

9277000 AM 8:00
1-1-99

DEPARTMENT OF ENVIRONMENTAL PROTECTION

ADVANCE NOTICE OF FINAL RULEMAKING

25 Pa. Code Chapters 91, 97 and 101

Wastewater Management

ORIGINAL; 1876
MIZNER
COPIES: Wilmarth
Sandusky
Legal

The Department of Environmental Protection is soliciting comments on changes it recommends to be made to the proposed regulations, which were published as proposed rulemaking at 27 Pa. B. 4343 (August 23, 1997). The Department is also holding one public hearing for the purpose of accepting comments from the public.

The draft final regulations are designed, in part, to supplement the Department's implementation of its "Final Strategy for Meeting Federal Requirements for Controlling Water Quality Impacts of Concentrated Animal Feeding Operations" (the CAFO Strategy). Notice of this strategy was published on March 13, 1999 (29 Pa. B. 1439). In response to the implementation of this strategy and following the Department's review of other related information, including public comments on the proposed rulemaking, the Department has prepared a draft final regulation for public comment. The draft final regulation contains significant changes in four major areas. Sections 91.6, 91.11 and 91.34 have been revised to provide guidance on pollution prevention measures. The freeboard requirements for waste impoundments in Section 91.35 have been revised to reflect the CAFO Strategy. The agricultural operation pollution control and prevention provisions of Section 91.36 have also been revised to reflect the CAFO Strategy. And finally, regulatory language is being proposed to replace guidance outlined in proposed Section 91.37 relating to private projects.

While there is no legal requirement to provide an opportunity to comment upon the Department's recommendations for final rulemaking, the Department believes further discussion would serve the public interest in this instance.

A copy of the draft final regulations is available from Mary Miller at the Department of Environmental Protection, Bureau of Water Quality Protection, (717) 787-8184. Written comments on the draft final regulations must be received by May 26, 1999; no telefax comments will be accepted. Comments or requests for copies should be addressed or delivered to Milton Lauch, Chief, Division of Wastewater Management, Bureau of Water Quality Protection, P.O. Box 8774, 10th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8774. The draft final regulations are also available electronically through the DEP Web site (<http://www.dep.state.pa.us>). Comments may be transmitted electronically to

RegComments@A1.dep.state.pa.us, and must also be received by May 26, 1999. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

A public hearing on the draft final regulations will be held at 6:30 p.m. on May 25, 1999 at the Southcentral Regional Office of the Department of Environmental Protection, which is located at 909 Elmerton Avenue, Harrisburg, PA.

Persons wishing to present testimony at the hearings are requested to contact Mary Miller at (717) 787-8184 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the time of the hearing. Each organization is limited to designating one witness to present testimony on its behalf.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Mary Miller at (717) 787-8184 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 to discuss how the Department may accommodate their needs.

JAMES M. SEIF
Secretary

Advance Notice of Final Rulemaking

**Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code Chapters 91, 97 and 101)**

Wastewater Management

The Department of Environmental Protection is soliciting comments on draft final amendments to 25 Pa. Code Chapter 91 (relating to general provisions). As explained in Section B of this Order, the draft final regulations are designed, in part, to supplement the Department's implementation of its "Final Strategy for Meeting Federal Requirements for Controlling Water Quality Impacts of Concentrated Animal Feeding Operations" (the "CAFO Strategy") (29 Pa. B. 1439, March 13, 1999).

A. Contact Persons and Submitting Comments

Written comments on the draft final regulations should be addressed or delivered to Milton L. Lauch, Chief, Division of Wastewater Management, Bureau of Water Quality Protection, P.O. Box 8774, 11th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105-8774. Comments may also be transmitted electronically to Lauch.Milton@a1.dep.state.pa.us. If the sender does not receive an acknowledgment of receipt of electronic comments within two working days, the comments should be retransmitted to ensure receipt. Written or electronically transmitted comments must be received by May 26, 1999. A subject heading of the proposal and a return name and address must be included in each letter or transmission. Comments will not be accepted by facsimile or voice mail.

The Department will hold a public hearing for the purpose of accepting comments on this proposal at 6:30 p.m. on May 25, 1999, as follows:

Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110-8200

In addition to generally seeking comments on the draft final regulation, the Department is requesting comment on the appropriate threshold for the number of animal equivalent units which would result in a manure storage facility located in a special protection water as being subject to the permit requirement of proposed Section 91.36(a)(1).

B. Background of the Draft Final Regulation

At a meeting held on June 17, 1997, the Environmental Quality Board adopted a proposal to amend Chapters 91, delete portions of Chapter 97 (relating to general provisions and industrial wastes) and to delete Chapter 101 (relating to special water protection regulations). As part of this regulatory proposal, certain provisions of Chapter 101 would be transferred to Chapter 91. A notice of proposed rulemaking regarding these amendments was published in the *Pennsylvania Bulletin* on August 23, 1997 (27 Pa. B. 4343).

Subsequent to the publication of the notice of proposed rulemaking, the Department undertook an initiative to control the water quality impacts of manure from agricultural mandated by the concentrated animal feeding operation (CAFO) requirements of the federal Clean Water Act. The Department convened a stakeholder group consisting of representatives from various groups to assist in developing the emerging strategy.

On June 16, 1998, a notice was published in the *Pennsylvania Bulletin* regarding the development of a proposed strategy and related permit documents to regulate Concentrated Animal Feeding Operations within the Commonwealth. See, 28 Pa. B. 2728 (June 13, 1998). Following publication of the notice of the Proposed Strategy, the Department held 4 public meetings/hearings throughout the Commonwealth. Over 125 people attended the public meetings/hearings. In addition, the Department received over 100 written comments on the Proposed Strategy. In response to the comments, the Department has made revisions to the Proposed Strategy. These revisions were outlined at a meeting of the stakeholders held on February 4, 1999. A notice of the availability of the "Final Strategy for Meeting Federal Requirements for Controlling the Water Quality Impacts of Concentrated Animal Feeding Operations" (the Final Strategy) was published in the *Pennsylvania Bulletin* on March 13, 1999 (29 Pa. B. 1439).

The intent of the "Strategy for Meeting Federal Requirements for Controlling the Water Quality Impacts of Concentrated Animal Feeding Operations" (CAFO Strategy) "is to ensure that all concentrated animal feeding operations are constructed and managed in an environmentally sound manner, while ensuring agricultural producers the opportunity to pursue agricultural production which is profitable, economically feasible, and based on sound technology and practical production techniques." (See CAFO Strategy p. 1).

With respect to the construction and operation of animal manure storage facilities, the CAFO Strategy outlines a requirement for a Part II Water Quality Management Permit for such facilities where a CAFO of more than 1,000 animal

equivalent units is proposed. The Department developed a Part II Permit application and a Part II Permit which includes requirements for siting/design plans and specifications for liners for manure storage facilities. It is specifically acknowledged in the CAFO Strategy that some elements will “require new regulations to create Water Quality Management Part II permit . . . requirements.” Animal equivalent units are calculated in accordance with the provisions of the Nutrient Management Act (3 P.S. §§1701-1718) and the regulations promulgated thereto at 25 *Pa. Code* Chapter 83.

In addition to revisions to the proposal necessitated by the CAFO Strategy, the Department is proposing certain other amendments to Chapter 91, particularly with respect to pollution prevention measures. These proposed amendments resulted from comments and suggestions submitted during the public comment period and are more fully described in Section C of this Preamble.

C. Summary of Proposed Amendments

1. §91.1 (relating to definitions).

As noted below, amendments are being proposed which relate to wastewater impoundments at agricultural operations and pollution prevention measures in certain sections of the regulations. Appropriate definitions are being added to complement these amendments. Thus, the terms “agricultural operations”, “animal equivalent unit”, “manure storage facility”, “pollution prevention”, and “pollution prevention measures” are being defined.

A portion of the definition of “stormwater” in the proposal included stormwater runoff. In response to comments asserting that this portion of the definition was somewhat circuitous, the phrase is proposed to be revised to provide that stormwater includes runoff from precipitation.

The definition of “wastewater impoundment” is proposed to be clarified by adding a phrase at the end of the definition making it clear that the definition applies to wastewater impoundments used to store wastewater including sewage, animal waste or industrial waste.

2. §91.6 (relating to pollution prevention).

The language of existing Section 97.14 (relating to measures to be used) was proposed to be moved to this section with slight modification. The language of the proposal is proposed to be revised to include a tie-in to the proposed “pollution prevention” or “pollution prevention measures” definitions. In addition, the identity of persons doing the pollution prevention such as the permittee or the industrial

discharger to a POTW would be indicated. The practice involving “segregation of strong wastes” where the strong waste is then treated is not true pollution prevention. If, however, the strong waste is separated for reuse within a process, then that is pollution prevention. While pollution prevention is encouraged and not required, the regulation provides some guidance regarding the consideration of pollution prevention measures. Finally, the last part of the existing regulation, which provides that the “. . . term ‘practical’ is not limited to that which is profitable or economical” might actually hinder pollution prevention efforts. Accordingly, that sentence is being deleted.

3. §91.11 (relating to compliance conferences)

This section provides, in part, that the Department will provide advice and suggestions to those required to abate pollution of the waters of the Commonwealth. Among other things, the advice may include measures for the treatment or prevention of pollution. This section is being clarified to provide a tie-in to the definition of “pollution prevention measures”. Thus, this portion of the regulation is proposed to be revised to provide that the Department will provide advice regarding possible means for abatement of the pollution in question through pollution prevention measures or treating the waste if prevention is not possible.

4. §91.15 (relating to basin-wide compliance).

This section, as proposed by the Environmental Quality Board, provided that the Department would require sources of pollutants in a basin, watershed or surface water to concurrently comply with the standards set forth in Chapters 93 and 95 as well as the Statement of Policy outlined Chapter 16. However, when the proposal was published in the *Pennsylvania Bulletin*, the reference to Chapter 16 did not indicate that it was a Statement of Policy. The language of this section is being revised to make it clear that Chapter 16 relates to a Statement of Policy and not a regulation.

5. §91.27 (relating to general permits).

This section outlines requirements relating to water quality management general permits (Part II general permits). Minor editorial changes are being proposed.

6. §91.34 (relating to activities utilizing pollutants)

This section requires persons engaged in an activity involving the use of a pollutant to submit a report or plan to the Department outlining measures to be

taken to prevent the pollutant from reaching waters of the Commonwealth upon notice from the Department. This section is to be clarified to suggest that the use of pollution prevention measures is preferable to treatment.

7. §91.35 (relating to waste impoundments).

The Department is specifically requesting comment on the appropriateness of adding a new subsection to proposed Section 91.35 concerning freeboards for waste storage ponds and waste storage structures at certain agricultural operations. The proposed new language would provide that if an agricultural operation contains less than 1,001 animal equivalent units the operation is not subject to the reporting or permit requirements of Section 91.35(b) or (c), but must provide either a 12-inch freeboard for all waste storage ponds or a 6-inch freeboard for all waste storage structures. These provisions are consistent with the criteria outlined in the "Pennsylvania Technical Guide". This language would replace the existing language of subsection (d) and existing subsection (d) would be renumbered as subsection (e).

8. §91.36 (relating to pollution control and prevention at agricultural operations)

The CAFO Strategy contains three other elements which necessitate revisions to proposed Section 91.36(a). First, all manure storage facilities must be designed and constructed in a manner consistent with the "Pennsylvania Technical Guide" and Section 83.351, where applicable. Second, all manure storage facilities must be designed to prevent any discharges to surface waters during a storm event of less than a 25-year/24-hour storm. Finally, an engineer's certification will be required for all existing facilities with greater than 1,000 animal equivalent units. These elements are consistent with existing policy, the Nutrient Management Act and the federal CAFO requirements.

As noted above, an engineer's certification would be required for all existing facilities with over 1,000 animal equivalent units. The Department is seeking comment on whether there should be a lower threshold of animal equivalent units for new facilities located in special protection waters which would precipitate the requirement for a Part II permit.

9. §91.37 (relating to private projects).

This section describes the Department's policy in reviewing permit applications in certain areas. The Independent Regulatory Review Commission suggested that it would be more appropriate to provide regulatory language should the Department desire to keep this policy in the regulations. Accordingly, regulatory language is being proposed in subsection (a) to provide that the

Department will not approve applications for private sewerage projects in built-up areas unless the applicant can demonstrate a compelling need. Currently this subsection provides that the Department will look with disfavor on such projects. Subsection (b) is clarified to reflect this change.

10. §§91.41 and 91.42 (relating to underground disposal).

The proposed amendments adopted by the Environmental Quality Board would have deleted the provisions of existing provisions of Sections 97.71 through 97.76 relating to underground disposal of wastes such as discharges into mines, abandoned wells, underground horizons and new wells and replace these provisions with a provision at proposed Section 91.32 requiring compliance with 40 CFR 144 relating to underground injection control. The Department has not accepted delegation from the Environmental Protection Agency for the administration of the underground injection control program. Subsequent to the proposal, the Department received a number of comments indicating that the Federal underground injection control program might not be adequate to address situations unique to the Commonwealth, particularly underground disposal to abandoned mines and abandoned wells. Accordingly, it is proposed to reinstate the provisions and requirements of existing Sections 97.71-97.76 in proposed new Sections 91.41 and 91.42, with slight modification in the text. Proposed Section 91.32 would be deleted and reserved. In addition, existing Sections 91.41 and 91.42 would be renumbered as Sections 91.51 and 91.52.

BY:

James M. Seif
Secretary

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

GENERAL

§91.1. Definitions.

The definitions set forth in section 1 of the act of June 22, 1937 (P.L. 1987, No. 394) (35 P.S. §691.1) [applies] APPLY to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

AGRICULTURAL OPERATIONS-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 (3 P.S. §1703).

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).

APPLICATION-THE DEPARTMENT'S FORM FOR REQUESTING APPROVAL TO CONSTRUCT AND OPERATE A WASTEWATER COLLECTION, CONVEYANCE OR TREATMENT FACILITY UNDER A NEW WATER QUALITY MANAGEMENT PERMIT, OR THE MODIFICATION, REVISION OR TRANSFER OF AN EXISTING WATER QUALITY MANAGEMENT PERMIT.

[Department–The Department of Environmental Resources of the Commonwealth or, where appropriate, the Sanitary Water Board, Environmental Quality Board or Environmental Hearing Board of the Commonwealth.

EPA–The United States Environmental Protection Agency.]

FACILITY–A STRUCTURE BUILT TO COLLECT, CONVEY OR TREAT WASTEWATER WHICH REQUIRES COVERAGE UNDER A WATER QUALITY MANAGEMENT PERMIT.

FEDERAL ACT–THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C.A. §§1251-1387).

GENERAL WATER QUALITY MANAGEMENT PERMIT OR GENERAL PERMIT–A WATER QUALITY MANAGEMENT PERMIT THAT IS ISSUED FOR A CLEARLY DESCRIBED CATEGORY OF WASTEWATER TREATMENT FACILITIES, WHICH ARE SUBSTANTIALLY SIMILAR IN NATURE.

INDUSTRIAL WASTE–A LIQUID, GASEOUS, RADIOACTIVE, SOLID OR OTHER SUBSTANCE RESULTING FROM MANUFACTURING OR INDUSTRY, OR FROM ANY 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. THE TERM INCLUDES ALL SUBSTANCES WHETHER OR NOT GENERALLY CHARACTERIZED AS WASTE. THE TERM DOES NOT INCLUDE SEWAGE.

MANURE STORAGE FACILITY–A PERMANENT STRUCTURE OR FACILITY OR A PORTION OF A STRUCTURE OR FACILITY, UTILIZED FOR THE PURPOSE OF CONTAINING MANURE AS DEFINED AT 25 PA. CODE §83.201 (RELATING TO DEFINITIONS).

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT–A PERMIT OR EQUIVALENT DOCUMENT OR REQUIREMENTS ISSUED BY THE ADMINISTRATOR OF THE EPA OR, WHEN APPROPRIATE, BY THE DEPARTMENT TO REGULATE THE DISCHARGE OF POLLUTANTS UNDER SECTION 402 OF THE FEDERAL ACT (33 U.S.C.A. §1342).

NOTICE OF INTENT (NOI)–A COMPLETE FORM SUBMITTED AS A REQUEST FOR GENERAL WATER QUALITY MANAGEMENT PERMIT COVERAGE.

OPERATOR—A PERSON OR OTHER LEGAL ENTITY RESPONSIBLE FOR THE OPERATION OR MAINTENANCE OF A FACILITY OR ACTIVITY SUBJECT TO THIS CHAPTER.

OWNER—THE PERSON OR OTHER LEGAL ENTITY HOLDING LEGAL TITLE TO A FACILITY OR ACTIVITY SUBJECT TO THIS CHAPTER.

PERSON—AN INDIVIDUAL, PUBLIC OR PRIVATE CORPORATION, PARTNERSHIP, ASSOCIATION, MUNICIPALITY, POLITICAL SUBDIVISION OF THE 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 EMPLOYEE THEREOF, OR ANY OTHER LEGAL ENTITY.

POLLUTANT—A CONTAMINANT OR OTHER ALTERATION OF THE PHYSICAL, CHEMICAL OR BIOLOGICAL PROPERTIES 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).

POLLUTION PREVENTION—SOURCE REDUCTION AND OTHER PRACTICES (E.G. DIRECT REUSE OR IN-PROCESS RECYCLING) 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.

POLLUTION PREVENTION MEASURES—PRACTICES THAT REDUCE THE USE OF HAZARDOUS MATERIALS, ENERGY, WATER OR OTHER RESOURCES AND THAT PROTECT NATURAL RESOURCES AND HUMAN HEALTH THROUGH CONSERVATION, MORE EFFICIENT USE, OR EFFECTIVE POLLUTANT RELEASE MINIMIZATION PRIOR TO REUSE, RECYCLING, TREATMENT OR DISPOSAL.

SCHEDULE OF COMPLIANCE—A SCHEDULE OF REMEDIAL MEASURES INCLUDING AN ENFORCEABLE SEQUENCE OF ACTIONS OR OPERATIONS LEADING TO COMPLIANCE WITH EFFLUENT LIMITATIONS, OTHER LIMITATIONS, PROHIBITIONS OR STANDARDS.

SEWAGE—A SUBSTANCE THAT CONTAINS WASTE PRODUCTS OR EXCREMENTITIOUS OR OTHER DISCHARGE FROM THE BODIES OF HUMAN BEINGS OR ANIMALS.

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 RESIDENCES INTO WATERS OF THIS COMMONWEALTH.

STORMWATER—[STORMWATER] RUNOFF FROM PRECIPITATION, SNOW MELT RUNOFF, AND SURFACE RUNOFF AND DRAINAGE.

WASTEWATER IMPOUNDMENT—A DEPRESSION, EXCAVATION OR FACILITY SITUATED IN OR UPON THE GROUND, WHETHER NATURAL OR ARTIFICIAL AND WHETHER LINED OR UNLINED, USED TO STORE WASTEWATER INCLUDING SEWAGE, ANIMAL WASTE OR INDUSTRIAL WASTE.

WATER QUALITY MANAGEMENT PERMIT—A PERMIT OR EQUIVALENT DOCUMENT OR REQUIREMENTS ISSUED BY THE DEPARTMENT TO AUTHORIZE ONE OF THE FOLLOWING:

(i) THE CONSTRUCTION, ERECTION AND LOCATION OF A WASTEWATER COLLECTION, CONVEYANCE OR TREATMENT FACILITY.

(ii) A DISCHARGE OF WASTEWATER TO GROUNDWATERS OF THIS COMMONWEALTH. THIS PERMIT IS ALSO KNOWN AS A “PART II” PERMIT.

WATERS OF THIS COMMONWEALTH—RIVERS, STREAMS, CREEKS, RIVULETS, IMPOUNDMENTS, DITCHES, WATER COURSES, STORM SEWERS, LAKES, DAMMED WATER, PONDS, SPRINGS AND ALL OTHER BODIES OR CHANNELS OF CONVEYANCE OF SURFACE AND UNDERGROUND WATER, OR PARTS THEREOF, WHETHER NATURAL OR ARTIFICIAL, WITHIN OR ON THE BOUNDARIES OF THIS COMMONWEALTH. THE TERM INCLUDES SURFACE WATERS AS DEFINED IN CHAPTER 93 (RELATING TO WATER QUALITY STANDARDS).

§91.6. Pollution prevention.

THE POLLUTANT LOADING OF WASTES SHOULD BE REDUCED BY THE PERMITTEE AND USERS OF THE PERMITTEE’S FACILITIES TO THE MAXIMUM EXTENT PRACTICAL [BY] THROUGH POLLUTION PREVENTION MEASURES SUCH AS PROCESS CHANGES, MATERIALS SUBSTITUTION, [SEGREGATION OF STRONG WASTES,] REDUCTION IN VOLUME OF WATER USE, IN-PROCESS RECYCLING AND REUSE OF

WATER, AND BY GENERAL MEASURES OF "GOOD HOUSEKEEPING" WITHIN THE PLANT OR FACILITY. AFTER CONSIDERATION OF POLLUTION PREVENTION MEASURES, THE FOLLOWING MEASURES, IN DESCENDING ORDER OF PREFERENCE, SHOULD BE CONSIDERED FOR ENVIRONMENTAL MANAGEMENT OF WASTES: REUSE, RECYCLING, TREATMENT AND DISPOSAL. POLLUTION PREVENTION MEASURES USED CURRENTLY OR PROPOSED SHALL BE ENCOURAGED AND ACKNOWLEDGED IN THE WATER QUALITY MANAGEMENT PERMIT APPLICATION. [THE TERM "PRACTICAL" IS NOT LIMITED TO THAT WHICH IS PROFITABLE OR ECONOMICAL.]

ADMINISTRATION AND ENFORCEMENT

§91.11. [Conferences] COMPLIANCE CONFERENCES [with violators].

(a) The Department will confer with the representatives of organizations required to abate their pollution of the waters of this Commonwealth and offer advice and suggestions regarding possible means for [the] abatement, [or treatment OR PREVENTION] of the pollution in question THROUGH POLLUTION PREVENTION MEASURES OR TREATING THE WASTE IF POLLUTION PREVENTION IS NOT POSSIBLE. [The staff shall interpret the orders of the Department.]

* * * * *

§91.12. Conference procedure.

[(a) The staff may not select or recommend specific measures or methods to be adopted by the party attempting to comply with the requirements of the Department.

(b) (a) [The staff] EMPLOYES OF THE DEPARTMENT may not act as [a] consulting [engineer] ENGINEERS for a party or recommend the employment of a particular consultant, gather the data for the design of his treatment plant, prepare plans or act as an inspector on the construction of the project.

[(c) (b) [The Department and the staff] EMPLOYES OF THE DEPARTMENT will not guarantee directly or by implication the efficacy of a proposed method of pollution abatement.

[(d) (c) [The staff] EMPLOYES OF THE DEPARTMENT shall exercise their best judgment in assisting the party and his engineers, but the responsibility for abating pollution shall rest entirely upon the one causing the pollution.

§91.13. Abatement or treatment required.

The Department will require either abatement of the pollution or the submission of a [report with detailed construction plans and specifications for a proposed treatment works] PLAN AND SCHEDULE FOR BRINGING THE SOURCE'S POLLUTANTS INTO COMPLIANCE THROUGH POLLUTION PREVENTION MEASURES, TREATMENT OR OTHER MEANS by a specific date, and shall require progress reports thereon, usually at monthly or bimonthly intervals as the Department will deem appropriate.

§91.14. Time for constructing treatment works.

(a) If, in lieu of abatement, a notified party elects to provide waste treatment works and submits plans therefore, the Department, upon approving the plans, will set a time within which the treatment works shall be constructed and placed in operation or will notify the party to be prepared to construct the plant upon notice from the Department, depending upon the status of the Department's program of construction for the basin in which the receiving stream lies as specified in §91.15 (relating to basin-wide [plans] COMPLIANCE).

* * * * *

§91.15. Basin-wide [plans] compliance.

(a) In general, the Department will require [submission of plans and construction of plants concurrently for a whole stream basin] SOURCES OF POLLUTANTS IN A BASIN, WASTERSHED OR SURFACE WATERS AS DEFINED IN CHAPTER 93 (RELATING TO WATER QUALITY STANDARDS) TO CONCURRENTLY COMPLY WITH THE WATER QUALITY STANDARDS AND PROTECTION LEVELS SET FORTH IN CHAPTER 93 [AND CHAPTERS 16] AND CHAPTER 95 (RELATING TO [WATER QUALITY TOXICS MANAGEMENT STRATEGY; AND] WASTEWATER TREATMENT REQUIREMENTS) AND IN THE STATEMENT OF POLICY AT 25 PA. CODE CHAPTER 16 (RELATING TO WATER QUALITY TOXICS MANAGEMENT STRATEGY).

(b) [If] NOTWITHSTANDING SUBSECTION (A), IF certain sources of [pollution] POLLUTANTS especially affect the public interests, [however,] the Department may act to require the abatement of the sources of pollution individually in the general order of degree of adverse effect upon the public interest.

* * * * *

APPLICATIONS AND PERMITS

§91.21. Applications for permits.

* * * * *

(c) Applications and their accompanying papers shall be submitted to the [Department through the regional engineer in whose region] DEPARTMENT'S REGIONAL OFFICE COVERING THE AREA WHERE the project will be located.

(d) TO QUALIFY FOR COVERAGE UNDER A GENERAL WATER QUALITY MANAGEMENT PERMIT UNDER THIS CHAPTER, AN ADMINISTRATIVELY COMPLETE NOTICE OF INTENT (NOD) SHALL BE SUBMITTED TO AND APPROVED BY THE DEPARTMENT IN ACCORDANCE WITH §91.27 (RELATING TO GENERAL WATER QUALITY MANAGEMENT PERMIT).

§91.22. Fees.

(a) * * *

(b) A NOTICE OF INTENT (NOD) FOR COVERAGE UNDER A GENERAL WATER QUALITY MANAGEMENT PERMIT SHALL BE ACCOMPANIED BY A CHECK PAYABLE TO THE "COMMONWEALTH OF PENNSYLVANIA," IN THE AMOUNT NO GREATER THAN \$500 AS SET FORTH IN THE PUBLIC NOTICE FOR THE GENERAL WATER QUALITY MANAGEMENT PERMIT AS DESCRIBED IN § 91.27(b)(1) (RELATING TO GENERAL WATER QUALITY MANAGEMENT PERMIT).

§91.25. Experimental projects.

If the suitability of a proposed device or method of treatment has not been demonstrated by actual field use IN THIS COMMONWEALTH OR ANOTHER STATE WITH SIMILAR CLIMATIC CONDITIONS, only conditional approval will be given to it until such time as the effectiveness of the device or treatment has been demonstrated to the satisfaction of the Department by ample field experience.

§91.27. General water quality management permit.

(a) COVERAGE AND PURPOSE. THE DEPARTMENT MAY ISSUE A GENERAL WATER QUALITY MANAGEMENT PERMIT, IN LIEU OF ISSUING INDIVIDUAL WATER QUALITY MANAGEMENT PERMITS, FOR A SPECIFIC

CATEGORY OF WASTEWATER TREATMENT FACILITIES IF THE WASTEWATER TREATMENT FACILITIES MEET THE FOLLOWING:

(1) INVOLVE THE SAME, OR SUBSTANTIALLY SIMILAR, TYPE OF OPERATIONS

(2) TREAT THE SAME TYPES OF WASTES.

(3) REQUIRE THE SAME OPERATING CONDITIONS.

(4) ARE, IN THE JUDGMENT OF THE DEPARTMENT, MORE APPROPRIATELY MANAGED UNDER A GENERAL PERMIT THAN UNDER INDIVIDUAL PERMITS.

(b) ADMINISTRATION OF GENERAL PERMITS.

(1) PROPOSED GENERAL PERMITS AND AMENDMENTS. THE DEPARTMENT WILL PUBLISH A NOTICE IN THE PENNSYLVANIA BULLETIN OF ITS INTENT TO ISSUE OR AMEND A GENERAL PERMIT, INCLUDING THE TEXT OF THE PROPOSED GENERAL PERMIT OR AMENDMENT, PROPOSED REVIEW FEES AND AN OPPORTUNITY FOR INTERESTED PERSONS TO PROVIDE WRITTEN COMMENTS ON THE PROPOSED GENERAL PERMIT OR AMENDMENT IN ACCORDANCE WITH §91 16 (RELATING TO NOTIFICATION OF ACTIONS).

(2) ISSUANCE OF GENERAL PERMITS. GENERAL PERMITS, SUBSEQUENTLY ISSUED, WILL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN AND INCLUDE THE EFFECTIVE DATE OF THE GENERAL PERMIT AND REVIEW FEES.

(3) EFFECTIVE DATE OF A GENERAL PERMIT THE DEPARTMENT WILL SPECIFY IN THE GENERAL PERMIT THAT AN APPLICANT WHO HAS SUBMITTED A TIMELY AND COMPLETE NOTICE OF INTENT FOR COVERAGE IS AUTHORIZED TO CONSTRUCT, ERECT AND LOCATE A WASTEWATER TREATMENT FACILITY OR DISCHARGE TO GROUNDWATERS OF THIS COMMONWEALTH, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE GENERAL PERMIT [COVERAGE]. COVERAGE UNDER [T]HE GENERAL PERMIT SHALL [COMMENCE ACCORDING TO ONE OF THE FOLLOWING] BECOME EFFECTIVE:

(i) AFTER A WAITING PERIOD FOLLOWING RECEIPT OF THE NOTICE OF INTENT BY THE DEPARTMENT AS SPECIFIED IN THE GENERAL PERMIT.

(ii) ON A DATE SPECIFIED IN THE GENERAL PERMIT.

(iii) UPON RECEIPT OF NOTIFICATION OF COVERAGE BY THE DEPARTMENT.

(iv) UPON RECEIPT OF THE NOTICE OF INTENT BY THE DEPARTMENT.

(4) NOTICE OF INTENT FOR COVERAGE UNDER A GENERAL PERMIT. A PERSON WHO DESIRES TO HAVE A WASTEWATER TREATMENT FACILITY COVERED UNDER A GENERAL PERMIT SHALL SUBMIT A NOTICE OF INTENT TO THE DEPARTMENT IN ACCORDANCE WITH §§91.21 AND 91.22 (RELATING TO APPLICATIONS FOR PERMITS; AND FEES) AND THE WRITTEN INSTRUCTIONS OF THE NOTICE OF INTENT. THE DEPARTMENT WILL REVIEW THE INFORMATION PROVIDED IN THE NOTICE OF INTENT FOR COMPLETENESS OR TO DETERMINE IF THE WASTEWATER TREATMENT FACILITY QUALIFIES UNDER THE PROVISIONS OF THE GENERAL PERMIT EXCEPT AS PROVIDED IN SUBSECTION (c)(1), (2) or [(4)] (5).

(c) DENIAL OF COVERAGE. THE DEPARTMENT MAY DENY COVERAGE UNDER THE GENERAL PERMIT WHEN ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:

(1) THE NOI IS NOT COMPLETE OR TIMELY.

(2) THE APPLICANT HAS NOT FIRST OBTAINED NPDES PERMITS REQUIRED BY CHAPTER 92 (RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM).

(3) THE APPLICANT IS NOT, OR WILL NOT BE, IN COMPLIANCE WITH ONE OR MORE OF THE CONDITIONS OF THE GENERAL PERMIT [OR].

(4) THE APPLICANT HAS A SIGNIFICANT HISTORY OF NONCOMPLIANCE WITH A PRIOR PERMIT ISSUED BY THE DEPARTMENT.

[(4)] (5) THE TREATMENT FACILITY PROPOSED FOR COVERAGE UNDER THE GENERAL PERMIT IS NOT CAPABLE OF TREATING WASTEWATER TO A DEGREE WHICH WILL RESULT IN COMPLIANCE WITH APPLICABLE EFFLUENT LIMITATIONS AND WATER QUALITY STANDARDS AS DESCRIBED IN CHAPTER 93 (RELATING TO WATER QUALITY STANDARDS).

[(5) (6) THE DEPARTMENT DETERMINES THAT THE ACTION IS NECESSARY TO ENSURE COMPLIANCE WITH THE FEDERAL ACT, THE ACT OR THIS TITLE.

(d) REQUIRING AN INDIVIDUAL PERMIT. THE DEPARTMENT MAY REVOKE, OR SUSPEND COVERAGE UNDER A GENERAL WATER QUALITY MANAGEMENT PERMIT, AND REQUIRE THAT AN INDIVIDUAL WATER QUALITY MANAGEMENT PERMIT BE OBTAINED WHEN THE PERMITTEE HAS VIOLATED ONE OR MORE OF THE CONDITIONS OF THE GENERAL PERMIT OR HAS VIOLATED A PROVISION OF THIS TITLE. UPON NOTIFICATION BY THE DEPARTMENT THAT AN INDIVIDUAL WATER QUALITY MANAGEMENT PERMIT IS REQUIRED FOR THE FACILITY, THE OWNER SHALL SUBMIT A COMPLETE WATER QUALITY MANAGEMENT PERMIT APPLICATION, IN CONFORMANCE WITH THE REQUIREMENTS OF THIS CHAPTER, WITHIN 90 DAYS OF RECEIPT OF THE NOTIFICATION, UNLESS THE OWNER IS ALREADY IN POSSESSION OF A VALID INDIVIDUAL WATER QUALITY MANAGEMENT PERMIT FOR THE APPLICABLE FUNCTIONS. FAILURE TO SUBMIT THE APPLICATION WITHIN 90 DAYS SHALL RESULT IN AUTOMATIC TERMINATION OF COVERAGE UNDER THE GENERAL PERMIT. TIMELY SUBMISSION OF A COMPLETE APPLICATION SHALL RESULT IN CONTINUATION OF COVERAGE OF THE APPLICABLE FACILITIES UNDER THE GENERAL PERMIT, WHEN THE FACILITY DEMONSTRATES THAT IT HAS UNDERTAKEN EFFORTS TO ADDRESS THE REASONS FOR THE REVOCATION OR SUSPENSION OF COVERAGE, UNTIL THE DEPARTMENT TAKES FINAL ACTION ON THE PENDING INDIVIDUAL PERMIT APPLICATION.

(e) TERMINATION OF COVERAGE UNDER A GENERAL PERMIT. WHEN AN INDIVIDUAL WATER QUALITY MANAGEMENT PERMIT IS ISSUED FOR A FACILITY WHICH IS COVERED UNDER A GENERAL WATER QUALITY MANAGEMENT PERMIT, THE APPLICABILITY OF THE GENERAL PERMIT TO THAT FACILITY IS AUTOMATICALLY TERMINATED ON THE EFFECTIVE DATE OF THE INDIVIDUAL PERMIT.

[STANDARDS FOR APPROVAL] MANAGEMENT OF OTHER WASTES

§91.31. [Comprehensive water quality management.] WELLS OTHER THAN OIL AND GAS.

[(a) The Department will not approve a project requiring the approval under the act or the provisions of this article unless the project is included in and conforms with a comprehensive program of water quality management and pollution control provided, however, that the Department may approve a project which is not

included in a comprehensive program of water quality management and pollution control if the Department finds that the project is necessary and appropriate to abate existing pollution or health hazards and that the project will not preclude the development or implementation of the comprehensive program.

(b) The determination of whether a project is included in and conforms to a comprehensive program of water quality management and pollution control shall be based on the following standards:

(1) Appropriate comprehensive water quality management plans approved by the Department.

(2) Official Plans for Sewage Systems which are required by Chapter 71 (relating to administration of sewage facilities planning program).

(3) In cases where a comprehensive program of water quality management and pollution control is inadequate or nonexistent and a project is necessary to abate existing pollution or health hazards, the best mix of all the following:

(i) Expeditious action to abate pollution and health hazards.

(ii) Consistency with long-range development.

(iii) Economy should be considered in the evaluation of alternatives and in justifying proposals.

(c) In making determinations under the provisions of subsection (b)(3), the Department will consider available and relevant information including, but not limited to, applicable studies and plans prepared by the following:

(1) The applicant.

(2) The Department.

(3) Federal agencies.

(4) Approved planning agencies.

(5) Political subdivisions.]

(a) EACH WELL-DRILLING OPERATION SHALL HAVE A SUMP OR OTHER RECEPTACLE LARGE ENOUGH TO RECEIVE ALL DRILL CUTTINGS, SAND BAILINGS, WATER HAVING A TURBIDITY IN EXCESS OF 1,000

NEPHELOMETRIC TURBIDITY UNITS (NTU) OR OTHER POLLUTANT RESULTING FROM THE WELL DRILLING OPERATIONS.

(b) SURFACE WATER SHALL BE EXCLUDED FROM THE SUMP OR RECEPTACLE BY MEANS OF DIVERSION DITCHES ON THE UPHILL SIDES, OR BY OTHER APPROPRIATE MEASURES.

(c) AFTER COMPLETION OF THE WELL, THE SUMP OR RECEPTACLE SHALL BE COVERED OVER OR OTHERWISE PROTECTED OR THE CONTENTS OF THE RECEPTACLE DISPOSED OF, SO THAT THE CONTENTS WILL NOT BE WASHED INTO THE WATERS OF THIS COMMONWEALTH.

(d) WASTE OIL, COAL, SPENT MATERIALS OR OTHER POLLUTANTS SHALL BE DISPOSED OF SO THAT THEY WILL NOT BE WASHED INTO THE WATERS OF THIS COMMONWEALTH.

§91.32. [Private projects] UNDERGROUND INJECTION OF WASTES.] RESERVED.

[(a) The Department will look with disfavor upon applications for sewerage permits for private sewerage projects to be located within the built-up parts of cities, boroughs and first and second class townships.

(b) Generally, issuance of the sewerage permits will be limited to proper private sewerage projects located in the rural parts of first and second class townships, and for which areas there appears to be no present necessity for public sewerage.]

[Underground injection of waste shall comply with 40 CFR Part 144 (relating to underground injection control program).]

§91.33. [Permit requirements] INCIDENTS CAUSING OR THREATENING POLLUTION.

[A permit may not be required for the discharge of sewage or industrial wastes into a sewer, sewer system or treatment plant which has been approved by a permit from the Department, provided that the sewer, sewer system or treatment plant is capable of conveying and treating the discharge and is operated and maintained in accordance with the permit and applicable orders, rules and regulations.]

(a) IF, BECAUSE OF AN ACCIDENT OR OTHER ACTIVITY OR INCIDENT, A TOXIC SUBSTANCE OR ANOTHER SUBSTANCE WHICH WOULD ENDANGER DOWNSTREAM USERS OF THE WATERS OF THIS

COMMONWEALTH, WOULD OTHERWISE RESULT IN POLLUTION OR CREATE A DANGER OF POLLUTION OF THE WATERS, OR WOULD DAMAGE PROPERTY, IS DISCHARGED INTO THESE WATERS—INCLUDING SEWERS, DRAINS, DITCHES OR OTHER CHANNELS OF CONVEYANCE INTO THE WATERS—OR IS PLACED SO THAT IT MIGHT DISCHARGE, FLOW, BE WASHED OR FALL INTO THEM, IT SHALL BE THE RESPONSIBILITY OF THE PERSON AT THE TIME IN CHARGE OF THE SUBSTANCE OR OWNING OR IN POSSESSION OF THE PREMISES, FACILITY, VEHICLE OR VESSEL FROM OR ON WHICH THE SUBSTANCE IS DISCHARGED OR PLACED TO IMMEDIATELY NOTIFY THE DEPARTMENT BY TELEPHONE OF THE LOCATION AND NATURE OF THE DANGER AND, IF REASONABLY POSSIBLE TO DO SO, TO NOTIFY KNOWN DOWNSTREAM USERS OF THE WATERS.

(b) IN ADDITION TO THE NOTICES SET FORTH IN SUBSECTION (A), A PERSON SHALL IMMEDIATELY TAKE OR CAUSE TO BE TAKEN STEPS NECESSARY TO PREVENT INJURY TO PROPERTY AND DOWNSTREAM USERS OF THE WATERS FROM POLLUTION OR A DANGER OF POLLUTION AND, IN ADDITION THERETO, WITHIN 15 DAYS FROM THE INCIDENT, SHALL REMOVE FROM THE GROUND AND FROM THE AFFECTED WATERS OF THIS COMMONWEALTH TO THE EXTENT REQUIRED BY THIS TITLE THE RESIDUAL SUBSTANCES CONTAINED THEREON OR THEREIN.

(c) COMPLIANCE WITH THIS SECTION DOES NOT AFFECT THE CIVIL OR CRIMINAL LIABILITY TO WHICH THE PERSON OR MUNICIPALITY MAY BE SUBJECT AS A RESULT OF AN ACTIVITY OR INCIDENT UNDER THE ACT, 30 PA.C.S. §§101-7314 (RELATING TO THE FISH AND BOAT CODE) OR ANOTHER STATUTE, ORDINANCE OR REGULATION.

§91.34. Activities utilizing pollutants.

(a) PERSONS ENGAGED IN AN ACTIVITY WHICH INCLUDES THE IMPOUNDMENT, PRODUCTION, PROCESSING, TRANSPORTATION, STORAGE, USE, APPLICATION OR DISPOSAL OF POLLUTANTS SHALL TAKE NECESSARY MEASURES TO PREVENT THE SUBSTANCES FROM DIRECTLY OR INDIRECTLY REACHING WATERS OF THIS COMMONWEALTH, THROUGH ACCIDENT, CARELESSNESS, MALICIOUSNESS, HAZARDS OF WEATHER OR FROM ANOTHER CAUSE.

(b) THE DEPARTMENT, AT ITS DISCRETION, MAY REQUIRE A PERSON TO SUBMIT A REPORT OR PLAN FOR ACTIVITIES DESCRIBED IN SUBSECTION (a). UPON NOTICE FROM THE DEPARTMENT AND WITHIN THE TIME SPECIFIED IN THE NOTICE, THE PERSON SHALL SUBMIT TO THE DEPARTMENT [A] THE REPORT OR PLAN SETTING FORTH

THE NATURE OF THE ACTIVITY[,] AND THE NATURE OF THE PREVENTATIVE MEASURES TAKEN TO COMPLY WITH SUBSECTION (A) [AND OTHER INFORMATION THE DEPARTMENT MAY REQUIRE]. THE USE OF POLLUTION PREVENTION MEASURES THAT MINIMIZE OR ELIMINATE THE GENERATION OF THE POLLUTANT ARE ENCOURAGED AND ARE PREFERRED OVER MEASURES WHICH INVOLVE POLLUTANT HANDLING OR TREATMENT. AFTER CONSIDERATION OF POLLUTION PREVENTION MEASURES, THE FOLLOWING MEASURES, IN DESCENDING ORDER OF PREFERENCE, SHOULD BE CONSIDERED FOR ENVIRONMENTAL MANAGEMENT OF WASTES: REUSE, RECYCLING, TREATMENT AND DISPOSAL.

§91.35. Wastewater impoundments.

(a) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTIONS (c), [AND] (d) AND (e), A PERSON MAY NOT OPERATE, MAINTAIN OR USE OR PERMIT THE OPERATION, MAINTENANCE OR USE OF A WASTEWATER IMPOUNDMENT FOR THE PRODUCTION, PROCESSING, STORAGE, TREATMENT OR DISPOSAL OF POLLUTANTS UNLESS THE WASTEWATER IMPOUNDMENT IS STRUCTURALLY SOUND, IMPERMEABLE, PROTECTED FROM UNAUTHORIZED ACTS OF THIRD PARTIES, AND IS MAINTAINED SO THAT A FREEBOARD OF AT LEAST 2 FEET REMAINS AT ALL TIMES. THE PERSON OWNING, OPERATING OR POSSESSING A WASTEWATER IMPOUNDMENT SHALL HAVE THE BURDEN OF SATISFYING THE DEPARTMENT THAT THE WASTEWATER IMPOUNDMENT COMPLIES WITH THESE REQUIREMENTS.

(b) A PERSON OWNING, OPERATING OR IN POSSESSION OF AN EXISTING WASTEWATER IMPOUNDMENT CONTAINING POLLUTANTS, OR INTENDING TO CONSTRUCT OR USE A WASTEWATER IMPOUNDMENT, SHALL PROMPTLY SUBMIT TO THE DEPARTMENT A REPORT OR PLAN SETTING FORTH THE LOCATION, SIZE, CONSTRUCTION AND CONTENTS OF THE WASTEWATER IMPOUNDMENT AND OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE.

(c) EXCEPT WHEN A WASTEWATER IMPOUNDMENT IS ALREADY APPROVED UNDER AN EXISTING PERMIT FROM THE DEPARTMENT, A PERMIT FROM THE DEPARTMENT IS REQUIRED APPROVING THE LOCATION, CONSTRUCTION, USE, OPERATION AND MAINTENANCE OF A WASTEWATER IMPOUNDMENT SUBJECT TO SUBSECTION (a) IN THE FOLLOWING CASES:

(1) IF A VARIANCE IS REQUESTED FROM THE REQUIREMENTS IN SUBSECTION (a).

(2) IF THE CAPACITY OF ONE WASTEWATER IMPOUNDMENT OR OF TWO OR MORE INTERCONNECTED WASTEWATER IMPOUNDMENTS EXCEEDS 250,000 GALLONS.

(3) IF THE TOTAL CAPACITY OF POLLUTING SUBSTANCES CONTAINED IN WASTEWATER IMPOUNDMENTS ON ONE TRACT OR RELATED TRACTS OF LAND EXCEEDS 500,000 GALLONS.

(4) IF THE IMPOUNDMENT IS A NEW OR EXPANDED MANURE STORAGE FACILITY AT AN AGRICULTURAL OPERATION WITH MORE THAN 1,000 ANIMAL EQUIVALENT UNITS, REGARDLESS OF THE CAPACITY OF THE IMPOUNDMENT.

[(4)] (5) IF THE DEPARTMENT DETERMINES THAT A PERMIT IS NECESSARY FOR EFFECTIVE REGULATION TO INSURE THAT POLLUTION WILL NOT RESULT FROM THE USE, OPERATION OR MAINTENANCE OF THE WASTEWATER IMPOUNDMENT.

(d) AN AGRICULTURAL OPERATION WHICH CONTAINS LESS THAN 1,001 ANIMAL EQUIVALENT UNITS IS NOT SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (b) AND (c), BUT SHALL PROVIDE A 12-INCH FREEBOARD FOR ALL WASTE STORAGE PONDS AND A 6-INCH FREEBOARD FOR ALL WASTE STORAGE STRUCTURES.

[(d)] (e) THIS SECTION DOES NOT APPLY TO RESIDUAL WASTE PROCESSING, DISPOSAL, TREATMENT, COLLECTION, STORAGE OR TRANSPORTATION.

§91.36. Pollution control and prevention at agricultural operations.

(a) ANIMAL MANURE STORAGE FACILITIES. EXCEPT AS PROVIDED IN PARAGRAPHS (1) AND (2), [A]ANIMAL MANURE STORAGE FACILITIES DO NOT REQUIRE A WATER QUALITY MANAGEMENT PERMIT FROM THE DEPARTMENT IF THE DESIGN AND OPERATION OF THE STORAGE FACILITIES ARE IN ACCORDANCE WITH THE DEPARTMENT APPROVED MANURE MANAGEMENT PRACTICES AS DESCRIBED IN THE PUBLICATION ENTITLED "MANURE MANAGEMENT FOR ENVIRONMENTAL PROTECTION" AND ADDENDA OR AMENDMENTS THERETO PREPARED BY THE DEPARTMENT, "THE PENNSYLVANIA TECHNICAL GUIDE" AND ADDENDA OR AMENDMENTS THERETO, AND, WHERE APPLICABLE, SECTION 83.351 (RELATING TO MINIMUM STANDARDS FOR THE DESIGN, CONSTRUCTION, LOCATION, OPERATION, MAINTENANCE AND REMOVAL FROM SERVICE OF MANURE STORAGE FACILITIES)

AND EACH ANIMAL MANURE STORAGE FACILITY IS DESIGNED TO PREVENT ANY DISCHARGES TO SURFACE WATERS DURING A STORM EVENT OF LESS THAN A 25-YEAR/24-HOUR STORM. IN ADDITION, IN THE CASE OF ANIMAL MANURE STORAGE FACILITIES LOCATED AT ANIMAL OPERATIONS WITH OVER 1,000 ANIMAL EQUIVALENT UNITS ON OR BEFORE (INSERT EFFECTIVE DATE) NO WATER QUALITY MANAGEMENT PERMIT IS REQUIRED IF A REGISTERED PROFESSIONAL ENGINEER CERTIFIES THAT THE DESIGN AND CONSTRUCTION OF EACH MANURE STORAGE FACILITY IS CONSISTENT WITH THE "PENNSYLVANIA TECHNICAL GUIDE".

(1) A PERMIT SHALL BE REQUIRED UNDER §91.35 FOR THE DESIGN, CONSTRUCTION AND OPERATION OF ANY NEW OR EXPANDED ANIMAL MANURE STORAGE FACILITY AT A AGRICULTURAL OPERATION WITH MORE THAN 1,000 ANIMAL EQUIVALENT UNITS. IN ADDITION TO THE REQUIREMENTS OF §91.35, THE PERMIT SHALL INCORPORATE THE REQUIREMENTS OF THIS SECTION 91.36.

(2) IF A PERSON CHOOSES TO DESIGN OR CONSTRUCT MANURE STORAGE FACILITIES USING CRITERIA OTHER THAN THOSE DESCRIBED IN "MANURE MANAGEMENT FOR ENVIRONMENTAL PROTECTION" PREPARED BY THE DEPARTMENT OR THE "PENNSYLVANIA TECHNICAL GUIDE" AND ADDENDA OR AMENDMENTS [THERETO] TO THOSE PUBLICATIONS [PREPARED BY THE DEPARTMENT], APPROVAL OF THE DEPARTMENT OR A PERMIT UNDER §91.35 (RELATING TO WASTEWATER IMPOUNDMENTS) WILL BE REQUIRED. OPERATIONS WHICH ARE REQUIRED TO OR VOLUNTEER TO SUBMIT NUTRIENT MANAGEMENT PLANS SHALL COMPLY WITH THE NUTRIENT MANAGEMENT REGULATIONS IN CHAPTER 83 (RELATING TO STATE CONSERVATION COMMISSION).

(b) LAND APPLICATION OF ANIMAL MANURE. THE LAND APPLICATION OF ANIMAL MANURES DOES NOT REQUIRE A PERMIT FROM THE DEPARTMENT IF THE [DESIGN AND OPERATION OF THE] LAND APPLICATION OF MANURE IS [SYSTEM ARE] IN ACCORDANCE WITH THE DEPARTMENT APPROVED MANURE MANAGEMENT PRACTICES AS DESCRIBED IN THE PUBLICATION ENTITLED "MANURE MANAGEMENT FOR ENVIRONMENTAL PROTECTION" AND ADDENDA OR AMENDMENTS THERETO PREPARED BY THE DEPARTMENT. IF A PERSON CHOOSES TO [DESIGN OR CONSTRUCT A] LAND [APPLICATION SYSTEM] APPLY ANIMAL MANURE USING CRITERIA OTHER THAN THOSE DESCRIBED IN "MANURE MANAGEMENT FOR ENVIRONMENTAL PROTECTION" AND ADDENDA OR AMENDMENTS THERETO PREPARED BY THE DEPARTMENT.

APPROVAL OF THE DEPARTMENT OR A PERMIT WILL BE REQUIRED. OPERATIONS WHICH ARE REQUIRED TO OR VOLUNTEER TO SUBMIT NUTRIENT MANAGEMENT PLANS SHALL COMPLY WITH CHAPTER 83.

§91.37. Private projects.

(a) THE DEPARTMENT WILL [LOOK WITH DISFAVOR UPON] NOT APPROVE APPLICATIONS FOR SEWERAGE PERMITS FOR PRIVATE SEWERAGE PROJECTS TO BE LOCATED WITHIN THE BUILT-UP PARTS OF CITIES, BOROUGHES AND FIRST AND SECOND-CLASS TOWNSHIPS UNLESS THE APPLICANT CAN DEMONSTRATE A COMPELLING PUBLIC NEED FOR THE PROJECT.

(b) [GENERALLY,] ISSUANCE OF THE SEWERAGE PERMITS WILL BE LIMITED TO PROPER PRIVATE SEWERAGE PROJECTS LOCATED IN THE RURAL PARTS OF FIRST AND SECOND CLASS TOWNSHIPS, AND FOR WHICH AREAS THERE APPEARS TO BE NO PRESENT NECESSITY FOR PUBLIC SEWERAGE.

§91.38. ALGICIDES, HERBICIDES AND FISH CONTROL CHEMICALS.

EXCEPT WHERE THE USE OF AN ALGICIDE, HERBICIDE OR FISH CONTROL CHEMICAL WOULD BE IN VIOLATION OF A SPECIFIC ORDER OR PERMIT, THE USE IS AUTHORIZED ONLY IN THE FOLLOWING INSTANCES:

(1) COPPER SULFATE REQUIRED TO CONTROL ALGAE IN A SOURCE OF PUBLIC WATER SUPPLY WHERE THE USE IS UNDER AND IN ACCORDANCE WITH APPROVAL GIVEN BY THE DEPARTMENT.

(2) CHEMICALS REQUIRED TO CONTROL AQUATIC PLANTS IN SURFACE WATERS AND CHEMICALS REQUIRED FOR THE MANAGEMENT OF FISH POPULATIONS WHERE THE USE IS UNDER AND IN ACCORDANCE WITH JOINT APPROVAL GIVEN BY THE DEPARTMENT AND THE FISH AND BOAT COMMISSION.

UNDERGROUND DISPOSAL

§91.41. POTENTIAL POLLUTION RESULTING FROM UNDERGROUND DISPOSAL

(a) THE DEPARTMENT WILL, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, CONSIDER THE DISPOSAL OF WASTES, INCLUDING STORM WATER RUNOFF, INTO THE UNDERGROUND AS POTENTIAL POLLUTION, UNLESS THE DISPOSAL IS CLOSE ENOUGH TO THE

SURFACE SO THAT THE WASTES WILL BE ABSORBED IN THE SOIL MANTLE AND BE ACTED UPON BY THE BACTERIA NATURALLY PRESENT IN THE MANTLE BEFORE REACHING THE UNDERGROUND OR SURFACE WATERS.

(b) THE FOLLOWING UNDERGROUND DISCHARGES ARE PROHIBITED:

(1) DISCHARGE OF INADEQUATELY TREATED WASTES, EXCEPT COAL FINES, INTO THE UNDERGROUND WORKINGS OF ACTIVE OR ABANDONED MINES.

(2) DISCHARGE OF WASTES INTO ABANDONED WELLS.

(3) DISPOSAL OF WASTES INTO UNDERGROUND HORIZONS UNLESS SUCH DISPOSAL IS FOR AN ABATEMENT OF POLLUTION AND THE APPLICANT CAN SHOW BY THE LOG OF THE STRATA PENETRATED AND BY THE STRATIGRAPHIC STRUCTURE OF THE REGION THAT IT IS IMPROBABLE THAT THE DISPOSAL WOULD BE PREJUDICIAL TO THE PUBLIC INTEREST AND IS ACCEPTABLE TO THE DEPARTMENT. ACCEPTANCES BY THE DEPARTMENT SHALL NOT RELIEVE THE APPLICANT OF RESPONSIBILITY FOR ANY POLLUTION OF THE WATERS OF THIS COMMONWEALTH WHICH MIGHT OCCUR AND IF ANY POLLUTION OCCURS, THE DISPOSAL OPERATIONS SHALL BE STOPPED IMMEDIATELY.

(c) NEW WELLS CONSTRUCTED FOR WASTE DISPOSAL SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION.

§91.42. PROCEDURAL REQUIREMENTS FOR UNDERGROUND DISPOSAL

A PERMIT ISSUED UNDER §91.41 (RELATING TO POTENTIAL POLLUTION RESULTING FROM UNDERGROUND DISPOSAL) SHALL BE ISSUED IN ACCORDANCE WITH THE REQUIREMENTS OF CHAPTER 92 (RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM).

MISCELLANEOUS PROVISIONS

91.[41] 51. Consultants.

91.[42] 52. Analysis of Wastes.

CHAPTER 97. INDUSTRIAL WASTES

(Editor's Note: The Department is proposing to delete §§97.14, 97.61 and 97.71-97.76 as they currently appear in the Pennsylvania Code at pages 97-5, 97-10, 97-11 and 97-14-97.16 (serial pps. (139009), (139014), (139015) and (126050)-(126052)).)

§97.14. (Reserved)

§97.61. (Reserved)

§§97.71-97.76. (Reserved)

(Editor's Note: The Department is proposing to delete Chapter 101 as it currently appears in the Pennsylvania Code at pages 101-1-101-7 (serial pps. (194071)-(194074) and (170117)-(170119)).)

CHAPTER 101. (Reserved)

§§101.1-101.6. (Reserved)

§101.8. (Reserved)

[Pa.B. Doc. No. 97-1351. Filed for public inspection August 22, 1997, 9:00 a.m.]