

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 92, 93 AND 95—97]

Water Quality

The Environmental Quality Board (Board) is amending Chapters 92, 93, 95 and 97, and adding new Chapter 96, as set forth in Annex A. This notice is given under Board order at its meeting of June 20, 2000.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information on Chapters 92 and 97 (relating to National Pollutant Discharge Elimination System; and industrial wastes), contact Milton Lauch, Chief, Division of Wastewater Management, Bureau of Water Quality Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 787-8184, or William J. Gerlach and William S. Cummings, Jr., Assistant Counsels, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

For further information on Chapters 93, 95 and 96 (relating to water quality standards; wastewater treatment requirements; and water quality standards implementation), contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, Harrisburg, PA 17105-8555, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. These final-form regulations are available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

These amendments are made under the authority of the following acts: 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 grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

D. *Background and Summary*

This final rulemaking revises water quality management regulations including Chapters 92, 93, 95 and 97, and creates a new Chapter 96 to incorporate Total Maximum Daily Loads (TMDLs) into the regulatory calculus, all as part of the Regulatory Basics Initiative (RBI). The RBI is a multistep process to evaluate regulations considering several factors including whether re-

quirements are more stringent than Federal regulations without good reason; impose economic costs disproportionate to the environmental benefit; are prescriptive rather than performance-based; inhibit green technology and pollution prevention strategies; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance.

These regulatory revisions streamline and clarify regulatory requirements, update the regulations to be consistent with Federal regulatory changes where indicated, consolidate certain chapters, and preserve Pennsylvania-specific requirements to serve the citizens of this Commonwealth. These final-form regulations may affect persons who discharge wastewater into surface waters of this Commonwealth or otherwise conduct activities which may impact these waters.

The Air and Water Quality Technical Advisory Committee (AWQTAC) and its successor committee, the Water Resources Advisory Committee (WRAC), provided input on the proposed amendments. The proposal was adopted by the Board as proposed rulemaking at its June 16, 1998, meeting. The proposal appeared at 28 Pa.B. 4431 (August 29, 1998), with provisions for a 60-day public comment period and three public hearings. The public comment period concluded on October 28, 1998. In response to the public comments received on the proposal, the Department revised the proposal in the form of an Advance Notice of Final Rulemaking (ANFR) proposal. Notice of the availability of the ANFR appeared at 29 Pa.B. 4872 (September 18, 1999) with provisions for a public comment period open until November 17, 1999, and three public meetings/hearings. The Department received approximately 1,500 public comments on the ANFR. The comments received on the proposed regulations and on the draft final regulations are summarized in Section E of the Preamble.

The Board has considered all of the public comments received on both its proposed rulemaking and the Department's ANFR in preparing these final-form regulations. Those portions of the draft final-form regulations that would potentially affect agriculture were presented to the Agricultural Advisory Board (AAB) on February 16, 2000. Following the meeting, the AAB sent a letter to Secretary Seif in opposition to the existing regulatory requirements concerning public hearings for individual NPDES permit applications for existing concentrated animal feeding operations (CAFOs) in High Quality and Exceptional Value Waters. The draft final-form regulations were discussed with and approved by WRAC on March 8, 2000. WRAC also submitted minutes of its meeting to document its comments on the regulations. The valuable input from the public and the collective knowledge and experience drawn from advisory committees and others on these proposals has been utilized to develop a regulation which carefully balances the needs of citizens and the regulated community in assuring the protection of this Commonwealth's waters.

E. *Summary of Comments and Responses on the Proposed Rulemaking and the ANFR*

These regulatory revisions streamline, clarify and consolidate the regulatory requirements. Specifically, Chapter 92 has been modified to incorporate portions from other chapters to address the permitting of wastewater discharges into surface waters. The water quality standards implementation provisions in Chapter 93 and por-

tions of Chapter 95 are moved to Chapters 96 and 92, as appropriate. Chapter 96 incorporates existing and modified provisions of Chapters 93, 95 and 97, and includes language describing TMDLs and individual water quality-based effluent limitations. The provisions of Chapter 97 have been relocated to Chapters 92, 95 and 96.

The preamble to the proposed rulemaking asked for comment on three specific issues. 1) A few comments were received on the question of additional public participation for NPDES permitting. The comments were split on the issue, and no change has been made to the current requirements. 2) The question of whether or not the potable water supply use should continue to be a State-wide use, or if it should be changed so that applicable water quality criteria are only applied at existing or planned potable water supply intakes, received several comments on both sides. Some comments stated that additional burdens were placed on dischargers to meet criteria more stringent than necessary, and other comments believed that protection of human health and water supplies were the most important factors in the decision. Based on an analysis of public comments and on the basis that the potable water supply use has been protected Statewide for many years and will impose no new requirements on dischargers, no change is being made to the potable water supply use, and the current language is retained. 3) No one commented on the request seeking alternative methods of analysis for color.

Because portions of this regulatory package constitute the Triennial Review of Water Quality Standards mandated by Environmental Protection Agency (EPA) regulations in 40 CFR Part 131 (relating to water quality standards), the following considerations were made. Part of the review requires that states reexamine waterbody segments that do not meet the fishable or swimmable uses specified in section 101(a)(2) of the Federal Clean Water Act (33 U.S.C.A. § 1251(a)(2)). The Department evaluated the two waterbodies where the uses are not met: (1) the Harbor Basin and entrance channel to Outer Erie Harbor/ Presque Isle Bay and (2) several zones in the Delaware Estuary.

The swimmable use designation was deleted from the Harbor Basin and entrance channel demarcated by United States Coast Guard buoys and channel markers on Outer Erie Harbor/Presque Isle Bay because boat and shipping traffic pose a serious safety hazard in this area. This decision was based on a use attainability study in 1985. Because the same conditions exist today, no change to the designated use for Outer Erie Harbor/Presque Isle Bay is made.

The Department cooperated with the Delaware River Basin Commission (DRBC), EPA and other DRBC signatory states on a comprehensive use attainability study in the lower Delaware River and Delaware Estuary. This study resulted in appropriate recommendations relating to the swimmable use, which the DRBC included in water use classifications and water quality criteria for portions of the tidal Delaware River in May 1991. Criteria for enterococcus and changes in application to the fecal coliform criteria in this area reflect the use. The changes were incorporated into §§ 93.9e and 93.9g (relating to Drainage Lists E and G) in 1994. The primary water contact use remains excluded from the designated uses for river miles 108.4 to 81.8 because of continuing significant impacts from combined sewer overflows.

The Department is also incorporating §§ 92.8a(c), 92.13(b), 92.21(b)(5) and 92.55 into its water quality standards. This clarifies the Department's ability to incor-

porate schedules of compliance in NPDES permits when a Federal statutory deadline has passed pursuant to the decision in *In the Matter of Star-Kist Caribe, Inc.*, NPDES Appeal No. 88-5, 1990 NPDES LEXIS 4 (April 16, 1990).

In addition, an error in § 93.9p (relating to Drainage List P) for Tunungwant Creek in McKean County, which states that the water contact sport use (WC) should be deleted for the main stem portion from the confluence of the East and West Branches to the PA-NY State border, has been corrected. The Department conducted a use attainability study for Tunungwant Creek in 1985 and concluded that, while there were existing land use and man-made activities adversely affecting the quality of water and limiting recreational uses in the stream, these man-induced conditions were not considered irretrievable. Accordingly, the water contact sports use was added as a designated use to Tunungwant Creek at the November 15, 1988, Board meeting, and this final-form rulemaking was published at 17 Pa.B. 968 (March 11, 1989). This regulatory revision was not, however, incorporated into the *Pennsylvania Code* until now.

A detailed description of the revisions to the proposal by chapter and section follows:

General

Many comments objected that the proposal weakened water quality protection in this Commonwealth and that the comment period was insufficient to address the wide scope of changes. In response, the Department prepared an ANFR and offered an additional comment period and a series of three public informational meetings and public hearings. The change of most concern in Chapter 92 was § 92.81(a)(5) (relating to toxic or hazardous pollutants and general NPDES permits). In response to comments, the current language of the section, prohibiting the use of general NPDES permits in High Quality and Exceptional Value Waters, is retained.

Other comments suggested that the Department should make its water quality standards more stringent than Federal regulations or as stringent as practicable. The RBI only allows for more stringent standards when a compelling state interest is established.

A commentator stated that State regulations cannot become effective until receipt of EPA approval, based on a Federal case in Alaska. First, this case applied only to water quality standards, and not other State regulations which regulate water quality in some way, such as implementation regulations. Moreover, the Commonwealth has the duty and obligation under State statutes to promulgate and implement regulations, including water quality standards regulations, to protect this Commonwealth's water quality regardless of Federal action, delay or inaction. The revisions to the Federal regulations which became final on April 27, 2000 (64 Fed. Reg. 37072) only apply to water quality standards "for Clean Water Act" (CWA) purposes. The Commonwealth will continue to issue NPDES permits based on the best available scientific information in its water quality standards, which may or may not be included in a water quality standards regulation approved by the EPA for CWA purposes. The Department, not the EPA, must defend the permits it issues in this Commonwealth, and has an obligation to apply applicable State water quality standards regulations in issuing the permits. The EPA has the legal right to object to an NPDES permit if they believe the state water quality standard used as a basis for the permit limit is insufficient for CWA purposes.

Concern was expressed that the public comment period was insufficient. The Department provided an additional

60-day public comment period following the 30-day comment period to obtain additional input on the regulations. Over 300 commentators took advantage of the extended comment period.

Chapter 92. National Pollutant Discharge Elimination System

The provisions of this chapter incorporate by reference portions of Federal regulations. This was done to limit the verbatim transfer of lengthy Federal regulations into this chapter. For this reason, it may be necessary for permittees to refer to Chapter 92 and 40 CFR Parts 122, 124 and 125 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System; procedures for decisionmaking; and criteria and standards for the National Pollutant Discharge Elimination System) to determine applicable requirements.

§ 92.1. Definitions.

The following definitions contained in the proposal were deleted in the final-form regulations: “average annual discharge limitation,” “average monthly discharge limitation,” “average weekly discharge limitation,” “bypass,” “complete application,” “LA-Load allocation,” “loading capacity,” “major facility,” “natural quality,” “operator,” “owner,” “separate storm sewer overflow,” “TMDL” and “WLA-Wasteload allocation.” Deletions were based on comments received regarding the need for or clarity of these definitions.

Definitions for “agricultural operation,” “AEU—animal equivalent unit (AEU),” “CAO—concentrated animal operation,” “indirect discharger,” “intermittent stream,” “perennial stream” and “small municipal separate storm sewer system” were added and the proposed definition of “CAFO—concentrated animal feeding operation” was modified based on comments recommending that the Department’s CAFO Strategy be incorporated in the final-form regulations.

Commentators recommended that a number of definitions be modified to be more consistent with Federal definitions. A number of definitions were modified in the final rule as follows:

The definition of “BAT—Best available technology” was modified to make the definition more consistent with the Federal definition.

The definition of “BMPs—Best Management Practices” was modified by deleting the phrase “pollution prevention measures; source reduction procedures; water conservation practices; erosion and sedimentation control plans, stormwater management measures; and” to be more consistent with the Federal definition.

The definition of “conventional pollutant” has been modified by deleting “nitrites, nitrate nitrogen and phosphorous” to make the definition consistent with the Federal definition.

The term “facility or activity” is modified to be consistent with the Federal definition.

The word “used” has been deleted from the definition of “effluent limitation guideline” to make the definition consistent with the Federal definition.

The eight permit categories listed within the definition of “point source” were deleted to simplify the definition. The word “or” was deleted and “and” inserted in lieu thereof to make the definition more consistent with the Federal definition.

Commentators proposed revisions to definitions for clarity. The following changes were made to definitions in the final-form regulations:

The definition of “CCW—Contact cooling water” was amended by deleting the phrase “, or which otherwise has the potential to become contaminated” because it was unclear.

The definition of “CSO—Combined sewer overflow” was amended to make it clear that these overflows occur “prior to reaching the headworks of the sewage treatment facility.”

Definitions for “intermittent stream” and “perennial stream” were added because these terms are used in the definition of surface waters.

The definition of “NPDES reporting form” is clarified by deleting “which includes” from the definition and adding “and” in lieu thereof.

The last sentence in the definition of “process wastewater” was deleted as unnecessary.

The definition of “stormwater discharges associated with construction activities” was revised to provide consistency with the definition of “NPDES permit for stormwater discharges associated with construction activities” in § 102.1 (relating to definitions).

Recommended changes to the definitions of “best available technology,” “applicable effluent limitations” and “toxic pollutant” were not made because the definitions are based on Federal definitions.

§ 92.2. Incorporation of Federal regulations by reference.

A commentator stated that incorporation of Federal regulations by reference violates State law. This practice is not a violation of any State law and has been done before.

In response to comments requesting clarity, the last sentence of § 92.2(a) (relating to incorporation of Federal regulations by reference) has been deleted and new language added to clarify that if there is a conflict among Federal and State regulatory provisions, the provision in Chapter 92 shall be used unless the Federal provision is more stringent.

A typographical error was corrected by changing “(h)(1)” to “(h), (i)(2), (j), (k), (l)” in subsection (b)(5).

In response to comments received, subsection (b)(6) was deleted in the final-form regulations to incorporate the Department’s CAFO Strategy into the regulations. The Federal references are inconsistent with the strategy.

Several commentators suggested sections of the Federal regulations that should have been incorporated by reference because they are not addressed in Chapter 92. Subsection (b)(19), (22) and (23) was added in the final-form regulations to identify these additional Federal provisions incorporated by reference.

Commentators questioned the meaning of the qualifying term “substantive and procedural.” Subsection (c) was amended in the final-form regulations by deleting the words “substantive or procedural” to make the section more clear.

§ 92.2a. Treatment requirements.

Subsection (a) was modified in the final-form regulations by deleting the last sentence limiting treatment requirements and effluent limits to those established under the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

Commentators questioned the protection of threatened species not yet listed in the Pennsylvania Natural Diversity Inventory but included on Federal listings. The reference to the "Pennsylvania Natural Diversity Inventory" (PNDI) in subsection (c) has been deleted to allow for consideration of threatened species not yet included on that list, but established as threatened when someone identifies and documents the presence of these to the Department. The PNDI will still be used as the source of information for threatened species in this Commonwealth.

§ 92.2b. Pollution prevention.

The proposed pollution prevention amendments were deleted based on comments questioning the inclusion of guidelines that are not regulatory requirements, and the potential for these recommendations to take on regulatory meaning. This section was revised to provide that the Department will encourage pollution prevention and provide assistance to permittees in the consideration of pollution prevention measures. Comments were received opposing this change during the ANFR comment period. Commentators stated that the change weakened the regulations. The changes to this section proposed during the ANFR were retained in the final-form regulations. The Department believes that the regulations should place the burden of encouraging pollution prevention on the Department and that this program functions best when a voluntary approach is used. Recommendations related to pollution prevention activities for permittees are not appropriate for regulation. The language in this section is based on language in recent revisions to Chapter 91 that became effective on January 29, 2000. See 30 Pa.B. 521 (January 29, 2000).

§ 92.2c. Minimum Sewage and Industrial Waste Treatment Requirement.

Subsection (a) was modified to specify that secondary treatment is applicable to all sewage discharges, except sanitary sewer overflows (SSOs) which are prohibited in accordance with § 92.73(8), and combined sewer overflows (CSOs), which need not attain secondary treatment if they implement Department-approved nine minimum controls (NMCs) and a long-term control plan (LTCP).

The phrase "after direct application or encouragement of pollution prevention approaches, including in-process recycling and reuse" was deleted in subsection (b)(4) to be consistent with the changes to § 92.2b, relating to pollution prevention. Additionally, subsection (b)(4) was changed to reference and clarify the applicability of provisions for quality standards and oil-bearing wastewater to NPDES discharges.

A new subsection (c), providing a cross reference to § 95.2 (relating to quality standards and oil-bearing wastewaters) has been added to the final-form regulations. This change was not included in the proposed rulemaking.

§ 92.2d. Technology-based standards.

Paragraph (3)(i)(C) is modified in the final-form regulations by deleting the phrase "other pollution prevention approaches" to be consistent with the changes made to § 92.2b discussed previously.

Some commentators supported the retention of 0.5 mg/l effluent limitation for discharges of total residual chlorine while others felt the regulations were too stringent and suggested a lesser residual chlorine limit. Others objected to the dechlorination provisions in paragraph (3)(iii) in special protection waters. These provisions were modified

in the final-form regulations as a result of terminology changes in the Department's antidegradation regulations in § 93.4c(b)(1)(iii).

There were objections to the transfer of provisions from Chapter 97 to Chapter 92 regarding oils creating a sheen. These provisions were determined to apply to both NPDES and non-NPDES discharges and were consequently moved to Chapter 95 in the final-form regulations. A reference to § 95.2 was added to paragraph (4) of the final-form regulations. Comments were received in support of this change.

§ 92.4. Exclusions from Permit Requirements.

There was a request that natural gas and oil producing activities receive a permit exemption because it was asserted that these operations are similar to agricultural and silviculture activities that have such a permit exemption. The exemptions are based on Federal regulations and they do not include oil and gas producing activities. The change was not made.

A commentator objected to the proposed pollution prevention language in subsection (a)(6). The phrase was deleted for reasons described in a response related to § 92.2b. Other clarifying changes were also made to this provision.

§ 92.5a. Concentrated animal feeding operations.

As proposed, this section would have authorized a "permit by rule" for CAFOs meeting certain requirements. The Department issued a "Final Strategy for Meeting Federal Requirements for Controlling the Water Quality Impacts of Concentrated Animal Feeding Operations" in March 1999. A notice of the availability of that strategy was published at 29 Pa.B. 1439 (March 13, 1999). The strategy does not provide for coverage under a permit by rule. Commentators recommended incorporation of the final strategy into the regulations. Accordingly, the proposed language of § 92.5a was deleted and replaced in the final-form regulations with regulations consistent with the published strategy.

§ 92.6a. Persons required to apply.

The proposed language was supported by one commentator, while another recommended it be changed to require the person with financial control over the operation to be the permittee. This entire provision was deleted in the final-form regulations as unnecessary. The Department will continue to permit persons with point source discharges, which includes owners, operators and others, as appropriate, as it has done for many years.

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

The final-form regulations replace the word "director" with the word "Department" for clarity. Commentators objected to the lack of clarity of the phrase "or which would include any new pollutant not covered by the NPDES permit" at the end of the last sentence in the section as part of the ANFR. The language has been amended in the final-form regulations to more clearly limit this requirement to those pollutants not identified in a previous permit application.

§ 92.8a. Changes in treatment requirements.

The proposed pollution prevention language in the last sentences of subsections (a) and (b) has been deleted to be consistent with the changes made to § 92.2b.

A commentator asserted that the provisions of subsection (a) are violations of due process protections, more stringent than Federal regulations and beyond the power

of the Department. This provision was transferred intact from two other chapters that were previously approved as to form and legality by the Office of the Attorney General. Actions taken under these provisions may be appealable to the Environmental Hearing Board (EHB). The provisions were retained in the final-form regulations.

Commentators expressed concern regarding the proposed 90-day time period to complete an extensive report. They suggested 180 days and opposed the language allowing the Department to unilaterally shorten the time frame without any regulatory restraints or procedures. Subsection (b) has been modified in the final-form regulations rule to increase the time allowed for submission of the required report from 90 to 180 days. In addition, the phrase "or within a lesser period as the Department may specify" was deleted. The last part of the following sentence was also changed to ensure consistency with a previous reference in the sentence to water quality standards by inserting the word "standards" following the phrase "water quality."

A commentator was concerned that this section did not include authority to impose permit modifications with compliance schedules. Subsection (c) was modified in the final-form regulations to add a phrase that provides the option of imposing permit modifications with compliance schedules to achieve compliance.

§ 92.11. Duration of standards for certain new sources.

A commentator suggested the more stringent standard of performance be for the lesser of 10 years or during the depreciation period. This suggested change was not made because this regulation is based on Federal regulatory requirements.

Proposed rulemaking included a deletion of the phrase "standards of performance shall" and insertion of the phrase "requirements will" in lieu thereof. The final-form regulations reestablishes the original language based on comments opposing the new language as unclear.

§ 92.13. Reissuance or renewal of permits.

With respect to subsection (a), commentators expressed concern that the Department's Money-Back Guarantee time limits are inconsistent with the regulatory permit review limits. The Money-Back Guarantee does not influence the Department's ability to process permits in a shorter time frame. No changes were made to this section.

Some commentators suggested that recent case law would require incorporation of a broad compliance review for all permitting activities. The scope of the compliance evaluation in subsection (b)(1) was expanded in the final-form regulations to include all Department issued permits, regulations and orders. A reference to other appropriate regulations was included at the end of the subsection to allow consideration of compliance schedules outside of the requirements of Chapter 92.

§ 92.21. Applications.

Some commentators requested the reinsertion of the phrase "not less than" in the final-form regulations to eliminate a perception that the proposed language required submittal at exactly 180 days. The recommended phrase has been reinserted in the final rule to provide clarity. Other commentators expressed concern that the time limits in the regulation were inconsistent with Department's Money-Back Guarantee. No change was made because the Money-Back Guarantee does not impact the Department's ability to process applications in a shorter period of time.

Based on comments received, a new paragraph (5) is added in the final-form regulations which includes a requirement for documentation that the applicant is in compliance with all existing Department permits, regulations, orders and schedules of compliance, consistent with similar changes made in § 92.13 (relating to reissuance or renewal of permits). Commentators suggested requiring the newspaper publication in subsection (b)(3) only for major modifications of the facility. No change was made because The Clean Streams Law requires this.

Subsection (c)(2) was deleted in the final-form regulations to be consistent with the revisions made to § 92.2b (relating to pollution prevention).

Comments on subsection (c) stated that some of the required information for a new facility application is generally available only after the commencement of a discharge, not when an application for a facility is being prepared. Accordingly, the provisions of subsection (c)(3)—(5) were transferred to a new subsection (d) which states that the Department may require an applicant for a modification, renewal or reissuance of a permit under § 92.13, or when required under 40 CFR Part 122 to provide this information. In addition, proposed subsection (c)(6) is renumbered as subsection (c)(2) and proposed subsections (d)—(f) are renumbered as subsections (e)—(g).

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

A commentator requested that the provisions related to the determination that aquatic communities are excluded be clarified. Subsection (e) has been modified in the final-form regulations to state that water quality data confirming a lack of improvement will be the measure of the exclusion of aquatic communities.

Subsection (d) is clarified to cross reference the requirements in Chapter 102 for stormwater dischargers associated with construction activities.

Subsection (e)(2)(iii) is revised by providing a cross reference to the definition of "TMDL" in § 96.1 to provide clarity.

Proposed language in subsection (f) relating to discharges with approved pretreatment programs was deleted in the final rule. Subsections (g) and (h) of the proposal were renumbered as subsections (f) and (g) respectively.

Commentators stated that the elimination of CSOs is impossible, that the time required is too extensive to make this requirement a prerequisite to a permit renewal, that identifying all points of influent is impossible, and that elimination should only be required where the discharge will not meet water quality based effluent limitations. Subsection (f) of the final-form regulations includes provisions to allow for submitting a long-term control plan to "minimize" or "eliminate" CSO discharges. These changes are consistent with Department's published CSO Strategy. Additional revisions delete proposed subsections (g)(3)(i)—(v) and, in lieu thereof, reference a Federal publication rather than listing its content in summary in the regulations. Subparagraph (vi) was renumbered (ii) and a requirement for an implementation schedule was added to the final-form regulations (third element of an approvable CSO program). The provisions relating to the identification of points of inflow into combined sewers is retained in the final-form regulations. This activity is a necessary part of compliance with the nine minimum controls related to the minimization or elimination of CSOs.

Editorial changes were made to subsection (h) (now (g)) in the final-form regulations.

§ 92.22. Application fees.

A new subsection (f) was added to provide an exemption from permit fees for certain CAFOs consistent with the Department's CAFO Strategy. Existing subsection (f) was renumbered as (g).

§ 92.25. Incomplete applications or notice of intent.

A minor editorial change to the proposal is made. The proposal references a notice of intent "to participate in" an NPDES general permit. The phrase "participate in" is replaced with "be covered by" since that is a more accurate description of the general permit process.

§ 92.31. Effluent limitations or standards.

An editorial change was made to subsection (a). Subsection (a)(9) was added to cross reference water quality protection requirements in Chapter 96 and subsection (a)(10) was added to cross reference antidegradation requirements.

§ 92.41. Monitoring.

A number of commentators objected to the addition of proposed subsection (b), asserting that the provisions allow arbitrary requirements and time limits to be set by the Department. The proposed subsection was proposed for deletion in the ANFR. After reconsideration, this language was rewritten to eliminate those portions of the provision on which objections were received. References to requests for additional information by the Department, which were perceived as arbitrary were deleted, and provisions retained which establish monitoring and reporting requirements to be incorporated in permit documents. The last two sentences of proposed subsection (b) (relating to monitoring pollutants not limited in the permit) are deleted in the final-form regulations. Commentators asserted that these provisions were overly broad, inconsistent with Federal requirements or not in the spirit of the RBI.

The amendments to subsections (c) and (g) make it clear that the monitoring requirements of subsection (g) also apply to stormwater discharges associated with construction activities and that subsection (c) is not applicable to stormwater discharges associated with industrial activity. No comments were received on this change. The proposed change is retained in the final-form regulations.

§ 92.51. Standard conditions in permits.

Some commentators suggested that the language in proposed paragraph (6) was confusing and should be simplified to say that compliance with all water quality standards is required. The proposed subsection was clarified in the ANFR by breaking it up into two sentences. Additional comments were received asserting that the changes made the provisions less clear. The final-form regulations incorporate the provisions into a single sentence and retains language that is consistent with the intent of the original regulation. A new paragraph (7) was added to the final-form regulations in response to comments to clearly state that dischargers must comply with applicable water quality standards.

§ 92.52a. Site specific permit conditions.

The final-form regulations delete the last sentence proposing pollution prevention measures. This change is consistent with the position described in response to comments made on § 92.2b. Commentators stated that the proposed provisions were too broad and that BMPs

should be established through the regulatory process. The final-form regulations includes a provision that requires permittees to identify BMPs reasonably necessary to achieve effluent limitations and standards or to carry out the purpose and intent of the Federal Act (the Clean Water Act) and to implement toxic reduction activities, effluent limitations based on WETT and other measures which eliminate or substantially reduce pollutants at their source. These final-form regulations provide the permittee with the opportunity to take an active role in establishing sufficient BMPs to achieve protection of surface waters.

§ 92.61. Public notice of permit application and public hearing.

WRAC recommended that the Department seek public comment on the need for an additional public notice when an NPDES application is renewed or when an applicant intends to apply for an NPDES permit, before an application is completed. Comments on this issue ranged from support for the notice of intent to support for no additional public notice. The Department believes the existing requirements for public notice are sufficient and no change has been made in the final-form regulations.

A new subsection (a)(9) was added to cross reference regulations promulgated at 29 Pa.B. 3720 (July 17, 1999) which provide that the notice shall include the antidegradation classification of the receiving surface water.

§ 92.71a. Transfer of permit.

Based on comments received regarding the need to include compliance evaluations as a part of permit actions, a new paragraph (4) has been added to the final-form regulations that requires compliance with all Department permits prior to approval of permit transfers.

§ 92.72a. Cessation of discharge.

Commentators stated that the 180-day notice should be reduced to 90 days to be consistent with State mandated notification requirements. The final-form regulations establishes the 90-day notification requirement.

§ 92.73. Prohibition of certain discharges.

This section is revised to provide that a permit will not be issued, modified, renewed or reissued under any of the conditions enumerated.

Paragraph (8) of the proposal provided that a permit will not be issued to a "discharger with a sanitary sewer overflow unless the discharger can demonstrate that it is taking measures to eliminate any overflows as soon as practicable, including, but not limited to a complete evaluation of the sanitary sewer system, the reduction of infiltration and inflow into the sanitary sewer system, the elimination of illegal hookups to the system, the institution of a ban or prohibition on sewer hookups to the sanitary sewer, and any other measures which will eliminate the overflows." The quoted portion of this subsection was deleted in the final rule because it is inconsistent with applicable State and Federal policy. The final-form regulations states that a permit will not be issued for a sanitary sewer overflow, except as provided for in the Federal regulations.

§ 92.81. General NPDES permits.

A large number of commentators objected to the proposed revisions to subsection (a)(5) because of a perception that this provision would allow discharge of toxic substances under a general permit. While the Department had no such intent when these amendments were

drafted, the existing language prohibiting issuance of an NPDES general permit for the discharges has been reinstated in the final-form regulations.

Subsection (a)(8) of the proposal would have authorized issuance of a general permit for discharges to High Quality Waters, but not to Exceptional Value Waters. A large number of commentators objected to this provision at proposed rulemaking. Accordingly, as part of the ANFR it was proposed to reinstate existing language that prohibits the issuance of general NPDES permits for activities in High Quality Waters. In response to the ANFR, the Department received a very large number of comments on both sides of this issue. The final-form regulations retain the reinstated (or existing) language prohibiting the issuance of general permits in High Quality Waters. This provision supports the Department's overriding State interest in the protection of High Quality Waters and in the provision of a broad opportunity for public comment when permit applications are received for facilities proposed in these watersheds. In addition, a recently developed individual NPDES permit for existing CAFOs in High Quality Waters clearly demonstrates the ability to create a simplified permit application process under the individual NPDES regulations while protecting the environment. A conforming change was made in § 92.83(b)(9) (relating to denial of coverage under a general NPDES permit).

The Board received comments objecting to the proposed deletion of a provision that general NPDES permits are to comply with of §§ 92.59 and 92.83(a)(1) (relating to documentation of permit conditions; and inclusion of individual discharges in general NPDES permits) that dischargers "certify" rather than "demonstrate" that the discharge will not result in a violation of an applicable water quality standard. Accordingly, the reference to § 92.59 was reinstated in § 92.81(b) and the existing term "demonstrate" reinserted in lieu of "certify" in § 92.83(a)(1) in the final-form regulations.

Some commentators opposed the proposed revisions to subsections (c) and (d) because they believed some of the options eliminated the opportunity for public comment. Two subsections proposed the inclusion of language from the Federal regulations that would have allowed discharges to commence: (1) on a date specified in the general permit; and (2) upon receipt of the notice of intent by the Department. These proposals have been deleted in the final-form regulations because they create circumstances that would make it impossible for the Department to keep a record of these discharges and they would have provided no opportunity for public comment. In addition, the proposal provided that a discharge under a general NPDES permit would be authorized after a waiting period specified in the general permit. This provision is retained, but clarifying language is added stating that the discharge may only commence following receipt of a Notice of Intent (NOI) by the Department. In addition, the provision authorizing the commencement of discharges "upon receipt of the notification of inclusion by the Department" is revised in the final rule to provide that the discharge may commence upon receipt of notification of approval of coverage under the general NPDES permit from the Department. Subsection (d) of the proposal relating to when an NOI would not be required was deleted in the final-form regulations for the same reasons outlined. Proposed subsection (e) was renumbered as subsection (d).

Commentators questioned the need for proposed subsection (e). This section was modified as subsection (d) in the

final-form regulations to provide that the Department "will" notify a discharger that it is "or is not" covered under a general NPDES permit. In addition, the clause, "even if the discharger has not submitted a notice of intent to be covered" was deleted.

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

Subsection (a)(3)(iii) has been deleted because it would have, consistent with the approach allowed under the Federal regulations, authorized the Department to provide no public notice of applications for general permits or approvals of coverage. This provision was not carried forward in the final-form regulations because it did not allow for sufficient public notice. Subsection (a)(1) was amended to clarify applicable requirements for NOIs.

A number of commentators commented that the EHB recently issued a ruling stating that compliance history review is not limited to prior NPDES permits, but to all permits issued by the Department. A commentator also asserted that the list of items to be considered was inconsistent with The Clean Streams Law. Accordingly, subsection (b) was revised to include violations of Department-issued permit as grounds for denial of the general permit coverage and to reference the entire list of items to be considered under The Clean Streams Law. The remainder of the subsection was renumbered.

§ 92.92. Method of seeking civil penalty.

A commentator objected to the regulation on the basis that it removes a right to a prehearing for alleged violations. A discussion of the due process protections provided by the procedures established in the regulation is provided in the comment and response document.

§ 92.93. Procedure for civil penalty assessments.

There were several comments requesting clarifying language regarding delivery of notices, the specifics of the hearing procedure, the scheduling of hearings, posting notice, and provision of notice from the Department concerning EHB rules of practice. A change was made in the final rule to subsection (c) regarding the posting of notice. An explanation is provided in the comment and response document regarding the remaining comments.

Also in subsection (c), a clause is added clarifying that a person requesting a hearing has a right to be represented by counsel, and a change is made providing that the Department need not make a decision at the hearing.

§ 92.94. Disbursement of funds pending resolution of appeal.

Subsection (a) of the final-form regulations has been modified to replace the word "law" with "section 605 of The Clean Streams Law (35 P. S. § 691.605)."

A commentator stated that preclusion of permit issuance should only be imposed on a specific facility when a company has more than one facility in this Commonwealth. This provision is not mandatory and would be imposed only when there is a continued pattern of failure to pay final assessments. No change was made in the final-form regulations.

Chapter 93. Water Quality Standards

Section 93.4. Statewide water uses.

WWF (warm water fishes) has been reinserted in Table 2 as the default aquatic life protection because several comments made the point that there would be no default aquatic life protection of waters inadvertently not listed in the chapter.

Many comments addressed the question of retaining the Statewide potable water supply use, some offering distinct reasons why it should be eliminated, but many others expressing support for keeping it. The use is retained without change.

A few comments suggested that the aesthetic water quality criteria for manganese and dissolved iron be applied at the point of potable water intake, as are other aesthetic criteria, under § 96.3 (relating to general water quality). The Department will analyze the impacts/benefits of this issue as part of its next triennial review of water quality standards.

A few comments were directed toward the Department adopting amended wildlife protection and protection of hydrologic regimes and habitat. At this time, there is no National guidance to assist the Department in moving forward with changes to wildlife protection. The Department is working with the Fish and Boat Commission on new habitat and stream flow criteria development, but it is premature to make changes at this time. These issues are all likely to be considered in future water quality standards reviews.

Section 93.7. Specific water quality criteria.

Comments concerning Table 3 included the following:

Alkalinity—The site-specific exception to the alkalinity criterion was reinserted because it was noted that many of this Commonwealth's streams may naturally violate the criterion, and without the exception, there would have to be regulation changes made for a very large number of site-specific criteria to amend the listings in §§ 93.9a—93.9z if the language were removed.

Aluminum—In the proposal, the aluminum criterion was amended and moved to Table 1, Chapter 16—Water Quality Toxics Management Strategy—Statement of Policy, where other water quality criteria for toxics are listed. The EPA and others commented that there was not adequate justification for the Commonwealth to not also adopt the chronic criterion. The Department believes that the chronic criterion of 87 µg/l should not be adopted because it is based on chronic toxicity test results that show inconsistencies within tests and between studies. The chronic studies described in the EPA's 1988 Ambient Water Quality Criteria for Aluminum document do not show a consistent pattern of toxicological response to the different exposure concentrations within or between the various tests described. The final chronic value developed following the EPA's procedures and based on available acute-chronic ratios is 750 µg/l, the same value as the acute criterion. However, the EPA then lowered the final chronic value to 87 µg/l, claiming it to be necessary to protect brook trout and striped bass. The EPA's justification for this adjustment was data derived from studies that the EPA later described as data that should not be used in the criteria development. The EPA staff have agreed that the aluminum toxicity is very complex due, in part, to the complexity of its chemistry and interactions with local water quality conditions and biological community. The EPA also agrees that the studies that were used in driving the derivation of the chronic criterion are limited in their application and should receive additional review. The Department cannot adopt the flawed chronic criterion for use in this Commonwealth without better justification. As recently as December 1999, the EPA reiterated that aluminum criteria issues are not a priority for the agency. Therefore, the Department believes that aluminum toxicity to fish and aquatic life will be adequately managed using the acute criterion of 750 µg/l.

The Department will also continue to monitor the scientific literature and the EPA's evaluations of aluminum toxicity and amend the criterion or add a chronic criterion, if indicated. The criterion is unchanged from the proposal.

Ammonia—The ammonia criteria is not changed to match the new the EPA criteria finalized in December 1999, but will be considered in the next Triennial Review.

Bacteria—In response to an EPA comment, language is added to Bac1 which limits to no more than 10% the samples that may exceed 400 fecal coliform per 100 ml in a 30-day period for the criteria to be attained.

DO (dissolved oxygen)—The language for DO₃ (for trout stocking fishes (TSF)) is clarified to state that the criteria for lakes, ponds and impoundments apply to the epilimnion in response to a comment.

Phenolics—To respond to comments expressing concern for protecting water supplies, the Statewide criterion for phenolics (Phen - 0.005 mg/l) is retained. This criterion is applied under new § 96.3(d).

Temperature—Language inadvertently struck from the new listing of temperature criteria in the proposal was reinserted to assure protection of aquatic life. The language states that in addition to the temperature criteria, wastes may not cause more than a 2°F rise in temperature in any 1-hour period.

Subsection (e), which was proposed to be deleted, is reinserted as (b) and the accompanying table is renamed Table 4 in response to comments that pointed out that the Table provides a ready reference to the criteria applicable to aquatic life uses, including High Quality and Exceptional Value Waters. The table has been modified to acknowledge the removal of the list of Statewide criteria (former Table 4) and the numbering change to DO criteria.

Accordingly, numbering changes are made to the remaining subsections. Subsection (c) is amended to the original language that provides that additional criteria will (not may as proposed) be developed using best scientific information. New subsection (d) is clarified to state that when the Department determines that the natural quality of a surface water is lower than the applicable aquatic life water quality criterion, the natural quality will become the aquatic life criterion for that segment following public notice and comment.

Section 93.9. Designated water uses and water quality criteria.

Section 93.9e (relating to Drainage List E) is modified to correct the turbidity criteria symbols from Tur 3 and 4 to Tur 1 and 2. The change is not substantive.

In § 93.9o (relating to Drainage List O), several comments on the proposal and ANFR addressed the issue of the color criterion for the Codorus Creek in York County. Some comments gave lengthy reasons why 50 pcu was the appropriate criterion and should remain in place, and others questioned the scientific basis for that criterion, stating the Statewide criterion should apply. Following consideration of all the comments, the site-specific color criterion for the Main Stem, Codorus Creek in York County is removed and the Statewide color criterion (75 platinum cobalt units) will apply to the stream. When it is achieved, the criterion will enhance water quality in the stream.

In § 93.9p (relating to Drainage List P), an error for Tunungwant Creek in McKean County, which deleted the

water contact sport use (WC) for the main stem from the confluence of the East and West Branches to the PA-NY State border, has been corrected. The Department conducted a use attainability study in 1985 which supported the correction and the water contact sports use was added as a designated use at the November 15, 1988, Board meeting, and published at 17 Pa.B. 968 (March 11, 1989). This regulatory revision was not, however, incorporated into the *Pennsylvania Code* until now.

Chapter 95. Wastewater Treatment Requirements

Section 95.1 (relating to special protections), which has recently been amended at 29 Pa.B. 3720 (July 17, 1999) is deleted as unnecessary in light of the inclusion of the language in § 92.2a(a).

Commentators objected to the incorporation of provisions in § 97.15 into § 95.2 of the final-form regulations. These provisions incorporate quality standards for industrial wastes including the prohibition of discharges that are acid, a pH requirement and an iron limit of no more than 7 milligrams per liter of dissolved iron. These provisions were retained in the final-form regulations as necessary to protect water quality from pollutants not regulated as point sources under the NPDES regulations.

Commentators objected to the elimination of §§ 95.4 and 95.5 from proposed rulemaking. This error occurred at the Legislative Reference Bureau, and was corrected at 28 Pa.B. 577 (November 7, 1998).

Chapter 96. Water Quality Standards Implementation (new chapter)

Section 96.1. Definition.

The following definitions are deleted from the proposal because the terms are not used in the final-form regulation: "allowable discharge concentration," "continuous point source discharge," "design discharge flow," "dilution ratio," "impaired surface water," "nonpoint source best management practice," "precipitation induced point source discharge," "significant pollutant source," "steady state modeling" and "water quality protection levels."

Definitions for "conservative substance," "lake pond or impoundment," "LA—load allocation," "nonpoint source," "nonpoint source restoration plan" and "TMDL—total maximum daily load" are amended in response to comments or for clarity and for consistency with other regulations.

Finally, definitions are added for "factor of safety," "reserve factor" and "WQBEL—water quality based effluent limitation" because § 96.4 is amended to address both TMDLs and WQBELs, and factor of safety and reserve factors, as used by the Department in modeling for WQBELs, are included in the regulation in § 96.4. Commentators pointed out that the proposed definitions for "LA" and "TMDL" were not consistent with the Federal definitions, and the final definitions address the issues raised. Some other comments recommending language changes to other terms were addressed either by deleting the terms because they are not used, or by explanation in the comment and response document that the recommendation did not clarify the term.

Section 96.3. Water quality protection requirements.

This section incorporates, and in some cases, contains modified provisions from previous § 93.5. The proposed title of the section (Water Quality Protection Levels) was changed because the term water quality protection levels is not contained in the chapter.

Commentators on subsections (a) and (b) said that the language should include "maintain and protect" as in the antidegradation policy and noted that antidegradation must apply to all waters, not only High Quality and Exceptional Value Waters. In response, subsection (b) is amended to apply to all surface waters and adds the specific sections of Chapters 93 and 105 that address antidegradation requirements.

Some commentators said the 99% level of protection in proposed subsection (c) was not as protective as the EPA's requirements for frequency, duration and magnitude standards. There are no Federal regulatory specifications for a level of protection, but the EPA guidance sets a series of conditions that would predict a level of protection greater than 99%. The EPA recommends an averaging period of 1 hour for acute aquatic life criteria and 4 days for the chronic criteria. The error band that surrounds the 99.91% level of protection implied by the EPA's recommended "one excursion in three years" has both upper and lower bounds. The 99% level of protection lies within that error band and is, therefore, protective of water quality. In practice, for cases involving point source discharges, the actual level of protection is greater than 99% because a combination of design factors (such as design flows, mixing considerations, temperature, pH, and hardness) is used to determine effluent limitations. As part of its response to the Great Lakes Initiative (GLI), the Department performed a series of modeling simulations that compared actual levels of protection achieved using the Department specifications, with the levels of protection that would be obtained using the GLI specifications, which are more stringent than those the EPA recommends nationally. These simulations demonstrated that Department's specifications yield levels of protection equivalent to those achieved using the GLI specifications. More recently, the Department submitted a TMDL for dealing with abandoned mine drainage in the Swatara Creek Watershed to EPA Region III. This TMDL was predicated on achieving applicable water quality criteria in all portions of the watershed at least 99% of the time. This TMDL was accepted and approved by the EPA. The 99% protection level has not been changed.

Other comments noted that 99% could not apply to the general water quality criteria which Federal guidance says must be achieved at all times. In response, general criteria are deleted from the first part of the subsection and a statement is added that general criteria must be achieved at design conditions.

Based on many comments, which questioned the "mixing zone" policy of the regulation, subsection (d) is amended to make clear that it is an exception to (c) (which subsection is applicable to all other water quality criteria) of special provisions for the applicability of water quality criteria for total dissolved solids, nitrite-nitrate, fluoride and phenolics for the protection of the potable water supply use. "Phenolics" is reinserted to the list of substances included in the section in response to a comment that was concerned with protection of water supplies from its esthetic effects.

Previous § 93.5(e), which this subsection replaces, was never applied as a "mixing zone" policy. It was adopted to differentiate between the relative points of application for the criteria for the specific pollutants discussed in the section (that is, at the point of potable water supply intakes) and the point of application for other criteria (such as fish and aquatic life) for these same pollutants. Section 96.3(d) is the same exception. It is an exception because all other criteria are applicable at all points

instream where a use is protected. It is not correct to interpret the section as allowing mixing zones in some cases and thereby forbidding them in others. The Department has a mixing procedure for point source discharges of toxics and other substances. A full explanation of the approach is available in the Department guidance documents. The way the Department considers discharge mixing is subject to public review and comment every time a draft NPDES permit that contains effluent limitations for toxic substances is published in the *Pennsylvania Bulletin*. Federal regulations allow, but do not require, states to adopt regulatory mixing zone policies, which can be submitted to the EPA for Federal review and approval. This Commonwealth position is compatible with the Federal requirement.

Comments on subsection (e) stated that the proposed language allowed substituting an evaluation of physical conditions to replace water quality observations in determining natural quality. In recognition of this comment, and that natural quality cannot replace human health criteria, the subsection was amended to clarify that water quality observations are the basis for natural quality determinations, and that natural quality may be used, when appropriate, as site-specific criteria only for aquatic life protection.

Subsection (g) is amended to include Chapter 93 in addition to Chapter 105 as protective of wetlands in response to a comment that noted the omission.

Section 96.4. TMDLs and WQBELs.

Section 96.4 and its heading have been amended to distinguish between TMDLs, which are developed for impaired waters, and the development of WQBELs for point source discharges. Because there are many similarities in developing TMDLs and WQBELs, some portions of the section remain combined. Many commentators asserted that nonpoint sources were not sufficiently addressed or regulated in the regulation. In response to the comments on nonpoint sources, it should be noted that there is no more specific guidance on nonpoint source impacts from the EPA. For example, design flows for point sources are specified, but a design flow for nonpoint sources is problematic. The Department is currently developing and using other methodologies to develop TMDLs where nonpoint sources are the cause of impairment. A public comment period is held on each TMDL to allow interested parties to provide input.

The final language of subsection (b) provides that WQBELs for NPDES point source discharges will be developed under this chapter when technology-based requirements will not meet water quality protection requirements.

Subsection (c) specifies that both TMDLs and WQBELs must meet the requirements of § 96.3.

Minor word changes to subsection (d) clarify that WLAs serve as the basis for WQBELs for point source discharges and LAs form the basis for nonpoint source restoration plans.

Subsection (e) provides for conditions that apply to developing TMDLs and WQBELs. Paragraph (1) adds physical characteristics of a watershed as a design factor to acknowledge a comment that variations associated with nonpoint sources should be included. Comments on the proposal and on the ANFR pointed out that margin of safety and natural quality are included in the definition of TMDL. In response, paragraph (1) is further amended to state that reserve factors, factors of safety (both of which are terms used in the Department's modeling of

WQBELs) and pollutant contributions from other sources are considered in developing WQBELs.

Subsection (f) is modified to describe the allocation procedure for WLAs, LAs and effluent limitations.

Proposed subsection (g) concerning effluent trading is deleted. Many commentators on the proposal opposed effluent trading and more ANFR comments supported removal of the section. Some commentators wanted a clearly defined program on effluent trading. The Department will develop a more complete pollutant trading program with the assistance of affected and interested parties in the future, including the issues expressed in the comments, and with extensive public involvement.

Subsection (h), now subsection (g), was clarified to tie the design flows, as applicable, to point source TMDLs and WQBELs. The design flow conditions for point source discharges are retained in Table 1, although commentators said those flows were not as restrictive as the EPA's requirements. The Department conducted flow analyses to compare the EPA's Q1-10 flow to Pennsylvania's use of Q7-10 for aquatic life criteria. The results showed that in most cases, there is no substantial difference in the level of protection afforded by using Q7-10 in place of Q1-10. Table 1 is amended to include the design flow for the acute ammonia-nitrogen criterion which was inadvertently omitted.

Several commentators expressed that only point sources were addressed in the regulation and that models and requirements for nonpoint sources should be added. The language on the nonpoint source LA is amended in the final regulation. The best available information on nonpoint sources and natural quality is used in developing TMDLs. If possible, the LA may be disaggregated based on the quality and spatial resolution of the available data. If nonpoint source data cannot be disaggregated based on available data, the LA may be for a total allotment. The Department is currently developing and using methodologies to develop TMDLs for nonpoint sources. A public participation process, including a comment period on every TMDL, allows for public input. The Department will continue to refine its methodologies in the foreseeable future.

Proposed subsection (i) is renumbered as (h), and proposed subsection (j) is deleted because the legal requirement that methods used should be accepted in the scientific community would apply in court proceedings even without regulatory language. Omitting the language provides more flexibility to the Department in using new approaches to TMDL development in this rapidly changing field. The proposed subsection (l), placing the burden of proof on a person who challenges a TMDL, is deleted in response to comments.

Commentators on § 96.7 said that the comment period provided for the list of impaired waters and for TMDLs is too short. The comment period is not changed because it is set only as a minimum and the Department strives to provide longer comment periods when not constrained by Federal deadlines or other circumstances. A minor wording change in subsection (b) clarifies that the comment periods on both may be combined when a TMDL is prepared concurrent with NPDES permits.

Chapter 97. Industrial Wastes

A commentator objected to the deletion of § 97.14 from the final-form rulemaking because the commentator supported the mandatory pollution prevention provisions included in this section. This section has not been retained in the final-form regulations for the reasons

discussed in the response to comments received about pollution prevention in § 92.2b.

F. Benefits, Costs and Compliance

Executive Order 1996-1 provides for a cost/benefit analysis of the final-form regulations.

Benefits

Overall, the citizens of this Commonwealth will benefit from these changes because they provide appropriate protection of designated and existing uses of surface waters in this Commonwealth in a more efficient and easily administrable manner. The final-form regulations reorganize and consolidate existing water management regulations in a more understandable manner, and should help to assure that pollution control actions are as cost-effective as possible and that pollution control costs are equitably distributed. The language should also make it easier for citizens to understand how NPDES permits are developed and administered, and how water quality standards are developed and implemented.

These revisions also assure compliance with applicable Federal requirements. Under the revisions to Chapter 92, persons required to obtain a new or renew an existing NPDES permit may benefit because of the clarification provided in the amendments, as well as improved consistency with Federal regulations. In addition, these persons may benefit by the modification of some requirements which are more stringent than Federal regulations without a compelling public interest. Among the sections modified to make them more closely mirror Federal requirements are § 92.4 (relating to exclusions from permit requirements), which adds a number of activities which would be excluded from the requirement to obtain an NPDES permit; § 92.11 (relating to duration of standards for certain new sources), which adds a third event, the date the discharge begins in the calculation of the 10-year period during which a point source would not be subject to a more stringent treatment technology standard; existing § 92.41(d) and (e) (relating to monitoring) by providing that the retention period for maintaining monitoring records may be extended during the course of any unresolved litigation (as opposed to the current requirement that the records shall be maintained) and incorporating the language of 40 CFR 122.44(i)(4) (relating to the establishment of monitoring requirements for stormwater discharges not subject to an effluent limitation on a case-by-case basis) into a new subsection (g); § 92.55 (relating to schedules of compliance), which is revised to provide a 1-year window for compliance before a compliance schedule is required in a permit as opposed to the current 9-month window; § 92.65 (relating to notice to other government agencies), which is revised to limit the circumstances in which the District Engineer of the Corps of Engineers may object to the issuance of a permit consistent with section 402(b)(6) of the Federal Clean Water Act (33 U.S.C.A. § 1342(b)(6)); and § 92.83 (relating to inclusion of individual discharges in general NPDES permits) which has been revised to provide some options for notification of coverage under the general permit consistent with 40 CFR 122.28(b) (relating to general permits).

Compliance Costs

The amendments to Chapters 92 and 93 are not expected to impose any significant additional compliance costs on the regulated community. Under the revisions to Chapter 96, it is possible that some activities, including some point source and nonpoint source activities, may experience additional compliance costs. In addition,

§ 96.4(i) may impose some additional monitoring costs on NPDES discharges and other persons subject to regulation under The Clean Streams Law if data are needed to develop or evaluate TMDLs. Decisions on when to require additional monitoring will be made on a case-by-case basis and, therefore, cannot be estimated in advance.

Since the TMDLs and WQBELS developed under these final-form regulations will be used as the basis for addressing point and nonpoint pollutant discharges, the regulations may impose additional costs on some entities. Other entities may experience a reduction in treatment costs as a result of these final-form regulations; the final-form regulations have been designed to equitably allocate the responsibility for pollution control among both point and nonpoint source pollutant contributors. Overall, these regulatory changes are not expected to increase total pollution control expenditures over that which would otherwise be required under existing regulations.

Compliance Assistance Plan

The amendments to Chapter 92 are primarily intended to consolidate existing requirements into a single chapter, clarify existing requirements and make the State regulations more closely mirror Federal regulations. Compliance assistance is provided to applicants through numerous guidance documents the Department has made available for permit applicants and permittees, and by Department staff through contacts with permittees.

Chapter 96 is primarily aimed at describing how and when the Department will develop TMDLs and WQBELS. The Department is currently undertaking efforts to develop program guidance to address the various issues relating to TMDL development. Other guidance is in place for conducting additional monitoring, and for allocating pollution treatment costs equitably when more stringent treatment costs are required. Guidance is being developed for the achievement of TMDLs. These guidances should aid regulated entities in complying with the regulatory requirements.

Paperwork Requirements

These regulatory revisions should have no significant paperwork impact on the Commonwealth, its political subdivisions or the private sector. The development of TMDLs by the Department under Chapter 96 may require some additional paperwork.

G. Pollution Prevention

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, Chapter 92 incorporates language encouraging the use of pollution prevention techniques, and suggesting measures to be taken to achieve environmental benefits. The existing mandatory pollution prevention language contained in existing § 97.14 has been deleted and replaced with other language which requires the Department to encourage pollution prevention. Additionally, Chapter 93 prevents pollution by incorporating the latest science into the water quality standards. Finally, Chapter 96 prevents pollution by more closely addressing point and nonpoint pollutant sources and measures to achieve water quality standards in waters which are threatened or impaired.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended. In addition, revisions

to water quality standards are required to be reviewed by the Department at least once every 3 years, with the results of the review to be submitted to the EPA. The revisions to portions of Chapters 92, 93 and 96, constitute the major portion of the Commonwealth's triennial water quality standards review.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 11, 1998, the Department submitted a copy of the proposed rulemaking published at 28 Pa.B. 4431, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and Committees with a copy of all comments received on the proposed amendments, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC and the public. The committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House Environmental Resources and Energy Committee on and by the Senate Environmental Resources and Energy Committee on August 21, 2000. IRRC met on August 24, 2000, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

J. 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) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa.B. 4431. These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

K. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapters 92, 93, 95, 96 and 97, are amended by amending §§ 92.1, 92.3, 92.4, 92.7, 92.9, 92.11, 92.13, 92.15, 92.17, 92.21—92.23, 92.25, 92.31, 92.41, 92.51, 92.53, 92.55, 92.57, 92.59, 92.61, 92.63, 92.65, 92.73, 92.75, 92.77, 92.79, 92.81—92.83, 93.1—93.8, 93.8a, 93.9, 93.9a, 93.9c, 93.9e, 93.9g, 93.9i, 93.9l—93.9r, 93.9u—93.9z, 95.2, deleting §§ 92.6, 95.1, 95.3, 95.6—95.9, 97.1, 97.2, 97.14, 97.15, 97.63, 97.81—97.83, 97.91—97.95; and adding §§ 92.2, 92.2a, 92.2b, 92.2c, 92.2d, 92.5a, 92.8a, 92.13a, 92.21a, 92.52a, 92.71a, 92.72a, 92.91—92.94; and §§ 96.1—96.7, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson shall submit this order and Annex A 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 order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication.

JAMES M. SEIF,
Chairperson

Fiscal Note: Fiscal Note 7-338 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

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

GENERAL PROVISIONS

§ 92.1. Definitions.

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

AEU—Animal equivalent unit—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in section 3 of the Nutrient Management Act (3 P. S. § 1703).

Administrator—The Administrator of the EPA.

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

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

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

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

BAT—Best available technology—

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

(A) The age of equipment and facilities involved.

(B) The process employed.

(C) The engineering aspects of the application of various types of control techniques and process changes (including in-plant source reduction measures in addition to end of pipe controls).

(D) The cost of achieving the effluent reduction.

(E) Nonwater quality environmental impacts (including energy requirements).

(F) Other factors the Department deems appropriate.

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

BMP—Best management practices—

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

(ii) The term includes:

(A) Treatment requirements.

(B) Operating procedures.

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

*CAFO—Concentrated animal feeding operation—*A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs or an agricultural operation with a discharge to surface waters during a storm event of less than a 25-year/24-hour storm.

*CAO—Concentrated animal operation—*An agricultural operation where the animal density exceeds 2 AEUs per acre, as defined in section 3 of the Nutrient Management Act.

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

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

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

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

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

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

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

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

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

(i) Additions of pollutants from surface runoff and stormwater which is collected or channelized.

(ii) Discharges through pipes, sewers or other conveyances which do not lead to a treatment works.

(iii) Discharges through pipes, sewers or other conveyances.

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

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

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

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

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

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

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

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

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

Industrial waste—

(i) A liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from manufacturing or industry, or from an establishment, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations.

(ii) The term includes all of these substances whether or not generally characterized as waste.

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

*Intermittent stream—*A body of water flowing in a channel or bed composed primarily of substrates associ-

ated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

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

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

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

Maximum daily discharge limitation—The highest allowable daily discharge.

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

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

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

(i) Owned or operated by a state, city, town, borough, county, district, association or other public body (created by or under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Federal Act (33 U.S.C.A. § 1288) that discharges to surface waters of this Commonwealth.

(ii) Designed or used for collecting or conveying stormwater.

(iii) Not a combined sewer.

(iv) Not part of a POTW.

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

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

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

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

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

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

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

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

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

POTWs—Publicly Owned Treatment Works—

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

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

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

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

Point source—Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,

rolling stock, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

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

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

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

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

Regional Administrator—The EPA Regional Administrator for Region III.

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

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

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

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

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

Silvicultural point source—

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

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

Single residence sewage treatment plant—A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot, which collects, disposes and treats solely direct or indirect sewage discharges from the residence into surface waters of this Commonwealth.

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

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

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

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

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

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

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

WETT—Whole Effluent Toxicity Testing—

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

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

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

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

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

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

PERMITS

§ 92.2. Incorporation of Federal regulations by reference.

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

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

- (1) 122.2 (relating to definitions).
- (2) 122.4 (relating to prohibitions).
- (3) 122.5 (relating to effect of a permit).
- (4) 122.7(b) (relating to confidentiality of information).
- (5) 122.21(g)(1)—(7), (9)—(13), (h), (i)(2), (j), (k), (l), (m)(6) and (p) (relating to application for a permit).
- (6) 122.24 (relating to concentrated aquatic animal production facilities).
- (7) 122.25 (relating to aquaculture projects).
- (8) 122.26(a)—(b), (c)(1), (d), (e)(1), (3)—(7) and (f)—(g) (relating to stormwater discharges).
- (9) 122.27 (relating to silvicultural activities).
- (10) 122.29 (relating to new sources and new discharges).
- (11) 122.41(a)—(m) (relating to conditions applicable to all permits).
- (12) 122.42 (relating to additional conditions applicable to specific categories of NPDES permits).
- (13) 122.43 (relating to establishing permit conditions).
- (14) 122.44 (relating to establishing limitations, standards, and other permit conditions).
- (15) 122.45 (relating to calculating NPDES permit conditions).
- (16) 122.48 (relating to requirements for recording and reporting monitoring results).
- (17) 122.50 (relating to disposal of pollutants into wells, into publicly owned treatment works or by land application).
- (18) 122.61—122.64 (relating to transfer, modification or revocation and reissuance of permits; and termination of permits).
- (19) 124.57(a) (relating to public notice of section 316 requests).
- (20) 125.1—125.3 (relating to purpose and scope; definitions; and technology-based treatment requirements in permits).
- (21) 125.10 and 125.11 (relating to purpose and scope; and criteria).

(22) 125.30—125.32 (relating to purpose and scope; criteria and method of application).

(23) 124.62(a)(3), (e)(1) and (f) (relating to attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife; and allows recreational activities).

(24) 125.70—125.73 (relating to purpose and scope; early screening of applications for section 316(a) variances criteria and standards for determining alternative effluent limitations under section 316(a) of the act).

(25) 125.100—125.104 (relating to criteria and standards for best management practices authorized under section 304(e) of the act).

(c) Any new or amended Federal regulation enacted after November 18, 2000, which creates a variance to existing NPDES permitting requirements is not incorporated by reference.

§ 92.2a. Treatment requirements.

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

(1) Requirements specified in Chapters 93, 95 and 96 (relating to water quality standards; wastewater quality standards; and water quality standards implementation).

(2) The applicable treatment requirements and effluent limitations to which a discharge is subject under this chapter and the Federal Act.

(3) The treatment requirements and effluent limitations of this title.

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

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

§ 92.2b. Pollution prevention.

The Department will encourage pollution prevention by providing assistance to the permittee and users of the permittee's facilities in the consideration of pollution prevention measures such as process changes, materials substitution, reduction in volume of water use, in-process recycling and reuse of water and general measures of "good housekeeping" within the plant or facility. The Department will encourage consideration of the following measures, in descending order of preference, for environmental management of wastes: reuse, recycling, treatment and disposal.

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

(a) *Sewage discharges.*

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

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

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

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

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

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

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

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

(c) Industrial wastes regulated by this chapter shall meet the requirements in § 95.2 (relating to quality standards and oil-bearing wastes).

§ 92.2d. Technology-based standards.

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

(1) EPA-promulgated effluent limitation guidelines established under section 304 of the Federal Act (33 U.S.C.A. § 1314).

(2) For those industrial categories for which no effluent limitations have been established under paragraph (1), Department-developed technology-based limitations established in accordance with 40 CFR 125.3 (relating to technology-based treatment requirement in permits).

(3) For facilities utilizing chlorine, the following apply:

(i) For those facilities utilizing chlorine which discharge to surface waters, an effluent limitation representing the BAT for the discharge of total residual chlorine (TRC). If the EPA adopts a National categorical ELG for TRC for a specific industry or activity under section 301 or 304(b) of the Federal Act (33 U.S.C.A. §§ 1311 and 1314(b)), that ELG constitutes BAT for the industry or activity. If the EPA has not promulgated a National ELG for an industry or activity, the Department may develop a facility-specific BAT effluent limitation. Factors which will be considered in developing a facility-specific BAT effluent limitation include the following:

(A) The age of equipment and facilities involved.

(B) The engineering aspects of the application of various types of control techniques and alternatives to the use of chlorine or reductions in the volume of chlorine used during the disinfection process.

(C) The cost of achieving the effluent reduction.

(D) Nonwater quality environmental impacts (including energy requirements).

(E) Other factors the Department deems appropriate.

(ii) For facilities where the EPA has not promulgated a National ELG for an industry or activity, and the Department has not developed a facility-specific BAT effluent limitation under the factors in this subparagraph, an effluent limitation for TRC of 0.5 mg/l (30-day average) shall constitute BAT.

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

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

§ 92.3. Permit requirement.

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

§ 92.4. Exclusions from permit requirements.

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

(1) Introduction of pollutants from nonpoint source agricultural activities and irrigation return flows. As used in this paragraph, "irrigation return flows" means pollutants discharged into surface waters from a discernible, confined and discrete conveyance which results from the controlled application of water by any person to land used primarily for crops, forage growth or nursery operations.

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

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

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

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

(6) Indirect discharges subject to the following requirements:

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

(ii) The Department may require that an indirect discharger of sewage, industrial waste or other pollutants obtain a permit under the State Act to discharge into a POTW or privately owned treatment works where neces-

sary to assure protection of waters of this Commonwealth in situations including, but not limited to, one or more of the following:

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

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

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

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

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

§ 92.5a. CAFOs.

(a) Each CAFO shall apply for an NPDES permit on the following schedule:

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

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

(3) Prior to beginning operation for any CAFO that begins operation after November 18, 2000.

(b) The NPDES permit for each CAFO shall include conditions requiring the following:

(1) A nutrient management plan meeting the requirements of Chapter 83 (relating to State Conservation Commission).

(2) An erosion and sediment control plan meeting the requirements of Chapter 102 (relating to erosion and sediment control).

(3) For earth disturbances of 5 acres or more, an NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102.

(c) In addition to the requirements of subsection (b), the NPDES permit for each CAFO with greater than 1,000 AEUs shall include conditions requiring the following:

(1) A water quality management permit under § 91.36(a) (relating to pollution control and prevention at agricultural operations).

(2) A preparedness, prevention and contingency plan for chemicals related to the CAFO operation.

(3) Written agreements with importers or brokers related to the land application of manure and nutrient balance sheets for all exported manure.

§ 92.6. (Reserved).

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

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

§ 92.8a. Changes in treatment requirements.

(a) Whenever there is a change in Chapters 93, 95 and 96 (relating to water quality standards; wastewater treatment requirements; and water quality standards implementation), or this chapter, or whenever the Department adopts a plan or makes a determination which would change existing or impose additional water quality criteria or treatment requirements, it shall be the duty of the permittee of facilities affected thereby, upon notice from the Department, to promptly take steps necessary to plan, obtain a permit or other approval and construct facilities that are required to comply with the new water quality standards or treatment requirements.

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

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

§ 92.9. Duration of permits.

(a) NPDES permits shall have a fixed term not to exceed 5 years.

(b) The terms and conditions of an expired permit are automatically continued when the following conditions are met:

(1) The permittee has submitted a timely application for a new permit in accordance with § 92.13 (relating to reissuance of permits).

(2) The Department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit.

(c) Permits continued under subsection (b) shall remain effective and enforceable against the discharger until the Department takes final action on the pending permit application.

§ 92.11. Duration of standards for certain new sources.

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

§ 92.13. Reissuance or renewal of permits.

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

(b) Upon completing review of the new application, the Department may reissue or renewal the permit if, based on up-to-date information on the permittee's waste treatment practices and the nature, contents and frequency of the permittee's discharge, the Department determines that the:

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

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

§ 92.13a. Effect of modification of permit.

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

§ 92.15. Regional Administrator's right to object to the issuance or modification of certain permits.

The EPA Administrator has a right to review or object to issuance of certain permits. The scope of EPA review and the procedures for its exercise are described in a

Memorandum of Agreement which was incorporated in the Program Description submitted to the EPA by the Department. A copy of the Memorandum of Agreement is on file with the Department and with the Administrator of EPA Region III.

§ 92.17. Other chapters applicable.

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

APPLICATION FOR PERMITS

§ 92.21. Applications.

(a) Persons wishing to commence discharges of pollutants shall file a complete application not less than 180 days before the date on which it is desired to commence the discharge of pollutants or within another period of time which the Department determines is sufficient to insure compliance with State and Federal law, including applicable water quality standards and applicable effluent limitations or standards.

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

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

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

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

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

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

(c) In addition to the information required under subsection (b), the Department may require an applicant to submit other information or data the Department may need to assess the discharges of the facility and any impact on receiving waters, and to determine whether to

issue an NPDES permit, or what conditions or effluent limitations (including water quality based effluent limitations) to place in the permit. The additional information may include, but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

(b) *New sources and new discharges.* Except for new discharges of industrial facilities which discharge

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

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

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

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

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

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

(ii) Sewage dischargers with approved pretreatment programs or required to develop a pretreatment program.

(2) In addition to the sewage dischargers in paragraph (1), the Department may require other sewage dischargers to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(i) The variability of the pollutants or pollutant parameters in the sewage effluent (based on chemical-specific information, the type of treatment facility and types of industrial contributors).

(ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).

(iii) Existing controls on point or nonpoint sources, including calculations of total maximum daily loads (TMDLs), as defined in § 96.1 (relating to definitions), for the waterbody segment, and the relative contribution of the sewage discharger.

(iv) Receiving surface water characteristics, including possible or known water quality impairment, and whether the sewage discharges to an estuary, one of the Great Lakes or a Water which is classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards).

(v) Other considerations including, but not limited to, the history of toxic impact and compliance problems at

the sewage discharge facility, which the Department determines could cause or contribute to adverse water quality impacts.

(3) For sewage dischargers required under paragraph (1) or (2) to conduct toxicity testing, the EPA's methods or other protocols approved by the Department, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity and approved by the Department, shall be utilized. The testing shall have been conducted since the last NPDES permit reissuance or when requested by the Department, whichever occurred later.

(f) CSOs. CSO dischargers shall submit the following information:

(1) The results of an evaluation determining the frequency, extent and cause of the CSO discharge, including identifying the points of inflow into combined systems.

(2) An evaluation of the water quality impacts of the CSO discharge on receiving waters.

(3) A description of:

(i) The nine minimum controls (NMCs) described in the EPA publication entitled "Combined Sewer Overflows—Guidance for Nine Minimum Controls" (EPA publication number 832-B-9-003 (September 1995) as amended or updated) utilized or proposed to be utilized at the facility to minimize or eliminate the CSO discharge impact on receiving water quality.

(ii) A long-term control plan (LTCP) to minimize or eliminate the CSO discharge.

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

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

§ 92.22. Application fees.

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

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

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

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

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

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

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

§ 92.23. Identity of signatories to NPDES forms.

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

(1) In the case of corporations, by a principal executive officer of at least the level of vice president, or an authorized representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal state, or other public facility, by either a principal executive officer, ranking elected official or other authorized employe.

§ 92.25. Incomplete applications or NOIs.

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

APPROVAL OF APPLICATIONS

§ 92.31. Effluent limitations or standards.

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

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

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

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

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

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

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

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

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

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

(10) Antidegradation requirements under this title.

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

MONITORING BY PERMITTEE

§ 92.41. Monitoring.

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

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

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

- (1) Flow (in gallons per day or million gallons per day).
- (2) All of the following pollutants:

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

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

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

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

(d) Each effluent flow or pollutant required to be monitored under subsections (b) and (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

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

- (1) Records of monitoring activities and results shall include for all samples:
 - (i) The date, exact place and time of sampling.
 - (ii) The dates analyses were performed.
 - (iii) Who performed the analyses.
 - (iv) The analytical techniques/methods used.
 - (v) The results of the analyses.

(2) The permittee shall also be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recordings

for continuous monitoring instrumentation and calibration and maintenance records. This period of retention may be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Department or Regional Administrator.

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

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

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

PERMIT CONDITIONS

§ 92.51. Standard conditions in all permits.

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

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

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

- (i) Violation of any terms or conditions of the permit.
- (ii) Obtaining a permit by misrepresentation or failure to disclose fully relevant facts.
- (iii) A change in a condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

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

- (i) Enter upon permittee's premises in which an effluent source is located or in which records are required to be kept under terms and conditions of the permit.
- (ii) Have access to and copy records required to be kept under terms and conditions of the permit.
- (iii) Inspect monitoring equipment or method required in the permit.
- (iv) Sample a discharge of pollutants.

(4) That the permittee shall maintain in good working order and operate as efficiently as possible facilities or

systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

(5) That if a toxic effluent standard or prohibition, including any schedule of compliance specified in the effluent standard or prohibition, is established under section 301(b)(2)(C) or (D), 304(b) or 307(a) of the Federal Act (33 U.S.C.A. §§ 1311(b)(2)(C) or (D), 1314(b) or 1317(a)) for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the Department will revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

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

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

§ 92.52a. Site specific permit conditions.

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

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

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

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

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

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

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

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

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

(c) The permittee shall identify the industrial users served by the POTWs which are subject to pretreatment standards adopted under section 307(b) of the Federal Act (33 U.S.C.A. § 1317(b)) and shall specify the total volume of discharge and estimated concentration of each pollutant discharged into the POTWs by the industrial users.

The permittee shall require an industrial user of the treatment works to comply with the reporting requirements of sections 204(b), 307 and 308 of the Federal Act (33 U.S.C.A. §§ 1284(b), 1317 and 1318) and regulations thereunder.

§ 92.55. Schedules of compliance.

(a) With respect to an existing discharge which is not in compliance with the water quality standards and effluent limitations or standards in § 92.31(a) (relating to effluent limitations or standards), the applicant shall be required in the permit to take specific steps to remedy a violation of the standards and limitations in accordance with a legally applicable schedule of compliance, in the shortest, reasonable period of time, the period not to be inconsistent with the Federal Act. If a deadline specified in section 301 of the Federal Act has passed, any schedule of compliance specified in the permit shall require compliance with final enforceable effluent limits as soon as practicable, but in no case longer than 3 years, unless a court of competent jurisdiction issues an order allowing a longer time for compliance.

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

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

§ 92.57. Effluent limitations.

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

§ 92.59. Documentation for permit conditions.

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

§ 92.61. Public notice of permit application and public hearing.

(a) Public notice of every complete application for an NPDES permit will be published by the Department in the *Pennsylvania Bulletin*. The public notice will also be

posted by the applicant near the entrance to the premises of the applicant and in nearby places. The contents of public notice of applications for NPDES permits will include at least the following:

(1) The name, address, phone number of agency issuing the public notice.

(2) The name and address of each applicant.

(3) A brief description of each applicant's activities or operations which result in the discharge described in the application.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under section 301, 302, 306 or 307 of the Federal Act (33 U.S.C.A. §§ 1311, 1312, 1316 and 1317) and regulations promulgated thereunder.

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

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

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

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

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

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

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

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

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

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

(3) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway.

(4) A brief reference to the public notice issued for each application, including identification number and date of issuance.

(5) Information regarding the time and location for the hearing.

(6) The purpose of the hearing.

(7) A concise statement of the issues raised by the persons requesting the hearing.

(8) The address and phone number of premises at which interested persons may obtain further information, request a copy of each fact sheet prepared under subsection (c), and inspect and copy NPDES forms and related documents.

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed.

(f) A copy of the notice of an application or a hearing and relevant fact sheets will be mailed to any person or group upon request. A person or group desiring to receive fact sheets, notices of applications, or notices of hearings on a routine basis may request to be placed on a mailing list to receive copies of all notices. The Department will annually review mailing lists, contact recipients and terminate mailings unless the recipient indicates desire to continue receiving the mailings.

(g) When the determination of the Department to issue or deny an NPDES permit is appealed to the EHB, notice of the appeal, and notice of the hearing date, if any, will be published in the *Pennsylvania Bulletin*. In addition, notice of the Department's final action, arrived at either through settlement or as the result of a decision of the Hearing Board, will be published in the *Pennsylvania Bulletin*.

§ 92.63. Public access to information.

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

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

(c) Information accorded confidential status, whether or not contained in an NPDES form, will be disclosed, upon

request, to the Regional Administrator, or an authorized representative, who shall maintain the disclosed information as confidential.

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

§ 92.65. Notice to other government agencies.

The Department will do the following:

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

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

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

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

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

MISCELLANEOUS

§ 92.71a. Transfer of permit.

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

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

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

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

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

§ 92.72a. Cessation of discharge.

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

§ 92.73. Prohibition of certain discharges.

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

(1) Authorizing the discharge of any radiological, chemical, biological warfare agent or high-level radioactive waste.

(2) Authorizing any discharge which is in conflict with a plan or amendment thereto approved under section 208(b) of the Federal Act (33 U.S.C.A. § 1288(b)).

(3) When the applicant is required to obtain a State water quality certification or other appropriate certification under section 401 of the Federal Act (33 U.S.C.A. § 1341) and that certification has not been obtained or waived.

(4) When the Regional Administrator has objected to the issuance of a permit.

(5) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states.

(6) When, in the judgment of the Administrator, a district engineer of the Army Corps of Engineers or the Department, anchorage and navigation in or on any surface waters would be substantially impaired by the discharge.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.

(8) For a sanitary sewer overflow, except as provided for in the Federal regulations.

§ 92.75. Transmission of NPDES forms.

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

§ 92.77. Requirement of additional data in certain cases.

If, after transmission of information to the Administrator under § 92.75 (relating to transmission of NPDES forms), the Administrator notifies the Department that any discharge which has a total volume of less than

50,000 gallons on every day of the year is not a minor discharge, the Department will require the applicant for the discharge to submit additional NPDES forms or other information requested by the Regional Administrator in the notification to the Department.

§ 92.79. Reports of violations.

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

GENERAL PERMITS

§ 92.81. General NPDES permits.

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

(1) Involve the same, or substantially similar, types of operations.

(2) Discharge the same types of wastes.

(3) Require the same effluent limitations or operating conditions, or both.

(4) Require the same or similar monitoring.

(5) Do not discharge toxic or hazardous pollutants as defined in sections 307 and 311 of the Federal Act (33 U.S.C.A. §§ 1317 and 1321) or any other substance which—because of its quantity; concentration; or physical, chemical or infectious characteristics—may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substantial present or future hazard to human health or the environment when discharged into the surface waters.

(6) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.

(7) Individually and cumulatively do not have the potential to cause significant adverse environmental impact.

(8) Do not discharge to waters classified as “special protection” under Chapter 93 (relating to water quality standards).

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

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

(1) After a waiting period following receipt of the notice of intent by the Department as specified in the general permit.

(2) Upon receipt of notification of approval of coverage under a general NPDES permit from the Department.

(d) *Department notification.* The Department will, as applicable, notify a discharger that it is or is not covered by a general permit. A discharger so notified may request an individual permit.

§ 92.82. Public notice and public hearing.

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

(1) The name, address and phone number of the agency issuing the public notice.

(2) A clear and specific description of the category of point source discharges eligible for coverage under the proposed general NPDES permit.

(3) The standards in § 92.81(a) (relating to general NPDES permits), and a brief description of the reasons for the Department's determination that the category of point source discharges is eligible for coverage under a general NPDES permit in accordance with these standards.

(4) A brief description of the terms and conditions of the proposed general NPDES permit, including applicable effluent limitations, BMPs and special conditions.

(5) A brief description of the procedures for the formulation of final determinations, and other means by which interested persons may influence or comment on those determinations. Except as provided in § 92.81(c) and (d) (relating to general NPDES permits), the procedures shall comply, at a minimum, with the public notice and hearing requirements in § 92.61(c)—(e) (relating to public notice of permit application and public hearing).

(6) The address and phone number of Commonwealth agency premises at which interested persons may obtain further information and a copy of the proposed general NPDES permit.

(7) The NOI fee for coverage under the general NPDES permit.

(b) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit.

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

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

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

(2) If the NOI is acceptable for one or more point sources, the Department, except as provided in § 92.81(c)

and (d) (relating to general permits), will formally notify the discharger of the coverage for each point source, and shall transmit a copy of the general permit to each discharger covered. Each copy of the general permit issued to a discharger shall bear an individual identification number.

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

(i) Notice in the *Pennsylvania Bulletin* of each NOI under an applicable general NPDES permit, and of each approval for coverage under a general NPDES permit.

(ii) Notice of every approval of coverage only.

(b) *Denial of coverage.* The Department will deny any NOI when one or more of the following conditions exist:

(1) The discharge, individually or in combination with other similar discharges, is or has the potential to be a contributor of pollution, as defined in the State Act, which is more appropriately controlled under an individual permit.

(2) The discharger is not, or will not be, in compliance with any of the conditions of the general permit.

(3) The applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by the Department.

(4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

(5) Categorical point source effluent limitations are promulgated by the EPA for those point sources covered by the general permit.

(6) The discharge is not, or will not, result in compliance with applicable effluent limitation or water quality standard.

(7) Other point sources at the facility require issuance of an individual NPDES permit, and issuance of both an individual and a general NPDES permit for the facility would constitute an undue administrative burden on the Department.

(8) The Department determines that the action is necessary for any other reason to ensure compliance with the Federal Act, the State Act or this title.

(9) The discharge would be to waters classified as "special protection" under Chapter 93 (relating to water quality standards).

(c) *Requiring an individual permit.* The Department may amend, revoke, suspend or terminate previously issued coverage under a general NPDES permit, and require the point source discharger to apply for and obtain an individual NPDES permit for any of the reasons in subsection (b). An interested person may petition the Department to take action under this subsection. Upon notification by the Department under this subsection that an individual NPDES permit is required for a point source, the discharger shall submit a complete NPDES application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid individual NPDES permit. Failure to submit the application within 90 days shall result in automatic termination of coverage of the applicable point sources under the general permit. Timely submission of a complete application shall result

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

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

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

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

CIVIL PENALTIES FOR VIOLATIONS OF NPDES PERMITS

§ 92.91. Applicability.

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

§ 92.92. Method of seeking civil penalty.

The Department may do either one of the following:

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

§ 92.93. Procedure for civil penalty assessments.

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

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

(c) If a timely request for hearing on the proposed assessment is received by the Department, the Department will assign a representative to hold an informal hearing regarding the assessment. The informal hearing will not be governed by requirements for formal adjudicatory hearings. The Department will establish a hearing date and notify the person requesting the hearing in accordance with the service procedures in subsection (a) and post notice of the time and place of the hearing at the Department office where the hearing is to be held at least

5 days prior to the hearing. The person requesting the hearing has the right to attend and participate in the hearing and to be represented by counsel. The Department will consider the relevant information presented and either affirm, raise, lower or vacate the proposed assessment. The Department representative's decision will constitute the Department's final assessment.

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

§ 92.94. Disbursement of funds pending resolution of appeal.

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

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

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

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.1. Definitions.

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

BMP—Best management practices—

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

(ii) The term includes:

- (A) Treatment requirements.
- (B) Operating procedures.

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

*Carcinogen—*A substance that causes an increased incidence in benign or malignant neoplasms, or a substantial decrease in the latency period between exposure and the onset of neoplasms in man or other species as evidenced by toxicological or epidemiological studies, or both.

*Class A wild trout water—*A surface water classified by the Fish and Boat Commission, based on species-specific biomass standards, which supports a population of naturally produced trout of sufficient size and abundance to support a long-term and rewarding sport fishery.

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

Clean Water Act—The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1376).

Coordinated water quality protective measures—

(i) Legally binding sound land use water quality protective measures coupled with an interest in real estate which expressly provide long-term water quality protection of a watershed corridor.

(ii) Sound land use water quality protective measures include: surface or groundwater source protection zones, enhanced stormwater management measures, wetland protection zones or other measures which provide extraordinary water quality protection.

(iii) Real estate interests include:

- (A) Fee interests.
- (B) Conservation easements.
- (C) Government owned riparian parks or natural areas.
- (D) Other interests in land which enhance water quality in a watershed corridor area.

Critical use—The most sensitive designated or existing use the criteria are designed to protect.

Daily average—The arithmetic average of the samples collected during a continuous 24-hour period.

Designated uses—Those uses specified in §§ 93.4(a) and 93.9a—93.9z for each water body or segment whether or not they are being attained.

Epilimnion—Warm upper layer of nearly uniform temperature in a stratified body of water, such as a lake or impoundment.

Exceptional Value Waters—Surface waters of high quality which satisfy § 93.4b(b) (relating to antidegradation).

Existing uses—Those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

Four-day average—The arithmetic average of the samples collected during a consecutive 4-day period.

High Quality Waters—Surface waters having quality which exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water by satisfying § 93.4b(a).

Margin of safety—The combination of uncertainty and modifying factors applied to the results of toxicity tests to compensate for incomplete characterization of the effect on the population to be protected.

Monthly average—The arithmetic average on the samples collected during a calendar month.

Natural quality—The water quality conditions that exist or that would reasonably be expected to exist in the absence of human related activity.

Nonpoint source—A pollution source which is not a point source discharge.

Nonthreshold effect—An adverse impact, including carcinogenic effects, for which no exposure greater than zero assures protection to the exposed individual.

One-hour average—The arithmetic average of the samples collected during a continuous 1-hour period.

Osmotic pressure—The pressure which, when applied to a solution, will just prevent the passage of solvent—

usually water—from an area of low solute concentration through a semipermeable membrane to an area of high solute concentration.

Outstanding National, State, regional or local resource water—A surface water for which a National or State government agency has adopted water quality protective measures in a resource management plan, or regional or local governments have adopted coordinated water quality protective measures along a watershed corridor.

Point source discharge—A pollutant source regulated under the National Pollutant Discharge Elimination System (NPDES) as defined in § 92.1 (relating to definitions).

Priority pollutants—The chemicals identified by the EPA for priority in water pollution control, under section 307(a)(1) of the Clean Water Act (33 U.S.C.A. § 1317(a)(1)).

Risk assessment—The characterization of the potential adverse effects of exposure to environmental hazards. The term includes hazard identification, dose-response assessment, exposure assessment and risk characterization.

Risk management—The process of evaluation and selection between alternative regulatory options. Risk management decisions may include consideration of risk assessment, analytical, socio-economic and political factors.

State game propagation and protection area—An area established by the Game Commission for the propagation and protection of game or wildlife wherein game or wildlife may not be hunted, pursued, disturbed, molested, killed or taken at any time except as authorized by the Game Commission.

Surface water of exceptional ecological significance—A surface water which is important, unique or sensitive ecologically, but whose water quality as measured by traditional parameters (for example, chemical, physical or biological) may not be particularly high, or whose character cannot be adequately described by these parameters. These waters include:

- (i) Thermal springs.
- (ii) Wetlands which are exceptional value wetlands under § 105.17(1) (relating to wetlands).

Surface water of exceptional recreational significance—A surface water which provides a water-based, water quality-dependent recreational opportunity (such as fishing for species with limited distribution) because there are only a limited number of naturally occurring areas and waterbodies across the State where the activity is available or feasible.

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

Threshold effect—An adverse impact that occurs in the exposed individual only after a physiological reserve is depleted. For these effects there exists a dose below which no adverse response will occur.

Thirty-day average—The arithmetic average of the samples collected during a consecutive 30-day period.

Toxic substance—A chemical or compound in sufficient quantity or concentration which is, or may become, harmful to human, animal or plant life. The term in-

cludes, but is not limited to, priority pollutants and those substances which are identified in Chapter 16 (relating to water quality toxic management strategy—statement of policy).

Water quality criteria—Numeric concentrations, levels or surface water conditions that need to be maintained or attained to protect existing and designated uses.

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

Wilderness trout stream—A surface water designated by the Fish and Boat Commission to protect and promote native trout fisheries and maintain and enhance wilderness aesthetics and ecological requirements necessary for the natural reproduction of trout.

§ 93.2. Scope.

(a) This chapter sets forth water quality standards for surface waters of this Commonwealth, including wetlands. These standards are based upon water uses which are to be protected and will be considered by the Department in its regulation of discharges.

(b) When an interstate or international agency under an interstate compact or international agreement establishes water quality standards regulations applicable to surface waters of this Commonwealth, including wetlands, more stringent than those in this title, the more stringent standards apply.

§ 93.3. Protected water uses.

Water uses which shall be protected, and upon which the development of water quality criteria shall be based, are set forth, accompanied by their identifying symbols, in Table 1:

TABLE 1

<i>Symbol</i>	<i>Protected Use</i>
Aquatic Life	
CWF	<i>Cold Water Fishes</i> —Maintenance or propagation, or both, of fish species including the family Salmonidae and additional flora and fauna which are indigenous to a cold water habitat.
WWF	<i>Warm Water Fishes</i> —Maintenance and propagation of fish species and additional flora and fauna which are indigenous to a warm water habitat.
MF	<i>Migratory Fishes</i> —Passage, maintenance and propagation of anadromous and catadromous fishes and other fishes which ascend to flowing waters to complete their life cycle.
TSF	<i>Trout Stocking</i> —Maintenance of stocked trout from February 15 to July 31 and maintenance and propagation of fish species and additional flora and fauna which are indigenous to a warm water habitat.
Water Supply	
PWS	<i>Potable Water Supply</i> —Used by the public as defined by the Federal Safe Drinking Water Act, 42 U.S.C.A. § 300F, or by other water users that require a permit from the Department under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.18), or the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641), after conventional treatment, for drinking, culinary and other domestic purposes, such as inclusion into foods, either directly or indirectly.
IWS	<i>Industrial Water Supply</i> —Use by industry for inclusion into nonfood products, processing and cooling.
LWS	<i>Livestock Water Supply</i> —Use by livestock and poultry for drinking and cleansing.
AWS	<i>Wildlife Water Supply</i> —Use for waterfowl habitat and for drinking and cleansing by wildlife.
IRS	<i>Irrigation</i> —Used to supplement precipitation for growing crops.
Recreation and Fish Consumption	
B	<i>Boating</i> —Use of the water for power boating, sail boating, canoeing and rowing for recreational purposes when surface water flow or impoundment conditions allow.
F	<i>Fishing</i> —Use of the water for the legal taking of fish. For recreation or consumption.
WC	<i>Water Contact Sports</i> —Use of the water for swimming and related activities.
E	<i>Esthetics</i> —Use of the water as an esthetic setting to recreational pursuits.
Special Protection	
HQ	<i>High Quality Waters</i>
EV	<i>Exceptional Value Waters</i>
Other	
N	<i>Navigation</i> —Use of the water for the commercial transfer and transport of persons, animals and goods.

§ 93.4. Statewide water uses.

(a) *Statewide water uses.* Except when otherwise specified in law or regulation, the uses set forth in Table 2 apply to all surface waters. These uses shall be protected in accordance with this chapter, Chapter 96 (relating to water quality standards implementation) and other applicable State and Federal laws and regulations.

TABLE 2

Symbol	Use
	Aquatic Life
WWF	Warm Water Fishes
	Water Supply
PWS	Potable Water Supply
IWS	Industrial Water Supply
LWS	Livestock Water Supply
AWS	Wildlife Water Supply
IRS	Irrigation
	Recreation
B	Boating
F	Fishing
WC	Water Contact Sports
E	Esthetics

(b) *Less restrictive uses.* Less restrictive uses than those currently designated for particular waters listed in §§ 93.9a—93.9z may be adopted when it is demonstrated that the designated use is more restrictive than the existing use, the use cannot be attained by implementing effluent limits required under sections 301(b) and 306 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311(b) and 1316) or implementing cost-effective and reasonable BMPs for nonpoint source control, and one or more of the following conditions exist:

- (1) Naturally occurring pollutant concentrations (natural quality) prevent the attainment of the use.
- (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the use.

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life uses.

(6) Controls more stringent than those required by sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread economic and social impact.

(c) *Redesignation of water.* Waters considered for redesignation may not be redesignated to less restrictive uses than the existing uses.

§ 93.5. (Reserved).

§ 93.6. General water quality criteria.

(a) Water may not contain substances attributable to point or nonpoint source discharges in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life.

(b) In addition to other substances listed within or addressed by this chapter, specific substances to be controlled include, but are not limited to, floating materials, oil, grease, scum and substances which produce color, tastes, odors, turbidity or settle to form deposits.

§ 93.7. Specific water quality criteria.

(a) Table 3 displays specific water quality criteria and associated critical uses. The criteria associated with the Statewide water uses listed in § 93.4, Table 2 apply to all surface waters, unless a specific exception is indicated in §§ 93.9a—93.9z. Other specific water quality criteria quality to surface waters as specified in §§ 93.9a—93.9z. All applicable criteria shall be applied in accordance with this chapter, Chapter 96 (relating to water quality standards implementation) and other applicable State and Federal laws and regulations.

TABLE 3

Parameter	Symbol	Criteria	Critical Use*
Alkalinity	Alk	Minimum 20 mg/l as CaCO ₃ , except where natural conditions are less. Where discharges are to waters with 20 mg/l or less alkalinity, the discharge should not further reduce the alkalinity of the receiving waters.	CWF, WWF, TSF, MF
Ammonia Nitrogen	Am	The maximum total ammonia nitrogen concentration at all times shall be the numerical value given by: un-ionized ammonia nitrogen (NH ₃ -N) × (log ⁻¹ [pK _T -pH] + 1), where: un-ionized ammonia nitrogen = 0.12 × f(T)/f(pH) f(pH) = 1 + 10 ^{1.03(7.32-pH)} f(T) = 1, T ≥ 10°C f(T) = 1 + 10 ^(9.73-pH) / (1 + 10 ^(pK_T-pH)), T < 10°C	1

Parameter	Symbol	Criteria	Critical Use*
		<p>and</p> $pK_T = \left[\frac{2730}{(T + 273.2)} \right]$, the dissociation constant for ammonia in water. <p>The average total ammonia nitrogen concentration over any 30 consecutive days shall be less than or equal to the numerical value given by:</p> <p>un-ionized ammonia nitrogen ($\text{NH}_3\text{-N}$) $\times (\log^{-1} [pK_T - \text{pH}] + 1)$, where:</p> <p>un-ionized ammonia nitrogen = $0.025 \times f(T)/f(\text{pH})$</p> <p>$f(\text{pH}) = 1$, $\text{pH} \geq 7.7$ $f(\text{pH}) = 10^{0.74(7.7 - \text{pH})}$, $\text{pH} < 7.7$ $f(T) = 1$, $T \geq 10^\circ\text{C}$ $f(T) = \frac{1 + 10^{(9.73 - \text{pH})}}{1 + 10^{(pK_T - \text{pH})}}$, $T < 10^\circ\text{C}$</p> <p>The pH and temperature used to derive the appropriate ammonia criteria shall be determined by one of the following methods:</p> <p>1) Instream measurements, representative of median pH and temperature—July through September.</p> <p>2) Estimates of median pH and temperature—July through September—based upon available data or values determined by the Department.</p> <p>For purposes of calculating effluent limitations based on this value the accepted design stream flow shall be the actual or estimated lowest 30-consecutive-day average flow that occurs once in 10 years.</p>	
Bacteria	Bac ₁	(Fecal coliforms/ 100 ml)—During the swimming season (May 1 through September 30), the maximum fecal coliform level shall be a geometric mean of 200 per 100 milliliters (ml) based on a minimum of five consecutive samples each sample collected on different days during a 30-day period. No more than 10% of the total samples taken during a 30-day period may exceed 400 per 100 ml. For the remainder of the year, the maximum fecal coliform level shall be a geometric mean of 2,000 per 100 milliliters (ml) based on a minimum of five consecutive samples collected on different days during a 30-day period.	WC
	Bac ₂	(Coliforms/100 ml)—Maximum of 5,000/100 ml as a monthly average value, no more than this number in more than 20 of the samples collected during a month, nor more than 20,000/100 ml in more than 5% of the samples.	PWS
Chloride	Ch	Maximum 250 mg/l.	PWS
Color	Col	Maximum 75 units on the platinum-cobalt scale; no other colors perceptible to the human eye.	PWS
Dissolved Oxygen	DO ₁	Minimum daily average 6.0 mg/l; minimum 5.0 mg/l. For lakes, ponds and impoundments only, minimum 5.0 mg/l at any point.	CWF, HQ-WWF, HQ-TSF
	DO ₂	Minimum daily average 5.0 mg/l; minimum 4.0 mg/l. For the epilimnion of lakes, ponds and impoundments, minimum daily average of 5.0 mg/l, minimum 4.0 mg/l.	WWF
	DO ₃	For the period February 15 to July 31 of any year, minimum daily average of 6.0 mg/l, minimum 5.0 mg/l. For the remainder of the year, minimum daily average of 5.0 mg/l, minimum 4.0 mg/l. For lakes, ponds and impoundments, the criteria apply to the epilimnion.	TSF
	DO ₄	Minimum 7.0 mg/l.	HQ-CWF
Fluoride	F	Daily average 2.0 mg/l.	PWS
Iron	Fe ₁	30-day average 1.5 mg/l as total recoverable.	CWF, WWF, TSF, MF
	Fe ₂	Maximum 0.3 mg/l as dissolved.	PWS
Manganese	Mn	Maximum 1.0 mg/l, as total recoverable.	PWS
Nitrite plus Nitrate	N	Maximum 10 mg/l as nitrogen.	PWS
Osmotic Pressure	OP	Maximum 50 milliosmoles per kilogram.	CWF, WWF, TSF, MF

<i>Parameter</i>	<i>Symbol</i>	<i>Criteria</i>	<i>Critical Use*</i>
pH	pH	From 6.0 to 9.0 inclusive.	CWF, WWF, TSF, MF
Phenolics (except § 307(a)(1) (33 U.S.C.A. § 1317(a)(1)), Priority Pollutants)	Phen	Maximum 0.005 mg/l.	PWS
Sulfate	Sul	Maximum 250 mg/l.	PWS
Temperature		Maximum temperatures in the receiving water body resulting from heated waste sources regulated under Chapters 92, 96 and other sources where temperature limits are necessary to protect designated and existing uses. Additionally, these wastes may not result in a change by more than 2°F during a 1-hour period.	See the following table.

<i>SYMBOL: CRITICAL USE: PERIOD</i>	<i>TEMP₁ CWF</i>	<i>TEMP₂ WWF TEMPERATURE °F</i>	<i>TEMP₃ TSF</i>
January 1-31	38	40	40
February 1-29	38	40	40
March 1-31	42	46	46
April 1-15	48	52	52
April 16-30	52	58	58
May 1-15	54	64	64
May 16-31	58	72	68
June 1-15	60	80	70
June 16-30	64	84	72
July 1-31	66	87	74
August 1-15	66	87	80
August 16-30	66	87	87
September 1-15	64	84	84
September 16-30	60	78	78
October 1-15	54	72	72
October 16-31	50	66	66
November 1-15	46	58	58
November 16-30	42	50	50
December 1-31	40	42	42

<i>Parameter</i>	<i>Symbol</i>	<i>Criteria</i>	<i>Critical Use</i>
Total Dissolved Solids	TDS	500 mg/l as a monthly average value; maximum 750 mg/l.	PWS
Total Residual Chlorine	TRC	Four-day average 0.011 mg/l; 1-hour average 0.019 mg/l.	CWF, WWF, TSF, MF

*Critical use: The most sensitive designated or existing use the criteria are designed to protect.

(b) Table 4 contains specific water quality criteria that apply to the water uses to be protected. When the symbols listed in Table 4 appear in the Water Uses Protected column in § 93.9, they have the meaning listed in the second column of Table 4. Exceptions to these standardized groupings will be indicated on a stream-by-stream or segment-by-segment basis by the words "Add" or "Delete" followed by the appropriate symbols described elsewhere in this chapter.

TABLE 4

<i>Symbol</i>	<i>Water Uses Protected</i>	<i>Specific Criteria</i>
WWF	Statewide list	DO ₂ and Temp ₂
CWF	Statewide list plus Cold Water Fish	DO ₁ and Temp ₁
TSF	Statewide list plus Trout Stocking	DO ₃ and Temp ₃
HQ-WWF	Statewide list plus High Quality Waters	DO ₁ and Temp ₂
HQ-CWF	Statewide list plus High Quality Waters and Cold Water Fish	DO ₄ and Temp ₁
HQ-TSF	Statewide list plus High Quality Waters and Trout Stocking	DO ₁ and Temp ₃
EV	Statewide list plus Exceptional Value Waters	Existing quality

(c) The list of specific water quality criteria does not include all possible substances that could cause pollution. For substances not listed, the general criterion that these substances may not be inimical or injurious to the designated water uses applies. The Department will develop a criterion for any substance not listed in Table 3 that is determined to be inimical or injurious to existing or designated water uses using the best available scientific information, as determined by the Department.

(d) If the Department determines that natural quality of a surface water segment is of lower quality than the applicable aquatic life criteria in Table 3, the natural quality shall constitute the aquatic life criteria for that segment. All draft natural quality determinations shall be published in the *Pennsylvania Bulletin* and be subject to a minimum 30-day comment period. The Department will maintain a publicly available list of surface waters and parameters where this subsection applies, and shall, from time to time, submit appropriate amendments to §§ 93.9a—93.9z.

§ 93.8. Development of site-specific water quality criteria for the protection of aquatic life.

(a) The Department will consider a request for site-specific criteria for protection of aquatic life, human health or wildlife when a person demonstrates that there exist site-specific biological or chemical conditions of receiving waters which differ from conditions upon which the water quality criteria were based. Site-specific criteria may be developed for use only in place of current Statewide or regional (such as the Great Lakes systems) criteria. The request for site-specific criteria shall include the results of scientific studies for the purpose of:

(1) Defining the areal boundaries for application of the site-specific criteria which will include the potentially affected wastewater dischargers identified by the Department, through various means, including, but not limited to, the total maximum daily load (TMDL) process described in Chapter 96 (relating to water quality standards implementation) or biological assessments.

(2) Developing site-specific criteria which protect its existing use and designated use.

(b) Scientific studies shall be performed in accordance with the procedures and guidance in the Water Quality Standards Handbook (EPA 1994), as amended and upgraded, guidance provided by the Department or other scientifically defensible methodologies approved by the Department.

(c) Prior to conducting studies specified in subsections (a) and (b), a proposed plan of study shall be submitted to and approved by the Department.

(d) Signed copies of all reports including toxicity test data shall be submitted to the Department within 30 days of completion of the tests.

(e) If as a result of its review of the report submitted, the Department determines that a site-specific criterion is appropriate, the Department will, for site-specific changes to criteria in § 93.7 (relating to specific water quality criteria), prepare a recommendation to the EQB in the form of proposed rulemaking, incorporating that criterion for the water body segment. The site-specific changes to the criteria will become effective for the water body segment following adoption by the EQB as final rulemaking and publication in the *Pennsylvania Bulletin*.

(f) A person challenging a Department action under this section shall have the burden of proof to demonstrate that the Department's action does not meet the requirements of this section.

§ 93.8a. Toxic substances.

(a) The waters of this Commonwealth may not contain toxic substances attributable to point or nonpoint source waste discharges in concentrations or amounts that are inimical to the water uses to be protected.

(b) Water quality criteria for toxic management substances shall be established under Chapter 16 (relating to water quality toxics management strategy—statement of policy) wherein the criteria and analytical procedures will also be listed. Chapter 16 along with changes made to it is hereby specifically incorporated by reference.

(c) Water quality criteria for toxic substances which exhibit threshold effects will be established by application of margins of safety to the results of toxicity testing to prevent the occurrence of a threshold effect.

(d) Nonthreshold carcinogenic effects of toxic substances, will be controlled to a risk management level of one excess case of cancer in a population of 1 million (1×10^{-6}) over a 70-year lifetime. Other nonthreshold effects of toxic substances will be controlled at a risk management level as determined by the Department.

(e) Water quality criteria for toxics shall be applied in accordance with Chapter 96 (relating to water quality standards implementation) and any other applicable State and Federal laws and regulations. For carcinogens, the design conditions shall result in a lifetime—70 years—average exposure corresponding to the risk management level specified in subsection (d).

(f) The Department will consider both the acute and chronic toxic impacts to aquatic life and human health.

(g) The Department may consider synergistic, antagonistic and additive toxic impacts.

(h) At intervals not exceeding 1 year, the Department will publish a new or revised water quality criteria for toxic substances, and revised procedures for criteria development in the *Pennsylvania Bulletin*.

(i) A person challenging criteria established by the Department under this section shall have the burden of proof to demonstrate that the criteria does not meet the requirements of this section. In addition, a person who proposes an alternative site-specific criterion shall have the burden of proof to demonstrate that the site specific criterion meets the requirements of this section.

(j) The requirements for discharges to and antidegradation requirements for the Great Lakes System are as follows.

(1) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

BAF—Bioaccumulation Factor—The ratio in liters per kilogram of a substance's concentration in tissues of an aquatic organism to its concentration in the ambient water, when both the organism and its food are exposed and the ratio does not change substantially over time.

BCC—Bioaccumulative Chemical of Concern—A chemical that has the potential to cause adverse effects which, upon entering the surface waters, by itself or its toxic transformation product, accumulates in aquatic organisms by a human health BAF greater than 1000, after considering metabolism and other physiochemical properties that might enhance or inhibit bioaccumulation, under the methodology in 40 CFR Part 132 Appendix B (relating to Great Lakes Water Quality Initiative). Current BCCs

are listed in 40 CFR 132.6, Table 6, Subpart A (relating to pollutants of initial focus in the Great Lakes Water Quality Initiative).

Great Lakes System—The streams, rivers, lakes and other bodies of surface water within the drainage basin of the Great Lakes in this Commonwealth.

Open Waters of the Great Lakes—The waters within the Great Lakes in this Commonwealth lakeward from a line drawn across the mouth of the tributaries to the lakes, including the waters enclosed by constructed breakwaters, but not including the connecting channels.

(2) *Total Maximum Daily Loads (TMDLs)*. TMDLs for Open Waters of the Great Lakes shall be derived following the procedures in 40 CFR Part 132, Appendix F, Procedure 3, Subpart D (relating to Great Lakes Water Quality Initiative implementation procedures), including all other subparts referenced in Subpart D, except Subpart C.

(3) Statewide antidegradation requirements in Chapters 93 and 95 (relating to water quality standards; and wastewater treatment requirements) and in the Federal regulation in 40 CFR 131.32(a) (relating to Pennsylvania) as applicable, apply to all surface waters of the Great Lakes System.

(4) If, for any BCC, the quality of the surface water exceeds the levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the waters, that quality shall be maintained and protected, unless the Department finds that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the surface water is located.

§ 93.9. Designated water uses and water quality criteria.

(a) The tables in §§ 93.9a—93.9z display designated water uses and water quality criteria in addition to the water uses and criteria specified in Tables 2 and 3. Designated uses shall be protected in accordance with Chapters 95 and 96 (relating to wastewater treatment requirements; and water quality standards implementation) and any other applicable State and Federal laws and regulations. The tables also indicate specific exceptions to Tables 2 and 3 on a stream-by-stream or segment-by-segment basis by the words “add” or “delete” followed by the appropriate symbols described elsewhere in this chapter. The county column in §§ 93.9a—93.9z

indicates the county in which the mouth of the stream is located. Abbreviations used in the “Zone” column are as follows:

- T — Township Road
- LR — Pennsylvania Legislative Route
- SR — Pennsylvania State Route
- FAS — Federal Aid Secondary Highway
- US — United States Federal Route
- I — Interstate Highway
- RM — River Mile; river miles are used to indicate the distance from a point on the waterbody to its mouth and are based on the Department’s River Mile Index

(b) When appropriate, “Exceptions to Specific Criteria” provide reference to the Delaware River Basin Commission (DRBC) water quality regulations, Orsanco (Ohio River Valley Water Sanitation Commission) pollution control standards and the Great Lakes Water Quality Agreement (GLWQA) which specify the criteria that apply. The applicable criteria can be obtained from the following:

Delaware River Basin Commission
P. O. Box 7360
West Trenton, New Jersey 08628
(609) 883-9500

Ohio River Valley Water Sanitation Commission
5735 Kellogg Ave.
Cincinnati, Ohio 45228
(513) 231-7719

GLWQA: International Joint Commission
Great Lakes Regional Office
100 Ouellette Ave., 8th Floor
Windsor Ontario, Canada N9A 6T3
(519) 257-6700

(c) With respect to hydrological order, the numbers appearing on the left-hand column of the drainage lists represent stream entries to aid in identifying hydrological order: 1 identifies the most downstream hydrologic order; 2 is tributary to 1; 3 is tributary to 2, and so on.

(d) An overview appears as follows:

* * * * *

§ 93.9a. Drainage List A.

Delaware River Basin in Pennsylvania								
<i>Delaware River</i>								
<i>Stream</i>	<i>Zone</i>	<i>County</i>					<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		*	*	*	*	*		
2-West Branch Delaware River	Main Stem, PA-NY State Border to Confluence with East Branch		Wayne				CWF, MF	See DRBC regulations—Water Quality Zone 1A
		*	*	*	*	*		

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1-Delaware River	Main Stem, Confluence of East and West Branches to PA 652 Bridge (Narrowsburg, NY)	Wayne	<i>Water Uses</i> CWF, MF	<i>Exceptions</i> See DRBC regulations—Water Quality Zone 1A
		* * * * *		
1-Delaware River	Main Stem, PA 652 Bridge to Lackawaxen River	Pike	WWF, MF	See DRBC regulations—Water Quality Zone 1B
		* * * * *		

§ 93.9c. Drainage List C.

Delaware River Basin in Pennsylvania
Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Delaware River	Main Stem, Lackawaxen River to Tocks Island	Pike	WWF, MF	See DRBC regulations—Water Quality Zone 1B/1C
		* * * * *		
1-Delaware River	Main Stem, Tocks Island to Lehigh River	Northampton	WWF, MF	See DRBC regulations—Water Quality Zone 1D
		* * * * *		

§ 93.9e. Drainage List E.

Delaware River Basin in Pennsylvania
Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Delaware River	Main Stem, Lehigh River to Head of Tide	Bucks	WWF; MF	See DRBC regulations—Water Quality Zone 1E
		* * * * *		
1-Delaware Estuary	Tidal Portions of Basin, Head of Tide to Burlington-Bristol Bridge	Bucks	WWF, MF	See DRBC regulations—Water Quality Zone 2
		* * * * *		

2-Neshaminy Creek

The following criteria are specific to waters in the Neshaminy Creek Basin where indicated, based on special studies.

<i>Parameter</i>	<i>Symbol</i>	<i>Criteria</i>	<i>Critical Use</i>
Turbidity	Tur ₁	Not more than 100 NTU.	PWS, WWF, MF
	Tur ₂	For the period May 15—September 15 of any year, not more than 40 NTU; for the period September 16—May 14 of any year, not more than 100 NTU.	PWS, CWF, WWF, MF

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<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3-West Branch Neshaminy Creek	Basin, Source to Confluence with North Branch	Bucks	WWF, MF	Add Tur ₂
3-North Branch Neshaminy Creek	Basin, Source to Tailwaters of Lake Galena	Bucks	WWF	Add Tur ₂
3-North Branch Neshaminy Creek	Basin, Lake Galena	Bucks	WWF	Add Tur ₂
3-North Branch Neshaminy Creek	Basin, Lake Galena Dam to Confluence with West Branch	Bucks	TSF, MF	Add Tur ₂
2-Neshaminy Creek	Main Stem, Confluence of West and North Branches to PA 614 Dam	Bucks	TSF, MF	Add Tur ₂
3-Unnamed Tributaries to Neshaminy Creek	Basins, Confluence of West and North Branches of PA 614 Dam	Bucks	TSF, MF	Add Tur ₂
3-Cooks Run	Basin	Bucks	WWF, MF	Add Tur ₂
3-Mill Creek	Basin	Bucks	TSF, MF	Add Tur ₂
3-Country Club Creek	Basin	Bucks	WWF, MF	Add Tur ₂
2-Neshaminy Creek	Non-Tidal Portion of Main Stem, PA 614 Dam to Mouth	Bucks	WWF, MF	Add Tur ₁
3-Unnamed Tributaries to Neshaminy Creek	Non-Tidal Portions of Basins, PA 614 Dam to Mouth	Bucks	WWF, MF	Add Tur ₁
3-Little Neshaminy Creek	Basin	Bucks	WWF, MF	Add Tur ₁
3-Mill Creek	Basin, Source to Watson Creek	Bucks	CWF, MF	Add Tur ₂
4-Watson Creek	Basin	Bucks	CWF, MF	Add Tur ₂
3-Mill Creek	Basin, Watson Creek to Mouth	Bucks	WWF, MF	Add Tur ₃
3-Core Creek	Basin, Source PA Rte 620 Dam	Bucks	CWF, MF	Add Tur ₂
3-Core Creek	Basin, PA Rte 620 Dam to Mouth	Bucks	WWF, MF	Add Tur ₁
3-Mill Creek	Basin	Bucks	WWF, MF	Add Tur ₁
1-Delaware Estuary	Tidal Portions of Basin, Burlington-Bristol Bridge to RM 108.4	Philadelphia	WWF, MF	See DRBC regulations—Water Quality Zone 2
	* * * * *			
1-Delaware Estuary	Tidal Portions of Basin, RM 108.4 to Big Timber Creek (NJ)	Philadelphia	WWF (Maintenance Only); MF (Passage Only); Delete WC	See DRBC regulations—Water Quality Zone 3
	* * * * *			

RULES AND REGULATIONS

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Delaware Estuary	Tidal Portions of Basin, Big Timber Creek (NJ) to Philadelphia-Delaware County Border	Philadelphia-Delaware	WWF (Maintenance Only); MF (Passage Only); <i>Delete</i> WC, PWS, LWS and IRS	See DRBC regulations—Water Quality Zone 4
		* * * * *		

§ 93.9g. Drainage List G.

Delaware River Basin in Pennsylvania
Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Delaware Estuary	Tidal Portions of Basin, Philadelphia-Delaware County Border to PA-DE State Border	Delaware	WWF (Maintenance Only); MF (Passage Only); <i>Delete</i> PWS, LWS, IRS. <i>Delete</i> WC above RM 81.8	See DRBC regulations—Water Quality Zone 4
		* * * * *		
3-Brandywine Creek	Main Stem, Confluence of East and West Branches to PA-DE State Border	Delaware	WWF, MF	None
		* * * * *		

§ 93.9i. Drainage List I.

Susquehanna River Basin in Pennsylvania
Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Susquehanna River	Main Stem, PA-NY State Border near Milltown to Lackawanna River	Luzerne	WWF	None
		* * * * *		

§ 93.9l. Drainage List L.

Susquehanna River Basin in Pennsylvania
West Branch Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3-Bald Eagle Creek	Main Stem, Nittany Creek to Mouth	Centre	WWF	None
		* * * * *		
3-Chatham Run	Basin, Chatham Water Co. Intake to Mouth	Clinton	CWF	None
		* * * * *		

§ 93.9m. Drainage List M.

Susquehanna River Basin in Pennsylvania
Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Susquehanna River	Main Stem, West Branch Susquehanna River to Juniata River	Perry	WWF	None
		* * * * *		

§ 93.9n. Drainage List N.

Susquehanna River Basin in Pennsylvania
Juniata River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
4-Halter Creek	Basin	Blair	WWF	None
3-Frankstown Branch Juniata River	Main Stem, Halter Creek to Piney Creek	Blair	WWF	None
		* * * * *		
3-Frankstown Branch Juniata River	Main Stem, Piney Creek to US 22 Bridge	Huntingdon	TSF	None
		* * * * *		
3-Frankstown Branch Juniata River	Main Stem, US 22 Bridge to Confluence with Little Juniata River	Huntingdon	WWF	None
		* * * * *		
3-Little Juniata River	Main Stem, South Bald Eagle Creek to Spruce Creek	Huntingdon	TSF	None
		* * * * *		
3-Little Juniata River	Main Stem, Spruce Creek to Confluence with Frankstown Branch	Huntingdon	CWF	None
		* * * * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Susquehanna River	Main Stem, Juniata River to PA-MD State Border	York Lancaster	WWF	None
		* * * * *		
2-Yellow Breeches Creek	Main Stem, LR 21012 to Mouth	Cumberland York Dauphin	CWF	Delete DO ₁ Add DO ₄
		* * * * *		
2-Codorus Creek	Main Stem, Oil Creek to Mouth	York	WWF	None
		* * * * *		

§ 93.9p. Drainage List P.

Ohio River Basin in Pennsylvania
Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Ohio River				
2-Allegheny River	Main Stem, Source to PA-NY State Border	McKean	CWF	None
		* * * * *		
3-Knapp Creek	Main Stem	McKean	CWF	None
		* * * * *		
3-Indian Creek	Main Stem, PA-NY State Border to Mouth	McKean	CWF	None
		* * * * *		
3-Tunungwant Creek	Main Stem, Confluence of East and West Branches to PA-NY State Border	McKean	WWF	None
		* * * * *		
3-Oswayo Creek	Main Stem, Source to Honeoye Creek	McKean	CWF	None
		* * * * *		
4-Honeoye Creek	Main Stem, PA-NY State Border to Mouth	Potter	CWF	None
		* * * * *		
3-Oswayo Creek	Main Stem, Honeoye Creek to PA-NY State Border	McKean	WWF	None
		* * * * *		

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3-Tunungwant Creek	Main Stem, Confluence of East and West Branches to PA-NY State Border	McKean	WWF	None
		* * * * *		

§ 93.9q. Drainage List Q.

Ohio River Basin in Pennsylvania
Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
2-Allegheny River	Main Stem, PA-NY State Border to Clarion River	Clarion	WWF	None
		* * * * *		
3-Brokenstraw Creek	Main Stem, PA-NY State Border to Mouth	Warren	CWF	None
		* * * * *		
3-Oil Creek	Main Stem, Source to Cherrytree Run	Venango	CWF	None
4-Unnamed Tributaries to Oil Creek	Basins, Source to Cherrytree Run	Crawford-Venango	CWF	None
4-West Shreve Run	Basin	Crawford	CWF	None
4-East Shreve Run	Basin	Crawford	CWF	None
4-Mosey Run	Basin	Crawford	CWF	None
4-Bloomfield Run	Basin	Crawford	CWF	None
4-East Branch Oil Creek	Basin	Crawford	CWF	None
4-Marsh Run	Basin	Crawford	CWF	None
4-Thompson Creek	Basin	Crawford	CWF	None
4-Church Run	Basin	Crawford	CWF	None
4-Pine Creek	Main Stem	Crawford	CWF	None
5-Unnamed Tributaries to Pine Creek	Basins	Warren-Crawford	CWF	None
5-Campbell Creek	Basin	Warren	CWF	None
5-Dunham Run	Basin	Warren	CWF	None
5-Caldwell Creek	Basin	Crawford	HQ-CWF	None
5-Henderson Run	Basin	Crawford	CWF	None
4-Benninghof Run	Basin	Venango	CWF	None
4-Cherrytree Run	Basin	Venango	CWF	None
3-Oil Creek	Main Stem, Cherrytree Run to Mouth	Venango	WWF	None
4-Unnamed Tributaries to Oil Creek	Basins, Cherrytree Run to Mouth	Venango	CWF	None

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<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4-Cherry Run	Basin, Source to Rouseville Corporate Boundary	Venango	HQ-CWF	None
4-Cherry Run	Basin, Rouseville Corporate Boundary to Mouth	Venango	CWF	None
4-Cornplanter Run	Basin	Venango	CWF	None
		* * * * *		
3-French Creek	Main Stem, PA-NY State Border to Mouth	Venango	WWF	None
		* * * * *		

§ 93.9r. Drainage List R.

Ohio River Basin in Pennsylvania
Clarion River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Ohio River				
2-Allegheny River				
3-Clarion River				
4-East Branch Clarion River	Basin, Source to Confluence with West Branch	Elk	HQ-CWF	None
4-West Branch Clarion River	Main Stem, Source to Confluence with East Branch	Elk	CWF	None
5-Unnamed Tributaries to West Branch Clarion River	Basins, Source to Confluence with East Branch	McKean-Elk	CWF	None
5-Windfall Run	Basin	McKean	CWF	None
5-Sicily Run	Basin	McKean	CWF	None
5-Buck Run	Basin	McKean	CWF	None
5-Rocky Run	Basin	Elk	CWF	None
5-Nearing Run	Basin	Elk	CWF	None
5-Wilson Run	Basin	Elk	CWF	None
5-Oil Creek	Basin	Elk	CWF	None
5-Wolf Run	Basin	Elk	HQ-CWF	None
5-Meffert Creek	Basin	Elk	CWF	None
5-Silver Creek	Basin	Elk	HQ-CWF	None
3-Clarion River	Main Stem, Confluence of East and West Branches to Mouth	Clarion	CWF	None
4-Unnamed Tributaries to Clarion River	Basins, Confluence of East and West Branches to Mouth	Elk- Forest-Jefferson-Clarion	CWF	None
4-Johnson Run	Basin	Elk	CWF	None
4-Powers Run	Basin	Elk	CWF	None
4-Riley Run	Basin	Elk	WWF	None
4-Little Mill Creek	Basin	Elk	HQ-CWF	None

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<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4-Mason Creek	Basin	Elk	CWF	None
4-Island Run	Basin	Elk	CWF	None
4-Big Mill Creek	Basin	Elk	HQ-CWF	None
4-Connerville Run	Basin	Elk	CWF	None
4-Dog Hollow Run	Basin	Elk	CWF	None
4-Gillis Run	Basin	Elk	CWF	None
4-Little Toby Creek	Main Stem	Elk	CWF	None
5-Unnamed Tributaries to Little Toby Creek	Basins	Elk-Jefferson	CWF	None
5-Limestone Run	Basin	Elk	CWF	None
5-Kyler Run	Basin	Elk	CWF	None
5-McCauley Run	Basin	Elk	CWF	None
5-Sawmill Run	Main Stem	Elk	CWF	None
6-Unnamed Tributaries to Sawmill Run	Basins	Elk	CWF	None
6-Lost Run	Basin, Source to Fox Township Municipal Authority Dam	Elk	HQ-CWF	None
6-Lost Run	Basin, Fox Township Municipal Authority Dam to Mouth	Elk	CWF	None
5-Brandy Camp Creek	Basin	Elk	CWF	None
5-Johnson Run	Basin	Elk	CWF	None
5-Bear Run	Basin	Elk	CWF	None
5-Oyster Run	Basin	Elk	CWF	None
5-Mead Run	Basin	Elk	CWF	None
5-Boggy Run	Basin	Elk	HQ-CWF	None
5-Whetstone Branch	Basin, Source to Brockway Municipal Authority No. 1 Dam	Elk	HQ-CWF	None
5-Whetstone Branch	Basin, Brockway Municipal Authority No. 1 Dam to Mouth	Elk	CWF	None
5-Walburn Run	Basin	Jefferson	CWF	None
5-Rattlesnake Creek	Basin, Source to Brockway Municipal Authority Dam	Jefferson	HQ-CWF	None
5-Rattlesnake Creek	Basin, Brockway Municipal Authority Dam to Mouth	Jefferson	CWF	None
5-Baghdad Run	Basin	Jefferson	CWF	None
5-Jenkins Run	Basin	Jefferson	CWF	None
5-Little Vineyard Run	Basin	Jefferson	CWF	None
5-Vineyard Run	Basin	Jefferson	CWF	None
5-Coward Run	Basin	Elk	CWF	None
5-Laurel Run	Basin	Elk	CWF	None
5-Bearmouth Run	Basin	Elk	CWF	None
4-Bear Creek	Basin	Elk	HQ-CWF	None

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<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4-Mahood Run	Basin	Elk	CWF	None
4-Beech Bottom Run	Basin	Elk	CWF	None
4-Lake City Run	Basin	Elk	CWF	None
4-Cole Run	Main Stem	Elk	CWF	None
5-Unnamed Tributaries to Cole Run	Basins	Elk	CWF	None
5-Crow Run	Basin	Elk	HQ-CWF	None
4-Irwin Run	Basin	Elk	CWF	None
4-Spring Creek	Basin	Elk	HQ-CWF	None
4-Maxwell Run	Basin	Elk	HQ-CWF	None
4-Elliott Run	Basin	Elk	CWF	None
4-Daugherty Run	Basin	Jefferson	CWF	None
4-Raught Run	Basin	Elk	CWF	None
4-Painter Run	Basin	Elk	CWF	None
4-Church Run	Basin	Elk	CWF	None
4-Callen Run	Basin	Jefferson	HQ-CWF	None
4-Cline Run	Basin	Elk	CWF	None
4-Wyncoop Run	Basin	Elk	HQ-CWF	None
4-Leeper Run	Basin	Elk	CWF	None
4-Pine Run	Basin	Elk	CWF	None
4-Mill Stone Creek	Basin	Elk	HQ-CWF	None
4-Shippen Run	Basin	Forest	CWF	None
4-Clear Creek	Basin	Jefferson	HQ-CWF	None
4-Tadler Run	Basin	Jefferson	CWF	None
4-Cherry Run	Basin	Forest	HQ-CWF	None
4-Maple Creek	Basin	Forest	HQ-CWF	None
4-Coleman Run	Basin	Forest	HQ-CWF	None
4-Troutman Run	Basin	Forest	HQ-CWF	None
4-Henry Run	Basin	Forest	CWF	None
4-Toms Run	Basin	Forest	CWF	None
4-Cather Run	Basin	Clarion	HQ-CWF	None
4-Maxwell Run	Basin	Clarion	HQ-CWF	None
4-Blyson Run	Basin	Clarion	EV	None
4-Mill Creek	Main Stem, Source to Little Mill Creek	Clarion	HQ-CWF	None
5-Unnamed Tributaries to Mill Creek	Basins, Source to Little Mill Creek	Clarion-Jefferson	HQ-CWF	None
4-Mill Creek				
5-Parks Run	Basin	Jefferson	HQ-CWF	None
5-Martin Run	Basin	Jefferson	HQ-CWF	None
5-Rankin Run	Basin	Jefferson	HQ-CWF	None
5-Updike Run	Basin	Jefferson	HQ-CWF	None
5-McCanna Run (Pendleton Run)	Basin	Clarion	EV	None
5-Little Mill Creek	Basin	Clarion	CWF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4-Mill Creek	Main Stem, Little Mill Creek to Mouth	Clarion	CWF	None
5-Unnamed Tributaries to Mill Creek	Basins, Little Mill Creek to Mouth	Clarion	HQ-CWF	None
5-Douglass Run	Basin	Clarion	CWF	None
5-Woods Run	Basin	Clarion	HQ-CWF	None
5-Stroup Run	Basin	Clarion	HQ-CWF	None
5-Trap Run	Basin	Clarion	HQ-CWF	None
5-Whites Run	Basin	Clarion	CWF	None
4-Reeds Run	Basin	Clarion	CWF	None
4-Toby Creek	Basin	Clarion	CWF	None
4-Trout Run	Basin	Clarion	CWF	None
4-Courtleys Run	Basin	Clarion	CWF	None
4-Piney Creek	Basin	Clarion	CWF	None
4-Deer Creek	Basin	Clarion	CWF	None
4-Canoe Creek	Basin	Clarion	HQ-CWF	None
4-Beaver Creek	Basin	Clarion	HQ-CWF	None
4-Licking Creek	Basin	Clarion	CWF	None
4-Turkey Creek	Basin	Clarion	HQ-CWF	None

§ 93.9u. Drainage List U.

**Ohio River Basin in Pennsylvania
Allegheny River**

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Ohio River				
2-Allegheny River	Main Stem, Kiskiminetas River to Confluence with Monongahela River	Allegheny	WWF; Add N	None
		* * * *		
3-Unnamed Tributaries to Allegheny River	Basins, Plum Creek to Confluence with Monongahela River	Allegheny	WWF; Delete PWS	None
3-Powers Run	Basin	Allegheny	WWF; Delete PWS	None
3-Indian Creek	Basin	Allegheny	WWF; Delete PWS	None
3-Quigley Creek	Basin	Allegheny	WWF; Delete PWS	None
3-Sandy Creek	Basin	Allegheny	WWF; Delete PWS	None
3-Squaw Run	Basin	Allegheny	HQ-WWF; Delete PWS	None
3-Shades Run	Basin	Allegheny	WWF; Delete PWS	None
3-Guyasuta Run	Basin, Source to PA 28	Allegheny	HQ-WWF; Delete PWS	None
3-Guyasuta Run	Basin, PA 28 to Mouth	Allegheny	WWF; Delete PWS	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3-Pine Creek	Basin, Source to North Park Lake Dam	Allegheny	CWF	None
3-Pine Creek	Basin, North Park Lake Dam to Mouth	Allegheny	TSF	None
3-Girtys Run	Basin	Allegheny	WWF; <i>Delete PWS</i>	None

§ 93.9v. Drainage List V.

Ohio River Basin in Pennsylvania
Monongahela River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Ohio River				
2-Monongahela River (WV)				
3-Unnamed Tributaries to Monongahela River	Basins (all sections in PA), Source to PA-WV State Border	Greene-Fayette	WWF	None
2-Monongahela River	Main Stem, PA-WV State Border to Confluence with Allegheny River	Allegheny	WWF; <i>Add N</i>	None
	* * * * *			
3-Unnamed Tributaries to Monongahela River	Basins, Youghiogheny River to Mouth	Allegheny	WWF; <i>Delete PWS</i>	None
3-Crooked Run	Basin	Allegheny	WWF; <i>Delete PWS</i>	None
3-Thompson Run	Basin	Allegheny	WWF; <i>Delete PWS</i>	None
3-Turtle Creek	Main Stem, Source to Brush Creek	Allegheny	TSF; <i>Delete PWS</i>	None
4-Unnamed Tributaries to Turtle Creek	Basins, Source to Brush Creek	Westmoreland-Allegheny	TSF; <i>Delete PWS</i>	None
4-Steels Run	Basin	Westmoreland	HQ-CWF <i>Delete PWS</i>	None
4-Haymakers Run	Basin	Westmoreland	HQ-CWF <i>Delete PWS</i>	None
4-Abers Creek	Basin	Allegheny	TSF; <i>Delete PWS</i>	None
4-Lyons Run	Basin	Westmoreland	TSF; <i>Delete PWS</i>	None
4-Simpson Run	Basin	Allegheny	TSF; <i>Delete PWS</i>	None
4-Brush Creek	Basin	Allegheny	TSF; <i>Delete PWS</i>	None
3-Turtle Creek	Main Stem, Brush Creek to Mouth	Allegheny	WWF; <i>Delete PWS</i>	None
4-Unnamed Tributaries to Turtle Creek	Basins, Brush Creek to Mouth	Allegheny	WWF; <i>Delete PWS</i>	None
4-Thompson Run	Basin	Allegheny	WWF; <i>Delete PWS</i>	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3-Homestead Run	Basin	Allegheny	WWF; Delete PWS	None
3-Ninemile Run	Basin	Allegheny	TSF; Delete PWS	None
3-West Run	Basin	Allegheny	WWF; Delete PWS	None
3-Streets Run	Basin	Allegheny	WWF; Delete PWS	None

§ 93.9w. Drainage List W.

Ohio River Basin in Pennsylvania
Ohio River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Ohio River	Main Stem, Confluence of Allegheny and Monongahela Rivers to PA-OH State Border	Beaver	WWF; Add N	See Orsanco Pollution Control Standards
		* * * * *		
3-Mahoning River	Main Stem, PA-OH State Border to Confluence with Shenango River	Lawrence	WWF	None
		* * * * *		
3-Shenango River	Main Stem (all sections in PA), Pymatuning Reservoir	Crawford	WWF	None
		* * * * *		
3-Shenango River	Main Stem, Pymatuning Reservoir Dam to Shenango Reservoir Dam	Mercer	WWF	None
		* * * * *		
3-Shenango River	Main Stem, Shenango Reservoir Dam to Point 1.0 River Mile Downstream	Mercer	TSF	None
		* * * * *		
4-Unnamed Tributaries to Shenango River	Basins, Shenango Reservoir Dam to Point 1.0 River Mile Downstream	Mercer	CWF	None
		* * * * *		
3-Shenango River	Main Stem (all sections in PA), 1.0 River Mile Downstream of Shenango Reservoir Dam to Confluence with Mahoning River	Lawrence	WWF	None
		* * * * *		

RULES AND REGULATIONS

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
2-Beaver River	Main Stem, Confluence of Mahoning and Shenango Rivers to Mouth	Beaver	WWF, Add N	None
		* * * * *		

§ 93.9x. Drainage List X.

Lake Erie

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1-Lake Erie	All sections of lake in PA except Outer Erie Harbor and Presque Isle Bay	Erie	CWF	Delete Fe, pH1, DO1 and Bac1 See GLWQA
1-Lake Erie (Outer Erie Harbor and Presque Isle Bay)	Portion of lake bordered by Presque Isle on west, longitude 80°10'18" on north, except harbor area and central channel dredged and maintained by United States Army Corps of Engineers.	Erie	WWF	Delete pH Add pH between 7 and 9
1-Lake Erie (Outer Erie Harbor and Presque Isle Bay)	Harbor area and central channel dredged and maintained by United States Army Corps of Engineers	Erie	WWF, Delete WC	Delete pH and Bac1 Add pH between 7 and 9, Bac2
		* * * * *		

§ 93.9y. Drainage List Y.

Lake Ontario Basin in Pennsylvania

Genesee River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		

§ 93.9z. Drainage List Z.

Potomac River Basin in Pennsylvania

Potomac River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
3-East Branch Antietam Creek	Main Stem, Vineyard Run to Confluence with West Branch	Franklin	CWF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4-Unnamed Tributaries to East Branch Antietam Creek	Basins (all sections in PA) Vineyard Run to Confluence with West Branch	Franklin	CWF	None
4-Deer Lick Run	Basin	Franklin	CWF	None
4-Biesecker Run	Basin	Franklin	CWF	None
4-Red Run	Main Stem	Franklin	CWF	None
5-Unnamed Tributaries to Red Run	Basins (all sections in PA)	Franklin	CWF	None
5-Devils Run	Basin	Franklin	CWF	None
5-Mackey Run	Basin	Franklin	CWF	None
5-Falls Creek	Basin (all sections in PA)	Franklin	WWF	None
3-West Branch Antietam Creek	Basin, Source to Confluence with East Branch	Franklin	CWF	None
2-Antietam Creek	Basin, Confluence of East and West Branches to PA-MD State Border	Franklin	WWF	None
2-Antietam Creek (MD)				
3-Unnamed Tributaries to Antietam Creek	Basins (all sections in PA), PA-MD State Border to Mouth	Franklin	WWF	None

* * * * *

CHAPTER 95. WASTEWATER TREATMENT REQUIREMENTS

§ 95.1. (Reserved).

§ 95.2. Quality standards and oil-bearing wastewaters.

Industrial waste shall meet the following quality standards:

(1) There may be no discharge of wastes which are acid.

(2) Wastes shall have a pH of not less than 6 and not greater than 9, except where:

(i) The wastes are discharged to an acid stream, in which case the pH may be greater than 9.

(ii) The discharger affirmatively demonstrates, in writing, to the Department that biological respiration in the wastewater treatment system will cause the discharge to exceed the limits in this paragraph and that exceeding these limits will not result in a violation of applicable water quality standards or of the applicable treatment requirements and effluent limitations to which a discharge is subject under the Federal Act, in which case the Department may grant a variance, in writing, from the limitation set forth in this paragraph.

(3) Oil-bearing wastewaters, except those subject to paragraph (4), shall comply with all of the following:

(i) At no time cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline.

(ii) At no time contain more than 15 milligrams of oil per liter as a daily average value nor more than 30 milligrams of oil per liter at any time, or whatever lesser amount the Department may specify for a given discharge or type of discharge as being necessary for the proper protection of the public interest or to meet any requirements based upon the State Act or the Federal Act, as defined in § 92.1 (relating to definitions).

(4) Petroleum marketing terminals shall:

(i) Be provided with facilities to remove oil from waters, including stormwater runoff, before discharge into waters of this Commonwealth. Compliance with this paragraph shall constitute compliance with paragraph (3)(i) except to the extent that the State Act or Federal Act or regulations promulgated thereunder impose a more stringent requirement.

(ii) Develop, implement and keep up to date pollution incident prevention plans as described in § 91.34 (relating to activities utilizing pollutants).

(iii) Design, maintain and utilize oil removal facilities that consist of an American Petroleum Institute (A.P.I.) listed oil separator, unless the person operating the facility can demonstrate to the Department that an alternate design is equivalent or better in removing oil from water to maintain and protect the waters of this Commonwealth, including all existing and designated uses established under to Chapter 93 (relating to water quality standards).

(5) Waste may not contain more than 7 milligrams per liter of dissolved iron.

(6) When surface waters are used in the industrial plant, the quality of the effluent need not exceed the quality of the raw water supply if the source or supply would normally drain to the point of effluent discharge, unless otherwise required under the State Act or Federal Act or regulations promulgated thereunder.

§ 95.3. (Reserved).

§§ 95.6—95.9. (Reserved).

**CHAPTER 96. WATER QUALITY STANDARDS
IMPLEMENTATION**

Sec.	Definitions.
96.1.	Purpose.
96.2.	Water quality protection requirements.
96.3.	TDMLs and WQBELs.
96.4.	Nutrient discharges.
96.5.	Heated wastewater discharges.
96.6.	Public participation.
96.7.	

§ 96.1. Definitions.

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

Concentration—The amount of a substance, expressed in mass units, in a unit volume of water or wastewater.

Conservative substance—A pollutant that undergoes no or minimal transformation or decay in a water system, except by dilution.

Cumulative loading—The sum of pollutant loadings from individual pollutant sources.

Factor of safety—A margin to take into account uncertainty concerning the relationships between effluent limitations and water quality.

Harmonic mean flow—The flow that is determined by taking the reciprocal of the arithmetic mean of reciprocals of daily flow values.

LA—Load allocation—The portion of a surface water's loading capacity that is assigned or allocated to existing and future nonpoint sources and natural quality.

Lake, pond or impoundment—A surface water with a hydraulic residence time of 14 days or more based on average annual daily stream flow. Residence time shall be determined at average annual daily stream flow and normal pool volume. In the absence of actual records, an average annual daily discharge rate of 1.5 CFS per square mile shall be used.

Loading capacity—The greatest amount of loading that a surface water can receive without violating a water quality standard.

Margin of safety—The portion of a surface water's loading capacity that is set aside to account for uncertainty about the relationship between pollutant loadings and resulting surface water quality, including any uncertainty or imprecision in mathematical models used to determine these relationships. For nonconservative substances, any imprecision or uncertainty concerning the mechanisms by which the substance decays or is transformed shall be considered.

Mass load—The pollutant loading expressed in units of mass per unit time.

NPDES or National Pollutant Discharge Elimination System Permit—A permit issued under Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) for the discharge or potential discharge of pollutants from a point source to surface waters.

Natural quality—The water quality conditions that exist or that would reasonably be expected to exist in the absence of human related activity.

Nonconservative substance—A pollutant whose concentration in the water column changes as a result of volatilization, photolysis, hydrolysis, biodegradation, transformation, or other processes, except dilution.

Nonpoint source—A pollutant source which is not a point source discharge.

Nonpoint source restoration plan—A nonpoint source management plan which describes needed actions to restore and improve water quality in a watershed or stream.

Point source discharge—A pollutant source regulated under the NPDES permit system as defined in § 92.1 (relating to definitions).

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

Potable water supply—A water source that is used by humans after conventional treatment for drinking, culinary and other purposes such as inclusion in food products.

Q7-10 flow—The actual or estimated lowest 7 consecutive-day average flow that occurs once in 10 years for a stream with unregulated flow, or the estimated minimum flow for a stream with regulated flow.

Q30-10 flow—The actual or estimated lowest 30 consecutive-day average flow that occurs once in 10 years for a stream with unregulated flow, or the estimated 30 day average minimum flow for a stream with regulated flow.

Reserve factor—A portion of the effluent flow held to provide for projected future wasteloads.

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

TMDL—Total maximum daily load—The sum of individual waste load allocations for point sources, load allocations for nonpoint sources and natural quality and a margin of safety expressed in terms of mass per time, toxicity or other appropriate measures.

WLA—Wasteload allocation—The portion of a surface water's loading capacity that is allocated to existing and future point source discharges.

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

Water quality criteria duration—The averaging period associated with a water quality criterion.

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

Wetlands—Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circum-

stances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

§ 96.2. Purpose.

The purpose of this chapter is to establish the process for achieving and maintaining water quality standards.

§ 96.3. Water quality protection requirements.

(a) Existing and designated surface water uses shall be protected.

(b) Antidegradation requirements in §§ 93.4a—93.4d and 105.1, 105.15, 105.17, 105.18a, 105.20a and 105.451 shall apply to surface waters.

(c) To protect existing and designated surface water uses, the water quality criteria described in Chapter 93 (relating to water quality standards), including the criteria in §§ 93.7 and 93.8a(b) (relating to specific water quality criteria; and toxic substances) shall be achieved in all surface waters at least 99% of the time, unless otherwise specified in this title. The general water quality criteria in § 93.6 (relating to general water quality criteria) shall be achieved in surface waters at all times at design conditions.

(d) As an exception to subsection (c), the water quality criteria for total dissolved solids, nitrite-nitrate nitrogen, phenolics and fluoride established for the protection of potable water supply shall be met at least 99% of the time at the point of all existing or planned surface potable water supply withdrawals unless otherwise specified in this title.

(e) When a water quality criterion described in Chapter 93, including the criteria in §§ 93.7 and 93.8a(b), cannot be attained at least 99% of the time due to natural quality, as determined by the Department under § 93.7(d) based on water quality observations in that waterbody or at one or more reference stations of similar physical characteristics to the surface water, the natural quality that is achieved at least 99% of the time shall be the applicable water quality criterion for protection of fish and aquatic life.

(f) When the minimum flow of a stream segment is determined or estimated to be zero, applicable water quality criteria shall be achieved at least 99% of the time at the first downstream point where the stream is capable of supporting existing or designated uses.

(g) Functions and values of wetlands shall be protected pursuant to Chapters 93 and 105 (relating to water quality standards; and dam safety and waterway management).

§ 96.4. TMDLs and WQBELs

(a) The Department will identify surface waters or portions thereof that require the development of TMDLs, prioritize these surface waters for TMDL development, and then develop TMDLs for these waters.

(b) The Department will develop WQBELs for point source discharges using applicable procedures described in this chapter when the Department determines that water quality protection requirements specified in § 96.3 (relating to water quality protection requirements) are or would be violated after the imposition of applicable technology based limitations required under sections 301(b), 306, 307 or other sections of the Federal Clean Water Act (33 U.S.C.A. §§ 1311(b), 1316 and 1317) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001) to the point source.

(c) TMDLs and WQBELs shall be developed to meet the requirements of § 96.3.

(d) WLAs developed in accordance with this chapter shall serve as the basis for the determination of WQBELs for point source discharges regulated under Chapter 92 (relating to National Pollutant Discharge Elimination System). When LAs are developed in accordance with this chapter, they shall serve as the basis for the development of nonpoint source restoration plans.

(e) In developing TMDLs and WQBELs, the Department will:

(1) As appropriate consider, relevant design factors, including, but not limited to: water quality criteria duration, flow duration and frequency, natural seasonal variability in water temperature, the natural variability of pH and hardness, the physical characteristics of a watershed, reserve factors, factors of safety and pollutant contributions from other sources.

(2) Treat all pollutants as conservative unless it finds based on scientifically valid information that the substance is not conservative and adequate information is available to characterize the substance's fate or transformation, or both.

(f) The allocation procedure is as follows:

(1) WLAs, LAs and effluent limitations assigned or allocated to individual pollutant sources shall be the more stringent of the following:

(i) The pollutant loading authorized to be discharged under applicable technology-based requirements.

(ii) Where applicable, the pollutant loading determined under §§ 96.5 and 96.6 (relating to nutrient discharges; and heated wastewater discharges).

(iii) The pollutant loading that will achieve the water quality protection requirements specified in § 96.3.

(2) WLAs, LAs and effluent limitations shall be made more stringent if the cumulative loading determined after the application of paragraph (1) does not meet the requirements of § 96.3.

(g) Mathematical modeling at the design flow conditions listed in Table 1 shall be used as applicable to develop TMDLs and WQBELs for point source discharges.

TABLE 1

<i>Water Quality Criteria</i>	<i>Steady State Design Flow</i>
Fish and Aquatic Life, Except Ammonia-Nitrogen	Q ₇₋₁₀
Ammonia-Nitrogen	Q ₃₀₋₁₀
Threshold Human Health	Q ₇₋₁₀
Nonthreshold Human Health (Carcinogens)	Harmonic Mean Flow

The LA portion of the TMDL will be allotted to nonpoint source pollutant loadings and natural quality.

(h) The Department will revise WLAs and LAs because of new or increased pollutant loadings. WLAs shall be revised at or before the expiration date of the current point source discharge permit term.

(i) The Department may require NPDES dischargers and other persons subject to regulation under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) to conduct appropriate monitoring of pollutant sources and waters and report the results and data, to obtain data needed to develop TMDLs and effluent limitations and to determine their effectiveness.

§ 96.5. Nutrient discharges.

(a) Whenever technically and financially feasible, and environmentally sound, land disposal of wastewater shall be used on a continuous or seasonal basis to prevent or minimize to the maximum extent practicable the discharge of nutrients to surface waters, including tributaries thereof, that are determined to be either threatened or impaired by nutrient enrichment.

(b) When necessary to control eutrophication in a lake, pond, or other impoundment, the Department will develop a TMDL and associated WLAS and LAS based on average annual loading estimates.

(c) When it is determined that the discharge of phosphorus, alone or in combination with the discharge of other pollutants, contributes or threatens to impair existing or designated uses in a free flowing surface water, phosphorus discharges from point source discharges shall be limited to an average monthly concentration of 2 mg/l. More stringent controls on point source discharges may be imposed, or may be otherwise adjusted as a result of a TMDL which has been developed.

§ 96.6. Heated wastewater discharges.

(a) WLAs established for the discharge of heated wastewater shall comply with applicable State and Federal requirements.

(b) Heated wastewater discharges may not cause a change of surface water temperature of more than 2°F during any 1-hour period.

(c) In addition to subsection (b), the allowable heat content of heated wastewater discharges shall be limited to one of the following:

(1) A calculated amount that will raise the temperature of the receiving surface water to no more than the applicable criteria specified in § 93.7 (relating to specific water quality criteria).

(2) An amount based on an evaluation conducted in accordance with section 316(a) of the Federal Clean Water Act (33 U.S.C.A. § 1326(a)).

§ 96.7. Public participation.

(a) The Department will publish a notice in the *Pennsylvania Bulletin* of the availability of draft and final lists of surface waters requiring TMDLs under § 96.4(a) (relating to TMDLs and WQBELs). The notice of the draft list shall set forth a minimum 30-day public comment period.

(b) The Department will publish a notice in the *Pennsylvania Bulletin* of the availability of any draft and final TMDL prepared under this chapter. Draft TMDL notices shall be subject to a minimum 30-day comment period. The Department may hold a public hearing on a draft TMDL if there is significant public interest. When the TMDL is prepared concurrent with or as part of an NPDES permit application, the notice may be included in the notice of permit application prepared under § 92.61 (relating to public notice of permit application and public hearing).

CHAPTER 97. (Reserved)**§ 97.1. (Reserved).****§ 97.2. (Reserved).****§ 97.14. (Reserved).****§ 97.15. (Reserved).****§ 97.63. (Reserved).****§§ 97.81—97.83. (Reserved).****§§ 97.91—97.95. (Reserved).**

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