

REGULATORY FEE RECOMMENDATION REPORT TO THE ENVIRONMENTAL QUALITY BOARD

NPDES Permit and Annual Fees Chapter 92a. National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance

BACKGROUND:

The Department of Environmental Protection's (DEP's) Bureau of Clean Water (BCW) is responsible for the administration of the National Pollutant Discharge Elimination System (NPDES) permitting and compliance monitoring activities under 25 Pa. Code Chapter 92a. DEP implements this program pursuant to a Memorandum of Agreement with the U.S. Environmental Protection Agency (EPA) for point source discharges from sewage, industrial waste and municipal and industrial stormwater facilities and other activities including the application of pesticides. The NPDES program authority comes from the federal Clean Water Act (Federal Act) (33 U.S.C.A. §§ 1251 – 1387) and the Clean Streams Law (35 P.S. §§ 691.1 – 691.1001). Chapter 92a was published as a final rulemaking in the *Pennsylvania Bulletin* (40 Pa.B. 5767) on October 9, 2010, and replaced the prior NPDES regulations, Chapter 92. Section 691.6 of the Clean Streams Law allows DEP to charge filing fees for applications by regulation, provided that the fee is "reasonable." The Clean Streams Law also allows for charging and collecting fees for permits issued (35 P.S. § 691.6).

DEP updated the fee schedule for NPDES permit applications through Chapter 92a in 2010 (see 25 Pa. Code § 92a.26). DEP also introduced annual fees in Chapter 92a for individual NPDES permits (see 25 Pa. Code § 92a.62). DEP began its Chapter 92a annual invoicing and fee collection program in December 2010.

Every three years, DEP is required to provide the Environmental Quality Board (EQB) with a review of the adequacy of the fees and recommend regulatory changes, if necessary, to address any disparity between program costs and income generated (see 25 Pa. Code §§ 92a.26(h) and 92a.62(e)).

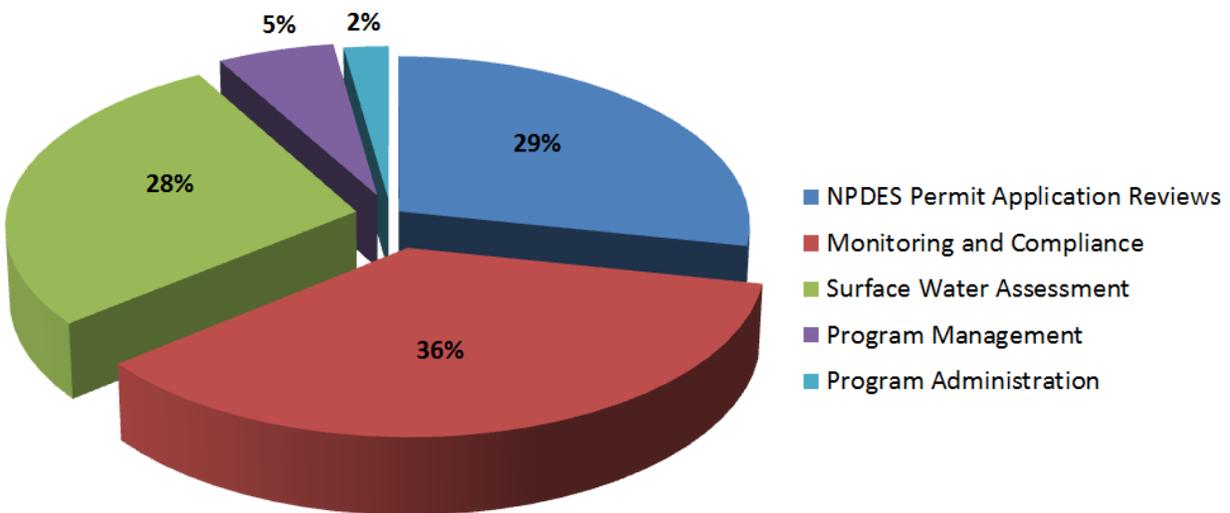
On February 18, 2014, DEP's Office of Water Management presented a Chapter 92a fee analysis to the EQB. The analysis highlighted that, despite the fee increase in 2010, revenue continues to fall well short of expenses, and nearly \$10 million per year is being drawn from DEP's General Fund to carry out the following program activities administered by DEP's BCW and implemented by DEP's Clean Water Program in six regional offices (see **Figure 1**):

- 1. NPDES Permit Application Reviews** – On an annual average basis, DEP receives approximately 2,150 NPDES applications for new permits, reissuance of existing permits, amendments to permits and permit transfers for sewage, industrial waste, industrial stormwater, municipal stormwater, pesticide and agricultural facilities, and activities. Pennsylvania has over 10,000 such facilities with NPDES permit coverage, which puts DEP in the top five in the nation in terms of number of permitted facilities. Twenty-nine percent (29%) of NPDES program expenses are related to application reviews.
- 2. Surface Water Assessment** – BCW and Clean Water Program biologists and other staff conduct chemical and biological monitoring of surface waters throughout the state and develop Total Maximum Daily Loads (TMDLs) for impaired surface waters. In addition, the program contracts with U.S. Geological Survey for Water Quality Network (WQN) station chemical monitoring. Twenty-eight percent (28%) of NPDES program costs are for surface water assessment.
- 3. NPDES Monitoring and Compliance** – Clean Water Program monitoring and compliance staff conduct inspections of permitted facilities to verify compliance with the permit. DEP must meet annual inspection goals established with the concurrence of EPA. On an annual average basis, DEP

conducts approximately 4,500 inspections, including in-office administrative reviews and on-site field inspections. Thirty-six percent (36%) of NPDES program expenses are for monitoring and compliance.

4. **Clean Water Program Administration** – Other staff who do not directly prepare NPDES permits or inspect facilities have roles in implementing the program; these roles include management and supervision of program activities and administration (clerical, fee processing, data management, etc.). Two percent (2%) of NPDES program costs go toward administration.
5. **Central Office Management** – BCW manages grants distributed by EPA for implementation of the delegated NPDES program, develops guidance and policy and provides training for the Clean Water Program and regulated community, and manages NPDES program data. Five percent (5%) of NPDES program expenses are related to management.

Figure 1. Distribution of Funded Activities in NPDES Program.



The analysis also highlighted that DEP’s NPDES fees, in terms of cost per facility, are generally 50% - 90% lower than surrounding states and states with similar numbers of NPDES-permitted facilities. In New Jersey, for example, NPDES fees account for over 50% of its NPDES program budget as opposed to 18% in Pennsylvania.

Fee Objective, Title, and Rate

The fee schedule established in Chapter 92a was intended to cover the program costs not covered by federal funding or the state General Fund. NPDES fees are deposited into the Clean Water Fund, a special restricted revenue account in the General Fund administered by DEP, who may use these funds for purposes authorized under the Clean Streams Law. **Table 1** below provides a summary of current individual NPDES permit application fees, and **Table 2** below summarizes the annual fees for facilities covered by individual NPDES permits.

Table 1. Summary of Current NPDES Permit Application Fees in 25 Pa. Code § 92a.26.

Type of Facility	Current Application Fee Amount
Single Residence Sewage Treatment Plant (SRSTP)	\$100 for new, \$100 for reissuance
Small Flow Treatment Facility (SFTF)	\$250 for new, \$250 for reissuance
Minor Sewage Facility < 0.05 million gallons/day (MGD)	\$500 for new, \$250 for reissuance
Minor Sewage Facility ≥ 0.05 MGD < 1 MGD	\$1,000 for new, \$500 for reissuance
Minor Sewage Facility with Combined Sewer Overflow (CSO)	\$1,500 for new, \$750 for reissuance
Major Sewage Facility ≥ 1 MGD < 5 MGD	\$2,500 for new, \$1,250 for reissuance
Major Sewage Facility ≥ 5 MGD	\$5,000 for new, \$2,500 for reissuance
Major Sewage Facility with CSO	\$10,000 for new, \$5,000 for reissuance
Minor Industrial Waste (IW) Facility Not Covered by an Effluent Limitation Guideline (ELG)	\$1,000 for new, \$500 for reissuance
Minor IW Facility Covered by an ELG	\$3,000 for new, \$1,500 for reissuance
Major IW Facility < 250 MGD	\$10,000 for new, \$5,000 for reissuance
Major IW Facility ≥ 250 MGD	\$50,000 for new, \$25,000 for reissuance
Mining Activity	\$1,000 for new, \$500 for reissuance
Stormwater	\$2,000 for new, \$1,000 for reissuance
Concentrated Animal Feeding Operation (CAFO)	\$1,500 for new, \$750 for reissuance
Concentrated Aquatic Animal Production (CAAP) Facility	\$1,500 for new, \$750 for reissuance
Municipal Separate Storm Sewer System (MS4)	\$5,000 for new, \$2,500 for reissuance
Type of Permit	Current Application Fee Amount
Transfers for SRSTP	\$50
Transfers for SFTF	\$100
Transfers for Other Domestic Wastewater (Sewage)	\$200
Transfers for IW	\$500
DEP-Initiated Amendments, All Facilities	\$0
Minor Amendments, All Facilities	\$200
Major Amendments, All Facilities	Same as reissuance fee
Notice of Intent (NOI) for Facilities Covered by General Permits	Not to exceed \$2,500 except as provided in Chapter 102.

Table 2. Summary of Current Annual Fees in 25 Pa. Code § 92a.62.

Type of Facility	Current Annual Fee Amount
SRSTP	\$0
SFTF	\$0
Minor Sewage Facility < 0.05 MGD	\$250
Minor Sewage Facility ≥ 0.05 MGD < 1 MGD	\$500
Minor Sewage Facility with CSO	\$750
Major Sewage Facility ≥ 1 MGD < 5 MGD	\$1,250
Major Sewage Facility ≥ 5 MGD	\$2,500
Major Sewage Facility with CSO	\$5,000
Minor IW Facility Not Covered by an ELG	\$500
Minor IW Facility Covered by an ELG	\$1,500
Major IW Facility < 250 MGD	\$5,000
Major IW Facility ≥ 250 MGD	\$25,000
Mining Activity	\$0
Stormwater	\$1,000
CAFO	\$0
CAAP Facility	\$0
MS4	\$500

FEE COLLECTION:

Table 3 below provides a summary of revenues collected in the Clean Water Fund for NPDES application and annual fees during the period of fiscal year 2013 to fiscal year 2017.

Table 3. Summary of Chapter 92a Revenues from Fees

FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
\$4,147,683	\$3,473,825	\$3,341,925	\$3,361,150	\$4,145,200

PROGRAM COSTS:

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;

- Automated notices of upcoming permit renewal application due dates to the regulated community; 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.

These efforts are being undertaken in the face of continuous increases in workload for the statewide Clean Water Program as new initiatives and expectations are handed down from EPA.

Table 4 below provides a summary of program expenses for the period fiscal year 2013 to fiscal year 2017. The budget and expenses for the EPA Section 106 Water Pollution Control, 106 Supplemental, and the 604b Water Planning Grants were used to calculate these costs, as all are applicable to the NPDES program. Only the Section 106 Water Pollution Control Grant has a required match in state funds. The required level of state funding for this grant has been approximately \$5 million, but DEP spends much more than the required amount each year to pay for its expenses. The amount received and spent from federal grants has remained steady and are assumed to remain steady in the future. The state's expenses are expected to increase a minimum of 2% per year due to increases in salaries, laboratory costs, and supply costs.

Table 4. NPDES Program Expenses

FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
\$19,120,015	\$19,369,439	\$19,623,852	\$20,016,329	\$20,416,656

It is noted that the figures above do not necessarily represent the full costs of administering the program. BCW estimates a total of 194 staff, including management, are associated with the implementation of this program at an approximate cost of \$28.1 million per year. Certain expenses, such as general program oversight, were not included in the cost estimates in Table 4, because these are not directly associated with the implementation of the Section 106 Water Pollution Control Grant or the required match.

TREND ANALYSIS:

Table 5 below provides revenue/expense ratios for the period fiscal year 2013 to fiscal year 2017. Total revenue in this table reflects the sum of 92a fee revenue from Table 3 and the federal monies DEP receives annually under EPA grants. Currently, fee revenue from the NPDES program only covers approximately \$3.7 million of program expenditures, or 18% of the cost to administer the NPDES Program. Federal funding provides approximately 33% of program costs.

Table 5. Revenue/Expense Ratios for the NPDES Program

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
92a Fee Revenue	\$4,147,683	\$3,473,825	\$3,341,925	\$3,361,150	\$4,145,200
Federal Funds	\$6,648,800	\$6,648,800	\$6,648,800	\$6,648,800	\$6,648,800
Total Revenue	\$10,796,483	\$10,122,625	\$9,990,725	\$10,009,950	\$10,794,000
Expenses	\$19,120,015	\$19,369,439	\$19,623,852	\$20,016,329	\$20,416,656
Ratios	0.56	0.52	0.51	0.50	0.53

PROBLEM STATEMENT:

Based on the current funding structure, DEP's ability to adequately comply with federal and state environmental requirements relating to the NPDES program is continually strained due to a lack of program solvency. Without adequate funding for all required aspects of the NPDES 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, satisfy increasing federal requirements, and promptly serve the public in areas, including but not limited to municipal stormwater (MS4s) and agriculture, are all affected by this funding gap.

DEP is using the General Fund to meet half 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.

RECOMMENDATION:

While achieving a self-funded NPDES program is desired in the future, increased NPDES program staff and resource are considered the highest priority given the activities that are not currently able to be completed by DEP to serve its mission. These include adequate inspection and enforcement and activities necessary to carry out DEP's Chesapeake Bay Restoration Strategy. Adequate DEP staffing will provide improved public health protections and protection of Pennsylvania's scenic waterways, which are utilized by many Pennsylvanians and tourists for recreational activities.

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 \$7 million in NPDES permit application and NOI fees and \$1 million from WQM permit application and NOI fees.

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