

# Part 750

[1/2] See also [\[2/2\]](#). This regulation became effective 05/11/03. The original Parts 750 through 758 became effective 08/29/75 and were repealed 05/11/03.

Available DEC Guidance: [The Division of Water Technical and Operational Guidance Series \(TOGS\)](#)

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## PART 750

### SUBPART 750 - 1

#### OBTAINING A SPDES PERMIT

##### State Pollutant Discharge Elimination System (SPDES) Permits

(Statutory authority: Environmental Conservation Law (ECL) Article 3, Title 3; Article 15; Article 17, Titles 3, 5, 7, 8; Article 21; Article 70, Title 1; Article 71, Title 19. New York State Penal Code, Articles 175 and 210. Public Health Law, Section 502. Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.))

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### **§ 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 stormwater 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 noted above. 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 Part.

(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 are set forth in Sub-Part 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 750-1.24 of this Part).

(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 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)&(e)(1&2), 40 CFR 125.3(2)(iii), 40 CFR 405 to 471 (see section 750-1.24 of this Part) 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 750-1.24 of this Part) 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 750-1.24 of this Part) 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&2), 40 CFR 125.3(a)(2)(I)(B)-(v), 40 CFR 414.11(h), 40 CFR 501.15(b) (see section 750-1.24 of this Part) 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 - 1.24).

(16) Biosolids means dewatered treatment residuals that meet federal regulations (40 CFR Part 501 - see section 750-1.24 of this Part) 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 -1.24) for the analyte or analytes in question.

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

(21) Concentrated Animal Feeding Operation - reserved.

(22) 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.

(23) 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.

(24) Daily Maximum means the highest allowable daily discharge for the reporting period.

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

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

(27) Discharges authorized by a SPDES permit means discharges of wastewater or stormwater 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 fire fighting activities; fire hydrant flushings; testing of fire fighting 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 washdown and vehicle washing which does not use detergents or other compounds; pavement washwaters 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.

(28) 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.

(29) Disposal system means a system for disposing of sewage, stormwater, industrial waste or other wastes, including sewer systems and treatment works.

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

(31) 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.

(32) Effluent limitation guideline means toxic or pretreatment effluent limitations contained in 40 CFR Parts 405 to 471 (see section 750-1.24 of this Part).

(33) ELAP Identification number means the number assigned to a certified laboratory by the New York State Health Department.

(34) EPA means the United States Environmental Protection Agency.

(35) 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 - 1.24) 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% 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 - 1.24) 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 ten percent or more beyond the annual usage given in the permittee's most recent New York State Industrial Chemical Survey submission.

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

(37) 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 750-1.19 of this Part , 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.

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

(39) 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 section 702 of this Title, but which has not been adopted as an ambient water quality standard.

(40) 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.

(41) Indicator Limit means a limit on pollutants other than those meeting the criteria of 40 CFR Part 122.44(e)(1), which in the judgement 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).

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

(43) Industrial user means the term as defined in 40 CFR 403.3 (see section 750-1.24 of this Part).

(44) 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 stormwater.

(45) 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.

(46) 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, stormwaters, surface runoff, street washwaters, or drainage. Inflow does not include, and is distinguished from infiltration.

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

(48) 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.

(49) Minor Facility means any SPDES permitted facility that is not a major facility.

(50) Monthly average means the average of Daily Discharges (as defined in this subdivision) over a calendar month for a permittee that is a POTW. 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.

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

(52) 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.

(53) National Pollutant Discharge Elimination System or NPDES means the national system for the issuance of wastewater and stormwater permits under the Act.

(54) Navigable waters means those waters under the jurisdiction of the Act.

(55) 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:

(a) After promulgation of standards of performance under section 306 of the Act which are applicable to such source, or

(b) 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.

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

(57) 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.

(58) 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.

(59) Outlet means outfall.

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

(61) Partially treated means receiving some level of treatment, but not enough treatment to meet all effluent limits.

(62) 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 Part, 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, 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.

(63) Permittee means the holder of a SPDES permit.

(64) 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.

(65) 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.

(66) 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.

(67) Priority Pollutants means those pollutants listed in 40 CFR Part 122, Appendix D (see section 750-1.24 of this Part) as Organic Toxic Pollutants (volatiles, acid compounds, base/neutral compounds and pesticides), Metals, Cyanide and Total Phenols.

(68) 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.

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

(70) Regional office means the office, that 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.

(71) 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.

(72) 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.

(73) 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.

(74) 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.

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

(76) 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.

(77) 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.

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

(79) 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.

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

(81) 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.

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

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

(84) 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 for the control of the discharge of pollutants.

(85) State means the State of New York.

(86) 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.

(87) Stormwater 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.

(88) 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.

(89) Toxic and pretreatment effluent standard means standards adopted in 40 CFR 405 to 471 (see 750-1.24 of this Part).

(90) 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 section 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.

(91) Treatment facility means disposal system as defined herein.

(92) Twelve month rolling average means the average of the most recent twelve month's monthly averages.

(93) USEPA means the United States Environmental Protection Agency.

(94) 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.

(95) Wastewater means water that is not stormwater, is contaminated with pollutants and is or will be discarded.

(96) 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.

(97) 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 - 1.24) 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.

(98) 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.

(99) 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 750-1.24 of this Part);

(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 750-1.24 of this Part), 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

750-1.24 of this Part), 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 CWA, or regulations promulgated under the CWA; 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 subdivision (a) of section 750-1.5 of this Part, 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, titles 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 stormwater 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, Titles 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 750-1.24 of this Part) 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 Part.

(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 one thousand 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 750-1.24 of this Part).

(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 750-1.24 of this Part);

(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 stormwater, 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, unless the particular stormwater discharge has been identified by the regional administrator or the department, as a significant contributor of pollution.

(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 stormwater;
- (10) The type of wastewater or stormwater treatment, including the design flow of each unit;
- (11) A topographic map on a scale of approximately one inch equals 2000 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 water bodies, 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 ten 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 2 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 storm water 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 POTW's , 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 section 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 750-1.24 of this Part) 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 750-1.24 of this Part). 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 paragraphs (vii) and (viii) of this subdivision 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 stormwater. 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 2 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 (4) 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).

(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 (x) of this section, 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 750-1.24 of this Part), priority pollutants required to be tested in accordance with 40 CFR Part 122 (see section 750-1.24 of this Part) 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 750-1.24 of this Part).

(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.

(ix) 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.

(x) 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); O,O-dimethyl O(2,4,5-trichlorophenyl) phosphorothioate (Ronnell); 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 750-1.24 of this Part).

(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 ten 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 an 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 750-1.24 of this Part).

(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 Part 651.53(f) of this Part.

(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 750-1.24 of this Part) 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 750-1.24 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.

(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 § 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, Titles 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 & 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 too 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 750-1.24) 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 750-1.24) 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 750-1.24 of this Part).

(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 750-1.24 of this Part).

#### **§ 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, 7 day average, annual average, twelve 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 Part.

(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), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the Act (see section 750-1.24 of this Part);

(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 wasteload 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 wasteload allocation method and the TMDL is set to assure attainment of the water quality standard and the limit has been subjected to an antidegradation review in accordance with the department's antidegradation policy.

(8) the modifications allowed in paragraphs (6) & (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 subsection (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 subsection (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.

#### **§ 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 750-1.24 of this Part);

(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 750-1.24 of this Part);

(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 750-1.24 of this Part);

(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 750-1.24 of this Part);

(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 750-1.24 of this Part);

(ii) necessary to implement a total maximum daily load/wasteload allocation/load allocation established pursuant to Section 303(d) of the Act and 40 CFR Part 130.7 (see section 750-1.24 of this Part); 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 750-1.24 of this Part):

(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 750-1.24 of this Part).

(8) as provided in Section 402(g) of the Act(see section 750-1.24 of this Part), 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 C.F.R. 122.23 Concentrated animal feeding operations, 40 C.F.R. Part 122.24 - Concentrated aquatic animal production facilities, 40 C.F.R. Part 122.25 - Aquaculture projects, 40 C.F.R. Parts 122.26, 122.30 to 122.37, and 122.42(c) & (d) - Storm Water Discharges, 40 C.F.R. Part 122.27 - Silvicultural activities (applicable to State NPDES), 40 C.F.R. Part 122.44 - Establishing limitations, standards, and other permit conditions, 40 C.F.R. Part 122.45 - Calculating NPDES permit conditions, 40 C.F.R. Part 125 - Criteria and Standards for NPDES, 40 C.F.R. 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 750-1.24 of this Part).

(10) 40 CFR 122.50(see section 750-1.24 of this Part).

(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 750-1.24 of this Part); 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 subdivisions (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 eighteen inches by twenty-four 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 two-hundred 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 750-1.24 of this Part); 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) 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 Part.

(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 750-1.24 of this Part) 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 750-1.24), 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 non-compliance;

(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 non-compliance.

(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 ten 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 may be 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 may be 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 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 750-1.24 of this Part);

(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 section 750-1.6 and section 750-1.7 of this Part 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 a new 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 non-compliance.

(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) Stormwater from construction activities as defined under 40 CFR 122.26(b)(14)(x) (see section 750-1.24 of this Part);

(3) Stormwater from industrial activities as defined and allowed under 40 CFR 122.26(b)(14)(i)-(ix) and (xi) (see section 750-1.24 of this Part);

(4) Discharges 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 may be 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;

(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 750-1.24 of this Part).

(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.

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

#### **§ 750-1.22 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.

#### **§ 750-1.23 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 judgement shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

#### **§ 750-1.24 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 Regulation (C.F.R.) 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 Regulation (C.F.R.) 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, 33USC 1251 et seq. - (July 1, 2001) References:

Section 1284(b) [FWPCA §§204(b)]- Limitations and conditions

Section 1288(b) [FWPCA §§208(b)] - Areawide 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