

DEP ROLLING REGULATORY AGENDA March 4, 2011

(This Rolling Agenda is designed to give a quick snapshot of the current status of regulations within DEP)

Title of Regulation / Statutory Authority	Summary of Regulation & Contact	Status
<p>Clarks Creek, et al. Stream Redesignation Package Clean Streams Law 25 Pa Code, Chapter 93</p>	<p>This proposal identifies the six following streams that should be redesignated to provide the correct aquatic life use designation in the water quality standards: UNT Lackawanna River "Clarks Creek" (Wayne County), Pine Creek (Schuylkill County); UNT Conestoga River (Lancaster County); Hammer Creek (Lebanon and Lancaster Counties), UNT Schuylkill river "Spring Mill Run" (Montgomery County), and Cacoosing River (Berks County). CONTACT: Rodney McAllister, 717-787-9637 romcallist@state.pa.us</p>	<p>On July 8, 2010, IRRC provided notice to the EQB that it had reviewed the proposed Clarks Creek et al Stream Redesignation rulemaking and had no objections, comments or recommendations to offer on the rulemaking. If the rulemaking is delivered to IRRC in its final-form without revisions, and the Standing Committee do not take any action on the rulemaking, it will be deemed approved by IRRC.</p> <p>Background: The proposed rulemaking was published in the April 24, 2010, issue of the PA Bulletin, opening a 45-day public comment period that ended on June 8, 2010. The EQB received comments on the proposal from 9 commentators. IRRC's deadline to issue comments on the proposed rulemaking is July 8, 2010. As a result of OGC approval, the rulemaking was submitted to the Attorney General's Office for a 30-day review on March 24, 2010. The EQB approved the proposed rulemaking at its February 16, 2010, meeting.</p>
<p>Fishing Creek, et al. Stream Redesignations Package <i>Clean Streams Law</i> 25 Pa. Code, Chapter 93</p>	<p>This proposal identifies the seven following stream segments that should be redesignated to provide the correct aquatic life use designation in the water quality standards: Buck Hill Creek (Monroe County); Upper Lehigh River (Lackawanna, Monroe, Wayne & Luzerne Counties); Little Lehigh Creek (Lehigh & Berks Counties); Gallows Run (Bucks County); French Creek & Beaver Run (Chester County); Tannery Hollow Run (Cameron County); Fishing Creek (Lancaster County); and Deer Creek & Little Falls (York County). CONTACT: Rodney McAllister, 717-787-9637 romcallist@state.pa.us</p>	<p>On December 2, 2010, IRRC provided notification to the EQB that it had reviewed the proposed Fishing Creek, et al proposed rulemaking and had no objections, comments or recommendations to offer on the rulemaking</p> <p>Background: The proposed rulemaking was published in the September 18, 2010, issue of the <i>PA Bulletin</i>, commencing a 45-day public comment period that ended on November 2, 2010. The EQB has received over 160 comments on the proposal, all of which expressed support for the redesignation of the French Creek and Beaver Run Basin from HQ to EV status. The Board approved the proposed rulemaking at its July 13, 2010, meeting.</p>

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Water Quality General Provision Amendments Clean Streams Law 25 Pa. Code, Chapter 91	Revisions to Chapter 91 (General Provisions) to require a management plan as part of the permit application, and clarify issuance of innovative technology permits for wastewater treatment facilities. The proposal will also include revisions to account for changes to CAFO regulations and will add a new subchapter on nutrient trading. CONTACT: Kevin McLeary 717-787-8184; kmcleary@state.pa.us	The draft proposed rulemaking was discussed with WRAC on April 8, 2009. Background: 3-14-07 & 1/10/07 WRAC discussion WRAC concept discussion 3/8/06.
Water Quality Standards for Chloride Clean Streams Law 25 Pa. Code Chapter 93	This rulemaking will add statewide water quality criterion in Chapter 93 for chloride, a substance that is documented to have toxic effects on aquatic life at certain concentrations. CONTACT: Tom Barron, 717-787-9637, tbarron@state.pa.us	On July 15, 2010, IRRC issued comments on the proposed rulemaking. Those comments are accessible on IRRC's website at www.irrc.state.pa.us . Background: The proposed rulemaking was published in the May 1, 2010, issue of the PA Bulletin commencing a 45-day public comment period that ended on June 15, 2010. The EQB received comments from 20 commentators. The EQB adopted the proposed rulemaking at its March 16, 2010, meeting.
Safe Drinking Water Fees Safe Drinking Water Act 25 Pa Code, Chapter 109	This rulemaking consists of amendments to Chapter 109 to update drinking water program fees. CONTACT: Kevin McLeary, 717-783-1820, kmcleary@state.pa.us	On January 31, 2011, the Attorney General's Office issued an <i>additional</i> Tolling Memo on the proposed rulemaking. In the memo, the Attorney General's Office questioned the Department's authority in Section 109.1411 to impose an interest penalty for failure to remit an annual fee. Further processing of the rulemaking is on hold, including responding to the Tolling Memo, pending approval from the Governor's Office. Background: On December 21, 2010, the Office of Attorney General tolled its review of the rulemaking. The issuance of the Tolling Memo temporarily suspends the Office's mandatory 30-day review of the rulemaking until the Department can sufficiently address the issues and/or questions in the Tolling Memo. The Department responded to the Tolling Memo on January 11, 2011. The EQB approved the proposed rulemaking at its November 16, 2010, meeting. The draft rulemaking was discussed with the Technical Assistance Center (TAC) for Small Water Systems advisory committee at their March 9, 2010, meeting.

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<p>Dam Safety and Waterways Management Fees Dam Safety and Encroachments Act and Clean Streams Law 25 Pa. Code, Chapter 105</p>	<p>The purpose of the rulemaking package is to amend existing regulations at 25 Pa Code, Chapter 105 to update existing fees and include additional fees for activities performed by the Department. The fees have not been increased since 1991. CONTACT: Sidney Freyermuth, 717-772-5977, sfreyermuth@state.pa.us</p>	<p>The Attorney General's Office approved the proposed rulemaking. Further processing of the rulemaking is on hold, pending approval from the Governor's Office.</p> <p>Background: The rulemaking was deposited with the Attorney General's Office on December 23, 2010, for a 30-day review. The EQB approved the proposed rulemaking on December 21, 2010. The draft proposed rulemaking was presented to WRAC at the committee's July 14, 2010, meeting.</p>
<p>Municipal and Residual Waste Amendments Solid Waste Management Act and Waste Transportation Safety Act 25 Pa. Code, Chapter 271-285 and 287-299</p>	<p>These proposed revisions are comprehensive modification to Municipal and Residual Waste Regulation, including: combination of similar chapters, revised definitions, additional permit-by-rule, revised coal ash beneficial use, standardized provisions. The package will also include regulations to implement the Waste Transportation Safety Program as authorized by Act 90 of 2002. CONTACT: Ken Reisinger, 717-783-2388, kereisinger@state.pa.us</p>	<p>SWAC discussion of the various chapters included in the comprehensive modifications to the Municipal and Residual Waste Regulations will continue to occur in 2009 as SWAC meets at its quarterly meetings. SWAC reviewed and approved the rulemaking package at its March 19, 2009, meeting.</p> <p>Background: SWAC discussion May 11, 2006; September 14, 2006; November 9, 2006; January 11, 2007; March 8, 2007; April 11, 2007; May 10, 2007; and January 16, 2008. Citizens Advisory Council discussion on January 15, 2008.</p>

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<p>Air Quality Plan Approval and Operating Permit Fees Air Pollution Control Act 25 Pa Code, Chapters 127 and 139</p>	<p>The proposed rulemaking will amend existing requirements and fees codified in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees), and add new categories of fees to Chapter 127, Subchapter I, to address modifications of existing plan approvals and requests for determination of whether a plan approval is required. The proposed rulemaking also adds a new section to address fees for risk assessment applications. The proposed rulemaking will amend the existing emission fee paid by the owner or operator of a Title V facility. The proposed rulemaking will also establish a fee schedule in new Subchapter D of Chapter 139 (relating to testing, auditing and monitoring fees), to add new categories of fees to address Department-performed source testing and auditing and monitoring activities for continuous emission monitoring systems (CEMS). CONTACT: Dean Van Order, 717-783-9264, dvanorden@state.pa.us</p>	<p>The EQB approved the final rulemaking at its November 16, 2010, meeting. The rulemaking was delivered to the Standing Committees and IRRC on November 23, 2010, for review. However, due to sine die of the state legislature, the rulemaking must be re-delivered to IRRC and the Standing Committees in 2011 for the Standing Committees to complete their required 20-day review of the rulemaking. Further processing of the rulemaking is on hold, pending approval from the Governor's Office</p> <p>Background: AQTAC reviewed the rulemaking on October 21, 2010. CAC reviewed the rulemaking on October 18, 2010. SBCAC reviewed the comments received on the proposed rulemaking at the committee's July 28, 2010, meeting. The proposed rulemaking was published in the October 17, 2009, edition of the PA Bulletin, commencing a 60-day public comment period on the proposal that ended on December 21, 2009. 16 commentators provided comment to the EQB on the rulemaking. IRRC issued comments on the rulemaking on January 20, 2010 (see www.irrc.state.pa.us) The proposed rulemaking was approved by the EQB at the Board's July 21, 2009, meeting. The draft proposed rulemaking was discussed with AQTAC on February 12, 2009. The Committee formally recommended that the proposed rulemaking be forwarded to the EQB for adoption as a propose rulemaking. The rulemaking was discussed with AQTAC on December 11, 2008. The CAC considered the rulemaking on February 17, 2009.</p>

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<p>Nonattainment New Source Review Particulate Matter 2.5 (NNSR PM2.5) Air Pollution Control Act 25 Pa. Code, Chapters 121 and 127</p>	<p>The proposed rulemaking would amend the existing nonattainment new source review (NSR) requirements in 25 Pa. Code Chapter 127, Subchapter E (relating to new source review), §§ 127.201-127.218, to incorporate recently promulgated Federal requirements for particulate matter equal to and less than 2.5 micrometers in diameter (PM2.5) and PM2.5 precursors. The proposed amendments would limit the emissions of PM2.5 and PM2.5 precursors for new major sources or major sources being modified in certain counties and portions of counties of this Commonwealth that are designated as nonattainment for the PM2.5 National Ambient Air Quality Standard. The Federal regulation requires a state with PM2.5 nonattainment areas to submit revised nonattainment NSR PM2.5 requirements to the U.S. Environmental Protection Agency (EPA) for State Implementation Plan (SIP) approval within three years of publication of the final rule. Therefore, the Commonwealth needs to amend its NSR regulations and submit a SIP revision to the EPA by May 16, 2011. CONTACT: Dean Van Order, 717-783-9264, dvanorden@state.pa.us</p>	<p>The public comment period for the proposed rulemaking concluded on April 12, 2010. Seven commentators provided comments on the rulemaking, including Sunoco, Inc., ARIPPA, Manko, Gold, Katcher and Fox, LLP, RRI Energy, Inc., Connectiv Energy, Carpenter Technology Corporation, and the PA Chamber of Business and Industry. IRRC issued comments on the rulemaking on May 12, 2010 (see www.irrc.state.pa.us).</p> <p>Background: The EQB approved the proposal at their November 17, 2009, meeting. The draft proposed rulemaking was discussed with AQTAC on March 12, 2009, and May 28, 2009. The draft proposed rulemaking was discussed with the CAC on February 17, 2009, and June 16, 2009.</p>
<p>Sulfur Limits in Commercial Fuel Oil Air Pollution Control Act 25 Pa. Code, Chapters 121 and 123</p>	<p>The proposed rulemaking would amend 25 Pa. Code § 123.22 (relating to combustion units) to revise downward the maximum allowed percent sulfur content in commercial fuel oil sold for and used in combustion units in this Commonwealth, to further limit the emissions of sulfur dioxide (SO₂) from these sources. Amendments to 25 Pa. Code § 121.1 (relating to definitions) may also be necessary to support the proposed amendments to § 123.22. Emissions of sulfur dioxide (SO₂) contribute to the formation of regional haze, which degrades visibility in many American cities and scenic areas. Regional haze is visibility impairment caused by cumulative air pollutant emissions from numerous sources over a wide geographic area. The proposed rulemaking would be consistent with the Statement of the Mid-Atlantic/ Northeast Visibility Union (MANE-VU) Regional Planning Organization (RPO). CONTACT: Susan Hoyle, 717-772-2329, shoyle@state.pa.us</p>	<p>On December 29, 2010, IRRC issued comments on the proposed rulemaking. IRRC's comments are accessible on the Commission's website at www.irrc.state.pa.us.</p> <p>Background: The proposal was published in the September 25, 2010, issue of the <i>PA Bulletin</i>, commencing a 60-day public comment period that closed on November 29, 2010. The Board received comments on the proposal from 16 commentators. The EQB approved the proposed rulemaking at its July 13, 2010, meeting. The proposed rulemaking was discussed with AQTAC on February 18, 2010.</p>

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<p>Lithographic and Letterpress Printing Processes, Flexible Package Printing, Processes and Industrial Cleaning Solvents <i>Air Pollution Control Act</i> 25 Pa Code, Chapter 129</p>	<p>The proposed rulemaking would amend 25 Pa. Code Chapter 129 (relating to standards for sources) to add requirements to reduce the emissions of volatile organic compounds (VOCs) from lithographic and letterpress printing processes, flexible package printing processes and industrial cleaning solvents to meet the Clean Air Act's "reasonably available control measures" requirement for ozone nonattainment areas. The proposal would also add 25 Pa. Code § 129.67a (relating to control of VOC emissions from lithographic and letterpress printing processes) to adopt emission limits and work practice standards for lithographic and letterpress printing operations, amend § 129.67 (relating to graphic arts systems) and add 25 Pa Code § 129.79 (relating to control of VOC emissions from industrial cleaning solvents) to add emission limits and work practice standards. CONTACT: Susan Hoyle, 717-772-2329, shoyle@state.pa.us</p>	<p>AQTAC reviewed the draft proposed rulemaking at its October 21, 2010, meeting.</p>
<p>HEDD – High Electric Demand Days <i>Air Pollution Control Act</i> 25 Pa Code, Chapter 145 Sub Ch. E</p>	<p>The proposed rulemaking would limit emissions of nitrogen oxides (NOx) from electric generating units (EGUs) and emergency generator sets used during nonemergency periods that operate less than 1200 hours per Ozone Season and generate electricity during periods of peak electric demand, including high electric demand days (HEDD). This class of units produces aggregate HEDD emissions of NOx on peak electric demand days that are great enough to reduce or eliminate the environmental benefit of NOx emission reductions achieved on peak electric demand days by the larger EGUs currently regulated under the Commonwealth's Clean Air Interstate Rule (CAIR) and previously under the NOx Budget Trading Program. CONTACT: Susan Hoyle, 717-772-2329, shoyle@state.pa.us</p>	<p>AQTAC reviewed the draft proposed rulemaking at its October 21, 2010, meeting.</p>

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<p>Incidental Coal Extraction, Bonding, Enforcement, Sediment Control and Remining Financial Guarantees 25 Pa Code, Chapters 86-90</p>	<p>This rulemaking includes revisions to Chapters 86-88 to include remining financial guarantees proposal and revisions to address program conditions that are currently inconsistent with federal OSM rules, including self-bonding, decisions on incidental coal extraction, coal exploration on areas unsuitable for mining, impoundment desing criteria, and disposal of noncoal waste and NPDES permit-by-rule for abandoned mine discharge. CONTACT: Bill Allen, 717-783-9580, wallen@state.pa.us</p>	<p>The final rulemaking was redelivered to IRRC and the Standing Committees on February 28, 2011, so that the Standing Committees may resume their mandatory 20-day review of the rulemaking. IRRC will consider the final rulemaking at its April 14, 2011, meeting. Background: The EQB approved the final rulemaking at its November 16, 2010, meeting. The rulemaking was delivered to the Standing Committees and IRRC on November 23, 2010, for review. However, due to sine die of the state legislature, the rulemaking must be re-delivered to IRRC and the Standing Committees in 2011 for the Standing Committees to complete their required 20-day review of the rulemaking. The MRAB considered the draft final-form rulemaking at its September 7, 2010, meeting. On July 1, 2010, IRRC issued comments on the rulemaking, which are accessible on the Commission's website at www.irrc.state.pa.us. The proposed rulemaking was published in the May 1, 2010, issue of the PA Bulletin, commencing a 30-day public comment period. As a result of the public comment period, the EQB received comments from two commentators including the PA Coal Association and the Western PA Coalition for Abandoned Mine Reclamation. The proposed rulemaking was approved by the EQB on March 16, 2010. The proposal was discussed at the MRAB's October 23, 2009, meeting.</p>
<p>Coal Mining Permit Fees 25 Pa Code, Chapters 77, 86, 210 and 211</p>	<p>This rulemaking includes amendments to increase permit application fees to support program activities and administration. CONTACT: Bill Allen, 717-783-9580, wallen@state.pa.us</p>	<p>On February 23, 2011, IRRC notified DEP that it had reviewed the proposed Coal Mining Permit Fees rulemaking and had no objections, comments or recommendations to offer on the regulation. As a result, if the final-form rulemaking is delivered without revisions to IRRC, and the Standing Committees do not take any action, the rulemaking will be deemed approved by IRRC. IRRC's Order can be accessed on their website at www.irrc.state.pa.us (see "Recent IRRC Orders"). Further processing of the rulemaking is on hold, pending approval from the Governor's Office Background: The pubic comment period for the proposal concluded on January 24, 2011. The EQB did not receive any comments on the proposal during the comment period. On December 25, 2010, the proposed rulemaking was published in the <i>Pennsylvania Bulletin</i> for a 30-day public comment period. The EQB approved the proposed rulemaking at its October 12, 2010, meeting. The proposal was discussed at the MRAB's October 23, 2009, meeting.</p>

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<p>Areas Unsuitable for Surface Mining Surface Mining Conservation and Reclamation Act, 25 Pa. Code, Chapter 86</p>	<p>Amendments to 25 Pa. Code Section 86.130 to add subsection (b)(18) to designate the Lower Kittanning, Clarion, Brookville and Mercer coals within the upper portion of the Muddy Run watershed, Reade Township, Cambria County, as unsuitable for surface mining operations. The regulation is the result of a comprehensive technical evaluation conducted in response to a petition submitted to the EQB by the Reade Township Municipal Authority, which requested that an area within the Muddy Run drainage be designated as unsuitable for surface mining operations. CONTACT: Bill Allen, 717-783-9580, wallen@state.pa.us</p>	<p>On July 7, 2010, IRRC provided notice to the EQB and the Standing Committees that it had reviewed the proposed Unsuitable for Surface Mining (Muddy Run) rulemaking and had no objections, comments or recommendations to offer on the rulemaking. If the rulemaking is delivered to IRRC in its final-form without revisions, and the Standing Committee do not take any action on the rulemaking, it will be deemed approved by IRRC.</p> <p>Background: The proposal was published in the May 8, 2010, edition of the Pennsylvania Bulletin, commencing a 30-day public comment period that concluded on June 7, 2010. The EQB received comments from one commentator – the Pennsylvania State Association of Township Supervisors – who expressed their support for the proposal. The EQB adopted the proposed rulemaking at its March 16, 2010, meeting.</p>
<p>Noncoal Mining Fees Noncoal Surface Mining Conservations & Reclamation Act 25 Pa Code, Chapter 77</p>	<p>Amendments to 25 Pa Code Chapter 77 in order to implement fees to support the Noncoal Mining Program. CONTACT: Bill Allen, 717-783-9580, wallen@state.pa.us</p>	<p>The proposed rulemaking was published in the August 28, 2010, edition of the PA Bulletin, commencing a 30-day public comment period that ended on September 27, 2010. 19 public commentators provided comments to the EQB on the proposal. IRRC issued comments on the rulemaking on October 27, 2010, which are accessible on IRRC's website at www.irrc.state.pa.us. Further processing of the rulemaking is on hold, pending approval from the Governor's Office</p> <p>Background: On July 26, 2010, the Attorney General's Office issued a Tolling Memo on the proposal, which in effect suspends the office's review of the regulation until the Department addresses the issues and/or concerns raised by the AG's Office. The Department responded to the Tolling Memo on August 3, 2010. The EQB approved the proposed rulemaking at its June 15, 2010, meeting.</p>

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<p>Underground Coal Mine Safety <i>Bituminous Coal Mine Safety Act</i> 25 Pa Code, Chapter 208</p>	<p>The rulemaking adopts by reference the MSHA regulations with a few minor edits. The regulation addresses belt flammability standards and maintenance requirements, seal design, construction and maintenance requirements, emergency response requirements, self-contained rescue devices and refuge chambers communication. CONTACT: Joseph Sbaffoni, 724-439-7469 jsbaffoni@state.pa.us</p>	<p>On October 8, 2010, IRRC provided notice that it did not have any objections, comments or recommendations to offer on the rulemaking. If the Board delivers the final rulemaking to IRRC without revisions, and the committees do not take any action, the rulemaking will be deemed approved by IRRC.</p> <p>Background: The proposal was published in the July 10, 2010, issue of the <i>Pennsylvania Bulletin</i>, commencing a 60-day public comment period that ended on September 8, 2010. Four individuals submitted comments to the Board on the proposal. The Board of Coal Mine Safety Board adopted the proposed rulemaking on April 8, 2010.</p>
<p>Underground Coal Mine Safety Reportable Accidents <i>Bituminous Coal Mine Safety Act</i> 25 Pa Code, Chapter 208</p>	<p>This rulemaking expands the list of accidents in underground bituminous coal mines that must be reported to the Department within 15 minutes of discovery. CONTACT: Joseph Sbaffoni, 724-439-7469 jsbaffoni@state.pa.us</p>	<p>The Board of Coal Mine Safety tabled consideration of this rulemaking at their October 26, 2010, meeting.</p>
<p>Underground Coal Mine Safety Automated External Defibrillators <i>Bituminous Coal Mine Safety Act</i> 25 Pa Code, Chapter 208</p>	<p>This regulation establishes safety standards relating to Automated External Defibrillators in underground bituminous coal mines. CONTACT: Joseph Sbaffoni, 724-439-7469 jsbaffoni@state.pa.us</p>	<p>The proposed rulemaking was tolled for an additional time by the Office of Attorney General on December 21, 2010. The issuance of the Tolling Memo temporarily suspends the Office's mandatory 30-day review of the rulemaking until the Department can sufficiently address the issues and/or questions in the Tolling Memo. DEP responded to this Tolling Memo on January 28, 2011.</p> <p>Background: The proposed rulemaking was tolled by the Office of Attorney General on November 24, 2010. The Board of Coal Mine Safety approved the proposed rulemaking at its October 26, 2010, meeting.</p>