

EXECUTIVE SUMMARY

Chapter 92a: National Pollutant Discharge Elimination System Permitting, Monitoring, and Compliance

Summary: This proposed rulemaking deletes and reserves Title 25, Chapter 92, *National Pollutant Discharge Elimination System Permitting, Monitoring, and Compliance*, and creates a new Chapter 92a of the same name. The National Pollutant Discharge Elimination System (NPDES) is the primary means by which pollution from point sources is controlled to protect the water quality of this Commonwealth's rivers and streams, in order to achieve the requirements of the federal Clean Water Act and the Pennsylvania Clean Streams Law.

The primary goal of the proposed rulemaking is to reorganize Chapter 92 consistent with the organization of the companion federal regulation 40 CFR 122. By aligning the two regulations, it becomes clear where they are identical and where they differ. This will help both Department staff and the regulated community better understand the requirements of the program, and where additional or more stringent provisions apply in Pennsylvania. Every effort has been made to revert to the baseline federal requirements except where additional or more stringent requirements in Chapter 92 were clear, well understood, and have an appropriate basis in the Pennsylvania Clean Streams Law or other appropriate basis. This general reorganization is extensive, and it necessitated that Chapter 92 be replaced with a new chapter, Chapter 92a, to avoid confusion.

The proposed rulemaking includes a new NPDES permit fee structure that is designed to cover the cost of running the program. The existing \$500 application fee every five years would be replaced by a sliding scale of fees based primarily on the size of the point source discharge. The proposed fee structure is designed to produce \$5 million annually, which is the Commonwealth's share of the total estimated annual cost of running the program, compared to the \$750,000 that is collected per year under the existing fee structure. Also, certain treatment requirements have been added or reorganized to standardize the Department's approach to discharges of treated sewage and industrial wastewater.

This proposed rulemaking also includes new provisions designed to update the program consistent with recent changes at the federal level. Some of these provisions are needed to ensure continued federal approval of Pennsylvania's NPDES program by the U.S. Environmental Protection Agency (EPA). Approval of the final regulation by EPA is also required. These new provisions include requirements related to:

- Stormwater Phase II Final Rule requirements (MS4s and small construction activities)
- Cooling water intake structures - 316(b)
- NPDES provisions for application of pesticides

These new provisions generally do not include additional or more stringent requirements compared to federal requirements.

Purpose: The purpose of this proposed rulemaking is to protect the environment, ensure the public's health and safety, and promote the long-term sustainability of the Commonwealth's natural resources by ensuring that the water quality of our rivers and streams is protected and enhanced. The proposed Chapter 92a implements the requirements of the federal Clean Water Act and the Pennsylvania Clean Streams Law for point source discharges of treated wastewater to the rivers and streams of this Commonwealth.

Regulated Community: The regulated community impacted by this proposed rulemaking comprises all of the point source dischargers of treated wastewater and stormwater in this Commonwealth. There are about 5,000 individual permits for discharges of treated sewage and industrial wastewater, plus approximately 5,000 discharges that are permitted under general permits. In addition, there are NPDES permits covering discharges associated with stormwater discharges, construction activities, mining activities, and oil and gas extraction activities.

WRAC Advisory Committee and Agricultural Advisory Board: The Department worked with the Water Resources Advisory Committee (WRAC) to develop this proposed rulemaking. The WRAC considered the regulation at the July 2008 and October 2008 meetings and offered advice and comments. The Department incorporated the comments and prepared a comment and response document. At the October 2008 meeting, the WRAC recommended the proposed regulation for advancement to the EQB (October 2008 meeting minutes are attached). At the meeting of the Agricultural Advisory Board on June 17, 2009, the provisions related to Concentrated Animal Feeding Operations (CAFOs), and Concentrated Aquatic Animal Production (CAAP) facilities were considered. Several concerns related to fees for CAFOs were raised, and the fee structure was adjusted in response to these comments.

Public Notice: Based on the extensive internal and advisory committee input, and considering that the most substantive issues identified by the WRAC were addressed in the comment and response process, a 30-day written public comment period is recommended.