

EXECUTIVE SUMMARY

National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance 25 Pa. Code Chapter 92a

The Department of Environmental Protection (Department) recommends amendments to 25 Pa. Code § 92a.51(a) for consideration by the Environmental Quality Board to read as set forth in Annex A. The proposed rulemaking would modify the Department's NPDES regulations concerning schedules of compliance to allow for a period of time greater than five years for a permittee with combined sewer overflow (CSO) discharges to comply with state water quality standards (WQS).

Purpose of the Proposed Rulemaking

Many municipalities across Pennsylvania have combined sewer systems (CSSs), in which sewage and stormwater are collected and conveyed together during precipitation events. Depending on factors such as the intensity of a precipitation event, the flow in CSSs may exceed the dry weather carrying capacity of those systems, resulting in CSO discharges from the CSS to surface waters prior to reaching a wastewater treatment facility. Wet weather CSO discharges are authorized under the federal Clean Water Act (33 U.S.C. § 1251—1388), Pennsylvania's Clean Streams Law (35 P.S. § 691.1—691.1001.), and 25 Pa. Code Chapter 92a, when approved under a NPDES permit.

In 1994, the U.S. Environmental Protection Agency (EPA) issued its CSO Policy that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with a Long-Term Control Plan (LTCP) to achieve WQS. Permittees have several options for achieving and demonstrating achievement of WQS in an LTCP. Each permittee must develop and submit an LTCP for approval by the Department, who is delegated to administer the federal NPDES program in Pennsylvania.

A permittee's CSO discharges are presumed to be in non-compliance for WQS until an approved LTCP is implemented. Neither Federal regulations nor policy require that LTCPs be implemented and WQS be achieved by a specific date, other than by the shortest feasible period of time. Due to the scale of infrastructure modifications and financial commitments involved with implementing LTCPs, implementation schedules exceeding 20 years are common. However, the Department's regulation in § 92a.51(a) currently requires that any discharge not in compliance with WQS and effluent limitations or standards must achieve compliance as soon as practicable, but in no case longer than 5 years.

The EPA has expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the existing language in § 92a.51(a) that requires compliance within 5 years. To resolve the inconsistency, this rulemaking proposes to amend § 92a.51(a) to allow the Department to approve NPDES permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

Summary of the Proposed Rulemaking

The Department proposes to revise § 92a.51(a) to allow compliance schedules granted to permittees with CSO discharges to exceed 5 years, but not to exceed the period of implementation specified in an approved LTCP.

Affected Parties

There are approximately 100 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges. The regulatory revision in this proposed rulemaking will provide certainty to those municipalities that implementation of LTCPs may be scheduled over a period exceeding 5 years. The revision will also allow the Department to move forward with reissuing NPDES permits for these CSO discharges that will include additional environmental protections, benefiting public health and the environment in Pennsylvania. Most NPDES permits for CSO dischargers have been on hold for several years pending resolution of EPA's concerns that DEP's issuance of an NPDES permit with a compliance schedule over five years is inconsistent with the current language in 25 Pa. Code § 92a.51(a).

Public Comments and Board Hearings

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