

**PROPOSED RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[25 PA. CODE CHS. 91 AND 92A]  
Water Quality Management (WQM) and  
National Pollution Discharge Elimination System (NPDES)  
Permit Application and Annual Fees**

The Environmental Quality Board (Board) proposes to amend Chapter 91 (relating to general provisions) and Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance) to establish new fee schedules for Water Quality Management (WQM) permit applications, NPDES permit applications and NPDES annual fees, and to make clarifications under 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, 91.52, 92a.26, 92a.32, and 92a.62, respectively.

This proposal was adopted by the Board at its meeting of \_\_\_\_\_.

*A. Effective Date*

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

*B. Contact Persons*

For further information contact Sean 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 Margaret O. Murphy, Assistant Director, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105, (717) 783-7472.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T 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](http://www.dep.pa.gov) (Select "Public Participation," then "Environmental Quality Board (EQB)").

*C. Statutory Authority*

The proposed rulemaking is being made under the authority of sections 5(b)(1) and 6 of the Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.6)) 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, including the charging and collecting of reasonable filing fees for applications filed and for permits issued under the Clean Streams Law.

*D. Background and Purpose*

Pennsylvania's water resources are among the most abundant in the nation and require significant Department resources to protect the quality of these waters through the NPDES and

WQM programs (collectively, “Clean Water Program”). Pennsylvania ranks in the top five nationally for number of NPDES-permitted facilities and in the top ten for surface water miles in the nation. Pennsylvania has more municipal separate storm sewer system (MS4) permits and more combined sewer overflows (CSOs) than any other state. The Department receives over 2,600 applications and Notices of Intent (NOIs) for NPDES and WQM permits annually for discharges of sewage, industrial waste, industrial stormwater, and municipal stormwater; operation of concentrated animal feeding operations (CAFOs); utilization of pesticides; land application of sewage and industrial wastes; and construction of sewage and industrial waste pollution control facilities.

Over the past decade, the Department has worked to modify and continually improve business processes to reduce the cost of administering the Clean Water Program while maintaining its core responsibility of serving the public by protecting public health and the environment. However, as development needs within the Commonwealth continue to expand, the Department’s workload also increases over time. For example, as new products and processes are employed by permittees, the Department must continually evaluate potential impacts to water resources and undertake new initiatives to meet federal requirements to achieve its core responsibilities.

Under the Clean Streams Law, Department permits are required for any discharge of sewage or industrial waste or for any other activity that creates a danger of pollution of waters of the Commonwealth. 35 P.S. §§ 691.202, 691.307, and 691.402(a). The Clean Streams Law also requires approval from the Department prior to the construction of infrastructure that is used to treat or convey sewage and industrial wastes. 35 P.S. §§ 691.207 and 691.308.

The Board has promulgated regulations in 25 Pa. Code Chapters 91 and 92a for the Department to administer the programs authorized by the Clean Streams Law. Chapter 91 establishes a WQM program for sewage and industrial waste construction projects, discharges to groundwater through the land application of sewage and industrial wastes, and the use of pesticides in surface waters. Section 91.22 provides a fee schedule for WQM permit applications. Most of these fees have not been updated since 1971.

Chapter 92a establishes a permit, monitoring and compliance program for discharges to surface waters of the Commonwealth under the Clean Streams Law, consistent with the NPDES permitting requirements of Section 402 of the federal Clean Water Act. 33 U.S.C. § 1342. The Department has been delegated the authority to administer the federal NPDES permitting program in Pennsylvania by the U.S. Environmental Protection Agency (EPA) and has done so since 1978.

Chapters 91 and 92a authorize the Department to issue individual WQM and NPDES permits with terms and conditions specific to the project, discharge or activity described in the permit application, and to issue general permits for categories of projects, discharges and activities that can be regulated by a standard set of terms and conditions. Persons seeking individual permits submit permit applications, while persons seeking coverage under a general permit submit NOIs.

The Board has established fees for permit applications and NOIs in §§ 91.22 and 92a.26. In addition, in 2010 the Board established an annual NPDES permit fee to aid in funding the cost of the Department's administration of the NPDES program. 40 Pa.B. 5767 (October 9, 2010). The Chapter 91 permit fees were initially promulgated by the Board in 1971 and subsequently amended in 1980 and 2000. *See* 1 Pa.B. 1804; 10 Pa.B. 4294; and 30 Pa.B. 521.

The NPDES fee schedule for individual NPDES permits remained the same from 1978 until 2010. In 2010, the Board promulgated an updated fee schedule reflecting increased fees for most categories of individual NPDES permits in § 92a.26 and promulgated new annual fees in § 92a.62. 40 Pa.B. 5767. These fee increases provided needed revenue to administer the NPDES program and reduced reliance on general tax revenue to support the NPDES program.

Under both §§ 92a.26 and 92a.62, the Department is required to report to the Board every three years on the adequacy of the fees to administer the NPDES program. The report analyzes the fiscal solvency of programs by comparing program funding sources, including fees, with the costs to administer the program. Fee reports may contain recommendations to increase fees to eliminate any identified funding disparities.

On February 18, 2014, the Department presented its first report to the Board under the new NPDES fee schedules promulgated in 2010. The report documented that the primary sources of revenue to fund the NPDES program are general tax revenue (50%), federal grants (33%), and permit fees (17%). The analysis also highlighted that NPDES fees in Pennsylvania are 50 to 90% less than surrounding and comparable states for most categories of NPDES permits. On August 21, 2018, the Department presented its second report to the Board, which illustrated similar conditions exist now as compared to 2014.

Based on its current staffing and activities, the Department spends approximately \$20 million per year to administer the NPDES program. These funds cover the following activities:

- Inspection and compliance monitoring of NPDES-permitted facilities – 36%;
- NPDES permit application/NOI reviews – 29%;
- Assessment of surface waters throughout Pennsylvania, including development of Total Maximum Daily Loads – 28%;
- Program management – 5%; and
- Program administration – 2%.

The Department spends approximately \$1.4 million per year to administer the WQM program, which involves activities similar to the NPDES program, except for surface water assessment. The primary sources of revenue to fund this program are general tax revenue (90%) and permit fees (10%).

The benefits and justifications for the proposed fee increases are further explained in Section F of this Preamble.

The Department's Bureau of Clean Water (BCW), which is responsible for the administration of the Clean Water Program, presented the proposed changes to the fees in Chapters 91 and

92a to the Agriculture Advisory Board (AAB) at its meetings on April 28, 2016, and October 26, 2017. A member of the AAB questioned in a letter to the Department's Secretary the need for fee increases that target a small number of farms (i.e., CAFOs) and stated that the Department should be utilizing its resources to inspect all farms, not just CAFOs.

BCW also presented the proposed changes to the fees in Chapters 91 and 92a to the Water Resources Advisory Committee (WRAC) at its meetings on September 21, 2016 and October 25, 2017. WRAC supported the proposal to increase these fees to adequately fund the Clean Water Program.

#### *E. Summary of Regulatory Requirements*

Summarized below are the proposed changes to Chapters 91 and 92a, along with supporting justification for these proposed permit fee increases. No federal regulations prescribe fees for NPDES and WQM permit applications.

##### *§ 91.1 (definitions)*

Definitions of the terms “major facility”, “minor facility”, and “small flow treatment facility” are proposed. The proposed definitions are needed because these terms are used in the proposed revisions to § 91.22. The proposed definitions are consistent with the definition of these terms in Chapter 92a. In addition, the reference to 25 Pa. Code § 92.1 in the definition of “CAFO” will be updated to 25 Pa. Code § 92a.2.

##### *§ 91.22 (WQM permit fees)*

Subsection (a) currently identifies WQM permit application fees for single residence sewage treatment plants (\$25), sewer extensions (\$100) and other WQM permits (\$500). The existing regulation does not indicate whether these fees apply to different types of permit applications (i.e., new, amendment, renewal and transfer). This subsection is proposed to be amended to expand the categories of WQM permit applications from three to eleven, and clarify the fees for the various types of permit applications. These proposed categories are based on an analysis conducted by the Department of the typical complexity and amount of time necessary to review the various WQM permit applications received. These proposed fee categories were also based on the need for the Department to conduct inspections during and/or following construction of the facilities.

Subsection (b) currently establishes a ceiling of \$500 for general WQM permit NOI fees. The Department proposes to revise this subsection to remove this ceiling and replace it with a requirement that NOI fees for general WQM permits may not exceed the amount established for individual WQM permit application fees for equivalent projects.

Subsection (c) is a new proposed section that would require the Department to adjust WQM permit application fees according to changes to the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every two years. The adjustment would be based on the cost difference, if any, of the ECI for the most recent two-

year period. The proposed revision requires the Department to publish any changes to the fees in subsection (a) based on the ECI in the *Pennsylvania Bulletin*. The Department will not be permitted to impose any increases beyond those based on the ECI without the Board promulgating a rulemaking to revise § 91.22. Further, fees will not be adjusted if application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program.

Subsection (d) proposes to require the Department to prepare a report every three years for submission to the Board to evaluate the revenue generated by the proposed fees and the cost to administer the WQM permitting program. The report would also include the Department's recommendation for amendments to this section if revenue to administer the program is insufficient. This proposed provision is similar to an existing provision in § 92a.26(h).

Subsection (e) proposes to allow the Department to enter into an agreement with any federal or Commonwealth agency or independent Commonwealth commission to provide an alternative funding mechanism for the WQM program rather than the payment of the fees established in § 91.22.

*§ 91.27 (General water quality management permit)*

The reference to Chapter 92 will be updated to Chapter 92a.

*§ 91.36 (Pollution control and prevention at agricultural operations)*

The references to 25 Pa. Code §§ 92.5a and 92.5a(e)(1)(i) will be updated to 25 Pa. Code §§ 92a.29 and 92a.29(e)(1)(i), respectively.

*§ 91.52 (Procedural requirements for underground disposal)*

The reference to Chapter 92 will be updated to Chapter 92a.

*§ 92a.26 (NPDES permit application fees)*

Subsection (a) is proposed to be modified to require payment of permit fees to the "Commonwealth of Pennsylvania" rather than the "Clean Water Fund" consistent with the Commonwealth's fiscal management policies. This subsection is further proposed to be modified to clarify that for fees based on the annual average design flow of a facility, the design flows of all discharges from the facility are totaled.

Subsection (b) is proposed to be amended to combine the provisions currently in subsections (b), (c) and (d). New subsection (b) proposes to address permit application fees for new permits and the reissuance of mining permits. New subsection (b) proposes to remove reissuance fees for all types of permits with the exception of mining permits due to corresponding amendments to the annual fee provisions found in Section 92a.62 (discussed further below). The fee categories remain the same in the new subsection (b), except that a new category for "pesticides" is proposed. The proposed fees are based on an analysis of the Department's costs to review the

various types of permit applications and the time necessary for ongoing inspections and compliance monitoring.

Current subsection (e) is proposed to become subsection (c) and would continue to address fees associated with individual NPDES permit transfers. The fees for the transfer of NPDES permits would not change. This subsection is proposed to clarify that transfer fees apply to NPDES permits for CAFOs, MS4s, and Concentrated Aquatic Animal Production (CAAP) facilities, as well as other types of NPDES permits.

Current subsection (f) is proposed to become subsection (d) and would continue to address fees associated with individual NPDES permit amendments. This subsection is proposed to be modified to include new, lower fees for minor amendments to NPDES permits for single residence sewage treatment plants (SRSTPs) and small flow treatment facilities (SFTFs), as the current fee for minor amendments to these permits exceeds or is not in proportion with the fees for SRSTP and SFTF permit applications for new permits. Major amendment fees would be the same as the annual fees in section 92a.62. Currently, major amendment fees are the same as reissuance fees, but since there will no longer be reissuance fees (except mining), the major amendment fees would be set equivalent to annual fees.

Current subsection (g) is proposed to become subsection (e) and would continue to address NOI fees associated with NPDES general permits. This subsection proposes to eliminate the current NOI ceiling of \$2,500 for coverage under an NPDES general permit and require that NOI fees for general NPDES permits not exceed the amount established for individual NPDES permit application fees for equivalent projects. This section also proposes to require payment of the annual increment of the NOI fee to obtain coverage under a general permit when the general permit allows payment of the NOI fee in annual increments. For example, if an NOI fee is \$1,000 and the general permit allows annual incremental payments of \$200 over five-year term of the general permit, a person seeking coverage under the general permit would be required to submit a payment of \$200 with the NOI.

A new subsection (f) proposes to require adjustments every two years to the NPDES fees based on the ECI as discussed above in § 91.22(c). However, fees will not be adjusted if application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program.

Current subsection (h) is proposed to become subsection (g) and would continue to require the Department to provide a report at least once every three years to the EQB on the adequacy of the NPDES fees.

Current subsection (i) is proposed to become subsection (h) and would continue to allow federal and state agencies or independent state commissions to provide funding to the Department for implementation of the NPDES program through an agreement as an alternative to paying the NPDES fees in this section. No change to the language in this subsection is proposed.

§ 92a.32 (*Stormwater discharges*)

Subsection (b) is proposed to be amended to codify the process of how to submit a “No Exposure Certification” application and fee. An applicant would be required to submit the appropriate permit application or NOI, including the appropriate application or NOI fee, and a “No Exposure Certification” on forms available from the Department at least once every 5 years. This amendment clarifies existing processes.

Subsection (c) is proposed to be amended to codify the process for how to submit a waiver from NPDES permit requirements for small MS4 operators. Applicants would be required to submit to the Department the appropriate permit application or NOI, the appropriate permit application or NOI fee and an application for the waiver on forms available from the Department at least once every 5 years. This amendment also clarifies existing processes.

§ 92a.62 (*NPDES annual fees*)

Subsection (a) proposes to require payment of the NPDES fee to the “Commonwealth of Pennsylvania” rather than the “Clean Water Fund” consistent with the Commonwealth’s fiscal management policies. This subsection would be modified to clarify that for fees based on the annual average design flow of a facility, the design flows of all discharges from the facility are totaled. This subsection would also be amended to change the due date of the annual fee for individual NPDES permits. The due date for the annual fee would be the effective date of the last permit issuance or reissuance for permits issued before this rulemaking (“old permits”) becomes effective and would be the effective date of the initial permit for permits issued after this rulemaking becomes effective (“new permits”). For example, if an old permit was last reissued with an effective date of June 1, 2017, as of the effective date of this rulemaking, the annual fee for this permit would be due every year on June 1, regardless of the effective date of future reissued permits. If a new permit is issued on September 1, 2020, the annual fee for this permit would be due every year on September 1. In conjunction with this change and as discussed above, permit reissuance fees were deleted for all permits that had annual fees. The current regulation requires annual fees to be due on the anniversary of the effective date of the permit. This date often changes each permit renewal cycle. The proposed amendment to this subsection would ease the administrative burden on the Department and on permittees by setting one due date for the life of each permit and would make the reissuance fee unnecessary.

Subsection (b) proposes to combine current subsections (b), (c) and (d), which address annual fees for facilities with individual NPDES permits. The fee categories associated with annual fees would remain the same as the existing regulation, except that a new category for “pesticides” and is proposed to be added. The proposed annual fees are based on the typical complexity and amount of time necessary to review the various applications the Department receives and the time necessary for ongoing inspections and compliance monitoring.

A new subsection (c) proposes to adjust the NPDES annual fees every two years based on the ECI, similar to the requirements in §§ 91.22(c) and 92a.26(f) described above. However, also as described above, fees will not be adjusted if application of the index would result in fees exceeding the Department’s costs to administer the Clean Water Program.

Current subsection (e) is proposed to become subsection (d) and would continue to require the Department to submit a written fee report at least once every three years to the EQB evaluating the adequacy of the annual fees.

Current subsection (f) is proposed to become subsection (e), but would not be revised otherwise. This subsection allows federal and state agencies or independent state commissions to provide funding to the Department for the implementation of the NPDES program through an agreement rather than paying annual fees required by this section.

## *F. Benefits, Costs, and Compliance*

### *Benefits*

The fee increases proposed in this rulemaking are necessary for the Department to administer the WQM and NPDES programs in Chapters 91 and 92a, respectively, to implement the Clean Streams Law, as well as the federal NPDES program mandated by the Clean Water Act. These programs are essential to the compelling public interest of preventing and eliminating pollution of the waters of the Commonwealth, promoting both public health and economic benefits.

WQM and NPDES permits help lower rates of acute and chronic illnesses in citizens by reducing the occurrence of pathogens, nutrients, and other contaminants in Pennsylvania's waterways. Citizens may come into contact with these pollutants through drinking improperly treated water, recreational activities, or consuming tainted food sources. High levels of some pathogens like *E. coli* can cause illness if accidentally consumed during recreational activities, by eating contaminated food, or from drinking improperly-treated water. Nutrient pollution can facilitate the occurrence of harmful algal blooms, which may produce toxic byproducts that harm recreational water users and render drinking water sources unusable during the duration of the bloom. Nutrient pollution is also known to impact downstream waters such as the Chesapeake Bay. Finally, other contaminants like heavy metals can accrue in fish tissue and cause sickness in people who consume the contaminated fish. This list of examples is not exhaustive of the types and causes of illnesses that can be associated with polluted waters. Preservation of public health is a standalone benefit of environmental regulation, but it also provides economic benefits. While it is difficult to assign a specific monetary value to the prevention of acute and long-term illnesses or disease by improving water quality, healthier citizens are able to work, are more productive, and live longer lives, all of which provide positive economic effects.

Pennsylvania receives other economic benefits from the proper administration of these programs through reduced costs to treat drinking water, increased property values, job creation, increased fishery resources and recreation, and enhanced aquatic habitat available to support the diverse species that depend upon clean water. Additionally, healthy watersheds help to avoid expensive restoration activities, reduce vulnerability to natural disasters, and maintain natural ecosystems that provide water treatment at far lower costs than can be achieved through human-engineered services. For more information about the economic benefits of effectively managing water resources, please see the EPA document, "The Economic Benefits of Protecting Healthy

Watersheds,” available on EPA’s website at [https://www.epa.gov/sites/production/files/2015-10/documents/economic\\_benefits\\_factsheet3.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/economic_benefits_factsheet3.pdf).

The proposed fees in this rulemaking will allow the Department to properly administer the Clean Water Program to protect the quality of water resources within the Commonwealth without any increases in the appropriation of general tax revenue to the Department. The Department acknowledges that new fees may impact some regulated entities negatively; instead of collecting a large up-front fee to support the Department’s water pollution control efforts, the regulation is structured to fairly spread fees among permit applications and annual fees, as applicable, to ease the burden on the regulated community. Despite the proposed increases, the Department’s fees would still be less than the fees for many comparable states.

The administration of the Clean Water Program involves many activities including permit application reviews, inspections, enforcement, surface water assessments and related activities such as the development and implementation of federally required Total Maximum Daily Loads (TMDLs).

Under the federal Clean Water Act, the Department is required to develop and maintain Pennsylvania’s water quality standards. 33 U.S.C.A. § 1313. Water quality standards are established to protect human health, aquatic life, and ensure that our waters are safe for drinking water consumption and recreation. Water quality standards have two parts: designated uses and specific water quality criteria. Department-issued permits must meet those water quality standards and adhere to state and federal technology-based standards. Department-issued WQM permits assure that appropriate engineering standards are applied to prevent pollution to waters of the Commonwealth.

As part of its Section 106 grant agreement, 33 U.S.C.A. § 1256, the Department is required by EPA to monitor and assess surface waters to determine if streams are meeting their designated uses. This is performed in a variety of ways including biological sampling, chemical sampling, and evaluation of aquatic habitats. Monitoring and assessment is performed to assure that the Department has appropriate water quality standards in place and has issued effective permits. Monitoring and assessment of our state waters are the foundational components for the water management programs implemented by the Department.

Other benefits associated with this proposed rulemaking include:

- Increased staff and resources to provide more timely permit application reviews, which would be beneficial to owners and operators of new facilities desiring permits as expeditiously as possible.
- Increased staff and resources to allow more thorough reviews of impacts to public health and the environment and a greater presence in the field. The public benefits from these services by providing a greater level of protection for waters of the Commonwealth. The regulated community benefits from this through enhanced compliance assistance before enforcement is considered. The Department prefers to work with the regulated community to promote

compliance. Compliance assistance has, in some cases, reduced expenses for permittees while providing adequate protection to human health and the environment.

- Increased staff to provide the resources necessary to evaluate existing programs, policies, guidance and regulation, what is and what is not working for the Department, the public and regulated community, and to make necessary changes more expeditiously. The Department is aware of some areas of the program that could be improved or enhanced in order to, for example, make the permit process less onerous and save applicants money. An increase of positions in the Department's BCW is necessary to complete this work.
- Increased revenue from fees to assist the Department in funding electronic solutions to improve business efficiency.

The Department believes that these benefits would result in cost savings to the regulated community although such savings are difficult to quantify.

#### *Compliance costs*

The operators of approximately 4,000 facilities in Pennsylvania with individual NPDES permits would be affected by the proposed rulemaking. Certain categories of facilities would be subject to little or no fee increase, and other categories would be subject to more significant increases, based on the nature and complexity of these facilities and the applications they submit.

Approximately 500-600 owners and operators of water pollution control facilities (e.g., persons proposing to construct or modify construction of sewage treatment facilities, sewer lines, wastewater pump stations, land application sites, etc.) who, on average, apply to the Department each year for a WQM permit, would be subject to WQM permit application fee increases.

The collective increase in fees for these facilities would be approximately \$6 million in the first year following the effective date of the final Chapters 91 and 92a rulemaking. Persons applying for new NPDES and WQM permits would be subject to the revised fees immediately. Persons with existing NPDES permits would not be subject to the revised fees until an annual fee is due. Persons with existing WQM permits would not be subject to the revised fees unless an amendment, transfer or renewal of the WQM permit is desired.

Not included in these estimates are costs associated with coverage under general WQM and NPDES permits. The Department could decide to increase NOI fees for general permits in the future to a level not to exceed the equivalent fee for an individual permit application. If the Department were to decide on this course of action, it could affect up to 5,700 additional facilities with general permit coverage and collectively cost up to an additional \$2 million. Any increase in NOI fees for general permits would be proposed at the time each general permit is renewed. Each proposed general permit is published in the *Pennsylvania Bulletin* for public comment.

While the costs to comply with the regulation for up to 10,300 NPDES and WQM-permitted facilities could be as high as \$8 million, it is expected that the net costs would be much lower considering the benefits described above.

#### *Compliance assistance plan*

The Department will develop and post to its website fact sheet(s) describing changes to the WQM and NPDES fee schedules and include important information on these changes on annual fee invoices mailed to permittees.

#### *Paperwork requirements*

The proposed amendments to Chapters 91 and 92a clarify existing processes but do not add to or change the existing paperwork requirements for the submission of WQM and NPDES permit applications and NOIs or the submission of annual fee payments to the Department. It is noted that the Department is in the process of launching an electronic payment system for annual fees, which would reduce paperwork.

#### *G. Pollution Prevention (if applicable)*

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

Certain sectors of facilities may be able to avoid paying annual fees when pollution prevention measures are employed. For example, industrial sites that are required to apply for and obtain NPDES permits for stormwater discharges associated with industrial activity may qualify for a No Exposure Certification approval in lieu of a permit, if most products and materials are stored in storm-resistant shelters.

#### *H. Sunset Review*

The Board is not establishing a sunset date for these regulations, because they 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 DATE, 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 DATE.

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](mailto:RegComments@pa.gov). A subject heading of the 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 one public hearing for the purpose of accepting comments on this proposal. The hearing will be held at \_\_\_ a.m./p.m. on the following date:

---

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Verbal testimony is limited to five minutes for each witness. Witnesses are requested to submit three written copies of their oral

testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T 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*