

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency: Department of Environmental Protection</p>		
<p>(2) Agency Number: 7 Identification Number: 563</p>		<p>IRRC Number:</p>
<p>(3) PA Code Cite: 25 Pa. Code Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance)</p>		
<p>(4) Short Title: National Pollution Discharge Elimination System (NPDES) Schedules of Compliance</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Griffin, (717) 783-8727, laurgriffi@pa.gov Secondary Contact: Jessica Shirley, (717) 783-8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and non-technical language. (100 words or less)</p> <p>This proposed rulemaking would revise the schedule of compliance for NPDES permits, which are required by federal and state law to control the discharge of pollutants to surface waters. When a discharger is not in compliance with state water quality standards (WQS), the Department may establish a schedule of compliance in an NPDES permit to ensure compliance in the shortest, reasonable period of time, not to exceed 5 years unless a court order provides for a longer period of time. Court orders, however, are not a practical solution in every instance, as seeking a judicial remedy for this type of routine administrative matter would require significant time and monetary expenditures from both the Department and CSO dischargers.</p> <p>Many municipalities across Pennsylvania have combined sewer systems that collect both sewage and stormwater and are designed to overflow during precipitation events. These untreated discharges to surface waters are called combined sewer overflows (CSOs). CSOs must be authorized under an NPDES permit and CSO dischargers must develop a Long-Term Control Plan (LTCP) to meet WQS. Until an LTCP is fully implemented, CSO dischargers are presumed to be in non-compliance with WQS.</p> <p>LTCPs often require large financial commitments and substantial infrastructure modifications to eliminate or significantly reduce CSOs. Depending on municipal resources, CSO dischargers often propose LTCPs with implementation schedules exceeding 5 years (often 20-40 years), and the Department has approved many LTCPs with implementation schedules longer than 5 years. However, the U.S. Environmental Protection Agency (EPA) has observed a conflict with 25 Pa. Code § 92a.51(a) when the Department issues an NPDES permit to a CSO discharger with an LTCP implementation schedule exceeding 5 years. To resolve this conflict, the Department proposes to amend 25 Pa. Code § 92a.51(a) to allow DEP to approve permits for CSO</p>		

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.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 5(b)(1) and 402 of Pennsylvania's Clean Streams Law, 35 P.S. §§ 691.5(b)(1) and 691.402, and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

The proposed revision is not mandated by any federal or state law, regulation, or court order, and there are no relevant state or federal court decisions. The existing § 92a.51(a) regulation is more stringent than the equivalent EPA regulation (40 CFR § 122.47) in that EPA regulations do not stipulate a maximum schedule of compliance period of 5 years.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

According to EPA, there are approximately 860 CSO communities in the United States. Pennsylvania has approximately 130 CSO communities, more than any other state. These municipalities in 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.A. §§ 1251—1388), the Commonwealth's Clean Streams Law (35 P.S. §§ 691.1—691.1001), and 25 Pa. Code Chapter 92a, when approved pursuant to a NPDES permit.

In 1994, the U.S. Environmental Protection Agency (EPA) issued its Combined Sewer Overflow Control Policy, 59 FR 18688 (April 19, 1994), that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with an 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 this Commonwealth.

A permittee's CSO discharges are presumed to be in non-compliance for WQS until an approved LTCP is implemented. Federal regulations and policy do not require that LTCPs be implemented and WQS be achieved by a specific date, other than in 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. The Department's regulations at 25 Pa. Code § 92a.51(a), however, require 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.

This proposed rulemaking would amend the Department's regulations at 25 Pa. Code § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve 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.

The proposed regulatory revision will allow the Department to reissue NPDES permits to these CSO communities while continuing to approve LTCPs with implementation schedules longer than 5 years. The primary beneficiaries of permit reissuance are the citizens of CSO communities, and those residing and recreating downstream of them, as improved standards concerning CSO discharges will be addressed in the reissued permits, including increased reporting and public notification.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

As explained in the response to Question 9, the Department's existing § 92a.51(a) regulation is more stringent than federal regulations. The Department seeks to keep the current regulation but allow DEP to approve permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulation.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

A review of NPDES regulations for neighboring states – Ohio, West Virginia, Maryland, Delaware, New Jersey, and New York – found that those states have standards for compliance schedules that match or are similar to the federal standards. The proposed regulatory revision will not impact Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

25 Pa. Code § 92a.51 is identified in three other sections of Chapter 92a: §§ 92a.21, 92a.71, and 92a.75. The proposed regulatory revision to § 92a.51 will not affect any of these regulations, or any other regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department discussed the proposed rulemaking with the Department's Water Resources Advisory Committee (WRAC) at its meeting on July 28, 2021. WRAC provides technical advice to the Department on the environmental, economic, and other social impacts of proposed regulations affecting water resources management including surface/ground water quality and quantity issues. WRAC membership includes representatives from the regulated community, municipalities, environmental advocacy organizations, and universities. WRAC voted to support the Department moving forward with the proposed rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are approximately 100 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges, about half of which currently have permits that need to be reissued. The regulatory revision in this proposed rulemaking will allow the Department to move forward with reissuing NPDES permits for CSO discharges and to include additional environmental protections in the reissued permits, benefiting public health and the environment in Pennsylvania, as most NPDES permits for CSO dischargers have been on hold for several years pending resolution of this issue with EPA. As a result, persons living within or downstream of CSO communities will be affected positively when the Department is able to reissue these NPDES permits. Additionally, the regulatory revision in this proposed rulemaking will provide certainty to CSO municipalities that implementation of LTCPs can be scheduled over a period exceeding 5 years.

No businesses (or small businesses) will be affected by the proposed revision to § 92a.51(a).

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

There are approximately 100 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges, about half of which currently have permits that need to be reissued. Under the proposed regulation, the Department will be able to reissue NPDES permits to CSO dischargers that recognize an implementation schedule for CSO LTCPs beyond 5 years. CSO dischargers will need to comply with the schedule in the NPDES permit when reissued.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

No financial, economic, or social impacts are expected on individuals, small businesses, businesses and labor communities and other public and private organizations as a result of the proposed regulatory revision.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No costs and adverse effects are expected on any party as a result of the proposed regulatory revision. Citizens of CSO communities, and those residing and recreating downstream of them, will benefit from this proposed rulemaking through the Department incorporating improved standards concerning CSO discharges into reissued permits.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No costs or savings to the regulated community associated with compliance are expected.

(20) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No costs or savings to local governments associated with compliance are expected.

(21) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

EPA provides grant funds to the Department under Section 106 of the federal Clean Water Act to carry out delegated responsibilities for the NPDES program. Failure to revise the § 92a.51(a) regulation as explained herein could result in a reduction or elimination of these funds if the Department is unable to reissue NPDES permits to CSO dischargers.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed amendment to Chapter 92a clarifies existing processes but does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government.

(22a) Are forms required for implementation of the regulation?

No new forms are required for the implementation of this regulation.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

No new forms are required for the implementation of this regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2021/22	FY+1 2022/23	FY+2 2023/24	FY+3 2024/25	FY+4 2025/26	FY+5 2026/27
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Savings	0.00	0.00	0.00	0.00	0.00	0.00

COSTS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	0.00	0.00	0.00	0.00	0.00	0.00
REVENUE LOSSES:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

The estimated costs for DEP to administer the NPDES program in Pennsylvania are as follows:

Program	FY -3 (2018/2019)	FY -2 (2019/2020)	FY -1 (2020/2021)	Current FY (2021/2022)
NPDES (Chapter 92a)	\$20,824,989	\$21,241,489	\$21,666,318	\$22,099,664

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The proposed regulation will not have an adverse impact on any small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been developed as this proposed regulation is limited to CSO dischargers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Over the past several years, DEP has explored alternative approaches with EPA to resume reissuance of NPDES permits for CSO dischargers. Both parties have concluded that because CSO dischargers are presumed by federal policy to be in non-compliance for WQS prior to implementation of the LTCP (and therefore a schedule of compliance is necessary in a permit), and because the schedule of compliance currently may not exceed 5 years given only the language in 92a.51(a), a change is needed to § 92a.51(a) to allow issuance of permits to CSO dischargers with LTCPs that will extend beyond 5 years.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- (a) The establishment of less stringent compliance or reporting requirements for small businesses.
- (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
- (c) The consolidation or simplification of compliance or reporting requirements for small businesses.
- (d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.
- (e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The proposed regulation will not have an adverse impact on any small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: 45 days
- B. The date or dates on which public meetings or hearings will be held: (TBD - One hearing)
- C. The expected date of delivery of the final-form regulation: Quarter 4, 2022
- D. The expected effective date of the final-form regulation: Upon Publication
- E. The date by which compliance with the final-form

<p>regulation will be required:</p> <p>F. The date by which required permits, licenses or other approvals must be obtained:</p>	<p><u>Upon Publication</u></p> <p><u>N/A</u></p>
<p>(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.</p> <p>Consistent with state and federal law and regulations, the Department’s longstanding practice is to consider a CSO community’s financial resources in reviewing LTCPs and, where appropriate, approve implementation schedules exceeding 5 years. This practice, which is considered equitable and effective, will continue under the regulatory revisions.</p>	