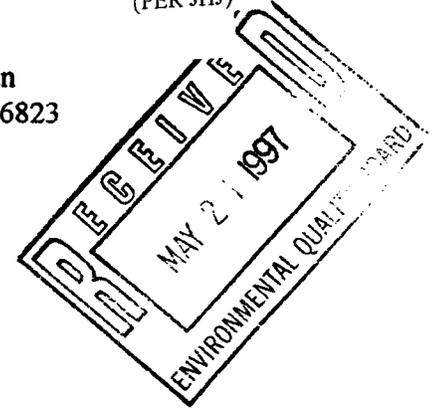


ORIGINAL: #1799
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2929 Buffalo Run
Bellefonte, PA 16823
May 19, 1997



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

RE: 25 PA. Code, Chapters 92,93 & 95 Water Quality Standards-Antidegradation

Dear Mr. Seif:

I speak to you from the point of view as a landowner who is deeply concerned about our right to conserve our property for further generations rather than "the right to eke out every dollar for its value today." I believe that as landowners, we are part of a silent majority who share visions for sustainable communities. We need to be equally capable to protect the public good by being equally capable of defending our lands.

Along with the property owners who have invested for profit, we too have invested our lifetime resources into the values of our land. Saving it is not only important to us biologically and aesthetically, but economically and socially as well. One of Pennsylvania's leading source of revenues is tourism. Socially, we are a part of a very caring watershed community who share in the responsibility for a sensitive and complex resource of the Spring Creek Watershed.

To increase the chances of survival of our Class A limestone stream of Buffalo Run, an adjacent landowner and I struggled for two years to seek a High Quality Designation. Much reading and research was needed. We made appointments for clarification of the of the procedure, drove to Williamsport and Harrisburg learning about the efforts of those testing the stream, prepared a map and extensive report for the EQB for our formal presentation and enlisted community support and involvement in our efforts.

Though the process was very stressful, difficult and lengthy, receiving the rule making for High Quality was one of the most gratifying things we have achieved in our lifetime. Investing the quality time of two years of our lives brought us much inspiration. We had a new basis for hope that in future land use issues careful measures would be in place to assess the impact on the stream through the rule making process. We felt the new designation assured us of a reasonable chance for protection of Buffalo Run. We felt supported by the judgment of a greater conditioned waterwise community. We gained confidence in our government. We were encouraged by its actions to persist in shaping its future by working with others to go further and establish a greenway.

Faced with the new rule making proposal we are devastated. It is a very difficult process to understand from the viewpoint of the average citizen, but from what we can tell the new rules will significantly allow for degradation to occur more easily and more often. They come forth as being very unbalanced as to whose rights are being protected and are heavily weighted taking the side of business in the major decisions.

COMMENTS ON GENERAL POLICY:

-Continue a strong antidegradation policy keeping in mind that the existing regulations though not perfect, are helping improve water quality and are far superior than the current proposal.

SPECIFIC COMMENTARY BASED ON PREMISE THAT HIGH QUALITY AND EXCEPTIONAL VALUE STREAMS REMAIN A PROTECTED USE:

- Include Exceptional Value and High Quality Streams as protected water uses. Enable EPA to review them keeping a check and balance system in place.
- Under 93.4a. Anti degradation Requirements retain the EPA language
(a) "EXISTING INSTREAM WATER USES AND THE LEVEL OF WATER QUALITY NECESSARY TO PROTECT THE EXISTING USES SHALL BE MAINTAINED AND PROTECTED" and strike the phrase "WHEN THE DEPARTMENT'S EVALUATION OF TECHNICAL DATA ESTABLISHES THAT A SURFACE WATER ATTAINS OR HAS ATTAINED AN EXISTING USE."
- Once designated our streams should remain at their highest level and not be subject to new rules which will make them more vulnerable. Under no circumstances should local residents or local governments have a veto power over designations. It is clearly the role of the Commonwealth.
- The water resources of EV and HQ should be defined as watersheds, not surface waters. The springs, seeps, tributaries and wetlands should clearly be a part of what is protected as they are critical components of the stream. This is especially true with our limestone streams which are gaining and losing streams and in our case related to the source of our well water.
Furthermore, there needs to be integration of wetland protection with anti degradation.
- Allow designation of HQ streams to occur through biological OR water chemical tests. It should not be both. Clearly biological means speak to the health of a stream. In Iowa the presence of minnows justifies stream protection.
- Protection of endangered species should not be confined to "discharge" but should be extended to any activity which eliminates them as unique species are an indicator of the well being of a superior watershed.
- More emphasis needs to be made on pollution prevention. The language of the non point source pollution is weak.
- Total prohibition of general NPDES permits in Special Protection watersheds should remain. The allowance of NPDES permits in HQ means they will no longer be tracked by DEP. Also concerning general uses and NPDES, such activities as channelization would not be included with the word "discharge". Why not replace the word discharge with the word activities or say "discharge and activities"?
- Public hearings should be required on discharges to HQ streams.
- Concerning discharge alternatives rather say "Unless clearly demonstrated to be cost prohibitive".

- Concerning discharge evaluation the more stringent design flows should apply such as Q 7-10 and not median design flow.
With specific water quality criteria there should be retention of the higher dissolved oxygen criteria for HQ streams and existing quality of EV streams.
- There is no language in the Federal Rules for exempting any amount of the stream for degradation. Minimal discharges of 25% invites a lot of unknown trouble.

In conclusion, the continuity of decades of effort to insure the integrity of watersheds is at a major crossroads. Every effort need be made to insure the future of our children with their right to pure water while balancing the needs of the users.

Sincerely,

Barbara Fisher

Environmental Quality Board of the State of Pennsylvania
25 PA. Code, Chapters 92, 93 & 95 Water Quality Standards-Antidegradation

I speak to you from the point of view as a landowner who is deeply concerned about our right to conserve our property for further generations rather than "the right to eke out every dollar for its value today." I believe that as landowners, we are part of a silent majority who share visions for sustainable communities. We need to be equally capable to protect the public good by being equally capable of defending our lands.

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Faced with the new rule making proposal we are devastated. It is a very difficult process to understand from the viewpoint of the average citizen, but from what we can tell the new rules will significantly allow for degradation to occur more easily and more often. They come forth as being very unbalanced as to whose rights are being protected and are heavily weighted taking the side of business in the major decisions.

I ask you to continue a strong antidegradation policy keeping in mind that the existing regulations though not perfect, are helping to improve water quality and are far superior than the current proposal. Specifically please include Exceptional Value and High Quality Streams as protected water uses, for designations allow either biological or chemistry tests but not require both, omit 25% minimal discharges, retain designation of existing streams and not subject them to change by local votes, use the word watershed instead of water ways, use Q 7-10 instead of median design flow, prohibit general NPDES in HQ and EV Streams, and include wetlands in anti degradation measures.

Sincerely, *Bonnie Fisher* 2929 Buffalo Run Bellefonte, PA 16823 May 19, 1997

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(PER JHJ)

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

May 19, 1997

To whom it may concern;

I am writing in response to the knowledge that there may be a change in The Clean Water Act that currently requires our states to protect the waterways from further degradation. The DEP will be proposing new regulations that would lower those water quality standards. As a mother, we need those standards to protect our waterways for our future, our children. Please reject the DEP's current anti-degradation proposal.

Thank you for taking the time to read my request. I hope to hear something from you regarding this issue in the near future.

Sincerely,

Caroline A. Kopec

Caroline A. Kopec
26 Gablewing Circle
Newtown, Pa. 18940



210 Teece Ave
Pgh., Pa. 15202

5-19-97

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

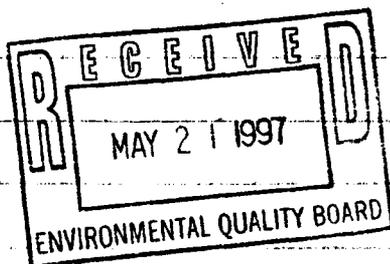
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To Whom it may Concern:

I am writing to you today, to express my sincere concern over the quality of our water today and in the future. As a parent, consumer, and concerned citizen, I refuse to believe that I/we have to accept continually declining water quality. Or that I/we should pay more for this injustice.

So, I beg you to please Reject the DEP's current anti-degradation proposal.

I hope the concerns of everyday citizens will help you decide the best way to vote. Please, let me hear what your decision ~~was~~ is.



Sincerely,
Angela C. Guesman
Angela C. Guesman

May 19, 1997
105 Oak St.
Pleasant Gap, Pa 16823

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



ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

Dear Mr. Seif:

The Centre County Federation of Sportsmen oppose the antidegradation proposal published in the March 22, 1997 Pennsylvania Bulletin. There are several poor provisions some of which are addressed below.

The Department of Environmental Protection proposes to significantly alter High Quality and Exceptional Value as "protected water uses." This can remove the redesignation of streams from EPA oversight and possibly allow these streams to be degraded. 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 regulation roll back. Sportsmen in Centre County join sportsmen across Pennsylvania opposing the weakening of water quality standards including HQ and EV designations.

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

In a recent settlement of a lawsuit, DEP plans to assess one-half of the Commonwealth's streams that are not assessed. This process could take up to 10 years and does not address the 29,000 miles of unassessed streams. These unassessed streams need to received at least tier 2 level protection and not left open to degradation.

In another part of the proposed regulations, DEP plans to allow the first 25% of a stream (tier 2 streams) to be degraded without any social or economic justification. This is counter to the purpose of tier 2 designation which is to ensure that the degradation has a good reason and that the public interest is served.

As far as public participation in EV (tier 3) 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.

This regulation should be rejected or re-written so that it is as good as the old DER's regulations

and guidance as well as incorporates the minimum Federal regulations. The Centre County Federation of Sportsmen urges the EQB to reject the proposed DEP regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Onufrak". The signature is written in a cursive, somewhat stylized font.

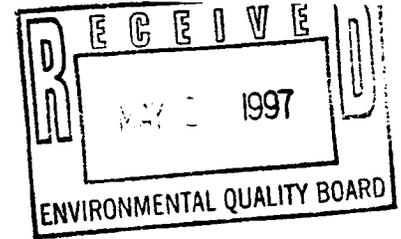
**Ted Onufrak, President
Centre County Federation of Sportsmen**

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SANDUSKY
WYATTE
BERESCHAK



May 18, 1997

Environmental Quality Board
Dept. of Environmental Protection
P.O. Box 8465
Harrisburg, Pa. 17105



re: New Proposed Antidegradation Rules

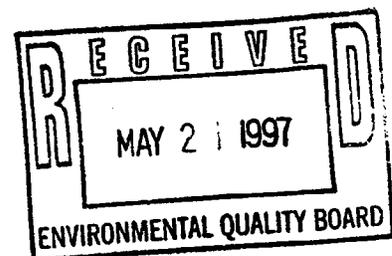
Gentlemen:

As President of the Valley Forge Chapter of Trout Unlimited and its 691 members, I would like you to know that we are sincerely concerned with the proposed antidegradation rules for the Commonwealth. It would be a dis-service to the residents of this state to have our water quality standards lowered. We feel the regulations will do just that. Those of you who are charged with protecting our resources have passed the buck this time by thinking that those new regulations qualify as "antidegradation".

Personally, my emotions range from embarrassment to rage when I think of Pennsylvania's trout streams, some of which are world famous, and how our elected public officials seem to take them for granted.

There are many reasons why we are not supporting the new regulations, some of which are listed below:

1. D.E.P. gives no weight to waters located in public lands, in the "selection criteria". There are fewer ways to qualify as Exceptional Value (EV).
2. E.V streams will be allowed to discharges and in the process degradation of water quality.
3. High Quality (HQ) and EV status no longer will be considered as "protected water uses".
4. Currently DEP designates watersheds as HQ or EV. The new proposal makes it easier to ignore springs, seeps, wetlands and tributaries. "Surface waters", not watersheds are considered. There is no integration of wetlands protection with antidegradation.



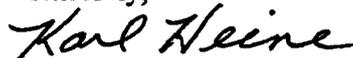
5. Unassented waters are protected at the lowest levels, benefiting discharges over the rights of the citizens.
6. Language on "non-point" sources of pollution is weak and open to interpretation.
7. Business interests can ask for veto power over EV designations for local residents on local governments.
8. DEP expects Tier 2 water (HQ) to pass both a water chemistry and a biology test to qualify. This is more exclusive than Federal requirements.

I can go on and on about these new water quality rules however, I think you get the picture. Pennsylvania is a beautiful state. We are blessed with many natural resources. I am asking you to reject these new antidegradation regulations, go back to the drawing board, and do them right. Comply with Federal regulations and basically do the job that the citizens of this state expect you to do. Protect our environment!

Before I close, I would like to tell you why we are so concerned with the attitude of our state government. Pennsylvania has become the dumping-ground of the Northeast. We bring in thousands of tons of trash from out of state which brings in lots of money, but it also brings many problems. We also withdraw thousands of gallons of our water. This water is of the finest found in our state and then it is trucked out to be sold elsewhere, out of state. Now, what's wrong with this picture? We are selling our resources and our future for short term financial gain.

It's time for Pennsylvania to lead instead of following. It's time to clean up our act!

Sincerely,



Karl Heine
President
Valley Forge Chapter of Trout Unlimited
P.O. Box 1356
West Chester, Pa. 19380

5-18-97

ENVIRONMENTAL QUALITY BOARD
DEP
P.O. BOX 8465
HARRISBURG, PA. 17105

NEW PROPOSAL / WATER QUALITY RULES

Gentleman:

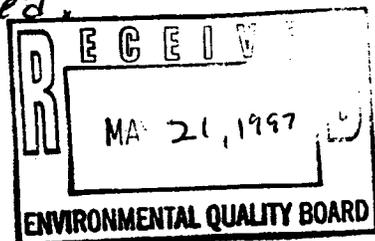
Please consider this letter as my protest against this subject.

I am not satisfied with the continuing effort on the part of DEP to avoid protection for PA waters. The persons acting as the States' representatives are still applying dilatory tactics which have resulted in litigation which found the DEP at fault, and the EPA was forced to step in to correct the situation.

This new proposal is worse yet; such as HQ + EV need to stay as protected water uses, so our best streams won't be downgraded. Another loophole allows discharges + degradation in EV waters.

There is no integration of wetlands protection with anti-degradation. Waters not yet assessed are protected at the lowest level; they will not last under these conditions.

This proposal is damaging to the environment + should be rejected.



Sincerely,
Linda A. Bradley

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(PER JHJ)

463 North 7th Avenue
Royersford, PA 19468-3306
May 17, 1997

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

Subject: Proposed Anti-degradation Regulations (Revisions to PA
code Chapters 92, 93, and 95 published on January 21,
1997)

Dear Sir:

I am writing to express my opposition to the proposed new anti-degradation regulations for Pennsylvania. The proposal weakens the projections that exist under 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. These high quality waters include Valley Creek in historic Valley Forge park.

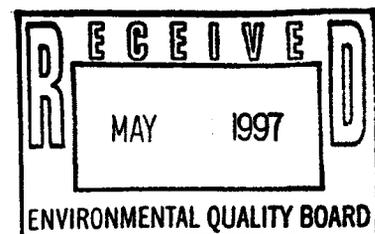
As a member of Trout Unlimited, I am concerned about the damage that can be done by any degradation of water quality. Pennsylvania is home to many outstanding trout streams. These waters and their fisheries are threatened from a variety of sources, including coal mining and its after effects, increased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

I understand that Pennsylvania Trout Unlimited 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 set of regulations is vastly preferable to the proposal as now written.

Sincerely,



William H. Ruland



WILSON BUILDING COMPANY

POST OFFICE BOX 65
PAOLI, PENNSYLVANIA 19301

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(PER JHJ)

JOHN W. WILSON
PRESIDENT

PHONE (610) 296-9191
FAX (610) 296-9924

May 17, 1997

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,

John W. Wilson



Conodoguinet Creek

WATERSHED ASSOCIATION



John R. Lake, 454 Bernhiesel Bridge Road, Carlisle, Pennsylvania 17013 Phone: (717) 796-0590

May 19, 1997

Honorable James M. Seif, Chairperson EQB
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477



Re: Proposed "Water Quality Amendments-Antidegradation" Comments on Proposed Amendments to Chapters 92, 93, and 95 as Published March 22, 1997.

Dear Mr. Seif:

The Pennsylvania Department of Environmental Resources (DER) was informed by Region III, U.S. Environmental Protection Agency (EPA) in 1994 that the DER's regulations failed to provide the antidegradation policy as required under the Federal Clean Water Act (CWA). The DER, now known as the Pennsylvania Department of Environmental Protection (DEP) has failed to date to promulgate or propose regulations that provide the minimum level of protection to the waters of this Commonwealth that are required under the CWA.

In response to DEP's failure to promulgate regulations that comply with the CWA, EPA has been forced under a court order (Raymond Proffitt Foundation vs. Browner, Civil Docket No.95-0861) to promulgate regulations for the Commonwealth that took effect on January 8, 1997. Since the Departments regulations have now been superceded by title 40 CFR, sec. 131.32, it should be one objective of the DEP to propose regulations that, at a minimum provide for the same level of protection for the waters of the Commonwealth as 40 CFR, sec. 131.32. The regulations proposed by DEP clearly do not do so.

40 CFR 132.12(a)(1) establishes the minimum level of protection that is to be afforded to the waters of the Commonwealth or Tier 1. Tier 1 is referred to as the "floor" of water quality protection. Tier 1 protection is to provide the following:

"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 that existed on or since November 28, 1975."

EPA goes on further to recognize the many waters of the Commonwealth exceed the water quality necessary to maintain the uses designated by DEP under chapter 93, and that those waters should be protected at a level that maintains the existing quality, not just the uses designated by

page 2 - CCWA comments on proposed antidegradation regulations.

DEP. We find it to be disturbing and extremely disappointing that DEP has resisted and delayed adopting regulations that are acceptable to EPA, and more importantly provide the level of protection that the current and future citizens of this Commonwealth deserve for the vast aquatic resources of this State.

The regulations that DEP has proposed attempt to limit the application of the antidegradation policy to only those waters designated as "Exceptional Value" (EV) and High Quality (HQ) waters under chapter 93. In addition DEP has relaxed the discharge limits under NPDES permitting for municipal and industrial dischargers, relaxed enforcement, implemented a system of general permitting for many discharges, and established a money back guarantee on permit review times, thus rushing decisions, all of which has resulted in a lowering of the protections afforded to the waters of the Commonwealth.

Therefore, in order to meet the standards of the CWA and provide the level of protection to the waters of the Commonwealth that we, the citizens of this Commonwealth, deserve we recommend that the Department revise the regulations it has proposed, to apply the antidegradation policy to all waters of the United States contained within the State, and as stated by EPA; "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 all nonpoint sources."

On behalf of the members of the CCWA thank you for this opportunity to comment on the proposed regulations. We hope that the DEP will make every effort to respond to our concerns in their final draft of these regulations. We also hope that the Department will discontinue it's efforts to reduce the regulatory protection of our environment, or "memories" of what was may be all we have left "to last a lifetime."

Sincerely,



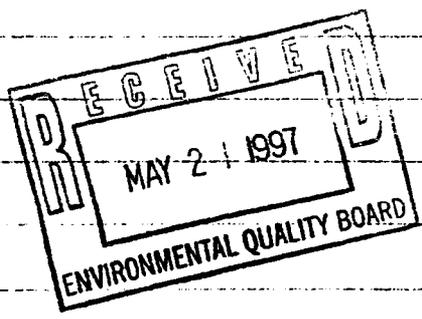
John R. Lake, Board Member CCWA

cc: W. Wolf, President CCWA
Evelyn S. MacKnight, Reg. III EPA

Environmental Quality Board (EQB)
Dep. Po Box 8465
Harrisburg Pa 17105

5/17/97

I request that you REJECT the
DEP's current anti degradation proposal
for myself and the rest of the ^{still} same people
who enjoy a clean and healthy environment the
way God and nature's forces intended it
for us all.



A handwritten signature in cursive script that reads "Tom Bobrack".

Tom Bobrack
930 N. Lincoln Ave
PGH, PA 15233

May 19, 1997

Mr. James Seif
Chairman
Environmental Quality Board
PO 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.

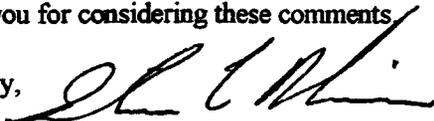
Pennsylvania's exceptional value program should apply only to outstanding resource waters as contained in the federal regulations. Currently, DEP's program is much broader in scope and includes streams that would never qualify under the federal program.

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.

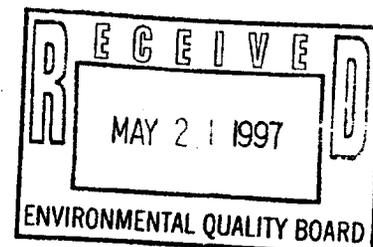
We support the department's efforts to reduce the permitting burden for applicants included in this proposal. The provisions regarding dischargers with minimal impact are welcomed. We also endorse the use of general permits on high quality streams and support the expansion of this practice to exceptional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

Thank you for considering these comments.

Sincerely,



Steven K. Misner
Owner of S. Misner Construction



OFFICERS - 1997

ARTHUR E. GEMMELL
PRESIDENT

STEVEN K. MISNER
VICE PRESIDENT

RICHARD A. PARDEE
ASSOCIATE VICE PRESIDENT

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SECRETARY

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TREASURER

ROBERT B. WHITE
IMMEDIATE PAST PRESIDENT

HENRY A. MORES
PRESIDENT KITTANNING CHAPTER

**INDIANA-ARMSTRONG
BUILDERS ASSOCIATION**

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525 AIRPORT PROFESSIONAL CENTER
INDIANA, PENNSYLVANIA 15701
(412) 349-2327
(800) 491-4030
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May 19, 1997



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TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

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

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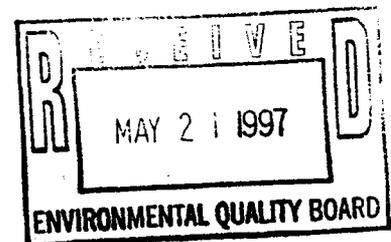
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Thank you for considering these comments.

Sincerely,

Richard A. Clawson
Executive Officer



DIRECTORS

ROBERT B. BURKE (99)
NORMAN L. BURNS (99)
MARYANN K. ENGLEHART (99)

MICHAEL R. BARNHART (98)
HAROLD L. WILSON (98)
CLYDE B. DEABENDERFER (98)

EDWARD F. BUTERBAUGH (97)
NANCY S. BIERWERTH (97)
ROBERT L. MYERS (97)
PAUL R. ATKINSON (97)



Dame Juliana League

Fly Fishers
P. O. Box 178
Kimberton, PA 19442



May 19, 1997

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

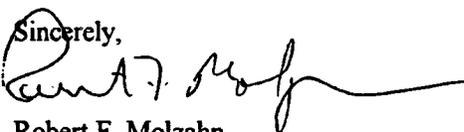
RE: Proposed Antidegradation Regulations (Revisions to PA code Chapters 92, 93, and 95 published on January 21, 1997)

Ladies and Gentlemen:

I am writing to express my opposition to the proposed new antidegradation regulations for Pennsylvania. The Proposal weakens the protections that exist under 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.

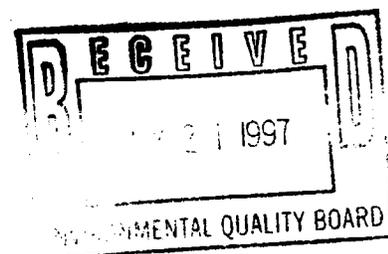
As a practicing environmental professional and sportsman, I am acutely aware of the ecological damage that can be done by any degradation of water quality. Pennsylvania is home to many outstanding trout streams that attracts anglers from all over the world. These waters and their fisheries are threatened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

I understand that Pennsylvania Trout Unlimited 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 corrected. The existing set of regulations is vastly preferable to the proposal as now written.

Sincerely,


Robert F. Molzahn
President

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



97 JUL-6 9 14:06

I N T E R O F F I C E M E M O R A N D U M

Date: 19-May-1997 11:13pm EST
From: david yates
davyates@trib.infi.net@PMDF@DE
Dept:
Tel No:

TO: RegComments

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

Subject: Re: Proposed Antidegradation Regulations

"I am writing to express my opposition to the proposed new antidegradation regulations for Pennsylvania. The Proposal weakens the protections that exist under 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 attracts 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 that unless we make protecting high water quality a top priority, we will lose it.

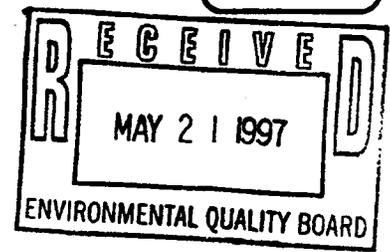
I understand that Pennsylvania Trout Unlimited is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing set of regulations is vastly preferable to the proposals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

Sincerely

.David Yates

MURRY DEVELOPMENT CORP./REAL ESTATE DEVELOPERS

1899 LITITZ PIKE • LANCASTER, PENNSYLVANIA 17601-6586 • PHONE (717) 569-0495 • FAX (717) 569-3871



May 19, 1997

Mr. James Seif, Chairman
Environmental Quality Board
PO 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 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 what 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 applications 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 E. Murry
President

WEM/caf

5/19/97

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

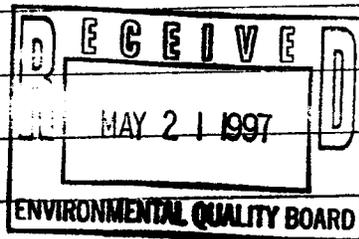
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(PER JHJ)

Sirs:

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

Please reply.

Patricia M. Smith
8 Chesapeake Dr
Newtown, PA 18940



0710 10 10 10
ADDITIONAL ST

201 Orin St.
Pittsburgh PA 15235
May 19, 1997

Environmental Quality Board

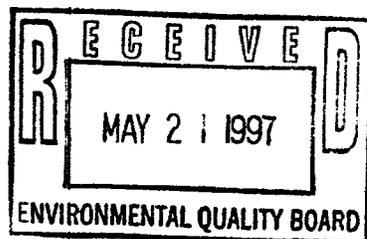
D E P

P O Box 8465

Harrisburg, PA 17165

We are writing to request that you reject the DEP's current anti-degradation proposal. We find it alarming that our state government would take actions to lower water quality standards, and would favor higher standards. If our government's best off from protecting our waters and other environmental resources, we fear for the kind of world future generations will have to live in, and we see this as far more important than any presumed gain that may motivate lowering of standards.

Please reply to this letter.



Sincerely,

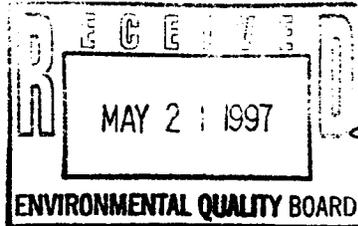
Kerry Brace
Debby Noaks

ORIGINAL: #1799
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5/19/97

EAB:

Please reject the DEP's
current anti-degradation proposal



Mark Rivera

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TYRRELL
JEWETT
SANDUSKY
WYATTE
BERESCHAK

INTEROFFICE MEMORANDUM

Date: 19-May-1997 08:48am EST
From: tmorrow
tmorrow@MAIL.CLARION.EDU@PMDF@
Dept:
Tel No:

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

Subject: Comments on proposed rulemaking, Water Quality amendments- Antidegreda

Comments on Proposed rulemaking: Water quality Amendments--Antidegradation
[25 PA. CODE CHS. 92, 93 and 95] Follow up to letter sent May 15, 1997.
Zip code may have been incorrect on posted letter.

Terry Morrow
35 Campbell Ave.
Clarion, PA 16214

May 10, 1997

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

Dear Mr. Seif:

These comments from Pennsylvania Trout, A Council of Trout Unlimited are in response to the proposed rulemaking on antidegradation published in the March 22, 1997 Pennsylvania Bulletin. Pennsylvania Trout, A Council of Trout Unlimited is the leading cold water conservation organization in the Commonwealth. Pennsylvania Trout (PA Trout) consists of over 8000 members belonging to 55 local chapters throughout the state. We are actively engaged in the preservation, enhancement and restoration of cold water resources in Pennsylvania.

PA Trout believes that a strong antidegradation policy is absolutely essential for Pennsylvania because clean water is essential for aquatic life, wildlife and for human health, enterprise and recreation. Tourism is now Pennsylvania's largest industry. The outstanding cold water fisheries of Pennsylvania provide recreation for our own citizens and attract many anglers from other states and nations. Further, the Pennsylvania Constitution guarantees Commonwealth citizens the right to pure water. The regulation in place now provides the level of protection required by law and should not be replaced by the new proposed regulations. The new proposal should only be adopted if amended significantly pursuant to the following detailed comments:

Chapter 92.81. General NPDES permits.

PA Trout believes that the total prohibition of general NPDES permits in Special Protection watersheds should remain. General permits, by their nature, allow for degradation and do not provide for sufficient oversight. Individual permits provide a level of needed protection.

Chapter 93.1. Definitions.

PA Trout supports the new definition of Exceptional Value Waters, except that "watersheds" should be the unit of designation, not "surface waters." Watersheds are a more natural unit to manage water quality, and DEP has recognized this in many other programs. Limiting the definition to surface waters risks a piecemeal approach that will not address the cause of degradation. In both the Exceptional Value and High Quality definitions "surface waters" should be replaced with "watersheds."

Chapter 93.3. Protected water uses.

PA Trout opposes deleting HQ and EV from the list of protected water uses. The proposed rulemaking does not remove the current level of EQB oversight in designating streams as either HQ or EV. However, removing HQ and EV from the list of protected water uses does remove designation changes from necessary EPA scrutiny. By removing HQ and EV as uses, DEP can raise the designation threshold for HQ and EV (as they have done in this proposal), reassess our existing HQ and EV streams, and downgrade them at will because they don't meet the new threshold. Once designated, our best streams should remain at the highest level of protection, and not be subject to new rules. Without EPA scrutiny HQ and EV designations could become more political and existing designations could be more easily rolled back. Since the level of EQB oversight remains the same, EV and HQ should remain as protected water uses.

ANTIDegradation REQUIREMENTS

Chapter 93.4a. Existing uses.

PA Trout opposes the language that conditions protection of existing uses on the "Department's evaluation of technical data." This provision, i.e. evaluation of technical data, makes Pennsylvania's definition more restrictive than the Federal definition. The regulation should unequivocally state that existing uses and water quality must be protected, as required by the Clean Water Act and EPA's regulations. Pennsylvania should adopt the precise language from the EPA regulation: "Existing in-stream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

We also suggest the following language for endangered species protection: "If known habitat for Federal or Pennsylvania threatened or endangered species is present, then no activity shall take place that could adversely affect the species."

Chapter 93.4b. High Quality Waters.

(a) Qualifying as High Quality Waters.

The proposal's requirement that a stream to "pass" both a chemistry and a biology test to qualify as High Quality water is less protective than and contrary to Federal requirements. We support the approach that was outlined in the final report of the Conservation stakeholders: assessing each stream using chemistry and biology, but allowing a stream to qualify on the basis of chemistry or biology.

(b) Level of protection/social or economic justification (SEJ).

PA Trout supports the provisions in this subsection clearly linking degradation of water quality, a public resource, to benefits accrued by the public.

We, however, oppose limiting the scope of this provision and the protection of High Quality Waters in general to "discharges." The current Federal regulations for Pennsylvania applies to "activities" that will result in "lower water quality." Antidegradation applies to more than "discharges"; for example channelization is an "activity" not a "discharge" that clearly threatens to degrade water quality as well as aquatic habitat. The word "discharges" should be replaced with the word "activities."

(f) Special provisions for minimal impact discharges.

PA Trout strongly disagrees with the spirit and letter of this provision. A discharge cannot "maintain and protect" water quality if it uses up to 25% of the assimilative capacity of the water, or qualifies for a general permit. This language must be eliminated. Regardless, there is no provision in the Federal regulation for exempting any amount of degradation from all the Tier 2 requirements. All applicants wishing to degrade water quality must be required to justify the degradation as outlined in subsection (b) as well as conduct an alternatives analysis and use best available technology. The purpose of Tier 2 is to give power to the public in making decisions about their water quality. DEP takes that power away with this language.

All dischargers to HQ or EV waters, including applicants for "minimal" impact discharges, should undergo an alternatives analysis and be required to use the best available technology.

Chapter 93.4c. Exceptional Value Waters.

(a) Qualifying as Exceptional Value Waters.

As mentioned above, "watersheds" should be the relevant unit designated, rather than "surface waters". Moreover, the language of this section does not reflect or implement the appropriate definition of EV water. No weight is given to public lands, there are no recreational attributes mentioned outside of Wilderness Trout Streams, and ecological values, such as endangered species, are disregarded unless they can be

measured with the Rapid Bioassessment Protocol. In short, the proposal severely limits the number of ways in which a watershed can qualify as EV, compared to the old EV program, and the current Federally-promulgated Tier 3 regulation.

The "Special Protection Waters Implementation Handbook" truly reflects all the attributes listed in the old EV definition. DEP has only proposed slight changes to the EV definition, yet does not follow through with selection criteria that reflect the new definition. The handbook language does a better job implementing the new EV definition than does this section. We strongly urge retaining the Handbook language over this proposal.

(b) Level of protection for Exceptional Value waters.

This proposal does not address EPA's disapproval of Pennsylvania's Tier 3 program because it allows discharges. The federal prohibition against any discharges into EV waters must be maintained. Moreover, allowing discharges that result in "no measurable change" means that water quality is simply not "maintained and protected." We have serious questions about DEP's methods, including the use of a median design flow, rather than Q7-10, the allowance of mixing zones, and the discharge of chemicals not normally found in surface water, up to the detection limit. DEP has solicited public comment on almost all other aspects of the program. Why is this topic not being discussed?

Chapter 93.4d. General requirements for HQ and EV Waters.

(a) Discharge alternatives/use of best technologies.

PA Trout believes the use of the phrase "cost effective" in this subsection would open "application of discharge alternatives/use of best technologies" to subjective evaluation of costs and thus weaken protection afforded to HQ and EV Waters. We suggest language be developed here that would require use of environmentally sound discharge alternatives/best available technology "unless clearly demonstrated to be cost-prohibitive" when compared with the cost of the proposed stream discharge.

(b) Nonpoint sources.

The proposed language is objectionably weak. While there is no Federal language concerning nonpoint sources for Tier 3 streams, there is Federal language concerning Tier 2 streams. That language states that the State must ensure that all the required nonpoint source controls be in place before allowing any more degradation. This language should be adopted verbatim instead of the proposed language.

Chapter 93.4e. Public participation in HQ and EV Value Waters.

- (a) Submission of antidegradation ...
- (b) Assessment of waters ...

PA Trout is aware that although the stakeholders group did not come to a complete final agreement, the group did reach agreement on public

participation. Their recommendations should be implemented. Under no circumstances should local residents or local governments have a "veto" power over EV designations. The waters in question are waters of the Commonwealth, not of local residents or municipalities.

(e) Public hearings for discharges to Exceptional Value Waters.

Public hearings should also be held on any proposed discharge to HQ waters. This would be consistent with the approach taken in

subsection (b) where the Department publishes a notice of its intent to study waters for either an HQ or EV classification.

Chapter 93.7. Specific water quality criteria.

PA Trout supports the retention of higher dissolved oxygen criteria for HQ streams and "existing quality" for EV streams.

Other Issues.

This proposal is silent on how DEP plans to integrate this program with the wetlands protection program. Wetlands have not received adequate antidegradation protection in Pennsylvania.

Summary.

In summary, PA Trout believes that certain provisions of this proposal are less protective than Federal regulation and guidance, and the regulations that EPA promulgated for Pennsylvania. If these provisions are not changed we will request EPA to retain the Federal regulations for Pennsylvania. Thank you for the opportunity to comment.

Sincerely yours,

Jack Beck, President PA Trout

Terry Morrow, Co-Chair

Jack Williams, Co-Chair, PA Trout
Environmental Committee

RFC-822-headers:

Received: from gatekeeper.pader.gov by PADER.GOV (PMDF V5.1-7 #21974)
with SMTP id <01IJ1Q9P5TZM96WVDJ@PADER.GOV> for RegComments@a1.pader.gov; Mon,
19 May 1997 08:42:49 EST
Received: by gatekeeper.pader.gov; (5.65v3.2/1.3/10May95) id AA26916; Mon,
19 May 1997 08:45:36 -0400
Received: from VAXA.CLARION.EDU by gatekeeper.pader.gov (smtpxd); id XA26859
Received: from [198.183.175.46] (198.183.175.46)
by MAIL.CLARION.EDU (PMDF V5.0-7 #18531)
id <01IJ1QGALKT88Y4X1A@MAIL.CLARION.EDU> for RegComments@A1.dep.state.pa.us;
Mon, 19 May 1997 08:48:12 -0500 (EST)
Date-warning: Date header was inserted by MAIL.CLARION.EDU
X-Sender: tmorrow@vaxa.clarion.edu (Unverified)

Jeanne L. Sollman
318 North Fillmore Road
Bellefonte, PA 16823

STIMM 87 000000

May 19, 1997

RE: Proposed rulemaking on
antidegradation

Mr. James M. Seif, Chairman
Environmental Quality Board
Harrisburg, PA 17101-8477

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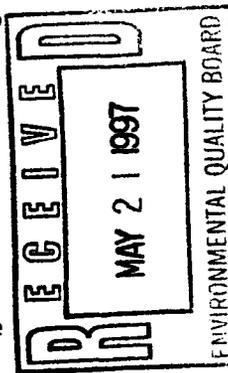
Dear Mr. Seif:

This is in response to the proposed rulemaking on antidegradation published in the March 22, 1997, "Pennsylvania Bulletin". As more development takes in our Commonwealth, it is essential to establish stronger antigradation laws to protect our ever decreasing natural resources by allowing degradation to creep into our wetlands like an insipid cancer, laying waste to our beautiful limestone streams. This recent proposal has made no improvement on suggested regulations, but instead has a retreating effect in its protection of streams and watersheds.

We need the most stringent design flow of discharge to protect our waters. It is DEP's mandate to protect Pennsylvania's streams and watersheds yet DEP has put the burden on concerned citizens to take time out of busy schedules, time away from families and businesses to research and present credible reports to our Environmental Quality Board to ensure protection of our watershed. And now we learn that what protection we have won with extreme difficulty for our HQ streams will be degraded more easily with this current proposal. Once a stream and watershed have received HQ or EV they should remain as protected water uses and not be rolled back to a lesser category. The wording in Chapter 93.1 Definitions should read "watersheds" and not "surface waters"

The citizens of PA should not have to accept into their clean waters a "discharge" that clearly threatens to degradate water quality as well as aquatic habitat. The two (water quality and aquatic habitat) go together. The terms "discharge" should be replaced with the more encompassing term "activity". We need more protection here not less. We need the EQB to maintain high standard of linking public resources to benefits accrued by the public, especially a public which is depending on its natural resources for tourism, to say nothing of the personal beauty and spirituality these watersheds bring us.

I am personally affronted by this weakening proposal because I spent two long and difficult years with the help of my



Jeanne L. Sollman
318 North Fillmore Road
Bellefonte, PA 16823

May 19, 1997

RE: Proposed rulemaking on
antidegradation

Board Members
Environmental Quality Board
Harrisburg, PA 17101-8477

Dear Members of the Board

This is in response to the proposed rulemaking on
antidegradation published in the March 22, 1997,
"Pennsylvania Bulletin".

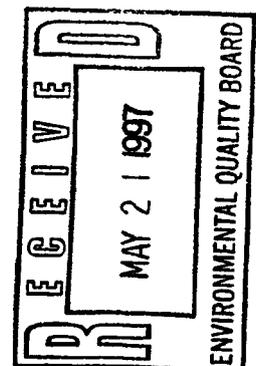
I am personally affronted by this weakening proposal because I spent two long and difficult years with the help of my neighbor and others in the community to upgrade Buffalo Run from CWF to HQ. We sat through 55 (fifty five) hearings and presented our concerns twice to DER in hearings to protect our watershed and Buffalo Run Valley. Buffalo Run is at the headwaters of the Spring Creek Watershed. If we allow degradation to occur here we will have a domino effect that will not stop. We must act now to substantiate the laws to make them stronger, to insist that EPA maintain a close scrutiny on permit applications, to enforce regulations, to ensure that streams and watershed are not allowed to shrink into a wasteland, but are allowed to be replenished, preserved and flourish in our life time as well as in the future. We need to make all stakeholders do their part to preserve threatened and endangered species not compromise their existence because of economic burden. We need to encompass stricter rules not watered down regulations which are already limiting in their ability to prevent degradation.

I thank you for the opportunity to comment on this proposal and hope sincerely that you will be able to help roll back the tendency of weakening our hard won protection of our watersheds.

Sincerely,



Jeanne L. Sollman



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(PER JHJ)

STANDARD
HARRISBURG, PA

Pamela J. Haggerty
44 Gable Wing Circle
Newtown, PA 18940
(215) 504-9456

May 19, 1997

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

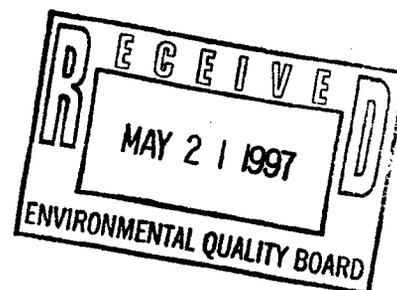
Dear Sir/Madam:

My husband, Michael, and I are against the proposed regulations that would lower water quality standards. Clean water is essential to maintain the good quality of life in Bucks County. We support regulations that would make water quality standards **more strict**.

If you would like to contact us, you can reach us at the above address.

Sincerely,

Pamela J. Haggerty
Pamela J. Haggerty



RICHARD L. HENRY
1011 Elm Street
Lebanon, PA 17042
Area 717 272-7018

ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

May 19, 1997

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

Dear Mr. Seif:

I vigorously oppose the obvious efforts of the Ridge Administration to accommodate the polluters of Pennsylvania's streams. DEP should protect all unassessed streams at a Tier 2 level, for example, even if a permit application seems to suggest otherwise.

Environmental degradation by business interests should not be tolerated in any society in which overpopulation pressures require optimum use of all our natural resources. Please don't let corporate greed set back the environmental gains of the past 30 years.

Best regards,



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COPIES: NONE
(PER JHJ)

MAY 19, 1997

ENVIRONMENTAL QUALITY BOARD
MR. JAMES SEIF, CHAIRMAN
P.O. BOX 8477
HARRISBURG, PENNSYLVANIA 17105-8477

DEAR MR. SEIF:

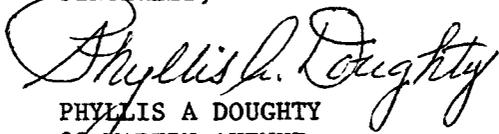
I AM WRITING IN REGARD TO THE PROPOSED RULEMAKING ON ANTIDEGRADATION AS PUBLISHED IN THE MARCH 22, 1997 PENNSYLVANIA BULLETIN. THERE IS INSUFFICIENT ANTIDEGRADATION PROTECTION FOR WETLANDS IN THIS PROPOSAL.

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?

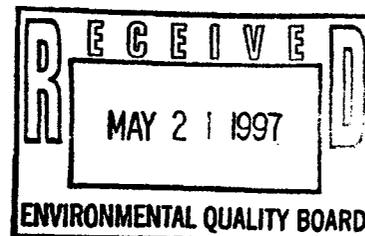
IT IS DISAPPOINTING THAT THE DEP DID NOT TAKE THIS OPPORTUNITY TO WRITE REGULATIONS SO THAT OUR WETLANDS COULD BEGIN TO RECEIVE ANTIDEGRADATION PROTECTION.

THIS REGULATION FALLS SHORT IN PROTECTING ONE OF OUR MOST VALUABLE RESOURCES....WETLANDS. IT SHOULD BE REJECTED BY THE BOARD.

SINCERELY,



PHYLLIS A DOUGHTY
20 MARTIN AVENUE
EPHRATA, PENNSYLVANIA 17522



ORIGINAL: #1799
COPIES: COCCODRILLI
TYRRELL
JEWETT
SANDUSKY
WYATTE
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I N T E R O F F I C E M E M O R A N D U M

Date: 19-May-1997 06:45am EST
From: Pxf3
Pxf3@aol.com@PMDF@DER003
Dept:
Tel No:

TO: RegComments (RegComments@a1.dep.state.pa.us@PMDF@
CC: mccabe.michael (mccabe.michael@epamail.epa.gov@PMDF@
Subject: proposed antidegradation regulations

May 19, 1997

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

Dear Mr. Seif:

DEP has proposed antidegradation regulations to replace the regulations promulgated by EPA. Unfortunately, the proposed regulations would seriously weaken Pennsylvania's regulatory program. I am making the following comments on behalf of the 350 members of the Juniata Valley Audubon Society (JVAS). Many JVAS memberships are family memberships of multiple people. JVAS is a local chapter of the National Audubon Society based in Altoona, Pennsylvania; its members reside primarily in Blair, Huntingdon, Bedford, Fulton, and Mifflin Counties.

JVAS members are concerned about protecting Pennsylvania's watersheds. Clean water is essential for wildlife and for humans. Too many of our streams already have been impacted. We should prevent further impacts wherever possible and clean up those streams and rivers that have been degraded by past activities. Pennsylvania has lost far too many of its precious wetlands. The Commonwealth's remaining wetlands should be protected.

General Provisions

DEP should not remove High Quality and Exceptional Value as "protected water uses." Our best streams deserve the maximum protection possible.

DEP should extend antidegradation to all permitted activities, not just discharges.

DEP ignores wetlands in their antidegradation proposal.

Our unassessed streams should be protected at least at the Tier 2 level, unless a permit applicant can demonstrate otherwise.

The proposal makes it easier to ignore springs, seeps, wetlands and tributaries, because HQ and EV are defined as "surface waters" rather than "watersheds." DEP ignores its own statements about "watershed" protection with this provision.

Tier 1

The proposal says that existing uses will be protected only after DEP evaluates the technical data. This puts a condition on existing use protection that is not in the Federal regulation.

Tier 2

DEP wants to give the HQ designation only to streams that pass a chemistry and biology test. EPA considers only a water chemistry test. Perhaps DEP should require either a chemistry or biology test.

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. The language mentioning non-point source pollution is weaker than the current language for HQ streams.

Tier 3

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 do not consider public lands in any way. We believe that our best streams, especially those on public lands, should receive increased protection.

DEP should close the major loophole that allows water quality degradation, but calls it "no measurable change."

A "public participation" program for EV waters should be set up. Guidance should be developed, and the streams should be given the designation if they merit it.

Summary

These proposed regulations should have developed a true water quality protection program. Pennsylvania's waters and the wildlife and humans who depend on them should have a water quality protection program that would result in increased protection of the Commonwealth's waters. It is very sad to see DEP attempt to weaken the regulations for water quality.

The EQB should reject this regulation.

Sincerely,

Paula Ford
Conservation Chair, Juniata Valley Audubon Society
206 Hickory St.
Hollidaysburg, PA 16648

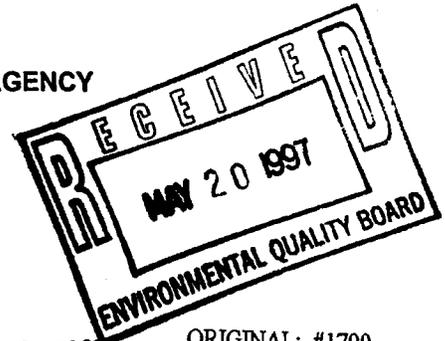
cc: USEPA Region 3, Philadelphia

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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.

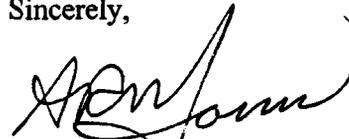
As is indicated in the Pennsylvania Bulletin notice of proposed rulemaking, the United States Environmental Protection Agency (EPA) promulgated the Federal antidegradation policy for the Commonwealth of Pennsylvania on December 9, 1996 (61 FR 64816) (copy enclosed). Our comments today are intended to 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 over a faint, illegible typed name.

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 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.

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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

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 of 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.'

[[Page 64818]]

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 Comment 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

[[Page 64820]]

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 affect 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

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

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]
BILLING CODE 6560-50-P

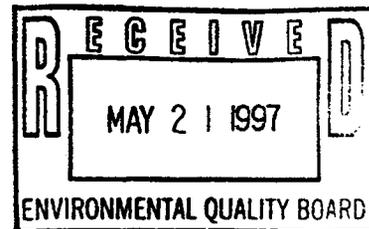
WM. MURR. & SON INC./BUILDERS

1888 LITIZ PIKE, LANCASTER, PA 17601



May 19, 1997

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



ORIGINAL: #1799
COPIES: NONE
(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 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 what 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 applications 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 E. Murry
President

WEM/caf



(717) 569-0495

FAX (717) 560-0391



Charles F. Gauvin
President
Chief Executive Officer

ORIGINAL: #1799
COPIES: COCCODP™ LI
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SANDUSKY
WYATTE
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ENV. PROTECTION
SECRETARY'S OFFICE

May 19, 1997

By Overnight Delivery

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

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

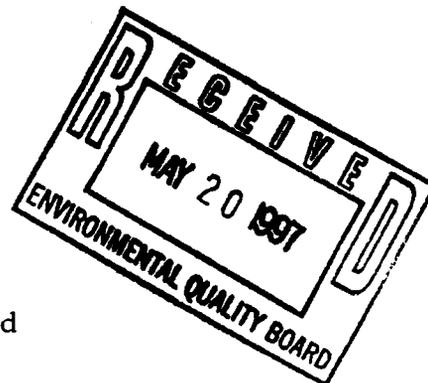
Dear Mr. Seif:

I am writing on behalf of Trout Unlimited ("TU") to oppose the proposed changes in Pennsylvania's antidegradation regulations. TU is a nonprofit organization whose mission is to conserve, protect, and restore North America's coldwater fisheries and their watersheds. TU has more than 95,000 members in the United States.

TU's Pennsylvania Council has submitted detailed comments on the proposed regulations, and I endorse those comments on behalf of TU's national organization. I feel compelled to write separately, however, because of the large numbers of TU members (including myself) from all over the nation who regularly visit Pennsylvania to fish its trout streams.

Pennsylvania is blessed with numerous truly remarkable watersheds, and the Clean Water Act has done much to improve the quality of the Commonwealth's rivers and streams. Some streams that were little more than open sewers now are clean enough to support trout. These successes do not, however, tell the whole story. Countless formerly pristine streams have been degraded by industrial pollution, polluted run-off, acid mine drainage, and other environmental stresses. The streams that remain clean, and those that have been successfully restored, are threatened by the same fate, and a meaningful antidegradation program is needed to preserve them.

America's Leading Coldwater Fisheries Conservation Organization
Washington, D.C. Headquarters: 1500 Wilson Blvd., Suite 310, Arlington, VA 22209-2404
Main Number: 703-522-0200 FAX: 703-284-9400



Mr. James M. Seif

May 19, 1997

Page 2

The proposed antidegradation regulations rollback protections for the Commonwealth's outstanding waters. The watersheds in Pennsylvania still capable of harboring world class fisheries are national treasures, and it is disappointing that the Department of Environmental Protection seems content to provide them less than the full measure of protection required by the Clean Water Act. The proposed regulations should be rejected. They should only be considered if amended substantially, as set out fully in the comments submitted by TU's Pennsylvania Council.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Charles F. Gauvin', with a long horizontal flourish extending to the right.

Charles F. Gauvin

CFG/lfs

cc: Jack Williams, Pennsylvania Trout Environmental Committee
Dr. Jack Beck, President, Pennsylvania Trout

May 19, 1997

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

Dear Mr. Seif:

I have been an avid fisherman for many years on the streams of Pennsylvania. History has taught us what happens if we allow our streams to be degraded by any means. Here in western PA we do not have an over abundance of quality streams. This is why I am vigorously opposing any environmental regulation changes that can lead to additional degradation of our watersheds. Specifically the proposed revision of antidegradation regulations (Pennsylvania Bulletin, March 22, 1997).

Sincerely,

Ted Pluchinsky



251 Sarah St.
Homer City, PA 15748



ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

I N T E R O F F I C E M E M O R A N D U M

Date: 19-May-1997 05:36am EST
From: trs
trs@ludwig.micro.lucent.com@PM
Dept:
Tel No:

TO: RegComments (RegComments@A1.dep.state.pa.us@PMDf@

Subject: Revisions to PA code Chapters 92, 93, and 95

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

"I am writing to express my opposition to thje proposed new antidegradation regulations for Pennsylvania. the Proposal weakens the protections that exist under 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 attracts 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 that unless we make protecting high water quality a top priority, we will lose it.

I understand that Pennsylvania Trout Unlimited 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 set of regulations is vastly preferable to the proposas as now written.

Sincerely
Todd R. Seigfried
390 Meadow Drive
Auburn, Pa. 17922
toddrs@potsville.infi.net

RFC-822-headers:

Received: from gatekeeper.pader.gov by PADER.GOV (PMDF V5.1-7 #21974)
with SMTP id <01IJ1LXKEA4W96WQMP@PADER.GOV> for RegComments@a1.pader.gov; Mon,
19 May 1997 06:39:16 EST

Received: by gatekeeper.pader.gov; (5.65v3.2/1.3/10May95) id AA02977; Mon,
19 May 1997 06:42:03 -0400

Received: from cbgw1.lucent.com by gatekeeper.pader.gov (smtpxd); id XA02975

Received: from ludwig by cbig1.firewall.lucent.com (SMI-8.6/EMS-L sol2)
id GAA21550; Mon, 19 May 1997 06:33:58 -0400

Received: from caddis (caddis.micro.lucent.com)
by ludwig (4.1/DCS-ludwig-M10.1) id AA14254; Mon,
19 May 1997 06:41:58 -0400 (EDT)

Received: by caddis (5.x/DCS-ludwig_client_sv-S3.1) id AA24184; Mon,
19 May 1997 06:36:45 -0400

X-Sun-Charset: US-ASCII

Robert W. Sauter
101 N. Bryant Ave
Apt. C
Pittsburgh, PA 15202
USA
Home Phone 412-766-2174

ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

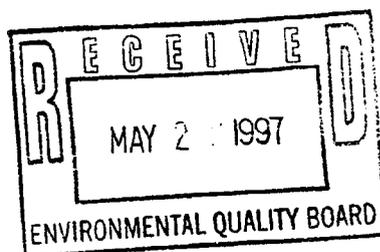
May 19, 1997

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

To Whom it may concern,

This letter is to inform you of my desire for you to reject the DEP's current anti-degradation proposal on my behalf. My tax dollars should not have to be used to clean our waterways because we allow lower water quality standards, which allow polluters to get away without the cost of clean up.

Please respond to this statement to the name and address above.



Sincerely,



Robert W. Sauter

5-19-97

ORIGINAL: #1799
COPIES: NONE
(PER JHJ)

Environmental Quality Board,

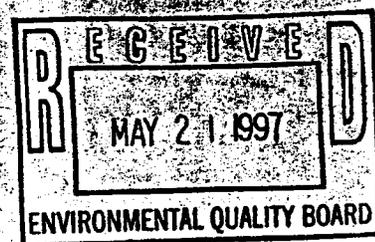
Sir:

As a resident of PA I am asking
you to reject the D.E.P.'s auto-
degradation proposal.

Please adopt the better standards
of the E.P.A.

Shirley R Teeple
32 Cinnamon Rd
Levittown, PA

1905



5710157

INTEROFFICE MEMORANDUM

Date: 20-May-1997 07:59am EST
From: Pike County Conservation Distr
pikecd@prolog.net@PMDF@DER003
Dept:
Tel No:

TO: RegComments

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

Subject: Water Quality Amendments-Antidegradation

May 19, 1997

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

RE: Proposed Amendments to 25 PA Code Chapters 92, 93 and 95 relating to NPDES,

Dear Mr. Seif:

The Board of Directors of the Pike County Conservation District voted at its May supports efforts to improve the State's antidegradation policy to afford additi

The following specific comments are offered for your consideration.

92.81.General NPDES permits

The requirement for Individual NPDES Permits in "special protection" watersheds

93.1. Definitions

The District recommends including "watershed" as a unit of designation in the de Waters which are used as a source of unfiltered potable water supply should be a

93.3. Protected Water Uses

High Quality and Exceptional Value Waters should remain as protected water uses. EPA review.

93.4A. Existing Uses

We recommend changing the language in this section to read: "Existing instream w ates to both point and nonpoint source impacts to water quality. Nonpoint sourc

93.4b. High Quality Waters

(a) Qualifying as High Quality Waters. We feel that the conditions for qualifyi organic compounds (VOCs).

(b) Level of protection/social or economic justification (SEJ). The EQB is spec r to Pike County are obvious. Water quality degradation, based on subjective, 1

(d) Special provisions for sewage facilities correcting public health or polluti

(f) Special provisions for minimal impact discharges. The District opposes these

93.4c. Exceptional Value Waters

The District, in previous comments to EPA, voiced concern that the promulgation of these provisions will ultimately result in reduced protection for Exceptional Value Waters (i.e. redesignated waters).

As previously discussed under 93.4.b(a)(1), we recommend that the chemistry tests be included in the list of parameters to be analyzed.

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

(b) Assessment of waters for High Quality or Exceptional Value Waters Classification. When the Department makes a recommendation for redesignation, the Department should provide an opportunity for public participation.

93.7. Special Water Quality Criteria and 93.9a-93.9z. Drainage Lists

As previously discussed, the District does not support the exclusion of High Quality Waters from the list of waters to be included in the drainage lists.

In conclusion, the proposal fails to meet Federal requirements in some areas and

Sincerely,

CATHERINE MAXANER, Chairperson
Pike County Conservation District Board of Directors
HC6, Box 6770
Hawley, PA 18428
(717) 226-8220

RFC-822-headers:

Received: from gatekeeper.pader.gov by PADER.GOV (PMDF V5.1-7 #21974)
with SMTP id <01IJ3515ML8096X9PW@PADER.GOV> for RegComments@a1.pader.gov; Tue,
20 May 1997 08:56:36 EST
Received: by gatekeeper.pader.gov; (5.65v3.2/1.3/10May95) id AA28982; Tue,
20 May 1997 08:59:25 -0400
Received: from srv1.ptd.net by gatekeeper.pader.gov (smtpxd); id XA28965
Received: (gmail 28610 invoked from network); Tue, 20 May 1997 12:59:17 +0000
Received: from cs5-14.haw.ptd.net (HELO STATION2) (204.186.20.78)
by srv1.ptd.net with SMTP; Tue, 20 May 1997 12:59:16 +0000
X-Sender: pikecd@mail.prolog.net
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07 MAY 27 09:50

I N T E R O F F I C E M E M O R A N D U M

RECEIVED

Date: 20-May-1997 09:21am EST
From: PaulBrutus
PaulBrutus@aol.com@PMDf@DER003
Dept:
Tel No:

TO: RegComments (RegComments@a1.dep.state.pa.us@PMDf@

Subject: Fwd: Proposal to revise current regulations protecting "existing uses"

Forwarded message:

Subj: Fwd: Proposal to revise current regulations protecting "existing
uses" of PA ...
Date: 97-05-20 10:11:00 EDT
From: PaulBrutus

To: <http://www.askdep@a1.dep.state.pa.us>

Forwarded message:

Subj: Proposal to revise current regulations protecting "existing uses" of
PA waters
Date: 97-05-19 20:52:13 EDT
From: PaulBrutus

To: <http://www.regcomments@a1.dep.state.pa.us>
To: Mr. James Seif, Chairman, EQB

Dear Mr. Seif:

We have sent our comments by US Mail however, we wish to ensure that you receive our comments by the deadline so we are sending sending our comments by E-Mail as well.

This letter is to protest the proposal to revise the current regulation protecting the "existing uses" of Pennsylvania's waters. We have protection that the Clean Water Act intended not because DEP took the initiative, but because of Federal regulations.

The proposed revision as reported in the March 22, 1997 PA Bulletin would protect the existing use only after DEP had evaluated the technical data. If DEP "does not have time" under the "money back guarantee" program to evaluate "existing uses", they will not do so and any ensuing water degradation will not be a violation.

Industry does not lose money or jobs by operating in an environmentally friendly way. The costs are simply passed on to the end user. Thr old adage " An ounce of prevention is worth a pound of cure" holds true. Southwestern Pennsylvania is still paying to clean up water problems created in the days of the industrial revolution.

If the technology we have today had been available and used in the days of H. C. Frick, imagine the savings in taxes and the quality of life Pennsylvanians would enjoy.

Many dollars and hours have been contributed by both the public and sectors to bring Pennsylvania's waters back to life. The fruits of these labors are beginning to be realized in a cleaner environment and improved quality of life for present and future generations. The right of Pennsylvanians to clean water is not a pawn to be sacrificed by political wannabees for the benefit of special interest parties.

We need strong existing use protection and an agency that is willing to use it. We are against any protection that qualifies the Federal language as this proposed revision does. Change the language to the Federal language.

Sincerely yours,

ALICE WATER PROTECTION ASSOCIATION
R. D. #5, Box 111-A
Mount Pleasant, PA 15666

Patricia A. Paul, Co-Executive Director
Adeline Leichliter, Co-Executive Diorector

412-547-6660

RFC-822-headers:

Received: from gatekeeper.pader.gov by PADER.GOV (PMDF V5.1-7 #21974)
with SMTP id <01IJ37VW0AZS96X9PW@PADER.GOV> for RegComments@a1.pader.gov; Tue,
20 May 1997 10:18:38 EST

Received: by gatekeeper.pader.gov; (5.65v3.2/1.3/10May95) id AA13687; Tue,
20 May 1997 10:21:25 -0400

Received: from emout16.mx.aol.com by gatekeeper.pader.gov (smtpxd); id XA13145

Received: (from root@localhost) by emout16.mail.aol.com (8.7.6/8.7.3/AOL-2.0.0)
id KAA15725 for RegComments@a1.dep.state.pa.us; Tue,
20 May 1997 10:21:24 -0400 (EDT)

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5/20/97 11:34 AM

INTEROFFICE MEMORANDUM

Date: 20-May-1997 11:34am EST
From: hillgj
hillgj@h01.pgh.wec.com@PMDF@DE
Dept:
Tel No:

TO: regcomments (regcomments@a1.dep.state.pa.us@PMDF@
CC: hillgj (hillgj@h01.pgh.wec.com@PMDF@DER003)
Subject: DEP's Anti-Degradation Proposal

To Whom It May Concern,

I request that you REJECT the Dept. of Environmental Protection's
Anti-Degradation Proposal.

Thank you.

Gregory J. Hill
122 Martin Drive
Apollo, PA 15613

(Westmoreland Cnty)

RFC-822-headers:

Received: from gatekeeper.pader.gov by PADER.GOV (PMDF V5.1-7 #21974)
with SMTP id <01IJ3CKNOYAE96XNOK@PADER.GOV> for regcomments@a1.pader.gov; Tue,
20 May 1997 12:32:21 EST
Received: by gatekeeper.pader.gov; (5.65v3.2/1.3/10May95) id AA12783; Tue,
20 May 1997 12:35:02 -0400
Received: from h01.pgh.wec.com by gatekeeper.pader.gov (smtpxd); id XA12892
Received: from dale.pgh.wec.com by h01.pgh.wec.com (4.1/SMI-4.1)
id AA10024; Tue, 20 May 1997 12:34:49 -0400 (EDT)

May 20, 1997

Mr James Seif
Environmental quality Board
PA Dept of Environmental Protection
PO Box 8477
Harrisburg, PA 17105-8477

Dear Mr. Seif,

I understand that DEP plans to assess $\frac{1}{4}$ of the streams that are "unassessed". Further, this will take 10 years to complete.

We have many streams which are unassessed and therefore have only basic water quality protection (Tier 1). DEP's proposed antidegradation regulation in March 22 PA Bulletin does nothing to protect the 1000's of miles of unassessed streams. I feel this will degrade our streams in many ways. Therefore, I strongly urge you to protect these unassessed streams at a Tier 2 level unless a permit applicant can demonstrate otherwise. This will give benefit of doubt to the public's resources.

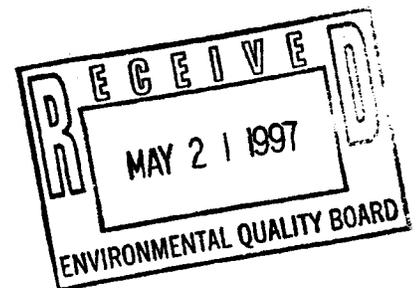
Also, the language mentioning non-point source pollution is weaker than the language for HQ streams. Please put strong non-point language in to protect our good streams from agriculture and land development.

I look forward to seeing these 2 changes in the proposed regulation.

Sincerely

Ed VanBlargan

Ed VanBlargan (plus Nancy, Laura, Kristen, Caroline, and Mark)
4117 Wimbledon Drive
Harrisburg, PA 1712





Delaware Highlands Conservancy

HC 1, Box 1926, River Road, Millarville, PA 18443-9743 (717) 729-7053

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Environmental Quality Board

May 20, 1997

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



Dear Mr. Seif,

I would like to comment on the proposed changes to PA's anti-degradation policy for our outstanding high quality (HQ) and exceptional value (EV) waters. I object to the weakening effect on water quality by some of the proposed regulatory changes PA DEP is seeking.

For example I suggest the following:

- HQ and EV waters must continue to be "protected water uses".
- Any and all allowed degradation must show some kind of public benefit.
- Public lands should merit special weighting as a selection criteria.
- The regulation must address how allowing discharges will maintain water quality.
- The DEC should retain the designation of wetlands as HQ and EV.
- HQ and EV wetlands should be protected under any anti-degradation policy.
- "Veto" power over EV designations must rest with the Commonwealth alone, not with local government or residents.
- "Existing uses" and endangered species should be protected unconditionally.
- To qualify for "HQ" designation, waters should pass either a chemical or a biological test. Preferably biological.
- HQ or mid-level protection should apply to all waters until the assessment is completed.

A LAND TRUST ... working with landowners to conserve the natural heritage of the Upper Delaware region

- To change anti-degradation policy to apply to only discharges is wrong. This omits all other activities such as non-point run-off that can be equally or more damaging to HQ and EV waters than a discharge.

Thank you for the opportunity to comment on the proposed regulatory changes.

Yours,



Barbara Yeaman
President



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(PER JHJ)

May 20, 1997

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

Dear Mr. Seif:

I am writing concerning Pennsylvania's Exceptional Value program and the fact that it only should be used for the protection of outstanding resource waters here in the Commonwealth.

It is so unfortunate that here in Pike County, my old friend, the late Gifford Pinchot, MD. along with former DER Secretary Arthur Davis, promulgated the unfortunate use of Exceptional Value to stop the construction of a shopping center known as Milford Commons and once they were successful in stopping this project, it opened a Pandora's Box of stream upgrades throughout the state.

Accordingly, I thank you for your most kind consideration of the sensible use of regulations that don't deprive your fellow residents of the Commonwealth of their property rights.

Best wishes.

Sincerely,

DAVIS R. CHANT
CHAIRMAN OF THE BOARD



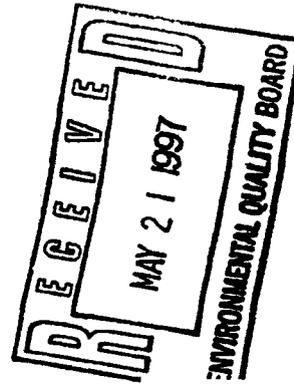
DRC:sm

97 JUN -6 PM 9:56

ORIGINAL SENT VIA OVERNIGHT MAIL

Suite 322
315 South Allen Street
State College, Pennsylvania 16801-4850

May 20, 1997



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

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TYRRELL
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SANDUSKY
WYATTE
BERESCHAK

Dear Mr. Seif:

The Fish and Wildlife Service has reviewed the proposed rulemaking for the antidegradation policy for Pennsylvania, published in the March 22, 1997 *Pennsylvania Bulletin*. The Service has provided comments on this issue to the Environmental Quality Board (EQB) and the Department of Environmental Protection (DEP) in the past. We have also consulted with the Environmental Protection Agency (EPA) during EPA's review of Pennsylvania's 1994 triennial review of water quality standards, and during EPA's recent promulgation of an antidegradation policy for Pennsylvania. In addition, we participated in the DEP-sponsored "regulatory-negotiation" (reg-neg) process from its inception in June 1995 to the close of the process in August 1996. At that time, the Service, along with other organizations, submitted a joint report to DEP that outlined recommendations on the antidegradation program.

We offer the following comments under the authority of the Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661-667e) and the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). Our review also considers the fact that federal regulations (40 CFR 131.6(d) and 131.12) require States to have an antidegradation policy in their water quality standards at least as stringent as the federal policy, and that implementation methods must be identified.

GENERAL COMMENTS

The Preamble to the proposed rulemaking states that DEP considered the "Phase I Interim Report" of the reg-neg group to have been a "good starting point" for new regulations. The DEP issued a "draft proposed rulemaking" in May 1996 based largely on the Phase I Interim Report and, although DEP offered at that time no proposals for the Exceptional Value waters program, the draft nevertheless elicited extensive public comment. The reg-neg group submitted two separate reports to DEP on the program. The EPA, under court order, has proposed and promulgated an antidegradation policy for Pennsylvania that took effect January 8, 1997 (40 CFR 131.32). The DEP offers this proposal to address the EPA disapproval of June 1994, and has taken the previous public comment and the reg-neg reports into consideration to "re-engineer an antidegradation

program which addresses concerns specific to this Commonwealth."

Our primary concern with Pennsylvania's old antidegradation policy was that it did not meet minimum federal requirements. The promulgation of a federal rule satisfies that basic fault of the State's old program. We do have other concerns with the program that relate mostly to endangered species protection, and fish and wildlife needs in general, and have relayed those concerns to the EQB and DEP in the past. Our other concerns with the program relate to how the antidegradation policy is implemented.

The DEP seems to be relying on public comments on the May 1996 draft proposal and the two separate reg-neg reports as the "concerns specific" to Pennsylvania that DEP believes are being addressed in this proposal. Unfortunately, no comment-response document was prepared for either the public comments received on the "draft proposed rulemaking" of May 1996 or the two separate reports submitted by the reg-neg group. Although the draft proposed rulemaking was withdrawn, the current proposal is very similar. Without a comment-response document, it is difficult to understand DEP's reasoning for some of the specific provisions of this proposal. We believe that the EQB should request that DEP, as part of this proposal, formally respond to the comments received for the May 1996 draft proposed rulemaking, and the two separate reg-neg reports. Regardless, we are enclosing as part of these comments our testimony of June 18, 1996, and the "conservation stakeholders' report" of August 21, 1996.

SPECIFIC COMMENTS

§ 92.81. General NPDES permits.

The proposal is less protective than the interim consensus reached by the reg-neg group. Unless DEP is willing to undertake a specific assessment of general NPDES permits and determine under which conditions they would be allowable, we would oppose issuance of general NPDES permits in High Quality (HQ) waters. We support the continued prohibition of general NPDES permits in Exceptional Value (EV) waters.

§ 93.1. Definitions.

The Service supports the new definitions of HQ and EV waters, except that we would prefer to see the word "watersheds" retained in each definition. It is unclear to us if DEP intends to continue to assess and designate on a watershed basis, or assess each separate surface water in a basin. If it is the latter, we note that the proposed biological tests for HQ and EV do not include biological methods for lakes, ponds, reservoirs, seeps, springs, wetlands or estuaries. If DEP plans on assessing the main streams and rivers in a basin, and then applying the designation to all the waterbodies in the watershed, then we do not see any need for changing the definitions.

§ 93.3. Protected water uses.

We note that HQ and EV, when considered "protected water uses," give an added measure of protection and visibility to significant environmental attributes. Currently, about 25% of the State's waters are HQ, and 3% are EV. These waters, because of DEP's past requirement for additional "features," have existing uses that merit a "protected water use" over and above the regular designated uses. To remove HQ and EV from the list of protected water uses without creating a new protected water use that recognizes significant environmental attributes could be considered a removal of a designated use. If the waterbodies have in fact attained that use (actually have the significant environmental attribute that merits the HQ or EV designation), then those uses cannot be removed, as designated uses must reflect existing uses.

We believe that if HQ and EV are removed as protected water uses, then a use category of "Outstanding Environmental Resource" should be added as a protected water use. Waters could then qualify for this protected water use regardless of their antidegradation classification. We would be willing to assist DEP in developing the definition for this use.

In addition, we do not believe that the proposal includes adequate safeguards to prevent arbitrary "downgrades" of the antidegradation classification. The conservation stakeholders' report included language to protect waters' antidegradation classification, while allowing for the removal of HQ and EV as protected water uses. We suggest that additional safeguards be put into place to prevent reductions in antidegradation protection (see enclosed report).

Alternatively, there is no need to remove HQ and EV from the list of protected water uses if what is desired is to separate antidegradation from protected water uses. Instead, three tiers of antidegradation protection could be established. All HQ waters are automatically in Tier 2, and all EV waters are automatically in Tier 3. As new waters are assessed, they will be assigned to a Tier and may merit a new designated use as HQ or EV in order to reflect their special attributes.

§ 93.4. Statewide water uses.

We support deletion of the phrase "under subsection (b)." This will ensure that the designated uses, at a minimum, reflect the existing uses in all cases.

§ 93.4a. Existing uses.

General existing use language. We believe that the federal Tier 1 language should be included as a separate sentence; we do not support the inclusion of the qualifying phrase beginning "when...". The inclusion of this phrase is problematic in that protection of existing uses must take place at all times, not just after a technical evaluation. Qualification of the existing use protection language of the regulation is not supported by federal regulation or guidance.

Endangered species protection. We appreciate DEP's efforts to include endangered species

protection under existing use protection. However, we have some questions about the threshold for, and the extent of, this protection. The threshold for protection is Departmental confirmation of the presence of the aquatic species or critical habitat in the Pennsylvania Natural Diversity Inventory (PNDI). We have had conversations about this very issue in the past with DEP Central Office and Regional Office staff. Reliance on the PNDI data base brings with it two problems: 1) PNDI generally is not up-to-date, and 2) PNDI is not inclusive.

The threats to unionid mussels have generated interest by agencies other than the Service. For example, DEP has contracted mussel surveys in northwestern Pennsylvania (seven sites completed; ten sites awaiting survey). We appreciate DEP's interest in protecting mussels, but believe that the information should be used as it is generated, because it may be months before the information is entered into the PNDI data base. In addition to its own surveys, DEP should use any available credible information in its determination of an occurrence of an endangered species, and not simply rely on the PNDI data base. To disregard other information seems to establish a double standard: one threshold for endangered species (PNDI) and another for all other existing uses ("Department's evaluation of technical data").

We are also concerned about an approach that assumes that PNDI or any data base can adequately establish all endangered species locations. Endangered unionid mussels are found only in six streams and rivers in Pennsylvania, and only in suitable habitat. Many of the surveys already conducted that have made their way into the PNDI database were not designed to detect the presence/absence of rare species, but were general qualitative surveys. For example, PNDI may list ten mussel species at a site, none endangered, with the survey having been done in 1990. Endangered mussels may very well occur at that site, and were simply not detected in the 1990 qualitative survey. In other areas, no surveys have been conducted, and PNDI will contain nothing at all on the resources at that site. We believe that when an activity is proposed that could affect suitable endangered species habitat, the permit applicant should be required to characterize the resource, including the presence/absence of endangered species.

There is a parallel between this situation and wetlands permitting. Before an applicant is permitted to discharge dredged or fill material into waters of the United States, a Clean Water Act § 404 permit is needed, and the applicant must characterize the wetland as part of the application. If the wetland is suitable habitat for the bog turtle (*Clemmys muhlenbergii*), a species that listed as endangered by Pennsylvania and proposed for federal listing as threatened, the applicant must conduct a bog turtle survey. We see no reason why applicants for NPDES permits or requesting Section 401 water quality certification should be held to a less stringent standard.

We applaud the preamble language that states that DEP will use all necessary measures, including restricting mixing zones, to protect listed species. We also support the ultimate goal to "ensure protection" of listed species. We believe, however, that limiting the protection to the effects of "discharges" unduly restricts the regulation. We also believe that limiting the protection to "aquatic" species is too limiting. The bald eagle (*Haliaeetus leucocephalus*) is a federally-listed species that is dependent on aquatic systems and merits protection under the Clean Water Act and State water

quality standards, including the antidegradation policy. We suggest the word "aquatic" be deleted.

We also suggest the following language for the regulation:

Where necessary, the Department will restrict activities, including limiting discharges, to ensure protection of federal or State listed endangered or threatened species, or their critical habitats.

We would be happy to assist DEP in developing implementation guidance for the endangered species protection provision of Tier 1.

§ 93.4b. High Quality Waters.

a. Qualifying as High Quality Waters. We have concerns about the requirement that both chemistry and biology tests be met in order to qualify as HQ waters. The contrast between this proposal and the Special Protection Waters Implementation Handbook shows that the biological tests proposed here were once considered to be "other environmental features" under the Special Protection Waters program. The EPA disapproved Pennsylvania's program because of the requirement for the other "feature." This proposal, while making changes to the definition, has defined "quality which exceeds levels" in such a way to require some biological "feature" as well as having water chemistry that exceeds numeric criteria.

On its face, the current Tier 2 regulation (40 CFR 131.32(a)(2)) guidance appears to apply to water chemistry: "[w]here the quality of the waters exceeds levels necessary to support [the 101(a)(2) Clean Water Act goals]." This is identical to the basic federal regulation (40 CFR 131.12(a)(2)). The "quality of the water" in a candidate waterbody would be compared to the numeric water quality criteria. The EPA's guidance (USEPA 1994) states:

All the parameters do not need to be better quality than the State's ambient criteria for the water to be deemed a "high-quality water." EPA believes that it is best to apply antidegradation on a parameter-by-parameter basis. Otherwise, there is potential for a large number of waters not to receive antidegradation protection (emphasis original).

Therefore, a strong argument can be made that the sole Tier 2 threshold is water chemistry alone, although the guidance goes on to say that EPA has accepted different approaches. These approaches must be evaluated for conformance with "the statutory and regulatory intent of the antidegradation policy." Since DEP has taken a different approach, the decision to use chemistry and biology must be evaluated.

The DEP has not given any rationale for requiring both tests. Perhaps the reasoning is that aquatic biota are a good integrator of long-term water chemistry. If this is the case, then why evaluate water chemistry at all? Simply assess biology, and from that determine whether or not long-term water chemistry "exceeds levels necessary" to meet the 101(a)(2) goals. Perhaps DEP believes

that the purpose of Tier 2 antidegradation is to protect the aquatic communities, rather than water chemistry. If that is the case, we suspect that no request for degradation would ever be denied, because degradation in water chemistry down to the level of the numeric criteria should not result in changes to aquatic biota. We see the purpose of Tier 2 antidegradation as giving further protection to water chemistry. Regardless, DEP should clearly state their rationale for departing from a parameter-by-parameter approach.

The proposed biological test can be met in three ways: 1) a biotic assessment, that considers physical habitat and benthic macroinvertebrates or fish, based on the Rapid Bioassessment Protocol (USEPA 1989); 2) other future methods that may be approved; or 3) if a water is Pennsylvania Fish and Boat Commission (PFBC) Class A Wild Trout Stream. Further details of 1) are provided in the proposed Statement of Policy, Chapter 15, and separate public comments are being taken on that proposal. We believe that some discussion of that method is warranted here, however.

2.i. Rapid Bioassessment Protocol. The Rapid Bioassessment Protocol (RBP) was established by EPA and has been adopted by many States and other resource agencies. We believe that it is a useful tool, and use it in our own surveys. We understand that Pennsylvania has been using it for some years now and has made some modifications to it based on Pennsylvania's waters. We do not question its utility for certain uses.

Our concern is the requirement that, using the RBP, a candidate's water quality must "support nonimpaired, high quality aquatic communities." Streams that do not meet this threshold will not get HQ protection (if they do not satisfy the biological test in another way), whatever the reason for the impairment (physical habitat or water quality). If the purpose of Tier 2 antidegradation is to protect water chemistry, then discounting a waterbody having an "impaired" biological community because of habitat problems violates the intent of Tier 2 antidegradation.

The RBP also uses reference streams in order to make comparisons, and reference streams are chosen on an ecoregion basis. While this works well for characterizing biota on a regional level, it creates problems for determining levels of antidegradation protection. There is strong evidence to indicate that, between ecoregions, reference streams vary widely in absolute quality. Across the State, candidate streams with similar water chemistry and biology will receive different levels of antidegradation protection if their respective reference streams are sufficiently dissimilar.

2. ii. Other methods. As noted above, the proposal changes the definition of HQ from a "watershed" to a "surface water." Surface waters are further defined as "...streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries." In this section, the proposal does not mention any specific methods for assessing biology, but says that other procedures will be used if they are approved by DEP. The RBP (above) and the Class A Wild Trout Stream (below) are the only specific biological procedures listed in this proposal. This creates a situation where only streams and rivers can receive HQ protection, because there are no biological methods listed

in the proposal for waters other than streams and rivers.

2.iii. Class A Wild Trout Streams. While we believe that Class A trout streams certainly merit HQ protection, we believe that most, if not all, wild trout streams qualify. The State of West Virginia considers all their wild trout streams to automatically qualify for Tier 2 protection. Wild trout streams vary greatly in their carrying capacity, and Pennsylvania's Class A streams are considered the best of the State. The variation in trout biomass, however, can be due to many factors, most notably physical habitat and natural productivity of the waters (T. Greene, PFBC, pers. comm.). There are likely to be few streams that are considered Class B, C, or D wild trout streams that also exhibit violations of numeric water quality criteria due to some human-induced condition. Just about all wild trout streams will have water chemistry which exceeds levels necessary to support the 101(a)(2) goals of the Clean Water Act and, therefore, all wild trout streams should be considered HQ.

In summary, the requirement for both chemistry and biology tests will limit the number of Tier 2 waters in a way not intended by federal regulation and guidance. We believe that simply making the tests disjunctive would solve this problem: waters qualify for HQ protection if water chemistry is better than criteria or if biology indicates that water chemistry is generally good.

b. Level of protection/social or economic justification. This section could be construed to mean that non-discharge permitted activities are not subject to this provision. We suggest re-writing this section to include all permitted activities that could result in degradation, since the threshold in the current regulation is water quality degradation. As written, this section would also apply to discharges that do not degrade water quality.

A balanced public interest determination requires that public benefits result from water quality degradation. Accordingly, we support inclusion of the phrase beginning "will result..." at the end of this paragraph.

f. Special provisions for minimal impact discharges. In the reg-neg proceedings, our previous consideration of some type of suspension of the full Tier 2 review for some discharges was a preliminary position. As DEP knows, this position was ultimately rejected by the Service and most of the "conservation stakeholders." Therefore, we do not support suspending the SEJ process for the first 25% of the assimilative capacity of the water. This would exempt many dischargers from the SEJ process and the accompanying public participation requirements, and is not allowed in the current regulation, which is considered

to be the minimum federal requirements. General NPDES permits should also be subject to the SEJ process, if they are allowed at all, in HQ watersheds.

§ 93.4c. Exceptional Value Waters.

a. Qualifying as Exceptional Value Waters. We believe that Pennsylvania has more latitude in determining Tier 3 waters than it does for Tier 2. The proposal includes water chemistry and biology tests, similar to the HQ proposal, and a provision to allow consideration of additional information. We note, however, that the current regulation considers waters of certain public lands and waters of "exceptional recreational or ecological significance" (40 CFR 131.32(a)(3)). The following comments focus on whether or not 1) the public land categories are sufficiently considered, and 2) the definitions of "recreational or ecological significance" are reasonable and sufficiently inclusive.

Public Lands. Unlike Pennsylvania's Special Protection program, this proposal does not give any consideration to the public land categories in the current regulation (40 CFR 131.32(a)(3)), nor does it reflect at all the public lands listed in the proposed definition of EV waters. The EPA (1994) considers the combination of "high quality waters" on public lands to be sufficient to qualify as a Tier 3 water. The Special Protection Waters Handbook gave thoughtful consideration to all the land use categories in the EV definition. We believe that this proposal does not give sufficient consideration to public lands. As a land steward whose lands are specifically mentioned in both the current Tier 3 regulation and proposed EV definition, the Service strongly supports consideration of public land uses as Tier 3 waters.

Recreational significance. Wilderness Trout Streams are listed here as a biological measure, although their designation by the PFBC is based less on the inherent biology of the stream than it is on the surrounding land use (J. Arway, PFBC, pers. comm.). Nevertheless, it is the only consideration given to any type of recreational use in the proposal. The Special Protection Waters Implementation Handbook had some examples of recreational uses that could qualify for EV protection. We believe that some consideration of recreational uses should be included in the final regulation. In addition, given our recommendation that all wild trout streams be considered at least HQ waters, Class A streams, by their biomass, constitute an outstanding recreational resource, and should qualify as EV waters. We also believe that the proposal should consider water resource-based recreation other than trout fishing.

Ecological significance. Similar to the High Quality section, the biology requirement relies on the Rapid Bioassessment Protocol (RBP), other methods (presumably to be determined at a later date), and the Wilderness Trout Stream classification to determine outstanding biology. Notably absent is any mention of threatened or endangered species. The Preamble stated that the addition of threatened or endangered species language in Tier 1 adequately protects these species. We support language protecting threatened or endangered

species in Tier 1, but believe that waters supporting listed species merit consideration as Tier 3 waters as well.

For federally-listed species, the listing as endangered or threatened often means that the species has been eliminated from a large portion of its historic range. The few remaining systems where the species occurs are often of "exceptional...ecological significance" by their sheer rarity. For example, the northern riffleshell mussel (*Epioblasma torulosa rangiana*) was once found throughout the upper Ohio and Great Lakes drainages. It has been eliminated from a large number of streams throughout its historic range, and French Creek and the Allegheny River in Pennsylvania probably have the best remaining populations in the world. One other federally-listed mussel, the clubshell (*Pleurobema clava*) is extant in Pennsylvania, and is often found with the northern riffleshell.

Mussels are a group of benthic macroinvertebrates not considered under the RBP; therefore, presence of mussel species in a waterbody will not give it any additional consideration. We do not mean to diminish the ecological value of streams rating highly because of their RBP benthic macroinvertebrate score, but it is difficult to imagine considering such streams as "waters of exceptional...ecological significance" while at the same time disregarding waterbodies that support the only known remaining populations of a different aquatic invertebrate. Although the proposal includes a provision for consideration of additional biological or chemical information, we believe that waters supporting threatened or endangered species merit specific language qualifying them as EV waters. We urge the EQB to allow for additional, definable ways to assess ecological significance, and are willing to assist DEP in developing the necessary language.

b. Level of protection for EV waters. We note that the Preamble states that this proposal does not resolve EPA disapproval of the level of protection for EV waters. Ideally, the proposal should have given details about the method DEP uses to determine whether or not water quality is "maintained and protected." During the reg-neg process, the Service had concerns about DEP's use of "no measurable change in long-term water quality." Specifically we were concerned with, and are still concerned with, 1) use of the median flow as the design flow in permitting; and 2) allowance for instream dilution and mixing zones, especially for chemicals not normally found in surface waters. We continue to support DEP's contention that Tier 3 does not automatically preclude discharges, but do not believe that DEP's current method maintains and protects water quality in all cases. This method should be clearly outlined and, after public comment, placed into regulation.

§ 93.4d. General requirements...

a. Discharge alternatives. We support the provision that all permit applicants in HQ and EV waters are subject to these requirements, even applicants proposing "minimal impact discharges" (§ 93.4b(f)). Specific pollution prevention and waste minimization language, as outlined in the conservation stakeholders' report, should also be included here. That language was based on the

Great Lakes Water Quality Initiative.

b. Nonpoint sources. We do not believe that the language in this section is as protective as the language in the current regulation. Programs that will "promote" best management practices (BMPs) for nonpoint source control are not equivalent to DEP's obligation to "assure that there shall be achieved" BMPs. We suggest simply incorporating the current regulation's language into this section.

§ 93.4e. Public participation...

The reg-neg group assembled a panel that agreed on public participation requirements. We believe that their recommendations should be adopted.

§ 93.7. Specific water quality criteria.

We support the higher dissolved oxygen standards for HQ waters.

§ 93.9a-93.9z. Drainage lists.

The DEP's Use Attainability Reports for the Peters Creek and the Broad Run basins, prepared as a result of the Special Protection surveys, indicate that both watersheds support naturally reproducing trout populations. Both basins, therefore, should have designated aquatic life uses of "cold water fishes."

Antidegradation in wetlands

We do not believe that the State's current wetlands permitting program affords sufficient antidegradation protection for wetlands. While this proposal nominally extends antidegradation protection to wetlands, there are no specific provisions to integrate the two programs. The EPA (1994), for example, considers that the antidegradation policy is satisfied if a fill does not result in "significant degradation" as defined in 40 CFR 230.10(c) of the Clean Water Act § 404(b)(1) Guidelines. While the State's regulations contain some language from the Guidelines, Pennsylvania does not always prohibit fills that cause significant degradation to special aquatic sites. Similarly, general permits for wetland fills have been issued that authorize activities in both HQ and EV watersheds, without any consideration of antidegradation. The Service believes that integration of the two programs is both possible and desirable. We would be happy to assist DEP in developing implementation procedures for antidegradation in wetlands.

SUMMARY

1. The DEP should respond formally to the previously submitted reg-neg reports (August 1996) and public comment on the draft proposed regulation (May 1996).

2. We support the prohibition of general NPDES permits in EV waters, but believe that HQ waters should be similarly protected.
3. Assessments should be done on a watershed basis, not a water-by-water basis. Definitions of HQ and EV should reflect this.
4. There are not sufficient safeguards against downgrades in the antidegradation classification of waters, and special environmental features will no longer be recognized if HQ and EV are removed as "protected water uses." They should remain, or safeguards put into place and another designated use created to recognize special environmental features.
5. The existing use language should not be qualified by DEP's evaluation of technical data.
6. We support language protecting endangered species in Tier 1. We believe that the protection should 1) extend to all species, not just "aquatic" species; 2) apply to activities, not just discharges; and 3) extend to confirmed endangered species habitat, not just PNDI occurrences.
7. We do not support the requirement that HQ waters meet both a chemical and biological test for the following reasons:
 - DEP has not given any rationale for deviating from the EPA-recommended parameter-by-parameter approach.
 - The use of the RBP test as outlined in this proposal 1) does not distinguish between impairment caused by water chemistry problems, and those caused by physical habitat problems; and 2) may give different results for streams of similar water chemistry when dissimilar reference streams are used.
 - There are no biological tests in place to assess lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, and therefore no possible way under the current proposal for these waterbodies to receive HQ protection.
 - While Class A Wild Trout Streams certainly deserve HQ protection, most wild trout streams, no matter what the biomass, will likely have water chemistry better than the numeric criteria, the differences in trout biomass often being a matter of physical habitat or natural productivity.
8. We agree with the provision that requires a demonstrated public benefit before permission

to degrade water quality in HQ waters is granted. Any activity that could degrade water quality should be subject to the SEJ, not just discharges.

9. The suspension of the SEJ for the first 25% of the assimilative capacity of a water, and for general NPDES permits, does not meet the minimum federal requirement.
10. The qualifiers for EV waters do not include the public land categories listed in either the current regulation nor the proposed definition of EV. The qualifiers for ecological significance should include consideration of threatened or endangered species. Additional recreational attributes should be considered.
11. The proposal is silent on how DEP plans to maintain and protect water quality in EV waters while allowing for point source discharges.
12. Specific pollution prevention language, as well as stronger language protecting against non-point source pollution, should be included.
13. The reg-neg group's recommendations on public participation should be adopted.
14. The DEP should integrate antidegradation into the wetlands protection program.

The Service appreciates the opportunity to provide comments on the proposed rulemaking. We are available to assist DEP in developing alternative language in areas where we suggested changes to the proposal, or in any other area where such assistance would be helpful. Please contact Mark Hersh of this office (814-234-4090) if you have any questions regarding these comments.

Sincerely,

David Densmore
Supervisor

Enclosures

REFERENCES

USEPA. 1994. Water quality standards handbook. 2nd edition. EPA-823-B-94-005a.
Office of Water, Washington, D.C.

USEPA. 1989. Rapid bioassessment protocol for use in streams and rivers. Benthic macroinvertebrates and fish. EPA/444/4-89-001. Office of Water, Washington, D.C.

**U.S. FISH AND WILDLIFE SERVICE
SUMMARY OF COMMENTS -- ANTIDegradation PROPOSAL**

DEP should respond formally to the previously submitted public comments and reports.

General NPDES permits in HQ waters should not be permitted.

HQ and EV assessments should be conducted on a watershed basis.

There are not sufficient safeguards against downgrades in the antidegradation classification of waters, and special environmental features will no longer be recognized if HQ and EV are removed as "protected water uses."

The existing use language should not be qualified by DEP's evaluation of technical data.

We support language protecting endangered species in Tier 1. We believe that the protection should 1) extend to all species, not just "aquatic" species, 2) apply to activities, not just discharges, and 3) require permittees to conduct surveys to determine the species presence/absence.

DEP has not given any rationale for deviating from the EPA-recommended parameter-by-parameter approach. There are no biological tests in place to assess lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, and therefore, they cannot receive HQ protection. We do not support requiring both chemistry and biology tests to qualify as HQ.

While Class A Wild Trout Streams certainly deserve High Quality protection, all wild trout streams deserve protection as HQ, because all wild trout streams will have good quality water.

We agree with the provision that requires a public benefit before permission to degrade water quality in HQ waters is granted. Antidegradation applies to activities, not just discharges.

The suspension of the SEJ for the first 25% of the assimilative capacity of a water, and for general NPDES permits, is not supported by the minimum federal regulation.

The qualifiers for EV waters should include the public land categories listed in the proposed definition of EV. There should be other qualifiers for ecological significance such as presence of threatened or endangered species. More recreational attributes should be considered.

The proposal is silent on how DEP plans on maintaining and protecting water quality in EV waters while allowing for point source discharges.

Specific pollution prevention language should be included, as well as stronger language protecting against non-point source pollution.

The reg-neg group's recommendations on public participation should be adopted.

DEP needs to address integration of antidegradation with the wetlands protection program.



CLEAN WATER ACTION

May 20, 1997

Dear Members of the Environmental Quality Board,

Clean Water Action is a non-profit environmental group with over 80,000 members in Pennsylvania. On behalf of our members, we are writing to comment on the proposed anti-degradation regulations.

The Pennsylvania Department of Environmental Protection has proposed new regulations for the stated purpose of preventing degradation of our waterways, as mandated by the Clean Water Act. However, these regulations do not accomplish this goal, and do not protect Pennsylvania waterways from any further degradation. Indeed, these rules are, in many ways, less protective than the EPA rules currently in place, and in some ways are weaker than the previous DEP regulations that were overturned by the courts.

We urge the EQB to reject this current proposal and to direct the DEP to prepare new regulations that carry out the anti-degradation requirements of the Clean Water Act.

We are concerned about the following provisions in the proposed regulations:

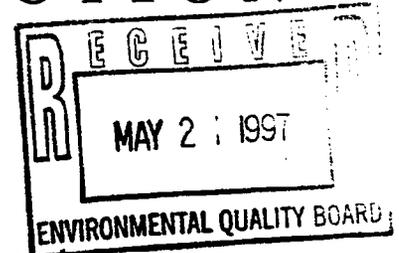
- Exceptional Value and High Quality classification should not be removed from being defined as protected "uses". This will remove EPA oversight on the redesignation of streams. We oppose making it easier to downgrade a stream classification, without a system of checks and balances. Exceptional Value and High Quality streams should have the most stringent protection, and these classifications should remain protected uses.

- Exceptional Value: Clean Water Action recognizes that the DEP's old Exceptional Value category was broader than the federal Tier III category. However, we believe that the proposed new regulations have diminished this category, reducing the number of waterways which will qualify for Exception Value status. We urge the DEP to return to its prior standards for classifying streams as Exceptional Value, while also adopting EPA's "No New Discharges" language as the level of protection for EV waters.

Clean Water Action opposes the new proposal for Exceptional Value qualification. In order for a stream to qualify as Exceptional Value, it would have to pass both a chemical and a biological test with high scores. Other factors that the DEP has used in the past apparently will not affect a stream classification; endangered species, ecological features, inclusion in public lands, state forests or parks will not be considered in granting EV status. Streams like Valley Creek that were given EV status in part due to its wild brown trout population and its flow through a national park and other public lands could well lose their EV status under the new proposed regulations.

The new proposal will also allow new and increased discharges into Exceptional Value streams. This does not mandate the level of protection that our best streams should receive. Quite simply, new discharges or increased discharges should not be allowed. The proposed rhetoric of "no measurable change" is not good enough, and could allow increased levels of chemicals like dioxin, where even small discharges can have a serious impact on stream life.

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♻️ RECYCLED PAPER



The net result of DEP's proposal is that fewer streams will qualify for Exceptional Value status, and those that do qualify will not receive sufficient protection. This is unacceptable. Exceptional Value criteria must return to the previous level, and Exceptional Value streams must be protected against additional discharges.

- **High Quality:** The proposed regulations call for a stream to pass both a biological and a chemical test in order for it to qualify as High Quality. This is more difficult than DEP's previous rule requiring passage of either test and this means that fewer streams will qualify for this level of protection. We urge the EQB to retain the current standard which qualifies streams for High Quality based on passing either a chemical or a biological test.

Clean Water Action opposes allowing general NPDES permits in either Exceptional Value or High Quality watersheds. General permits allow for degradation without the proper safeguards. This should be rejected. Similarly we oppose allowing degradation of up to 25% of a High Quality stream's assimilative capacity. This does not protect the water from further degradation. Any proposed discharger into a High Quality stream must meet all the High Quality requirements, including the alternatives assessment, social/economic justification, and using the best available technology.

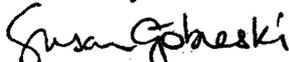
- **Existing Uses:** We oppose the language conditioning protection of existing uses on "Department evaluation of technical data". The protection must be unconditional, and the DEP should use the exact language in the EPA regulations that says that existing uses shall be maintained and protected. Any review of technical data should not delay protection of existing uses, but could occur once temporary protection has been put in place.

We urge the EQB to reject these proposed regulations. They do not protect Pennsylvania's waterways from degradation and do not meet the requirements of the Clean Water Act. We urge you to direct the DEP to develop new regulations that incorporate the standards that the EPA has put in place, while adding the broader Exceptional Value category in the previous DEP regulations and handbook.

Finally, there is tremendous public support for protecting Pennsylvania's waterways with the strongest levels of protection. Clean Water Action members and supporters have written approximately 950 letters and 350 postcards expressing opposition to the standards as currently proposed.

Approximately 40% of Pennsylvania's stream miles are still not meeting the Clean Water Act's standards of being fishable and swimmable. We can't afford to lower our water quality regulations and allow degradation of these waterways which do not meet this standard. Rather, we must strengthen and improve our protections to bring all of our waterways up to the goals of the Clean Water Act, a law that is as relevant today as it was twenty-five years ago when it was enacted.

Sincerely,

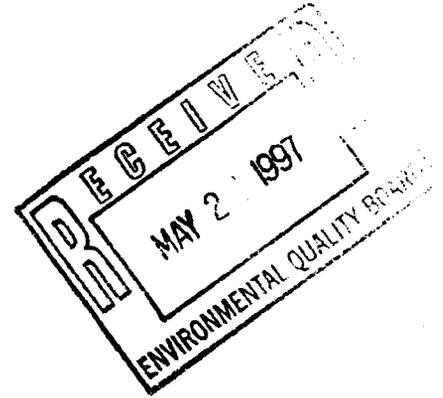

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May 20, 1997



Environmental Quality Board
Rachel Carson State Office Building
400 Market St., 15th floor
Harrisburg, PA 17101-2301

Re: 25 PA. Code CHS. 92, 93, and 95
Water Quality Amendments - Antidegradation
27 PA. Bulletin 1459 et seq. (March 22, 1997)

Dear Environmental Quality Board:

On behalf of the Municipal Authority of the Borough of Milford ("Authority"), I submit the enclosed one page summary and accompanying detailed comments on the Pennsylvania Department of Environmental Protection's (DEP's) proposed antidegradation rule, 27 Pa. Bulletin 1459 et seq. (March 22, 1997).

Sincerely,

Frances A. Dubrowski
Attorney for the Municipal Authority
of the Borough of Milford

**COMMENTS OF THE MUNICIPAL AUTHORITY
OF THE BOROUGH OF MILFORD**

SUMMARY

The Authority finds critical portions of the proposed rule inconsistent with federal law and likely to disrupt the long-standing antidegradation program for Pennsylvania's most special waterways. We urge the Board to "grandfather" existing HQ and EV streams from these provisions and otherwise to revise this proposal so as not to degrade Pennsylvania's special waters. Specifically, we note:

1. Federal law prohibits DEP from changing EV and HQ from "uses" to mere management categories for existing EV and HQ streams. DEP must "grandfather" these streams from this amendment.
2. DEP cannot legally adopt its proposed "new, additional, or increased discharge" rules for existing EV streams; it must "grandfather" these streams.
3. Existing EV streams deserve the highest possible protection without further petitions or rulemaking to enter a new ONRW category.
4. DEP must "grandfather" existing HQ streams from its new general permit proposal and its new "minimal impact" exception.
5. The proposal must be revised to keep the burden of proof of acceptable water quality impact on the discharger to HQ waters.
6. DEP cannot weaken the pollution prevention requirements for new dischargers to HQ streams as this proposal does.
7. The proposal must be revised to:
 - protect watersheds, not a narrowly defined category of surface waters.
 - direct public comment to DEP, not the permittee.
 - ensure protection of endangered species
 - protect existing water uses pending upgrade proceedings.
 - not deny upgrades to streams entitled to HQ or EV designation.

DETAILED COMMENTS OF THE MUNICIPAL AUTHORITY OF THE BOROUGH OF MILFORD

OVERVIEW

The Municipal Authority of the Borough of Milford (“Authority”) appreciates this opportunity to participate in protecting Pennsylvania’s exceptional waterways by commenting on DEP’s proposed amendments to the Commonwealth’s antidegradation rule.

The Authority finds critical portions of the proposed rule inconsistent with federal law and likely to disrupt the long-standing antidegradation program for Pennsylvania’s most special waterways. We urge the Board to “grandfather” existing HQ and EV streams from these provisions and otherwise to revise this proposal so as not to degrade Pennsylvania’s special waters.

The remainder of these comments will outline the Authority’s interest in this matter and those aspects of the proposal meriting reconsideration.

BACKGROUND

The Borough of Milford sits atop a high-yield sand and gravel aquifer of exceptional quality. The Authority derives its water from two primary and eleven secondary springs. The spring water is stored in two concrete reservoirs and then gravity fed through most of the distribution system.

These water supply springs are hydraulically connected to two Pike County streams: 1) the Vantine, currently designated “HQ,” and 2) Sawkill Creek, currently designated “EV.” The Authority has been actively involved in protecting the water quality of both streams for over three decades. In the 1960s, the Authority succeeded in persuading the Pennsylvania Department of Highways to take measures to ensure that construction of Interstate Route 84 did not discharge turbid runoff to Vantine Brook because the turbidity could infiltrate the groundwater body feeding the Milford water supply springs. In the late 1980s, the Authority commissioned a study which concluded that the Sawkill loses flow to the groundwater feeding the water supply springs. Since wastewater discharges to the Sawkill could threaten the

water quality of the springs, the Authority urged DEP (then DER) to upgrade the Sawkill from an “HQ” to the more protective “EV” designation.

DEP’s proposal weakens the level of protection now afforded to HQ and EV streams in three respects:

- I. It reduces the level of protection afforded by an HQ or EV designation.
- II. It denies upgrades to streams entitled to HQ or EV designation.
- III. It may encourage developers and others to try to redesignate HQ or EV streams to less protected classifications or apply for permits that previously would not have been considered. Even if such efforts do not succeed, they may require water quality proponents to expend additional resources protecting stream designations obtained years ago and now viewed as settled matters.

SPECIFIC ISSUES

DEP’s proposal should be revised to address 12 specific issues affecting existing EV and HQ streams.

1. DEP cannot legally eliminate EV and HQ as “use” designations for existing EV and HQ streams; it must “grandfather” these streams from this proposal.

DEP proposes changing EV and HQ from “uses” to mere management categories. DEP has not offered any explanation for this proposed change, and it is difficult to see how the proposal will benefit the Commonwealth’s surface waters.

DEP claims that this action “is consistent with Federal regulations which do not require antidegradation categories to be defined as protected uses.” 27 Pa. Bull. 1460. This is at odds with federal law which requires that water quality standards: a) consist of designated uses and water quality criteria, and b) be sufficient to “enhance the quality of water and serve the purposes [including antidegradation]” of federal law. See 33 U.S.C. 1311(c)(2)(A). See also 40 C.F.R. 131.2: “[Water quality] standards serve the dual purposes

of establishing the water quality goals for a specific water body and serve as the regulatory basis for [controls beyond technology-based effluent limits].”

In any event, federal law prohibits removal of existing designated uses. For example, federal law specifies that “Existing instream water uses ... shall be maintained and protected.” 40 C.F.R. 131.12(a)(1)(emphasis added). In addition, federal law prohibits States from removing designated uses “if they are existing uses [i.e., have been actually attained after November 28, 1975] unless a use requiring more stringent criteria is added.” 40 C.F.R. 131.10

Both the Sawkill and the Vantine attained their respective EV and HQ use designations after 1975. The Sawkill was evaluated and designated EV in 1989; the Vantine evaluated and retained as HQ the same year. In other words, DEP’s proposal violates federal law insofar as it applies to the Sawkill, the Vantine, and other streams which already bear the EV or HQ designation.

Finally, DEP’s proposal is unwise as a matter of policy. The proposal may generate pressure to downgrade HQ and EV waters since: 1) DEP rules prohibit redesignating waters to less restrictive uses, but do not explicitly prohibit changes to less restrictive management categories (see 25 PA. Code 93.4), and 2) EPA review is required for changes to uses (i.e., water quality standards), but may not be for changed management categories.

2. DEP cannot legally adopt its proposed “new, additional, or increased discharge” rules for existing EV streams; it must “grandfather” these streams from this portion of the proposed rule.

In 1989 when the Sawkill was designated EV, DER’s rules prohibited any degradation of such streams: “ ‘Exceptional Value Waters’ are to be protected at existing quality. The water quality in ‘Exceptional Value Waters’ shall not be degraded.” See DER’s May, 1988 Special Protection Evaluation Report for Sawkill Creek. Current rules also state EV streams “shall be maintained and protected at a minimum at their existing quality.” 25 Sect. 95.1(c). [Because this standard was so stringent, the pollution prevention requirements for new dischargers to HQ streams were not even deemed applicable to EV streams. See 25 PA. Code 95.1(d).]

In 1992, DEP adopted a Handbook adding that a point source permit to EV waters may not result in an adverse measurable change in existing water quality (measured by comparing the long-term average in-stream concentration after mixing to the historical mean). The Handbook, however, cannot be used to interpret the EV rule since: 1) it is not part of the rule, 2) it was adopted long after the rule and, as a noncontemporaneous agency interpretation of the rule, is not entitled to any deference, 3) it is at odds with the precise language of the rule, especially because average rather than critical or low flow conditions may not detect measurable and potentially significant water quality changes. (The Handbook is also at odds with 25 PA. Code 93.5(b) which specifies use of Q7-10, not average flow, for water quality criteria purposes.) Indeed, EPA disapproved DEP's EV rule in part because the Handbook, in EPA's view, did not preclude "potentially significant discharges and loading increases from point and nonpoint sources." 61 Fed. Reg. 64818 (Dec. 9, 1996).

Now for the first time DEP's proposed rule expressly would allow new, additional, or increased dischargers to EV streams provided the dischargers "evaluate alternatives" as required and "use the best available combination of cost-effective treatment, land disposal and wastewater reuse technologies." DEP has concentrated on EPA's prohibition against "new or increased dischargers," arguing that EPA does not have "legal, regulatory, or statutory basis for that policy." 27 Pa. Bull. 1460 (March 22, 1997).

DEP's theory, however, cannot justify a relaxation on existing EV designations. DEP cannot amend its rules to allow new, additional, or increased discharges to EV streams designated long before DEP's Handbook or proposed rule because this would violate the antidegradation policy of the Clean Water Act, the Pennsylvania Clean Streams Law (Sect. 4 and 402) and specific federal restrictions on downgrading uses outlined above. (The "no discharge" aspects of the EV use designation are, after all, its distinguishing characteristic; removing these restrictions effectively removes the use.)

3. Existing EV streams deserve the highest possible protection without further petitions or rulemaking.

DEP argues that Pennsylvania's EV category is broader than the most protected federal category (called "ONRW" or "Outstanding National

Resource Waters”) because EV includes streams of purely State or regional significance as well as outstanding national waters.

Unless DEP grandfathers existing EV streams from its “new discharge” proposal, EPA will require a new “ONRW” category as a supplement to DEP’s EV. Then presumably those who want “ONRW” protection for an existing EV stream would have to petition DEP to place the stream in the newly created “Pennsylvania ONRW” category.

This outcome is decidedly unfair for streams like the Sawkill which were designated EV in acknowledgement of their national as well as regional values. The Department’s May 1988 Special Protection Evaluation Report for the Sawkill specifically recognized that creek’s place in American history and ecology:

“The stream enters the Delaware River in the Delaware Water Gap National Recreational area near the Borough of Milford. The Saw Kill flows through the grounds of the Gov. Gifford Pinchot estate, Grey Towers, which is maintained by the U.S. Forest Service as a National Historic Landmark. Grey Towers has been described as the “birthplace of conservation in America” because of Gov. Pinchot’s role in many forestry and other conservation related efforts (emphasis added).”

In a February 5, 1988 letter to Governor Casey, the U.S. Forest Service, as the landowner and trustee of Grey Towers, supported the EV upgrade, noting that “the Sawkill Creek and its falls are an integral part of the property and programs of this [National Historic Landmark]. In addition to being the home of Gifford Pinchot, founder of American forestry and Chief of the U.S. Forest Service from 1898-1910, the Sawkill was also the home of James Pinchot, founder of the Yale Forest School and one of the creators of the American Museum of Natural History.

Several national environmental organizations and over 1500 private citizens petitioned DER to give the Sawkill the highest possible protection available under federal and State law. Both DEP and EPA should refrain from requiring such a nationally valued EV stream to undergo an additional petition process to continue protections in place since 1989.

4. DEP must “grandfather” existing HQ streams from its new general permit proposal.

DEP’s current rules do not allow general permits in HQ or EV streams; instead, the applicant must apply for an individual permit in which the discharger’s impact on the particular stream receives greater scrutiny.

This proposal would continue to restrict general permits in EV waters, but would eliminate this restriction for HQ waters. DEP has advanced no justification to show that such a change will continue to protect these vital water resources.

Again, DEP cannot legally allow existing HQ streams to be subject to this amendment. General permits are inappropriate and illegal for HQ streams because they do not ensure that water quality will be sufficiently protected in the unique circumstances of each stream.

5. DEP must “grandfather” existing HQ streams from its new “minimal impact” exception.

DEP proposes to create an exception in HQ waters for so-called “minimal impact discharges.” Such discharges would be deemed to protect water quality if they, alone or in combination with other discharges, utilized 25% or less of the stream’s assimilative capacity. DEP has not presented any evidence that this wholly arbitrary percentage will protect these special waters.

DEP must “grandfather” existing HQ streams from this amendment because: it represents an unexplained weakening of existing protections, it will be impossible to ascertain especially in the case of “losing” and “intermittent” streams, and there is no evidence it will protect vulnerable streams.

6. The proposal must be revised to keep the burden of proof of acceptable water quality impact on the discharger to HQ waters.

Under DEP’s existing rules, anyone proposing a new, additional, or increased discharge to HQ waters must “affirmatively demonstrate,” in addition to necessary social or economic justification, that the proposed

discharge “alone or in combination with other anticipated discharges ... will not preclude any use presently possible in the waters and downstream from the waters, and will not result in a violation of any of the numerical water quality criteria.” 25 Sect. 95.1(b).

Although the proposed rule retains this two-pronged test and specifies that the permit holder must demonstrate economic or social justification, it fails to specify who bears the burden of making the requisite water quality demonstration. DEP cannot justify failure to keep the burden of proof on the discharger.

7. DEP cannot weaken the pollution prevention requirements for new dischargers to HQ streams as this proposal does.

DEP’s existing rules require new, additional, or increased discharges to use “best available” treatment, land disposal, and wastewater reuse technologies. 25 PA. Code 95.1(d). [The rules do not contain a similar provision for EV streams because the EV standard was deemed so much more stringent.]

DEP’s proposal weakens this pollution prevention requirement by subjecting it to a “cost-effectiveness” test. DEP cannot justify this aspect of its proposal (indeed, does not even attempt to do so).

8. The proposal must be revised to retain full watershed protection.

Under DEP’s existing rules, HQ and EV apply to “waters of the Commonwealth,” and, in particular, to a “stream or watershed” meeting certain characteristics. The term “waters of the Commonwealth” is defined by statute to include “underground” as well as surface waters. Cleans Streams Law, 35 P.S. 691.1. (The term “watershed” would seem to include underground waters as well.)

By contrast, the proposed rules define EV and HQ waters as “surface waters” only. “Surface waters,” in turn, include “intermittent streams, reservoirs, ponds, and springs,” not underground waters. This change has two consequences. First, it eliminates special protection of underground waters. Second, DEP recently informed the Authority that a nearby stream which is “small” and not ever-present does not qualify for protection as

“intermittent.” Thus, DEP’s proposed narrowing of the antidegradation program raises questions as to whether “intermittent” streams will continue to be protected.

DEP must retain the original wording. There is no basis in the Cleans Streams Law for this distinction.

9. The proposal should be revised to include appropriate public participation processes.

DEP’s proposed rule creates a public participation process for HQ or EV streams in which the permit applicant solicits comments, reviews and responds to these comments, and submits the comments and responses to DEP for review. The Authority supports expanded public participation in HQ and EV waters, but believes it is inappropriate and unwise for DEP to require commenters, including local government, to go through the applicant to raise concerns with DEP.

10. The proposal should be revised to ensure protection of endangered species.

DEP’s proposal states that discharges to HQ or EV waters will be limited to ensure protection of endangered or threatened Federal or Pennsylvania aquatic species, but does not state how this is to be done. The Sawkill was designated EV in part because it serves as documented environs for at least one Pennsylvania rare wetland plant (Bog-rosemary) and one species of special concern (river otter), and likely environs for at least six other Rare or Endangered plants. DEP should require a permit applicant to submit a demonstration that these species will be protected if the permit issues.

In addition, DEP’s proposal limits protection to aquatic species. Since aquatic species are not defined, it is unclear whether DEP will protect plants, including wetlands plants, and water-dependent wildlife. DEP should extend protection to all endangered or threatened species which may be affected by a discharge.

11. DEP must revise this proposal to protect existing water uses pending upgrade proceedings.

In some cases, water quality may be sufficiently better than required – so much so that the water could be upgraded to a more protective use. Federal law requires the upgrade: existing water uses and the level of water quality necessary to support those uses must be protected – period. 40 C.F.R. 131.12(a)(1).

DEP's original rule had said that this protection would occur only until DEP concluded a rulemaking regarding the use, a position that led EPA to disapprove the rule. Now DEP proposes to make the rule better – but not as strong as federal law requires. DEP proposes to provide the protection required by federal law only after DEP's "evaluation of technical data establishes that a surface water attains or has attained an existing use."

This is significant because: 1) DEP has no comprehensive program for systematically evaluating streams for upgrades, 2) DEP has no deadline for final action on petitions for stream upgrades, and 3) this proposal lengthens the technical evaluations DEP must make to designate streams as HQ or EV. If DEP does not get around to making the technical evaluation (e.g., for resource or backlog reasons) or if DEP is unaware of the need for an upgrade, there is no commitment to protection equivalent to that provided by federal law.

We urge DEP: 1) to initiate a systematic program for evaluating streams for upgrades, and 2) not to limit these federally required protections to cases where DEP has completed all of the extensive technical evaluation necessary to support an upgrade. If preliminary evidence suggests a stream is likely to qualify or if a party presents DEP with a prima facie case supporting an upgrade, DEP should provide protection pending further analysis. See 35 P.S. 691.402.

12. The proposal may deny upgrades to streams entitled to HQ or EV designation.

This proposal requires EV and HQ designations to be supported by both extensive chemical and biological test data. Streams may qualify for EV or HQ designation on the basis of either, so the rule should reflect this.

Monroe County Conservation District

Technical
Section
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May 20, 1997

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James M. Seif, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
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400 Market Street
Harrisburg, PA 17101-2301

RE: Proposed Rulemaking 25 PA Code Chapters 92, 93 and 95
Water Quality Amendments - Antidegradation
Pennsylvania Bulletin, Vol. 27, No. 12, March 22, 1997

Dear Mr. Seif:

The Board of Directors of the Monroe County Conservation District appreciates the opportunity to comment on the proposed rulemaking referenced above. Although the District has limited working experience with Chapter 93, we recognize historical inadequacies and deficiencies in the proposed rulemaking and bring them to your attention with the following comments.

This proposal separates HQ and EV waters and applies more lenient standards to HQ waters (ref. Sections 93.4b, 93.4c, 93.4e) which effectively eliminates the antidegradation program in Monroe County where the majority of EV streams are on State land. We oppose the "divide and conquer" approach to Pennsylvania's antidegradation program. Both HQ and EV waters should remain in the antidegradation program per the intent of the existing water quality program. The proposed amendments are more a reflection of how the existing program is administered.

Removing HQ and EV waters from "protected uses" and adding them as an antidegradation classification appears benign until one considers all of the other DEP programs that incorporate Chapter 93 water quality designations. Will this change affect the applicability of Chapter 105 general permits? Will it allow further degradation of existing water quality? It is our understanding that this change will eliminate EPA oversight of designation changes resulting in potential degradation. This office opposes the changes proposed in Sections 93.3 and 93.9 unless the only difference is in how the information is organized in the drainage lists.

In order to maintain and protect existing water quality, the proposed regulations should apply to "activities" that may impact water quality of which "discharges" are one example (ref. Sections 93.4b and 93.4d). Other examples of activities that should be regulated under Chapter 93 are stream channelization, nonpoint source pollution and water withdrawals.

The concept of base flow is critical to maintaining water quality but is not explicitly addressed in the existing or proposed regulations. Although base flows may be implicated in Section 93.4b "mathematical modeling," specific flow requirements should be incorporated into Section 93.7, Specific Water Quality Criteria.

The "criteria used for determining SEJ" are elusive in Sections 93.4b and 93.4e. Although an SEJ process has evolved with the administration of the existing regulations, the currently accepted criteria should be subject to public review. At a minimum, the basic project purpose should be the basis of the SEJ as in the Federal Clean Water Act's 404(b)(1) guidelines and the SEJ should consider only long term impacts and benefits. Further, allowing the applicant to document that there have not been changes in technology is an extension of the "rubber stamp" mentality currently applied to SEJ's. There should be a requirement to submit the SEJ to the local governing body for review and approval during the Act 537 planning process. This would serve two purposes: to make a much-needed connection between this program and local government and to ensure a review of the SEJ at least at the local level. (Our recent experience with other DEP programs is that they will accept what the applicant offers, no questions asked.)

We disagree with the concept of minimal impact discharges in Section 93.4b because regardless of its name, the associated criteria allow the degradation of water quality in high quality streams without a SEJ. The antidegradation allowance calculation does not specify which of the water quality criteria are used (daily average or minimum, for example) and includes the terms "receiving stream" and "reference stream," which should be defined in Section 93.1.

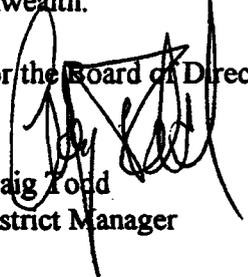
On page 1466 of the PA Bulletin, Vol. 27, No. 12, the assumption that nondischarge alternatives reduce overall pollution is invalid. We agree that they should be encouraged but site specific conditions will dictate whether the discharge or nondischarge alternative will cause the least pollution. Similarly, cost effectiveness as discussed in Section 93.4d should not be used to evaluate discharges to EV waters except to the extent that an alternative may be cost prohibitive.

The conditions required for waters to qualify as HQ or EV in Sections 93.4b and 93.4c should be clear. Although chemistry, biology and additional information may all be considered, only one of the tests should need to be satisfied in order to make an HQ or EV designation.

Although these regulations apply to wetlands pursuant to Section 93.2, there are no protected uses (Section 93.3) or specific water quality criteria (Section 93.7) that apply to wetlands. The proposed revisions should incorporate wetlands into the antidegradation program.

Our overwhelming concern is that the Department's antidegradation program be improved and protected, that it not only meets the federal guidelines but exceeds them, for it is the Commonwealth that has the most to gain by enhancing and protecting the waters of the Commonwealth.

For the Board of Directors,


Craig Todd
District Manager

CT/ms
Enclosure



May 20, 1997

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Environmental Quality Board
P.O. Box 8477
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**Re: Proposed Water Quality Amendments-Antidegradation [25 Pa. Code Chs. 92, 93 and 95]
Pennsylvania Bulletin, March 22, 1997, Vol. 27, No. 12.**

Dear Sir:

The Pennsylvania Farm Bureau (PFB) appreciates the opportunity to provide comments on the Department of Environmental Protection's (DEP) proposed water quality-antidegradation regulations. Farm Bureau is Pennsylvania's largest general farm organization with membership exceeding 26,600 family farm members. Farm Bureau's comments will be general and in certain instances specific in nature.

Many sections in the regulatory package appear to be in conflict with Governor Ridge's Executive Order 1996-1. In particular the Executive Order states.... "Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law." and "Regulations shall not hamper Pennsylvania's ability to compete effectively with other states". The regulated community believes that the Department has not considered these requirements when developing the proposed regulatory amendments. Farm Bureau strongly recommends that the Department revisit Executive Order 1996-1 and adjust its regulations accordingly. Farm Bureau's more specific comments are as follows:

Section 92.81(a)(1) (General NPDES Permits) and Section 92.83 (b)(8) (Inclusion of individual dischargers in general NPDES permits) limit general permits to High Quality (HQ) designated streams. Farm Bureau recommends that the proposed regulations allow general permits for minor discharges into Exceptional Value (EV) streams. Discharges which result in no adverse measurable changes to long term water quality should be allowed.

Section 93.1 (Definitions) defines Exceptional Value Waters (tier 3) as:

Surface waters of high quality which constitute an outstanding national, state, regional or local resource.

The federal program relating to exceptional value waters is limited to Outstanding National Resource Waters. Pennsylvania's current and proposed EV (tier 3) program is broader and more inclusive than the Environmental Protection Agency (EPA) program, encompassing outstanding state,

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regional and local waters. The EV program has been labeled as an anti-growth tool and many EV designations have been criticized as not being justified. Farm Bureau believes that an EV designation should only be assigned to waters that are truly unique or exhibit statewide or national significance. It is recommended that the DEP exceptional value waters program be revised to be no more stringent than the federal program.

Section 93.4a (Existing Uses) contains new language which states:

If the Department has confirmed the presence or critical habitat of endangered or threatened Federal or Pennsylvania aquatic species listed in "The Pennsylvania Natural Diversity Inventory" PNDI, discharges to these waters shall be limited to ensure protection of these species and critical habitat.

Considering the regulatory implications of this section, many aspects of the proposed language need clarification. It is Farm Bureau's understanding that the intent of this section was to only consider Federal and state listed endangered or threatened species and not every single species listed on the PNDI. To avoid confusion Farm Bureau recommends the following amended language:

If the Department has confirmed the presence or critical habitat of Federal or state listed endangered or threatened aquatic species, discharges to these waters shall be limited to ensure protection of these species and critical habitat.

The term "limited" and its implications have not been explained adequately. An explanation of the procedure to "confirm" the presence or critical habitat is needed. Farm Bureau has great concern that dated information and limited field inspections will be used to confirm species or habitat. Objective and accurate data must be used. The proposed regulations do not define "aquatic species". Will the definition of "aquatic species" go beyond amphibians, reptiles and fish to include mammal and insects dependent on water? The regulated community needs to know the implications of this proposed language.

Farm Bureau believes that modern society cannot continue to operate on the basis that all species must be preserved at any cost. All state and federal programs designed to protect alleged threatened and or endangered species should demonstrate that the benefits to humans exceed the cost to humans. Farm Bureau believes that the human need for food, fiber, shelter and energy should have priority over the protection of endangered species.

Section 93.4b(a)(1) (High Quality Waters) proposes to allow streams to qualify for HQ status if they have water quality "generally better" than the criteria in Section 93.7 and Chapter 16, Appendix A, Table 1. Farm Bureau disagrees with this approach. As with the federal program an applicant for HQ status should "exceed" all water quality standards before it can be elevated to HQ status. This section also allows one grab sample to be used as the basis for a water quality analysis of a candidate HQ stream. Farm Bureau recommends additional sampling.

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Section 93.4b(b) (High Quality Waters) contains language that stipulates that HQ waters shall be maintained and protected unless a person proposing a new or increased discharge can demonstrate and the Department finds that the proposed discharge is necessary to accommodate important economic or social development in the area in which the service 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. Farm Bureau recommends that the second part of this proposed social and economic justification (SEJ) test should be deleted. The second part of the proposed regulation contains language that is more stringent than federal requirements. In addition, Farm Bureau knows of no criteria or guidelines for implementing the second part of the new SEJ test. Without guidelines, conflicting interpretation and implementation by DEP Regional offices is possible.

Section 93.4b(f) contains Special Provisions for Minimal Impact Discharges. If a proposed discharge meets one or more of the listed conditions, a SEJ analysis will not be required for the discharge proposal. Farm Bureau supports this provision to ease the burden for minor discharges into HQ streams.

Section 94e(d) requires NPDES permit applicants to solicit public comments on proposed discharges to HQ and EV streams before applying for the permit. An applicant is also required to supply DEP with a copy of comments received and a response to the comments prior to Department review of the proposal. Farm Bureau recommends that the requirement that permit applicants must ask for public comments be eliminated. This is a needless exercise since the Department will also ask for comments after the permit application is submitted.

Thank you for your consideration in this important matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Bill Adams", with a long horizontal flourish extending to the right.

William Adams
Director, Natural Resources

cc: Glenn Maurer, Director, Bureau of Water Quality Management, PA Dept. of Environmental Protection
Honorable Roger Madigan, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Robert Reber, Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Minority Chairman, House Environmental Resources and Energy Committee

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Environmental Quality Board

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Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown #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,

for Sharon K. Freeman
Regulatory Coordinator

Enclosure

1. Mr. Joe Hennessy
2. Mr. Gary M. Erbe
3. Mrs. Holoman
4. Mr. Frank Delturk
5. Mr. Edward S. Longtin
6. B. Sell
7. Ms. Joanne E. Diefenderfer
8. Mr. Karl Schmidt
9. Mr. Edward Simons
10. Pat Blythe
11. Ms. Elizabeth M. Moyer
12. Ms. Joyce Herbert
13. Mr. Michael Kremer
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15. Ms. Bernadette B. Van Husen
16. Ms. Cynthia Kreider
17. Resident
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24. Mr. Michael Abraham
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26. Ms. Rosemarie Lemuell
27. Mr. Michael Wendling
28. Mrs. Suzanne Bolger
29. Wilbur and Anita Ziegenfus
30. Mr. Charles Durepo
31. Mr. Joshua J. Guttman
32. Mr. Steven C. Deturck
33. Steven and Amanda Melones
34. Ms. Ruth Bilski
35. Mr. Jeff Campbell
36. Mr. Gary W. Baumbach
37. Jan E. Radakovitch
38. James J. Concilla, Vineyard Oil and Gas Co.
39. Stan Kotala, Blair County Trout Unlimited
40. Mr. Robb Platz
41. Mr. Benjamin L. Dugger
42. Susan C. Knasko, Ph.D.
43. Glen Foster, Indiana County Sportsmen's and Conservation League
44. Ms. Cathy Cobrando
45. Mr. Russell Heeter
46. Mr. Steven E. Rensma, Timberlands & Christmas Trees
47. Mr. James P. Hough
48. The Honorable Dan A. Surra, PA House of Representatives
49. Ronald A. Baker, Baker Gas, Inc.
50. Mr. Thomas C. Rogenshi Coastal Contracting
51. Mr. Craig R. Engesser
52. Mr. F. D. Hill, Jr. Hill Drilling
53. A. A. Lollar, CarLon Oil and Gas Company
54. Mr. Richard Tate
55. Mr. John J. Forebaugh
56. Mr. Reuben P. Ferringer, Brookville Borough
57. Mr. Joe F. Young, Messer Oil Corp.
58. Mr. James W. Reynolds, Potter-McKean Resources, Inc.
59. Mr. John McKown
60. Mr. Ronni Weiss
61. Mr. Peter S. Morgan, Jr.
62. Mr. Brian J. McCullough, PA Cooperative Fish and Wildlife Research Unit
63. Mr. Louis J. Lekus
64. Mr. Thomas A. Ross, Jr.
65. William T. and Suzanne E. Andrews
66. Mr. Andrew C. Thompson
67. Ms. Ethel J. Lawless
68. Ms. Judy M. Snyder
69. Mr. William J. Stryker
70. Mr. Paul E. Temple, EMA Mid-Atlantic, Inc.
71. Mr. Paul T. Berkobin
72. Mr. Sebastian B. Dombrowski, Mr. Robert Dombrowski and Ms. Christine M. Rapp
73. Ms. Dolores E. Pisco
74. Ms. Andrea Campitelli
75. Ms. Paula Imming
76. Mr. Curtis M. Wise
77. Dr. Owen D. Owens, American Baptist Churches USA
78. Carl A. DuPoldt, Jr., Chester Ridley Crum Watersheds Assn.
79. Mr. Jeremiah J. Jones
80. Mr. Robert J. Gorny
81. Ms. Juanita L. Moehring
82. Mrs. Patricia Beck
83. Mr. James V. DeLia
84. Mr. Reinaldo Colon
85. Lesley Gradone
86. Ms. Elissa M. Ward Tracy Dodd
87. Dr. Charles E. Carrier
88. I. Ted B. Cranmer, Phillips Production Company
89. Mr. Earl R. Altemose, Allegheny Mt. Chapter of Trout Unlimited

90. Mr. Samuel E. Fragale, PC
Exploration, Inc.
91. Mr. Paul Turtzer
92. Mr. Marvin H. Donsky, Donsky,
Soffian, Allen & Bor
93. Mr. Craig H. Sluetz, Texakoma Oil
& Gas Corporation
94. Mr. Allan W. Lilja
95. Ms. Marie B. Page
96. Ms. Shirley J. Orendi
97. Mr. Thomas A. Wilson
98. Ms. Chrysanthe M. Spais
99. Mr. John E. Engelberger
100. Mr. Robert B. Philipson
101. Ms. Cheryl Olsen
102. Mr. Jack F. C. Lee
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104. Mr. Royce McWharter
105. Mr. Charles Barr
106. Ms. Cecelia Cary
107. Mr. William H. M. Gould and
Ms. Marguerite de V. Gould
108. Mr. James Higgins
109. Mr. Arthur C. Kirkpatrick
110. Mr. Mark Aufiery
111. Clifford Troyer, Troyer Farms
112. Ms. Mary Alice Knox
113. Mr. John A. Antonelli
114. Mr. Fred W. Wise
115. Ms. Janet Rekitt, James Drilling
Corporation
116. Mr. John E. McArdle, General
American Industrial Corporation
117. Mr. David J. Feut, Meridian Oil and
Gas Enterprises, Inc.
118. James J. Shearer, Shearwood
Terrace Development Corporation
119. Mr. Michael S. Robertson
120. David A. Lind, Pennsylvania General
Energy Corp.
121. Mr. Alan C. Gregory, Friends of the
Nescopeck
122. Mr. Rock Robertson, R. B. Robertson
& Son Gas & Oil Company
123. Mr. Curtis E. Schneck, Curtis E.
Schneck, Inc.
124. Mr. Mark S. Henry
125. Mr. Harvey K. Graham
126. Philip A. Burtner, Monocacy Creek
Watershed Association, Inc.
127. Mr. Charles F. Hamilton, Lehigh
Valley Builders Association
128. Mr. Albert E. Crawford
129. Mr. Edgar P. Weamer
130. Jerry and Michael Burkholder
131. Wilbur and Dora Devore
132. Mr. Louis Geer, Mr. Gerry W. Geer
and Mr. Gilbert Geer, I. L. Geer &
Sons
133. Mr. Philip M. Wallace
134. Henry and Leona Beers
135. Mr. David Latoche, Ms. Beverly
Latoche, Mr. Ben Latoche and Ms.
Julie Latoche
136. Mr. Kenneth S. King
137. Mr. Rudolph Valasek, Arrowhead
Chapter Trout Unlimited
138. Mr. James W. Kearney, Jr.
139. W. H. Laudes
140. Mr. Terry Burket
141. Mr. John D. Allen, Allen Oil Corp.
142. Ms. Marisa L. Fox
143. Ms. Elizabeth M. Allis
144. Mr. Francis Johnston
145. Mr. Eric M. Fox
146. Mr. Dean B. Walters, Standard Steel
147. Mr. Brian MacElroy
148. Mr. Lawrence A. Swartzlander
149. Ms. Jennifer K. Hall
150. Ms. Dorothy Wilson Lee
151. Ms. Doris K. McDaniel
152. Leslie Brennan
153. Ms. Judith Faulkner
154. Mr. Robert D. Metzgar, North Penn
Pipe & Supply Inc.
155. Douglas H. Hay, Mill Rift Civic
Assn.
156. Mr. Craig Cheselske
157. Ms. Shannon Nelson
158. Ms. Wendy Evans
159. Ms. Lisa Durland and Ms. Helene
Durland
160. Mr. David Page
161. Ms. Dorothy Moniger
162. Ms. Audrey Manning
163. Grenda Anderson
164. Mr. John R. Johnson
165. The Schaefer Family
166. Ms. Mary L. Pretz-Lawson
167. Mr. William Gillier
168. Mr. Jeffrey Bergman
169. Mrs. Maria L. Heller
170. Mr. Bill Grover
171. Stephen and Sally Smith
172. Ms. Margie McCormick
173. Ms. Nancy J. Field
174. Ms. Kate Rapine
175. Mrs. Vera Simpson

176. Mr. Kenneth A. Kupiec
177. Gerald S. and Susan M. Votta
178. Mr. Darryl L. Hurd
179. Mr. Daniel T. Sculley
180. Mr. Gary Heller
181. Keith S. Hamberger, Markey Builders, Inc.
182. Mr. Stephen Golub
183. Ms. Marjorie E. Patton
184. Mr. Bob Kutz, Donegal Trout Unlimited
185. Mr. Mark DiSanto, Triple Crown Corporation
186. Ms. Lillian M. Li
187. Mr. Milton R. Beck
188. Ms. Susan Sauve Meyer
189. Mr. Nick Pulcinella
190. Mr. Wolfgang Nadler and Ms. Bette Seamonds Nadler
191. Carl W. Dickinson, Pemco Gas, Inc.
192. Mr. Gary H. Roulston
193. Ms. Linda M. Ingram
194. Alice Laskaris, M.D.
195. John R. Bachich, Woodridge Construction Company, Inc.
196. John, Kathy and Ann Pokrifka
197. Mr. A. Clyde Kreider, Harmony Home Builders, Inc.
198. Mr. Barry M. Sullivan
199. Ms. Lorraine K. Patton, Lebanon County Builders Assn.
200. Mr. William R. Southwell, William Southwell Oil Field Services
201. Norman E. White, Norman E. White & Associates
202. Mr. Frederick M. Muroski
203. Ms. Sue Rustad
204. Mr. John I. Kennedy, PA Council Trout Unlimited
205. Ms. Helene Durland
206. Torre J. Lippi, Sunrise Builders & Contractors, Inc.
207. Ms. Ellen Coldren
208. Mr. William Heu, IPSCO Drilling
209. Mr. David G. Clark, 4 C's Drilling Company
210. David G. Clark, Clark Oil Company
211. Mr. Robert G. Young, Marquette Savings Bank
212. Mr. David A. Leib
213. Mr. Charles A. Farrell, Beneyfield & Farrell
214. Mr. Theodore R. Moser, Moser Builders, Inc.
215. Mr. John Nordberg
216. Mr. Robert T. Wilson and Ms. Kara Flynn Wilson
217. Mrs. Karen Wacker
218. Ms. Marybeth Griminski
219. Ms. Karen DeLone
220. Mr. James A. Weaver
221. Ms. Cheryl J. Irwin
222. Mr. David L. Pieri
223. Ms. Susan Ridgeway
224. Mr. David Fiorito and Ms. Jennifer Spotila
225. Mr. John Wilmer, Attorney for the Raymond Proffitt Foundation
226. Mr. Vincent G. DeLuca, DeLuca Enterprises, Inc.
227. Mr. John M. Thompson, III, John M. Thompson, Inc.
228. Merle W. Stoltzfus, Stoltzfus Enterprises
229. Mr. Bruce L. Beavis
230. Stuart E. Price, Granor Price Homes
231. Mr. Todd Pohlig, Pohlig Builders
232. Mr. Stanley E. Beers and Ms. Debra J. Beers
233. Mr. Lloyd W. Cravener, Snyder Brothers, Inc.
234. Ms. Amy M. Kijowski, Snyder Brothers, Inc.
235. Mr. Mark A. Karenchack, Snyder Brothers, Inc.
236. Mr. Ronald D. Piechowicz, Snyder Brothers, Inc.
237. Ms. Carol A. Toy, Snyder Brothers, Inc.
238. Ms. Carol A. Schaub, Snyder Brothers, Inc.
239. Ms. Diana Nordby, Snyder Brothers, Inc.
240. Ms. Patricia Robinson, Snyder Brothers, Inc.
241. Daniel G. Boylstein, Snyder Brothers, Inc.
242. Ms. Donna Lasher, Snyder Brothers, Inc.
243. Ms. Yvonne M. Maus, Snyder Brothers, Inc.
244. Mr. Kurt A. Walker, Snyder Brothers, Inc.
245. Mr. Elmer A. Snyder, Snyder Brothers, Inc.
246. Ms. Teri D. Emminger, Snyder Brothers, Inc.

247. Mr. Robert W. Smith, Snyder Brothers, Inc.
248. Ms. Ann L. Cheers
249. Mr. Chuck Furimsky, Seven Springs Fly Fishers
250. Mr. Robert D. Stuckert
251. Judy L. Mitchell, Builders Association of Central PA
252. Mr. James C. Rumburg, Bar Development Co.
253. Ms. Gabriele Amersbach
254. Ms. Francesca Garufi, Baron Crest Energy Co.
255. Norman DeSouza, DeSouza Brown, Incorporated
256. Mr. Wallace L. Bederther, A. Duchini Inc.
257. Robert Basile, The Basile Corporation
258. Mr. Stephen P. Kunz, Schmid & Company, Inc.
259. Ms. Francesca Garufi, Garufi Oil and Gas
260. Frank Garufi, Huntley & Huntley, Inc.
261. Kenneth M. Keagy, Blair County Builders Association
262. Ms. Frances Dickerson
263. Ms. Bonnie B. Spoales
264. Ms. Beth Bucci
265. Ms. Linette Fennell
266. Tracy E. Hamel and Family
267. Mr. Patrick J. Lavin, Sr.
268. Ms. Tina Daly
269. Mr. Curtin Winsor
270. Ralph E. Kates, III, Stanley Cooper Sr. Chapter Trout Unlimited
271. William B. Stricker, Stanley Cooper Sr. Chapter Trout Unlimited
272. Mr. John P. Bergerim
273. Mr. Stan Cooper
274. Mr. Albert McCloskey
275. Mr. Thomas C. Donnelly
276. Resident
277. Mr. Michael Romanowski
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292. Mr. Alfred J. Speicher
293. Mr. Joseph M. Kalafut
294. Mr. Rodney J. Driscoll
295. Mr. Charles J. Harris
296. Mr. John Levitsky
297. Mr. Robert Morech
298. Mr. Woody Hayck
299. Mr. Jeff Piatt
300. Ms. Barbara M. Modic
301. Ms. Monica A. LoSchiavo
302. Mr. Kenneth Collins
303. Mr. and Mrs. Carl Boettcher
304. Ms. Mary Bouwkamp
305. Mr. James V. Mitchell
306. Mr. Robert Reifsnyder
307. Ms. Frances Mather
308. Ms. Patricia A. White
309. Mr. Trent D. Bentzel
310. Mr. John Grosz, Grosz & Son Construction
311. Thomas C. Hogan, Hogan Homes
312. Mr. Bud Avery, Avery Builders Inc.
313. Raymond Iacobucci, The Iacobucci Organization
314. Mr. Richard Valazak
315. Mr. Francis B. Kerchenski
316. Glenn E. Garis, Garis Homes
317. John A. Westrum, Westrum Development Company
318. Mr. John M. Dewey, Dewey Homes
319. Paul J. Finley, Nolen Companies
320. David E. Snyder, Snyder Brothers, Inc.
321. Mr. Michael A. Odasso, Snyder Brothers, Inc.
322. Ms. Jocelyn Lewis-Miller, Snyder Brothers, Inc.
323. Mr. David M. McCue, Snyder Brothers, Inc.
324. Mr. Charles H. Snyder, Sr., Snyder Brothers, Inc.
325. Mr. Bill McCune
326. Mr. and Mrs. James Krouse
327. Mr. John A. VanLuvanee, Eastburn and Gray, P.C.
328. Mr. James H. Cottrell
329. Robin Pagotto, Richland Construction

330. Mr. Richard L. Baumgardner and Ms. Marcia H. Baumgardner, G. Keith Constructors
331. Frank C. Thompson, Sweetwater Builders, Inc.
332. Irvin J. Fortney, Fortney's Construction
333. Mr. H. Duane Kinzer
334. Jim Grieshober, J. E. Grieshober Plumbing - Hydronics
335. David E. Knipe, Rock Hill Builders, Inc.
336. Charles G. Ofiesh, Ofiesh Construction and Development
337. John W. Schaefer, John W. Schaefer Builders, Inc.
338. James R. Hertner, Pro Realty, Inc.
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340. Earl K. Hess, Hess Home Builders
341. Shawn Leader
342. Mr. Douglas B. Homa
343. Ms. Carmella Barrett
344. Mr. John Fortunato
345. Michael J. Schultz, Sr., Schultz Construction
346. Michael Murray, M. R. Murray General Contractor
347. Ms. Doris L. Thrailkill, G. Keith Constructors
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349. John D. Maleno, Maleno Builders, Inc.
350. Mary C. Pucciarella, Reliance Savings
351. N. Eugene Minnick, Minnick's Electric and Vacuflo
352. Ms. Lisa M. Occhiolini
353. Mr. E. Donald Worthington
354. Mr. J. Charles George
355. John Klunk, Cordorus Monitoring Network
356. Mr. Mark Matika
357. Mr. Carl E. Dusinberre
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360. Ms. Margaret M. Andrews
361. Mr. Fred Bohls, Bohls Financial Services
362. Harris Covon, The Committee for the Preservation of Franklin Cove
363. Ms. Daphne D. Minner
364. Douglas Sanders, The Brentwood Organization, Inc.
365. Ms. Renee Oslager
366. Fred and Helen Walters
367. Mr. Paul Ashman
368. Ms. Sherry Pearlman
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370. Mr. Brad Deutsch
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382. Ms. Jennifer Perea
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384. Ms. Elizabeth Wendell
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396. Ms. Alexandra Tooder
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400. Ms. Nicole Linson
401. Tameka Curry
402. Ms. Alisa Gibbs
403. Ms. Shelisa Waller
404. Ms. Tameka Butcher
405. Mr. Jeff Layton
406. Mr. Daniel Hiller and Ms. Gina Hiller
407. Mr. Steven O'Banion
408. Mr. Ryan Carrelli
409. Mr. Stephen Iefenfouse
410. Mr. Ross Brindle
411. Ms. D. Cureton
412. Ms. Karen Trindle
413. Mr. Tommy Chen
414. Wei Tang
415. Chitto Lee
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417. Mr. David Ellis
 418. Ms. Amanda Eller
 419. Mr. Michael Frame
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 421. Mr. Rick Werkheiser
 422. Ms. Clarissa Mason
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 425. Minh Nguyen
 426. Mr. Russell Kreutzer
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 429. Mr. Austin Komareh
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 478. Ms. Marie McCaffrey
 479. Ms. Barbara Boyle
 480. H. J. Santini
 481. J. P. D'Enna, Jr.
 482. Katerin Zapiropoulos
 483. Ms. Jacqueline Anastasih
 484. Amanda, Shanna and Chris Scone
 485. Ms. Mary Theresa Sculley and
 Ms. Kathleen Hickey
 486. Mr. Philip Kloss
 487. Brinton G. Liddell
 488. Mr. Eugene Farmer
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 522. Mr. Eugene Holland

- 523. Ms. Lila L. Satenstein
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- 534. Mr. John Holley
- 535. Ms. Wendy Hager
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- 537. Mr. Barry D. Stoneback, Sr.
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- 544. David Morris
- 545. C. Moser
- 546. Tony Nixon
- 547. Jason Taylor
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- 549. Lauren Davis
- 550. Tiffany Young
- 551. Demetria Rivers
- 552. Shannon Summers Patorius
- 553. DeVaughn Smith
- 554. Lamarr Sanders
- 555. Ciera Conway
- 556. Brenda Gomez
- 557. Abiodun Odunlami
- 558. Melissa Garrison
- 559. Carla Skinner
- 560. Jessica Correr
- 561. Marcia Bertoni
- 562. Devin Taylor
- 563. Leonard Valentine

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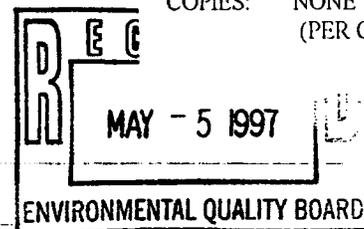
attn: Environmental Quality Board (EQB)
DEP, PO Box 8465
Harrisburg, PA 17105



Please reject the DEP's current anti-degradation proposal. Also adopt the superior, better standard of the EPA.

Sincerely,
Christina Calorie
322 Hazel St Apt A
Ellenboro PA 16063

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To Whom it may concern,

Please reject the DEP's current anti-degradation proposal. Our environments need all the help they can get! I would like to know your feelings on this matter.

Bonnie Provost
30 Vassar Drive
Queakertown, PA 18951

**THE
BERKS
COUNTY
CONSERVANCY**



960 Old Mill Road • Wyomissing, PA 19610 • (610) 372-4992 • FAX 372-2917

May 20, 1997

Jamea Seif, Secretary
Department of Environmental Protection
Rachel Carson State Office Building
4th and Market Streets
Harrisburg PA 17105

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SANDUSKY
WYATTIE
BERESCHAK



Dear Secretary Seif:

The Berks County Conservancy, a participant in the Special Protection Waters regulatory negotiation process during 1995 and 1996, wishes to express its opposition to the proposed DEP antidegradation water quality standards meant to replace the interim Environmental Protection Agency (EPA) regulations under which the Commonwealth currently operates. It is the proper approach to develop standards at a state rather than Federal level if the appropriate level of protection remains (or is improved) as a result of that effort. Unfortunately, the Commonwealth's proposal falls short in the following areas:

- The existing level of protection can be lowered under DEP proposed standards without adequate review.
- The addition of more onerous and difficult requirements in chemical and biological areas will make it more difficult for deserving streams to reach high quality (HQ) or exceptional value (EV) classification.
- The ability of DEP to change classifications of streams without an EPA consultation reduces the level of protection offered such streams.
- The majority of streams in the Commonwealth have not been adequately studied or addressed. Failure to provide these streams with proper designation eliminates the incentive to ever have those streams studied and a scientific research-supported classification determined.
- The standards do not have adequate measures for citizen involvement.

DEP understandably wants to develop standards it feels more directly reflect conditions present in the Commonwealth. However, a guiding principle behind such standards must be, as a minimum, retaining the current level of protection offered by EPA regulations. To do otherwise, particularly with a standing legal decision to the contrary, only exposes DEP to more risk.

The Berks County Conservancy remains willing to help in the process of formulating state-specific standards of which we can all be proud. This could include reconstituting the "reg neg" panel; developing smaller, more focused environment-industry "brainstorming sessions", or direct interaction with DEP personnel involved in writing standards. Please let us know at (610) 372-4992 or fax (610) 372-2917 or via e-mail at berkscon@ptd.net if we can be of further assistance. We can also be reached at 960 Old Mill Road in Wyomissing PA 19610.

Sincerely,


Joseph Griffin, President
Board of Directors
Berks County Conservancy

The Berks County Conservancy is a registered 501(c)(3), nonprofit, charitable organization. A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1-800-722-4899. Registration does not imply endorsement.

HELPING TO PROTECT OUR OPEN SPACES, FORESTS, WATERWAYS, FARMLAND, AND HISTORIC SITES

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ENVIRONMENTAL QUALITY BOARD

STATE OF ENVIRONMENTAL QUALITY BOARD
MR. JAMES SELF, CHAIRMAN
PO BOX 8477
HARRISBURG, PA 17105-8477

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DEAR MR SELF

I AM WRITING REGARDING THE PROPOSED REGULATIONS ON ANTI DEGRADATION AS PUBLISHED IN THE MARCH 22, 1997 PA BULLETIN. THERE IS INSUFFICIENT ANTI DEGRADATION PROTECTION FOR PA 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 DEP DID NOT TAKE THIS OPPORTUNITY TO WRITE REGULATIONS SO THAT OUR WETLANDS COULD BEGIN TO RECEIVE MUCH NEEDED ANTI DEGRADATION PROTECTION.

THIS REGULATION FALLS FAR SHORT IN PROTECTING ONE OF OUR MOST VALUABLE RESOURCES - WETLANDS. IT SHOULD BE REJECTED BY THE BOARD.

SINCERELY,
[Signature]

 Albert Siggia
R.R. 1 Box 521
Dingmans Fry, PA 18328-9744

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

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 protection for endangered species in this proposal.

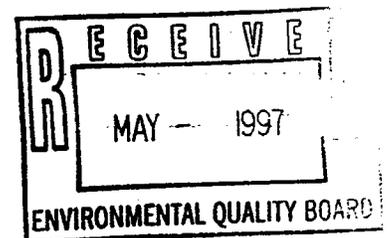
The language in the "existing uses" section is insufficient. Endangered species need protection from more than just "discharges." The antidegradation policy applies to more than point source discharges; it applies to all activities that could affect water quality.

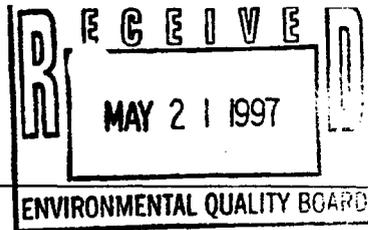
I also disagree with the removal of the presence of endangered species as an attribute worthy of an Exceptional Value designation. Surely the presence of our rarest aquatic species constitutes ecological significance and deserves the highest protection possible.

This proposal falls short of the current regulation in place and the old state regulations. It should be rejected by the EQB.

Yours truly,

Barbara M. Kalbfleisch
William B. Kalbfleisch





CHESAPEAKE BAY FOUNDATION

Resource Protection
Environmental Education

**Comments of the Pennsylvania Office of the Chesapeake Bay Foundation
On the Proposed Rulemaking
Water Quality Amendments - Antidegradation
25 PA. Code Chs. 92, 93, and 95
May 21, 1997**

The Pennsylvania Office of the Chesapeake Bay Foundation (CBF) respectfully submits the following comments to the Environmental Quality Board on the proposed rulemaking on the water quality regulations pertaining to antidegradation. CBF is the largest regional citizens group whose mission is to maintain and restore the Chesapeake Bay and its watershed. The greatest link between the Chesapeake Bay and Pennsylvania can be found in the Susquehanna River - the river that drains half of the Commonwealth of Pennsylvania and provides half of the fresh water that enters the Chesapeake Bay. The only way for the Bay to be healthy is for the rivers and streams in its watershed to be healthy. This is one reason the antidegradation regulations are important to the Bay. These regulations are meant to keep our clean waters clean.

CBF was an active member of the regulatory negotiation (Reg Neg) group convened by Department of Environmental Protection (DEP) to discuss the issues revolving around the antidegradation requirements. The proposed regulations in some ways address the areas which do not currently meet federal minimum standards. However, there are particular areas in which the standards are not protective of one of the most important natural resources in our Commonwealth - our rivers and streams.

§92.81 and §92.83 - General NPDES permits

The use of general permits in special protection waters was discussed in some detail during the Reg Neg. CBF believes that some general permits may have minimal impacts on streams, so that the use of general permits should not be totally forbidden in high quality waters. However, a determination needs to be made that the use of the specific general permit will not individually or cumulatively degrade the water where the discharge is located. This review should be stricter than for the use of general permits in Tier 1 waters. The determination should be to nondegradation levels, not to nonpolluting levels. DEP should consider adding conditions on the use of the general permits, such as a requirement for a specific dilution ratio, before allowing its use in a high quality water. In addition, DEP needs to periodically review the usage of general

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Virginia Office: 1001 E. Main Street, Suite 710, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011

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permits in high quality watersheds and make a determination whether the cumulative impact of the use of the general permits is degrading the stream. Under these conditions we would not object to the use of general permits in high quality watersheds. We agree with the prohibition of their use in Exceptional Value watersheds.

§93.1 - Definitions

We agree with the proposal to keep the current definition for Exceptional Value Waters, and also agree with adopting the federal definition of Tier 2 waters as the definition for High Quality Waters. By using the definition of Tier 2 waters, DEP will satisfy one point of the EPA partial disapproval of Pennsylvania's water quality standards.

§93.4 - Protected Water Uses

It is true that EPA does not require antidegradation classifications to be designated uses. But until this proposal, the state has given use designation to special protection waters, and in doing so brought this process under the purview of the Environmental Quality Board (EQB), with changes reviewed by EPA. As a result, the designation process was lengthy and periodically became a political battle rather than a decision based on the water quality of the stream. The DEP proposal keeps the designation process through the EQB, but by removing the designation as a designated use, DEP removes the EPA review. Therefore the decision on the designation in the special protection program still can be based on a political decision rather than water quality. We support the recommendation of the Reg Neg group to take the designation of high quality waters out of review of the EQB, and make it a management classification with proper public notice and participation but not needing a rulemaking action by the EQB. However, if DEP insists on keeping the designation process, we recommend the designation remain a use designation with review by EPA.

§93.4a - Existing uses

The proposed language appears to put a qualifier on protection of existing uses - in order for an existing use to be protected, DEP has to do a study on the stream. EPA requires existing uses to be protected, regardless of when or if DEP does a study. The federal language on existing uses should be substituted for the proposed language:

"Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." A separate sentence can then be added to explain how the DEP will determine existing uses.

In addition, we do not believe the language regarding threatened and endangered species will be protective. Although in the proposed regulation it states that "...discharges to these waters shall be limited to ensure protection of these species and critical habitat," the summary states that the measures used to limit the discharges will be examination of mixing zones. This alone may not be protective of the endangered species. Unless it can show by toxicity testing that the discharge of a particular pollutant will not harm a particular endangered specie, then DEP should not allow the discharge of that pollutant. In addition, there is no mention of how DEP will control nonpoint source pollutants in relation to endangered species. Both point and nonpoint sources of pollution need to be controlled in order to adequately protect endangered species.

§93.4b - High Quality Waters

(a) Part of the EPA disapproval of the antidegradation portion of the water quality standards centered around the definition of high quality waters. The old definition was more stringent than the federal requirements. Although in this regulatory proposal the definition has changed, this section serves to further restrict what is considered a high quality water. This regulation requires both a biological and chemical test to be passed in order to qualify. The Reg Neg group discussed this issue at great length. The biological test is supposed to be an indicator of long-term water quality, since the aquatic flora and fauna for the most part are subjected to the water quality over their lifetime. If a healthy flora and fauna are present, it is indicative of good water quality. In other words, if there are no long term water quality data available, then biology can be used as an indicator. However, the biology and chemistry tests should be separate, not joined. If one or the other requirement is fulfilled, then the water should qualify as high quality. If you join the tests, then it becomes more stringent than federal requirements, and should not be approved by EPA.

§93.4b(a)(1)(i)

Because this sentence covers two different topics, it is confusing. It first states that the water quality must be better than the criteria found in Chap. 93 and 16, but then lists a limited number of chemicals that need to be sampled. It would be clearer to separate this paragraph into two sentences.

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

CBF agrees with adopting the federal language in regards to the SEJ, although the first period needs to be removed in order to make a complete sentence. CBF also supports the language "...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." The SEJ must override water quality degradation. There should not be just a balancing of the two.

One suggestion voiced in the Reg Neg SEJ workgroup was the need for all the SEJ determinations to be consistent. The workgroup suggested that all the SEJ determinations be done through the central office, and that personnel with the appropriate backgrounds, such as an economist, be brought in to help with the determinations. CBF hopes DEP will adopt these suggestions to help bring statewide consistency to the determinations.

93.4b(d) - (e)

Throughout sections (d) and (e), it is difficult to determine what requirements apply in specific situations. If the discharge relieves a public health problem, do they need to do an alternatives analysis? It is difficult to determine which requirements apply.

Also, in section (e), it should be made clear that if an SEJ is to be determined during the sewage planning stage, the appropriate personnel within DEP need to analyze the SEJ. The personnel who look at the sewage facility plans for consistency with planning requirements may not be familiar with the requirements for an SEJ within the antidegradation and permitting programs.

§93.4b(f) Special provisions for minimal impact discharges

The concept of a threshold below which an SEJ is not needed came as a very contentious compromise made at the Reg Neg meetings. The understanding was that all current SEJs were approved, no matter what minimal benefit was derived. The streams awarded an SEJ then could be degraded down to the water quality standards, which is more degradation than would be allowed with a minimal impact threshold. In this light, the idea of using the threshold was that if truly minimal impacts were exempt from the SEJ process, then the SEJ process could be tightened and overall there would be an environmental benefit. Because there was no consensus reached for revising the SEJ process, the entire idea of a threshold for SEJ was never finally agreed upon by the Reg Neg group.

CBF believes that if DEP does revise the SEJ process so that only true overriding needs are given one, then perhaps a threshold below which an SEJ is not needed may be allowed. However, as proposed, the threshold of 25% of the assimilative capacity is too high, particularly for toxic chemicals. For persistent, bioaccumulative chemicals, no additional discharge should be allowed. For naturally occurring metals, only 10% additional should be allowed without an SEJ. For conventional pollutants, 20% would be an appropriate threshold without an SEJ. Once again, this threshold should only be allowed if the SEJ process is tightened. In addition, it should be made clear that even those discharges that would be exempt from an SEJ are required to do a discharge alternatives analysis/ pollution prevention evaluation.

§93.4c - Exceptional Value Waters

As stated regarding high quality waters, CBF believes the chemistry and biology tests should be separate, not joined. The water should be able to qualify for exceptional value with either the chemistry or biology test, it should not need both. We also believe that there should be a prohibition of discharges into Exceptional Value Waters, and supports EPA's request on the this issue. These streams are the best of the best, and even with the current DEP policy, pollutants can be added to these exceptional streams.

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

(a) Discharge alternatives: If the requirement for an alternatives analysis does apply to all new and expanded discharges, then it should say so in section 93.4b, where the confusion exists in (d), (e), and (f). In all situations for a proposed discharge to high quality waters, pollution prevention plans and alternatives analysis should be required. DEP could tier the complexity of these requirements to the size of the plant, e.g. a small package plant discharging to a large stream would need to examine a reduced universe of alternatives compared to a large plant discharging to a small stream. Particularly with DEP's pollution prevention initiative, the requirement for pollution prevention plans and alternatives analysis should be an important requirement in those areas where water quality degradation should be kept at a minimum.

(b) Nonpoint sources: The proposed language on nonpoint sources is weak and ambiguous. It is not clear that DEP will require anything to address nonpoint source pollution in high quality and exceptional value waters. This language needs to be strengthened so that high quality and exceptional value waters will not be degraded by nonpoint source pollution.

(c) designation process: During the Reg Neg, there was concern about the large number of streams that are unassessed. When a new permit application is filed, would the stream be assessed before issuing the permit, or would the permit be issued and the stream not get the full protection it may deserve? The proposed regulations do not address this concern. Also, it is not clear in the proposed regulations if someone must petition the EQB for a change to occur in the antidegradation classification. The petition process should not be the only route for a change in the antidegradation classification, because then streams only get appropriate protection if there is a group in the state with the resources needed to do a study and submit a petition. Protection of instream water quality should not be dependent on the ability of local watershed groups to have a study done on a stream. It is DEP's responsibility to provide appropriate protection of water quality at all times. Antidegradation protection should not be dependent on a group to submit a petition.

§93.4e Public Participation

In the Reg Neg SEJ workgroup meetings, public participation was discussed at length. The final report of the workgroup included recommendations on public participation (see Attachment 1). DEP should incorporate these recommendation into their proposal.

Other Issues

Federal Regulations

Even though the EPA has promulgated antidegradation regulations for Pennsylvania, we commend DEP for proceeding with state water quality regulations on antidegradation. Although the federal regulations do address the PA water quality standards partial disapproval, they do not go far enough in addressing a number of implementation issues that are addressed in the state proposal. The federal regulations alone are not sufficient.

Coverage of the antidegradation program to wetlands

In §93.2, waters of the Commonwealth are defined to include wetlands. Therefore the antidegradation requirements also apply to wetlands. However, DEP has not proposed policy on how to include wetlands in this program. We hope DEP will soon develop this guidance, and we would be happy to work with them on this task.

This concludes our comments on the proposed changes to the antidegradation regulations. Please contact Jolene Chinchilli or Barbara Kooser if you have any questions regarding these remarks.

Attachment 1 - Final report of the SEJ Workgroup



CHESAPEAKE BAY FOUNDATION

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Comments of the Pennsylvania Office of the Chesapeake Bay Foundation On the Proposed Rulemaking on Water Quality Amendments - Antidegradation, submitted May 21, 1997

Summary: Please refer to the full comments for more complete information.

- **General Permit:** May allow use in high quality waters if additional review is made to ensure that waters will not be degraded. The review should include periodic review of the use of gps in the watershed to ensure the cumulative use of the gps is not degrading the water.
- **Definitions:** We agree with the proposed definitions of exceptional value and high quality waters.
- **Protected Water Uses:** DEP should leave antidegradation classification as a designated use with full EPA oversight or completely remove the classification from review by the EQB.
- **Existing uses:** The federal language should be adopted verbatim - delete the part of the sentence regarding when DEP does a review.
- **High Quality Waters:** The chemical and biological tests should be separated.
- **SEJ:** We support the proposed language, and the reviews should be consistent statewide.
- **Pollution Prevention:** The pollution prevention requirements should apply to all new and additional discharges.
- **Minimal impact:** The threshold should not be allowed unless first the SEJ is tightened. If it is tightened, then possibly allow minimal impacts, but lower the percentage of the assimilative capacity to 20% for conventional pollutants, 10% for metals, and 0% for persistent bioaccumulative chemicals.
- **Exceptional Value Waters:** We agree with proposed definition, the chemical and biological tests should be separated, and we agree with EPA on no new or expanded discharges.
- **Nonpoint source controls:** The proposed language is weak and ambiguous.
- **Designation process:** DEP must ensure that when an assessment is done, appropriate classification changes are then made. Reclassification should not be dependent on a local group submitting a petition.
- **Public participation:** The recommendations of SEJ workgroup from the Reg Neg process should be followed.
- **Wetlands:** The antidegradation program should be expanded to cover wetlands.

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Maryland Office: 111 Annapolis Street, Annapolis, Maryland 21401, 410.268.8833, fax 410.280.3513
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To: Special Protection Waters
Full Regulatory Negotiation Group

From: Jolene Chinchilli

Date: July 31, 1996

REPORT OF SEJ WORKGROUP

After reviewing available information on the current Special Protection Waters SEJ process and similar processes for other programs, and identifying the issues and concerns of the stakeholders about the current SEJ process, the SEJ workgroup determined that we would focus our discussions on public participation and decision criteria. The group agreed that many of the problems associated with the current SEJ process were related to the timing and adequacy of public participation and the perceived bias and interpretation of the decision criteria.

The workgroup addressed the following issues: Improved and expanded public participation, revision of decision criteria, sequence of alternatives analysis and SEJ determination and the language of the HQW definition related to SEJ.

RECOMMENDATIONS FOR PUBLIC PARTICIPATION

1. Act 537 (sewage facility) planning:

- * During development of a 537 plan. Where a discharge to a High Quality Water is to be evaluated during the development of alternatives for wastewater management, a municipality shall provide public notice highlighting the HQ issue and soliciting public comment and participation in the planning process.
- * When a municipality adopts a proposed plan. Public participation is currently required at this time under Section 71.31(b) & (c). The workgroup recommends that language be added to this section requiring that the municipality again highlight the HQ issue during the public participation process, demonstrate that it provided for informed public participation during the planning process and provide that comments on the proposed plan be submitted to DEP as well as the municipality.
- * Prior to DEP approval of the plan. DEP has 120 days to act on a plan submitted by a municipality. There is currently no formal public participation at this point in the process. The workgroup recommends that public comment be solicited and considered by the DEP during this time.

* After DEP approval of the plan. Currently, DEP approval of 537 plans may be appealed to the Environmental Hearing Board. The workgroup recommends retaining this provision.

2. All permits:

* At permit application. The workgroup recommends that public participation be included at this stage and should include the following elements (similar to the mining program):

- a) 4 newspaper notices (1/week for 4 weeks) provided by the applicant highlighting the fact that the permit proposes a discharge to a HQ water. The notice solicits comments and provides opportunity to request a public hearing.
- b) application to be made available and updated by the applicant at an accessible public place in the area of the project.
- c) DEP publishes notice of application in PA Bulletin.
- d) DEP notifies by letter the appropriate parties including the following: municipality, water suppliers, planning agencies, PFBC, FWS, Historical and Museum Commission.

* At draft permit stage.

- a) DEP's PA Bulletin notice should highlight that the discharge is to a HQ water and explicitly solicit input on antidegradation issues (alternatives, SEJ).
- b) Add requirement for applicant to provide 2 newspaper notices (on consecutive weeks) stating that draft permit (including fact sheet and other information pertinent to antidegradation issues) is available at a locally accessible site.
- c) DEP sends copy of notice to all who commented on permit application.

The workgroup recommends that these public participation requirements be in regulation.

RECOMMENDATIONS FOR SEJ REVIEW CRITERIA

The workgroup agreed that the "Social or Economic Benefits Analysis Checklist for Proposed Discharges to HQ Waters" found at A-7-2 of the current DEP Special Protection Waters Handbook is a good framework. It was also agreed that rather than providing a simple yes/no/NA response as in the current checklist, the applicant should provide more detailed narrative responses as well as documentation where appropriate. The group also agreed that the nature of the SEJ analysis will always be somewhat subjective, but there should be an explanation and record of the Department's analysis and decision for public review.

The revised checklist is attached to this report.

The workgroup recommends that a reference to the review criteria be in regulation, Chapter X.X, but that details be in policy.

DEP CONDITIONAL CONCURRENCE WITH SEJ AND ALTERNATIVES ANALYSIS DURING ACT 537 PLANNING

The SEJ group discussed whether DEP can grant a conditional SEJ approval when it approves an Act 537 plan proposing a discharge or discharges to a high quality stream. It was noted that this would require the permitting staff of DEP to be involved in the DEP Act 537 plan review and approval process. The group recommends the following:

1. Municipalities should consider SEJ in the Act 537 planning process.
2. DEP should grant a conditional approval of the Act 537 plan and SEJ determination.
3. Upon the review of a permit for a discharge, DEP will review the SEJ determination for consistency of the project with laws, regulation, and SEJ considerations (alternatives, advances in technology) in effect at the time of the permit decision.

Thus, the conditional SEJ approval will be affirmed, unless there are material changes in the character or cost of the project, or in technology, laws, or regulations.

ALTERNATIVES ANALYSIS AND SEJ

There is no consensus on the issue of which process should occur first, the alternatives analysis or the SEJ. The regulated community feels strongly that the SEJ should be conducted first since the alternatives analysis can be costly. The conservation community believes that protection of the resource demands that alternatives (including pollution prevention) to discharge that would degrade high quality waters should be evaluated before considering whether there is social or economic justification for degrading high quality waters. There was also a concern that if the alternatives analysis is waived for the 25% off ramp, we could be losing the best opportunities in terms of cost-effectiveness, land availability, location for alternatives such as land application. For example, land application for a small volume discharge located near a golf course might be a low cost, innovative, environmentally sound alternative to stream degradation. At the last SEJ meeting the group devised the following proposal. **It should be noted that not all the regulated community members of the SEJ group attended the last meeting. Therefore, this proposal does not reflect a consensus of the entire SEJ group.**

Proposal:

The issue of whether SEJ or alternative analysis come first could be resolved by proposing to allow inclusion of a stream discharge alternative based on BAT as a comparison with nondischarge alternatives in the alternatives analysis. This allows comparison of an SEJ alternative in the alternatives analysis for cost comparison. The high quality status of the stream is recognized by using BAT instead of assuming a permit would just be at Tier II. This is the pre-handbook way of alternative analysis with some better guidelines for cost evaluation. The present way interpreted by DEP requires an alternative evaluation based on a nondegradation stream discharge.

The alternatives analysis would use an economic evaluation to show that a stream discharge alternative has a life cycle cost effectiveness of greater than 10% of the cost of the next least costly nondischarge alternative (to account for estimating contingency at the planning stage) in order for it to be considered.

A life cycle cost would be based on a 20 year present worth or annual cost basis for capital cost, and annual operation, maintenance, administration costs and future salvage value.

The interest rate for the cost analysis would be established by DEP based on current EPA Water Resources Council rates.

Costs would be based on current values. No inflationary values would be applied (avoids speculation in the cost evaluation). Capital costs would include construction and nonconstruction related costs (project costs) of all facilities required for collection, conveyance and treatment. Salvage values could be based on a straight line depreciation.

This proposal was patterned after EPA cost evaluation methods, which would also be a normal part of a business review to determine the best economic choices for a discharge. It was argued that this economic evaluation is preferable and more workable than attempting to try to include economic profitability and affordability of the activity into the evaluation.

This proposal was acceptable to those present *if it could also be a required review as part of the 25% off ramp*. For municipal discharges this may not be much of a problem because of the wide variety of constituents in a "domestic" wastewater discharge. This may not be the case for proposed mining or industrial discharges that may deal with a smaller number of specific components. However, since these discharges are specific, it might be possible for these industries to develop DEP acceptance of BAT and standardized nondischarge alternatives that can be applied in the alternatives evaluations. Site variables and conditions can then be included into a standardized design for comparison in the cost. This would simplify the alternatives analysis and provide a greater degree of accuracy in the cost estimation.

To aid the development of this, the group recommended that the alternatives evaluation review and SEJ determination be returned to the central DEP office so that the necessary expertise within DEP can be established. This would aid in developing DEP familiarity of alternatives and standardization of methodology.

WORDING OF THE HQ DEFINITION AS IT RELATES TO SEJ

The SEJ group discussed the wording of the HQ language as it relates to SEJ. We discussed both the issue of the *important/necessary* wording as well as the deletion of the phrase *of significant public value*. The discussion was informative and lively, however, no consensus was reached on this issue.

5

**Social or Economic Benefits Analysis Checklist
For
Proposed Discharges To High Quality Waters**

I. Description of the Activity

- a. Describe the nature and extent of the proposed activity that will result in this proposed discharge.
- b. Describe the volume and characteristics of the point source wastewaters (sewage or industrial wastes) that the activity described above will generate.
- c. Describe the expected impacts on surface or ground water quantity.
- d. Describe the expected magnitude of nonpoint source discharge(s), (stormwater runoff) including hydrologic modification that will result from the activity described above.
- e. Describe why there is a need for the activity to occur in the drainage area of a high quality stream versus some other location.

II. Economic Factors

Employment

Yes No N/A

- a. Will the activity create or maintain full and/or part-time employment opportunities?

If yes, describe: 1) the nature and number of full and/or part-time jobs created or maintained, 2) the expected longevity of the jobs, 3) what percentage are from the local area, 4) what percentage are minorities, veterans, mentally or physically disabled or females, 5) community and regional employment levels noting employment and unemployment trends and 6) any major changes in the types of employment available in the region.

- b. **Employment: What is the net effect of the activity on area employment? Will jobs be lost as well as gained as a result of the activity?**

Fiscal/Tax Impact

- c.b. Will the activity result in increased state, county, or local tax revenues (applies to new rather than relocated commercial or industrial development and new residential development)?
- | | | |
|-------|-------|-------|
| Yes | No | N/A |
| _____ | _____ | _____ |

If yes, describe: 1) the estimated amount per annum in state taxes: 2) the estimated amount per annum in county taxes and 3) the estimated amount per annum in local taxes.

- d. **The Applicant should provide information so that the public can add to it. DEP should use/consider information submitted by all parties.**

- e.e. Will the activity result in increased property or real estate taxes over those being derived from the present land use?
- | | | |
|-------|-------|-------|
| Yes | No | N/A |
| _____ | _____ | _____ |

If yes, describe: 1) present land use and/or amount of property or real estate taxes collected per annum, 2) proposed land use and estimated amount of property or real estate taxes collected per annum.

- f. Will the activity help or hinder the traditional economic base?
- | | | |
|-------|-------|-------|
| Yes | No | N/A |
| _____ | _____ | _____ |

- g. **What is the quality of the jobs gained (high pay v. low pay; long term v. short term)?**

- h.d. Will the activity result in increased public costs or user charges to maintain, improve or create state, county or municipal services and/or facilities?
- | | | |
|-------|-------|-------|
| Yes | No | N/A |
| _____ | _____ | _____ |

If yes, describe incremental public cost increases for: 1) roads and other community transportation systems, 2) storm drainage and public utilities, 3) hospitals and emergency services, 4) public schools, 5) police and fire protection, 6) solid waste disposal and 7) any other municipal service or facility needed to support the activity.

i.e. Will the activity result in a net economic benefit to state, county or local government? Yes No N/A
— — —

If yes, document the net benefit using the information provided in the answers to a through d above and any other relevant data.

III. Social Factors

a. Will the activity fulfill an immediate public need for specific types of residential, business or other commercial services? Yes No N/A
— — —

If yes, describe: 1) what specific housing type is proposed and why from a public standpoint, it is desirable and necessary, and 2) what specific business or other commercial services are proposed and why these are of significant public benefit.

b. Will the activity meet a need for community facilities, e.g. a hospital? Yes No N/A
— — —

c.e. Will the activity resolve or aid in the resolution of a public health, safety or nuisance condition? Yes No N/A
— — —

Note: The requirement for an alternative analysis still exists and public health benefits must be substantiated.

If yes, describe: 1) the existing condition and 2) indicate how this activity will resolve or help to resolve this condition.

d.e. Will the activity be consistent with county and/or local governmental land use or zoning plans now and in the foreseeable future? In the case of sewage facilities, does the proposed activity and selected sewage disposal method satisfy the consistency requirements of 25 Pa. Code Section 71.21?

Yes No N/A

If yes, describe: 1) the current county and local land use plans, 2) the current local zoning plans and/or ordinances, 3) any available future county and/or local land use plans within a 10 year and 20 year planning horizon, and 5) how this activity will be consistent with 1), 2) and 3) above.

~~e.d. Will the activity be compatible with maintaining community cohesion and character the surrounding area in terms of style of architecture, land use density, and scale, mass, texture and architectural design?~~

~~Yes No N/A~~

~~_____~~

Is it in an area of transition in terms of density or types of land use?

Yes No N/A

~~f.e. Will the existing national, state, county or local recreational, or other open space facilities in the surrounding area be adequate to meet the needs the proposed activity might create?~~

~~Yes No N/A~~

~~_____~~

~~If yes, describe why. If no, describe how this activity is likely to impact on these public amenities and to what degree.~~

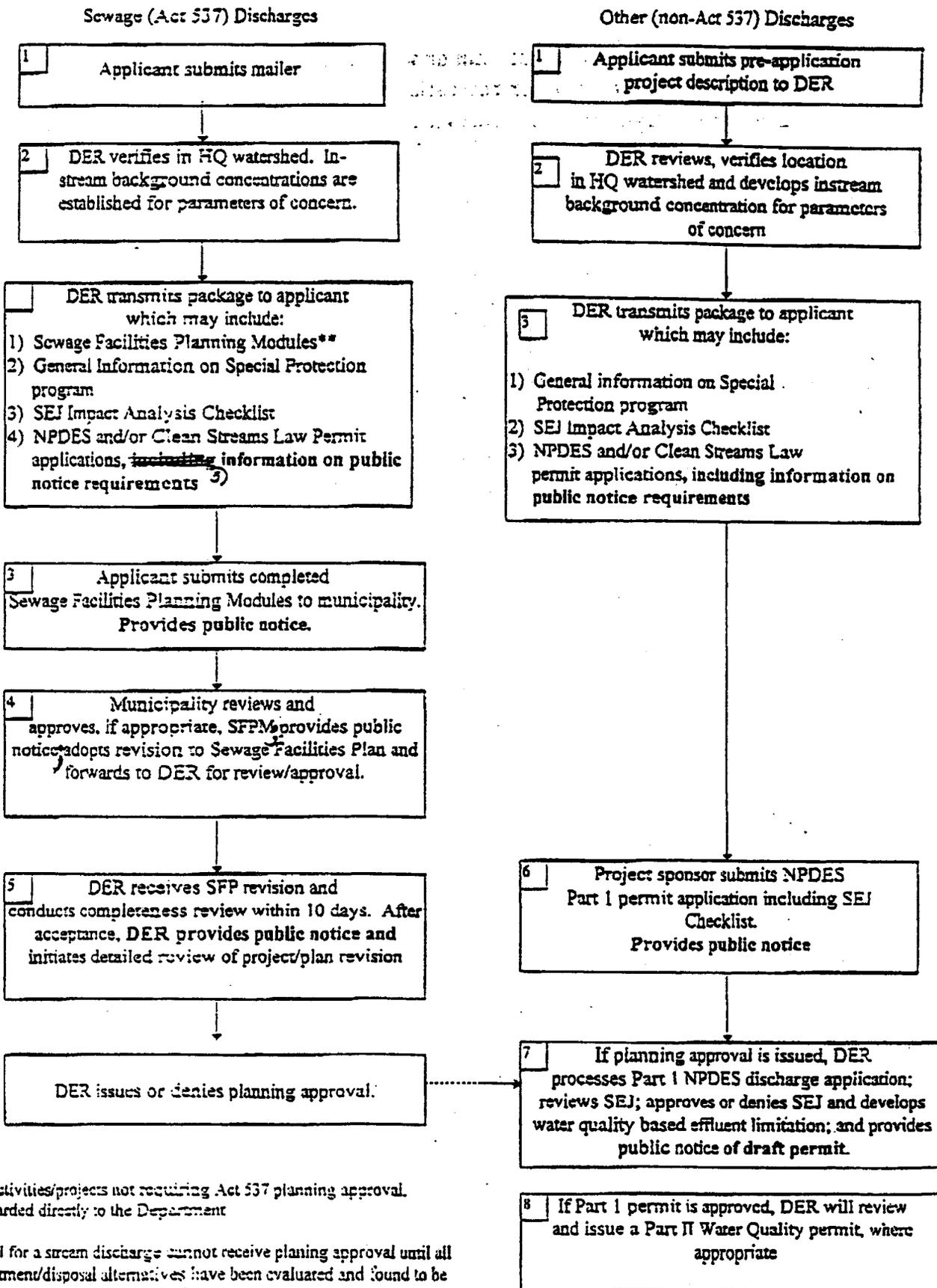
Will the activity have an impact on present and reasonably anticipated local and regional

recreational uses of the stream or waterbody
or existing parks or other recreational areas?
Does the activity meet or enhance a recreational
need?

IV. Description of Alternatives

- a. Describe the alternatives to the proposed activity that have been considered to prevent or reduce water quality degradation or impacts on water quantity. Alternatives which should be considered include but are not limited to, relocation of the proposed activity or discharge to a non-special protection watershed, wastewater reuse/recycling and seasonal land disposal.
- b. Provide a rationale for eliminating any alternative as infeasible. Include technical and financial data to support your position.?

High Quality Waters Planning/Permitting Process*



* For proposed activities/projects not requiring Act 537 planning approval, materials are forwarded directly to the Department

** Note: Proposal for a stream discharge cannot receive planning approval until all non-discharge treatment/disposal alternatives have been evaluated and found to be not environmentally sound or economically feasible.

Comments submitted electronically 5/20/97



Pike County Conservation District

STANDARD FORM NO. 64

May 20, 1997

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Phone (717) 226-8220 Fax (717) 226-8222



Edward R. Brezina, Chief
Division of Water Quality Assessment and Standards
Bureau of Water Conservation
P.O. Box 8555
Harrisburg, PA 17105-8555

RE: Proposed Chapter 15 Implementation of Antidegradation Requirements -
Statement of Policy

Dear Mr. Brezina:

Since 1987, the Pike County Conservation District has gathered chemical, habitat and biological data for 18 county watersheds in an annual monitoring program. The District's efforts are geared towards assessment and protection of High Quality and Exceptional Value watersheds in Pike County. This program is supported by the Board of Commissioners as well as the District Board of Directors. Annual reports are published and distributed to local municipalities, federal agencies and the regional water management office of DEP. In relation to our program, Conservation District technical staff have reviewed the proposed Chapter 15 Implementation of Antidegradation Requirements and offer the following comments for your consideration.

§ 15.1. Implementation of Tests for High Quality Waters.

It is recommended that chemistry and/or biological tests be used in evaluating candidate waters for High Quality Waters classification.

(d) In order for a stream or watershed to be classified as High Quality, assessment should be based on US EPA Rapid Bioassessment Protocols (RBP) II (Plafkin, et al., Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish. EPA/444/4-89-001). The meaning of the phrase "as modified by the Department" is unclear. A candidate surface water should be considered as having met the biological criteria when the integrated benthic macroinvertebrate score is greater than or equal to 79% (versus the proposed 83%) of the reference stream or watershed score as referenced in RBP p. 6-12, Figure 6.2-3, Flowchart of bioassessment approach advocated for Rapid Bioassessment Protocol II.

§ 15.2 Implementation of Tests for Exceptional Value Waters.

It is recommended that chemistry and/or biological tests be used in evaluation of candidate waters for Exceptional Value Waters classification.

(d) Again, in order for a stream or watershed to be classified as Exceptional Value assessment should be based on US EPA Rapid Bioassessment Protocols (RBP) II or III (Plafkin, et al., Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish. EPA/444/4-89-001). The meaning of the phrase "as modified by the Department" is unclear. A candidate surface water should be considered as having met the biological criteria when the integrated benthic macroinvertebrate score is greater than or equal to 79% (RBP II) or 83% (versus the proposed 92%) of the reference stream or watershed score as referenced in RBP p. 6-27, Figure 6.3-4, Flowchart of bioassessment approach advocated for Rapid Bioassessment Protocol III.

(e) Included after "Commission" should be the wording "pursuant to its 'Class A Wild Trout Stream' protocol".

§ 15.3 Submission of Antidegradation Evaluation Reports and Petitions.

(1)(ii) We recommend that procedures listed in US EPA Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish (EPA/444/4-89-001) be used as guidelines for benthic macroinvertebrate collection and habitat assessment.

(4) We recommend that surface waters meet the chemistry and/or biology tests in § 93.4a.

Table 7 (3.) Modified HBI. It is our recommendation that RBP II Protocol procedures be followed for HQ Waters and RBP II or III Protocol be followed for EV Waters. RBP II uses modified Family Biotic Index (FBI) where RBP III uses modified Hilsenhoff Biotic Index (HBI). Table 7 should be modified accordingly.

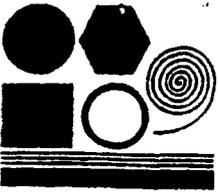
Table 7 (5.) Modified % Mayflies. Mayflies are not necessarily an abundant component of all streams and therefore this metric should not be required for classification of HQ and EV Waters. We recommend that "Ratio of Scrapers/Filtering Collectors" or "Ratio of EPT and Chironomid Abundances" be considered instead.

Thank you for your consideration of these comments. Please feel free to contact me or District Water Quality Technician Hannelore Schanzenbacher should you have any questions.

Sincerely,



SUSAN BEECHER
District Manager



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SPECIALTY STEEL INDUSTRY OF PENNSYLVANIA

Address correspondence to: Allegheny Ludlum Corporation, 1000 Six PPG Place, Pittsburgh, PA 15222
Phone: (412) 394-2836 Facsimile: (412) 394-3010

May 20, 1997

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

Dear Sirs,

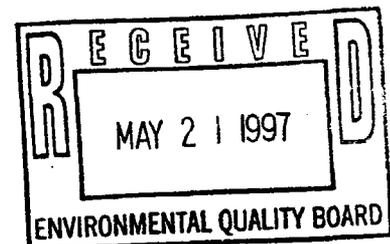
Attached are the comments of the Specialty Steel Industry of Pennsylvania (SSIPA) regarding the proposed amendments to 25 PA Code Chapters 92 93, and 95, Antidegradation.

We welcome the opportunity to discuss these comments with the Department or the Board at their convenience.

Sincerely,

Richard B. Hoyt
Chairman
SSIPA Technical Committee

cc: SSIPA Technical Committee
A. H. Wardwell



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(PER CAT)

DEAR S:

I'm writing to ASK you
to stop your current anti-
degradation proposal. If you
could adopt the standards
of the EPA, our waters
would be better for all of
us. Please send me a reply
regarding your stance on this
issue.



Thank you
Daniel Rafter
Daniel Rafter
1218 Longford Rd
West Chester PA
19380

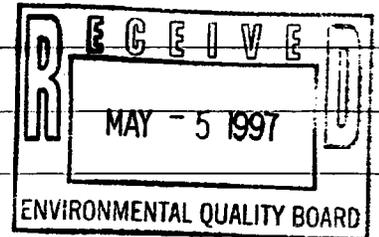
ATTN:
PA Environmental Quality
Board

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

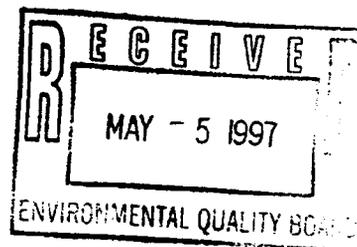
Thank you.

L. Hartsorne
1 Nolan Drive
Malvern, PA 19355

Please acknowledge
receipt of this
letter.



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



Dear Mr. Seif:

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(PER CAT)

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,

Gary H. Starnes
1008 Hilltown Road
Biglerville, PA 17307-9544

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.

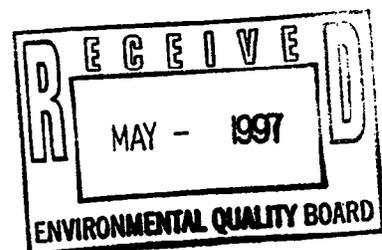
I understand that Pennsylvania Trout is submitting comments on the regulations pointing out their specific shortcomings. The regulations should not be adopted unless all of the problems pointed out in those comments are fixed. The existing regulation is vastly preferable to the new proposal as it is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

Sincerely,

Gary L. Shellenbarger

*PO Box 101
Beaver Springs PA 17812*

*P.S.
Please do not turn
back the clock on the
quality of our streams.
Great strides have been
taken. Next to my children
and grandchildren, this
beautiful Pennsylvania means
the most to me.*



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(PER CAT)



EVAL SMITH
217 CITTON AVE
PITTSBURGH, PA 15213

TO THE PA ENVIRONMENTAL QUALITY BOARD,

WE ARE IN CRUCIAL NEED OF STANDARDS THAT PROTECT
OUR WATERWAYS FROM ANY MORE DEGRADATION. PLEASE REJECT
THE DEP'S CURRENT ANTI-DEGRADATION PROPOSAL. IN ADDITION,
IT MAY BE IN EVERYONES BEST INTEREST TO ADOPT THE
SIMPLER, BETTER STANDARDS OF THE EPA. THANK YOU, AND
PLEASE REPLY.

A handwritten signature in black ink, appearing to read "Eval Smith". The signature is written in a cursive, flowing style.