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CHAPTER 91. GENERAL PROVISIONS

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Authority

The provisions of this Chapter 91 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5), unless otherwise noted.

Source

The provisions of this Chapter 91 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 71.64 (relating to small flow treatment facilities); 25 Pa. Code § 78.60 (relating to discharge requirements); 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or governmental-financed reclamation projects); 25 Pa. Code § 87.102 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.92 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.187 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.292 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 89.52 (relating to water quality standards, effluent limitations and best management practices); 25 Pa. Code § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices); 25 Pa. Code § 92.5a (relating to CAFOs); 25 Pa. Code § 92.17 (relating to other chapters applicable); 25 Pa. Code § 94.1 (relating to definitions); 25 Pa. Code § 94.12 (relating to annual report); 25 Pa. Code § 250.1 (relating to definitions); 25 Pa. Code § 250.309 (relating to MSCs for surface water); 25 Pa. Code § 250.406 (relating to relationship to surface water quality requirements); 25 Pa. Code § 271.821 (relating to application for general permit); 25 Pa. Code § 271.902 (relating to permits and direct enforceability); 25 Pa. Code § 271.907 (relating to special definitions); 25 Pa. Code § 271.915 (relating to management practices); 25 Pa. Code § 299.142 (relating to general requirements); 25 Pa. Code § 961.8 (relating to ineligible costs); and 25 Pa. Code § 963.12 (relating to ineligible costs).

GENERAL**§ 91.1. Definitions.**

The definitions in section 1 of The Clean Streams Law (35 P. S. § 691.1) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

AEU—Animal equivalent unit—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in 3 Pa.C.S. § 503 (relating to definitions).

Act—The Clean Streams Law (35 P. S. §§ 691.1—691.801).

Agricultural operations—The management and use of farming resources for the production of crops, livestock or poultry as defined in 3 Pa.C.S. § 503.

Agricultural process wastewater—Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

Application—The Department’s form for requesting approval to construct and operate a wastewater collection, conveyance or treatment facility under a new water quality management permit, or the modification, revision or transfer of an existing water quality management permit.

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

CAO—Concentrated animal operation—An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under 3 Pa.C.S. Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management).

Facility—A structure built to collect, convey or treat wastewater which requires coverage under a water quality management permit.

Federal Act—The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387).

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.

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 Management Manual—The guidance manual published by the Department that is entitled “Manure Management Manual for Environmental

Protection,” including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by § 91.36 (relating to pollution control and prevention at agricultural operations).

Manure storage capacity—The total volume in gallons of a manure storage facility, less any required freeboard, sufficient and available to contain all of the following:

- (i) Accumulated manure and agricultural process wastewater during the storage period.
- (ii) Normal precipitation less evaporation on the surface of the facility.
- (iii) Normal runoff during the storage period.
- (iv) The design storm precipitation and runoff (25 year or 100 year, as appropriate under § 91.36(a)).
- (v) Solids remaining after liquids have been removed.

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 under-building structures, as well as earthen and synthetically-lined manure storage ponds.

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

Operator—A person or other legal entity responsible for the operation or maintenance of a facility or activity subject to this chapter.

Owner—The person or other legal entity holding legal title to a facility or activity subject to this chapter.

Pennsylvania Technical Guide (Guide)—

(i) The Pennsylvania Soil and Water Conservation Technical Guide, including supplements and amendments, which is the primary technical guide published by the Pennsylvania office of the Natural Resources Conservation Service of the United States Department of Agriculture.

(ii) The Guide contains technical information, including design criteria, about conservation of soil, water, air, plant and animal resources specific to this Commonwealth.

(iii) The Guide is also referred to as the Field Office Technical Guide in Federal regulations and other documents.

Pollutant—A contaminant or other alteration of the physical, chemical or biological properties of surface water which causes or has the potential to cause pollution as defined in section 1 of the act (35 P. S. § 691.1).

Pollution prevention—Source reduction and other practices (for example—direct reuse or in-process recycling) that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Pollution prevention measures—Practices that reduce the use of hazardous materials, energy, water or other resources and that protect natural resources and human health through conservation, more efficient use, or effective pollutant release minimization prior to reuse, recycling, treatment or disposal.

Schedule of compliance—A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with effluent limitations, other limitations, prohibitions or standards.

Single residence sewage treatment plant—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.

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

Vegetated buffer—A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

Wastewater impoundment—A depression, excavation or facility situated in or upon the ground, whether natural or artificial and whether lined or unlined, used to store wastewater including sewage, animal waste or industrial waste.

Water quality management permit—A permit or equivalent document (Part II Permit) issued by the Department to authorize one of the following:

- (i) The construction, erection and location of a wastewater collection, conveyance or treatment facility.
- (ii) A discharge of wastewater to groundwaters of this Commonwealth.

Authority

The provisions of this § 91.1 amended 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 1921 (71 P. S. § 510-20).

Source

The provisions of this § 91.1 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5796. Immediately preceding text appears at serial pages (263037) to (263038).

§ 91.2. Agreements with other states and agencies.

The administration of the act and the rules and regulations of the Department will conform to interstate obligations the Commonwealth or the Department has assumed or shall in the future assume with other states, the Federal government or their agents under interstate agreements or other formal commitments.

91-4.1

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Source

The provisions of this § 91.2 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

§ 91.3. Consistency with laws.

No act or approval by the Department may be construed as an intent on its part to approve anything inconsistent with law or as abrogating the requirement that the approval of another municipal, State or Federal agency shall be obtained by the party in interest if the approval is necessary or precedent to the carrying out of anything approved by the Department.

Source

The provisions of this § 91.3 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

§ 91.5. Interpretation of regulations.

Unless a provision of this article explicitly exempts a discharge from permit requirements, no provision of this article may be construed as authorizing a discharge of industrial wastes or other wastes without a permit.

Source

The provisions of this § 91.5 adopted April 27, 1973, effective May 14, 1973, 3 Pa.B. 765; corrected February 25, 1977, effective May 14, 1973, 7 Pa.B. 521.

§ 91.6. Pollution prevention.

The Department will encourage pollution prevention by providing assistance to the permittee and users of the permittee's facilities in the consideration of pollution prevention measures such as process changes, materials substitution, reduction in volume of water use, in-process recycling and reuse of water, and by general measures of "good housekeeping" within the plant or facility. The Department will encourage consideration of the following measures, in descending order of preference, for environmental management of wastes: reuse, recycling, treatment and disposal.

Authority

The provisions of this § 91.6 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.6 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

ADMINISTRATION AND ENFORCEMENT**§ 91.11. Compliance conferences.**

(a) The Department will confer with the representatives of organizations required to abate their pollution of the waters of this Commonwealth and offer advice and suggestions regarding possible means for abatement of the pollution in question through pollution prevention measures or treating the waste if pollution prevention is not possible.

(b) One or more conferences will be held in the interests of attaining a better understanding of the pollution problems involved and of expediting solutions to specific pollution problems. If applicable, the conferences will be held prior to the preparation of plans.

Authority

The provisions of this § 91.11 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.11 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial pages (225895) to (225896).

§ 91.12. Conference procedure.

(a) Employees of the Department may not act as consulting engineers for a party or recommend the employment of a particular consultant, gather the data for the design of his treatment plant, prepare plans or act as an inspector on the construction of the project.

(b) Employees of the Department will not guarantee directly or by implication the efficacy of a proposed method of pollution abatement.

(c) Employees of the Department shall exercise their best judgment in assisting the party and his engineers, but the responsibility for abating pollution shall rest entirely upon the one causing the pollution.

Authority

The provisions of this § 91.12 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.12 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (225896).

§ 91.13. Abatement or treatment required.

The Department will require either abatement of the pollution or the submission of a plan and schedule for bringing the source's pollutants into compliance through pollution prevention measures, treatment or other means by a specific date, and shall require progress reports thereon, usually at monthly or bimonthly intervals as the Department will deem appropriate.

Authority

The provisions of this § 91.13 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.13 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (225896).

§ 91.14. Time for constructing treatment works.

(a) If, in lieu of abatement, a notified party elects to provide waste treatment works and submits plans therefore, the Department, upon approving the plans will set a time within which the treatment works shall be constructed and placed in operation or will notify the party to be prepared to construct the plant upon notice from the Department, depending upon the status of the Department's program of

construction for the basin in which the receiving stream lies as specified in § 91.15 (relating to basin-wide compliance).

(b) In some cases, time may be required within which to prepare plans and construct treatment works by a party responsible for stream pollution before abatement can be consummated. The Department, upon application by the party and when in its judgment the public interest warrants, may grant a limited extension of time during which the discharge of waste shall be permitted, if the party responsible therefor continues work on corrective measures.

Authority

The provisions of this § 91.14 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.14 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial pages (225896) to (225897).

§ 91.15. Basin-wide compliance.

(a) In general, the Department will require sources of pollutants in a basin, watershed or surface waters as defined in Chapter 93 (relating to water quality standards) to concurrently comply with the water quality standards and protection levels in Chapters 16, 93 and 95 (relating to water quality toxics management strategy—statement of policy; water quality standards; and wastewater treatment requirements).

(b) Notwithstanding subsection (a), if certain sources of pollutants especially affect the public interests, the Department may act to require the abatement of the sources of pollution individually in the general order of degree of adverse effect upon the public interest.

(c) It is the policy of the Department to require concurrent similar action by all parties in the same category with respect to stream pollution.

(d) Each case of pollution will be considered by itself, without reference to other alleged or actual polluters.

Authority

The provisions of this § 91.15 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.15 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (225897).

Cross References

This section cited in 25 Pa. Code § 91.14 (relating to time for constructing treatment works).

§ 91.16. Notification of actions.

(a) The Department will determine the time and manner in which notification of its actions or hearings under the act will be made. If appropriate, (as where an action or hearing affects the general public), such notification may be published in the *Pennsylvania Bulletin* and publication therein shall constitute notice to interested persons except the permittee or respondent directly affected by the action or hearing.

(b) Normally, a person interested but not directly affected by the action or hearing is not entitled to a formal hearing or to participate in a formal hearing but will be given an opportunity to present his objections and views to the Department before its action becomes final.

Source

The provisions of this § 91.16 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

Cross References

This section cited in 25 Pa. Code § 91.27 (relating to general water quality management permit).

APPLICATIONS AND PERMITS**§ 91.21. Applications for permits.**

(a) Applications for approval of projects by the Department shall be made upon the appropriate form, which will be supplied upon request without charge.

(b) Applications shall be in triplicate, one copy of which shall be attested by a notary public, justice of the peace, alderman or district justice. The Department may require additional copies of applications to be filed.

(c) Applications and their accompanying papers shall be submitted to the Department's regional office covering the area where the project will be located.

(d) To qualify for coverage under a general water quality management permit under this chapter, an administratively complete NOI shall be submitted to and approved by the Department in accordance with § 91.27 (relating to general water quality management permit).

Authority

The provisions of this § 91.21 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.21 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (225898).

Cross References

This section cited in 25 Pa. Code § 91.27 (relating to general water quality management permit).

§ 91.22. Fees.

(a) Applications for water quality management permits from parties except agencies of the Commonwealth shall be accompanied by a check payable to “Commonwealth of Pennsylvania,” in the following amounts:

- (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.

(b) An NOI for coverage under a general water quality management permit shall be accompanied by a check 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).

Authority

The provisions of this § 91.22 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.22 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended November 7, 1980, effective November 8, 1980, 10 Pa.B. 4294; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (225898).

Cross References

This section cited in 25 Pa. Code § 91.27 (relating to general water quality management permit); and 25 Pa. Code § 92.22 (relating to application fees).

§ 91.23. Plans, reports and specifications.

(a) An engineer’s report as well as plans and specifications shall accompany the applications, clearly showing what is proposed and permitting the bases of design to be thoroughly understood and checked.

(b) Plans, reports and specifications shall be prepared by a licensed professional engineer authorized to practice in this Commonwealth.

(c) The front cover or flyleaf of each set of drawings and each copy of the report and specifications shall bear the imprint of the engineer’s seal.

(d) Drawings submitted shall bear imprint or legible facsimile of the engineer’s seal.

(e) Reports, drawings and specifications for strip mines or for minor work not involving safety to life or health may be submitted, as provided by law, by a registered surveyor and shall bear the imprint or facsimile of his seal.

Source

The provisions of this § 91.23 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

Notes of Decisions

The failure to use a registered professional engineer with regard to requirements pertaining to plans and specifications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) was not fatally defective to the landowner's sewage disposal plan, and use of a soil scientist was sufficient. *Haycock Township v. Department of Environmental Resources*, 530 A.2d 514 (Pa. Cmwlth. 1987); appeal denied 544 A.2d 1343 (Pa. 1988).

§ 91.24. Basis of design.

Plans shall provide ample capacities for present needs and for a reasonable time in the future. Conservative and accepted factors of design shall be used.

Source

The provisions of this § 91.24 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

§ 91.25. Experimental projects.

If the suitability of a proposed device or method of treatment has not been demonstrated by actual field use in this Commonwealth or another state with similar climatic conditions, only conditional approval will be given to it until the effectiveness of the device or treatment has been demonstrated to the satisfaction of the Department by ample field experience.

Authority

The provisions of this § 91.25 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.25 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (225899).

Notes of Decisions*Experimental*

Issuance of an unconditional permit is proper if there is uncontradicted expert testimony that the feature in question was not experimental in nature. *Concerned Citizens for Orderly Progress v. Department of Environmental Resources*, 387 A.2d 989 (Pa. 1978).

§ 91.26. Withholding permit for noncompliance.

(a) When considering applications coming before it, the Department will take notice of the failure of the applicant to comply with any of its prior requirements or orders respecting sewerage or industrial waste disposal and will consider the application favorably only if, in its opinion, there are sufficient extenuating reasons for the failure or if the public interest as affected by the proposed project warrants favorable action, in which case the Department will include suitable conditions respecting compliance with its unfulfilled requirements in any permit which it may authorize.

(b) The Department will not consider an application or issue a permit to an applicant who has conducted or is conducting a mining operation which is in

violation of the act, rules and regulations of the Department, or permit conditions unless and until the violation is abated or corrected to the satisfaction of the Department.

Source

The provisions of this § 91.26 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

§ 91.27. General water quality management permit.

(a) *Coverage and purpose.* The Department may issue a general water quality management permit, in lieu of issuing individual water quality management permits, for a specific category of wastewater treatment facilities if the wastewater treatment facilities meet the following:

- (1) Involve the same, or substantially similar, type of operations.
- (2) Treat the same types of wastes.
- (3) Require the same operating conditions.
- (4) Are, in the judgment of the Department, more appropriately managed under a general permit than under individual permits.

(b) *Administration of general permits.*

(1) *Proposed general permits and amendments.* The Department will publish a notice in the *Pennsylvania Bulletin* of its intent to issue or amend a general permit, including the text of the proposed general permit or amendment, proposed review fees and an opportunity for interested persons to provide written comments on the proposed general permit or amendment in accordance with § 91.16 (relating to notification of actions).

(2) *Issuance of general permits.* General permits, subsequently issued, will be published in the *Pennsylvania Bulletin* and include the effective date of the general permit and review fees.

(3) *Effective date of a general permit.* The Department will specify in the general permit that an applicant who has submitted a timely and complete notice of intent for coverage is authorized to construct, erect and locate a wastewater treatment facility or discharge to groundwaters of this Commonwealth, in accordance with the terms and conditions of the general permit. Coverage under the general permit shall become effective:

- (i) After a waiting period following receipt of the notice of intent by the Department as specified in the general permit.
- (ii) Upon receipt of notification of coverage by the Department.

(4) *Notice of intent for coverage under a general permit.* A person who desires to have a wastewater treatment facility covered under a general permit shall submit a notice of intent to the Department in accordance with §§ 91.21 and 91.22 (relating to applications for permits; and fees) and the written instructions of the notice of intent. The Department will review the information provided in the notice of intent for completeness or to determine if the waste-

water treatment facility qualifies under the provisions of the general permit except as provided in subsection (c)(1), (2) or (5).

(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 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) when required.
- (3) The applicant is not, or will not be, in compliance with one or more of the conditions of the general permit.
- (4) The applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a prior permit issued by the Department.
- (5) The treatment facility proposed for coverage under the general permit is not capable of treating wastewater to a degree which will result in compliance with applicable effluent limitations and water quality standards as described in Chapter 93 (relating to water quality standards).
- (6) The Department determines that the action is necessary to ensure compliance with the Federal Act, the act or this title.

(d) *Requiring an individual permit.* The Department may revoke, or suspend coverage under a general water quality management permit, and require that an individual water quality management permit be obtained when the permittee has violated one or more of the conditions of the general permit or has violated a provision of this title. Upon notification by the Department that an individual water quality management permit is required for the facility, the owner shall submit a complete water quality management permit application, in conformance with this chapter, within 90 days of receipt of the notification, unless the owner is already in possession of a valid individual water quality management permit for the applicable functions. Failure to submit the application within 90 days shall result in automatic termination of coverage under the general permit. Timely submission of a complete application shall result in continuation of coverage of the applicable facilities under the general permit, when the facility demonstrates that it has undertaken efforts to address the reasons for the revocation or suspension of coverage, until the Department takes final action on the pending individual permit application.

(e) *Termination of coverage under a general permit.* When an individual water quality management permit is issued for a facility which is covered under a general water quality management permit, the applicability of the general permit to that facility is automatically terminated on the effective date of the individual permit.

Authority

The provisions of this § 91.27 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.27 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

Cross References

This section cited in 25 Pa. Code § 91.21 (relating to applications for permits).

MANAGEMENT OF OTHER WASTES**§ 91.31. Wells other than oil and gas.**

(a) Each well-drilling operation shall have a sump or other receptacle large enough to receive all drill cuttings, sand bailings, water having a turbidity in excess of 1,000 nephelometric turbidity units (NTU) or other pollutant resulting from the well drilling operations.

(b) Surface water shall be excluded from the sump or receptacle by means of diversion ditches on the uphill sides, or by other appropriate measures.

(c) After completion of the well, the sump or receptacle shall be covered over or otherwise protected or the contents of the receptacle disposed of, so that the contents will not be washed into the waters of this Commonwealth.

(d) Waste oil, coal, spent materials or other pollutants shall be disposed of so that they will not be washed into the waters of this Commonwealth.

Authority

The provisions of this § 91.31 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.31 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended October 29, 1971, effective December 1, 1971, 1 Pa.B. 2035; amended September 29, 1973, effective September 30, 1973, 3 Pa.B. 2177; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial pages (225900) and (239685).

Notes of Decisions

An agency decision denying a sewage permit to a private landowner may not be upheld where a municipality and not the landowner has the burden of persuading the Department that sewage disposal on the property is in conformity with the provisions of this section. Failure of the municipality to act would be confiscatory and tantamount to a taking of the landowner's private property without due process of law. *Department of Environmental Resources v. Trautner*, 338 A.2d 718 (Pa. Cmwlth. 1975).

When a property owner can be effectively denied the right to use his property until such time as the municipality has satisfied the Department that sewage disposal on the property is in conformity with a comprehensive program of water quality management, there is an unreasonable restriction on the use of private land and a confiscation of property without due process. *Department of Environmental Resources v. Trautner*, 338 A.2d 718 (Pa. Cmwlth. 1975).

By negotiating a contract with a township authority for use of the borough's sewage treatment facilities which provided for a set rate and no future increases except for the cost of upgrading treat-

ment facilities, including those necessary for compliance with the Clean Streams Law and the regulations promulgated thereunder, the borough waived any right to increase its basic fee except for the costs of upgrading treatment facilities. *Tamaqua Borough v. Rush Township Sewer Authority*, 482 A.2d 1167 (Pa. Cmwlth. 1984).

Cross References

This section cited in 25 Pa. Code § 83.102 (relating to definitions).

§ 91.32. [Reserved].

Source

The provisions of this § 91.32 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; reserved January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial pages (239685) to (239686).

Notes of Decisions

This section speaks to present conditions and not to future status of property for which permits for private sewerage projects are sought. *Department of Environmental Resources v. Trautner*, 338 A.2d 718 (Pa. Cmwlth. 1975).

§ 91.33. Incidents causing or threatening pollution.

(a) If, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters—including sewers, drains, ditches or other channels of conveyance into the waters—or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

(b) In addition to the notices in subsection (a), a person shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition thereto, within 15 days from the incident, shall remove from the ground and from the affected waters of this Commonwealth to the extent required by this title the residual substances contained thereon or therein.

(c) Compliance with this section does not affect the civil or criminal liability to which the person or municipality may be subject as a result of an activity or incident under the act, 30 Pa.C.S. (relating to the Fish and Boat Code) or another statute, ordinance or regulation.

Authority

The provisions of this § 91.33 amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.33 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804; amended November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended January 28, 2000, effective January 29, 2000, 30 Pa.B. 521. Immediately preceding text appears at serial page (239686).

Cross References

This section cited in 25 Pa. Code § 78.66 (relating to reporting releases); 25 Pa. Code § 83.312 (relating to site specific emergency response plans); and 25 Pa. Code § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities).

§ 91.34. Activities utilizing pollutants.

(a) Persons engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall take necessary measures to prevent the substances from directly or indirectly reaching waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather or from another cause.

(b) The Department may require a person to submit a report or plan for activities described in subsection (a). Upon notice from the Department and within the time specified in the notice, the person shall submit to the Department the report or plan setting forth the nature of the activity and the nature of the preventative measures taken to comply with subsection (a). The Department will encourage the use of pollution prevention measures that minimize or eliminate the generation of the pollutant over measures which involve pollutant handling or treatment. The Department will encourage consideration of the following pollution prevention measures, in descending order of preference, for environmental management of wastes: reuse, recycling, treatment and disposal.

Authority

The provisions of this § 91.34 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.34 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

§ 91.35. Wastewater impoundments.

(a) Except as otherwise provided under subsections (c) and (d), a person may not operate, maintain or use or permit the operation, maintenance or use of a wastewater impoundment for the production, processing, storage, treatment or disposal of pollutants unless the wastewater impoundment is structurally sound, impermeable, protected from unauthorized acts of third parties, and is maintained so that a freeboard of at least 2 feet remains at all times. The person owning, operating or possessing a wastewater impoundment has the burden of satisfying the Department that the wastewater impoundment complies with these requirements.

(b) A person owning, operating or in possession of an existing wastewater impoundment containing pollutants, or intending to construct or use a wastewater impoundment, shall promptly submit to the Department a report or plan setting forth the location, size, construction and contents of the wastewater impoundment and other information as the Department may require.

(c) Except when a wastewater impoundment is already approved under an existing permit from the Department, a permit from the Department is required approving the location, construction, use, operation and maintenance of a wastewater impoundment subject to subsection (a) in the following cases:

(1) If a variance is requested from the requirements in subsection (a).

(2) If the capacity of one wastewater impoundment or of two or more interconnected wastewater impoundments exceeds 250,000 gallons.

(3) If the total capacity of polluting substances contained in wastewater impoundments on one tract or related tracts of land exceeds 500,000 gallons.

(4) If the Department determines that a permit is necessary for effective regulation to insure that pollution will not result from the use, operation or maintenance of the wastewater impoundment.

(d) This section does not apply to:

(1) Manure storage facilities at agricultural operations, which are governed by § 91.36 (relating to pollution control and prevention at agricultural operations).

(2) Residual waste processing, disposal, treatment, collection, storage or transportation.

Authority

The provisions of this § 91.35 issued 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).

Source

The provisions of this § 91.35 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5796. Immediately preceding text appears at serial pages (276355) to (276356).

§ 91.36. Pollution control and prevention at agricultural operations.

(a) *Animal manure storage facilities.*

(1) Except when more stringent requirements are contained in paragraphs (2)—(5), a manure storage facility shall be designed, constructed, operated and maintained in accordance with current engineering and agronomic practices to ensure that the facility is structurally sound, water-tight, and located and sized properly, to prevent pollution of surface water and groundwater, including design to prevent discharges to surface waters during a storm up to and including a 25-year/24-hour storm.

(i) The Manure Management Manual and the Pennsylvania Technical Guide contain current engineering and agronomic practices which can be used to comply with the requirements in paragraph (1).

(ii) If the criteria in the Manure Management Manual and the Pennsylvania Technical Guide are not followed, the owner or operator shall obtain a water quality management permit or other approval from the Department for the manure storage facility.

(2) For liquid or semisolid manure storage facilities constructed after January 29, 2000, the owner or operator shall obtain a water quality management permit from the Department for the manure storage facility unless the design and construction of the facility are certified to meet the “Manure Management Manual” and “Pennsylvania Technical Guide” by a registered professional

engineer. The owner or operator shall retain a copy of the certification at the operation and provide a copy to the Department upon request.

(3) In the case of a new or expanded liquid or semisolid manure storage facility located at an animal operation with over 1,000 AEUs for the first time after January 29, 2000, a water quality management permit is required.

(4) For a new or expanded liquid or semisolid manure storage facility after October 22, 2005:

(i) Where the manure storage capacity is between 1 million and 2.5 million gallons, a water quality management permit is required for any manure storage facility that is a pond and one of the following applies:

(A) The nearest downgradient stream is classified as a High Quality or Exceptional Value water under Chapter 93 (relating to water quality standards).

(B) The nearest downgradient stream has been determined by the Department to be impaired from nutrients from agricultural activities.

(ii) Where the manure storage capacity is 2.5 million gallons or more, a water quality management permit is required.

(5) For new or expanded CAFOs that commenced operations after April 13, 2003, and that include swine, poultry or veal calves, the CAFO shall prevent discharges to surface waters during a storm event up to and including a 100-year/24-hour storm from manure storage facilities that contain manure from those swine, poultry or veal calves.

(6) For a liquid or semisolid manure storage facility, the following minimum freeboard requirements apply and shall be maintained:

(i) For an agricultural operation with over 1,000 AEUs that was a new or expanded operation after January 29, 2000, a minimum 24-inch freeboard, except for enclosed facilities that are not exposed to rainfall, which must have a minimum freeboard of 6 inches.

(ii) For all other facilities, a minimum 12-inch freeboard for manure storage facilities that are ponds, and a minimum 6-inch freeboard for all other manure storage facilities.

(7) The requirements in this section are in addition to and do not replace any more stringent requirements in Chapter 83, Subchapter D (relating to nutrient management).

(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 (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).

(4) For purposes of paragraph (2) only, "surface water" means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

(c) *Discharge of pollutants.*

(1) It is unlawful for agricultural operations to discharge pollutants to waters of this Commonwealth except as allowed by regulations or a permit administered by the Department. The Department is authorized to take an enforcement action against any agricultural operation in violation of this requirement.

(2) An operation that has a discharge that is not authorized under the act and that meets the definition of either a medium or small CAFO under 40 CFR 122.23 (relating to concentrated animal feeding operations (applicable to State NPDES programs, see 123.25)) is considered to have an illegal discharge and is subject to enforcement action under the act.

(3) When an agricultural operation is found to be in violation of the act, the Department may require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

Authority

The provisions of this § 91.36 issued 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).

Source

The provisions of this § 91.36 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5796. Section 91.36(b)(2)(i) and (ii) shall remain in effect until the effective date of regulations promulgated by the State Conservation Commission that establish requirements which provide, at a minimum, the same setback and buffer requirements for concentrated animal operations, and for agricultural operations that import manure from those operations, established in § 91.36(b)(2). The Department will publish notice in the *Pennsylvania Bulletin* if those regulations are promulgated. Nothing in this order is intended to affect the duty of any agricultural operation to comply with The Clean Streams Law or any other provision of Chapters 91 and 92. Immediately preceding text appears at serial pages (276356) and (271951).

Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.311 (relating to manure management); and 25 Pa. Code § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities); 25 Pa. Code § 91.1 (relating to definitions); 25 Pa. Code § 91.35 (relating to wastewater impoundments); and 25 Pa. Code § 92.5a (relating to CAFOs).

§ 91.37. Private projects.

(a) The Department will not approve applications for sewerage permits for private sewerage projects to be located within the built-up parts of cities, boroughs and first and second-class townships unless the applicant can demonstrate a compelling public need for the project.

(b) Issuance of the sewerage permits will be limited to private sewerage projects located in the rural parts of first and second class townships, and for which areas there appears to be no present necessity for public sewerage.

Authority

The provisions of this § 91.37 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.37 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

§ 91.38. Algicides, herbicides and fish control chemicals.

Except when the use of an algicide, herbicide or fish control chemical would be in violation of a specific order or permit, the use is authorized only in the following instances:

(1) Copper sulfate required to control algae in a source of public water supply when the use is under and in accordance with approval given by the Department.

(2) Chemicals required to control aquatic plants in surface waters and chemicals required for the management of fish populations where the use is under and in accordance with joint approval given by the Department and the Fish and Boat Commission.

Authority

The provisions of this § 91.38 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.38 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

MISCELLANEOUS PROVISIONS**§ 91.41. Consultants.**

(a) The selection of professional services upon a purely competitive bid basis is not in accordance with good practice and may not result in the best quality of service to a municipality which selects its engineers on that basis. The Department, therefore, recommends that careful consideration be given to the professional attainments of the proposed consultants.

(b) The Commonwealth, through the granting of financial aid to municipalities for sewage treatment works, has a direct interest in the validity of contracts

entered into with engineers by municipalities. The Department therefore, requires that contracts for engineering services for the preparation of the plans comply with the following:

- (1) Be covered by the proper legal steps so as to insure that the services may be properly paid for after having been rendered.
- (2) Explicitly provide for the services to be rendered.
- (3) Grant to the municipality the right to receive the reports, plans and specifications and later to construct the treatment works from those plans.

Source

The provisions of this § 91.41 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

§ 91.42. Analyses of wastes.

In analyzing sewage, industrial wastes and other substances to determine whether their characteristics meet the requirements of this article, the methods and procedures described in the current edition of Standard Methods for the Examination of Water and Wastewater, Public Health Association, Inc, shall be used.

Source

The provisions of this § 91.42 adopted September 2, 1971, effective September 3, 1971, 1 Pa.B. 1804.

UNDERGROUND DISPOSAL

§ 91.51. Potential pollution resulting from underground disposal.

(a) The Department will, except as otherwise provided in this section, consider the disposal of wastes, including stormwater runoff, into the underground as potential pollution, unless the disposal is close enough to the surface so that the wastes will be absorbed in the soil mantle and be acted upon by the bacteria naturally present in the mantle before reaching the underground or surface waters.

(b) The following underground discharges are prohibited:

- (1) Discharge of inadequately treated wastes, except coal fines, into the underground workings of active or abandoned mines.
- (2) Discharge of wastes into abandoned wells.
- (3) Disposal of wastes into underground horizons unless the disposal is for an abatement of pollution and the applicant can show by the log of the strata penetrated and by the stratigraphic structure of the region that it is improbable that the disposal would be prejudicial to the public interest and is acceptable to the Department. Acceptances by the Department do not relieve the applicant of responsibility for any pollution of the waters of this Commonwealth which might occur. If pollution occurs, the disposal operations shall be stopped immediately.

(c) New wells constructed for waste disposal shall be subject to this section.

Authority

The provisions of this § 91.51 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.51 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

Cross References

This section cited in 25 Pa. Code § 91.52 (relating to procedural requirements for 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 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) when applicable.

Authority

The provisions of this § 91.52 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 91.52 adopted January 28, 2000, effective January 29, 2000, 30 Pa.B. 521.

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(315446) No. 374 Jan. 06

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