

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

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Authority

The provisions of this Chapter 92 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5), unless otherwise noted.

Source

The provisions of this Chapter 92 adopted August 4, 1978, 8 Pa.B. 2157, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 16.22 (relating to criteria development); 25 Pa. Code § 77.532 (relating to surface water and groundwater monitoring); 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 government-financed reclamation projects); 25 Pa. Code § 87.102 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 87.117 (relating to hydrologic balance: surface water monitoring); 25 Pa. Code § 88.92 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.106 (relating to hydrologic balance: surface water monitoring); 25 Pa. Code § 88.187 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.202 (relating to hydrologic balance: surface water monitoring); 25 Pa. Code § 88.292 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.306 (relating to hydrologic balance: surface water monitoring); 25 Pa. Code § 89.52 (relating to water quality standards, effluent limitations and best management practices); 25 Pa. Code § 89.59 (relating to surface water and groundwater monitoring); 25 Pa. Code § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices); 25 Pa. Code § 90.116 (relating to hydrologic balance: surface water monitoring); 25 Pa. Code § 91.27 (relating to general water quality management permit); 25 Pa. Code § 91.52 (relating to procedural requirements for underground disposal); 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements); 25 Pa. Code § 94.1 (relating to definitions); 25 Pa. Code § 96.4 (relating to TMDLs and QBELs); 25 Pa. Code § 102.5 (relating to permit requirements); 25 Pa. Code § 102.6 (relating to permit applications and fees); 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 § 299.141 (relating to scope); 25 Pa. Code § 961.8 (relating to ineligible costs); and 25 Pa. Code § 963.12 (relating to ineligible costs).

GENERAL PROVISIONS

§ 92.1. Definitions.

The following words and terms, when used in this chapter, 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 section 3 of the Nutrient Management Act (3 P. S. § 1703).

Administrator—The Administrator of the EPA.

Agricultural operation—The management and use of farming resources for the production of crops, livestock or poultry as defined in section 3 of the Nutrient Management Act.

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.

Applicable effluent limitations or standards—State, interstate and Federal effluent limitations or standards to which a discharge is subject under the State and Federal Acts, including, but not limited to, water quality-based and technology-based effluent limitations, standards of performance, toxic effluent standards and prohibitions, BMPs and pretreatment standards.

Applicable water quality standards—Water quality standards to which a discharge is subject under the State and Federal Acts, and regulations promulgated thereunder.

Application—The Department's form for applying for approval to discharge pollutants to surface waters of this Commonwealth under a new NPDES permit, or renewal or reissuance of an existing NPDES permit, or the modification, revision or transfer of an existing NPDES permit.

BAT—Best available technology—

(i) The maximum degree of effluent reduction attainable through the application of the best treatment technology economically achievable within an industrial category or subcategory, or other category of discharger, taking into account:

- (A) The age of equipment and facilities involved.
- (B) The process employed.
- (C) The engineering aspects of the application of various types of control techniques and process changes (including in-plant source reduction measures in addition to end of pipe controls).
- (D) The cost of achieving the effluent reduction.
- (E) Nonwater quality environmental impacts (including energy requirements).
- (F) Other factors the Department deems appropriate.

(ii) The term includes categorical ELGs promulgated by the EPA under section 304(b) of the Federal Act (33 U.S.C.A. § 1314(b)).

BMP—Best management practices—

(i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollution to surface waters of this Commonwealth.

(ii) The term includes:

(A) Treatment requirements.

(B) Operating procedures.

(C) Practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

CAFO—Concentrated animal feeding operation—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR 122.23 (relating to concentrated animal feeding operations).

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

CCW—Contact cooling water—Cooling water that comes into contact with any raw material, intermediate product, finished product, byproduct or waste product.

CSO—Combined sewer overflow—Any intermittent overflow or other untreated discharge from a municipal combined sewer system (including domestic, industrial and commercial wastewater and stormwater) prior to reaching the headworks of the sewage treatment facility which results from a flow in excess of the dry weather carrying capacity of the system.

Combined sewer system—A sewer system which has been designed to serve as both a sanitary sewer and a storm sewer.

Concentrated aquatic animal production facility—A hatchery, fish farm or other facility which meets the criteria in 40 CFR Part 122, Appendix C (relating to criteria for determining a concentrated aquatic animal production facility), or which the Department designates under the criteria in 40 CFR 122.24(c) (relating to concentrated aquatic animal production facilities).

Conventional pollutant—Biochemical oxygen demand, carbonaceous biochemical oxygen demand, suspended solids, pH, fecal coliform, oil or grease.

Daily discharge—The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably and accurately represents the calendar day for purposes of sampling:

(i) For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day.

(ii) For pollutants with limitations expressed in other units of measurement, daily discharge is calculated as the average measurement of that pollutant during the day.

Discharge—An addition of any pollutant to surface waters of this Commonwealth from a point source, including:

- (i) Additions of pollutants from surface runoff and stormwater which is collected or channelized.
- (ii) Discharges through pipes, sewers or other conveyances which do not lead to a treatment works.
- (iii) Discharges through pipes, sewers or other conveyances.

Draft permit—A document prepared by the Department indicating the Department's tentative decision to issue or deny, modify, revoke, renew or reissue a permit.

ELG—Effluent Limitations Guideline—A regulation published by the Administrator under section 304(b) of the Federal Act (33 U.S.C.A. § 1314(b)), or by the Department, to revise or adopt effluent limitations.

Effluent Limitation or Standard—A restriction established by the Department or the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into surface waters, including BMP's and schedules of compliance.

Existing discharge—A discharge which is not a new discharge or a new source.

Facility or activity—Any NPDES point source or any other facility or activity including land or appurtenances thereto that is subject to regulation under the NPDES Program.

Federal Act—The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1376), also known as the Clean Water Act or CWA.

General NPDES permit or general permit—An NPDES permit that is used for a clearly described category of point source discharges, when those discharges are substantially similar in nature and do not have the potential to cause significant adverse environmental impact.

Indirect discharger—A person who discharges sewage, industrial waste or other pollutants into a treatment works.

Industrial user—Those industries identified in the Standard Industrial Classification Manual, Office of Management and Budget, 1987, as amended and supplemented, under the category "Division D-Manufacturing" and other classes of significant waste producers, as by regulation, the Administrator deems appropriate.

Industrial waste—

- (i) A liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from manufacturing or industry, or from an establishment, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations.
- (ii) The term includes all of these substances whether or not generally characterized as waste.

Instantaneous maximum effluent limitation—The highest allowable discharge of a concentration or mass of a substance at any one time as measured by a grab sample.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Interstate agency—An agency of two or more states established by or under an agreement or compact approved by the Congress, or another agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

Large municipal separate storm sewer system—A municipal separate storm sewer system defined in 40 CFR 122.26(b)(4) (relating to stormwater discharge (applicable to state NPDES programs)).

Livestock—

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation. Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(ii) The term does not include aquatic species.

Log sorting and log storage facilities—Facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). See 40 CFR Part 429, Subpart J (relating to log washing), including the effluent limitations guidelines.

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.

Maximum daily discharge limitation—The highest allowable daily discharge.

Medium municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(7).

Minor discharge—A discharge which has a total volume of less than 50,000 gallons on every day of the year, does not affect the waters of another state, and is not identified by the Department, the Regional Administrator or by the Administrator in regulations issued under section 307(a) of the Federal Act (33 U.S.C.A. § 1317(a)) as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, no discharge from the facility is a minor discharge.

Municipal separate storm sewer system—A separate storm sewer (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains) which is all of the following:

- (i) Owned or operated by a state, city, town, borough, county, district, association or other public body (created by or under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Federal Act (33 U.S.C.A. § 1288) that discharges to surface waters of this Commonwealth.
- (ii) Designed or used for collecting or conveying stormwater.
- (iii) Not a combined sewer.
- (iv) Not part of a POTW.

NOI—Notice Of Intent—A complete form submitted for NPDES general permit coverage which contains information required by the terms of the permit and by §§ 92.81—92.83 (relating to general permits). An NOI is not an application.

NPDES form—An issued NPDES permit and a National form developed for use in the NPDES, including the application and the NPDES reporting form.

NPDES permit—A permit or equivalent document or requirements issued by the Administrator, or, when appropriate, by the Department after enactment of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C.A. §§ 1281 and 1361), to regulate the discharge of pollutants under section 402 of the Federal Act (33 U.S.C.A. § 1342).

NPDES primary industry categories—The primary industry categories in 40 CFR Part 122, Appendix A (relating to NPDES primary industry categories), which is incorporated by reference.

NPDES reporting form—The form for reporting monitoring results approved by the Administrator for use in this Commonwealth, also referred to as a discharge monitoring report (DMR), and any supplemental forms provided by the Department.

New discharger—A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a final effective NPDES permit for discharges at that site.

New source—A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants, the construction of which commenced after promulgation of standards of performance under section 306 of the Federal Act (33 U.S.C.A. § 1316) which are applicable to the source, or after proposal of standards of performance in accordance with section 306 of the Federal Act which are applicable to the source.

Noncontact cooling water—Cooling water that does not contact any raw material, intermediate product, finished product, byproduct or waste product.

Nonconventional pollutant—A pollutant which is not a conventional or toxic pollutant.

POTWs—Publicly Owned Treatment Works—

(i) A device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality.

(ii) The term includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Person—Any individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; department, agency or instrumentality of State, Federal or local government, or an agent or employe thereof; or any other legal entity.

Point source—Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

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

Pollution prevention—Source reduction and other practices 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.

Primary industrial facility—An industrial facility in a primary industry category, as defined in 40 CFR 122.2 (relating to definitions).

Process wastewater—Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

Regional Administrator—The EPA Regional Administrator for Region III.

Rock crushing and gravel washing facilities—Facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B (relating to crushed stone subcategory), including the effluent limitations guidelines).

SSO—Sanitary Sewer Overflow—An intermittent overflow of wastewater, or other untreated discharge from a separate sanitary sewer system (which is not a combined sewer system), which results from a flow in excess of the carrying capacity of the system or from some other cause prior to reaching the headworks of the sewage treatment facility.

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

Separate storm sewer—A conveyance or system of conveyances (including pipes, conduits, ditches and channels) primarily used for collecting and conveying stormwater runoff.

Setback—A specified distance from the top of the bank of surface waters, or potential conduits to surface waters, where manure and agricultural process wastewater may not be land applied. Examples of conduits to surface waters includes, but are not limited to:

- (i) Open tile line intake structures.
- (ii) Sinkholes.
- (iii) Agricultural wellheads.

Sewage—A substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

Silvicultural point source—

(i) A discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting or log storage facilities which is operated in connection with silvicultural activities and from which pollutants are discharged into waters of this Commonwealth.

(ii) The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is runoff.

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 residence into surface waters of this Commonwealth.

Small municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(16)—(18).

State Act—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

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

Stormwater discharge associated with construction activity—The discharge or potential discharge of stormwater into waters of this Commonwealth from construction activities including clearing and grubbing, grading and excavation activities involving 5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part of or during any stage of a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project.

Stormwater discharge associated with industrial activity—The discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing or raw materials storage areas at an industrial area, as defined in 40 CFR 122.26(b)(14) which is incorporated by reference.

Surface waters—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

Toxic pollutant—Those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may, on the basis of information available to the Administrator or Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in these organisms or their offspring.

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.

WETT—Whole Effluent Toxicity Testing—

(i) A test, survey, study, protocol or assessment which includes the use of aquatic, bacterial, invertebrate or vertebrate species to measure acute or chronic toxicity, and any biological or chemical measure of bioaccumulation, bioconcentration or impact on established aquatic and biological communities.

(ii) The term includes any established, scientifically defensible method which is sufficiently sensitive to measure toxic effects.

Water quality-based effluent limitation—An effluent limitation based on the need to attain or maintain the water quality criteria and to assure protection of designated and existing uses.

Water quality standards—The combination of water uses to be protected and the water quality criteria necessary to protect those uses.

Wetlands—Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

Whole effluent toxicity—The total toxic effect of an effluent measured directly with a toxicity test.

Authority

The provisions of this § 92.1 issued under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402).

Source

The provisions of this § 92.1 amended July 20, 1984, effective July 21, 1984, 14 Pa.B. 2672; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5796. Immediately preceding text appears at serial pages (310163) to (310164), (271959) to (271964) and (296985).

Notes of Decisions

Pollutant

A discharge that tested positive for excessive levels of ammonia, chloride, nitrate, nitrite, phosphorous, sulfate, dissolved solids, total coliform bacteria, fecal coliform bacteria, copper, lead, nickel and zinc was a “pollutant” as defined in § 92.1. *Reynolds v. Rick’s Mushroom Services, Inc.*, 246 F. Supp. 2d 449 (E. D. Pa. 2003).

Cross References

This section cited in 7 Pa. Code § 130e.2 (relating to definitions); 25 Pa. Code § 91.1 (relating to definitions); 25 Pa. Code § 92.5a (relating to CAFOs); and 25 Pa. Code § 96.1 (relating to definitions).

§ 92.2. Incorporation of Federal regulations by reference.

(a) Except as specified in subsection (c), the Federal NPDES regulations in subsection (b), including all appendices, future amendments and supplements thereto, are incorporated by reference to the extent that these provisions are applicable and not contrary to Pennsylvania law. In the event of any conflict among Federal and Pennsylvania regulatory provisions, the provision expressly set out in this chapter shall be utilized unless the Federal provision is more stringent.

(b) The following Federal regulatory provisions in 40 CFR Parts 122, 124 and 125 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System; procedures for decisionmaking; and criteria and standards for the National Pollutant Discharge Elimination system) are incorporated by reference:

- (1) 122.2 (relating to definitions).
- (2) 122.4 (relating to prohibitions).
- (3) 122.5 (relating to effect of a permit).

- (4) 122.7(b) (relating to confidentiality of information).
 - (5) 122.21(g)(1)—(7), (9)—(13), (h), (i)(2), (j), (k), (l), (m)(6) and (p) (relating to application for a permit).
 - (6) 122.24 (relating to concentrated aquatic animal production facilities).
 - (7) 122.25 (relating to aquaculture projects).
 - (8) 122.26(a)—(b), (c)(1), (d), (e)(1), (3)—(7) and (f)—(g) (relating to stormwater discharges).
 - (9) 122.27 (relating to silvicultural activities).
 - (10) 122.29 (relating to new sources and new discharges).
 - (11) 122.41(a)—(m) (relating to conditions applicable to all permits).
 - (12) 122.42 (relating to additional conditions applicable to specific categories of NPDES permits).
 - (13) 122.43 (relating to establishing permit conditions).
 - (14) 122.44 (relating to establishing limitations, standards, and other permit conditions).
 - (15) 122.45 (relating to calculating NPDES permit conditions).
 - (16) 122.48 (relating to requirements for recording and reporting monitoring results).
 - (17) 122.50 (relating to disposal of pollutants into wells, into publicly owned treatment works or by land application).
 - (18) 122.61—122.64 (relating to transfer, modification or revocation and reissuance of permits; and termination of permits).
 - (19) 124.57(a) (relating to public notice of section 316 requests).
 - (20) 125.1—125.3 (relating to purpose and scope; definitions; and technology-based treatment requirements in permits).
 - (21) 125.10 and 125.11 (relating to purpose and scope; and criteria).
 - (22) 125.30—125.32 (relating to purpose and scope; criteria and method of application).
 - (23) 125.62(a)(3), (e)(1) and (f) (relating to attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife; and allows recreational activities).
 - (24) 125.70—125.73 (relating to purpose and scope; early screening of applications for section 316(a) variances criteria and standards for determining alternative effluent limitations under section 316(a) of the act).
 - (25) 125.100—125.104 (relating to criteria and standards for best management practices authorized under section 304(e) of the act).
- (c) Any new or amended Federal regulation enacted after November 18, 2000, which creates a variance to existing NPDES permitting requirements is not incorporated by reference.

Authority

The provisions of this § 92.2 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 § 92.2 adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.2a. Treatment requirements.

(a) Specific treatment requirements and effluent limitations for each discharge shall be established based on the more stringent of the following:

- (1) Requirements specified in Chapters 93, 95 and 96 (relating to water quality standards; wastewater quality standards; and water quality standards implementation).
- (2) The applicable treatment requirements and effluent limitations to which a discharge is subject under this chapter and the Federal Act.
- (3) The treatment requirements and effluent limitations of this title.

(b) When interstate or international agencies under an interstate compact or international agreement establish applicable effluent limitations or standards for dischargers of this Commonwealth to surface waters which are more stringent than those required by this title, the more stringent standards and limitations apply.

(c) If the Department has confirmed the presence or critical habitat of endangered or threatened species under Federal or State law or regulation, discharges to these waters shall be limited to ensure protection of these species and critical habitat.

Authority

The provisions of this § 92.2a 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 § 92.2a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

Cross Referenes

This section cited in 25 Pa. Code § 92.5a (relating to CAFOs).

§ 92.2b. 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 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 § 92.2b 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 § 92.2b adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.2c. Minimum sewage and industrial waste treatment requirements.

(a) *Sewage discharges.*

(1) Sewage, except that discharged from a CSO which is in compliance with § 92.21a(f) (relating to additional application requirements for classes of dischargers) under paragraph (2), or as provided in paragraph (3), shall be given a minimum of secondary treatment.

(2) Dischargers of sewage from a CSO that meets the requirements of § 92.21a(f) shall implement, as approved by the Department, nine minimum controls (NMCs) and a long-term control plan (LTCP) to minimize or eliminate the CSO discharge impact on receiving surface water quality.

(3) Discharges from an SSO are prohibited under § 92.73(8) (relating to prohibition of certain discharges).

(b) Secondary treatment for sewage is that treatment which accomplishes the following:

(1) Compliance with the requirements of secondary treatment as defined by the administrator under section 304 of the Federal Act (33 U.S.C.A. § 1314). The regulations promulgated by the EPA in 40 CFR Part 133 (relating to secondary treatment regulations) including amendments thereto, are incorporated by reference.

(2) Provision of effective disinfection to control disease-producing organisms during the swimming season—May 1 through September 30. Effective disinfection to control disease-producing organisms shall be defined as the product of an effluent which will contain a concentration not greater than 200/100 milliliters of fecal coliform organisms as a geometric mean value nor greater than 1,000/100 milliliters of these organisms in more than 10% of the samples tested.

(3) Provision for the disposal or beneficial use of sludge in accordance with applicable Department regulations.

(4) Compliance with § 95.2(1)—(3) (relating to quality standards and oil-bearing wastewaters).

(c) Industrial wastes regulated by this chapter shall meet the requirements in § 95.2.

Authority

The provisions of this § 92.2c 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 § 92.2c adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.2d. Technology-based standards.

Discharges that are regulated by this chapter shall meet the following minimum requirements when applicable:

- (1) EPA-promulgated effluent limitation guidelines established under section 304 of the Federal Act (33 U.S.C.A. § 1314).
- (2) For those industrial categories for which no effluent limitations have been established under paragraph (1), Department-developed technology-based limitations established in accordance with 40 CFR 125.3 (relating to technology-based treatment requirement in permits).
- (3) For facilities utilizing chlorine, the following apply:
 - (i) For those facilities utilizing chlorine which discharge to surface waters, an effluent limitation representing the BAT for the discharge of total residual chlorine (TRC). If the EPA adopts a National categorical ELG for TRC for a specific industry or activity under section 301 or 304(b) of the Federal Act (33 U.S.C.A. §§ 1311 and 1314(b)), that ELG constitutes BAT for the industry or activity. If the EPA has not promulgated a National ELG for an industry or activity, the Department may develop a facility-specific BAT effluent limitation. Factors which will be considered in developing a facility-specific BAT effluent limitation include the following:
 - (A) The age of equipment and facilities involved.
 - (B) The engineering aspects of the application of various types of control techniques and alternatives to the use of chlorine or reductions in the volume of chlorine used during the disinfection process.
 - (C) The cost of achieving the effluent reduction.
 - (D) Nonwater quality environmental impacts (including energy requirements).
 - (E) Other factors the Department deems appropriate.
 - (ii) For facilities where the EPA has not promulgated a National ELG for an industry or activity, and the Department has not developed a facility-specific BAT effluent limitation under the factors in this subparagraph, an effluent limitation for TRC of 0.5 mg/l (30-day average) shall constitute BAT.

(iii) Facilities utilizing chlorine which discharge to Exceptional Value Waters, or High Quality Waters where economic or social justification under § 93.4c(b)(1)(iii) (relating to implementation of antidegradation requirements) has not been demonstrated under applicable State or Federal law or regulations, shall discontinue the use of chlorine or dechlorinate their effluents prior to discharge into the waters.

(4) Oil-bearing wastewaters shall meet the requirements in § 95.2 (relating to water quality standards and oil-bearing wastewaters).

Authority

The provisions of this § 92.2d 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 § 92.2d adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

PERMITS

§ 92.3. Permit requirement.

A person may not discharge pollutants from a point source into surface waters except as authorized under an NPDES permit.

Authority

The provisions of this § 92.3 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.3 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228248).

Notes of Decisions

Elements of Offense

Where the defendant admitted that it did not have an NPDES permit, the only determination for the court is whether the defendant discharged pollutants from a point source. *Reynolds v. Rick's Mushroom Services, Inc.*, 246 F. Supp. 2d 449 (E. D. Pa. 2003).

§ 92.4. Exclusions from permit requirements.

(a) The following are excluded from the requirement of obtaining an NPDES permit under this chapter:

(1) Introduction of pollutants from nonpoint source agricultural activities and irrigation return flows. As used in this paragraph, "irrigation return flows"

means pollutants discharged into surface waters from a discernible, confined and discrete conveyance which results from the controlled application of water by any person to land used primarily for crops, forage growth or nursery operations.

(2) Silviculture activities, except that this exclusion does not apply to silvicultural point sources.

(3) Sewage from vessels within the meaning of section 312 of the Federal Act (33 U.S.C.A. § 1322).

(4) Water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes, is approved by authority of the Department, and if the Department determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(5) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of the Federal Act (33 U.S.C.A. § 1344).

(6) Indirect discharges subject to the following requirements:

(i) Except as provided in subparagraph (ii), the discharge of sewage, industrial wastes or other pollutants into a POTW or privately owned treatment works which is, or will be when connected, conveying and treating the discharge into the treatment works, and is operated and maintained in accordance with the State Act, rules and regulations promulgated thereunder, the permit and any applicable orders.

(ii) The Department may require that an indirect discharger of sewage, industrial waste or other pollutants obtain a permit under the State Act to discharge into a POTW or privately owned treatment works where necessary to assure protection of waters of this Commonwealth in situations including, but not limited to, one or more of the following:

(A) When the indirect discharger has failed to take adequate measures to prevent, reduce or otherwise eliminate the discharge.

(B) When the indirect discharger has failed to take adequate measures to pretreat its discharge prior to conveying the discharge to the POTW.

(C) When the discharge would otherwise result in interference with proper operations of the POTW, upsets at the POTW or pass-throughs of pollutants.

(7) A discharge in compliance with the instructions of the Department in an environmental emergency cleanup situation remediating a one time spill or release of pollutants, or the instructions of an on-scene coordinator under 40 CFR Part 300 or 33 CFR Part 153 (relating to National Oil and Hazardous Substances Pollution Contingency Plan; and control of pollution by oil and hazardous substances, discharge removal), where necessary to abate an imminent threat to the public health or safety.

(b) The specification of exclusion under subsection (a) may not relieve any person of any requirement imposed by the State Act or the regulations, other than this chapter, promulgated thereunder, including State permit requirements.

Authority

The provisions of this § 92.4 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.4 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228248).

§ 92.5. NPDES permit satisfies certain other permit requirements.

An NPDES permit issued for a discharge pursuant to this chapter is the Department permit for purposes of sections 202 and 307 of the Clean Streams Law (35 P. S. §§ 691.202 and 691.307).

§ 92.5a. CAFOs.

(a) Except as provided in subsections (b)—(d), each CAFO shall have applied for an NPDES permit on the following schedule, and shall have obtained a permit:

(1) By May 18, 2001, for any CAFO in existence on November 18, 2000, with greater than 1,000 AEUs.

(2) By February 28, 2002, for any other CAFO in existence on November 18, 2000.

(3) Prior to beginning operation, for any new or expanded CAFO that began operation after November 18, 2000, and before October 22, 2005.

(b) A poultry operation that is a CAFO, which is in existence on October 22, 2005, and that is not using liquid manure handling systems, shall apply for an NPDES permit no later than the following, and shall obtain a permit:

(1) By April 24, 2006, for operations with 500 or more AEUs.

(2) By January 22, 2007, for all other operations.

(c) After October 22, 2005, a new operation, and an existing operation that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:

(1) Apply for an NPDES permit at least 180 days before the operation commences or changes.

(2) Obtain an NPDES permit prior to commencing operations or making changes, as applicable.

(d) Other operations not described in subsections (a)—(c) that will become newly regulated as a CAFO for the first time due to the changes in the definition of a CAFO in § 92.1 (relating to definitions) shall apply for a permit by April 24, 2006, and obtain a permit.

(e) The NPDES permit application requirements shall include, but not be limited to, the following:

- (1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) and approved by the county conservation district or the State Conservation Commission. The plan must include:
 - (i) Manure application setbacks for the CAFO of at least 100 feet, or vegetated buffers at least 35 feet in width.
 - (ii) A statement that manure that is stockpiled for 15 consecutive days or longer shall be under cover or otherwise stored to prevent discharge to surface water during a storm event up to and including the appropriate design storm for that type of operation under § 91.36(a)(1) and (5) (relating to pollution control and prevention at agricultural operations).
- (2) An erosion and sediment control plan for plowing and tilling operations meeting the requirements of Chapter 102 (relating to erosion and sediment control).
- (3) When required under § 91.36(a), a water quality management permit, permit application, approval or engineer's certification, as required.
- (4) A preparedness, prevention and contingency plan for pollutants related to the CAFO operation.
- (5) A water quality management permit application as required by this chapter and Chapter 91 (relating to general provisions), when treatment facilities that would include a treated wastewater discharge are proposed.
- (6) Measures to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies. These measures may be included in the nutrient management plan.
- (f) NPDES permits for each CAFO shall include, but not be limited to, conditions requiring the following:
 - (1) Compliance with the Nutrient Management Plan, the Preparedness, Prevention and Contingency Plan and the Erosion and Sediment Control Plan for plowing and tilling operations.
 - (2) A separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102 (relating to erosion and sediment control) when applicable.
 - (3) Compliance with 3 Pa.C.S. §§ 2301—2389 (relating to the Domestic Animal Law).
 - (4) Compliance with § 91.36.
 - (5) Recordkeeping and reporting requirements as described in the permit.
 - (6) When applicable, effluent limitations and other conditions as required under § 92.2a (relating to treatment requirements) to meet water quality standards, for treated wastewater discharges.
 - (7) Measures needed to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies, which are not otherwise included in the nutrient management plan.

Authority

The provisions of this § 92.5a 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 § 92.5a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059; amended October 21, 2005, effective October 22, 2005, 35 Pa.B. 5796. Immediately preceding text appears at serial pages (313602) and (271973).

Cross References

This section cited in 25 Pa. Code § 91.36 (relating to pollution control and prevention at agricultural operations).

§ 92.6. [Reserved].**Source**

The provisions of this § 92.6 amended October 6, 1978, 8 Pa.B. 2721; reserved November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228249).

§ 92.7. New or increased discharges, or change of wastestreams.

Facility expansions, production increases or process modifications, which result in new or increased discharges of pollutants, which discharges do not violate effluent limitations specified in the NPDES permit, shall be reported by submission to the Department of notice of the new or increased discharges. A new permit application shall be submitted and a new permit obtained before commencing a new or increased discharge, or change of the wastestream, which would violate effluent limitations in the NPDES permit or which would include any new or increased pollutant not identified in a previous permit application.

Authority

The provisions of this § 92.7 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.7 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228249).

§ 92.8. [Reserved].**§ 92.8a. Changes in treatment requirements.**

(a) Whenever there is a change in Chapters 93, 95 and 96 (relating to water quality standards; wastewater treatment requirements; and water quality standards implementation), or this chapter, or whenever the Department adopts a plan or makes a determination which would change existing or impose additional water quality criteria or treatment requirements, it shall be the duty of the permittee of facilities affected thereby, upon notice from the Department, to promptly take

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steps necessary to plan, obtain a permit or other approval and construct facilities that are required to comply with the new water quality standards or treatment requirements.

(b) Within 180 days of the receipt of the notice, the permittee shall submit to the Department either a report establishing that its existing facilities are capable of meeting the new water quality standards or treatment requirements, or a schedule setting forth the nature and date of completion of steps that are necessary to plan, obtain a permit or other approval, and construct facilities to comply with the new water quality standards or treatment requirements. The permittee shall comply with the schedule approved by the Department.

(c) Whenever a point of projected withdrawal for a new potable water supply not previously considered is identified by an update to the State Water Plan or a river basin commission plan, or by the application for a water allocation permit from the Department, the Department will notify a discharger of total dissolved solids, nitrite-nitrate nitrogen and fluoride of more stringent effluent limitations needed to protect the point of withdrawal. The discharger shall meet more stringent effluent limitations in accordance with a schedule approved by the Department. The Department will issue orders directing dischargers to achieve compliance or will impose permit modifications with compliance schedules, when necessary.

Authority

The provisions of this § 92.8a 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 § 92.8a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.9. Duration of permits.

- (a) NPDES permits shall have a fixed term not to exceed 5 years.
- (b) The terms and conditions of an expired permit are automatically continued when the following conditions are met:
 - (1) The permittee has submitted a timely application for a new permit in accordance with § 92.13 (relating to reissuance or renewal of permits).
 - (2) The Department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit.
- (c) Permits continued under subsection (b) shall remain effective and enforceable against the discharger until the Department takes final action on the pending permit application.

Authority

The provisions of this § 92.9 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.9 amended October 5, 1979, effective October 6, 1979, 9 Pa.B. 3369; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228249) to (228250).

§ 92.10. [Reserved].**§ 92.11. Duration of standards for certain new sources.**

Any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C.A. §§ 1281 and 1361) (October 18, 1972) and which is so constructed as to meet the applicable standards of performance, may not be subject to any more stringent treatment technology standard of performance during a 10-year period beginning on the date of completion of the construction during the period of depreciation or amortization of the facility for the purpose of section 167 or section 169, or both, of the Internal Revenue Code of 1954 (26 U.S.C.A. §§ 167 and 169), or 10 years from the date the source begins to discharge process or other nonconstruction related wastewater, whichever period ends first. A more stringent standard may be imposed if the imposition is allowed under section 510 of the Federal Act (33 U.S.C.A. § 1370). This section does not apply to water quality based effluent limitations.

Authority

The provisions of this § 92.11 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.11 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228250).

§ 92.12. [Reserved].**§ 92.13. Reissuance or renewal of permits.**

(a) A permittee who wishes to continue to discharge after the expiration date of its NPDES permit shall submit a new application for reissuance or renewal of the permit at least 180 days prior to the expiration of the permit unless permission has been granted for a later date by the Department. The application fees specified in § 92.22 (relating to application fees) apply.

(b) Upon completing review of the new application, the Department may reissue or renew the permit if, based on up-to-date information on the permit-

tee's waste treatment practices and the nature, contents and frequency of the permittee's discharge, the Department determines that the:

(1) Permittee is in compliance with all existing Department-issued permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit) consistent with § 92.55 (relating to schedules of compliance) and other applicable Department regulations.

(2) Discharge is, or will be under a compliance schedule issued under § 92.55 and other applicable regulations, consistent with the applicable water quality standards, effluent limitations or standards and other legally applicable requirements established under this title, including revisions or modifications of the standards, limitations and requirements which may have occurred during the term of the existing permit.

Authority

The provisions of this § 92.13 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 1929 (71 P. S. § 510-20).

Source

The provisions of § 92.13 amended through November 7, 1980, effective November 8, 1980, 10 Pa.B. 4295; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228250) and (263059).

Cross References

This section cited in 25 Pa. Code § 92.9 (relating to duration of permits); 25 Pa. Code § 92.21 (relating to applications); and 25 Pa. Code § 92.67 (relating to notice of reissuance of permits).

§ 92.13a. Effect of modification of permit.

When an NPDES permit is modified, only those permit conditions which are new or are materially changed in the modified permit are reopened. All other conditions of the permit remain in full force and effect and remain administratively final.

Authority

The provisions of this § 92.13a 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 § 92.13a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.14. [Reserved].**§ 92.15. Regional Administrator's right to object to the issuance or modification of certain permits.**

The EPA Administrator has a right to review or object to issuance of certain permits. The scope of EPA review and the procedures for its exercise are described in a Memorandum of Agreement which was incorporated in the Program Description submitted to the EPA by the Department. A copy of the Memorandum of Agreement is on file with the Department and with the Administrator of EPA Region III.

Authority

The provisions of this § 92.15 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.15 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (263059).

§ 92.16. [Reserved].**§ 92.17. Other chapters applicable.**

To the extent that Chapters 91, 93, 95, 96, 102 and 105 pertain to a discharge for which an NPDES permit is required, Chapters 91, 93, 95, 96, 102 and 105 shall govern whenever their application produces a more stringent effluent limitation than would be produced by application of Federal requirements. Effluent limitations resulting from the application of these chapters shall be expressed in an NPDES permit issued under this chapter.

Authority

The provisions of this § 92.17 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.17 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (263059).

APPLICATION FOR PERMITS**§ 92.21. Applications.**

(a) Persons wishing to commence discharges of pollutants shall file a complete application not less than 180 days before the date on which it is desired to commence the discharge of pollutants or within another period of time which the

Department determines is sufficient to insure compliance with State and Federal law, including applicable water quality standards and applicable effluent limitations or standards.

(b) At a minimum, the following are required to be submitted by all applicants for an individual permit, except as otherwise specified:

(1) A permit application fee and other fees as set forth in § 92.22 (relating to application fees).

(2) Except for mining activity water quality permits, proof that written notice of an application has been submitted to the municipality in which the activity is or will be located at least 30 days before the Department may take action on the application.

(3) For discharges of industrial waste, including process wastewaters, CCWs and noncontact cooling waters, proof that public notice of the application has been published in a newspaper of general circulation in the locality in which the activity is or will be located once a week during a consecutive 4-week period.

(4) A description of the activities conducted by the applicant which require an NPDES permit; name, mailing address and location of the facility; up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility; the operator's name, address, telephone number, ownership status and entity status; a listing of all Department and EPA environmental quality permits for the facility; a topographic or other map extending 1 mile beyond the boundaries of the facility or activity; and a brief description of the nature of the business.

(5) Documentation that the applicant is in compliance with all existing Department permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit) consistent with § 92.55 (relating to schedules of compliance) and other applicable Department regulations.

(c) In addition to the information required under subsection (b), the Department may require an applicant to submit other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters, and to determine whether to issue an NPDES permit, or what conditions or effluent limitations (including water quality based effluent limitations) to place in the permit. The additional information may include, but is not limited to:

(1) The results of an effluent assessment (or estimate for new dischargers or new sources), including a list of the mass and concentration of pollutants found (or estimated to be for new discharges or new sources) in the wastewater discharge, under Department protocols.

(2) The results of any pollutant source or waterbody monitoring conducted under this title.

(3) Information relating to the biological, physical and chemical characteristics of waters and habitat immediately upstream and downstream of the proposed discharge conducted under a Department approved protocol.

(d) In addition to the information required under subsections (b) and (c), the Department may require an applicant for a modification, renewal or reissuance of a permit under § 92.13 (relating to reissuance or renewal of permits) or when required under 40 CFR Part 122 (relating to EPA administered programs: the National Pollutant Discharge Elimination System), to provide the following information:

(1) The results of a waterbody assessment, under Department protocols, setting forth the impact (or potential impact) of the discharges on surface waters of this Commonwealth.

(2) The results of whole effluent toxicity testing, an instream cause/effect survey, or other tests or surveys as needed to determine the impact of a discharge on a waterbody conducted under a Department-approved protocol.

(3) Additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life, and to determine the cause of the toxicity, and information relating to the biological, physical and chemical characteristics of waters and habitat immediately upstream and downstream of the facility conducted under a Department-approved protocol.

(e) Three copies of complete applications shall be submitted, one of which shall be attested by a notary public, justice of the peace, alderman or district justice. The Department may require additional copies of the application to be filed.

(f) The Department will publish at least annually a list of addresses to which applications and their accompanying papers shall be submitted.

(g) A person required to file an application shall also file additional modules, forms and applications, and supply data as specified by the Department. Additional modules, forms, applications and data shall be considered a part of the application.

Authority

The provisions of this § 92.21 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.21 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (263059) to (263060).

Notes of Decisions

Although a coordinated review may be generally desirable, there is nothing in the National Pollutant Discharge Elimination System regulations which requires that review of NPDES permit applications be coordinated with review of other required permits. *Del-Aware Unlimited, Inc. v. Department of Environmental Resources*, 508 A.2d 348. (Pa. Cmwlth. 1986); appeal denied 523 A.2d 1132 (Pa. 1986).

Cross References

This section cited in 25 Pa. Code § 92.83 (relating to inclusion of individual dischargers in general NPDES permits).

§ 92.21a. Additional application requirements for classes of dischargers.

(a) *Existing industrial discharges.* Dischargers of industrial waste from sources other than new sources or new discharges subject to subsection (b), non-process wastewater discharges subject to subsection (c) and stormwater discharges associated with industrial activity subject to subsection (d), shall submit the applicable information required to be submitted under 40 CFR 122.21(g)(1)—(7) and (g)(9)—(13) (relating to application for a permit), which is incorporated by reference.

(b) *New sources and new discharges.* Except for new discharges of industrial facilities which discharge nonprocess wastewater subject to subsection (c) and new discharges of stormwater associated with industrial activity subject to subsection (d), new discharges and new sources applying for NPDES permits shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(k), which is incorporated by reference.

(c) *Nonprocess industrial waste discharges.* Except for stormwater discharges associated with industrial activity subject to subsection (d), industrial waste dischargers applying for NPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitation guideline or new source performance standard shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(h), which is incorporated by reference.

(d) *Stormwater discharges associated with industrial activity.* Applicants for individual NPDES permits for the discharge of stormwater associated with industrial activity shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(g)(7) and 122.26(c)(1) (relating to storm water discharges (applicable to state NPDES program)), which are incorporated by reference. In addition, stormwater dischargers associated with construction activity shall submit information required in § 102.4 (relating to erosion and sediment control requirements) as appropriate.

(e) *New and existing sewage dischargers.* The following additional application requirements apply to new and existing sewage dischargers (including POTWs and privately owned treatment works), as applicable except where aquatic communities are essentially excluded as documented by water quality data confirming the absence of the communities and confirming the lack of a trend of water quality improvement in the waterbody:

(1) The following sewage dischargers shall provide the results of whole effluent toxicity testing to the Department:

(i) Sewage dischargers with design influent flows equal to or greater than 1 million gallons per day.

- (ii) Sewage dischargers with approved pretreatment programs or required to develop a pretreatment program.
- (2) In addition to the sewage dischargers in paragraph (1), the Department may require other sewage dischargers to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:
 - (i) The variability of the pollutants or pollutant parameters in the sewage effluent (based on chemical-specific information, the type of treatment facility and types of industrial contributors).
 - (ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).
 - (iii) Existing controls on point or nonpoint sources, including calculations of total maximum daily loads (TMDLs), as defined in § 96.1 (relating to definitions), for the waterbody segment, and the relative contribution of the sewage discharger.
 - (iv) Receiving surface water characteristics, including possible or known water quality impairment, and whether the sewage discharges to an estuary, one of the Great Lakes or a Water which is classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards).
 - (v) Other considerations including, but not limited to, the history of toxic impact and compliance problems at the sewage discharge facility, which the Department determines could cause or contribute to adverse water quality impacts.
- (3) For sewage dischargers required under paragraph (1) or (2) to conduct toxicity testing, the EPA's methods or other protocols approved by the Department, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity and approved by the Department, shall be utilized. The testing shall have been conducted since the last NPDES permit reissuance or when requested by the Department, whichever occurred later.
- (f) CSOs. CSO dischargers shall submit the following information:
 - (1) The results of an evaluation determining the frequency, extent and cause of the CSO discharge, including identifying the points of inflow into combined systems.
 - (2) An evaluation of the water quality impacts of the CSO discharge on receiving waters.
 - (3) A description of:
 - (i) The nine minimum controls (NMCs) described in the EPA publication entitled "Combined Sewer Overflows—Guidance for Nine Minimum Controls" (EPA publication number 832-B-9-003 (September 1995) as amended or updated) utilized or proposed to be utilized at the facility to minimize or eliminate the CSO discharge impact on receiving water quality.
 - (ii) A long-term control plan (LTCP) to minimize or eliminate the CSO discharge.

(iii) An implementation schedule for the NMCs and LTCP.

(g) *Large, medium or small municipal separate storm sewers.* The operator of a discharge from a large, medium or small municipal separate storm sewer shall submit in its application the information required to be submitted under 40 CFR Part 122 (relating to EPA administered programs: the National Pollutant Discharge Elimination System).

Authority

The provisions of this § 92.21a 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 § 92.21a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

Cross References

This section cited in 25 Pa. Code § 92.2c (relating to minimum sewage and industrial waste treatment requirements).

§ 92.22. Application fees.

(a) A sewage application, except those submitted for single residence sewage treatment plants, shall be accompanied by a check for \$500 payable to “Commonwealth of Pennsylvania.”

(b) Sewage applications for single residence sewage treatment plants require no application fee.

(c) Industrial wastes applications, except those submitted for mining operations, shall be accompanied by a check for \$500 payable to “Commonwealth of Pennsylvania.”

(d) Industrial wastes applications submitted for mining operations shall be accompanied by a check for \$250 payable to “Commonwealth of Pennsylvania.”

(e) An NOI for coverage under a general NPDES permit under § 92.83(a) (relating to inclusion of individual dischargers in general NPDES permits) shall be accompanied by a check payable to “Commonwealth of Pennsylvania” in the amount set forth in the public notice for the general permit. The amount may not exceed \$500.

(f) Applications for individual NPDES permits for new or expanded CAFOs with more than 1,000 AUEs require an application fee of \$500. Other CAFOs require no application fee.

(g) The application fee specified in § 91.22 (relating to fees) applies to all other applications.

Authority

The provisions of this § 92.22 amended under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402).

Source

The provisions of this § 92.22 amended through July 20, 1984, effective July 21, 1984, 14 Pa.B. 2672; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (263060) and (228253).

Cross References

This section cited in 25 Pa. Code § 92.13 (relating to reissuance or renewal of permits); 25 Pa. Code § 92.21 (relating to applications); and 25 Pa. Code § 92.83 (relating to inclusion of individual dischargers in general NPDES permits).

§ 92.23. Identity of signatories to NPDES forms.

An NPDES form submitted to the Department shall be signed as follows:

- (1) In the case of corporations, by a principal executive officer of at least the level of vice president, or an authorized representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.
- (2) In the case of a partnership, by a general partner.
- (3) In the case of a sole proprietorship, by the proprietor.
- (4) In the case of a municipal state, or other public facility, by either a principal executive officer, ranking elected official or other authorized employe.

Authority

The provisions of this § 92.23 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.23 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228253).

Cross References

This section cited in 25 Pa. Code § 92.83 (relating to inclusion of individual dischargers in general NPDES permits).

§ 92.24. [Reserved].**§ 92.25. Incomplete applications or NOIs.**

The Department will not complete processing of an application or NOI which is incomplete or otherwise deficient. An application for an individual NPDES permit is complete when the Department receives an application form and supplemental information which are completed in accordance with this chapter. An NOI to be covered by an NPDES general permit issued by the Department is complete when the Department receives an NOI setting forth the information specified by the terms of the general permit.

Authority

The provisions of this § 92.25 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.25 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228253).

APPROVAL OF APPLICATIONS**§ 92.31. Effluent limitations or standards.**

(a) Except as set forth in subsection (b), a permit will not be issued for the discharge of pollutants unless the proposed discharge is in compliance with the following, when applicable:

(1) Effluent limitations under sections 301 and 302 of the Federal Act (33 U.S.C.A. §§ 1311 and 1312).

(2) Standards of performance for new sources under section 306 of the Federal Act (33 U.S.C.A. § 1316).

(3) Effluent standards, effluent prohibitions or pretreatment standards under section 307 of the Federal Act (33 U.S.C.A. § 1317).

(4) If the NPDES permit is for the discharge of pollutants into the navigable waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage and stowage of pollutants.

(5) Any more stringent limitation required to implement any applicable water quality standard. The limitations are to include any legally applicable requirements necessary to implement TMDLs defined and established under Chapter 96 (relating to water quality standards), or section 303(d) of the Federal Act (33 U.S.C.A. § 1313(d)).

(6) Any more stringent legally applicable requirements necessary to comply with a plan approved under section 208(b) of the Federal Act (33 U.S.C.A. § 1288).

(7) Any more stringent limitation established under any other Federal law or regulation.

(8) Any more stringent limitation established under any law of the Commonwealth.

(9) Water quality protection requirements under § 96.3 (relating to water quality protection requirements).

(10) Antidegradation requirements under this title.

(b) Existing dischargers not currently attaining a requirement in subsection (a) may meet the requirements of subsection (a) under a compliance schedule in a reissued, renewed or amended permit which is consistent with § 92.55 (relating to schedules of compliance).

Authority

The provisions of this § 92.31 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.31 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228253) to (228254).

Cross References

This section cited in 25 Pa. Code § 92.55 (relating to schedules of compliance); 25 Pa. Code § 92.59 (relating to documentation for permit conditions); 25 Pa. Code § 92.71 (relating to interim standards); and 25 Pa. Code § 92.81 (relating to general NPDES permits).

MONITORING BY PERMITTEE**§ 92.41. Monitoring.**

(a) The Department may impose reasonable monitoring requirements on any discharge.

(b) Each person who discharges pollutants, with the exception of sewage discharges from single family residence sewage treatment plants, may be required to monitor and report all toxic, conventional, nonconventional and other pollutants in its discharge, at least once a year, and on a more frequent basis if required by a permit condition. The results of this monitoring shall be submitted to the Department as required by a permit condition.

(c) Except for stormwater discharges subject to the requirements of subsection (g), a discharge authorized by an NPDES permit which is not a minor discharge or contains toxic pollutants for which an effluent standard has been established by the Administrator under section 307(a) of the Federal Act shall be monitored by the permittee for at least the following:

(1) Flow (in gallons per day or million gallons per day).

(2) All of the following pollutants:

(i) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to abatement under the terms and conditions of the permit.

(ii) Pollutants which the Department finds, on the basis of information available to it, could have an impact on the quality of this Commonwealth's waters.

(iii) Pollutants specified by the Administrator, in regulations issued under the Federal Act, as subject to monitoring.

(iv) Pollutants in addition to those in subparagraphs (i)—(iii) which the Regional Administrator requests, in writing to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsections (b) and (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored efflu-

ent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

(e) The permittee shall maintain records of the information resulting from any monitoring activities required of it in its NPDES permit as follows:

(1) Records of monitoring activities and results shall include for all samples:

- (i) The date, exact place and time of sampling.
- (ii) The dates analyses were performed.
- (iii) Who performed the analyses.
- (iv) The analytical techniques/methods used.
- (v) The results of the analyses.

(2) The permittee shall also be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This period of retention may be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Department or Regional Administrator.

(f) The permittee shall periodically report, at a frequency of at least once per year, on the proper NPDES reporting form monitoring results obtained by a permittee pursuant to monitoring requirements. In addition to the NPDES reporting form, the Department may require submission of other information regarding monitoring results it determines to be necessary.

(g) Requirements to report monitoring results from stormwater discharges associated with industrial activity (including a construction activity), except those subject to an effluent limitation guideline or an NPDES general permit, shall be established in a case-by-case basis with a frequency dependent on the nature and effect of the discharge.

(h) The monitoring requirements under this section shall be consistent with any National monitoring, recording and reporting requirements specified by the Administrator in regulations issued under the Federal Act.

Authority

The provisions of this § 92.41 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.41 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228254) to (228256).

Cross References

This section cited in 25 Pa. Code § 92.81 (relating to general NPDES permits).

PERMIT CONDITIONS**§ 92.51. Standard conditions in all permits.**

The issued NPDES permit shall provide for and insure the following:

(1) That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new application or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the Department of notice of the new or increased discharges of pollutants, that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

(2) That the permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

(i) Violation of any terms or conditions of the permit.

(ii) Obtaining a permit by misrepresentation or failure to disclose fully relevant facts.

(iii) A change in a condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(3) That the permittee shall permit the Director or an authorized representative, upon presentation of that representative's credentials, to:

(i) Enter upon permittee's premises in which an effluent source is located or in which records are required to be kept under terms and conditions of the permit.

(ii) Have access to and copy records required to be kept under terms and conditions of the permit.

(iii) Inspect monitoring equipment or method required in the permit.

(iv) Sample a discharge of pollutants.

(4) That the permittee shall maintain in good working order and operate as efficiently as possible facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

(5) That if a toxic effluent standard or prohibition, including any schedule of compliance specified in the effluent standard or prohibition, is established under section 301(b)(2)(C) or (D), 304(b) or 307(a) of the Federal Act (33 U.S.C.A. §§ 1311(b)(2)(C) or (D), 1314(b) or 1317(a)) for a toxic pollutant

which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the Department will revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

(6) That the discharger may not discharge floating materials, oil, grease, scum, foam, sheen and substances which produce color, taste, turbidity or settle to form deposits in concentrations or amounts sufficient to be, or creating a danger of being, inimical to the water uses to be protected or to human, animal, plant or aquatic life.

(7) That dischargers comply with applicable water quality standards.

Authority

The provisions of this § 92.51 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.51 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228256) to (228257).

Cross References

This section cited in 25 Pa. Code § 92.81 (relating to general NPDES permits).

§ 92.52. [Reserved].

§ 92.52a. Site specific permit conditions.

The Department may establish and include in an NPDES permit, any permit condition, as needed on a case-by-case basis, to assure protection of surface waters. These conditions may include a requirement to identify and implement the following:

(1) BMPs reasonably necessary to achieve effluent limitations or standards or to carry out the purpose and intent of the Federal Act.

(2) Toxic reduction activities, effluent limitations based on WETT, and other measures which eliminate, or substantially reduce releases of pollutants at their source.

Authority

The provisions of this § 92.52a 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 § 92.52a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.53. Additional standard conditions in permits for publicly-owned treatment works which serve industrial users.

(a) Standard conditions in permits for POTWs shall require the permittee to give notice to the Department of the following:

(1) A new introduction of pollutants into the treatment works from a source which would be a new source as defined in section 306 of the Federal Act (33 U.S.C.A. § 1316) if the source was directly discharging pollutants.

(2) Except as to categories and classes of point sources or discharges specified by the Department, a new introduction of pollutants into the treatment works from a source which would be subject to section 301 of the Federal Act (33 U.S.C.A. § 1311) if the source was directly discharging pollutants.

(3) A substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the works at the time of issuance of the permit.

(b) The notice shall include information on the quality and quantity of effluent to be introduced into the treatment works and the anticipated impact of the change in the quantity or quality of effluent to be discharged from the publicly owned treatment works.

(c) The permittee shall identify the industrial users served by the POTWs which are subject to pretreatment standards adopted under section 307(b) of the Federal Act (33 U.S.C.A. § 1317(b)) and shall specify the total volume of discharge and estimated concentration of each pollutant discharged into the POTWs by the industrial users. The permittee shall require an industrial user of the treatment works to comply with the reporting requirements of sections 204(b), 307 and 308 of the Federal Act (33 U.S.C.A. §§ 1284(b), 1317 and 1318) and regulations thereunder.

Authority

The provisions of this § 92.53 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 1929 (71 P. S. § 510.20).

Source

The provisions of this § 92.53 amended February 26, 1988, effective upon delegation of the pretreatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228257) to (228258).

§ 92.54. [Reserved].

§ 92.55. Schedules of compliance.

(a) With respect to an existing discharge which is not in compliance with the water quality standards and effluent limitations or standards in § 92.31(a) (relating to effluent limitations or standards), the applicant shall be required in the permit to take specific steps to remedy a violation of the standards and limitations in

accordance with a legally applicable schedule of compliance, in the shortest, reasonable period of time, the period not to be inconsistent with the Federal Act. If a deadline specified in section 301 of the Federal Act has passed, any schedule of compliance specified in the permit shall require compliance with final enforceable effluent limits as soon as practicable, but in no case longer than 3 years, unless a court of competent jurisdiction issues an order allowing a longer time for compliance.

(b) If the period of time for compliance specified in subsection (a) exceeds 1 year, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement. If the time necessary for completion of the interim requirement such as the construction of a treatment facility is more than 1 year and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress towards completion of the interim requirement. For each NPDES permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September and December.

(c) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the Department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

Authority

The provisions of this § 92.55 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.55 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228258).

Cross References

This section cited in 25 Pa. Code § 92.13 (relating to reissuance or renewal of permits); 25 Pa. Code § 92.21 (relating to applications); and 25 Pa. Code § 92.71a (relating to transfer of permit).

§ 92.56. [Reserved].

§ 92.57. Effluent limitations.

NPDES permits shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight except pH, temperature, radiation and any other pollutants not appropriately expressed by weight. Permits may in addition impose limitations on frequency of discharge, concentrations or percentage removal, and may include instantaneous maximum limits, BMPs or any other limitations, as necessary.

Authority

The provisions of this § 92.57 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.57 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228258).

Cross References

This section cited in 25 Pa. Code § 92.81 (relating to general NPDES permits).

§ 92.58. [Reserved].**§ 92.59. Documentation for permit conditions.**

When an NPDES permit applies the effluent limitations or standards described in § 92.31 (relating to effluent limitations or standards), the Department will prepare documentation demonstrating that the permit will not violate applicable water standards. When an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to insure that the discharge authorized by the permit is consistent with applicable water quality standards.

Authority

The provisions of this § 92.59 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.59 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228259).

Cross References

This section cited in 25 Pa. Code § 92.81 (relating to general NPDES permits).

§ 92.60. [Reserved].**§ 92.61. Public notice of permit application and public hearing.**

(a) Public notice of every complete application for an NPDES permit will be published by the Department in the *Pennsylvania Bulletin*. The public notice will also be posted by the applicant near the entrance to the premises of the applicant and in nearby places. The contents of public notice of applications for NPDES permits will include at least the following:

- (1) The name, address, phone number of agency issuing the public notice.
- (2) The name and address of each applicant.
- (3) A brief description of each applicant's activities or operations which result in the discharge described in the application.

(4) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether the discharge is a new or an existing discharge.

(5) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the application. If there is a tentative determination to issue a permit, the determination will include proposed effluent limitations for those effluents proposed to be limited, a proposed schedule of compliance including interim dates and requirements for meeting the proposed effluent limitations and a brief description of any proposed special conditions which will have a significant impact upon the discharge described in the application.

(6) The location of the nearest downstream potable water supply considered in establishing proposed effluent limitations under this title, or a finding that no potable water supply will be affected by the proposed discharge.

(7) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by subsection (d) and any other means by which interested persons may influence or comment upon those determinations.

(8) The address and phone number of State or interstate agency premises at which interested persons may obtain further information, request a copy of the fact sheet described in subsection (c) and inspect and copy NPDES forms and related documents.

(9) The antidegradation classification of the receiving surface water under § 93.4c(b)(1)(ii)(B) (relating to implementation of antidegradation requirements).

(b) The Department will organize the tentative determination prepared under subsection (a)(5) into a draft NPDES permit.

(c) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, the Department will prepare and following public notice, will send to any person, upon request, a fact sheet with respect to the application described in the public notice. The contents of the fact sheets will include at least the following information:

(1) A sketch or detailed description of the location of the discharge described in the application.

(2) A quantitative description of the discharge described in the application which includes at least the following:

(i) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day.

(ii) For thermal discharges subject to limitation under the Federal Act, the average summer and winter temperatures in degrees Fahrenheit.

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations

or prohibition under section 301, 302, 306 or 307 of the Federal Act (33 U.S.C.A. §§ 1311, 1312, 1316 and 1317) and regulations promulgated thereunder.

(3) The tentative determinations required under subsection (a).

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge.

(5) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(i) The 30-day comment period required by subsection (d).

(ii) Procedures for requesting a public hearing and the nature thereof.

(iii) Other procedures by which the public may participate in the formulation of the final determinations.

(d) There will be a 30-day period following publication of notice during which written comments may be submitted by interested persons before the Department makes its final determination on a permit application. All written comments submitted during the 30-day comment period will be retained by the Department and considered in the formulation of the final determinations with respect to the application. The period for comment may be extended at the discretion of the Department for one additional 15-day period. The Department will provide an opportunity for the applicant, any affected state, any affected interstate agency, the Regional Administrator or any interested agency, person or group of persons to request or petition for a public hearing with respect to the application. The request or petition for public hearing shall be filed within the 30 day period allowed for filing of written comments and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. A hearing will be held if there is a significant public interest, including the filing of requests or petitions for the hearing; in holding the hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection will be held in the geographical area of the proposed discharge or other appropriate area and may, as appropriate, consider related groups of permit applications.

(e) If a public hearing is requested, notice of the hearing will be published in the *Pennsylvania Bulletin*, and in at least one newspaper of general circulation within the geographical area of the discharge and will be sent to all persons or government agencies which received a copy of the notice or the fact sheet for the application. All of the notices of a public hearing will be published at least 30 days before the hearing. Notice of public hearing will include at least the following:

(1) The name, address and phone number of agency holding the public hearing.

(2) The name and address of each applicant whose application will be considered at the hearing.

- (3) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway.
 - (4) A brief reference to the public notice issued for each application, including identification number and date of issuance.
 - (5) Information regarding the time and location for the hearing.
 - (6) The purpose of the hearing.
 - (7) A concise statement of the issues raised by the persons requesting the hearing.
 - (8) The address and phone number of premises at which interested persons may obtain further information, request a copy of each fact sheet prepared under subsection (c), and inspect and copy NPDES forms and related documents.
 - (9) A brief description of the nature of the hearing, including the rules and procedures to be followed.
- (f) A copy of the notice of an application or a hearing and relevant fact sheets will be mailed to any person or group upon request. A person or group desiring to receive fact sheets, notices of applications, or notices of hearings on a routine basis may request to be placed on a mailing list to receive copies of all notices. The Department will annually review mailing lists, contact recipients and terminate mailings unless the recipient indicates desire to continue receiving the mailings.
- (g) When the determination of the Department to issue or deny an NPDES permit is appealed to the EHB, notice of the appeal, and notice of the hearing date, if any, will be published in the *Pennsylvania Bulletin*. In addition, notice of the Department's final action, arrived at either through settlement or as the result of a decision of the Hearing Board, will be published in the *Pennsylvania Bulletin*.

Authority

The provisions of this § 92.61 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.61 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228259) to (228260) and (258037) to (258038).

Notes of Decisions

Posted Notice

A landowner failed to file a timely appeal after receipt of what was determined to be a properly noticed administrative agency action and as the prescribed time limits for appeals are jurisdictional,

the Board lost the jurisdiction that it would have otherwise had and the landowner's petition for allowance of an appeal nunc pro tunc was denied. *Grimaud v. Department of Environmental Resources*, 638 A.2d 299 (Pa. Cmwlth. 1994).

Cross References

This section cited in 25 Pa. Code § 92.65 (relating to notice to other government agencies); 25 Pa. Code § 92.67 (relating to notice of reissuance of permits); 25 Pa. Code § 92.82 (relating to public notice and public hearing); 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements); 25 Pa. Code § 93.8d (relating to development of site-specific water quality criteria); and 25 Pa. Code § 96.7 (relating to public participation).

§ 92.62. [Reserved].

§ 92.63. Public access to information.

(a) Any NPDES forms and public comment will be available to the public for inspection and copying.

(b) The Department may protect any information, other than effluent data, contained in NPDES forms, or other records, reports or plans pertaining to the NPDES permit program as confidential upon a showing by any person that the information is not a public record for the purposes of section 607 of the State Act (35 P. S. § 691.607). Documents which may be protected as confidential and are not public records are those which if made public would divulge an analysis of chemical and physical properties of coal (excepting information regarding the mineral or elemental content which is potentially toxic in the environment), and those which are confidential commercial information or methods or processes entitled to protection as trade secrets under State or Federal law. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Department will forward the information to the Regional Administrator for concurrence in any determination of confidentiality. If the Regional Administrator does not concur that some or all of the information being considered for confidential treatment merits the protection and so notifies the Department in writing, the Department will make available to the public that information determined by the Regional Administrator in consultation with the EPA Office of General Counsel not entitled to protection in accordance with 40 CFR Part 2 (relating to public information).

(c) Information accorded confidential status, whether or not contained in an NPDES form, will be disclosed, upon request, to the Regional Administrator, or an authorized representative, who shall maintain the disclosed information as confidential.

(d) Facilities for the inspection of information relating to NPDES permits will be provided and State employes will honor requests for inspection promptly without undue requirements or restrictions. Either a machine or device for the copying of papers and documents will be available for a reasonable fee, or other copying facilities or services will be provided.

Authority

The provisions of this § 92.63 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.63 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (258038) to (258039).

Cross References

This section cited in 25 Pa. Code § 92.67 (relating to notice of reissuance of permits); 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements); and 25 Pa. Code § 93.8d (relating to development of site-specific water quality criteria).

§ 92.64. [Reserved].**§ 92.65. Notice to other government agencies.**

The Department will do the following:

(1) Provide a subscription to the *Pennsylvania Bulletin* for any other states whose waters may be affected by the issuance of an NPDES permit, to any interstate agency having water quality control authority over water which may be affected by the issuance of an NPDES permit, and to all Pennsylvania District Engineers of the Army Corps of Engineers.

(2) At the time of issuance of public notice under § 92.61(a) (relating to public notice of permit application and public hearing), transmit to any other states, whose waters may be affected by the issuance of an NPDES permit a copy of fact sheets prepared under § 92.61(c). Upon request, the Department will provide the states with a copy of the application and a copy of the draft permit prepared under § 92.61(b). Each affected state shall be afforded an opportunity to submit written recommendations to the Department and to the Regional Administrator which the Department may incorporate into the permit if issued. If the Department decides not to incorporate any written recommendations thus received, it will provide to the affected states and to the Regional Administrator a written explanation of its reasons for deciding not to accept any of the written recommendations.

(3) At the time of issuance of public notice under § 92.61(a), transmit to any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit a copy of fact sheets prepared under § 92.61(c). The interstate agency shall have the same opportunity to submit recommendations and to receive explanations in paragraph (2).

(4) At the time of issuance of public notice under § 92.61(a), transmit to the appropriate District Engineer of the Army Corps of Engineers a copy of fact sheets prepared under § 92.61(c). An NPDES permit will not be issued if a district engineer objects to the issuance of the permit because anchorage and navigation of any of the surface waters would be impaired.

(5) Provide a subscription to the *Pennsylvania Bulletin* and transmit fact sheets prepared under § 92.61(c) for any other Federal, State or local agency upon request, and provide these agencies an opportunity to respond or comment.

Authority

The provisions of this § 92.65 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.65 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (258039) to (258040).

Cross References

This section cited in 25 Pa. Code § 92.67 (relating to notice of reissuance of permits); 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements); and 25 Pa. Code § 93.8d (relating to development of site-specific water quality criteria).

§ 92.66. [Reserved].

§ 92.67. Notice of reissuance of permits.

Notice of reissuance of permits under § 92.13 (relating to reissuance of permits) shall be accomplished in the same manner specified in §§ 92.61, 92.63 and 92.65 (relating to public notice of permit application and public hearing; public access to information; and notice to other government agencies).

MISCELLANEOUS

§ 92.71. Interim standards.

Prior to promulgation by the Administrator of effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the Federal Act (33 U.S.C.A. §§ 1311, 1312, 1316 and 1317), for purposes of compliance with § 92.31 (relating to effluent standards) permit conditions governing allowable discharges shall be designed to insure compliance with the provisions of the Federal Act.

Authority

The provisions of this § 92.71 amended under sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402).

Source

The provisions of this § 92.71 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (258040).

§ 92.71a. Transfer of permit.

An NPDES permit may be automatically transferred to a new permittee if the following conditions are met:

(1) The current permittee notifies the Department at least 30 days in advance of the proposed transfer date.

(2) The notice includes a written agreement between the existing permittee and the new permittee containing a specific date for transfer of permit responsibilities, coverage and liability between them.

(3) The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the transfer date specified in the agreement required under paragraph (2).

(4) The new permittee is in compliance with existing Department issued permits, regulations, orders and schedules of compliance, or that any noncompliance with the existing permits has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit), consistent with § 92.55 (relating to schedules of compliance) and other appropriate Department regulations.

Authority

The provisions of this § 92.71a 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 § 92.71a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.72. [Reserved].**§ 92.72a. Cessation of discharge.**

If a permittee intends to cease operations or cease a discharge for which a permit has been issued under this chapter, the permittee shall notify the Department in writing of its intent at least 90 days prior to the cessation of operations or the cessation of the discharge, unless permission has been granted for a later date by the Department.

Authority

The provisions of this § 92.72a 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 § 92.72a adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

§ 92.73. Prohibition of certain discharges.

A permit will not be issued, modified, renewed or reissued under any of the following conditions:

- (1) Authorizing the discharge of any radiological, chemical, biological warfare agent or high-level radioactive waste.
- (2) Authorizing any discharge which is in conflict with a plan or amendment thereto approved under section 208(b) of the Federal Act (33 U.S.C.A. § 1288(b)).
- (3) When the applicant is required to obtain a State water quality certification or other appropriate certification under section 401 of the Federal Act (33 U.S.C.A. § 1341) and that certification has not been obtained or waived.
- (4) When the Regional Administrator has objected to the issuance of a permit.
- (5) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states.
- (6) When, in the judgment of the Administrator, a district engineer of the Army Corps of Engineers or the Department, anchorage and navigation in or on any surface waters would be substantially impaired by the discharge.
- (7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.
- (8) For a sanitary sewer overflow, except as provided for in the Federal regulations.

Authority

The provisions of this § 92.73 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.73 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (258040).

Cross References

This section cited in 25 Pa. Code § 92.2c (relating to minimum sewage and industrial waste treatment requirements).

§ 92.74. [Reserved].**§ 92.75. Transmission of NPDES forms.**

The Department will transmit to the Regional Administrator and the National data bank complete copies of all NPDES forms and other information received, and in the manner the Department and the Regional Administrator shall agree.

Authority

The provisions of this § 92.75 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.75 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228265).

Cross References

This section cited in 25 Pa. Code § 92.77 (relating to requirement of additional data in certain cases).

§ 92.76. [Reserved].**§ 92.77. Requirement of additional data in certain cases.**

If, after transmission of information to the Administrator under § 92.75 (relating to transmission of NPDES forms), the Administrator notifies the Department that any discharge which has a total volume of less than 50,000 gallons on every day of the year is not a minor discharge, the Department will require the applicant for the discharge to submit additional NPDES forms or other information requested by the Regional Administrator in the notification to the Department.

Authority

The provisions of this § 92.77 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.77 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228265).

§ 92.78. Transmission of issued NPDES permits.

The Department shall transmit to the Regional Administrator a copy of every issued NPDES permit immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of such permit or which affect the authorization by the permit of the discharge of pollutants.

§ 92.79. Reports of violations.

The Department will prepare a quarterly report listing permittees who have violated final or interim requirements in their NPDES permits, stating the nature of the violation, describing any enforcement action which is proposed or has been taken, and giving a brief description, if appropriate, of any circumstances which explain the violation. A copy of the report shall be forwarded on the last day of the months of February, May, August and November to the EPA Regional Administrator.

Authority

The provisions of this § 92.79 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.79 amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228265).

NPDES PERMITS**§ 92.81. General NPDES permits.**

(a) *Coverage and purpose.* The Department may issue a general NPDES permit, in lieu of issuing individual NPDES permits, for a clearly and specifically described category of point source discharges, if the point sources meet the following conditions:

- (1) Involve the same, or substantially similar, types of operations.
- (2) Discharge the same types of wastes.
- (3) Require the same effluent limitations or operating conditions, or both.
- (4) Require the same or similar monitoring.
- (5) Do not discharge toxic or hazardous pollutants as defined in sections 307 and 311 of the Federal Act (33 U.S.C.A. §§ 1317 and 1321) or any other substance which—because of its quantity; concentration; or physical, chemical or infectious characteristics—may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substantial present or future hazard to human health or the environment when discharged into the surface waters.
- (6) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.
- (7) Individually and cumulatively do not have the potential to cause significant adverse environmental impact.
- (8) Do not discharge to waters classified as “special protection” under Chapter 93 (relating to water quality standards).

(b) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this chapter. Issuance of a general NPDES permit does not exempt a person from compliance with this title. General NPDES permits shall have a fixed term not to exceed 5 years, and shall comply with §§ 92.31, 92.41, 92.51, 92.57 and 92.59 and other applicable provisions of this title.

(c) *Department specification.* The Department may specify in the general permit that an eligible person who has submitted a timely and complete notice of intent is authorized to discharge in accordance with the terms of the permit under one of the following:

- (1) After a waiting period following receipt of the notice of intent by the Department as specified in the general permit.
- (2) Upon receipt of notification of approval of coverage under a general NPDES permit from the Department.
- (d) *Department notification.* The Department will, as applicable, notify a discharger that it is or is not covered by a general permit. A discharger so notified may request an individual permit.

Authority

The provisions of this § 92.81 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 § 92.81 adopted July 20, 1984, effective July 21, 1984, 14 Pa.B. 2672; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial page (228266).

Cross References

This section cited in 25 Pa. Code § 92.82 (relating to public notice and public hearing); 25 Pa. Code § 92.83 (relating to inclusion of individual dischargers in general NPDES permits); and 25 Pa. Code § 271.902 (relating to permits and direct enforceability).

§ 92.82. Public notice and public hearing.

(a) Public notice of every proposed general NPDES permit will be published by the Department in the *Pennsylvania Bulletin*. The contents of the public notice will include at least the following:

- (1) The name, address and phone number of the agency issuing the public notice.
- (2) A clear and specific description of the category of point source discharges eligible for coverage under the proposed general NPDES permit.
- (3) The standards in § 92.81(a) (relating to general NPDES permits), and a brief description of the reasons for the Department's determination that the category of point source discharges is eligible for coverage under a general NPDES permit in accordance with these standards.
- (4) A brief description of the terms and conditions of the proposed general NPDES permit, including applicable effluent limitations, BMPs and special conditions.
- (5) A brief description of the procedures for the formulation of final determinations, and other means by which interested persons may influence or comment on those determinations. Except as provided in § 92.81(c) and (d) (relating to general NPDES permits), the procedures shall comply, at a minimum, with the public notice and hearing requirements in § 92.61(c)—(e) (relating to public notice of permit application and public hearing).

- (6) The address and phone number of Commonwealth agency premises at which interested persons may obtain further information and a copy of the proposed general NPDES permit.
- (7) The NOI fee for coverage under the general NPDES permit.
- (b) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit.

Authority

The provisions of this § 92.82 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 § 92.82 adopted July 20, 1984, effective July 21, 1984, 14 Pa.B. 2672; amended July 20, 1984, effective July 21, 1984, 14 Pa.B. 3364; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228266) to (228267).

Cross References

This section cited in 25 Pa. Code § 92.1 (relating to definitions); and 25 Pa. Code § 271.902 (relating to permits and direct enforceability).

§ 92.83. Inclusion of individual dischargers in general NPDES permits.

(a) *NOI for coverage under the general permit.*

(1) Eligible dischargers, who wish to be covered by the general permit, shall file an NOI which complies with §§ 92.21(b)(4) and (5), 92.22 and 92.23 (relating to applications; application fees; and identity of signatories to NPDES forms). At a minimum, the NOI shall identify each point source for which coverage under the general permit is requested; demonstrate that each point source meets the eligibility requirements for inclusion in the general permit; demonstrate that the discharge from the point sources, individually or cumulatively, will not result in a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards) and include other information the Department may require. The NOI shall be accompanied by a signed and notarized statement that the discharger agrees to accept all conditions and limitations imposed by the general NPDES permit.

(2) If the NOI is acceptable for one or more point sources, the Department, except as provided in § 92.81(c) and (d) (relating to general permits), will formally notify the discharger of the coverage for each point source, and shall transmit a copy of the general permit to each discharger covered. Each copy of the general permit issued to a discharger shall bear an individual identification number.

(3) The Department will indicate in the publication of the notice of availability of a general permit in the *Pennsylvania Bulletin* whether it will provide one of the following:

- (i) Notice in the *Pennsylvania Bulletin* of each NOI under an applicable general NPDES permit, and of each approval for coverage under a general NPDES permit.
 - (ii) Notice of every approval of coverage only.
- (b) *Denial of coverage.* The Department will deny any NOI when one or more of the following conditions exist:
- (1) The discharge, individually or in combination with other similar discharges, is or has the potential to be a contributor of pollution, as defined in the State Act, which is more appropriately controlled under an individual permit.
 - (2) The discharger is not, or will not be, in compliance with any of the conditions of the general permit.
 - (3) The applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by the Department.
 - (4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.
 - (5) Categorical point source effluent limitations are promulgated by the EPA for those point sources covered by the general permit.
 - (6) The discharge is not, or will not, result in compliance with applicable effluent limitation or water quality standard.
 - (7) Other point sources at the facility require issuance of an individual NPDES permit, and issuance of both an individual and a general NPDES permit for the facility would constitute an undue administrative burden on the Department.
 - (8) The Department determines that the action is necessary for any other reason to ensure compliance with the Federal Act, the State Act or this title.
 - (9) The discharge would be to waters classified as “special protection” under Chapter 93.
- (c) *Requiring an individual permit.* The Department may amend, revoke, suspend or terminate previously issued coverage under a general NPDES permit, and require the point source discharger to apply for and obtain an individual NPDES permit for any of the reasons in subsection (b). An interested person may petition the Department to take action under this subsection. Upon notification by the Department under this subsection that an individual NPDES permit is required for a point source, the discharger shall submit a complete NPDES application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid individual NPDES permit. Failure to submit the application within 90 days shall result in automatic termination of coverage of the applicable point sources under the general permit. Timely submission of a complete application shall result in continuation of cov-

erage of the applicable point sources under the general permit, until the Department takes final action on the pending individual permit application.

(d) *Action of the Department.* Action of the Department denying coverage under a general permit under subsection (b), or requiring an individual NPDES permit under subsection (c), is not a final action of the Department until the discharger submits and the Department takes final action on an individual NPDES permit application.

(e) *Termination of general permit.* When an individual NPDES permit is issued for a point source which is covered under a general NPDES permit, the applicability of the general permit to that point source is automatically terminated on the effective date of the individual permit.

(f) *Coverage under general permit.* A point source excluded from a general permit solely because it already has an individual permit may submit an NOI under subsection (a). If the NOI is acceptable, the Department will revoke the individual permit and notify the source that it is covered under the general permit.

Authority

The provisions of this § 92.83 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 1929 (71 P. S. § 510-20).

Source

The provisions of this § 92.83 adopted July 20, 1984, effective July 21, 1984, 14 Pa.B. 2672; amended November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059. Immediately preceding text appears at serial pages (228267) to (228269).

Cross References

This section cited in 25 Pa. Code § 92.1 (relating to definitions); 25 Pa. Code § 92.22 (relating to application fees); and 25 Pa. Code § 271.902 (relating to permits and direct enforceability).

CIVIL PENALTIES FOR VIOLATION OF NPDES PERMITS

§ 92.91. Applicability.

This section and §§ 92.92—92.94 apply to civil penalty assessments by the Department under section 605(a) of the State Act (35 P. S. § 691.605(a)).

Authority

The provisions of this § 92.91 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 § 92.91 adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

Cross References

This section cited in 25 Pa. Code § 92.94 (relating to disbursement of funds pending resolution of appeal).

§ 92.92. Method of seeking civil penalty.

The Department may do either one of the following:

- (1) File a complaint for civil penalties before the EHB.
- (2) Assess a civil penalty, after hearing under § 92.93 (relating to procedure for civil penalty assessments).

Authority

The provisions of this § 92.92 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 § 92.92 adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

Cross References

This section cited in 25 Pa. Code § 92.91 (relating to applicability); and 25 Pa. Code § 92.94 (relating to disbursement of funds pending resolution of appeal).

§ 92.93. Procedure for civil penalty assessments.

(a) The Department, if it assesses a civil penalty for a State Act violation, will serve a copy of the proposed civil penalty assessment on the discharger. Service will be by registered or certified mail, or by personal service. If the mail is tendered at the address in the permit, or at an address where the discharger is located, and delivery is refused, or mail is not collected, the requirements of this section shall be deemed to have been complied with upon the tender.

(b) The discharger who has been served with a proposed assessment in accordance with subsection (a) has 30 days to request that the Department hold an informal hearing on the proposed assessment by serving the Department by registered or certified mail with the request. If no timely request for an informal hearing is submitted, the failure to submit a timely request will operate as a waiver of the opportunity for a hearing, and the proposed assessment will become a final assessment of the Department upon the expiration of the 30 day period unless the Department determines to hold a hearing on the proposed assessment under the procedures in subsection (c).

(c) If a timely request for hearing on the proposed assessment is received by the Department, the Department will assign a representative to hold an informal hearing regarding the assessment. The informal hearing will not be governed by requirements for formal adjudicatory hearings. The Department will establish a hearing date and notify the person requesting the hearing in accordance with the service procedures in subsection (a) and post notice of the time and place of the hearing at the Department office where the hearing is to be held at least 5 days prior to the hearing. The person requesting the hearing has the right to attend and participate in the hearing and to be represented by counsel. The Department will consider the relevant information presented and either affirm, raise, lower or

vacate the proposed assessment. The Department representative's decision will constitute the Department's final assessment.

(d) The person subject to a final assessment by the Department may contest the penalty assessment by filing a timely appeal with the EHB.

Authority

The provisions of this § 92.93 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 § 92.93 adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

Cross References

This section cited in 25 Pa. Code § 92.91 (relating to applicability); and 25 Pa. Code § 92.94 (relating to disbursement of funds pending resolution of appeal).

§ 92.94. Disbursement of funds pending resolution of appeal.

(a) If the person subject to a final assessment fails to file a timely appeal to the EHB as provided in the Environmental Hearing Board Act (35 P. S. §§ 7511—7516), the penalty assessed shall become due and payable upon expiration of the time allowed to file an appeal. If the person fails to pay, the amount shall be collected in the manner provided by section 605 of the State Act. The Department may preclude persons who fail to pay in full from obtaining or renewing any Department permits.

(b) If the final decision in the administrative and judicial review process results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the amount specified in the final decision to the Department within 30 days after the order is mailed to the person. If the person fails to pay the amount specified in the final decision, the amount shall be collected in the manner provided by law. The Department may preclude persons who fail to pay in full from obtaining or renewing any Department permits.

(c) Upon completion of the administrative and judicial review process, any funds collected under §§ 92.91—92.93 (relating to applicability; method of seeking civil penalty; and procedure for civil penalty assessments) and this section will be deposited into the Clean Water Fund.

Authority

The provisions of this § 92.94 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 § 92.94 adopted November 17, 2000, effective November 18, 2000, 30 Pa.B. 6059.

Cross References

This section cited in 25 Pa. Code § 92.91 (relating to applicability).

[Next page is 93-1.]