy.

This is not an insoluble problem. There are a number of natural resource economists who are developing methods to pin economic values on ecological and social benefits. Streams have recreational values that spin off into tangible economic benefits. Fisheries have definable economic values. Even aesthetics can be valued, as in studies of the economic value of urban trees. It is important that the SEJ process compare apples and apples.

But there is a more fundamental problem that the SEJ procedure does not address well. The goal of the SEJ policy should be to facilitate a genuine search for innovative cost-effective solutions that will yield no degradation to water quality. If the permit applicant can find that kind of solution, then the SEJ will be unnecessary. But there may be no easy off-the-shelf technical solutions for this problem. And the avenues that need to be explored very likely lie well outside the area of expertise of

many of the engineers, consultants and regulatory officials who have to carry out an alternatives analysis. In this climate it is easy to see why so many permit applicants assume there is no way to avoid a technology that will degrade water quality. They may be are unfamiliar with where to search for constructive solutions.

Solving the problem of how to keep contaminants out of stream is essentially still an experimental practice. Each new stormwater or wastewater treatment system should stimulate learning. No one has the answer to exactly how to make development compatible with no degradation of streams and groundwater. Developers, municipalities, and regulators who are willing to search for creative solutions and take a risk at implementing them, need to be encouraged and given enough slack to learn from what they are doing. The research is not going to be carried out exclusively in universities or by regulatory agencies.

One way to facilitate this kind of innovation would be to establish a task force of scientists, policymakers, consultants and developers to try to identify the kinds of possibilities that should be explored in an alternatives analysis. They could develop a set of suggestions about how to lower the cost of high performance or non-discharge systems. Perhaps they could even act as a tech-support hotline for consultants stumped in their search for viable alternatives. Another way to facilitate creative solutions would be to give a permit applicant with a technically promising idea a little leeway in meeting the permit requirements. If they were given an experimental permit, and established a good scientific experimental methodology so the project would generate new knowledge, then they might be given a certain amount of time to get the bugs worked out of the system before they had to meet the exact permit requirements. However the innovation process is stimulated, the SEJ will become a much more constructive process if a genuine search for constructive alternatives is made early in the process

Thank you for giving me the opportunity to make these comments.

Sincerely,

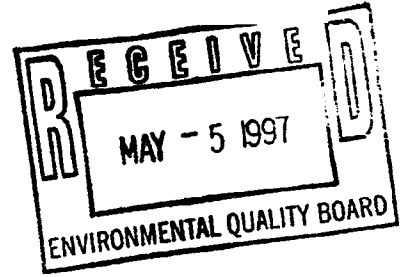
Peter Pinchot
225 Moose Hill Road
Guilford, CT 06437
203-453-1104
e-mail: Peterpin@snet.net

P.O. Box 307
Milford, PA 18337
717-296-2877

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with SMTP id <01IJ5CJ1TOJO96XOK4@PADER.GOV> for RegComments@a1.pader.gov; Wed,
21 May 1997 22:52:39 EST
Received: by gatekeeper.pader.gov; (5.65v3.2/1.3/10May95) id AA09505; Wed,
21 May 1997 22:55:34 -0400
Received: from mail.snet.net by gatekeeper.pader.gov (smtpxd); id XA09564
Received: from PCPinchot (nwhn02-sh1-port15.snet.net [204.60.13.15])
by daisy.snet.net (8.8.5/8.8.5/SNET-1.5) with SMTP id WAA20732 for
<RegComments@A1.dep.state.pa.us>; Wed, 21 May 1997 22:55:27 -0400 (EDT)
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Environmental Quality Board
DEP, P.O. Box 8465
Harrisburg, PA 17105

To Whom it may concern:

I am writing to you today in regards to the DEP's current anti-degradation proposal.

I have two small children + am concerned about the safety of our drinking water. Kids have enough to deal with in today's world, shouldn't we be able to give them a safe, clean, glass of water. Please reject the anti-degradation proposal and give our future generations the chance to live in a world with clean water.

Thank you for your time, a reply would be appreciated.

Patricia Prusch
29 Kenwood Circle
Quakertown, PA 18951



Pennsylvania Coal Association

212 North Third Street • Suite 102 • Harrisburg, PA 17101

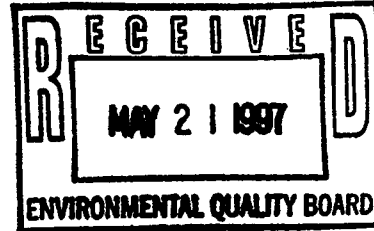
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(717) 236-5901
(800) COAL NOW (PA Only)

GEORGE ELLIS
President

57 MAY 20 1997

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May 21, 1997



Environmental Quality Board
Rachel Carson State Office Bldg.
15th Floor
400 Market St.
Harrisburg, PA 17101

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Re: Proposed Water Quality Amendments - Antidegradation
25 Pa. Code, Chapters 92, 93 and 95

Ladies and Gentlemen:

The Pennsylvania Coal Association (PCA), pursuant to notice published in the *Pennsylvania Bulletin* on March 22, 1997, submits the following comments on the above referenced proposed rulemaking.

PCA is a trade association organized and existing under the laws of Pennsylvania representing producers of bituminous coal in the Commonwealth in regulatory matters affecting the coal industry. PCA's members produce over 75% of the bituminous coal annually mined in Pennsylvania, which according to preliminary data from DEP and the U.S. Department of Energy, totaled approximately 67 million tons in 1996. In addition, PCA represents 86 Associate Members who provide services to the coal industry ranging from banking and insurance to equipment and engineering consultation.

PCA was one of the stakeholders in the "Reg-Neg" process convened by the Department to facilitate a consensus on this issue. Both the Association and its member companies have a substantial interest in the outcome of this proposed rulemaking.

Generally, it is the position of PCA that Pennsylvania's anti-degradation regulations should not be more stringent than the corresponding Federal regulations, which set national standards that are adequate to protect water quality and allow Pennsylvania industry to compete with industry from neighboring states. PCA's specific comments to the proposed regulations follow.

PCA supports the proposed amendment to 25 Pa. Code § 92.81 and 92.83 to allow the use of general NPDES permits on High Quality (HQ) Waters. PCA believes that there should not be a prohibition on the applicability of general NPDES permits to Exceptional Value (EV) Waters. If the other requirements of Sections 92.81 and 92.83 are met, the use of general permits should be allowed on EV Waters.

PCA objects to the proposed definition of EV Waters because it is more encompassing than the corresponding Federal definition. The proposed anti-degradation requirements for Tier I and Tier II (HC) waters adequately protect surface waters which are not Outstanding National Resource Waters. Waters which are outstanding State, local and regional resource waters can be adequately protected as HQ Waters. PCA also objects to including waters which have been designated by the Fish and Boat Commission (PFC) as Wilderness Trout Streams as waters that qualify as EV Waters if they meet the conditions specified in § 93.4c. All waters should have to meet both a biology and a chemistry test to qualify as EV Waters. Under the proposed definition of EV Waters and § 93.4c, streams designated by PFC as Wilderness Trout Streams are not required to meet a chemistry test. Also, the Department and the EQB should not delegate authority to designate EV Waters to PFC.

PCA objects to the definition of "Natural Quality" because PCA objects to using natural quality as one of the criteria for satisfying the chemistry requirement for EV Waters designation. Waters can be of natural quality and still be of poor chemical quality. EV Waters are supposed to represent the highest quality waters of the Commonwealth in both chemical and biological characteristics. Therefore, "natural quality" waters which do not meet the chemical and biological criteria for EV Waters should not qualify as EV Waters.

PCA objects to including springs and natural seeps in the definition of "Surface Waters" because doing so is inconsistent with and could result in the unintended modification to 25 Pa. Code § 93.5(a) which provides for achieving water quality criteria at Q₇₋₁₀ flows and, for streams with Q₇₋₁₀ flows of zero, provides for achieving water quality standards at the first downstream point where a stream can support designated water uses. Since most springs and natural seeps are likely to have Q₇₋₁₀ flows of zero, including them in a definition of surface waters could create confusion as to how § 93.5(a) is to apply to springs and natural seeps.

Section 93.4b should be rewritten to make it clear that a surface water must satisfy both the chemistry criteria of subsection (1) and the biological criteria of subsection (2). Subsection (3) as written is discretionary and should remain discretionary. Therefore, the introductory paragraph [93.4b(a)] should be rewritten to provide as follows:

- (a) **Qualifying as High Quality Waters.** For a surface water to qualify as High Quality Waters, the Department must determine that the water quality meets the conditions set forth in paragraphs (1) and (2).

PCA recommends that subsection 93.4b(a)(1)(ii) be deleted. As discussed above, "natural quality" waters should not automatically satisfy the chemistry criteria for HQ Waters.

PCA recommends that subsection 93.4b(a)(2)(iii) be deleted. The Department and the EQB should not delegate their rulemaking authority to PFC. There should not be a separate biological category for PFC designated Wild Trout Streams because subsection (ii) is broad enough to cover the PFC Wild Trout Stream designations if PFC's assessment procedures can satisfy peer review requirements. If not, a Wild Trout Stream designation should not be sufficient to satisfy the biological criteria for HQ Water qualification.

The last clause of Section 93.4b(b) must be deleted. It provides "and will result in economic or social benefits to the public which outweigh any water quality degradation which the proposed discharge is expected to cause." This requirement goes beyond the federal anti-degradation requirements for Tier II (HQ) waters and there is no basis in state law for imposing it. If proponents of this language argue that it is necessary to implement Article I, Section 27 of the Pennsylvania Constitution, they are wrong because that constitutional provision is applicable to permit decisions regardless of whether its criteria are included in permit review regulations. More importantly, the standard set forth in the proposed regulation is clearly inconsistent with the standard enunciated by Commonwealth Court for implementation of Article I, Section 27 in Payne v. Kassab, 11 Pa. Cmwlth 14, 312 A.2d 86 (1973), affirmed 468 Pa. 226, 361 A.2d 263 (1976). According to Commonwealth Court, the question which is to be asked is -- ... Does the environmental harm of a proposed project so clearly outweigh the benefits that to allow the project to proceed would be an abuse of discretion? The objectionable clause of proposed Section 93.4(b)(b) is inconsistent with the standard and burden of proof of Payne v. Kassab. Accordingly, the objectionable clause should be deleted [or, at a minimum, it should be revised to track the Payne v. Kassab test.]

Section 93.4c (Exceptional Value Waters) should be revised to clarify that it is mandatory for qualification as an EV Water, a water way must satisfy the criteria in subsections (1) and (2), and that consideration of additional information under subsection (3) is discretionary. That can be accomplished by changing the last clause of subsection (a) to state "the water quality must meet the conditions set forth in paragraphs (1) and (2)."

"Generally" should be deleted from the first line of Subsection 93.4c(a)(1)(i). EV Waters are supposed to be highest quality waters. Therefore, their chemistry should clearly be better than instream criteria, rather than merely generally better.

Subsection 93.4c(a)(1)(ii) dealing with "natural quality" water should be deleted for the reasons discussed above.

There appears to be an omission of some text in proposed Subsection 93.4c(a)(2)(i).

Subsection 93.4c(a)(2)(iii) should be deleted for the reasons set forth above in the discussion of Subsection 93.4b(a)(2)(iii).

Proposed Subsection 93.4e(d)(1) should be revised to clarify that where publication of notice of a permit application is already required under existing statutes or regulations, the public notice requirement of Subsection 93.4e(d) may be included in the existing public notice requirement.

Proposed Subsection 93.4e(e) should be revised to add "If a public hearing is requested during the public comment period" at the beginning of said Subsection. There is no reason to require the Department to hold a public hearing if a timely request for one is not made.

Finally, if the final regulation allows an EV designation to be imposed on private watershed lands, the rulemaking should provide for additional public participation in the decision to designate waters as EV.

While the proposal seeks public input on technical issues, it ignores public dialogue on the serious economic and social impacts that an EV designation could have on the people who live and work in the affected watershed.

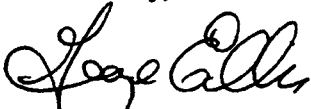
Therefore, the regulation should be changed to condition the approval of an EV upgrade on the Department receiving an agreement on the designation from those people who would be directly affected by it.

Accordingly, the regulation should include the following:

- DEP should be required to inform the owners of private watershed lands that would be affected by a new EV designation how it will limit activities on their property.
- The regulations should allow the affected property owners to decide whether they want the EV designation.
- DEP should be required to get a formal commitment from the owners of the affected watershed lands to preserve the resource at the strict EV standard before recommending the designation to the EQB.

Thank you for your consideration of these comments.

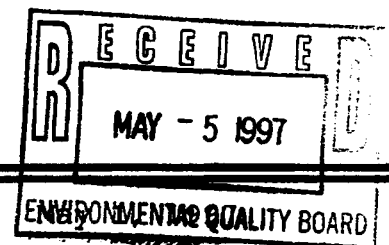
Sincerely,



George Ellis
President



James Seif
Environmental Quality Board
Box 8477
Harrisburg, PA 17105-8477



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Dear Mr. Seif:

I write you at the direction of the members of the Iron Furnace Chapter of Trout Unlimited to protest elements of the Antidegradation Proposal which we view with grave concern:

1. High Quality and Exceptional Value will no longer to be considered as "protected water uses." Changes in use will not receive EPA scrutiny; and in a politicized atmosphere, current HQ and EV designations may be reversed.

2. The proposal redesignates HQ and EV waters from "watersheds" to "surface waters." The redesignation is harmful because it makes it easier to ignore springs, seeps, wetlands, and tributaries.

3. Although quality standards recognize wetlands as "waters of the Commonwealth," wetlands protection is not integrated with antidegradation.

4. Unassessed waters--over half the waters in the Commonwealth--are protected at the lowest level and so dischargers are given the benefit of the doubt over the rights of all other citizens.

5. Language on "non-point" sources of pollution is weaker than the Federal language.

6. Several other points in the proposal are contrary to Federal regulations: a) HQ waters must pass both a water chemistry and a biology test to qualify for the designation, and so more waters would be excluded from it than under the Federal requirements. b) Dischargers who use 25% or less of the "assimilative capacity" of a stream will not be required to demonstrate "social or economic justification," nor will dischargers who qualify for "general" NPDES permits. Such loopholes are retreats from the current program and are contrary to Federal regulations. c) In designating waters as EV, DEP no longer gives weight to waters on public lands in the "selection criteria," contrary to Federal regulations. d) Protection given EV streams contains a loophole that allows not only discharges but degradation of water quality; and so water quality is not protected as Federal Regulations require. e) Business interests may ask for veto power over EV designations for local residents or local governments, a dangerous power and contrary to Federal regulations.

These proposals set the clock back. They are dangers to the Commonwealth.

Sincerely,

James H. Knickerbocker, Ph.D., Secretary

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Environmental Quality Board
Mr. James Seif, Chairman
P.O. Box 8477
Harrisburg, PA 17105-8477

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12/26/97

Dear Mr. Seif:

I am writing in regard to the proposed rulemaking on antidegradation as published in the March 22, 1997 Pennsylvania Bulletin. There is insufficient antidegradation protection for wetlands in this proposal.

The current regulation, put into place by EPA, gives this protection to wetlands. How can wetlands be given HQ or EV protection if the biological criteria to make a "surface water" HQ or EV are based on streams?

It is disappointing that the DEP did not take this opportunity to write regulations so that our wetlands could begin to receive antidegradation protection.

This regulation falls short in protecting one of our most valuable resources - wetlands. It should be rejected by the Board.

Sincerely,

Theo F. Lumia
resident: Bear Creek, Pa.
May 18th '97 -

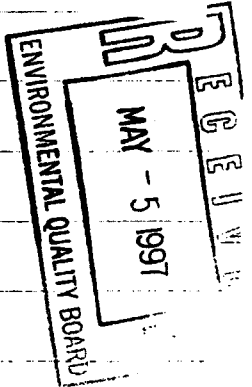
ENVIRONMENTAL QUALITY BOARD

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Please reject the DEP's current
anti-degradation proposal

Please reply to

Virginia R. Dresler
1410 Concord Ct.
Quakertown, PA 18951



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Please reject the DEP current anti-degradation proposal

R E C E I V E
MAY - 5 1997
ENVIRONMENTAL QUALITY BOARD

*Thank you
Troy Yerk*

TROY YERK
4 PARKVIEW DR.
QUAKERTOWN, PA 18951

CQB
Dep PO Box 8465
Harrisburg, PA 17105

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To Whom It may Concern:

We need standards that protect our
waterway from any more degradation.

Reject the DEP's current anti-degradation
proposal.

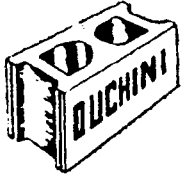
Thank you

Tracy Keller

29 South 11th St
Quakertown PA 18951

- Please reply

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Mr. James Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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(PER JHJ)

Dear Secretary Seif:

Thank you for the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. This is a very important proposal and my comments are as follows:

This proposal should be subject to the Governor's Executive Order 1996-1, which requires the department to revise all of its regulations to bring balance to Pennsylvania's environmental regulations. In several instances, Pennsylvania's program exceeds federal standards. The DEP should adopt the federal language that states water quality must "exceed" standards rather than what is contained in the proposal as "generally better than" standards. This proposal of "generally better than" standards allows for judgement calls by the department. If data indicates the stream does not meet even one water quality standard, the stream should not qualify for a high quality or exceptional value designation.

Pennsylvania's exceptional value program should apply only to outstanding resource waters as contained in the federal regulations. Currently, DEP's program is much broader in scope and includes streams that would never qualify under the federal program.

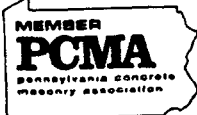
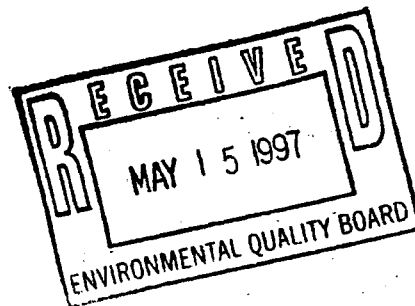
The DEP must expand its public participation in regard to its assessment of high quality and exceptional value waters. Notice by first class mail must be sent to any applicant with a pending permit, any existing discharge permittees, the appropriate municipalities, planning commissions and all applicants that have received planning or subdivision and land development approval within the last five years.

We support the department's efforts to reduce the permitting burden for applicants included in this proposal. The provisions regarding dischargers with minimal impact are welcomed. We also endorse the use of general permits on high quality streams and support the expansion of this practice to exceptional value streams.

Thank you for considering these comments.

Sincerely,

William L. Bedorf, Jr.



HAYDITE, DUKECRETE, DUKE-LITE, CONCRETE BLOCKS, CUSTOMIZED MASONRY UNITS, FACE BRICK, ANDERSEN WINDOWS, STORM DOORS, PRECAST PRODUCTS, ELECTRICAL SUPPLIES, PLUMBING SUPPLIES, COMPUTERIZED KITCHEN CABINETS, MAJESTIC FIREPLACE, LUMBER, AND POWER TOOLS.



PENNSYLVANIA OIL & GAS ASSOCIATION

412 North Second Street, Harrisburg, PA 17101 • Tel : 717-233-0935 Fax: 717-233-0940

97 MAY 03 10:09:50

Comments of the Pennsylvania Oil & Gas Association on proposed amendments to the Department of Environmental Protection's Water Quality (Antidegradation) Regulations

ORIGINAL: #1799

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SANDUSKY
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The Pennsylvania Oil and Gas Association (POGAM) is a trade organization representing independent oil and gas producers who live and work throughout the Commonwealth and the allied industries that serve them. Because of the nature of the oil and gas exploration and production business and because of the significant effect that Departmental decisions made on the basis of statutory authority to regulate the waters of the Commonwealth have on real property owned by our members, POGAM has a substantial interest in the structure and content of the Department of Environmental Protection's water quality program.

POGAM participated in the regulatory negotiation convened in 1995 by the Department to address outstanding concerns with the antidegradation components of the water quality program. While the negotiation ended without coming to an appropriate closure on many significant issues, we thank the Department for the opportunity to participate in the process. We also urge the Department to continue employing regulatory negotiations and similar techniques to ensure adequate public involvement in its decisions.

We submit the following comments on the proposed water quality rulemaking adopted by the Environmental Quality Board in January 1997 as published in the *Pennsylvania Bulletin* on March 22, 1997.

GENERAL COMMENTS

In general, POGAM endorses the final report submitted to the Department in the aftermath of the regulatory negotiation by the so-called "regulated community" stakeholders. We believe that their report presents a balanced approach to addressing many of the vexing regulatory issues that the Department and the Environmental Quality Board attempt to resolve through the proposed rulemaking being addressed in these comments.

We ask you to consider and respond to each of the issues raised in the regulated community stakeholders report in the context of this proposed rulemaking.

SPECIFIC ISSUES

We also wish to highlight some of the issues we consider most important through the following discussion.

The Exceptional Value Waters program should only apply to outstanding waters on public lands.

It is important to note that the proposed rule retains the current Exceptional Value waters program essentially intact. This is contrary to Governor Ridge's 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 tougher standard or the department can articulate an overriding 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 overriding state need for a higher standard has ever been established.

EPA's Tier 3 antidegradation program protects the highest quality waters in the nation. 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 which use the surface water to satisfy a human need are prohibited.

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Almost half of the streams now classified by DEP as Exceptional Value waters are on private lands. DEP should not be permitted to designate waters that flow through private lands for Exceptional Value protection because of the extreme restrictions the designation imposes on individuals and communities who reside in the affected watersheds.

The Exceptional Value designation should be reserved for streams that are truly unique or exhibit statewide or national significance. Many of the Pennsylvania streams currently classified as Exceptional Value cannot meet that standard, and the proposed regulation lets DEP continue to designate Exceptional Value streams that could never meet such a standard.

By continuing to extend its Exceptional Value Waters program beyond streams in public parks and forests, the Department's proposed regulation 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 Exceptional Value streams flow.

The Environmental Quality Board 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 participation in the Exceptional Value designation decision.

In the preamble to the proposed water quality amendments, the Environmental Quality Board solicits comments on ways to enhance public participation in the designation of Exceptional Value waters.

If the final regulation allows the Exceptional Value designation to be placed on private watershed lands, you should provide for more public participation in the decision to designate Exceptional Value waters. The proposed rulemaking 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 Environmental Quality Board should amend the final regulation to require DEP to get the people affected by an Exceptional Value upgrade to buy into it. Specifically:

- DEP should be required to inform the owners of private property interests in the watershed lands that would be affected by a new Exceptional Value designation how it will limit what they can do on their property.
- The regulations should allow the affected property owners to decide whether they want the Exceptional Value designation.
- DEP 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.

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.

The Environmental Quality Board 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.

Pennsylvania's Exceptional Value regulations can be improved substantially if they are modified to require the department to take the time to ensure that the people directly affected by a potential decision to regulate a water body under strict Exceptional Value standards understand and endorse that level of governmental control.

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The expansion of public participation in the Exceptional Value waters decision-making process as described above is also a logical extension of the department's new policies. The Department's World Wide Web site on the Internet make the point very clearly.

At http://www.dep.state.pap.us/dep/subject/involved/yes_comment.htm, the Department states:

Yes, We Do Want Your Comments!

One fundamental rule has changed at the new DEP – we want your comments!

When the new DEP puts out a proposed rule or policy, we want your comments and alternatives. We also want to encourage your constructive discussion based on facts and science. We don't want you to simply make a point with your comments, we want you to make a difference.

One of the critical "facts" that is discounted by the proposed amendments to the Exceptional Value waters program is the effect the designation has when it is imposed on private watershed lands. If the Department wants "comments and alternatives" to a regulation that would designate a privately owned watershed as an Exceptional Value resource, it should consider the effects of the designation on the citizens of the candidate watershed on an equal footing with the proposed technical criteria. The department can obtain such comments and alternatives by giving the owners of the private watershed lands affected by a potential Exceptional Value waters designation the opportunity to share their concerns and participate in the decision.

One of the first policies developed and adopted by the new Department attempted to put teeth into its commitment to expand public involvement in the rulemaking activities. The document, entitled "Public Participation in the Development of Regulations and Technical Guidance" (Document No. 012-1920-001), states:

The Department will ensure that all guidance documents and regulations are developed with effective participation by the public during all steps in the process.

It explains that "one of the primary objectives of this Administration is to improve public access to information and decision-making in the Department," and it states unequivocally that "the Department must reach out to broaden public participation to understand what the public thinks, to better inform the Department, and to ensure that the public understands what the Department is doing and why it is doing it."

The public participation policy also list specific principles that the Department commits to following to ensure effective public participation,. They include the following:

1. Public involvement in the process must occur early and often. Public participation takes more time and effort up front, but will result in a better decision which is less controversial and requires less outreach, education and defense.
2. Public trust is earned through openness, outreach, consistency and results. Public involvement is integral to sound decision-making....
3. Public dialog will increase understanding among all interests affected by environmental decisions. Public dialog can aid both the regulated community and the public in understanding their individual expectations, resulting in more workable and widely-acceptable solutions.
4. Public input should be solicited from all sectors of society. Equal opportunity for comment and equal consideration of comments from the private and public sectors should be provided. All members of the public should have equitable opportunities to participate. The Department will encourage broad participation in its decision-making from all members of the public....

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5. The public deserves substantive responses to all comments they submit. The Department should carefully consider all public comments, regardless of their origin, and provide a response through a comment and response document, not just an acknowledgment.
6. **Freedom to Participate.** The Department will encourage broad participation in its decision-making and discourage actions which prevent effective participation. DEP will encourage participation by targeting specific audiences who may have a particular interest in a proposal, widely distributing information on proposals, and proactively asking for comments on specific issues of concern. Disruptive actions by interest groups which hinder others from participating in discussions and meetings with the Department will be discouraged.

If the Department truly believes that "effective participation also means two-way communication and the willingness of the public to take advantage of the various opportunities to participate," it should open the door to such communication so that individuals and communities directly affected by its decisions have a meaningful opportunity to participate. Such an opportunity is especially critical in the context of the Exceptional value waters designation.

To perfect the Department's public participation policy, the Environmental Quality Board should amend the final antidegradation rulemaking to provide for meaningful public involvement in the decision to impose an Exceptional Value waters designation on private watershed lands.

Make general permits available on all Special Protection waters.

The proposed regulation allows general permits for minor discharges on High Quality streams. This is a positive step, but the final regulation should go further.

Many private individuals own the minerals under Exceptional Value watershed lands. If their discharge qualifies for a general permit, they should be able to use that permit on both High Quality and Exceptional Value streams. Otherwise they may not be able to extract the minerals economically.

Keep the "de minimis" permit threshold to ease the permitting burden.

POGAM supports the proposal 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.

Change the High Quality Waters program to match federal standards.

DEP's proposal allows streams to qualify for High Quality status if they have water quality that is "generally better" than water quality standards. The EPA regulation, on the other hand, requires a stream to "exceed" water quality standards before it can be elevated to High Quality status. A stream should never qualify for Special Protection if even one of its water quality parameters violates the required standard.

The final regulation should be modified to require the water quality of streams to actually "exceed" water quality standards for all relevant criteria before qualifying for a High Quality waters designation.

The same condition should also apply to candidates for an Exceptional Value designation.

Use sound science to evaluate streams for Special Protection.

DEP should also be required to conduct a valid scientific investigation of water quality to determine if a stream qualifies for Special Protection. It is bad science to rely on one grab sample to assess a stream. While it may be a bureaucratic convenience, such limited sampling does not generate enough information to accurately determine whether a stream's background condition exceeds water quality standards.

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Change the Social and Economic Justification (SEJ) requirements for High Quality Waters to match federal regulations.

The Department's proposal imposes the basic federal SEJ standard and adds a second "balancing test" that has no federal counterpart. The balancing test should be removed from the final rule to maintain consistency with the federal regulation.

Eliminate the requirement for two public comment periods for permits on Special Protection streams.

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

Thank you for considering these comments.

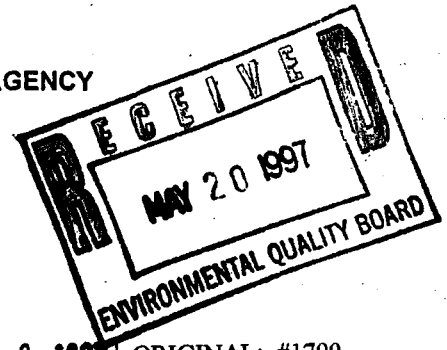
Sincerely,


Stephen W. Rhoads
President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 841 Chestnut Building
 Philadelphia, Pennsylvania 19107-4431

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Environmental Quality Board
 P. O. Box 8477
 Harrisburg, PA 17105-8477

Dear Board Members:

The U. S. Environmental Protection Agency (EPA) has reviewed the proposed rulemaking to amend Chapters 92, 93 and 95 of Title 25 of the Pennsylvania Code, which was published in the Pennsylvania Bulletin on March 22, 1997, and is providing the enclosed comments. EPA commends the Pennsylvania Department of Environmental Protection's (PADEP) initiative to involve stakeholders through the regulatory-negotiation (reg-neg) process in an effort to address EPA's disapproval of Pennsylvania's antidegradation policy. While the reg-neg process did not yield full consensus on regulatory language, it served PADEP's mission greatly by creating a forum for major organizations in Pennsylvania to understand PADEP's water quality program and also for the policy debate surrounding this issue. EPA participated in the reg-neg process and we note that some, but not all, of the recommendations which arose during the process are incorporated into Pennsylvania's proposal.

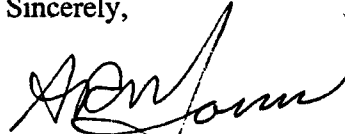
As is indicated in the Pennsylvania Bulletin notice of proposed rulemaking, the United States Environmental Protection Agency (EPA) promulgated the Federal antidegradation policy for the Commonwealth of Pennsylvania on December 9, 1996 (61 FR 64816) (copy enclosed). Our comments today are intended to identify changes and clarification that would be needed to support a recommendation to the Regional Administrator to approve Pennsylvania's antidegradation policy. We have provided comments and suggestions regarding Pennsylvania's implementation methods. Because implementation is such an important part of the effectiveness of antidegradation as a tool to protect water quality, we encourage all stakeholders in the process to make every effort to reach agreement. EPA's promulgation provides an antidegradation policy but does not prescribe implementation methods.

To date, EPA has received more than 800 letters from the citizens of the Commonwealth regarding PADEP's proposed regulation. The majority of the letters express a preference for the "clearer, simpler" Federal language which EPA promulgated in December 1996. We believe that this misconception has been created by PADEP's initiative to fully disclose how the program will be implemented. We urge PADEP to make any revisions necessary to clarify Pennsylvania's commitment to adopt of a policy which is fully equivalent to the Federal regulation.

Pennsylvania intends to adopt a regulation which can form the basis for removal of the Federal regulation currently in place. In cases where there is a Federally-promulgated rule in place for a State, it is EPA's practice to withdraw the Federal rule once a State adopts rules that are approved by EPA. EPA's 1994 disapproval was based in part upon the antidegradation implementation procedures found in the Commonwealth's Special Protection Waters Implementation Handbook. We have been informed by PADEP that the Handbook will be revised once a new antidegradation regulation is adopted by the Commonwealth. Once the Commonwealth's complete antidegradation program is in place, EPA will be prepared to make a determination whether our promulgation can be withdrawn, either in whole or in part.

Thank you for the opportunity to review this proposed rulemaking. If you have any questions regarding our comments, please contact Denise Hakowski at (215)566-5626.

Sincerely,

A handwritten signature in black ink, appearing to read "Alvin R. Morris", written in a cursive style.

Alvin R. Morris, Director
Water Protection Division

Enclosures

EPA's Comments on Pennsylvania's Proposed Rulemaking to amend the Commonwealth's Antidegradation Requirements (Pennsylvania Bulletin, March 22, 1997)

§§92.81 and 92.83 -- General NPDES permits/Inclusion of individual dischargers in general NPDES permits

The Commonwealth's current regulation currently prohibits the use of general NPDES permits in "special protection" waters. We are pleased to note that this proposed rulemaking would retain this restriction in Exceptional Value (EV) waters. The proposal, does, however, allow the use of general permits in High Quality (HQ) waters. We understand from the *Summary of Regulatory Revisions* and from our discussions with PADEP that the use of general permits would be limited, but the regulation does not specify the criteria or special conditions that would apply to use of general permits in HQ waters. This would appear to exempt those dischargers from antidegradation requirements for HQ waters, without providing the necessary justification that the discharges allowed by general permits truly do have a *de minimis* impact on water quality. This is especially important given the potential impact on small HQ headwaters. In order to approve this section, EPA will require a demonstration that *de minimis* dischargers will not have an impact on HQ waters, either through criteria which must be met before a discharger can be eligible for a general permit in an HQ watershed or through special conditions placed in the general permits which would apply in HQ waters.

EPA has determined that this regulatory action will require an amendment to current general permits issued by the Commonwealth. As a modification of the Commonwealth's NPDES regulation, it will require EPA action under 40 CFR §123.62(b)(4), and will be effective upon the approval of EPA and not immediately upon adoption, as would be the case for a water quality standards regulation..

§93.1 -- Definitions

EPA wishes to correct any misconception that the Outstanding National Resource Water (ONRW) category within *Exceptional Value Waters* could be interpreted to apply only to surface waters located on publicly-owned lands. ONRW status can be granted to any waterbody, including wetlands, of significant ecological or recreational significance. We have been assured by PADEP representatives that this limitation was not intended, but request confirmation on the interpretation of this definition in the response to our comments.

In the current regulation, HQ and EV waters are defined as "(a) stream or watershed..." In the proposed regulation, the definition of *Surface waters* does not include the term "watershed". EPA requests clarification on the scope of this definition without the inclusion of "watershed" and how it relates to the term "waters of the Commonwealth" found in §93.2. The Federal antidegradation policy, likewise refers to "waters", although actions considered to potentially lower water quality include those in the watershed as a whole and not merely in the "water."

93.3 -- Protected water uses

The Federal regulation does not require that States use a designational approach to antidegradation and, in fact, EPA has expressed a parameter-by-parameter approach in which all changes to lower quality receive antidegradation protection. Pennsylvania's program of designating Special Protection waters has been successful, although limited by resources available to evaluate petitions and also somewhat encumbered by the regulatory process. Removal of Special Protection categories as designated uses was contemplated during the reg-
neg process as a means to shorten the time required to insure protection by eliminating aspects of the approval process involving the Environmental Quality Board and also to allow PADEP to quickly require antidegradation protection based on its technical evaluation whenever new discharges were proposed for previously unassessed waters. The current proposal appears to have only the practical effect of removing EPA from the review and approval process.

For waters that are already listed as HQ or EV, if it is the Commonwealth's intent to remove the HQ or EV designation for any of these waters, the Commonwealth would have to provide justification, reviewable by EPA and the public, in accordance with §131.10(j)(2). The justification is necessary since these management categories include special criteria and removing the special protection would allow for less stringent criteria. For waters that will be listed in the future under the management categories scenario, EPA would not have authority to review and approve, although antidegradation would still be a "water quality standard" and subject to treatment as such for the purposes of Section 401 certification and other situations when "compliance with water quality standards" is required.

Given that the antidegradation management categories appear to apply only to waters which have been assessed in accordance, we request that PADEP explain how adequate antidegradation protection will be insured when new or expanded discharges are contemplated to unassessed waters.

§§93.4a, 93.4b and 93.4c -- ANTIDEGRADATION REQUIREMENTS

EPA commends Pennsylvania for its efforts to adopt comprehensive language into regulation to address important aspects of the implementation methods which must be identified to support the policy. However, the large response from the public expressing a preference for the "simpler, clearer" Federal language indicates that revisions are necessary to insure that this important public policy is clear to its intended readers. EPA strongly recommends that the Commonwealth clearly state its baseline antidegradation policy, perhaps as a separate policy statement inserted between "Definitions" and "Antidegradation Requirements" or by clarifying the policy vs. implementation bases within each category.

§93.4a -- Existing uses

EPA believes that the regulation should be revised to remove any misconception that existing use protection is only provided when the Department has conducted a technical evaluation. We recognize, however, that the technical evaluation is an important part of the process to identify and protect existing uses. This could be accomplished by the modifying the provision to read: "Existing uses shall be maintained and protected. The Department shall ..." EPA applauds the Commonwealth's recent commitment to assess all unassessed waters and encourages PADEP to highlight these plans when it responds to public comments.

§§93.4b(a) and 93.4c(a) Qualifying as High Quality Waters and Exceptional Value Waters

The proposed regulation requires that certain chemistry and biology tests must be met before a surface water can qualify for HQ or EV protection. EPA strongly supports PADEP's efforts to use biological data as an indicator of long-term water quality. We have been advised by PADEP representatives that the chemistry test is considered only as a screening tool, and that the weight of evidence is in the biology test. EPA requests confirmation that this is the case. EPA believes that the chemistry test alone, as described, is not statistically adequate to disqualify a water from special protection. We also note that the chemistry test requires that certain parameters be screened whose criteria level supports the public water supply use only (i.e., nitrite/nitrate-nitrogen, sulfate, manganese). Compliance with these criteria should not be expected to limit high quality protection of streams for the purposes of aquatic life use.

Regarding the biology test, EPA applauds PADEP's commitment to use scientifically defensible methods to evaluate biological integrity. This is a developing field and EPA cannot at this time confirm or deny the validity of the integrated benthic macroinvertebrate threshold scores set in the policy proposed on March 22, 1997, for Chapter 15 of Title 25 of the Pennsylvania Code as measures of HQ or EV equivalent. 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 are, however, seeking advice from national experts and will provide comments in a separate letter to Mr. Edward R. Brezina, Chief of the Water Quality Assessment and Standards Division at PADEP. We also request that PADEP provide a rationale which supports these scores as indicators of waters which meet the intent of the Federal definition of high quality waters in Pennsylvania.

These qualification factors also allows that PADEP may consider additional chemical or biological information which characterizes or indicates the quality of a water in making its determination if a surface water is eligible for special protection. EPA requests clarification on how this additional information could support or override eligibility of a water for special protection.

§93.4b(b) -- Level of protection/social or economic justification (SEJ)

This section appears to have a typographical error separating two sentences where it appears there should only be one (...as described in §93.4e(d)....*that* the proposed discharge...). Also in this section, a proposed discharge into an HQ water is required to show that it is necessary to accommodate important economic or social development in the area in which the surface water is located and will result in economic or social benefits to the public which outweigh any water quality degradation which the proposed discharge is expected to cause [emphasis added]. However, in §93.4b(e)(1) through (5), it appears that the discharger is only expected to provide data regarding social and economic benefit. EPA recommends that §93.4b(e) include the specific requirement that the proposed discharger be required to provide data which demonstrates that the economic/social benefits may be adequately weighed against anticipated water quality degradation.

§93.4b(c) -- Compliance with water quality standards

This proposed regulation indicates that a proposed discharge to HQ waters, alone or in combination with other existing and anticipated discharges, may not violate water quality standards which are applicable to the receiving waters. This is the case for all discharges, whether or not they are to HQ waters.

§93.4b(f)(1) -- Assimilative Capacity Equation

EPA would like clarification as to the use of the term “natural quality” as it is used in this equation as it relates to the definition found in §93.1. In other words, is the level of a parameter set at the existing quality in the receiving stream, or at the condition that exists or that would reasonably be expected to exist in the absence of human-related activity? Also, when natural quality is greater than criteria, it appears that no assimilative capacity should exist. Is EPA interpreting the equation correctly? Please also clarify whether the assimilative capacity equation sets a cap at 25 percent for all existing and future dischargers.

§93.4c(b) -- Level of protection for Exceptional Value Waters

EPA notes that this section indicates that EV waters will be maintained and protected. Please clarify whether the interpretation of “maintain and protect” is based on the current edition of the Special Protection Waters Handbook.

§94.4d -- General requirements for High Quality and Exceptional Value Waters

The proposed regulation indicates that prior to designation a surface water is protected as HQ or EV following a positive evaluation of the technical data by the Department. EPA would like a clarification of what interim protection applies for waters that have not yet been assessed. EPA

recommends the presumption that waters are HQ when a new discharge is proposed unless proven otherwise by the applicant.

§93.4e(d)(3) – Public participation requirements for proposed discharges to High Quality or Exceptional Value Waters

EPA recommends that this section include a requirement that the public notice of complete application and fact sheet for dischargers to HQ waters include the basis and results of the SEJ review, including the analysis of benefits, impacts and the criteria used to insure that the public has adequate information to comment on whether lowering of water quality should be allowed. The process should also provide for intergovernmental coordination consistent with the Federal regulation.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-5659-9]
RIN 2040-AC78

Water Quality Standards for Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes water quality standards applicable to waters of the United States in the Commonwealth of Pennsylvania. EPA is promulgating this rule pursuant to Section 303(c)(4) of the Clean Water Act (CWA). This rule establishes an antidegradation policy for Pennsylvania, making available additional water quality protection than currently provided by the Commonwealth's antidegradation policy including the "Special Protection Waters Program," which EPA disapproved in part in 1994.

EFFECTIVE DATE: January 8, 1997.

ADDRESSES: This action's administrative record is available for review and copying at Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107. For access to the docket materials, call Denise Hakowski at 215-566-5726 for an appointment. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT: Evelyn S. MacKnight, Chief, PA/DE Branch, 3WP11, Office of Watersheds, Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA, telephone: 215-566-5717.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities

This action will establish a Federal antidegradation policy applicable to waters of the United States in the Commonwealth of Pennsylvania. Entities potentially affected by this action are those dischargers (e.g., industries or municipalities) that may request authorization for a new or increased discharge of pollutants to waters of the United States in Pennsylvania. This list is not intended to be exhaustive, but rather a guide for readers regarding entities potentially affected by this action. Other types of entities not listed could also potentially be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed in the preceding FOR FURTHER INFORMATION CONTACT section.

B. Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), States are required to develop water quality standards for waters of the United States within the State. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of their triennial review of their water quality standards to EPA. EPA reviews the submittal and makes a determination whether to approve or disapprove any new or revised standards.

Minimum elements which must be included in each State's water quality standards regulations include: use designations for all waterbodies in the State, water quality criteria sufficient to protect those designated uses, and an antidegradation policy consistent with EPA's water quality standards regulations (40 CFR 131.6). States may also include in their standards policies generally affecting the standards' application and implementation (40 CFR 131.13). These policies are subject to EPA review and approval (40 CFR 131.6(f), 40 CFR 131.13).

This rule involves antidegradation. 40 CFR 131.12 requires States to adopt antidegradation policies that provide three levels of protection of water quality, and to identify implementation methods. Under 40 CFR 131.12(a)(1), referred to as Tier 1, existing instream water uses and the level of water quality necessary to protect the existing uses are to be maintained and protected. Existing uses are those uses that existed on or since November 28, 1975. Tier 1 represents the "floor" of water quality protection afforded to all waters of the United States. Under 40 CFR 131.12(a)(2), referred to as Tier 2 or High Quality Waters, where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint sources.

Finally, under 40 CFR 131.12(a)(3), known as Tier 3 or Outstanding National Resource Waters (ONRWs), where a State determines that high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Section 303(c)(4) (33 U.S.C. 1313(c)(4)) of the CWA authorizes EPA to promulgate water quality standards for a State when EPA disapproves the State's new or revised water quality standards, or in any case where the Administrator determines that a new or revised water quality standard is needed in a State to meet the CWA's requirements.

In June 1994, EPA Region 3 disapproved portions of Pennsylvania's standards pursuant to Section 303(c)(4) of the CWA and 40 CFR 131.21, including portions of the antidegradation policy, known in Pennsylvania as the Special Protection Waters Program, relating to protection of existing uses, criteria used to define High Quality Waters and protection afforded to Exceptional Value Waters as

equivalent to ONRWs. For a detailed review of the correspondence and discussions between the Pennsylvania Department of Environmental Protection ("Pennsylvania" or "the Department") resulting from EPA's disapproval, see

[[Page 64817]]

the August 29, 1996, Federal Register proposal of this rule. (61 FR 45379).

As a result of EPA's disapproval, Pennsylvania initiated a regulatory negotiation, or "reg-neg," to reassess its antidegradation policy, or Special Protection Waters Program, while involving stakeholders in the process. EPA participated in the reg-neg process in an advisory capacity and informed the reg-neg group of this rulemaking action.

Based on the reg-neg process and an interim report produced by the group, the Department announced in the Pennsylvania Bulletin, May 4, 1996, the availability of proposed changes to the antidegradation provisions of the Commonwealth's water quality standards. The reg-neg group's final meeting was on August 1, 1996, where the stakeholders declared that a group consensus could not be reached, disbanded and issued two separate reports, representing the opinions of the conservation stakeholders and the regulated community stakeholders respectively. The Department is currently developing a new regulatory proposal using these reports and input it received in response to its May 4, 1996 Pennsylvania Bulletin notice.

On April 18, 1996, concerned with the time that had elapsed since EPA's disapproval, the United States District Court for the Eastern District of Pennsylvania ordered EPA to prepare and publish proposed regulations setting forth revised or new water quality standards for the Commonwealth's antidegradation provisions disapproved in June 1994. *Raymond Proffitt Foundation v. Browner*, Civil Docket No. 95-0861 (E.D.Pa). The court stated that EPA was not to delay its rulemaking any more to accommodate the Commonwealth's schedule.

Consistent with the Court's order, on August 29, 1996, EPA published a Federal Register notice proposing standards related to Pennsylvania's antidegradation policy (61 FR 45379). Since the Commonwealth has not adopted revised water quality standards which EPA determined are in accordance with the CWA, an action that would have made EPA's rulemaking unnecessary, EPA is promulgating this rule in accordance with Section 303(c)(3) and (4) of the CWA.

EPA's long-standing practice in the water quality standards program has been to withdraw the Federal rule if, and when, a State subsequently adopts rules that are then approved by EPA. Thus, notwithstanding today's action, EPA strongly encourages the Commonwealth to pursue its on-going effort to adopt appropriate standards which will make this Federally promulgated rule unnecessary.

C. Summary of Final Rule and Response to Major Comments

A description of EPA's final action, and a summary of major comments regarding the proposal and EPA's response, are set forth below. Additional comments and responses to comments are in the administrative record.

1. Ensuring That Existing Uses Will Be Maintained and Protected as Required Under 40 CFR 131.12(a)(1)

Pennsylvania's regulation at 25 PA Code Sec. 93.4 explicitly protects existing uses only through Pennsylvania's designated use process. That process requires that when an evaluation of technical

data establishes that a waterbody attains the criteria for an existing use that is more protective than the waterbody than the current designated use, that waterbody will be protected at its existing use until the conclusion of a rulemaking action. After the rulemaking action the waterbody will be protected only at its designated use and in some cases the designated use will not adequately protect the existing use. For a more detailed discussion of EPA's disapproval of this provision and Pennsylvania's resulting actions, see the preamble discussion in the August 29, 1996, proposal, 61 FR 45379.

In order to ensure that the standards governing Tier 1 antidegradation protection in Pennsylvania are consistent with the CWA, EPA proposed to promulgate for Pennsylvania language that ensures existing uses shall be maintained and protected in accordance with 40 CFR 131.12(a)(1). The comments EPA received regarding Federal Tier 1 protection were generally supportive of EPA's proposed action and raised no significant issues. See the Response to Comments document in the Administrative Record to this rule for responses to specific comments.

This final rule is promulgating our proposal without changes. This regulation will be the applicable Federal antidegradation Tier 1 policy in Pennsylvania for purposes of the CWA and, to the extent it is more stringent, supersedes Pennsylvania Regulations at 25 PA Code 93.4(d)(1). EPA is taking this action to protect all existing uses, including providing protection for existing uses that may be more specific, or require more protection, than Pennsylvania's designated uses.

Pennsylvania has recently proposed changes to its antidegradation policy that would protect existing uses without the limitations imposed by its use designation process. See 25 Pennsylvania Bulletin 2131-32 (May 4, 1996). If Pennsylvania promulgates this proposal as a final rule and it is approved by EPA, EPA would expect to withdraw the part of the Federal rule relating to Tier 1.

2. Ensuring That Pennsylvania's High Quality Designation Adequately Protects All Waters That Qualify for Protection Under the Federal Tier 2 Set Forth in 40 CFR 131.12(a)(2)

In order to afford equivalent protection to that afforded by Tier 2 of the Federal policy set forth in 40 CFR 131.12(a)(2), Pennsylvania has developed a Special Protection Waters Program which utilizes the designational approach, i.e., designates specific waters as High Quality. The High Quality Waters Policy is set forth in 25 PA Code Secs. 93.3, 93.7, 93.9 & 95.1, and the Department's Special Protection Waters Handbook (November 1992). High Quality Waters are defined in Pennsylvania's water quality standards as "[a] stream or watershed which has excellent quality waters and environmental or other features that require special water quality protection". 25 Pa Code Sec. 93.3. Once designated as High Quality, those waters are afforded a level of protection consistent with EPA's Tier 2.

EPA disapproved a portion of Pennsylvania's High Quality Waters Policy because the policy requires that a stream must possess "excellent quality waters and environmental or other features that require special water quality protection" [emphasis added]. That definition may exclude waters that would be protected under the Federal Tier 2 policy which provides Tier 2 protection to all waters with water quality exceeding levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water regardless of any other feature. Additional details concerning EPA's disapproval and Pennsylvania's response to the disapproval are available in the preamble to the August 29, 1996, proposal. 61 FR 45379.

EPA proposed language based on 40 CFR 131.12(a)(2) to make

available Federal Tier 2 protection for Pennsylvania waters on the basis of water quality alone. That language would have the effect of making Tier 2 protection available to all waters whose quality "exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water."

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Discussion of major comments relating to Tier 2

Comment: Two commenters stated that the EPA proposed language concerning social and economic justification for lowering water quality will weaken the present Pennsylvania program. Pennsylvania's program requires that a proposed project that will add a new or increased discharge into a Special Protection waters must be "necessary" and "of significant benefit to the public," whereas the Federal language requires that lowering of water quality be "necessary" and "to support important social and economic benefit in the area in which the waters are located."

Response: Under the wording of 40 CFR Sec. 131.32(a)(2), the Commonwealth will be responsible for determining whether a particular lowering of water quality is "necessary to support important social and economic benefit in the area in which the waters are located." In making that determination the Commonwealth may equate "important social and economic benefit" with "of significant benefit to the public" if that phrase as used by Pennsylvania is interpreted to be at least as stringent as EPA's wording. We note that the word "important" was selected by EPA in 1983 because it was believed to be more protective than "significant." Accordingly, EPA does not believe that the language of the Federal regulation will weaken the level of protection of Tier 2 waters.

Comment: One commenter stated that the Federal Tier 2 designation should be strictly interpreted in Pennsylvania as disallowing the Commonwealth from designating a stream as high quality or Tier 2 if even one of the stream's water quality standards is violated.

Response: EPA does not interpret 40 CFR 131.32(a)(2) as excluding a water from Tier 2 protection merely because one parameter exceeds water quality standards.

For additional comments and responses, see the Response to Comments document in the Administrative Record to this rule.

In the August 29, 1996, proposal, EPA also discussed another option of simply promulgating the definition of High Quality Water from 25 Pa. Code Sec. 93.3 but without the phrase "and environmental or other features which require special criteria." EPA sought comments on both of these options through the August 29, 1996, Federal Register proposal. Under either option, the current State process for establishing designations and reviewing proposals to lower water quality would remain in effect. The only comment supporting the second option was based on the concern that using the language of 131.12(a)(2) would weaken Pennsylvania's program. This concern is discussed above. Accordingly, the final rule retains the proposed approach.

Pennsylvania has not yet satisfied EPA's disapproval of its High Quality waters policy. Therefore, promulgation of the rule is still necessary. EPA has decided to retain the proposed language in this final rule since the rule is still necessary, and EPA received no comments on the proposed rule that would necessitate modification.

As discussed in the BACKGROUND section of this notice, Pennsylvania has considered enhancements to its High Quality Waters program through a regulatory negotiation process. As a result of this process, the Department indicated in the Pennsylvania Bulletin, May 4, 1996, that it may consider revising the High Quality Water definition to delete the requirements for additional "environmental or other features." If

Pennsylvania were to finalize this proposal and EPA approves it, EPA would expect to withdraw the portion of the Federal promulgation relating to Tier 2.

3. Ensuring That Pennsylvania's Highest Quality Waters May Be Provided a Level of Protection Fully Equivalent to Tier 3 of the Federal Policy

Pennsylvania considers its Exceptional Value Waters designation as part of the Special Protection Waters Program to be equivalent to Tier 3. The Exceptional Value Policy is set forth in 25 PA Code Secs. 93.3, 93.7, 93.9 & 95.1, and the Department's Special Protection Handbook, which contains implementation procedures for Exceptional Value protection. The Code and the Handbook must be read together to understand the effect of the Exceptional Value policy.

As described in the Handbook, Pennsylvania requires Exceptional Value Waters to be protected at their existing quality to the extent that no adverse measurable change in existing water quality would occur as a result of a point source permit. A change is considered measurable "if the long-term average in-stream concentration of the parameter of concern can be expected, after complete mix of stream and wastewater, to differ from the mean value established from historical data describing background conditions in the receiving stream" or at selected Pennsylvania reference sites.

EPA disapproved the Commonwealth's Exceptional Value designation because it is not convinced that this level of protection is sufficient to assure that water quality shall be maintained and protected as required by the Federal Tier 3 requirement at 40 CFR 131.12(a)(3). EPA believes that, in practice, Pennsylvania's policy of "no adverse measurable change" could allow potentially significant discharges and loading increases from point and nonpoint sources. See the August 29, 1996, Federal Register proposal of this rule (61 FR 45382).

EPA proposed promulgating language derived from 40 CFR 131.12(a)(3) (see 61 FR 45379). The language states that where waters are identified by the Commonwealth as ONRWs, their water quality shall be maintained and protected. It is EPA's recommendation that, while not required by EPA's regulation, "no new or increased discharges" to Tier 3 waters is the best and most reliable method to assure that water quality is fully maintained and protected in ONRWs. In the preamble to the proposed rule, and consistent with the recommended interpretation in its National guidance, EPA Water Quality Standards Handbook at 4-8 (2nd ed. 1994), EPA interpreted the proposed language at 40 CFR 131.32(a)(3) to prohibit, in waters identified by the Commonwealth as ONRWs, new or increased discharges, aside from limited activities which have only temporary or short-term effects on water quality.

Despite EPA's position that Pennsylvania's Exceptional Value designation is not as protective as EPA's Tier 3 regulation, EPA recognized that the Commonwealth's success in having so many waters designated Exceptional Value might not have occurred if new or increased discharges were strictly prohibited. In light of this situation, rather than modify the Exceptional Value policy, EPA proposed in the August 29, 1996 Federal Register notice to promulgate language to provide Pennsylvania the opportunity to designate appropriate Pennsylvania waters as ONRWs, to which no new or increased discharges would be allowed. The intent of this ONRW proposal was not to replace or supplant the Exceptional Value category and designations already in place in Pennsylvania, but rather to supplement them. It would give the citizens of the Commonwealth the opportunity to request the highest level of protection be afforded to particular waters where appropriate. Under the proposal, EPA will not designate waters as ONRWs; that will be the Commonwealth's prerogative.

Discussion of Major Comments Relating to Tier 3

Comment: While some comments supported the creation of a new tier of protection, a number of comments requested that Pennsylvania's EV category be upgraded to be equivalent to Federal Tier 3 protection.

Response: EPA proposed a new tier, rather than a modification of Pennsylvania's Exceptional Value category because this seemed least disruptive to the state and most protective of the environment. The Exceptional Value category, which is not quite as protective as Tier 3, but still better than Tier 2, covers more waters than are likely to be designated ONRWs. Had EPA proposed to modify the Exceptional Value category, the State might have felt the need to reconsider the inclusion of some of the currently designated Exceptional Value waters.

Comment: Several commenters asserted that Section 131.12(a)(3) does not require a prohibition against new or increased discharges.

Response: The literal Federal regulatory requirement is that the water quality of designated ONRWs "be maintained and protected." For the reasons explained in the preamble to the proposed rule (see 61 FR 45382), EPA believes that prohibition of new or increased discharges is a reasonable interpretation of its regulatory language and is the most dependable way of ensuring that ONRWs will be maintained and protected. There is no Federal requirement for states to adopt such a prohibition as a water quality standard regulation. EPA notes that there may be other formulations that States may adopt to meet the requirements of 40 CFR 131.12(a)(3) and provide a level of protection substantially equivalent for maintaining and protecting water quality in ONRWs. However, with respect to Pennsylvania, the Commonwealth's level of protection falls short of "maintaining and protecting" water quality in ONRWs and hence fails to meet Federal requirements. Because EPA is promulgating a Federal regulation for Pennsylvania, EPA wishes to make it clear how it will interpret today's regulation.

Comment: One commenter stated that EPA improperly considered Pennsylvania's implementation of its antidegradation procedures, as the Commonwealth is not required by the CWA to submit water quality standards implementation procedures to EPA for review and approval.

Response: This is incorrect. In reviewing those elements of water quality standards that have been submitted as required in 40 CFR 131.6, EPA may use any information available in determining what the State actually means by its water quality standards language. EPA's water quality standards regulation also requires in 40 CFR 131.12(a) that "the State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart." In this case, EPA disapproved Pennsylvania's antidegradation policy based on the Commonwealth's interpretation of its policy as reflected in the Special Protection Waters Handbook.

See the Response to Comments document, which is part of the Administrative Record to this rule, for additional comments and responses concerning Tier 3.

Today's final rule is identical to the rule as proposed on August 29, 1996. Federal promulgation is still necessary since the Commonwealth has not yet satisfied EPA's disapproval of its Exceptional Value designation. EPA received no comments that necessitated changes to the proposal and believes that promulgation of the language as proposed is the most effective way to provide to Pennsylvania the level of protection equivalent to the Federal Tier 3.

Pennsylvania's reg-neg group discussed this issue but did not reach an agreement to recommend that Pennsylvania create a new Tier 3 ONRW category of protection. If Pennsylvania adopts either EPA's recommended interpretation or an appropriate alternative formulation for maintaining and protecting water quality in ONRWs, and it is approved

by EPA as meeting the requirements of 40 CFR 131.12(a)(3), EPA would expect to propose to withdraw the portion of its rule relating to Tier 3.

D. Relationship of This Rulemaking to the Great Lakes Water Quality Guidance

On March 23, 1995, pursuant to section 118(c)(2) of the CWA, EPA published Final Water Quality Guidance for the Great Lakes System (60 FR 15366), which applies to the Great Lakes System, including a small portion of Pennsylvania waters. The Guidance includes water quality criteria, implementation procedures and antidegradation policies which are intended to provide the basis for consistent, enforceable protection for the Great Lakes System. In particular, the antidegradation requirements are more specific than those set out in 40 CFR 131.12. Pennsylvania and the other Great Lakes States and Tribes must adopt provisions into their water quality programs which are consistent with the Guidance, or EPA will promulgate the provisions for them.

This rulemaking, which is being undertaken pursuant to section 303 of the Act, is independent of, and does not supersede, the Guidance. Regardless of this rulemaking, Pennsylvania must still adopt an antidegradation policy for its waters in the Great Lakes Basin consistent with the Guidance, or EPA will promulgate such provisions for them. At that time, EPA will withdraw any portion of this rule which is inconsistent with such Great Lakes provisions and which applies to Pennsylvania waters within the Great Lakes basin.

E. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (16 U.S.C. Sec. 1656 et seq.), Federal agencies must assure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or adversely affect designated critical habitat of such species.

EPA initiated section 7 informal consultation under the Endangered Species Act with the U. S. Fish and Wildlife Service (FWS) regarding this rulemaking, and requested concurrence from the FWS that this action is unlikely to adversely affect threatened or endangered species. The FWS originally responded in a letter dated July 31, 1996, that they could not concur with a finding of no adverse affect to threatened or endangered species, but proposed five options that would facilitate a "not likely to adversely affect" determination. In EPA's August 29, 1996 proposal of this rule (61 FR 45379), EPA sought comment on these five options, which were available in the administrative record.

Since that proposal, EPA and FWS have continued to consult informally, and have reached agreement on an alternative approach. Under that approach, EPA will make every effort to ensure that, prior to the final Commonwealth rulemaking pertaining to antidegradation (but no later than June 30, 1997), the State will draft an antidegradation policy which accords full antidegradation protection, including Tier 1 requirements, for threatened and endangered species and that, by December 31, 1997, the State will identify implementation methods for this policy. The policy and implementation methods must fully protect threatened and endangered

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species as existing uses of the waterbody. EPA will request that Pennsylvania submit both the policy and implementation methods to EPA

and the FWS by the dates listed above to allow for review and early coordination prior to the final State rulemaking. EPA will encourage the State to develop the draft regulatory language and implementation methods in close coordination with the Service and EPA. In any case, EPA will consult with FWS on any revisions to Pennsylvania's water quality standards which are submitted to EPA for review and approval and welcomes the State as a partner in this process.

Also, as part of EPA's role in overseeing Pennsylvania's implementation of the National Pollutant Discharge Elimination System (NPDES) program, where EPA finds (based on analysis conducted by EPA or FWS) that issuance of a PADEP NPDES permit, as drafted, is likely to have an adverse effect on Federally-listed species or critical habitat, EPA will require changes to a State-issued draft permit under Section 402(d)(4) of the CWA, or take other appropriate actions.

By letter to the FWS dated November 7, 1996, EPA offered to implement this alternative approach, explained our concerns with the other options, and again sought FWS's concurrence. Based upon EPA's commitment to fully implement the approach outlined above, the FWS provided concurrence with EPA's finding of no adverse effect to threatened or endangered species by letter dated November 7, 1996. Discussion of Major Comments Concerning the Endangered Species Act

Comment: EPA received comment that EPA lacks authority or obligation to consult with the FWS on the proposed antidegradation rule, since EPA has taken no action that would jeopardize listed species, as the rule would have a beneficial effect on listed species.

Response: EPA agrees that issuance of the antidegradation rule will improve water quality in Pennsylvania. Nonetheless, EPA had an obligation to consult FWS under the controlling regulations.

The commenters' view that issuance of the rule is not an "action" under the ESA ignores FWS's definition of agency action. That definition expressly includes "actions intended to conserve listed species or their habitat * * * the promulgation of regulations * * * or actions directly or indirectly causing modifications to the * * * water." 50 CFR Sec. 402.02. Issuance of the rule is agency "action" under this broad definition.

In addition, under the FWS' regulations, the fact that the effect of an action may be beneficial does not exempt EPA from the obligation to consult. EPA agrees that the antidegradation rule will have a positive effect, but that effect triggers consultation under FWS's regulatory interpretation of section 7(a)(2), 16 U.S.C. Sec. 1536(a)(2)--i.e., whether an agency's action "may affect" listed species. See 50 CFR Sec. 402.14(a). FWS interprets this standard to require consultation even when an action will have "beneficial" effects. 51 Fed. Reg. 19,949. Thus, although the rule will improve water quality in Pennsylvania, this beneficial effect is sufficient, under FWS's regulations, to trigger the consultation obligation. See also TVA v. Hill, 437 U.S. 153, 178 (1978) ("the heart of" the ESA is the "institutionalization of * * * caution").

Comment: EPA received several comments that EPA should not adopt any of the five options proposed by the FWS for resolving Sec. 7 consultation.

Response: To the extent that this objection is based on a general belief that the FWS lacked authority to require anything in connection with this rule, see the response to the previous comment. With respect to the specifics of the five options, EPA agrees that the particular options, as formulated by the FWS in its letter of July 31, 1996, were inappropriate and has not adopted them. As indicated above, as a result of further discussions with the FWS, EPA offered an alternative approach consisting of a modification of two of the options, and on that basis the FWS concurred that the rule is not likely to adversely affect listed species. See the Response to Comments document for this

rule for further discussion of comments related to the Endangered Species Act.

F. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule would be significantly less than \$100 million and the rule would meet none of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Comment: Comment was received that, in light of the options raised by the FWS in the context of the rulemaking, EPA was incorrect in its finding that the proposed rule is not a significant regulatory action under Executive Order 12866, particularly the FWS option that would extend Tier 3 protection to streams that contain listed species, and another that would federalize NPDES permits on waterbodies that contain Federally listed species, and grant the FWS a role in each permit action on those waters.

Response: In making its determination under Executive Order 12866 that the proposed rule was not a significant regulatory action, EPA evaluated the rule as proposed. EPA did not adopt any of the Service's options, and therefore stands by its original assessment.

G. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

H. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the

head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this rule will not have a significant impact on a substantial number of small entities. Therefore, the Agency did not prepare a regulatory flexibility analysis.

Under the Clean Water Act water quality standards program, States must adopt water quality standards for their waters that must be submitted to EPA for approval. If the Agency disapproves a state standard, EPA must promulgate standards consistent with the statutory requirements. These State standards (or EPA-promulgated standards) are implemented through the NPDES program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved state program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet State water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards where state standards are inconsistent with statutory requirements establishes standards that the state implements through the NPDES permit process. The state has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the state's implementation of federally-promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's rule imposes obligations on the Commonwealth of Pennsylvania but, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's action here, the Commonwealth of Pennsylvania will need to ensure that permits it issues comply with the antidegradation provisions in today's rule. In so doing, the Commonwealth will have a number of discretionary choices associated with permit writing. In addition, the Commonwealth has the threshold choice whether to designate particular waters as Outstanding National Resource Waters. While Pennsylvania's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rules' requirements. See *United States Distribution Companies v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by United Distribution court).) The Agency is thus certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Although the statute does not require EPA to prepare an RFA when it promulgates water quality standards for Pennsylvania, EPA has undertaken a limited assessment, to the extent it could, of possible outcomes and the economic effect of these on small entities. Given the fact that any economic impact on small entities is dependent on a number of currently unknown factors, EPA's quantitative consideration

of possible effects is necessarily restricted. The final version of that evaluation is available in the administrative record for today's action.

Comment: One commenter stated that EPA's proposed regulation fails to comply with the RFA because it reaches the conclusion that this rule would not have a significant economic impact on a substantial number of small entities without providing a factual basis for this certification, and it is incorrect in its assumption that this rule would not impact small business in Pennsylvania.

Response: The commenter is incorrect in asserting that EPA has no basis for its Section 605(b) certification. Further, as explained above, though not required by the RFA, EPA prepared with contractor assistance an assessment which identified and evaluated, as best it could given the unknown, the potential costs to small entities that might follow state implementation of today's standards. The assessment is based on data developed by the contractor from a variety of sources including data from the U.S. Department of Commerce, EPA reports, and telephone surveys of industrial and municipal dischargers and each Commonwealth regional office. EPA referenced this assessment in the proposal (61 FR 45379, 45384), made it available in the administrative record, and specifically invited comment on it. No comments were received pointing out errors in this assessment, or the data on which it was based. With regard to the impact to small businesses, EPA stands by its assessment.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to antidegradation designations within the Commonwealth of Pennsylvania. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

Thus, today's rule is not subject to the requirements of section 202, 203, or 205 of the UMRA.

Comment: One commenter stated that EPA failed to comply with UMRA in that it did not provide the basis for conclusions that this rule will not significantly or uniquely affect small governments, that this rule will not result in expenditure of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year, or develop a small government agency plan.

Response: EPA disagrees. EPA has assessed the effects of this regulatory action on State and local governments and the private sector, and based its conclusions on the report entitled Economic Analysis of the Potential Impact of the Proposed Antidegradation Requirements for Pennsylvania.

J. Paperwork Reduction Act

This action requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards.

Dated: November 27, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is amended as follows:

PART 131--WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart D-- [Amended]

2. Section 131.32 is added to read as follows:

Sec. 131.32 Pennsylvania.

(a) Antidegradation policy. This antidegradation policy shall be applicable to all waters of the United States within the Commonwealth of Pennsylvania, including wetlands.

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

(2) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Commonwealth finds, after full satisfaction of the inter-

governmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Commonwealth shall assure water quality adequate to protect existing uses fully. Further, the Commonwealth shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint sources.

(3) Where high quality waters are identified as constituting an outstanding National resource, such as waters of National and State parks and wildlife refuges and water of exceptional recreational and ecological significance, that water quality shall be maintained and protected.

(b) (Reserved)

[FR Doc. 96-31007 Filed 12-6-96; 8:45 am]
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Bethlehem, Pa. 18015

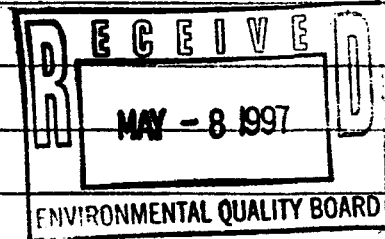
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(PER JHJ)

Dear Environmental Quality Board,

This letter is to ask you to please reject the DEP's current anti-degradation proposal. We do not want additional discharges into our streams. Please protect our waterway from further degradation.

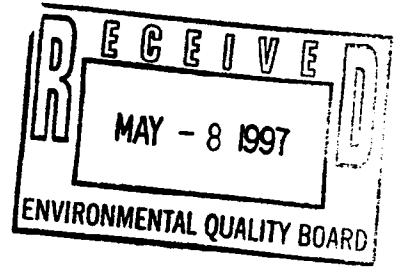
Could I please have a reply to this.

Thank you,
Amite Ziegler
Willard Ziegler





From the desk of Andy Thompson



07 MAY 27 11 08 AM '97
U.S. DEPARTMENT OF ENVIRONMENTAL PROTECTION
HARRISBURG, PA 17105

212 Skycrest Place
Landenberg, Pa. 19350

Phone 302-654-3345
Fax 302-654-3479
Home Phone 610-274-8713
Email acth@bellatlantic.net

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(PER JHJ)

ENVIRONMENTAL QUALITY BOARD
DEPARTMENT OF ENVIRONMENTAL PROTECTION
P. O. Box 8465
Harrisburg, Pa. 17105

Dear Board Members,

Please consider this my letter of protest against your new proposals to protect (?) our lakes, streams, rivers, and watersheds. Once again the DEP seems content to let our waterways be degraded and discharged into at will by anyone who promises a few jobs for Pennsylvanians. Our HQ and EV designated waters should not have any discharges allowed into them at all. Waters in the public domain should also be cleaned up and protected under the HQ and EV designations.

It seems the only hope for those Pennsylvanians who truly want to see us improve our environment, is the EPA, who twice now has had to step in and remind the Penna. DEP that your mission, and sole reason for being, is to PROTECT AND PRESERVE our environment! It looks like it is time to call in the Feds, again!!!

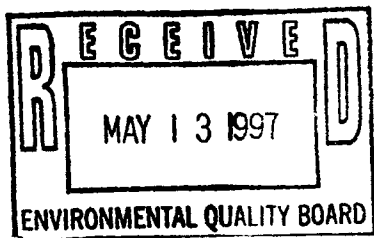
Sincerely yours,

Andrew C. Thompson

ORIGINAL: #1799
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(PER JHJ)

To Whom It May Concern

Please reject the DEP's current anti-degradation proposal. We need standards that will protect our waterways from further degradation.



Sincerely,

Amy E. Verrill

STREET ADDRESS
CITY STATE ZIP

DATE: 5/1/97

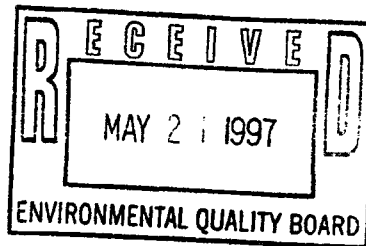
To whom it may concern:

I want to say to reject the
D.C.P.s. current anti-degradation pro-
posal.

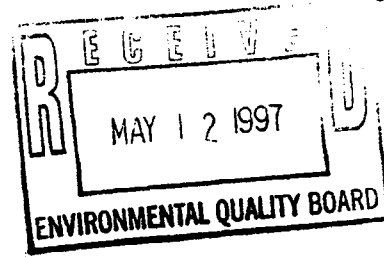
Keep the water system as it
is -

Thank You.

Alice Luteran
99 N. Bryant Ave
Pgh Pa. 15202



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Mr. James Seif
Chairman
Environmental Quality Board
16th Floor, Rachel Carson Building
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Antidegradation Regulations (Revisions to PA Code Chapters 92, 93,
and 95 published on January 21, 1997)

Dear Mr. Seif:

I am writing to express my opposition to the proposed new antidegradation regulations for Pennsylvania. The proposal weakens the protections that exist under the current regulations promulgated for Pennsylvania by the U.S. Environmental Protection Agency and does not ensure that this state's highest quality waters will not be degraded.

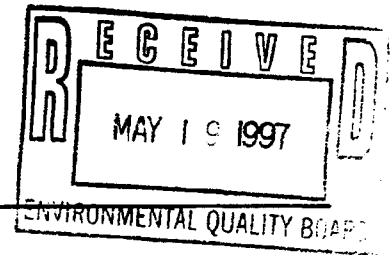
As a member of Trout Unlimited, I am acutely aware of the ecological damage that can be done by any degradation of water quality. Pennsylvania is home to many outstanding trout streams that attract anglers from all over the world. These waters and their fisheries are threatened from a variety of sources, including coal mining and its after effects, increased development, polluted run-off, and industrial pollution. These sources are so pervasive and diverse that unless we make protecting high water quality a top priority, we will lose it.

I understand that Pennsylvania Trout is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing regulation is vastly preferable to the new proposal as it is now written.

Sincerely,

ALBERT E. CRAWFORD
312 W. GARFIELD AVE.
DU BOIS, PA. 15801

A. E. Pellow Builder
1282 Liberty Street
Franklin, Pennsylvania 16323
Telephone (814) 437-2090



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(PER JHI)

Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

Dear Chairman Seif:

A. E. Pellow, Builder appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality anti-degradation regulations. Our company employs 5 persons in the Northwest Pennsylvania area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years A. E. Pellow, Builder has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

Pennsylvania's current stream designation process is, in ever increasing numbers, used as a tool to halt future economic growth and development in particular areas. Often, it seems stream designation upgrades to exceptional value status have been granted based more on politically driven anti-growth sentiment rather than based on scientific fact. Remember, these DEP regulations concern water quality, not land use.

Several provisions of the existing regulations need revised to provide more reasonable water quality regulations. The three areas of our comments deal with high quality stream designations, exceptional value stream designations and public participation.

First, when DEP assesses a stream, only those streams that have water quality better than standards should be eligible for special protection status. Currently, the Department evaluates a stream for a high quality or exceptional value designation using a "generally better than water quality" determination. This is not appropriate nor consistent with the existing federal language. A stream should never be considered for a high quality or exceptional value status if even one of its water quality parameters is above the existing standard.

We support a "de minimis" permit threshold where a social and economic justification is not required. We also recommend that the Department revise its regulations to allow for the use of general permits on high quality and exceptional value streams. Discharges associated with these permits are minimal and permit applicants should not be burdened with applying for an individual permit for these types of projects.

Also, because of the many implications an anti-degradation designation will have on a community, the DEP must base its designations on more than just one grab sample. The DEP must have enough actual, sound scientific background water quality data before an accurate evaluation can occur and a stream designation can be made.

Our second major area of concern is the DEP's current exceptional value streams designation process. The section of the regulations concerning the designation of streams as exceptional value has been abused recently. Too often streams have been redesignated as exceptional value, when in reality they may have only qualified as high quality. In other words, certain streams designated as exceptional value under Pennsylvania's program would never meet the criteria of a federal Tier Three stream designation. In particular, Pennsylvania's EV program is broader than the federal program as it considers outstanding regional and local resource waters. We recommend the DEP's exceptional value program be revised to be no more stringent than the federal program.

Designation of exceptional value streams should be based solely on the stream's uniqueness to the Commonwealth of Pennsylvania or the nation. Some states have not yet designated a single stream in their state as exceptional value due to the adverse economic impact this designation carries with it.

One of the key positions of Governor Ridge's administration is that no state-run program should be more stringent than required by federal law. Also, a greater balance needs to be established between the environmental and economic interests of the state. Pennsylvania should not be placed at an economic disadvantage in comparison to other states water quality programs.

An associated concern with the federal tier three program is the Environmental Protection Agency's (EPA) interpretation of the federal requirements regarding discharges to exceptional value streams. Despite the EPA's insistence that the DEP prohibit new or expanded discharges to exceptional value streams, we believe that current EPA and DEP rules allow for the consideration of such discharges. With the use of sound technical practices, discharges which result in no adverse measurable change to long term water quality should be allowed.

Our final comments focus on the need for improved public participation in the entire special protection stream designation process. Public participation must start during the assessment of the stream.

The Department must ensure increased public participation at the early stages of the stream redesignation process, whether the assessment is initiated by the Department or by a petition. Under the present DEP policy, The Department publishes a notice of acceptance of a petition in the *Pennsylvania Bulletin*, however not everyone subscribes to this publication. Many parties, including landowners and homeowners, which may be adversely affected by a stream upgrade are never made aware of the petition until perhaps a proposed regulatory package is already in front of the Environmental Quality Board for consideration. In addition, these parties are never fully made aware of the impacts a redesignation can have on their activities in the area.

The Department must notify potentially affected parties in the preliminary stages of the stream's evaluation. This includes notice by first class mail to any applicant with a pending discharge permit application, any existing discharge permittees, the appropriate municipalities, planning commissions and all applicants that have received Act 247 or Act 537 planning or subdivision and land development planning approval within the previous 5 years. This will help the DEP to eliminate potential oversights and to obtain a complete picture of the stream, including present and planned growth and economic development in the area.

The Department should be required to consider the social and economic impacts associated with any of its high quality and exceptional value designations during the assessment process. This information should be made available to the public.

Thank you for your consideration of these comments regarding this very important regulatory proposal. A. E. Pellow, Builder believes the incorporation of these comments into the final regulations will provide Pennsylvania with a more balanced water quality stream designation program that will continue to protect our valuable resource and also allow for economic growth in Pennsylvania.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernie Pellow". The signature is fluid and cursive, with a long, sweeping horizontal line extending to the right.

Ernie Pellow
Owner

Chairman
Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477

Dear Sir:

This letter is in reference to the antidegradation regulation proposal in the March 22, 1997, *Pennsylvania Bulletin*.

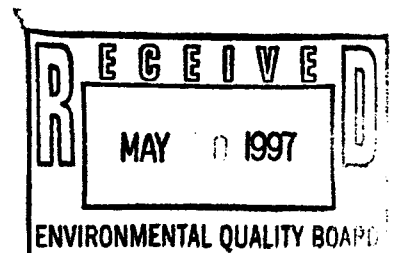
I am opposed to the allowance of general NPDES permits in our High Quality streams. Oil and gas discharges have already done plenty of damage in the northwest part of the state, and now you want to allow their discharges in HQ streams. General permits are not tracked by DEP, so they would have no way of knowing how much degradation is taking place in any one watershed--until it was too late. The proposed rules will significantly weaken existing protection for both High Quality and Exceptional Value streams.

I am also very disappointed that DEP did not mention wetlands in their antidegradation proposal. The current regulation, put into place by EPA, gives this protection to wetlands. How can wetlands be given HQ or EV protection if the criteria to make a "surface water" HQ or EV are based on streams?

The proposed regulation has little good to recommend them and much bad. The proposed regulation should be rejected by the Board.

Sincerely yours,

Adam Lae



07/10/97 11:11 AM

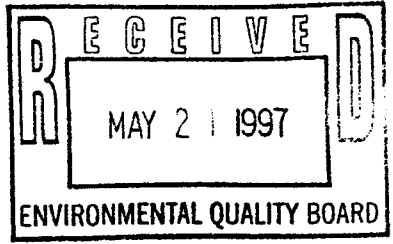
10/15/97 11:11 AM

EQB:

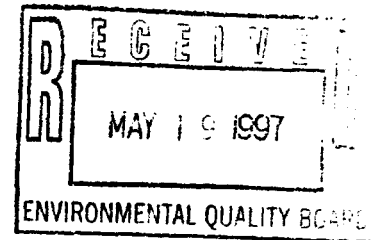
Please reject the DEP's current anti-degradation proposal. Please adopt the simpler, better standards of the EPA.

Thank you,

Anne Serfes
77 King Charles Ln.
Newtown, PA. 18940



Brislin Construction
100 Aster Court
Exeter, PA 18708-1145
(717) 655-0344



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Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

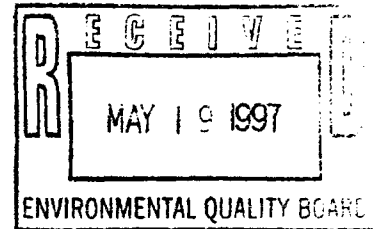
Dear Chairman Seif:

The Brislin Construction Company appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. Our company employs 4 persons in the northeastern Pennsylvania area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years the Brislin Construction Company has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

Pennsylvania's current stream designation process is, in ever increasing numbers, used as a tool to halt future economic growth and development in particular areas. Often, it seems stream designation upgrades to exceptional value status have been granted based more on politically driven anti-growth sentiment rather than based on scientific fact. Remember, these DEP regulations concern water quality, not land use.

Brislin Construction
100 Aster Court
Exeter, PA 18708-1145
(717) 655-0344



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Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

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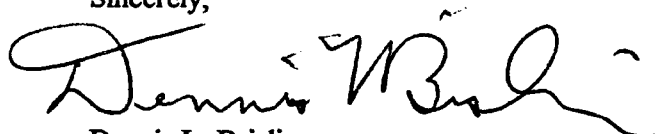
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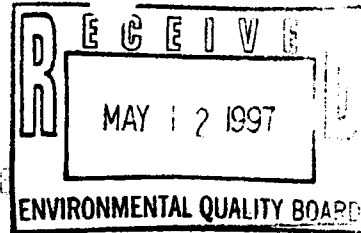
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Sincerely,

A handwritten signature in black ink, appearing to read "Dennis L. Brislin". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dennis L. Brislin
Owner

Mr. James Seif
Chairman
Environmental Quality Board
16th Floor, Rachel Carson Building
P.O. Box 8477
Harrisburg, PA 17105-8477



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Re: Proposed Antidegradation Regulations (Revisions to PA Code Chapters 92, 93, and 95 published on January 21, 1997)

Dear Mr. Seif:

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I understand that Pennsylvania Trout is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing regulation is vastly preferable to the new proposal as it is now written.

Sincerely,

Brian J. MacElroy

*P.S. Please do what you know in your heart is the right thing to do. I have fished & plan to vacation in this area "Penn's Valley" (PVCA) So please don't ruin what took years to develop
thanks again*



Brian MacElroy
206 Cambridge Road
Clifton Heights, PA 19018

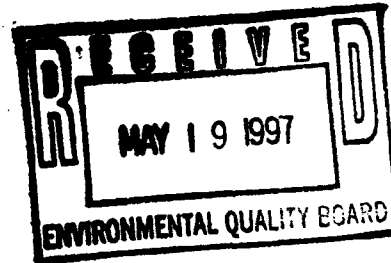
Member of Delco Manning chapter of TU & father of 3 fisher people!



Blue Valley Builders

CUSTOM HOMES
3220 VALLEY VIEW DRIVE BATH, PENNSYLVANIA 18014
(215) 837-7579

Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105



Dear Chairman Seif:

The Blue Valley Builders, Inc., appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. Our company is a small company in the Harrisburg area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years Blue Valley Builders, Inc., has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

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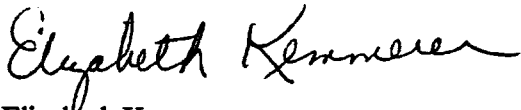
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Thank you for your consideration of these comments regarding this very important regulatory proposal. The Blue Valley Builders, Inc., believes the incorporation of these comments into the final regulations will provide Pennsylvania with a more balanced water quality stream designation program that will continue to protect our valuable resource and also allow for economic growth in Pennsylvania.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Kemmerer". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Elizabeth Kemmerer
Vice President
Blue Valley Builders, Inc.

To
Environmental Quality Board

We need stricter standards for water quality. Some of our rivers are so bad, you could almost walk across on top of the water. I have heard that the new proposals would lower the standards even further.

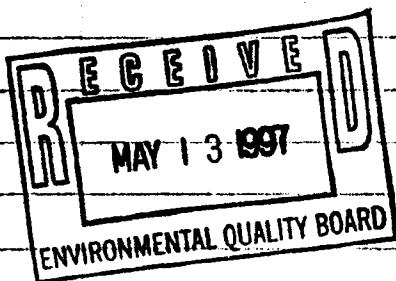
This is not acceptable, if we don't change this course of action what do we drink twenty years from now.

Thinks about it and don't come up with proposals aimed at the individual alone. Big business needs to clean up their act. Some of the clean air proposals are aimed at the individual only. Almost makes me wonder if our Government is looking to take the easy way out.

Vote for stricter water quality standards now.

Bill Grover
571 Crooked Ln
King of Prussia PA

19406-3658



**BOB FEATHER HOMES
1510 DARK SHADE DRIVE
WINDBER, PENNSYLVANIA 15963**

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TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

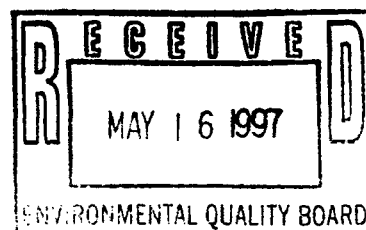
Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

Dear Chairman Seif:

Bob Feathers Homes appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. Our company employs 23 persons in the Windber area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years Bob Feather Homes has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

Pennsylvania's current stream designation process is, in ever increasing numbers, used as a tool to halt future economic growth and development in particular areas. Often, it seems stream designation upgrades to exceptional value status have been granted based more on politically driven anti-growth sentiment rather than based on scientific fact. Remember, these DEP regulations concern water quality, not land use.



Several provisions of the existing regulations need revised to provide more reasonable water quality regulations. The three areas of our comments deal with high quality stream designations, exceptional value stream designations and public participation.

First, when DEP assesses a stream, only those streams that have water quality better than standards should be eligible for special protection status. Currently, the Department evaluates a stream for a high quality or exceptional value designation using a “generally better than water quality” determination. This is not appropriate nor consistent with the existing federal language. A stream should never be considered for a high quality or exceptional value status if even one of its water quality parameters is above the existing standard.

We support a “de minimis” permit threshold where a social and economic justification is not required. We also recommend that the Department revise its regulations to allow for the use of general permits on high quality and exceptional value streams. Discharges associated with these permits are minimal and permit applicants should not be burdened with applying for an individual permit for these types of projects.

Also, because of the many implications an antidegradation designation will have on a community, the DEP must base its designations on more than just one grab sample. The DEP must have enough actual, sound scientific background water quality data before an accurate evaluation can occur and a stream designation can be made.

Our second major area of concern is the DEP’s current exceptional value streams designation process. The section of the regulations concerning the designation of streams as exceptional value has been abused recently. Too often streams have been redesignated as exceptional value, when in reality they may have only qualified as high quality. In other words, certain streams designated as exceptional value under Pennsylvania’s program would never meet the criteria of a federal Tier Three stream designation. In particular, Pennsylvania’s EV program is broader than the federal program as it considers outstanding regional and local resource waters. We recommend the DEP’s exceptional value program be revised to be no more stringent than the federal program.

Designation of exceptional value streams should be based solely on the stream’s uniqueness to the Commonwealth of Pennsylvania or the nation. Some states have not yet designated a single stream in their state as exceptional value due to the adverse economic impact this designation carries with it.

One of the key positions of Governor Ridge's administration is that no state-run program should be more stringent than required by federal law. Also, a greater balance needs to be established between the environmental and economic interests of the state. Pennsylvania should not be placed at an economic disadvantage in comparison to other states' water quality programs.

An associated concern with the federal tier three program is the Environmental Protection Agency's (EPA) interpretation of the federal requirements regarding discharges to exceptional value streams. Despite the EPA's insistence that the DEP prohibit new or expanded discharges to exceptional value streams, we believe that current EPA and DEP rules allow for the consideration of such discharges. With the use of sound technical practices, discharges which result in no adverse measurable change to long term water quality should be allowed.

Our final comments focus on the need for improved public participation in the entire special protection stream designation process. Public participation must start during the assessment of the stream.

The Department must ensure increased public participation at the early stages of the stream redesignation process, whether the assessment is initiated by the Department or by a petition. Under the present DEP policy, The Department publishes a notice of acceptance of a petition in the *Pennsylvania Bulletin*, however not everyone subscribes to this publication. Many parties, including landowners and homeowners, which may be adversely affected by a stream upgrade are never made aware of the petition until perhaps a proposed regulatory package is already in front of the Environmental Quality Board for consideration. In addition these parties are never fully made aware of the impacts a redesignation can have on their activities in the area.

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The Department should be required to consider the social and economic impacts associated with any of its high quality and exceptional value designations during the assessment process. This information should be made available to the public.

Thank you for your consideration of these comments regarding this very important regulatory proposal. Bob Feather Homes believes the incorporation of these comments into the final regulations will provide Pennsylvania with a more balanced water quality stream designation program that will continue to protect our valuable resource and also allow for economic growth in Pennsylvania.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert P. Feathers". The signature is written in a cursive style with a large, prominent initial "R".

Robert P. Feathers, Owner
Bob Feather Homes

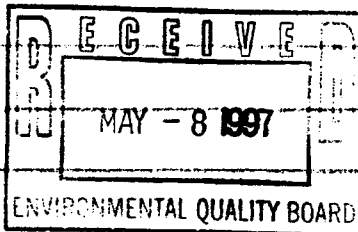
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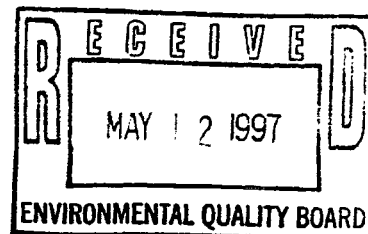
To the EQB:

Reject the DEP's
current anti-degradation
proposal.

¹
Dery Krep
300 E. Park St.
Clem, Pa 18103



STAMPED 01 01 97



Mr. James Seif
Chairman, Environmental Quality Board
PO Box 8477
Harrisburg, PA. 17105-8477

Dear Sir:

This letter is in reference to the antidegradation regulation proposal in the March 22, 1997 Penna. Bulletin. I am against the allowance of general NPDES permits in our High Quality Streams. Oil and gas discharges have already done much damage in the northwest part of the state, and now you want to allow their discharges into HQ streams. General permits are not tracked by DEP, so they would have no way of knowing how much degradation is taking place in any one watershed—until it was much too late.

I am also disappointed that the DEP did not mention **wetlands** in their antidegradation proposal. The current regulation put into place by EPA gives this protection to wetlands—how can wetlands be given HQ or EV (Exceptional Value) protection if the criteria to make a 'surface water' HQ or EV are based on streams alone?

This regulation has a little good, but much bad. **It should be rejected by the Board.**

Sincerely,

Arthur C. Kirkpatrick
248 S. 4th Ave.
Clarion, Pa. 16214

971 MAY 15 11 04 AM

Chairman
Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477

Dear Sir:

This letter is in reference to the antidegradation regulation proposal in the March 22, 1997, *Pennsylvania Bulletin*.

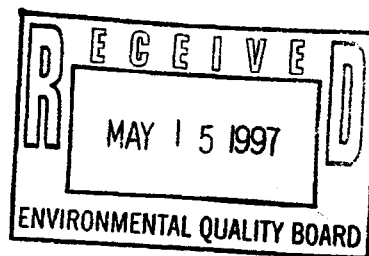
I am opposed to the allowance of general NPDES permits in our High Quality streams. Oil and gas discharges have already done plenty of damage in the northwest part of the state, and now you want to allow their discharges in HQ streams. General permits are not tracked by DEP, so they would have no way of knowing how much degradation is taking place in any one watershed—until it was too late. The proposed rules will significantly weaken existing protection for both High Quality and Exceptional Value streams.

I am also very disappointed that DEP did not mention wetlands in their antidegradation proposal. The current regulation, put into place by EPA, gives this protection to wetlands. How can wetlands be given HQ or EV protection if the criteria to make a "surface water" HQ or EV are based on streams?

The proposed regulation has little good to recommend them and much bad. The proposed regulation should be rejected by the Board.

Sincerely yours,

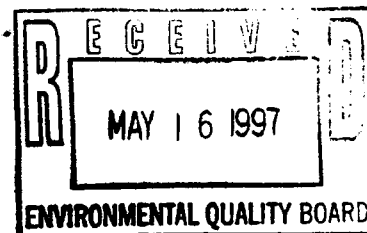
Ann L. Cheers





**AVERY BUILDERS INC.
24 WHITETAIL DRIVE
CHADDS FORD, PA 19317-9242**

(610) 388-7800



Mr. James Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Dear Secretary Seif:

Thank you for the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. This is a very important proposal and my comments are as follows:

This proposal should be subject to the Governor's Executive Order 1996-1, which requires the department to revise all of its regulations to bring balance to Pennsylvania's environmental regulations. In several instances, Pennsylvania's program exceeds federal standards. The DEP should adopt the federal language that states water quality must "exceed" standards rather than what is contained in the proposal as "generally better than" standards. This proposal of "generally better than" standards allows for judgement calls by the department. If data indicates the stream does not meet even one water quality standard, the stream should not qualify for a high quality or exceptional value designation.

Pennsylvania's exceptional value program should apply only to outstanding resource waters as contained in the federal regulations. Currently, DEP's program is much broader in scope and includes streams that would never qualify under the federal program.

The DEP must expand its public participation in regard to its assessment of high quality and exceptional value waters. Notice by first class mail must be sent to any applicant with a pending permit, any existing discharge permittees, the appropriate municipalities, planning commissions and all applicants that have received planning or subdivision and land development approval within the last five years.

We support the department's efforts to reduce the permitting burden for applicants included in this proposal. The provisions regarding dischargers with minimal impact are welcomed. We also endorse the use of general permits on high quality streams and support the expansion of this practice to exceptional value streams.

Thank you for considering these comments.

Sincerely,

5-12-97

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97 MAY 27 10 01 AM

MAIL ROOM

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MAY - 8 1997
ENVIRONMENTAL QUALITY BOARD

CHARLES & JOANNE SWOPE
211 TONICKON AVE APT #2
QUAKERTOWN PA. 18951

TO: ENVIRONMENTAL QUALITY BOARD (EQB)
DEP, PO BOX 8405, HARRISBURG, PA. 17105

PLEASE REJECT THE DEP'S CURRENT
ANTI-DEGRADATION PROPOSAL! THANK YOU.

Charles Swope + Joanne Swope

BUILDERS ASSOCIATION OF NORTHWESTERN PENNSYLVANIA
2415 WEST GRANDVIEW BOULEVARD
ERIE, PA 16506
(814) 833-3999

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TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

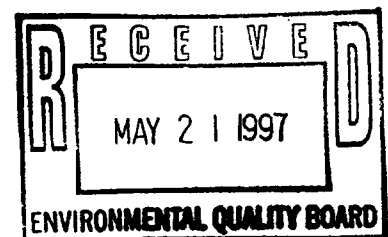
Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

Dear Chairman Seif:

Thank you for the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. The Builders Association of Northwestern Pennsylvania represents 450 builder, remodeler and associate member firms and employees. The housing industry has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As home builders, we have a responsibility to provide safe and affordable homes and to develop land in an environmentally sound manner.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. For many years Builder Association of Northwestern Pennsylvania has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

Pennsylvania's current stream designation process is, in ever increasing numbers, used as a tool to halt future economic growth and development in particular areas. Often, it seems stream designation upgrades to exceptional value status have been granted based more on politically driven anti-growth sentiment rather than based on scientific fact. Remember, these DEP regulations concern water quality, not land use.



Several provisions of the existing regulations need revised to provide more reasonable water quality regulations. The three areas of our comments deal with high quality stream designations, exceptional value stream designations and public participation.

First, when DEP assesses a stream, only those streams that have water quality better than standards should be eligible for special protection status. Currently, the Department evaluates a stream based on “generally better than water quality” for designating a high quality stream. This is not appropriate nor consistent with the federal language. A stream should never be considered for a high quality or exceptional value status if even one of its water quality parameters is above the determined standard.

We support a “de minimis” permit threshold where a social and economic justification is not required. We also recommend that the Department revise its regulations to allow for the use of general permits on high quality and exceptional value streams. Discharges associated with these permits are minimal and permit applicants should not be burdened with applying for an individual permit for these types of projects.

Also, because of the many implications an antidegradation designation will have on a community, the DEP must base its designations on more than just one grab sample. The DEP must have enough actual, sound scientific background water quality data before an accurate evaluation can occur and a stream designation can be made.

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Designation of exceptional value streams should be based solely on the stream’s uniqueness to the Commonwealth of Pennsylvania or the nation. Some states have not yet designated a single stream in their state as exceptional value due to the adverse economic impact this designation carries with it.

One of the key positions of Governor Ridge's administration is that no state-run program should be more stringent than required by federal law. Also, a greater balance needs to be established between the environmental and economic interests of the state. Pennsylvania should not be placed at an economic disadvantage in comparison to other states' water quality programs.

An associated concern with the federal tier three program is the Environmental Protection Agency's (EPA) interpretation of the federal requirements regarding discharges to exceptional value streams. Despite the EPA's insistence that the DEP prohibit new or expanded discharges to exceptional value streams, we believe that current EPA and DEP rules allow for the consideration of such discharges. With the use of sound technical practices, discharges which result in no adverse measurable change to long term water quality should be allowed.

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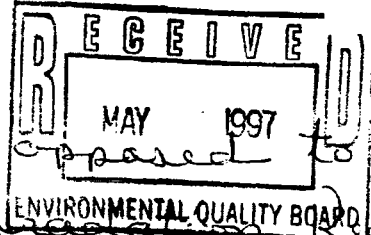
Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. Maier". The signature is written in a cursive style with a large, looping initial "M".

Michael Maier
Executive Officer

Dear Mr. Seif,

I am very much opposed to the proposed anti-degradation regulation.



Pennsylvania should be proud of all our water resources and should be protective of them in every way. This should include private and industrial use of our resource. Clean, pure water is such a wonderful gift to the people who live in and visit Pennsylvania. How sad to watch dead or dying streams and rivers.

Give us a chance to work to protect our water, to pay back the pleasure it has given us all.

Keep our 'Clean Water' clean and continue to enforce strong regulations that will not degrade us or our water.

Thank you for your consideration.

Carol Berney
Juniata Valley Area School

97 MAY 27 11 00 AM

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Chairman
Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477

Dear Sir:

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The proposed regulation has little good to recommend them and much bad. The proposed regulation should be rejected by the Board.

Sincerely yours,

CHARLES E. GARRISON, DDS.

P.S. While this is a form letter, it accurately & precisely states my views on this matter. Please reject this proposed regulation.

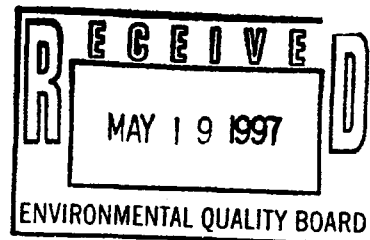
Century Inc.

Real Estate - Rentals - Investments

Post Office Box 277
27 East Baltimore Street
Greencastle, Pa. 17225
(717) 597-9500

ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105



Dear Chairman Seif:

Century, Inc. appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality antidegradation regulations. Our company employs several persons in the Greencastle area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years Century, Inc. has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

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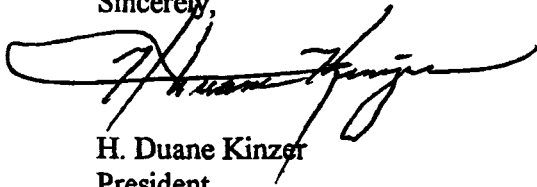
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Thank you for your consideration of these comments regarding this very important regulatory proposal. Century, Inc. believes the incorporation of these comments into the final regulations will provide Pennsylvania with a more balanced water quality stream designation program that will continue to protect our valuable resource and also allow for economic growth in Pennsylvania.

Sincerely,

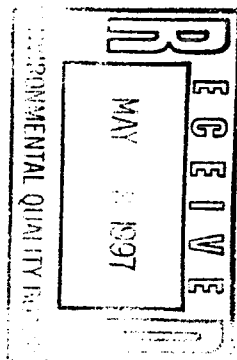
A handwritten signature in black ink, appearing to read "H. Duane Kinzer". The signature is fluid and cursive, with a large, sweeping initial "H" and a long, horizontal flourish extending to the right.

H. Duane Kinzer
President
Century, Inc.

ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

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

Reject the DEP's current anti-degradation proposal.



Chris Schmidt

05/21/97 11:00 AM

DEP
HARRISBURG PA

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(PER JHJ)

Mr. James Seif
Chairman
Environmental Quality Board
16th Floor, Rachel Carson Building
P.O. Box 8477
Harrisburg, PA 17105-8477

97 MAY 27 11 09 AM '97

Re: Proposed Antidegradation Regulations (Revisions to PA Code Chapters 92, 93, and 95 published on January 21, 1997)

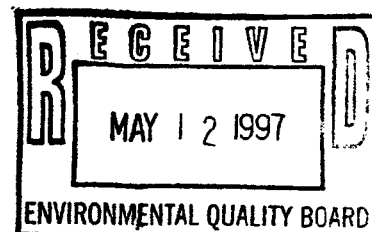
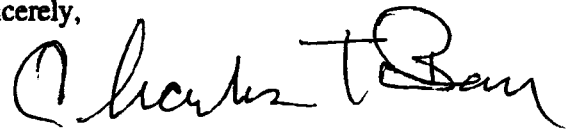
Dear Mr. Seif:

I am writing to express my opposition to the proposed new antidegradation regulations for Pennsylvania. The proposal weakens the protections that exist under the current regulations promulgated for Pennsylvania by the U.S. Environmental Protection Agency and does not ensure that this state's highest quality waters will not be degraded.

As a member of Trout Unlimited, I am acutely aware of the ecological damage that can be done by any degradation of water quality. Pennsylvania is home to many outstanding trout streams that attract anglers from all over the world. These waters and their fisheries are threatened from a variety of sources, including coal mining and its after effects, increased development, polluted run-off, and industrial pollution. These sources are so pervasive and diverse that unless we make protecting high water quality a top priority, we will lose it.

I understand that Pennsylvania Trout is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing regulation is vastly preferable to the new proposal as it is now written.

Sincerely,



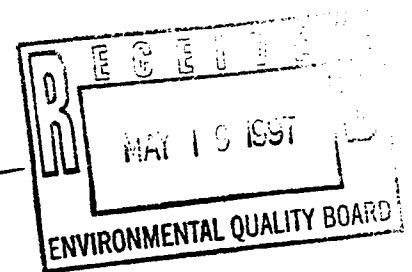
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STANDARD FORM NO. 64
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

Environmental Quality Board -

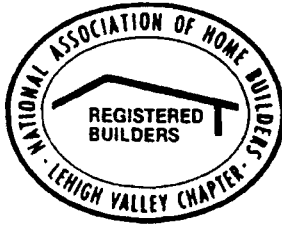
Please Reject The DEP's Current anti-degradation
Proposal

C. C. Bell



Curtis E. Schneck, Inc.

5426 ROUTE 873
SCHNECKSVILLE, PA 18078
Telephone (610) 767-5018



dep
BUILDING CONTRACTOR

DEVELOPER

MAY 27 11 01 AM '97

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Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105

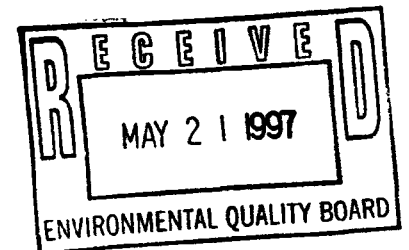
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COPIES: COCCODRILLI
TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

Dear Chairman Seif:

Curtis E. Schneck, Inc. appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality anti-degradation regulations. Our company employs 14 persons in the Lehigh Valley area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years Curtis E. Schneck, Inc. has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

Pennsylvania's current stream designation process is, in ever increasing numbers, used as a tool to halt future economic growth and development in particular areas. Often, it seems stream designation upgrades to exceptional value status have been granted based more on politically driven anti-growth sentiment rather than based on scientific fact. Remember, these DEP regulations concern water quality, not land use.



Several provisions of the existing regulations need revised to provide more reasonable water quality regulations. The three areas of our comments deal with high quality stream designations, exceptional value stream designations and public participation.

First, when DEP assesses a stream, only those streams that have water quality better than standards should be eligible for special protection status. Currently, the Department evaluates a stream for a high quality or exceptional value designation using a "generally better than water quality" determination. This is not appropriate nor consistent with the existing federal language. A stream should never be considered for a high quality or exceptional value status if even one of its water quality parameters is above the existing standard.

We support a "de minimis" permit threshold where a social and economic justification is not required. We also recommend that the Department revise its regulations to allow for the use of general permits on high quality and exceptional value streams. Discharges associated with these permits are minimal and permit applicants should not be burdened with applying for an individual permit for these types of projects.

Also, because of the many implications an anti-degradation designation will have on a community, the DEP must base its designations on more than just one grab sample. The DEP must have enough actual, sound scientific background water quality data before an accurate evaluation can occur and a stream designation can be made.

Our second major area of concern is the DEP's current exceptional value streams designation process. The section of the regulations concerning the designation of streams as exceptional value has been abused recently. Too often streams have been redesignated as exceptional value, when in reality they may have only qualified as high quality. In other words, certain streams designated as exceptional value under Pennsylvania's program would never meet the criteria of a federal Tier Three stream designation. In particular, Pennsylvania's EV program is broader than the federal program as it considers outstanding regional and local resource waters. We recommend the DEP's exceptional value program be revised to be no more stringent than the federal program.

Designation of exceptional value streams should be based solely on the stream's uniqueness to the Commonwealth of Pennsylvania or the nation. Some states have not yet designated a single stream in their state as exceptional value due to the adverse economic impact this designation carries with it.

One of the key positions of Governor Ridge's administration is that no state-run program should be more stringent than required by federal law. Also, a greater balance needs to be established between the environmental and economic interests of the state. Pennsylvania should not be placed at an economic disadvantage in comparison to other states water quality programs.

An associated concern with the federal tier three program is the Environmental Protection Agency's (EPA) interpretation of the federal requirements regarding discharges to exceptional value streams. Despite the EPA's insistence that the DEP prohibit new or expanded discharges to exceptional value streams, we believe that current EPA and DEP rules allow for the consideration of such discharges. With the use of sound technical practices, discharges which result in no adverse measurable change to long term water quality should be allowed.

Our final comments focus on the need for improved public participation in the entire special protection stream designation process. Public participation must start during the assessment of the stream.

The Department must ensure increased public participation at the early stages of the stream redesignation process, whether the assessment is initiated by the Department or by a petition. Under the present DEP policy, The Department publishes a notice of acceptance of a petition in the *Pennsylvania Bulletin*, however not everyone subscribes to this publication. Many parties, including landowners and homeowners, which may be adversely affected by a stream upgrade are never made aware of the petition until perhaps a proposed regulatory package is already in front of the Environmental Quality Board for consideration. In addition, these parties are never fully made aware of the impacts a redesignation can have on their activities in the area.

The Department must notify potentially affected parties in the preliminary stages of the stream's evaluation. This includes notice by first class mail to any applicant with a pending discharge permit application, any existing discharge permittees, the appropriate municipalities, planning commissions and all applicants that have received Act 247 or Act 537 planning or subdivision and land development planning approval within the previous 5 years. This will help the DEP to eliminate potential oversights and to obtain a complete picture of the stream, including present and planned growth and economic development in the area.

The Department should be required to consider the social and economic impacts associated with any of its high quality and exceptional value designations during the assessment process. This information should be made available to the public.

Thank you for your consideration of these comments regarding this very important regulatory proposal. Curtis E. Schneck, Inc. believes the incorporation of these comments into the final regulations will provide Pennsylvania with a more balanced water quality stream designation program that will continue to protect our valuable resource and also allow for economic growth in Pennsylvania.

Sincerely,

A handwritten signature in cursive script that reads "Curtis E. Schneck". The signature is written in black ink and is positioned below the word "Sincerely,".

Curtis E. Schneck
Owner/President



p.o. box 8477 • harrisburg, pa. 17105-8477 • (717) 787-4526

Environmental Quality Board

May 27, 1997

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Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120


RE: Proposed Rulemaking - Water Quality Amendments - Antidegradation (#7-310)

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the above referenced proposed rulemaking from those on the enclosed list.

These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,


Sharon K. Freeman
Regulatory Coordinator

Enclosure

1. Ms. Rachel Crews
2. Ms. Joanne P. Rossi
3. Ms. Heather L. Mochulski
4. Mr. Jason Jaremenko
5. Ms. Donna Molls
6. Damon and Germaine Henry
7. Gine Kolender
8. C. Summers
9. Damali Mason
10. Ms. Simone Berman-Perlstein
11. Ms. Yvonne Meredith
12. Mr. William DeMarco
13. Ms. Felisa Trent
14. Ms. Lillie Trent
15. Jo L. Walh
16. Ms. Theresa Downey
17. Ms. Beverly Casey and
Ms. Cherifonne Casey
18. Mr. Oliver Houd
19. Ms. Octavia Tucker
20. Ms. Michele Kumarroy
21. Ms. Mabel Harrell
22. Arun Prabhakaran
23. Ms. Annie L. Kellam
24. Ms. Jennifer Barile
25. Myrtice Parker
26. Mr. Dennis Glennon
27. Ms. Nancy Roberts
28. Idolidra Rosario
29. Ms. Mariam Melendy
30. Charles M. Kim and Chris
DeGuzman-Kim
31. Mr. James Bryant
32. Ms. Jennifer King
33. Mr. Todd Simon
34. John A. and Deborah Elam
35. Mr. Timothy Fox
36. Mr. Aaron Cooley
37. Hung Tang
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41. Mr. Eric Cortez
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43. Keenan Leigh Aldridge
44. Quiana Granf
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61. Ms. Patsy Santos
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66. Ms. Colleen McCabe
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68. Ms. Patty Dolby
69. Mr. Kevin Weathersby and
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70. Tamiyh Peeler
71. Charles and April Short
72. Ikea Williams
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75. Aida Garcia
76. Patt Papiernik
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 197. Mr. Homer G. Lee
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 199. Ms. Janet Baraniak
 200. Mr. Charles J. Wood
 201. The Honorable Harry A. Readshaw,
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 250. Mr. Edward Glenn Becker
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 280. Evan Say
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 286. Mr. Frank McMullen
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 350. Mark A. Snyder, Snyder Brothers,
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 352. Mr. Mark Restelli
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 354. Matthew and Amy J. Keth
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 358. Mr. Gary W. Moser
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 366. Mr. Wayne S. Leeper
 367. Terry Morrow
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 389. Mr. Leo L. Estes
 390. Mr. Arlene Collamer
 391. Ms. Nancy L. Schulman
 392. Mr. Bruce E. Toll, Toll Brothers, Inc.
 393. R. Eric Jarrell, Montgomery County
 Planning Commission
 394. Patrick J. Minnock, Minnock
 Construction Company
 395. Mr. Len Ferraro
 396. R. L. Martz
 397. Ms. Theresa Hurrelbrink
 398. Mr. Alan A. Zaeske
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 400. Ms. Anna M. Pyshink
 401. Mr. Michael J. McMurray
 402. Mr. Larry E. Galbreath
 403. Mr. Thomas E. Greg
 404. Mr. Ronald L. Reitz
 405. Ms. Alice Thuray
 406. Mr. Timothy W. Sandberg
 407. Ms. Marcia W. Woolman
 408. Ms. Lucille Maxson
 409. Mr. Glen Gutgold
 410. Richard W. Gross, U.S. Department
 of the Interior

411. Robert Heise, Home Builders Assn. of Berks County
412. John F. and Sally McDermott
413. Mr. Kenneth Van Gilder
414. John W. and Carol A. McGonigle
415. Mr. Barry Gardner
416. Raymond E. and Diana Brothers
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431. James A. Brown, Snyder Brothers, Inc.
432. Charles H. Snyder, Jr., Snyder Brothers, Inc.
433. Mr. Robert Clark, Gas & Oil Management Associates, Inc.
434. Mr. Robert Clark, Sullivan & Clark, Partners
435. Mr. Robert Clark, Clark & Sullivan, Inc.
436. Dennis L. Brislin, Brislin Construction
437. Ernie Pellow, A. E. Pellow Builder
438. Mr. John D. Kelly, John D. Kelly, Inc.
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445. Clyde Kreider, Harmony Home Builders, Inc.
446. Elizabeth Kemmerer, Blue Valley Builders, Inc.
447. Stuart E. Price, Granor Price Homes
448. John Bliss, Darlington Brick
449. Patrick J. Minnock, Minnock Construction Company
450. Thomas B. O'Donoghue, O'Donoghue Construction Company, Inc.
451. Marlin Gayman, Gayman Construction Company, Inc.
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454. John J. Schneider, Esquire
455. Ms. Genevieve Earon
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457. Sharad K. Singh
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459. Ed Zygmunt, PA Federation of Sportsmen's Clubs, Inc.
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474. D. J. DeLess, D and C Development
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476. Mr. William H. Ruland
477. Mr. John R. Lake, Conodoquinet Creek Watershed Assn.
478. Mr. Richard L. Henry
479. Ms. Carol Berry
480. Ms. Daphne D. Minner
481. Ingrid E. Morning, The Pine Creek Valley Watershed Assn. Inc.
482. Scott H. Cannon, S.H.C. Inc.
483. Janet L. Bowers, Chester County Water Resources Authority
484. Patricia A. Paul and Adeline Leichliter, Alice Water Protection Association
485. Mr. Gregory J. Hill
486. Catherine Maxaner, Pike County Conservation District Board of Directors
487. Mr. Terry Morrow
488. Mr. Todd R. Seigfried
489. Mr. John A. Shaffer
490. Paula Ford, Juniata Valley Audubon Society

491. Alvin R. Morris, U.S. Environmental Protection Agency, Region III
492. Charles F. Gauvin, Trout Unlimited
493. Ms. Jean Holland
494. Scott K. Rodgers, Pennsylvania Electric Association
495. Mr. Scott McKenzie
496. Ms. Linda A. Kubis
497. Kelly Leyh
498. Ms. Louise Yeager
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521. Jamie DeMarib
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550. Claire Sawyers
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554. Ms. Nancy Huppman
555. Ms. Jean Berbie
556. Ms. Barbara Robbins
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558. Ms. Mara Sharkey
559. Tracy Kleinfelter
560. Jay Rore
561. Sandi Sorrenkel
562. Alix Strong
563. Ms. Sharon Vandegrift
564. Ms. Marian E. Vernon
565. Ms. Alice M. Durnell
566. Schmidt
567. Ms. Millicent L. Wynn and Mr. Bill Newmiller
568. D. and Karen Robbins
569. Ms. Colleen Crenny
570. Negar Ekbatani
571. Frances A. Dubrowski, Attorney for the Municipal Authority of the Borough of Milford
572. Ms. Barbara Fisher
573. David Densmore, Fish and Wildlife Service
574. Martin E. Visnosky, Sierra Club Pennsylvania Chapter
575. Wayne and Joan Beaver
576. Ms. Alice Luteran
577. Susan Gobreski, Clean Water Action
578. Craig Todd, Monroe County Conservation District
579. Richard G. Myers, Neshaminy Watershed Association
580. Ted Onufrak, Centre County Federation of Sportsmen
581. Jack W. Master, PA Independent Petroleum Producers Assn.
582. Karl Heine, Valley Forge Chapter of Trout Unlimited
583. Ms. Jeanne L. Sollman
584. Richard B. Hoyt, Specialty Steel Industry of Pennsylvania

585. Ms. Shirley R. Feeple
586. Ms. Anne Serfes
587. Ms. Caroline A. Kopec
588. Mr. and Mrs. J. W. Jarman
589. Ms. Debra Schwab
590. James and Joanne Lagan
591. Ms. Margaret W. McLaughlin
592. Ms. Nancy Gage
593. Robert F. Molzahn, Dame Juliana League
594. Richard Constantino, Kitchen Concepts By Rick Constantino
595. Mr. Ben Hogan, Hogan Homes
596. Mr. James Hutch, Hutch Construction
597. William Adams, Pennsylvania Farm Bureau
598. Mr. James E. Mead, Mead Oil Company
599. Ben Hogan, Pike County Builders Association
600. Gene Silver, Franklin County Builders Association, Inc.
601. Mr. John D. Maleno, Maleno Real Estate and Development
602. Mr. Laird A. Bradley
603. Mr. Richard F. Reynolds
604. Mr. Ted Pluckinsky
605. Steven K. Misner, S. Misner Construction
606. Arthur E. Gemmell, A. E. Gemmell Builder
607. Robert B. White, Bob White General Contracting
608. Curtis T. Lentz, Curtis T. Lentz Contracting Services
609. Richard A. Clawson, Indiana-Armstrong Builders Assn.
610. Mr. Louis Leo Will
611. Ms. Margaret P. McCime
612. Olin L. Miller, Olin L. Miller Corporation
613. T. C. Hogan, T. C. Hogan, Inc.
614. Edward S. Nikles, Nikles Realty, Inc.
615. Mr. Michael J. Murphy, Michael J. Murphy Construction, Inc.
616. Mr. Frank DiSerafino, DiSerafino Bros. Inc.
617. Ms. Lois M. Miller
618. Edward S. Nikles, Ed Nikles Custom Builder, Inc.
619. Michael Maier, Builders Assn. of Northwestern PA
620. Mr. Robert Wardrop
621. Mrs. Gertrude Wiliuszis
622. William E. Murry, Wm. Murry & Sons, Inc.
623. William E. Murry, Murry Development Corp.
624. Mr. James Tipe
625. Mr. Tom Bobiack
626. William J. and Kathryn S. Kress
627. Mr. Thomas M. Ziffert
628. Mr. Thomas Barbush
629. Ms. Judy Boyle
630. Ms. Jennifer Bourbeau
631. Chist John
632. Mr. Robert W. Sauter
633. Ms. Angela C. Guesman
634. H. J. Brickell
635. Ms. Anita F. Orton
636. Phillis A. Gayman, PBA's Woman's Council
637. Ms. Lisa Donatelli
638. Mr. Andrew Swedler
639. Mr. Kenneth Mesko
640. Ms. Kathleen Pickering
641. Ruth Ann Minnick, Pennsylvania Builders Association Women's Council
642. Mr. Dennis Guise
643. Mr. Jeff Bauser
644. Ms. Sharron Moore
645. Ms. Marie Rivers
646. Mr. Jason Knox



p.o. box 8477 • harrisburg, pa. 17105-8477 • (717) 787-4526

Environmental Quality Board

May 27, 1997

ORIGINAL: #1799
COPIES: COCCODRILLI
TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

RE: Proposed Rulemaking - Water Quality Amendments - Antidegradation (#7-310)

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the above referenced proposed rulemaking from those on the enclosed list.

These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,

Sharon K. Freeman
Regulatory Coordinator

Enclosure

1. Ms. Karen Reibstein
2. Mr. Eric LePine
3. Mr. Paul Banrewicz
4. Ms. Patricia M. Smith
5. Ms. Marge Natoli
6. Ms. Monique Rowen
7. Mr. Howard M. McGarvey, Jr.
8. C. F. Holloway III, & Company
9. Mr. Davis R. Chant, Davis R. Chant Realtors
10. Mr. Robert L. Graner
11. Mr. Mark W. Symon
12. Kenneth and Helen Strickenberger
13. Mr. Marvin Cussins
14. Mr. John J. Small
15. Mr. Patrick J. Schill
16. Mr. Benedict J. Landen
17. Mr. John J. Murphy
18. Mr. Robert Collett
19. Mr. Timothy P. Schill
20. Mr. Richard L. Schill
21. Mr. Richard L. Altio
22. Ms. Brenda Hoover
23. Mr. Brian Vossler
24. Mr. Richard A. Judy
25. Mr. Kevin Schill
26. Mr. Stephen F. Schill
27. Mr. Francis Ochs
28. Mr. Andrew D. Grabmund
29. Mr. Arthur A. Lutz
30. Mr. Ronald H. Filius
31. Ms. Phyllis A. Doughty
32. Mr. John W. Wilson, Wilson Building Company
33. Mr. Ed VanBlargan
34. Ms. Margaret Chleboski
35. Mr. Bob Ging, Law Office of Robert P. Ging, Jr., P.C.
36. B. Churak
37. Mr. Kerry Brace and Ms. Debby Noalks
38. Jan Shulman
39. Ms. Pamela J. Haggerty
40. Mr. Jeffrey Lipton
41. Stephen W. Rhoads, Pennsylvania Oil & Gas Association
42. Mr. Dennis T. Guise, PA Fish and Boat Commission
43. Chesapeake Bay Foundation
44. Megan A. Milford, Pennsylvania Builders Association
45. George Ellis, Pennsylvania Coal Association
46. Barbara Yeaman, Delaware Highlands Conservancy
47. Ms. Beatrice Kelly
48. Sandy Schutt
49. Mr. Peter C. Pinchot
50. Louis D. D'Amico, Independent Oil & Gas Assn of PA
51. Davitt B. Woodwell, Pennsylvania Environmental Council
52. Joseph Griffin, Berks County Conservancy
53. Ms. Susan Beecher, Pike County Conservation District

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Box 167 Lilac Lane
Norvelt, PA 15674

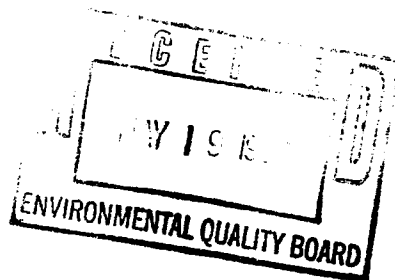
Environmental Quality Board
P.O. Box 8465
Harrisburg, PA 17105

To whom it may concern,

I want to reject the DEP Antidegradation Proposal.

Sincerely,

Constance Y. Urban
Constance Y. Urban



Chrysanthe Spais
117 Maple Lane
West Chester, PA 19382

97 MAY 27 10 51 AM '97
Environmental Quality Board, DEP
PO Box 8465
Harrisburg, PA 17105

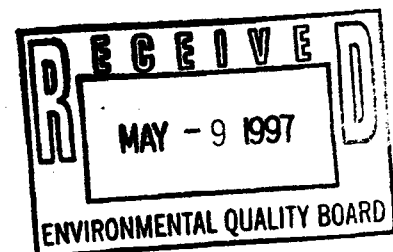
To the EQB,

As a Pennsylvania citizen, I have always assumed that legislation was intact to protect the water I drink and the air I breathe. It has come to my attention that the DEP is proposing new regulations that would further lower water quality standards. I am writing to ask that you reject the DEP's current proposal and adopt the better standards of the Clean Water Act. I feel it is important for myself and others to voice our interest in maintaining our streams and waterways. Please let me know what action is being done so that there will be no more degradation of Pennsylvania's resources.

Sincerely,

Chrysanthe M. Spais

Chrysanthe M. Spais

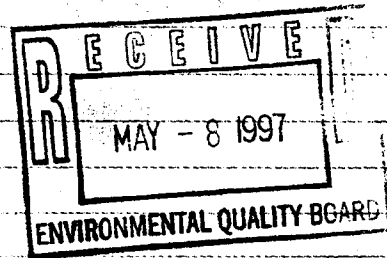


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Environmental Quality Board

reject the DEP's current
anti-degradation proposal

Callen Macart



W P H

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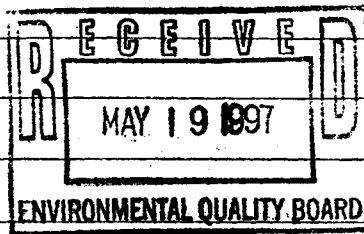
DATE: 05/19/97

TIME: 10:00 AM

Reject DEPS

Antidredgation Proposal

Christopher A. Basson



ORIGINAL: #1799
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(PER JHJ)

Christie Strub
1018 Norwich Avenue
Pittsburgh, PA 15226

EQB
DEP, PO Box 8465
Harrisburg, PA 17105

Dear State EQB representative

I am proud of my state because of the high water quality. I am saddened to learn that our elected officials are planning to reverse the progress we've made.

Please leave well enough alone and reject the DEP's Antidegradation proposal!

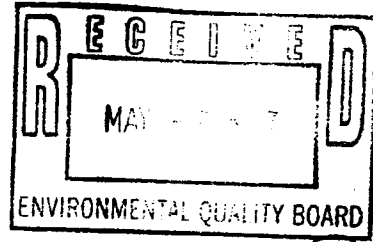
Sincerely,

Christie Strub

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27 JUN 27 11 05 AM

◆ ◆ ◆ ◆ ◆
Ms Cynthia Kreider
231 S 3rd St
Quakertown PA 18951-1612
◆ ◆ ◆ ◆ ◆



Attention: Environmental Quality Board

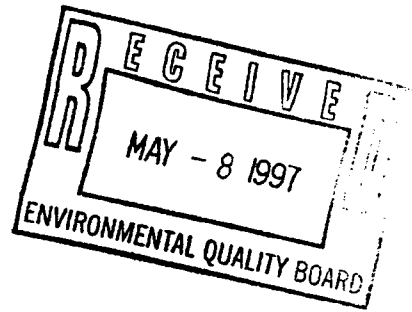
*You must reject
the DEP's current
anti-degradation proposal.
Protection. Prevention.*

Purity.

Thank you -

Sincerely,

Cynthia A. Kreider



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1135 Sylvan Road
West Chester, PA 19382-5744
2 May 1997

Environmental Quality Board
DEP
PO Box 8465
Harrisburg, PA 17105

Dear Sirs:

I understand that the DEP is proposing new water quality standards that would allow even lower standards than are currently in place!

I strongly urge you to reconsider, to reject any such proposition, and, instead, move to adopt the standards of the EPA which I understand to be simpler and better!!

Please let me know how this matter is resolved. Thank you.

Yours truly,

A handwritten signature in cursive script that reads "Curtis M. Wise".

Curtis M. Wise

298 Winchester Lane
Newtown, PA 18940
May 19, 1997

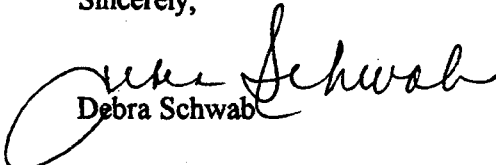
STUART - 18940
MAY 21 1997

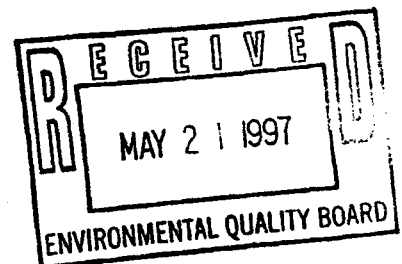
Environmental Quality Board
DEP, PO Box 8465
Harrisburg, PA 17105

To the Environmental Quality Board Members:

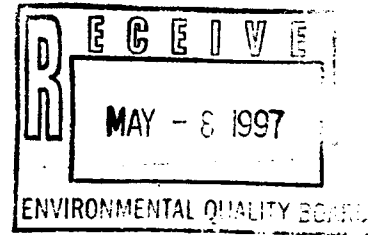
The DEP is proposing new regulations that would lower water quality standards, and I am asking that you reject the DEP's current anti-degradation proposal. I would like a response to my letter as to your position.

Sincerely,


Debra Schwab



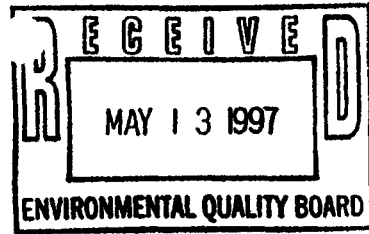
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Environmental Quality

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

David C. Kolb



To Whom It May Concern

Please reject the DEP's current anti-degradation proposal. We need standards that will protect our waterways from further degradation.

Sincerely,

Deborah C. Comeskey

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10/10/97
MAY 13 1997
MAY 13 1997
MAY 13 1997

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David Biber
1018 Norwich Avenue
Pittsburgh, PA 15226

EQB
DEP, PO Box 8465
Harrisburg, PA 17105

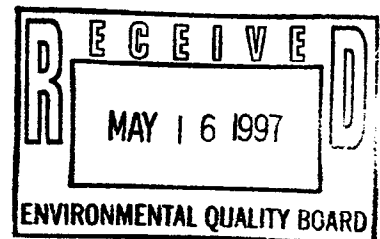
Dear State EQB representative

I am proud of my state because of the high water quality. I am saddened to learn that our elected officials are planning to reverse the progress we've made.

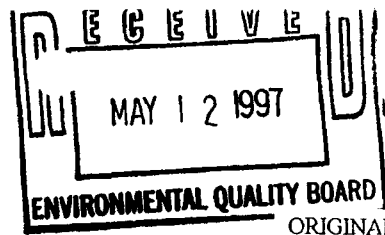
Please leave well enough alone and reject the DEP's Antidegradation proposal!

Sincerely,

David Biber



MR. JAMES SEIF



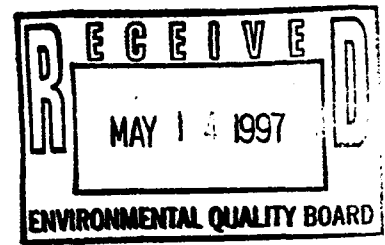
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Dear Mr. Seif

I am strongly opposed to the proposed new anti degradation regulations for Pa. These regulations (Revisions to Pa. Code Chapters 92, 93, + 95 published on Jan 21, 1997) would bring about harm to the streams and rivers of Pennsylvania. We must not weaken the protections we now have in place for high quality water. On the contrary, we should do more to strengthen the existing regulations and do more, much more than we are now doing, to clean up degraded waters. As a member of Trout Unlimited, The Benssneck Wildlife Association, Traditional Anglers of Penna, Portage Sportsmen, Jamestown Rod and Gun Club, and others I will be watching the outcome with great interest. As a resident and voter of Western Pennsylvania I have seen the results of bad water regulations of the past that we have to cope with now in the form of mine acid degraded streams, sewage polluted streams, etc. The time to protect our good waters is now. Our future and our childrens future depends on our actions now.

Sincerely
David Latache
Beverly Latache

Mr. James Seif
Chairman
Environmental Quality Board
16th Floor, Rachel Carson Building
P.O. Box 8477
Harrisburg, PA 17105-8477



Re: Proposed Antidegradation Regulations (Revisions to PA Code Chapters 92, 93,
and 95 published on January 21, 1997

ORIGINAL: #1799
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(PER JHJ)

Dear Mr. Seif:

I am writing to express my opposition to the proposed new antidegradation regulations for Pennsylvania. The proposal weakens the protections that exist under the current regulations promulgated for Pennsylvania by the U.S. Environmental Protection Agency and does not ensure that this state's highest quality waters will not be degraded.

As a member of Trout Unlimited, I am acutely aware of the ecological damage that can be done by any degradation of water quality. Pennsylvania is home to many outstanding trout streams that attract anglers from all over the world. These waters and their fisheries are threatened from a variety of sources, including coal mining and its after effects, increased development, polluted run-off, and industrial pollution. These sources are so pervasive and diverse that unless we make protecting high water quality a top priority, we will lose it.

I understand that Pennsylvania Trout is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing regulation is vastly preferable to the new proposal as it is now written.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel K. LeB.".

Darlington Brick
Box 346
Darlington, Pennsylvania 16115
Telephone (412) 827-2700

Mr. James M. Seif
Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105



Dear Chairman Seif:

Darlington Brick appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality anti-degradation regulations. Our company employs 50 persons in the Western Pennsylvania area. Our company has always been a strong proponent of sensible environmental regulations that protect the public health and safety. As a small company, we are affected by many of Pennsylvania's laws and regulations.

Reasonable environmental regulations and water quality protection are essential to enhance our quality of life. There are instances, however, when regulations can be used to unjustly limit or inhibit growth. Increasingly, the time and cost with complying with environmental regulations has been tremendous. For many years Darlington Brick has been, and still is, very concerned about the current process the DEP uses to designate streams for special protection. Whether a high quality or exceptional value stream designation is made, the viability of a project located near that stream may be in jeopardy.

Pennsylvania's current stream designation process is, in ever increasing numbers, used as a tool to halt future economic growth and development in particular areas. Often, it seems stream designation upgrades to exceptional value status have been granted based more on politically driven anti-growth sentiment rather than based on scientific fact. Remember, these DEP regulations concern water quality, not land use.

Several provisions of the existing regulations need revised to provide more reasonable water quality regulations. The three areas of our comments deal with high quality stream designations, exceptional value stream designations and public participation.

First, when DEP assesses a stream, only those streams that have water quality better than standards should be eligible for special protection status. Currently, the Department evaluates a stream for a high quality or exceptional value designation using a "generally better than water quality" determination. This is not appropriate nor consistent with the existing federal language. A stream should never be considered for a high quality or exceptional value status if even one of its water quality parameters is above the existing standard.

We support a "de minimis" permit threshold where a social and economic justification is not required. We also recommend that the Department revise its regulations to allow for the use of general permits on high quality and exceptional value streams. Discharges associated with these permits are minimal and permit applicants should not be burdened with applying for an individual permit for these types of projects.

Also, because of the many implications an anti-degradation designation will have on a community, the DEP must base its designations on more than just one grab sample. The DEP must have enough actual, sound scientific background water quality data before an accurate evaluation can occur and a stream designation can be made.

Our second major area of concern is the DEP's current exceptional value streams designation process. The section of the regulations concerning the designation of streams as exceptional value has been abused recently. Too often streams have been redesignated as exceptional value, when in reality they may have only qualified as high quality. In other words, certain streams designated as exceptional value under Pennsylvania's program would never meet the criteria of a federal Tier Three stream designation. In particular, Pennsylvania's EV program is broader than the federal program as it considers outstanding regional and local resource waters. We recommend the DEP's exceptional value program be revised to be no more stringent than the federal program.

Designation of exceptional value streams should be based solely on the stream's uniqueness to the Commonwealth of Pennsylvania or the nation. Some states have not yet designated a single stream in their state as exceptional value due to the adverse economic impact this designation carries with it.

One of the key positions of Governor Ridge's administration is that no state-run program should be more stringent than required by federal law. Also, a greater balance needs to be established between the environmental and economic interests of the state. Pennsylvania should not be placed at an economic disadvantage in comparison to other states' water quality programs.

An associated concern with the federal tier three program is the Environmental Protection Agency's (EPA) interpretation of the federal requirements regarding discharges to exceptional value streams. Despite the EPA's insistence that the DEP prohibit new or expanded discharges to exceptional value streams, we believe that current EPA and DEP rules allow for the consideration of such discharges. With the use of sound technical practices, discharges which result in no adverse measurable change to long term water quality should be allowed.

Our final comments focus on the need for improved public participation in the entire special protection stream designation process. Public participation must start during the assessment of the stream.

The Department must ensure increased public participation at the early stages of the stream redesignation process, whether the assessment is initiated by the Department or by a petition. Under the present DEP policy, The Department publishes a notice of acceptance of a petition in the *Pennsylvania Bulletin*, however not everyone subscribes to this publication. Many parties, including landowners and homeowners, which may be adversely affected by a stream upgrade are never made aware of the petition until perhaps a proposed regulatory package is already in front of the Environmental Quality Board for consideration. In addition these parties are never fully made aware of the impacts a redesignation can have on their activities in the area.

The Department must notify potentially affected parties in the preliminary stages of the stream's evaluation. This includes notice by first class mail to any applicant with a pending discharge permit application, any existing discharge permittees, the appropriate municipalities, planning commissions and all applicants that have received Act 247 or Act 537 planning or subdivision and land development planning approval within the previous 5 years. This will help the DEP to eliminate potential oversights and to obtain a complete picture of the stream, including present and planned growth and economic development in the area.

The Department should be required to consider the social and economic impacts associated with any of its high quality and exceptional value designations during the assessment process. This information should be made available to the public.

Thank you for your consideration of these comments regarding this very important regulatory proposal. The Darlington Brick believes the incorporation of these comments into the final regulations will provide Pennsylvania with a more balanced water quality stream designation program that will continue to protect our valuable resource and also allow for economic growth in Pennsylvania.

Sincerely,

A handwritten signature in black ink that reads "John Bliss". The signature is written in a cursive style with a large, looping initial "J".

John Bliss
Sales Representative

ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

STATE OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

DONNA L. RAY
214 Redwood Road
King of Prussia, Pennsylvania 19406

I am writing to ask that
you support the standards of
the EPA and not lower the
water quality standards in
Pennsylvania.

Sincerely
Donna L. Ray

