

Executive Summary

Water Quality Management (WQM) and National Pollutant Discharge Elimination System (NPDES) Permit Application and Annual Fees 25 Pa. Code Chapters 91 and 92a

The Department of Environmental Protection (Department) recommends amendments to 25 Pa. Code §§ 91.1 and 91.22, and 25 Pa. Code §§ 92a.26, 92a.32, and 92a.62 for consideration by the Environmental Quality Board to read as set forth in Annex A. The proposed rulemaking would increase fees for Water Quality Management (WQM) permit applications and National Pollutant Discharge Elimination System (NPDES) permit applications and annual fees, would clarify the fees applicable to No Exposure Certifications and waivers, and would create a fixed date for payment of annual fees.

Purpose of the Proposed Rulemaking

WQM permits are required under Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1-691.1001) and 25 Pa. Code Chapter 91 for the construction of water pollution control facilities, discharges to waters of the Commonwealth, and other activities that may cause or contribute to pollution to waters of the Commonwealth. NPDES permits are required under the federal Clean Water Act (33 U.S.C. § 1342), the Clean Streams Law, and 25 Pa. Code Chapter 92a for the discharge of pollutants to surface waters. The purpose of this proposed rulemaking is to raise approximately \$8 million in increased fees annually, as determined by the Department's workload analyses, to increase program resources for the Bureau of Clean Water and statewide Clean Water Program, and increase program resources to support additional positions, so that the Department can accomplish its mission and legal obligations to the public, regulated community, and federal authorities.

Summary of the Proposed Rulemaking

The Department recommends several changes to WQM permit application fees in 25 Pa. Code § 91.22. The Department proposes to create "fee categories" for different types of projects requiring WQM permits, with the fee commensurate with the level of effort necessary to review and process the permits. For example, the review and processing of a WQM permit application for a new major industrial wastewater treatment facility requires more Department resources than the review and processing of an application for a new small flow sewage treatment facility at a convenience store. Currently the applicants for both types of projects pay a \$500 fee. The proposed rulemaking would require a higher fee for the applicant of the industrial wastewater treatment facility than the applicant of a small flow sewage treatment facility.

The Department proposes to clarify fees for amendments to and transfers of WQM permits. The Department also proposes to eliminate the cap of \$500 on general WQM permit Notice of Intent (NOI) fees and establish that NOI fees may not exceed the equivalent individual WQM permit application fees. The Department is proposing to add language that will 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 based on the ECI in the *Pennsylvania Bulletin*. Fee increases exceeding the ECI change would require promulgation of a rulemaking. 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. Finally, the Department plans to update references within Chapter 91 to Chapter 92a, which replaced Chapter 92 in 2010.

The Department is also recommending changes to NPDES permit application and annual fees in 25 Pa. Code §§ 92a.26 and 92a.62, respectively. The Department proposes to increase NPDES permit application and annual fees for most, but not all, categories of facilities. The existing fee categories established by the 2010 rulemaking would generally remain the same, but most fees would be increased. The Department proposes to eliminate the cap of \$2,500 on general NPDES permit NOI fees and establish that NOI fees may not exceed the equivalent individual NPDES permit application fees.

The Department proposes to amend 25 Pa. Code § 92a.32 by clarifying that industrial facilities that seek a No Exposure Certification in lieu of NPDES permit coverage and municipal separate storm sewer systems (MS4s) that seek a waiver from NPDES permit requirements must submit the relevant NOI or application along with the appropriate fee.

The Department also proposes to include language that will require the Department to adjust NPDES permit application and annual fees according to changes to the 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 based on the ECI in the *Pennsylvania Bulletin*. Further, as previously noted, 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. Fee increases exceeding the ECI change would require promulgation of a rulemaking.

The proposed rulemaking would eliminate permit reissuance fees for most categories of facilities so that five annual fees are due per permit term rather than four annual fees and one reissuance fee. Additionally, the proposed rulemaking would establish a fixed date for payment of annual fees based on the effective date of the latest issued or reissued permit.

The fee increases proposed in this rulemaking are necessary for the Department to administer the WQM program and NPDES program established in 25 Pa. Code 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 preventing and eliminating pollution to waters of the Commonwealth.

Affected Parties

Any person proposing or modifying one of the following activities would be affected by this proposed rulemaking:

- Construction of new or expanded sewage treatment facilities;
- Construction of new or expanded industrial wastewater treatment facilities;
- Construction of wastewater pump stations;
- Construction of sewers and sewer extensions meeting specific criteria;
- Construction of manure storage facilities meeting specific criteria;
- Land application and reuse of wastewater;
- Use of algicides, herbicides and fish control chemicals in surface waters;
- Discharge of sewage, industrial waste, industrial stormwater, municipal stormwater, and pesticides above specific thresholds to surface water; and
- Operation of a Concentrated Animal Feeding Operation (CAFO).

Public Comments and Board Hearings

The Department recommends the adoption of this proposed rulemaking with a 45-day public comment period and at least one public hearing.