

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 the Environmental Quality Board (Board) adopt amendments to 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, and 91.52, and 25 Pa. Code §§ 92a.26, 92a.32, and 92a.62 as set forth in Annex A.

Purpose of the Rulemaking

This final-form rulemaking increases fees for Water Quality Management (WQM) permit applications and Notices of Intent (NOIs), and most National Pollutant Discharge Elimination System (NPDES) permit applications, NOIs, and annual fees; clarifies the fees applicable to No Exposure Certifications and municipal separate storm sewer system (MS4) waivers; creates a fixed date for payment of annual fees; adds new definitions; and makes other clarifications.

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 final-form rulemaking raises up to \$6.5 million in additional revenue annually for the Department's Bureau of Clean Water and statewide Clean Water Program, providing additional resources the Department needs to accomplish its mission and legal obligations to the public, the regulated community, and federal authorities.

Summary of the Rulemaking

Several changes have been made to WQM permit application fees in 25 Pa. Code § 91.22. The Department has created categories for different types of projects requiring WQM permits, with the application fee for each project category commensurate with the level of effort necessary to review and process the corresponding 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 a WQM permit 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 final-form rulemaking sets a higher fee for the applicant of the major industrial wastewater treatment facility than the applicant of a small flow sewage treatment facility.

This final-form rulemaking clarifies fees for amendments to and transfers of WQM permits. This rulemaking also eliminates the cap of \$500 on general WQM permit NOI fees and establishes that NOI fees may not exceed the equivalent individual WQM permit application fees. The rulemaking requires the Department to review the adequacy of fees collected under

Chapter 91 every three years and provide a written report to the Board that identifies disparities between the amount of program income and the cost to administer the program. The rulemaking exempts any Federal or Commonwealth agency or independent Commonwealth commission that provides funding to the Department for implementation of the WQM program and any municipality designated as a financially distressed municipality under Act 47 of 1987 from fees identified in 25 Pa. Code § 91.22. This rulemaking also adds three new definitions to 25 Pa. Code § 91.1 to explain new terms amended in 25 Pa. Code § 91.22. Finally, the rulemaking updates references in Chapter 91 to Chapter 92a, which replaced Chapter 92 in 2010 (see 40 Pa.B. 5767).

The rulemaking also adjusts NPDES permit application and annual fees in 25 Pa. Code §§ 92a.26 and 92a.62, respectively. The rulemaking increases NPDES permit application and annual fees for most, but not all, categories of facilities. This rulemaking generally retains the facility categories established by the 2010 Chapter 92a rulemaking, but increases the NPDES permit application and annual fees for most of these facility categories. Additionally, the rulemaking increases the cap of \$2,500 on general NPDES permit NOI fees to \$5,000.

The rulemaking amends 25 Pa. Code § 92a.32 by clarifying that industrial facilities that seek a No Exposure Certification in lieu of NPDES permit coverage and MS4s that seek a waiver from NPDES permit requirements must submit the relevant NOI or application along with the appropriate fee. By specifying what information applicants must include in permit applications and NOIs, the amendments to 25 Pa. Code § 92a.32 aim to support more timely permit decisions by improving the quality of applications and NOIs submitted to the Department. Specifically, the rulemaking clarifies which forms must be completed and which fees must be submitted by those seeking No Exposure Certification and waivers for MS4 NPDES permits. While 25 Pa. Code § 92a.32 currently references federal regulations that allow for MS4 NPDES permit waivers, the amendments in this rulemaking should be helpful for the regulated community to understand that the Department's regulations explicitly provide for such waivers and the length of time that the waivers are effective.

The rulemaking eliminates reissuance fees for most categories of individual NPDES permits and establishes that five annual fees are due per five-year permit term rather than four annual fees and one reissuance fee. Additionally, the rulemaking establishes a fixed date for payment of NPDES permit annual fees based on the effective date of the latest issued or reissued permit. The rulemaking also exempts financially distressed municipalities under Act 47 of 1987 from the fees in 25 Pa. Code §§ 92a.26 and 92a.62.

The fee increases 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, and to implement the Clean Streams Law, as well as the federal NPDES program delegated to the Department under the Clean Water Act. These programs are essential to preventing and eliminating pollution to waters of the Commonwealth.

Affected Parties

Any person conducting the following activities will be affected by this final-form 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).