

CHAPTER 92a. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING, MONITORING AND COMPLIANCE

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(Editor's Note: Chapter 92 is being deleted and reserved in its entirety. Chapter 92a is replacing Chapter 92 and is written in normal format for readability. All language is new.)

Subchapter A. DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS

Sec.

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§ 92a.1. Purpose and scope. (92.3)

(a) *Purpose.* The regulatory provisions contained in this chapter implement the National Pollutant Discharge Elimination System (NPDES) Program by the Department under the Federal Act.

(b) *Scope.* A person may not discharge pollutants from a point source into surface waters except as authorized under an NPDES permit.

§ 92a.2. Definitions. (92.1)

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

AEU—Animal equivalent unit—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in Section 3 of the Nutrient Management Act, 3 Pa.C.S. § 503.

Administrator—The Administrator of the EPA or an authorized representative.

Agricultural operation—The management and use of farming resources for the production of crops, livestock or poultry as defined in Section 3 of the Nutrient Management Act, 3 Pa.C.S. § 503.

Agricultural process wastewater—Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

Applicable effluent limitations or standards—State, interstate and Federal effluent limitations or standards to which a discharge is subject under the State and Federal Acts, including, but not limited to, water quality-based and technology-based effluent limitations, standards of performance, toxic effluent standards and prohibitions, BMPs and pretreatment standards.

Applicable water quality standards—Water quality standards to which a discharge is subject under the State and Federal Acts, and regulations promulgated thereunder.

Application—The Department's form for applying for approval to discharge pollutants to surface waters of this Commonwealth under a new NPDES permit, or reissuance of an existing NPDES permit, or the modification or transfer of an existing NPDES permit.

Aquaculture project—A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants and animals.

Authority—A body politic and corporate created pursuant to the act of May 2, 1945 (P.L. 382, No. 164), known as the "Municipality Authorities Act of 1945."

BAT—Best available technology economically achievable— The maximum degree of effluent reduction attainable through the application of the best treatment technology economically achievable within an industrial category or subcategory, or other category of discharger. The term includes categorical ELGs promulgated by the EPA under section 304(b) of the Federal Act (33 U.S.C.A § 1314(b)).

BOD₅—Biochemical oxygen demand, 5-day—The five day measure of the pollutant parameter biochemical oxygen demand.

BMP—Best management practices—

- (i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollutant loading to surface waters of this Commonwealth.

(ii) The term includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(iii) The term includes riparian buffers, soil and slope stabilization measures, control of fertilization practices, and other actions and measures designed to reduce erosion and runoff of soil, sediment and pollutants from the land surface during precipitation events; or to reduce the contamination of groundwater with pollutants that may affect surface waters.

(iv) The term includes BMP measures developed under this Title to reduce pollutant loading to surface waters.

BTA—Best technology available— The combination of technologies and operational practices that achieves the most effective degree of impingement mortality and entrainment reduction applicable to the facility.

CAAP—Concentrated aquatic animal production facility—A hatchery, fish farm or other facility which meets the criteria in 40 CFR 122.24 (relating to concentrated aquatic animal production facilities).

CAFO—Concentrated animal feeding operation—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR 122.23(b)(4) (relating to concentrated animal feeding operations).

CAO—Concentrated animal operation—An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under the authority of 3 Pa.C.S. § 503 Chapter 5 (relating to nutrient management and odor management) in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

CBOD₅—Carbonaceous biochemical oxygen demand, 5-day—The five day measure of the pollutant parameter carbonaceous biochemical oxygen demand.

CCW—Contact cooling water—Cooling water that comes into contact with any raw material, intermediate product, finished product, byproduct or waste product.

CSO—Combined sewer overflow—Any intermittent overflow or other untreated discharge from a municipal combined sewer system (including domestic, industrial and commercial wastewater and stormwater) prior to reaching the headworks of the sewage treatment facility which results from a flow in excess of the dry weather carrying capacity of the system.

Combined sewer system—A sewer system that has been designed to serve as both a sanitary sewer and a storm sewer.

Conventional pollutant—Biochemical oxygen demand, carbonaceous biochemical oxygen demand, suspended solids, pH, fecal coliform, oil or grease.

DMR—Discharge Monitoring Report -- The Department or EPA supplied form(s) for reporting of self-monitoring results by the permittee.

Daily discharge—The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably and accurately represents the calendar day for purposes of sampling:

(i) For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day.

(ii) For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Department—The Department of Environmental Protection.

Discharge—An addition of any pollutant to surface waters of this Commonwealth from a point source.

Disturbed Area—As defined in Chapter 102.

Draft permit—A document prepared by the Department indicating the Department's tentative decision to issue or deny, modify, revoke, or reissue a permit.

EHB—*Environmental Hearing Board*—The Pennsylvania Environmental Hearing Board.

ELG—*Effluent Limitations Guideline*—A regulation published by the Administrator under section 304(b) of the Federal Act, or by the Department, to revise or adopt effluent limitations.

EPA—*Environmental Protection Agency*—The United States Environmental Protection Agency.

Earth disturbance activity—As defined in Chapter 102.

Effluent limitation or standard—A restriction established by the Department or the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into surface waters, including BMPs and schedules of compliance.

Entrainment—The incorporation of all life stages of fish and shellfish with intake flow entering and passing through a cooling water intake structure and into a cooling water intake system.

Existing discharge—A discharge that is not a new discharge or a new source.

Expanding facility or activity—Any expansion, modification, process change, or other change to an existing facility or activity which will result in an increased discharge of wastewater flow, or an increased loading of pollutants.

Facility or activity—Any NPDES point source or any other facility or activity including land or appurtenances thereto that is subject to regulation under the NPDES Program.

Federal Act—The Federal Water Pollution Control Act (33 U.S.C.A. § § 1251—1387) also known as the Clean Water Act or CWA.

GPD—Gallons per day.

Immediate—As soon as possible, but not to exceed four hours.

Impingement—The entrapment of all life stages of fish and shellfish on the outer part of the intake structure or against a screening device during periods of intake water withdrawal

Indirect discharger—A discharger of nondomestic wastewater introducing pollutants into a POTW or other treatment works.

Industrial waste—

(i) A liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from manufacturing or industry, or from an establishment, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations.

(ii) The term includes all of these substances whether or not generally characterized as waste.

Instantaneous maximum effluent limitation—The highest allowable discharge of a concentration or mass of a substance at any one time as measured by a grab sample.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Interstate agency—An agency of two or more states established by or under an agreement or compact, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

Large municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(4) (relating to stormwater discharges).

Livestock—

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation. Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(ii) The term does not include aquatic species.

MGD—Million gallons per day.

MS4—Municipal Separate Storm Sewer System—A municipal separate storm sewer system.

Major amendment—Any amendment to an NPDES permit that is not a minor amendment.

Major facility—A POTW with a design flow of 1.0 MGD or more and any other facility classified as such by the Department in conjunction with the Administrator.

Manure—

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding and raw materials which are commingled with that excrement.

Medium municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(7).

Mining activity—A surface or underground mining activity as defined in Chapter 77 (relating to noncoal mining) or Chapter 86 (relating to surface and underground coal mining: general).

Minor amendment—An amendment to an NPDES permit to correct a typographical error, increase monitoring requirements, change interim compliance dates by no more than 120 days, delete an outfall, change a construction schedule for a discharger that is a new source, or to incorporate an approved pretreatment program into an existing permit.

Minor facility—Any facility not identified as a major facility.

Monthly average discharge limitation—The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during the calendar month divided by the number of daily discharges measured during the month.

Municipal separate storm sewer system—A separate storm sewer (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains) which is all of the following:

- (i) Owned or operated by a state, city, town, borough, county, district, association or other public body (created by or under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Federal Act (33 U.S.C.A. § 1288) that discharges to surface waters of this Commonwealth.
- (ii) Designed or used for collecting or conveying stormwater.
- (iii) Not a combined sewer.
- (iv) Not part of a POTW.

Municipality—A city, town, borough, county, township, school district, institution, authority or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

NOI—Notice Of Intent—A complete form submitted for NPDES general permit coverage which contains information required by the terms of the permit and by § 92a.54 (relating to general permits). An NOI is not an application.

NPDES—National Pollutant Discharge Elimination System.

NPDES form—An issued NPDES permit, the application, NOI or any DMR reporting form.

NPDES general permit or general permit—An NPDES permit that is issued for a clearly described category of point source discharges, when those discharges are substantially similar in nature and do not have the potential to cause significant adverse environmental impact.

NPDES permit—An authorization, license, or equivalent control document issued by the Administrator or the Department to implement the requirements of 40 CFR Parts 122, 123 and 124 and the Federal Act.

New discharger—A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a final effective NPDES permit for discharges at that site.

New source—A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants, the construction of which commenced after promulgation of standards of performance under section 306 of the Federal Act (33 U.S.C.A. § 1316) which are applicable to the source.

No exposure—Where industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to stormwater. Industrial materials and activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

Noncontact cooling water—Cooling water that does not contact any raw material, intermediate product, finished product, byproduct or waste product.

Nonconventional pollutant—A pollutant which is not a conventional or toxic pollutant.

Nonpoint source— A pollutant source that is not a point source.

POTWs—Publicly Owned Treatment Works –

- (i) A treatment works which is owned by a state or municipality.
- (ii) The term includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature.
- (iii) The term also includes sewers, pipes or other conveyances if they convey wastewater to a POTW treatment plant.
- (iv) The term also means the municipality as defined in section 502(4) of the Federal Act (33 U.S.C.A. § 1362), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Permit-by-rule—An NPDES permit which a person is deemed to have for the operation of an SRSTP or for the application of pesticides upon compliance with the requirements of § 92a.24 or 92a.25, as applicable.

Person—Any individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; department, agency or instrumentality of State, Federal or local government, or an agent or employee thereof; or any other legal entity.

Point source—Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAAP, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

Pollutant—Any contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the State Act (35 P. S. § 691.1).

Pollution prevention—Source reduction and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, without having significant cross-media impacts.

Privately owned treatment works—Any device or system used to treat wastewater that is not a POTW.

Process wastewater—Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

SSO—Sanitary Sewer Overflow—An overflow of wastewater, or other untreated discharge from a separate sanitary sewer system (which is not a combined sewer system), which results from a flow in excess of the carrying capacity of the system or from some other cause prior to reaching the headworks of the sewage treatment facility.

SRSTP—Single residence sewage treatment plant—A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot, that solely collects, treats, and disposes of direct or indirect sewage discharges from the residence into surface waters of this Commonwealth.

Schedule of compliance—A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with effluent limitations, prohibitions, other limitations or standards.

Separate storm sewer—A conveyance or system of conveyances (including pipes, conduits, ditches and channels) primarily used for collecting and conveying stormwater runoff.

Setback—A specified distance from the top of the bank of surface waters, or potential conduits to surface waters, where manure and agricultural process wastewater may not be land applied. Examples of conduits to surface waters include, but are not limited to:

- (i) Open tile line intake structures.
- (ii) Sinkholes.
- (iii) Agricultural wellheads.

Sewage—Any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

Significant biological treatment—The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of at least 65 percent removal of BOD₅.

Small flow treatment facility—A treatment works designed to adequately treat sewage flows of not greater than 2,000 gallons per day for final disposal using a stream discharge or other methods approved by the Department.

Small municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(16)—(18).

State Act—The Clean Streams Law (35 P. S. § § 691.1—691.1001).

Stormwater—Runoff from precipitation, snow melt runoff and surface runoff and drainage.

Stormwater discharge associated with construction activity—The discharge or potential discharge of stormwater from construction activities, including clearing and grubbing, grading and excavation activities involving:

- (i) Equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a point source discharge to surface waters of this Commonwealth, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that

involves equal to or greater than 1 to less than 5 acres (0.4 to 2 hectares) of earth disturbance with a point source discharge to surface waters of this Commonwealth over the life of the project

(ii) 5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part or during any stage of, a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project.

. *Stormwater discharge associated with industrial activity*—The discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant, and as defined in 40 CFR 122.26(b)(14) (related to stormwater discharges).

Surface waters—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

TMDL—Total maximum daily load—The sum of individual waste load allocations for point sources, load allocations for nonpoint sources and natural quality and a margin of safety expressed in terms of mass per time, toxicity or other appropriate measures.

TSS—Total Suspended Solids—The pollutant parameter total suspended solids.

Toxic pollutant—Those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may, on the basis of information available to the Administrator or the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in these organisms or their offspring.

Treatment works—Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement the State and Federal Acts, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.

Vegetated buffer—A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

WETT—Whole Effluent Toxicity Testing—

(i) A test, survey, study, protocol or assessment which includes the use of aquatic, bacterial, invertebrate or vertebrate species to measure acute or chronic toxicity, and any biological or

chemical measure of bioaccumulation, bioconcentration or impact on established aquatic and biological communities.

(ii) The term includes any established, scientifically defensible method that is sufficiently sensitive to measure toxic effects.

WQBEL—Water quality-based effluent limitation—An effluent limitation based on the need to attain or maintain the water quality criteria and to assure protection of designated and existing uses.

Water quality standards—The combination of water uses to be protected and the water quality criteria necessary to protect those uses.

Weekly average discharge limitation—The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during the calendar week divided by the number of daily discharges during that week.

Wetlands—Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

Whole effluent toxicity—The aggregate toxic effect of an effluent measured directly with a *WETT*.

§ 92a.3. Incorporation of Federal regulations by reference. (92.2)

(a) The Federal NPDES regulations listed in subsection (b), including all appendices, future amendments and supplements thereto, are incorporated by reference to the extent that these provisions are applicable and not contrary to Pennsylvania law. In the event of a conflict between Federal and Pennsylvania regulatory provisions, the provision expressly set out in this chapter must be applied unless the Federal provision is more stringent.

(b) The following Federal regulatory provisions in 40 CFR Parts 122, 124 and 125 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System; procedures for decision making; and criteria and standards for the National Pollutant Discharge Elimination system) are incorporated by reference:

- (1) 122.2 (relating to definitions) unless the definitions in § 92a.2 (relating to definitions) are different.
- (2) 123.25(c) (relating to requirements for permitting).
- (3) 124.57(a) (relating to public notice).
- (4) 125.1—125.3 (relating to criteria and standards for imposing technology-based treatment requirements under sections 301(b) and 402 of the Federal Act).
- (5) 125.30—125.32 (relating to criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the Federal Act).
- (6) 125.70—125.73 (relating to criteria for determining alternative effluent limitations under section 316(a) of the Federal Act).

(c) The Federal NPDES regulations listed in §§ 92a.4, 92a.5, 92a.6, 92a.8, 92a.21, 92a.22, 92a.32, 92a.33, 92a.34, 92a.35, 92a.36, 92a.37, 92a.41, 92a.42, 92a.43, 92a.44, 92a.45, 92a.56, 92a.61, 92a.71, 92a.72, 92a.73, 92a.74, and 92a.92, including all appendices, future amendments and supplements thereto, are incorporated by reference to the extent that these provisions are applicable and not contrary to Pennsylvania law. In the event of a conflict between Federal and Pennsylvania regulatory provisions, the provision expressly set out in this chapter must be applied unless the Federal provision is more stringent.

§ 92a.4. Exclusions. (92.4)

The provisions of 40 CFR 122.3 (a)—(g) (related to exclusions) are incorporated by reference.

§ 92a.5. Prohibitions. (92.73)

- (a) The provisions of 40 CFR 122.4 (relating to prohibitions) are incorporated by reference.
- (b) A permit may not be issued, modified, or reissued for a sanitary sewer overflow.

§ 92a.6. Effect of a permit.

The provisions of 40 CFR 122.5 (relating to effect of a permit) are incorporated by reference.

§ 92a.7. Duration of permits and continuation of expiring permits. (92.9)

- (a) NPDES permits must have a fixed term not to exceed 5 years.
- (b) The terms and conditions of an expiring permit are automatically continued when the following conditions are met:
 - (1) The permittee has submitted a timely application for reissuance of an existing permit in accordance with § 92a.75 (relating to reissuance of expiring permits).
 - (2) The Department is unable, through no fault of the permittee, to reissue or deny a permit before the expiration date of the previous permit.
- (c) Permits continued under subsection (b) remain effective and enforceable against the discharger until the Department takes final action on the pending permit application.

§ 92a.8. Confidentially of information. (92.63)

- (a) The provisions of 40 CFR 122.7 (b) (relating to confidentiality of information) are incorporated by reference.
- (b) The Department may protect any information, other than effluent data, contained in NPDES forms, or other records, reports or plans pertaining to the NPDES permit program as confidential upon a showing by any person that the information is not a public record for the purposes of section 607 of the State Act (35 P. S. § 691.607). Documents that may be protected as confidential and are not public records are those that if made public would divulge an analysis of chemical and

physical properties of coal (excepting information regarding the mineral or elemental content that is potentially toxic in the environment), and those that are confidential commercial information or methods or processes entitled to protection as trade secrets under State or Federal law. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Department will forward the information to the Administrator for concurrence in any determination of confidentiality. If the Administrator does not concur that some or all of the information being considered for confidential treatment merits the protection and notifies the Department in writing, the Department will make available to the public that information determined by the Administrator in consultation with the EPA Office of General Counsel not entitled to protection in accordance with 40 CFR Part 2 (relating to public information).

(c) Information approved for confidential status, whether or not contained in an NPDES form, will be disclosed, upon request, to the Administrator, or an authorized representative, who shall maintain the disclosed information as confidential.

§ 92a.9. NPDES permit satisfies other permit requirements. (92.5)

An NPDES permit issued for a discharge pursuant to this chapter is the Department permit for purposes of sections 202 and 307 of the State Act (35 P. S. § § 691.202 and 691.307).

§ 92a.10. Pollution prevention. (92.2b)

(a) The Department will encourage pollution prevention by providing assistance to the permittee and users of the permittee’s facilities in the consideration of pollution prevention measures such as process changes, materials substitution, reduction in volume of water use, in-process recycling and reuse of water and general measures of “good housekeeping” within the plant or facility.

(b) The Department will encourage consideration of the following measures, in descending order of preference, for environmental management of wastes:

- (1) Process change
- (2) Materials substitution
- (3) Reuse
- (4) Recycling
- (5) Treatment
- (6) Disposal.

§ 92a.11. Other chapters applicable. (92.17)

To the extent that Chapters 16, 77, 87, 88, 89, 90, 91, 93, 95, 96, 102 and 105 pertain to a discharge for which an NPDES permit is required, those chapters govern whenever their application produces a more stringent effluent limitation than would be produced by application of Federal requirements. Effluent limitations resulting from the application of those chapters must be expressed in an NPDES permit issued under this chapter.

§ 92a.12. Treatment requirements. (92.2a)(92.8a)

- (a) Specific treatment requirements and effluent limitations for each discharge must be established based on the more stringent of the following:
- (1) Requirements specified in Chapters 16, 77, 87, 88, 89, 90, 93, 95, 96, and 102.
 - (2) The applicable treatment requirements and effluent limitations to which a discharge is subject under this chapter and the Federal Act.
 - (3) The treatment requirements and effluent limitations of this title.
- (b) When interstate or international agencies under an interstate compact or international agreement establish applicable effluent limitations or standards for dischargers of this Commonwealth to surface waters that are more stringent than those required by this title, the more stringent standards and limitations apply.
- (c) If the Department has confirmed the presence or critical habitat of endangered or threatened species under Federal or State law or regulation, the Department will limit discharges to these waters to ensure protection of these species and critical habitat.
- (d) New or changed water quality standards or treatment requirements may result from revisions to Chapters 16, 77, 87, 88, 89, 90, 92a, 93, 95, 96, or 102, or other plans or determinations approved by the Department. Upon notice from the Department, a permittee of an affected facility shall promptly take the steps necessary to plan, obtain a permit or other approval, and construct facilities that are required to comply with the new water quality standards or treatment requirements.
- (e) Within 180 days of the receipt of the notice, the permittee shall submit to the Department either a report establishing that its existing facilities are capable of meeting the new water quality standards or treatment requirements, or a schedule setting forth the nature and date of completion of steps that are necessary to plan, obtain a permit or other approval, and construct facilities to comply with the new water quality standards or treatment requirements. The permittee shall comply with the schedule approved by the Department.
- (f) Whenever a point of projected withdrawal for a new potable water supply not previously considered is identified by the Department, the Department will notify a discharger if more stringent effluent limitations are needed to protect the point of withdrawal. The discharger shall meet the more stringent effluent limitations in accordance with a schedule approved by the Department. The Department will issue orders directing dischargers to achieve compliance or will impose permit modifications with compliance schedules, when necessary.

Subchapter B. PERMIT APPLICATION AND SPECIAL NPDES PROGRAM REQUIREMENTS

Sec.

- 92a.21. Application for a permit.
- 92a.22. Signatories to permit applications and reports.
- 92a.23. NOI for coverage under an NPDES general permit.
- 92a.24. Permit-by-Rule for SRSTPs.
- 92a.25. Permit-by-Rule for application of pesticides.

- 92a.26. New or increased discharges, or change of wastestream.
- 92a.27. Incomplete applications or incomplete NOIs.
- 92a.28. Application fees.
- 92a.29. Sewage discharges.
- 92a.30. Industrial waste discharges.
- 92a.31. CAFO.
- 92a.32. CAAP.
- 92a.33. Aquaculture projects.
- 92a.34. Stormwater discharges.
- 92a.35. Silviculture activities.
- 92a.36. Cooling water intake structures 92a.37. New sources and new discharges.
- 92a.38. Department action on NPDES permit applications.

§ 92a.21. Application for a permit. (92.21)

(a) The provisions of 40 CFR 122.21 (b), (g)(1)—(7), (9)—(13), (h), (i), (j), (k), (l), (m)(1) and (6), (p), (q) and (r) (relating to application for a permit) are incorporated by reference, except as required by the Department.

(b) *Duty to apply.* Persons wishing to discharge pollutants shall file a complete application for an individual permit at least 180 days before the date on which it is desired to commence the discharge of pollutants or within another period of time that the Department determines is sufficient to ensure compliance with the Federal Act and the State Act, including applicable water quality standards and effluent limitations or standards. Persons are not required to submit an application for an individual permit for SRSTPs or for the application of pesticides that are subject to permit-by-rule, provided the requirements of § § 92a.24 and 92a.25 (relating to permit-by-rule for SRSTPs; and permit-by-rule for application of pesticides) are met.

(c) *Application forms.* Applicants for permits shall submit applications on Department permit application forms. At a minimum, the following are required to be submitted by applicants for a permit, except as otherwise specified:

- (1) One original and two copies of the complete application. The Department may require additional copies, if needed to complete the review process
- (2) The applicable permit application fee and other fees as set forth in § 92a.28 (relating to application fees).
- (3) If required by the application, proof that a written notice of an application has been submitted to the municipality and county in which the activity is or will be located at least 30 days before the Department may take action on the application. This notice must satisfy the notification requirements of section 1905-A of the Administrative Code of 1929 (71 P.S. § 510-5) and the Municipal Planning Code (53 P.S. § 10101-11202) if required.
- (4) If required by the application, proof that public notice of the application has been published in a newspaper of general circulation in the locality in which the activity is or will be located once a week during a consecutive 4-week period.
- (5) A description of the activities conducted by the applicant that require an NPDES permit; name, mailing address and location of the facility; up to four standard industrial codes (SIC) or

North American Industry Classification System (NAICS) code that best reflect the principal products or services provided by the facility; the operator's name, address, telephone number, ownership status and entity status; a listing of all Department and EPA environmental quality permits for the facility; a topographic or other map extending 1 mile beyond the boundaries of the facility or activity; and a brief description of the nature of the business.

(6) Documentation that the applicant is in compliance with all existing Department permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit) consistent with § 92a.51 (relating to schedules of compliance) and other applicable Department regulations.

(d) *Additional information.* The Department may require other information or data needed to assess the discharge(s) from the facility and any impact on receiving waters, and to determine whether to issue an NPDES permit, or what conditions or effluent limitations (including water quality based effluent limitations) to place in the permit. The additional information may include, but is not limited to:

(1) The results of an effluent assessment (or estimate for new dischargers or new sources), including a list of the mass and concentration of pollutants found (or estimated to be for new discharges or new sources) in the wastewater discharge, under Department protocols.

(2) Information and data relating to the biological, physical and chemical characteristics of waters and habitat immediately upstream and downstream of the proposed discharge, performed under a Department-approved protocol.

(3) The results of a waterbody assessment, under Department protocols, setting forth the impact (or potential impact) of the discharges on surface waters of this Commonwealth.

(4) The results of whole effluent toxicity testing, an instream cause/effect survey, or other tests or surveys as needed to determine the impact of a discharge on a waterbody performed under a Department-approved protocol.

(e) *Addresses.* The Department will publish at least annually a list of addresses to which applications and their accompanying papers shall be submitted.

(f) *Supporting documentation.* A person required to file an application shall also file additional modules, forms and applications, and supply data as specified by the Department. Additional modules, forms, applications and data are considered a part of the application.

§ 92a.22. Signatories to permit applications and reports. (92.23)

The provisions of 40 CFR 122.22 (relating to signatories to permit applications and reports) are incorporated by reference.

§ 92a.23. NOI for coverage under an NPDES general permit. (92.83)

(a) Eligible dischargers, who wish to be covered by a general permit, shall file a complete NOI as instructed in the NOI. At a minimum, the NOI must identify each point source for which coverage under the general permit is requested; demonstrate that each point source meets the eligibility requirements for inclusion in the general permit; demonstrate that the discharge from the point

sources, individually or cumulatively, will not result in a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards) and include other information the Department may require. By signing the NOI, the discharger agrees to accept all conditions and limitations imposed by the general permit.

(b) If the NOI is acceptable, the Department will process the NOI in accordance with § 92a.54 (relating to general permits).

(c) General permits for POTWs, CSOs, CAFOs, primary industrial facilities, and stormwater discharges associated with industrial activities must require that an NOI be submitted for each reissuance of coverage under the general permit. A general permit for any other category of discharges may be designed to allow discharges to continue to be authorized to discharge without submitting a NOI for each reissuance of coverage under the general permit. The Department will consider the following in deciding whether an NOI must be submitted for each reissuance of coverage under the general permit: the type of discharge; the potential for toxic and conventional pollutants in the discharge; and the estimated number of discharges to be covered by the permit. The public notice of the general permit will provide the reasons for not requiring the NOI.

§ 92a.24. Permit-by-Rule for SRSTPs

(a) *Coverage.* A person is deemed to have an NPDES permit authorizing discharge from an SRSTP provided the following requirements are met:

- (1) The person has obtained coverage under the water quality management general permit for small flow treatment facilities under Chapter 91 (relating to water quality provisions).
- (2) The SRSTP is designed to adequately treat sewage flows of not greater than 1,000 gallons per day.
- (3) The discharge is not to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards).
- (4) The person maintains and operates the SRSTP in compliance with the standards and requirements of the Department contained in approvals issued under Chapter 71 (relating to administration of sewage facilities planning program) and the water quality management general permit issued under Chapter 91.

(b) *Administration of permit-by-rule for SRSTPs.*

- (1) *Requiring an individual or general permit.* The Department may revoke or suspend coverage under a permit-by-rule, and require that NPDES permit coverage be obtained under an individual or general NPDES permit, when the permittee has violated one or more provisions of this Title or otherwise is ineligible for coverage under the water quality management general permit for small flow treatment facilities. Upon notification by the Department that coverage under an individual or general NPDES permit is required, the permittee shall submit a complete application or NOI, in conformance with this chapter, within 90 days of receipt of the notification. Failure to submit the required application or NOI within 90 days automatically terminates coverage under the permit-by-rule.
- (2) *Termination of coverage under permit-by-rule for SRSTPs.* When an individual permit or approval for coverage under a general NPDES permit is issued for an SRSTP, coverage under the permit-by-rule for SRSTPs is automatically terminated.

§ 92a.25. Permit-by-Rule for application of pesticides

(a) *Coverage.* A person is deemed to have an NPDES permit authorizing application of a pesticide provided the following requirements are met:

- (1) The pesticide is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136 to 136y), and applied consistent with all applicable requirements of FIFRA.
- (2) The pesticide application meets at least one of the following conditions:
 - (i) The pesticide is applied directly to surface water to control pests. An example is an aquatic pesticide applied to surface water to control mosquito larvae or aquatic weeds.
 - (ii) The pesticide is applied over or near surface waters to control pests, where a portion of the pesticide will unavoidably be deposited to surface waters in order to target the pests effectively. An example is a pesticide applied over surface water to control insects, or to a field or forest canopy near surface water to control insects or terrestrial vegetation.
- (3) The discharge of the pesticide is not associated with any facility or activity related to the manufacture, storage, or disposal of the pesticide.

(b) *Administration of permit-by-rule for application of pesticides.*

(1) *Requiring an individual or general permit.* The Department may revoke or suspend coverage under a permit-by-rule, and require that permit coverage be obtained under an individual or general NPDES permit, when the permittee has violated one or more provisions of this Title or otherwise is ineligible for coverage under the permit-by-rule. Upon notification by the Department that coverage under an individual or general NPDES permit is required, the permittee shall submit a complete application or NOI, in conformance with this chapter, within 90 days of receipt of the notification. Failure to submit the required application or NOI within 90 days automatically terminates coverage under the permit-by-rule.

(2) *Termination of coverage under permit-by-rule for application of pesticides.* When an individual permit or approval for coverage under a general NPDES permit is issued for a pesticide application, coverage under the permit-by-rule for pesticide application is automatically terminated.

§ 92a.26. New or increased discharges, or change of waste streams. (92.7)

(a) *Sewage discharges and industrial waste discharges.* Facility expansions or process modifications, which may result in increases of permitted pollutants that do not have the potential to exceed ELGs or violate effluent limitations specified in the permit, may be initiated by the permittee without the approval of the Department, but shall be reported by submission to the Department of notice of the increased discharges within 60 days. Facility expansions or process modifications, which may result in increases of pollutants that have the potential to exceed ELGs or violate effluent limitations specified in the permit, or which may result in a new discharge, or a discharge of new or increased pollutants for which no effluent limitation has been issued, must be approved in writing by the Department before commencing the new or increased discharge, or change of wastestream. The Department will determine if a permittee will be required to submit a

new permit application and obtain a new or amended permit before commencing the new or increased discharge, or change of wastestream.

(b) *Stormwater discharges associated with construction activity.* The permittee shall notify the Department before initiating any new or expanded disturbed area not identified in the permit application. The Department will determine if a permittee will be required to submit a new permit application and obtain a new or amended permit before initiating the new or expanded disturbed area.

§ 92a.27. Incomplete applications or incomplete NOIs. (92.25)

The Department will not process an application or NOI that is incomplete or otherwise deficient. An application for an NPDES individual permit is complete when the Department receives an application form and supplemental information completed in accordance with this chapter and the instructions with the application. An NOI to be covered by an NPDES general permit issued by the Department is complete when the Department receives an NOI setting forth the information specified in the NOI and by the terms of the general permit.

§ 92a.28. Application fees. (92.22)

(a) The application fee is payable to the Commonwealth according to the fee schedule set forth in this section. All flows listed in this section are design flows.

(b) Applications fees for individual NPDES permits for discharges of treated sewage are:

SRSTP	\$100 for new; \$100 for reissuance.
Small flow treatment facility	\$250 for new; \$250 for reissuance
Minor facility < 50,000 GPD	\$500 for new; \$250 for reissuance
Minor facility ≥ 50,000 GPD < 1 MGD ...	\$1,000 for new; \$500 for reissuance
Minor facility with CSO	\$1,500 for new; \$750 for reissuance
Major facility ≥ 1 MGD < 5 MGD	\$2,500 for new; \$1,250 for reissuance
Major facility ≥ 5 MGD	\$5,000 for new; \$2,500 for reissuance
Major facility with CSO	\$10,000 for new; \$5,000 for reissuance

(c) Applications fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	\$1,000 for new; \$500 for reissuance
Minor facility covered by an ELG	\$3,000 for new; \$1,500 for reissuance
Major facility < 250 MGD	\$10,000 for new; \$5,000 for reissuance
Major facility ≥ 250 MGD	\$50,000 for new; \$25,000 for reissuance
Stormwater	\$2,000 for new; \$1,000 for reissuance

(d) Application fees for individual NPDES permits for other facilities or activities are:

CAFO	\$1,500 for new; \$750 for reissuance
CAAP	\$1,500 for new; \$750 for reissuance
MS4.....	\$5,000 for new; \$2,500 for reissuance
Mining activity.....	\$1,000 for new; \$500 for reissuance

(e) Application fees for transfers of individual permits are:

SRSTP	\$50
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Small flow treatment facility	\$100
Other domestic wastewater	\$200
Industrial waste	\$500

(f) Application fees for amendments to individual permits are:

Amendment initiated by Department	No charge
Minor amendment	\$200
Major amendment	Same as reissuance permit fee

(g) NOI fees for coverage under a general permit under § 92a.23 (relating to NOI for coverage under an NPDES general permit) will be established in the general permit, and may not exceed \$2500. An eligible person shall submit to the Department the applicable NOI fee before the Department approves coverage under the general permit for that person.

(h) The Department will review the adequacy of the fees established in this section at least once every three years and provide a written report to the Environmental Quality Board. The report shall identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it shall contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

§ 92a.29. Sewage discharges. (92.21a)

(a) The following additional application requirements apply to new and existing sewage dischargers (including POTWs and privately owned treatment works), as applicable except where aquatic communities are essentially excluded as documented by water quality data confirming the absence of the communities and confirming the lack of a trend of water quality improvement in the waterbody, and provided that the Department has determined that the primary cause of the exclusion is unrelated to any permitted discharge:

(1) The following sewage dischargers shall provide the results of whole effluent toxicity testing to the Department:

- (i) Sewage dischargers with design influent flows equal to or greater than 1.0 million gallons per day.
- (ii) Sewage dischargers with approved pretreatment programs or who are required to develop a pretreatment program.

(2) In addition to the sewage dischargers in paragraph (1), the Department may require other sewage dischargers to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

- (i) The variability of the pollutants or pollutant parameters in the sewage effluent (based on chemical-specific information, the type of treatment facility and types of industrial contributors).
- (ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).

(iii) Existing controls on point or nonpoint sources, including calculations of total maximum daily loads (TMDLs) for the waterbody segment, and the relative contribution of the sewage discharger.

(iv) Receiving surface water characteristics, including possible or known water quality impairment, and whether the sewage discharges to an estuary, one of the Great Lakes or a surface water that is classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards).

(v) Other considerations including, but not limited to, the history of toxic impact and compliance problems at the sewage discharge facility, which the Department determines could cause or contribute to adverse water quality impacts.

(3) For sewage dischargers required under paragraph (1) or (2) to conduct toxicity testing, the EPA's methods or other protocols approved by the Department, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity and approved by the Department, shall be used. The testing shall have been performed since the last NPDES permit reissuance, or when requested by the Department, whichever occurred later.

(b) CSO dischargers shall submit the following information:

(1) The results of an evaluation determining the frequency, extent and cause of the CSO discharge, including identifying the points of inflow into combined systems.

(2) An evaluation of the water quality impacts of the CSO discharge on receiving waters.

(3) A description of the nine minimum controls (NMCs) described in the EPA publication entitled "Combined Sewer Overflows—Guidance for Nine Minimum Controls" (EPA publication number 832-B-95-003 (September 1995) as amended or updated) used at the facility to minimize or eliminate the CSO discharge impact on receiving water quality.

(4) A long-term control plan (LTCP) to minimize or eliminate the CSO discharge with an implementation schedule.

(5) An update on the progress made with the implementation of the LTCP and future activities with schedules to comply with water quality standards.

§ 92a.30. Industrial waste discharges. (92.21a)

(a) *Existing industrial discharges.* Dischargers of industrial waste from sources other than new sources or new discharges subject to subsection (b), nonprocess wastewater discharges subject to subsection (c), and stormwater discharges associated with industrial activity subject to § 92a.34 (relating to stormwater discharges), shall submit the applicable information required to be submitted under 40 CFR 122.21(g)(1)—(7) and (g)(9)—(13) (relating to application for a permit).

(b) *New sources and new discharges.* Except for new discharges of industrial facilities that discharge nonprocess wastewater subject to subsection (c) and new discharges of stormwater associated with industrial activity subject to § 92a.34, new discharges and new sources applying for NPDES permits shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(k).

(c) *Nonprocess industrial waste discharges.* Except for stormwater discharges associated with industrial activity subject to § 92a.34, industrial waste dischargers applying for NPDES permits that discharge only nonprocess wastewater not regulated by an effluent limitation guideline or new source performance standard shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(h).

§ 92a.31. CAFO. (92.5a)

(a) Except as provided in subsections (b) – (d), each CAFO shall have applied for an NPDES permit on the following schedule, and shall have obtained a permit:

- (1) By May 18, 2001, for any CAFO in existence on November 18, 2000, with greater than 1,000 AEUs.
- (2) By February 28, 2002, for any other CAFO in existence on November 18, 2000.
- (3) Prior to beginning operation, for any new or expanded CAFO that began operation after November 18, 2000, and before October 22, 2005.

(b) A poultry operation that is a CAFO, which is in existence on October 22, 2005, and that is not using liquid manure handling systems, shall apply for an NPDES permit no later than the following, and shall obtain a permit:

- (1) By April 24, 2006, for operations with 500 or more AEUs.
- (2) By January 22, 2007, for all other operations.

(c) After October 22, 2005, a new operation, and an existing operation that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:

- (1) Apply for an NPDES permit at least 180 days before the operation commences or changes.
- (2) Obtain an NPDES permit prior to commencing operations or making changes, as applicable.

(d) Other operations not described in subsections (a) – (c) that will become newly regulated as a CAFO for the first time due to the changes in the definition of a CAFO in § 92a.2 (relating to definitions) shall apply for a permit by April 24, 2006, and obtain a permit.

(e) The NPDES permit application requirements shall include, but not be limited to, the following:

- (1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) and approved by the county conservation district or the State Conservation Commission. The plan must include:
 - (i) Manure application setbacks for the CAFO of at least 100 feet, or vegetated buffers at least 35 feet in width.
 - (ii) A statement that manure that is stockpiled for 15 consecutive days or longer shall be under cover or otherwise stored to prevent discharge to surface water during a storm event

up to and including the appropriate design storm for that type of operation pursuant to § 91.36(a)(1) and (5) (relating to pollution control and prevention at agricultural operations).

- (2) An erosion and sediment control plan meeting the requirements of Chapter 102 (relating to erosion and sediment control).
- (3) When required under § 91.36(a), a water quality management permit, permit application, approval or engineer's certification, as required.
- (4) A preparedness, prevention and contingency plan for pollutants related to the CAFO operation.
- (5) A water quality management permit application as required by this chapter and Chapter 91 (relating to general provisions), when treatment facilities that would include a treated wastewater discharge are proposed.
- (6) Measures to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies. These measures may be included in the nutrient management plan.

§ 92a.32. CAAP.

The provisions of 40 CFR 122.24 (relating to concentrated aquatic animal production facilities) are incorporated by reference.

§ 92a.33. Aquaculture projects.

The provisions of 40 CFR 122.25 (relating to aquaculture projects) and 125.10 and 125.11 (relating to criteria for issuance of permits to aquaculture projects) are incorporated by reference.

§ 92a.34. Stormwater discharges. (92.21a)

(a) The provisions of 40 CFR 122.26(a)-(b), (c)(1), (d), (e)(1), (3) –(9) and (f) –(g) (relating to stormwater discharges) and 122.30—122.37 are incorporated by reference.

(b) *No exposure stormwater discharges.* Discharges composed entirely of stormwater are not stormwater discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to stormwater and the discharger satisfies the conditions in 40 CFR 122.26(g). A facility or activity with no stormwater discharges associated with industrial activity may qualify for a conditional exclusion from a permit, provided that the facility or activity does not discharge to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards). To qualify for the conditional exclusion from a permit, the responsible person shall complete, sign and submit to the Department a “No Exposure Certification” at least once every 5 years in lieu of a permit application.

(c) *Municipal separate storm sewer systems.* The operator of a discharge from a large, medium, or small municipal separate storm sewer shall submit in its application the information required to be submitted under 40 CFR Part 122 (relating to EPA administered programs: the National Pollutant Discharge Elimination System). Permits for discharges from municipal separate storm sewer systems are not eligible for a “no exposure” conditional exclusion from a permit under subsection (b).

(d) *Stormwater discharges associated with construction activity.* Applicants for individual NPDES permits for the discharge of stormwater associated with construction activity shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(g)(7) (relating to application for a permit) and 122.26(c)(1). In addition, stormwater dischargers shall submit information required in Chapter 102 (relating to erosion and sediment control) as appropriate. Permits for stormwater discharges associated with construction activity are not eligible for a “no exposure” conditional exclusion from a permit under subsection (b).

§ 92a.35. Silviculture activities.

The provisions of 40 CFR 122.27 (relating to silvicultural activities) are incorporated by reference.

§ 92a.36. Cooling water intake structures.

(a) The provisions of 40 CFR 125.80—125.89 (relating to requirements applicable to cooling water intake structures for new facilities under section 316(b) of the Federal Act) are incorporated by reference.

(b) The location, design, construction, and capacity of cooling water intake structures, in connection with a point source, must reflect the BTA for minimizing adverse environmental impacts in accordance with the State Act and section 316(b) of the Federal Act.

(c) The Department will determine if a facility with a cooling water intake structure reflects the BTA for minimizing adverse environmental impacts based on a site-specific evaluation.

§ 92a.37. New sources and new discharges.

The provisions of 40 CFR 122.29 (relating to new sources and new dischargers) are incorporated by reference.

§ 92a.38. Department action on NPDES permit applications.

(a) The Department will not issue an NPDES permit unless the application is complete and the documentation submitted meets the requirements of this chapter. The applicant, through the application and its supporting documentation, shall demonstrate that the application is consistent with:

- (1) Plans approved by the Department under the Pennsylvania Sewage Facilities Act (35 P.S. § § 750.1— 750.20), wastewater facility capabilities, service areas, selected alternatives and any adverse effects on the environment of reasonably foreseeable future development within the area of the project resulting from construction of the wastewater facility.
- (2) Other applicable statutes and regulations administered by the Commonwealth, federal environmental statutes and regulations, and if applicable, river basin commission requirements created by interstate compact.

- (3) Standards established for the wastewater facilities through permits to implement the requirements of 40 CFR Parts 122, 123, 124 and the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C.A. § § 1251 et seq.).
- (b) The Department will consider Local and County Comprehensive Plans and zoning ordinances developed pursuant to the Pennsylvania Municipalities Planning Code (53 P.S. § 10101 et seq.) when evaluating NPDES permit applications, provided that such plans are not preempted by State law. The Department may use the plans and ordinances as a basis to support actions on applications, including determining appropriate permit conditions and limitations, and whether or not to issue an NPDES permit.

Subchapter C. PERMITS AND PERMIT CONDITIONS

Sec.

- 92a.41. Conditions applicable to all permits.
- 92a.42. Additional conditions applicable to specific categories of NPDES permits.
- 92a.43. Establishing permit conditions.
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- 92a.54. General permits.
- 92a.55. [Reserved].
- 92a.56. Disposal of pollutants into wells, into POTW or by land application.

§ 92a.41. Conditions applicable to all permits. (92.51)

(a) Unless indicated otherwise in this section, all NPDES permits must include the permit conditions specified in 40 CFR 122.41 (a) – (m) (relating to conditions applicable to all permits).

- (1) Duty to comply.
- (2) Duty to reapply.
- (3) Need to halt or reduce activity not a defense.
- (4) Duty to mitigate.
- (5) Proper operation and maintenance.
- (6) Permit actions.
- (7) Property rights.

- (8) Duty to provide information.
- (9) Inspection and entry.
- (10) Monitoring and records.
- (11) Signature requirements.
- (12) Reporting requirements.
- (13) Bypass.

(b) The immediate notification requirements of § 91.33 (relating to incidents causing or threatening pollution) supersede the reporting requirements of 40 CFR 122.41 (l)(6).

(c) The discharger may not discharge floating materials, oil, grease, scum, sheen and substances that produce color, taste, odors, turbidity or settle to form deposits.

§ 92a.42. Additional conditions applicable to specific categories of NPDES permits.

The provisions of 40 CFR 122.42 (relating to additional conditions applicable to specific categories of NPDES permits) are incorporated by reference.

§ 92a.43. Establishing permit conditions.

The provisions of 40 CFR 122.43 (relating to establishing permit conditions) are incorporated by reference.

§ 92a.44. Establishing limitations, standards, and other permit conditions.

The provisions of 40 CFR 122.44 (relating to establishing limitations, standards, and other permit conditions) are incorporated by reference.

§ 92a.45. Calculating NPDES permit conditions.

The provisions of 40 CFR 122.45 (relating to calculating NPDES permit conditions) are incorporated by reference.

§ 92a.46. Site-specific permit conditions. (92.52a)

The Department may establish and include in an NPDES permit, any permit condition, as needed on a case-by-case basis, to assure protection of surface waters. These conditions may include a requirement to identify and implement the following:

- (1) BMPs reasonably necessary to achieve effluent limitations or standards or to carry out the purpose and intent of the Federal Act.
- (2) Toxic reduction activities, effluent limitations based on WETT, and other measures that eliminate, or substantially reduce releases of pollutants at their source.

§ 92a.47. Sewage permit. (92.2c)

(a) Sewage, except that discharged from a CSO that is in compliance with subsection (d), shall be given a minimum of secondary treatment. Secondary treatment for sewage is that treatment that includes significant biological treatment and accomplishes the following:

- (1) Monthly average discharge limitation for BOD₅ and TSS may not exceed 30 milligrams per liter. If CBOD₅ is specified instead of BOD₅ the limitation may not exceed 25 milligrams per liter.
- (2) Weekly average discharge limitation for BOD₅ and TSS may not exceed 45 milligrams per liter. If CBOD₅ is specified instead of BOD₅ the limitation may not exceed 40 milligrams per liter.
- (3) On a concentration basis, the monthly average percent removal of BOD₅ or CBOD₅, and TSS, must be at least 85 % for POTW facilities.
- (4) From May through September, a monthly average discharge limitation for fecal coliform of 200/100 mL as a geometric mean and an instantaneous maximum effluent limitation not greater than 1,000/100 mL
- (5) From October through April, a monthly average discharge limitation for fecal coliform of 2000/100 mL as a geometric mean and an instantaneous maximum effluent limitation not greater than 10,000/100 mL.
- (6) Provision for the disposal or beneficial use of sludge in accordance with applicable Department regulations.
- (7) Compliance with § 95.2(1)-(3) (relating to quality standards and oil-bearing wastewaters).
- (8) Compliance with § 92a.48 (b) (relating to industrial waste permit) if chlorine is used.

(b) Sewage, except that discharged from a CSO that is in compliance with subsection (d), or that discharged from a small flow treatment facility, shall be given a minimum of tertiary treatment if either of the following apply:

- (1) The discharge from a new source, new discharger, or expanding facility or activity is to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards), or to a surface water or location for which the first intersected perennial stream is classified as a High Quality Water or an Exceptional Value Water.
- (2) The discharge from a facility or activity affects surface waters of the Commonwealth not achieving water quality standards, with the impairment attributed at least partially to point source discharges of treated sewage.

(c) Tertiary treatment for sewage is that treatment that meets all of the requirements of secondary treatment, and also accomplishes the following:

- (1) Monthly average discharge limitation for CBOD₅ and TSS may not exceed 10 milligrams per liter.
- (2) Monthly average discharge limitation for total nitrogen may not exceed 8 milligrams per liter.

- (3) Monthly average discharge limitation for ammonia nitrogen may not exceed 3 milligrams per liter.
- (4) Monthly average discharge limitation for total phosphorus may not exceed 1 milligram per liter.
- (5) Dissolved oxygen must be 6 milligrams per liter or greater at all times.
- (6) Seasonal modifiers may not be applied for tertiary treatment.
- (d) Dischargers of sewage from a CSO shall implement, as approved by the Department, nine minimum controls (NMCs) and a long-term control plan (LTCP) to minimize or eliminate the CSO discharge impact on the water quality of the receiving surface water.
- (e) Discharges from an SSO are prohibited.
- (f) When pollutants contributed by indirect dischargers result in interference or pass through, and a violation is likely to recur, a permittee shall develop and implement specific local limits for indirect dischargers and other users, as appropriate, that together with appropriate sewerage facility or operational changes, are necessary to ensure renewed or continued compliance with the plant's NPDES permit or sludge use or disposal practices.
- (g) POTWs that serve indirect dischargers shall give notice to the Department in accordance with 40 CFR 122.42(b) (relating to additional conditions applicable to specific categories of NPDES permits).

§ 92a.48. Industrial waste permit. (92.2d)

- (a) Industrial waste regulated by this chapter shall meet the following requirements:
 - (1) EPA-promulgated effluent limitation guidelines established under section 304(b) of the Federal Act (33 U.S.C.A. § 1314(b)).
 - (2) Compliance with § 95.2 (relating to quality standards and oil-bearing wastewater standards).
 - (3) For those industrial categories for which no effluent limitations have been established under paragraph (1), Department-developed technology-based limitations established in accordance with 40 CFR 125.3 (relating to technology-based treatment requirements in permits).
 - (4) For facilities discharging conventional pollutants in industrial waste, the monthly average discharge limitation for BOD₅ and TSS may not exceed 60 milligrams per liter. If CBOD₅ is specified instead of BOD₅, the limitation may not exceed 50 milligrams per liter. More stringent limits may apply based on the requirements of § 92a.12 (relating to treatment requirements).
- (b) For facilities or activities using chlorination, the following apply:
 - (1) If the EPA adopts a National categorical ELG promulgating limits for Total Residual Chlorine (TRC) or free available chlorine for a specific industry or activity under section 301 or 304(b) of the Federal Act (33 U.S.C.A. § 1311 or § 1314), that ELG constitutes BAT for the industry or activity. If the EPA has not promulgated a National ELG for TRC or free available chlorine for an industry or activity, the Department may develop a facility-specific BAT

effluent limitation for TRC. Factors, which will be considered in developing a facility-specific BAT effluent limitation, include the following:

- (i) The age of equipment and facilities involved.
 - (ii) The engineering aspects of the application of various types of control techniques and alternatives to the use of chlorine or reductions in the volume of chlorine used during the disinfection process.
 - (iii) The cost of achieving the effluent reduction.
 - (iv) Nonwater quality environmental impacts (including energy requirements).
 - (v) Other factors the Department deems appropriate.
- (2) For facilities where the EPA has not promulgated a National ELG setting forth limits for TRC or free available chlorine for an industry or activity, and the Department has not developed a facility-specific BAT effluent limitation for TRC under the factors in paragraph (1), an effluent limitation for TRC of 0.5 milligrams per liter (30-day average) constitutes BAT.
- (3) Facilities using chlorination that discharge to an Exceptional Value Water, or to a High Quality Water where economic or social justification under § 93.4c(b)(1)(iii) (relating to implementation of antidegradation requirements) has not been demonstrated under applicable State or Federal law or regulations, shall discontinue chlorination or dechlorinate their effluents prior to discharge into the waters.

§ 92a.49. CAFO. (92.5a)

NPDES permits for each CAFO must include, but not be limited to, conditions requiring the following:

- (1) Compliance with the Nutrient Management Plan, the Preparedness, Prevention and Contingency Plan and the Erosion and Sediment Control Plan.
- (2) A separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102 (relating to erosion and sediment control) when applicable.
- (3) Compliance with 3 Pa.C.S. § § 2301--2389 (relating to the Domestic Animal Law).
- (4) Compliance with § 91.36 (relating to pollution control and prevention at agricultural operations).
- (5) Recordkeeping and reporting requirements as described in the permit.
- (6) When applicable, effluent limitations and other conditions as required under § 92a.12 (relating to treatment requirements) to meet water quality standards, for treated wastewater discharges.
- (7) Measures necessary to prevent the discharge to surface water from storage of raw materials such as feed and supplies, which are not otherwise included in the nutrient management plan.

§ 92a.50. CAAP.

- (a) For discharges from a CAAP into a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards), the requirements of § 93.4c (relating to implementation of antidegradation requirements) are applicable.
- (b) Each discharger shall prepare and implement a BMP plan that addresses:
 - (1) Solids and excess feed management and removal.
 - (2) Proper facility operation and maintenance.
 - (3) Nonnative species loss prevention.
 - (4) Facility personnel training.
 - (5) Removal, handling and disposal/utilization of bio-residual solids (sludge).
- (c) Permittees shall report any investigational/therapeutic drugs usage as follows:
 - (1) For investigational/new drugs, the permittee shall provide the Department with an oral notification within 7 days of initiating application of the drug, and a New Drug Usage Report shall be filed monthly.
 - (2) Changes in or increases in usage rates shall be reported to the Department through both oral notification and written report on the Drug Usage Report Form, quarterly.
- (d) Products or chemicals that contain any carcinogenic ingredients are prohibited, except that limited use of those chemicals may be permitted provided that the permittee shall:
 - (1) Thoroughly investigate the use of alternative chemicals.
 - (2) Demonstrate that no suitable alternatives are available.
 - (3) Demonstrate through sampling or calculation that any carcinogen in the proposed chemical will not be detectable in the final effluent, using the most sensitive analytic method available.

§ 92a.51. Schedules of compliance. (92.55)

- (a) With respect to an existing discharge that is not in compliance with the water quality standards and effluent limitations or standards in § 92a.44 (relating to establishing limitations, standards and other permit conditions) or § 92a.12 (relating to treatment requirements), the applicant shall be required in the permit to take specific steps to remedy a violation of the standards and limitations in accordance with a legally applicable schedule of compliance, in the shortest, reasonable period of time, the period not to be inconsistent with the Federal Act. Any schedule of compliance specified in the permit shall require compliance with final enforceable effluent limitations as soon as practicable, but in no case longer than 3 years, unless the EHB or any other court of competent jurisdiction issues an order allowing a longer time for compliance.
- (b) If the period of time for compliance specified in subsection (a) exceeds 1 year, a schedule of compliance will be specified in the permit that will set forth interim requirements and the dates for their achievement. If the time necessary for completion of the interim requirement such as the construction of a treatment facility is more than 1 year and is not readily divided into stages for completion, interim dates will be specified for the submission of reports of progress towards

completion of the interim requirement. For each NPDES permit schedule of compliance, interim dates and the final date for compliance must, to the extent practicable, fall on the last day of the months of March, June, September and December.

(c) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the Department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

§ 92a.52. Variances.

Any new or amended Federal regulation enacted after November 18, 2000, which creates a variance to existing NPDES permitting requirements is not incorporated by reference.

§ 92a.53. Documentation of permit conditions. (92.59)

The Department will prepare a fact sheet on the derivation of the effluent limitations or other conditions and the reasons for the conditions of the draft or final permit, or both. The fact sheet will include:

- (1) A brief description of the type of facility or activity being permitted.
- (2) The type and quantity of wastewater or pollutants evaluated in the permit.
- (3) Documentation that the applicable effluent limitations and standards including a citation of same are considered in development of the draft permit.
- (4) Documentation that applicable water quality standards will not be violated.
- (5) A brief summary of the basis for the draft permit limitations and conditions including references to applicable statutory or regulatory provisions.

§ 92a.54. General permits. (92.81, 92.83)

(a) *Coverage and purpose.* The Department may issue a general permit, in lieu of issuing individual permits, for a clearly and specifically described category of point source discharges, if the point sources meet the following conditions:

- (1) Involve the same, or substantially similar, types of operations.
- (2) Discharge the same types of wastes.
- (3) Require the same effluent limitations or operating conditions, or both.
- (4) Require the same or similar monitoring.
- (5) Do not discharge toxic or hazardous pollutants as defined in sections 307 and 311 of the Federal Act (33 U.S.C.A. § § 1317 and 1321) or any other substance that—because of its quantity; concentration; or physical, chemical or infectious characteristics—may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substantial present or future hazard to human health or the environment when discharged into surface waters.

- (6) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.
 - (7) Individually and cumulatively do not have the potential to cause significant adverse environmental impact.
 - (8) Do not discharge to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards).
- (b) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this chapter. Issuance of a general permit does not exempt a person from compliance with this title. General permits have a fixed term not to exceed 5 years.
- (c) *Department specification.* The Department may specify in the general permit that an eligible person who has submitted a timely and complete NOI is authorized to discharge in accordance with the terms of the permit under one of the following:
- (1) After a waiting period following receipt of the NOI by the Department as specified in the general permit.
 - (2) Upon receipt of notification of approval of coverage under a general permit from the Department.
- (d) *Department notification.* The Department will, as applicable, notify a discharger that it is or is not covered by a general permit. A discharger so notified may request an individual permit.
- (e) *Denial of coverage.* The Department will deny coverage under a general permit when one or more of the following conditions exist:
- (1) The discharge, individually or in combination with other similar discharges, is or has the potential to be a contributor of pollution, as defined in the State Act, which is more appropriately controlled under an individual permit.
 - (2) The discharger is not, or will not be, in compliance with any one or more of the conditions of the general permit.
 - (3) The applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by the Department.
 - (4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.
 - (5) Categorical point source effluent limitations are promulgated by the EPA for those point sources covered by the general permit.
 - (6) The discharge is not, or will not, result in compliance with an applicable effluent limitation or water quality standard.
 - (7) Other point sources at the facility require issuance of an individual permit, and issuance of both an individual and a general permit for the facility would constitute an undue administrative burden on the Department.
 - (8) The Department determines that the action is necessary for any other reason to ensure compliance with the Federal Act, the State Act or this title.

(9) The discharge would be to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93.

(f) *Requiring an individual permit.* The Department may revoke or terminate coverage under a general permit, and require the point source discharger to apply for and obtain an individual permit for any of the reasons in subsection (e). An interested person may petition the Department to take action under this subsection. Upon notification by the Department under this subsection that an individual permit is required for a point source, the discharger shall submit a complete NPDES application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid individual permit. Failure to submit the application within 90 days will result in automatic termination of coverage of the applicable point sources under the general permit. Timely submission of a complete application will result in continuation of coverage of the applicable point sources under the general permit, until the Department takes final action on the pending individual permit application.

(g) *Action of the Department.* Action of the Department denying coverage under a general permit under subsection (e), or requiring an individual permit under subsection (f), is not a final action of the Department until the discharger submits and the Department takes final action on an individual permit application.

(h) *Termination of general permit.* When an individual permit is issued for a point source that is covered under a general permit, the applicability of the general permit to that point source is automatically terminated on the effective date of the individual permit.

(i) *Coverage under general permit.* A point source excluded from a general permit solely because it already has an individual permit may submit an NOI under § 92a.23 (relating to NOI for coverage under an NPDES general permit). If the NOI is acceptable, the Department will revoke the individual permit and notify the source that it is covered under the general permit.

§ 92a.55. [Reserved].

§ 92a.56. Disposal of pollutants into wells, into POTW or by land application.

The provisions of 40 CFR 122.50 (relating to disposal of pollutants into wells, into publicly owned treatment works or by land application) are incorporated by reference.

Subchapter D. MONITORING AND ANNUAL FEES

Sec.

92a.61. Monitoring.

92a.62. Annual fees.

§ 92a.61. Monitoring. (92.41)

- (a) The provisions of 40 CFR 122.48 (relating to requirements for recording and reporting of monitoring results) are incorporated by reference.
- (b) The Department may impose reasonable monitoring requirements on any discharge, including monitoring of the intake and discharge flow of a facility or activity, other operational parameters that may affect effluent quality, and of surface waters adjacent to or associated with the intake or discharge flow of a facility or activity. The Department may require submission of data related to such monitoring.
- (c) Each person who discharges pollutants may be required to monitor and report all toxic, conventional, nonconventional and other pollutants in its discharge, at least once a year, and on a more frequent basis if required by a permit condition. The monitoring requirements will be specified in the permit.
- (d) Except for stormwater discharges subject to the requirements of subsection (h), a discharge authorized by an NPDES permit that is not a minor discharge or contains toxic pollutants for which an effluent standard has been established by the Administrator under section 307(a) of the Federal Act (33 U.S.C.A. § 1317(a)) shall be monitored by the permittee for at least the following:
- (1) Flow (in gallons per day or million gallons per day).
 - (2) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) that are subject to abatement under the terms and conditions of the permit.
 - (3) Pollutants that the Department finds, on the basis of information available to it, could have an impact on the quality of this Commonwealth's waters or the quality of waters in other states.
 - (4) Pollutants specified by the Administrator in regulations issued under the Federal Act as subject to monitoring.
 - (5) Pollutants in addition to those in paragraphs (2)—(4) that the Administrator requests in writing to be monitored.
- (e) Each effluent flow or pollutant required to be monitored under subsections (c) and (d) shall be monitored at intervals sufficiently frequent to yield data that reasonably characterize the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels that may be monitored at less frequent intervals.
- (f) The permittee shall maintain records of the information resulting from any monitoring activities required of it in its NPDES permit as follows:
- (1) Records of monitoring activities and results shall include for all samples:
 - (i) The date, exact place and time of sampling.
 - (ii) The dates analyses were performed.
 - (iii) Who performed the analyses.
 - (iv) The analytical techniques/methods used.
 - (v) The results of the analyses.

- (2) The permittee shall also be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This period of retention may be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Department or Administrator.
- (g) The permittee shall periodically report, at a frequency of at least once per year, using a format or process established by the Department, results obtained by a permittee pursuant to monitoring requirements. In addition to these results, the Department may require submission of other information regarding monitoring results it determines to be necessary.
- (h) Requirements to report monitoring results from stormwater discharges associated with industrial activity, except those subject to an effluent limitation guideline or an NPDES general permit, will be established in a case-by-case basis with a frequency dependent on the nature and effect of the discharge.
- (i) The monitoring requirements under this section must be consistent with any National monitoring, recording and reporting requirements specified by the Administrator in regulations issued under the Federal Act.
- (j) The Department may require that the permittee perform additional sampling for limited periods for the purpose of TMDL development, or for other reasons that the Department determines are appropriate.

§ 92a.62. Annual fees.

- (a) Permittees shall pay an annual fee to the Commonwealth. The annual fee must be for the amount indicated in the following schedule and is due on each anniversary of the effective date of the permit. All flows listed in this section are design flows.
- (b) Annual fees for individual NPDES permits for discharges of domestic sewage are:

SRSTP	\$0
Small flow treatment facility	\$0
Minor facility < 50,000 GPD	\$250
Minor facility ≥ 50,000 GPD < 1 MGD	\$500
Minor facility with CSO	\$750
Major facility ≥ 1 MGD <5 MGD	\$1,250
Major facility ≥ 5 MGD	\$2,500
Major facility with CSO	\$5,000
- (c) Annual fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	\$500
Minor facility covered by an ELG	\$1,500
Major facility < 250 MGD	\$5,000
Major facility ≥ 250 MGD	\$25,000
Stormwater	\$1,000
- (d) Annual fees for individual NPDES permits for other facilities or activities are:

CAFO	\$0
CAAP	\$0

MS4	\$500
Mining activity	\$0

(e) The Department will review the adequacy of the fees established in this section at least once every three years and provide a written report to the Environmental Quality Board. The report shall identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it shall contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

Subchapter E. TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, TERMINATION OF PERMITS, REISSUANCE OF EXPIRING PERMITS AND CESSATION OF DISCHARGE

Sec.

- 92a.71. Transfer of permits.
- 92a.72. Modification or revocation and reissuance of permits.
- 92a.73. Minor modification of permits.
- 92a.74. Termination of permits.
- 92a.75. Reissuance of expiring permits.
- 92a.76. Cessation of discharge.

§ 92a.71. Transfer of permits. (92.71a)

- (a) The provisions of 40 CFR 122.61 (relating to transfer of permits) are incorporated by reference.
- (b) A new permittee shall be in compliance with existing Department issued permits, regulations, orders and schedules of compliance, or demonstrate that any noncompliance with the existing permits has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit), consistent with § 92a.51 (relating to schedules of compliance) and other appropriate Department regulations.

§ 92a.72. Modification or revocation and reissuance of permits. (92.13a)

The provisions of 40 CFR 122.62 (relating to modification or revocation and reissuance of permits) are incorporated by reference.

§ 92a.73. Minor modification of permits.

The provisions of 40 CFR 122.63 (relating to minor modification of permits) are incorporated by reference.

§ 92a.74. Termination of permits.

The provisions of 40 CFR 122.64 (relating to termination of permits) are incorporated by reference.

§ 92a.75. Reissuance of expiring permits. (92.13)

(a) A permittee who wishes to continue to discharge after the expiration date of its NPDES permit shall submit an application for reissuance of the permit at least 180 days prior to the expiration of the permit unless permission has been granted for a later date by the Department. The application fees specified in § 92a.28 (relating to application fees) apply.

(b) Upon completing review of the application, the Department may administratively extend a permit for a minor facility for a maximum of 5 years if, based on up-to-date information on the permittee's waste treatment practices and the nature, contents and frequency of the permittee's discharge, the Department determines that:

(1) The permittee is in compliance with existing Department-issued permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action.

(2) No changes in Department regulations have occurred since the permit was issued or reissued that would affect the effluent limitations or other terms and conditions of the existing permit.

(c) Alternatively, the Department may reissue a permit if, based on up-to-date information on the permittee's waste treatment practices and the nature, contents and frequency of the permittee's discharge, the Department determines that:

(1) The permittee is in compliance with all existing Department-issued permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action.

(2) The discharge is, or will be under a compliance schedule issued under § 92a.51 (relating to schedules of compliance) and other applicable regulations, consistent with the applicable water quality standards, effluent limitations or standards and other legally applicable requirements established under this title, including revisions or modifications of the standards, limitations and requirements that may have occurred during the term of the existing permit.

§ 92a.76. Cessation of discharge. (92.72a)

If a permittee intends to cease operations or cease a discharge for which a permit has been issued under this chapter, the permittee shall notify the Department in writing of its intent at least 90 days prior to the cessation of operations or the cessation of the discharge, unless permission has been granted for a later date by the Department. The 90-day notice is not required to cease mining activities and related discharges that are terminated in accordance with procedures for mine reclamation and bond release established in 25 Pa. Code § § 86.170-86.175 (relating to release of bonds) or 25 Pa. Code § § 77.241-77.243 (relating to release of bonds).

Subchapter F. PUBLIC PARTICIPATION

Sec.

- 92a.81. Public access to information.
- 92a.82. Public notice of permit application and draft permits.
- 92a.83. Public notice of public hearing.
- 92a.84. Public notice of general permits.
- 92a.85. [Reserved]
- 92a.86. Notice to other government agencies.
- 92a.87. Notice of issuance or final action on a permit.
- 92a.88. Notice of reissuance of permits.
- 92a.89. Notice of appeal.

§ 92a.81. Public access to information. (92.63)

- (a) NPDES forms and public comments will be available to the public for inspection and copying.
- (b) Information relating to NPDES permits, not determined to be confidential under the provisions of § 92a.8, may be inspected at the Department office processing the information. Copying facilities and services will be available for a reasonable fee, or other arrangements for copying may be made with the Department office.

§ 92a.82. Public notice of permit applications and draft permits. (92.61)

- (a) Public notice of every complete application for an NPDES permit will be published in the *Pennsylvania Bulletin*. The contents of public notice of applications for NPDES permits will include at least the following:
 - (1) The name and address, including county and municipality, of each applicant.
 - (2) The permit number and type of permit applied for.
 - (3) The stream name of the waterway to which each discharge is proposed.
 - (4) The address of the State or interstate agency premises at which interested persons may obtain further information, request a copy of the NPDES forms and related documents.
- (b) A public notice of every new draft individual permit, or major amendment to an individual permit, will be published in the *Pennsylvania Bulletin*. This public notice will also be posted by the applicant near the entrance to the premises of the applicant, and at the facility or location where the discharge exists, if the facility or location is remote from the premises of the applicant. The contents of public notice for draft NPDES permits will include at least the following in addition to those specified in subsection (a):
 - (1) A brief description of each applicant's activities or operations that result in the discharge described in the application.
 - (2) The name and existing use protection classification of the receiving surface water under § 93.3 (relating to protected water uses) to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether the discharge is a new or an existing discharge.

- (3) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the application. If there is a tentative determination to issue a permit, the determination will include proposed effluent limitations for those effluents proposed to be limited, a proposed schedule of compliance including interim dates and requirements for meeting the proposed effluent limitations and a brief description of any proposed special conditions that will have a significant impact upon the discharge described in the application.
 - (4) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day.
 - (5) A brief description of the procedures for making final determinations, including the 30-day comment period required by subsection (d) and any other means by which interested persons may influence or comment upon those determinations.
- (c) The provisions of 40 CFR 124.57(a) (relating to public notice) must be followed when there is a Section 316(a) request for a thermal discharge.
- (d) There will be a 30-day period following publication of notice under subsection (b) during which written comments may be submitted by interested persons before the Department makes its final determinations. Written comments submitted during the 30-day comment period will be retained by the Department and considered in making the final determinations. The period for comment may be extended at the discretion of the Department for one additional 15-day period. The Department will provide an opportunity for the applicant, any affected State, any affected interstate agency, the Administrator or any interested agency, person or group of persons to request or petition for a public hearing with respect to the application. The request or petition for public hearing filed within the 30-day period allowed for filing of written comments shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. A hearing will be held if there is a significant public interest, including the filing of requests or petitions for the hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection will be held in the geographical area of the proposed discharge or other appropriate area and may, as appropriate, consider related groups of permit applications.
- (e) The Department will prepare and send to any person, upon request, following public notice of draft permit, a fact sheet with respect to the draft permit described in the public notice. The contents of the fact sheet will include at least the information contained in § 92a.53 (documentation of permit conditions).

§ 92a.83. Public notice of public hearing. (92.61)

Notice of a public hearing will be published in the *Pennsylvania Bulletin*, and in at least one newspaper of general circulation within the geographical area of the discharge and will be sent to all persons or government agencies that received a copy of the fact sheet for the draft permit. All of the notices of a public hearing will be published at least 30 days before the hearing. Notice of a public hearing will include at least the following:

- (1) The name, address and phone number of agency holding the public hearing.
- (2) The name and address of each applicant whose application will be considered at the hearing.

- (3) The name of the waterway to which each discharge is proposed and a short description of the location of each discharge on the waterway.
- (4) A brief reference to the public notice published in the *Pennsylvania Bulletin* for each application, including identification number and date of issuance.
- (5) Information regarding the time and location for the hearing.
- (6) The purpose of the hearing.
- (7) A concise statement of the issues raised by the persons requesting the hearing.
- (8) The address and phone number of the premises at which interested persons may obtain further information, request a copy of each fact sheet prepared under 92a.53 (relating to documentation of permit conditions), and inspect and copy NPDES forms and related documents.
- (9) A brief description of the nature of the hearing, including the rules and procedures to be followed.

§ 92a.84. Public notice of general permits. (92.82)

(a) Public notice of every proposed general permit will be published in the *Pennsylvania Bulletin*. The contents of the public notice will include at least the following:

- (1) The name, address and phone number of the agency issuing the public notice.
- (2) A clear and specific description of the category of point source discharges eligible for coverage under the proposed general permit.
- (3) A brief description of the reasons for the Department's determination that the category of point source discharges is eligible for coverage under a general permit in accordance with these standards.
- (4) A brief description of the terms and conditions of the proposed general permit, including applicable effluent limitations, BMPs and special conditions.
- (5) A brief description of the procedures for making the final determinations, and other means by which interested persons may influence or comment on those determinations.
- (6) The address and phone number of the Commonwealth agency at which interested persons may obtain further information and a copy of the proposed general permit.
- (7) The NOI fee for coverage under the general permit.

(b) There will be a 30-day period following publication of notice during which written comments may be submitted by interested persons before the Department makes its final determinations. Written comments submitted during the 30-day comment period will be retained by the Department and considered in making the final determinations. The period for comment may be extended at the discretion of the Department for one additional 15-day period. The Department will provide an opportunity for any interested person or group of persons, any affected State, any affected interstate agency, the Administrator or any interested agency, to request or petition for a public hearing with respect to the proposed general permit. The request or petition for public hearing, which must be filed within the 30-day period allowed for filing of written comments, shall

indicate the interest of the party filing the request and the reasons why a hearing is warranted. A hearing will be held if there is a significant public interest, including the filing of requests or petitions for the hearing.

(c) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit. The notice of availability will indicate whether it will provide one of the following:

- (1) Notice in the *Pennsylvania Bulletin* of each NOI under an applicable general permit, and of each approval for coverage under a general permit.
- (2) Notice of every approval of coverage only.

§ 92a.85. [Reserved]

§ 92a.86. Notice to other government agencies. (92.65)

The Department will do the following:

(1) Provide a subscription to the *Pennsylvania Bulletin* for any other states whose waters may be affected by the issuance of an NPDES permit, to any interstate agency having water quality control authority over water that may be affected by the issuance of an NPDES permit, and to all Pennsylvania District Engineers of the Army Corps of Engineers.

(2) At the time of issuance of public notice under § 92a.82 (relating to public notice of permit application and draft permits), transmit to any other states, whose waters may be affected by the issuance of an NPDES permit, a copy of fact sheets prepared under § 92a.53 (relating to documentation of permit conditions). Upon request, the Department will provide the states with a copy of the application and a copy of the draft permit. Each affected state will be afforded an opportunity to submit written recommendations to the Department and the Administrator. The Department will consider these comments during preparation of the permit decision. If the Department decides not to incorporate any written recommendations thus received, it will provide a written explanation of its reasons for deciding not to accept any of the written recommendations.

(3) At the time of issuance of public notice under § 92a.82, transmit to any interstate agency having water quality control authority over waters that may be affected by the issuance of a permit a copy of fact sheets prepared under § 92a.53. Upon request, the Department will provide the interstate agency with a copy of the application and a copy of the draft permit. The interstate agency must have the same opportunity to submit recommendations and to receive explanations in paragraph (2).

§ 92a.87. Notice of issuance or final action on a permit.

Following the 30-day comment period described in § 92a.82(d) (relating to public notice of permit applications and draft permits), and any public hearing, on the permit application and draft permit, the Department will take action on the permit. Comments received during the comment period will be addressed and documented by the Department, and made available for public review. Final action will be published in the *Pennsylvania Bulletin*.

§ 92a.88. Notice of reissuance of permits. (92.67)

Notice of reissuance of permits will be accomplished as specified in §§ 92a.81, 92a.82, 92a.83, 92a.86 and 92a.87 for any draft individual permit. Notice of administrative extensions will be accomplished under § 92a.82(a) (relating to public notice of permit applications and draft permits).

§ 92a.89. Notice of appeal. (92.61)

When the determination of the Department to issue or deny an NPDES permit is appealed to the EHB, notice of the appeal, and notice of the hearing date, if any, will be published in the *Pennsylvania Bulletin*. In addition, notice of the Department's final action, arrived at either through settlement or as the result of a decision of the EHB, will be published in the *Pennsylvania Bulletin*.

Subchapter G. PERMIT COORDINATION WITH THE ADMINISTRATOR

Sec.

92a.91. NPDES forms.

92a.92. Decision on variances.

92a.93. Administrator's right to object to issuance or modification of certain permits.

92a.94. Reports of violations.

§ 92a.91. NPDES forms. (92.75)(92.78)(92.77)

The Department will transmit to the Administrator complete copies of all NPDES forms, draft and final permits and other documentation or information as agreed to by the Department and the Administrator. If the Administrator requests additional information, the Department may require the applicant to provide this additional information requested by the Administrator.

§ 92a.92. Decision on variances.

The provisions of 40 CFR 124.62(a)(3), (e)(1) and (f) (relating to decision on variances) are incorporated by reference.

§ 92a.93. Administrator's right to object to the issuance or modification of certain permits. (92.15)

The Administrator has a right to review or object to issuance of certain permits. The scope of EPA review and the procedures for its exercise are described in a Memorandum of Agreement that was incorporated in the Program Description submitted to the EPA by the Department. A copy of the Memorandum of Agreement is on file with the Department and with the Administrator of EPA Region III.

§ 92a.94. Reports of violations. (92.79)

The Department will prepare a quarterly report listing permittees who have violated final or interim requirements in their NPDES permits, stating the nature of the violation, describing any enforcement action that is proposed or has been taken, and giving a brief description, if appropriate, of any circumstances that explain the violation. A copy of the report will be forwarded on the last day of the months of February, May, August and November to the Administrator.

Subchapter H. CIVIL PENALTIES FOR VIOLATIONS OF NPDES PERMITS

Sec.

92a.101. Applicability.

92a.102. Method of seeking civil penalty.

92a.103. Procedure for civil penalty assessments.

92a.104. Disbursement of funds pending resolution of appeal.

§ 92a.101. Applicability. (92.91)

Sections 92a.102—92a.104 (relating to method of seeking civil penalty; procedure for civil penalty assessments; and disbursement of funds pending resolution of appeal) apply to civil penalty assessments by the Department under section 605(a) of the State Act (35 P. S. § 691.605(a)).

§ 92a.102. Method of seeking civil penalty. (92.92)

The Department may do either one of the following:

- (1) File a complaint for civil penalties before the EHB.
- (2) Assess a civil penalty, after hearing under § 92a.103 (relating to procedure for civil penalty assessments).

§ 92a.103. Procedure for civil penalty assessments. (92.93)

(a) The Department, if it assesses a civil penalty for a State Act violation, will serve a copy of the proposed civil penalty assessment on the alleged violator. Service will be by registered or certified mail, or by personal service. If the mail is tendered at the address in the permit, or at an address where the person is located, and delivery is refused, or mail is not collected, the requirements of this section will be deemed to have been complied with upon the tender.

(b) The person who has been served with a proposed assessment in accordance with subsection (a) has 30 days to request that the Department hold an informal hearing on the proposed assessment by serving the Department by registered or certified mail with the request. If no timely request for an informal hearing is submitted, the failure to submit a timely request will operate as a waiver of the opportunity for a hearing, and the proposed assessment will become a final

assessment of the Department upon the expiration of the 30 day period unless the Department determines to hold a hearing on the proposed assessment under the procedures in subsection (c).

(c) If a timely request for hearing on the proposed assessment is received by the Department, the Department will assign a representative to hold an informal hearing regarding the assessment. The informal hearing will not be governed by requirements for formal adjudicatory hearings. The Department will establish a hearing date and notify the person requesting the hearing in accordance with the service procedures in subsection (a) and post notice of the time and place of the hearing at the Department office where the hearing is to be held at least 5 days prior to the hearing. The person requesting the hearing has the right to attend and participate in the hearing and to be represented by counsel. The Department will consider the relevant information presented and either affirm, raise, lower or vacate the proposed assessment. The Department representative's decision will constitute the Department's final assessment.

(d) The person subject to a final assessment by the Department may contest the penalty assessment by filing a timely appeal with the EHB.

§ 92a.104. Disbursement of funds pending resolution of appeal. (92.94)

(a) If the person subject to a final assessment fails to file a timely appeal to the EHB as provided in the Environmental Hearing Board Act (35 P. S. § § 7511—7516), the penalty assessed is due and payable upon expiration of the time allowed to file an appeal. If the person fails to pay, the amount will be collected in the manner provided by section 605 of the State Act. The Department may preclude persons who fail to pay in full from obtaining or renewing any Department permits.

(b) If the final decision in the administrative and judicial review process results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the amount specified in the final decision to the Department within 30 days after the order is mailed to the person. If the person fails to pay the amount specified in the final decision, the amount will be collected in the manner provided by law. The Department may preclude persons who fail to pay in full from obtaining any new or reissued Department permits.

(c) Upon completion of the administrative and judicial review process, any funds collected under this subchapter will be deposited into the Clean Water Fund.