

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 91 AND 92a]

Water Quality Management and National Pollution Discharge Elimination System Permit Application and Annual Fees

[49 Pa.B. 1518]

[Saturday, March 30, 2019]

The Environmental Quality Board (Board) proposes to amend Chapters 91 and 92a (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) to establish new fee schedules for Water Quality Management (WQM) permit applications, National Pollution Discharge Elimination System (NPDES) permit applications and NPDES annual fees, and to make clarifications in 25 Pa. Code §§ 91.1, 91.22, 91.27, 91.36, 91.52, 92a.26, 92a.32 and 92a.62, respectively.

This proposed rulemaking was adopted by the Board at its meeting of December 18, 2018.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Sean 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 Margaret O. Murphy, Assistant Director, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105, (717) 783-7472. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 6 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.6) 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, including the charging and collecting of reasonable filing fees for applications filed and for permits issued under The Clean

Streams Law (35 P.S. §§ 691.16 691.1001).

D. Background and Purpose

Water resources of this Commonwealth are among the most abundant in the nation and require significant Department resources to protect the quality of these waters through the NPDES and WQM programs (collectively, Clean Water Program). This Commonwealth ranks in the top five Nationally for number of NPDES-permitted facilities and in the top ten for surface water miles in the nation. This Commonwealth has more municipal separate storm sewer system (MS4) permits and more combined sewer overflows (CSO) than any other state. The Department receives over 2,600 applications and Notices of Intent (NOI) for NPDES and WQM permits annually for discharges of sewage, industrial waste, industrial stormwater and municipal stormwater; operation of concentrated animal feeding operations (CAFO); utilization of pesticides; land application of sewage and industrial wastes; and construction of sewage and industrial waste pollution control facilities.

Over the past decade, the Department has worked to modify and continually improve business processes to reduce the cost of administering the Clean Water Program while maintaining its core responsibility of serving the public by protecting public health and the environment. However, as development needs within this Commonwealth continue to expand, the Department's workload also increases over time. For example, as new products and processes are employed by permittees, the Department must continually evaluate potential impacts to water resources and undertake new initiatives to meet Federal requirements to achieve its core responsibilities.

Under sections 202, 307, and 402(a) of The Clean Streams Law, Department permits are required for any discharge of sewage or industrial waste or for any other activity that creates a danger of pollution of waters of this Commonwealth. Under sections 207 and 308 of The Clean Streams Law also requires approval from the Department prior to the construction of infrastructure that is used to treat or convey sewage and industrial wastes.

The Board has promulgated regulations in 25 Pa. Code Chapters 91 and 92a for the Department to administer the programs authorized by The Clean Streams Law. Chapter 91 establishes a WQM program for sewage and industrial waste construction projects, discharges to groundwater through the land application of sewage and industrial wastes, and the use of pesticides in surface waters. Section 91.22 (relating to fees) provides a fee schedule for WQM permit applications. Most of these fees have not been updated since 1971.

Chapter 92a establishes a permit, monitoring and compliance program for discharges to surface waters of this Commonwealth under The Clean Streams Law, consistent with the NPDES permitting requirements of section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342). The Department has been delegated the authority to administer the Federal NPDES permitting program in the Commonwealth by the United States Environmental Protection Agency (EPA) and has done so since 1978.

Chapters 91 and 92a authorize the Department to issue individual WQM and NPDES permits with terms and conditions specific to the project, discharge or activity described in the permit application, and to issue general permits for categories of projects, discharges and activities that can be regulated by a standard set of terms and conditions. Persons seeking individual permits submit permit applications, while persons seeking coverage under a general permit submit NOIs.

The Board has established fees for permit applications and NOIs in § 91.22 and § 92a.26 (relating to application fees). In addition, in 2010 the Board established an annual NPDES permit

fee to aid in funding the cost of the Department's administration of the NPDES program. 40 Pa.B. 5767 (October 9, 2010). The Chapter 91 permit fees were initially promulgated by the Board in 1971 and subsequently amended in 1980 and 2000. See 1 Pa.B. 1804 (September 11, 1971); 10 Pa.B. 4294 (November 8, 1980); and 30 Pa.B. 521 (January 29, 2000).

The NPDES fee schedule for individual NPDES permits remained the same from 1978 until 2010. In 2010, the Board promulgated an updated fee schedule reflecting increased fees for most categories of individual NPDES permits in § 92a.26 and promulgated new annual fees in § 92a.62 (relating to annual fees). See 40 Pa.B. 5767. These fee increases provided needed revenue to administer the NPDES program and reduced reliance on general tax revenue to support the NPDES program.

Under both §§ 92a.26 and 92a.62, the Department is required to report to the Board every 3 years on the adequacy of the fees to administer the NPDES program. The report analyzes the fiscal solvency of programs by comparing program funding sources, including fees, with the costs to administer the program. Fee reports may contain recommendations to increase fees to eliminate any identified funding disparities.

On February 18, 2014, the Department presented its first report to the Board under the new NPDES fee schedules promulgated in 2010. The report documented that the primary sources of revenue to fund the NPDES program are general tax revenue (50%), Federal grants (33%) and permit fees (17%). The analysis also highlighted that NPDES fees in this Commonwealth are 50% to 90% less than surrounding and comparable states for most categories of NPDES permits. On August 21, 2018, the Department presented its second report to the Board, which illustrated similar conditions exist now as compared to 2014.

Based on its current staffing and activities, the Department spends approximately \$20 million per year to administer the NPDES program. These funds cover the following activities:

É Inspection and compliance monitoring of NPDES-permitted facilitiesô 36%.

É NPDES permit application/NOI reviewsô 29%.

É Assessment of surface waters throughout this Commonwealth, including development of Total Maximum Daily Loadsô 28%.

É Program managementô 5%.

É Program administrationô 2%.

The Department spends approximately \$1.4 million per year to administer the WQM program, which involves activities similar to the NPDES program, except for surface water assessment. The primary sources of revenue to fund this program are general tax revenue (90%) and permit fees (10%).

The benefits and justifications for the proposed fee increases are further explained in Section F of this preamble.

The Department's Bureau of Clean Water (BCW), which is responsible for the administration of the Clean Water Program, presented the proposed changes to the fees in Chapters 91 and 92a to the Agriculture Advisory Board (AAB) at its meetings on April 28, 2016, and October 26, 2017. A member of the AAB questioned in a letter to the Department's Secretary the need for fee increases that target a small number of farms (that is, CAFOs) and stated that the Department

should be utilizing its resources to inspect all farms, not just CAFOs.

The BCW also presented the proposed changes to the fees in Chapters 91 and 92a to the Water Resources Advisory Committee (WRAC) at its meetings on September 21, 2016, and October 25, 2017. The WRAC supported the proposal to increase these fees to adequately fund the Clean Water Program.

E. *Summary of Regulatory Requirements*

Summarized as follows are the proposed changes to Chapters 91 and 92a, along with supporting justification for these proposed permit fee increases. No Federal regulations prescribe fees for NPDES and WQM permit applications.

§ 91.1. *Definitions*

Definitions of the terms "major facility," "minor facility" and "small flow treatment facility" are proposed. The proposed definitions are needed because these terms are used in the proposed revisions to § 91.22. The proposed definitions are consistent with the definition of these terms in Chapter 92a. In addition, the reference to 25 Pa. Code § 92.1 in the definition of "CAFO" will be updated to 25 Pa. Code § 92a.2 (relating to definitions).

§ 91.22. *WQM permit fees*

Subsection (a) currently identifies WQM permit application fees for single residence sewage treatment plants (\$25), sewer extensions (\$100) and other WQM permits (\$500). The existing regulation does not indicate whether these fees apply to different types of permit applications (that is, new, amendment, renewal and transfer). This subsection is proposed to be amended to expand the categories of WQM permit applications from 3 to 11, and clarify the fees for the various types of permit applications. These proposed categories are based on an analysis conducted by the Department of the typical complexity and amount of time necessary to review the various WQM permit applications received. These proposed fee categories were also based on the need for the Department to conduct inspections during or following construction of the facilities.

Subsection (b) currently establishes a ceiling of \$500 for general WQM permit NOI fees. The Department proposes to revise this subsection to remove this ceiling and replace it with a requirement that NOI fees for general WQM permits may not exceed the amount established for individual WQM permit application fees for equivalent projects.

Subsection (c) is a new proposed subsection that would require the Department to adjust WQM permit application fees according to changes to the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation (ECI) every 2 years. The adjustment would be based on the cost difference, if any, of the ECI for the most recent 2-year period. The proposed revision requires the Department to publish any changes to the fees in subsection (a) based on the ECI in the *Pennsylvania Bulletin*. The Department will not be permitted to impose any increases beyond those based on the ECI without the Board promulgating a rulemaking to revise § 91.22. Further, fees will not be adjusted if application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program.

Subsection (d) proposes to require the Department to prepare a report every 3 years for submission to the Board to evaluate the revenue generated by the proposed fees and the cost to administer the WQM permitting program. The report would also include the Department's

recommendation for amendments to this subsection if revenue to administer the program is insufficient. This proposed provision is similar to an existing provision in § 92a.26(h).

Subsection (e) proposes to allow the Department to enter into an agreement with any Federal or Commonwealth agency or independent Commonwealth commission to provide an alternative funding mechanism for the WQM program rather than the payment of the fees established in § 91.22.

§ 91.27. *General WQM permit*

The reference to Chapter 92 will be updated to Chapter 92a.

§ 91.36. *Pollution control and prevention at agricultural operations*

The references to 25 Pa. Code § 92.5a and (e)(1)(i) (relating to prohibitions) will be updated to 25 Pa. Code §§ 92a.29 and (e)(1)(i) (relating to CAFO), respectively.

§ 91.52. *Procedural requirements for underground disposal*

The reference to Chapter 92 will be updated to Chapter 92a.

§ 92a.26. *NPDES permit application fees*

Subsection (a) is proposed to be modified to require payment of permit fees to the "Commonwealth of Pennsylvania" rather than the "Clean Water Fund" consistent with the Commonwealth's fiscal management policies. This subsection is further proposed to be modified to clarify that for fees based on the annual average design flow of a facility, the design flows of all discharges from the facility are totaled.

Subsection (b) is proposed to be amended to combine the provisions currently in subsections (b) and (d). New subsection (b) proposes to address permit application fees for new permits and the reissuance of mining permits. New subsection (b) proposes to remove reissuance fees for all types of permits with the exception of mining permits due to corresponding amendments to the annual fee provisions found in § 92a.62 (discussed further as follows). The fee categories remain the same in the new subsection (b), except that a new category for "pesticides" is proposed. The proposed fees are based on an analysis of the Department's costs to review the various types of permit applications and the time necessary for ongoing inspections and compliance monitoring.

Current subsection (e) is proposed to become subsection (c) and would continue to address fees associated with individual NPDES permit transfers. The fees for the transfer of NPDES permits would not change. This subsection is proposed to clarify that transfer fees apply to NPDES permits for CAFOs, MS4s and Concentrated Aquatic Animal Production (CAAP) facilities, as well as other types of NPDES permits.

Current subsection (f) is proposed to become subsection (d) and would continue to address fees associated with individual NPDES permit amendments. This subsection is proposed to be modified to include new, lower fees for minor amendments to NPDES permits for single residence sewage treatment plants (SRSTP) and small flow treatment facilities (SFTF), as the current fee for minor amendments to these permits exceeds or is not in proportion with the fees for SRSTP and SFTF permit applications for new permits. Major amendment fees would be the same as the annual fees in § 92a.62. Currently, major amendment fees are the same as reissuance fees, but since there will no longer be reissuance fees (except mining), the major amendment fees would be set equivalent to annual fees.

Current subsection (g) is proposed to become subsection (e) and would continue to address NOI fees associated with NPDES general permits. This subsection proposes to eliminate the current NOI ceiling of \$2,500 for coverage under an NPDES general permit and require that NOI fees for general NPDES permits not exceed the amount established for individual NPDES permit application fees for equivalent projects. This subsection also proposes to require payment of the annual increment of the NOI fee to obtain coverage under a general permit when the general permit allows payment of the NOI fee in annual increments. For example, if an NOI fee is \$1,000 and the general permit allows annual incremental payments of \$200 over 5-year term of the general permit, a person seeking coverage under the general permit would be required to submit a payment of \$200 with the NOI.

A new subsection (f) proposes to require adjustments every 2 years to the NPDES fees based on the ECI as previously discussed in § 91.22(c). However, fees will not be adjusted if application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program.

Current subsection (h) is proposed to become subsection (g) and would continue to require the Department to provide a report at least once every 3 years to the Board on the adequacy of the NPDES fees.

Current subsection (i) is proposed to become subsection (h) and would continue to allow Federal and State agencies or independent State commissions to provide funding to the Department for implementation of the NPDES program through an agreement as an alternative to paying the NPDES fees in this section. No change to the language in this subsection is proposed.

§ 92a.32. *Stormwater discharges*

Subsection (b) is proposed to be amended to codify the process of how to submit a "No Exposure Certification" application and fee. An applicant would be required to submit the appropriate permit application or NOI, including the appropriate application or NOI fee, and a "No Exposure Certification" on forms available from the Department at least once every 5 years. This amendment clarifies existing processes.

Subsection (c) is proposed to be amended to codify the process for how to submit a waiver from NPDES permit requirements for small MS4 operators. Applicants would be required to submit to the Department the appropriate permit application or NOI, the appropriate permit application or NOI fee and an application for the waiver on forms available from the Department at least once every 5 years. This amendment also clarifies existing processes.

§ 92a.62. *NPDES annual fees*

Subsection (a) proposes to require payment of the NPDES fee to the "Commonwealth of Pennsylvania" rather than the "Clean Water Fund" consistent with the Commonwealth's fiscal management policies. This subsection would be modified to clarify that for fees based on the annual average design flow of a facility, the design flows of all discharges from the facility are totaled. This subsection would also be amended to change the due date of the annual fee for individual NPDES permits. The due date for the annual fee would be the effective date of the last permit issuance or reissuance for permits issued before this rulemaking (old permits) becomes effective and would be the effective date of the initial permit for permits issued after this rulemaking becomes effective (new permits). For example, if an old permit was last reissued with an effective date of June 1, 2017, as of the effective date of this proposed rulemaking, the annual fee for this permit would be due every year on June 1, regardless of the effective date of future

reissued permits. If a new permit is issued on September 1, 2020, the annual fee for this permit would be due every year on September 1. In conjunction with this change and as previously discussed, permit reissuance fees were deleted for all permits that had annual fees. The current regulation requires annual fees to be due on the anniversary of the effective date of the permit. This date often changes each permit renewal cycle. The proposed amendment to this subsection would ease the administrative burden on the Department and on permittees by setting one due date for the life of each permit and would make the reissuance fee unnecessary.

Subsection (b) proposes to combine current subsections (b) and (d), which address annual fees for facilities with individual NPDES permits. The fee categories associated with annual fees would remain the same as the existing regulation, except that a new category for "pesticides" is proposed to be added. The proposed annual fees are based on the typical complexity and amount of time necessary to review the various applications the Department receives and the time necessary for ongoing inspections and compliance monitoring.

A new subsection (c) proposes to adjust the NPDES annual fees every 2 years based on the ECI, similar to the requirements in §§ 91.22(c) and 92a.26(f) previously described. However, also as previously described, fees will not be adjusted if application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program.

Current subsection (e) is proposed to become subsection (d) and would continue to require the Department to submit a written fee report at least once every 3 years to the Board evaluating the adequacy of the annual fees.

Current subsection (f) is proposed to become subsection (e), but would not be revised otherwise. This subsection allows Federal and State agencies or independent State commissions to provide funding to the Department for the implementation of the NPDES program through an agreement rather than paying annual fees required by this section.

F. *Benefits, Costs and Compliance*

Benefits

The fee increases proposed in this proposed rulemaking are necessary for the Department to administer the WQM and NPDES programs in Chapters 91 and 92a, respectively, to implement The Clean Streams Law, as well as the Federal NPDES program mandated by the Federal Clean Water Act (33 U.S.C.A. §§ 1251 and 1376). These programs are essential to the compelling public interest of preventing and eliminating pollution of the waters of this Commonwealth, promoting both public health and economic benefits.

WQM and NPDES permits help lower rates of acute and chronic illnesses in citizens by reducing the occurrence of pathogens, nutrients and other contaminants in waterways of this Commonwealth. Citizens may come into contact with these pollutants through drinking improperly treated water, recreational activities or consuming tainted food sources. High levels of some pathogens like *E. coli* can cause illness if accidentally consumed during recreational activities, by eating contaminated food or from drinking improperly treated water. Nutrient pollution can facilitate the occurrence of harmful algal blooms, which may produce toxic byproducts that harm recreational water users and render drinking water sources unusable during the duration of the bloom. Nutrient pollution is also known to impact downstream waters such as the Chesapeake Bay. Finally, other contaminants like heavy metals can accrue in fish tissue and cause sickness in people who consume the contaminated fish. This list of examples is not exhaustive of the types and causes of illnesses that can be associated with polluted waters.

Preservation of public health is a standalone benefit of environmental regulation, but it also provides economic benefits. While it is difficult to assign a specific monetary value to the prevention of acute and long-term illnesses or disease by improving water quality, healthier citizens are able to work, are more productive and live longer lives, all of which provide positive economic effects.

This Commonwealth receives other economic benefits from the proper administration of these programs through reduced costs to treat drinking water, increased property values, job creation, increased fishery resources and recreation, and enhanced aquatic habitat available to support the diverse species that depend upon clean water. Additionally, healthy watersheds help to avoid expensive restoration activities, reduce vulnerability to natural disasters and maintain natural ecosystems that provide water treatment at far lower costs than can be achieved through human-engineered services. For more information about the economic benefits of effectively managing water resources, see the EPA document, "The Economic Benefits of Protecting Healthy Watersheds," available on EPA's web site at https://www.epa.gov/sites/production/files/2015-10/documents/economic_benefits_factsheet3.pdf.

The proposed fees in this proposed rulemaking will allow the Department to properly administer the Clean Water Program to protect the quality of water resources within this Commonwealth without any increases in the appropriation of general tax revenue to the Department. The Department acknowledges that new fees may impact some regulated entities negatively; instead of collecting a large up-front fee to support the Department's water pollution control efforts, the regulation is structured to fairly spread fees among permit applications and annual fees, as applicable, to ease the burden on the regulated community. Despite the proposed increases, the Department's fees would still be less than the fees for many comparable states.

The administration of the Clean Water Program involves many activities including permit application reviews, inspections, enforcement, surface water assessments and related activities such as the development and implementation of Federally required Total Maximum Daily Loads (TMDL).

Under section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) the Department is required to develop and maintain the Commonwealth's water quality standards. Water quality standards are established to protect human health, aquatic life and ensure that our waters are safe for drinking water consumption and recreation. Water quality standards have two parts, designated uses and specific water quality criteria. Department-issued permits must meet those water quality standards and adhere to State and Federal technology-based standards. Department-issued WQM permits assure that appropriate engineering standards are applied to prevent pollution to waters of this Commonwealth.

As part of its section 106 grant agreement (33 U.S.C.A. § 1256), the Department is required by the EPA to monitor and assess surface waters to determine if streams are meeting their designated uses. This is performed in a variety of ways including biological sampling, chemical sampling and evaluation of aquatic habitats. Monitoring and assessment is performed to assure that the Department has appropriate water quality standards in place and has issued effective permits. Monitoring and assessment of our Commonwealth waters are the foundational components for the water management programs implemented by the Department.

Other benefits associated with this proposed rulemaking include:

- É Increased staff and resources to provide more timely permit application reviews, which would be beneficial to owners and operators of new facilities desiring permits as expeditiously as

possible.

É Increased staff and resources to allow more thorough reviews of impacts to public health and the environment and a greater presence in the field. The public benefits from these services by providing a greater level of protection for waters of this Commonwealth. The regulated community benefits from this through enhanced compliance assistance before enforcement is considered. The Department prefers to work with the regulated community to promote compliance. Compliance assistance has, in some cases, reduced expenses for permittees while providing adequate protection to human health and the environment.

É Increased staff to provide the resources necessary to evaluate existing programs, policies, guidance and regulation, what is and what is not working for the Department, the public and regulated community, and to make necessary changes more expeditiously. The Department is aware of some areas of the program that could be improved or enhanced in order to, for example, make the permit process less onerous and save applicants money. An increase of positions in the Department's BCW is necessary to complete this work.

É Increased revenue from fees to assist the Department in funding electronic solutions to improve business efficiency.

The Department believes that these benefits would result in cost savings to the regulated community although the savings are difficult to quantify.

Compliance costs

The operators of approximately 4,000 facilities in this Commonwealth with individual NPDES permits would be affected by this proposed rulemaking. Certain categories of facilities would be subject to little or no fee increase, and other categories would be subject to more significant increases, based on the nature and complexity of these facilities and the applications they submit.

Approximately 500-600 owners and operators of water pollution control facilities (for example, persons proposing to construct or modify construction of sewage treatment facilities, sewer lines, wastewater pump stations, land application sites, and the like) who, on average, apply to the Department each year for a WQM permit, would be subject to WQM permit application fee increases.

The collective increase in fees for these facilities would be approximately \$6 million in the first year following the effective date of this final-form rulemaking of Chapters 91 and 92a. Persons applying for new NPDES and WQM permits would be subject to the revised fees immediately. Persons with existing NPDES permits would not be subject to the revised fees until an annual fee is due. Persons with existing WQM permits would not be subject to the revised fees unless an amendment, transfer or renewal of the WQM permit is desired.

Not included in these estimates are costs associated with coverage under general WQM and NPDES permits. The Department could decide to increase NOI fees for general permits in the future to a level not to exceed the equivalent fee for an individual permit application. If the Department were to decide on this course of action, it could affect up to 5,700 additional facilities with general permit coverage and collectively cost up to an additional \$2 million. Any increase in NOI fees for general permits would be proposed at the time each general permit is renewed. Each proposed general permit is published in the *Pennsylvania Bulletin* for public comment.

While the costs to comply with the regulation for up to 10,300 NPDES and WQM-permitted facilities could be as high as \$8 million, it is expected that the net costs would be much lower

considering the benefits previously described.

Compliance assistance plan

The Department will develop and post to its web site fact sheets describing changes to the WQM and NPDES fee schedules and include important information on these changes on annual fee invoices mailed to permittees.

Paperwork requirements

The proposed amendments to Chapters 91 and 92a clarify existing processes but do not add to or change the existing paperwork requirements for the submission of WQM and NPDES permit applications and NOIs or the submission of annual fee payments to the Department. It is noted that the Department is in the process of launching an electronic payment system for annual fees, which would reduce paperwork.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101ô 13109) 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, and 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. This regulation has incorporated the following pollution prevention incentives:

Certain sectors of facilities may be able to avoid paying annual fees when pollution prevention measures are employed. For example, industrial sites that are required to apply for and obtain NPDES permits for stormwater discharges associated with industrial activity may qualify for a No Exposure Certification approval instead of a permit, if most products and materials are stored in storm-resistant shelters.

H. Sunset Review

The Board is not establishing a sunset date for these regulations, since they are 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.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 12, 2019, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to

final-form publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. Public Comments

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding this proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by May 14, 2019. Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. Public Hearings

The Board will hold one public hearing for the purpose of accepting comments on this proposed rulemaking. The hearing will be held at 1 p.m. on the following date:

May 1, 2019 Department of Environmental Protec-
tion
Southcentral Regional Office
Susquehanna Rooms A and B
909 Elmerton Avenue
Harrisburg, PA 17110

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 783-8727 at least 1 week in advance of the hearing to reserve a time to present testimony. Verbal testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 783-8727 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

PATRICK McDONNELL,
Chairperson

Fiscal Note: 7-533. No fiscal impact. The Historical and Museum Commission and the Department of Corrections will face nominal costs resulting from the adjustments in the fee schedules; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

GENERAL

§ 91.1. Definitions.

* * * * *

CAFO—Concentrated animal feeding operation An agricultural operation that meets the criteria established by the Department in § [92.1] 92a.2 (relating to definitions).

* * * * *

General water quality management permit or general permit A water quality management permit that is issued for a clearly described category of wastewater treatment facilities, which are substantially similar in nature.

Major facility—The term as defined in § 92a.2 (relating to definitions).

Manure

- (i) Animal excrement, including poultry litter, which is produced at an agricultural operation.
- (ii) The term includes materials such as bedding and raw materials which are commingled with that excrement.

* * * * *

Manure storage facility A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underbuilding structures, as well as earthen and synthetically-lined manure storage ponds.

Minor facility—The term as defined in § 92a.2 (relating to definitions).

NOI *Notice of Intent* A complete form submitted as a request for general water quality management permit coverage.

* * * * *

*Single residence sewage treatment plant*ô A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot which collects, disposes and treats solely direct or indirect sewage discharges from the residences into waters of this Commonwealth.

Small flow treatment facility—The term as defined in § 92a.2 (relating to definitions).

*Stormwater*ô Runoff from precipitation, snow melt runoff and surface runoff and drainage.

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APPLICATIONS AND PERMITS

§ 91.22. Fees.

(a) Applications for **new individual** water quality management permits [from parties except agencies of the Commonwealth], **reissuance of individual water quality management permits, and requests for permit amendments and transfers** shall be accompanied by a [check] **fee** payable to "Commonwealth of Pennsylvania," in the [following] amounts[:] **specified below.**

[(1) For applications for single residence sewage treatment plant permits—\$25.

(2) For applications for sewer extension permits—\$100.

(3) For applications for other water quality management permits—\$500.]

<u>Category</u>	<u>Application Type</u>	<u>Fee</u>
<u>Joint Pesticides Permit</u>	<u>New and Reissuance</u>	<u>\$500</u>
	<u>Amendment</u>	<u>\$100</u>
	<u>Transfer</u>	<u>\$50</u>
<u>Major Industrial Waste Treatment Facility</u>	<u>New</u>	<u>\$15,000</u>
	<u>Amendment</u>	<u>\$2,000</u>
	<u>Transfer</u>	<u>\$500</u>
<u>Minor and Non-NPDES Sewage Treatment Facility</u>	<u>New</u>	<u>\$5,000</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Minor and Non-NPDES Industrial Waste Treatment Facility</u>	<u>New</u>	<u>\$7,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Single Residence Sewage Treatment Plant</u>	<u>New</u>	<u>\$200</u>
	<u>Amendment</u>	<u>\$100</u>
	<u>Transfer</u>	<u>\$50</u>
<u>Small Flow Treatment Facility</u>	<u>New</u>	<u>\$1,000</u>
	<u>Amendment</u>	<u>\$200</u>

	<u>Transfer</u>	<u>\$100</u>
<u>Sewer Extensions</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Pump Station</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Sewage</u>	<u>New and Reissuance</u>	<u>\$5,000</u>
	<u>Amendment</u>	<u>\$1,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Industrial Waste</u>	<u>New and Reissuance</u>	<u>\$10,000</u>
	<u>Amendment</u>	<u>\$2,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Manure Storage and Wastewater Impoundment</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>

(b) **[An] NOI fees for coverage under a general water quality management permit, including fees for amendments to and transfers of general permit coverage, shall be [accompanied by a check] made payable to the "Commonwealth of Pennsylvania[.]" [in the amount no greater than \$500 as set forth in the public notice for the general water quality management permit as described in § 91.27(b)(1) (relating to general water quality management permit).] The fees for a general permit in § 91.27(b)(1) (relating to general water quality management permit) shall be established in the general permit. NOI fees may not exceed the individual permit application fees in subsection (a) for the equivalent category and application type.**

(c) **The Department will adjust fees for WQM permit applications required under subsection (a) every 2 years based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation, or an equivalent index recognized by the United States Department of Labor, beginning 2 years after (Editor's Note: The blank refers to the effective date of the final-form rulemaking). The adjustment will be based upon the cost difference for the most recent 2-year period prior to the calculation. The fees shall not be adjusted if the application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program. The Department will publish the final adjusted fee schedule and effective date in the Pennsylvania Bulletin.**

(d) **The Department will review the adequacy of the fees established in this section every 3 years and provide a written report to the EQB. The report will identify disparities between the amount of program income generated by the fees and the costs to administer the program, and contain recommendations to increase fees to eliminate any disparities, including recommendations for regulatory amendments to increase program fees.**

(e) **Any Federal or Commonwealth agency or independent Commonwealth commission that provides funding to the Department for the implementation of the WQM program through terms and conditions of a mutual agreement may be exempt from the fees in this section.**

§ 91.27. General water quality management permit.

* * * * *

(c) *Denial of coverage.* The Department may deny coverage under the general permit when one or more of the following conditions exist:

(1) The NOI is not complete or timely.

(2) The applicant has not obtained permits required by Chapter [92] 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) when required.

* * * * *

MANAGEMENT OF OTHER WASTES

§ 91.36. Pollution control and prevention at agricultural operations.

* * * * *

(b) *Land application of animal manure and agricultural process wastewater; setbacks and buffers.*

(1) The land application of animal manures and agricultural process wastewater requires a permit or approval from the Department unless the operator can demonstrate that the land application meets one of the following:

(i) The land application follows current standards for development and implementation of a plan to manage nutrients for water quality protection, including soil and manure testing and calculation of proper levels and methods of nitrogen and phosphorus application. The Manure Management Manual contains current standards for development and implementation of a plan to manage nutrients for water quality protection which can be used to comply with the requirements in paragraph (1).

(ii) For CAOs, the land application is in accordance with an approved nutrient management plan under Chapter 83, Subchapter D.

(iii) For CAFOs, the land application is in accordance with a CAFO permit as described in § [92.5a] 92a.29 (relating to CAFOs).

(2) Unless more stringent requirements are established by statute or regulation, the following agricultural operations may not mechanically land apply manure within 100 feet of surface water, unless a vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into surface water:

(i) A CAO.

(ii) An agricultural operation receiving manure from a CAO directly, or indirectly through a broker or other person.

(iii) An agricultural operation receiving manure from a CAFO directly, or indirectly through a broker or other person.

(3) CAFOs shall meet the setback requirements in § **[92.5a(e)(1)(i)] 92a.29(e)(1)(i)**.

* * * * *

UNDERGROUND DISPOSAL

§ 91.52. Procedural requirements for underground disposal.

A permit issued under § 91.51 (relating to potential pollution resulting from underground disposal) shall be issued in accordance with the requirements of Chapter **[92] 92a** (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) when applicable.

CHAPTER 92a. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING, MONITORING AND COMPLIANCE

Subchapter B. PERMIT APPLICATION AND SPECIAL NPDES PROGRAM REQUIREMENTS

§ 92a.26. Application fees.

(a) **[The] NPDES application [fee is] fees are** payable to the **[Clean Water Fund] Commonwealth of Pennsylvania** according to the fee schedule set forth in this section. All flows listed in this section are **total** annual average design flows **for all discharges at a facility in million gallons per day (MGD)**.

(b) Applications fees for **new** individual NPDES permits **[for discharges of treated sewage are:] are as follows.**

[SRSTP	\$100 for new; \$100 for reissuance
Small flow treatment facility	\$250 for new; \$250 for reissuance
Minor facility < 50,000 GPD	\$500 for new; \$250 for reissuance
Minor facility > = 50,000 GPD < 1 MGD	\$1,000 for new; \$500 for reissuance
Minor facility with CSO	\$1,500 for new; \$750 for reissuance
Major facility > = 1 MGD < 5 MGD	\$2,500 for new; \$1,250 for reissuance
Major facility > = 5 MGD	\$5,000 for new; \$2,500 for reissuance
Major facility with CSO	\$10,000 for new; \$5,000 for reissuance]

<u>Category</u>	<u>Application Fee</u>
<u>Single Residence Sewage Treatment Plant</u>	<u>\$200</u>
<u>Small Flow Treatment Facility</u>	<u>\$1,000</u>
<u>Minor Sewage Facility < 0.05 MGD</u>	<u>\$1,500</u>
<u>Minor Sewage Facility >= 0.05 MGD and < 1.0 MGD</u>	<u>\$2,000</u>
<u>Minor Sewage Facility with CSO</u>	<u>\$5,000</u>
<u>Major Sewage Facility >= 1.0 MGD and < 5.0 MGD</u>	<u>\$7,500</u>
<u>Major Sewage Facility >= 5.0 MGD</u>	<u>\$10,000</u>

<u>Major Sewage Facility with CSO</u>	\$15,000
<u>Minor Industrial Waste Facility not covered by ELG</u>	\$5,000
<u>Minor Industrial Waste Facility covered by ELG</u>	\$7,500
<u>Major Industrial Waste Facility < 250 MGD</u>	\$15,000
<u>Major Industrial Waste Facility >= 250 MGD</u>	\$100,000
<u>Industrial Stormwater</u>	\$5,000
<u>CAFO</u>	\$3,000
<u>MS4</u>	\$5,000
<u>CAAP</u>	\$3,000
<u>Pesticides</u>	\$3,000
<u>Mining Activity</u>	\$1,000

In addition, the application fee for reissuance of an individual NPDES permit associated with a mining activity shall be \$500.

(c) Applications fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	\$1,000 for new; \$500 for reissuance
Minor facility covered by an ELG	\$3,000 for new; \$1,500 for reissuance
Major facility < 250 MGD	\$10,000 for new; \$5,000 for reissuance
Major facility > = 250 MGD	\$50,000 for new; \$25,000 for reissuance
Mining activity	\$1,000 for new; \$500 for reissuance
Stormwater	\$2,000 for new; \$1,000 for reissuance

(d) Application fees for individual NPDES permits for other facilities or activities are:

CAFO	\$1,500 for new; \$750 for reissuance
CAAP	\$1,500 for new; \$750 for reissuance
MS4	\$5,000 for new; \$2,500 for reissuance

(e) (c) Application fees for transfers of individual permits are:

[SRSTP] Single residence sewage treatment plant

\$50

Small flow treatment facility

\$100

[Other domestic wastewater] All other sewage facilities

\$200

Industrial waste, **Industrial stormwater, CAFO, MS4 and CAAP**

\$500

(f) (d) Application fees for amendments to individual permits are:

Amendment initiated by Department

No charge

Minor Amendment for single residence sewage treatment plant

\$50

Minor Amendment for small flow treatment facility

\$100

Minor amendment **for all other facilities**

\$200

Major amendment

Same as **[reissuance permit fee] annual fee established in**

§ 92a.62 (relating to annual fees)

[(g)] (e) NOI fees for coverage under a general permit under § 92a.23 (relating to NOI for coverage under an NPDES general permit), including fees for amendments to or transfers of general permit coverage, will be established in the general permit. [NOI fees may not exceed \$2,500, except as provided in Chapter 102 (relating to erosion and sediment control).] NOI fees under this chapter may not exceed the individual permit application fees in subsections (b), (c) and (d) and annual fee in § 92a.62 (relating to annual fees) for the equivalent activity. An eligible person shall submit to the Department the applicable NOI fee before the Department approves coverage under the general permit for that person. If the general permit allows payment of the NOI fee in annual increments, the eligible person shall, if required by the Department, submit the initial increment to the Department with the NOI before the Department approves coverage under the general permit.

(f) The Department will adjust fees for NPDES permit applications imposed under subsections (b)—(d) every 2 years based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation, or an equivalent index recognized by the United States Department of Labor, beginning 2 years after _____ (Editor's Note: The blank refers to the effective date of the final-form rulemaking). The adjustment will be based upon the cost difference for the most recent 2-year period prior to the calculation. The fees shall not be adjusted if the application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program. The Department will publish the final adjusted fee schedule and effective date in the Pennsylvania Bulletin.

[(h)] (g) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

[(i)] (h) Any Federal or State agency or independent State commission that provides funding to the Department for the implementation of the NPDES program through terms and conditions of a mutual agreement may be exempt from the fees in this section.

§ 92a.32. Stormwater discharges.

(a) The provisions of 40 CFR 122.26(a), (b), (c)(1), (d), (e)(1), (3) (9) and (f) (g) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)) and 122.30 (122.37) are incorporated by reference.

(b) *No exposure stormwater discharges.* Discharges composed entirely of stormwater are not stormwater discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to stormwater and the discharger satisfies the conditions in 40 CFR 122.26(g). A facility or activity with no stormwater discharges associated with industrial activity may qualify for a conditional exclusion from a permit, provided that the facility or activity does not discharge to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards). To qualify for the conditional exclusion from a permit, the responsible person shall complete, sign and submit to the Department **[a] the appropriate permit application or NOI, including the appropriate application or NOI fee, and a "No Exposure Certification" on forms available from the Department** at least once every 5 years **[in lieu of a permit application]**.

(c) *Municipal separate storm sewer systems.* The operator of a discharge from a large, medium or small municipal separate storm sewer shall submit in its **permit application or NOI** the information required to be submitted under 40 CFR Part 122 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System). Permits for discharges from municipal separate storm sewer systems are not eligible for a "no exposure" conditional exclusion from a permit under subsection (b). **The operator of a discharge from a small MS4 may seek a waiver from NPDES permit requirements under 40 CFR 122.32(c) (relating to as an operator of a small MS4, am I regulated under the NPDES storm water program?). To request this waiver, the operator of the small MS4 shall complete, sign and submit to the Department the appropriate permit application or NOI, the appropriate permit application or NOI fee and an application for the waiver on forms available from the Department at least once every 5 years.**

* * * * *

Subchapter D. MONITORING AND ANNUAL FEES

§ 92a.62. Annual fees.

(a) Permittees shall pay an annual fee **in the amount indicated in the following schedule** to the **[Clean Water Fund] Commonwealth of Pennsylvania**. The annual fee **[must be for the amount indicated in the following schedule and] for permits issued before _____** **(Editor's Note: The blank refers to the effective date of the final-form rulemaking)** is due on each anniversary of the **[effective date of the permit] effective date of the last permit issuance or reissuance until the Department terminates the permit. The annual fee for permits issued for the first time after _____ (Editor's Note: The blank refers to the effective date of the final-form rulemaking) is due on each anniversary of the effective date of the initial permit until the Department terminates the permit.** The flows listed in this section are **total** annual average design flows **for all discharges at a facility in million gallons per day (MGD).**

(b) Annual fees for individual NPDES permits **[for discharges of treated sewage are:] are as follows:**

[SRSTP

\$0

Small flow treatment facility	\$0
Minor facility < 50,000 GPD	\$250
Minor facility > = 50,000 GPD < 1 MGD	\$500
Minor facility with CSO	\$750
Major facility > = 1 MGD < 5 MGD	\$1,250
Major facility > = 5 MGD	\$2,500
Major facility with CSO	\$5,000]

<u>Category</u>	<u>Annual Fee</u>
<u>Single Residence Sewage Treatment Plant</u>	<u>\$100</u>
<u>Small Flow Treatment Facility</u>	<u>\$500</u>
<u>Minor Sewage Facility < 0.05 MGD</u>	<u>\$750</u>
<u>Minor Sewage Facility $\times \times$ 0.05 MGD and < 1.0 MGD</u>	<u>\$1,000</u>
<u>Minor Sewage Facility with CSO</u>	<u>\$2,500</u>
<u>Major Sewage Facility $\times \times$ 1.0 MGD and < 5.0 MGD</u>	<u>\$3,750</u>
<u>Major Sewage Facility $\times \times$ 5.0 MGD</u>	<u>\$5,000</u>
<u>Major Sewage Facility with CSO</u>	<u>\$7,500</u>
<u>Minor Industrial Waste Facility not covered by ELG</u>	<u>\$2,500</u>
<u>Minor Industrial Waste Facility covered by ELG</u>	<u>\$3,750</u>
<u>Major Industrial Waste Facility < 250 MGD</u>	<u>\$7,500</u>
<u>Major Industrial Waste Facility $\times \times$ 250 MGD</u>	<u>\$50,000</u>
<u>Industrial Stormwater</u>	<u>\$2,500</u>
<u>CAFO</u>	<u>\$1,500</u>
<u>MS4</u>	<u>\$2,500</u>
<u>CAAP</u>	<u>\$1,500</u>
<u>Pesticides</u>	<u>\$1,500</u>
<u>Mining Activity</u>	<u>\$0</u>
<u>Stormwater Associated with Construction Activities</u>	<u>\$500</u>

(c) Annual fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	\$500
Minor facility covered by an ELG	1,500
Major facility < 250 MGD	\$5,000
Major facility > = 250 MGD	\$25,000
Mining activity	\$0
Stormwater	\$1,000

(d) Annual fees for individual NPDES permits for other facilities or activities are:

CAFO	\$0
CAAP	\$0
MS4	\$500]

(c) The Department will adjust annual fees required under subsection (b) every 2 years based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation, or an equivalent index recognized by the United States Department of Labor, beginning 2 years after _____ (Editor's Note: The blank refers to the effective date of the final-form rulemaking). The adjustment will be based upon the cost difference for the most recent 2-year period prior to the calculation. The fees shall not be adjusted if the application of the index would result in fees exceeding the Department's costs to administer the Clean Water Program. The Department will publish the final adjusted fee schedule and effective date in the *Pennsylvania Bulletin*.

[(e)] (d) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

[(f)] (e) Any Federal or State agency or independent state commission that provides funding to the Department for the implementation of the NPDES Program through terms and conditions of a mutual agreement may be exempt from the fees in this section.

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