

REGULATORY FEE RECOMMENDATION REPORT TO THE ENVIRONMENTAL QUALITY BOARD

Water Quality Management (WQM) Fees Chapter 91. General Provisions, Water Quality Management Program

BACKGROUND:

The Department of Environmental Resources (now the Department of Environmental Protection) published 25 Pa. Code Chapter 91 on September 2, 1971 to implement provisions of Pennsylvania's Clean Streams Law (35 P. S. §§ 691.1 *et seq.*). Chapter 91 establishes, among other things, a water quality management (WQM) permitting program for the construction of sewage and industrial waste treatment facilities and for land application of sewage and industrial wastes. Chapter 91 also provides for a permit program for the use of algicides, herbicides and fish control chemicals (pesticides) in waters of the Commonwealth (generally referred to as joint pesticide permits; see 25 Pa. Code § 91.38).

The application fees for sewer extension permits and other WQM permits were first established in 1971. The application fees in this section were amended in 1980 and 2000 to include a lower fee for single residence sewage treatment plant (SRSTP) application fees and to add General WQM permits. Section 691.6 of the Clean Streams Law allows the Department to charge filing fees for applications by regulation, provided that the fee is "reasonable." For many years the application fees have remained stagnant despite escalating program expenses and decreases in staff compliment. Additionally, there are no fees established in the regulations for the processing of joint pesticide permits.

WQM application fees for industrial waste are deposited into the Clean Water Fund in accordance with the Clean Streams Law (35 P.S. § 691.8). WQM application fees for sewage are deposited into the General Fund. The Department receives an average of 500 - 600 traditional (sewage and industrial waste) WQM applications per year, including General WQM Notices of Intent (NOIs), which generate an average of approximately \$140,000 annually for the Clean Water Fund and General Fund. Historically, the Department also received an average of 650 applications for joint pesticide permits per year, which produced no revenue (due to some recent program modifications, the number of applications received has been reduced).

Table 1 below provides the current application and NOI fees for WQM permits.

Table 1. Summary of Current WQM Permit Application Fees in 25 Pa. Code § 91.22

Type of Facility	Fee Amount
Single Residence Sewage Treatment Plant (SRSTP) Permits	\$25
Sewer Extension Permits	\$100
Other WQM Permits	\$500
General WQM Permit Coverage (NOI)	No Greater Than \$500

FEE COLLECTION:

Table 2 below provides a summary of revenues collected in the Clean Water Fund and General Fund for all WQM application and NOI fees during the past five fiscal years. The amount collected depends in large part on the health of the construction industry but may also be influenced by government initiatives;

for example, during the period 2007 – 2010 there were an unusually high number of applications received for wastewater treatment plant upgrades to achieve NPDES permit compliance with effluent limitations pursuant to Pennsylvania’s Chesapeake Bay Strategy.

Table 2. Summary of Chapter 91 Revenues from Fees

FY2011	FY2012	FY2013	FY2014	FY2015
\$115,000	\$120,000	\$148,000	\$141,000	\$139,000

PROGRAM COSTS:

It is estimated that it currently costs \$1,399,000 annually to administer the WQM program, and the Department’s costs to administer the WQM permitting program are entirely related to staff resources. In general, there are no dedicated Department staff for processing WQM permit applications and NOIs. Staff who are responsible for reviewing NPDES permit applications and overseeing Act 537 sewage planning activities are also tasked with reviewing WQM permit applications and NOIs. Using historical SAP timesheet information, the Bureau of Clean Water (BCW) estimates that approximately ten full-time equivalent (FTE) staff are involved with the processing of traditional WQM permits. This complement includes engineering staff, management, administrative staff, and other technical staff including hydrogeologists. According to the Department’s Bureau of Fiscal Management, an FTE for planning purposes costs \$139,900 (salary, benefits and indirects). It is therefore estimated that it currently costs \$1,399,000 annually to administer the WQM program, or approximately ten times the current revenue collected for WQM permit application and NOI fees. Further, this figure does not include follow-up inspections by Department staff to ensure construction has been done in accordance with the application or periodic inspections of WQM land application activities.

In addition to the ten FTEs that process traditional WQM permits, an additional three FTEs process joint pesticide permits. The Department is, however, currently pursuing the development of a statewide General Permit which will cover most of the applications for joint pesticide permits, and therefore these costs are expected to be minimal in the future.

The Department has undertaken several initiatives in the past few years to streamline program implementation in an effort to minimize costs and maximize the effective use of existing staff resources. These initiatives include:

- Standard Operating Procedures (SOPs) to ensure consistent and efficient use of permit application review resources statewide;
- Electronic management of permit documents; and
- Electronic management of monitoring data submitted by the regulated community, with automated compliance assessment so that staff do not need to manually evaluate compliance.

PROBLEM STATEMENT:

Based on the current funding structure, the Department’s ability to adequately comply with state environmental requirements relating to the WQM program is continually strained due to a lack of program solvency. Without adequate funding for all required aspects of the WQM program, public health may suffer, and environmental gains previously made may be lost, due to a reduced capacity to conduct compliance and enforcement efforts. Additionally, the Department’s ability to efficiently and timely process permit applications, meet its obligations under the Clean Streams Law, and promptly serve the public are all affected by this insufficient funding.

The Department is using the General Fund to meet 90% of its existing funding obligations, as noted above. Given the potential fluctuations in appropriations by the legislature, a more stable and sustainable funding source is desired. In addition, the WQM permit application fees are outdated. The consumer price index (CPI) has increased 585% since 1971. Accounting for inflation, the typical WQM permit application fee of \$500 in 1971 would now be \$3,425.

RECOMMENDATION:

It has been determined that approximately \$9 million in new revenue annually is needed in order for the Department to fully comply with all federal and state environmental and public health requirements relating to the NPDES and WQM programs. This amount mostly represents adding 65 positions the Department has determined are necessary for properly implementing all aspects of the NPDES and WQM Programs. These positions will greatly increase the Department's permit review capacity and timeliness, as well as increasing required compliance and inspection efforts. To meet that annual revenue objective, the Department is recommending an overall fee increase of approximately \$1 million from WQM permit application and NOI fees, to be phased in over a five year period. The Department is also concurrently proposing a Chapter 92a rulemaking that includes new NPDES permit application fees of approximately \$8 million.

Table 3 below presents the proposed fee increases for the various types of WQM permits. The proposed WQM application fees consider the complexity of processing WQM permit applications; for example, a new WQM permit application for land application of sewage or industrial waste typically involves site visits and a hydrogeological assessment. Accordingly, these WQM permit applications have much higher fees than, for example, WQM permit applications for sewage pump stations. The column, "Proposed Fee – Effective Date", indicates the proposed fee upon publication of the final rulemaking and the column, "Proposed Fee – 5 Years" represents the proposed fee five years following publication of the final rulemaking.

Attachment A provides a draft proposed Annex A for 25 Pa. Code § 91.22; a summary of these changes is as follows:

- Establishment of a fee schedule consistent with **Table 3**.
- Substitution of the word "fee" for "check" in the event the Department, in the future, may provide for an electronic fee payment system.
- Removal of the cap of \$500 for general WQM permit NOI fees, and instead cap NOI fees to be no greater than individual WQM permit application fees.
- Inclusion of language that authorizes an adjustment to the fees based on the change in the consumer price index (CPI) published by the U.S. Department of Labor, Bureau of Labor Statistics, without the need for approval by the Environmental Quality Board (EQB). Such changes would be published in the *Pennsylvania Bulletin*. Where greater increases are sought, EQB approval would be necessary.

Table 3. 25 Pa. Code § 91.22 Existing and Proposed WQM Fees.

Category	Application Type	No. Expected Over 5 Years	Existing Fee	Proposed Fee – Effective Date	Proposed Fee - 5 Years
Joint Pesticides Permit	New	25	\$0	\$250	\$500
	Renewal	50	\$0	\$250	\$500
	Amendment	25	\$0	\$50	\$100
	Transfer	5	\$0	\$50	\$50
WQM – Major Sewage Treatment Plants	New	5	\$500	\$5,000	\$10,000
	Renewal	-	-	-	-
	Amendment	50	\$500	\$1,000	\$2,000
	Transfer	25	\$100	\$250	\$250
WQM – Major Industrial Waste Treatment Plants	New	5	\$500	\$7,500	\$15,000
	Renewal	-	-	-	-
	Amendment	50	\$500	\$1,000	\$2,000
	Transfer	25	\$100	\$500	\$500
WQM – Minor and Non-NPDES Sewage Treatment Plants	New	100	\$500	\$2,500	\$5,000
	Renewal	-	N/A	-	-
	Amendment	200	\$500	\$500	\$500
	Transfer	100	\$100	\$250	\$250
WQM – Minor and Non-NPDES Industrial Waste Treatment Plants	New	50	\$500	\$3,750	\$7,500
	Renewal	-	N/A	-	-
	Amendment	150	\$500	\$500	\$500
	Transfer	100	\$100	\$250	\$250
WQM - SRSTPs	New	100	\$25	\$100	\$200
	Renewal	-	N/A	-	-
	Amendment	100	\$25	\$50	\$100
	Transfer	200	\$0	\$50	\$50
WQM - Sewer Extensions	New	200	\$100	\$1,250	\$2,500
	Renewal	-	N/A	-	-
	Amendment	50	\$100	\$500	\$500
	Transfer	75	\$100	\$250	\$250
WQM - Pump Stations	New	200	\$500	\$1,250	\$2,500
	Renewal	-	N/A	-	-
	Amendment	50	\$500	\$500	\$500
	Transfer	75	\$100	\$250	\$250
WQM - Land Application and Reuse of Sewage	New	10	\$500	\$2,500	\$5,000
	Renewal	50	\$500	\$2,500	\$5,000
	Amendment	10	\$500	\$500	\$1,000
	Transfer	5	\$100	\$250	\$250
WQM - Land Application and Reuse of Industrial Waste	New	15	\$500	\$5,000	\$10,000
	Renewal	25	\$500	\$5,000	\$10,000
	Amendment	10	\$500	\$1,000	\$2,000
	Transfer	5	\$100	\$250	\$250
WQM - Manure Storage and Wastewater Impoundments	New	50	\$500	\$1,250	\$2,500
	Renewal	-	N/A	-	-
	Amendment	5	\$500	\$500	\$500
	Transfer	5	\$100	\$250	\$250

NOTES:

1. **Table 3** proposes new categories of WQM permits, not currently part of 25 Pa. Code § 91.22. The Department believes that distinguishing between types of WQM permit applications in this manner is necessary for the Chapter 91 rulemaking, to reflect the differences in level of effort required to process the applications.
2. The number of WQM permit applications expected per year is based on a long-term analysis of actual applications received by the Clean Water Program. For joint pesticides permits, the actual number of applications received is much higher, but BCW is planning on implementing changes that would reduce the number of applications received.
3. Application types are not currently identified in 25 Pa. Code § 91.22. The proposed rulemaking would include fees based not only on the type of WQM permit, but also the type of application, including new, renewal, amendment and transfer.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

§ 91.1. Definitions.

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General water quality management permit or general permit—A water quality management permit that is issued for a clearly described category of wastewater treatment facilities, which are substantially similar in nature.

Major facility – The term as defined in § 92a.2 (relating to definitions).

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Manure storage facility—A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underbuilding structures, as well as earthen and synthetically-lined manure storage ponds.

Minor facility – The term as defined in § 92a.2 (relating to definitions).

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§ 91.22. Fees.

(a) Applications for **individual** water quality management **(WQM)** permits from parties except agencies of the Commonwealth shall be accompanied by a **[check] fee** payable to “Commonwealth of Pennsylvania,” in the **[following] amounts specified in paragraphs (a)(1) and (a)(2), below.**[:]

(1) For applications for single residence sewage treatment plant permits—\$25.

(2) For applications for sewer extension permits—\$100.

(3) For applications for other water quality management permits—\$500.]

(1) The following application fees for individual WQM permits are effective upon the effective date of this regulation.

<u>Category</u>	<u>Application Type</u>	<u>Application Fee</u>
<u>Joint Pesticides Permits</u>	<u>New</u>	<u>\$250</u>
	<u>Renewal</u>	<u>\$250</u>
	<u>Amendment</u>	<u>\$50</u>
	<u>Transfer</u>	<u>\$50</u>
<u>Major Sewage Treatment Plants</u>	<u>New</u>	<u>\$5,000</u>
	<u>Renewal</u>	<u>-</u>
	<u>Amendment</u>	<u>\$1,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Major Industrial Waste Treatment Plants</u>	<u>New</u>	<u>\$7,500</u>
	<u>Amendment</u>	<u>\$1,000</u>
	<u>Transfer</u>	<u>\$500</u>
<u>Minor and Non-NPDES Sewage Treatment Plants</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>WQM – Minor and Non-NPDES Industrial Waste Treatment Plants</u>	<u>New</u>	<u>\$3,750</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>SRSTPs</u>	<u>New</u>	<u>\$100</u>
	<u>Amendment</u>	<u>\$50</u>
	<u>Transfer</u>	<u>\$50</u>
<u>Sewer Extensions</u>	<u>New</u>	<u>\$1,250</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Pump Stations</u>	<u>New</u>	<u>\$1,250</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Sewage</u>	<u>New</u>	<u>\$2,500</u>
	<u>Renewal</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Industrial Waste</u>	<u>New</u>	<u>\$5,000</u>
	<u>Renewal</u>	<u>\$5,000</u>
	<u>Amendment</u>	<u>\$1,000</u>

	<u>Transfer</u>	<u>\$250</u>
<u>Manure Storage and Wastewater Impoundments</u>	<u>New</u>	<u>\$1,250</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>

(2) The following application fees for individual WQM permits are effective five years following the effective date of this regulation.

<u>Category</u>	<u>Application Type</u>	<u>Application Fee</u>
<u>Joint Pesticides Permits</u>	<u>New</u>	<u>\$500</u>
	<u>Renewal</u>	<u>\$500</u>
	<u>Amendment</u>	<u>\$100</u>
	<u>Transfer</u>	<u>\$50</u>
<u>Major Sewage Treatment Plants</u>	<u>New</u>	<u>\$10,000</u>
	<u>Amendment</u>	<u>\$2,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Major Industrial Waste Treatment Plants</u>	<u>New</u>	<u>\$15,000</u>
	<u>Amendment</u>	<u>\$2,000</u>
	<u>Transfer</u>	<u>\$500</u>
<u>Minor and Non-NPDES Sewage Treatment Plants</u>	<u>New</u>	<u>\$5,000</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Minor and Non-NPDES Industrial Waste Treatment Plants</u>	<u>New</u>	<u>\$7,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>SRSTPs</u>	<u>New</u>	<u>\$200</u>
	<u>Amendment</u>	<u>\$100</u>
	<u>Transfer</u>	<u>\$50</u>
<u>Sewer Extensions</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Pump Stations</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Sewage</u>	<u>New</u>	<u>\$5,000</u>
	<u>Renewal</u>	<u>\$5,000</u>
	<u>Amendment</u>	<u>\$1,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Industrial Waste</u>	<u>New</u>	<u>\$10,000</u>
	<u>Renewal</u>	<u>\$10,000</u>
	<u>Amendment</u>	<u>\$2,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Manure Storage and Wastewater</u>	<u>New</u>	<u>\$2,500</u>

<u>Impoundments</u>	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>

(b) [An] NOI fees for coverage under a general water quality management permit, including fees for amendments to or transfers of general permit coverage, shall be made [accompanied by a check] payable to the “Commonwealth of Pennsylvania[,]” The fees for a general permit in § 91.27(b)(1) (relating to general water quality management permits) shall be established in the general permit or its NOI instructions. NOI fees may not exceed its equivalent in individual permit application fees as described in subsections (a)(1) and (a)(2). [in the amount no greater than \$500 as set forth in the public notice for the general water quality management permit as described in § 91.27(b)(1) (relating to general water quality management permit).]

(c) Fees for WQM permit applications imposed under subsection (a)(2) may be increased each calendar year, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

(1) If any increase is made based on the Consumer Price Index, the Department will publish the revised fee schedule in the *Pennsylvania Bulletin*.

(2) The Department will not increase application fees for individual WQM permits beyond the Consumer Price Index difference unless the Environmental Quality Board has promulgated amendments to this section.