

## **EXECUTIVE SUMMARY**

### **National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance 25 Pa. Code Chapter 92a**

This final-form rulemaking amends 25 Pa. Code § 92a.51(a) as set forth in Annex A. The final-form rulemaking modifies the Department's National Pollutant Discharge Elimination System (NPDES) regulations concerning schedules of compliance to allow for a period of time greater than 5 years for a permittee with combined sewer overflow (CSO) discharges to comply with state water quality standards (WQS).

#### **Purpose of the Rulemaking**

Many municipalities across Pennsylvania 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 hydraulic 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. § 1251—1388), Pennsylvania's Clean Streams Law (35 P.S. § 691.1—691.1001.), and 25 Pa. Code Chapter 92a, when approved under an NPDES permit.

In 1994, the United States Environmental Protection Agency (EPA) issued its CSO Policy that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with a Long-Term Control Plan (LTCP) to achieve WQS. 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, which is delegated to administer the federal NPDES program in Pennsylvania.

A permittee's CSO discharges are presumed to be in non-compliance with WQS until an approved LTCP is implemented. Neither Federal regulations nor policy requires that LTCPs be implemented and WQS be achieved by a specific date, other than within 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, prior to this final-form rulemaking, the Department's regulation at § 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 expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the current language in § 92a.51(a) that requires compliance within 5 years for all dischargers. To resolve this inconsistency and address the EPA's concerns, this final-form rulemaking seeks to amend § 92a.51(a) to allow the Department to approve NPDES permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulations, but not longer than the implementation period specified in the discharger's approved LTCP. This amendment affects CSO dischargers only.

## **Summary of the Rulemaking**

This final-form rulemaking revises 25 Pa. Code § 92a.51(a) to allow compliance schedules granted to permittees with CSO discharges to exceed 5 years, but not to exceed the period of implementation specified in an approved LTCP.

## **Affected Parties**

There are 92 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges. The regulatory revision in this final-form rulemaking will provide certainty to those municipalities that implementation of LTCPs may be scheduled over a period exceeding 5 years. The revision will also allow the Department to move forward with reissuing NPDES permits for these CSO discharges that will include additional environmental protections, benefiting public health and the environment in Pennsylvania. Reissuance of most NPDES permits for CSO dischargers has been on hold for several years pending resolution of EPA's concerns that DEP's issuance of an NPDES permit with a compliance schedule over 5 years is inconsistent with the current language in 25 Pa. Code § 92a.51(a).

## **Outreach (Advisory Committee/Stakeholder Consultation)**

The Department's Water Resources Advisory Committee (WRAC) voted to support the proposed rulemaking at its meeting on July 28, 2021, and voted to support the final-form rulemaking at its meeting on July 21, 2022.

## **Public Comments**

The proposed rulemaking was published in the *Pennsylvania Bulletin* on January 15, 2022 [52 Pa.B. 361], opening a 45-day public comment period that ended on March 1, 2022. One public hearing was held virtually on February 16, 2022, with no testimony offered by the public.

The Department received three sets of comments from the public as well as comments from EPA Region 3. EPA's comments supported the rulemaking, noting that the rulemaking was in accordance with agreements between EPA and the Department on this issue, and discussed the procedural steps necessary to seek approval of the modified § 92a.51(a) as part of Pennsylvania's approved WQS.

One commentator opposed the proposed rulemaking because they believe it would extend and eliminate compliance schedules, or allow for compliance periods on a case-by-case basis, and therefore perpetuate pollution. The rulemaking does not allow for an extension to compliance periods. The compliance period to implement LTCPs has always been proposed by CSO permittees and reviewed by the Department in light of EPA's requirement that compliance be achieved in the shortest feasible period of time. Depending on a permittee's proposed solution to reduce or eliminate CSOs, the compliance period could range from a few years to a few decades. It is when the compliance period exceeds 5 years that EPA believes the Department's approval of the schedule conflicts with § 92a.51(a) as currently written. By changing § 92a.51(a) to recognize that LTCP implementation schedules may exceed 5 years, the Department can be

authorized by EPA to resume reissuing NPDES permits to CSO dischargers. This is important for public health and the environment because reissued permits will include updated milestones to keep permittees on track to achieve compliance with their overall LTCP implementation schedule. When permits are outdated, the milestone dates pass and there are no new milestones for permittees to adhere to.

One commentator noted that this regulatory change should not be a stepping stone for all NPDES-permitted dischargers to request longer compliance schedules. The Department is not providing an exception to the 5-year limitation under § 92a.51(a) to any class of dischargers other than CSO dischargers, and is doing so in the interests of public health and the environment.

One commentator supported the proposed rulemaking and stated their belief that schedules of compliance exceeding 5 years should also apply to systems other than CSSs. The Department is not making an exception to the 5-year limitation for any other class of dischargers through this rulemaking.

### **Recommendation to the Board**

The Department recommends the Board adopt this final-form rulemaking.