



## The National Agricultural Law Center

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## State NPDES Authority Statutes:

*Pennsylvania*



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

# A National Agricultural Law Center Research Publication

## State NPDES Authority Statutes: Pennsylvania

### [35 P.S. § 691.5](#)

### [35 P.S. § 691.402](#)

*Current through the 2022 legislative session.*

#### **§ 691.5. Powers and Duties.**

(a) The department, in adopting rules and regulations, in establishing policy and priorities, in issuing orders or permits, and in taking any other action pursuant to this act, shall, in the exercise of sound judgment and discretion, and for the purpose of implementing the declaration of policy set forth in section 4 of this act, consider, where applicable, the following:

- (1) Water quality management and pollution control in the watershed as a whole;
- (2) The present and possible future uses of particular waters;
- (3) The feasibility of combined or joint treatment facilities;
- (4) The state of scientific and technological knowledge;
- (5) The immediate and long-range economic impact upon the Commonwealth and its citizens.

(b) The department shall have the power and its duty shall be to:

- (1) Formulate, adopt, promulgate and repeal such rules and regulations and issue such orders as are necessary to implement the provisions of this act.
- (2) Establish policies for effective water quality control and water quality management in the Commonwealth of Pennsylvania and coordinate and be responsible for the development and implementation of comprehensive public water supply, waste management and other water quality plans.
- (3) Review all Commonwealth research programs pertaining to public water supply, water quality control and water quality management: Provided, however, that this section shall not be construed to limit the authority of each department to conduct research programs and operations as authorized by law.
- (4) Report from time to time to the Legislature and to the Governor on the Commonwealth's public water supply and water quality control program.



(5) Review and take appropriate action on all permit applications submitted pursuant to the provisions of this act and to issue, modify, suspend, limit, renew or revoke permits pursuant to this act and to the rules and regulations of the department. In all cases involving surface coal mining operations as they are defined in section 3 of the act of May 31, 1945 (P.L. 1198, No. 418), known as the "Surface Mining Conservation and Reclamation Act," following the department's decision whether to approve or deny a renewal, the burden shall be on the opponent of the department's decision.

(6) Receive and act upon complaints.

(7) Issue such orders as may be necessary to implement the provisions of this act or the rules and regulations of the department.

(8) Make such inspections of public or private property as are necessary to determine compliance with the provisions of this act, and the rules, regulations, orders or permits issued hereunder.

#### **§ 691.402. Potential Pollution.**

(a) Whenever the department finds that any activity, not otherwise requiring a permit under this act, including but not limited to the impounding, handling, storage, transportation, processing or disposing of materials or substances, creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution, the department may, by rule or regulation, require that such activity be conducted only pursuant to a permit issued by the department or may otherwise establish the conditions under which such activity shall be conducted, or the department may issue an order to a person or municipality regulating a particular activity. Rules and regulations adopted by the department pursuant to this section shall give the persons or municipalities affected a reasonable period of time to apply for and obtain any permits required by such rules and regulations.

(b) Whenever a permit is required by rules and regulations issued pursuant to this section, it shall be unlawful for a person or municipality to conduct the activity regulated except pursuant to a permit issued by the department. Conducting such activity without a permit, or contrary to the terms or conditions of a permit or conducting an activity contrary to the rules and regulations of the department or conducting an activity contrary to an order issued by the department, is hereby declared to be a nuisance.

(c)

(1) For persons proposing or conducting earth disturbance activities when the activity requires a National Pollutant Discharge Elimination System permit for storm water discharge under 25 Pa. Code Ch. 102 (relating to erosion and sediment control), the person may use or install either:

(i) a riparian buffer or riparian forest buffer; or



(ii) another option or options among available best management practices, design standards and alternatives that collectively are substantially equivalent to a riparian buffer or riparian forest buffer in effectiveness, to minimize the potential for accelerated erosion and sedimentation and to protect, maintain, reclaim and restore water quality and for existing and designated uses of a perennial or intermittent river, stream or creek or lake, pond or reservoir of this Commonwealth to ensure compliance with 25 Pa. Code Ch. 93 (relating to water quality standards).

(2) A project located in a special protection watershed in a drainage list specified in 25 Pa. Code § 93.9 (relating to designated water uses and water quality criteria) that proposes any earth disturbance within 100 feet of a surface water shall offset any reduction in the total square footage of the buffer zone that would have been utilized as a best management practice, with a replacement buffer elsewhere along special protection waters in the same drainage list and as close as feasible to the area of disturbance at a ratio of one-to-one. Any project incorporating such an alternative shall also include other best management practices to manage postconstruction storm water to protect, maintain, reclaim and restore water quality and existing and designated uses of waters of this Commonwealth. Replacement planting costs shall be calculated using department guidance as specified in BMP 6.7.1: Riparian Buffer Restoration of the Pennsylvania Stormwater Best Management Practice Manual.

