

3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

NPDES Permit and Annual Fees Chapter 92a. National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance

BACKGROUND:

Introduction

25 Pa. Code Chapter 92a establishes the policies and procedures for permitting, monitoring and compliance activities by the Department of Environmental Protection (DEP) and the regulated community in implementing duties and responsibilities of the National Pollutant Discharge Elimination System (NPDES) program under the federal Clean Water Act (Federal Act) (33 U.S.C.A. §§ 1251 – 1387) and The Clean Streams Law (State Act) (35 P.S. §§ 691.1 – 691.1001). Chapter 92a was published as final rulemaking in the *Pennsylvania Bulletin* (40 Pa.B 5767) on October 9, 2010 and replaced the prior NPDES regulations, Chapter 92.

Chapter 92a updated the fee schedule for NPDES permit applications for persons to discharge pollutants from point sources into surface waters (see 25 Pa. Code § 92a.26). In addition, Chapter 92a introduced an annual fee for certain facilities authorized to discharge pollutants by individual NPDES permits (see 25 Pa. Code § 92a.62). DEP began its Chapter 92a annual invoicing and fee collection program in December 2010.

DEP is required by 25 Pa. Code §§ 92a.26(h) and 92a.62(e) to provide a written review of the fees to the Environmental Quality Board (EQB) at least once every three years:

The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

This report has been developed by DEP's Bureau of Point and Non-Point Source Management (BPNPSM) in compliance with the regulatory directive.

Fee Related Activities and Costs

Components of the NPDES Program

BNPNSM administers the NPDES program and DEP's Clean Water Program in six regional offices implements the program. The program consists of the following five components:

- 1. NPDES Permit Application Reviews** – On an annual average basis, DEP receives approximately 2,150 NPDES applications for new permits, reissuance of existing permits, amendments to permits and permit transfers for sewage, industrial waste, industrial stormwater, municipal stormwater, pesticide and agricultural facilities and activities. The universe of such facilities in Pennsylvania with NPDES permit coverage is over 10,000, which puts DEP in the top five in the nation in terms of number of permitted facilities. NPDES permits must be reissued (renewed) every five years. NPDES applications are typically reviewed for completeness and technical adequacy by Clean Water Program technical staff. Where an application is deemed complete and technically adequate, the NPDES permit is issued. The workload also includes the development of draft permit documents for review by the regulated community, the U.S. Environmental Protection Agency (EPA), the public and other agencies; data management; public meetings and hearings; field work and site visits; and other duties ancillary to permit development.
- 2. NPDES Monitoring and Compliance** – Clean Water Program monitoring and compliance staff conduct inspections of permitted facilities to verify compliance with the permit. DEP must meet annual inspection goals established with the concurrence of EPA. The existing goal is to inspect each facility at least once every five years, with certain facilities requiring more frequent inspections. In 2012 there were approximately 4,500 inspections completed, including in-office administrative reviews and on-site field inspections.
- 3. Clean Water Program Administration** – Other staff who do not directly prepare NPDES permits or inspect facilities have roles in implementing the program; these roles include management and supervision of program activities and administration (clerical, fee processing, data management, etc.).
- 4. Central Office Management** – BNPNSM manages grants distributed by EPA for implementation of the delegated NPDES program, develops guidance and policy and provides training for the Clean Water Program and regulated community, and manages NPDES program data.
- 5. Surface Water Assessment** – BNPNSM and Clean Water Program biologists and other staff conduct chemical and biological monitoring of surface waters throughout the state and develop Total Maximum Daily Loads (TMDLs) for impaired surface waters. In addition, the program contracts with USGS for Water Quality Network (WQN) station chemical monitoring.

Fee Objective, Title and Rate

The fee schedule established in Chapter 92a was intended to cover the program costs not covered by federal funding or the state General Fund. Fund fees are deposited into the Clean Water Fund, a special restricted revenue account in the General Fund administered by DEP and for which funds are appropriated to DEP for purposes authorized in the State Act. Table 1 provides a summary of current individual NPDES permit application fees and Table 2 summarizes the annual fees for facilities covered by individual NPDES permits.

Table 1. Summary of Current NPDES Permit Application Fees in Chapter 92a.26

Type of Facility	Fee Amount
Single Residence Sewage Treatment Plant (SRSTP)	\$100 for new, \$100 for reissuance
Small Flow Treatment Facility (SFTF)	\$250 for new, \$250 for reissuance
Minor Sewage Facility < 0.05 million gallons/day (MGD)	\$500 for new, \$250 for reissuance
Minor Sewage Facility ≥ 0.05 MGD < 1 MGD	\$1,000 for new, \$500 for reissuance
Minor Sewage Facility with Combined Sewer Overflow (CSO)	\$1,500 for new, \$750 for reissuance
Major Sewage Facility ≥ 1 MGD < 5 MGD	\$2,500 for new, \$1,250 for reissuance
Major Sewage Facility ≥ 5 MGD	\$5,000 for new, \$2,500 for reissuance
Major Sewage Facility with CSO	\$10,000 for new, \$5,000 for reissuance
Minor Industrial Waste (IW) Facility Not Covered by an Effluent Limitation Guideline (ELG)	\$1,000 for new, \$500 for reissuance
Minor IW Facility Covered by an ELG	\$3,000 for new, \$1,500 for reissuance
Major IW Facility < 250 MGD	\$10,000 for new, \$5,000 for reissuance
Major IW Facility ≥ 250 MGD	\$50,000 for new, \$25,000 for reissuance
Mining Activity	\$1,000 for new, \$500 for reissuance

Type of Facility	Fee Amount
Stormwater	\$2,000 for new, \$1,000 for reissuance
Concentrated Animal Feeding Operation (CAFO)	\$1,500 for new, \$750 for reissuance
Concentrated Aquatic Animal Production (CAAP) Facility	\$1,500 for new, \$750 for reissuance
Municipal Separate Storm Sewer System (MS4)	\$5,000 for new, \$2,500 for reissuance
Type of Permit	Fee Amount
Transfers for SRSTP	\$50
Transfers for SFTF	\$100
Transfers for Other Domestic Wastewater (Sewage)	\$200
Transfers for IW	\$500
DEP-Initiated Amendments, All Facilities	\$0
Minor Amendments, All Facilities	\$200
Major Amendments, All Facilities	Same as reissuance fee
Notice of Intent (NOI) for Facilities Covered by General Permits	Not to exceed \$2,500 except as provided in Chapter 102.

Table 2. Summary of Current Annual Fees in Chapter 92a.62

Type of Facility	Fee Amount
SRSTP	\$0
SFTF	\$0
Minor Sewage Facility < 0.05 MGD	\$250
Minor Sewage Facility $\geq$ 0.05 MGD < 1 MGD	\$500
Minor Sewage Facility with CSO	\$750
Major Sewage Facility $\geq$ 1 MGD < 5 MGD	\$1,250
Major Sewage Facility $\geq$ 5 MGD	\$2,500

Type of Facility	Fee Amount
Major Sewage Facility with CSO	\$5,000
Minor IW Facility Not Covered by an ELG	\$500
Minor IW Facility Covered by an ELG	\$1,500
Major IW Facility < 250 MGD	\$5,000
Major IW Facility ≥ 250 MGD	\$25,000
Mining Activity	\$0
Stormwater	\$1,000
CAFO	\$0
CAAP Facility	\$0
MS4	\$500

FEE COLLECTION:

Table 3 provides a summary of revenues collected in the Clean Water Fund for NPDES application and annual fees during the previous two state fiscal years and projected revenues for the current and next two state fiscal years assuming no changes to the fee schedule.

Table 3. Summary of Chapter 92a Revenues from Fees

FY2010	FY2011	FY2012	FY2013	FY2014
\$2,350,449	\$3,632,255	\$4,125,558 ¹	\$3,600,000	\$3,600,000

¹ Fees were higher than usual in FY2012 because of the receipt of nearly 1,000 municipal separate storm sewer system (MS4) permit renewal applications.

PROGRAM COSTS:

Table 4 provides a summary of program expenses for the previous two state fiscal years and projected expenses for the current and next two federal fiscal years. Note: when these projections were done, the current fiscal year was FY2012.

Table 4. Summary of NPDES Program Expenses^{1,2}

	FY2010	FY2011	FY2012	FY2013	FY2014
Federal	\$5,470,751	\$7,414,253	\$7,314,430	\$6,648,800	\$6,648,800
State	\$8,639,834	\$10,101,719	\$11,399,160	\$12,471,215	\$12,853,615
Total	\$14,110,585	\$17,515,972	\$18,713,590	\$19,120,015	\$19,502,415

- 1 The budget and expenses for the EPA Section 106 Water Pollution Control, 106 Supplemental, and the 604b Water Planning Grants were used to calculate these costs. Only the Section 106 Water Pollution Control Grant has a required match. As indicated from Table 4, this grant is significantly overmatched every year. The required level of state funding for this grant for the same timeframe was \$4,963,523.
2. The federal cost for FY2013 is based on the estimated allocation for the FY2014 EPA grants. The state contribution was calculated by assuming a 2% inflation adjustment for the total program projected costs, minus the federal contribution. The same methodology was used for FY2014 and FY2015, assuming the same amount of federal money is received. This 2% inflation adjustment was applied in accordance with the Bureau of Fiscal Management's guidance.

It is noted that the figures above do not necessarily represent the full costs for administering the program. BPNPSM estimates a total of 194 people, including management, are associated with the implementation of this program at an approximate cost of \$28.1 million per year. Some of the time spent by program managers in general program oversight were not included in the cost estimates in Table 4, since these are not directly associated with the implementation of the Section 106 Water Pollution Control Grant or the required match.

It must be noted that DEP has undertaken several initiatives in the past three years to streamline program implementation in an effort to minimize costs and maximize the effective use of existing staff resources. These initiatives include:

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

TREND ANALYSIS:

Table 5 provides revenue/expense ratios for the previous two federal fiscal years and projected ratios for the current and next two state fiscal years. The 92a fee revenue from Table 3 is added to the federal monies DEP receives annually under the Section 106 Water Pollution Control Grant from EPA.

Table 5. Revenue/Expense Ratios for the NPDES Program

	FY2010	FY2011	FY2012	FY2013	FY2014
92a Fee Revenue	\$2,350,449	\$3,632,255	\$4,125,558	\$3,600,000	\$3,600,000
Federal Funds	\$6,504,160	\$6,905,078	\$6,648,800	\$6,648,800	\$6,648,800
Total Revenue	\$8,854,609	\$10,537,333	\$10,774,358	\$10,248,800	\$10,248,000
Expenses	\$14,110,585	\$17,515,972	\$18,713,590	\$19,120,015	\$19,502,415
Ratios	0.63	0.60	0.58	0.54	0.53

The projected revenue/expense ratios indicate that the current fee schedule established in 25 Pa. Code Chapter 92a will not cover NPDES program costs in coming federal fiscal years.