

# PA Campaign for Clean Water News

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## Campaign for Clean Water Accomplishments

By Bob Wendelgass, Clean Water Action

The PA Campaign for Clean Water was formed in 2002 to bring together statewide, regional and local organizations from all corners of the state to speak in one voice in support of federal and state policies to protect and restore Pennsylvania's water resources.

Since its inception, the Campaign has helped mobilize its members and friends on a number of important issues, helping win some policy changes and legislative victories to better preserve our state's waterways. Here's just a few highlights:

**WWF Streams:** The Campaign has worked with DEP since 2003 to make sure that it adopts new policies allowing Warm Water streams to qualify for Exceptional Value (EV) and High Quality (HQ) status. Current DEP protocols for EV and HQ make it difficult or impossible for warm water streams to qualify. The Campaign has pressed DEP to develop new protocols that would benefit warm water streams, and we expect to see new protocols for the Ohio River basin soon. We're also helping several watershed groups prepare petitions to upgrade some WWF streams to EV.

**Water Quality Standards:** The Campaign led a successful fight to protect DEP's authority to regulate non-point pollution sources and other activities (like mining) that could affect water quality. Economic interests were working to reduce DEP's authority to apply Water Quality Standards to such activities. The Campaign mobilized 95 groups to submit comments to DEP and the House and Senate Environmental Resources Committees and organized meetings with key legislators supporting continuation of DEP's historic authority.

**EV Legislation:** The Campaign's letter to state legislators opposing a bill that would undermine the EV and HQ programs helped kill the legislation, ensuring that it died in committee.

**Water Resources Planning:** The Campaign has coordinated regular meetings among environmental participants in the state water resource planning process, helping make this program more responsive to environmental issues and concerns.

**Water Agenda:** The Campaign developed a comprehensive agenda of regulatory actions to better protect Pennsylvania's waters and presented it to the incoming administration of Governor Rendell. This agenda featured initiatives to expand the EV and HQ programs, improve the Water Resources Planning program, expand funding for watershed restoration, intensify enforcement and increase TMDL development and implementation.

**Sewage Dumping:** A Campaign letter opposing a proposed EPA rule allowing dumping of partially treated sewage when it rains helped force the withdrawal of these regulations. Our letter also helped win passage by the US House of Representatives of an amendment which will prevent EPA from adopting any such regulations in the new fiscal year.

And that's just our first couple years!

Thanks for all your past support. With your continued support, we can keep winning more victories for our state's water resources, mobilizing our community and speaking in one voice for healthy rivers and streams!

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## Upcoming Regulatory Revisions – DEP Water Regulations

By Bill Gerlach, Chesapeake Bay Foundation



DEP has announced that it is reworking many of its water regulations, with the exception of the water quality standards in Chapter 93. The goal of the review is to rework the fee structure for permits, streamline and simplify regulatory requirements, eliminate redundancies, and further DEP priorities such as watershed protection, sustainable energy production and use, and community revitalization. New regulations on watershed permitting and nutrient trading are also anticipated.

Draft regulations are expected to be vetted with the Water Resources Advisory Committee in the Fall, and brought before the Environmental Quality Board as proposed regulations late in the year. The rulemaking process typically lasts 12-18 months from introduction to final publication.

The PA Campaign for Clean Water will be providing input on the proposed regulations to ensure that water quality and drinking water protections are not compromised. Stay tuned for details.

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## Fall Strategy Meeting

By Bob Wendelgass

The Campaign for Clean Water is planning to hold a strategy session for its member groups in late October in Harrisburg. It will be a half-day meeting, from 11 AM to 3 PM. If you're interested in attending, call or email Bob Wendelgass at the addresses on the front of this Newsletter.

The purpose of the meeting is to bring together key watershed activists to discuss upcoming issues and develop a common strategy and platform for the next year.

As the article above mentions, DEP is now reviewing all water-related regulations, and will be proposing changes later this year. The Campaign and our member groups will need to be vigilant and united in reviewing proposed changes.

In addition, many water activists in the state believe it is time for a pro-active agenda on water again. During the early days of the Rendell Administration, the Campaign for Clean Water prepared a Water Agenda outlining several dozen actions the Administration could take to improve

and protect our state's water resources. Many groups believe it is time to revisit this agenda, and to look at possible legislative actions as well.

The bottom line: if the watershed community is united and speaks with one voice, we can be more effective. The strategy meeting will allow us to share ideas and concerns, and hopefully work together on a common platform and agenda to safeguard our state's water.

If you're interested in attending the strategy session, email [bwendelgass@cleanwater.org](mailto:bwendelgass@cleanwater.org). The meeting is not a public meeting but is open to member organizations of the PA Campaign for Clean Water.

## Protecting Pennsylvania's Wetlands

By Robin Mann, Sierra Club

Have any wetlands or streams in your watershed recently lost federal Clean Water Act protection? You can find out the answer by consulting websites of the US Army Corps of Engineers.

In 2001, the Supreme Court ruled in *SWANCC v. Army Corps* that federal agencies do not have the authority to impose Clean Water Act requirements over certain so-called "isolated" waters. The ruling applied to intrastate, non-navigable and isolated waters where the sole basis for federal jurisdiction was their use as habitat for migratory birds.

The Bush Administration has taken advantage of this very narrow ruling to pursue a policy of removing Clean Water Act protection from a much wider scope of the nation's wetlands, streams, lakes and other waters. A policy directive adopted by the Army Corps and EPA in 2003 directs agency staff to exclude as no longer "waters of the United States" all intrastate, isolated and non-navigable waters – which should continue to be protected under existing regulations -- unless otherwise advised by headquarters. Despite the widespread opposition to the directive from environmental, conservation and sportsmen's groups, members of Congress and several state agencies, the administration has refused to withdraw it.

Pennsylvania has state-level regulations that apply safeguards to a broad scope of waters, helping fill the void where Clean Water Act protection is removed. However, PA's Chapter 105 regulations contain a number of exemptions, notably a waiver from permit requirements for activities in small streams draining an area of 100 acres or less. Where such streams are found to be "isolated" by the Corps, they may be completely unprotected. Even where Pennsylvania's regulatory requirements are in effect, federal safeguards provide important reinforcement, better ensuring compliance.

It's important to monitor the determinations

that the Army Corps are making, and question findings that waters are "isolated" where the circumstances suggest otherwise. Three Corps Districts have regulatory responsibility in Pennsylvania, one for each of the major river basins. Links to their websites where non-jurisdiction determinations are posted are as follows:

--Philadelphia (Delaware River Basin)  
<http://www.nap.usace.army.mil/cenap-op/regulatory/swancc.html>

--Baltimore (Susquehanna River Basin)  
<http://www.nab.usace.army.mil/Regulatory/JD/swannc.htm>

--Pittsburgh (Allegheny River Drainage)  
<http://www.lrp.usace.army.mil/or/or-f/permits.htm> [scroll down to Non-jurisdictional Isolated Waters]

### What you can do:

1. Check the Corps' websites for regular postings of non-jurisdictional waters. Is a stream or wetland listed as "isolated" actually hydrologically connected to a tributary system, even if portions of the connection are ditches or other man-made conveyances? Consider visiting the site and photographing it. If the water seems connected to nearby tributaries or other waters, contact the Corps staff listed on the NJD form.
2. Alert your Member of Congress about waters in his/her district that have been excluded from the Clean Water Act. We need Congresspeople to understand that current policy is hurting their district. Urge them to co-sponsor HR 1356 or S. 912, the Clean Water Authority Restoration Act, which would restore the broad protection intended under the Clean Water Act.
3. Contact the Regional Office of PADEP to see what activity is planned and if DEP is properly applying state regulations.

*Where streams are found to be "isolated" by the Corps, they may be completely unprotected.*



## Reducing Nutrients In The Susquehanna and Potomac Watersheds

By Bill Gerlach, Chesapeake Bay Foundation (CBF)



*DEP set out a plan...to reduce nitrogen, phosphorus and sediment loadings by approximately 35%...by the year 2010.*

DEP and EPA are taking several actions to help clean up nutrient impairment in the Susquehanna and Potomac watersheds as part of the strategy to clean up the Chesapeake Bay.

In January, 2005, DEP published its Tributary Strategy for reducing Pennsylvania's nutrient contributions to the Bay from these watersheds. Under the Strategy, DEP set out a plan to attain its commitments to reduce nitrogen, phosphorous, and sediment loadings by approximately 35% from 2000 levels by the year 2010. This ambitious plan calls for sewage treatment plants to install nutrient reduction technology, farmers to implement extensive best management practices to reduce runoff, and communities to implement stormwater runoff controls. It will cost an estimated \$8.2 billion in capital costs & \$1 billion in annual operation and maintenance costs to implement the Strategy. Unfortunately, the Strategy fails to set forth any funding or implementation mechanisms.

In June, 2005, EPA responded to a Petition and 2 federal lawsuits by CBF. EPA agreed that the federal Clean Water Act and existing regulations provide authority to require states in the Bay watershed to require that significant sewage dischargers (0.4 MGD or more) include adequate, enforceable permit limits for nitrogen and phosphorous, and install Nutrient Reduction Technology after Maryland revises its water quality standards for the Bay. The Maryland revisions will be final on August 29, 2005.

DEP has established a cap load for the Pennsylvania portion of the Bay watershed, and has committed to including such limits in renewal permits issued after August 29, 2005. Discharge permits for new or expanded operations will contain effluent limits of 0 net nutrient load. Facilities can buy or

sell nutrient credits via a trading mechanism.

CBF has submitted comments on six proposed discharge permit renewals that allow for unlimited amounts of nitrogen and excessive amounts of phosphorous to be discharged directly into nutrient-impaired waters. The comments emphasize that nutrient reduction is required for permitted discharges into nutrient-impaired watersheds. Sewer operators have threatened litigation should their permits contain such limits. Builders and developers have also expressed concern that such limits may restrict growth.

Also in June, the EQB approved final regulatory revisions for large animal operations (Concentrated Animal Feeding Operations or CAFOs) and other agricultural operations. These regulatory revisions establish a minimum 100 foot setback (or 35 foot vegetated buffer) for manure application near surface waters by CAFOs, manure importers, and many other agricultural operations. They also add large poultry operations under the CAFO umbrella, and make other changes intended to match changes in federal regulations. The regulations fail to require permits for medium-sized CAFOs as required by federal law.

Another step DEP has taken is to adopt a policy revising its cost share payments for the Conservation Reserve Enhancement Program (CREP) to increase its targeting of incentives to farmers to install and maintain riparian buffers. These buffers provide significant nutrient and sediment benefits to local rivers and streams.

## Exceptional Value Waters

By Lauren Imgrund, Alliance for Aquatic Resource Monitoring (ALLARM)

As part of Pennsylvania's water quality standards, surface waters are assigned a "designated use". Designated uses are the human and ecological water uses that the law is designed to protect. In Pennsylvania, our uses include the aquatic life uses of Cold Water Fishes, Warm Water Fishes, Migratory Fishes and Trout Stocking; the water supply uses of Potable Water Supply, Industrial Water Supply, Livestock Water Supply, Wildlife Water Supply and Irrigation; the recreational uses of boating, fishing, water contact and esthetics; and the special protection categories of High Quality (HQ) & Exceptional Value (EV).

The special protection categories are unique in that water quality itself must be protected, rather than maintenance of the use only. Of the special protection waters, EV waters are the most stringently protected.

When waters are designated as EV or HQ, existing activities are "grandfathered" and can continue in their current form. EV status ensures that new and expanded activities in the watershed do not degrade the existing quality of the water. HQ status provides similar protection except that new or increased activities that require action by DEP can demonstrate that there is a "social or economic justification" that merits some stream degradation. Townships can also use these designations as tools to help guide land use planning and zoning decisions.

The PA Campaign for Clean Water is working with several groups on petitions to the Environmental Quality Board for protection of unique warm water streams as Exceptional Value. These streams have some of the best warm water fish communities in our state and deserve the protection afforded by such a designation. As part of this process we have been working on answers to frequently asked questions that

residents, farmers and local government might have about this protection. Some of those questions and answers appear below.

If you know of an outstanding warm water fishery that you think might be a candidate for upgrade please contact the Campaign to discuss the process.

### Frequently Asked Community Questions about EV Waters

#### **How would EV designation impact farms?**

In EV watersheds, existing farming operations are not affected. Existing permits for larger operations, such as Concentrated Animal Feeding Operations (CAFO's) would be grandfathered and no changes would be needed as the result of the EV classification. For new or expanded CAFO's, permit requirements are designed to prevent stream degradation, but CAFO's could still be built. For example, in the Sideling Hill Creek Watershed in Bedford County a CAFO permit was issued in 2004 for Wide Awake Farms, a 3,900 animal pig operation.

The water quality protections of this designation benefit agriculture in the form of clean potable surface water for livestock and better herd health.

#### **Would EV designation stop development?**

EV status will not bar development, but will ensure that associated activities are subject to more stringent requirements to make sure that they will not degrade the water resource.

Developers will have to examine siting alternatives, minimize the extent of earth disturbance and maintain or install riparian buffers when working along an EV stream. In addition, developers

*"EV and HQ waters...are unique in that water quality itself must be protected."*

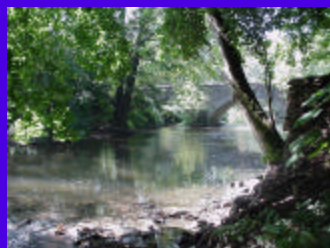


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*The Pennsylvania Campaign for Clean Water represents 120 environmental, conservation, sportsmen, and faith-based organizations united in support of strong state and federal policies that restore and protect the Commonwealth's water resources.*

**Steering Committee Members:**

Bill Gerlach, Chesapeake Bay Foundation  
Lauren Imgrund, ALLARM  
Judith Jordan, POWR  
Robin Mann, Sierra Club  
Jennifer Murphy, Mid Atlantic Environmental Law Center  
Deb Nardone, Pennsylvania Trout  
Sara Nicholas, American Rivers  
Matt Royer, PennFuture  
Bob Wendelgass, Clean Water Action



## Exceptional Value Waters (Continued)

must utilize the best available management practices and demonstrate that any stream discharge will not degrade the water.

As an alternative to direct sewage discharges into an EV water, proponents must consider land application of wastewater or other alternatives that avoid stream degradation. Developers will also be required to minimize direct storm-water discharges to the maximum extent possible through the use of infiltration and other techniques that will maintain clean water.

Furthermore, many activities proposed in EV watersheds are subject to more stringent individual permit requirements rather than general permits. The state has issued many permits for residential, commercial and industrial activity in EV watersheds, but proposals for these developments had to demonstrate that they would not adversely affect the stream.

### What about existing point sources, e.g. sewage treatment plants?

These sources would be grandfathered and would not have to meet new requirements unless the activity is expanded or increased. In that case, only the new increment must meet the more stringent requirements.

### What about proposed, new discharges?

Any new discharges would first have to demonstrate to DEP that there is no cost-effective and environmentally sound non-discharge alternative such as land application. If there are no such non-discharge alternatives, the best available combination of non-discharge and discharge technologies must be used. If a discharge is approved, it must not degrade the receiving EV waterway. In short, only discharges that will not degrade the water can be approved.

### How will municipal projects, such as road maintenance be impacted?

Municipalities will have to assure that these improvements do not degrade the existing water conditions. Bridge and culvert repair and maintenance can continue to take place under general permit requirements.

### What impact will this designation have on wetlands protection?

Only those wetlands located in or along the floodplain of an EV water are protected as exceptional value wetlands as a result of an EV designation. These wetlands will be given greater protection and permits for filling or otherwise impacting them are difficult to obtain. Other wetlands in the watershed will be protected at the current level.

### PennFuture Handbook

PennFuture has published a new handbook to help you through the EV petition process. PennFuture's *Stream Redesignation Handbook: A Step-By-Step Guide for Petitioning to Upgrade Your Stream to High Quality or Exceptional Value Special Protection in Pennsylvania* provides valuable information and step-by-step guidance on how to petition for HQ or EV status. It includes an explanation of the benefits of HQ or EV designation, a description of the petition process, a detailed guide to filling out your petition, suggestions on how to build public support, lists of contacts and other useful information.

Limited copies of the handbook are available from PennFuture. Contact Matt Royer at (717)214-7928 or [royer@pennfuture.org](mailto:royer@pennfuture.org). It may also be downloaded from PennFuture's website: [www.pennfuture.org/index.cfm?myPageName=work/water/home](http://www.pennfuture.org/index.cfm?myPageName=work/water/home)