Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Department of Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-386

IRRC Number: 2316

(3) Short Title

Water Quality Standards – Triennial Review

(4) PA Code Cite

25 PA Code, Chapter 93

(5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate 783 -1303
Secondary Contact: Sharon Trostle 783-1303

(6) Type of Rulemaking (Check One)

_X_ Proposed Rulemaking
____ Final Order Adopting Regulation
____ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

_X_ No
____ Yes: By the Attorney General
____ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. These proposals constitute Pennsylvania's current triennial review of its water quality standards. The proposed regulation will add clarity to the Scope in § 93.2. This proposal will also update the dissolved oxygen criteria in § 93.7. In order to recognize the effects of natural stratification in lakes, and to provide consistency between the dissolved oxygen criteria in Chapter 93, it is proposed that the DO_1 and DO_4 criteria be amended to apply only to the epilimnion (upper layer) of stratified lakes. For periods when lakes are not stratified, the criteria apply throughout the lakes. In § 93.9 several changes to the drainage lists are proposed to clarify stream names and segment boundaries. In §§ 93.6, 93.7, 93.8 and 93.9, there are language or grammatical corrections proposed to add clarity.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Pennsylvania Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394) as amended, 35 P.S. § 691.1 et seq.

Section 1920-A of The Administrative Code of 1929, as amended, 71 P.S. § 510-20.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Although this regulation is not specifically mandated by Federal or state law or regulations, Section 303 (c) of the federal Clean Water Act requires that states review their water quality standards and modify them, as appropriate, at least once every three years. This regulation is undertaken as part of the Department's ongoing review of Pennsylvania's water quality standards.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Water quality standards are an important element of the Commonwealth's water quality management program in that they set general and specific goals for the quality of Pennsylvania's streams. The water quality standards can affect all sources of wastewater discharge since the Department must regulate these sources to ensure that the instream water quality standards are met. The standards are used as program objectives in the control of both point and non-point sources of pollution. Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. These proposals constitute Pennsylvania's current triennial review of its water quality standards.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. There are no public health, safety, environmental or general welfare risks associated with changing the regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The citizens of the Commonwealth will benefit from the regulation since it will provide the appropriate level of water quality protection for the surface waters in Pennsylvania.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

No persons will be adversely affected by the proposed regulation, which is intended to update the water quality standards for the Commonwealth. Persons proposing new or expanded activities or projects which result in discharges to waters of the Commonwealth are required to provide effluent treatment according to the water quality criteria and designated use. This regulation will be implemented through the National Pollutant Discharge Elimination System (NPDES) since the stream use designation is a major basis for determining allowable stream discharge effluent limitations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

See Question #14. Persons with proposed or existing discharges into surface waters of the Commonwealth must comply with the regulation.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who where involved, if applicable.

The Water Resources Advisory Committee (WRAC) reviewed the proposed amendments at it October 18, 2001, September 11, 2002 and November 14, 2002 meetings. WRAC approved the Departments recommendation be presented to the EQB for proposed rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed amendment is expected to reduce compliance costs on the regulated community by not requiring costly technologies that may not be available or appropriate to the discharges. Costs and savings cannot be determined because of site-specific considerations and because there is no historical accounting of costs that would enable a comparative cost analysis to be conducted.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs will be imposed directly upon state or local governments by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

This proposal is based on and will be implemented through existing Department programs, procedures and policies. There are no additional implementation costs associated with this regulation.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	Not Measurable					
Local Government	"					
State Governments	"					
Total Savings	"					
COSTS:						
Regulated Community	Not Measurable					
Local Government	"					
State Governments	"					
Total Costs	"					
REVENUE LOSSES:						
Regulated Community	Not Measurable					
Local Government	"					
State Governments	"					
Total Revenue Losses	"					

(20a) Explain how the cost estimates listed above were derived.

Not Applicable.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Env. Prot. Operations (160)	$76,018,000	$75,074,000	$75,560,000	$76,393,000
Env. Program Mgmt. (161)	$41,471,000	$43,354,000	$43,782,000	$43,679,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits to the citizens of the Commonwealth will accrue from protecting the surface waters of the Commonwealth at the appropriate level.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There were no non-regulatory alternatives available to consider in this case.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There were no alternative regulatory schemes to consider to achieve the correct level of protection of Commonwealth waters.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. The proposed regulations are not more stringent than the companion federal standards allow.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Other states are also required to maintain water quality standards with similar requirements. The proposed amendment will not put Pennsylvania at a competitive disadvantage to other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations or state agencies are affected by this proposal.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

See Question 16. The Environmental Quality Board will hold a public hearing and meeting in Harrisburg for the purpose of accepting comments on this proposal, which will be scheduled during the public comment period. The hearing will be held at ___p.m. on, _____, 2003, at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No additional reporting, record keeping, or other paperwork will be required.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no such provisions in this proposed regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become final after review and approval by the Environmental Quality Board and publication in the Pennsylvania Bulletin as final-form rulemaking. New or renewed NPDES permits reflecting the regulation changes will be issued according to current timelines that apply to permit applications.

(31) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

CDL-1

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WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

AUG 06 2003
DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-386

DATE OF ADOPTION 7/15/03

BY _____

TITLE KATHLEEN A MCGINTY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY _____

7/24/03
DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~
(Strike inapplicable title)

☐ Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Triennial Review of Water Quality Standards

25 *Pa. Code*, Chapter 93

NOTICE OF PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. Code, Chapter 93]
Triennial Review of Water Quality Standards

The Environmental Quality Board (Board) proposes to amend Chapter 93 (relating to water quality standards) to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of July 15, 2003.

A. Effective Date

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

B. Contact Persons

For further information contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P.O. Box 8467, (717) 787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (http://www.dep.state.pa.us).

C. Statutory Authority

These proposed amendments are made under the authority of Sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement provisions of The Clean Streams Law and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, Section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and the Federal regulations in 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. Background and Purpose of the Amendment

Pennsylvania's water quality standards, which are codified in Chapter 93 and portions of Chapter 92, are designed to implement the requirements of Section 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water (33 U.S.C.A. § 1313). The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and an antidegradation policy. Thus, water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution.

Water quality standards are an important element of the Commonwealth's water quality management program. Some type of water quality standard has been in use for approximately 75 years in this Commonwealth. One of the early actions after the Sanitary Water Board (SWB) was created in 1923 was to classify streams by priority for water quality management actions. In 1947, the SWB classified all streams in this Commonwealth by the degree of treatment that had to be provided before discharge could occur. Article 301 – Water Quality Control, which specifically contained water uses, general and specific water quality criteria, and designated water uses and water quality criteria, was added to the SWB's Rules and Regulations on June 28, 1967. The SWB was then abolished on January 19, 1971 following the formation of the new Pennsylvania Department of Environmental Resources (PA DER) in 1968. Responsibilities for developing and maintaining the water quality criteria and standards, and other related regulations were transferred to PA DER. New or revised specific water quality criteria and standards were developed by PA DER for all Pennsylvania surface waters, and formally adopted into 25 Pennsylvania Code, Chapter 93 – Water Quality Standards on September 10, 1971.

PA DER completed its first major review and complete overhaul of the water quality criteria and standards in 1979. After a series of public hearings and extensive public participation, revisions to the water quality criteria and uses were incorporated into Chapter 93. U.S. EPA Region III formally approved the revisions to Pennsylvania's water quality standards on January 26, 1981. Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. As such, additional reviews and revisions were made to Pennsylvania's water quality standards during 1985, 1989, and 1994. The then newly formed Department of Environmental Protection (DEP), which was created in June 1995 after splitting DER into two agencies by approval of The Conservation and Natural Resources Act (Act 18 of 1995), began to conduct the DEP's first comprehensive review of water quality standards regulations, policies, and implementation procedures which became the basis for the DEP's next Triennial Review.

Additional reviews and revisions were made to Pennsylvania's water quality standards during 1998, 1999, 2000 and 2002 to address amendments for the Great Lakes Initiative

(GLI), the Antidegradation policies, the Water Quality Standard (WQS) Regulatory Basics Initiative (RBI) Triennial, and several other corrective amendments.

These proposals constitute Pennsylvania's current triennial review of its water quality standards.

E. Summary of Issues and Proposed Regulatory Revisions

In this triennial review, it is proposed to clarify language in several sections of Chapter 93; update water quality criteria for dissolved oxygen; and correct several stream listings.

Detailed Description of Proposed Revisions in Chapter 93 by Section.

Section 93.2 Scope

The Board is proposing to amend subsection (a) of the scope section by deleting the words "and will be considered by the Department in its regulation of discharges." It has been the Department's longstanding position that the existing scope section of Chapter 93 is broad and that the Chapter is not limited to "discharges" or to "point sources" as defined by 25 Pa. Code § 92.1. On December 31, 2002, the Environmental Hearing Board issued an opinion in *Consol Pennsylvania Coal Company v. Commonwealth of Pennsylvania, Department of Environmental Protection et al.,* EHB Docket No. 2002 – 112, that interpreted the scope section of Chapter 93 as applying only to "discharges." After accepting petitions for reconsideration on the interpretation of the language in § 93.2, the Environmental Hearing Board issued a subsequent opinion in the case withdrawing its portion of the earlier opinion that related to the scope of Chapter 93. The proposed amendment to § 93.2 will avoid future misunderstandings about the scope of Chapter 93. The proposed amendment will reaffirm the Department's longstanding position that the water quality standards in Chapter 93 are the standards that are used whenever the environmental statutes authorize the Department to make decisions or approvals relating to stream quality protection.

Section 93.6 General water quality criteria.

In § 93.6(b) a grammatical correction is proposed to replace the word "which" with the word "that". Also a spelling correction is proposed for the word "odors".

Section 93.7 Specific water quality criteria.
Dissolved oxygen:

The dissolved oxygen (DO) water quality criteria applicable to waters designated Cold Water Fishes (CWF), High Quality (HQ) – Warm Water Fishes (WWF) or HQ- Trout Stocking (TSF) (DO_1) and HQ-CWF (DO_4) currently do not recognize the natural phenomenon of thermal stratification that can occur in lakes, ponds and impoundments (subsequently referred to as lakes). The DO_1 criterion currently requires that dissolved oxygen levels meet the criteria at any location throughout the water column in lakes. The

DO_4 criterion, on the other hand does not specifically mention lakes. The current DO_2 and DO_3 criteria, applicable to waters designated WWF and TSF respectively, recognize the fact that dissolved oxygen levels in the bottom waters of lakes are likely to be depressed due to naturally occurring conditions and specify that the criteria are applicable to the epilimnion (upper layer) of lakes. It is important to account for the natural stratification of lakes, which may occur in the summer and early fall. The hypolimnion (lower layer) is typically the coldest layer in the summer (but may be the warmest in the winter), and tends to have naturally depressed dissolved oxygen levels because it is isolated from the effects of wind mixing that physically incorporates oxygen, and is typically too dark for photosynthesis to occur to produce or replenish oxygen in this lower layer. Further, dissolved oxygen in the hypolimnion is also gradually consumed through respiration and decomposition faster than it can be replaced. A similar phenomenon of thermal stratification may also occur in the winter, especially under ice cover. As a result, these natural conditions of stratification prevent specific dissolved oxygen criteria from being met throughout this lower layer of the lake. In order to recognize the effects of natural stratification in CWF, HQ-WWF, HQ-TSF and HQ-CWF lakes, it is proposed that the DO_1 and DO_4 criteria be amended to apply to the epilimnion of stratified lakes, as the other DO_2 and DO_3 criteria apply. For those periods when lakes are not stratified, the dissolved oxygen criterion applies throughout the lake. The natural processes that cause this stratification are time and site-specific, and may be very changeable, not only from one waterbody to another but also within the same lake under different weather or prevailing conditions, or from year to year. Fish populations, however, are not adversely affected by these conditions because the fish move to areas containing sufficient dissolved oxygen, including the epilimnion, shallow near-shore areas or shallow coves and embayments. The general narrative water quality criteria in § 93.6 protect aquatic life in the hypolimnion of these stratified lakes.

Section 93.8 Development of site-specific water quality criteria for the protection of aquatic life.

The language in the title of this section indicates that it applies only to the protection of aquatic life. In order to clarify that the section also applies to human health and wildlife criteria, the proposed change removes the words "for the protection of aquatic life" from the title.

In Section 93.8(b), a language correction is proposed to replace the word "upgraded" with the word "updated", in order to be consistent with the language used throughout Chapter 93.

Section 93.9. Designated water uses and water quality criteria.

The proposed regulation reorganizes the abbreviations in §93.9(a), into alphabetical order.

In § 93.9, the following changes to the drainage lists are proposed to clarify stream names and segment boundaries:

§ 93.9a. Drainage List A.

Sand Pond Creek is listed as a tributary to the West Branch Delaware River and Sherman Creek is listed as a tributary to Sand Pond Creek. The PA DEP Stream Directory does not list Sand Pond Creek. The topographic maps of the area show that Sherman Creek flows into the West Branch Delaware River and the Stream Directory correctly reflects this drainage pattern. It appears that this error was made in 1979 and has been carried forward since then. The Department's records indicate that the upper portion of Sherman Creek was a Conservation Area and designated High Quality Waters. Two tributaries to Sherman Creek, Starboard Creek and Cat Hollow, were excluded from the Conservation Area designation. This error is corrected in the annex. This action will not affect the current stream use designations.

§ 93.9b. Drainage List B.

Johnson Creek is a tributary to the West Branch Lackawaxen River, above Prompton Reservoir. It is currently shown as being below the reservoir. It is therefore proposed to delete Johnson Creek from the drainage list because it is a tributary in the upper part of the basin and is therefore included in the designation for the upper basin. This change will have no affect on the existing stream designations.

§ 93.9c. Drainage List C.

An error was made to the stream listing hierarchy pertaining to Sand Hill Creek and Little Bush Kill during the reformatting of Chapter 93, which was printed as final in the *Pennsylvania Bulletin* on March 7, 1992. These streams were listed as tributaries to the unnamed tributaries of Bush Kill. It is proposed to correct the hierarchy to show that Sand Hill Creek and Little Bush Kill are tributaries to Bush Kill. These corrections will not affect the current stream designation.

§ 93.9d. Drainage List D.

First Hollow Run is the local name of an unnamed tributary to Nesquehoning Creek. In order to clarify the name and location, it is proposed to add the stream code, UNT 04106, to the First Hollow Run listing.

An error was made when listing the upper portion of the Mauch Chunk basin. White Bear Creek was mistaken for Mauch Chunk Creek. White Bear Creek is a tributary to the upper Mauch Chunk Creek basin. It is therefore proposed that the current stream entries for White Bear Creek be deleted because they are included in the designation for the Mauch Chunk Creek basin. This correction will not affect the current stream designations.

§ 93.9e. Drainage List E.

Neshaminy Creek is a tributary to the Delaware River. The drainage list uses the PA 614 Dam as a segment boundary. This dam was never built. In order to clarify the location of this segment boundary it is proposed to use the river mile location of the proposed dam site.

§ 93.9f. Drainage List F.

It is proposed to correct an error that was made during a 1996 rulemaking concerning Drainage List F. Before the rulemaking there were two entries for unnamed tributaries (UNTs) to the Schuylkill River from the Berks-Chester-Montgomery County border to Valley Creek. One included all UNTs except those in Spring City and Phoenixville. The other referred to only the UNTs in Spring City and Phoenixville. In that rulemaking, the reference to the tributaries in Spring City and Phoenixville was inadvertently omitted and wording from the first entry was included in the second entry. The correction in the Annex restores the original entry for the tributaries in Spring City and Phoenixville. There is no change in the use designation of these tributaries as a result of this correction.

Typographical errors were made in the segmentation of portions of Perkiomen Creek during the final Class A Wild Trout Waters rulemaking, which was published as final in the *Pennsylvania Bulletin*, on September 28, 2002. The entries were correct at proposed rulemaking. The upper part of the Perkiomen Creek basin (source to SR 1010 bridge at Hereford) was redesignated High Quality-Cold Water Fishes (HQ-CWF). The next entry should be for the main stem of Perkiomen Creek from that bridge to the Green Lane Reservoir Dam. At final rulemaking, the entry was incorrectly listed as the basin in this reach. In addition, the entry for the unnamed tributaries in this reach still refers to the old segment boundary, instead of SR 1010. These errors are proposed for correction in the Annex.

§ 93.9i. Drainage List I.

While conducting assessments in Bradford County, DEP determined that the Little Wysox Creek entry was incorrect. After reviewing the stream maps and the Stream Directory, it was found that the correct name for the stream is Laning Creek, rather than Little Wysox Creek. It is proposed to delete the name Little Wysox Creek and add the correct name, Laning Creek. This correction will not alter the current stream designation, because it is simply a name change.

§ 93.9l. Drainage List L.

Rather than redesignating only a portion of Spring Run, Elk County as a Class A Wild Trout Water, the entire basin was inadvertently redesignated High Quality-Cold Water Fishes (HQ-CWF). Neither the Fish and Boat Commission (Commission) or the Department noticed this error during the rulemaking process. The EQB approved the

Class A Wild Trout Waters for final rulemaking at its July 16, 2002 meeting, and the final-form rulemaking was published on September 28, 2002 (32 Pa.B. 4695).

The Commission's fisheries management report describes the Class A portion of Spring Run as that portion of the basin from an unnamed tributary near the Elk State Forest boundary downstream to Stony Brook, and includes a map showing the segment. Department staff conducted an independent review of the trout biomass data in the fisheries management report for this stream. There is no additional information that meets the criteria for High Quality waters in the other portions of the basin. The Board proposes to correct this error, limiting the HQ-CWF designation to the correct segment and relisting the rest of the basin as the Cold Water Fishes (CWF) use as it was before the error was made. The corrected designations are shown in Annex A.

§ 93.9m. Drainage List M.

Muddy Creek, a tributary to Penns Creek in Centre County, was inadvertently omitted from the Class A Wild Trout Waters rulemaking. The Muddy Creek basin is included on the Fish and Boat Commission list of Class A Wild Trout Waters. The Department reviewed the fisheries management report and concluded that the stream qualifies for High Quality designation. Therefore, the Board proposes to change the designation of the Muddy Creek basin from Cold Water Fishes (CWF) to High Quality – Cold Water Fishes (HQ-CWF).

§ 93.9o. Drainage List O.

Laurel Run is a tributary to Sherman Creek in the Susquehanna River basin. In Chapter 93, North Branch Laurel Run is listed as a tributary to Laurel Run. There is no North Branch Laurel Run in the stream directory. In order to make the listing correct, it is proposed that the North Branch entry be deleted and the upper portion of Laurel Run be listed. This change will have no affect on the current stream designation.

Mill Creek is a tributary to the Conestoga River. An outdated road designation is used as the downstream boundary of the listing for the upper main stem. To clarify this segment of the stream, it is proposed that an updated State Route number be substituted for the current road number in the stream listing.

Deer Creek is a tributary to the Susquehanna River and is presently classified as CWF. The Commission's fisheries management report revealed the presence of the American Eel at all sampling stations along this creek. The Department reviewed the fisheries management report and concluded that the stream qualifies for the additional designation of Migratory Fishes (MF), which is proposed in this rulemaking.

§ 93.9q. Drainage List Q.

Four tributaries to the South Branch Tionesta Creek are missing from Drainage List Q. They are: Wolf Run; Chaffee Run; Tuttle Run and Martin Run. The entire South Branch

Tionesta basin was a Conservation Area and was designated HQ-CWF, with the exception of Crane Run that was designated EV as a Wilderness Trout Stream. This meant that all tributaries, named and unnamed should have been included in the drainage list. These four named streams were inadvertently omitted in 1978 – 1979, and the error has been carried forward since then. These four streams are added in the annex with the HQ-CWF designation. In addition, the county where the stream mouth is located has been corrected for some streams.

§ 93.9s. Drainage List S.

North Fork is listed as a tributary of Redbank Creek and South Branch is shown as a tributary of North Fork. North Fork and South Branch are incomplete stream names that have been used since about 1979. It is proposed to correct the names of these two streams in the drainage list. The correct names are North Fork Redbank Creek and South Branch of North Fork Redbank Creek.

Fishable/Swimmable Waters

Part of the triennial review requires that states reexamine water body segments that do not meet the fishable or swimmable uses specified in Section 101(a)(2) of the Federal Clean Water Act. The Department evaluated the two Pennsylvania water bodies where the uses are not currently met: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/Presque Isle Bay and (2) several zones in the Delaware Estuary.

The swimmable use designation was deleted from the Harbor Basin and entrance channel demarcated by U.S. Coast Guard buoys and channel markers on Outer Erie Harbor/ Presque Isle Bay because boat and shipping traffic pose a serious safety hazard in this area. This decision was based on a Use Attainability study in 1985. Because the same conditions exist today, no change to the designated use for Outer Erie Harbor/Presque Isle Bay is proposed.

The Department cooperated with the Delaware River Basin Commission (DRBC), EPA and other DRBC signatory states on a comprehensive Use Attainability study in the lower Delaware River and Delaware Estuary. This study resulted in appropriate recommendations relating to the swimmable use, which DRBC included in water use classifications and water quality criteria for portions of the tidal Delaware River in May 1991. Criteria for enterococcus and changes in application to the fecal coliform criteria in this area reflect the use. The appropriate DRBC standards are referenced in Sections 93.9e and 93.9g (Drainage Lists E and G) in 1994. The primary water contact use remains excluded from the designated uses for river miles 108.4 to 81.8 because of continuing significant impacts from combined sewer overflows.

F. Benefits, Costs and Compliance

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

1. *Benefits* – Overall, the citizens of this Commonwealth will benefit from these recommended changes because they provide the appropriate level of protection for the uses of surface waters in this Commonwealth.

2. *Compliance Costs* – The proposed amendments to Chapter 93 are not expected to impose any significant additional compliance costs on the regulated community. These regulatory changes are not expected to increase total pollution control expenditures over that which would otherwise be required under existing regulations.

Persons conducting or proposing activities or projects must comply with the regulatory requirements relating to designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are upgraded.

3. *Compliance Assistance Plan*—The proposed revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations.

The proposed amendments will be implemented in part through the National Pollutant Discharge Elimination System (NPDES) permitting program. No additional compliance materials are anticipated. Staff are available to assist regulated entities in complying with the regulatory requirements if any questions arise.

4. *Paperwork Requirements*—The proposed revisions should have no significant paperwork impact on the Commonwealth, its political subdivisions, or the private sector.

G. Pollution Prevention

Water quality standards are a major pollution prevention tool because they protect water quality and designated and existing uses. The proposed amendments will be implemented through DEP's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) bases effluent limitations on the designated use of the stream and assures water quality criteria are achieved and designated and existing uses are protected.

H. Sunset Review

This proposed amendment will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 7, 2003, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In addition to submitting the proposed amendments, IRRC and the Committees have been provided a detailed regulatory analysis form prepared by the Department, in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Departments, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. The Board must receive comments by December 17, 2003. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by December 17, 2003. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed amendments will be considered. Two public hearings will be scheduled at appropriate locations to receive additional comments.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. The Board must also receive comments submitted electronically by December 17, 2003.

K. Public Meetings and Public Hearings

The Department will hold two public meetings to explain the proposed amendments and to respond to questions from participants. The meetings will be held at 6:00 p.m. as follows:

December 2, 2003 — Four Points By Sheraton Pittsburgh North
910 Sheraton Drive
Mars, PA 16046

December 4, 2003 — Courtyard by Marriott
16 Glenmaura National Blvd.
Moosic, PA 18507

The Board will hold two public hearings for the purpose of accepting comments on this proposal. The hearings will be held at 7:00 p.m. on the following dates:

December 2, 2003 — Four Points By Sheraton Pittsburgh North
910 Sheraton Drive
Mars, PA 16046

December 4, 2003 — Courtyard by Marriott
16 Glenmaura National Blvd.
Moosic, PA 18507

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Services at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

Kathleen A. McGinty
Chairperson
Environmental Quality Board

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.2. Scope.

(a) This chapter sets forth water quality standards for surface waters of this Commonwealth, including wetlands. These standards are based upon water uses which are to be protected **[and will be considered by the Department in its regulation of discharges]**.

* * * * *

§ 93.6. General water quality criteria

* * * * *

(b) In addition to other substances listed within or addressed by this chapter, specific substances to be controlled include, but are not limited to, floating materials, oil, grease, scum and substances **[which]** **that** produce color, tastes, **[orders]** **odors,** turbidity or settle to form deposits.

§ 93.7. Specific water quality criteria.

* * * * *

TABLE 3

Parameter	*Symbol*	*Criteria*	*Critical Use**
		* * * * *	
Color	Col	Maximum 75 units on the platinum-cobalt scale; no other colors perceptible to the human eye.	PWS
Dissolved Oxygen		**The following specific dissolved oxygen criteria recognize the natural process of stratification in lakes, ponds and impoundments, and allow that the hypolimnion in a stratified lake, pond or impoundment is protected by the narrative water quality criteria in § 93.6 (relating to general water quality criteria). For non-stratified lakes, ponds or impoundments, the dissolved oxygen criteria are the same as for the epilimnion to protect the critical use of the lake, pond or impoundment.**	**See the following table.**

Dissolved Oxygen	DO_1	Minimum daily average 6.0 mg/l; minimum 5.0 mg/l. For **the epilimnion of stratified** lakes, ponds and impoundments **[only]**, minimum 5.0 mg/l **[at any point]**.	CWF HQ-WWF HQ-TSF
		* * * * *	
	DO_4	Minimum 7.0 mg/l. **For stratified lakes, ponds and impoundments, the criterion applies to the epilimnion.**	HQ-CWF

* * * * *

§ 93.8. Development of site-specific water quality criteria [for the protection of aquatic life].

* * * * *

(b) Scientific studies shall be performed in accordance with the procedures and guidance in the Water Quality Standards Handbook (EPA 1994), as amended and **[upgraded]** **updated**, guidance provided by the Department or other scientifically defensible methodologies approved by the Department.

* * * * *

§ 93.9. Designated water uses and water quality criteria.

* * * * *

[T – Township Road
LR – Pennsylvania Legislative Route
SR – Pennsylvania State Route
FAS – Federal Aid Secondary Highway
US – United States Federal Route
I – Interestate Highway
RM – River Mile; river miles are used to indicate the distance from a point on the waterbody to its mouth and are based on the Department's River Mile Index]
FAS – Federal Aid Secondary Highway
I – Interstate Highway
LR – Pennsylvania Legislative Route
RM – River Mile; river miles are used to indicate the distance from a point on the waterbody to its mouth and are based on the Department's River Mile Index
SR – Pennsylvania State Route
T – Township Road
US – United States Federal Route

* * * * *

§93.9a. Drainage List A.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
[3 – Sand Pond Creek	**Basin (all sections in PA), Source to Sherman Creek**	**Wayne**	**CWF**	**None]**
[4] 3 – Sherman Creek	Basin (all sections in PA), Source to Starboard Creek	Wayne	HQ-CWF	None
4 – Starboard Creek	**Basin (all sections in PA)**	**Wayne**	**CWF**	**None**
3 – Sherman Creek	**Basin (all sections in PA), Starboard Creek to PA-NY State Border**	**Wayne**	**CWF**	**None**
[3 –Sand Pond Creek	**Basin, (all sections in PA), Sherman Creek to PA-NY state Border**	**Wayne**	**CWF**	**None]**
3 – **[Sand Pond]** Sherman Creek (NY)				
4 – **[Unnamed Tributaries]** UNTs to **[Sand Pond]** Sherman Creek	Basins (all sections in PA), PA-NY State Border to Mouth	Wayne	CWF	None
2—West Branch Delaware River	Main Stem, PA-NY State Border to Confluence with East Branch	Wayne	CWF, MF	See DRBC regulations—Water Quality Zone 1A

* * * * *

§93.9b. Drainage List B.

Delaware River Basin in Pennsylvania
Lackawaxen River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3 – West Branch Lackawaxen River	Main Stem, Prompton Reservoir to Confluence with Dyberry Creek	Wayne	HQ-TSF, MF	None
	* * * * *			
[4 – Johnson Creek	**Basin**	**Wayne**	**HQ-CWF, MF**	**None]**
4—Van Auken Creek	Basin	Wayne	HQ-TSF, MF	None
	* * * * *			

§ 93.9c. Drainage List C.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Unnamed Tributaries to Bush Kill	Basins, Saw Creek to Mouth	Monroe	HQ-CWF	None
[4]3—Sand Hill Creek	Basin	Monroe	HQ-CWF	None
[4]3—Little Bush Kill	Basin, Source to Unnamed Tributary (UNT) 05067	Pike	EV	None
[5]4—Unnamed Tributary 05067 to Little Bush Kill	Basin	Pike	EV	None
[4]3—Little Bush Kill	Basin, UNT 05067 to UNT 05059	Pike	HQ-CWF	None
[5]4—Unnamed Tributary 05059 to Little Bush Kill	Basin	Pike	EV	None
[4]3—Little Bush Kill	Basin, UNT 05059 to UNT 05057	Pike	EV	None
[5]4—Unnamed Tributary 05057 to Little Bush Kill	Basin	Pike	HQ-CWF	None
[4]3—Little Bush Kill	Basin, UNT 05057 to Mouth	Pike	EV	None
1—Delaware River	Main Stem, Tocks Island to Lehigh River	Northampton	WWF, MF	See DRBC regulations—Water Quality Zone

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§93.9d. Drainage List D.

Delaware River Basin in Pennsylvania
Lehigh River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3 – Nesquehoning Creek	Main Stem, Tibbetts Pond Dam to Mouth	Carbon	CWF	None
	* * * * *			
4 – [First Hollow Run] UNT 04106 (locally First Hollow Run)	Basin	Carbon	EV	None
4—Jeans Run	Basin	Carbon	HQ-CWF	None
	* * * * *			
3 – Mauch Chunk Creek	**[Main Stem] Basin, Source to SR 902 Bridge**	Carbon	**[CWF]EV**	None
[4 – Unnamed Tributaries to Mauch Chunk Creek	**Basins**	**Carbon**	**CWF**	**None**
4 – White Bear Creek	**Basin, Source to PA 902 Bridge**	**Carbon**	**EV**	**None**
4 – White Bear Creek	**Basin, PA 902 Bridge to Mouth**	**Carbon**	**CWF**	**None]**

3 – Mauch Chunk Creek	**Basin, SR 902 Bridge to Mouth**	**Carbon**	**CWF**	**None**
3—Beaverdam Run	Basin	Carbon	CWF	None

* * * * *

§93.9e. Drainage List E.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
2 – Neshaminy Creek	Main Stem, Confluence of West and North Branches to **[PA 614 Dam]** **RM 26.84**	Bucks	TSF, MF	*Add* Tur_2
3—Unnamed Tributaries to Neshaminy Creek	Basins, Confluence of West and North Branches **to** **[of PA 614 Dam]** **RM 26.84**	Bucks	TSF, MF	*Add* Tur_2
3—Cooks Run	Basin	Bucks	WWF, MF	*Add* Tur_2
3—Mill Creek	Basin	Bucks	TSF, MF	*Add* Tur_2
3—Country Club Creek	Basin	Bucks	WWF, MF	*Add* Tur_2
2—Neshaminy Creek	Non-Tidal Portion of Main Stem, **[PA 614 Dam]** **RM 26.84** to Mouth	Bucks	WWF, MF	*Add* Tur_1
3—Unnamed Tributaries to Neshaminy Creek	Non-Tidal Portions of Basins, **[PA 614 Dam]** **RM 26.84** to Mouth	Bucks	WWF, MF	*Add* Tur_1
3—Little Neshaminy Creek	Basin	Bucks	WWF, MF	*Add* Tur_1

* * * * *

93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Monocacy Creek	Basin	Berks	WWF	None
3—**[Unnamed Tributaries]** **UNTs** to Schuylkill River	Basins, Berks-Chester-Montgomery County Border to Valley Creek (except those in Spring City and Phoenixville)	Chester - **Montgomery**	HQ-TSF	None
3—**[Unnamed Tributaries]** **UNTs** to Schuylkill River	Basins, **[Berks-Chester-Montgomery County Border to Valley Creek]** **in Spring City and Phoenixville**	**[Montgomery]** **Chester**	WWF	None
3—Manatawny Creek	Main Stem	Berks	CWF	None
	* * * * *			
3 - Perkiomen Creek	Basin, Source to SR 1010 Bridge at Hereford	Berks	HQ-CWF	None
3 – Perkiomen Creek	**[Basin]** **Main Stem**, SR 1010	Montgomery	TSF	None

	Bridge to Green Lane Reservoir Dam			
4 – Unnamed Tributaries to Perkiomen Creek	Basins, **[LR 06119]** **SR 1010** Bridge to Green Lane Reservoir **Dam**	Montgomery	TSF	None
4—Hosensack Creek	Basin	Montgomery	CWF	None

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§93.9i. Drainage List I.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
2 – **[Little Wysox]** **Laning** Creek	Basin	Bradford	WWF	None
2—Wysox Creek	Basin	Bradford	CWF	None

* * * * *

§93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4—Bennett Branch Sinnemahoning Creek	Main Stem, Mill Run to Confluence with Driftwood Branch	Cameron	WWF	None
	* * * * *			
5 – Trout Run	Basin, Source to Spring Run	Elk	CWF	None
6 – Spring Run	Basin, **Source to UNT 24721**	Elk	**[HQ-CWF]** **CWF**	None
7 – UNT 24721 to Spring Run	**Basin**	**Elk**	**CWF**	**None**
6 – Spring Run	**Basin, UNT 24721 to Stony Brook**	**Elk**	**HQ-CWF**	**None**
7 – Stony Brook	**Basin**	**Elk**	**CWF**	**None**
6 – Spring Run	**Basin, Stony Run to Mouth**	**Elk**	**CWF**	**None**
5 – Trout Run	Basin, Spring Run to Mouth	Elk	CWF	None

* * * * *

§93.9m. Drainage List M.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
2 – Penns Creek	Basin, Source to **[Pine Creek]** **Muddy Creek**	Centre	CWF	None
3 – Muddy Creek	**Basin**	**Centre**	**HQ-CWF**	**None**
2 – Penns Creek	**Basin, Muddy Creek to Pine Creek**	**Centre**	**CWF**	**None**
3—Pine Creek	Basin, Source to Downstream Boundary of Hook Natural Area	Centre	EV	None
	* * * * *			

§93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3 – Laurel Run	**Basin, Source to South Branch Laurel Run**	**Perry**	**EV**	**None**
[4 – North Branch Laurel Run	**Basin, Source to Confluence with South Branch**	**Perry**	**EV**	**None]**
4—South Branch Laurel Run	Basin**[, Source to Confluence with North Branch]**	Perry	HQ-CWF	None
3—Laurel Run	Basin, **[Confluence of North and]** South Branch**[es]** to T 339	Perry	HQ-CWF	None
3—Laurel Run	Basin, T 339 to Mouth	Perry	CWF	None
	* * * * *			
3—Mill Creek	Main Stem, Source to **[PA A-352]** **SR 1011**	Lancaster	CWF	None
4—Unnamed Tributary to Mill Creek From New Holland Reservoir	Basin, Source to Tailwaters of New Holland Reservoir	Lancaster	HQ-CWF	None
4—Unnamed Tributary to Mill Creek From New Holland Reservoir	Basin, New Holland Reservoir	Lancaster	CWF	None
4—Unnamed Tributary to Mill Creek From New Holland Reservoir	Basin, New Holland Reservoir Dam to Mouth	Lancaster	CWF	None
3 – Mill Creek	Basin, **[PA A-352]** **SR 1011** to Mouth	Lancaster	WWF	None
3—Stehman Run	Basin	Lancaster	WWF	None
	* * * * *			
2 – Deer Creek	Basin (all sections in PA)	York	CWF, **MF**	None
1—Chesapeake Bay				

* * * * *

§93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4—South Branch Tionesta Creek	Main Stem, Source to Confluence with West Branch	Warren	HQ-CWF	None
5—**[Unnamed Tributaries]** **UNTs** to South Branch Tionesta Creek	Basins	Elk-Forest- Warren	HQ-CWF	None
5—Martin Run	Basin	Elk	HQ-CWF	None
5 – Wolf Run	**Basin**	**Elk**	**HQ-CWF**	**None**
5—Coon Run	Basin	Elk	HQ-CWF	None
5 – Chaffee Run	**Basin**	**Elk**	**HQ-CWF**	**None**
5—Crane Run	Basin	Elk	EV	None
5—Iron Run	Basin	Forest	HQ-CWF	None
5—Fork Run	Basin	Forest	HQ-CWF	None
5—Bogus Run	Basin	Forest	HQ-CWF	None
5—Rock Run	Basin	Forest	HQ-CWF	None
5 – Tuttle Run	**Basin**	**Forest**	**HQ-CWF**	**None**
5—Cherry Run	Basin	**[Forest]** **Warren**	HQ-CWF	None
5 – Martin Run	**Basin**	**Warren**	**HQ-CWF**	**None**
5—East Branch Tionesta Creek	Basin	**[Forest]** **Warren**	HQ-CWF	None
3—Tionesta Creek	Main Stem, Confluence of West and South Branches to Mouth	Forest	CWF	None

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§93.9s. Drainage List S.

Ohio River Basin in Pennsylvania
Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
4 – North Fork **Redbank Creek**	Main Stem, Source to Confluence with Sandy Lick Creek	Jefferson	HQ-CWF	None
5—Unnamed Tributaries to North Fork	Basins, Source to Confluence with Sandy Lick Creek	Jefferson	HQ-CWF	None

* * * * *

5 – South Branch **of North Fork Redbank Creek**	Basin	Jefferson	EV	None
5—Acy Run	Basin	Jefferson	HQ-CWF	None

* * * * *

NOTICE OF PUBLIC HEARINGS
on
ENVIRONMENTAL QUALITY BOARD's
TRIENNIAL REVIEW OF WATER QUALITY STANDARDS
and
DEPARTMENT OF ENVIORNMENTAL PROTECTION's
CHAPTER 16, WATER QUALITY TOXICS MANAGEMENT STRATEGY

The Environmental Quality Board (EQB) will hold two public hearings to accept comments on proposed amendments to Title 25 *Pennsylvania Code*, Chapter 93, relating to the Commonwealth's water quality standards. Pennsylvania's water quality standards consist of the uses of the surface waters of this Commonwealth, the criteria necessary to protect those uses and an antidegradation policy. Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. The purpose of this proposed rulemaking is to fulfill the Commonwealth's requirements under § 303(c)(1).

Issues that are addressed in the triennial review include: clarification of the scope section of Chapter 93, dissolved oxygen criteria, drainage list corrections, review of water body segments that do not meet the fishable or swimmable uses, and the correction of typographic and grammatical errors. Specifically, the proposed rulemaking recommends deletion of certain text in § 93.2(a) in order to correct any misinterpretation that the scope of Chapter 93 applies only to "discharges" or to "point sources". The proposed rulemaking also includes changes to the application of dissolved oxygen criteria in § 93.7 to recognize the effects of natural stratification in lakes, ponds, and impoundments.

In addition to the proposed Triennial Review rulemaking, the Department of Environmental Protection (Department) is proposing revisions to Chapter 16, Water Quality Toxics Management Strategy – Statement of Policy. The water quality toxics standards must also be reviewed as part of the triennial review. Since the proposed amendments to Chapter 16 involves changes in policy, rather than regulatory amendments, the EQB is not required to take action on the proposed changes to Chapter 16. Nevertheless, the Department is simultaneously advertising the proposed Chapter 16 changes with the Triennial Review proposed rulemaking to encourage public review and comment on both packages.

Public Meetings and Hearings

In order to acquaint the public with the proposed amendments to Chapter 93 and Chapter 16, the Department will conduct public meetings prior to the start of the public hearings. The public is encouraged to attend the public meetings.

The public meetings and public hearings will be held as follows:

December 2, 2003 — Four Points By Sheraton Pittsburgh North
910 Sheraton Drive
Mars, PA 16046

Chapter 16, Water Quality Toxics Management Strategy
Public Meeting: 2:00 p.m. – 3:00 p.m.
Public Hearing: 3:00 – 4:00 p.m.

Chapter 93, Triennial Review of Water Quality Standards
Public Meeting: 6:00 p.m. – 7:00 p.m.
EQB Public Hearing: 7:00 p.m. – 8:00 p.m.

December 4, 2003 Courtyard by Marriott
16 Glenmaura National Blvd.
Moosic, PA 18507

Chapter 16, Water Quality Toxics Management Strategy
Public Meeting: 2:00 p.m. – 3:00 p.m.
Public Hearing: 3:00 – 4:00 p.m.

Chapter 93, Triennial Review of Water Quality Standards
Public Meeting: 6:00 p.m. – 7:00 p.m.
EQB Public Hearing: 7:00 p.m. – 8:00 p.m.

Persons wishing to present testimony at any of the above public hearings should contact Chris Shroyer at (717) 787-4526, by e-mail at cshroyer@state.pa.us, or at P.O. Box 8477, Harrisburg, PA 17105-8477, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their statement at the hearing. Each organization is limited to designating one witness to present testimony on its behalf.

Persons with a disability who wish to attend a public hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Chris Shroyer at the telephone number, e-mail address or mailing address indicated above, or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD), to discuss how their needs may be accommodated.

Written Comments

In lieu of or in addition to presenting oral testimony at a hearing, interested persons may submit written comments, suggestions, or objections on the proposals by December 17, 2003. Comments submitted by facsimile will not be accepted; however, the EQB and the Department will accept comments submitted by e-mail. A subject heading of the proposal and return name and address must be included in each e-mail transmission.

Chapter 93, Triennial Review of Water Quality Standards: Written comments may be sent to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Electronic comments may be submitted to RegComments@state.pa.us. In addition to written or electronic comments, interested persons may submit a summary of their comments to the EQB on the proposed Chapter 93 amendments. The summary cannot exceed one page in length and must also be received by December 17, 2003. One-page summaries will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Chapter 16, Water Quality Toxics Management Strategy: Written comments may be sent to Mary Houghton, Division of Water Quality Assessment and Standards, Bureau of Water Supply and

Wastewater Management, 11th Floor, Rachel Carson State Office Building, P.O. Box 8467, Harrisburg, PA 17105-8467. Electronic comments may be submitted to mhoughton@state.pa.us.

Availability of the Proposals

Copies of the proposed amendments to Chapters 93 and 16 are available by contacting Chris Shroyer at the telephone number, e-mail address or mailing address indicated above. The proposals are also available on the DEP website at http://www.dep.state.pa.us (DEP Keyword: *Participate,* then *Proposals Open for Comment*).

KATHLEEN A. MCGINTY
Chairperson
Environmental Quality Board

and

Secretary
Department of Environmental Protection

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
October 7, 2003

Policy Office 717-783-8727

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

RE: Proposed Rulemaking: Triennial Review of Water Quality Standards (#7-386)

Dear Mr. Nyce:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission) pursuant to Section 5(a) of the Regulatory Review Act. The Environmental Quality Board (EQB) approved this proposal on July 15, 2003. The proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on October 18, 2003, with a 60-day public comment period. Two public hearings have been scheduled as indicated in the enclosed public notice.

Section 303(c)(1) of The Clean Water Act requires that states periodically, but at least once every 3 years, review and revise as necessary, their water quality standards. The purpose of this proposed rulemaking is to fulfill the federally required triennial review, and to make revisions, as necessary, to water quality standards in Chapter 93 to fulfill the Commonwealth's requirements under § 303(c)(1).

Issues that are addressed in the Commonwealth's triennial review include: clarification of the scope section of Chapter 93, dissolved oxygen criteria, drainage list corrections, review of water body segments that do not meet the fishable or swimmable uses, and the correction of typographic and grammatical errors. Specifically, the proposed rulemaking recommends deletion of certain text in
§ 93.2(a) in order to correct any misinterpretation that the scope of Chapter 93 applies only to "discharges" or to "point sources". The proposed rulemaking also includes changes to the application of dissolved oxygen criteria in § 93.7 to recognize the effects of natural stratification in lakes, ponds, and impoundments.

In addition to the proposed Triennial Review rulemaking, the Department of Environmental Protection (Department) is proposing revisions to Chapter 16, Water Quality Toxics Management Strategy – Statement of Policy. The water quality toxics standards are

referenced in Chapter 93 and, under federal regulations, must be reviewed as part of the state's triennial review. Since the proposed amendments to Chapter 16 involves changes in policy, rather than regulatory amendments, the EQB is not required to take action on the proposed changes to Chapter 16. However, the proposed revisions to Chapter 16 are enclosed with this correspondence for your review and information.

The Department is simultaneously advertising the proposed Chapter 16 changes with the Chapter 93 Triennial Review proposed rulemaking to encourage public review and comment on both packages. To simplify and facilitate the public comment process, the EQB's public hearings on the proposed Triennial Review rulemaking will be held on the same date and at the same location where the Department's public hearings on the proposed revisions to Chapter 16 will be conducted. Details concerning both hearings are outlined in the enclosed public notice.

The Department's Water Resources Advisory Committee (WRAC) was briefed on the proposed Chapter 93, Triennial Review amendments at its October 18, 2001, September 11, 2002, and November 13, 2002, meetings. WRAC suggested adding a definition for epilimnion in Chapter 93; however, because the definition is technical and would not benefit the public, the Department decided to add language in the preamble to explain and clarify the term. WRAC subsequently supported the Department's proposed rulemaking and approved presentation of the proposal to the EQB.

The Department will provide the Commission with the assistance required to facilitate a thorough review of the proposed amendments to Chapter 93. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days after the close of the public comment period, convey to the agency any comments, recommendations and objections to the proposed regulation. The Department will consider any comments or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

Please contact Michele Tate or me at the number above if you have any questions or would like additional information.

Sincerely,

S. F. Trostle

Sharon F. Trostle
Regulatory Coordinator

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER:	7-386
SUBJECT:	Triennial Review of Water Quality Standards
AGENCY:	DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10-7-03	Vicki Hoffman	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10-7-03	Dorothy Costelli	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10-7-03	Elaine Pagan	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
10/7/03		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

August 7, 2003