

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION
RECEIVED**

(All Comments submitted on this regulation will appear on IRRC's website)

MAR 21 2023

(1) Agency:

Department of Environmental Protection

(2) Agency Number: 7

Identification Number: 563

Independent Regulatory
Review Commission
IRRC Number: 3327

(3) PA Code Cite: 25 Pa. Code Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance)

(4) Short Title: National Pollution Discharge Elimination System (NPDES) Schedules of Compliance

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Laura Griffin, (717) 772-3277, laurgriffi@pa.gov

Secondary Contact: Brian Chalfant, (717) 783-8073, bchalfant@pa.gov

(6) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
☒ Final Regulation
☐ Final Omitted Regulation

- ☐ Emergency Certification Regulation;
☐ Certification by the Governor
☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and non-technical language. (100 words or less)

This final-form rulemaking will revise the schedule of compliance for NPDES permits, which are required by federal and state law for combined sewer overflow (CSO) dischargers to control the discharge of pollutants to surface waters. When a CSO discharger is not in compliance with state water quality standards (WQS), the Department may establish a schedule of compliance in an NPDES permit to ensure compliance in the shortest, reasonable period of time, not to exceed 5 years unless a court order provides for a longer period of time. Court orders, however, are not a practical solution in every instance, as seeking a judicial remedy for this type of routine administrative matter would require significant time and monetary expenditures from both the Department and CSO dischargers.

Many municipalities across Pennsylvania have combined sewer systems (CSS) that collect both sewage and stormwater and are designed to overflow during precipitation events. These untreated discharges to surface waters are called CSOs. CSOs must be authorized under an NPDES permit and CSO dischargers must develop a Long-Term Control Plan (LTCP) to meet the State WQS. Until an LTCP is fully implemented, CSO dischargers are presumed to be in non-compliance with WQS.

LTCPs often require significant financial commitments and substantial infrastructure modifications to eliminate or significantly reduce CSOs. Depending on municipal resources, CSO dischargers often propose LTCPs with implementation schedules exceeding 5 years (often 20-40 years), and the Department has approved many LTCPs with implementation schedules longer than 5 years. However, the U.S. Environmental Protection Agency (EPA) has observed a conflict with 25 Pa. Code § 92a.51(a) when the Department issues an NPDES permit to a CSO discharger with an LTCP implementation schedule exceeding 5 years. To resolve this

conflict, the Environmental Quality Board (EQB) is amending 25 Pa. Code § 92a.51(a) to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 5(b)(1) and 402 of Pennsylvania's 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).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

The final-form revisions are not mandated by any federal or state law, regulation, or court order, and there are no relevant state or federal court decisions. The existing § 92a.51(a) regulation is more stringent than the equivalent EPA regulation (40 CFR § 122.47) in that EPA regulations do not stipulate a maximum schedule of compliance period of 5 years.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

According to EPA, there are approximately 860 CSO communities in the United States. Pennsylvania has 123 CSO communities, more than any other state. These municipalities in Pennsylvania have CSSs, in which sewage and stormwater are collected and conveyed together during precipitation events. Depending on factors such as the intensity of a precipitation event, the flow in CSSs may exceed the dry-weather hydraulic capacity of those systems, resulting in CSO discharges from the CSS to surface waters prior to reaching a wastewater treatment facility. Wet-weather CSO discharges are authorized under the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1388), the Commonwealth's Clean Streams Law (35 P.S. §§ 691.1—691.1001), and 25 Pa. Code Chapter 92a, when approved pursuant to a NPDES permit.

In 1994, EPA issued its Combined Sewer Overflow Control Policy, 59 FR 18688 (April 19, 1994), that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with an LTCP to achieve WQS. Permittees have several options for achieving and demonstrating achievement of WQS in an LTCP. Each permittee must develop and submit an LTCP for approval by the Department, who is delegated to administer the Federal NPDES program in this Commonwealth.

A permittee's CSO discharges are presumed to be in non-compliance for WQS until an approved LTCP is implemented. Federal regulations and policy do not require that LTCPs be implemented and WQS be achieved by a specific date, other than within the shortest feasible period of time. Due to the scale of infrastructure modifications and financial commitments involved with implementing LTCPs, implementation schedules exceeding 5 years are common. Prior to this final-form rulemaking, the Department's regulations at 25 Pa. Code § 92a.51(a), however, required that any discharge not in compliance with WQS and effluent limitations or standards must achieve compliance as soon as practicable, but in no case longer than 5 years.

This final-form rulemaking amends the Department's regulations at 25 Pa. Code § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

The regulatory revision will allow the Department to reissue NPDES permits to these CSO communities while continuing to approve LTCPs with implementation schedules longer than 5 years. The primary beneficiaries of permit reissuance are the citizens of CSO communities, and those residing and recreating downstream of them, as improved standards concerning CSO discharges will be addressed in the reissued permits, including increased reporting and public notification.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

As explained in the response to Question 9, the Department's existing § 92a.51(a) regulation is more stringent than federal regulations. The Department seeks amend the current regulation to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulation.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

A review of NPDES regulations for neighboring states – Ohio, West Virginia, Maryland, Delaware, New Jersey, and New York – found that those states have standards for compliance schedules that match or are similar to the federal standards. The proposed regulatory revision will not impact Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

25 Pa. Code § 92a.51 is identified in three other sections of Chapter 92a: §§ 92a.21, 92a.71, and 92a.75. The proposed regulatory revision to § 92a.51 will not affect any of these regulations, or any other regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department discussed the proposed rulemaking with the Department's Water Resources Advisory Committee (WRAC) at its meeting on July 28, 2021. WRAC provides technical advice to the Department on the environmental, economic, and other social impacts of proposed regulations affecting water resources management including surface/groundwater quality and quantity issues. WRAC membership includes representatives from the regulated community, municipalities, environmental advocacy organizations, and universities. WRAC voted to support the Department moving forward with the proposed rulemaking. The Department discussed the final-form rulemaking with WRAC at its meeting on July 21, 2022, and WRAC voted to support the Department moving forward with the final-form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are 92 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges, about half of which currently have permits that need to be reissued. (The 31 other municipalities in Pennsylvania with authorized CSO discharges are covered by an NPDES general permit.) The regulatory revision in this final-form rulemaking will allow the Department to move forward with reissuing NPDES permits for CSO discharges and to include additional environmental protections in the reissued permits, benefiting public health and the environment in Pennsylvania, as reissuance of most NPDES permits for CSO dischargers has been on hold for several years pending resolution of this issue with EPA. As a result, persons living within or downstream of CSO communities will be affected positively when the Department is able to reissue these NPDES permits with additional environmental protections. Additionally, the regulatory revision in this final-form rulemaking will provide certainty to CSO municipalities that implementation of LTCPs can be scheduled over a period exceeding 5 years.

No businesses (or small businesses) will be affected by the proposed revision to § 92a.51(a).

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

There are 92 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges, about half of which currently have permits that need to be reissued. Under this final-form regulation, the Department will be able to reissue NPDES permits to CSO dischargers that recognize an implementation schedule for CSO LTCPs beyond 5 years. CSO dischargers will need to comply with the schedule in the NPDES permit when reissued.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

No financial, economic, or social impacts are expected on individuals, small businesses, businesses and labor communities and other public and private organizations as a result of this final-form rulemaking.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No costs and adverse effects are expected on any party as a result of this final-form rulemaking. Citizens of CSO communities, and those residing and recreating downstream of them, will benefit from this rulemaking through the Department incorporating improved standards concerning CSO discharges into reissued permits.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No costs or savings to the regulated community associated with compliance are expected.

(20) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No costs or savings to local governments associated with compliance are expected.

(21) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

EPA provides grant funds to the Department under Section 106 of the federal Clean Water Act to carry out delegated responsibilities for the NPDES program. Failure to revise the § 92a.51(a) regulation as explained herein could result in a reduction or elimination of these funds if the Department is unable to reissue NPDES permits to CSO dischargers.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This final-form rulemaking clarifies existing processes but does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government.

(22a) Are forms required for implementation of the regulation?

No new forms are required for the implementation of this regulation.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

No new forms are required for the implementation of this regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2021/22	FY+1 2022/23	FY+2 2023/24	FY+3 2024/25	FY+4 2025/26	FY+5 2026/27
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Savings	0.00	0.00	0.00	0.00	0.00	0.00

COSTS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	0.00	0.00	0.00	0.00	0.00	0.00
REVENUE LOSSES:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

The estimated costs for the Department to administer the NPDES program in Pennsylvania are as follows:

Program	FY -3 (2019/2020)	FY -2 (2020/2021)	FY -1 (2021/2022)	Current FY (2022/2023)
NPDES (Chapter 92a)	\$21,241,489	\$21,666,318	\$22,099,664	\$22,532,817

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This final-form rulemaking will not have an adverse impact on any small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been developed as this final-form rulemaking is limited to CSO dischargers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Over the past several years, the Department has explored alternative approaches with EPA to resume reissuance of NPDES permits for CSO dischargers. Both parties have concluded that because CSO dischargers are presumed by federal policy to be in non-compliance for WQS prior to implementation of the LTCP (and therefore a schedule of compliance is necessary in a permit), and because the schedule of compliance currently may not exceed 5 years according to the language in § 92a.51(a) prior to this rulemaking, this rulemaking is needed to amend § 92a.51(a) to allow issuance of permits to CSO dischargers with LTCPs that will extend beyond 5 years.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- (a) The establishment of less stringent compliance or reporting requirements for small businesses.
- (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
- (c) The consolidation or simplification of compliance or reporting requirements for small businesses.
- (d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.
- (e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This final-form rulemaking will not have an adverse impact on any small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The length of the public comment period: | <u>45 days</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>February 16, 2022</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 1, 2023</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication in the Pennsylvania Bulletin</u> |

E. The date by which compliance with the final-form regulation will be required:

Upon publication in the
Pennsylvania Bulletin

F. The date by which required permits, licenses or other approvals must be obtained:

Not applicable

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Consistent with state and federal law and regulations, the Department's longstanding practice is to consider a CSO community's financial resources in reviewing LTCPs and, where appropriate, approve implementation schedules exceeding 5 years. This practice, which is considered equitable and effective, will continue under the regulatory revisions.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

MAR 21 2023

**Independent Regulatory
Review Commission
DO NOT WRITE IN THIS SPACE**

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

☐ Check if applicable.
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-563

DATE OF ADOPTION November 15, 2022

BY Ramez Ziad

TITLE **RAMEZ ZIADEH, P.E.
ACTING CHAIRPERSON**

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY

[Signature]

11/21/2022

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel—Independent Agency)
(Strike inapplicable title)

☒ Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

**National Pollutant Discharge Elimination System (NPDES)
Schedules of Compliance**

25 Pa. Code Chapter 92a

**FINAL-FORM RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 92a]**

National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance

The Environmental Quality Board (Board) amends Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) to revise § 92a.51(a) (relating to schedules of compliance) to allow for the implementation of Long-Term Control Plans (LTCP) for combined sewer overflow (CSO) dischargers to achieve State water quality standards (WQS) by a period that may exceed 5 years, but that may not exceed the implementation period specified in an approved LTCP.

This final-form rulemaking was adopted by the Board at its meeting of November 15, 2022.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Sean M. Furjanic, PE, Environmental Program Manager, Bureau of Clean Water, P.O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-2137, or Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105, (717) 783-8261. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department's) website at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of November 15, 2022).

C. *Statutory Authority*

This final-form rulemaking is authorized 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), which authorize the Board to promulgate rules and regulations necessary for the Department to perform its work.

D. *Background and Purpose*

Many municipalities across this Commonwealth have combined sewer systems (CSS), in which sewage and stormwater are collected and conveyed together during precipitation events. Depending on factors such as the intensity of a precipitation event, the flow in CSSs may exceed the dry weather carrying capacity of those systems, resulting in CSO discharges from the CSS to surface waters prior to reaching a wastewater treatment facility. Wet weather CSO discharges are authorized under the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1388), the

Commonwealth's Clean Streams Law (35 P.S. §§ 691.1—691.1001), and Chapter 92a, when approved under an NPDES permit.

In 1994, the United States Environmental Protection Agency (EPA) issued its Combined Sewer Overflow Control Policy, 59 FR 18688 (April 19, 1994), that required implementation of nine minimum controls that all permittees with CSO discharges must implement, along with an LTCP to achieve WQS. In this Commonwealth, LTCPs are implemented through NPDES permits. Permittees have several options for achieving and demonstrating achievement of WQS in an LTCP. Each permittee must develop and submit an LTCP for approval by the Department, who is delegated to administer the Federal NPDES program in this Commonwealth.

A permittee's CSO discharges are presumed to be in non-compliance with WQS until an approved LTCP is implemented. Neither Federal regulations nor policy require that LTCPs be implemented and WQS be achieved by a specific date, other than within the shortest feasible period of time. Due to the scale of infrastructure modifications and financial commitments involved with implementing LTCPs, implementation schedules exceeding 20 years are common. However, prior to this final-form rulemaking, the Department's regulation at § 92a.51(a) required that any discharge not in compliance with WQS and effluent limitations or standards must achieve compliance as soon as practicable, but in no case longer than 5 years.

The EPA expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the previous language in § 92a.51(a) that required compliance within 5 years for all dischargers. Consequently, the Department had paused reissuing NPDES permits for CSO dischargers with these longer LTCP implementation schedules until the inconsistency was resolved. To resolve the inconsistency and address the EPA's concerns, this final-form rulemaking amends § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

The Department's regulation at § 92a.51(a) authorizes schedules of compliance for existing discharges that are not in compliance with WQS or effluent limitations or standards. This regulation is more stringent than equivalent Federal regulations because the Department's regulation establishes a maximum period of time to come into compliance of 5 years (unless a court of competent jurisdiction issues an order allowing a longer time for compliance), while Federal regulations do not. CSO dischargers, however, typically require more than 5 years to implement LTCPs to achieve compliance with WQS due to the scale of infrastructure modifications and financial commitments needed to implement LTCPs. The Department has approved many LTCPs with implementation schedules exceeding 5 years.

This final-form rulemaking amends subsection (a) to allow compliance schedules for CSO dischargers to exceed 5 years, but not to exceed the period of implementation specified in an approved LTCP.

This final-form rulemaking will not result in any degradation of public health or environmental protection. Conversely, the rulemaking is expected to improve public health and the environment by allowing the Department to move forward with reissuing long overdue NPDES permits to CSO dischargers and incorporating new conditions to minimize the discharge of pollutants to surface waters. Ultimately, the revision would recognize the Department's longstanding practice of approving LTCPs with implementation schedules exceeding 5 years.

No changes have been made between the proposed rulemaking and this final-form rulemaking.

F. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was published in the *Pennsylvania Bulletin* at 52 Pa.B. 361 (January 15, 2022), opening a 45-day public comment period that ended on March 1, 2022. One public hearing was held virtually on February 16, 2022, with no testimony offered by the public.

The Board received three sets of comments from the public as well as comments from the EPA's Region 3 office. The EPA's comments supported the rulemaking, noted that the rulemaking was in accordance with agreements between the EPA and the Department on how to address the issue, and discussed the procedural steps necessary to seek approval of the modified § 92a.51(a) as part of the Commonwealth's approved WQS.

One commentator opposed the proposed rulemaking because they believe it would extend and eliminate compliance schedules or allow for compliance periods on a case-by-case basis, and therefore perpetuate pollution. In response, this final-form rulemaking does not allow for an extension to compliance periods. The compliance period to implement LTCPs has always been proposed by CSO permittees and reviewed by the Department in light of the EPA's requirement that compliance be achieved in the shortest feasible period of time. Depending on a permittee's proposed solution to reduce or eliminate CSOs, the compliance period could range from a few years to a few decades. It is when the compliance period exceeds 5 years that the EPA believed the Department's approval of the schedule conflicted with § 92a.51(a) as written prior to the amendments in this final-form rulemaking. By amending § 92a.51(a) to recognize that LTCP implementation schedules may exceed 5 years, the Department can be authorized by the EPA to resume reissuing NPDES permits to CSO dischargers. This is important for public health and the environment because reissued permits will include updated milestones to keep permittees on track to achieve compliance with their overall LTCP implementation schedule. When permits are outdated, the milestone dates pass and there are no new milestones for permittees to adhere to.

One commentator noted that this regulatory change should not be a stepping stone for all NPDES-permitted dischargers to request longer compliance schedules. The Department is not providing an exception under § 92a.51(a) to any class of dischargers other than CSO dischargers and is doing so in the interests of public health and the environment.

One commentator supported the proposed rulemaking and stated their belief that schedules of compliance exceeding 5 years should also apply to systems other than CSSs. The Department is not making an exception for any other class of dischargers through this rulemaking.

G. Benefits, Costs and Compliance

Benefits

NPDES permits have a fixed term not exceeding 5 years. If a timely application is submitted for reissuance of an NPDES permit, the permit may be administratively extended after the permit expiration date to allow a discharger to continue operating under the terms and conditions of the permit. The EPA has objected to or otherwise expressed concerns to the Department over the reissuance of NPDES permits for CSO dischargers because the EPA perceived that the Department's approval of LTCPs with implementation schedules longer than 5 years conflicted with § 92a.51(a) as written prior to this final-form rulemaking. As a result, there are many administratively extended NPDES permits for CSO dischargers across this Commonwealth. By amending § 92a.51(a) as described previously, the Department will be able to move forward with reissuing these permits, providing the Department the opportunity to update the permits to ensure the most up-to-date standards and pollution control measures are included in the permits, benefiting public health and the environment.

Compliance costs

The regulatory revision does not impose any additional costs on the regulated community.

Compliance assistance plan

A compliance assistance plan is not considered necessary for this final-form rulemaking.

Paperwork requirements

The amendment to Chapter 92a clarifies existing processes but does not add to or change the existing paperwork requirements for the submission of NPDES permit applications and Notices of Intent to the Department.

H. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

Pollution prevention is not applicable to this final-form rulemaking.

I. Sunset Review

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. The Department will continue to closely

monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 4, 2022, the Department submitted a copy of the notice of proposed rulemaking, published at 52 Pa.B. 361 (January 15, 2022), and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5a(j.2) of the Regulatory Review Act, on (blank) , this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5a.(e) of the Regulatory Review Act, IRRC met on (blank) and approved this final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A 45-day public comment period was provided and a public hearing was held as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 52 Pa.B. 361.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 92a, are amended by amending § 92a.51 as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form regulation to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RICHARD NEGRIN,
Acting Chairperson



pennsylvania

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

COMMENT AND RESPONSE DOCUMENT

National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance

25 Pa. Code Chapter 92a

52 Pa.B. 361 (January 15, 2022)

Environmental Quality Board Regulation #7-563

(Independent Regulatory Review Commission #3327)

National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance

On January 15, 2022, the Environmental Quality Board (Board or EQB) published a *Pennsylvania Bulletin* notice of a public hearing and comment period, at 52 Pa.B. 361, on a proposed rulemaking to amend 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). Specifically, the Board proposed to amend 25 Pa. Code § 92a.51(a) to provide an exception to the 5-year limit on a compliance schedule for combined sewer overflow (CSO) dischargers. Section 92a.51(a) authorizes schedules of compliance for existing NPDES discharges that are not in compliance with water quality standards or effluent limitations or standards. Prior to the finalization of this rulemaking, § 92a.51(a) was more stringent than equivalent Federal regulations because the regulation established a maximum period of time to come into compliance of 5 years (unless a court of competent jurisdiction issues an order allowing a longer time for compliance), while Federal regulations do not. CSO dischargers, however, typically require more than 5 years to implement Long-Term Control Plans (LTCPs) to achieve compliance with State water quality standards due to the scale of infrastructure modifications and financial commitments needed to implement LTCPs, and the Department has approved many LTCPs with implementation schedules exceeding 5 years. This final-form rulemaking amends § 92a.51(a) to allow compliance schedules for CSO dischargers to exceed 5 years, but not exceed the period of implementation specified in an approved LTCP.

The Board held one virtual public hearing on February 16, 2022, for the purpose of accepting testimony on this proposed rulemaking. No testimony was offered by the public at this hearing. The 45-day public comment period closed on March 1, 2022.

This document presents the written comments received during the public comment period and the Department's responses to those comments. The Board received four sets of written comments during the public comment period, including comments from the United States Environmental Protection Agency's (EPA) Region 3 office.

The Board received no comments from the House of Representatives, the Senate, the House and Senate Environmental Resources and Energy (ERE) Committees or the Independent Regulatory Review Commission (IRRC).

Copies of Comments

Copies of all comments received by the Board during the public comment period are posted on the Department's eComment website at:

<https://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?cnc=DN064MT8R38NKyiRv2iU7DrOFnHlTYDXd5YgHv9%2b9QQ%3d>.

Additionally, copies of all comments are available on IRRC's website at <http://www.irrc.state.pa.us/regulations/RegSrchRsIts.cfm?ID=3338> or at <http://www.irrc.state.pa.us> (search for Regulation # 7-563 or IRRC # 3327).

List of Commentators

The ID of the commentators listed below is presented in parentheses following each comment.

ID	Name/Affiliation
1	Shannon GORITY Chesapeake Bay Foundation Harrisburg, PA
2	Heather Hulton VanTassel, PhD Three Rivers Waterkeeper Pittsburgh, PA
3	Steven A. Hann Hamburg, Rubin, Mullin, Maxwell & Lupin, PC Harrisburg, PA
4	Jennifer Fulton U.S. Environmental Protection Agency Region 3 Philadelphia, PA

Comments and Responses

- 1. Comment:** Pennsylvania is currently in the process of implementing the final Phase 3 Watershed Implementation Plan (WIP3) to achieve nitrogen, phosphorus, and sediment reductions to our local waters and ultimately the Chesapeake Bay. Pennsylvania has made great progress to date; but substantial work remains, and the state is eagerly searching for opportunities to reduce nutrient and sediment pollution across the bay watershed.

In 2020 CSOs within the Pennsylvania's portion of the Chesapeake Bay Watershed (PACBW) constituted 0.88 percent of the nitrogen load (927,495 lbs), 3 percent of the phosphorus load (112,983 lbs), and 0.33 percent of the sediment load (9,421,540 lbs) while impairing 117 miles of streams in the state. In order to meet the WIP3, Pennsylvania forecasts implementing practices that will reduce CSO nitrogen loads by 787,369 pounds, phosphorus loads by 95,937 pounds, and sediment loads by 8,000,789 pounds by the end of 2025.

In addition to the sediment and nutrients targeted in the WIP3, the estimated total annual discharge of 25,882 million gallons by PACBW CSOs can also contain a myriad of pollutants which have ecological and human health impacts, such as fecal coliforms, pharmaceuticals and their byproducts, antimicrobial compounds, insecticides, flame-retardants, polycyclic aromatic hydrocarbons, metals, and anything else that enters the sanitary or storm sewer system. Many of these compounds are known or suspected endocrine disruptors. In fact, a study in Vermont found endocrine disrupting compounds were ten times greater in CSO discharges than in treated wastewater.

The ecological and human health impacts of CSOs are likely to intensify due to the impacts of climate change. Pennsylvania's projected increases in total annual precipitation and intensification of events promise to add greater strain on these systems. In fact, the Chesapeake Bay Program projects that by 2055 annual nitrogen and phosphorus loads to the Bay by PACBW CSOs may increase by 3.2 percent and 3.1 percent from the 1991-2000 mean load, respectfully. CBF appreciates the unique and complicated situation of CSOs in Pennsylvania. Our Commonwealth has one of the most numbers of CSOs in the country that scored a "D-" in the condition of the state's wastewater infrastructure, according to the American Society of Civil Engineers. It does not appear that the proposed revision will impact the Commonwealth's ability to meet the WIP3 or further prolong the CSO's ecological and human health impacts by extending the implementation schedules of Long-Term Control Plans. However, should this occur, it would be of significant concern. (1)

Response: The Department agrees that the amendment to § 92a.51(a) to allow for a period of time exceeding five years to implement LTCPs will neither impede the Commonwealth's ability to meet the goals of Pennsylvania's Phase 3 Chesapeake Bay Watershed Implementation Plan nor extend the implementation schedules of CSO LTCPs; conversely, the Department believes that finalizing this rulemaking will assist in those efforts because, once this rulemaking is finalized, EPA will allow DEP to reissue NPDES permits for CSO discharges, which will help in ensuring that LTCP implementation remains on track.

2. **Comment:** Furthermore, this regulatory change should not be a stepping stone for all water quality discharge violators to request longer compliance schedules. The proposed regulation change to §92a.51(a) is concerning for the potential precedent it may create with other NPDES dischargers that are not in compliance with water quality standards and need to implement schedules of compliance under the regulations. These non-CSO discharge violators may easily claim that they too need compliance schedules longer than five years due to technical and financial needs. This regulatory change may create an equity argument for others not in compliance to receive the same treatment and subsequent regulatory change as CSOs.

For these reasons, we recommend considering additional options and tools to assist CSOs in reaching the milestones in their compliance schedules more efficiently. Tools such as consent decrees, legislative support for CSO infrastructure investments and more may be other options that don't create precedent for other dischargers violating water quality standards. (1)

Response: The Department does not intend for this regulatory amendment to serve as a stepping stone or precedent for other classes of dischargers. The Department and the EPA worked for several years to identify an alternative solution that would be feasible to implement statewide but both agencies ultimately determined that the regulatory amendment was the most feasible alternative.

3. **Comment:** Combined sewage overflow (CSO) discharges cause serious impacts to the environment and human health. They also impact Pittsburgh's tourism and economy. These impacts are likely to become more frequent with Pittsburgh's population growth and the weather effects from climate change. The proposed amendment to remove the time frame to reach compliance will set a precedent that will create an environmental practice of extending and eliminating compliance schedules and will only exasperate our environmental pollution in our waterways – perpetually kicking the preverbal can to our next generation, only to continually accumulate pollution and violating our rights to clean water as outline by the Clean Water Act. We understand DEP's concerns that the current regulation does not align with current practices as the economic struggle to meet regulations our older sewage systems is daunting. However, eliminating compliance schedules will have serious consequences to our environment and does not guarantee our right to clean water. We recognize the difficulty and cost of replacing Pittsburgh's CSO infrastructure; nevertheless, public and environmental health are at risk with continued allowable violations to the Clean Water Act. (2)

Response: The regulatory amendment will not result in the extension or elimination of any compliance schedules. Please also see the response to Comment #6 regarding the use of LTCPs and timeframe requirements to achieve compliance.

4. **Comment:** CSOs cause serious harm to our waterways, to human health and safety, and they affect our tourism industry and economy. CSO discharges can contain untreated domestic, commercial, and industrial wastes, as well as surface runoff – all of which can contain many different types of contaminants that are toxic to human and environmental health. Contaminants may include bacteria, pathogens, oxygen-demanding pollutants, suspended solids, nutrients, toxics, and floatable matter. These contaminants have a variety of adverse

impacts on Pennsylvania waterbodies and public health. Specifically, CSOs pose a threat to our drinking water supplies as the rivers supply the main source of drinking water to 90% of Allegheny County residents. Additionally, CSOs have contributed to shellfish harvesting restrictions, water use closures, and fish kills. Runoff, containing raw sewage, contaminates the water with bacteria and viruses, and increases the risk of E. Coli exposure to swimmers and boaters. This is a particular problem in the Pittsburgh region, where at least nine billion gallons of untreated sewage and storm water discharge from the sewer system into the Allegheny, Ohio, and Monongahela rivers every year.

CSOs place both the environment and human health at risk, and many individuals may not know that they are putting their health at risk during an overflow event. When overflows occur, the Allegheny County Sanitary Authority (ALCOSAN) issues alerts in the form of orange flags placed at designated points along the waterways, via the ALCOSAN Sewer Overflow Advisory line, the ALCOSAN website, and through an opt-in text or email service notification program. These alerts warn individuals to limit their contact with contaminated water, and to avoid submerging their eyes, face, or any open wounds in the water. Apart from the orange flags placed along the waterways, the public only learns of the alerts if they actively seek them out. Further, these alerts only serve as a caution, they do not prohibit the public from recreational river activities. Individuals who do not understand the serious health risks, or are not adequately warned, risk illness and infection when interacting with Pennsylvania waterways during alert periods.

CSOs impact recreational activities, tourism and, thus, Pennsylvania's economy. There are eleven alerts, on average per year, which average seven days in length, however they can vary from one to forty-five days. The river advisories are in effect for around 50%, or seventy days, of each recreational season. Therefore, during the average recreational season, people are either discouraged from engaging in recreational river activities altogether for half the season or potentially engage in river activities that expose themselves to harmful bacteria. The three rivers and their watersheds provide valuable ecosystem services, outdoor recreational activities such as fishing and kayaking, and contribute to tourism. Pittsburgh citizens and tourists cannot take full advantage of our three rivers and their watersheds under our current CSO problem. Eliminating the five-year requirement for long term control plans (LTCP) will prolong these environmental and public health problems and dissuade the public and tourists from using our rivers. (2)

Response: DEP understands and agrees that CSO discharges pose risks to the environment and to public health and safety. However, as stated in the response to Comment #3, this rulemaking will not result in the extension or elimination of any compliance schedules, or result in prolonged implementation of CSO LTCPs. To the contrary, and as noted in the response to Comment #1, by addressing an EPA objection that prevented the Department from reissuing CSO NPDES permits, this rulemaking will help ensure that LTCP implementation remains on track by allowing the Department to reissue CSO NPDES permits with updated LTCP implementation milestones.

5. **Comment:** CSOs cause serious harm to our waterways, to human health and safety, and they affect our tourism industry and economy. Combined sewer systems collect rainwater, runoff, and sewage through one system and direct it to a wastewater treatment center. For example, ALCOSAN manages Allegheny County, covering Pittsburgh and eighty-two other municipalities. Originally dedicated in 1959, the ALCOSAN treatment center is currently not large enough to receive all the runoff during wet weather periods because it is old infrastructure built before any environmental regulations were put in place. Additionally, it does not account for today's much larger population. While the current state of Pennsylvania's water quality is an urgent environmental and public health issue, in the Pittsburgh area it becomes even more so when considering population growth and the probability of increased wet weather due to climate change.

Allegheny County grew by 27,230 residents in the 2020 census. While this represents a seemingly marginal increase of only 2.2%, it is the first time the county has grown in population since 1960. This growth not only outperformed estimates by 3%, but it also represents one of the largest outperformances in the entire country. This data indicates a general population growth trend. Pittsburgh has many impermeable surfaces, clay soils, and steep topography. Pittsburgh's geography means rainwater flows quickly and accumulates in valleys. As Pittsburgh continues to grow, the city will build more concrete surfaces and thus, fewer permeable areas such as trees and green spaces can be expected. This means the region will likely experience increased overflows in the future and increased pressure on the already stressed wastewater treatment system, creating the potential for even more overflow than the area currently experiences. This data and its effects on wastewater infrastructure should be considered when promulgating the proposed rule. Additionally, this data should be considered in combination with the data on likely increased precipitation caused by climate change.

Climate change is expected to result in more frequent storm events and more frequent wet weather. This means there will be more frequent CSO discharges, larger volumes of water and more contaminants discharging into our waterways. The CSO problem currently has significant impacts on the environment, however, the combination of climate change impacts and population growth will make this problem exponentially worse. Considering these future impacts, it is not rational to amend the five-year compliance schedule for LTCP and delay fixing this problem. (2)

Response: As noted in the responses to Comment #3 and Comment #4, this rulemaking will not result in the extension or elimination of any compliance schedules, or result in prolonged implementation of CSO LTCPs. To the contrary, this rulemaking will help ensure that LTCP implementation remains on track by allowing the Department to reissue CSO NPDES permits with updated LTCP implementation milestones. In fact, prior to this rulemaking, the EPA's objection to allowing the Department to reissue CSO NPDES permits based on the prior regulatory language caused delays in the Department's reissuance of NPDES permits, which may have had the effect of delaying LTCP implementation for some CSO dischargers. The regulatory amendment in this rulemaking will address EPA's objection, which will allow the Department to resume reissuing NPDES permits with updated milestones to ensure permittees stay on track with LTCP implementation.

The Department also acknowledges the effects of climate change noted by the commentator and acknowledges that – in response to and anticipation of these effects – some CSO dischargers may need to adjust the solutions in their LTCPs in order to achieve long-term performance standards such as the elimination or capture for treatment of at least 85% by volume of combined sewer system flows during precipitation events on a system-wide annual average basis.

6. **Comment:** The five-year compliance schedule was implemented to limit future CSO impacts, and that reasoning has not changed. When the current rule was promulgated over a decade ago, it set a meaningful five-year term for LTCPs. Pennsylvania has one of the most serious overflow issues in the country with estimated yearly CSO and sanitary sewer overflows (SSO) exceeding nine billion gallons. This is particularly true for Allegheny County, which has 448 outfalls with CSO/SSO potential. Additionally, DEP has classified nearly half of all Pittsburgh area waterways, more than 940 miles, as impaired. Storm water runoff is one of the most frequent contributors to stream impairments. Because the area's wastewater system capacity can be overwhelmed by rainfall volumes as low as 0.1 inches, the issue of how long it takes permittees to mitigate CSOs is one of great urgency for environmental integrity as well as public health and safety.

It is therefore important that the regulations concerning CSOs are more stringent in Pennsylvania and that they pressure municipalities to prioritize funding realistic CSO reduction strategies and infrastructure. A five-year implementation period for LTCPs is necessary because Pennsylvania's environment and citizens require it to protect our health and environment. The proposed rule should not replace the original regulation simply because permittees will not prioritize adhering to a deadline and DEP will not enforce adherence to that deadline. The proposed rule, allowing for individual LTCP compliance periods on a case-by-case basis, will eliminate the pressure inherent in a short, fixed period and will increase the likelihood that Pennsylvania water quality will remain among the worst in the nation. (2)

Response: The Department disagrees with the assertion that the current regulation was promulgated to force total LTCP implementation within a single permit term. Such an interpretation would undermine the very notion of an LTCP as established by the EPA to bring CSO discharges into compliance. LTCP compliance schedules have always been proposed by permittees and reviewed by the Department on a case-by-case basis. The Department needs to ensure that the alternative selected by the permittee is reasonable and will be implemented in the shortest feasible period of time. Frequently, the shortest feasible period of time exceeds five years due to the scale of infrastructure modifications and financial commitments needed to implement LTCPs. Also see the responses to Comments #3, 4, and 5 regarding the effect of this rulemaking on implementation of LTCPs.

7. **Comment:** The proposed rulemaking sets a dangerous precedent by delaying remedies for environmental problems. 3RWK recognizes and appreciates that the goal of this proposed rulemaking is to bring permittees into compliance and mitigate Pennsylvania's dire CSO issue. However, we do not believe that this proposed rulemaking provides the best path

forward for achieving this goal. Amending a regulation rather than changing agency practices sets a dangerous precedent for future environmental regulations. The proposed rule is only delaying the inevitable and causing environmental degradation during the delay. This is not a suitable solution. We have environmental laws and regulations for a reason, to improve the quality of our environment. If agencies stop embracing complicated problems and simply kick the problem down the road, our environment will never improve, and ecosystems and human health will suffer indefinitely. (2)

Response: As detailed in the responses to Comments #3–6, the Department believes that this regulatory amendment will eliminate a source of delay in abating CSO discharges in Pennsylvania and will bring CSO dischargers in Pennsylvania into compliance sooner.

8. **Comment:** The proposed rule raises procedural concerns, in its IRRC Regulatory Analysis Form, and substantive concerns, in the text of the rule. The proposed rule raises several concerns. First, the IRRC Regulatory Analysis Form for this proposed rule does not include any data nor reference to the water quality achievable by adhering to the current five-year LTCP compliance schedule. This lack of data is concerning because the proposed rule will likely increase the volume of overflow as opposed to the current five-year LTCP. DEP should consider all available data to accurately understand the costs and benefits of this proposed rule to the environment.

Second, we are disappointed that in query (26) of the IRRC Regulatory Analysis Form, DEP did not specifically describe the “alternative regulatory provisions” that DEP and EPA explored. The IRRC Regulatory Analysis Form merely states that alternatives had been explored, but it would be beneficial for affected individuals to have a description of any alternative regulatory provisions which were considered and rejected. Additionally, it would be beneficial to have an explanation as to why the option selected is the least burdensome or most beneficial option.

Third, the proposed rule does not embrace pollution prevention that it is necessary for preserving our Nation’s waters – and protecting our drinking water source. Pollution prevention must be considered under the Clean Water Act. Specifically, the Clean Water Act puts forth a goal of restoring and preserving the chemical, physical, and biological integrity of our Nation’s waters. This rule runs counter to the Act’s goal because the proposed rule extends the time that our waterways will be out of compliance with water quality standards. Lastly, the proposed rule states that there will be no negative impacts to human health or the environment, however, the proposed rule does not explain how it will achieve this. As will be discussed in Section VI the proposed rule will prolong Pennsylvania’s CSO issues. CSOs have many negative effects on our waterways. Thus, it is unclear how prolonging the problem will not negatively affect the environment. (2)

Response: The regulatory amendment will not result in an increase in the volume of overflows and, as detailed in the responses to Comments #3–7, will help ensure that LTCP implementation remains on track by allowing the Department to reissue CSO NPDES permits with updated LTCP implementation milestones. As such, this rulemaking helps support the goals of the Federal Clean Water Act and Pennsylvania’s Clean Streams Law. On

a practical level, the only thing this rulemaking will change is that the Department will again be able to reissue NPDES permits for CSO dischargers with LTCP implementation schedules longer than 5 years, which will allow updated compliance schedules to be established in those reissued permits. DEP explored a number of alternatives with EPA Region 3 and EPA Headquarters that did not involve modifying the Chapter 92a regulations, including but not limited to decoupling LTCP approvals from NPDES permit issuance and executing enforcement actions simultaneously with NPDES permit issuance, but none of the alternatives were considered feasible.

9. **Comment:** There are other solutions to Pennsylvania's CSO problem beside extending the compliance schedule and we urge DEP to consider alternatives. 3RWK recognizes that upgrading the infrastructure in the Pittsburgh region alone is expensive, and that many individual municipalities may not have the funding available or the political will to fund such upgrades. However, Pennsylvania is receiving \$240,000,000 from the federal government specifically for clean water issues. While insufficient to cover the entire cost of all permittees' LTCP implementations, some may be allocated for such use. Additionally, DEP should explore regional approaches to the overflow problem as a cost-saving mechanism and include all avenues of green infrastructure in that exploration.

ALCOSAN has developed multiple plans targeting the region's CSO problem under an EPA consent decree. The first in 2012, the "Wet Weather Plan," cost \$3.6 billion and was criticized for its lack of "green technology," nature-based solutions that aim to decrease runoff such as permeable green spaces, rain gardens, green roofs, and its heavy reliance on "grey technology," such as constructing pipes, pumps, and holding facilities. While grey technology increases capacity, green technology controls excess storm water. ALCOSAN later released its "Clean Water Plan" in 2019, which integrated green technology projects with plans to expand capacity, and with a projected cost of \$2 billion. Under this new plan, ALCOSAN now has a deadline of 2036 to reduce sewage overflows by seven billion gallons.

The projected cost of the Clean Water Plan was reduced by \$1.6 billion by incorporating runoff mitigation methods with plans to expand the pipes and treatment plants. Studies have shown that green space can reduce the operating and capital costs of storm water management. Further, other cities have successfully employed creative technologies such as biodigesters to curb the costs of running treatment plants. The biodigesters convert the fecal sludge from wastewater treatment plants into energy, which offsets the cost of running the plants. Solutions are within reach, however they won't be realized when we do not set compliance schedules. (2)

Response: The Department supports the utilization of green infrastructure where it is able to reduce inflows into combined sewer systems. The Department also recognizes that increased funding may be available to address CSO discharges through the Federal Infrastructure Investment and Jobs Act. As noted in the response to Comment #5, the prior regulatory language caused delays in the Department's reissuance of NPDES permits, which may have had the effect of delaying LTCP implementation for some CSO dischargers. With the regulatory amendment, the Department can resume utilizing NPDES permits to ensure permittees stay on track with LTCP implementation.

- 10. Comment:** According to the Proposed Rule and the above-referenced DEP presentations, it is PMAA's understanding that EPA has expressed concerns that the existing language in 25 Pa. Code § 92a.51 is inconsistent with DEP's practice of approving LTCP implementation schedules greater than five (5) years for Combined Sewer Systems. Accordingly, the Proposed Rule would address this issue by allowing DEP to approve NPDES permits with compliance schedules greater than the five (5) year period currently provided for in 25 Pa. Code § 92a.51 (but not longer than the implementation schedule provide in an approved LTCP). Therefore, based upon its review of the Proposed Rule and the aforementioned documents, PMAA supports adoption of the Proposed Rule to amend 25 Pa. Code § 92a.51 as published in the January 15, 2022 Pennsylvania Bulletin.

PMAA would also like to make one recommendation not directly germane to the Proposed Rule. PMAA believes that the concept embodied in the Proposed Rule regarding schedules of compliance greater than five (5) years should also apply, if applicable, to sewer systems other than Combined Sewer Systems. PMAA understands the narrow nature of the Proposed Rule and, to reiterate, supports the Proposed Rule in its current form. PMAA is not suggesting that the Proposed Rule be amended to address non-Combined Sewer Systems; rather, PMAA requests that DEP consider a similar amendment for systems other than Combined Sewer Systems. In fact, PMAA understand from its review of the July 28, 2021 WRAC minutes that DEP has already internally discussed whether a non-Combined Sewer System permittee's particular circumstances could warrant a timeframe for compliance of greater than five (5) years. PMAA is willing to work with DEP on such an amendment. (3)

Response: The Department appreciates the commentator's support for this rulemaking. As noted in the response to Comment #2, the Department has no plans for a separate amendment to extend compliance schedules for non-combined sewer systems.

- 11. Comment:** The EPA provided comments in support of the rulemaking, noted that the rulemaking was in accordance with agreements between the EPA and the Department on how to address the issue, and discussed the procedural steps necessary to seek approval of the modified § 92a.51(a) as part of the Commonwealth's approved water quality standards. (4)

Response: The Department appreciates the EPA's support for the rulemaking and will ensure the Federal procedural requirements are followed and all necessary documentation is included when the final regulation is submitted to the EPA for review.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

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

Subchapter C. PERMITS AND PERMIT CONDITIONS

§ 92a.51. Schedules of compliance.

(a) With respect to an existing discharge that is not in compliance with the water quality standards and effluent limitations or standards in § 92a.44 or § 92a.12 (relating to establishing limitations, standards, and other permit conditions; and treatment requirements), 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 to be consistent with the Federal Act. **[Any] Except as otherwise set forth in this subsection, a** schedule of compliance specified in the permit must require compliance with final enforceable effluent limitations as soon as practicable, but in no case longer than 5 years, unless a court of competent jurisdiction issues an order allowing a longer time for compliance. **Compliance schedules granted to CSO dischargers may exceed 5 years but may not exceed the period of implementation specified in an approved long-term control plan (LTCP).**



March 21, 2023

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Final Rulemaking: National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance (#7-563 / IRRC # 3327)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act (RRA), please find enclosed the National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance (#7-563) final-form rulemaking for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (Board) adopted this rulemaking on November 15, 2022.

The Board adopted the proposed rulemaking at its meeting on October 19, 2021. On January 15, 2022, the proposed rulemaking was published in the *Pennsylvania Bulletin* at 52 Pa.B. 361 for a 45-day public comment period. One public hearing was held on February 16, 2022. The public comment period closed on March 1, 2022. The Department received comments from four commentators, including the U.S. Environmental Protection Agency. The Board provided the Environmental Resources and Energy Committees and IRRC with copies of all comments received in compliance with Section 5(c) of the RRA.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed rulemaking under Section 5.1(e) of the RRA.

Please contact me by e-mail at laurgriffi@pa.gov or by telephone at 717.772.3277 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Griffin".

Laura Griffin
Regulatory Coordinator

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-563

SUBJECT: National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

TYPE OF REGULATION

RECEIVED

Proposed Regulation

X Final Regulation

MAR 21 2023

Final Regulation with Notice of Proposed Rulemaking Omitted Independent Regulatory
Review Commission

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

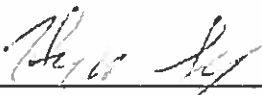
DATE

SIGNATURE

DESIGNATION

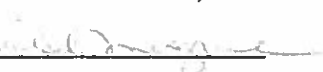
*HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES &
ENERGY*

3/21/23



MAJORITY CHAIR Representative Greg Vitali

3/21/23



MINORITY CHAIR Representative Martin T. Causer

*SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES &
ENERGY*

3/21/23

electronic submitted

MAJORITY CHAIR Senator Gene Yaw

3/21/23

electronic submitted

MINORITY CHAIR Senator Carolyn Comitta

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

March 21, 2023

Shani Shenk

From: Eyster, Emily <Emily.Eyster@pasenate.com>
Sent: Tuesday, March 21, 2023 11:11 AM
To: Troutman, Nick; Griffin, Laura
Cc: Chalfant, Brian; Reiley, Robert A.; Nezat, Taylor
Subject: Re: Delivery of Final Rulemaking - NPDES Schedules of Compliance (7-563)

Received by Sen. Comitta's office.

Emily Eyster

Legislative Director, Office of Senator Carolyn T. Comitta

Executive Director, Senate Environmental Resources and Energy Committee

Cell: [\(717\) 756-4702](tel:(717)756-4702)

Phone: [\(717\) 787-5709](tel:(717)787-5709)

www.pasenatorcomitta.com

RECEIVED

MAR 21 2023

Independent Regulatory
Review Commission

From: Troutman, Nick <ntroutman@pasen.gov>
Sent: Tuesday, March 21, 2023 10:53:39 AM
To: Griffin, Laura <laurgriffi@pa.gov>; Eyster, Emily <Emily.Eyster@pasenate.com>
Cc: Chalfant, Brian <bchalfant@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: RE: Delivery of Final Rulemaking - NPDES Schedules of Compliance (7-563)

■ EXTERNAL EMAIL ■

Received by Senator Yaw's Office. Thanks Laura

From: Griffin, Laura <laurgriffi@pa.gov>
Sent: Tuesday, March 21, 2023 10:50 AM
To: Troutman, Nick <ntroutman@pasen.gov>; Emily.Eyster@pasenate.com
Cc: Chalfant, Brian <bchalfant@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: Delivery of Final Rulemaking - NPDES Schedules of Compliance (7-563)
Importance: High

● CAUTION : External Email ●

Good morning,

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find attached the National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance final rulemaking (#7-563) for review by the Senate Environmental Resources and Energy Committee. The rulemaking documents are attached in a compressed folder and the cover letters for Senators Yaw and Comitta are attached separately.

Also attached is the transmittal sheet showing delivery to the House Environmental Resources and Energy Committee this morning.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,
Laura

Laura Griffin | Regulatory Coordinator
she/her/hers

Department of Environmental Protection | Policy Office
Rachel Carson State Office Building
400 Market Street | Harrisburg, PA 17101
Phone: 717.772.3277 | Fax: 717.783.8926
Email: laurgriffi@pa.gov
www.dep.pa.gov

RECEIVED

MAR 21 2023

Independent Regulatory
Review Commission

Connect with DEP on: [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [YouTube](#) | [Instagram](#)

This message and any attachment may contain privileged or confidential information intended solely for the use of the person to whom it is addressed. If the reader is not the intended recipient then be advised that forwarding, communicating, disseminating, copying or using this message or its attachments is strictly prohibited. If you receive this message in error, please notify the sender immediately and delete the information without saving any copies.

Shani Shenk

From: Troutman, Nick <ntroutman@pasen.gov>
Sent: Tuesday, March 21, 2023 10:54 AM
To: Griffin, Laura; Eyster, Emily
Cc: Chalfant, Brian; Reiley, Robert A.; Nezat, Taylor
Subject: RE: Delivery of Final Rulemaking - NPDES Schedules of Compliance (7-563)

Received by Senator Yaw's Office. Thanks Laura

RECEIVED

MAR 21 2023

From: Griffin, Laura <laurgriffi@pa.gov>
Sent: Tuesday, March 21, 2023 10:50 AM
To: Troutman, Nick <ntroutman@pasen.gov>; Emily.Eyster@pasenate.com
Cc: Chalfant, Brian <bchalfant@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Nezat, Taylor <tnezat@pa.gov>
Subject: Delivery of Final Rulemaking - NPDES Schedules of Compliance (7-563)
Importance: High

Independent Regulatory
Review Commission

Ⓢ CAUTION : External Email Ⓢ

Good morning,

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find attached the National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance final rulemaking (#7-563) for review by the Senate Environmental Resources and Energy Committee. The rulemaking documents are attached in a compressed folder and the cover letters for Senators Yaw and Comitta are attached separately.

Also attached is the transmittal sheet showing delivery to the House Environmental Resources and Energy Committee this morning.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,
Laura

Laura Griffin | Regulatory Coordinator
she/her/hers

Department of Environmental Protection | Policy Office
Rachel Carson State Office Building
400 Market Street | Harrisburg, PA 17101
Phone: 717.772.3277 | Fax: 717.783.8926
Email: laurgriffi@pa.gov
www.dep.pa.gov

Connect with DEP on: [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [YouTube](#) | [Instagram](#)