

<h1>Regulatory Analysis Form</h1> <p>(Completed by: Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p> <p style="text-align: right;">7/22 JAN -11 P 2:16 RECEIVED IRRC</p>	
<p>(1) Agency: Department of Environmental Protection</p>		<p>IRRC Number: <b>3327</b></p>	
<p>(2) Agency Number: 7 Identification Number: 563</p>			
<p>(3) PA Code Cite: 25 Pa. Code Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance)</p>			
<p>(4) Short Title: National Pollution Discharge Elimination System (NPDES) Schedules of Compliance</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):                  Primary Contact: Laura Griffin, (717) 783-8727, laurgriffi@pa.gov                  Secondary Contact: Jessica Shirley, (717) 783-8727, jessshirley@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and non-technical language. (100 words or less)</p> <p>This proposed rulemaking would revise the schedule of compliance for NPDES permits, which are required by federal and state law to control the discharge of pollutants to surface waters. When a 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.</p> <p>Many municipalities across Pennsylvania have combined sewer systems that collect both sewage and stormwater and are designed to overflow during precipitation events. These untreated discharges to surface waters are called combined sewer overflows (CSOs). CSOs must be authorized under an NPDES permit and CSO dischargers must develop a Long-Term Control Plan (LTCP) to meet WQS. Until an LTCP is fully implemented, CSO dischargers are presumed to be in non-compliance with WQS.</p> <p>LTCPs often require large 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 Department proposes to amend 25 Pa. Code § 92a.51(a) to allow DEP to approve permits for CSO</p>			

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 proposed revision is 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 approximately 130 CSO communities, more than any other state. These municipalities in Pennsylvania have combined sewer systems (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 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 25 Pa. Code Chapter 92a, when approved pursuant to a NPDES permit.

In 1994, the U.S. 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. 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 in 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. The Department's regulations at 25 Pa. Code § 92a.51(a), however, require 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 proposed rulemaking would amend 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 proposed 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 to keep the current regulation but allow DEP 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/ground water 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.

(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 approximately 100 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges, about half of which currently have permits that need to be reissued. The regulatory revision in this proposed 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 most NPDES permits for CSO dischargers have 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. Additionally, the regulatory revision in this proposed 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 approximately 100 municipalities in Pennsylvania with individual NPDES permits that authorize CSO discharges, about half of which currently have permits that need to be reissued. Under the proposed 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 the proposed regulatory revision.

(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 the proposed regulatory revision. Citizens of CSO communities, and those residing and recreating downstream of them, will benefit from this proposed 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.

The proposed amendment to Chapter 92a 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.

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

<b>COSTS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Local Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>State Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Costs</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>REVENUE LOSSES:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Local Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>State Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue Losses</b>	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 DEP to administer the NPDES program in Pennsylvania are as follows:

<b>Program</b>	<b>FY -3 (2018/2019)</b>	<b>FY -2 (2019/2020)</b>	<b>FY -1 (2020/2021)</b>	<b>Current FY (2021/2022)</b>
NPDES (Chapter 92a)	\$20,824,989	\$21,241,489	\$21,666,318	\$22,099,664

(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.

The proposed regulation 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 proposed regulation 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, DEP 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 given only the language in 92a.51(a), a change is needed to § 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.

The proposed regulation 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: 45 days
- B. The date or dates on which public meetings or hearings will be held: February 16, 2022
- C. The expected date of delivery of the final-form regulation: Quarter 4, 2022
- D. The expected effective date of the final-form regulation: Upon publication in the *Pennsylvania Bulletin*

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)**

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DO NOT WRITE IN THIS SPACE

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

By: **Amy M. Elliott**  
(Deputy Attorney General)

**12/21/21**  
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 October 19, 2021

BY 

TITLE **PATRICK MCDONNELL  
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

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

BY 

DATE OF APPROVAL  
**November 22, 2021**  
(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 PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

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

**25 Pa. Code Chapter 92a**

**PROPOSED RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[25 PA. CODE CH. 92a]**

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

The Environmental Quality Board (Board) proposes to amend Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance) to revise 25 Pa. Code § 92a.51(a) (relating to schedules of compliance) to allow for the implementation of Long-Term Control Plans (LTCPs) 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 proposed rulemaking was adopted by the Board at its meeting of October 19, 2021.

*A. Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

*B. Contact Persons*

For further information, contact Sean M. Furjanic, P.E., 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 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (Select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of October 19, 2021).

*C. Statutory Authority*

The proposed rulemaking is being made under the authority of 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 (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 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 a NPDES permit.

In 1994, the U.S. 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 for 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 in 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, the Department's regulation in § 92a.51(a) currently requires 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 has expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the existing language in § 92a.51(a) that requires compliance within 5 years. Consequently, the Department has paused approving NPDES permit renewals for CSO dischargers with these longer LTCP implementation schedules until the inconsistency is resolved. This proposed rulemaking would amend § 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.

#### *E. Summary of Regulatory Requirements*

##### *§ 92a.51. Schedules of Compliance*

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 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, and the Department has approved many LTCPs with implementation schedules exceeding 5 years.

This proposed rulemaking would amend subsection (a) to allow compliance schedules for CSO dischargers to exceed 5 years, but those schedules could not exceed the period of implementation specified in an approved LTCP.

The proposed rulemaking will not result in any degradation of public health or environmental protection. Conversely, the proposal 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, 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.

#### *F. Benefits, Costs, and Compliance*

##### *Benefits*

NPDES permits have a fixed term not exceeding 5 years. If a timely application is submitted for reissuance or renewal 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. EPA has objected to or otherwise expressed concerns to the Department over the reissuance of NPDES permits for CSO dischargers because EPA perceives that the Department's approval of LTCPs with implementation schedules longer than 5 years conflicts with § 92a.51(a). 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 proposed regulatory revision would not impose any additional costs on the regulated community.

##### *Compliance assistance plan*

A compliance assistance plan is not considered necessary for the proposed regulatory revision.

##### *Paperwork requirements*

The proposed 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 (NOIs) to the Department.

#### *G. Pollution Prevention*

Pollution prevention is not applicable to this proposed rulemaking.

#### *H. Sunset Review*

The Board is not establishing a sunset date for these regulations, because these regulations are needed for the Department to carry out its statutory authority. The Department will continue to

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

### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 4, 2022, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

### *J. Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by March 1, 2022.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board online by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

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

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

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

### *K. Public Hearings*

The Board will hold a virtual public hearing for the purpose of accepting comments on this proposed rulemaking. The hearing will be held on February 16, 2022, at 1 p.m.

Persons wishing to present testimony at the hearing must contact Jennifer Swan for the Department and the Board, (717) 783-8727 or [RA-EPEQB@pa.gov](mailto:RA-EPEQB@pa.gov), by February 14, 2022, to

reserve a time to present testimony. Language interpretation services are available upon request. Persons in need of language interpretation services must contact Jennifer Swan by 5 p.m. on February 9, 2022.

Witnesses may provide testimony by means of telephone or Internet connection. Verbal testimony is limited to 5 minutes for each witness. Organizations are limited to designating one witness to present testimony on their behalf. Video demonstrations and screen sharing by witnesses will not be permitted.

Witnesses are requested to submit written copy of their verbal testimony by e-mail to [RegComments@pa.gov](mailto:RegComments@pa.gov) after providing testimony at the hearing.

Information on how to access the hearing will be available on the Board's webpage found through the Public Participation tab on the Department's web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board"). Prior to the hearing, individuals are encouraged to visit the Board's webpage for the most current information for accessing the hearing.

Any members of the public wishing to observe the public hearing without providing testimony are also directed to access the Board's webpage. Those who have not registered with Jennifer Swan in advance as described previously will remain muted for the duration of the public hearing.

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

PATRICK McDONNELL,  
*Chairperson*

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

§ 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).

\* \* \* \* \*



January 4, 2022

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

Re: Proposed Rulemaking: National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance (#7-563)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of the National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance proposed rulemaking (#7-563) for review by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on January 15, 2022, with a 45-day public comment period ending on March 1, 2022. The Environmental Quality Board adopted this proposal on October 19, 2021.

This proposed rulemaking would amend 25 Pa. Code § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve permits for municipal combined sewer overflow 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.

As set forth in the Regulatory Review Act, the Department will consider any comments and recommendations made by the Commission, as well as the House and Senate Environmental Resources and Energy Committees and the public, prior to final adoption of the enclosed rulemaking.

Please contact me by e-mail at [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov) or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink 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) <sup>Schedules of Compliance</sup>

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION, <sup>Environmental Quality Board</sup>

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolerated Regulation
  - a.  With Revisions
  - b.  Without Revisions

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 1006

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
1/4/22	<u>Pam Nenzard</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Daryl Metcalfe
1/1/22	<u>[Signature]</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Greg Vitalli
1/9/2022	<u>electronic submittal</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Gene Yaw
1/4/2022	<u>electronic submittal</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Carolyn Comitta
		INDEPENDENT REGULATORY REVIEW COMMISSION David Summer
		ATTORNEY GENERAL (for Final Omitted only)
1/4/2022	<u>electronic submittal</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only) Leah Brown

**Kathy Cooper**

---

**From:** Eyster, Emily  
**Sent:** Tuesday, January 4, 2022 10:25 AM  
**To:** Griffin, Laura; Troutman, Nick  
**Cc:** Cole, Kate; Reiley, Robert A.; Kauffman, Gregory; Hartman, Michael  
**Subject:** Re: Delivery of Proposed Rulemakings: 7-563, 7-564, 7-566, 7-568

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good Morning Laura!

Proposed rulemaking has been received.

Thank you,

Emily Eyster  
Legislative Director, Office of Senator Carolyn T. Comitta  
Executive Director, Senate Environmental Resources and Energy Committee  
Cell: (717) 756-4702  
Phone: (717) 787-5709  
[www.pasenate.com](http://www.pasenate.com)

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1/4/22 10:25 AM

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**From:** Griffin, Laura <laurgriffi@pa.gov>  
**Sent:** Tuesday, January 4, 2022 10:00 AM  
**To:** Eyster, Emily <Emily.Eyster@pasenate.com>; Troutman, Nick <ntroutman@pasenate.com>  
**Cc:** Cole, Kate <kacole@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Kauffman, Gregory <grekauffma@pa.gov>; Hartman, Michael <Michael.Hartman@pasenate.com>  
**Subject:** Delivery of Proposed Rulemakings: 7-563, 7-564, 7-566, 7-568  
■ EXTERNAL EMAIL ■

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the following **four (4) proposed rulemakings** for review by the Senate Environmental Resources and Energy Committee:

1. #7-563 - NPDES Schedules of Compliance Proposed Rulemaking
2. #7-564 - Municipal Waster Rural Transfer Facility Permit-By-Rule Proposed Rulemaking
3. #7-566 (IRRC #3325) - Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger and Yukon Facilities Proposed Rulemaking (REDELIVERY)
  - *This rulemaking is being redelivered due to changes to the Preamble in the public hearing section. No other changes have been made to the rulemaking package.*
4. #7-568 - VOC RACT Requirements for Shipbuilding and Ship Repair Surface Coatings, Large Petroleum Dry Cleaning Facilities and Synthetic Organic Chemical Manufacturing Industry (SOCMI) Processes for the 2015 Ozone NAAQS Proposed Rulemaking

Also attached are the transmittal sheets 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

Phone: 717.772.3277 | Fax: 717.783.8926

Email: [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov)

[www.dep.pa.gov](http://www.dep.pa.gov)

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**Kathy Cooper**

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**From:** Troutman, Nick  
**Sent:** Tuesday, January 4, 2022 1:04 PM  
**To:** Griffin, Laura; Eyster, Emily  
**Cc:** Cole, Kate; Reiley, Robert A.; Kauffman, Gregory; Hartman, Michael  
**Subject:** RE: Delivery of Proposed Rulemakings: 7-563, 7-564, 7-566, 7-568

Hi Laura! Got it. Thanks

---

**From:** Griffin, Laura <laurgriffi@pa.gov>  
**Sent:** Tuesday, January 4, 2022 10:01 AM  
**To:** Emily.Eyster@pasenate.com; Troutman, Nick <ntroutman@pasen.gov>  
**Cc:** Cole, Kate <kacole@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Kauffman, Gregory <grekauffma@pa.gov>; Michael.Hartman@pasenate.com  
**Subject:** Delivery of Proposed Rulemakings: 7-563, 7-564, 7-566, 7-568  
**Importance:** High

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© CAUTION : External Email ©

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the following **four (4) proposed rulemakings** for review by the Senate Environmental Resources and Energy Committee:

- 1) #7-563 - NPDES Schedules of Compliance Proposed Rulemaking
- 2) #7-564 - Municipal Waster Rural Transfer Facility Permit-By-Rule Proposed Rulemaking
- 3) #7-566 (IRRC #3325) - Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies, Inc. Bulger and Yukon Facilities Proposed Rulemaking (REDELIVERY)
  - *This rulemaking is being redelivered due to changes to the Preamble in the public hearing section. No other changes have been made to the rulemaking package.*
- 4) #7-568 - VOC RACT Requirements for Shipbuilding and Ship Repair Surface Coatings, Large Petroleum Dry Cleaning Facilities and Synthetic Organic Chemical Manufacturing Industry (SOCMI) Processes for the 2015 Ozone NAAQS Proposed Rulemaking

Also attached are the transmittal sheets 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  
Phone: 717.772.3277 | Fax: 717.783.8926  
Email: [jaurgriffi@pa.gov](mailto:jaurgriffi@pa.gov)  
[www.dep.pa.gov](http://www.dep.pa.gov)

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LKB

**Kathy Cooper**

---

**From:** Bulletin <bulletin@palrb.us>  
**Sent:** Tuesday, January 4, 2022 3:06 PM  
**To:** Griffin, Laura; Code&Bulletin  
**Cc:** Adeline E. Gaydosh; Leah Brown; A.J. Mendelsohn  
**Subject:** [External] Re: Delivery of Proposed Rulemaking - NPDES Schedules of Compliance (7-563)

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA\_SPAM@pa.gov.*

Hi Laura,

Thank you for sending this proposed rulemaking. It is indeed scheduled for publication in the 1/15 issue of the *Pennsylvania Bulletin*.

Have a terrific rest of your afternoon!  
Adeline

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**From:** Griffin, Laura <laurgriffi@pa.gov>  
**Sent:** Tuesday, January 4, 2022 2:08 PM  
**To:** Code&Bulletin <codeandbulletin@palrb.us>; Bulletin <bulletin@palrb.us>  
**Cc:** Adeline E. Gaydosh <agaydosh@palrb.us>; Leah Brown <lbrown@palrb.us>; A.J. Mendelsohn <amendelsohn@palrb.us>  
**Subject:** Delivery of Proposed Rulemaking - NPDES Schedules of Compliance (7-563)

Good afternoon,  
Please see the attached documents, including Word versions of the Preamble and Annex A, for Proposed Rulemaking – NPDES Schedules of Compliance (#7-563), for publication on **January 15, 2022**.  
The transmittal sheet confirming receipt of the rulemaking by the House ERE Committee and email confirmation of receipt by both the Senate ERE Committee chairs is attached.  
Please confirm that you received the rulemaking documents for publication.

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  
Phone: 717.772.3277 | Fax: 717.783.8926  
Email: [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov)

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