

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 92a]

National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance

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

This proposed rulemaking was adopted by the Board at its meeting of October 19, 2021.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Sean M. Furjanic, PE, Environmental Program Manager, Bureau of Clean Water, P.O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-2137, or Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105, (717) 783-8261. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of October 19, 2021).

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of the Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402) and section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20), which authorize the Board to promulgate rules and regulations necessary for the Department to perform its work.

D. *Background and Purpose*

Many municipalities across this Commonwealth have combined sewer systems (CSS), in which sewage and stormwater are collected and conveyed together during precipitation events. Depending on factors such as the intensity of a precipitation event, the flow in CSSs may exceed the dry weather carrying capacity of those systems, resulting in CSO discharges from the CSS to surface waters prior to reaching a wastewater treatment facility. Wet weather CSO discharges are authorized under the Federal Clean Water Act (33 U.S.C.A. §§ 1251–1388), the Commonwealth's Clean Streams Law (35 P.S. §§ 691.1–691.1001), and Chapter 92a, when approved under an NPDES permit.

In 1994, the United States Environmental Protection Agency (EPA) issued its Combined Sewer Overflow Con-

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

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

The EPA has expressed concerns that the Department's practice of approving LTCP implementation schedules exceeding 5 years is inconsistent with the existing language in § 92a.51(a) that requires compliance within 5 years. Consequently, the Department has paused approving NPDES permit renewals for CSO dischargers with these longer LTCP implementation schedules until the inconsistency is resolved. This proposed rulemaking would amend § 92a.51(a) for NPDES permit schedules of compliance to allow the Department to approve permits for CSO dischargers with compliance schedules beyond the 5-year period currently established in the regulations, but not longer than the implementation period in the discharger's approved LTCP.

E. *Summary of Regulatory Requirements*

§ 92a.51. *Schedules of Compliance*

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

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

This proposed rulemaking will not result in any degradation of public health or environmental protection. Conversely, the proposal is expected to improve public health and the environment by allowing the Department to move forward with reissuing long overdue NPDES permits to CSO dischargers and incorporating new conditions to

minimize the discharge of pollutants to surface waters. Ultimately, the revision would recognize the Department's longstanding practice of approving LTCPs with implementation schedules exceeding 5 years.

F. *Benefits, Costs and Compliance*

Benefits

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

Compliance costs

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

Compliance assistance plan

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

Paperwork requirements

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

G. *Pollution Prevention*

Pollution prevention is not applicable to this proposed rulemaking.

H. *Sunset Review*

The Board is not establishing a sunset date for these regulations because these regulations are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

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

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act

(71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. *Public Comments*

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

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

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

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

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

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

K. *Public Hearings*

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

Persons wishing to present testimony at the hearing must contact Jennifer Swan for the Department and the Board, (717) 783-8727 or RA-EPEQB@pa.gov, by February 14, 2022, to reserve a time to present testimony. Language interpretation services are available upon request. Persons in need of language interpretation services must contact Jennifer Swan by 5 p.m. on February 9, 2022.

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

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

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

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

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

PATRICK McDONNELL,
Chairperson

Fiscal Note: 7-563. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

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

Subchapter C. PERMITS AND PERMIT CONDITIONS

§ 92a.51. Schedules of compliance.

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

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[Pa.B. Doc. No. 22-79. Filed for public inspection January 14, 2022, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 271 AND 279]

Municipal Waste Rural Transfer Facility Permit-By-Rule

The Environmental Quality Board (Board) proposes to amend Chapters 271 and 279 (relating to municipal waste management—general provisions; and transfer facilities) to update the regulations to read as set forth in Annex A. This proposed rulemaking would amend Chapter 271 to establish requirements for operating a Rural Transfer Facility under a permit-by-rule. The amendment to Chap-

ter 279 clarifies that the requirements of that chapter are not applicable to Rural Transfer Facilities.

This proposed rulemaking was adopted by the Board at its meeting on November 16, 2021.

A. Effective Date

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

B. Contact Persons

For further information, contact Ali Tarquino Morris, Director, Bureau of Waste Management, P.O. Box 69170, Rachel Carson State Office Building, Harrisburg, PA 17106-9170, (717) 783-7827; or Nikolina Smith, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8501. Persons with a disability may use the Pennsylvania Hamilton Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection’s (Department) website at www.dep.pa.gov (select “Public Participation,” then “Environmental Quality Board” and then navigate to the Board meeting of November 16, 2021).

C. Statutory Authority

The proposed amendments to Chapters 271 and 279 are authorized under sections 105 and 501 of the Solid Waste Management Act (35 P.S. §§ 6018.105 and 6018.501), which grant the Board the authority to adopt rules and regulations of the Department to accomplish the purposes and carry out the provisions of the Solid Waste Management Act; sections 301 and 302 of Act 101, the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4001.301 and 4001.302); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grant the Board the authority to adopt rules and regulations for the proper performance of the work of the Department.

D. Background and Purpose

Presently, all residents of this Commonwealth do not have convenient and affordable access to waste disposal and recycling options. Specifically, in rural areas of this Commonwealth trash collection and recycling services are not economically feasible to establish and therefore unavailable to many local communities. This lack of access results in residential waste and recycling being mismanaged through illegal dumping or open burning of the waste, which cause environmental degradation and place a significant strain on the Department and local governments to clean up.

For context, a 10-year study (partially funded by the Department) was conducted by Keep Pennsylvania Beautiful in which more than 6,200 illegal dumps were identified across this Commonwealth. The study found that cleanups of illegal dump sites cost on average \$3,000 per site and divert funding and staff resources from State and local governments that could otherwise be used more productively. It also conveyed that there is less illegal dumping in areas where there is universal access to waste and recycling collection and more than 87% of residents of this Commonwealth indicated they would be willing to take their household waste, recyclables or other items not collected at the curb to a convenient outlet and pay for the service.

Additionally, open burning of waste also can be a dangerous and environmentally hazardous activity. According to the Department of Conservation and Natural

Resources, one of the major causes of forest fires in this Commonwealth is debris burning. A careless or unaware person burning trash or yard waste can be responsible for causing wildfires that burn thousands of acres of valuable forests. In fact, 98% of the wildfires in this Commonwealth are a direct result of people's actions and place emergency responders directly in harm's way. Furthermore, a United States Environmental Protection Agency report published in November 1997 shows that a single household burn barrel may emit as many toxic chemicals as a well-controlled municipal incinerator.

To address the waste and recycling collection gap that currently exists in the more rural areas of this Commonwealth and help to prevent illegal dumping and burning of waste, the Board is proposing to establish a permit-by-rule framework for persons to construct and operate rural transfer facilities. A rural transfer facility is a facility located in a municipality with a population density of under 300 people per square mile where residents can drop off municipal waste and source separated recyclable materials that the operators of the facility would then transfer to a permitted processing or disposal facility.

The Board proposes to use a permit-by-rule framework for authorizing rural transfer facilities operations. A permit-by-rule is a permit which a person or municipality is deemed to have for the operation of a facility or an activity upon compliance with the general requirements contained in the regulations authorizing the permit-by-rule in § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements) and the requirements contained in this proposed rulemaking.

Under the permit-by-rule format, public or private entities would notify the Department of their intent to operate a rural transfer facility and would not have to submit an application for review. This simplifies the application requirements associated with other types of permitted facilities by replacing voluminous application materials with more general operational plans and notification documents while still protecting the health, safety and welfare of residents of this Commonwealth and the environment.

A facility operating under a permit-by-rule must follow a standard and abbreviated set of operating requirements that are tailored for the type of activity undertaken. As noted previously, the permit-by-rule for rural transfer facilities would only be available for sites located in rural areas with a population density of under 300 people per square mile. Rural transfer facilities would also be limited in the amount of waste they can manage onsite to 80 cubic yards of municipal waste stored in a maximum of 4 containers. In general, this and other thresholds in this proposed rulemaking are based on those that were included in the draft general permit the Department previously proposed to authorize what were referred to as convenience centers. The Department worked closely with regional waste program managers and the Solid Waste Advisory Committee (SWAC) to determine appropriate thresholds as described as follows. These thresholds were also based on information the Department had about existing individually permitted municipal waste transfer facilities, including how much waste these facilities accept on a quarterly or annual basis. The thresholds represent and establish an appropriate amount of waste to be managed at a small rural transfer facility that will meet the needs of rural communities without approaching amounts that would require the facility to obtain an

individual permit. Further explanation of the proposed thresholds and full operating requirements for the rural transfer facilities permit-by-rule are outlined as follows. If the facility fails to comply with the conditions of the permit-by-rule as proposed in this rulemaking, the facility may be required to obtain an individual or general permit instead.

This proposed rulemaking was developed in consultation with the Department's SWAC and Recycling Fund Advisory Committee (RFAC). Members of SWAC and RFAC represent municipal solid waste authorities, local government interests, solid waste management industry groups, the legislature, consulting firms and private citizens.

Discussions formally began in 2015, with the formation of an Ad Hoc committee to focus on developing a model for what were then known as convenience centers and advise the Department on the requirements for operation. The Ad Hoc committee disbanded after its final meeting in August 2015.

The convenience center model evolved over the next several years, until the Department developed a general permit (GP) to authorize their operation. The Department brought the GP before SWAC and RFAC in December 2018, at which time it was determined that the recordkeeping requirements of the GP were too onerous for operators (that is, rural counties and municipalities) to meet. However, SWAC and RFAC members and the Department agreed that a means of authorizing operation of these facilities to aid in providing convenient, affordable access to waste disposal and recycling to all residents of this Commonwealth was imperative. The Department responded by developing this proposed rulemaking to authorize a permit-by-rule for rural transfer facilities. On June 3, 2020, SWAC voted to concur with the Department's recommendation that this proposed rulemaking move forward in the regulatory process.

E. Summary of this Proposed Rulemaking

§ 271.103. Permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements

Proposed amendments to this section would add provisions for the operation of a rural transfer facility authorized through a permit-by-rule.

Subsection (i) is proposed to be added to authorize operation of a rural transfer facility through a permit-by-rule under certain conditions. The permit-by-rule format streamlines and reduces costs associated with permitting and obtaining the authorizations necessary to establish and operate a transfer facility. This allows persons or municipalities in rural areas more flexibility and ease in constructing, siting and operating the facility, in conjunction with the added benefit of reducing illegal dumping and better serving residents of rural areas while still being protective of public health and the environment.

Paragraph (1) proposes operating requirements that a rural transfer facility must follow to receive authorization under this proposed permit-by-rule. These requirements are intended to ensure rural transfer facilities are operating in a way that ensures the health, safety and welfare of residents of this Commonwealth and the environment are protected.

Subparagraph (i) describes the types of wastes that may be transferred through a rural transfer facility. It proposes that no processing other than the transfer of

residential municipal waste, construction/demolition waste and yard waste take place at the rural transfer facility since this is a permit-by-rule for municipal waste specifically. As such, the only materials that may be accepted at a rural transfer facility are municipal wastes as defined elsewhere in statute and regulation. See 35 P.S. § 6018.103 and 25 Pa. Code § 271.1 (relating to definitions). Construction/demolition and yard waste are both classified as municipal wastes and are specifically identified to clarify what wastes are acceptable for management at a rural transfer facility.

Subparagraph (ii) requires the rural transfer facility to collect steel and bimetallic cans, corrugated cardboard and aluminum, at a minimum, for the purpose of recycling. This requirement is proposed in order to capture more recyclables, which contributes to this Commonwealth's recycling marketplace and helps support the 66,000 recycling-related jobs it provides.

Subparagraph (iii) proposes that a rural transfer facility may not collect or process any liquid, special handling waste, residual waste or hazardous waste. Management of these types of wastes by regulation requires additional scrutiny and approval for management and is not suitable for this municipal waste permit-by-rule.

Subparagraph (iv) proposes limits on the volume of municipal waste that can be stored at a rural transfer facility prior to transfer. This proposed rulemaking sets these limits at 80 cubic yards stored in a maximum of 4 containers at a facility. These proposed limits do not apply to construction and demolition (C&D) waste nor yard waste as they have their own limits specified in § 271.103(i)(2) and (3). These thresholds are based on information the Department has about existing individually permitted municipal waste transfer facilities, including how much waste these facilities accept on a quarterly or annual basis. The thresholds represent an appropriate amount of waste to be managed at a small rural transfer facility to meet the needs of rural communities without approaching amounts that would require the facility to obtain an individual permit. The volume thresholds were established to limit the size and impact of these facilities so the less rigorous permit-by-rule framework for construction and operation can be utilized.

Subparagraph (v) proposes that containers at rural transfer facilities be emptied at least once every 10 days. The total waste collected, excluding C&D and yard waste, cannot exceed 160 cubic yards during that same 10-day period, and all containers must be emptied within 72 hours of being filled. Similar to the reasoning discussed previously for the requirements in proposed § 271.103(iv), these volume and storage thresholds were established to limit the size and impact of these facilities and so the less rigorous permit-by-rule framework for construction and operation can be utilized. Time limits for emptying containers were specifically established to minimize the potential for nuisances associated with operation of the facility.

Subparagraph (vi) proposes that records of pick up dates for all containers at a rural transfer facility be kept onsite for 5 years and made available to the Department upon request. These requirements are consistent with those already established for other facilities authorized by a permit-by-rule in this section. The additional requirement to keep records onsite for 5 years ensures that the Department can collect data on the facilities to evaluate the effectiveness of the rulemaking.

Subparagraph (vii) proposes that a rural transfer facility cannot cause or allow a point or nonpoint source

discharge from or on the facility to surface waters of this Commonwealth. This requirement is included to maintain compliance with The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and protect the waters of the Commonwealth.

Subparagraph (viii) proposes prohibitions on the areas in which rural transfer facilities may be located. These prohibited areas include: a populated area as described in § 272.411(a) and (b) (relating to affected municipalities) and section 1501(a) and (b) of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. § 4000.1501(a) and (b)); a municipality with a population density over 300 people per square mile; or an area that is zoned as residential, unless otherwise approved in writing by a municipality. Municipalities with a population density over 300 people per square mile is used in section 1501(b) of the Municipal Waste Planning, Recycling and Waste Reduction Act and was included in the list of prohibited areas because municipalities with a population density exceeding this threshold already have recycling and waste management infrastructure. The intent of this proposed regulation is to facilitate and establish access to waste management and recycling services in the underserved rural areas of this Commonwealth. The defined areas described previously are not considered rural or underserved and are, therefore, not suitable for siting and operation of a rural transfer facility.

Subparagraph (ix) proposes a requirement that the rural transfer facility not store waste, yard waste or source separated recyclable materials outside of a container in order to protect human health and the environment by preventing nuisances, vectors, and point and nonpoint source pollution. These requirements also aim to protect the market value of recyclable materials collected by preventing contamination during management.

Subparagraph (x) prohibits a rural transfer facility from accepting waste transported by a truck, tractor or combination having a gross vehicle weight rating, gross combination weight rating, registered gross weight, registered combination weight or actual gross weight of 17,001 pounds or more. These vehicle weight limits are established in the regulations implementing the Commonwealth's Vehicle Code at 67 Pa. Code § 231.8(1) (relating to additions or modifications to 49 CFR) and trigger additional authorization and licensing under 27 Pa.C.S. §§ 6201—6209 (Act 90) (relating to Waste Transportation Safety Act). Rural transfer facilities are not an acceptable destination for vehicles exceeding these weight limits, as they carry an amount of waste that would exceed the volume and storage limits established by the permit-by-rule. Use of a rural transfer facility by these size vehicles would negate the potential benefits of convenient and affordable disposal and recycling for local residents.

Subparagraph (xi) proposes that rural transfer facilities must be operated in a manner to minimize and control nuisances and vectors to protect human health and the environment. Facilities that do not meet this requirement may be required to obtain an individual or general permit under § 271.103(c).

Subparagraph (xii) proposes that rural transfer facilities store source separated recyclable materials in a manner that preserves their marketability. This requirement is intended to ensure that recyclables are not damaged and ultimately are able to be recycled to help bolster this Commonwealth's recycling marketplace.

Subparagraph (xiii) requires an operator of a rural transfer facility to submit written notice to the Depart-

ment when intending to operate a facility under the proposed permit-by-rule. As proposed in clause (A), the notice must be submitted to the Department within 30 days of adoption of this proposed rulemaking when published as a final-form rulemaking and by January 31 every 5 years after the initial notice. As proposed in clause (B), for any rural transfer facilities that are constructed after the effective date of the final-form rulemaking, operators shall submit written notice to the Department at least 30 days before beginning operations and by January 31 every 5 years after the initial notice. As proposed in clause (C), the written notice shall contain the following information: the contact information and address of the rural transfer facility; proposed hours of operation; the contact information and address of the person or municipality responsible for operating the facility; a brief description of the facility; and the name and address of the facilities to which the rural transfer facility transfers municipal waste. If there are any changes to the facilities to which a rural transfer facility transfers waste, the rural transfer facility operator shall notify the Department within 15 days of the change. These notification requirements are consistent with requirements for existing municipal waste permit-by-rule facilities in § 271.103(d) and (e)—(h). Notification also allows the Department to accurately identify the universe of rural transfer facilities operating in this Commonwealth and the disposal facilities they utilize.

Subparagraph (xiv) proposes that the operator post and maintain signs at the rural transfer facility. Clauses (A)—(D) propose that the signs include the facility name, hours of operation, a list of accepted materials, and the contact information and address of the facility operator. This subparagraph is consistent with existing site identification and signage requirements. These requirements allow for proper identification of the rural transfer facility site; provide emergency contact information to users; and provide clarity about what materials are able to be managed at the facility.

Paragraph (2) proposes that rural transfer facilities may provide for the collection of C&D waste in addition to the volumes permitted in § 271.103(i)(1)(iv) as long as the following two conditions are met. The volume of C&D waste stored at the rural transfer facility cannot exceed 40 cubic yards and be stored in a maximum of 2 containers as proposed in subparagraph (i), and the containers are removed and taken to a permitted processing or disposal facility at least once every 10 days as proposed in subparagraph (ii). These requirements are based on information the Department has about existing individually permitted municipal waste transfer facilities, including how much waste these facilities accept on a quarterly or annual basis, and allow for limited management of C&D waste while protecting the overall intent of the rulemaking, which is to provide convenient and affordable access to disposal of municipal waste and management of recyclables to underserved areas of the Commonwealth.

Paragraph (3) proposes that a rural transfer facility may provide for the collection of yard waste in addition to the volumes permitted in § 271.103(i)(1)(iv) as long as the following two conditions are met. The volume of yard waste stored at the rural transfer facility cannot exceed 40 cubic yards and be stored in a maximum of 2 containers as proposed in subparagraph (i), and the containers are removed at least every 10 days and taken to a composting facility, land application site or other facility permitted for the beneficial use of yard waste as proposed in subparagraph (ii). These requirements are

based on information the Department has about existing individually permitted municipal waste transfer facilities, including how much waste these facilities accept on a quarterly or annual basis, and allow for limited management of yard waste while protecting the overall intent of the rulemaking, which is to provide convenient and affordable access to disposal of municipal waste and management of recyclables to underserved areas of the Commonwealth.

§ 279.1. Scope

Subsection (a) is proposed to be amended to clarify that the application and operating requirements for transfer facilities established in Chapter 279 do not apply to rural transfer facilities operating under a permit-by-rule, as these facilities are now authorized under § 271.103(i).

F. Benefits, Costs and Compliance

Benefits

This proposed rulemaking aims to provide convenient and affordable access to waste disposal and recycling services in rural areas of this Commonwealth where trash collection and recycling services are not economically feasible to establish and therefore, are currently unavailable to many rural communities. By establishing rural transfer stations where all members of the community can drop off their waste and recycling to be transferred to a permitted disposal or processing facility, rural Pennsylvanians will benefit from gaining access to disposal and recycling options and being able to responsibly dispose of their waste.

Accordingly, this proposed rulemaking will help to alleviate the mismanagement of residential municipal waste and associated burning or illegal dumping of waste that currently exists in the more rural areas of this Commonwealth. This rulemaking provides a mechanism for municipalities to strategically locate a facility in areas that are most convenient for residents and/or where open burning and illegal dumping are an issue. Making responsible waste disposal and recycling options conveniently available in the community at little or no cost will meet the need of those currently paying significantly more to properly dispose of waste and manage recyclables. It will also provide an incentive to recycle and begin properly disposing of waste for those currently mismanaging these materials due to lack of convenience and prohibitive costs. This will improve protection of public health and the environment by preventing air and land pollution through an anticipated decrease in the instances of burning and illegal dumping of municipal waste and recyclables. It will also help to alleviate the costs State and local governments incur to clean up illegal dump sites and reduce the enforcement costs the Department currently incurs to respond to burning and illegal dumping complaints. Furthermore, once implemented, this proposed rulemaking will also allow for the capture of more recyclables, positively contributing to this Commonwealth's recycling marketplace and the 66,000 jobs it creates.

Public or private entities who decide to operate a rural transfer facility under the authorization of this proposed rulemaking will also realize benefits. By using the permit-by-rule format for this proposed rulemaking, the application requirements are simplified, compared to the requirements associated with other types of permitted facilities, by replacing voluminous application materials with more general operational plans and notification documents. A permit-by-rule provides persons or municipalities in rural areas more flexibility and allows them to

obtain the authorization necessary to operate a rural transfer facility at a lower permitting cost, while providing necessary and adequate environmental controls to ensure that public health and the environment are protected.

Compliance costs

This proposed regulation does not mandate that any public or private entity operate a rural transfer facility. Therefore, no compliance costs are required as part of this proposed rulemaking.

Compliance assistance plan

The Department will continue to work with the regulated community to ensure this proposed rulemaking is understood. Department staff will provide compliance assistance during routine facility permitting and inspection activities.

Paperwork requirements

Rural Transfer Facility operators are required in this proposed rulemaking to maintain records of pick-up dates for all containers for a period of 5 years. Records may be kept in a hard copy format or electronically. The permit-by-rule allows for significantly less paperwork than if a facility were required to apply for and obtain a general or individual permit.

G. Pollution Prevention

By providing convenient and affordable access to waste disposal and recycling services in rural areas of this Commonwealth, this proposed rulemaking will help to alleviate the mismanagement of residential municipal waste and associated burning or illegal dumping of waste. By decreasing the instances of burning and illegal dumping of municipal waste and recyclables, the regulation will thereby improve public health and the environment by preventing air and land pollution.

Development of this regulation will also provide the Department with the opportunity to further educate the public about proper management of waste and recyclables and the environmental and economic benefits of proper management.

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.

I. Regulatory Review

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

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

J. Public Comments

Interested persons are invited to submit written comments, suggestions, support or objections regarding this proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by February 14, 2022.

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

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

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

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

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17107-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

PATRICK McDONNELL,
Chairperson

Fiscal Note: 7-564. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VIII. MUNICIPAL WASTE

CHAPTER 271. MUNICIPAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter B. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

REQUIREMENT

§ 271.103. Permit-by rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements.

* * * * *

(h) *Yard waste composting facility.* A person or municipality that operates a yard waste composting facility that is less than 5 acres, other than an individual backyard composting facility, shall be deemed to have a municipal waste processing permit-by-rule if the person or municipality meets the requirements of subsections (a)—(c), the facility is operated in accordance with the Department’s guidelines on yard waste composting and the operator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

(i) Rural transfer facility. The following apply to a facility that provides publicly available municipal waste processing and collection of source separated recyclable materials:

(1) A processing facility shall be deemed to have a municipal waste transfer facility permit under this article if, in addition to subsections (a)—(c), the following conditions are met:

(i) No processing other than the transfer of residential municipal waste, construction/demolition waste and yard waste takes place at the facility.

(ii) The facility provides for the collection of, at a minimum, steel and bimetallic cans, corrugated cardboard and aluminum for the purpose of recycling.

(iii) The facility does not collect or process any liquid, special handling waste, residual waste or hazardous waste.

(iv) Except as provided in paragraphs (2) and (3), the volume of municipal waste stored at the facility prior to transfer does not exceed 80 cubic yards stored in a maximum of 4 containers.

(v) Municipal waste is transferred to a permitted processing or disposal facility at least once every 10 days and the total volume of municipal waste managed at the facility does not exceed 160 cubic yards during the same 10 days. A full container must be transferred to a permitted processing or disposal facility within 72 hours of the container being filled.

(vi) Records of pick up dates for all containers at the facility shall be kept onsite for 5 years and made available to the Department upon request.

(vii) The facility does not cause or allow a point or nonpoint source discharge in violation of The Clean Streams Law (35 P.S. §§ 691.1—691.1001) from or on the facility to surface waters of this Commonwealth.

(viii) The facility is not located in any of the following:

(A) A populated area as described in § 272.411(a) and (b) (relating to affected municipalities) and section 1501(a) and (b) of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. § 4000.1501(a) and (b)).

(B) A municipality with a population density over 300 people per square mile.

(C) An area that is zoned as residential, unless otherwise approved in writing by the municipality.

(ix) The facility does not store waste, yard waste or source separated recyclable materials outside of a container.

(x) The facility does not accept waste transported by a truck, tractor or combination having a gross vehicle weight rating, gross combination weight rating, registered gross weight, registered combination weight or actual gross weight of 17,001 pounds or more.

(xi) The facility is operated in a manner to minimize and control nuisances and vectors.

(xii) Source separated recyclable materials are stored in a manner which preserves their marketability.

(xiii) The operator submits written notice to the Department as follows:

(A) Within 30 days of _____ (Editor's Note: The blank refers to the effective date of adoption of

this proposed rulemaking when published as a final-form rulemaking), and by January 31 every 5 years after the initial notice.

(B) The operator of a rural transfer facility constructed after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking) shall submit written notice to the Department at least 30 days before beginning operation and by January 31 every 5 years after the initial notice.

(C) The written notice shall contain the following:

(I) The name, address and telephone number of the facility.

(II) Proposed hours of operation for the facility.

(III) The name, address and telephone number of the person or municipality responsible for operating the facility.

(IV) A brief description of the facility.

(V) The name and address of the facilities to which the rural transfer facility transfers municipal waste. The rural transfer facility shall notify the Department in writing of any changes to the facilities to which it transfers waste within 15 days of the change.

(xiv) The operator posts and maintains signs that include the following information:

(A) Facility name.

(B) Hours of operation.

(C) A list of accepted materials.

(D) The name, business address, and telephone number of the facility operator.

(2) A rural transfer facility may provide for collection of construction/demolition waste, in addition to the volumes permitted in (i)(1)(iv), if the following conditions are both met:

(i) The volume of construction/demolition waste stored at the facility prior to transfer does not exceed 40 cubic yards, stored in a maximum of 2 containers.

(ii) The containers are removed and taken to a permitted processing or disposal facility at least once every 10 days.

(3) A rural transfer facility may provide for collection of yard waste, in addition to the volumes permitted in (i)(1)(iv), if the following conditions are both met:

(i) The volume of yard waste stored at the facility prior to transfer does not exceed 40 cubic yards, stored in a maximum of 2 containers.

(ii) The containers are removed at least every 10 days and taken to a composting facility, land application site or other facility permitted for the beneficial use of yard waste.

CHAPTER 279. TRANSFER FACILITIES

Subchapter A. GENERAL

§ 279.1. Scope.

(a) This chapter sets forth application and operating requirements for a person or municipality that operates a transfer facility, **other than a rural transfer facility operating under a permit-by-rule under § 271.103(i) (relating to permit-by rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements)**. The requirements in this

chapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions).

(b) The Department may waive or modify a requirement of this chapter for permitted transfer facilities at which no actual loading, unloading or transferring of municipal waste occurs, if the absence of loading, unloading or transferring activity renders the requirement unnecessary.

[Pa.B. Doc. No. 22-80. Filed for public inspection January 14, 2022, 9:00 a.m.]