



Office of Water Management

**Final Rulemaking:  
Water Quality Management (WQM) and  
National Pollutant Discharge Elimination  
System (NPDES)  
Permit Application and Annual Fees  
25 Pa. Code Chapters 91 and 92a**

Environmental Quality Board

March 16, 2021

Tom Wolf, Governor

Patrick McDonnell, Secretary

# Background

- Rulemaking supports permitting, inspections, enforcement, monitoring and assessment of surface waters, and development of TMDLs under PA Clean Streams Law and Federal Clean Water Act
- NPDES – one fee increase in past 40 years (2010)
- WQM – fees have remained essentially the same over past 50 years

# Proposed Rule

- DEP presented the proposed Chapters 91 and 92a rulemaking to EQB on December 18, 2018. EQB voted to approve the proposed rulemaking.
- Proposed rulemaking published in the *Pennsylvania Bulletin* on March 30, 2019

# Proposed Rule

- Updated fee schedules for Chapters 91 and 92a
  - Including annual fee administrative updates
- References changed from Chapter 92 to Chapter 92a in Chapter 91
- 3-year review of WQM fees for EQB
- Clarifications for No Exposure and MS4 waivers

# Proposed Rule

- One public hearing held on May 1, 2019
- 45-day comment period ended May 14, 2019
- Comments received from 157 individuals/groups including 69 state legislators and 55 from agricultural sector

# Public Comments

- **Comment:** Several commenters stated they believe DEP lacks authority to collect fees covering activities beyond issuance of permits.
- **Response:** DEP disagrees and believes the Clean Streams Law provides authority to charge fees for applications received and permits issued.

# Public Comments

- **Comment:** The amount of the fee increases is inconsistent with the legislative directive that fees be reasonable and will impose a hardship particularly on small businesses and farmers.
- **Response:** DEP believes the fees are reasonable but understands the need for balance; DEP has reduced certain fees in response.

# Public Comments

- **Comment:** DEP does not have the statutory authority to automatically adjust fees every two years and doing so would circumvent the public participation process for fee increases.
- **Response:** DEP maintains it has statutory authority for this provision but has decided to remove it from the final-form rulemaking.



# Proposed Changes for Final Rule

- **Chapter 91**

Category	Application Type	Fee		
		Proposed Rule	Final-Form Rule	Difference
Joint Pesticides Permit	New and Reissuance	\$500	\$250	<b>-\$250</b>
	Amendment	\$100	\$100	\$0
	Transfer	\$50	\$50	\$0
Manure Storage and Wastewater Impoundment	New	\$2,500	\$1,000	<b>-\$1,500</b>
	Amendment	\$500	\$500	\$0
	Transfer	\$250	\$250	\$0

# Proposed Changes for Final Rule

- **Chapter 91**

- 2-year adjustment to fees based on inflation (the Employment Cost Index) has been removed

# Proposed Changes for Final Rule

- **Chapter 91**

**(e) (D) Any Federal or Commonwealth agency or independent Commonwealth commission that provides funding to the Department for the implementation of the WQM program through terms and conditions of a mutual agreement AND ANY MUNICIPALITY THAT IS CURRENTLY DESIGNATED AS A FINANCIALLY DISTRESSED MUNICIPALITY BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT UNDER THE MUNICIPALITIES FINANCIAL RECOVERY ACT (53 P.S. §§ 11701.101—11701.712) may be exempt from the fees in this section.**

# Proposed Changes for Final Rule

- **Chapter 92a**

Category	Application Fee			Annual Fee		
	Proposed Rule	Final-Form Rule	Difference	Proposed Rule	Final-Form Rule	Difference
Small Flow Treatment Facility	\$1,000	\$500	<b>-\$500</b>	\$500	\$250	<b>-\$250</b>
Minor Sewage Facility < 0.05 MGD	\$1,500	\$1,000	<b>-\$500</b>	\$750	\$500	<b>-\$250</b>
Minor Industrial Waste Facility not covered by ELG	\$5,000	\$3,000	<b>-\$2,000</b>	\$2,500	\$1,500	<b>-\$1,000</b>
Minor Industrial Waste Facility covered by ELG	\$7,500	\$6,000	<b>-\$1,500</b>	\$3,750	\$3,000	<b>-\$750</b>
Industrial Stormwater	\$5,000	\$3,000	<b>-\$2,000</b>	\$2,500	\$1,500	<b>-\$1,000</b>
CAFO	\$3,000	\$500	<b>-\$2,500</b>	\$1,500	\$500	<b>-\$1,000</b>

# Proposed Changes for Final Rule

- **Chapter 92a**

- 2-year adjustment to fees based on inflation (the Employment Cost Index) has been removed

# Proposed Changes for Final Rule

- **Chapter 92a**

~~[(f)]~~ ~~(e)~~ **(D)** Any Federal or State agency or independent state commission that provides funding to the Department for the implementation of the NPDES Program through terms and conditions of a mutual agreement **AND ANY MUNICIPALITY THAT IS CURRENTLY DESIGNATED AS A FINANCIALLY DISTRESSED MUNICIPALITY BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT UNDER THE MUNICIPALITIES FINANCIAL RECOVERY ACT (53 P.S. §§ 11701.101—11701.712)** may be exempt from the fees in this section.

# Proposed Changes for Final Rule

- Chapter 92a

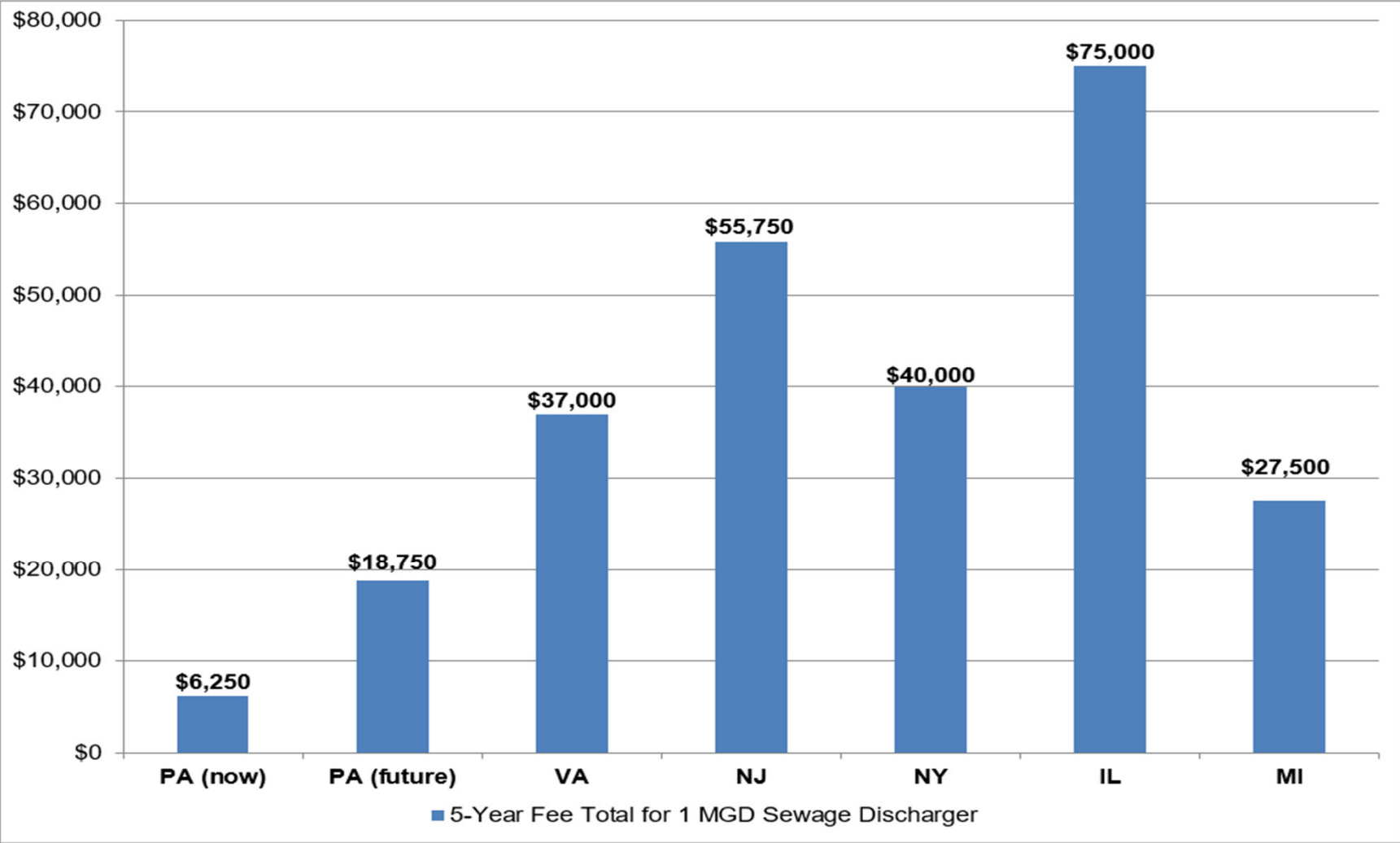
[(g)] (e) NOI fees for coverage under a general permit under § 92a.23 (relating to NOI for coverage under an NPDES general permit), **including fees for amendments to or transfers of general permit coverage**, will be established in the general permit. [NOI fees may not exceed \$2,500, except as provided in Chapter 102 (relating to erosion and sediment control).] ~~NOI fees under this chapter may not exceed the individual permit application fees in subsections (b), (c) and (d) and annual fee in § 92a.62 (relating to annual fees) for the equivalent activity.~~ **NOI FEES MAY NOT EXCEED \$5,000, EXCEPT AS PROVIDED IN CHAPTER 102 (RELATING TO EROSION AND SEDIMENT CONTROL).** An eligible person shall submit to the Department the applicable NOI fee before the Department approves coverage under the general permit for that person. **If the general permit allows payment of the NOI fee in annual increments, the eligible person shall, if required by the Department, submit the initial increment to the Department with the NOI before the Department approves coverage under the general permit.**

# Advisory Committees

- Water Resources Advisory Committee (WRAC)
  - Proposed: 3/24/16, 9/21/16, and 10/25/17
  - Final: 1/30/20 and 11/19/20
- Agricultural Advisory Board (AAB)
  - Proposed: 4/28/16, 6/23/16, 10/26/17, and 8/29/19
  - Final: 1/27/20 and 10/22/20



# Fee Comparison



# Recommendation

- DEP recommends that the Board adopt the WQM and NPDES Permit Application and Annual Fees final-form rulemaking.



Office of Water Management



**Aneca Y. Atkinson, MSWREE**

Deputy Secretary

Office of Water Programs

[aneatkinso@pa.gov](mailto:aneatkinso@pa.gov)

**Adam Duh**

Assistant Counsel

Bureau of Regulatory Counsel

[aduh@pa.gov](mailto:aduh@pa.gov)

**Jay E. Patel, P.E.**

Acting Co-Director

Bureau of Clean Water

[jaypatel@pa.gov](mailto:jaypatel@pa.gov)

**Sean M. Furjanic, P.E.**

Environmental Program Manager

Bureau of Clean Water

[sefurjanic@pa.gov](mailto:sefurjanic@pa.gov)