

REGULATORY FEE RECOMMENDATION REPORT TO THE ENVIRONMENTAL QUALITY BOARD

Water Quality Management (WQM) Fees Chapter 91. General Provisions, Water Quality Management Program

BACKGROUND:

The Department of Environmental Resources, now the Department of Environmental Protection (DEP) published 25 Pa. Code Chapter 91 on September 2, 1971, to implement provisions of Pennsylvania's Clean Streams Law (35 P. S. §§ 691.1 *et seq.*). Chapter 91 establishes, among other things, a water quality management (WQM) permit program for the construction of sewage and industrial waste treatment facilities and for land application of sewage and industrial wastes. Chapter 91 also provides for a permit program for the use of algicides, herbicides and fish control chemicals (pesticides) in waters of the Commonwealth (generally referred to as joint pesticide permits; see 25 Pa. Code § 91.38).

The application fees for sewer extension permits and other WQM permits were first established in 1971. The application fees in this section were amended in 1980 and 2000 to include a lower fee for single residence sewage treatment plant (SRSTP) applications and to add General WQM permits. Section 691.6 of the Clean Streams Law allows DEP to charge filing fees for applications by regulation, provided that the fee is "reasonable." For many years, the application fees have remained the same despite escalating program expenses. Additionally, there are no fees established in the regulations for the processing of joint pesticide permits.

WQM application fees for industrial waste are deposited into the Clean Water Fund in accordance with the Clean Streams Law (35 P.S. § 691.8). WQM application fees for sewage are deposited into the General Fund. DEP receives an average of 500 - 600 traditional (sewage and industrial waste) WQM applications per year, including General WQM Notices of Intent (NOIs), generating an average of approximately \$140,000 annually for the Clean Water Fund and General Fund. Historically, DEP has also received an average of 650 applications for joint pesticide permits per year, which produced no revenue; however, due to some recent program modifications, the number of applications received has been reduced.

Table 1 below provides the current application and NOI fees for WQM permits.

Table 1. Summary of Current WQM Permit Application Fees in 25 Pa. Code § 91.22

Type of Facility	Fee Amount
Single Residence Sewage Treatment Plant (SRSTP) Permits	\$25
Sewer Extension Permits	\$100
Other WQM Permits	\$500
General WQM Permit Coverage (NOI)	No Greater Than \$500

FEE COLLECTION:

Table 2 below provides a summary of revenues collected in the Clean Water Fund and General Fund for all WQM application and NOI fees during the period of fiscal year 2013 to fiscal year 2017. The amount collected depends in large part on the health of the construction industry but may also be influenced by

government initiatives; for example, during the period 2007 – 2010 there were an unusually high number of applications received for wastewater treatment plant upgrades to achieve NPDES permit compliance with effluent limitations pursuant to Pennsylvania’s Chesapeake Bay Strategy.

Table 2. Summary of Chapter 91 Revenues from Fees

FY2013	FY2014	FY2015	FY2016	FY2017
\$148,000	\$141,000	\$139,000	\$140,000	\$125,000

PROGRAM COSTS:

It is estimated that it currently costs \$1,427,000 annually to administer the WQM program, and DEP’s costs to administer the WQM permitting program are entirely related to staff resources. In general, there are no dedicated DEP staff for processing WQM permit applications and NOIs. Staff who are responsible for reviewing NPDES permit applications and overseeing Act 537 sewage planning activities are also tasked with reviewing WQM permit applications and NOIs. Using historical SAP timesheet information, the Bureau of Clean Water (BCW) estimates that approximately ten full-time equivalent (FTE) staff are involved in the processing of traditional WQM permits. This compliment includes engineering staff, management, administrative staff, and other technical staff including hydrogeologists. According to DEP’s Bureau of Fiscal Management, an FTE for planning purposes costs \$142,700 (salary, benefits, and indirects). It is therefore estimated that it currently costs \$1,427,000 annually to administer the WQM program or approximately ten times the current revenue collected for WQM permit application and NOI fees. Further, this figure does not include follow-up inspections by DEP staff to ensure construction has been done in accordance with the application or periodic inspections of WQM land application activities.

In addition to the ten FTEs that process traditional WQM permits, an additional three FTEs process joint pesticide permits. DEP is, however, planning to pursue the development of a statewide General Permit which will cover most of the applications for joint pesticide permits, and therefore these costs are expected to be minimal in the future.

DEP has undertaken several initiatives in the past few years to streamline program implementation in an effort to minimize costs and maximize the effective use of existing staff resources. These initiatives include:

- Implementation of Standard Operating Procedures (SOPs) to ensure consistent and efficient use of permit application review resources statewide;
- Electronic management of permit documents; and
- Electronic management of monitoring data submitted by the regulated community, with automated compliance assessment so that staff do not need to manually evaluate compliance.

PROBLEM STATEMENT:

Based on the current funding structure, DEP’s ability to adequately comply with state environmental requirements relating to the WQM program is continually strained due to a lack of program solvency. Without adequate funding for all required aspects of the WQM program, public health may suffer, and environmental gains previously made may be lost, due to a reduced capacity to conduct compliance and enforcement efforts. Additionally, DEP’s ability to efficiently and timely process permit applications, meet its obligations under the Clean Streams Law, and promptly serve the public are all affected by this insufficient funding.

DEP is using the General Fund to meet 90% of its existing funding obligations, as noted above. Given the potential fluctuations in appropriations by the legislature, a more stable and sustainable funding

source is desired. In addition, the WQM permit application fees are outdated. The consumer price index (CPI) has increased over 600% since 1971¹. Accounting for inflation, the typical WQM permit application fee of \$500 in 1971 would now be over \$3,500.

RECOMMENDATION:

It has been determined that approximately \$8 million in new revenue annually is needed in order for DEP to fully comply with all federal and state environmental and public health requirements relating to the NPDES and WQM programs (collectively “Clean Water Program”). This amount is based on a comprehensive workload analysis conducted by DEP that considered all of the tasks necessary to properly implement all aspects of the Clean Water Program. The workload analysis concluded that the statewide Clean Water Program requires 63 additional staff to fully carry out all regulatory responsibilities. A summary of the workload analysis is presented in **Attachment A**, which illustrates that the program’s greatest needs are in the areas of program administration, inspections, and surface water assessments.

To meet that annual revenue objective, DEP is recommending an overall fee increase of approximately \$1 million from WQM permit application and NOI fees. DEP is also concurrently proposing a Chapter 92a rulemaking that includes increases in NPDES permit application fees that would result in approximately \$7 million of new revenue annually.

¹ Source: Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm

ATTACHMENT A

SUMMARY OF DEP WORKLOAD ANALYSIS FOR CLEAN WATER PROGRAM

Program Implementation – DEP Regional Offices

Task	Hours Required / Year	FTEs Required	Current FTEs	Increase Required
NPDES and WQM Permit Application Reviews	74,032	49	47	2
NPDES and WQM Inspections	82,823	55	41	14
Surface Water Assessment	38,437	26	15	11
NPDES and WQM Enforcement	18,956	13	6	7
Soils Evaluations	3,968	3	0	3
Hydrogeological Evaluations	2,464	2	1	1
	220,680	148	110	38

Program Administration – DEP Bureau of Clean Water

Task	Hours Required / Year	FTEs Required	Current FTEs	Increase Required
Program Development, Policy, Guidance, Regulations, and Oversight	111,000	74	49	25

Total Increase in FTEs Required: 63