

CHAPTER 94. MUNICIPAL WASTELOAD MANAGEMENT**GENERAL PROVISIONS**

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Authority

The provisions of this Chapter 94 issued under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 5 of The Clean Streams Law (35 P. S. § 691.5), unless otherwise noted.

Source

The provisions of this Chapter 94 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 71.21 (relating to content of official plans); 25 Pa. Code § 71.51 (relating to general); 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects); 25 Pa. Code § 95.10 (relating to treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS)); 25 Pa. Code § 102.31 (relating to permit requirements); 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); and 46 Pa. Code § 15.64 (relating to waste management and sewage disposal records).

GENERAL PROVISIONS**§ 94.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Average daily organic load—The arithmetic mean of all samples of 5-day Biochemical Oxygen Demand, expressed in terms of pounds per day, collected over a calendar month.

Ban—A restriction placed by the Department on additional connections to an overloaded sewer system or a sewer system tributary to an overloaded plant and other necessary measures the Department may require to prevent or alleviate an actual organic or hydraulic overload or an increase in an organic or hydraulic overload.

Bypass—The intentional diversion of wastewater either at or after the headworks of the plant.

CAP—Corrective action plan—A plan and schedule developed by the permittee of a sewerage facility which has an existing or projected overload. A CAP establishes actions needed and a schedule to reduce the overload and provide needed capacity.

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

Capacity—The rated ability of the plant to receive and effectively treat a specified load. When the term is used in reference to a pump station or sewer system, the term refers to the rated ability to effectively convey a specified load.

Clean Water Act—33 U.S.C.A. §§ 1251, 1252, 1254—1256, 1259, 1262, 1263, 1281—1288, 1291, 1292, 1294—1297, 1311, 1314, 1315, 1317—1319, 1321—1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375 and 1376.

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

Connection—The connection of a structure which generates or could generate hydraulic or organic loads to a sewer system.

Discharge—Wastewater flow which is or would be discharged to a sewer system.

Exception to a ban—An allowable connection to a sewer system even though a ban is in effect.

Extension—An addition to the sewer system to accommodate more than one connection.

Facilities of public need—Hospitals, health clinics, nursing care facilities, primary and secondary education facilities, fire and police stations and correctional institutions.

Headworks—For the purposes of this chapter, the first treatment unit or wetwell within the plant.

Hydraulic design capacity—The maximum monthly design flow, expressed in millions of gallons per day, at which a plant is expected to consistently provide the required treatment or at which a conveyance structure, device or pipe is expected to properly function without creating a backup, surcharge or overflow. This capacity is specified in the water quality management permit (Part II permit issued under Chapter 91) (relating to general provisions).

Hydraulic overload—The condition that occurs when the monthly average flow entering a plant exceeds the hydraulic design capacity for 3-consecutive months out of the preceding 12 months or when the flow in a portion of the sewer system exceeds its hydraulic carrying capacity.

Industrial user—An establishment which discharges or introduces industrial wastes into a sewerage facility.

Interference—A discharge which, alone or in conjunction with a discharge from other sources, does the following:

- (i) Inhibits or disrupts the sewerage facility, its treatment processes or operations or its sludge processes, use or disposal.
- (ii) Is a cause of a violation of a requirement of the sewerage facility's NPDES permit—including an increase in the magnitude or duration of a violation—or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder—or more stringent State or local regulations:

(A) Section 405 of the Clean Water Act (33 U.S.C.A. § 1345).

(B) The Solid Waste Disposal Act (SWDA) (42 U.S.C.A. §§ 6901—6987), including Title II, more commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA).

(C) State regulations contained in a State sludge management plan prepared under Subtitle D of the SWDA, the Clean Air Act (42 U.S.C.A. §§ 7401—7642), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2629) and the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C.A. §§ 1431—1434; 33 U.S.C.A. §§ 1401, 1402, 1411—1421 and 1441—1445).

Load—The rate of flow and organic strength of the wastewater, including infiltration, discharged to a plant, as measured at the influent of the plant or in the sewer system or a portion of it.

Monthly average flow—The total flow received at a sewerage facility or another portion of the sewer system during any 1-calendar month divided by the number of days in that month. This value is always expressed in millions of gallons per day (mgd).

Monthly average organic loading—The total organic load received at a plant during any 1 calendar month divided by the number of days in that month. This value is expressed in pounds per day of biological oxygen demand after 5 days (BOD₅).

NPDES permit—A permit or equivalent document or requirements issued by the EPA, or, if appropriate, by the Department, to regulate the discharge of pollutants under section 402 of the Clean Water Act (33 U.S.C.A. § 1342).

Official plan—A comprehensive plan for the provision of adequate sewage systems adopted by a municipality possessing authority or jurisdiction over the provision of the systems and submitted to and approved by the Department as provided by the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and Chapter 71 (relating to administration of sewage facilities planning program).

Organic design capacity—The highest daily organic load at which a sewage treatment facility or a portion thereof is expected to provide a specific predetermined level of treatment. This capacity is normally specified in the water quality management permit (Part II permit issued under Chapter 91).

Organic overload—The condition that occurs when the average daily organic load exceeds the organic design capacity upon which the permit and the plant design are based.

PPP—Pollution Prevention Plan—A written document that guides a discharger in the reduction of pollutants at their source before they reach the wastewater treatment plant. The PPP shall, at a minimum, address the following elements:

- (i) An explicit statement of top management support for implementation of the pollution prevention plan.
- (ii) A process characterization that identifies and characterizes the input of raw materials, outflow of products and generation of wastes.
- (iii) An estimate of the amount of each waste generated.
- (iv) Development of pollution prevention alternatives based on an estimate of reductions in the amount and toxicity of waste from each pollution prevention activity.
- (v) An identification of pollution prevention opportunities to be implemented and an implementation timetable with interim and final milestones and periodic review of implemented recommendations.

Pass through—A discharge which exits the plant into waters of this Commonwealth in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of a violation of a requirement of the plant's NPDES permit—including an increase in the magnitude or duration of a violation.

Permit—A permit required by section 202 or 207 of the act (35 P. S. §§ 691.202 and 691.207).

Permittee—A person who possesses or is required to possess a permit.

Plant—Devices, systems or other works installed for the purpose of treating, recycling or disposing of sewage.

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

Pretreatment—The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a sewerage facility.

Pretreatment program—A program administered by a sewerage facility that has been approved by the EPA under 40 CFR 403.11 (relating to approval procedures for pretreatment programs and granting of removal credits).

Prohibition—A restriction placed by a permittee on additional connections to an overloaded sewer system or a sewer system tributary to an overloaded plant.

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 plant.

Separate sanitary sewer system—A sewer system or part thereof which is specifically designed and intended to carry sanitary sewage separate from stormwater as specified in the permit.

Sewerage facilities—The term used to collectively describe a plant and sewer system owned by or serving a municipality.

Sewer system—The pipelines or conduits, pumping stations and force mains, and other appurtenant constructions, devices and facilities used for conveying sewage to a plant.

(b) A word or phrase which is not defined in this chapter but which is defined in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) has the meaning as defined therein.

Authority

The provisions of this § 94.1 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 94.1 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 6, 1978, effective October 23, 1978, 8 Pa.B. 2722; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended February 26, 1988, effective upon delegation of the pretreatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (237390), (237217) to (237218) and (228275) to (228276).

Cross References

This section cited in 25 Pa. Code § 94.57 (relating to other exceptions).

§ 94.2. Purpose.

This chapter is intended to prevent unpermitted and insufficiently treated wastewater from entering waters of this Commonwealth by requiring the owners and operators of sewerage facilities to project, plan and manage future hydraulic, organic and industrial waste loadings to their sewerage facilities. Reductions in wastewater volume and pollutant mass loadings through the application of pollution prevention practices are encouraged to avoid hydraulic, organic and industrial wastewater overloads at sewerage facilities to accomplish the following objectives:

- (1) Prevent the occurrence of overloaded sewerage facilities.
- (2) Limit additional extensions and connections to an overloaded sewer system or a sewer system tributary to an overloaded plan.
- (3) Improve opportunities to prevent or reduce the volume and toxicity of industrial wastes generated and discharged to sewerage facilities and where prevention and reduction opportunities have been maximized, and to recycle and reuse municipal and industrial wastewaters and sludges.

Authority

The provisions of this § 94.2 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 94.2 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended February 26, 1988, effective upon delegation of the pretreatment program to the Department by the Environmental Protection Agency; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial page (228276).

§ 94.3. Scope.

This chapter requires owners of sewerage facilities to properly plan, manage and maintain sewerage facilities in a manner which will do the following:

- (1) Anticipate and prevent overloading sewerage facilities.
- (2) Limit additional extensions and connections to an overloaded sewer system or a sewer system tributary to an overloaded plant.

(3) Prevent the introduction into sewerage facilities of pollutants which will interfere with the operation of the plant or pass through or otherwise be incompatible with the treatment process or sewerage facility.

(4) Improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

Authority

The provisions of this § 94.3 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9); amended under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 94.3 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended February 26, 1988, effective upon delegation of the pretreatment program to the Department by the Environmental Protection Agency; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228276) to (228277).

GENERAL REQUIREMENTS

§ 94.11. Sewer extensions.

(a) A sewer extension may not be constructed if the additional flows contributed to the sewerage facilities from the extension will cause the plant, pump stations or other portions of the sewer system to become overloaded or if the flows will add to an existing overload unless the extension is in accordance with an approved CAP submitted under § 94.21 or § 94.22 (relating to existing overload; and projected overload) or unless the extension is approved under § 94.54 (relating to sewer line extension).

(b) The Department may issue a permit for the construction of a capped sewer, which would be tributary to an overloaded sewerage facility where the capped sewer would not be placed into service until adequate conveyance and treatment capacity becomes available under all of the following conditions:

(1) The proposed project is consistent with the approved official plan of the municipality.

(2) The municipality or municipal authority which owns the sewer system to which the capped sewer would connect has an approved program for providing adequate conveyance and treatment capacity within 5 years of the date of issuance of a capped sewer permit by the Department.

(3) Other Department requirements for sewer design and construction are met.

Authority

The provisions of this § 94.11 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.11 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228277) to (228278).

§ 94.12. Annual report.

(a) To provide for annual review of sewerage facilities and ensure that there is sufficient time to address existing operational or maintenance problems or to plan and construct needed additions, plant permittees shall submit a complete and accurate wasteload management annual report, in duplicate, by March 31 of each year to the appropriate regional office of the Department. The report shall be signed by the preparer and by the permittee of the plant and include the following:

(1) A line graph depicting the monthly average flows (expressed in millions of gallons per day) for each month for the past 5 years and projecting the flows for the next 5 years. The graph shall also include a line depicting the hydraulic design flow (also expressed in millions of gallons per day) of the plant included in the water quality management permit (Part II permit issued under Chapter 91 (relating to general provisions)).

(2) A line graph depicting the monthly average organic loading (expressed as pounds per day of BOD₅) for each month for the past 5 years and projecting the monthly average organic loading for the next 5 years. The graph shall also include a line depicting the organic loading design (also expressed in pounds per day of BOD₅) of the plant included in the water quality management permit (Part II permit issued under Chapter 91).

(3) A brief discussion of the basis for the projections referred to in paragraphs (1) and (2), as well as a description of the time needed to expand the plant to meet the load projections, if necessary. Data used to support those projections should be included in an appendix to the annual report.

(4) A map showing all sewer extensions constructed within the past calendar year, sewer extensions approved or exempted in the past year in accordance with the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and Chapter 71 (relating to administration of the sewage facilities program), but not yet constructed, and all known proposed projects which require public sewers but are in the preliminary planning stages. The map shall be accompanied by a list summarizing each extension or project and the population to be served by the extension or project. If a sewer extension approval or proposed project includes schedules describing how the project will be completed over time, the listing should include that information and the effect this build-out-rate will have on populations served.

(5) A discussion of the permittee's program for sewer system monitoring, maintenance, repair and rehabilitation, including routine and special activities, personnel and equipment used, sampling frequency, quality assurance, data

analyses, infiltration/inflow monitoring, and, where applicable, maintenance and control of combined sewer regulators during the past year.

(6) A discussion of the condition of the sewer system including portions of the system where conveyance capacity is being exceeded or will be exceeded in the next 5 years and portions where rehabilitation or cleaning is needed or is underway to maintain the integrity of the system and prevent or eliminate bypassing, combined sewer overflow, sanitary sewer overflow, excessive infiltration and other system problems.

(7) A discussion of the condition of sewage pumping stations, including a comparison of the maximum pumping rate with present maximum flows and the projected 2-year maximum flows for each station.

(8) A report, if applicable, of industrial wastes discharged into the sewer system. This report shall include the following:

(i) A copy of any ordinance or regulation governing industrial waste discharges to the sewer system or a copy of amendments adopted since the initial submission of the ordinance or regulation under this chapter, if it has not previously been submitted. Ordinances, regulations or fee structures may provide incentives to industrial waste dischargers to use pollution prevention techniques to reduce or eliminate the generation of industrial wastewater discharges to the sewer system.

(ii) A discussion of the permittee's or municipality's program for surveillance and monitoring of industrial waste discharges into the sewer system during the past year.

(iii) A discussion of specific problems in the sewer system or at the plant, known or suspected to be caused by industrial waste discharges and a summary of the steps being taken to alleviate or eliminate the problems. The discussion shall include a list of industries known to be discharging wastes which create problems in the plant or in the sewer system and action taken to eliminate the problem or prevent its recurrence. The report may describe pollution prevention techniques in the summary of steps taken to alleviate current problems caused by industrial waste dischargers and in actions taken to eliminate or prevent potential or recurring problems caused by industrial waste dischargers.

(9) A proposed plan to reduce or eliminate present or projected overloaded conditions under §§ 94.21 and 94.22 (relating to existing overload; and projected overload).

(b) Permittees of sewer systems which contribute sewage flows to the plant shall submit information to the permittee of the plant as required to facilitate preparation of the annual report.

Authority

The provisions of this § 94.12 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.12 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228278) to (228279).

Cross References

This section cited in 25 Pa. Code § 94.13 (relating to measuring, indicating and recording devices).

§ 94.13. Measuring, indicating and recording devices.

(a) A plant which receives or will receive within the next 5 years, monthly average flows exceeding 100,000 gallons per day shall be equipped to continuously measure, indicate and record the flow. The permittee of the plant shall install equipment necessary for these measurements within 6 months after the date when such a flow becomes evident.

(b) Flow measuring, indicating and recording equipment shall be calibrated annually, and the calibration report shall be included in the annual report submitted under § 94.12 (relating to annual report).

Authority

The provisions of this § 94.13 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.13 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228279) to (228280).

§ 94.14. Approval of official plans and revisions.

No official plan, official plan revision or supplement will be approved by the Department or delegated agency, nor will an exemption from the planning requirements be granted under Chapter 71 (relating to administration of the sewage facilities planning program) that is inconsistent with this chapter.

Authority

The provisions of this § 94.14 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.14 adopted October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial page (228280).

§ 94.15. Pretreatment program development.

In cases where pollutants contributed by industrial users result in interference or pass through, and the violation is likely to recur, a permittee shall develop and implement specific local limits for industrial users and other users, as appropriate, that together with appropriate sewerage facility or operational changes, are necessary to ensure renewed or continued compliance with the plant's NPDES permit or sludge use or disposal practices.

Authority

The provisions of this § 94.15 issued under section 5 of The Clean Streams Law (35 P. S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Source

The provisions of this § 94.15 adopted February 26, 1988, effective upon delegation of the pre-treatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228280) to (228282).

ACTION ON OVERLOADED FACILITIES**§ 94.21. Existing overload.**

(a) If the annual report establishes or if the Department determines that the sewerage facilities or any portions thereof are either hydraulically or organically overloaded, the permittee of the sewerage facilities shall comply with the following program:

(1) Prohibit new connections to the overloaded sewerage facilities except as approved by the permittee under the standards for granting exceptions contained in §§ 94.55—94.57 (relating to building permit issued prior to ban; replacement of a discharge; and other exceptions). No building permit may be issued by a governmental entity which may result in a connection to overloaded sewerage facilities or increase the load to those sewerage facilities from an existing connection. The permittee shall retain records of exceptions granted and make the records available to the Department upon request.

(2) Immediately begin work for the planning, design, financing, construction and operation of the sewerage facilities that may be necessary to provide required capacities to meet anticipated demands for a reasonable time in the future and resulting in a project that is consistent with the applicable official plans approved under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and the regulations thereunder in Chapter 71 (relating to administration of the sewage facilities planning program) and consistent with the requirements of the Department and the Federal Government regarding areawide planning and sewerage facilities.

(3) Submit to the Regional Office, for the review and approval of the Department, a written CAP to be submitted with the annual report or within 90 days of notification of the Department's determination of overload, setting forth the actions to be taken to reduce the overload and to provide the needed additional capacity. The written CAP shall include, but not be limited, to limitations on and a program for control of new connections to the overloaded sewerage facilities and a schedule showing the dates each step toward compliance with paragraph (2) shall be completed.

(b) Upon receipt of an acceptable CAP submitted in accordance with subsection (a)(3), the Department may modify or lift the requirement to prohibit new connections and the issuance of building permits contained in subsection (a)(1). In determining whether the requirement to prohibit new connections shall be modified or lifted, the Department will consider the extent to which the permittee plans to limit new connections; the timing for provisions of additional capacity and reduction of the existing overload; and the impact of the overload on treatment plant effluent quality, water quality degradation and public health.

(c) The Department may approve permits for extensions to overloaded sewerage facilities when the following conditions are met:

(1) The proposed extension is consistent with an acceptable CAP submitted under subsection (a)(3).

(2) The proposed extension is consistent with the applicable official plan approved under the Pennsylvania Sewage Facilities Act and the regulations adopted thereunder at Chapter 71.

(3) The additional load from the proposed extension will not have a significant adverse impact on the water quality of the receiving waters.

(4) The proposed extension is in accordance with any other applicable requirement of this title.

(5) The connections to the extension are controlled in accordance with the CAP submitted in accordance with subsection (a)(3); provided that, no connections to an extension may be allowed when the approved CAP is not being implemented in accordance with the schedule contained therein.

Authority

The provisions of this § 94.21 issued under section 9 of the act of January 24, 1966 (P. L. 1535 (1965), No. 537) (35 P. S. § 750.9).

Source

The provisions of this § 94.21 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 6, 1978, effective October 23, 1978, 8 Pa.B. 2722; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228282) to (228283).

Notes of Decisions

Approval

Section 94.21 does not prohibit approval of an Act 537 sewage facilities planning module, even if there is an actual hydraulic overload. At most, the situation would prohibit new connections to the overloaded facility. *The Ainjar Trust v. Department of Environmental Protection*, 806 A.2d 482 (Pa. Cmwlth. 2002).

Exceptions

To allow the Department of Environmental Resources to require a plan supplement rather than a plan revision where an applicant for a sewage connection permit met one of the exceptions would be to take away the building permit exemption granted by the provisions of regulation by the Environmental Quality Board. *Rico, Inc. and McDonald's Corporation v. Department of Environmental Resources*, 21 Pa. D. & C.3d 177 (1981).

The provisions of subsection (a)(1) did not require a would-be developer to have obtained sewage facilities planning approval under 25 Pa. Code Chapter 71 (relating to administration of sewage facilities program) as well as a building permit prior to the imposition of a connection prohibition in order to meet the building permit exception. *Rico, Inc. and McDonald's Corporation v. Department of Environmental Resources*, 21 Pa. D. & C. 3d 177 (1982).

Municipal Corporations

When an overload of a sewer system occurs, transfer of permits from one landowner to another is barred during a period of connection prohibition. *Chateau Woods, Inc. v. Lower Paxton Twp.*, 772 A.2d 122 (Pa. Cmwlth. 2001).

Where a sewer facility is overloaded, new connections are prohibited, except as approved by the municipality for exceptions enumerated in 25 Pa. Code §§ 94.55 and 94.57. *Chateau Woods, Inc. v. Lower Paxton Twp.*, 772 A.2d 122 (Pa. Cmwlth. 2001).

Where the Department of Environmental Protection restricts a municipality's ability to authorize new connections to an overloaded facility to only four per month, the municipality cannot issue 44 permits, as it is under a "prohibition" as defined by this section. *Chateau Woods, Inc. v. Lower Paxton Twp.*, 772 A.2d 122 (Pa. Cmwlth. 2001).

Regulation Invalid

Since this section, in effect, delegated unlimited discretion to the Department of Environmental Resources and provided for no exceptions, it was unreasonable and invalid on its face. *City of Lancaster v. Department of Environmental Resources*, 6 Pa. D. & C.3d 159 (1978).

Cross References

This section cited in 25 Pa. Code § 94.11 (relating to sewer extensions); 25 Pa. Code § 94.12 (relating to annual report); and 25 Pa. Code § 94.31 (relating to organic or hydraulic overload).

§ 94.22. Projected overload.

If the annual report shows or if the Department determines that the sewerage facilities or any portion thereof will, within the next 5 years, become hydraulically or organically overloaded, the permittee of the sewerage facilities shall comply with the following:

- (1) Submit a report or CAP to the regional office, with the annual report or within 90 days of notification of the Department's determination, setting forth steps to be taken by the permittee to prevent the sewerage facilities from becoming hydraulically or organically overloaded. If the steps to be taken include planning, design, financing, construction and operation of sewerage facilities, the facilities shall be consistent with an official plan approved under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and the regulations thereunder in Chapter 71 (relating to administration of the sewage facilities planning program) and consistent with the requirements of the Department and the Federal government regarding areawide planning and sewerage facilities.
- (2) Limit new connections to and extensions of the sewerage facilities based upon remaining available capacity under a plan submitted in accordance with this section.

Authority

The provisions of this § 94.22 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.22 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228284) to (228285).

Cross References

This section cited in 25 Pa. Code § 94.11 (relating to sewer extensions); and 25 Pa. Code § 94.12 (relating to annual report).

IMPOSITION OF BAN**§ 94.31. Organic or hydraulic overload.**

A ban on connections will be imposed by the Department whenever the Department determines that the sewerage facilities or any portion thereof are either hydraulically or organically overloaded or that the discharge from the plant causes actual or potential pollution of the waters of this Commonwealth and, in addition, that one or more of the following conditions prevail:

- (1) The Department determines that a ban is necessary to prevent or alleviate endangerment of public health.
- (2) The permittee has failed to submit a satisfactory plan or has failed to implement the program as required by § 94.21 (relating to existing overload).

Authority

The provisions of this § 94.31 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.31 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial page (228285).

§ 94.32. Public health hazard or pollution.

A ban may be imposed by the Department whenever the Department finds that such a ban is needed in order to prevent or eliminate public health hazards or pollution resulting from violations of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) not otherwise covered by the provisions of this chapter.

Source

The provisions of this § 94.32 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259.

§ 94.33. Notice of ban.

- (a) A ban imposed by order of the Department will be addressed to the person or municipality who authorizes connection to the sewer system and who

operates the sewer system or plant. The ban shall be effective immediately upon receipt of the order imposing the ban.

(b) The Department will publish the order imposing the ban in one newspaper of general circulation in the area affected by the ban beginning no later than 48 hours after the imposition of the ban or as soon thereafter as publication schedules allow. The Department will publish the order imposing the ban, following imposition of the ban, once in the *Pennsylvania Bulletin*, provided, however, that failure or delay in so publishing by the Department shall not in any way affect the date of imposition or validity of the ban.

(c) The Department, at the time of imposition of the ban, will give notice of the ban to a governmental entity which issues building permits in the area of the ban. No building permit which may result in a connection to the overloaded sew-

erage facilities or increase the load to those sewerage facilities shall be issued by a governmental entity after the ban is effective; provided, however, that failure or delay in the notification will not, in any way, affect the date of imposition or validity of the ban.

Authority

The provisions of this § 94.33 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.33 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917. Immediately preceding text appears at serial page (35310).

BAN MODIFICATION OR REMOVAL

§ 94.41. Elimination of overload.

A ban may be removed by the Department, in the exercise of its discretion, in accordance with the following conditions:

- (1) If the permittee has demonstrated that steps have been taken which have resulted in the reduction of the actual loading to the plant to less than the capacity provided in the permit or, in the case of a sewer system, to eliminate the hydraulic overload, the ban may be removed to allow connections up to capacity.
- (2) If it is affirmatively demonstrated, through the submission by the permittee and approval by the Department of an application for an amendment to the permit, that the actual capacity of the plant is in excess of the capacity provided in the existing permit and is sufficient to prevent an overload until additional capacity is made available, the ban may be removed to allow connections up to the new capacity.

Authority

The provisions of this § 94.41 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.41 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917. Immediately preceding text appears at serial pages (35310) and (35311).

§ 94.42. Reduction of overload.

(a) The Department may modify a ban to allow limited approval of connections if the permittee demonstrates that steps have been taken which have resulted in the reduction but not the elimination of the overload, that public health will not be endangered, and that downstream uses will not be adversely affected; provided that the permittee adheres to an acceptable program and schedule for eliminating the overload.

- (b) Priority shall be given to connections in the following order:
 - (1) The elimination of public health hazards.

- (2) The elimination of pollution.
- (3) The connection of facilities of public need.

Authority

The provisions of this § 94.42 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.42 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917. Immediately preceding text appears at serial page (35311).

EXCEPTION TO BANS

§ 94.51. Request for exception.

Exceptions to bans shall be requested in writing from the Regional Office of the Department for the county in which the requested exception is located and shall state with specificity the reasons why such request should be granted. No exception shall be considered granted until the applicant is so advised in writing by the Department.

Source

The provisions of this § 94.51 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259.

§ 94.52. Limitations on exception.

The exceptions to a ban described in §§ 94.55—94.57 (relating to building permit issued prior to ban; replacement of a discharge; and other exceptions) are to be strictly construed and are the only exceptions the Department will allow.

Authority

The provisions of this § 94.52 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.52 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917. Immediately preceding text appears at serial page (35312).

§ 94.53. Transfer of exception.

The exceptions to a ban described in §§ 94.55—94.57 (relating to building permit issued prior to ban; replacement of a discharge; and other exceptions) are not transferrable; an owner granted an exception under this title cannot transfer his right to discharge under that exception to another person or to another location, except as such transfer will result from a sale or other transfer of property for which an exception has been granted prior to the sale or other transfer of property.

Authority

The provisions of this § 94.53 issued under act of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.53 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917. Immediately preceding text appears at serial page (35312).

§ 94.54. Sewer line extension.

Exceptions to a ban are limited to those exceptions which do not require the extension of existing sewer lines, except as needed for the elimination of public health hazards or pollution or for facilities of public need.

Source

The provisions of this § 94.54 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259.

Cross References

This section cited in 25 Pa. Code § 94.11 (relating to sewer extensions).

§ 94.55. Building permit issued prior to ban.

A discharge which the Department determines will result from a structure for which a valid building permit had been issued within 1 year prior to the date of imposition of the ban shall constitute an exception to the ban.

Authority

The provisions of this § 94.55 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.55 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259; amended October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917. Immediately preceding text appears at serial page (44648).

Cross References

This section cited in 25 Pa. Code § 94.21 (relating to existing overload); 25 Pa. Code § 94.52 (relating to limitations on exception); and 25 Pa. Code § 94.53 (relating to transfer of exception).

§ 94.56. Replacement of a discharge.

A new source of discharge which replaces a source of discharge forever eliminated as a result of demolition, destruction, accident, act of God or act of government shall constitute an exception to the ban if the Department determines that the following conditions are met:

- (1) The new source of discharge is contained in a structure on the same property as the source of discharge which it has replaced.
- (2) The new source of discharge will not generate a greater volume of wastewater flow or organic content than the source of discharge it has replaced.

Source

The provisions of this § 94.56 adopted November 4, 1977, effective November 21, 1977, 7 Pa.B. 3259.

Cross References

This section cited in 25 Pa. Code § 94.21 (relating to existing overload); 25 Pa. Code § 94.52 (relating to limitations on exception); and 25 Pa. Code § 94.53 (relating to transfer of exception).

§ 94.57. Other exceptions.

Connections which are necessary to eliminate a public health hazard or which are necessary for the operation of a facility of public need as the term is defined in § 94.1 (relating to definitions) shall constitute an exception to a ban.

Authority

The provisions of this § 94.57 issued under section 9 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.9).

Source

The provisions of this § 94.57 adopted October 3, 1980, effective October 4, 1980, 10 Pa.B. 3917; amended September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial page (228290).

Cross References

This section cited in 25 Pa. Code § 94.21 (relating to existing overload); 25 Pa. Code § 94.52 (relating to limitations on exception); and 25 Pa. Code § 94.53 (relating to transfer of exception).

INDUSTRIAL WASTE PRETREATMENT PROGRAMS**§ 94.61. [Reserved].****Source**

The provisions of this § 94.61 adopted February 26, 1988, effective upon delegation of the pre-treatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; reserved September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial page (228290) to (228292).

§ 94.62. [Reserved].**Source**

The provisions of this § 94.62 adopted February 26, 1988, effective upon delegation of the pre-treatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; reserved September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228292) to (228294).

§ 94.63. [Reserved].**Source**

The provisions of this § 94.63 adopted February 26, 1988, effective upon delegation of the pre-treatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; reserved September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228294) to (228295).

§ 94.64. [Reserved].

Source

The provisions of this § 94.64 adopted February 26, 1988, effective upon delegation of the pre-treatment program to the Department by the Environmental Protection Agency, 18 Pa.B. 846; reserved September 4, 1998, effective September 5, 1998, 28 Pa.B. 4517. Immediately preceding text appears at serial pages (228296) to (228297).

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