

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATER STANDARDS AND FACILITY REGULATION**

**DOCUMENT NUMBER:** 385-0810-001

**TITLE:** Chapter 95 – Total Dissolved Solids, Statement of Policy Defining the Term “Authorization”

**EFFECTIVE DATE:** August 21, 2010

**AUTHORITY:** Sections 5 and 402 of the Clean Streams Law, 35 P.S. §§ 691.5 and 691.402.

**POLICY:** To assist in the implementation of revisions to 25 Pa Code, Chapter 95 that create limits on Total Dissolved Solids (TDS) discharges, specifically with respect to determining exemptions for discharge loads of TDS that were authorized by the Department prior to the effective date of the revised regulations, the Department will utilize this guidance.

**PURPOSE:** To provide the Department’s interpretation for the term “authorization” as used in 25 Pa in § 95.10(a) regarding exemptions from certain requirements in Chapter 95.

**APPLICABILITY:** This policy applies to discharges of total dissolved solids to Waters of this Commonwealth.

**DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give the rules in these policies that weight or deference. This document establishes the framework within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 3

**LOCATION:** Volume 33, Tab 61

**DEFINITIONS:** See Title 25 Pa. Code, Chapter 95

In 25 Pa Code § 95.10(a)(1) the Department refers to “authorization” as follows: “The following are not considered new and expanding mass loadings of TDS and are exempt from the treatment requirements in this section: Maximum daily discharge loads of TDS or specific conductivity levels that were authorized [*emphasis added*] by the department prior to August 21, 2010. Such discharge loads shall be considered existing mass loadings by the Department...”

Statutory authority for § 95.10(a)(1) is found in the Clean Streams Law, 35 P.S. § 691.1 et seq. which prohibits the discharge of any pollutant into the waters of the Commonwealth, unless that discharge is authorized by DEP through a permit or other form of authorization. The Clean Water Act is similarly structured, prohibiting the discharge of any pollutant into the waters of the United States unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The term “authorized” as used in 25 Pa. Code, Chapter 95.10(a) includes all permits, licenses, registrations, certifications, and other approvals issued by the Department, and are included in the exempting of existing discharges from this regulatory change.

DEP used the word “authorization,” in order to be as broad as possible and to describe all approvals issued by DEP. Concerns were raised by regulated industries during the comment period for the regulatory amendments that a challenge could be made regarding exemption of existing TDS loads on the basis that a specific limit for TDS was not contained in an NPDES permit issued prior to the effective date of the Chapter 95 amendments. The broadest possible term was utilized in the regulatory amendments in order to assure that all existing loads of TDS would be exempt, and that there would be no misunderstanding by the regulated community that the term applies to all DEP authorizations, not just NPDES permits. Section 95.10(a)(1) does not limit the exemption to, e.g., “discharge loads of TDS established by a NPDES permit that contains specific effluent limitations for TDS, sulfates and chlorides, and was issued prior to the effective date of these regulations.”

For the purpose of this regulation, any discharge of TDS or specific conductance level permitted, registered, approved, certified or by other means granted permission by DEP prior to August 21, 2010, that contained a detectable level of TDS upon issuance, regardless of whether effluent limits for TDS or specific conductivity were included in the authorization would be exempt from the provisions of this regulation to the maximum level of TDS historically present in that approved discharge.

DEP’s *Guide to DEP Permits & Other Authorizations* (Guide) was written to better inform business owners, industry managers, governmental officials, environmental health workers, consultants and concerned citizens about authorization requirements. In the Guide, DEP states: “To clear up any confusion in terminology, the guide includes information on all authorizations handled by DEP (e.g., permits, registrations, certifications, licenses, etc.). For this reason, the Guide will refer to these approvals as authorizations.”

To better define the types of authorizations in which DEP will consider TDS loads existing prior to the effective date of the Chapter 95 amendment, we have created the list below. This list is not intended to be exhaustive, but rather a comprehensive illustration, therefore it may not contain all permits, licenses, registrations, etc. that DEP is defining as authorizations.

- Coal mining – bituminous surface mine permit
- Coal mining – bituminous underground mines, preparation plants & refuse disposal
- Coal mining – coal mining activity permit renewal

- Industrial minerals – large noncoal mine permit
- RECLAIM PA – environmental good samaritan project proposal
- PAG 310001 wells (general NPDES permit for discharges from stripper oil well)
- Roadspreading plan approval request
- NPDES permits for stormwater discharges from construction activities
- National pollutant discharge elimination system (NPDES) permit
- Hazardous waste – treatment facility
- Hazardous waste – land disposal facility
- PAG-03 Discharge of stormwater associated with industrial activities
- PAG-04 Single residence sewage treatment plant
- PAGg-05 Discharges from gasoline contaminated ground water remediation system
- PAG-06 Wet weather overflow discharge from combined sewer systems
- Hazardous waste – Land disposal facility
- PAG-10 Discharge resulting from hydrostatic testing of tanks & pipelines
- PAG-12 Concentrated animal feeding operations
- PAG-13 Stormwater discharges from small municipal separate storm sewer systems (MS4s)
- NPDES – concentrated animal feeding operations individual NPDES permit
- NPDES – New & existing sewage discharger, short form
- State water pollution control water management part II permit for industrial wastewater facility
- State water pollution control water management Part II permit for manure storage facility for concentrated animal feeding operations
- Underground injection control (UIC) permit
- Non-hazardous (municipal & residual) residual waste other residual waste processing permit
- Non hazardous – Residual and Municipal waste general permits (those with beneficial use criteria involving wastewater containing TDS)