



Department of
Environmental
Conservation

6 NYCRR PART 750

State Pollutant Discharge Elimination System (SPDES) Permits

SUBPART 750-1

Obtaining a SPDES Permit

SUBPART 750-2

Operating in Accordance with a SPDES Permit

Version effective date – November 30, 2016

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PREFACE

Organization and Numbering of Regulations

The Regulations of the department are Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

Examples of numbering system in the department regulations:

Title 6

Part 750

Subpart 750-2

Section 750-2.13

Subdivision 750-2.13(k)

Paragraph 750-2.13(k)

Subparagraph 750-2.13(k)(3)(iii)

Clause 750-2.13(k)(3)(iii)'(b)'

Subclause 750-2.13(k)(3)(iii)'(b)''(l)''(i)'

Item 750-2.13(k)(3)(iii)'(b)''(l)''(i)'

This may be written 6NYCCRR Part 750-2.13(k)(3)(iii)'(b)''(l)''(i)'

This numbering system is described in the preface to the department's regulations, and in the regulations of the Department of State (19 NYCRR 261.4(b)).

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(Statutory authority: Environmental Conservation Law, § 1-0101, art. 3, title 3; § 8-0113, 11-0325; arts. 15, 17, titles 3, 5,7, 8; §§ 19-0301, 19-0303, 19-0304, 19-0306; arts. 21, 27, titles 1, 3, 5, 7, 9, 13, 70; art. 71, title 19; New York State Penal Code, arts. 175, 210; Public Health Law, § 502; Federal Water Pollution Control Act, 33 USC 1251, *et seq.*)

750-1.1 Scope and purpose.

(a) New York State has a State program that has been approved by the United States Environmental Protection Agency for the control of wastewater and storm water discharges in accordance with the act. Under New York State law the program is known as the State Pollutant Discharge Elimination System (SPDES) and is broader in scope than that required by the act in that it controls point source discharges to groundwaters as well as surface waters.

(b) The regulations in this Part prescribe procedures and substantive rules concerning the SPDES Program as set forth in the statutory authority for this Part. The SPDES Program does not apply to:

(1) Indian activities on Indian lands under the jurisdiction of the United States; or

(2) those discharges that are deemed prohibited by section 17-0807 of the ECL or section 750-1.4 of this Subpart.

(c) Much of the procedures and administrative rules concerning SPDES permits in connection with departmental action on applications, emergency authorizations, modification, suspension and revocation provisions and other provisions, are set forth in Part 621 of this Title.

(d) Permit hearing procedures are set forth in Part 624 of this Title.

(e) Enforcement hearing procedures are set forth in Part 622 of this Title.

(f) Provisions applicable to issued SPDES permits and POSS registrations are set forth in Subpart 750-2 of this Part.

750-1.2 Definitions.

(a) Whenever used in this Part, unless a different meaning is stated in a definition applicable to only a portion of this Part, the following terms will have the meanings set forth below:

(1) *Act* means the Clean Water Act formerly referred to as the Federal Water Pollution Control Act, 33 USC 1251 *et seq.* (see section 750-1.25 of this Subpart).

(2) *Action level* means, when used in a SPDES permit, a monitoring requirement characterized by a numerical value that, when exceeded, triggers additional permittee monitoring and department review to determine if numerical effluent limitations should be imposed.

(3) *Administrative renewal* means renewal of a SPDES permit in accordance with Part 621 of this Title, based on an abbreviated review of changes at the permitted facility.

(4) *Administrator* means the administrator of the EPA.

(5) *Animal feeding operation (AFO)* means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they physically adjoin each other, or if they use a common area or system for the disposal of wastes.

(6) Animal unit. [*Reserved*]

(7) *Applicable water quality standards and effluent limitations* means all State and Federal water quality standards and effluent limitations to which a discharge is subject under the act, or under State law, including but not limited to water quality standards, effluent limitations, best management practices, standards of performance, toxic effluent standards and prohibitions, pretreatment standards, and ocean discharge criteria.

(8) *Approvable* is defined as that which can be approved by the department, with only minimal revision. *Minimal revision* shall mean revised and resubmitted to the department within 60 days of notification by the department of the revisions that are necessary, unless otherwise defined by the applicable SPDES permit.

(9) *Average* means the arithmetic mean of pollutant parameter values for samples collected in a given period.

(10) *Best available technology economically achievable (BAT)* means effluent limits authorized under section 301(b)(2)(A) of the act, 40 CFR 122.44(a) and (e)(1) and (2), 40 CFR 125.3(2)(iii), 40 CFR 405 to 471 (see section 750-1.25 of this Subpart) and ECL 17-0801. BAT is technology-based effluent limitations guidelines established by the act as the most appropriate means available on a national basis for controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. BAT effluent limitations guidelines, as established by EPA, represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

(11) *Best conventional pollutant control technology (BCT)* means effluent limits authorized under the act, section 301(b)(2)(E), 40 CFR 122.44(a), 40 CFR 125.3(2)(ii), 40 CFR 405 to 471 (see section 750-1.25 of this Subpart) and ECL 17-0811. BCT is technology based effluent limitations guidelines for the discharge of conventional pollutants from existing industrial point sources including BOD5, TSS, fecal coliform, pH, oil and grease. The BCT is established by EPA using a two-part cost reasonableness test that compares the cost for an industry to reduce its pollutant discharge with the cost to a POTW for similar levels of reduction of a pollutant loading. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find limits that are reasonable under both tests before establishing them as BCT.

(12) *Best management practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements (if determined necessary by the permittee), operating procedures, and practices to control

plant site runoff, spillage and leaks, sludge or waste disposal, or drainage from raw material storage.

(13) *Best practicable control technology currently available (BPT)* means effluent limits authorized under the act, section 301(b)(2)(E), 40 CFR 122.44(a), 40 CFR 125.3(2)(ii), 40 CFR 405 to 471 (see section 750-1.25 of this Subpart) and ECL 17-0811. The initial level of technology-based standards established by the CWA to control pollutants discharged to navigable waters, BPT effluent limitations guidelines are generally based on the average of the best existing performance by plants within an industrial category or subcategory. Because BPT has been supplanted by BAT and BCT in all other instances, BPT is only applied by EPA when proposed BCT limits fail the cost comparison with secondary treatment regulations for POTWs.

(14) *Best professional judgement (BPJ)* means effluent limits authorized under the Act section 402(a)(1)(B), 40 CFR 122.44(e)(1) and (2), 40 CFR 125.3(a)(2)(I)(B)-(v), 40 CFR 414.11(h), 40 CFR 501.15(b) (see section 750-1.25 of this Subpart) and ECL 17-0811. BPJ is the method used by permit writers to develop BAT or BCT limits or requirements on a case-by-case basis for pollutants and wastewaters not addressed by 40 CFR 405 to 471.

(15) *Biological monitoring* means the determination of the effects of the discharge of pollutants on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants by scientifically sound techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristics of the effluent, at appropriate frequencies and locations. Such monitoring includes, but is not limited to whole effluent toxicity testing as set forth in 40 CFR part 136 (see section 750-1.25 of this Subpart).

(16) *Biosolids* means dewatered treatment residuals that meet Federal regulations (40 CFR part 501 - see section 750-1.24 of this Subpart) and State regulations (Part 360 of this Title) and local rules for reuse concerning metals, pathogens, and vector attraction reduction.

(17) *Bypass* means the intentional or unintentional diversion of wastewater or stormwater around any portion of a treatment facility having the effect of reducing the degree of treatment designed for the bypassed portion of the treatment facility.

(18) *Central office* means the principal office of the department, located in the County of Albany, State of New York.

(19) *Certified laboratory* means a laboratory that is certified by the State Commissioner of Health pursuant to section 502 of the Public Health Law (see section 750-1.25 of this Subpart) for the analyte or analytes in question.

(20) *Combined sewer overflow (CSO)* means a discharge from a combined sewer system (CSS) at a point before the POTW wastewater treatment plant.

(21) *Combined sewer system (CSS)* means a sewer system which conveys sewage and stormwater through a single pipe system to a POTW wastewater treatment plant.

(22) *Commissioner* means the commissioner of the New York State Department of Environmental Conservation as well as meaning the commissioner's designated agent.

(23) (i) *Concentrated animal feeding operation. (CAFO)* means an AFO that meets the criteria of either a large, medium or small CAFO. A *large CAFO* means an AFO that stables or confines as many as or more than the numbers of animals in any of the following categories:

- (a) 700 mature dairy cows, whether milked or dry;
- (b) 1,000 veal calves;
- (c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (d) 2,500 swine each weighing 55 pounds or more;
- (e) 10,000 swine each weighing less than 55 pounds;
- (f) 500 horses;
- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (j) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (l) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (m) 5,000 ducks (if the AFO uses a liquid manure handling system).

(ii) A *medium CAFO* means an AFO that stables or confines as many as or more than the numbers of animals in any of the following categories:

- (a) 200 to 699 mature dairy cows, whether milked or dry, except that an AFO that stables or confines 200-299 mature dairy cows, whether milked or dry that does not cause a discharge would not be considered a medium CAFO;
- (b) 300 to 999 veal calves;
- (c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (d) 750 to 2,499 swine each weighing 55 pounds or more;
- (e) 3,000 to 9,999 swine each weighing less than 55 pounds;

- (f) 150 to 499 horses;
- (g) 3,000 to 9,999 sheep or lambs;
- (h) 16,500 to 54,999 turkeys;
- (i) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (j) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (l) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
- (m) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system).

(iii) A *small CAFO* means an AFO that is designated by the department as a CAFO or requests CAFO SPDES permit coverage and is not a medium or large CAFO.

While not required, an AFO with 200-299 mature dairy cows may request CAFO SPDES permit coverage and, if permit coverage is granted, the AFO would be considered a small CAFO throughout permit coverage. Notwithstanding any provision of this subdivision, the department retains its existing authority to enter and inspect any property or premises and access records for the purpose of ascertaining compliance or noncompliance with provisions of the ECL article 17, or the actor any regulations adopted pursuant thereto.

(24) *Contiguous zone* means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea for this zone.

(25) *Daily discharge* means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. For pollutants expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement (concentration) of the pollutant over the day.

(26) *Daily maximum* means the highest allowable daily discharge for the reporting period.

(27) *Department* means the New York State Department of Environmental Conservation as well as meaning the department's designated agent.

(28) *Discharge* means any addition of any pollutant to waters of the State through an outlet or point source.

(29) *Discharges authorized by a SPDES permit* means discharges of wastewater or storm water from sources listed in the permit, that do not violate ECL section 17-0501, that are through outfalls listed in the permit, and that are:

- (i) discharges within permit limitations of pollutants limited in the SPDES permit;
- (ii) discharges within permit limitations of pollutants limited by an indicator limit in the SPDES permit;
- (iii) discharges of pollutants subject to action level requirements in the SPDES permit;
- (iv) discharges of pollutants not explicitly listed in the SPDES permit, but reported in the SPDES permit application record as detected in the discharge or as something the permittee knows or has reason to believe to be present in the discharge, provided the special conditions section of the applicable SPDES permit does not otherwise forbid such a discharge and provided that such discharge does not exceed, by an amount in excess of normal effluent variability, the level of discharge that may reasonably be expected for that pollutant from information provided in the SPDES permit application record;
- (v) discharges of pollutants not required to be reported on the appropriate and current New York State SPDES permit application; provided the special conditions section of the permit does not otherwise forbid such a discharge. The department may, in accordance with law and regulation, modify the permit to include limits for any pollutant even if that pollutant is not required to be reported on the SPDES permit application; or
- (vi) discharges from firefighting activities; fire hydrant flushings; testing of firefighting equipment, provided that such equipment is for water only fire suppression; potable water sources including waterline flushings; irrigation drainage; lawn watering; uncontaminated infiltration and inflow; leakage from raw water conveyance systems; routine external building wash down and vehicle washing which does not use detergents or other compounds; pavement wash waters where spills or leaks of toxic or hazardous materials, other than minor and routine releases from motor vehicles, have not occurred (unless such material has been removed) and where detergents are not used; air conditioning and steam condensate; springs; uncontaminated groundwater; and foundation or footing drains where flows are not contaminated with process materials such as solvents provided that the permittee has implemented an effective plan for minimizing the discharge of pollutants from all of the sources listed in this subparagraph.

(30) *Discharge monitoring report (DMR)* means a report submitted by a permittee to the department summarizing the effluent monitoring results obtained by the permittee over periods of time as specified in the SPDES permit.

(31) *Disposal system* means a system for disposing of sewage, storm water, industrial waste or other wastes, including sewer systems and treatment works.

(32) *ECL* means chapter 43-B of the Consolidated Laws of the State of New York, entitled the Environmental Conservation Law.

(33) *Effluent limitation* means any restriction on quantities, quality, rates and concentrations of chemical, physical, biological, and other constituents of effluents that are discharged into waters of the state.

(34) *Effluent limitation guideline* means toxic or pretreatment effluent limitations contained in 40 CFR parts 405 to 471 (see section 750-1.25 of this Subpart).

(35) *ELAP identification number* means the number assigned to a certified laboratory by the New York State Health Department.

(36) *EPA* means the United States Environmental Protection Agency.

(37) *Facility expansion* means when any of the following conditions occurs and is expected to continue or has occurred and has been existing for more than one year:

(i) increases in production or increases in the mass of any one pollutant in wastewater that may result in discharges that are not discharges authorized by the permit;

(ii) production in any one operation subject to regulation under 40 CFR 405 to 471 and/or 40 CFR part 125 (see section 750-1.25 of this Subpart) or discharges to groundwater described in the SPDES permit application record upon which the current permit is based increases by greater than 20 percent beyond what was reported in the SPDES permit application record for the sum of production from operations subject to the same regulation under 40 CFR 405 to 471 and/or 40 CFR part 125 and is permitted. For the purposes of this definition, *production* is defined as the activity that is the source of the discharge. For the purposes of this definition the *20 percent calculation* is determined by comparing the flow and load resulting from the subject increase to the flow/load at the time the permit last underwent a substantial renewal or modification related to the subject parameters;

(iii) the permittee commences a new operation, of which no operations in this category currently exist at the facility, subject to regulation under 40 CFR 405 to 471 and/or 40 CFR part 125 (see section 750-1.25 of this Subpart) which will result in pollutants which the permittee knows or has reason to believe will be discharged (except substances not required to be reported on the appropriate and current New York State SPDES permit application) and which is not described in the SPDES permit application record upon which the current permit is based;

(iv) the permittee commences use of a substance, discharge of which is not authorized by this permit, which will contact wastewater and, usage of which is required to be reported on the appropriate and current New York State SPDES permit application; or

(v) the permittee increases usage of a substance that will contact wastewater by 10 percent or more beyond the annual usage given in the permittee's most recent New York State industrial chemical survey submission.

(38) *Forms* means forms printed on paper, electronic files that set a format and electronic formats.

(39) *Full technical review* means the complete evaluation of all elements of a SPDES permit identified as priorities under the priority ranking system set forth in section 750-1.19 of this Subpart, together with substantive issues identified in comments submitted during the public comment period, and the verification of the accuracy and appropriateness of all information contained in the permit as well as compliance with current effluent limitations guidelines, requirements and water quality standards.

(40) *General SPDES permit* means a SPDES permit issued pursuant to section 750-1.21 of this Subpart authorizing a category of discharges.

(41) *Guidance value* means such numerical measure of purity or quality for any waters in relation to their best use as may be established by the department pursuant to Part 702 of this Title, but which has not been adopted as an ambient water quality standard.

(42) *Groundwaters* means waters in the saturated zone. The saturated zone is a subsurface zone in which all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain gas-filled interstices or interstices filled with fluids other than water, it is still considered saturated.

(43) *Indicator limit* means a limit on pollutants other than those meeting the criteria of 40 CFR Part 122.44(e)(1), which in the judgment of the permit writer, will assure treatment of the pollutants required by 40 CFR 122.44(e)(1) to the levels required by 40 CFR 125.3(c).

(44) *Individual SPDES permit* means a SPDES permit issued to a single facility in one location in accordance with this Part (as distinguished from a general SPDES permit).

(45) *Industrial user* means the term as defined in 40 CFR 403.3 (see section 750-1.25 of this Subpart).

(46) *Industrial waste* means any liquid, gaseous, solid or waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the standards adopted as provided herein. Industrial wastewater is any wastewater that is not sanitary waste or uncontaminated storm water.

(47) *Infiltration* means water other than wastewater that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include and is distinguished from inflow.

(48) *Inflow* means water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers, process and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

(49) *Major facility* means any SPDES permitted facility classified as such by the regional administrator in conjunction with the department.

(50) *Method detection limit or MDL* means the level at which the analytical procedure referenced is capable of determining with a 99 percent probability that the substance is present. The precision at this level is plus or minus 100 percent.

(51) *Minor facility* means any SPDES permitted facility that is not a major facility.

(52) *Monthly average* means the average of daily discharges (as defined in this subdivision) over a calendar month. This value is most frequently calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. The department may allow for alternative procedures for calculating monthly average values by written approval from the regional water engineer or as set forth by the SPDES permit.

(53) *Municipality* means any county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof.

(54) *Municipal sewage* means wastewater composed primarily of discharges of sanitary sewage from residences, primarily from facilities not owned by a municipality, with or without the admixture of industrial wastewater.

(55) *National pollutant discharge elimination system or NPDES* means the national system for the issuance of wastewater and storm water permits under the act.

(56) *Navigable waters* means those waters under the jurisdiction of the act.

(57) *New source* means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(i) after promulgation of standards of performance under section 306 of the act which are applicable to such source; or

(ii) after proposal of standards of performance in accordance with section 306 of the act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

(58) *Ocean* means any portion of the high seas beyond the contiguous zone.

(59) *Other wastes* means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, ballast and all other discarded matter not sewage or industrial waste that may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the standards and guidance values adopted as provided in Parts 700, *et seq.* of this Title.

(60) *Outfall* means the terminus of a sewer system, or the point of emergence of any waterborne sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the State.

(61) *Outlet* means outfall.

(62) *Owner or operator* means the owner or operator of any facility or activity subject to regulation under this Part.

(63) *Partially treated sewage* means sewage that is diverted around any portion of the treatment plant of a sewage treatment works after it enters the treatment plant.

(64) *Permit application record*, as applicable to a permitted discharge, means the most recently completed application as set forth in section 750-1.7 of this Subpart, of which the department performed a full technical review for that discharge, including all the materials submitted by the permittee upon which the current permit and any modifications thereto are based, all notifications pursuant to Subpart 750-2 of this Part, any additional materials made available for public review as part of the SPDES permit application process and any information that was part of the SPDES permit application process, but held confidential in accordance with this Part.

(65) *Permittee* means the holder of a SPDES permit.

(66) *Person or persons* means any individual, public or private corporation, political subdivision, government agency, municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever.

(67) *Point source* means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged.

(68) *Pollutant* means dredged spoil, filter backwash, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the standards or guidance values adopted as provided in Parts 700, *et seq.* of this Title.

(69) *Priority pollutants* means those pollutants listed in 40 CFR part 122, appendix D (see section 750-1.25 of this Subpart) as organic toxic pollutants (volatiles, acid compounds, base/neutral compounds and pesticides), metals, cyanide and total phenols.

(70) *Publicly owned sewer system (POSS)* means a sewer system owned by a municipality and which discharges to a POTW owned by another municipality.

(71) *Publicly owned treatment works (POTW)* means any device or system used in the treatment (including recycling and reclamation) of municipal sewage that is owned by a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(72) *Regional administrator* means the regional administrator for the EPA region overseeing EPA programs in New York State.

(73) *Regional office* means the office, which is not the central office of the department administering the SPDES program in one of the department's nine geographical regions

of the State. When used in this Part, it refers to the regional office for the region in which the permittee discharges.

(74) *Regional permit administrator* means an employee of the department, one for each of the department's nine regions, designated to act on the commissioner's behalf in carrying out the provisions of article 70 of the ECL and Part 621 of this Title, or the regional permit administrator's designated representative. When used in this Part, the regional permit administrator is the one designated for the region in which the permittee discharges.

(75) *Regional water engineer* means an employee of the department, one for each of the department's nine regions, designated to act on the commissioner's behalf in carrying out the provisions of article 17 and this Part, or the regional water engineer's designated representative. When used in this Part, the regional water engineer is the one designated for the region in which the permittee discharges.

(76) *Report orally to the regional water engineer* means report by telephone or in person during business hours to the regional water engineer, or after business hours by telephone to the telephone number designated by the regional water engineer to receive such reports.

(77) *Schedule of compliance* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(78) *Service area* means the area defined by a municipality and approved by the department serviced by a publicly owned treatment works.

(79) *Severe property damage* means damage to property, or treatment facilities, which causes such facilities to become inoperable or significantly damaged, and/or any substantial and permanent loss of natural resources, which would not reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(80) *Sewage* means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage as above defined of industrial wastes or other wastes as hereafter defined, shall also be considered sewage within the meaning of this Part.

(81) *Sewage treatment works* means a facility for the purpose of treating, neutralizing or stabilizing sewage, including treatment or disposal plants, the necessary collection, intercepting, out fall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(82) *Sewer connection* means a point of connection between a building, residence, or other structure and a public sewer except that any connection designed or intended to convey 2,500 gallons per day or more of residential sewage alone or in combination with storm water shall be considered a sewer extension.

(83) *Sewer extension* means a newly constructed or proposed sewer designed to serve one or more sewer connections.

(84) *Sewer system* means pipe lines or conduits, pumping stations, force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting storm water, sewage, industrial waste or other wastes, alone or in combination to a disposal system.

(85) *Significant facility* means a minor facility that the regional water engineer has designated as significant.

(86) *Sink* means a body or storage device that acts as a storage device or disposal mechanism; the opposite of source.

(87) *Standard of performance* means a standard set forth in 40 CFR 405 to 471 or as set by the department accordance with 40 CFR 125.3 (see section 750-1.24 of this Subpart) for the control of the discharge of pollutants.

(88) *State* means the State of New York.

(89) *State pollutant discharge elimination system* or *SPDES* means the system established pursuant to article 17 of the ECL and this Part for issuance of permits authorizing discharges to the waters of the State.

(90) *Storm water* means that portion of precipitation that, once having fallen to the ground, is in excess of the evaporative or infiltrative capacity of soils, or the retentive capacity of surface features, which flows or will flow off the land by surface runoff to waters of the State.

(91) *Territorial seas* means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(92) *Toxic and pretreatment effluent standard* means standards adopted in 40 CFR 405 to 471 (see section 750-1.25 of this Subpart).

(93) *Toxic pollutant* means those pollutants, or combination of pollutants, including disease causing agents that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, will, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring. Toxic pollutants include those listed under sections 307(a) and 405(d) of the act. Toxic pollutants shall be listed in the permit application form applicable to the source of discharge. Changes to the list of toxic pollutants in permit application forms shall be made only after appropriate notice to the regulated community and interested parties.

(94) *Treatment facility* means disposal system as defined herein.

(95) *Twelve-month rolling average* means the average of the most recent 12 month's monthly averages.

(96) *Untreated sewage* means sewage that has not entered the treatment plant of a sewage treatment works.

(97) *USEPA* means the United States Environmental Protection Agency.

(98) *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, failure to properly monitor the system or careless or improper operation.

(99) *Wastewater* means water that is not storm water, is contaminated with pollutants and is or will be discarded.

(100) *Water treatment chemical* means biocides, coagulants, conditioners, corrosion inhibitors, defoamers, flocculants, scale inhibitors, sequestrants, and settling aids that are or may be used by the permittee, which contain ingredients that may be toxic, which are or may be present in the discharge, which have not been or would not otherwise be reported on the permit application as present or potentially present in the discharge.

(101) *Waters* or *waters of the State* shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the State or within its jurisdiction. Waters of the State are further defined in Parts 800 to 941 of this Title. Storm sewers are not waters of the State unless they are classified in Parts 800 to 941 of this Title. Nonetheless, a discharge to a storm sewer shall be regulated as a discharge at the point where the storm sewer discharges to waters of the State. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act and Environmental Conservation Law (other than cooling ponds as defined in 40 CFR 423.11[m]) (see section 750-1.25 of this Subpart) which also meet the criteria of this definition are not waters of the State. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the State (such as a disposal area in wetlands) nor resulted from impoundment of waters of the State.

(102) *Water quality standard* means such measures of purity or quality for any waters in relation to their reasonable and necessary use as promulgated in Part 700, *et seq.* of this Title.

(103) *Whole effluent toxicity* means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(b) Terms not defined herein shall be as defined by the context in which they are used.

750-1.3 Prohibited discharges.

The following discharges into the waters of the State are hereby prohibited, and no SPDES or other permit shall be issued authorizing any such discharge:

- (a) the discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste, pursuant to section 301(f) of the act (see section 750-1.25 of this Subpart);
- (b) any discharge that the Secretary of the Army, acting through the chief of engineers, finds would substantially impair anchorage or navigation;
- (c) any discharge to which the regional administrator has objected in writing, pursuant to any right to object provided the administrator in section 402(d) of the act and 40 CFR 123.44 (see section 750-1.25 of this Subpart), provided that the permittee is provided with a copy of said written objection subject to the permittee's right to appeal under applicable law and regulation;
- (d) any discharge from a point source, which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the act and 40 CFR part 35 (see section 750-1.25 of this Subpart), or any other discharge not permitted by this Part, ECL article 17, other rules and regulations adopted or applicable pursuant thereto or to the act, or the provisions of an SPDES permit;
- (e) when the conditions of the permit do not provide for compliance with the applicable requirements of the act, or regulations promulgated under the act; and
- (f) when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.

750-1.4 Requirement to obtain a permit.

- (a) Except as provided in section 750-1.5(a) of this Subpart, no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL article 17, title 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.
- (b) For discharges of storm water that are not to groundwater, permits shall be required in accordance with 40 CFR 122.26 except as provided in section 1069 of the Federal Intermodal Transportation Efficiency Act of 1991.
- (c) All permits for discharges into navigable waters issued by the Federal government pursuant to the act shall be deemed to be permits issued under this article, and shall continue in force and effect for their term unless revoked, modified or suspended in accordance with the provisions of this Title.

750-1.5 Exceptions.

(a) The following acts do not require a SPDES permit under ECL article 17, title 7 or 8, or this Part:

(1) any discharge in compliance with the instructions of an on- scene coordinator (usually the department spill response coordinator) pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances) (see section 750-1.25 of this Subpart) or an order issued pursuant to article 12 of State Navigation Law;

(2) any discharge in compliance with an order issued pursuant to ECL 27-1313 to implement a department approved inactive hazardous waste remedial site program provided that such discharge complies with the substantive requirements of a SPDES permit, or any discharge under any remedial or corrective action work plan approved by the department provided that such work plan includes public notification and response to the public equivalent to that required under either ECL 27-1313 or Part 621 of this Title, and provided that such discharge complies with the substantive requirements of a SPDES permit;

(3) additions of pollutants into a POTW that are otherwise in compliance with this Part; provided, however, that this exception does not relieve any permittee from the obligation to comply with section 750-1.11 of this Subpart;

(4) (i) the construction and use of a new or modified disposal system, point source or outlet, when such disposal system, point source or outlet is designed to discharge or discharges sewage effluent without the admixture of industrial wastes or other wastes to the groundwaters of the State when such discharge consists of a flow of less than 1,000 gallons per day;

(ii) nothing contained in this paragraph shall be construed to permit the making or use of a disposal system, outlet or point source discharging an effluent to the waters of the State which causes or contributes to contravention of any water quality standards contained in Part 700 *et seq.* of this Title or guidance values adopted pursuant thereto or discharging an effluent in such manner as to expose sewage on the ground surface, impair the quality of waters of the State used for drinking purposes or otherwise create a nuisance or menace to health;

(iii) a county, city, town or village may adopt and enforce additional local laws, ordinances and regulations, or enforce existing local laws, ordinances and regulations, relating to discharges of sewage in cases covered by this paragraph, including local laws, ordinances and regulations requiring a permit for disposal systems, point sources or outlets for such discharges, provided that such local laws, ordinances and regulations are not inconsistent with the provisions of the ECL or the State Sanitary Code;

(5) any discharge of sewage from vessels, including effluent from properly functioning marine engines, laundry, shower and galley sink wastes, or any other discharge incidental to the normal operation of a vessel; provided that such discharge is in compliance with applicable Federal and State law; and provided further, that this exclusion shall not be construed to apply to rubbish, trash, garbage, ballast water or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel, such as when a vessel is being used as a storage facility, a cannery, or a residence;

(6) water, gas or other material that is injected into a well, except a disposal well, to facilitate production of oil, gas, salt or geothermal resources, if the following conditions apply:

(i) the well used for injection is approved by authority of the department;

(ii) the department determines that such injection will not result in the degradation of ground or surface water resources;

(iii) the injection does not result in a discharge at the surface; and

(iv) injection into the well is approved by the EPA in accordance with 40 CFR parts 124.10, 144 and 146 (see section 750-1.25 of this Subpart);

(7) dredged or fill material and dredge return water discharged into waters of the State except groundwaters, which are regulated under:

(i) section 404 of the act (see section 750-1.25 of this Subpart);

(ii) title 5 of article 15 of the ECL;

(iii) article 24 of the ECL; and/or

(iv) article 25 of the ECL;

(8) return flows from irrigated agriculture managed in accordance with best management practices;

(9) discharges of radioactive materials regulated under Part 380 of this Title;

(10) discharges composed entirely of storm water, to which no pollutant(s) has/have been added by industrial, commercial, or other activity, and otherwise not regulated pursuant to 40 CFR parts 121, 122, 123 and 124 (see section 750-1.24 of this Subpart), unless the particular storm water discharge has been identified by the regional administrator or the department, as a significant contributor of pollution; and

(11) discharges of yield test, well test and cutting water from water well drilling operations provided such discharges are handled in accordance with best management practices and are for limited duration during well development only.

750-1.6 Applications to obtain individual SPDES permits.

(a) Any person who is required to obtain an individual SPDES permit with respect to either an existing unpermitted discharge who previously was not required to obtain an individual permit, who were previously required but have not obtained an individual permit or who is required to obtain an individual SPDES permit for a proposed discharge shall make application for such permit in the manner prescribed in this section. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(b) *Existing unpermitted discharges that previously did not require an individual permit.*

(1) Such person shall either:

(i) have filed a SPDES application satisfying the filing requirements of this Title, which has not been denied; or

(ii) file a SPDES application satisfying the filing requirements of this Title no later than 60 days following receipt by the person of notice of incomplete application.

(2) If a discharge that is the subject of any of the applications described in paragraph (1) of this subdivision causes or contributes to any contravention of applicable standards or guidance values, the department may require abatement action to be undertaken notwithstanding the filing of an application or pending filing of an application or pending filing of a revised application.

(c) Proposed discharges.

Any person proposing to discharge pollutants under an individual SPDES permit shall file a complete SPDES application in accordance with Part 621 of this Title. Such a permit must be issued prior to discharge.

(d) The department may require the submission of such additional information as is necessary to determine compliance with this Part after a SPDES application has been filed. If such an application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency. If the department determines that site visits, by representatives of the department, would be useful in evaluating the application, such site visits shall be considered a necessary part of the application.

(e) Applications for an individual SPDES permit shall be filed on forms supplied to the discharger by the department, substitute forms approved by the department, or by the electronic transfer of data as approved by the department. Electronic submissions shall conform to the format, standards and other conditions specified by the department. Forms may be obtained from the department's central office or any regional office. Applications shall be filed at the office specified in the instructions accompanying the application form, and shall be accompanied by such data as the department may reasonably require for the purposes of fulfilling its responsibilities under the ECL, this Part and the act.

(f) A permit for a sewage disposal system or approval of a sewer extension serving or intended to serve more than one separately owned property shall be issued only to either a governmental agency, municipality, or sewage disposal corporation formed and regulated pursuant to article 10 of the Transportation Corporations Law. The commissioner may, on written application, grant a variance from this provision in a particular case, subject to appropriate conditions, including bonding requirements, where such variance is in harmony with the general purposes and intent of this Chapter.

750-1.7 Individual SPDES permit application requirements.

(a) All dischargers.

Permit application requirements that apply to all dischargers seeking to obtain an individual SPDES permit. Application requirements are set by application forms. Requirements include:

- (1) the discharger's name and legal status (corporate, individual, partnership or public);
- (2) the discharger's official mailing address, and the address where correspondence should be sent, if different;
- (3) the designated contact telephone number and, if available, facsimile number and e-mail address;
- (4) the discharger's facility name and location, including street address;
- (5) the nature of the activities that will result in the discharge, including up to four SIC codes which best reflect the principal products or services provided by the facility;
- (6) for POTWs, private residential subdivisions, apartment or condominium developments or mobile home parks, the service area and population served;
- (7) the frequency, duration and days of discharge;
- (8) the quality and quantity of the discharge;
- (9) the source of the wastewater or storm water;
- (10) the type of wastewater or storm water treatment, including the design flow of each unit;
- (11) a topographic map on a scale of approximately one inch equals 2,000 feet (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment storage and disposal facilities; the portion of the mapped area on Indian lands; and those wells, springs, other surface waterbodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;
- (12) for discharges to surface waters, the classification of the receiving waters and the water index number;

- (13) for discharges to groundwaters, the soil type and the depth of the water table;
- (14) certification that the permittee or prospective permittee has not been held liable in the last 10 years for the violation of pollution control laws or regulations or certification identifying any such violation, the nature of the offense and the status of its disposition;
- (15) engineering reports and plans and specifications as may be required by section 750-2.10 of this Part;
- (16) a listing of all permits or construction approvals received or applied for under any of the following programs:
 - (i) Hazardous Waste Management Program under RCRA;
 - (ii) UIC Program under SDWA;
 - (iii) NPDES Program under the act;
 - (iv) Prevention of Significant Deterioration (PSD) Program under the Clean Air Act;
 - (v) Nonattainment Program under the Clean Air Act;
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (vii) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (viii) dredge or fill permits under section 404 of the act; and
 - (ix) other relevant environmental permits, including State permits;
- (17) any other relevant information that the department deems necessary to make determinations about permitting said discharge and which the department is authorized by Environmental Conservation Law to require.

(b) Dischargers that are not POTWs.

Additional application requirements for facilities that are not POTWs for individual SPDES permits. Application requirements are set by application forms. Requirements include:

- (1) Outfall location. The latitude and longitude to the nearest two seconds and the name of the receiving water.
- (2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (3) of this subdivision. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area that contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow that each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge, including all significant losses of water to products and atmosphere. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For facilities that are not POTWs, but receive wastewater or storm water from other persons, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated. Where the flow during the permit term is expected to differ from the historical flow, the projected flow must also be provided.

(4) Intermittent flows. If any of the discharges described in paragraph (3) of this subdivision are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water runoff, spillage or leaks).

(5) Production. If an effluent limitation guideline promulgated under section 304 of the act (see section 750-1.25 of this Subpart) applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline must be provided. The reported measure must reflect the actual production of the facility as described in the application form provided by the department. Where production is expected to change during the permit term, the projected changed production must also be provided.

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this paragraph must be provided.

(i) Analytical methods. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136 (see section 750-1.25 of this Subpart). When no analytical method is approved under 40 CFR part 136, the applicant may request that the department identify available analytical methodologies or use any suitable method but must provide a description of the method.

(ii) Identical outfalls. When an applicant has two or more outfalls with substantially identical effluents, the department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls.

(iii) Intake pollutants. The requirements in subparagraphs (vii) and (viii) of this paragraph that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present.

(iv) Sample type.

(a) Any mixture of process wastewater and storm water. Grab samples must be used for pH, temperature, cyanide, volatile organics, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours or for discharges that take place over a two-hour or shorter period during any one calendar day. In addition, the department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. The department may allow or establish appropriate site-specific storm water sampling procedures or requirements that are different than those described in this clause, provided that the monitoring results would be sufficiently representative for the use of the resulting data.

(b) Storm water only. In accordance with requirements set forth in 40 CFR part 122.21(g)(7) (see section 750-1.24 of this Subpart).

(v) Representative samples. Effluent characteristics reported in the permit application must be representative of normal operations at the discharging facility.

(vi) Pollutants present. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of past practices at the site, the expected use, production, or storage of the pollutant as listed on the applicant's industrial chemical survey, or on any previous analyses for the pollutant.

(vii) Conventional and non-conventional pollutant monitoring.

(viii) Quantitative toxic pollutant monitoring. Except as provided in subparagraph

(ix) of this paragraph, each applicant must report quantitative effluent monitoring data, from analysis performed by a laboratory certified by the State as able to perform wastewater analysis, for the following pollutants in each outfall containing process wastewater:

(a) for discharges from processes in one or more industry category subject to an effluent limitation guideline in accordance with section 307 of the act (see section 750-1.25 of this Subpart), priority pollutants required to be

tested in accordance with 40 CFR part 122 (see section 750-1.25 of this Subpart) for the applicant's industrial category;

b) pollutants directly or, by an effluent limitation guideline's express terms, indirectly limited through limitations on an indicator in the effluent limitation guideline as set forth in 40 CFR parts 405-471 (see section 750-1.25 of this Subpart);

(c) priority pollutants the applicant knows or has reason to believe are discharged from the outfall;

(d) other significant pollutants, subject to department water quality standards or guidance values, with USEPA and/or department approved analytical methods, that the applicant knows or has reason to believe are discharged from the outfall; and

(e) other significant pollutants, with USEPA/department promulgated analytical methods, which the applicant knows or has reason to believe are discharged from the outfall.

(x) Qualitative toxic pollutants reporting. Each applicant must indicate whether it knows or has reason to believe that any other toxic pollutants or hazardous substances are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for that pollutant.

(xi) Qualitative monitoring for extremely toxic substances. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(a) uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl,2,2-dichloropropionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(b) knows or has reason to believe that TCDD is or may be present in an effluent and is due to or a consequence of activities related to the facility producing the discharge.

(8) Used or manufactured toxics. A listing of any toxic pollutant that the applicant currently or has in the past or expects in the future to use, store or manufacture as an intermediate or final product or byproduct.

(9) Whole effluent biological toxicity tests. The results of whole effluent biological toxicity tests performed in accordance with 40 CFR part 136 or, where part 136 does not include such methods, USEPA guidance on whole effluent toxicity testing (see section 750-1.25 of this Subpart).

(10) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by paragraph (a)(7) of this section, the identity of each laboratory or firm and the analyses performed.

(11) Water supply. The applicant shall provide the name and type of each water supply source as well as the volume of flow from each of the water supply sources from which the wastewater is derived.

(12) Outfall configuration. The applicant shall provide a description of the outfall configuration for each outfall. The description shall provide sufficient information so that the department can analyze the effect of the discharge on the receiving waters.

(13) Water treatment chemicals. For each outfall, the applicant shall provide or cause to be provided, detailed information on each water treatment chemical used that could be discharged from that outfall. Such information shall include but not be limited to the name, the manufacturer, the dosage rates, the ingredients, the toxicity and measures taken to minimize water treatment chemical discharge.

(14) Certification that the permittee or prospective permittee has not been held liable in the last 10 years for the violation of pollution control laws or regulations or certification identifying any such violation, the nature of the offense and the status of its deposition.

(15) Engineering reports and plans and specifications as may be required by section 750-2.10 of this Part.

(16) Additional information. In addition to the information reported on the application form, applicants shall provide to the department, upon request, such other information as the department may reasonably, as authorized under Environmental Conservation Law, require to assess the discharges of the facility and to determine whether to issue a SPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(c) Concentrated animal feeding operations.

Concentrated animal feeding operations and aquatic animal production facilities. Application requirements are set by application forms. Requirements include those set forth in 40 CFR part 122.21(i) (see section 750-1.25 of this Subpart) and 6 NYCRR Part 621.

(d) Publicly owned treatment works.

Application requirements are set by application forms. Requirements include:

- (1) those set forth in 40 CFR 122.21(j);
- (2) evidence that up-to-date, effective, and duly enacted sewer use laws are in place and being enforced throughout the POTW service area;
- (3) a demonstration that the POTW has an approved method of residuals disposal in compliance with Parts 360 and 364 of this Title;

(4) for POTWs receiving industrial waste, evidence that it is operating (or implementing) its industrial pretreatment program, if such a program is required under this Part, in accordance with section 651.53(f) of this Title.

(e) New facilities.

Any new facilities that are applying for a SPDES permit must obtain a permit prior to discharge and may be required to submit the same information required of existing facilities under this section, except that new facilities may be required to submit projected or estimated data in lieu of actual measurements. New facilities must also include the expected discharge date and any engineering reports for the facility.

(f) Variance requests.

The applicant shall include any variance requests under 40 CFR part 122 (see section 750-1.25 of this Subpart) and Part 702 of this Title with the application.

750-1.8 Signature of SPDES forms.

(a) All SPDES applications and reports required by a SPDES permit shall be signed as provided in 40 CFR 122.22 (see section 750-1.25 of this Subpart) except that, in lieu of a signature, the department may permit the use of a unique identifier assigning responsibility for the veracity of the information contained in an application to the same person or persons that would otherwise be required to sign the application in this section. Such a document with a unique identifier shall be considered a signed document with a certifying signature and a written instrument that could subject the signatory to liability under the New York State Penal Law for officers concerning perjury and false written statements pursuant to articles 175 and 210 of said law.

(b) On the basis of previous violations by the duly authorized representative of the permittee for falsification of reports to the department, the department may revoke that person's authorization to sign reports to the department.

(c) No person shall knowingly make any material false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance. Any person who violates this subsection shall be liable for violation of ECL section 71-1933 and subject to a fine and/or imprisonment thereunder.

(d) All applications, reports, or notifications required or authorized to be made or filed by this Part or ECL article 17, title 7 or 8, or by the provisions or conditions of any permit issued pursuant thereto, by or on behalf of a permittee, applicant for a permit or person subject to the requirement of a permit shall be sworn to in respect to all statements of fact therein or shall bear an executed statement as provided in section 210.45 of the New York State Penal Law to the effect that false statements made therein are made under penalty of perjury.

750-1.9 Draft permits and fact sheets for new or modified SPDES permits.

(a) If the department determines to issue a SPDES permit, the department shall develop a draft SPDES permit in advance of public notice of the application pursuant to Part 621 of this Title.

(b) With respect to every application for a facility designated by USEPA as major, for every facility that is not an EPA major with a design flow equal to or in excess of 500,000 gallons per day, for every general permit, and for all permits that incorporate a variance or requires an explanation under 40 CFR 124.56 (see section 750-1.25 of this Subpart) the department shall prepare a fact sheet. In response to requests for fact sheets, the department may elect to provide copies of a draft permit and public notice together with the fact sheet, in which case, information provided on the draft permit and public notice need not be separately provided on the fact sheet. The contents of such fact sheets shall comply with the requirements of 40 CFR 124.8 and 124.56 (see section 750-1.25 of this Subpart) and include:

(1) any water quality determinations based on a total maximum daily loading/waste load allocation/load allocations as set forth in 40 CFR 130.7 (see section 750-1.25 of this Subpart); and

(2) for total maximum daily loading/waste load allocation/load allocations (TMDL/WLA/LA) where the proposed permittee is the only point source, a notice that the public process for the permit will also be the public notice for the TMDL/WLA/LA provided that such notice complies with the notice requirements in 40 CFR 130.7 (see section 750-1.25 of this Subpart).

750-1.10 Effluent limitations in issued SPDES permits.

(a) In the application of effluent limitations, water quality standards, and other applicable requirements, pursuant to this Part, the department may specify daily average, monthly average, seven-day average, annual average, 12-month rolling average, peak hourly, annual maximum, instantaneous maximum and daily maximum quantitative limitations for the level of pollutants in the authorized discharge in terms of weight or, as in the case of flow, pH, temperature, and for any other pollutants not appropriately expressed by weight, in other appropriate terms. The department may, in addition to or in lieu of the specification of daily quantitative limitations by weight or by other terms, specify other limitations, such as average or maximum concentration limits, on the pollutants in the authorized discharge.

(b) Any point source, the construction of which is commenced after October 18, 1972, and which is so constructed or physically modified, provided the cost of such modification exceeds 50 percent of the initial capital costs of the facility or new source which meets the applicable promulgated new source performance standards before the commencement of the discharge, to meet all applicable standards of performance set forth in the point source SPDES permit and fact sheet shall not be subject to a more stringent technology based standard of performance (under section 301[b][2] of the act) requiring the construction of additional treatment facilities during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1986, whichever period ends first; provided, however, that if the

operation of such source causes or contributes to any contravention of any State water quality standard the department shall require that abatement action be taken by the permittee and modify the permit pursuant to section 750-1.18 of this Subpart.

(c) Notwithstanding any other provision of this Part, when effluent limitations are established they must be at least as stringent as the effluent limitations previously required unless the department determines that an exception is warranted because the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification. A permit may be modified to contain a less stringent effluent limitation applicable to a pollutant, if:

(1) material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation;

(2)

(i) information is available, which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods), which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the department determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under this Part;

(3)

(i) a less stringent effluent limitation is necessary because of events over which the permittee has no control and the permittee demonstrates that it has thoroughly studied or implemented all feasible alternative means to remedy the situation, and is still unable to meet the limitations; or

(ii) the department reviewed the data supplied by the permittee and is in agreement that no feasible alternatives to remedy the situation exist; provided that:

(4) the permittee has received a permit modification under section 301(c), (g), (h), (i), (k), (n), or 316(a) of the act (see section 750-1.25 of this Subpart);

(5) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit modification);

(6) the discharge is to non-attainment waters for the limited pollutant and the limit is based on a final or interim TMDL or other waste load allocation method and the TMDL is set to assure attainment of the water quality standard; or

(7) the limit is for attainment waters for the limited pollutant and based on a final or interim TMDL or other waste load allocation method and the TMDL is set to assure

attainment of the water quality standard and the limit has been subjected to an anti-degradation review in accordance with the department's anti degradation policy;

(8) the modifications allowed in paragraphs (6) and (7) of this subdivision shall not apply to any revised waste load allocations or any alternative where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Chapter or for reasons otherwise unrelated to water quality.

(d) In no event may a permit be modified in accordance with subdivision (c) of this section to contain an effluent limitation that is less stringent than required by effluent guidelines, including variances thereto, in effect at the time the permit is modified. In no event may such a permit to discharge into waters be modified in accordance with subdivision (c) of this section to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard or guidance value applicable to such waters as set forth in Parts 700-706, *et seq.* of this Title.

750-1.11 Application of standards, limitations and other requirements.

(a) The provisions of each issued SPDES permit shall ensure compliance with all of the following, whenever applicable:

- (1) BPT effluent limitations under section 301 of the act and 40 CFR parts 120, 125, 133 and 405-471, inclusive (see section 750-1.25 of this Subpart);
- (2) BCT new source performance standards and other new source performance standards under section 306 of the act and 40 CFR parts 122.29, 129 and 405-471, inclusive (see section 750-1.25 of this Subpart);
- (3) BAT effluent limitation guidelines, effluent prohibitions, and pretreatment standards for existing sources under section 307 of the act and 40 CFR parts 129 and 405-471, inclusive (see section 750-1.25 of this Subpart);
- (4) ocean discharge criteria adopted by the Federal government pursuant to section 403 of the act and 40 CFR part 125, sections 125.120-125.124 (see section 750-1.25 of this Subpart);
- (5) any more stringent limitations, including those:
 - (i) necessary to meet water quality standards, guidance values, effluent limitations or schedules of compliance, established pursuant to any state law or regulation consistent with section 510 of the act, or the requirements of 40 CFR part 132 (see section 750-1.25 of this Subpart);
 - (ii) necessary to implement a total maximum daily load/waste load allocation/load allocation established pursuant to section 303(d) of the act and 40 CFR part 130.7 (see section 750-1.25 of this Subpart); or
 - (iii) necessary to meet any other State or Federal law or regulation;

- (6) any more stringent requirements necessary to comply with a plan approved pursuant to section 208(b) of the act and 40 CFR part 35 (see section 750-1.25 of this Subpart);
- (7) prior to promulgation by the administrator of applicable effluent standards and limitations, BPJ effluent limitations and such conditions as the commissioner determines are necessary to carry out the provisions of this Part pursuant to section 402 of the act and 40 CFR part 125 (see section 750-1.25 of this Subpart);
- (8) as provided in section 402(g) of the act (see section 750-1.25 of this Subpart), if the SPDES permit is for the discharge of pollutants into the navigable waters of the State from a vessel or other floating craft, any applicable regulations promulgated by the U.S. Department of Commerce, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants;
- (9) unless otherwise required or authorized by this Part, the provisions or requirements of 40 CFR part 122.23 - Concentrated animal feeding operations, 40 CFR part 122.24 - Concentrated aquatic animal production facilities, 40 CFR part 122.25 - Aquaculture projects, 40 CFR parts 122.26, 122.30 to 122.37, and 122.42(c) and (d) - Storm water discharges, 40 CFR part 122.27 - Silvicultural activities (applicable to State NPDES), 40 CFR part 122.44 - Establishing limitations, standards, and other permit conditions, 40 CFR part 122.45 - Calculating NPDES permit conditions, 40 CFR part 125 - Criteria and standards for NPDES, 40 CFR part 133 - Secondary treatment regulation, 40 CFR part 401 - General provisions and 40 CFR part 403 - General pretreatment regulations, except 40 CFR part 403.10 (see section 750-1.25 of this Subpart);
- (10) 40 CFR 122.50 (see section 750-1.25 of this Subpart); and
- (11) the requirements or provisions of this Part.

(b) Persons discharging industrial waste to the publicly owned treatment works shall comply with toxic effluent limitations and pretreatment standards and with monitoring, reporting, recording, sampling and entry requirements provided by section 307 of the act and 40 CFR parts 129 and 405-471, inclusive; and section 308 of the act and 40 CFR parts 122 and 125 (see section 750-1.25 of this Subpart); or ECL article 17, or adopted pursuant to ECL article 17 of this Title.

750-1.12 Public notification of discharges.

(a) Any person possessing a SPDES permit which allows the discharge of wastewater into the surface waters of the State shall post a sign as provided for in subdivision (b) of this section at all discharge points to surface waters, except for those sites where the discharge is composed exclusively of stormwater or those sites for which the requirements of this section have been waived in accordance with subdivision (e) or (f) of this section.

(b)

(1) All SPDES permittees who discharge to surface waters shall erect or post a conspicuous and legible sign of not less than 18 inches by 24 inches bearing the following statement: "N.Y.S. Permitted Discharge Point Permit No. (insert SPDES

permit number here). For information on this discharge you can contact: (insert contact information here)." The sign shall also contain the following information: The SPDES permit number as issued by the department; the name and telephone number of the permittee that shall be the business office repository of the permittee as required by this section; and the name, address and telephone number of the regional office in which the discharge is located.

(2) The permittee shall provide for public review at the business office repository of the permittee or at the off-premises location of its choice, provided the custodian of the off-premise location grants written permission, (such off-premise location shall be the village, town, city or county clerk's office, local library or other location accessible by the public) all the discharge monitoring reports (DMR) prepared by the permittee to demonstrate compliance with the SPDES permit conditions. A copy of each DMR shall be placed on file at such location at the same time it is sent to the department, or within 60 days of preparation for DMRs not required to be submitted to the department. This information shall be kept on file for the period of five years.

(c) The actual appearance of the sign shall be as established in the SPDES permit and the location of the sign on the property of the permittee shall be in as close proximity to the point of discharge into the surface waters as is reasonably possible while ensuring the maximum visibility from the surface water and shore.

(d) It shall be the responsibility of the permittee to periodically and reasonably maintain the sign to ensure that it is still legible, visible and factually correct. A good faith documented effort by permittee to maintain such sign will be an affirmative defense for its absence.

(e) The permittee may apply to the department for a waiver from the requirements of this section, under any of the following subjective circumstances:

- (1) such a sign cannot reasonably be maintained;
- (2) such a sign would be inconsistent with the provisions of another statute;
- (3) such a sign could not be so located as to provide a public purpose;
- (4) the nature of the discharge is temporary and of a relatively short duration; or
- (5) the authorization to discharge is under a general permit.

(f) For dischargers that are not major, significant facilities, the department may also choose to include permit provisions that allow for all the requirements of this section, including sign and repository requirements, to be waived under any of the following objective circumstances if the department is previously notified in accordance with subdivision (g) of this section:

- (1) such sign would be inconsistent with any other State or Federal statute;
- (2) when this Part would require that such sign be located in an area that is damaged by ice or flooding during a one-year storm, or less severe storms;
- (3) that the outfall to the receiving water is located on private or government property, which is restricted to the public through fencing, patrolling, or other control mechanisms.

Property that is posted only, without additional control mechanisms, does not qualify for this provision;

(4) the outfall pipe or channel discharges to another outfall pipe or channel, before discharge to a receiving water;

(5) the discharge from the outfall is located in the receiving water at a distance 200 or more feet from the shoreline of the receiving water; or

(6) the discharge to the receiving water would be a temporary discharge of less than one-year duration.

(g) If the department chooses to include the waiver criteria listed in subdivision (f) of this section in a permit, and the permittee believes that any outfall that discharges wastewater from the permitted facility meets any of those criteria, the permittee must provide written notification to the department of such fact, and, provided the department does not object, a sign for the involved outfall(s) is not required. This notification must include the facility's name, address, telephone number, contact, permit number, outfall number(s), and reason why such outfall(s) is waived from the requirements of discharge notification. The department may evaluate the applicability of a waiver at any time, and take appropriate measures to assure that the ECL and this section are complied with.

750-1.13 Monitoring requirements in SPDES permits.

(a) Any discharge authorized by a SPDES permit shall be subject to such requirements for monitoring the intake, discharge, waters of the State or other source or sink as may be reasonably required by the department to determine compliance with effluent limitations and water quality standards that are or may be effected by the discharge; including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods), and if imposed shall be included as provisions of the SPDES permit.

(b) Any discharge authorized by a SPDES permit that is not a minor project (as defined in Part 621 of this Title); which the regional administrator requests, in writing, be monitored; which contains toxic pollutants for which effluent limitations have been established by the administrator pursuant to section 307(a) of the act and 40 CFR parts 129 and 405-471 inclusive (see section 750-1.25 of this Subpart); or to which the department applies this section; shall, upon inclusion of such requirements in the SPDES permit, be monitored by the permittee for at least the following:

(1) flow; and

(2) the following pollutants:

(i) pollutants (measured either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) that are subject to tracking, reduction, elimination or limitation under the provisions of the permit; and

(ii) any pollutants in addition to the above, which EPA requests, in writing and in accordance with agreements between EPA and the department, be monitored.

(c) Each effluent flow or pollutant required to be monitored pursuant to subdivision (b) of this section shall be monitored at intervals to be determined by the department as sufficiently frequent to yield data that reasonably characterizes the nature of the discharge of the monitored flow or pollutant. Variable effluent flows and pollutant levels may be required to be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels, which may be required to be monitored at less frequent intervals.

(d) Each permittee subject to the requirements of subdivision (b) of this section shall submit reports to the department summarizing the results of the monitoring required under subdivision (b) of this section at the end of each month, unless otherwise specified by the department. For permittees discharging to surface waters, these reports shall be submitted, at a minimum, annually.

750-1.14 Schedules of compliance and other requirements in issued SPDES permits.

(a) Among the provisions of a SPDES permit there may be compliance schedules. The purpose of these schedules is to achieve compliance by the permittee with applicable effluent limitations, water quality standards, and other requirements applicable pursuant to the Part. With respect to any discharge that is not in compliance with applicable limitations, applicable water quality standards, or other applicable requirements, the department shall establish specific steps in a compliance schedule designed to attain compliance within the shortest reasonable time, consistent with the act and ECL, article 17.

(b) Where the time for compliance specified in subdivision (a) of this section exceeds nine months, a schedule of compliance shall be specified in the permit, which will set forth interim requirements and the dates for their achievement. In no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress towards completion of the interim requirement.

(c) The permit shall state that no construction, operation or use of a disposal system for facilities covered in the permit shall occur except in accordance with plans approved in advance by the department.

(d) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(e) Schedules of compliance may be revised or modified pursuant to section 750-1.18 of this Subpart.

(f) Permits may include and the permittee shall comply with such other terms, provisions, requirements or conditions as may be necessary to meet the requirements of ECL article 17 and 40 CFR 122 (see section 750-1.25 of this Subpart) including but not limited to requirements to implement best management practices plans, pollution prevention plans, studies of the effects of the permitted discharge on the receiving water, studies of the treatability of the permitted discharge and studies of the discharge to determine usable analytical procedures and analytical

capabilities and pollutant minimization programs as described in 40 CFR part 132 (see section 750-1.25 of this Subpart), except that the department may require a pollutant minimization program where the pollutant to be minimized is impairing or precluding the best use of the receiving water.

(g) The department shall maintain an inventory of major facilities and significant facilities that have failed to comply with an interim or final permit requirement. Such inventory shall be available to the public and shall contain at least the following:

- (1) the name and address of each noncomplying permittee;
- (2) a short description of each instance of noncompliance;
- (3) a short description of any actions or proposed actions by the permittee or the department to comply or enforce compliance with the interim or final requirement; and
- (4) any details which tend to explain or mitigate an instance of noncompliance.

(h) The first SPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge

750-1.15 Duration of SPDES permits.

SPDES permits issued for discharges to waters of the State other than groundwaters shall be valid for a fixed term not to exceed five years. SPDES permits issued for discharges to groundwaters shall be valid for a term not to exceed 10 years.

750-1.16 Renewal of existing SPDES permits.

(a) Any permittee who intends to continue to discharge beyond the period of time covered in the applicable SPDES permit must file for renewal of the permit at least 180 days prior to its expiration. Filing for renewal shall be made by the permittee on forms provided by the department.

(b) SPDES permits maybe administratively renewed.

(c) At administrative renewal the department shall make available to the public:

- (1) the applicant's name and address;
- (2) a brief description of the project;
- (3) a list of department permits directly related to the project for which application is pending;

- (4) the name and classification of the receiving water body;
- (5) the permits priority ranking score;
- (6) the name and telephone number of the department contact person;
- (7) the existing permit application, draft permit, fact sheet, priority ranking sheet and a description of the SPDES priority ranking system; and
- (8) an opportunity to submit written comments or request a public hearing on the permit application or the permit's priority ranking score.

(d) Public notification of SPDES renewals and time frames for issuance shall be in accordance with Part 621 of this Title.

(e) If a permittee seeks renewal of a permit for a discharge and the establishment that would be or is the source of the permitted discharge has not operated during the term of the permit, it shall not be entitled to administrative renewal. Such renewal shall require full technical review.

(f) If the regional water engineer determines that full technical review of a SPDES permit is necessary to include provisions in or make changes to the permit necessary to comply with the Clean Water Act, such renewal shall require full technical review.

750-1.17 Transfer of permit.

(a) To transfer a permit to a new owner or operator, written application for permit modification must be made to the department on the forms provided by the department for permit transfers.

(b) In order for operation of the facility to continue without interruption, application must be made at least 30 days in advance of the transfer.

(c) If, when the ownership or operation is transferred, the volume or composition of the facility discharge will be altered beyond that provided for in the permit, a new application for permit shall be required.

750-1.18 Modification of SPDES permits.

(a) SPDES permits maybe modified in accordance with Part 621 of this Title.

(b) In addition to the grounds set forth in Part 621 of this Title, the department may modify a SPDES permit on any of the following grounds:

- (1) the permit has attained a level of sufficient priority in accordance with the priority system set forth under section 750-1.19 of this Subpart for the department;
- (2) satisfaction of the terms of a special permit condition or requirement has not achieved expressed objectives of the special permit condition or requirement;
- (3) when required to satisfy a condition or conditions of a permit;

(4) to adjust permit limitations, where adjustment of such permit limits would not cause the permittee to violate such adjusted permit limits and adjustment of the permit limitations is necessary to allow a new or increased discharge from another permittee in accordance with a total maximum daily load/waste load allocation/load allocation as set forth in 40 CFR 130.7 (see section 750-1.25 of this Subpart);

(5) to correct technical mistakes, such as typographical errors and errors in calculation, or mistaken interpretations of law made in determining permit conditions or to make changes to monitoring requirements or make other minor technical adjustments;

(6) to implement a department initiative that is a legal requirement from applicable law or regulation; or

(7) when necessary to comply with the Clean Water Act.

(c) The provisions of this Part related to the requirements for applications, draft permits and fact sheets for new SPDES permits shall apply to the extent appropriate, as determined by the department in conformance with the act.

(d) When a permit is modified, only the aspects of the permit that are modified are subject to public review.

750-1.19 Modification priority ranking system.

(a) The department shall review each existing permit at least once every five years to determine whether the permit conforms with changes to law, regulation or whether physical circumstances have changed since the permit last received full technical review.

(b) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the department shall institute proceedings to modify the permit in order to achieve conformance with the toxic effluent standard or prohibition and in conformance with ECL 17-0809.

(c) The department shall use a priority ranking system of SPDES permits. The ranking system shall prioritize permits for full technical review and, when necessary, modification.

(d) The department may require the permittee to submit a comprehensive application as set forth in sections 750-1.6 and 750-1.7 of this Subpart or other information prior to conducting a full technical review of the permit. The permittee shall submit any information or data as the department may reasonably require for the purposes of fulfilling its responsibilities under the ECL and the act, within 90 days from the date of the request, unless an extension is granted by the department. If the department subsequently issues a revised permit, that permit will be deemed anew permit rather than a modification.

(e) Whenever the department reviews the SPDES permit priority ranking system for possible modification, the department shall formally solicit and provide for the involvement of the public in such review. The department shall annually publish in the Environmental Notice Bulletin the

priority ranking list in effect at the time of the publication, and solicit and provide for the involvement of the public in a review of the priority ranking list. The published list may be limited to those permits that have attained a priority ranking scores high enough to be likely to be selected for complete technical review within the 12 months following publication.

750-1.20 Denial, suspension or revocation of a permit.

(a) The department may deny an application for a SPDES permit if the department determines:

- (1) that the discharge will result in contravention of effluent limitations, water quality standards or guidance values;
- (2) that the permittee or applicant has been convicted of a crime related to the permitted activity under any Federal or State law; or
- (3) the permittee or applicant has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL, any related order or determination of the commissioner, any regulation of the department, any condition or term of any permit issued by the department, or any similar statute, regulation, order or permit condition of the Federal or other state government, or agency, on one or more occasions and in the opinion of the department, the violation that was the basis for the action posed a significant potential threat to the environment or human health, or is part of a pattern of noncompliance.

(b) In addition to the criteria set forth in Part 621 of this Title for suspension or revocation of a permit, the department may suspend or revoke a SPDES permit if the department determines:

- (1) the establishment that would be or is the source of the permitted discharge has not operated and is not likely to operate during the term of the permit;
- (2) that the permittee or applicant has been convicted of a crime related to the permitted activity under any Federal or State law;
- (3) the permit was issued erroneously or by mistake;
- (4) the permit was obtained through fraud, deceit, or through the submission of incorrect data; or
- (5) the permittee was negligent, or practiced fraud or deceit, in the performance of the permitted activities.

750-1.21 SPDES general permits.

(a) The department may issue a general permit, upon application or on its own initiative, to cover a category of point sources of one or more discharges within a stated geographical area that:

- (1) involve the same or substantially similar types of operations;
- (2) discharge the same types of pollutants;

- (3) require the same effluent limitations or operating conditions;
- (4) require the same or similar monitoring; and
- (5) that will result in minimal adverse cumulative impacts.

(b) Discharges may be authorized in accordance with a general permit for each of the following categories of discharges or potential discharges:

- (1) sanitary sewage, excluding industrial waste, from private, commercial or institutional establishments with design flows less than 10,000 gallons per day to groundwater;
- (2) storm water from construction activities as defined under 40 CFR 122.26(b)(14)(x) (see section 750-1.25 of this Subpart);
- (3) storm water from industrial activities as defined and allowed under 40 CFR 122.26(b)(14)(i)-(ix) and (xi) (see section 750-1.25 of this Subpart);
- (4) from Concentrated Animal Feeding Operations; and
- (5) other discharges for which the department has issued a general permit in accordance with the criteria set forth in article 70, section 0117 of the ECL.

(c) Any general permit issued under this subdivision shall set forth the applicability of the permit and the conditions that apply to any discharge authorized by such general permit.

(d) Administration of general permits.

General permits maybe issued, modified, and reissued, or terminated in accordance with applicable requirements of this Part and Part 621 of this Title, except:

- (1) to obtain permission to discharge in accordance with a general permit, an existing or proposed discharger must timely notify the department, in the format provided by the department, of the discharger's intention to discharge in accordance with a general permit. The department may provide verification of discharge approval pursuant to the general permit and may require such verification prior to the permittee being authorized to discharge;
- (2) upon renewal of a general permit, all dischargers permitted to discharge in accordance with the previous general permit shall be permitted to discharge in accordance with the renewed general permit unless otherwise notified by the department;
- (3) upon modification of a general permit, all discharges permitted to discharge in accordance with the previous unmodified general permit shall be permitted to discharge in accordance with the modified general permit unless otherwise notified by the department; and
- (4) unless otherwise set forth in this Part, department administration of the general permit for storm water discharges shall be in accordance with the Federal regulations set forth in 40 CFR 122.26 (see section 750-1.25 of this Subpart).

(e) The department may require any discharger authorized to discharge in accordance with a general permit to apply for and obtain an individual SPDES permit or apply for authorization to discharge in accordance with another general permit.

(1) Cases where an individual SPDES permit or authorization to discharge in accordance with another general permit may be required include, but is not limited to the following:

(i) the discharger is not in compliance with the conditions of the general permit or does not meet the criteria for coverage under the general permit;

(ii) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(iii) new effluent limitation guidelines or new source performance standards are promulgated that are applicable to point sources authorized to discharge in accordance with the general SPDES permit;

(iv) existing effluent limitation guidelines or new source performance standards that are applicable to point sources authorized to discharge in accordance with the general SPDES permit are modified;

(v) a water quality management plan containing requirements applicable to such point sources is approved by the department;

(vi) circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the SPDES general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(vii) the discharge is in violation of section 17-0501 of the ECL;

(viii) the discharge(s) is a significant contributor of pollutants. In making this determination, the department may consider the following factors:

(a) the location of the discharge(s) with respect to waters of New York State;

(b) the size of the discharge(s);

(c) the quantity and nature of the pollutants discharged to waters of New York State; and

(d) other relevant factors including compliance with other provisions of ECL, article 17, or the act.

(2) When the department requires any discharger authorized by a general permit to apply for an individual SPDES permit as provided for in this subdivision, it shall notify the discharger in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application for an individual SPDES permit, and a deadline, not sooner than 180 days from receipt to the permittee's receipt of the notification letter, whereby the authorization to discharge under a SPDES general permit

shall be terminated. The department may grant additional time upon demonstration, to the satisfaction of the regional water engineer, that additional time to apply for an alternative authorization is necessary or where the department has not provided a permit determination in accordance with Part 621 of this Title.

(3) When an individual SPDES permit is issued to a discharger authorized to discharge under a general SPDES permit for the same discharge(s), the general permit authorization for outfalls authorized under the individual permit is automatically terminated on the effective date of the individual permit unless termination is earlier in accordance with this Part.

(f) General permits shall include such provisions that are applicable as set forth in sections 750-1.10, 750-1.11, 750-1.13 and 750-1.14 of this Subpart.

750-1.22 POSS registrations.

(a) Applicability.

The owner of a POSS must register the POSS with the department as specified in this section.

(b) Discharge reporting and notification requirements.

Owners and operators of POSSs must comply with the reporting and notification requirements of section 750-2.7(b) and (d) of this Part.

(c) POSS registration procedures.

(1) Registrations are ministerial actions for the purposes of Part 617 (State Environmental Quality Review) of this Title and are not subject to Part 621 (Uniform Procedures) of this Title.

(2) Construction of a POSS shall not commence until the owner of the POSS has registered the POSS with the department by providing all information requested on a registration form as prescribed by the department. All registration forms shall be signed by the ranking elected official or principal executive officer of the municipality that owns the POSS.

(3) Existing POSSs must be registered with the department within 30 days of the effective date of this section.

(4) The department will validate complete registration forms and return a validated copy the validated registration to the POTW to which it discharges within 10 days of receipt of the validated registration.

(5) The owner of a POSS must submit a registration form to the department and obtain a validated amended registration form from the department prior to modifying the POSS.

(d) Transfer of ownership or operation.

The owner of a POSS must notify the department of the transfer of ownership or operation of the POSS at least 30 days prior to such transfer using forms prescribed by or acceptable to the department.

(e) New and modified POSSs.

The construction of a new or modified POSS must be in accordance with section 750-2.10 of this Part.

(f) Access to records and facilities.

(1) The owner of a POSS must keep a copy of its validated registration and all other documents relating to operation and maintenance of the POSS, recordkeeping and reporting requirements, and compliance with this Part at the business office for the facility or at the village, town, city or county clerk's office, local library or other location accessible by the public. These documents must be accessible to the department for review and copying. The validated registration and other documents may be stored in either paper or electronic form. Owners and operators of POSSs must allow any authorized representative of the department at all reasonable times to review and copy such documents.

(2) Any authorized representative of the department may, at reasonable times, inspect a POSS for compliance with this Part.

750-1.23 Confidentiality of information.

(a) The following shall not be held confidential: the name and address of any permit applicant or permittee; effluent data, SPDES permits, permit applications (including permit renewal applications), priority ranking fact sheets or requests for permit modification, suspension or revocation, including information submitted on the forms themselves and any attachments used to supply information required by the forms (except information submitted on usage of substances).

(b) Upon request of the applicant, the department shall make determinations of confidentiality in accordance with Part 616 of this Title, except as set forth by subdivision (a) of this section.

(c) Any information accorded confidential status shall be disclosed to the regional administrator upon his or her written request. Prior to disclosing such information to the regional administrator, the department will notify the regional administrator of the confidential status of such information.

750-1.24 Severability.

If any provision of this Part or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

750-1.25 References.

(a) *USEPA guidance publications.*

- *USEPA Guidance on Whole Effluent Toxicity Testing - Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, Fourth Edition, EPA/600/4-90/027F (1993)
- *Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to Freshwater Organisms*, Third Edition, EPA/600/4-91/002 (1994)
- *Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Marine and Estuarine Organisms*, Second Edition, EPA/600/4-91/003 (1994)

(b) As it appears in title 33 Code of Federal Regulations (CFR) on the date shown in parentheses:

- Part 153 - Control of Pollution by Oil and Hazardous Substances, Discharge Removal - (October 5, 2001)

(c) As it appears in title 40 Code of Federal Regulations (CFR) on the date shown in parentheses:

- Part 35 - State and Local Assistance - (November 16, 2001)
- Part 122 - EPA Administered Programs: The National Pollutant Discharge Elimination System - (December 3, 2001)
- Part 123.44 - EPA Review of and Objections to State Permits - (November 16, 2001)
- Part 124.10 - Public Notice of Permit Actions and Public Comment Period - (October 5, 2001)
- Part 125 - Criteria and Standards for the National Pollutant Discharge Elimination System - (March 4, 2002)
- Part 129 - Toxic Pollutant Effluent Standards - (October 5, 2001)
- Part 130 - Water Quality Planning and Management - (January 4, 2002)
- Part 132 - Water Quality Guidance for the Great Lakes System - (October 5, 2001)
- Part 133 - Secondary Treatment Regulation - (October 5, 2001)
- Part 136 - Guidelines Establishing Test Procedures for the Analysis of Pollutants - (July 1, 2000)
- Part 144 - Underground Injection Control Program - (October 5, 2001)
- Part 146 - Underground Injection Control Program: Criteria and Standards - (October 5, 2001)
- Part 300 - National Oil and Hazardous Substances Pollution Contingency Plan - (October 5, 2001)
- Part 401 - General Provisions - (January 30, 2002)
- Part 403 - General Pretreatment Regulations for Existing and New Sources of Pollution - (October 5, 2001)

- Part 405 - Dairy Products Processing Point Source Category - (November 16, 2001)
- Part 406 - Grain Mills Point Source Category - (November 16, 2001)
- Part 407 - Canned and Preserved Fruits and Vegetables Processing Point Source Category - (November 16, 2001)
- Part 408 - Canned and Preserved Seafood Processing Point Source Category - (November 16, 2001)
- Part 409 - Sugar Processing Point Source Category - (November 16, 2001)
- Part 410 - Textile Mills Point Source Category - (November 16, 2001)
- Part 411 - Cement Manufacturing Point Source Category - (November 16, 2001)
- Part 412 - Feedlots Point Source Category - (November 16, 2001)
- Part 413 - Electroplating Point Source Category - (November 16, 2001)
- Part 414 - Organic Chemicals, Plastics, and Synthetic Fibers - (November 16, 2001)
- Part 415 - Inorganic Chemicals Manufacturing Point Source Category - (November 16, 2001)
- Part 417 - Soap and Detergent Manufacturing Point Source Category - (November 16, 2001)
- Part 418 - Fertilizer Manufacturing Point Source Category - (November 16, 2001)
- Part 419 - Petroleum Refining Point Source Category - (November 16, 2001)
- Part 420 - Iron and Steel Manufacturing Point Source Category - (November 16, 2001)
- Part 421 - Nonferrous Metals Manufacturing Point Source Category - (November 16, 2001)
- Part 422 - Phosphate Manufacturing Point Source Category - (November 16, 2001)
- Part 423 - Steam Electric Power Generating Point Source Category - (November 16, 2001)
- Part 424 - Ferroalloy Manufacturing Point Source Category - (November 16, 2001)
- Part 425 - Leather Tanning and Finishing Point Source Category - (November 23, 2001)
- Part 426 - Glass Manufacturing Point Source Category - (November 23, 2001)
- Part 427 - Asbestos Manufacturing Point Source Category - (November 23, 2001)
- Part 428 - Rubber Manufacturing Point Source Category - (November 23, 2001)
- Part 429 - Timber Products Processing Point Source Category - (November 23,2001)
- Part 430 - The Pulp, Paper, and Paperboard Point Source Category - (November 23, 2001)
- Part 432 - Meat Products Point Source Category - (November 23, 2001)
- Part 433 - Metal Finishing Point Source Category - (November 23, 2001)
- Part 434 - Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards - (November 23, 2001)

- Part 435 - Oil and Gas Extraction Point Source Category - (November 23, 2001)
- Part 436 - Mineral Mining and Processing Point Source Category - (November 23, 2001)
- Part 437 - The Centralized Waste Treatment Point Source Category - (November 23, 2001)
- Part 439 - Pharmaceutical Manufacturing Point Source Category - (November 23, 2001)
- Part 440 - Ore Mining and Dressing Point Source Category - (November 23, 2001)
- Part 442 - Transportation Equipment Cleaning Point Source Category - (November 23, 2001)
- Part 443 - Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving and Roofing Materials (Tars and Asphalt) Point Source Category - (November 23, 2001)
- Part 444 - Waste Combustors Point Source Category - (November 23, 2001)
- Part 445 - Landfills Point Source Category - (November 23, 2001)
- Part 446 - Paint Formulating Point Source Category - (November 23, 2001)
- Part 447 - Ink Formulating Point Source Category - (November 23, 2001)
- Part 454 - Gum and Wood Chemicals Manufacturing Point Source Category - (November 23, 2001)
- Part 455 - Pesticide Chemicals - (November 23, 2001)
- Part 457 - Explosives Manufacturing Point Source Category - (November 23, 2001)
- Part 458 - Carbon Black Manufacturing Point Source Category - (November 23, 2001)
- Part 459 - Photographic Point Source Category - (November 23, 2001)
- Part 460 - Hospital Point Source Category - (November 23, 2001)
- Part 461 - Battery Manufacturing Point Source Category - (November 23, 2001)
- Part 463 - Plastics Molding and Forming Point Source Category - (November 23, 2001)
- Part 464- Metal Molding and Casting Point Source Category - (November 23, 2001)
- Part 465 - Coil Coating Point Source Category - (November 23, 2001)
- Part 466 - Porcelain Enameling Point Source Category - (November 23, 2001)
- Part 467 - Aluminum Forming Point Source Category - (November 23, 2001)
- Part 468 - Copper Forming Point Source Category - (November 23, 2001)
- Part 469 - Electrical and Electronic Components Point Source Category - (November 23, 2001)
- Part 471 - Nonferrous Metals Forming and Metal Powders Point Source Category - (November 23, 2001)

(d) Clean Water Act formerly referred to as the Federal Water Pollution Control Act, 33 USC 1251 *et seq.* - (July 1, 2001) References:

- section 1284(b) [FWPCA §§ 204(b)] - Limitations and conditions
- section 1288(b) [FWPCA §§ 208(b)] - Area wide waste treatment management - planning process
- section 1288(b)(2)(C) [FWPCA §§ 208(b)(2)(C)] - “The establishment of a regulatory program to implement requirements of 201(c) [waste treatment management area and scope]
- section 1311 [FWPCA §§ 301] - Effluent limitations
- section 1312 [FWPCA §§ 302] - Water quality related effluent limitations
- section 1313 [FWPCA §§ 303] - Water quality standards and implementation plans
- section 1314 [FWPCA §§ 304] - Information and guidelines
- section 1316 [FWPCA §§ 306] - National standards of performance
- section 1317 [FWPCA §§ 307] - Toxic and pretreatment effluent standards
- section 1318 [FWPCA §§ 308] - Records and reports; inspections
- section 1321 [FWPCA §§ 311] - Oil and hazardous substance liability
- section 1326 [FWPCA §§ 316] - Thermal discharges
- section 1342 [FWPCA §§ 402] - National pollutant discharge elimination system
- section 1343 [FWPCA §§ 403] - Ocean discharge criteria
- section 1370 [FWPCA §§ 510] - State authority

(e) Miscellaneous.

Recommended Standards for Wastewater Facilities, Policies for the Design, Review and Approval of Plans and Specifications, 1997 Edition. *Design Standards for Wastewater Treatment Works*, 1988, Intermediate Sized Sewage Facilities.

(f) All publications referenced in this Part are available electronically at <http://www.dec.state.ny.us/website/dow/bwp/ref750/index.html>.

(g) All material referenced in this Part is available for copying and inspection at the New York State Department of Environmental Conservation, Division of Water at its Central Office location in Albany County.

(h) *Act* means the Federal Water Pollution Control Act or Clean Water Act, 33 USC 1251 *et seq.*, as amended, that is in effect on July 1, 2001.

(i) *Ten states standards* means *Recommended Standards for Wastewater Facilities, Policies for the Design, Review and Approval of Plans and Specifications*, 1997 Edition.

(j) *Intermediate design standards* means *Design Standards for Wastewater Treatment Works*, 1988, Intermediate Sized Sewerage Facilities.

SUBPART 750-2 Operating in Accordance with a SPDES Permit

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750-2.1 General provisions of a SPDES permit.

(a) The SPDES permit, or a true copy, shall be kept readily available for reference at the largest wastewater treatment facility on site.

(b) Upon issuance of a SPDES permit, a determination has been made on the basis of a submitted application, plans, or other available information, that compliance with the specified permit provisions will reasonably protect classified water use and assure compliance with applicable water quality standards. Satisfaction of permit provisions notwithstanding, if operation pursuant to the permit causes or contributes to a condition in contravention of State water quality standards or guidance values, or if the department determines that a modification of the permit is necessary to prevent impairment of the best use of the waters or to assure maintenance of water quality standards or compliance with other provisions of ECL article 17, or the act or any regulations adopted pursuant thereto (see section 750-1.25 of this Part), the department may require such a modification and the commissioner may require abatement action to be taken by the permittee and may also prohibit such operation until the permit has been modified pursuant to section 621.14 of this Title.

(c) The provisions of a SPDES permit are severable, and if any provision of the permit, or the application of any provision of the permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of the permit, shall not be affected thereby.

(d) If the discharge(s) permitted in a SPDES permit originate(s) within the jurisdiction of an interstate water pollution control agency, then the permitted discharge(s) must also comply with any applicable effluent standards or water quality standards promulgated by that interstate agency and as set forth in the permit for such discharge(s).

(e) The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for: enforcement action; for permit suspension, revocation or modification; and for denial of a permit renewal application.

(f) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, the permittee shall promptly submit such facts or corrected information to the regional water engineer.

(g) It shall not be a defense, for a permittee in an enforcement action, that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(h) The filing of a request by the permittee for a permit modification, termination, transfer, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(i) The permittee shall furnish to the department, within a reasonable time as set forth in the department request, any information that the department may request to determine whether cause exists for modifying, suspending, or revoking a SPDES permit, or to determine compliance with

the permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

(j) Nothing in a SPDES permit relieves the permittee from a requirement to obtain any other permits required by law.

(k) Discharges authorized by a SPDES permit as defined in section 750-1.2(a) of this Part are deemed in compliance with titles 5, 7 and 8 of article 17 and the regulations promulgated thereunder.

750-2.2 Exclusions.

(a) The issuance of a SPDES permit by the department and the receipt thereof by the applicant does not supersede, revoke or rescind an order on consent or modification thereof or any of the terms, conditions or requirements contained in such order or modification thereof unless specifically intended by said order or a newly issued order.

(b) The issuance of a SPDES permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining the assent of any other jurisdiction as required by law for the discharge authorized.

(c) A SPDES permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

(d) Oil and hazardous substance liability.

The imposition of responsibilities upon, or the institution of any legal action against the permittee under section 311 of the act (see section 750-1.25 of this Part) shall be in conformance with regulations promulgated pursuant to section 311 governing the applicability of section 311 of the Clean Water Act to discharges from facilities with NPDES permits.

750-2.3 Inspection and entry.

The permittee shall allow the commissioner, the regional administrator, the applicable county health department, or their authorized representatives, upon the presentation of credentials and other documents as may be required by law, to:

(a) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of a SPDES permit;

(b) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit, including records required to be maintained for purposes of operation and maintenance;

(c) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit;

- (d) sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the act or ECL, any substances or parameter at any location;
- (e) enter upon the property of any contributor of wastewater to the system under authority of the permittee's Sewer Use Law, ordinance (municipalities) or regulations; and
- (f) if any part of the permittee's sewer system or sewage treatment works is located on any property not owned by the permittee, the permittee must be able to reasonably demonstrate to the satisfaction of the department that it has legal access to these locations or facilities and ensure that the commissioner, the regional administrator or the county health department or any authorized representative thereof, upon presentation of credentials, will have access to these locations and facilities.

750-2.4 Operator and permittee liability.

(a) Any person who, having any of the culpable mental states defined in section 15.05 of the Penal Law, shall violate any of the provisions of titles 1 through 5, 9 through 11 and 19 of article 17 of ECL or the rules, regulations, orders or determinations of the commissioner promulgated thereto, or the terms of any permit issued thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(b) Any person is guilty of a class A misdemeanor who with criminal negligence, as defined in section 15.05 of the Penal Law:

- (1) violates any provision of title 7 or 8 of article 17 of ECL;
- (2) violates the rules or regulations promulgated thereunder;
- (3) violates any term of any permit issued thereunder;
- (4) violates any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3), 402(b)(8) of the act (see section 750-1.25 of this Part), or approved pursuant to title 7 or 8 of article 17 of ECL;
- (5) violates any final administrative orders issued pursuant to article 71 of ECL where an opportunity for a hearing is provided; or
- (6) introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance:
 - (i) when such person knew that such introduction was likely to cause personal injury or property damage, except if that introduction was in compliance with all applicable Federal, State or local requirements or permits; or
 - (ii) which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of ECL or the rules or regulations promulgated

thereunder except if that introduction was in compliance with all applicable Federal, State or local requirements or permits.

(c) Any person is guilty of a class E felony who knowingly, as defined in section 15.05 of the Penal Law:

- (1) violates any provision of title 7 or 8 of article 17 of ECL;
- (2) violates the rules or regulations promulgated thereunder;
- (3) violates any term of any permit issued thereunder;
- (4) violates any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3), 402(b)(8) of the act (see section 750-1.25 of this Part), or approved pursuant to title 7 or 8 of article 17 of this ECL;
- (5) violates any final administrative orders issued pursuant to article 71 of ECL where an opportunity for a hearing is provided; or
- (6) introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance:
 - i) when such person knew that such introduction was likely to cause personal injury or property damage, except if that introduction was in compliance with all applicable Federal, State or local requirements or permits; or
 - ii) which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of ECL or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable Federal, State or local requirements or permits.

(d) Any person is guilty of a class C felony who intentionally, as defined in section 15.05 of the Penal Law:

- (1) violates:
 - (i) any provision of title 7 or 8 of article 17 of ECL;
 - (ii) the rules or regulations promulgated thereunder;
 - (iii) any term of any permit issued thereunder; or
 - (iv) any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided; and
- (2) knows at that time that he thereby places another person who is not a participant in the crime in imminent danger of death or serious bodily injury;
- (3) for the purpose of paragraphs (1) and (2) of this subdivision, in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury:
 - (i) the person is responsible only for actual awareness or actual belief that he possessed; and

(ii) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(e) For purposes of subdivisions (b), (c) and (d) of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(f) Any person shall be guilty of a class E felony who, with intent to deceive, makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to title 7 or 8 of article 17 of the ECL or who intentionally falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to title 7 or 8 of article 17 of ECL.

(g) A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed \$25,000 per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided. Violation of a permit condition shall constitute grounds for revocation of such permit.

750-2.5 Routine monitoring, recording, and reporting.

(a) General.

(1) The permittee shall comply with all recording, reporting, monitoring and sampling requirements specified in the permit.

(2) Samples and measurements taken to meet the monitoring requirements specified in a SPDES permit shall be representative of the quantity and character of the monitored discharges. Unless otherwise specified in the permit or directed by the regional water engineer in writing, the following shall apply to such sample collection:

(i) A representative sample is one that adequately reflects the actual condition of the wastewater. The most representative sample will be drawn from a point that represents the wastewater discharged. When appropriate, that point should be at a depth where the flow is turbulent and well-mixed and the likelihood of solids settling is minimal.

(ii) For all parameters except volatile organics and oil and grease, composite samples required by a SPDES permit shall be composed of a minimum of eight grab samples, collected over the specified collection period, either at a constant sample volume for a constant flow interval or at a flow-proportioned sample volume for a constant time interval. Where continuous flow monitoring equipment is not available or where effluent flows do not vary more than 10 percent over the course of composite sample collection, composite samples may be composed of equal size grab samples taken at equal time intervals.

(iii) For volatile organics and oil and grease, composite samples required by a SPDES permit shall be collected as individual aliquots that must be combined in

the laboratory for analysis. At least four (rather than eight) aliquots or grab samples should be collected over the specified collection period, either at a constant sample volume for a constant flow interval or at a flow-proportioned sample volume for a constant time interval. Where flow monitoring equipment is not available or where effluent flows do not vary more than 10 percent over the course of composite sample collection, composite samples may be composed of equal size grab samples taken at equal time intervals.

(iv) *Grab sample* means a single sample, taken over a period of time not exceeding 15 minutes.

(v) Sample collection shall be scheduled to be representative of the normal discharge. Representative sample collection schedules include schedules set at least one month prior to when the samples are to be collected. A true and accurate copy of the schedule shall be kept readily available for reference at the wastewater treatment facility and shall be provided to the department upon request. The schedule may only be changed for good cause including but not limited to sampling equipment failure and unanticipated process shutdown. Samples may be scheduled as follows:

(a) randomly;

(b) day of the week or month, provided that scheduling by day of week or month does not persistently coincide with or exclude recurrent discharges;

(c) for storm water: based on availability of a suitable storm water event; and

(d) any other method of scheduling that is representative and acceptable to the regional water engineer.

(3) Accessible sampling locations must be provided and maintained by the permittee. New sampling locations shall be provided by the permittee if existing locations are deemed unsuitable by the department.

(4) Unless otherwise specified in the permit or directed by the regional water engineer, actual measured values of all positive analytical results obtained above the method detection limit (MDL) for all monitored parameters shall be recorded and reported, as required by the permit.

(5) For instrumentation that is not used by a certified laboratory, but which is used to measure discharges to the environment as specified in a SPDES permit, the permittee shall periodically calibrate and perform maintenance procedures to ensure accuracy of measurements. Verification of maintenance shall be logged into the record book(s) of the facility. The permittee shall notify the department's regional office in the discharge monitoring report if any required instrumentation becomes inoperable. In addition, the permittee shall verify the accuracy of its measuring equipment to the department's regional office or its designated field office upon request.

(6) No person shall falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under the permit.

(b) Signatories and certification.

(1) All SPDES applications and reports required by a SPDES permit shall be signed as provided in 40 CFR 122.22 (see section 750-1.25 of this Part) except that, in lieu of a signature, the department may permit the use of a unique identifier assigning responsibility for the veracity of the information contained in an application to the same person or persons that would otherwise be required to sign the application in this section. Such a document with a unique identifier shall be considered a signed document with a certifying signature and a written instrument that could subject the signatory to liability under the New York State Penal Law for officers concerning perjury and false written statements pursuant to articles 175 and 210 of said law.

(2) No person shall knowingly make any material false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance. Any person who violates this subsection shall be liable for violation of ECL section 71-1933 and subject to a fine and/or imprisonment thereunder.

(3) All applications, reports, or notifications required or authorized to be made or filed by this article or ECL article 17, title 7 or 8, or by the provisions or conditions of any permit issued pursuant thereto, by or on behalf of a permittee, applicant for a permit or person subject to the requirement of a permit shall be sworn to in respect to all statements of fact therein or shall bear an executed statement as provided in section 210.45 of the New York State Penal Law to the effect that false statements made therein are made under penalty of perjury.

(c) Recording of monitoring activities and results.

(1) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by a SPDES permit, and records of all data used to complete the application for the permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by written request of the department, provided that the extension is necessary to implement the provisions of this Part or ECL and that the reason or reasons for the extension are provided in the request.

(2) Records of monitoring information shall include:

- (i) the date, exact place, and time of sampling or measurements;
- (ii) the individual(s) who performed the sampling or measurements;
- (iii) the date(s) analyses were performed;
- (iv) the individual(s) who performed the analyses;
- (v) the analytical techniques or methods used;
- (vi) the results of such analyses; and
- (vii) quality assurance/quality control documentation.

(3) When records are stored electronically, the records must be preserved in a manner that reasonably assures their integrity and are acceptable to the department. Such records must also be in a format which is accessible to the department.

(4) The permittee shall make available to the department for inspection and copying or furnish to the department within 25 business days of receipt of a department request for such information, any information retained in accordance with this subdivision.

(d) Test and analytical procedures.

(1) Monitoring and analysis conducted in accordance with an issued SPDES permit must be conducted using test procedures promulgated, pursuant to 40 CFR part 136 (Test Procedures - see section 750-1.25 of this Part), except:

(i) when the permit specifies an alternative procedure; or

(ii) when the permittee applies to the department and the department approves an alternative test method in accordance with applicable law and regulation.

(2) Any laboratory test or sample analysis required by this permit for which the State Commissioner of Health issues certificates of approval pursuant to section 502 of the Public Health Law shall be conducted by a laboratory that has been issued a certificate of approval.

(3) Application for approval of alternative test procedures shall be made to the department's regional permit administrator, and shall contain:

(i) the name and address of the applicant or the responsible person making the discharge, the DEC permit number and applicable SPDES identification number of the existing or pending permit, name of the permit issuing agency, name and telephone number of applicant's contact person;

(ii) the names of the pollutants or parameters for which an alternate testing procedure is being requested, and the monitoring location(s) at which each testing procedure will be utilized;

(iii) justification for using test procedures, other than those approved in subdivision (a) of this section; and

(iv) a detailed description of the alternate procedure in accordance with requirements set forth in 40 CFR part 136 (see section 750-1.25 of this Part) or other applicable law and regulation.

(e) Reporting of monitoring results and other information.

(1) The permittee shall submit the results of any wastewater or ambient monitoring results required by the permit at the end of each month, unless otherwise specified by the department. Such reports shall be made on the reporting forms supplied to the permittee by the department, in a format acceptable to the department, or by the electronic transfer of data as approved by the department. Electronic submissions shall conform to the format, standards and other conditions specified by the department. The regional water engineer may also require the submittal of such other information as is necessary to

determine the validity of monitoring results submitted in accordance with permit requirements. In no event shall reports on discharges to surface waters required by this subdivision be submitted at a frequency of less than once per year.

(2) For any parameter, analytical results shall be reported to the same number of significant digits as the permit limits or action level for that parameter. If the permit does not clarify the number of significant digits to which results should be reported, the results must be reported to two significant digits, except in cases of effluent TSS or BOD where single digit effluents are achieved. In these cases single digits may be reported.

(3) On each discharge monitoring report, the permittee shall include the ELAP identification number or numbers for the certified laboratory or laboratories who performed the analyses, the results of which, are summarized on that discharge monitoring report. Where the monitoring is not performed under ELAP, the permittee shall provide the MDL for the parameter monitored.

(4) If the permittee monitors any pollutant at the discharge or monitoring point or points described in the permit or if the permittee monitors the waters of the State to which the permittee discharges more frequently than required by the permit and, where the analysis for that monitoring is performed by a certified laboratory or where such analysis is not required to be performed by a certified laboratory, such monitoring results shall be appended to the discharge monitoring report for the period during which the monitoring was performed.

750-2.6 Special reporting requirements for SPDES permittees that are not POTWs.

(a) All existing SPDES permittees that are not POTWs must notify the regional water engineer as soon as they know or have reason to believe that any activity has occurred or will occur that would result in the discharge of any pollutant that is not a discharge authorized by a SPDES permit as defined in section 750-1.2 of this Part.

(b) Facility expansion, as defined in section 750-1.2 of this Part, for all existing SPDES permittees that are not POTWs must be reported by submission of a letter to the regional water engineer. The department may determine that additional information must be submitted or that the information submitted by letter to the regional permit administrator must be submitted on a department application form. The department may determine, on the basis of such information, and any related investigation, inspection or sampling, that a modification of the permit is necessary to assure maintenance of water quality standards or compliance with other provisions of ECL, article 17 or the Clean Water Act. Conversely, the department may determine in accordance with this Part that the proposed activity does not require a permit modification. Unless the department determines that a permit modification is unnecessary, operations that fit the following criteria, which may result in discharges that are not discharges authorized by the SPDES permit, are prohibited until the permit has been modified in accordance with Part 621 of this Title:

(1) increases in production or the mass of any one pollutant in wastewater that occur and are expected to continue or have occurred and been existing for more than one year; or

(2) the permittee commences a new operation, of which no operations in this category currently exist at the facility, subject to regulation under 40 CFR 405 to 471 and/or 40 CFR part 125 (see section 750-1.25 of this Part) which will result in pollutants which the permittee knows or has reason to believe will be discharged (except substances not required to be reported on the appropriate and current New York State SPDES permit application) and which is not described in the SPDES permit application record upon which the current permit is based.

(c) The permittee shall submit written notice to the department if the permitted facility experiences a decrease in production, a decrease of process flow, or a facility modification, where such change results in a greater than 20 percent decrease in the discharges of a pollutant explicitly limited in a SPDES permit and the limit was based on production or flow, provided that such decrease in discharge is expected to continue or has been existing for more than one year.

750-2.7 Incident reporting and notification requirements.

(a) Anticipated noncompliance.

The permittee shall give at least 45 days advance notice to the regional water engineer of any change in the permitted facility or activity that the permittee knows or has reason to know would occur as part of a construction project, which is part of the permittee's routine maintenance program, or which the permittee knows or has reason to know about 60 or more days before it occurs, and that is very likely or certain to result in a bypass or other noncompliance with permit requirements.

(1) Such notice shall contain:

- (i) a description of the treatment units to be effected;
- (ii) the anticipated character and volume of wastewater and/or storm water to be discharged;
- (iii) the need for the changes;
- (iv) the anticipated duration of the noncompliance;
- (v) the receiving stream for the noncomplying wastewater and/or storm water;
- (vi) the anticipated benefits of the change;
- (vii) the alternatives considered; and
- (viii) such additional information requested by the regional water engineer to assess the effects of and need for such a change.

(2) In the time between notification of a planned change and the date scheduled for the change the department may choose to do one or more of the following:

- (i) require additional information that can reasonably be used to decide the necessity of such noncompliance;

- (ii) require that the permittee delay the planned change up to 45 additional days until the department may adequately assess the necessity for the planned change;
- (iii) require the permittee to modify the planned change;
- (iv) prohibit the planned change; or
- (v) apply no conditions to the planned change.

(b) Reporting and notification requirements for bypasses, upsets and discharges of untreated and partially treated sewage.

(1) Two hour reporting requirements for SPDES permittees that are non-POTWs. For discharges from a non-POTW permittee's wastewater treatment plant or sewer system that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes, the non-POTW permittee shall, within two hours of discovery of the discharge, report orally to the regional water engineer and the local health department of any discharge of untreated or partially treated sewage, except a discharge in accordance with a department approved plan for managing wastewater (provided that such plan is in compliance with applicable law and regulation). Such report shall include:

- (i) the date and time of discovery of the discharge and a brief description of the reason for the discharge, bypass, upset, or other incident;
- (ii) the location of the discharge, bypass, upset or other incident including the receiving water effected by the discharge, bypass, upset, or other incident;
- (iii) the estimated volume and treated state (untreated or partially treated) of the discharge at the time of the oral report;
- (iv) a brief description of the measures taken and planned to contain the discharge, bypass, upset, or other incident; and
- (v) the expected duration of the discharge, bypass, upset, or other incident and the total expected volume of the discharge.

(2) Requirements for POTWs and POSSs. Owners and operators of POTWs and POSSs must comply with the reporting and notification requirements described in subparagraphs (i), (ii), (iii) and (iv) of this paragraph through use of the department approved form of electronic media. POTWs and POSSs are in compliance with the reporting and notification requirements in subparagraphs (i), (ii), (iii) and (iv) of this paragraph if they register to use the department approved form of electronic media and submit timely and sufficient reports and notifications when required. A CSO is considered to be untreated sewage for purposes of the reporting and notification requirements specified in subparagraphs (i), (ii) and (iii) of this paragraph. The department may temporarily waive or suspend these requirements in instances of emergencies, extreme weather or when other conditions present a greater risk to human health.

- (i) Two hour reporting requirements for POTWs and POSSs. Immediately, but in no case later than two hours after discovery of the discharge, owners and operators of POTWs and POSSs must report all discharges of untreated or partially treated sewage, including combined sewer overflows, to the department

and the local health department, or if there is none, the New York State Department of Health. This reporting requirement applies to all untreated and partially treated sewage discharges to waters of the State except partially treated sewage discharged directly from a POTW that is in compliance with a department approved plan or permit. These initial discharge reports shall be submitted using appropriate electronic media as determined by the department and shall, at a minimum, include to the extent knowable with existing systems and models the following:

(a) the date and time of discovery of the discharge and a brief description of the reason for the discharge;

(b) the location of the discharge including the receiving water effected by the discharge;

(c) the estimated volume and treated state (untreated or partially treated) of the discharge at the time of the report;

(d) a brief description of the measures taken and planned to contain the discharge except for wet weather combined sewer overflow discharges; and

(e) the expected duration of the discharge and the total expected volume of the discharge.

(ii) Four hour notification requirements for POTWs and POSSs.

(a) Notification to municipalities. As soon as possible, but no later than four hours from discovery of the discharge, owners and operators of POTWs and POSSs must notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality that may be affected of untreated or partially treated sewage discharges, including combined sewer overflows, to waters of the State except underground waters, through appropriate electronic media as determined by the department. This notification is not required for partially treated sewage discharged directly from a POTW that is in compliance with a department approved plan or permit. For purposes of this clause, *municipality* means a city, town or village and *adjoining municipality* means any municipality that is adjacent to the municipality in which the discharge occurred.

(b) Notification to the general public. As soon as possible, but no later than four hours from discovery of the discharge, owners and operators of POTWs and POSSs must notify the general public of untreated or partially treated sewage discharges, including combined sewer overflows, to waters of the State except underground waters, through appropriate electronic media as determined by the department. This notification is not required for partially treated sewage discharged directly from a POTW that is in compliance with a department approved plan or permit.

(iii) Notification requirements for certain combined sewer overflows. For combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, owners and operators of POTWs and POSSs must expeditiously issue advisories to the general public through appropriate electronic media as determined by the department when, based on actual rainfall data or predictive models, enough rain has fallen that combined sewer overflows may discharge. Advisories may be done on a waterbody basis rather than by individual combined sewer overflow points.

(iv) Daily and termination reports. A daily report shall be made by owners and operators of POTWs and POSSs for each day that the discharge continues after the date the initial discharge report is made, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the daily report. Daily and termination reports must be made within 24 hours of the previous report using an appropriate form of electronic media as determined by the department. Daily and termination reports must include, at a minimum, the criteria required for the initial discharge report, except that subsequent to the initial discharge report the department may modify or waive reporting requirements for daily and termination reports on a case by case basis if acceptable alternate reporting methods are available. POTWs and POSSs are not required to file daily and termination reports for wet weather CSO events.

(c) Twenty-four hour oral reporting of bypass, upset or other incident.

(1) Non-POTW SPDES permittees shall report, including the same information required to be reported under subdivision (b) of this section, orally to the regional water engineer within 24 hours from the time the non-POTW permittee becomes aware of a discharge of untreated or partially treated sewage that would otherwise be treated, except a discharge in accordance with a department approved plan for managing wastewater and/or storm water (provided that such plan is in compliance with applicable law and regulation).

(2) All SPDES permittees shall report, including the same information required to be reported under subdivision (b) of this section, orally to the regional water engineer within 24 hours from the time the permittee becomes aware of any of the following incidents:

(i) a discharge of untreated wastewater and/or storm water that would otherwise be treated, except a discharge in accordance with a department approved plan for managing wastewater (provided that such plan is in compliance with applicable law and regulation). Twenty-four hour reporting is not required if the discharge is sewage and the non-POTW SPDES permittee or POTW has fully complied with applicable two hour reporting requirements described in this section;

(ii) a spill that may result in a discharge that may:

- (a) violate permit limitations of pollutants limited in the SPDES permit;
- (b) exceed an action level or more than one action level in the SPDES permit;

(c) cause discharges of pollutants not explicitly listed in the SPDES permit, in amounts in excess of normal effluent variability of the level of discharge that may reasonably be expected for that pollutant from information provided in the SPDES permit application record; or

(d) which would result in dilution in lieu of treatment of a discharge authorized by a SPDES permit;

(iii) a spill to waters of the State of greater than the reportable quantity for releases to water as set forth in Part 597 of this Title; or

(iv) a bypass, upset or other incident that a reasonable practitioner in water pollution control would consider to be similar in severity and consequences to the incidents set forth in this subdivision.

(d) Five-day written incident report requirements for SPDES permittees and POSSs.

SPDES permittees and owners and operators of POSSs must provide a written report to the department of a discharge, bypass, upset or other incident reported under subdivisions (b) and (c) of this section within five days of discovery by the permittee or the owner or operator of the POSS. The written report shall be submitted on a form prescribed by the department and, at a minimum, shall contain a description of the discharge, bypass, upset, or other incident and its cause; the period of the discharge, bypass, upset, or other incident, including exact dates and times, and if the discharge, bypass, upset, or other incident has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent the discharge, bypass, upset, or other incident and its reoccurrence. The department may waive the written report on a case-by-case basis if reports have been received within the time periods required under subdivisions (b) and (c) of this section. Five day written incident reports are not required for wet weather combined sewer overflows that are in compliance with a department approved plan or permit.

(e) Additional reporting.

The permittee shall report all instances of noncompliance with permit conditions not otherwise required to be reported under these regulations or the SPDES permit, with each submitted copy of its discharge monitoring reports until such noncompliance ceases. Such noncompliance reports shall contain the same information required to be submitted under subdivision (d) of this section.

(f) Duty to mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit, which has a reasonable likelihood of adversely affecting human health or the environment.

(g) Duty to assess.

Where a bypass, upset, or other incident occurs as defined in subdivision (b) or (c) of this section that can reasonably be expected to create detectable discharges of a substance where that substance was not detectable prior to the bypass, upset, or other incident or the bypass, upset, or other incident can reasonably be expected to increase the discharge of a substance or substances

by 20 percent or more, the permittee shall collect at least one representative sample for each day of discharge effected by the bypass, upset or other incident in a manner that can be used to assess compliance with the permit. Each sample should be monitored for the parameters which the permittee knows or has reason to believe will be detectable or increased by 20 percent or more in the discharge due to the bypass, upset, or other incident.

750-2.8 Disposal system operation and quality control.

(a) General.

- (1) The disposal system shall not receive or be committed to receive wastes beyond its design capacity for volume and character of wastes treated without written approval of the regional water engineer. Nor shall the system operation be impaired by alterations to the type, degree, or capacity of treatment provided; disposal of treated effluent; or treatment and disposal of separated scum, liquids, solids or combination thereof resulting from the treatment process without written approval of the department or its duly authorized representative.
- (2) The permittee shall, at all times, properly operate and maintain all disposal facilities, which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes as a minimum, the following:
 - (i) a preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. A facility or system is critical if it contains process equipment that is essential for proper operation and necessary to achieve compliance with the applicable SPDES permit effluent limits; and
 - (ii) written procedures for operation and maintenance, training new operators, adequate laboratory controls and appropriate quality assurance. This provision requires the operation of installed backup or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.
- (3) When required under Part 650 of this Title, sufficient personnel meeting qualifications for operators of sewage treatment works as required therein and additional maintenance personnel shall be employed to satisfactorily operate and maintain the treatment works.
- (4) The permittee shall not discharge floating solids or visible foam.
- (5) The permittee and operator shall operate the wastewater treatment facility in such a manner as to minimize the discharge of pollutants to a degree that is achievable when compared to standard practices for operation of such wastewater treatment facilities.
- (6) The permittee and operator shall operate the wastewater treatment facility in such a manner as to minimize odors and other nuisance conditions to a degree that is achievable

when compared to standard practices for operation of such wastewater treatment facilities.

(b) Bypass.

(1) Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be violated, but only if it also is for essential maintenance, repair or replacement to assure efficient and proper operation. These bypasses are not subject to the paragraph (2) of this subdivision, provided that written notice is submitted prior to the bypass in accordance with section 750-2.7(a) of this Subpart (if anticipated) or (if unanticipated) with the discharge monitoring report for the reporting period during which the bypass occurred. Covered under this paragraph is the diversion of wastewater or storm water around any portion of a treatment facility in accordance with a department approved plan for wastewater or storm water management (provided that such plan is in compliance with applicable law and regulation).

(2) Prohibition of bypass. Except as provided for in paragraph (1) of this subdivision, bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

(i) bypass was unavoidable to prevent loss of life, personal injury, public health hazard, environmental degradation or severe property damage;

(ii) there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal period of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance or if designed and installed backup equipment that could have prevented or mitigated the impact of the bypass is not operating during the bypass; and

(iii) the permittee submitted notices as required under section 750-2.7 of this Subpart and, excepting emergency conditions, the proposed bypass was accepted by the department.

(c) Upset.

(1) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such permit effluent limitations if the requirements of paragraph (2) of this subdivision are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(2) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operation logs, or other relevant evidence that:

(i) an upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) the permitted facility was, at the time, being properly operated;

(iii) the permittee submitted notice of the incident for which an upset defense is being claimed as required in section 750-2.7 of this Subpart; and

(iv) the permittee implemented any mitigation and assessment required under section 750-2.7(f) and (g) of this Subpart.

(3) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(d) Special condition- disposal systems with septic tanks.

Unless otherwise directed by the Regional Water Engineer, if a septic tank is installed as part of the disposal system, it shall be inspected by the permittee or his agent for scum and sludge accumulation at intervals not to exceed one year's duration, and such accumulation will be removed before the depth of either exceeds one-fourth of the liquid depth so that no settleable solids or scum will leave in the septic tank effluent. Such accumulation shall be disposed of in accordance with all applicable law and regulation.

(e) Residuals management.

The permittee shall properly store or dispose of collected screenings, sludges, other solids or precipitates removed from the permitted discharges, intakes or supply waters. Proper storage or disposal shall prevent creation of nuisance conditions or the entry of such materials into State waters and shall be in a manner approved by the department. Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment should be returned to their water body habitat. The permittee shall maintain records of disposal on all effluent screenings, sludges and other solids associated with the discharge(s) herein described. The following data shall be compiled and reported to the department upon request:

(1) the sources of the materials to be disposed of;

(2) the approximate volumes, weights, water content and (if other than sewage sludge) chemical composition;

(3) the method by which they were removed and transported, including the name and permit number of the waste transporter; and

(4) their final disposal locations.

(f) Biosolids reuse.

Permittees shall make reasonable efforts, to the extent practical, reuse biosolids.

(g) POSS operation requirements.

Owners and operators of POSSs must properly operate and maintain the POSS. Proper operation and maintenance includes at a minimum, the following:

(1) a preventive/corrective maintenance program for all critical components of the collection system that includes provisions requiring the maintenance of installed backup or auxiliary components or similar systems when the proper operation of such component

or system is essential for preventing discharges of untreated or partially treated sewage; and

(2) written procedures for operation and maintenance of the POSS and training new operators.

750-2.9 Additional conditions applicable to a publicly owned treatment works (POTW).

(a) General.

(1) In addition to the requirements set forth in this Subpart, all POTWs must provide adequate notice to the department of the following:

(i) As set forth in department guidance on what is a substantial change in volume or character of pollutants introduced into a POTW, any such change.

(ii) For purposes of this paragraph, adequate notice shall include information on:

(a) the quality and quantity of effluent introduced into the POTW; and

(b) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(2) If the department determines, on the basis of a notice provided pursuant to paragraph one of this subdivision and any related investigation, inspection or sampling, that a modification of a permit is necessary to assure maintenance of water quality standards and guidance values or compliance with other provisions of ECL article 17, this Part, or the act, then the department may propose such a modification. Unless the department determines that such permit modification is unnecessary, the noticed act is prohibited until the permit has been modified pursuant to Part 621 of this Title.

(3) The permittee shall identify all inflow to the tributary system and remove excessive infiltration/inflow to an extent that is economically feasible.

(4) The permittee shall enact, maintain and enforce or cause to be enacted, maintained and enforced up-to-date and effective Sewer Use Law in all parts of the POTW service area. Such enactment and enforcement shall include intermunicipal agreements and/or other enforceable legal instruments that allow the permittee to control discharges, either directly or through jurisdictions contributing flows to the POTW, flow and loads to the POTW as well as discharges to the POTW.

(5) New connections to a publicly owned sewer system or a privatized municipal sewer system are prohibited when the permittee is notified by the department:

(i) that the discharge(s) regulated by a SPDES permit create(s) or is likely to create a public health or potential public health hazard, a contravention of water quality standards or guidance values or the impairment of the best use of waters, as determined by the commissioner; or

(ii) that the permittee has failed or is likely to fail to carry out, meet or comply with any limit or requirement of the permit, compliance schedule, order of the department, judicial order, or consent decree.

(6) The provisions provided for in paragraph (5) of this subdivision shall remain in effect until the permittee can demonstrate to the department's satisfaction and approval that adequate available capacity exists in the plant and that the facility is in full compliance with all of the effluent limitations required by the permit.

(b) National pretreatment standards.

(1) All POTWs shall comply with the provisions contained in 40 CFR 403.5(a), (b), (c) and (d) (see section 750-1.25 of this Part).

(2) EPA and State enforcement actions. If, within 30 days after notice of an interference or pass-through violation has been sent by EPA or the department to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA and the department may take appropriate enforcement action.

(3) POTWs required by the department to develop a pretreatment program in accordance with 40 CFR 403.8 shall submit an approvable program application in accordance with 40 CFR 403.8 (see section 750-1.25 of this Part).

(4) The approval authority, as defined by 40 CFR 403.3 (see section 750-1.25 of this Part), shall review, require changes to, approve and/or disapprove such a program in accordance with 40 CFR 403.9 and 403.11 (see section 750-1.25 of this Part).

(5) POTWs and industrial users shall submit reports as required in accordance with 40 CFR 403.12 (see section 750-1.25 of this Part).

(6) Industrial users may obtain intake credits in accordance with 40 CFR 403.15 (see section 750-1.25 of this Part).

(7) Modifications to pretreatment programs shall be made in accordance with 40 CFR 403.18 (see section 750-1.27 of this Part).

(c) POTW design, planning and flow management.

(1) Flow management plan.

(i) Within 120 days of when the permittee determines in accordance with paragraph (4) of this subdivision that the annual average flow value for a calendar year to a POTW has reached or exceeded 95 percent of that POTW's design flow, the permittee shall submit to the regional water engineer a flow management plan to identify and implement reductions in hydraulic loading to the POTW treatment plant or failing that, approvable engineering reports, plans and specifications and/or capital improvements as necessary to stabilize annual average flows below the POTW treatment plant design flow. This plan shall be certified by a professional engineer licensed to practice in the State of New York and endorsed by the chief fiscal officer of the municipality. The provisions of the plan may

reflect new efforts or may refer to existing, ongoing efforts. The flow management plan shall, at a minimum, include provisions for:

- (a) a statement to the effect that the permittee has the authority in all parts of the POTW service area to implement or cause to be implemented the provisions of this subdivision or, if the permittee does not have such authority, a proposed schedule, not to exceed three years, to obtain such authority or a statement from the permittee's designated legal representative that existing law precludes the permittee from obtaining such authority;
- (b) an inventory of all known facilities/projects that have applied to connect to the sewer system and a determination if there is capacity for connection;
- (c) a schedule of implementation for all flow reduction measures identified herein;
- (d) a map delineating the service area as defined; and
- (e) a description of information that will be reported during implementation of the plan to the regional water engineer and a schedule for such reporting.

(ii) The flow management plan required by subparagraph (i) of this paragraph shall also include provisions for implementation of any or all of the following that are necessary to stabilize influent flows below design flows:

- (a) water conservation measures to reduce customer usage by measures including but not limited to customer metering, meter calibration, retrofitting existing plumbing fixtures with water conservation fixtures and revision of water rate structures;
- (b) reduction of infiltration and inflow through continuous measures including but not limited to sewer system metering, evaluation and rehabilitation, removal of roof leaders and footing drains from separate sanitary sewers and installation of separate storm sewers;
- (c) prevention of future sources of infiltration and inflow where feasible through measures including but not limited to implementation of standards for sewer installation and requirements to provide for adequate drainage from roof leaders and footing drains in new construction;
- (d) measures to maximize sewer system and sewage treatment works capacity at a minimum cost;
- (e) approvable engineering reports and/or plans and specifications to assure annual average flows do not exceed 95 percent of the POTW treatment plant design flow; and/or
- (f) capital improvements necessary to assure annual average flows do not exceed 95 percent of the POTW treatment plant design flow.

(iii) Within 90 days of submittal to the regional water engineer of the plan required under subparagraphs (i) and (ii) of this paragraph, the permittee shall begin to implement the provisions of said program in accordance with the proposed schedule or cause the provisions of said program to be implemented by another party.

(iv) The regional water engineer may object to the plan, or implementation of the plan, submitted in accordance with subparagraphs (i) and (ii) of this paragraph if the plan does not provide for substantive and effective measures to reduce hydraulic loading to the POTW. Within 90 days of receipt of written notification from the regional water engineer documenting the aspects of the plan that must be revised, the permittee shall submit a revised plan that addresses the department's objection(s).

(2) Planning.

(i) Within 120 days of when the permittee determines that the actual influent mass loading of biochemical oxygen demand or total suspended solids to a POTW has reached or exceeded the design influent loading for those parameters for any eight calendar months during a calendar year, the permittee shall submit a plan for future growth at the POTW. The plan shall include:

(a) provisions for obtaining any necessary funding;

(b) provisions for preparation and submission to the regional water engineer of approvable engineering reports and/or plans and specifications to provide for growth of discharges in the POTW service area; and

(c) a demonstration of the permittee's ability to impose a connection moratorium in any and all parts of the service area or, if the permittee does not have such authority, a proposed schedule, not to exceed three years, to obtain such authority or a statement from the permittee's designated legal representative that existing law precludes the permittee from obtaining such authority.

(ii) The regional water engineer may object to the plan, or implementation of the plan, submitted in accordance with subparagraph (i) of this paragraph if the plan does not provide for substantive and effective measures to accommodate future growth of discharges from the POTW service area. Within 90 days of receipt of written notification from the regional water engineer documenting the aspects of the plan that must be revised, the permittee shall submit an approvable, revised plan that addresses the department's objection(s).

(iii) Within 90 days of submittal to the regional water engineer of the plan required under subparagraph (i) of this paragraph, the permittee shall begin to implement the plan to obtain the authority required under clause (i)(c) of this paragraph.

(3) Plan implementation and sewer connection moratorium. For POTWs that have exceeded the design influent loading criteria set forth in paragraph (2) of this subdivision,

within 90 days of when the permittee determines that, in accordance with the annual review required by paragraph (4) of this subdivision, that the effluent discharge from a publicly owned treatment works has exceeded a SPDES permit limit for biochemical oxygen demand or ultimate oxygen demand for any four or more months during two consecutive calendar quarters, or a SPDES permit limit for total suspended solids for any four or more months during two consecutive calendar quarters, the permittee shall:

- (i) begin to implement the plan developed in accordance with paragraph (2) of this subdivision or in accordance with this subparagraph; and
- (ii) cease the further approval of sewer connections to the POTW.

(4) Annual certification. The chief fiscal officer of any municipality subject to this subdivision shall certify in writing to the department as an attachment to its February discharge monitoring report that the municipality is complying with the provisions of this subdivision and, if applicable, is complying with the implementation schedule in the program adopted in accordance with paragraphs (1), (2) and (3) of this subdivision or if such compliance certification cannot be provided to the department, satisfactory explanation for deviation from the provisions of this subdivision must be provided.

(5) Rescission of plan requirements or moratoria. The regional water engineer may rescind or hold in abeyance any or all of the conditions imposed under this subdivision provided the permittee can demonstrate to the satisfaction of the department that:

- (i) the conditions were implemented on the basis of erroneous data; or
- (ii) the situation that gave rise to the imposition of the conditions has been adequately addressed; or
- (iii) there is an existing or potential public health nuisance or hazard as determined by the State Department of Health, that is best remediated by rescinding or holding in abeyance the conditions; or
- (iv) all compliance conditions in a SPDES permit or a judicially or administratively imposed order have been or will be met.

(6) Violations of permit limits. Compliance with this section does not, in any way, shield the permittee from enforcement actions for violations of SPDES permit limits.

(7) The regional water engineer may, by written approval, upon adequate demonstration of compelling need, allow for relaxation of schedules contained in this subdivision.

750-2.10 Special provisions - new or modified disposal systems or service areas.

(a) Except as provided in subdivision (h) of this section, prior to construction of any new or modified waste disposal system or modification of a facility or service area generating wastewater that could alter the design volume of, or the method or effect of treatment or disposing of the sewage, industrial waste or other wastes, from an existing disposal system, provided that discharge from such system is required in accordance with this Part to be

authorized under a SPDES permit, the permittee shall submit to the regional water engineer an approvable engineering report, plans, and specifications that have been prepared by a person or firm licensed to practice professional engineering in the State of New York in accordance with standards accepted by the department.

(b) The construction of such new or modified disposal system shall not start until the discharger receives written approval of the system from the department and an issued permit. The department may require the discharger to remove any constructed disposal system or portion thereof if such a system or portion thereof is constructed prior to written approval from the department. The department may approve portions of disposal systems to allow for design and construction of disposal systems to proceed at the same time.

(c) The construction of such new or modified disposal system shall be under the general supervision of a person or firm licensed to practice professional engineering in the State of New York. Upon completion of construction, that person or firm shall certify to the department that the disposal system has been fully completed in accordance with the approved engineering report, plans and specifications, permit and letter of approval; and the permittee shall receive written acceptance of such certificate from the department prior to commencing discharge.

(d) The department reviews disposal system reports, plans, and specifications for treatment process capability only, and approval does not represent any opinion of the system's structural integrity.

(e) Department approval of the disposal system or service area does not relieve the permittee of any responsibility for compliance with its SPDES permit.

(f) The department may accept, in lieu of submission of engineering reports or plans and specifications, certification by a person or firm licensed to practice professional engineering in the State of New York that the design of the disposal system or service area conform to design standards accepted by the department. The department may require certification by letter or form (where the form may include but is not limited to a checklist consistent with the applicable standards). Such certifications shall be deemed notifications in accordance with ECL section 17-0819.

(g) The following standards are accepted by the department:

(1) ten states standards (see section 750-1.25 of this Part) for use in designing POTWs and POTW collection systems;

(2) intermediate design standards (see section 750-1.25 of this Part) for use in designing facilities that are not POTWs, which treat only sanitary sewage; and

(3) other standards that are acceptable by the department.

(h) Submission of approvable engineering report, plans, and specifications is not required where:

(1) the treatment unit is temporarily (less than one year) installed for benchmarking and/or troubleshooting and the permittee has provided notification to the regional water engineer at least 30 days prior to installation;

- (2) an equivalent or superior treatment unit is installed;
- (3) changes to treatment units do not have a reasonable potential to affect the discharge.
 - (i) Sewer extensions, public or private, must be reviewed and approved in accordance with this section before construction and connection to any conveyance tributary to a SPDES permitted discharge.
 - (j) Owners of new or modified POSSs as defined in section 750-1.2(a)(70) of this Part must comply with the registration requirements of section 750-1.22 of this Part before construction and connection to any existing POTW or POSS.

750-2.11 Closure requirements for disposal systems.

(a) This section applies to any and all disposal systems permanently removed from use or operation at SPDES permitted facilities or at facilities for which a SPDES permit has been revoked or an application for renewal denied, unless a judicial or administrative stay is in effect. The intent of this section is to protect public safety and health and to assure that no contamination of ground or surface water will occur as a result of removing such systems from service either through the act of closure or through continuing the discharge of pollutants into or through equipment; or through leaking, leaching, or discharge of pollutants from wastewater or residuals remaining in disposal systems which has been removed from use but remains on site.

(b) The *closure of a disposal system* means either the termination of the source of wastewater or storm water, or the permitted conveyance of wastewater or storm water to an alternate location (such as a regional facility) in such a manner that no further treatment storage or conveyance of wastewater or storm water is performed by the system.

(c) Disposal system closures shall conform with the following procedures:

(1) On or before 60 calendar days prior to taking the system out of service a permittee shall:

(i) submit to the regional water engineer the following information concerning closure activities:

(a) the date the system will cease operation;

(b) the date the influent and effluent pipes will be sealed;

(c) plans (signed and sealed by a New York State licensed professional engineer) for final disposition of the physical facilities, including all treatment units, outfall line, and all mechanical and electrical equipment and piping;

(d) plans (signed and sealed by a New York State licensed professional engineer) for elimination of all equipment and/or conditions that could possibly pose a safety hazard, either during or after shut-down of operations;

(e) verification that there are no lines in the collection system which are cross connected (receiving both sanitary and storm water) or which do not contain adequate conveyance capacity;

(f) the name of the licensed individual responsible for the maintenance and operation of the wastewater pumping station and/or disposal system systems that are still to be maintained; and

(ii) notify the regional water engineer, in writing, concerning any deactivated lagoons or other actual or potential discharges to ground water which may exist at the site.

(2) Proper management and/or removal of all residual materials (collected grit and screenings, scums, sand bed material, and dried or liquid sludges), as well as filter media, and all other solids from the treatment process that may remain in the abandoned treatment works is required.

(i) The permittee shall submit to the regional water engineer proof of ownership of or contractual arrangement with an operation or operations permitted to manage all such waste materials. A contract with a hauler will only be accepted as proof of proper waste management if documentation of management at an approved site or sites is included. In addition, all necessary State or Federal permits/approvals must accompany the submission.

(ii) All residual material shall be removed within 180 calendar days after the system is taken out of service. Proof of proper residuals management shall be submitted to the regional water engineer within 30 calendar days after their removal. The dates of removal and quantities removed shall be specified.

(d) Upon satisfaction of closure requirements specified in subdivision (c) of this section, the regional water engineer shall be contacted, in writing, to schedule a final site inspection of any disposal system which had a SPDES discharge permit to verify that influent and effluent pipes have been sealed and that all solid and residual materials related to the treatment process have been removed.