



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Clean Water Management

# **PADEP Clean Water Program Compliance & Enforcement Review**

Schuylkill Action Network  
Pathogen and Point Source Workgroup  
2020 Water Utility Forum  
January 28, 2020

Erick M. Ammon  
Environmental Protection Compliance Specialist  
PADEP Southcentral Regional Office  
Clean Water Program

# Department Contacts

PADEP Webpage: [www.dep.pa.gov](http://www.dep.pa.gov)

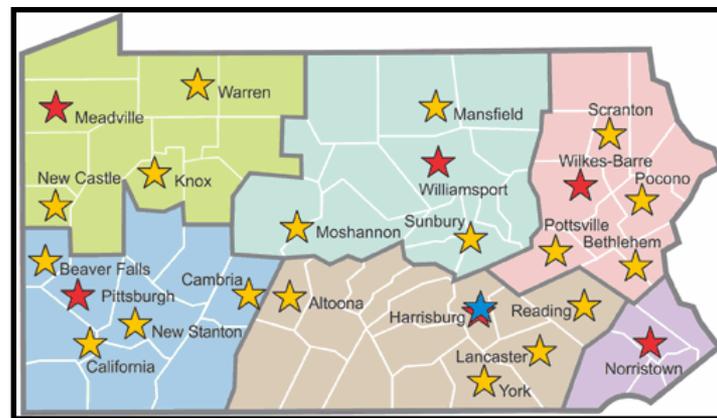
## Office of Water Programs

- Bureau of Clean Water
- Bureau of Safe Drinking Water



## PADEP Southcentral Regional Office

- Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, & York Counties
- 24/7 toll-free Emergency Response hotline
  - **1.800.541.2050 (July 2019)**
- Clean Water Program
  - SCRO
    - 717.705.4707
  - Reading District Office
    - 610.916.0100
    - Shawn Fassel



# PADEP CWP Compliance & Enforcement

- **Article 1, Section 27 of Pennsylvania State Constitution**
  - Added by Amendment of May 18, 1971

*“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”*

**The State, as a public trustee, has standing to enforce the public trust.**

# PADEP CWP Compliance & Enforcement

- **The Administrative Code of 1929**

- Article XIX-a
  - Establishes some powers and duties of PADEP
- Section 1917-A

The Department...shall have the power and its duty shall be:

- (1) To protect the people of this Commonwealth from unsanitary conditions and other nuisances...;
- (2) To cause examination to be made of nuisances, or questions affecting the security of life and health, in any locality, and, for that purpose, without fee or hinderance, to enter, examine and survey all grounds, vehicles, apartments, buildings, and places, within the Commonwealth, and all persons, authorized by the department to enter, examine and survey such grounds, vehicles, apartments, buildings and places, shall have the powers and authority conferred by law upon constables;
- (3) To order such nuisances including those detrimental to the public health to be abated and removed;
- (4) If the owner or occupant of any premises, whereon any such nuisance fails to comply with any order of the department for the abatement or removal thereof, to enter upon the premises, to which such order relates, and abate or remove such nuisance;
- (5) For the purpose of collecting or recovering the expense of the abatement or removal of a nuisance, to file a claim, or maintain an action, in such manner as may now or hereafter be provided by law, against the owner or occupant of the premises upon or from which such nuisance shall have been abated or removed by the department;...

# PADEP CWP Compliance & Enforcement

- **PA Clean Streams Law (35 P.S. § § 691.1 *et seq.*, Rev. 2014)**
  - 201: Prohibition Against Discharge of Sewage.
  - 202: Discharge of sewage without a permit or contrary to the terms and conditions of a permit.
  - 301: Prohibition Against Discharge of Industrial Wastes.
  - 307: Discharge of industrial waste without a permit or contrary to the terms and conditions of a permit.
  - 308: Approval of Plans, Designs, and Relevant Data. (WQM Part II Permit)
  - 401: Prohibition against other pollutants.
  - 402(a): Potential Pollution.
  - 402(b): Failure to obtain a permit for an activity that creates a danger of pollution as determined by PADEP.
  - 611: Unlawful conduct & failure to comply with terms and conditions of a WQM Permit or Department Rules & Regulations.

# PADEP CWP Compliance & Enforcement

- **Title 25 PA Code Chapter 91 (General Provisions)**
  - 25 Pa. Code § 91.33: Incidents Causing/Threatening Pollution
    - Failure to immediately notify the Department of the incident creating a danger of pollution to waters of the Commonwealth.
    - Immediate Notification to Department & Downstream Users
      - 4 hours
    - PADEP Reporting Requirements Fact Sheet (3800-FS-DEP4449)
  - 25 Pa. Code § 91.34: Activities utilizing pollutants
    - Failure to take appropriate measures to prevent the release of a polluting substance to waters of the Commonwealth.
    - Pollution prevention measures for environmental management of wastes: reuse, recycling, treatment and disposal.
    - 5-Day written incident summary
    - Cleanup of material
      - 15 days

# PADEP CWP Compliance & Enforcement

- **Water Quality Management Permits (Part II)**
  - Authorization to construct and operate sewage collection and conveyance systems, and sewage and industrial waste treatment systems
  - Authorization for land application/injection
    - Authority is based in Clean Streams Law (202 / 307 / 402(a))
- **NPDES Permits**
  - Authorization to discharge pollutants from point sources to navigable waters (Waters of the Commonwealth)
  - 40 CFR Part 122 (Federal NPDES Program)
    - *Delegated authority to PADEP in 1978*
  - **Title 25 Pa. Code § 92A**
    - State adoption of 40 CFR Part 122 requirements
  - **PADEP NPDES Permits (Part I)**
    - Part A: Effluent Monitoring & Reporting, Definitions, and Self Monitoring, Reporting & Recordkeeping
    - Part B: Management Requirements, Penalties & Liabilities, Other Responsibilities, Fees (boilerplate)
    - Part C: Other requirements & facility specific requirements

# PADEP CWP Compliance & Enforcement

- **Title 25 PA Code § 302**

- **Administration of the Water & Wastewater Systems Operators' Certification Program**

- Duties of Owners
  - Notification & Communication
- Duties of Operators
  - Process Control Plans, O&M Plans, and Standard Operating Procedures (SOPs)
- Operation of multiple treatment systems (Circuit Riders)
  - General Work Plan
  - Site Specific Management Plans
  - Process Control Plans
  - SOPs
- Satellite collection systems with pump stations (4,E for flows >2,000 GPD)
- **25 PA Code §§ 94.21-22 (Hydraulic / Organic Overload)**
  - Corrective Action Plans & Connection prohibitions/bans
- **Sewage Planning / Pennsylvania Sewage Facilities Act (Act 537)**
  - 25 PA Code § 71 & 73
- **Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003)**
  - Land Application of Sewage Sludge / Biosolids (PAG-07, PAG-08, PAG-09)
- **The Environmental Laboratory Accreditation Act**
  - Chapter 252 & Standard Methods/EPA Approved Analysis



# PADEP CWP Compliance & Enforcement

- **The Clean Water Program cites a violation...**

- Inspection Reports & Correspondence

- Department staff has discretion.
- Administrative / Compliance Evaluation / Routine / Follow-Up Inspections
- Pollution Incident / Complaint Response (Illicit Discharges, SSO, storm event, etc...)

- \* **Read the report/correspondence.**

- \* **Ask field representative or Department staff for clarification as needed.**

- \* **Provide justification for edits, revisions or corrections.**

- 25 Pa. Code § 91.12

(a) Employees of the Department may not act as consulting 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.

(b) Employees of the Department will not guarantee directly or by implication the efficacy of a proposed method of pollution abatement.

(c) Employees of the Department shall exercise their best judgment in assisting the party and his engineers, but the responsibility for abating pollution shall rest ...upon the one causing the pollution.

**Voluntary compliance resolves majority of violations.**

# PADEP CWP Compliance & Enforcement

- **Clean Water Program Enforcement Referral Process**
  - Internal discussion regarding validity of case.
    - Chronic/recurring violations
    - Significance
    - Catastrophic effects / Fish mortality, etc....
  - Information gathering & documentation by Water Quality Specialist (WQS). Referral package is assembled by WQS and includes a case summary, accounting of violations, inspection reports, Department correspondence, and responses & documentation provided by responsible party.
  - Referral package is reviewed and approved by Supervisor and Operations Manager.
  - Referral package is assigned to Environmental Protection Compliance Specialist (EPCS).
  - EPCS completes a file review & accounts for all violations within last five (5) calendar years.

# PADEP CWP Compliance & Enforcement

- **Enforcement Instruments & Actions**

- Notice of Violation

- Requires official response from responsible party

- Consent Assessment of Civil Penalty (CACP)

- Resolves violations through *negotiated* civil penalty
- May include additional PADEP Programs (Waste, Drinking Water, etc...)

- Consent Assessment and Settlement Agreement (CASA)

- Three-party agreement (PFBC)
- Resolves violations through *negotiated* civil penalties

- Consent Order and Agreement (COA)

- Resolves violations through *negotiated* corrective actions
- Potential to include *negotiated* civil penalty
- Stipulated civil penalties for failure to comply with corrective actions
- May include additional PADEP Programs (Waste, Drinking Water, etc...)

Consent instruments allow for negotiation between Department and responsible party.

# PADEP CWP Compliance & Enforcement

- **Calculation of civil penalties.**

- Civil Penalties determined by following Section 605 of the Clean Streams Law, 35 P.S. § 691.605 (up to \$10,000 per day per violation)
- Penalty Matrix developed by PADEP Central Office for calculation
- Follows Standard Operating Procedure for Determining Civil Penalties under the Clean Streams Law. (BPNPSM-ENF-004)
- Damage, Willfulness, and facility History.
- Calculations for effluent violations have no subjective determination.

- **Unilateral Actions**

- Field Order
- Administrative Order
- Petition State Board for suspension/revocation of licensure
- Criminal referral
  - PADEP Bureau of Investigation & PA Attorney Generals Office Env'tl Crime Unit
- Civil Penalty Assessment Informal Hearing (PADEP)
- Complaint for Assessment of Civil Penalty (EHB)

# PADEP CWP Compliance & Enforcement

- **Notes**

- Department enforcement may prevent enforcement action by federal authorities (EPA/DOJ) and/or third party action.
- Due diligence
  - Environmental civil liability and pollution liability is ***strict liability***.
  - Strict liability is applicable without proof of negligence or fault.
- Honesty
  - Violations happen and VERY few are considered deliberate/willful.
- Cooperation
  - The Department needs all the information you can provide when considering formal enforcement.
  - 99% of civil penalties are reduced significantly for cooperation and costs associated with mitigation and remediation.
- Negotiating in good faith

# PADEP CWP Compliance & Enforcement



# PADEP CWP Compliance & Enforcement



# PADEP CWP Compliance & Enforcement





**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Clean Water Management

# Questions/Comments/Concerns?

Erick M. Ammon  
Environmental Protection Compliance Specialist  
PADEP Southcentral Regional Office  
Clean Water Program

[eammon@pa.gov](mailto:eammon@pa.gov)

717.705.4775