

**PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 92a]**

**National Pollutant Discharge Elimination System (NPDES)
Schedules of Compliance**

The Environmental Quality Board (Board) proposes to amend Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance) to revise 25 Pa. Code § 92a.51(a) (relating to schedules of compliance) to allow for the implementation of Long-Term Control Plans (LTCPs) for combined sewer overflow (CSO) dischargers to achieve state water quality standards (WQS) by a period that may exceed 5 years, but that may not exceed the implementation period specified in an approved LTCP.

This proposed rulemaking was adopted by the Board at its meeting of _____, 2021.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

B. Contact Persons

For further information, contact Sean M. Furjanic, P.E., Environmental Program Manager, Bureau of Clean Water, P.O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-2137, or Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105, (717) 783-8261. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Hamilton Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection’s (Department) web site at www.dep.pa.gov (Select “Public Participation,” then “Environmental Quality Board” and then navigate to the Board meeting of _____, 2021).

C. Statutory Authority

The proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of the Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402)) and section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20), which authorize the Board to promulgate rules and regulations necessary for the Department to perform its work.

D. Background and Purpose

Many municipalities across this Commonwealth have combined sewer systems (CSSs), in which sewage and stormwater are collected and conveyed together during precipitation events. Depending on factors such as the intensity of a precipitation event, the flow in CSSs may exceed the dry weather carrying capacity of those systems, resulting in CSO discharges from the CSS to surface waters prior to reaching a wastewater treatment facility. Wet weather CSO discharges

are authorized under the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1388), the Commonwealth’s Clean Streams Law (35 P.S. §§ 691.1—691.1001), and Chapter 92a, when approved under a NPDES permit.

In 1994, the U.S. Environmental Protection Agency (EPA) issued its Combined Sewer Overflow Control Policy, 59 FR 18688 (April 19, 1994), that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with an LTCP to achieve WQS. In Pennsylvania, LTCPs are implemented through NPDES permits. Permittees have several options for achieving and demonstrating achievement of WQS in an LTCP. Each permittee must develop and submit an LTCP for approval by the Department, who is delegated to administer the Federal NPDES program in this Commonwealth.

A permittee’s CSO discharges are presumed to be in non-compliance for WQS until an approved LTCP is implemented. Neither Federal regulations nor policy require that LTCPs be implemented and WQS be achieved by a specific date, other than in the shortest feasible period of time. Due to the scale of infrastructure modifications and financial commitments involved with implementing LTCPs, implementation schedules exceeding 20 years are common. However, the Department’s regulation in § 92a.51(a) currently requires that any discharge not in compliance with WQS and effluent limitations or standards must achieve compliance as soon as practicable, but in no case longer than 5 years.

The EPA has expressed concerns that the Department’s practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the existing language in § 92a.51(a) that requires compliance within 5 years. Consequently, the Department has paused approving NPDES permit renewals for CSO dischargers with these longer LTCP implementation schedules until the inconsistency is resolved. This proposed rulemaking would amend § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulations, but not longer than the implementation period in the discharger’s approved LTCP.

E. Summary of Regulatory Requirements

§ 92a.51. Schedules of Compliance

The Department’s regulation at § 92a.51(a) authorizes schedules of compliance for existing discharges that are not in compliance with WQS or effluent limitations or standards. This regulation is more stringent than equivalent Federal regulations because the Department establishes a maximum period of time to come into compliance of 5 years (unless a court of competent jurisdiction issues an order allowing a longer time for compliance), while federal regulations do not. CSO dischargers, however, typically require more than 5 years to implement LTCPs to achieve compliance with WQS due to the scale of infrastructure modifications and financial commitments needed to implement LTCPs, and the Department has approved many LTCPs with implementation schedules exceeding 5 years.

This proposed rulemaking would amend subsection (a) to allow compliance schedules for CSO dischargers to exceed 5 years, but those schedules could not exceed the period of implementation specified in an approved LTCP.

The proposed rulemaking will not result in any degradation of public health or environmental protection. Conversely, the proposal is expected to improve public health and the environment by allowing the Department to move forward with reissuing long overdue NPDES permits to CSO dischargers, incorporating new conditions to minimize the discharge of pollutants to surface waters. Ultimately, the revision would recognize the Department's longstanding practice of approving LTCPs with implementation schedules exceeding 5 years.

F. Benefits, Costs, and Compliance

Benefits

NPDES permits have a fixed term not exceeding 5 years. If a timely application is submitted for reissuance or renewal of an NPDES permit, the permit may be administratively extended after the permit expiration date to allow a discharger to continue operating under the terms and conditions of the permit. EPA has objected to or otherwise expressed concerns to the Department over the reissuance of NPDES permits for CSO dischargers because EPA perceives that the Department's approval of LTCPs with implementation schedules longer than 5 years conflicts with § 92a.51(a). As a result, there are many administratively extended NPDES permits for CSO dischargers across this Commonwealth. By amending § 92a.51(a) as described above, the Department will be able to move forward with reissuing these permits, providing the Department the opportunity to update the permits to ensure the most up-to-date standards and pollution control measures are included in the permits, benefiting public health and the environment.

Compliance costs

The proposed regulatory revision would not impose any additional costs on the regulated community.

Compliance assistance plan

A compliance assistance plan is not considered necessary for the proposed regulatory revision.

Paperwork requirements

The proposed amendment to Chapter 92a clarifies existing processes but does not add to or change the existing paperwork requirements for the submission of NPDES permit applications and Notices of Intent (NOIs) to the Department.

G. Pollution Prevention

Pollution prevention is not applicable to this proposed rulemaking.

H. Sunset Review

The Board is not establishing a sunset date for these regulations, because these regulations are needed for the Department to carry out its statutory authority. The Department will continue to

closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. Public Comments

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by _____.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. Public Hearings

The Board will hold a virtual public hearing for the purpose of accepting comments on this proposed rulemaking. The hearing will be held on _____, 2021, at _____ p.m.

Persons wishing to present testimony at the hearing must contact Jennifer Swan for the Department and the Board, (717) 783-8727 or RA-EPEQB@pa.gov, by _____, 2021, to reserve a time to present testimony.

Organizations are limited to designating one witness to present testimony on their behalf. Verbal testimony is limited to 5 minutes for each witness. Witnesses may provide testimony by means of telephone or Internet connection. Video demonstrations and screen sharing by witnesses will not be permitted.

Witnesses are requested to submit written copy of their verbal testimony by e-mail to RegComments@pa.gov after providing testimony at the hearing.

Information on how to access the hearing will be available on the Board's webpage found through the Public Participation tab on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board"). Prior to the hearing, individuals are encouraged to visit the Board's webpage for the most current information for accessing the hearing.

Any members of the public wishing to observe the public hearing without providing testimony are also directed to access the Board's webpage. Those who have not registered with Jennifer Swan in advance as described previously will remain muted for the duration of the public hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 783-8727 or through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

PATRICK McDONNELL,
Chairperson