Living with Exceptional Value
Testimony by the Penns Valley Conservation Association (PVCA)
Http://www.pennsvalley.net/

Public Hearing on Anti-Degradation Implementation
Pennsylvania Department of Environmental Protection (PA-DEP)
Bureau of Water Quality and Wastewater Management
Harrisburg PA
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Thank you for providing us the opportunity to comment on DEP’s draft Guidance for water quality protection. We strongly support DEP’s anti-degradation program. Because we support it, we are concerned about how local communities such as ours perceive and participate in the program. We focus our testimony on the need to make implementation more inclusive and to ensure public participation. We offer related suggestions for revising the draft Guidance.

Our message to DEP is this:

The goal of regulation is water quality protection. To the extent possible under Pennsylvania law, DEP’s guidance should assume that implementation requires equal participation by petitioners or applicants and by communities that must live with the consequences of permitted or approved activity. The Department’s function is to arbitrate between these parties and their interests while protecting the larger public interest. Petitioners and applicants are well-prepared to present their legitimate interests and the commercial value of granting their request. Communities are less prepared to protect their interests. To carry out its function, DEP must ensure effective public participation.

Addressing those concerns one at a time, and relating them to the draft Guidance:

The goal of the program is water quality protection.

The draft Guidance does not make sufficiently clear that the purpose of the anti-degradation program is to protect all surface waters from adverse impacts on fish species, flora, and fauna by activities receiving a DEP permit or approval. True, policy is stated in chapter 1 and regulations as well as standards are identified at the start of chapter 2. But discussion sections throughout the draft create doubt that DEP will protect Pennsylvania’s resources as required by regulation and federal law.

Guidance should assume that protection requires full participation of affected communities in addition to applicants or petitioners. DEP’s function is to arbitrate between those interests and to protect the larger public interest.

The draft Guidance focuses exclusively on DEP’s response to applicants or petitioners for permits or approvals. Community representatives such as citizens’ groups must also be recognized as key participants in permitting or approval processes. The public will refer to the Guidance for policies, definitions, and procedures. The Guidance might function as the procedures manual for public participation, but the current draft does not serve that function well.

To carry out its function, DEP needs effective public participation.

According to the Guidance, applicants or petitioners are encouraged to go beyond public notification to seek public input. That is not enough. The Department itself should actively seek and inform community input. On that topic, we must caution DEP about an effort, noted in chapter 4, on the processing of petitions, evaluations and assessments to change a designated use. We are concerned
about the pilot program of notifying landowners who border streams or stream segments being considered for HQ or EV status. That notification is dangerously insufficient. To notify landowners alone—and not local conservation groups, watershed associations, or municipal planning commissions—favours one constituency, property owners. Worse, to notify landowners without spelling out which activities or permits might affect a protected stream is likely to generate misinformed reaction. Backlash against protection is fueled by selective and cryptic public notification.

To summarize, experience teaches our organization that classifying a stream as High Quality or Exceptional Value is relatively easy. But implementation of protection on-the-ground in the community can be hard. We’ve identified three main obstacles: public ignorance or misunderstanding of the anti-degradation program’s purpose and methods, burdensome permitting, and weak coordination among DEP bureaus sharing responsibility for water quality protection.

If time allows, I will briefly describe our experience in attempting to protect special waters and a watershed. Direct practical experience is the context for our testimony. [Detail omitted]

**Conclusion**

PVCA applauds the new ground the DEP is exploring in financing watershed assessment and restoration activities by local communities through its Growing Greener program. Conservation groups like the PVCA are adopting watershed-wide approaches to restoration, while monitoring local activities for adverse effects on watersheds. We would like to see watershed concepts reflected in DEP’s regulatory and permitting process. We would like support for comprehensive restoration efforts. And, we would like to see stronger inter-governmental coordination in protecting special waters.

This concludes our testimony. We refer you to our accompanying chapter-by-chapter list of suggested revisions to the draft Guidance. We are glad to answer questions now.