

**FINAL-FORM RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[25 PA. CODE CH. 92a]**

**National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance**

The Environmental Quality Board (Board) amends Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) to revise § 92a.51(a) (relating to schedules of compliance) to allow for the implementation of Long-Term Control Plans (LTCP) for combined sewer overflow (CSO) dischargers to achieve State water quality standards (WQS) by a period that may exceed 5 years, but that may not exceed the implementation period specified in an approved LTCP.

This final-form rulemaking was adopted by the Board at its meeting of (blank).

*A. Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

*B. Contact Persons*

For further information, contact Sean M. Furjanic, PE, Environmental Program Manager, Bureau of Clean Water, P.O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-2137, or Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105, (717) 783-8261. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department's) website at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of (blank)).

*C. Statutory Authority*

This final-form rulemaking is authorized under sections 5(b)(1) and 402 of The 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), which authorize the Board to promulgate rules and regulations necessary for the Department to perform its work.

*D. Background and Purpose*

Many municipalities across this Commonwealth have combined sewer systems (CSS), 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 Chapter 92a, when approved under an NPDES permit.

In 1994, the United States 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. In this Commonwealth, LTCPs are implemented through NPDES permits. 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 with 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 within 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, prior to this final-form rulemaking, the Department's regulation at § 92a.51(a) required 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 expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the previous language in § 92a.51(a) that required compliance within 5 years for all dischargers. Consequently, the Department had paused reissuing NPDES permits for CSO dischargers with these longer LTCP implementation schedules until the inconsistency was resolved. To resolve the inconsistency and address the EPA's concerns, this final-form rulemaking amends § 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 established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

#### *E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

The Department's regulation at § 92a.51(a) authorizes schedules of compliance for existing discharges that are not in compliance with WQS or effluent limitations or standards. This regulation is more stringent than equivalent Federal regulations because the Department's regulation establishes a maximum period of time to come into compliance of 5 years (unless a court of competent jurisdiction issues an order allowing a longer time for compliance), while Federal regulations do not. CSO dischargers, however, typically require more than 5 years to implement LTCPs to achieve compliance with WQS due to the scale of infrastructure modifications and financial commitments needed to implement LTCPs. The Department has approved many LTCPs with implementation schedules exceeding 5 years.

This final-form rulemaking amends subsection (a) to allow compliance schedules for CSO dischargers to exceed 5 years, but not to exceed the period of implementation specified in an approved LTCP.

This final-form rulemaking will not result in any degradation of public health or environmental protection. Conversely, the rulemaking is expected to improve public health and the environment by allowing the Department to move forward with reissuing long overdue NPDES permits to CSO dischargers and incorporating new conditions to minimize the discharge of pollutants to surface waters. Ultimately, the revision would recognize the Department's longstanding practice of approving LTCPs with implementation schedules exceeding 5 years.

No changes have been made between the proposed rulemaking and this final-form rulemaking.

#### *F. Summary of Comments and Responses on the Proposed Rulemaking*

The proposed rulemaking was published in the *Pennsylvania Bulletin* at 52 Pa.B. 361 (January 15, 2022), opening a 45-day public comment period that ended on March 1, 2022. One public hearing was held virtually on February 16, 2022, with no testimony offered by the public.

The Board received three sets of comments from the public as well as comments from the EPA's Region 3 office. The EPA's comments supported the rulemaking, noted that the rulemaking was in accordance with agreements between the EPA and the Department on how to address the issue, and discussed the procedural steps necessary to seek approval of the modified § 92a.51(a) as part of the Commonwealth's approved WQS.

One commentator opposed the proposed rulemaking because they believe it would extend and eliminate compliance schedules or allow for compliance periods on a case-by-case basis, and therefore perpetuate pollution. In response, this final-form rulemaking does not allow for an extension to compliance periods. The compliance period to implement LTCPs has always been proposed by CSO permittees and reviewed by the Department in light of the EPA's requirement that compliance be achieved in the shortest feasible period of time. Depending on a permittee's proposed solution to reduce or eliminate CSOs, the compliance period could range from a few years to a few decades. It is when the compliance period exceeds 5 years that the EPA believed the Department's approval of the schedule conflicted with § 92a.51(a) as written prior to the amendments in this final-form rulemaking. By amending § 92a.51(a) to recognize that LTCP implementation schedules may exceed 5 years, the Department can be authorized by the EPA to resume reissuing NPDES permits to CSO dischargers. This is important for public health and the environment because reissued permits will include updated milestones to keep permittees on track to achieve compliance with their overall LTCP implementation schedule. When permits are outdated, the milestone dates pass and there are no new milestones for permittees to adhere to.

One commentator noted that this regulatory change should not be a stepping stone for all NPDES-permitted dischargers to request longer compliance schedules. The Department is not providing an exception under § 92a.51(a) to any class of dischargers other than CSO dischargers and is doing so in the interests of public health and the environment.

One commentator supported the proposed rulemaking and stated their belief that schedules of compliance exceeding 5 years should also apply to systems other than CSSs. The Department is not making an exception for any other class of dischargers through this rulemaking.

#### *G. Benefits, Costs and Compliance*

##### *Benefits*

NPDES permits have a fixed term not exceeding 5 years. If a timely application is submitted for reissuance of an NPDES permit, the permit may be administratively extended after the permit expiration date to allow a discharger to continue operating under the terms and conditions of the permit. The EPA has objected to or otherwise expressed concerns to the Department over the reissuance of NPDES permits for CSO dischargers because the EPA perceived that the Department's approval of LTCPs with implementation schedules longer than 5 years conflicted with § 92a.51(a) as written prior to this final-form rulemaking. As a result, there are many administratively extended NPDES permits for CSO dischargers across this Commonwealth. By amending § 92a.51(a) as described previously, the Department will be able to move forward with reissuing these permits, providing the Department the opportunity to update the permits to ensure the most up-to-date standards and pollution control measures are included in the permits, benefiting public health and the environment.

##### *Compliance costs*

The regulatory revision does not impose any additional costs on the regulated community.

##### *Compliance assistance plan*

A compliance assistance plan is not considered necessary for this final-form rulemaking.

##### *Paperwork requirements*

The amendment to Chapter 92a clarifies existing processes but does not add to or change the existing paperwork requirements for the submission of NPDES permit applications and Notices of Intent to the Department.

#### *H. Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

Pollution prevention is not applicable to this final-form rulemaking.

#### I. *Sunset Review*

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

#### J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 4, 2022, the Department submitted a copy of the notice of proposed rulemaking, published at 52 Pa.B. 361 (January 15, 2022), and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5a(j.2) of the Regulatory Review Act, on (blank), this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5a.(e) of the Regulatory Review Act, IRRC met on (blank) and approved this final-form rulemaking.

#### K. *Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A 45-day public comment period was provided and a public hearing was held as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 52 Pa.B. 361.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

L. *Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 92a, are amended by amending § 92a.51 as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form regulation to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RAMEZ ZIADEH, P.E.,  
*Acting Chairperson*