

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0; font-size: small;">(All Comments submitted on this regulation will appear on IRRC's website)</p>	<p style="margin: 0;">INDEPENDENT REGULATORY REVIEW COMMISSION</p> <h1 style="margin: 0;">RECEIVED</h1> <p style="margin: 0; font-size: large;">APR 13 2023</p> <p style="margin: 0;">Independent Regulatory Review Commission IRRC Number: 3309</p>
<p>(1) Agency Environmental Protection</p>	
<p>(2) Agency Number: 7 Identification Number: 557</p>	
<p>(3) PA Code Cite: 25 Pa. Code Chapter 93</p>	
<p>(4) Short Title: Water Quality Standards – Dunbar Creek et al. Stream Redesignations</p>	
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Griffin; 717.772.3277; laurgriffi@pa.gov Secondary Contact: Ezra Thrush; 717.783.8727; ezthrush@pa.gov</p>	
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The amendments to 25 Pa. Code Chapter 93 (relating to water quality standards) reflect the list of recommended stream redesignations as described in the attached Water Quality Standards Review Stream Redesignation Evaluation Reports. The final-form regulation updates and revises stream use designations in §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v (relating to designated water uses and water quality criteria). These changes do not impose any new operating requirements on existing wastewater discharges or other existing activities regulated by the Department under existing individual permits or approvals. If a new, increased or additional discharge is proposed by a permit applicant, more stringent treatment requirements and enhanced best management practices (BMPs) may be necessary to maintain and protect the existing quality of the receiving waters. Additionally, as a result of these regulations, discharge activities to special protection streams are not eligible for coverage under National Pollutant Discharge Elimination System (NPDES) general permits, and therefore, require individual permits.</p>	
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Environmental Quality Board (Board) to develop and adopt rules and regulations to implement The Clean Streams Law (35 P.S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929, (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department.</p>	

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Sections 101(a)(2) and 303(c)(2)(A) of the Federal Clean Water Act (CWA) (33 U.S.C.A. §§ 1251(a)(2) and 1313(c)(2)(A)) set forth requirements for water quality standards. States must adopt water quality standards and the standards must be reviewed and approved by the U.S. Environmental Protection Agency (EPA) to be effective for purposes of implementing CWA actions. The water quality standards must be reviewed for consistency with the mandates under the CWA. Section 1251(a)(2) of the CWA establishes the national goal that wherever attainable, water quality should provide for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water. Section 1313(c)(2)(A) requires water quality standards to include designated uses of waters, taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes. Section 1313(d)(4)(B), establishes an antidegradation policy for waters where the quality of the water equals or exceeds levels necessary to protect the designated uses for such waters. The designated uses in this rulemaking are consistent with these mandates.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The purpose of developing water quality standards is to protect Pennsylvania's surface waters. Each of Pennsylvania's surface waters have specific goals for how the waterbody is used. These goals are dependent upon water quality and they are amended through the redesignation process when they are incongruent with the designated uses as listed in §§ 93.9a—93.9z. Pennsylvania's surface waters, through the water quality standards program, are protected for a variety of uses relating to aquatic life, water supply, recreation and fish consumption, special protection and navigation. It is in the public interest to redesignate surface waters so that the appropriate protections are in place to maintain the uses of the surface waters.

By protecting the water uses, and the quality of the water necessary to maintain the uses, benefits may be gained in a variety of ways by the residents of and visitors to the Commonwealth. For example, clean water used for drinking water supplies benefits the consumers by lowering drinking water treatment costs and reducing medical costs associated with drinking-water related illnesses. Clean surface waters also benefit the Commonwealth by providing for increased tourism and recreational use of the waters. Clean water provides for increased wildlife habitat and more productive fisheries. This final-form regulation benefits not only local residents but those from outside the affected areas who come to enjoy the benefits and aesthetics of outdoor recreation. Refer to Question 17 for a more detailed description of the economic and social benefits provided by the final-form regulation.

(11) 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 regulation is not more stringent than federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?

Other states are also required to maintain water quality standards, based on the federal mandate of the CWA as described in Question 9.

Therefore, the amendments do not put Pennsylvania at a competitive disadvantage to other states. On the contrary, if Pennsylvania’s water quality is sufficiently better than that found in other states, it may attract industries which rely on high quality water to do business within the Commonwealth. Higher water quality may also support the Commonwealth as a preferred tourist destination for various outdoor recreational activities and related business.

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

No other regulations are affected by this final-form regulation.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

These amendments are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); a request from the Pennsylvania Fish and Boat Commission (PFBC) (Dunbar Creek); the Department’s ongoing statewide monitoring activities (UNT 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek).

As part of the stream redesignation process, and in accordance with 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements), the Department offered opportunities for the public to provide data and other information during the review of the uses of the streams. The Department provided public notice of its intent to assess Bear Creek, Clyde Run, Cranberry Creek, Dunbar Creek, Two Lick Creek, UNT 28168 to Oley Creek and UNT 08187 to South Branch Codorus Creek and requested water quality data for these streams through publications in the *Pennsylvania Bulletin* as summarized in Table 1.

Table 1. Pennsylvania Bulletin publication dates for notices of stream evaluation.

Stream Name	PA Bulletin	Publication Date
Bear Run	37 Pa. B. 4490	August 11, 2007
	46 Pa. B. 3328	June 25, 2016
Clyde Run	40 Pa. B. 5643	October 2, 2010
Cranberry Creek	44 Pa. B. 6149	September 27, 2014
	48 Pa. B. 5924	September 22, 2018
Dunbar Creek	30 Pa. B. 2071	April 22, 2000
Two Lick Creek	34 Pa. B. 1520	March 13, 2004
UNT 28168 to Oley Creek	45 Pa. B. 2676	May 30, 2015
UNT 08187 to S. Br. Codorus Creek	42 Pa. B. 2539	May 12, 2012

Additionally, notices of intent to assess these streams were posted on the Department website. The Department directly notified all affected municipalities, planning commissions, conservation districts, and Commonwealth agencies of these redesignation evaluations in letters dated as summarized in Table 2.

Table 2. Letters of notification to affected governmental organizations and agencies.

Stream Name	Date of Letter
Bear Run	May 22, 2007
	July 8, 2016
Clyde Run	November 5, 2010
Cranberry Creek	September 15, 2017
Dunbar Creek	April 19, 2000
Two Lick Creek	March 2, 2004
UNT 28168 to Oley Creek	May 11, 2015
UNT 08187 to S. Br. Codorus Creek	April 2, 2012

In response to these notifications, one letter in support of the redesignation was received for Bear Run. The Department received no additional water quality data for Bear Run, Clyde Run, Dunbar Creek, Two Lick Creek, UNT 28168 or UNT 08187. Temperature data was provided by Karl M. Weiler for Cranberry Creek.

Following the period for data submission described in the notices of intent to assess, the Department evaluated all available water quality data and other applicable information for these streams, drafted stream evaluation reports and published the draft reports on its website for public review and comment as summarized in Table 3. If members of the public are interested in receiving notifications of stream evaluations, including the notices of intent to assess and draft stream evaluation reports, they may subscribe to the Department’s Electronic Notification System, eNotice.

Table 3. Stream Evaluation Draft Report Publication for Public Comment

Stream Name	Draft Report Publication Date	Petitioner (if applicable)
Bear Run	February 24, 2017	Ken Sink Chapter of Trout Unlimited
Clyde Run	July 14, 2018	
Cranberry Creek	July 14, 2018	Brodhead Creek Watershed Association
Dunbar Creek	July 14, 2018	
Two Lick Creek	February 24, 2017	Ken Sink Chapter of Trout Unlimited
UNT 28168 to Oley Creek	July 14, 2018	
UNT 08187 to S. Br. Codorus Creek	February 24, 2017	

Each report was open for public comment for no less than a 30-day period.

For Bear Run, one comment was received in support of the Exceptional Value Waters (EV) and High Quality Waters--Cold Water Fishes (HQ-CWF) recommendations.

For Clyde Run, one comment was received in support of the recommendations.

For Cranberry Creek, approximately 159 comments were received in response to the draft report. Ten comments expressed opposition and 148 comments expressed support for the recommendations. A macroinvertebrate survey conducted by Normandeau Associates was submitted.

For Dunbar Creek, the Department received 46 comments in support of the recommendations.

For Two Lick Creek, the Department received three comments in response to the draft report. One comment was in support of the recommendation, and two comments were in opposition.

No comments were received on the draft report for UNT 28168 to Oley Creek.

One comment was received in support of the EV recommendation for UNT 08187 to South Branch Codorus Creek.

Copies of the stream evaluation reports for these waterbodies are available on the Department's website and are included with this regulatory analysis form.

The Board adopted the proposed regulation at its April 20, 2021 meeting, which was published in the *Pennsylvania Bulletin* on July 31, 2021 (51 Pa.B. 4062) with a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021 for the purpose of accepting comments on the proposed rulemaking. The Board received comments from 228 commentators including testimony from three witnesses at the public hearing and a letter from the Independent Regulatory Review Commission (IRRC) indicating that the Commission had no objections, comments, or recommendations to offer on the regulation.

The data and information collected on these waterbodies support the Board's final-form rulemaking as set forth in Annex A.

The Department presented a summary of the final-form rulemaking package to the Department's Agriculture Advisory Board (AAB) on October 20, 2022.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

NPDES Permittees

Only nine facilities currently hold active, individual NPDES permits for discharges to the stream segments being redesignated in this final-form rulemaking, and only four of those nine facilities have discharges to stream segments being considered for redesignation to HQ or EV. There are approximately 10,300 facilities across the Commonwealth that hold permits issued pursuant to 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). This statewide number of approximately 10,300 includes NPDES permits for concentrated animal feeding operations (CAFO), industrial waste, municipal separate storm sewer systems (MS4), treated sewage, and stormwater associated with industrial activities. This total does not include NPDES permits for stormwater associated with construction activities, which is discussed in Question 19.

The types of the nine discharges with active NPDES permits located in waters affected by this final-form rulemaking include industrial wastewater and stormwater associated with industrial activities.

The Department considers five of these nine permitted facilities to be small businesses based on available information. Discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these waters may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose additional special treatment requirements on existing permitted discharges.

In general, if a person has an individual NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit will not be affected by the stream redesignations to HQ or EV, and no new costs will be incurred. If, however, a permittee proposes to change the quality or quantity of an NPDES permitted discharge after a stream is redesignated to HQ or EV, any subsequent permit action will take the redesignation into account when establishing permit conditions.

Discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8) (relating to general permits), and therefore, require individual permits. As described in the responses to Questions 17, 19 and 20, higher application fees have been established for individual permits for certain activities as compared with the application fees for coverage under the general permits for those same activities, when general permits are available.

The Department's antidegradation analysis requires any person, including individuals, small businesses, large businesses, local and state government agencies and public or private corporations and associations, proposing a new, additional, or increased point source discharge to satisfy the antidegradation requirements found in 25 Pa. Code § 93.4c(b)(1) (relating to point source discharges). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative if it is environmentally sound and cost-effective when compared to the cost associated with achieving a nondegrading discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must utilize antidegradation best available combination of technologies (ABACT), which include cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies. The permit applicant must demonstrate in the permit application that their new or expanded activities will not lower the existing water quality of special protection streams. If an applicant cannot meet these nondegrading discharge requirements, a person who proposes a new, additional, or increased discharge to HQ waters is given an opportunity to demonstrate there is a social or economic benefit of the project that would justify a lowering of the water quality. The social or economic justification (SEJ) demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that a lower water quality will protect all other applicable water uses for the waterbody. SEJ is not available for proposed discharges to EV waters. The water quality of EV streams must be maintained and protected.

Costs associated with new, increased or additional discharges to surface waters may include increased consulting fees to complete the additional antidegradation analyses and permit application requirements that address antidegradation of surface waters. Based on the site-specific nature of these antidegradation evaluations and the variety of potential discharges, costs and savings to the regulated community will depend

upon technologies chosen to address new, additional or increased pollutants; effluent discharge and receiving stream characteristics; and demonstrations of SEJ for less stringent limitations.

Any estimates of who will be affected by the stream redesignations in this final-form rulemaking and how they will be affected would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) the characteristics of each receiving stream and each effluent discharge are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

Please refer to the response to Questions 19 and 20 for more detailed economic information.

Public Water Supply Facilities

The Department identified one public water supply facility with a raw water intake located within the stream sections being redesignated in this final-form regulation. This one public water supplier, which serves over 22,300 citizens, will benefit from this final-form rulemaking because their raw source water will be afforded a higher level of protection. This final-form rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. By maintaining clean surface water, public water suppliers may avoid the costly capital investments that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. In turn, the public water suppliers' customers will benefit from reduced fees for clean drinking water. A similar case could generally be made for other water supply uses benefiting from the availability of better source water quality.

Recreation Industry

Small businesses in the recreation industry will also be positively affected by this final-form regulation. The maintenance and protection of the water quality that will result from this final-form rulemaking will ensure the long-term availability of sport fishing, wildlife watching, and other forms of outdoor recreation.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Only four facilities have active, individual NPDES permits for discharges to the stream segments being redesignated to HQ or EV, which will not be impacted by this regulation unless the discharges are increased or new discharges are added. An additional five facilities currently hold active, individual NPDES permits for discharges to the stream segments being redesignated to non-special protection uses in this final-form rulemaking. The types of the nine discharges with active NPDES permits located in waters affected by this final-form rulemaking include industrial waste and stormwater associated with industrial activities. The Department considers five of these nine permitted facilities to be small businesses based on available information. A person who applies for a new, additional or increased point source discharge to a special protection water must comply with this regulation and must satisfy the requirements of the antidegradation regulation in § 93.4c(b)(1).

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for discharges of stormwater associated with construction activities issued under 25 Pa. Code Chapter 102 (relating to erosion and sediment control). Any person proposing a new earth disturbance

activity requiring a permit under Chapter 102 must comply with this final-form regulation and the antidegradation provisions, as applicable.

Any approximation of the number of future activities within these waters that may require an NPDES permit for a new, additional or increased point source discharge would be speculative. See the discussion in response to Question 19 for additional details.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Financial and Economic Impacts:

The stream redesignations in this final-form rulemaking will not have any negative financial or economic impact on those persons currently engaged in an activity that is regulated by the Department under an individual permit. Discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, they are considered to satisfy the antidegradation requirements as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not automatically impose additional new treatment requirements or financial impacts on NPDES permitted entities and other existing permitted discharges.

The Department's antidegradation analysis requires any person, including individuals, small businesses, large businesses, local and state government agencies and public or private corporations and associations, proposing a new, additional, or increased point source discharge to satisfy the requirements found in § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative that is environmentally sound and cost-effective when compared to the costs associated with achieving a nondegrading discharge. See further discussion in the response to Question 15 regarding SEJ, nondegrading discharge and nondischarge alternatives.

Only when a person proposes a new, additional or increased discharge would it be necessary to satisfy the requirements of the antidegradation regulation in § 93.4c(b)(1). For nonpoint source control, pursuant to 25 Pa. Code § 93.4c(b)(2), cost-effective and reasonable BMPs must be achieved for pollution sources to HQ and EV waters. Discharges to special protection waters do require additional permit application evaluations and considerations and may require the use of additional technologies or BMPs to address pollution that was not present at the time of the stream redesignation. Costs associated with new, increased or additional discharges to surface waters may include increased consulting fees to complete the additional antidegradation analyses and permit application requirements that address antidegradation of surface waters as well as increased treatment and operations and maintenance expenses. Presently, four discharges with active NPDES permits are located on waters that are being redesignated to HQ or EV in this final-form rulemaking. It is not known at this time whether these facilities will expand, or whether a new application for a discharge permit will be filed with the Department, possibly triggering compliance with the antidegradation regulation.

When earth disturbance activities occur within the basins of the stream segments being redesignated in this rulemaking, additional construction and post-construction BMPs may be necessary to protect water quality

under 25 Pa. Code Chapter 102. It is not known at this time whether any new earth disturbance activities will be proposed that would require a Chapter 102 permit or other approval from the Department.

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 (relating to the administration of sewage facilities planning program; administration of sewage facilities permitting program; and standards for onlot sewage treatment facilities) will continue to satisfy § 93.4c (relating to implementation of antidegradation requirements). This final-form rulemaking will not increase costs or trigger adverse effects on existing or planned sewage systems.

Discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, require individual permits. Additional cost may be incurred by facilities required to obtain an individual permit.

In general, any evaluation of the financial and economic impacts of this final-form regulation on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) the characteristics of each receiving stream and each effluent discharge are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

Social Impacts and Economic and Social Benefits:

Overall, the Commonwealth, its residents and visitors, and its natural resources will benefit from this final-form rulemaking because it provides the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of a clean water supply. Water uses in the Commonwealth include water supplies for human consumption, wildlife, irrigation, and industrial use; recreational opportunities such as fishing (also for consumption); water contact sports and boating; and aquatic life and special protection. It is important for the Commonwealth to ensure opportunities and activities continue in a manner that is environmentally, socially and economically sound. Protection and maintenance of water quality ensures its future availability for all uses. The following paragraphs describe the economic and social benefits of clean water that are protected by this final-form regulation.

Increased property values

A reduction in toxics found in Pennsylvania's waterways may lead to increased property values for properties located near rivers or lakes. The study, *The Effect of Water Quality on Rural Nonfarm Residential Property Values*, (Epp and Al-Ani, American Journal of Agricultural Economics, Vol 61, No. 3 (Aug. 1979), pp. 529-534 (www.jstor.org/stable/1239441)), used real estate prices to determine the value of improvements in water quality in small rivers and streams in Pennsylvania. Water quality, whether measured in pH or by the owner's perception, has a significant effect on the price of adjacent property. The analysis showed a positive correlation between water quality and housing values. They concluded that buyers are aware of the environmental setting of a home and that differences in the quality of nearby waters affect the price paid for a residential property.

A 2010 report from the Delaware Riverkeeper Network (www.delawariverkeeper.org/sites/default/files/River_Values_Report_0.pdf) discusses a case study from the Maine Agricultural and Forest Experiment Station which compared water-front property values based on

whether the water that the homes faced was considered clean. Properties located near higher quality waters had higher market value than if the waterbody was lower in water quality. It was shown in some cases that a decline in water quality can completely abate the market value premium associated with a home being a waterfront property.

A 2006 study from the Great Lakes region estimated that property values were significantly depressed in two regions associated with toxic contaminants (polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and heavy metals). The study showed that a portion of the Buffalo River region (approximately 6 miles long) had depressed property values of between \$83 million and \$118 million for single-family homes, and between \$57 million and \$80 million for multi-family homes as a result of toxic sediments. The same study estimated that a portion of the Sheboygan River (approximately 14 miles long) had depressed property values of between \$80 million and \$120 million as the result of toxics. "*Economic Benefit of Sediment Remediation in the Buffalo River AOC and Sheboygan River AOC: Final Project Report,*" (www.nemw.org/Econ). While this study related to the economic effect of contaminated sediment in other waters in the Great Lakes region, the idea that toxic pollution depresses property values applies in Pennsylvania. A reduction in toxic pollution in Pennsylvania's waters has a substantial economic benefit to property values in close proximity to waterways.

Maintenance of abundant and healthy fish and wildlife populations and support for outdoor recreation

Businesses in the recreation industry will be positively affected by this final-form regulation. The maintenance and protection of the water quality will ensure the long-term availability of trout fisheries, water contact recreation, wildlife watching and other recreational opportunities. The purpose of these stream redesignations is to preserve these resources for current and future sportspersons, outdoor recreators and wildlife enthusiasts so that the social and economic benefits are maintained in the local areas. As recreation demands increase in the future, the preservation of unique resources will undeniably add economic value to the local areas and, importantly, provide a valuable social function for outdoor recreation. Specific revenue-related benefits associated with outdoor trout fishing in Pennsylvania are outlined below.

The Center for Rural Pennsylvania prepared a report titled "Economic Values and Impacts of Sport Fishing, Hunting and Trapping Activities in Pennsylvania," (www.rural.palegislature.us/documents/reports/hunting.pdf) that examined such economic values and impacts between the years 1995 to 1997. The report provides a snapshot of how much money these sporting activities bring to the state and how they affect employment in rural areas. A major finding of that report is the total annual value of \$3.7 billion for sport fishing was almost three times the \$1.26 billion spent in travel costs to use fishing resources during the same 12-month period. The total net annual benefit to anglers was \$2.49 billion.

According to the "Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania," (R. Greene, et al. 2005) (www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf), the PFBC collected information to assess the economic impact of wild trout angling in Pennsylvania, during the 2004 regular trout season, April 17 through September 3, 2004. PFBC found, based on the results of this study, that angling on wild trout streams contributed over \$7.16 million to Pennsylvania's economy during the regular trout season in 2004.

According to the "2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation" (www.census.gov/prod/2012pubs/fhw11-nat.pdf) for Pennsylvania, prepared by the U.S. Fish and Wildlife Service, approximately 1,101,000 anglers, participated in fishing and 3,598,000 persons participated in

wildlife watching in the year 2011. In addition, all fishing-related expenditures in Pennsylvania totaled \$485 million in 2011. Such expenditures include food and lodging, transportation and other expenses (that is, equipment rental, bait, cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in Pennsylvania. Expenditures include trips-related costs and equipment.

According to the Outdoor Industry Association, Pennsylvania's outdoor recreation generates 251,000 direct Pennsylvania jobs, \$8.6 billion in wages and salaries, and \$1.9 billion in state and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. The association reports that 56% of Pennsylvania residents participate in outdoor recreation each year. (See Outdoor Industry Association (2017), "The Outdoor Economy: Take it Outside for American Jobs and a Strong Economy," <https://outdoorindustry.org/resource/pennsylvania-outdoor-recreation-economy-report>).

Southwick Associates prepared a report for the Theodore Roosevelt Conservation Partnership that analyzed the economic contribution of outdoor recreation in Pennsylvania. This 2018 report, "The Power of Outdoor Recreation Spending in Pennsylvania: How hunting, fishing, and outdoor activities help support a healthy state economy" (www.trcp.org/wp-content/uploads/2018/12/TRCP-and-Southwick-PA-Economic-Analysis-12-6-18.pdf), states that during 2016 there were greater than 390,000 jobs supported by outdoor recreation activities in Pennsylvania, and for comparison, this is greater than the number of jobs in Pennsylvania that supported the production of durable goods. Outdoor recreation had an economic contribution in Pennsylvania of almost \$17 billion in salaries and wages paid to employees and over \$300 million in federal, state and local tax revenue.

Maintenance of the current green infrastructure along streams and the associated avoided costs

The findings of a 2014 Lehigh Valley Planning Commission report entitled "Lehigh Valley Return on Environment" demonstrates the benefits when clean water and natural areas are preserved. The report (www.lvpc.org/pdf/2014/ReturnOnEnvironment_Dec_18_2014.pdf) discusses that \$110.3 million in taxes is annually avoided by maintaining the current green infrastructure along streams in the Lehigh Valley. This reduction in taxes includes expenditures for water supply (\$45.0 million), disturbance (flood) mitigation (\$50.6 million) and water quality (\$14.7 million). This report describes how investing in green infrastructure to improve water quality (that is, watershed conservation, forest buffers, and wetlands construction) can be much more cost effective than more traditional gray infrastructure approaches (that is, pipes and treatment plants).

Savings in water treatment for downstream communities that rely on surface waters for water supplies and availability of unpolluted water for domestic, agricultural and industrial uses

The Department identified one public water supply facility with a raw water intake located within the stream sections being redesignated in this final-form regulation. This one public water supplier, which serves over 22,300 citizens, will benefit from this final-form rulemaking because their raw source water will be afforded a higher level of protection. This final-form rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. Safe drinking water is vital to maintaining healthy and sustainable communities. Protecting sources of drinking water can reduce the incidence of illness and reduce health care costs, ensure a continuous supply of safe drinking water, enable communities to plan and build future capacity for economic growth, and ensure their long-term sustainability for years to come. By maintaining clean surface water, public water suppliers may avoid the costly capital investments that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. In turn, the public water suppliers' customers will benefit from reduced fees for clean drinking water.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The stream redesignations in this final-form rulemaking will benefit residents of and visitors to the Commonwealth, both present and future, by maintaining and protecting water quality. Protecting water quality provides economic value to present and future generations in the form of clean water. For example, by maintaining clean surface water, public water suppliers may avoid costly capital investments associated with advanced water treatment processes and the higher annual operations and maintenance costs associated with effective operation of these processes. Additional examples of benefits to be gained by the stream redesignations include increased property values, maintenance of abundant and healthy fish and wildlife populations, and support for outdoor recreation. Restoring the water quality of a stream once it has become impaired by contaminants is often a lengthy and costly process. It is generally more cost-effective to prevent water quality degradation than to restore it after it has become degraded.

It is important for the Commonwealth to realize these benefits of clean water and to ensure that associated opportunities and activities continue in a manner that is environmentally, socially and economically sound. Protection and maintenance of water quality ensures its future availability for all uses.

Protection of HQ and EV waters does not automatically impose additional special treatment requirements on NPDES permittees because their existing discharges are factored into these redesignations. Furthermore, the Department has an obligation prior to rulemaking to provide existing use protection to surface waters when data indicates that a surface water attains or has attained an existing use. Information regarding the HQ and EV waters identified in this final-form rulemaking have been compiled for use in Department permit or approval actions. Notice of the availability of this data is posted on the Department's Existing Uses List Summary Table found at:

www.dep.pa.gov/Business/Water/CleanWater/WaterQuality/StreamRedesignations/Pages/Statewide-Existing-Use-Classifications.aspx.

While a discharge to an HQ or EV water does require additional evaluations and may require the use of additional treatment technologies or BMPs, it does not prohibit activities. Discharge permits to HQ or EV waters may be issued if a permit applicant can sufficiently demonstrate to the Department that the activity will protect existing water quality.

The costs and benefits of this final-form rulemaking are described further in the responses to Questions 17 and 19.

On balance, the certain benefits of this final-form rulemaking outweigh any potential costs and potential adverse impacts.

(19) 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. Explain how the dollar estimates were derived.

Only nine facilities currently hold active NPDES permits for discharges to the stream segments being redesignated in this final-form rulemaking, and only four of those nine facilities have discharges to stream segments being redesignated to HQ or EV. The types of the four discharges with active NPDES permits located in waters being redesignated to HQ or EV in this final-form rulemaking include stormwater associated with industrial activities. The remaining five NPDES permits discharge into Two Lick Creek, which is being redesignated from Trout Stocking (TSF) to CWF. The types of the five discharges with active

NPDES permits located in waters within this basin include industrial waste and stormwater associated with industrial activities. These permits will not be affected by the redesignation.

The Department considers five of these nine permitted facilities to be small businesses based on available information. Discharges in existence at the time of each relevant stream survey have been considered in the determination of the existing water quality of each relevant stream and the recommendation for redesignation to special protection. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these streams may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose additional special treatment requirements on the existing discharges from the four NPDES permitted discharges located in waters being redesignated to HQ or EV in this final-form rulemaking.

As stated previously, discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, require individual permits. Individual permits are required in special protection waters because the existing quality of the water must be protected. Therefore, each discharge must be evaluated individually for each stream. Site-specific characteristics of the stream water quality are used to determine effluent limitations for discharges to a special protection stream. Individual NPDES permits are necessary to track the quality and quantity of any existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the required antidegradation review in accordance with the antidegradation regulations.

There are no NPDES general permits available for discharges to special protection waters. In addition, there are no general permits available for discharges of treated sewage effluent or industrial waste, with the exception of the PAG-04 (general permit for small flow sewage treatment facilities (SFTFs)). The application fee for a new first-time individual permit for discharges of stormwater associated with industrial activities is \$2,000 compared to \$500 for the general permit; the fee to renew the individual permit for discharges of stormwater associated with industrial activities is \$1,000. These permit application fees are set by the NPDES regulations found at 25 Pa. Code § 92a.26 (relating to application fees).

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 will continue to satisfy § 93.4c in these waters that are being redesignated to HQ or EV in this final-form rulemaking. Permit applicants of sewage facilities with proposed discharges to HQ waters, subject to antidegradation requirements, may demonstrate SEJ at the sewage facilities planning stage and need not redemonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and nonsewage discharge applicants for any naturally occurring substances identified in accordance with the Department's *Water Quality Antidegradation Implementation Guidance* (391-0300-002; available at www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=4664).

Although no stormwater discharges from MS4s have been identified in the waters being redesignated, in general, any MS4s that discharge to an HQ or EV water will be required to obtain an individual permit. The application fee for a new individual permit is \$5,000 compared to \$500 for the general permit (that is, NPDES General Permit for Stormwater Discharges from Small MS4s (PAG-13)). If there is an existing MS4 permit (whether it is currently a general permit or an individual permit) to discharge into one of the HQ or EV waters in this final-form rulemaking, any subsequent permit application fee for an individual permit is \$2500. The annual fee for all MS4 permits is \$500, whether it is for coverage under the general permit or an individual permit. There is a difference in cost between the initial issuance of an individual permit and approval of coverage under the general permit due to increased staff time needed to review permit applications and implementation oversight that is associated with individual permits. An individual permit

allows for the tailoring of an MS4's stormwater management program and its implementation of the minimum control measures.

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for discharges of stormwater associated with construction activities issued under Chapter 102. These permits for stormwater discharges associated with construction activities were not included in the permit analyses because of the short-term, temporary nature of these permitted discharges. A person proposing a new earth disturbance activity requiring a permit under Chapter 102 with a discharge to an HQ or EV water must comply with the antidegradation provisions, as applicable. Where a permitted discharge existed prior to the receiving waterbody attaining an existing or designated use of HQ or EV, those persons may continue to operate using BMPs that have been approved by the Department and implemented. Any new discharges to the waterbody would be required to comply with the antidegradation provisions, as applicable, and must undergo an antidegradation analysis. Based on the analysis, additional construction and post-construction BMPs may need to be implemented on the remaining area that will be disturbed. The administrative filing fee for an individual permit is \$1,500 compared to \$500 for a general permit as set forth in § 102.6(b)(1) (relating to permit applications and fees). The erosion and sediment (E&S) BMPs and their ABACT rating, if applicable, are identified in the Department's *Erosion and Sedimentation Pollution Control Manual* (363-2134-008) and the Department's Alternative E&S and Post Construction Stormwater Management (PCSM) BMPs list. The Department may also approve alternative BMPs that maintain and protect the existing water quality and water uses.

In addition to permitted earth disturbance activities, any person proposing a new, additional or increased point source discharge associated with a CAFO, industrial wastewater, MS4, treated sewage or stormwater associated with industrial activities would need to satisfy the antidegradation requirements found in § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative if it is environmentally sound and cost-effective when compared with the cost of the proposed nondegrading discharge. See further discussion in the response to Question 15 regarding SEJ, nondegrading discharge and nondischarge alternatives.

Special protection designations do require additional permit application evaluations and considerations and may require the use of additional technologies or BMPs to address pollution that was not present at the time of the stream redesignation. Costs associated with new, increased or additional discharges to surface waters may include increased consulting fees to complete the additional antidegradation analyses and permit application requirements that address antidegradation of surface waters as well as increased treatment and operations and maintenance expenses. Based on the site-specific nature of these antidegradation evaluations and the variety of potential discharges, costs and savings to the regulated community will depend upon technologies chosen to address new, additional or increased pollutants; effluent discharge and receiving stream characteristics; and demonstrations of SEJ for less stringent limitations.

Any estimates of who will be affected by the stream redesignations in this final-form rulemaking and how they will be affected would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) the characteristics of each receiving stream and each effluent discharge are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for persons who are responsible for discharges.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No publicly-owned treatment works (POTW) with an NPDES permit to discharge treated sewage to the streams being redesignated were identified. A new POTW may be impacted by this final-form rulemaking in the future if the POTW proposes to discharge to waters identified in this final-form rulemaking. For existing discharges, if a person proposes to change the quality or quantity of their permitted discharge(s) after a stream is redesignated, any subsequent permit action will take the redesignation into account when establishing permit conditions. See the responses to Questions 15 and 19 for more detailed information on antidegradation requirements, SEJ, nondegrading discharge and nondischarge alternatives.

Although no stormwater discharges from MS4s have been identified in the waters being redesignated, in general, local governments that are MS4s will most likely have additional costs associated with MS4 permitting requirements for discharges to HQ or EV waters. Any MS4 that discharges to an HQ or EV water will be required to obtain an individual permit. Discharge activities to special protection streams are not eligible for coverage under NPDES general permits, based on 25 Pa. Code § 92a.54(a)(8), and therefore, require individual permits. See the response to Question 19 for additional information on costs to MS4s.

In general, if an MS4 has an NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit will not be affected by the stream redesignations to HQ or EV, and no new costs will be incurred. If, however, the MS4 proposes to change the quality or quantity of their permitted discharge(s) after a stream is redesignated to HQ or EV, any subsequent permit action will take the redesignation into account when establishing permit conditions.

Any evaluation of adverse effects on dischargers would be speculative at this time since: (1) a discharger will not be impacted until a future activity requires a new or modified NPDES permit; (2) effluent discharge and receiving stream characteristics are unique; (3) SEJ may be available to modify the requirement; and (4) generic technology or cost equations are not available for purposes of comparing the costs and/or savings for local governments that are responsible for discharges.

Local governments may gain income from the redesignations due to potential tourism and recreational revenue. For those local governments that receive income from the tourism industry, the redesignations may help maintain local revenue and employment. In addition, local land values may increase in the future as homes that are near areas of clean water and protected resources become more desirable places to live. Local governments that use these waters as a public water supply may also gain an economic benefit by reduced source water treatment requirements. See the response to Questions 17 and 19 for additional details.

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

In general, if a Commonwealth agency has an NPDES permit to discharge pollutants into waters of the Commonwealth, the costs and savings would be the same as those described in Question 20 for local government. However, no permits have been issued to a Commonwealth agency for a discharge to any of the streams that are being redesignated in this final-form rulemaking.

No other costs will be imposed directly upon Commonwealth government by this final-form rulemaking. This regulation will be implemented through existing Department programs, procedures and policies.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Existing Department paperwork, procedures and guidance will be used to implement antidegradation requirements for discharges to the streams being redesignated to HQ and EV in this final-form rulemaking. No new forms, reports or implementation procedures are necessary. A permit applicant who proposes to discharge new, additional or increased pollutants might need the assistance of a consultant to evaluate certain elements of the antidegradation requirements such as nondischarge alternatives and nondegrading treatment options or BMPs. A permit applicant for a new or renewed permit must apply for an individual permit; however, a permit renewal does not trigger antidegradation review until new, additional or increased pollutants are proposed in the permit application.

(22a) Are forms required for implementation of the regulation?

No new forms are required to implement this regulation. For a permit applicant who proposes to discharge new, additional or increased pollutants, the appropriate permit applications are needed when applying for a permit. The permit application should include an antidegradation module, if available, corresponding to the appropriate Department permitting program.

Permit application modules for discharges to special protection waters can be found at the links listed below in the response to Question 22b. If a permit application lacks an antidegradation module, the permit applicant must still provide the required antidegradation analyses and evaluations as required by § 93.4c(b)(1).

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

The following are links to existing antidegradation permit application modules or forms that include antidegradation requirements:

Antidegradation Supplement for Mining Permits

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3713>

Mining SEJ module

www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3872

Oil and Gas Program Erosion and Sediment (E&S) Control General Permit

<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=56433&DocName=03 - NOTICE OF INTENT %28NOI%29.PDF>

Industrial Waste Antidegradation Module (including Industrial Waste (IW) Stormwater Only Discharges)
www.depgreenport.state.pa.us/elibrary/GetDocument?docId=11982&DocName=3800-PM-BCW0008g
[Module 4 and Module 4 Instructions.pdf](#)

Pesticides Permit Antidegradation Module
www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3675

Erosion and Sediment Control Individual Permit
<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=105622>

(23) 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 2022/23	FY +1 2023/24	FY +2 2024/25	FY +3 2025/26	FY +4 2026/27	FY +5 2027/28
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Savings	"	"	"	"	"	"
COSTS:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Costs	"	"	"	"	"	"
REVENUE LOSSES:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	"	"	"	"	"	"
State Government	"	"	"	"	"	"
Total Revenue Losses	"	"	"	"	"	"

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 (2019/20)	FY -2 (2020/21)	FY -1 (2021/22)	Current FY (2022/23)
160-10381 Enviro Protection Operations	\$84,023,000	\$94,202,000	\$98,036,000	\$102,719,000
161-10382 Enviro Program Management	\$27,920,000	\$32,041,000	\$34,160,000	\$35,739,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

According to the Regulatory Review Act, small businesses are defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations). The Small Business Administration defines a small business as less than 500 employees. Persons who propose to discharge new, additional or increased pollutants into surface waters of the Commonwealth must comply with the regulation. Also, please see the response to Question 15. When this final-form regulation goes into effect, no existing discharges will be immediately affected. The Department considers five out of nine NPDES-permitted facilities in waters affected by this final-form rulemaking to be small businesses based on available information.

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

Existing Department paperwork, procedures, and guidance will be used to implement the antidegradation requirements that apply to discharges to the streams being redesignated to HQ or EV in this final-form rulemaking. No new forms, reports, or implementation procedures are necessary. NPDES permit application modules for discharges to HQ or EV waters can be found at the links listed in the response to Question 22b. A permit applicant who proposes to discharge new, additional, or increased pollutants might need the assistance of a consultant to evaluate certain elements of the antidegradation requirements such as nondischarge and nondegrading treatment options or BMPs.

(c) A statement of probable effect on impacted small businesses.

In general, if a person has an NPDES permit to discharge pollutants into waters of the Commonwealth, the existing permit limits will not be affected by the stream redesignations in this final-form rulemaking, and no new costs will be incurred. If, however, a person proposes to change the quality or quantity of their permitted discharge(s) after a stream is redesignated to HQ or EV, any subsequent permit action will take the redesignation into account when establishing permit conditions.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulations at 25 Pa. Code Chapter 93 provide the opportunity for examination of the least costly alternative treatment method for a person or entity seeking a new, additional or increased discharge of pollutants through the permit application process. This examination is performed when an applicant evaluates whether nondischarge alternatives (that is, alternatives to the discharge) exist that are cost-effective and environmentally sound; and, if not, whether a nondegrading discharge is possible. Since this final-form rulemaking involves redesignations of streams to HQ, Chapter 93 allows a reduction of water quality if lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

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

While no special provisions are included in this final-form rulemaking, it is important to note that this regulation will afford the protection of water quality necessary to ensure clean water for residents of and visitors to this Commonwealth.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

This final-form regulation meets the Commonwealth's obligations under The Clean Streams Law and the CWA to protect water uses. The final-form regulation reflects the results of a scientific evaluation of regulatory criteria. No alternative regulatory schemes are available to achieve the correct level of protection for the waters of the Commonwealth.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

a) The establishment of less stringent compliance or reporting requirements for small businesses;

This final-form regulation does not establish or revise compliance or reporting requirements for small businesses. Those requirements would be addressed through the applicable permitting program. No alternative regulatory schemes are available to achieve the correct level of protection for the waters of the Commonwealth. The final-form regulation reflects the results of a scientific evaluation of regulatory criteria.

b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

This final-form regulation does not establish or revise schedules or deadlines for compliance or reporting requirements for small businesses. Schedules of compliance and reporting requirements are considered when permit or approval actions are taken, in accordance with 25 Pa. Code Chapter 92a or other applicable permitting programs.

c) The consolidation or simplification of compliance or reporting requirements for small businesses;

This final-form regulation does not establish or revise compliance or reporting requirements for small businesses. Compliance and reporting requirements are considered when permit or approval actions are taken, in accordance with 25 Pa. Code Chapter 92a or other applicable permitting programs.

d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and

Any evaluation of treatment technologies or BMPs for persons who discharge pollutants to HQ or EV streams would be speculative at this time since (1) a discharger will not be impacted until a future activity requiring a new or modified NPDES permit is proposed; (2) the characteristics of each receiving water and each effluent discharge are unique; and (3) SEJ may be available to modify the compliance requirement.

- e) **The exemption of small businesses from all or any part of the requirements contained in the regulation.**

No such exemptions of small businesses are available in this case.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

These amendments are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); the Department's ongoing statewide monitoring activities (UNT 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek). The stream redesignations rely on the special protection qualifiers found at §§ 93.4b(a)(2)(i)(A), 93.4b(a)(2)(ii), 93.4b(b)(1)(iii), 93.4b(b)(1)(v) and 93.4b(b)(2). The redesignations also include evaluation of the protected water uses specified in 25 Pa. Code § 93.3 (relating to protected water uses) (UNT 08187) and the less restrictive use qualifiers specified in 25 Pa. Code § 93.4(b) (relating to statewide water uses) (UNT 28168). This final-form rulemaking was developed by the Bureau of Clean Water following a comprehensive evaluation of the physical, chemical and biological characteristics and other information available on these waterbodies. The data and information evaluated for these waterbodies support the Board's final-form regulation as set forth in Annex A.

The results of the Department's review can be found in the Department's Stream Evaluation Reports for each stream included in this final-form rulemaking and are available on the Department's website at:

Bear Run

[http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream Packages/Dunbar Creek/Bear Run Report.pdf](http://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream%20Packages/Dunbar%20Creek/Bear%20Run%20Report.pdf)

Clyde Run

[https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream Packages/Dunbar Creek/Clyde Run Report.pdf](https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream%20Packages/Dunbar%20Creek/Clyde%20Run%20Report.pdf)

Cranberry Creek

[https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream Packages/Dunbar Creek/Cranberry Creek Report.pdf](https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream%20Packages/Dunbar%20Creek/Cranberry%20Creek%20Report.pdf)

Dunbar Creek

[https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream Packages/Dunbar Creek/Dunbar Creek Report.pdf](https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream%20Packages/Dunbar%20Creek/Dunbar%20Creek%20Report.pdf)

Two Lick Creek

[https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream Packages/Dunbar Creek/Two Lick Creek Report.pdf](https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortalFiles/Stream%20Packages/Dunbar%20Creek/Two%20Lick%20Creek%20Report.pdf)

UNT 08187 to South Branch Codorus Creek

https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortals/Stream_Packages/Dunbar_Creek/UNTSB_Report.pdf

UNT 28168 to Oley Creek

https://files.dep.state.pa.us/Water/Drinking%20Water%20and%20Facility%20Regulation/WaterQualityPortals/Stream_Packages/Dunbar_Creek/UNT28168_Oley_Creek_Report.pdf

The Department readily accepts and values all data from outside agencies and the public for use in stream evaluations. These data are evaluated and considered in the development of the recommendations for redesignation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The length of the public comment period: | <u>45 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>August 30, 2021</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 2, 2023</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication in <i>Pennsylvania Bulletin</i> as final-form rulemaking for CSL permit and approval actions, or as approved by EPA for purposes of implementing the CWA.</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon issuance or renewal of NPDES permits or other approvals of the Department – subsequent to publication of the final-form rulemaking in the <i>Pennsylvania Bulletin</i>.</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>When permits or approvals are issued or renewed – subsequent to publication of the final-form rulemaking in the <i>Pennsylvania Bulletin</i>.</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board is not proposing to establish a sunset date for this final-form regulation because it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor this regulation for its effectiveness and recommend updates to the Board as necessary.

Also, since the CWA requires review and revision of water quality standards as necessary, but at least once every three years, a schedule for review is inherently established.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

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Independent Regulatory
Review Commission

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

By: (Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
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correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO 7-557

DATE OF ADOPTION April 11, 2023

BY Richard Negrin
TITLE RICHARD NEGRIN
ACTING CHAIRPERSON

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

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

BY

Adrian Blawie

DATE OF APPROVAL
April 12, 2023
(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 FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Water Quality Standards; Dunbar Creek et al. Stream Redesignations

25 Pa. Code Chapter 93

**FINAL-FORM RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 93]**

Water Quality Standards; Dunbar Creek et al. Stream Redesignations

The Environmental Quality Board (Board) amends Chapter 93 (relating to water quality standards). This final-form rulemaking amends the drainage lists at §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v (relating to designated water uses and water quality criteria) as set forth in Annex A. The purpose of this final-form rulemaking is to update the designated uses so the surface waters of this Commonwealth are afforded the appropriate level of protection. This final-form rulemaking fulfills the Commonwealth's obligations under State and Federal law to review and revise, as necessary, water quality standards that are protective of surface waters.

This final-form rulemaking was adopted by the Board at its meeting of April 11, 2023.

A. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. Once approved by the United States Environmental Protection Agency (EPA), water quality standards are used to implement the Federal Clean Water Act (CWA) (33 U.S.C.A. §§ 1251—1388).

B. Contact Persons

For further information, contact Michael (Josh) Lookenbill, Program Manager, Water Quality Standard Division, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, 400 Market Street, Harrisburg, PA, 17105-8774, (717) 787-9637, or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA, 17105-8464, 717-787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (Select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of April 11, 2023).

C. Statutory Authority

This final-form rulemaking is authorized under sections 5(b)(1) and 402 of The Clean Streams Law (CSL) (35 P.S. §§ 691.5 (b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the CSL (35 P.S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt, and promulgate rules and regulations for the proper performance of the work of the Department. In addition, sections 101(a)(2) and 303(c)(2)(A) of the CWA (33 U.S.C.A. §§ 1251(a)(2) and 1313(c)(2)(A)) set forth requirements for water quality standards.

D. Background and Purpose

The purpose of developing water quality standards is to protect this Commonwealth's surface waters. Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices (BMPs)) on individual sources of pollution. Water quality standards include designated uses, numeric and narrative criteria to protect those uses, and antidegradation requirements for surface waters. The Commonwealth protects its surface waters for a variety of uses relating to aquatic life, water supply, recreation and fish consumption, special protection and navigation.

The continued development of water quality standards, including revisions and updates, is required by Federal and State law. Section 5 of the CSL (35 P.S. § 691.5) instructs the Department to consider water quality management and pollution control in the watershed as a whole, and the present and possible future uses of waters when adopting rules and regulations. In addition to these requirements, the Commonwealth has responsibilities under the CWA that require water quality standards to be reviewed and approved by the EPA for consistency with the mandates under that act. Section 101(a)(2) of the CWA (33 U.S.C.A. § 1251(a)(2)) establishes the National goal that, wherever attainable, water quality should provide for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water. Section 303(c)(2)(A) of the CWA (33 U.S.C.A. § 1313(c)(2)(A)) requires water quality standards to include designated uses of waters, taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes. Section 303(d)(4)(B) of the CWA (33 U.S.C.A. § 1313(d)(4)(B)) establishes an antidegradation policy for waters where the quality of the water equals or exceeds levels necessary to protect the designated uses for such waters. Section 303(c)(1) of the CWA (33 U.S.C.A. § 1313(c)(1)) requires states to periodically review and revise, as necessary, their water quality standards. The designated uses included in this final-form rulemaking are consistent with these State and Federal statutory mandates.

The Department also has an obligation to protect existing uses when data indicates that a surface water attains or has attained an existing use. Section 93.1 (relating to definitions) defines "existing uses" as "those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards." Where the existing uses are different than the designated uses for a surface water, the waterbody will receive the water quality protection identified by either the existing uses or the designated uses, whichever use is most protective.

For example, if the designated use of a stream is listed as Cold Water Fishes (CWF) but the Department's evaluation of available existing use information indicates that the water also attains the use of High Quality Waters (HQ), the stream would be protected for this HQ-CWF existing use through Department permit or approval actions. Section 93.4c (relating to implementation of antidegradation requirements) requires the Department to make a final determination of existing use protection for a surface water as part of a final permit or approval action. During the review of a permit application and draft permit, interested persons may provide the Department with additional information regarding existing use protection for the surface water. This additional information is considered prior to a final determination of existing use protection and is included

in the draft stream evaluation reports that are published on the Department's web site for public review and comment.

In addition to existing use determinations made during a Department permit or approval process, stream use evaluations may be initiated in other ways. The Department may identify candidate streams for redesignation of uses during routine waterbody investigations. Other agencies may request use evaluations to be considered, and members of the public may submit a rulemaking petition to the Board in accordance with § 93.4d (relating to processing of petitions, evaluations and assessments to change a designated use). When an evaluation of the data demonstrates that existing uses are incongruent with the designated uses, a stream redesignation proposal will be initiated through the rulemaking process to ensure the designated uses in the drainage lists found in §§ 93.9a—93.9z are consistent with the existing uses of the stream.

By protecting the water uses, and the quality of the water necessary to maintain the uses, benefits may be gained in a variety of ways by all residents and visitors of this Commonwealth. For example, clean water used for drinking water supplies benefits the consumers by lowering drinking water treatment costs and reducing medical costs associated with drinking-water related illnesses. Clean surface waters benefit this Commonwealth by providing for increased tourism and recreational use of the waters. Clean water provides for increased wildlife habitat and more productive fisheries. Furthermore, clean water attracts businesses and industry that require a high quality of surface water for production or operation.

The purpose of this final-form rulemaking is to update the designated uses so that the surface waters of this Commonwealth are afforded the appropriate level of protection. These amendments to the designated uses of streams benefit not only local residents but those persons from outside the areas affected by this final-form rulemaking who come to enjoy the benefits and aesthetics of outdoor recreation.

The amendments are the result of stream evaluations conducted by the Department in response to: petitions (Bear Run, Cranberry Creek, Two Lick Creek); a request from the Pennsylvania Fish and Boat Commission (PFBC) (Dunbar Creek); the Department's ongoing Statewide monitoring activities (UNT 08187 to South Branch Codorus Creek and Clyde Run); and an error identified in Chapter 93 (UNT 28168 to Oley Creek). The stream redesignations rely on the special protection qualifiers found at §§ 93.4b(a)(2)(i)(A), 93.4b(a)(2)(ii), 93.4b(b)(1)(iii), 93.4b(b)(1)(v), and 93.4b(b)(2) (relating to qualifying as High Quality or Exceptional Value Waters). The redesignations also include evaluation of the protected water uses specified in § 93.3 (relating to protected water uses) (UNT 08187 to South Branch Codorus Creek) and the less restrictive use qualifiers specified in § 93.4(b) (relating to Statewide water uses) (UNT 28168 to Oley Creek). The specific qualifiers applied for each of the stream redesignation recommendations are detailed in the individual stream evaluation reports available on the Department's web site. This final-form rulemaking was developed by the Bureau of Clean Water following a comprehensive evaluation of the physical, chemical and biological characteristics of these waterbodies and other information available on these waterbodies. The data and information evaluated support this final-form regulation as set forth in Annex A.

In addition to the changes to designated uses, the Board is correcting an error that was inadvertently introduced in a prior rulemaking to the drainage list in § 93.9c (relating to Drainage

List C), published at 48 Pa.B. 866 (February 10, 2018). The correction clarifies that the mainstem and tributaries of Swiftwater Creek downstream of UNT 04960 continue to be designated as HQ-CWF, MF.

The Board adopted the proposed rulemaking at its April 20, 2021 meeting, and was published in the *Pennsylvania Bulletin* at 51 Pa.B. 4062 (July 31, 2021) with a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021, for the purpose of accepting comments on the proposed rulemaking. The Board received comments from 228 commentators, including testimony from three witnesses at the public hearing and a letter from the Independent Regulatory Review Commission (IRRC) indicating IRRC had no objections, comments or recommendations to offer on the regulation. The comments received on the proposed rulemaking are summarized in section F.

The Board has considered all public comments received on the proposed rulemaking in preparing this final-form rulemaking.

E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

This final-form rulemaking amends the drainage lists at §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v set forth in Annex A. The purpose of this rulemaking is to update the designated uses so that the surface waters of this Commonwealth are afforded the appropriate level of protection. Other than a change to Drainage List L discussed as follows, there are no changes made to the amendments described as follows from the proposed rulemaking to this final-form rulemaking.

As part of this stream redesignation process and in accordance with § 93.4c, the Department offered opportunities for the public to provide data and information during the review of surface water uses prior to drafting the proposed rulemaking. The Department provided public notice of its intent to assess Bear Creek, Clyde Run, Cranberry Creek, Dunbar Creek, Two Lick Creek, UNT 28168 to Oley Creek and UNT 08187 to South Branch Codorus Creek and requested water quality data for these streams through publications in the *Pennsylvania Bulletin* as summarized in Table 1.

Table 1. *Pennsylvania Bulletin* publication dates for notices of stream evaluation.

Stream Name	Pennsylvania Bulletin	Publication Date
Bear Run	37 Pa.B. 4490	August 11, 2007
	46 Pa.B. 3328	June 25, 2016
Clyde Run	40 Pa.B. 5643	October 2, 2010
Cranberry Creek	44 Pa.B. 6149	September 27, 2014
	48 Pa.B. 5924	September 22, 2018
Dunbar Creek	30 Pa.B. 2071	April 22, 2000
Two Lick Creek	34 Pa.B. 1520	March 13, 2004
UNT 28168 to Oley Creek	45 Pa.B. 2676	May 30, 2015
UNT 08187 to South Branch Codorus Creek	42 Pa.B. 2539	May 12, 2012

Additionally, notices of the intent to assess these streams were posted on the Department's web site. The Department directly notified affected municipalities, planning commissions, conservation districts and Commonwealth agencies of these redesignation evaluations in letters dated as summarized in Table 2.

Table 2. Letters of notification to affected governmental organizations and agencies.

Stream Name	Date of Letter
Bear Run	May 22, 2007
	July 8, 2016
Clyde Run	November 5, 2010
Cranberry Creek	September 15, 2017
Dunbar Creek	April 19, 2000
Two Lick Creek	March 2, 2004
UNT 28168 to Oley Creek	May 11, 2015
UNT 08187 to South Branch Codorus Creek	April 2, 2012

In response to these notifications, the Department received one letter in support of the redesignation for Bear Run. The Department received no additional water quality data for Bear Run, Clyde Run, Dunbar Creek, Two Lick Creek, UNT 28168 to Oley Creek or UNT 08187 to South Branch Codorus Creek. Karl M. Weiler provided temperature data for Cranberry Creek.

Following the period for data submission described in the notices of intent to assess, the Department evaluated all available water quality data and other applicable information for these streams, drafted stream evaluation reports and published the draft reports on its web site for public review and comment as summarized in Table 3. If members of the public are interested in receiving notifications of stream evaluations, including the notices of intent to assess and draft stream evaluation reports, they may subscribe to the Department's Electronic Notification System, eNotice.

Table 3. Stream evaluation draft report publication for public comment.

Stream Name	Draft Report Publication Date	Petitioner (if applicable)
Bear Run	February 24, 2017	Ken Sink Chapter of Trout Unlimited
Clyde Run	July 14, 2018	
Cranberry Creek	July 14, 2018	Brodhead Creek Watershed Association
Dunbar Creek	July 14, 2018	
Two Lick Creek	February 24, 2017	Ken Sink Chapter of Trout Unlimited
UNT 28168 to Oley Creek	July 14, 2018	
UNT 08187 to South Branch Codorus Creek	February 24, 2017	

Each draft report was open for public comment for no less than a 30-day period.

For Bear Run, one comment was received in support of the Exceptional Value Waters (EV) and HQ-CWF recommendations.

For Clyde Run, one comment was received in support of the recommendations.

For Cranberry Creek, approximately 159 comments were received in response to the draft report. Ten comments expressed opposition and 148 comments expressed support for the recommendations. A macroinvertebrate survey conducted by Normandeau Associates was submitted.

For Dunbar Creek, the Department received 46 comments in support of the recommendations.

For Two Lick Creek, the Department received three comments in response to the draft report. One comment was in support of the recommendation and two comments were in opposition.

No comments were received on the draft report for UNT 28168 to Oley Creek.

One comment was received in support of the EV recommendation for UNT 08187 to South Branch Codorus Creek.

Copies of the stream evaluation reports for these waterbodies are available on the Department's web site or from the contact persons listed in section B of this preamble. All data and comments received in response to these notifications were considered in the review of the surface water evaluations for these streams. The data and information collected on these waterbodies support the Board's final-form rulemaking as set forth in Annex A.

Department staff delivered a presentation of the proposed rulemaking to the Agricultural Advisory Board on November 7, 2019. Staff provided a brief overview of the stream redesignation process and the Department's recommendations for the streams included in this final-form rulemaking.

The following is a brief summary of the Department's recommendations for each waterbody.

§ 93.9c. Drainage List C

Cranberry Creek—The Brodhead Creek Watershed Association submitted a petition requesting that Cranberry Creek, from its source to mouth, be considered for redesignation to EV. The indigenous aquatic community is an excellent indicator of long-term water quality conditions and is used as a measure of both water quality and ecological significance. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to Cranberry Creek. Dimmick Meadow Brook (05244) served as the EV reference for stream metrics comparisons. Three of four stations met the 92% comparison required to qualify for EV. Therefore, the Department recommended that the Cranberry Creek basin, from and including UNT 04948 to its mouth be designated as EV, Migratory Fishes (EV, MF) in § 93.9c (relating to

Drainage List C). The remainder of the Cranberry Creek basin, from its source to UNT 04948 should maintain the current designated use of HQ-CWF, MF.

§ 93.9k. *Drainage List K*

UNT 28168 to Oley Creek—The Department conducted an evaluation of UNT 28168 to Oley Creek due to an error discovered in § 93.9k (relating to Drainage List K) that affected the Oley Creek basin and UNT 28168. The error listed these surface waters with two conflicting use designations. A correction to § 93.9k was made in the stream redesignation rulemaking published at 47 Pa.B. 7029 (November 18, 2017), which lists the designated use of UNT 28168 as HQ-CWF consistent with the 1979 rulemaking. UNT 28168 is also currently listed on the Commonwealth's CWA section 303(d) list of impaired waters. The aquatic life use of UNT 28168 is impaired, and the source has been identified on the CWA section 303(d) list as Abandoned Mine Drainage. The Department evaluated the stream to determine if the human caused conditions that created the impairment occurred before the special protection designation and whether or not the current designated use of HQ-CWF is attainable. As required by § 93.4(b), a use attainability analysis was conducted to determine the appropriate designated aquatic life use of the water. A survey of UNT 28168 indicated that it is appropriately listed on the section 303(d) list of impaired waters. Furthermore, historical aerial photography confirms that significant mining activity as early as 1939 caused conditions that prevented UNT 28168 from meeting the Conservation Area designated use in 1973 and the HQ designated use in 1979. Due to current limitations in available treatment technologies, land availability and remediation, for both point and nonpoint source control of the specific pollutants of concern, UNT 28168 will not attain the HQ-CWF use. Therefore, the Department recommended that UNT 28168 to Oley Creek be designated as CWF, MF in § 93.9k.

§ 93.9l. *Drainage List L*

Bear Run—The Ken Sink Chapter of Trout Unlimited submitted a petition requesting that the Bear Run basin, from its source to its confluence with South Branch Bear Run, be considered for redesignation to HQ or EV. On April 16, 2016, the PFBC added Bear Run, from its source to its confluence with South Branch Bear Run, to the List of Class A Wild Trout Waters following public notice and comment (46 Pa.B. 1977 (April 16, 2016)). The Bear Run basin, from its source to its confluence with South Branch Bear Run, qualifies as HQ based on § 93.4b(a)(2)(ii) regarding Class A wild trout stream qualifier. In addition, the portions of the Bear Run basin located entirely within State Game Land (SGL) 174 meet the definition in § 93.1 for an "outstanding National, State, regional or local resource water." These waters satisfy the HQ qualifiers in § 93.4b(a) and are located within SGL managed by the Pennsylvania Game Commission (PGC). The PGC has established coordinated water quality protective measures in its resource management plans that provide protection to substantial reaches of the watershed corridor. As such, these stream segments qualify as EV waters under § 93.4b(b)(1)(iii). Therefore, the Department recommended that: the Bear Run basin, from UNT 27063 to South Branch Bear Run excluding the headwaters of Brooks Run, be designated as EV in § 93.9l (relating to Drainage List L); and that the Bear Run basin, from its source to and including UNT 27063, and the Brooks Run basin from its source to and including UNT 27059, be designated as HQ-CWF in § 93.9l.

Drainage List L has been amended between the proposed rulemaking and this final-form rulemaking to clarify that the South Branch Bear Run basin retains its current designated use of CWF, MF and is not included in the EV redesignation of Bear Run – Basin, Brooks Run to South Branch Bear Run.

§ 93.9o. *Drainage List O*

UNT 08187 to South Branch Codorus Creek—The Department evaluated the UNT 08187 to South Branch Codorus Creek basin as part of ongoing Statewide monitoring efforts. Biological data were collected to evaluate UNT 08187 since the indigenous aquatic community is an excellent indicator of long-term water quality conditions. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to UNT 08187. Carbaugh Run (60248) served as the EV reference for stream metrics comparisons. Both stations on UNT 08187 met the 92% comparison required to qualify for EV. Therefore, the Department recommended the entire basin of UNT 08187 to South Branch Codorus Creek be designated as EV, MF in § 93.9o (relating to Drainage List O).

§ 93.9r. *Drainage List R*

Clyde Run—The Department evaluated the Clyde Run basin as part of ongoing Statewide monitoring efforts. Biological data were collected to evaluate Clyde Run since the indigenous aquatic community is an excellent indicator of long-term water quality conditions. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to Clyde Run. Korb Run (54831) served as the EV reference for stream metrics comparisons. The Clyde Run station met the 92% comparison required to qualify for EV. Therefore, the Department recommended the entire basin of Clyde Run be designated as EV in § 93.9r (relating to Drainage List R).

§ 93.9t. *Drainage List T*

Two Lick Creek—The Ken Sink Chapter of Trout Unlimited submitted a petition requesting that the Two Lick Creek main stem, from the tailrace of the Two Lick Reservoir to Yellow Creek, be considered for redesignation to HQ-CWF. The Two Lick Creek main stem is currently designated Trout Stocking (TSF). The indigenous aquatic community is an excellent indicator of long-term water quality conditions. The integrated benthic macroinvertebrate score test described at § 93.4b(a)(2)(i)(A) was applied to Two Lick Creek. Cross Fork (23765) and Kettle Creek (23661) served as the EV references for stream metrics comparisons. Data collected at two stations on Two Lick Creek in 2005 were compared to Cross Fork while data collected at one of the same stations in 2009 were compared to Kettle Creek. None of the Two Lick Creek samples exceeded the 83% comparison required to qualify for HQ. As a result of data collection, the Department documented the presence of a naturally reproducing Salmonidae community and other flora and fauna indigenous to a cold water habitat in Two Lick Creek. Therefore, the Department recommended the Two Lick Creek main stem, from the Two Lick Reservoir tailrace to the confluence of Yellow Creek, be designated as CWF in § 93.9t (relating to Drainage List T).

§ 93.9v. *Drainage List V*

Dunbar Creek—The PFBC submitted information to the Department requesting that the Dunbar Creek basin, from its source to Gist Run, be considered for redesignation to EV. The integrated benthic macroinvertebrate score test described at § 93.4b(b)(1)(v) was applied to Dunbar Creek. Clear Shade Creek (45293) served as the EV reference for stream metrics comparisons. Six of 12 stations on Dunbar Creek met the 92% comparison required to qualify for EV. In addition, the portions of the Dunbar Creek basin located entirely within SGL 51 meet the definition in § 93.1 for an "outstanding National, State, regional or local resource water." These waters are currently designated HQ and are located within SGL managed by the PGC. The PGC has established coordinated water quality protective measures in its resource management plans that provide protection to substantial reaches of the watershed corridor. As such, these stream segments qualify as EV waters under § 93.4b(b)(1)(iii). The PGC water quality protective measures combined with reasonable acid mine drainage remediation and recovery projects demonstrate that an EV designated use for the Glade Run basin as set forth in Annex A is appropriate. Therefore, the Department recommended EV designations in § 93.9v (relating to Drainage List V) for: the Dunbar Creek basin, from its source to Glade Run; the Glade Run basin, from the boundary of SGL 51 to Mouth; and the Dunbar Creek basin, from Glade Run to Gist Run.

Correction to Drainage List C

In the Sobers Run rulemaking published at 48 Pa.B. 866 (February 10, 2018), Swiftwater Creek basin retained its HQ designation with the exception of adding an EV designation for the source of Swiftwater Creek to, but not including, UNT 04960 to Swiftwater Creek. The word "basin" was inadvertently omitted with the listing of UNT 04960 to Mouth, thereby eliminating listings for tributaries to that section of Swiftwater Creek. This final-form rulemaking restores the original HQ listing for those tributaries by adding the "basin" designation.

F. Summary of Comments and Responses on the Proposed Rulemaking

All public comments received on the proposed rulemaking supported the stream redesignation recommendations as set forth in Annex A.

The Board received comments from 65 commentators in support of redesignating the surface waters contained in this final-form rulemaking.

The Board received a comment from 57 commentators highlighting a 2014 Lehigh Valley report that outlines the economic value of protecting clean water and natural areas.

The Board also received comments from 161 commentators supporting the Cranberry Creek redesignation recommendation to EV, MF. In addition to their support for the redesignation, several commentators requested the Department reevaluate the basin from its source to unnamed tributary (UNT) 04948 stating that the scores necessary to qualify for EV designation were close to being achieved.

Six commentators submitted comments in support of the Dunbar Creek basin redesignation recommendation.

The EPA provided one comment with respect to the redesignation of UNT 28168 to Oley Creek from HQ-CWF, MF to CWF, MF and noted that a use attainability analysis (UAA) is required for redesignations to less restrictive uses. Two additional commentators echoed the EPA's comment.

The Board appreciates these comments in support of this final-form rulemaking. The Board does not agree that the headwaters of Cranberry Creek warrant additional evaluation at this time and is not recommending redesignation of the Cranberry Creek basin from its source to UNT 04948 in this final-form rulemaking. With respect to the EPA's comment, the stream report for UNT 28168 to Oley Creek includes the required UAA component, and a copy of each stream report is available on the Department's web site.

G. Benefits, Costs and Compliance

Benefits

Overall, this Commonwealth's residents and visitors and its natural resources will benefit from this final-form rulemaking because it provides the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of a clean water supply for human consumption, wildlife, irrigation and industrial use; recreational opportunities such as fishing (also for consumption); water contact sports and boating; and aquatic life protection. It is important for the Commonwealth to ensure that the associated opportunities and activities continue in a manner that is environmentally, socially and economically sound. Protection and maintenance of water quality ensures its future availability for all potential uses. The following paragraphs describe the economic and social benefits of clean water that are protected by this final-form rulemaking.

Increased property values

A reduction in toxics found in the waterways of this Commonwealth may lead to increased property values for properties located near rivers or lakes. The study "The Effect of Water Quality on Rural Nonfarm Residential Property Values," (Epp and Al-Ani, *American Journal of Agricultural Economics*, Vol. 61, No. 3 (Aug. 1979), pp. 529—534 (www.jstor.org/stable/1239441)), used real estate prices to determine the value of improvements in water quality in small rivers and streams in this Commonwealth. Water quality, whether measured in pH or by the owner's perception, has a significant effect on the price of adjacent property. The analysis showed a positive correlation between water quality and housing values. They concluded that buyers are aware of the environmental setting of a home and that differences in the quality of nearby waters affect the price paid for a residential property.

A 2010 report from the Delaware Riverkeeper Network (www.delawariverkeeper.org/sites/default/files/River_Values_Report_0.pdf) discusses a case study from the Maine Agricultural and Forest Experiment Station which compared water-front

property values based on whether the water that the homes faced was considered clean. Properties located near higher quality waters had higher market value than if the waterbody was lower in water quality. It was shown in some cases that a decline in water quality can completely abate the market value premium associated with a home being a waterfront property.

A 2006 study by Braden et al. from the Great Lakes region estimated that property values were significantly depressed in two regions associated with toxic contaminants (polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and heavy metals). The study showed that a portion of the Buffalo River region (approximately 6 miles long) had depressed property values of between \$83 million and \$118 million for single-family homes, and between \$57 million and \$80 million for multifamily homes as a result of toxic sediments. The same study (Braden et al. 2006) estimated that a portion of the Sheboygan River (approximately 14 miles long) had depressed property values of between \$80 million and \$120 million as the result of toxics. "Economic Benefit of Sediment Remediation in the Buffalo River AOC and Sheboygan River AOC: Final Project Report," (www.nemw.org/Econ). While this study related to the economic effect of contaminated sediment in other waters in the Great Lakes region, the idea that toxic pollution depresses property values applies in this Commonwealth. A reduction in toxic pollution in this Commonwealth's waters has a substantial economic benefit to property values in close proximity to waterways.

Maintenance of abundant and healthy fish and wildlife populations and support for outdoor recreation

Businesses requiring a high-quality source water and those in the recreation industry will be positively affected by this final-form rulemaking. The maintenance and protection of the water quality will ensure the long-term availability of recreational fisheries and other activities. The purpose of these stream redesignations is to preserve these resources for current and future sportspeople, outdoor recreators and wildlife enthusiasts so that the social and economic benefits are maintained in the local areas. As recreation demands increase in the future, the preservation of unique resources will undeniably add economic value to the local areas and, importantly, provide a valuable social function for outdoor recreation. Specific revenue-related benefits associated with outdoor trout fishing in this Commonwealth are outlined below.

The Center for Rural Pennsylvania prepared a report titled "Economic Values and Impacts of Sport Fishing, Hunting and Trapping Activities in Pennsylvania" (Shafer et al. 1998, www.rural.palegislature.us/documents/reports/hunting.pdf) that examined such economic values and impacts between the years 1995 to 1997. The report provides a snapshot of how much money these sporting activities bring to this Commonwealth and how they affect employment in rural areas. A major finding of that report is the total annual value of \$3.7 billion for sport fishing was almost three times the \$1.26 billion spent in travel costs to use fishing resources during the same 12-month period. The total net annual benefit to anglers was \$2.49 billion.

According to the "Angler Use, Harvest and Economic Assessment on Wild Trout Streams in Pennsylvania," (R. Greene et al., 2005, www.fishandboat.com/Fish/Fisheries/TroutPlan/Documents/WildTroutStreamAnglerUseCatchEconomicContribution.pdf), the PFBC collected information to assess the economic impact of wild trout angling in this Commonwealth, during the 2004 regular trout season, April 17 through

September 3, 2004. The PFBC found, based on the results of this study, that angling on wild trout streams contributed over \$7.16 million to this Commonwealth's economy during the regular trout season in 2004.

According to the "2011 National Survey of Fishing, Hunting and Wildlife-Associated Recreation" (U.S. Fish and Wildlife Service 2011, www.census.gov/prod/2012pubs/fhw11-nat.pdf) for this Commonwealth, approximately 1,101,000 anglers, participated in fishing and 3,598,000 persons participated in wildlife watching in the year 2011. In addition, all fishing related expenditures in this Commonwealth totaled \$485 million in 2011. Such expenditures include food and lodging, transportation, and other expenses (that is, equipment rental, bait, cooking fuel). In 2011, wildlife watchers spent \$1.3 billion on activities in this Commonwealth. Expenditures include trip-related costs and equipment.

According to a 2017 report by the Outdoor Industry Association, this Commonwealth's outdoor recreation generated 251,000 direct in-State jobs, \$8.6 billion in wages and salaries, and \$1.9 billion in State and local tax revenue. These figures include both tourism and outdoor recreation product manufacturing. The association reported that 56% of Commonwealth residents participate in outdoor recreation each year. "The Outdoor Economy: Take it Outside for American Jobs and a Strong Economy," (<https://outdoorindustry.org/resource/pennsylvania-outdoor-recreation-economy-report>).

Southwick Associates has prepared several reports for the Theodore Roosevelt Conservation Partnership that analyze the economic contribution of outdoor recreation in this Commonwealth. A 2018 report, "The Power of Outdoor Recreation Spending in Pennsylvania: How hunting, fishing, and outdoor activities help support a healthy state economy," (www.trcp.org/wp-content/uploads/2018/12/TRCP-and-Southwick-PA-Economic-Analysis-12-6-18.pdf), states that during 2016 there were more than 390,000 jobs supported by outdoor recreation activities in this Commonwealth, and for comparison, this is more than the number of jobs in this Commonwealth that supported the production of durable goods. In 2016, outdoor recreation had an economic contribution in Pennsylvania of almost \$17 billion in salaries and wages paid to employees and over \$300 million in federal, state, and local tax revenue. An updated 2020 report for the Theodore Roosevelt Conservation Partnership, "Estimating the economic contributions of outdoor recreation in Pennsylvania: an analysis of 2020 state-level economic contributions made by hunting, fishing, and other outdoor recreation activities," (www.trcp.org/wp-content/uploads/2022/04/TRCP-PA-Economic-Report-2020-FINAL.pdf), revealed that economic contributions from outdoor recreation increased from nearly \$17 billion in salaries and wages paid to employees in 2016 to nearly \$20 billion in 2020. The 2020 report also continues to highlight the fact that "more Pennsylvania jobs are supported by outdoor recreation than by the production of durable goods (U.S. Bureau of Labor Statistics, 2020)." In 2020, outdoor recreation activities supported more than 430,000 jobs and contributed more than \$32 billion to Pennsylvania's state gross domestic product (GDP) and over \$6.5 billion in tax revenue at the federal, state, and locals levels, which is a significant increase from the 2016 tax revenue total of over \$300 million.

Maintenance of the current green infrastructure along streams and the associated reduction in tax expenditures

The findings of a 2014 Lehigh Valley Planning Commission report entitled “Lehigh Valley Return on Environment,” (www.lvpc.org/pdf/2014/ReturnOnEnvironment_Dec_18_2014.pdf), demonstrates the benefits when clean water and natural areas are protected. The report states, “the current green infrastructure along streams in the Lehigh Valley reduces tax dollars by avoiding more than \$110.3 million annually in expenditures for water supply (\$45.0 million), disturbance (flood) mitigation (\$50.6 million) and water quality (\$14.7 million).” This report describes how investing in green infrastructure to improve water quality (such as watershed conservation, forest buffers, and wetlands construction) can be much more cost effective than more traditional gray infrastructure approaches (such as pipes and treatment plants).

Savings in water treatment for downstream communities that rely on surface waters for water supplies and availability of unpolluted water for domestic, agricultural and industrial uses

The Department identified one public water supply facility with a raw water intake located within the candidate stream sections for redesignation in this final-form rulemaking package. This public water supplier, which serves over 22,300 citizens, will benefit from this final-form rulemaking because their raw source water will be afforded a higher level of protection. This final-form rulemaking further provides the likelihood of economic benefits to the public water supplier and the local community. By maintaining clean surface water, public water suppliers may avoid the costly capital investments that are often required for the installation of advanced water treatment processes as well as the higher annual operations and maintenance costs associated with effective operation of these processes. Safe drinking water is vital to maintaining healthy and sustainable communities. Protecting the quality of drinking water sources can reduce the incidence of illness and reduce health care costs, help ensure a continuous supply of safe drinking water, enable communities to plan and build future capacity for economic growth and ensure their long-term sustainability for years to come. Public water suppliers’ customers will also benefit from reduced fees for clean drinking water.

Compliance costs

This final-form rulemaking is necessary to protect and maintain the existing water quality of the HQ and EV waters, to protect existing water uses and to effectively control discharges of pollutants into the affected streams. These amendments to Chapter 93 do not impose any new compliance costs on persons engaged in regulated activities under existing individual permits or approvals from the Department since existing discharges are included in any determination of existing water quality when streams are redesignated to HQ or EV. Additional compliance costs may arise when permits or approvals are necessary for new or expanded regulated activities in HQ or EV waters, or when streams are redesignated to different non-special protection designations (such as WWF to CWF). Discharges to special protection streams are not eligible for coverage under National Pollutant Discharge Elimination System (NPDES) general permits, based on § 92a.54(a)(8) (relating to general permits), and therefore, require individual permits. Some additional cost will be incurred by facilities required to obtain an individual permit. The Department will implement stream redesignations through permit and approval actions.

Persons adding or expanding a discharge to a stream may need to provide a higher level of treatment or additional BMPs to protect the designated and existing uses of the affected streams, which could result in higher engineering, construction or operating costs. Treatment costs and BMPs are based on the specific design and operation of a facility, which also requires consideration of the size of the discharge in relation to the size of the stream and many other factors.

In the future, a person who proposes a new, additional or increased point source discharge to an EV or HQ water would need to satisfy the antidegradation requirements found in § 93.4c(b)(1). An applicant for any new, additional or increased point source discharge to special protection waters must evaluate nondischarge alternatives, and the applicant must use an alternative that is environmentally sound and cost effective when compared to the costs associated with achieving a nondegrading discharge. If a nondischarge alternative is not environmentally sound and cost-effective, an applicant for a new, additional or increased discharge must utilize antidegradation best available combination of technologies (ABACT), which include cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

The permit applicant must demonstrate in the permit application that their new or expanded activities will not lower the existing water quality of special protection streams. If an applicant cannot meet these nondegrading discharge requirements, a person who proposes a new, additional or increased discharge to HQ waters is given an opportunity to demonstrate there is a social or economic benefit of the project that would justify a lowering of the water quality. The social and economic justification (SEJ) demonstration must show that the discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that a lower water quality will protect all other applicable water uses for the waterbody. SEJ is not available for proposed discharges to EV waters. The water quality of EV streams must be maintained and protected.

There are approximately 10,300 facilities across this Commonwealth that hold permits issued under Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance). This Statewide number of approximately 10,300 includes NPDES permits for concentrated animal feeding operations, industrial waste, municipal separate storm sewer systems (MS4), treated sewage, and stormwater associated with industrial activities. This total does not include NPDES permits for stormwater associated with construction activities, which is discussed as follows. Out of this Statewide total of approximately 10,300, only nine facilities currently hold active NPDES permits for discharges to the stream segments being considered for redesignation in this final-form rulemaking.

The types of discharges with active NPDES permits located in waters affected by this final-form rulemaking include industrial wastewater and industrial stormwater. There is also one Chapter 91 (relating to general provisions) pesticide permit within the waters affected by this final-form rulemaking. Since the presence of such discharge activities did not preclude the attainment of the HQ or EV use, the discharges to these waters may continue as long as the discharge characteristics of both quality and quantity remain the same. Thus, redesignation to special protection does not impose any additional special treatment requirements on existing permitted discharges.

As previously stated, discharge activities to special protection streams are not eligible for coverage under NPDES general permits and, therefore, require individual permits. Individual permits are required in special protection waters because the existing quality of the water must be protected. Therefore, each discharge must be evaluated individually for each stream. Site-specific characteristics of the stream water quality are used to determine effluent limitations for discharges to a stream. The individual permits are necessary to track the quality and quantity of any existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the Department's review in accordance with the antidegradation regulations.

There are no NPDES general permits available for discharges to special protection waters. In addition, there are no general permits available for discharges of treated sewage effluent or industrial waste effluent with the exception of the PAG-04 (general permit for small flow sewage treatment facilities). The Department identified four NPDES permits for discharges to waters proposed for redesignation to special protection, and all four permits are currently individual permits. Consequently, there would be no change in the permitting requirements for these activities.

The remaining five NPDES permits discharge into Two Lick Creek, which is recommended for redesignation from TSF to CWF. The types of discharges with active NPDES permits located in the Two Lick Creek basin include industrial waste and industrial stormwater. These permits will not be affected by the redesignation.

Although no stormwater discharges from MS4s have been identified in the waters being redesignated, in general, local governments that are MS4s will most likely have additional costs associated with MS4 permitting requirements for discharges to HQ or EV waters. Any MS4 that discharges to an HQ or EV water will be required to obtain an individual permit. The application fee for a new individual permit is \$5,000 compared to \$500 for the general permit (that is, NPDES General Permit for Stormwater Discharges from Small MS4s (PAG-13)). If there is an existing MS4 permit (whether it is currently the general permit or an individual permit) to discharge into one of the HQ or EV waters redesignated in this final-form rulemaking, any subsequent permit application fee for an individual permit is \$2,500. The annual fee for all MS4 permits is the same, whether it is for coverage under the general permit or for an individual permit. There is a difference in cost between the initial issuance of an individual permit and approval of coverage under the general permit due to increased staff time needed to review permit applications and implementation oversight that is associated with individual permits. An individual permit allows for the tailoring of an MS4's stormwater management program and its implementation of the minimum control measures.

Statewide, there are thousands of active earth disturbance activities requiring general or individual NPDES permits for stormwater discharges associated with construction activities issued under Chapter 102 (relating to erosion and sediment control). These permits for stormwater discharges associated with construction activities were not included in the preceding permit analyses because of the short-term, temporary nature of these permitted discharges.

A person proposing a new earth disturbance activity requiring a permit under Chapter 102 with a discharge to an HQ or EV water must obtain an individual permit and comply with the

antidegradation provisions, as applicable. Where a permitted discharge existed prior to the receiving waterbody attaining an existing or designated use of HQ or EV, those persons may continue to operate using BMPs that have been approved by the Department and implemented. Any new discharges to the waterbody would be required to comply with the antidegradation provisions, as applicable, and must undergo an antidegradation analysis. Based on the analysis, additional construction and post-construction BMPs may need to be implemented on the remaining area that will be disturbed.

The administrative filing fee for an individual earth disturbance permit is \$1,500 compared to \$500 for a general permit, as set forth in § 102.6(b)(1) (relating to permit applications and fees). A person proposing a new earth disturbance activity requiring a permit under Chapter 102 must comply with the antidegradation provisions, as applicable. The erosion and sediment (E&S) BMPs and their ABACT rating, if applicable, are identified in the Department's *Erosion and Sedimentation Pollution Control Manual*, 363-2134-008, (2012) and the Department's Alternative E&S and Post-Construction Stormwater Management BMPs list, Version 2.2. (March 18, 2022). The Department may also approve alternative BMPs that maintain and protect the existing water quality and water uses.

Where onlot sewage systems are planned, compliance with the sewage facilities planning and permitting regulations in 25 Pa. Code Chapters 71, 72 and 73 (relating to the administration of sewage facilities planning program; administration of sewage facilities permitting program; and standards for onlot sewage treatment facilities) will continue to satisfy § 93.4c. Permit applicants of sewage facilities with proposed discharges to HQ waters, subject to antidegradation requirements, may demonstrate SEJ at the sewage facilities planning stage and need not re-demonstrate SEJ at the discharge permitting stage. The SEJ demonstration process is available to sewage and non-sewage discharge applicants for any naturally occurring substances identified in accordance with the Department's *Water Quality Antidegradation Implementation Guidance*, 391-0300-002, (DEP 2003).

A more detailed description of cost is discussed in the Regulatory Analysis Form, required under the Regulatory Review Act (71 P.S. §§ 745.1—745.14), that accompanies this rulemaking.

Compliance assistance plan

This final-form rulemaking does not impose any new compliance requirements on persons engaged in regulated activities under existing individual permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges, the Department will provide compliance assistance.

Paperwork requirements

NPDES general permits are not available for discharges to HQ or EV waters. Applications for individual permits will require additional paperwork. The individual permits are necessary to track the quality and quantity of any existing permitted discharges to ensure that additional or increased discharges to a special protection water do not occur without the Department's review in accordance with the antidegradation regulations.

This final-form rulemaking does not, however, impose any new paperwork requirements on persons engaged in regulated activities under existing individual permits or approvals from the Department. When applying for permits or approvals for new, additional or increased discharges to HQ or EV waters, additional information may need to be submitted to the Department as part of the permit application or approval request. As discussed above, the permit applicant will complete an antidegradation analysis. The applicant will describe how the proposed activity will be conducted to maintain existing water quality. If water quality cannot be maintained and the proposed discharge will be to an HQ water, the applicant may submit an SEJ demonstration for the lowering of water quality.

H. Pollution Prevention

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

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanding wastewater discharges, nondischarge alternatives must be implemented when environmentally sound and cost-effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil. In addition, if no environmentally sound and cost-effective alternatives are available, discharges must be nondegrading except as provided in § 93.4c(b)(1)(iii) regarding SEJ in HQ waters.

I. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 24, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 4062 (July 31, 2021), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other

documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on (DATE) , this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (DATE) and approved this final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A 45-day public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 4062.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

(5) These regulations are reasonably necessary to maintain the Commonwealth's water quality standards and to satisfy related CWA requirements.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, §§ 93.9c, 93.9k, 93.9l, 93.9o, 93.9r, 93.9t and 93.9v, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RICHARD NEGRIN,
Acting Chairperson



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

**Comment and Response
Document**

Appendix: List of Commentators

**Water Quality Standards
Dunbar Creek et al. Stream Redesignations**

25 Pa. Code Chapter 93
51 Pa.B. 4062 (July 31, 2021)
Environmental Quality Board Regulation #7-557
(Independent Regulatory Review Commission #3309)

ID #	LAST_NAME	FIRST_NAME	AFFILIATION	CITY	STATE
1	Gordon	Albert		Mt. Braddock	PA
2	Voigt	Gregory	EPA, Region 3	Philadelphia	PA
3	Moyer	Ben	TU Chestnut Ridge Chapter	Farmington	PA
4	Moyer	Ben	TU Chestnut Ridge Chapter	Farmington	PA
5	Byerly	Jack	Clean Air Council	Philadelphia	PA
6	Croft	Dennis		Washington	PA
7	DiBiasi	Vito	Friends of the Milford Aquifer	Milford	PA
8	Jones	Abigail	PennFuture	Mount Pocono	PA
9	Orr-Greene	Jennifer	PA Trout Unlimited	Millersburg	PA
10	Faith	Zerbe	PA Campaign for Clean Water EV Team	Bristol	PA
11	Heist	H Scott		Kintnersville	PA
12	Faith	Zerbe	Delaware Riverkeeper Network	Bristol	PA
13	Harder	Eric	Mountain Watershed Association	Melcroft	PA
14	Ketner	Robie		Center Valley	PA
15	Savisky	Timothy		Greensburg	PA
16	Johnson	Erin		Swarthmore	PA
17	Weaver	Susan		Allentown	PA
18	Richardson	Sharon		Malvern	PA
19	Nelson	Heather		Douglassville	PA
20	Yaari	Evelyn		Bala Cynwyd	PA
21	Thompson	Carol		South Park	PA
22	McCue	Elizabeth		Yardley	PA
23	Duffy	Jerry		Warminster	PA
24	Stauffer	Kathleen		Malvern	PA
25	Shah	A		Bethlehem	PA
26	Zerbe	John		Bethlehem	PA
27	Collier	John		Coatesville	PA
28	Hill	Janet I		Pennsburg	PA
29	Suleski	James		Hummelstown	PA
30	Deady	Allyson		Newtown Square	PA
31	Bressler	David		West Chester	PA
32	Dizel	Aurora		Havertown	PA
33	Newman	Sharon		West Chester	PA
34	Navarro	Greg		Drexel Hill	PA
35	Shaeffer	Lawrence		Philadelphia	PA
36	Goldstein	Jane		Wallingford	PA
37	Pendleton	Shannon		Lahaska	PA

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38	Davis	Linda		Easton	PA
39	Schmotzer	Michael		York	PA
40	Christman	Linda		Lehighton	PA
41	Mink	Daniel		Lancaster	PA
42	Casey	Tom		Media	PA
43	Vannozzi	Kathy		Pipersville	PA
44	McGrath	John		Exton	PA
45	Spurlino	Robin		Downingtown	PA
46	Bergin	Grace		Du Bois	PA
47	Goodman	Lloyd		Radnor	PA
48	Baker	Carol		Warrington	PA
49	Cosgrove	John		Easton	PA
50	Deakin	David		Pipersville	PA
51	Soltis	B		Downingtown	PA
52	Hawkins	Don		North Braddock	PA
53	Yavorsky	Donna		Warren	NJ
54	Satter	Arthur		Beach Lake	PA
55	Zavoda	Michael		Ottsville	PA
56	Swartz	Lily		New Hope	PA
57	Whittaker	Stephen G		Southampton	PA
58	S	M		Stroudsburg	PA
59	Wells	Holly		Mouth Bethel	PA
60	Perilli	Aggie		Lancaster	PA
61	Miari	Eve		Media	PA
62	Seker	Gokhan		Drexel Hill	PA
63	Norris	Brenda		Brookhaven	PA
64	Vogel	Marilyn		Green Lane	PA
65	Anderson	Arthur		Philadelphia	PA
66	Hoff	Michelle		Allentown	PA
67	K	Melissa		South Heights	PA
68	McNutt	Richard		Pipersville	PA
69	Dawson	Deborah		Folsom	PA
70	Harri	Candice		Langhorne	PA
71	Uhlir	Christina		Kutztown	PA
72	Mattison	Priscilla		Bryn Mawr	PA
73	Bush	John		Coatesville	PA
74	Wilson	Marisa		Philadelphia	PA
75	Hart	Kathy		Caldwell	PA
76	Neiman	Laura		Damascus	PA
77	Laughead	Scott		Philadelphia	PA

ID #	LAST_NAME	FIRST_NAME	AFFILIATION	CITY	STATE
78	Henckel	Judith		Mouth Bethel	PA
79	Bellwoar	Jessica		Philadelphia	PA
80	DeSilets	Bob		Bryn Mawr	PA
81	Knizhnik	Heather		Philadelphia	PA
82	Vogt	James		Saylorsburg	PA
83	Ackley	Rebecca		Philadelphia	PA
84	McCabe	Judith		Wilmington	DE
85	Russo	Joan		Hawley	PA
86	Diorio	Anthony		Philadelphia	PA
87	Allen	Kimberly		Philadelphia	PA
88	Naus	Curtis		Downingtown	PA
89	Fake	Laura		Womelsdorf	PA
90	Cahill	Annalee		Aston	PA
91	Brommer	Clarence		Bethlehem	PA
92	Burns	Todd		Pen Argyl	PA
93	Ojserkis	Max		Philadelphia	PA
94	Grutzmacher	Linda		Philadelphia	PA
95	Caright	Rebecca		Asbury	NJ
96	Davis	Emily		Philadelphia	PA
97	Gellert	Sally Jane		Woodcliff Lake	NJ
98	Furlong	Sharon		Feasterville Trevoise	PA
99	Kirby	Anne		Wilmington	DE
100	Curry	Susan		Ambler	PA
101	Johnson	Erin		Swarthmore	PA
102	Dolsky	Ken		Parsippany	NJ
103	Fairless	Judy		Warren	NJ
104	Isaac	Sheldon		Philadelphia	PA
105	Thornton	Edward		Swarthmore	PA
106	Kardos	Theresa		Cortlandt Manor	NY
107	Koelle	Spencer		Philadelphia	PA
108	Bonner	Bruce		Cresco	PA
109	Huber	William		Tobyhanna	PA
110	Chesley	Gayle		Philadelphia	PA
111	Colgan-Davis	John		Philadelphia	PA
112	Siegel	Sheila		Philadelphia	PA
113	Vernon	Thomas		Philadelphia	PA
114	DuPlessis	Robert		Philadelphia	PA
115	Riley	Kelly		Hatfield	PA
116	Hartenstine	Dennis		Birdsboro	PA
117	Reyes	Jesse		Maplewood	NJ

ID #	LAST_NAME	FIRST_NAME	AFFILIATION	CITY	STATE
118	Tate	Nancy		Riegelsville	PA
119	Greenberg	Bernard		West Chester	PA
120	Roessler	Leslie		Bethlehem	PA
121	Henry	Mark		Philadelphia	PA
122	Miari	Eve		Media	PA
123	Fissinger	Jeannie		Levittown	PA
124	Kleiner	Richard		Merion Station	PA
125	Ade	Rob		Glenmoore	PA
126	Salata	Gary		Ewing	NJ
127	Keenan	James		Lansdowne	PA
128	Coffman	Albert		Perkasie	PA
129	Cloud	Michael		Palmyra	NJ
130	Nigrini	Barbara		Reading	PA
131	Steinert	MaryAnne		Northampton	PA
132	Limouze	Robert		East Fallowfield	PA
133	Schuster	Loree		Philadelphia	PA
134	Harris	Dale		Lansdowne	PA
135	Martin	Susanna		Philadelphia	PA
136	Gershenson	Carl		Philadelphia	PA
137	Libbey	Patricia		Philadelphia	PA
138	Papandrea	John		New York	NY
139	Grant	Eveline		Pen Argyl	PA
140	Harvey	Marian		Philadelphia	PA
141	Lombardi	Michael		Levittown	PA
142	Flanagan-Cato	Lori		Merion Station	PA
143	DeMillion	Fran		Kennett Square	PA
144	Danzon	Patricia		Bryn Mawr	PA
145	Reever	Karen		Doylestown	PA
146	Kronheim	David		Chester	PA
147	Rossi	Patricia		Levittown	PA
148	Dorfman	Nancy		Bethlehem	PA
149	Tillman	Barbara		North Bergen	NJ
150	Spodek	Howard		Philadelphia	PA
151	Neal	E		CMCH	NJ
152	Bensetler	Shirley		Cresskill	NJ
153	Schmitthenner	Christine		Spring Valley	PA
154	Saunders	Andrea		Sellersville	PA
155	Turco	Jill		Philadelphia	PA
156	Cornelia	Jared		Wilmington	DE
157	Skutches	Greg		Bethlehem	PA

ID #	LAST_NAME	FIRST_NAME	AFFILIATION	CITY	STATE
158	Nicolai	Nicola		Chester Springs	PA
159	Mizanty	Carolyn		Eynon	PA
160	Moyer	Bruce		Harleysville	PA
161	Castellan	James		Media	PA
162	De Castro	Brian		South Orange	NJ
163	Folzer	Sandra		Philadelphia	PA
164	Briggs	Katie		Philadelphia	PA
165	Germann	Kelly		Erwinna	PA
166	Wilson	Andrew		Philadelphia	PA
167	D'Alba	Rosemarie		Philadelphia	PA
168	Hagedorn	Paul		Philadelphia	PA
169	Dulik	John		Philadelphia	PA
170	Werzinski	Joseph		New Hope	PA
171	Levin	Mark		Plymouth Meeting	PA
172	Smith	Donna		Havertown	PA
173	Foster	Tracy		Egg Harbour Twp	NJ
174	Davidson	Barry		Norristown	PA
175	Blythe	Linda		Philadelphia	PA
176	Rosenberg	Sondra		Philadelphia	PA
177	Ritzheimer	Barbara		Pine Grove	PA
178	Beadenkopf	Francis		Bala Cynwyd	PA
179	Camp	Roberta		Philadelphia	PA
180	Trager	Nate		Philadelphia	PA
181	Murray	Miriam Eileen		Wallingford	PA
182	Harkins	Nancy		West Chester	PA
183	Byrnes	Claire		Philadelphia	PA
184	Schogel	David		Philadelphia	PA
185	Duncan	Timothy		Philadelphia	PA
186	Sorrell	JoAnn		Collegeville	PA
187	Porter	Susan		Lords Valley	PA
188	Stabinski	Lea		Eaglesville	PA
189	S	C		New York	NY
190	Furcht	Peter		Philadelphia	PA
191	White-Marley	Megan		Havertown	PA
192	Kaufman	David		Bartonsville	PA
193	Punnett	Hope		Philadelphia	PA
194	Suchorsky	Michael		Andes	NY
195	Duffy	Carolyn		Philadelphia	PA
196	Hanlon	Susan		Manchester	NJ
197	Shapiro	Dein		Stockton	NJ

ID #	LAST_NAME	FIRST_NAME	AFFILIATION	CITY	STATE
198	Safer	Daniel		Philadelphia	PA
199	Manning	Alexa		Downingtown	PA
200	Brody	Mark		Wayne	PA
201	Nightengale	Douglas		King of Prussia	PA
202	Simone	Beverly		West Nyack	NY
203	Babbitt	Susan		Philadelphia	PA
204	Owen	Tom		Plymouth Meeting	PA
205	Deibler	Neena		Upper Chichester	PA
206	Pegan	Philip		Upper Chichester	PA
207	Rudman	Linda		New York	NY
208	Grant	Renee		Pen Argyl	PA
209	Baker	Curtis		Ocean City	NJ
210	Nelson	Thomas		Lansdowne	PA
211	Metz	Rich		Erdenheim	PA
212	Shupak	Eileen		Philadelphia	PA
213	Said	Keith		New York	NY
214	Laverne	David		Dickson City	PA
215	Grech	Rhyan		Mays Landing	NJ
216	Raab	Frances		Quakertown	PA
217	Josephs	Ira		Media	PA
218	Burger	Theodore		Bethlehem	PA
219	Johnson	Johnny		Philadelphia	PA
220	Wallace	Kelsey		Stevens	PA
221	Black	Jim		Wilmington	DE
222	LeCluyse	Megan		Philadelphia	PA
223	Allen	Russ		Jenkintown	PA
224	Saberi	Poune		Philadelphia	PA
225	Miller Jr.	Michael		Philadelphia	PA
226	Dzwil	Beth		Glenside	PA
227	Carota	Marie		Doylestown	PA
228	McColm	Elisabeth		Media	PA
229	Zerbe	Faith	Delaware Riverkeeper Network	Bristol	PA
230	Jackson	Alexander	Brodhead Watershed Association	Henryville	PA
231	Moyer	Ben	Chestnut Ridge Chapter of Trout Unlimited	Farmington	PA



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Comment and Response Document

Water Quality Standards Dunbar Creek et al. Stream Redesignations

25 Pa. Code Chapter 93
51 Pa.B. 4062 (July 31, 2021)
Environmental Quality Board Regulation #7-557
(Independent Regulatory Review Commission #3309)

Water Quality Standards – Dunbar Creek et al. Stream Redesignations

The Environmental Quality Board (Board) adopted the proposed rulemaking for the Dunbar Creek et al. Stream Redesignation Package at its April 20, 2021 meeting. On June 24, 2021, the Department of Environmental Protection (Department) submitted a copy of the proposed rulemaking 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 accordance with Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)).

The proposed rulemaking was published in the *Pennsylvania Bulletin* on July 31, 2021 (51 Pa.B. 4062) with a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021 for the purpose of accepting comments on the proposed rulemaking. Comments were received from 228 commentators including testimony from three witnesses at the public hearing.

This document includes the testimony received at the public hearing and the written comments received during the public comment period. All 228 of the commentators expressed support for the rulemaking. No commentators indicated opposition to the rulemaking, but provided additional comment on the recommendations for Cranberry Creek, Dunbar Creek, and unnamed tributary (UNT) 28168 to Oley Creek. IRRC also submitted a letter to the Board indicating that the Commission had no objections, comments, or recommendations to offer on the regulation. A list of the commentators including name, affiliation (if any), and location can be found in Appendix A.

Copies of Comments

Copies of all comments received by the Board are posted on the Department's e-Comment website at <https://www.ahs.dcp.pa.gov/cComment/>. Additionally, copies of all comments are available on IRRC's website at <http://www.irrc.state.pa.us> by searching for Regulation # 7-557 or IRRC # 3309.

Comments supporting the proposed stream redesignations

1. **Comment:** The United States Environmental Protection Agency (EPA) commends the Department in its continuing effort to update the designated uses of Pennsylvania's streams to ensure that water quality standards are protective of surface waters. (2)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

2. **Comment:** The commentator encourages the Board to support the Department's recommendation and to vote in favor of granting these streams the special protections they deserve. Thank you for your consideration of these comments. (5)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

3. **Comment:** Just like the Sawkill Creek and Sloat Brook have benefited from the Exceptional Value Waters (EV) status in Pike County, these proposed creeks will also benefit. The Delaware River can die by a "thousand cuts." Each of these streams and tributaries represent one of those cuts. The more we can protect these crucial streams the more the health of the Delaware can be preserved. Thank you. (7)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

4. **Comment:** Water resources are essential to Pennsylvanians' health and economic well-being, and it is particularly important to identify and provide heightened protection for waters that meet the criteria for the Commonwealth's highest classification of EV. The commentator asks that the Board promptly finalize the water quality standards bundle in order to provide these special waters with the protection they so richly deserve. Providing proper water quality designations for surface waters is one important way to help ensure Pennsylvanians' constitutional right to "pure water" is protected. Pa. Const. art. I, § 27. (8)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

5. **Comment:** The commentator is writing to express its support of the Department's redesignation stream bundle to upgrade a subset of deserving Pennsylvania streams to EV status. The commentator believes the EV protection for these streams are long overdue and are in keeping with the protections afforded under Article 1 Section 27 of Pennsylvania's Environmental Rights Amendment of the Pennsylvania Constitution, articulated "the people of Pennsylvania have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people now and in the future." The

commentator is eager to see the lengthy regulatory process through for these important streams and stream segments and appreciate the time and attention put into this review. At the same time, the commentator encourages the movement and upgrade of other deserving streams that have yet to be put forth in a regulatory bundle before their water quality decreases and urge the Department to prioritize its important upgrade work over other permitting responsibilities to ensure streams are granted the higher existing uses they deserve and that is required under the Clean Water Act and antidegradation requirements. (10)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking. The Department works to balance all of its responsibilities with its available resources. Department staff will continue to prioritize the workload as needed to meet statutory obligations and continue to work on existing use stream assessments.

- 6. Comment:** Almost exactly 50 years back, the commentator published their first cover feature on the Delaware River watershed. In the subsequent years, the commentator has covered wine and food cultivation around the world, which are completely dependent on potable water. A grape is 85% water not petroleum, frack run off or sewage, etc. The Delaware Aquifer is maybe the best in the entire world. Clean, flowing water (no not floods from hyper warming in the gulf ... give us a break) is the number one resource. Not fracking, not Grade A crude, but water.

Every opportunity for preservation and protection must be taken in the smaller steps on tributaries and the larger master plans to preserve (not hold & wreck). Even Nestle will tell you that ... except they want to sell it back to us. This letter is in support of both. (11)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

- 7. Comment:** The commentator, representing over 25,000 members in 22,000 households, is writing in support of finalizing the stream upgrade bundle being considered as part of the Dunbar et. al. package. When we protect our clean streams, we protect a vital economy, our health and our wellbeing. During COVID this has come abundantly clear with many people flocking to the Delaware River Valley's EV and High Quality Waters (HQ) streams and forests to enjoy healthy recreation. The commentator's 2010 River Values Report highlighted many of the benefits Pennsylvanian's receive when the rivers, the floodplains, riparian forests and the communities who live there are protected. The Dunbar public notice further outlines various reports and research showing the tremendous economic benefits and recreational value to communities where clean streams still exist. At the same time, the commentator is well aware that EV and HQ designation does not stop development. It just puts the brakes on speculating developers who want to come in and run rough shod over our protections at the local, state, and regional level where communities are working hard to protect the very cleanest streams that remain. EV adds some specific restrictions to benefit the broader community while pushing developers to do better with their proposals and be more innovative. Antidegradation policy grounded in the Clean Water Act, and in Pennsylvania, EV and HQ designations are one way citizens

and communities who call Pennsylvania home are able to have just a little more leverage and a few more tools to insist on better projects that are more sustainable, more wise, and more conservation oriented. It's critical that the Department and the Board move this stream bundle package and all languishing petitions forward for the benefit of clean streams and clean water. There are still many pending petitions and streams that are deserving of EV and HQ designation. Every year and month that passes to put these protections into place, the more of Penn's woods and streams that deserve protection are sacrificed. (12, 229)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking. The Department works to balance all of its responsibilities with its available resources. Department staff will continue to prioritize the workload as needed to meet statutory obligations and continue to work on stream redesignation petitions.

8. **Comment:** The commentator supports these stream upgrades to better protect the cleanest streams that flow through Pennsylvania. (14)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

9. **Comment:** The commentator is writing to share support for the stream upgrades, including Cranberry Creek, being proposed for the Dunbar et al. stream bundle out for public comment and proposed rulemaking. The commentator urges moving forward with the process so that these streams can receive the EV regulatory designations they deserve. As a Pennsylvania resident, the commentator knows that clean water and clean streams are a bonanza for Pennsylvania's economy, health, communities and long term well-being. The commentator also believes more must be done to give attention to languishing petitions and to streams in need of special protection and EV designations. By giving EV designation to these streams, the Commonwealth is protecting its health and communities. (15-71)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

10. **Comment:** The commentator commends the Department in its continued effort to update the designated uses of Pennsylvania streams to ensure the protection of clean and abundant surface waters for all and future generations. (230)

Response: The Department acknowledges and appreciates the support for the final-form rulemaking.

Comments on the Economic Benefits of Clean Water

11. **Comment:** According to an Outdoor Industry Association 2017 report, Pennsylvania's outdoor recreation generates 251,000 direct in-State jobs, \$8.6 billion in wages and

salaries and \$1.9 billion in State and local tax revenue. The association reports that 56% of Commonwealth residents participate in outdoor recreation each year and many flock to these pristine Pennsylvania waters for rest, reflection and exercise. The findings of a 2014 Lehigh Valley Planning Commission report entitled "Lehigh Valley Return on Environment" demonstrates the benefits when clean water and natural areas are protected. The report finds that current green infrastructure along streams in the Lehigh Valley alone "reduces tax dollars by avoiding more than \$110.3 million annually in expenditures for water supply (\$45.0 million), flood mitigation (\$50.6 million) and water quality (\$14.7 million)."

For these and many more reasons, it is clear that the Commonwealth and the taxpayers benefit when clean rivers and streams are protected before they are lost to pollution. Thank you for moving this stream bundle forward at the April 2021 Meeting and please continue to urge the Department to process and upgrade other deserving streams that are in the long awaited queue for upgrades before it is too late. Thank you for your time and attention. (15-71)

Response: The Department agrees that there are many benefits to be gained by maintaining clean water and that maintenance of clean water is less costly than treatment and remediation associated with the environmental degradation and pollution. The Department acknowledges and appreciates the support for the final-form rulemaking.

Comments on Cranberry Creek

12. Comment: The commentator urges the Board to support upgrading the 10.25 miles of the Cranberry Creek basin, from and including UNT 04948 to its mouth, to the proposed EV, Migratory Fishes (MF) designation. The Department's integrated benthic macroinvertebrate tests in these streams yielded Biological Condition Scores (BCS) that exceeded the 92% criterion required to qualify for EV designation. Cranberry Creek supports a healthy wild trout fishery and these enhanced protections will greatly benefit aquatic life in these streams as well as in downstream areas of the Brodhead Watershed. This redesignation of Cranberry Creek will also help protect a valuable drinking water source since these waters eventually flow into the stretch of the Brodhead Creek where the Brodhead Creek Water Authority draws its public water supply for the region. (5)

Response: The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

13. Comment: This packet would redesignate Cranberry Creek in Monroe County to EV. Much of Cranberry Creek watershed has recently been preserved through open space and land trust purchases of critical watershed acreage. The commentator feels that the finest quality waters, such as Cranberry Creek, should be preserved at their current quality with no further degradation allowed. The petitioners anticipate minimal to no negative economic impact resulting from this redesignation to EV. And many individuals and organizations would reap positive benefits from an EV designation for Cranberry

Creek. The brown trout population of Cranberry Creek - Creek is particularly well-balanced with - with abundant fingerlings, and that's evidence of very successful reproduction. Wild Brook Trout were also present in addition to Slimy sculpin, which are only found in colder, silt-free, unpolluted streams. Public trout fisheries and private clubs and - and other organizations rely very heavily on the recruitment of young trout from these exceptional value tributaries such as Cranberry Creek. (230)

Response: The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

14. **Comment:** The commentator asks that the Department conduct an additional field survey in the portion of the Cranberry Creek basin from its source to UNT 04948, where station ICC is located, to determine whether this tributary also meets the biological criteria necessary for obtaining EV designation. In its draft report, the Department found that the Biological Condition Scores from tests at this eastern tributary did not meet the criteria necessary to qualify for EV redesignation and recommended the tributary retain its HQ-Cold Water Fishes, MF (HQ-CWF, MF) designation. However, the results of these tests were on the cusp of meeting necessary criteria and indicate that this tributary has a rich biological diversity and may actually qualify for EV status. Specifically, Station ICC's taxa richness score of 27 fell just barely below the reference stream's score of 28 while the number of individual stonefly larva identified at Station ICC exceeded the number of those documented at the reference stream. Since a stream's macroinvertebrate diversity varies temporally and the Department's previous tests were based on only a single field survey, the Council encourages the Department to conduct at least one additional field survey to determine whether this stream actually meets the biological criteria necessary for EV status. Redesignating the portion of Cranberry Creek basin from its source to UNT 04948 to EV, MF would protect the headwaters of the basin and support the health of all downstream waterways, especially the portion of the basin from and including UNT 04948 to its mouth. (5)

Response: The Department disagrees that Station ICC was near qualifying as EV and warrants reevaluation under its current regulations and protocols. Aquatic macroinvertebrate community data provides excellent information on long-term aquatic conditions and is used as measure of water quality. When evaluating waters for special protection designation, the Department only collects macroinvertebrate samples during specific calendar months to optimize the capture of sensitive Ephemeroptera, Plecoptera, and Trichoptera (EPT) taxa present in the waterbody, which ensures adequate characterization of the aquatic community. Since macroinvertebrate communities are a measure of long-term conditions in a waterbody, single samples are sufficient to characterize the aquatic community and water quality. The Department collected samples in Cranberry Creek during March, which falls within the Department's acceptable macroinvertebrate sampling period (that is, November to April). For more information on the Department's monitoring protocols, reference the Department's *Water Quality Monitoring Protocols for Streams and Rivers* (Lookenbill and Whiteash 2021).

The Department's benthic macroinvertebrate scoring test utilizes a set of five metrics and compares the scores of the candidate stream to the scores of a reference stream. In order to qualify as EV, a candidate stream must have a total biological condition score of at least 92% of that of a reference stream. While the taxa richness metric for Station 1CC did fall just below the reference station (1DMB) score for that metric, three of the five metric scores evaluated for the candidate stream were well below the reference station scores, including the modified Hilsenhoff Biotic Index (HBI), the percent dominant taxa, and the percent modified mayflies. As such, Station 1CC had a total biological condition score of 25 compared to the reference stream score of 40. At 63%, this comparability score falls well below the minimum required score of 92%. In contrast, Stations 2UNTCC, 3CC, and 4CC had percent comparability scores of 100%, 95% and 100%, respectively.

Furthermore, this headwater section of Cranberry Creek already has a special protection designated use of HQ-CWF, MF, and it will continue to receive this protection.

- 15. Comment:** The commentator submitted comments on August 13, 2018, supporting the Department's draft stream redesignation evaluation report. In 2012, Brodhead Watershed Association submitted to the Board a petition to amend the Chapter 93 water quality standards regulations to change the designated use of the Cranberry Creek basin to EV from its current designation of HQ-CWF ("Cranberry Creek Redesignation Petition"). Those comments noted while we were disappointed that the entirety of the Cranberry Creek Basin was not recommended for EV status as was petitioned for, we are nevertheless in support of the Department's analysis and its recommendation that 10.25 stream miles, or about 77% of the overall 13.32 miles of streams in the Cranberry Creek Basin, would be upgraded to EV. The Department's independent and objective scientific data and analysis reveals that the majority of the Cranberry Creek basin is among the best of Pennsylvania's natural waters. As the Cranberry Creek Redesignation Petition points out, Cranberry Creek supports a healthy wild trout fishery, which may be critical for sustaining trout populations in downstream waters through recruitment. The numerous privately and publicly-owned protected lands, hunting and fishing clubs, and private residences along Cranberry Creek will also benefit from the EV protections. Cranberry Creek is also an indirect tributary to the Brodhead Creek, on which the Brodhead Regional Water Authority operates the largest public drinking water supply in the region. Affording the majority of the Cranberry Creek basin with the highest water quality protections will positively impact the water quality downstream upon which the community relies for its drinking water. Thus, the increased protection of these waters as EV is critical not only to the health of the Cranberry, but also to water quality in the downstream waters, including the Paradise and Brodhead Creeks. Designating the proposed 10.25 miles of the Cranberry Creek basin as EV will provide these waters with an additional layer of protection to ensure that they continue to serve as a viable habitat for aquatic life and as a bastion for some of the best wild trout fishing in the Commonwealth. (8)

Response: The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

16. Comment: In 2011, the commentator and over 20 co-petitioners and 300 supporters, businesses, and landowners petitioned the Department to upgrade all tributaries flowing into the Upper and Middle Delaware River to EV which included the Cranberry Creek in Monroe County. In 2014 the Brodhead Watershed Association submitted a petition with extensive data for Cranberry Creek to push for action and upgrade to EV of this important Pocono tributary. Community support for EV designation has only grown stronger in the Delaware River since this petition was filed but other interests are also at work to undermine the protections and stewardship provided by the community to date that has kept these Upper and Middle Delaware tributaries clean and healthy. It's critical that this upgrade for the Cranberry Creek and the other streams being considered for upgrades be finalized now. (12, 229)

Response: The Department acknowledges and appreciates the support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

17. Comment: Cranberry Creek is a relatively small, cold and shallow third-order tributary to Paradise Creek at River Mile Index (RMI) 3.16 located in Barrett and Paradise Townships, Monroe County and drains 6.85 square miles with a total of 13.32 stream miles. GIS analysis by the Department determined land use to be 90% forested, 8.8 % developed land, and 0.2% wetlands. In the case of Cranberry Creek, the Department is proposing all of Cranberry Creek receive EV designation with the exception of the upper east tributary that has Department station ICC near the confluence. This current change in designation the Department proposed would add 10.25 miles of EV streams to Chapter 93 and partially reflects the EV designation sought in the petitions submitted by Brodhead Watershed Association in 2014 and the Upper Regional Upgrade Delaware petition submitted in 2011. If the Department were to expand to include all of Cranberry Creek, it would add an additional 3.07 miles of EV. The commentator requests that the Department re-examine that excluded section of Cranberry in the future after this specific bundle is fully approved. The commentator's reasons for further review of the excluded headwater are outlined in our 2018 comment on the Department's Cranberry stream report. (12, 229)

Response: As stated in the response to Comment 12, the Department disagrees that Station ICC warrants reevaluation under its current regulations and protocols. Aquatic macroinvertebrate community data provides excellent information on long-term aquatic conditions and is used as measure of water quality. When evaluating waters for special protection designation, the Department only collects macroinvertebrate samples during specific calendar months to optimize the capture of sensitive EPT taxa present in the waterbody, which ensures adequate characterization of the aquatic community. Since macroinvertebrate communities are a measure of long-term conditions in a waterbody, single samples are sufficient to characterize the aquatic community and water quality. The Department collected samples in Cranberry Creek during March, which falls within the Department's acceptable macroinvertebrate sampling period (that is, November to April). For more information on the Department's monitoring protocols, reference the Department's *Water Quality Monitoring Protocols for Streams and Rivers* (Lookenbill and Whiteash 2021). See also the response to Comment 12.

18. Comment: The commentator supports the EV designation for Cranberry Creek and other deserving streams of Pennsylvania. (14)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

19. Comment: The commentator strongly urges the Board to vote to approve the Department's recommendation to upgrade 10.25 miles of the Cranberry Creek basin, from and including UNT 04948 to its mouth, from its current designation of HQ-CWF, MF to the proposed EV, MF designation. Cranberry Creek supports a healthy wild trout fishery and these enhanced protections will greatly benefit aquatic life in these streams as well as in downstream areas of the Broadhead Watershed. This redesignation of Cranberry Creek will also help protect a valuable drinking water source since these waters eventually flow into the stretch of the Broadhead Creek where the Broadhead Creek Water Authority draws its public water supply for the region. (72-228)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of Cranberry Creek to EV, MF in the final-form rulemaking.

20. Comment: The commentator urges the Board to recommend that the Department do additional water monitoring at the stretch of Cranberry Creek from its source to UNT 04948. This could provide the Department with the data it needs to redesignate this portion of the stream to EV, MF as well. This would protect the headwaters of the basin and support the health of all downstream waterways, especially the portion of the basin from and including UNT 04948 to its mouth. (72-228)

Response: The Department does not agree that additional monitoring in Cranberry Creek is warranted at this time. See the response to Comment 12. As previously noted, this headwater section of Cranberry Creek already has a special protection designated use of HQ-CWF, MF, and it will continue to receive this protection.

Comments on Dunbar Creek

21. Comment: The commentator strongly supports the redesignation of the Dunbar Creek Watershed as EV. This gem of a stream deserves the protection that this redesignation provides. The fishing opportunities on the stream has always brought fishermen from out of town to the area. The scenery of the head waters rivals none. (1)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

22. Comment: The commentator is writing to express its enthusiastic support of the proposed re-designation of 47.5 stream-miles in the Dunbar Creek basin, including Dunbar Creek

main stem and tributaries Limestone Run, Irishtown Run, and those parts of Glade Run within State Game Lands 51, Fayette County, as EV.

The Dunbar Creek basin's improving water quality, wild character, scenic appeal, and the fact that two-thirds of the basin is protected within State Game Land 51, make the basin an irreplaceable environmental, recreational, and economic asset to Fayette County and southwestern Pennsylvania. The commentator knows of anglers who travel from long distances for the experience of fishing for Dunbar Creek basin's wild native trout. These visits contribute to the vitality of an otherwise challenged local economy, and the angler's reports back elevate the image of the Dunbar community and Fayette County.

The commentator has worked to improve the water chemistry, trout habitat, and the aesthetic appeal of the Dunbar Creek basin since 1998. Since that date the commentator has invested nearly a half-million dollars and an immense contribution of volunteer time and effort of its members to construct an anoxic limestone treatment system to moderate acid mine drainage degradation of Glade Run tributary. The commentator has also carried on a regular program of alkaline limestone sand treatment of Glade Run and two of its tributaries to boost alkalinity in the basin and helped remove obstructions to aquatic organism passage. The commentator annually cleans up litter along Dunbar Creek main stem. (3, 4, 231)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

23. **Comment:** As a fisherman and nature lover who enjoys activities in the Dunbar Creek watershed, the commentator strongly urges the redesignation to EV. The commentator and many others travel to fish in that beautiful and pristine area. To have such a place protected to ensure it stays that way is beneficial to the economy of the area as well as the recreation of our grandchildren. Thank you for your consideration in this matter. (6)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

24. **Comment:** The commentator is writing today with comments related to proposed changes to stream designations for waters in the Dunbar Creek Watershed (Fayette County). These stream designations propose the upgrade of 47.5 miles of stream to EV use status and the delisting of 1.2 miles of streams from the Section 303(d) list of impaired waters, including several waters in State Game Lands 51. The commentator supports these proposed changes in use designations throughout the watershed. Conservation groups like the commentator know from experience that protecting water quality is far easier and cheaper than trying to clean up the damage later. In short, these designations would provide critical resources protections for some of the highest quality waters in the Commonwealth, many of which provide recreational opportunities for anglers (9)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

- 25. Comment:** The commentator observes that the biological data used to support the listing of 4.7 miles of stream in the UNT 38212 Glade Run Basin on the Section 303(d) list of impaired waters were collected in 2006, 15 years ago. Additional water quality data were collected in 2016 but benthic macroinvertebrate samples were not collected at this time. The Chestnut Ridge Chapter of Trout Unlimited and partners have been active in the watershed in abandoned mine drainage treatment. It is disheartening to see that one of the results of this report is a net increase in miles considered impaired in the watershed despite these reclamation activities. Basing management decisions on water chemistry data alone without collecting synchronous benthic macroinvertebrate data in a watershed where active reclamation is ongoing does not allow for accurate characterization of impairment status. There are examples of streams (Swatara Creek in Schuylkill County) where biological conditions are being attained, especially those related to fish communities, in spite of water quality parameter exceedances. Impairment decisions should be made based on multiple factor analysis, rather than one at the exclusion of others, to correctly characterize impairment/attainment status. (9)

Response: The assessment of surface waters of the Commonwealth and the listing of such surface waters on the impaired waters list are outside of the scope of this final-form rulemaking. Assessment activities are separate from existing use determinations and designated use recommendations, and they do not require a rulemaking. Assessment data is collected and evaluated in accordance with the Department's *Assessment Methodology for Streams and Rivers* (Shull and Whiteash 2021). While data that supports a status of attainment or impairment of designated uses may be collected during an existing use evaluation of a waterbody, assessment determinations are not part of the Department's existing use evaluations and stream designation recommendations. As such, while data may have been collected to support a determination of impairment for UNT 38212, this rulemaking does not address whether a stream segment is being listed on the impaired waters list. The scope of this final-form rulemaking is the proper designation of water uses that apply to UNT 38212. Furthermore, UNT 38212 is not currently listed as impaired for its aquatic life use on the impaired waters list.

- 26. Comment:** The commentator, home of the Youghiogheny Riverkeeper is submitting these comments in support of the redesignation of portions of Dunbar Creek. The commentator submits these comments on behalf of its organization and its membership of over 2,000 members. The Dunbar Creek watershed is a picturesque area of Fayette County. The large amount of forested area and the relatively low levels of historic agricultural, commercial, and industrial development have combined to allow the uses and quality of the watershed to become truly exceptional. Because the law would require the protection and maintenance of existing water quality, the commentator supports the redesignation of Dunbar Creek to an EV status. Benefits of this redesignation would include benefits to anglers, locals, downstream users, and the commonwealth of PA. The commentator urges the Board to redesignate Dunbar Creek as an EV waterway. (13)

Response: The Department acknowledges and appreciates this support for the redesignation of portions of the Dunbar Creek basin to EV, MF in the final-form rulemaking.

Comments on UNT 28168 to Oley Creek

27. Comment: EPA has only one comment on these proposed revisions. In drainage list K at 25 PA Code § 93.9k, the Department proposes to revise the designated use of UNT 28168 to Oley Creek from HQ-CWF, MF, to CWF, MF. As the Department notes in the proposed rulemaking such a revision to the designated use would require a use attainability analysis (UAA). EPA expects that a UAA which has been subject to public review will be included as part of the Department's water quality standards submission package. (2)

Response: As noted in the proposed rulemaking, the Department recognizes that the redesignation of a stream to a less restrictive use requires a UAA. This UAA evaluation was completed and made available for public review and comment. It is included in the stream report for UNT 28168 to Oley Creek, which is part of the proposed and final-form rulemaking.

28. Comment: The commentator echoes August 16, 2021 comments on the record that downgrades would require a UAA. (10, 12)

Response: See response to Comment 25.

References

- Lookenbill, M. J. and R. Whiteash (editors). 2021. Water quality monitoring protocols for streams and rivers. Pennsylvania Department of Environmental Protection, Harrisburg, Pennsylvania.
- Shull, D. R., and R. Whiteash (editors). 2021. Assessment methodology for streams and rivers. Pennsylvania Department of Environmental Protection, Harrisburg, Pennsylvania.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9c. Drainage List C.				
Delaware River Basin in Pennsylvania				
<i>Delaware River</i>				
Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
3—Paradise Creek	Basin, Devils Hole Creek to Forest Hills Run	Monroe	HQ-CWF, MF	None
4—Forest Hills Run	Basin, Source to Swiftwater Creek	Monroe	HQ-CWF, MF	None
5—Swiftwater Creek	Basin, Source to UNT 04960 at 41°5'58.5"N; 75°20'4.8"W	Monroe	EV, MF	None
6—UNT 04960	Basin	Monroe	HQ-CWF, MF	None
5—Swiftwater Creek	<u>Basin</u> , UNT 04960 to Mouth	Monroe	HQ-CWF, MF	None
4—Forest Hills Run	Basin, Swiftwater Creek to Mouth	Monroe	HQ-CWF, MF	None
3—Paradise Creek	Basin, Forest Hills Run to [Mouth] <u>Cranberry Creek</u>	Monroe	HQ-CWF, MF	None
<u>4—Cranberry Creek</u>	<u>Basin, Source to UNT 04948 at 41°8'28.6"N; 75°16'58.7"W</u>	Monroe	<u>HQ-CWF, MF</u>	None
<u>5—UNT 04948</u>	<u>Basin</u>	Monroe	<u>EV, MF</u>	None
<u>4—Cranberry Creek</u>	<u>Basin, UNT 04948 to Mouth</u>	Monroe	<u>EV, MF</u>	None

<u>3—Paradise Creek</u>	<u>Basin, Cranberry Creek to Mouth</u>	Monroe	<u>HQ-CWF, MF</u>	None
3—Michael Creek	Basin	Monroe	HQ-CWF, MF	None
* * * * *				
§ 93.9k. Drainage List K.				
Susquehanna River Basin in Pennsylvania				
<i>Susquehanna River</i>				
Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
2—Salem Creek	Basin	Luzerne	CWF, MF	None
2—Nescopeck Creek	Basin, Source to [PA 309 Bridge] <u>Oley Creek</u>	Luzerne	HQ-CWF, MF	None
<u>3—Oley Creek</u>	<u>Basin, Source to UNT 28168 at 41°3'7.1"N; 75°54'40.8"W</u>	<u>Luzerne</u>	<u>HQ-CWF, MF</u>	<u>None</u>
<u>4—UNT 28168</u>	<u>Basin</u>	<u>Luzerne</u>	<u>CWF, MF</u>	<u>None</u>
<u>3—Oley Creek</u>	<u>Basin, UNT 28168 to Mouth</u>	<u>Luzerne</u>	<u>HQ-CWF, MF</u>	<u>None</u>
<u>2—Nescopeck Creek</u>	<u>Basin, Oley Creek to PA 309 Bridge at 41°2'14.7"N; 75°57'11.9"W</u>	<u>Luzerne</u>	<u>HQ-CWF, MF</u>	<u>None</u>
2—Nescopeck Creek	Main Stem, PA 309 Bridge to Mouth	Luzerne-Columbia	TSF, MF	None
* * * * *				
§ 93.9l. Drainage List L.				
Susquehanna River Basin in Pennsylvania				
<i>West Branch Susquehanna River</i>				
Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
* * * * *				
3—Tributaries to West Branch Susquehanna River	Basins, North Run to [Chest Creek] <u>Bear Run</u>	Clearfield	CWF, MF	None

<u>3—Bear Run</u>	<u>Basin, Source to UNT 27063 at 40°54'5.1"N; 78°50'51.0"W</u>	<u>Indiana</u>	<u>HQ-CWF, MF</u>	<u>None</u>
<u>4—UNT 27063</u>	<u>Basin</u>	<u>Indiana</u>	<u>HQ-CWF, MF</u>	<u>None</u>
<u>3—Bear Run</u>	<u>Basin, UNT 27063 to Brooks Run</u>	<u>Indiana</u>	<u>EV, MF</u>	<u>None</u>
<u>4—Brooks Run</u>	<u>Basin, Source to UNT 27059 at 40°54'10.5"N; 78°49'41.6"W</u>	<u>Indiana</u>	<u>HQ-CWF, MF</u>	<u>None</u>
<u>5—UNT 27059</u>	<u>Basin</u>	<u>Indiana</u>	<u>HQ-CWF, MF</u>	<u>None</u>
<u>4—Brooks Run</u>	<u>Basin, UNT 27059 to Mouth</u>	<u>Indiana</u>	<u>EV, MF</u>	<u>None</u>
<u>3—Bear Run</u>	<u>Basin, Brooks Run to South Branch Bear Run</u>	<u>Indiana</u>	<u>EV, MF</u>	<u>None</u>
<u>4—SOUTH BRANCH BEAR RUN</u>	<u>BASIN</u>	<u>INDIANA</u>	<u>CWF, MF</u>	<u>NONE</u>
<u>3—Bear Run</u>	<u>Basin, South Branch Bear Run to Mouth</u>	<u>Indiana</u>	<u>CWF, MF</u>	<u>None</u>
<u>3—Tributaries to West Branch Susquehanna River</u>	<u>Basins, Bear Run to Chest Creek</u>	<u>Clearfield</u>	<u>CWF, MF</u>	<u>None</u>
<u>3—Chest Creek</u>	<u>Basin, Source to Patton Water Supply</u>	<u>Cambria</u>	<u>HQ-CWF, MF</u>	<u>None</u>

* * * * *

§ 93.90. Drainage List O.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
* * * * *				
3—Stoverstown Branch	Basin	York	WWF, MF	None
3—South Branch Codorus Creek	Basin, Source to [UNT from Glen Rock Valley at RM 16.58]UNT 08187 at 39°46'26.7" N; 76°43'15.2" W	York	WWF, MF	None

<u>4—UNT 08187</u>	<u>Basin</u>	<u>York</u>	<u>EV, MF</u>	<u>None</u>
<u>3—South Branch Codorus Creek</u>	<u>Basin, UNT 08187 to UNT from Glen Rock Valley at 39° 47' 36" N; 76° 43' 49" W</u>	<u>York</u>	<u>WWF, MF</u>	<u>None</u>
4—UNT to South Branch Codorus Creek Through Glen Rock Valley	Basin	York	CWF, MF	None

* * * * *

§ 93.9r. Drainage List R.

Ohio River Basin in Pennsylvania

Clarion River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Clarion River	Basin, Maxwell Run to [Callen Run]Clyde Run	Elk	CWF	None
<u>4—Clyde Run</u>	<u>Basin</u>	<u>Elk</u>	<u>EV</u>	<u>None</u>
<u>3—Clarion River</u>	<u>Basin, Clyde Run to Callen Run</u>	<u>Elk-Jefferson</u>	<u>CWF</u>	<u>None</u>
4—Callen Run	Basin	Jefferson	HQ-CWF	None

* * * * *

§ 93.9t. Drainage List T.

Ohio River Basin in Pennsylvania

Kiskiminetas River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
6—Two Lick Creek				
7—South Branch Two Lick Creek	Basin, Source to Confluence with North Branch	Indiana	HQ-CWF	None
7—North Branch Two Lick Creek	Basin, Source to Confluence with South Branch	Indiana	CWF	None

6—Two Lick Creek	Main Stem, Confluence of North and South Branches to <u>[Mouth]Two Lick Reservoir tailrace</u>	Indiana	TSF	None
7—[Unnamed] Tributaries to Two Lick Creek	Basins, Confluence of North and South Branches to <u>[Mouth]Two Lick Reservoir tailrace</u>	Indiana	CWF	None
<u>7—Browns Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>7—Buck Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>7—Dixon Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>7—Penn Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>7—Allen Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>7—Ramsey Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>7—Stoney Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>6—Two Lick Creek</u>	<u>Basin, Two Lick Reservoir tailrace to Yellow Creek</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
7—Yellow Creek	<u>[Main Stem]Basin, Source to [Yellow Creek State Park]Little Yellow Creek</u>	Indiana	CWF	None
<u>[8—Unnamed Tributaries to Yellow Creek</u>	<u>Basins, Source to Yellow Creek State Park Dam</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>8—Leonard Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>8—Laurel Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>8—Rose Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
<u>8—Laurel Run</u>	<u>Basin</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
8—Little Yellow Creek	Basin	Indiana	HQ-CWF	None
<u>7—Yellow Creek</u>	<u>Basin, Little Yellow Creek to Yellow Creek State Park Dam</u>	<u>Indiana</u>	<u>CWF</u>	<u>None</u>
7—Yellow Creek	Main Stem, Yellow Creek State Park Dam to Mouth	Indiana	TSF	None

8—[Unnamed] Tributaries to Yellow Creek	[Main Stem]Basins, Yellow Creek State Park Dam to Mouth	Indiana	CWF	None
8—Ferrier Run	Basin	Indiana	CWF	None
7—Tearing Run	Basin	Indiana	CWF	None
7—Cherry Run	Basin	Indiana	CWF	None]
6—Two Lick Creek	Main Stem, Yellow Creek to Mouth	Indiana	TSF	None
7—Tributaries to Two Lick Creek	Basins, Yellow Creek to Mouth	Indiana	CWF	None
6—Weirs Run	Basin	Indiana	CWF	None
* * * * *				
§ 93.9v. Drainage List V.				
Ohio River Basin in Pennsylvania				
<i>Monongahela River</i>				
* * * * *				
4—Dunbar Creek	Basin, Source to [Gist Run]Glade Run	Fayette	[HQ-CWF] EV	None
5—Glade Run	Basin, Source to Boundary of SGL 51	Fayette	HQ-CWF	None
5—Glade Run	Basin, Boundary of SGL 51 to Mouth	Fayette	EV	None
4—Dunbar Creek	Basin, Glade Run to Gist Run	Fayette	EV	None
5—Gist Run	Basin	Fayette	TSF	None
* * * * *				



April 13, 2023

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Final Rulemaking: Water Quality Standards – Dunbar Creek et al. Stream Redesignations
(#7-557 / IRRC # 3309)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act (RRA), please find enclosed the Water Quality Standards – Dunbar Creek et al. Stream Redesignations final-form rulemaking for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB or Board) adopted this rulemaking on April 11, 2023.

The Board adopted the proposed rulemaking on April 20, 2021. On July 31, 2021, the proposed rulemaking was published in the *Pennsylvania Bulletin* at 51 Pa.B. 4062 for a 45-day public comment period that closed on September 14, 2021. The Board held one virtual public hearing on August 30, 2021. Comments were received from 228 commentators, including testimony from three witnesses at the public hearing, all of which were supportive of the rulemaking. The Board provided the Environmental Resources and Energy Committees and IRRC with copies of all comments received in compliance with Section 5(c) of the RRA.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed rulemaking under Section 5.1(e) of the Regulatory Review Act.

Please contact me by e-mail at laurgriffi@pa.gov or by telephone at 717.772.3277 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Griffin".

Laura Griffin
Regulatory Coordinator

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-557

SUBJECT: Water Quality Standards; Dunbar Creek et al. Stream Redesignations

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

TYPE OF REGULATION

RECEIVED

APR 13 2023

Independent Regulatory
Review Commission

Proposed Regulation

X 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

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

*HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES
& ENERGY*

4/13/23 electronic submittal

MAJORITY CHAIR Representative Greg Vitali

4/13/23 electronic submittal

MINORITY CHAIR Representative Martin Causer

*SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES &
ENERGY*

4/13/23 electronic submittal

MAJORITY CHAIR Senator Gene Yaw

4/13/23 electronic submittal

MINORITY CHAIR Senator Carolyn Comitta

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

Madison Brame

From: Franzese, Evan B.
Sent: Thursday, April 13, 2023 10:05 AM
To: Griffin, Laura; Michele Musgrave
Cc: Shupe, Hayley; Thrush, Ezra; Reiley, Robert A.; Nezat, Taylor
Subject: RE: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)

Receipt confirmed.

Evan Franzese-Peterson

Executive Director | House Environmental Resources & Energy Committee (D)

Representative Greg Vitali

Pennsylvania House of Representatives

P: 717-787-7647

F: 717-780-4780

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APR 13 2023

Independent Regulatory
Review Commission

From: Griffin, Laura <laurgriffi@pa.gov>
Sent: Thursday, April 13, 2023 10:01 AM
To: Franzese, Evan B. <EFranzese@pahouse.net>; Michele Musgrave <Mmusgrav@pahousegop.com>
Cc: Shupe, Hayley <HShupe@pahouse.net>; Thrush, Ezra <ezthrush@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)
Importance: High

Good morning,

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find attached the Water Quality Standards - Dunbar Creek et al. Stream Redesignations final rulemaking (#7-557) for review by the House Environmental Resources and Energy (ERE) Committee. The rulemaking documents are attached as one document and the cover letters for Representatives Vitali and Causer are attached separately.

A copy of the transmittal sheet is attached for your records – all ERE Committee chairs are receiving the rulemaking electronically.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,
Laura

Laura Griffin | Regulatory Coordinator
she/her/hers

Department of Environmental Protection | Policy Office

Rachel Carson State Office Building

400 Market Street | Harrisburg, PA 17101

Phone: 717.772.3277 | Fax: 717.783.8926

Email: laurgriffi@pa.gov

www.dep.pa.gov

Madison Brame

From: Michele Musgrave
Sent: Thursday, April 13, 2023 10:06 AM
To: Griffin, Laura; Franzese, Evan B.
Cc: Shupe, Hayley; Thrush, Ezra; Reiley, Robert A.; Nezat, Taylor
Subject: RE: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)

Receipt confirmed, thanks!

Michele Musgrave
Administrative Assistant II
Representative Martin Causer
67th Legislative District
Room 47 East Wing
PO Box 202067
Harrisburg, PA 17120-2067
717-787-5075

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APR 13 2023

Independent Regulatory
Review Commission

From: Griffin, Laura <laurgriffi@pa.gov>
Sent: Thursday, April 13, 2023 10:01 AM
To: Franzese, Evan B. <EFranzese@pahouse.net>; Michele Musgrave <Mmusgrav@pahousegop.com>
Cc: Shupe, Hayley <HShupe@pahouse.net>; Thrush, Ezra <ezthrush@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)
Importance: High

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Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,
Laura

Laura Griffin | Regulatory Coordinator
she/her/hers
Department of Environmental Protection | Policy Office

Madison Brame

From: Osenbach, Matt
Sent: Thursday, April 13, 2023 10:05 AM
To: Griffin, Laura; Eyster, Emily
Cc: Troutman, Nick; Thrush, Ezra; Reiley, Robert A.; Nezat, Taylor
Subject: RE: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)

Message received. Thanks Laura!

Matt Osenbach
Director, Environmental Resources & Energy Committee
Office of State Senator Gene Yaw (R-23)
362 Main Capitol Building, Senate Box 203023
Harrisburg, PA 17120
T: (717) 787-3280
F: (717) 772-0575

www.SenatorGeneYaw.com



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APR 13 2023

**Independent Regulatory
Review Commission**

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From: Griffin, Laura <laurgriffi@pa.gov>
Sent: Thursday, April 13, 2023 10:01 AM
To: Osenbach, Matt <mosenbach@pasen.gov>; emily.eyster@pasenate.com
Cc: Troutman, Nick <ntroutman@pasen.gov>; Thrush, Ezra <ezthrush@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)
Importance: High

© CAUTION : External Email ©

Good morning,

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find attached the Water Quality Standards - Dunbar Creek et al. Stream Redesignations final rulemaking (#7-557) for review by the Senate Environmental Resources and Energy (ERE) Committee. The rulemaking documents are attached as one document and the cover letters for Senators Yaw and Comitta are attached separately.

A copy of the transmittal sheet is attached for your records – all ERE Committee chairs are receiving the rulemaking electronically.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,
Laura

Madison Brame

From: Eyster, Emily
Sent: Thursday, April 13, 2023 10:26 AM
To: Osenbach, Matt; Griffin, Laura
Cc: Troutman, Nick; Thrush, Ezra; Reiley, Robert A.; Nezat, Taylor
Subject: Re: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)

Received. Thanks!

Emily Eyster
Legislative Director, Office of Senator Carolyn T. Comitta
Executive Director, Senate Environmental Resources and Energy Committee
Cell: (717) 756-4702
Phone: (717) 787-5709
www.pasenate.com

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APR 13 2023

Independent Regulatory
Review Commission

From: Osenbach, Matt <mosenbach@pasen.gov>
Sent: Thursday, April 13, 2023 10:04 AM
To: Griffin, Laura <laurgriffi@pa.gov>; Eyster, Emily <emily.eyster@pasenate.com>
Cc: Troutman, Nick <ntroutman@pasen.gov>; Thrush, Ezra <ezthrush@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: RE: Delivery of Final Rulemaking - Dunbar Creek et al. Stream Redesignations (7-557)

■ EXTERNAL EMAIL ■

Message received. Thanks Laura!

Matt Osenbach
Director, Environmental Resources & Energy Committee
Office of State Senator Gene Yaw (R-23)
362 Main Capitol Building, Senate Box 203023
Harrisburg, PA 17120
T: (717) 787-3280
F: (717) 772-0575
www.SenatorGeneYaw.com



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To: Osenbach, Matt <mosenbach@pasen.gov>; emily.eyster@pasenate.com