

# Environmental Conservation

## ARTICLE 17 WATER POLLUTION CONTROL

### TITLE 8

#### STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM

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#### § 17-0801. Purpose.

To create a state pollutant discharge elimination system (SPDES) to insure that the State of New York shall possess adequate authority to issue permits regulating the discharge of pollutants from new or existing outlets or point sources into the waters of the state, upon condition that such discharges will conform to and meet all applicable requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.) hereinafter referred to as the "Act", and rules, regulations, guidelines, criteria, standards and limitations adopted pursuant thereto relating to effluent limitations, water quality related effluent limitations, new source performance standards, toxic and pretreatment effluent limitations, ocean discharge criteria, and monitoring, and to participate in the national pollutant discharge elimination system (NPDES) created by the Act.

§ 17-0803. SPDES permits; application.

Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit. The department shall, by rule and regulation, require that every applicant for a permit to discharge pollutants into the waters of the state shall file such information at such times and in such form as the department may reasonably require to execute the provisions of this article. Rules and regulations adopted hereunder may provide that in lieu of issuance of such permit the department may accept as compliance herewith a permit duly issued by the federal government or an agency thereof pursuant to the provisions of the Act.

§ 17-0804. Rules and regulations.

The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

§ 17-0805. Notice and public participation; access to information.

1. a. Public notice of a complete application for a SPDES permit, including: (i) all renewals of SPDES permits issued in lieu of NPDES permits; (ii) other permit renewals, except renewals of permits for projects defined as minor in article 70 of this chapter; and (iii) modifications involving substantive changes in permit requirements or authorized activities, except modification of permits for projects defined as minor under article 70 of this chapter, shall be circulated in a manner designed to inform interested and potentially interested persons and any other state, the waters of which may be affected, of such application. Such notice shall include, where appropriate, the following: (i) the applicant's name and address; (ii) a brief description of the project or proposed project and its location; (iii) a list of all department permits directly related to the project for which application has been made; (iv) the name and classification of the water body to which discharges are being made or are to be made; (v) the volume and type of the discharge authorized or to be authorized; (vi) the permit's priority ranking score; (vii) the name and telephone number of the department and the lead agency contact persons for the project; (viii) a statement that copies of the permit application, the existing or draft permit, the fact sheet, the priority ranking fact sheet, worksheet and a description of the SPDES permit priority ranking system are available upon request; and (ix) a statement that written comments or requests for a public hearing on the permit application, draft environmental impact statement or the permit's priority ranking score may be filed by a time and at a place specified.

b. The department shall provide a period of not less than thirty days following the date of the public notice pursuant to paragraph a of this subdivision during which time interested persons may submit their written views with respect to the application and the priority ranking of the permit. The period for comment may be extended at the discretion of the department. All written comments submitted during such thirty day or extended period shall be retained by the department and considered in the formulation of the final determination on the application and the

priority ranking of the permit. The department may, in its discretion, provide an opportunity for the applicant or any interested agency, person or group of persons to request or petition for a public hearing with respect to such application or the priority ranking of the permit. Such request or petition shall be made during the public notice and comment period. The department shall promulgate rules and regulations with respect to notice, procedures and conduct of public hearings in accordance with due process of law for administrative proceedings and the provisions of the Act.

2. Notwithstanding any other provision of law, any effluent data, any SPDES permit, permit application including a permit renewal application, priority ranking fact sheet or request for permit modification, suspension or revocation shall be available to the public for inspection and copying. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

3. Except insofar as trade secrets would be disclosed, the following information shall be available to the public for inspection and copying;

(a) any public comments, testimony or other documentation concerning a permit application, including a permit renewal application, priority ranking fact sheet or request for permit modification, suspension or revocation; and

(b) any information obtained pursuant to any monitoring, records, reporting or sampling requirements or as a result of sampling or other investigatory activities of the department.

4. The department shall identify and hold confidential any information, except 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, shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

#### § 17-0807. Prohibited discharges.

The following discharges into the waters of the state are hereby prohibited.

1. the discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste, as such terms are defined by the Act or pursuant thereto.

2. any discharge which would substantially impair anchorage and navigation, as determined by the Secretary of the Army.

3. any discharge to which the federal government has objected pursuant to any right to object provided by the Act.

4. any discharge not permitted by the provisions of this article, rules and regulations adopted or applicable pursuant hereto, the Act, or provisions of a permit issued hereunder.

#### § 17-0808. Municipal and industrial stormwater discharges.

1. Prior to October first, nineteen hundred ninety-two, no permit shall be required for discharges composed entirely of stormwater, except as provided in subdivision two of this section.

2. Subdivision one of this section shall not apply with respect to the following stormwater discharges:

a. A discharge with respect to which a permit has been issued under

this title prior to the effective date of this section;

b. A discharge associated with industrial activities directly related to manufacturing, processing, or raw materials storage areas at an industrial plant;

c. A discharge from a municipal separate storm sewer system serving a population of one hundred thousand or more; or

d. A discharge which the commissioner determines contributes to a violation of water quality standards adopted pursuant to section 17-0301 of this article or is a significant contributor of pollutants to the waters of the state.

3. Permits for discharges from municipal storm sewers:

a. May be issued on a system or jurisdiction-wide basis, pursuant to paragraph (a) of subdivision seven of section 70-0117 of this chapter;

b. Shall include a requirement which regulates non-stormwater discharges into the storm sewers; and

c. Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods, and such other provisions as the commissioner determines appropriate for the control of such pollutants.

4. The commissioner shall promulgate regulations setting forth the requirements for permit applications for stormwater discharges and the deadlines for the receipt of applications.

#### § 17-0809. Effluent limitations.

1. SPDES permits issued pursuant hereto shall contain applicable effluent limitations as required by the Act and as may be promulgated by the department.

2. Notwithstanding any other provision of this article, any point source the construction of which is commenced after the date of enactment of the Act and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-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.

3. Notwithstanding any other provision of this article, when effluent limitations are established they must be at least as stringent as the effluent limitations previously required unless the commissioner determines, through regulation, that an exception is warranted as provided in section 303(d) and 402(o) of the Federal Water Pollution Control Act (33 U.S.C. sections 1313(d) and 1342(o)) as amended by the Water Quality Act of 1987.

#### § 17-0810. Stormwater management design manual modification.

On or before one year following the effective date of this section, the department shall modify the New York State Stormwater Management Design Manual to include the following provisions:

1. Require signage prohibiting swimming and wading, warning of possible contamination or pollution of the stormwater retention pond, and a description with the depth of the stormwater retention pond;

2. Define a reasonable slope past the aquatic bench to limit the immediate drop off to the deeper end of the stormwater retention pond;

3. Require aquatic vegetation be established in the aquatic and safety benches before the stormwater retention pond is rendered in-service;

4. Ensure maintenance plans include a requirement for examining the status of safety features by the maintenance authority in their routine maintenance schedule of stormwater retention ponds; and

5. Any other provisions the department deems essential to further promote safety in and around stormwater retention ponds.

§ 17-0811. Application of effluent standards and limitations; water quality standards; other requirements.

SPDES permits issued pursuant hereto shall include provisions requiring compliance with the following, where applicable;

1. effluent limitation.

2. standards of performance for new sources.

3. toxic and pretreatment effluent standards.

4. ocean discharge criteria adopted by the federal government.

5. any further limitations necessary to insure compliance with water quality standards adopted pursuant to state law.

§ 17-0813. Compliance schedules.

SPDES permits issued pursuant hereto may contain compliance schedules. Such compliance schedules shall require that the permittee within the shortest reasonable time consistent with the requirements of the Act conform to and meet;

1. applicable effluent limitations.

2. any further limitations necessary to insure compliance with water quality standards adopted pursuant to state law.

3. standards of performance for new sources.

4. ocean discharge criteria adopted by the federal government pursuant to the Act.

5. toxic and pretreatment effluent standards.

§ 17-0815. SPDES permits; additional terms and conditions.

SPDES permits shall include the following provisions, terms, requirements and conditions;

1. that all discharges authorized by the permit shall be consistent with the provisions, terms, requirements and conditions of such permit.

2. that facility expansions, production increases or process modifications by the permittee which result in new or increased discharges of pollutants into the waters of the state shall be reported by the permittee by submission of a new SPDES application.

3. that the discharge of any pollutant not identified and authorized by such permit or the discharge of any pollutant more frequently than or at a level in excess of that permitted by such permit shall constitute a violation of the terms of the permit.

4. that, where the permit is for a publicly owned treatment works, notice shall be given the department of any new introduction into such works of pollutants or substantial changes in volume or character of pollutants.

5. that for discharges from publicly owned treatment works appropriate measures will be established by the permittee to insure compliance by industrial users with any system of user charges and recovery of construction costs required under the provisions of the Act.

6. that such permit may be modified, suspended or revoked where the department finds.

a. a violation of any term of the permit;

b. that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts; or

c. a change in conditions or the existence of a condition which requires either a temporary or permanent reduction or elimination of the authorized discharge.

7. such other terms, provisions, requirements or conditions as may be necessary to meet the requirements of the Act.

8. recording, reporting, monitoring, and sampling requirements applicable under the Act.

§ 17-0815-a. Discharge point signs.

1. Any person possessing a SPDES permit which allows the discharge of waste water into the surface waters of the state shall post a sign as provided for in subdivision two of this section at all discharge points to surface waters, except for those sites where the discharge is composed exclusively of storm water runoff.

2. (a) All SPDES permit holders for discharges to surface waters shall erect or post a conspicuous and legible sign of not less than eighteen inches by twenty-four inches bearing the following statement:

"N.Y.S. Permitted Discharge Point Permit No. (here insert permit number). For information on this discharge you can contact:"

The sign shall also contain the following information: The SPDES permit number as issued by the department; the name and telephone number of the permit holder which shall be the business office repository of the permit holder as required by this title; and the name, address and telephone number of the regional department office in which the discharging facility is located.

(b) The permit holder shall provide for public review at the business office repository of the permit holder or at the off-premises location of its choice (such location shall be the village, town, city or county clerk's office, local library or such other location as the department and permit holder shall agree upon) all the Discharge Monitoring Reports (DMR) prepared by the permit holder 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. This information shall be kept on file for the period of the effective dates of the SPDES permit.

(c) The permit holder shall be in compliance with this title by providing, at its option, on or off premises inspection of documents pursuant to paragraphs (a) and (b) of this subdivision and providing the address or location where the required information is available for public review upon an inquiry.

3. The department shall, pursuant to the terms and conditions of the permits issued pursuant to this title, establish the actual appearance and location of the sign on the property of the permit holder 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.

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

absence.

5. The department may in its discretion waive all or part of the requirements of this section if it determines that: (a) such sign cannot be reasonably maintained; (b) such sign would be inconsistent with the provisions of another statute; (c) such sign could not be so located as to provide a public purpose; (d) the nature of the discharge is temporary and of a relatively short duration; (e) the permit has been issued under the terms and conditions of a general permit as authorized by this title; or (f) the discharge is not a major, significant discharge.

§ 17-0816. Coordination with AEM program.

To the extent practical and consistent with the purposes of this title and title seven of this article, SPDES permits for farm operations participating in the agricultural environmental management (AEM) program as set forth in article eleven-A of the agriculture and markets law shall incorporate as part of the SPDES permit terms and conditions any AEM plan prepared for the permit applicant.

§ 17-0817. SPDES permits; duration and reissuance.

1. SPDES permits issued in lieu of national pollutant discharge elimination system permits shall be valid for a fixed term not to exceed five years. All other SPDES permits issued pursuant to this chapter shall be valid for a term not to exceed ten years.

2. All SPDES permits may be administratively renewed in accordance with article seventy of this chapter.

3. The department shall review at least once every five years all existing permits for conformance with new federal treatment technology, new state water quality classifications and water quality standards.

4. The department shall develop a priority ranking system of SPDES permits. The ranking system shall prioritize permits for full technical review and, when necessary, modification. For purposes of this subdivision, full technical review shall mean the complete evaluation of all elements of the permit associated with the ranking system's priority ranking factors, together with substantive issues identified in comments submitted during the public comment period, and the verification of the accuracy and appropriateness of all other information contained in the permit. Any permits reviewed pursuant to this subdivision shall require compliance with current effluent standards and limitations and water quality standards.

5. Any interested party may request at any time that a permit be modified, suspended or revoked on the grounds that newly discovered, material information has been discovered; that a material change in environmental conditions has occurred; that relevant technology or applicable law or regulations have changed since the issuance of the existing permit; or on other grounds established by the department by regulation. All such requests shall be in writing and contain facts or reasons supporting the request. If the department determines that the request is not justified, it shall send the party a brief written response giving the reasons for the decision. A copy of such request and the department's response shall be sent to the permittee. If the department determines that the request is justified, it shall take action pursuant to article seventy of this chapter.

6. Within eight months after the effective date of this section the

department shall hold at least three public hearings to solicit public comments on the SPDES permit priority ranking system, including the permit priority ranking factors and the weighing and scoring system. All comments submitted during the hearing process and associated comment period shall be considered by the department in the review, and modification if appropriate, of the SPDES permit priority ranking system. Thereafter, 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 any changes in the priority ranking list, and solicit and provide for the involvement of the public in a review of the priority ranking list.

§ 17-0819. Applications, reports, notices; provisions to insure verity.

All applications, reports, notices or notifications required or authorized to be made or filed by this title or by rules or regulations promulgated pursuant hereto or by the provisions or conditions of any permit issued pursuant to this title or title three of this article by or on behalf of a permittee, applicant for a permit or person in control of an outlet into the water of the state or point source shall be verified or sworn to in respect to all statements of fact therein or shall bear a form notice as provided in section 210.45 of the penal law to the effect that false statements made therein are punishable.

§ 17-0821. Fees.

The department is hereby authorized to establish a schedule of reasonable fees, such schedule taking into consideration the volume of the discharge and treatment costs, for application for issuance of SPDES permits to compensate the department for its expenses hereunder, giving due recognition to the amount of federal assistance available; provided, however, that the department shall not charge a publicly owned drinking water treatment plant the rates charged industrial facilities, but shall consider such plants to be municipal facilities for the purposes of the imposition of fees pursuant to section 72-0602 of this chapter.

§ 17-0823. Power plant siting.

In the case of a major steam electric generating facility, as defined in section one hundred forty of the public service law, for the construction or operation of which a certificate is required under the former article eight of the public service law, or a major electric generating facility as defined in section one hundred sixty of the public service law, for the construction or operation of which a certificate is required under article ten of the public service law, such certificate shall be deemed a permit under this section if issued by the state board on electric generation siting and the environment pursuant to federally delegated or approved environmental permit authority. Nothing herein shall limit the authority of the department of health and the department to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility or major electric generating facility and to enforce applicable provisions of the public health law and this article and the terms and conditions of the certificate governing the environmental and



health impacts resulting from such operation. In such case all powers, duties, obligations and privileges conferred upon the department by this article shall devolve upon the New York state board on electric generation siting and the environment. In considering the granting of permits, such board shall apply the provisions of this article and the Act.

§ 17-0825. Discharges of industrial waste to publicly owned treatment works.

Persons discharging industrial waste to a publicly owned treatment works shall comply with toxic effluent standards and pretreatment standards and to monitoring, reporting, recording, sampling and entry requirements provided by the Act or adopted pursuant thereto.

§ 17-0826. Notification of discharges affecting groundwaters.

Whenever a provision of this title is violated by a facility operating under or pursuant to a SPDES permit and located within an area designated pursuant to any federal or state statute as a sole source aquifer, all public water purveyors with a service area or portion thereof located within a three mile radius of the violating facility shall be notified by the department of such violation if the department determines that the violation could have a significant impact on the water resources of the area. The department's notices pursuant to this section shall be made within fourteen days of the official notice of noncompliance of the SPDES permit to the violating facility.

For the purposes of this section "public water purveyor" shall mean any person, partnership, public or private corporation, municipality, or public authority which sells water derived from a sole source aquifer to at least five service connections or at least twenty-five individuals.

§ 17-0826-a. Mandatory sewage release reporting and notification by publicly owned treatment works and operators of publicly owned sewer systems.

1. Publicly owned treatment works or the operator of a publicly owned sewer system shall immediately, but in no case later than two hours after discovery, report discharges of untreated or partially treated sewage, including combined sewer overflows, except partially treated sewage discharged directly from a publicly owned treatment works that is in compliance with a department approved plan or permit, to the department and the local health department, or if there is none, the New York state health department. Such report shall, at a minimum, include, to the extent knowable with existing systems and models:

- (a) the volume and treated state of the discharge;
- (b) the date and time of the discharge;
- (c) the expected duration of the discharge;
- (d) a brief description of the steps being taken to contain the discharge except for wet weather combined sewer overflow discharges;
- (e) the location of the discharge, with the maximum level of specificity possible; and
- (f) the reason for the discharge.

2. In addition to subdivision one of this section, as soon as possible, but no later than four hours from discovery of the discharge, the publicly owned treatment works or the operator of a publicly owned

sewer system shall notify the local health department or if there is none, the New York state health department, the chief elected official or their authorized designee of the municipality in which the discharge occurred and the chief elected official or their authorized designee of any adjoining municipality that may be affected. The same notification shall also be provided within the same timeframe to the general public, pursuant to regulations to be promulgated under subdivision four of this section through appropriate electronic media, including, but not limited to, electronic mail or voice communication as determined by the department.

3. The department, in consultation with the department of health, shall post reported information on its website expeditiously and shall prepare a report on publicly owned treatment works and sewer system discharges annually. The report shall, at a minimum, include: the total number of discharges, details of such discharges including the volume and treated state of the discharge, and the duration and location of each discharge; as well as any remedial responses taken to mitigate impacts and avoid further discharges.

4. The department shall promulgate rules and regulations that are necessary for the implementation of this section. Such regulations as are necessary for the implementation of the public notification requirements of subdivision two of this section shall provide only for public notification of discharges that may present a threat to public health, considering the potential for exposure and other relevant factors. Such regulations may also include preconditions for notification of any discharge that is not subject to a permit issued under this title and does not present a threat to public health, considering the potential for exposure and other relevant factors.

§ 17-0827. Conflicts of interest.

The commissioner of the department or his designee responsible for issuance of SPDES permits hereunder, is hereby prohibited from receiving, or during two years prior to approval of an application for a permit from having received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. For the purposes of this section (a) "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement; (b) "income" includes retirement benefits, consultant fees, and stock dividends; and (c) income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

§ 17-0828. Discharges affecting groundwaters.

In addition to any other requirements imposed by this title, any person seeking a SPDES permit or a renewal hereunder, within an area designated pursuant to any federal or state statute as a sole source aquifer, shall include as a part of the required information, the name and address of all public water purveyors with a service area or portion thereof located within a three mile radius of the applicant's facility.

The names of all public water purveyors identified in the SPDES permit application or renewal shall be included in the project description as set forth when announced in the environmental notice bulletin.

For the purposes of this section "public water purveyor" shall mean any person, partnership, public or private corporation, municipality, or public authority which sells water derived from a sole source aquifer to at least five service connections or at least twenty-five individuals.

§ 17-0829. Inspection and entry.

(a) To carry out the purposes of this Act or any rule, regulation, order, or permit, issued thereunder, the department or its authorized representative, upon presentation of his credentials:

(1) shall have a right of entry to, upon, or through any premises in which any effluent source is located or in which any records are required to be maintained;

(2) may at reasonable times have access to and copy any records required to be maintained;

(3) may inspect any monitoring equipment or method which is required; and

(4) may have access to and sample any discharges or pollutants to waters or to publicly owned treatment works resulting directly or indirectly from activities or operations of the owner or operator of the premises in which the effluent source is located.

(b) For the purposes of this section the term "effluent source" shall mean:

(1) a point source of the discharge of pollutants or

(2) a source of introduction of pollutants into publicly owned treatment works by an industrial user.

§ 17-0831. Environmental monitors for tankers.

1. At the discretion of the commissioner, a tanker withdrawing or transporting water where such withdrawal or transport was authorized pursuant to a permit issued under section 15-1506 of this chapter shall be accompanied by an environmental monitor authorized by the department.

2. It shall be the duty of such environmental monitor to inspect and monitor the compliance of such tankers with all federal, state and local requirements for operations and ballasting.

3. Nothing in this section shall prohibit the department from entering into a memorandum of understanding with the board of commissioners of pilots, created by article six of the navigation law, to allow licensed pilots to perform the functions of environmental monitors.

4. The department is authorized to set environmental monitoring fees to recover all costs associated with such monitors. Every tanker withdrawing or transporting water where such withdrawal or transport was authorized pursuant to a permit issued under section 15-1506 of this chapter shall be subject to such fees.