

EXECUTIVE SUMMARY

Chapter 92a: National Pollutant Discharge Elimination System Permitting, Monitoring, and Compliance

Summary: This final form rulemaking deletes and reserves Title 25, Chapter 92, *National Pollutant Discharge Elimination System Permitting, Monitoring, and Compliance*, and creates a new Chapter 92a of the same name. The National Pollutant Discharge Elimination System (NPDES) is the primary means by which pollution from point sources is controlled to protect the water quality of this Commonwealth's rivers and streams, in order to achieve the requirements of the federal Clean Water Act and the Pennsylvania Clean Streams Law.

The primary goal of the rulemaking is to reorganize Chapter 92 consistent with the organization of the companion federal regulation 40 CFR 122. By aligning the two regulations, it becomes clear where they are identical and where they differ. This will help both Department staff and the regulated community better understand the requirements of the program, and where additional or more stringent provisions apply in Pennsylvania. Every effort has been made to revert to the baseline federal requirements except where additional or more stringent requirements in Chapter 92 were clear, well understood, and have an appropriate basis in the Pennsylvania Clean Streams Law or other appropriate basis. This general reorganization is extensive, and it necessitated that Chapter 92 be replaced with a new chapter, Chapter 92a, to avoid confusion.

There was significant opposition to the new NPDES permit fee structure in the public comment period, but it has been retained intact in the final form rulemaking. The existing \$500 application fee every five years is to be replaced by a sliding scale of fees based primarily on the size of the point source discharge. The new fee structure is designed to produce \$5 million annually, which is the Commonwealth's share of the total estimated annual cost of running the program, compared to the \$0.75 million that is collected per year under the existing fee structure.

Based on comments received in the public comment period, several new proposed treatment requirements were deleted for the final form rulemaking. The requirement for tertiary treatment in water quality-limited segments was deleted, as were certain minimum treatment requirements for conventional pollutants (Biochemical Oxygen Demand and Total Suspended Solids) applicable to industrial dischargers. Certain federally-based exemptions and adjustments to the Secondary Treatment Standard for discharges of treated sewage were reinstated or extended.

Also, provisions for Permit-by-Rule for applications of pesticides and single-residence sewage treatment plants were deleted for the final rulemaking. These discharges will be covered under a general permit.

Purpose: The purpose of this final form rulemaking is to protect the environment, ensure the public's health and safety, and promote the long-term sustainability of the Commonwealth's natural resources by ensuring that the water quality of our rivers and streams is protected and enhanced. Chapter 92a implements the requirements of the federal Clean Water Act and the

Pennsylvania Clean Streams Law for point source discharges of treated wastewater to the rivers and streams of this Commonwealth.

Regulated Community: The regulated community impacted by this final form rulemaking comprises all of the point source dischargers of treated wastewater and stormwater in this Commonwealth. There are about 5,000 individual permits for discharges of treated sewage and industrial wastewater, plus approximately 5,000 discharges that are permitted under general permits. In addition, there are NPDES permits covering discharges associated with stormwater discharges, construction activities, and mining activities.

Public Notice: The proposed rulemaking was published in the *Pennsylvania Bulletin* at 40 Pa. B. 847 (February 13, 2010) for a 30-day public comment period that ended on March 15, 2010. Forty-two commentators submitted comments, and all comments and responses are documented in the Comment and Response document.

WRAC Advisory Committee and Agricultural Advisory Board: Based on comments received in the public notice of the proposed rulemaking, amendments were made to the proposed rulemaking. The Department briefed the Agricultural Advisory Board at its April 21, 2010, meeting that the revisions did not affect the agricultural community. The WRAC was briefed on the proposed revisions at its April 14, 2010, meeting, and considered the revisions at its May 11, 2010, meeting. The WRAC approved the final-form rulemaking with several additional comments. Additional revisions were made to the final-form rulemaking in response to those comments.