

## Revised Regulatory Impact Statement

### 6 NYCRR Part 830

#### Lake Champlain Drainage Basin

##### 1. Statutory Authority

Environmental Conservation Law (“ECL”) §§ 3-0301, 15-0313, and 17-0301 provide DEC with the authority to adopt regulations to classify the surface waters in New York, and authorize DEC to modify existing classifications.

##### 2. Legislative Objectives

The reclassification of fresh surface waters in the Lake Champlain drainage basin will contribute to the fulfillment of the legislative objective of the ECL to guarantee that the “widest range of beneficial uses of the environment is attained without risk to health or safety,” (ECL 1-0101 [3] [b]) and that the waters of the state are classified “in accordance with considerations of best usage in the interest of the public” (ECL 17-0301 [2]).

Under the federal Clean Water Act (“CWA”), the reclassification will contribute to achieving the federal mandate “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” (33 USC § 1251 [a]) and the national goal, wherever attainable, of “water quality which provides for the protection and propagation of fish, shellfish, and wildlife” (33 USC § 1251 [a] [2]), commonly known as the “fishable” goal. In addition, CWA § 303 (c) requires the states to review their water quality classifications and standards at least once every three years and to modify them as appropriate.

### 3. Needs and Benefits

CWA § 303 (c) requires the states, every three years, to “hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards” (33 USC § 1313 [c]). CWA § 101 (a) (2) states that “it is the national interim goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983” (33 USC § 1251 [a] [2]). CWA § 303 (c) (2) (A) requires water quality standards to “protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter” (33 USC § 1313 [c] [2] [A]). The U.S. Environmental Protection Agency’s (“EPA’s”) regulations in the Code of Federal Regulations (“CFR”), Title 40, Part 131, interpret and implement these provisions through a requirement that water quality standards protect CWA § 101 (a) (2) uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability (*see* 48 Fed Reg 51405 [1983], codified at 40 CFR 131 *et seq.*). In addition, ECL § 17-0301 (2) requires the DEC to “group the waters of the state into classes.”

The amendments to surface water classifications are the result of petitions submitted to DEC pursuant to 6 NYCRR Part 609. A copy of any of the petitions may be obtained by emailing your request to DEC at [Part.830Reclass@dec.ny.gov](mailto:Part.830Reclass@dec.ny.gov). The “D” classification protects fish life (i.e., fish survival) but not fish propagation. Protection for fish propagation is necessary to achieve the fishable goal of the CWA, as expressed in § 101 (a) (2). Petitions to amend the classification of waters from Class “D” to Class “C,” protecting fishing and fish propagation, resulted from analyses performed as specified in “Water Quality Standards Attainability Strategy,” NYSDEC, dated June

6, 1985. A copy of this document may be obtained by emailing your request to DEC at [Part.830Reclass@dec.ny.gov](mailto:Part.830Reclass@dec.ny.gov).

Factors that may limit a water's ability to achieve a best usage of fishing (fish propagation) were evaluated through a Use Attainability Analysis ("UAA"). Pursuant to 40 CFR Part 131.3 (g), a UAA is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10 (g).

A UAA must be conducted when designating uses that do not include the uses specified in CWA § 101 (a) (2), such as in those cases where a waterbody will remain class "D." For existing "D" waters, a decision not to upgrade must be supported by a UAA to comply with federal regulations pursuant to the CWA. Where a state believes that a use specified in § 101 (a) (2) is not attainable and wishes to remove or subcategorize this use, the state is required to demonstrate that the use is not attainable based on one or more of the factors included in 40 CFR Part 131.10 (g) through the completion and submission of a UAA to the EPA. In addition, the state must show that the change in use will not result in removing an existing use. If the analysis leads to a recommendation of a classification below "C," the state must provide appropriate justification as described above.

In Table I of 6 NYCRR Part 830, the waters within the Lake Champlain drainage basin are listed for purposes of classification. For ease of reference, each listing in the table is assigned an "item number," which can refer to a single waterbody, or multiple waterbodies, or a portion of a waterbody. Twenty eight item numbers currently classified "D" cannot sustain a classification of "C"; UAAs were completed for these item numbers. A copy of any of the UAAs may be obtained by emailing your request to DEC at [Part.830Reclass@dec.ny.gov](mailto:Part.830Reclass@dec.ny.gov).

Changes designating waters for trout (T) or trout spawning (TS) were based on field surveys where trout were captured or the habitat was evaluated and determined to be suitable to support the revised use. Those revisions were documented by petitions and supporting information prepared by staff from DEC's Division of Fish and Wildlife.

With the adoption of this rule, DEC amends the classifications of 174 item numbers (as summarized in Table A below), adopts 46 new item numbers, and repeals 1 item number in Table I of Part 830. The benefit of this action is that it provides a current basis for protection of the basin's waters, ensuring they are classified consistently with their best usage, and that the applicable water quality standards for each water's classification will protect its best usage. In the long term, it will lead to improved water quality because of the generally increased protection provided. The action furthers the state's efforts to comply with federal requirements to maintain an appropriate review process for waterbody classifications and water quality standards. This process also continues to maintain the eligibility of municipalities throughout the state to receive assistance for the construction of publicly-owned wastewater treatment works. There are loans available from the New York State Environmental Facilities Corporation, and grants are periodically available from DEC.

Based on DEC staff input, the Department is correcting the spelling of the "Bouquet River" in Table I to "Boquet River." In addition, in Item Numbers 324 and 325, each reference of "mill dam" is deleted and replaced with "cascades." Mill dam is no longer there and is thus no longer an appropriate reference point. This change also provides some consistency in use of terms with a Special Fishing Regulation. DEC staff also corrected several proposed classifications that would have inadvertently downgraded existing classifications set forth under the "Special Conditions"

provision in 6 NYCRR Part 830. In addition for some waters currently covered under Special Conditions, new item numbers were created to clarify existing classifications.

#### 4. Costs

Reclassification of a waterbody may result in the application of different ambient water quality standards, which must be considered when writing wastewater discharge permits. For example, if a waterbody is reclassified from “D” to “C,” additional and more stringent standards would apply to protect the water quality for fish propagation. As an example, for cyanide in Class D waters, the aquatic life standard is 22 micrograms per liter ( $\mu\text{g/L}$ ) to protect fish survival, but Class C waters have a more restrictive aquatic life standard of 5.2  $\mu\text{g/L}$  to protect fish propagation. Thus, a classification change could lead to additional capital construction and/or operation and maintenance costs for individual permittees if their current permit limits and level of wastewater treatment would not meet the newly applied standards.

Adoption of the revised classifications will not immediately change the limits in existing permits. Permits are reviewed according to their priority under the “Environmental Benefit Permit Strategy” and are drafted consistent with standards in place and information available at that time. This discussion of costs reflects an assessment made with current knowledge of water quality data and treatment plant effluent constituents.

All wastewater treatment plants are required by the CWA to meet minimum standards—both in treatment methodologies and effluent quality—based on the type of facility. For example, municipal treatment plants must provide a minimum amount of secondary treatment, and industrial and commercial facilities have equivalent minimum requirements based on the type of industry and the processes used. Reclassification could cause a facility’s permit limits to change, but if it is

currently operating in a manner that would meet the more stringent permit limits, there would be no cost impact from the new limits.

All facilities having a State Pollutant Discharge Elimination System (“SPDES”) permit and currently discharging to waters being reclassified in this rule have had their present permit effluent limits reassessed to determine whether more stringent water quality standards or guidance values would result in more stringent effluent limits. The review of the SPDES permit involves a calculation of projected effluent limits for each discharger where more stringent water quality standards or guidance values would result from the revised classification when compared to the previous classification. All SPDES permits which potentially could be affected were reviewed to determine if their specified discharge limits would change and if there would be any associated costs. The review of permit limits and operational data from facilities discharging to waters being reclassified indicated there may be a cost impact to one SPDES-permitted facility.

The following statements are the result of evaluations of financial impact of this rule on potentially affected entities:

(a) Costs to State Government

No costs are projected for state government because no state-owned facility discharge would be affected by this rule.

(b) Costs to Local Governments

No costs are projected for local governments because no local government-owned facility discharge would be affected by this rule.

(c) Costs to Private Regulated Parties

There may be a regulatory impact to one SPDES-permitted facility, a campground, which may need to modify its wastewater treatment to meet a revised effluent limit for ammonia due to

the reclassification of a stream in this drainage basin. Estimated costs to this facility are approximately \$10,000 to \$50,000, depending on the method of compliance. There may be additional annual costs of up to \$500 per year for operation and maintenance. The potentially affected facility has been notified of this potential impact and DEC staff have engaged the facility to find a cost-effective solution.

(d) Costs to the Regulating Agency

New costs to DEC associated with this rulemaking are limited to the costs of advertising and conducting the public hearing.

5. Local Government Mandates

This rule does not impose any program, service, duty, or responsibility upon any local government entity.

6. Paperwork

There are no new reporting requirements, including forms or other paperwork, associated with the revised reclassifications.

7. Duplication

There is no duplication. DEC is amending Part 830 in order to comply with the requirements of the CWA.

8. Alternatives

An alternative to pursuing this rulemaking is to take no action. “No action” would fail to provide the desired water quality protection that would result from the upgraded classifications. The “no action” alternative would fail to ensure that New York State regulations are consistent with federal requirements. The “no action” alternative was rejected because it would not result in the needed upgrades as described above.

### 9. Federal Standards

This rule complies with federal standards for the classification of waters.

### 10. Compliance Schedule

Any facility that is subject to the requirements of this rulemaking is expected to comply at the time that their SPDES permit is renewed, but a compliance schedule could be provided.

TABLE A

Previous Classification	Number	Reclassifications							
		C	C(T)	C(TS)	A(T)	AA(T)	AA(TS)	AA Special (TS)	None***
AA-Special	2							2	
AA	10					9	1		
A	6				6				
C(T)	3			3					
C	12		9	3					
D*	140	123	8	8					1
None**	1	1							
TOTAL	174	124	8	8	0	0	0	0	1

\* Twenty-eight (28) item numbers previously classified "D" were determined to be inappropriate for reclassification. Supporting UAA forms are on file.

\*\* None; "Class" column entry in Table I of Part 830 is blank

\*\*\* None; water is in forest preserve