

REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

NPDES Permit and Annual Fees Chapter 92a. National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance

BACKGROUND

The Department of Environmental Protection's (DEP's) Bureau of Clean Water (BCW) is responsible for the administration of the National Pollutant Discharge Elimination System (NPDES) permitting and compliance monitoring activities under 25 Pa. Code Chapter 92a. DEP implements this program pursuant to a Memorandum of Agreement with the United States Environmental Protection Agency (EPA) for point source discharges from sewage, industrial waste, municipal and industrial stormwater facilities, and other activities, including the application of pesticides. The NPDES program authority comes from the federal Clean Water Act (Federal Act) (33 U.S.C. §§ 1251—1388) and the Commonwealth's Clean Streams Law (35 P.S. §§ 691.1—691.1001). Chapter 92a was published as a final rulemaking in the *Pennsylvania Bulletin* on October 9, 2010 (see 40 Pa.B. 5767), and replaced DEP's prior NPDES regulations, Chapter 92. Section 691.6 of the Clean Streams Law allows DEP, in accordance with its rules and regulations, to charge reasonable filing fees for applications filed and for permits issued.

In the 2010 Chapter 92a rulemaking, the Environmental Quality Board (EQB) updated the fee schedule for NPDES permit applications (see 25 Pa. Code § 92a.26) and also introduced annual fees for individual NPDES permits (see 25 Pa. Code § 92a.62). Following finalization of that rulemaking, DEP began its Chapter 92a annual invoicing and fee collection program in December 2010.

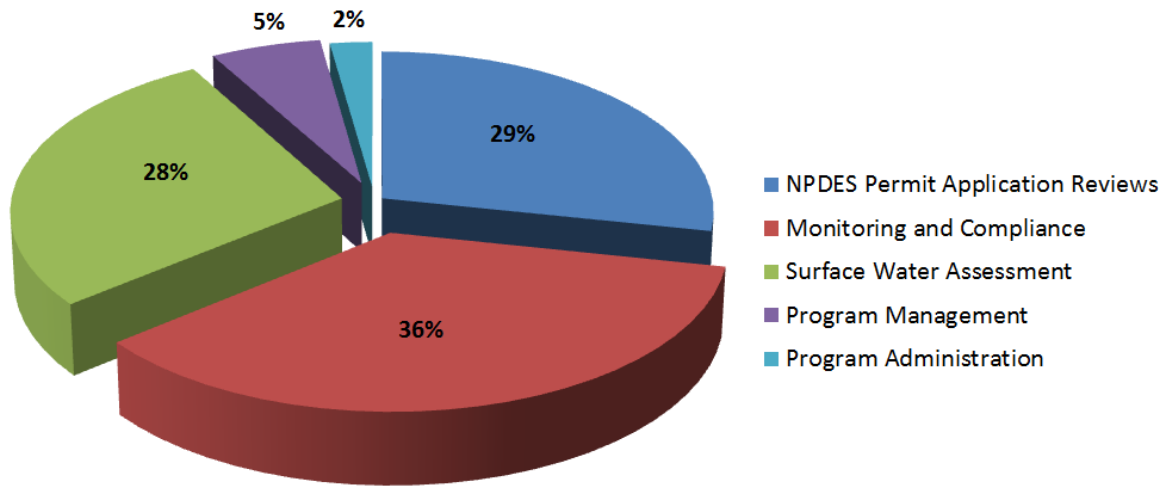
Every three years, DEP is required to provide the EQB with a review of the adequacy of the fees and recommend regulatory changes, if necessary, to address any disparity between program costs and income generated (see 25 Pa. Code §§ 92a.26(h) and 92a.62(e)). On February 18, 2014, DEP presented to the EQB the first fee analysis after the 2010 fee rulemaking. DEP did not recommend any fees changes at that time.

On August 21, 2018, DEP's Office of Water Programs presented a subsequent Chapter 92a fee analysis to the EQB. DEP highlighted a significant disparity between the amount of program income generated by the fees and the costs to administer the NPDES program. In that fee analysis, DEP also expressed concern that it was falling behind on its regulatory obligations and EPA commitments, even with significant improvements to its business process over the previous decade. As a result, DEP recommended fee increases for 25 Pa. Code §§ 92a.26 and 92a.62 to the EQB. The final-form rulemaking increasing those fees was published in the *Pennsylvania Bulletin* on August 28, 2021 (see 51 Pa.B. 5361).

The following activities are administered by DEP's BCW and implemented by DEP's Clean Water Program in DEP's six regional offices in support of the NPDES program (see **Figure 1**):

1. **NPDES Permit Application Reviews** – On an annual average basis, DEP receives approximately 2,150 NPDES applications for new permits, reissuance of existing permits, amendments to permits, and permit transfers for sewage, industrial waste, industrial stormwater, municipal stormwater, pesticides, and agricultural activities. Pennsylvania has over 10,000 such facilities with NPDES permit coverage, which puts DEP in the top five in the nation in terms of number of NPDES-permitted facilities. Twenty-nine percent (29%) of DEP’s NPDES program expenses are related to application reviews.
2. **Surface Water Monitoring, Assessment, and TMDL Development** – BCW and Clean Water Program biologists and other staff statewide conduct chemical and biological monitoring of surface waters throughout the state, assess if surface waters are meeting water quality standards, and develop Total Maximum Daily Loads (TMDLs) for surface waters that are not meeting water quality standards. These elements of DEP’s Clean Water Program are essential to informing where NPDES permit terms and conditions may need to be adjusted so that the Commonwealth’s surface waters can attain water quality standards. In addition, DEP’s Clean Water Program contracts with the United States Geological Survey for collection of samples at DEP’s Water Quality Network (WQN) stations. Twenty-eight percent (28%) of NPDES program costs are for surface water monitoring, assessment, and TMDL development.
3. **Monitoring and Compliance of NPDES-Permitted Facilities** – Clean Water Program monitoring and compliance staff conduct inspections of permitted facilities to verify compliance with permit terms and conditions. DEP must meet annual inspection goals established with the concurrence of EPA. On an annual average basis, DEP conducts approximately 4,500 inspections, including in-office administrative reviews and on-site field inspections. Thirty-six percent (36%) of NPDES program expenses are for monitoring and compliance of NPDES-permitted facilities.
4. **Clean Water Program Administration** – Other staff who do not directly prepare NPDES permits, inspect NPDES-permitted facilities, conduct water quality monitoring or assessments, or develop TMDLs also have roles in implementing the Clean Water Program; these roles include management and supervision of program activities and administration (clerical, fee processing, data management, etc.). Two percent (2%) of NPDES program costs go toward administration.
5. **Central Office Management** – BCW manages grants distributed by EPA for implementation of the delegated NPDES program, develops program guidance and policy, provides training for the Clean Water Program and regulated community, and manages NPDES program data. Five percent (5%) of NPDES program expenses are related to management.

Figure 1. Breakdown of Funded Activities in NPDES Program.



Fee Objective, Title, and Rate

The fee schedule established in Chapter 92a was intended to cover the program costs not covered by federal funding or the state General Fund. NPDES fees are deposited into the Clean Water Fund, a special restricted revenue account in the General Fund administered by DEP, who may use these funds for purposes authorized under the Clean Streams Law. **Table 1** below provides a summary of current individual NPDES permit *application* fees (“Current Fee”) and the fees that were in effect prior to August 28, 2021 (“Prior Fee”). The fees in Table 1 are for new permits; there is no charge for permit renewal applications as of August 28, 2021. **Table 2** below summarizes the current *annual* fees for facilities covered by individual NPDES permits and the fees that were in effect prior to August 28, 2021.

**Table 1. Summary of Current and Prior NPDES Permit Application Fees
in 25 Pa. Code § 92a.26.**

Type of Facility	Current Fee	Prior Fee
Permits for New Facilities or Activities		
Single Residence Sewage Treatment Plant (SRSTP)	\$200	\$100
Small Flow Treatment Facility (SFTF)	\$500	\$250
Minor Sewage Facility < 0.05 million gallons/day (MGD)	\$1,000	\$500
Minor Sewage Facility ≥ 0.05 MGD < 1 MGD	\$2,000	\$1,000
Minor Sewage Facility with Combined Sewer Overflow (CSO)	\$5,000	\$1,500
Major Sewage Facility ≥ 1 MGD < 5 MGD	\$7,500	\$2,500
Major Sewage Facility ≥ 5 MGD	\$10,000	\$5,000
Major Sewage Facility with CSO	\$15,000	\$10,000
Minor Industrial Waste (IW) Facility Not Covered by an Effluent Limitation Guideline (ELG)	\$3,000	\$1,000
Minor IW Facility Covered by an ELG	\$6,000	\$3,000
Major IW Facility < 250 MGD	\$15,000	\$10,000
Major IW Facility ≥ 250 MGD	\$100,000	\$50,000
Mining Activity	\$1,000	\$1,000
Stormwater	\$3,000	\$2,000
Concentrated Animal Feeding Operation (CAFO)	\$500	\$1,500
Concentrated Aquatic Animal Production (CAAP) Facility	\$3,000	\$1,500
Municipal Separate Storm Sewer System (MS4)	\$5,000	\$5,000
Permit Transfers		
SRSTPs	\$50	\$50
SFTFs	\$100	\$100
All other sewage facilities and CAFOs	\$200	\$200
Industrial waste, industrial stormwater, MS4s, and CAAPs	\$500	\$500

Type of Facility	Current Fee	Prior Fee
Permit Amendments		
Amendments initiated by DEP	\$0	\$0
Minor Amendment for SRSTPs	\$50	\$200
Minor Amendment for SFTFs	\$100	\$200
Minor Amendments for all other facilities	\$200	\$200
Major Amendments	Same fee established in 25 Pa. Code § 92a.62	Same as reissuance fee
Notice of Intent (NOI) for Facilities Covered by General Permits	Not to exceed \$5,000 except as provided in Chapter 102	Not to exceed \$2,500 except as provided in Chapter 102
Permit Renewals		
Renewal of Individual NPDES Permits	\$0	Same as annual fee (except \$2,500 for MS4)

Table 2. Summary of Current and Prior Annual Fees in 25 Pa. Code § 92a.62.

Type of Facility	Current Fee	Prior Fee
SRSTP	\$100	\$0
SFTF	\$250	\$0
Minor Sewage Facility < 0.05 MGD	\$500	\$250
Minor Sewage Facility ≥ 0.05 MGD < 1 MGD	\$1,000	\$500
Minor Sewage Facility with CSO	\$2,500	\$750
Major Sewage Facility ≥ 1 MGD < 5 MGD	\$3,750	\$1,250
Major Sewage Facility ≥ 5 MGD	\$5,000	\$2,500
Major Sewage Facility with CSO	\$7,500	\$5,000
Minor IW Facility Not Covered by an ELG	\$1,500	\$500
Minor IW Facility Covered by an ELG	\$3,000	\$1,500
Major IW Facility < 250 MGD	\$7,500	\$5,000

Type of Facility	Current Fee	Prior Fee
Major IW Facility \geq 250 MGD	\$50,000	\$25,000
Mining Activity	\$0	\$0
Stormwater	\$1,500	\$1,000
CAFO	\$500	\$0
CAAP Facility	\$1,500	\$0
MS4	\$2,500	\$500
Stormwater Associated with Construction Activities	\$500	\$0

FEE COLLECTION

Table 3 below provides a summary of revenues collected in the Clean Water Fund for NPDES application and annual fees during the period of fiscal year 2018 to fiscal year 2025. The increased fees went into effect partway through fiscal year 2022.

Table 3. Summary of Chapter 92a Revenues from Fees

Fiscal Year	Fee Revenue
2018	\$3,468,900
2019	\$4,453,900
2020	\$3,938,900
2021	\$4,688,800
2022	\$6,486,300
2023	\$8,116,500
2024	\$7,863,250
2025	\$7,770,250

PROGRAM COSTS

DEP has undertaken several initiatives in the past few years to streamline program implementation in an effort to minimize costs and maximize the effective use of existing staff resources. These initiatives include:

- Implementation of Standard Operating Procedures (SOPs) to ensure consistent and efficient use of permit application review resources statewide;
- Electronic management of permit documents;
- Automation of *Pennsylvania Bulletin* notice submissions;
- Electronic acceptance of permit applications;

- Automated notices of upcoming permit renewal application due dates to the regulated community;
- Electronic management of monitoring data submitted by the regulated community, with automated compliance assessment so that staff do not need to manually evaluate compliance; and
- Development of electronic Annual Reports.

These efforts are being undertaken in the face of continuous increases in workload for DEP’s statewide Clean Water Program due to new EPA initiatives and expectations, new contaminants of emerging concern, and other demands.

Table 4 below provides a summary of DEP’s NPDES program expenses for the period fiscal year 2018 to fiscal year 2025. The budget and expenses for the EPA Section 106 Water Pollution Control, Section 106 Supplemental, and the Section 604(b) Water Quality Management Planning Grants were used to calculate these costs, as all are applicable to the NPDES program. Section 106 Water Pollution Control Grants are provided to states and other eligible entities to establish and implement ongoing water pollution control programs, with supplemental grants provided to fund specific activities such as surface water monitoring. Section 604(b) Water Quality Management Planning Grants are provided to states and other eligible entities to determine the nature and extent of point and nonpoint source water pollution and to develop water quality management plans. Only the Section 106 Water Pollution Control Grant has a required match in state funds. The required level of state funding for this grant has been approximately \$5 million annually, but DEP spends much more than the required amount each year to pay for its expenses. The amount received and spent from federal grants has remained steady and are assumed to remain steady in the future. DEP’s expenses are expected to increase a minimum of 2% per year due to increases in salaries, laboratory costs, and supply costs.

Table 4. NPDES Program Expenses

Fiscal Year	Expenses
2018	\$20,825,000
2019	\$21,241,488
2020	\$21,666,319
2021	\$22,099,645
2022	\$22,541,638
2023	\$22,992,471
2024	\$23,452,320
2025	\$23,921,367

The figures above do not necessarily represent DEP’s full costs of administering the NPDES program. BCW estimates a total of 194 staff, including management, are associated with the implementation of this program at an approximate cost of \$28.1 million per year. Certain expenses, such as general program oversight, were not included in the cost estimates in Table 4 because these are not directly associated with the implementation of the Section 106 Water Pollution Control Grant or the required match.

TREND ANALYSIS

Table 5 below provides revenue/expense ratios for the period fiscal year 2018 to fiscal year 2025. Total revenue in this table reflects the sum of Chapter 92a fee revenue from Table 3 and the federal monies DEP receives annually under EPA grants. The percentage of DEP’s expenses that are paid for by Chapter 92a fees and federal funds has increased from approximately 50% prior to the latest Chapter 92a rulemaking to 60% this past fiscal year, with the increased revenue/expense ratio in recent years mainly attributable to the 2021 fee increases since federal funds for the program remained the same each of the past several fiscal years. The remainder of DEP’s costs to administer the NPDES program are paid for by DEP’s general operating budget. The revenue/expense ratio is expected to remain at approximately 60% for the next three fiscal years. NPDES application and annual fees historically covered 20% or less of program expenses and this percentage increased to average 33% in the three most recent fiscal years, following the 2021 fee increases.

Table 5. Revenue/Expense Ratios for the NPDES Program

Fiscal Year	Fee Revenue	Federal Funds	Total Revenue	Expenses	Ratios
2018	\$3,468,900	\$6,648,800	\$10,117,700	\$20,825,000	0.49
2019	\$4,453,900	\$6,648,800	\$11,102,700	\$21,241,488	0.52
2020	\$3,938,900	\$6,648,800	\$10,587,700	\$21,666,319	0.49
2021	\$4,688,800	\$6,648,800	\$11,337,600	\$22,099,645	0.51
2022	\$6,486,300	\$6,648,800	\$13,135,100	\$22,541,638	0.58
2023	\$8,116,500	\$6,648,800	\$14,765,300	\$22,992,471	0.64
2024	\$7,863,250	\$6,648,800	\$14,512,050	\$23,452,320	0.62
2025	\$7,770,250	\$6,648,800	\$14,419,050	\$23,921,367	0.60

ANALYSIS AND RECOMMENDATION

The 2021 fee increase for NPDES permits was the first substantive increase since 2010. The increases were intended to ensure that DEP has sufficient resources to protect the health and safety of the public, to protect the state’s water resources, and to meet other state and federal obligations while fairly and equitably distributing the cost to administer the Clean Water Program among the regulated community. The 2021 fee increases were also designed to be competitive with the fees charged by neighboring and comparable states. Approximately 60% of DEP’s NPDES program costs are now paid for by Chapter 92a fees and federal funds. As personnel and other costs inevitably rise, this percentage will gradually decrease, since the number of NPDES permit applications received per year is expected to remain relatively stable. However, given the magnitude of the fee increases in 2021, DEP is not, at this time, recommending fee increases for NPDES permits.