



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029



Environmental Quality Board  
 P.O. Box 8477  
 Rachel Carson State Office Building  
 Harrisburg, PA 17105-8477

Dear Sir or Madam:

The U.S. Environmental Protection Agency (EPA), Region III has reviewed the proposed amendments to Pennsylvania's Chapter 92a (relating to National Pollutant Discharge Elimination System (NPDES) permitting, monitoring and compliance) to revise §92a.51(a) (relating to schedules of compliance). This proposal, which was announced for public review and comment in the *Pennsylvania Bulletin* on January 15, 2022, allows 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. The purpose of this letter is to provide EPA's comments on the proposal.

EPA supports the adoption of this provision by Pennsylvania to facilitate implementation of certain LTCPs where it is determined that compliance schedules longer than 5 years are necessary and appropriate to achieve State WQS. This modification as proposed appears consistent with the provisions of Section 402(q) of the Clean Water Act, which incorporates EPA's Combined Sewer Overflow Control Policy (EPA 1994) and is in accordance with the agreements between EPA and Pennsylvania on the required changes to its NPDES Permit program. EPA looks forward to reviewing the final provision under the CWA as described below.

The proposed amendments are both a modification to Pennsylvania's NPDES program and a revision to Pennsylvania's WQS and, therefore, must be approved by EPA under 40 C.F.R. §§ 123.62 and 131.21.

As a revision to Pennsylvania's NPDES program, EPA approval is required under 40 C.F.R. § 123.62. Once a final amendment to Pennsylvania's Chapter 92a has been promulgated in accordance with Pennsylvania law, it should be submitted to EPA for approval along with supporting documents. Note that EPA approval is required before the program revision can take effect. *See 40 C.F.R. § 123.62(b)(4).*

Please also note that in accordance with federal regulation at 40 C.F.R. § 131.15, for permit compliance schedule authorizing provisions to be used for water quality-based effluent limits in NPDES permits, such authorizing provisions must be approved by EPA as applicable WQS under CWA section



303(c). This is the case even if that authorizing provision is located in a state's NPDES permitting regulations. Please ensure that Pennsylvania is meeting the requirements for public participation of a WQS revision under 40 C.F.R. § 131.20(b) (i.e., one or more public hearings, 45-day notice of the hearing). Once this provision is finalized, please ensure that it is submitted to EPA in accordance with 40 C.F.R. § 131.6 and 40 C.F.R. § 131.20(c) for EPA's review and approval.

EPA recommends that Pennsylvania's formal submission to EPA of the NPDES Permit program change and compliance schedule authorizing provision include the following supporting documents:

1. Documentation of the agreement between EPA and Pennsylvania regarding resolution of incorporating compliance schedules for CSO LTCPs in NPDES permits that are longer than five years.
2. Documentation of the date of adoption of Pennsylvania's fecal coliform WQS.
3. Public comments received and Pennsylvania's response to comments.
4. Pennsylvania's Chapter 92a.51(a) Schedules of Compliance final regulation, as well as a redline version documenting the changes.
5. Submission to EPA as a revision to Pennsylvania WQS regulation for EPA's CWA 303(c) review and approval along with any supporting documentation. Submission must include certification by the appropriate legal authority that this regulation revision was duly adopted pursuant to the Commonwealth's law.

Thank you for this opportunity to provide comments on this proposed revision to the Commonwealth's NPDES and WQS programs. Please note that the comments and recommendations contained in this letter are strictly for Pennsylvania's consideration and do not constitute approval or disapproval decisions under CWA §303(c) and 40 C.F.R. § 131.21, or 40 C.F.R. § 123.62. Neither are these comments a determination by the EPA Administrator under CWA §303(c)(4)(B) and 40 C.F.R. § 131.22(b) that revised or new standards are necessary to meet the requirements of the Act. EPA would be happy to assist the Commonwealth as necessary to complete the review of this amended provision.

If you have any questions concerning this letter, please contact me at 304-234-0248, or have your staff contact Denise Hakowski for WQS questions at 215-814-5726, or Dana Hales for NPDES Permit program questions at 215-814-2928.

Sincerely,

Jennifer Fulton  
Acting Chief, Clean Water Branch  
Water Division

cc: Aneca Atkinson, Pennsylvania Department of Environmental Protection  
Sean Furjanic, Pennsylvania Department of Environmental Protection  
Tom Baron, Pennsylvania Department of Environmental Protection

