

Revised Express Terms - 6 NYCRR Subparts 750-1 and 750-2; 6 NYCRR Part 621

The heading of Subpart 750-1 is amended as follows: OBTAINING A SPDES PERMIT AND POSS REGISTRATION

Subpart 750-1 (Table of Contents) is revised to renumber sections 750-1.22, 750-1.23 and 750-1.24 to be sections 750-1.23, 750-1.24 and 750-1.25 and to add a new section 750-1.22 to read:

750-1.22 POSS registrations.

Subdivision (f) of section 750-1.1 is amended as follows:

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

750-1.2(a), paragraph (1) is amended as follows:

(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] 750-1.25 of this Subpart).

750-1.2(a), paragraph (10) is amended as follows:

(10) *Best available technology economically achievable (BAT)* means effluent limits authorized under section 301(b)(2)(A) of the act, 40 CFR 122.44(a) and (e)(1) and (2), 40 CFR 125.3(2)(iii), 40 CFR 405 to 471 (see section [750-1.24] 750-1.25 of this Subpart) and ECL 17-0801. BAT is technology-based effluent limitations guidelines established by the act as the most appropriate means available on a national basis for controlling the direct discharge of toxic and nonconventional pollutants to

navigable waters. BAT effluent limitations guidelines, as established by EPA, represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

750-1.2(a), paragraph (11) is amended as follows:

(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] 750-1.25 of this Subpart) and ECL 17-0811. BCT is technology based effluent limitations guidelines for the discharge of conventional pollutants from existing industrial point sources including BOD5, TSS, fecal coliform, pH, oil and grease. The BCT is established by EPA using a two-part cost reasonableness test that compares the cost for an industry to reduce its pollutant discharge with the cost to a POTW for similar levels of reduction of a pollutant loading. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find limits that are reasonable under both tests before establishing them as BCT.

750-1.2(a), paragraph (13) is amended as follows:

(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] 750-1.25 of this Subpart) and ECL 17-0811. The initial level of technology-based standards established by the CWA to control pollutants discharged to navigable waters, BPT effluent limitations guidelines are generally based on the average of the best existing performance by plants within an industrial category or subcategory. Because BPT has been supplanted by BAT and BCT in

all other instances, BPT is only applied by EPA when proposed BCT limits fail the cost comparison with secondary treatment regulations for POTWs.

750-1.2(a), paragraph (14) is amended as follows:

(14) *Best professional judgement (BPJ)* means effluent limits authorized under the Act section 402(a)(1)(B), 40 CFR 122.44(e)(1) and (2), 40 CFR 125.3(a)(2)(I)(B)-(v), 40 CFR 414.11(h), 40 CFR 501.15(b) (see section [750-1.24] 750-1.25 of this Subpart) and ECL 17-0811. BPJ is the method used by permit writers to develop BAT or BCT limits or requirements on a case-by-case basis for pollutants and wastewaters not addressed by 40 CFR 405 to 471.

750-1.2(a), paragraph (15) is amended as follows:

(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] 750-1.25 of this Subpart).

750-1.2(a), paragraph (19) is amended as follows:

(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] 750-1.25 of this Subpart) for the analyte or analytes in question.

With respect to subdivision 750-1.2(a), the paragraphs below are renumbered as follows:

Paragraphs (20) through (67) are renumbered to be (22) through (69);

Paragraphs (68) through (92) are renumbered to be (71) through (95);

Paragraphs (93) through (99) are renumbered to be (97) through (103).

A new paragraph (20) of subdivision 750-1.2(a) is added to read:

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

A new paragraph (21) of subdivision 750-1.2(a) is added to read:

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

750-1.2(a), paragraph (32) [renumbered to be paragraph (34)] is amended as follows:

[(32)] 34 *Effluent limitation guideline* means toxic or pretreatment effluent limitations contained in 40 CFR parts 405 to 471 (see section [750-1.24] 750-1.25 of this Subpart).

750-1.2(a)(35) [renumbered to be 750-1.2(a)(37)] is amended as follows in subparagraph (ii):

(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] 750-1.25 of this Subpart) or discharges to groundwater described in the SPDES permit application record upon which the current permit is based increases by greater

than 20 percent beyond what was reported in the SPDES permit application record for the sum of production from operations subject to the same regulation under 40 CFR 405 to 471 and/or 40 CFR part 125 and is permitted. For the purposes of this definition, *production* is defined as the activity that is the source of the discharge. For the purposes of this definition the *20 percent calculation* is determined by comparing the flow and load resulting from the subject increase to the flow/load at the time the permit last underwent a substantial renewal or modification related to the subject parameters;

750-1.2(a)(35) [renumbered to be 750-1.2(a)(37)] is amended as follows in subparagraph (iii):

(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] 750-1.25 of this Subpart) which will result in pollutants which the permittee knows or has reason to believe will be discharged (except substances not required to be reported on the appropriate and current New York State SPDES permit application) and which is not described in the SPDES permit application record upon which the current permit is based;

750-1.2(a), paragraph (43) [renumbered to be paragraph (45)] is amended as follows:

[(43)] 45 *Industrial user* means the term as defined in 40 CFR 403.3 (see section [750-1.24] 750-1.25 of this Subpart).

750-1.2(a), paragraph (61) [renumbered to be paragraph (63)] is amended as follows:

[(61)] (63) *Partially treated sewage* means [receiving some level of treatment, but not enough treatment to meet all effluent limits] sewage that is diverted around any portion of the treatment plant of a sewage treatment works after it enters the treatment plant.

750-1.2(a), paragraph (67) [renumbered to be paragraph (69)] is amended as follows:

[67] 69 *Priority pollutants* means those pollutants listed in 40 CFR part 122, appendix D (see section [750-1.24] 750-1.25 of this Subpart) as organic toxic pollutants (volatiles, acid compounds, base/neutral compounds and pesticides), metals, cyanide and total phenols.

A new paragraph (70) of subdivision 750-1.2(a) is added to read:

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

750-1.2(a), paragraph (89) [renumbered to be paragraph (92)] is amended as follows:

[(89)] 92 *Toxic and pretreatment effluent standard* means standards adopted in 40 CFR 405 to 471 (see section [750-1.24] 750-1.25 of this Subpart).

A new paragraph (96) of subdivision 750-1.2(a) is added to read:

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

750-1.2(a), paragraph (97) [renumbered to be paragraph (101)] is amended as follows:

[97] (101) *Waters* or *waters of the State* shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the State or within its jurisdiction. Waters of the State are further defined in Parts 800 to 941 of this Title. Storm sewers are not waters of the State unless they are classified in Parts 800 to 941 of this Title. Nonetheless, a discharge to a storm sewer shall be regulated as a discharge at the point where the storm sewer discharges to waters of the State. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act and Environmental Conservation Law (other than cooling ponds as defined in 40 CFR 423.11[m]) (see section [750-1.24] 750-1.25 of this Subpart) which also meet the criteria of this definition are not waters of the State. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the State (such as a disposal area in wetlands) nor resulted from impoundment of waters of the State.

Subdivision (a) of section 750-1.3 is amended as follows:

(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] 750-1.25 of this Subpart);

Subdivision (c) of section 750-1.3 is amended as follows:

(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] 750-1.25 of this Subpart), provided that the permittee is provided with a copy of said written objection subject to the permittee's right to appeal under applicable law and regulation;

Subdivision (d) of section 750-1.3 is amended as follows:

(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] 750-1.25 of this Subpart), or any other discharge not permitted by this Part, ECL article 17, other rules and regulations adopted or applicable pursuant thereto or to the act, or the provisions of an SPDES permit;

750-1.5(a), paragraph (1) is amended as follows:

(1) any discharge [~~incompliance~~] 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] 750-1.25 of this Subpart) or an order issued pursuant to article 12 of State Navigation Law;

750-1.5(a)(6), subparagraph (iv) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.5(a)(7), subparagraph (i) is amended as follows:

(i) section 404 of the act (see section [750-1.24] 750-1.25 of this Subpart);

750-1.7(b), paragraph (5) is amended as follows:

(5) Production. If an effluent limitation guideline promulgated under section 304 of the act (see section [750-1.24] 750-1.25 of this Subpart) applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline must be provided. The reported measure must reflect the actual production of the facility as described in the application form provided by the department. Where production is expected to change during the permit term, the projected changed production must also be provided.

750-1.7(b)(7), subparagraph (i) is amended as follows:

(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] 750-1.25 of this Subpart). When no analytical method is approved under 40 CFR part 136, the applicant may request that the department identify available analytical methodologies or use any suitable method but must provide a description of the method.

750-1.7(b)(7)(viii), clause (a) is amended as follows:

(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] 750-1.25 of this Subpart), priority pollutants required to be tested in accordance with 40 CFR part 122 (see section [750-1.24] 750-1.25 of this Subpart) for the applicant's industrial category;

750-1.7(b)(7)(viii), clause (b) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.7(b), paragraph (9) is amended as follows:

(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] 750-1.25 of this Subpart).

Subdivision (c) of section 750-1.7 is amended as follows:

(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] 750-1.25 of this Subpart) and 6 NYCRR Part 621.

Subdivision (f) of section 750-1.7 is amended as follows:

(f) *Variance requests*. The applicant shall include any variance requests under 40 CFR part 122 (see section [750-1.24] 750-1.25 of this Subpart) and Part 702 of this Title with the application.

Subdivision (a) of section 750-1.8 is amended as follows:

(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] 750-1.25 of this Subpart) except that, in lieu of a signature, the department may permit the use of a unique identifier assigning responsibility for the veracity of the

information contained in an application to the same person or persons that would otherwise be required to sign the application in this section. Such a document with a unique identifier shall be considered a signed document with a certifying signature and a written instrument that could subject the signatory to liability under the New York State Penal Law for officers concerning perjury and false written statements pursuant to articles 175 and 210 of said law.

Subdivision (b) of section 750-1.9 is amended as follows:

(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]~~ to or in excess of 500,000 gallons per day, for every general permit, and for all permits that incorporate a variance or requires an explanation under 40 CFR 124.56 (see section ~~[750-1.24]~~ 750-1.25 of this Subpart) the department shall prepare a fact sheet. In response to requests for fact sheets, the department may elect to provide copies of a draft permit and public notice together with the fact sheet, in which case, information provided on the draft permit and public notice need not be separately provided on the fact sheet. The contents of such fact sheets shall comply with the requirements of 40 CFR 124.8 and 124.56 (see section ~~[750-1.24]~~ 750-1.25 of this Subpart) and include:

750-1.9(b), paragraph (1) is amended as follows:

(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]~~ 750-1.25 of this Subpart); and

750-1.9(b), paragraph (2) is amended as follows:

(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] 750-1.25 of this Subpart).

750-1.10(c), paragraph (4) is amended as follows:

(4) the permittee has received a permit modification under section 301(c), (g), (h), (i), (k), (n), or 316(a) of the act (see section [750-1.24] 750-1.25 of this Subpart);

750-1.11(a), paragraph (1) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.11(a), paragraph (2) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.11(a), paragraph (3) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.11(a), paragraph (4) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.11(a)(5), subparagraph (i) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.11(a)(5), subparagraph (ii) is amended as follows:

(ii) necessary to implement a total maximum daily load/waste load allocation/load allocation established pursuant to section 303(d) of the act and 40 CFR part 130.7 (see section [750-1.24] 750-1.25 of this Subpart); or

750-1.11(a), paragraph (6) is amended as follows:

(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] 750-1.25 of this Subpart).

750-1.11(a), paragraph (7) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.11(a), paragraph (8) is amended as follows:

(8) as provided in section 402(g) of the act (see section [750-1.24] 750-1.25 of this Subpart), if the SPDES permit is for the discharge of pollutants into the navigable waters of the State from a vessel or other floating craft, any applicable regulations promulgated by the U.S. Department of Commerce, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants;

750-1.11(a), paragraph (9) is amended as follows:

(9) unless otherwise required or authorized by this Part, the provisions or requirements of 40 CFR part 122.23 – Concentrated animal feeding operations, 40 CFR part 122.24 – Concentrated aquatic animal production facilities, 40 CFR part 122.25 – Aquaculture projects, 40 CFR parts 122.26, 122.30 to 122.37, and 122.42(c) and (d) – Storm water discharges, 40 CFR part 122.27 – Silvicultural activities (applicable to State NPDES), 40 CFR part 122.44 – Establishing limitations, standards and other permit conditions, 40 CFR part 122.45 – Calculating NPDES permit conditions, 40 CFR part 125 – Criteria and standards for NPDES, 40 CFR part 133 – Secondary treatment regulation, 40 CFR part 401 – General provisions and 40 CFR part 403 – General pretreatment regulations, except 40 CFR part 403.10 (see section [750-1.24] 750-1.25 of this Subpart);

750-1.11(a), paragraph (10) is amended as follows:

(10) 40 CFR 122.50 (see section [750-1.24] 750-1.25 of this Subpart); and

Subdivision (b) of section 750-1.11 is amended as follows:

(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] 750-1.25 of this Subpart); or ECL article 17, or adopted pursuant to ECL article 17 of this Title.

Subdivision (b) of section 750-1.13 is amended as follows:

(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] 750-1.25 of this Subpart); or to which the department applies this section; shall upon inclusion of such requirements in the SPDES permit, be monitored by the permittee for at least the following:

Subdivision (f) of section 750-1.14 is amended as follows:

(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] 750-1.25 of this Subpart) including but not limited to requirements to implement best management practices plans, pollution prevention plans, studies of the effects of the permitted discharge on the receiving water, studies of the [treat ability] 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] 750-1.25 of this Subpart), except that the department may require a pollutant minimization

program where the pollutant to be minimized is impairing or precluding the best use of the receiving water.

750-1.18(b), paragraph (4) is amended as follows:

(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] 750-1.25 of this Subpart);

750-1.21(b), paragraph (2) is amended as follows:

(2) storm water from construction activities as defined under 40 CFR 122.26(b)(14)(x) (see section [750-1.24] 750-1.25 of this Subpart);

750-1.21(b), paragraph (3) is amended as follows:

(3) storm water from industrial activities as defined and allowed under 40 CFR 122.26(b)(14)(i)-(ix) and (xi) (see section [750-1.24] 750-1.25 of this Subpart);

750-1.21(d), paragraph (4) is amended as follows:

(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] 750-1.25 of this Subpart).

Sections 750-1.22, 750-1.23 and 750-1.24 are renumbered to be sections 750-1.23, 750-1.24, and 750-1.25 and a new section 750-1.22 is added to read:

§ 750-1.22 POSS Registrations.

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

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

(c) *POSS registration procedures.*

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

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

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

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

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

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

(e) *New and modified POSSs.* The construction of a new or modified POSS must be in accordance with section 750-2.10 of this Part.

(f) *Access to records and facilities.*

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

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

The heading of Subpart 750-2 is amended as follows: OPERATING IN ACCORDANCE WITH A SPDES PERMIT AND POSS REGISTRATION

Subpart 750-2 (Table of Contents) is revised to amend section 750-2.6 as follows:

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

Subpart 750-2 (Table of Contents) is revised to amend section 750-2.7 as follows:

750-2.7 Incident reporting and notification requirements.

Subdivision (b) of section 750-2.1 is amended as follows:

(b) Upon issuance of a SPDES permit, a determination has been made on the basis of a submitted application, plans, or other available information, that compliance with the specified permit provisions will reasonably protect classified water use and assure compliance with applicable water quality standards. Satisfaction of permit provisions notwithstanding, if operation pursuant to the permit causes or contributes to a condition in contravention of State water quality standards or guidance values, or if the department determines that a modification of the permit is necessary to prevent impairment of the best use of the waters or to assure maintenance of water quality standards or compliance with other provisions of ECL article 17, or the act or any regulations adopted pursuant thereto (see section [750-1.24] 750-1.25 of this Part), the department may require such a modification and the commissioner may require abatement action to be taken by the permittee and may also prohibit such operation until the permit has been modified pursuant to section 621.14 of this Title.

Subdivision (d) of section 750-2.2 is amended as follows:

(d) *Oil and hazardous substance liability*. The imposition of responsibilities upon, or the institution of any legal action against the permittee under section 311 of the act (see section [750-1.24] 750-1.25 of this Part) shall be in conformance with regulations promulgated pursuant to section 311 governing the applicability of section 311 of the Clean Water Act to discharges from facilities with NPDES permits.

750-2.4(b), paragraph (4) is amended as follows:

(4) violates any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3), 402(b)(8) of the act (see section [750-1.24] 750-1.25 of this Part), or approved pursuant to title 7 or 8 of article 17 of ECL;

750-2.4(c), paragraph (4) is amended as follows:

(4) violates any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3), 402(b)(8) of the act (see section [750-1.24] 750-1.25 of this Part), or approved pursuant to title 7 or 8 of article 17 of this ECL;

750-2.5(b), paragraph (1) is amended as follows:

(1) All SPDES applications and reports required by a SPDES permit shall be signed as provided in 40 CFR 122.22 (see section [750-1.24] 750-1.25 of this Part) except that, in lieu of a signature, the department may permit the use of a unique identifier assigning responsibility for the veracity of the information contained in an application to the same person or persons that would otherwise be required to sign the application in this section. Such a document with a unique identifier shall be considered a signed document with a certifying signature and a written instrument that could subject the signatory to liability under the New York State Penal Law for officers concerning perjury and false written statements pursuant to articles 175 and 210 of said law.

750-2.5(d), paragraph (1) is amended as follows:

(1) Monitoring and analysis conducted in accordance with an issued SPDES permit must be conducted using test procedures promulgated, pursuant to 40 CFR part 136 (Test Procedures – see section [750-1.24] 750-1.25 of this Part), except:

750-2.5(d)(3), subparagraph (iv) is amended as follows:

(iv) a detailed description of the alternate procedure in accordance with requirements set forth in 40 CFR part 136 (see section [750-1.24] 750-1.25 of this Part) or other applicable law and regulation.

The heading of section 750-2.6 is amended as follows:

§ 750-2.6 Special reporting requirements for [dischargers] SPDES permittees that are not POTWs.

Subdivisions (a) and (b) of section 750-2.6 are amended as follows:

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

(b) Facility expansion, as defined in section 750-1.2 of this Part, for all existing [dischargers] SPDES permittees that are not POTWs must be reported by submission of a letter to the regional water engineer. The department may determine that additional information must be submitted or that the information submitted by letter to the regional permit administrator must be submitted on a department application form. The department may determine, on the basis of such information, and any related investigation, inspection or sampling, that a modification of the permit is necessary to

assure maintenance of water quality standards or compliance with other provisions of ECL, article 17 or the Clean Water Act. Conversely, the department may determine in accordance with this Part that the proposed activity does not require a permit modification. Unless the department determines that a permit modification is unnecessary, operations that fit the following criteria, which may result in discharges that are not discharges authorized by the SPDES permit, are prohibited until the permit has been modified in accordance with [the] Part 621 of this Title:

- (1) increases in production or the mass of any one pollutant in wastewater that occur and are expected to continue or have occurred and been existing for more than one year; or
- (2) the permittee commences a new operation, of which no operations in this category currently exist at the facility, subject to regulation under 40 CFR 405 to 471 and/or 40 CFR part 125 (see section [750-1.24] 750-1.25 of this Part) which will result in pollutants which the permittee knows or has reason to believe will be discharged (except substances not required to be reported on the appropriate and current New York State SPDES permit application) and which is not described in the SPDES permit application record upon which the current permit is based.

The heading of section 750-2.7 is amended as follows:

§ 750-2.7 Incident reporting and notification requirements.

Subdivisions (b), (c), and (d) of section 750-2.7 are amended as follows:

(b) [*Two-hour oral reporting of bypass, upset or other incident.*] *Reporting and notification requirements for bypasses, upsets and discharges of untreated and partially treated sewage.*

(1) Two hour reporting requirements for SPDES permittees that are non-POTWs. For discharges from a non-POTW permittee's wastewater treatment plant or sewer system that would affect bathing

areas during the bathing season, shellfishing or public drinking water intakes, the non-POTW permittee shall, within two hours of [becoming aware] discovery of the discharge, report orally to the regional water engineer and the local health department of any discharge of untreated or partially treated sewage, except [a discharge due to a properly operating, wet weather combined sewer overflow or] a discharge in accordance with a department approved plan for managing wastewater (provided that such plan is in compliance with applicable law and regulation). [Each permittee that must provide oral report within two hours under this subdivision for incidents resulting in discharges from the permittee's site or service area will be so notified in writing by the regional water engineer.]

Such [a] report shall include:

[(1)] (i) the date and time of discovery of the discharge and a brief description of the reason for the discharge, bypass, upset, or other incident;

[(2)] (ii) the location of the discharge, bypass, upset or other incident including the receiving water effected by the discharge, bypass, upset, or other incident;

[(3)] (iii) the estimated volume and [characteristics] treated state (untreated or partially treated) of the discharge at the time of the oral report;

[(4)] (iv) a brief description of the measures taken [to end the] and planned to contain the discharge, bypass, upset, or other incident; and

[(5) an estimate when the] (v) the expected duration of the discharge, bypass, upset, or other incident [will be over] and the total expected volume of the discharge.

(2) Requirements for POTWs and POSSs. Owners and operators of POTWs and POSSs must comply with the reporting and notification requirements described in subparagraphs (i), (ii), (iii) and (iv) of this paragraph through use of the department approved form of electronic media. POTWs and POSSs are in compliance with the reporting and notification requirements in subparagraphs (i), (ii),

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

(i) Two hour reporting requirements for POTWs and POSSs. Immediately, but in no case later than two hours after discovery of the discharge, owners and operators of POTWs and POSSs must report all discharges of untreated or partially treated sewage, including combined sewer overflows, to the department and the local health department, or if there is none, the New York State Department of Health. This reporting requirement applies to all untreated and partially treated sewage discharges to waters of the State except partially treated sewage discharged directly from a POTW that is in compliance with a department approved plan or permit. These initial discharge reports shall be submitted using appropriate electronic media as determined by the department and shall, at a minimum, include to the extent knowable with existing systems and models the following:

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

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

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

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

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

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

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

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

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

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

(c) [*Twenty-four*] 24 hour oral reporting of bypass, upset or other incident. [The permittee]

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

(1)] a discharge of untreated or partially treated sewage that would otherwise be treated, except a discharge [due to a properly operating wet weather combined sewer overflow or a discharge] in accordance with a department approved plan for managing wastewater and/or storm water (provided that such plan is in compliance with applicable law and regulation)[;].

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

[(2)] (i) a discharge of untreated wastewater and/or storm water that would otherwise be treated, except a discharge in accordance with a department approved plan for managing wastewater

(provided that such plan is in compliance with applicable law and regulation)[;]. 24 hour reporting is not required if the discharge is sewage and the non-POTW SPDES permittee or POTW has fully complied with applicable two hour reporting requirements described in this section;

[(3)] (ii) a spill that may result in a discharge that may:

[(i)] (a) violate permit limitations of pollutants limited in the SPDES permit;

[(ii)] (b) exceed an action level or more than one action level in the SPDES permit;

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

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

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

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

(d) *Five-day written incident report requirements for SPDES permittees and POSSs.* [A] SPDES permittees and owners and operators of POSSs must provide a written report to the [regional water engineer] department of a discharge, bypass, upset or other incident reported under subdivisions (b) and (c) of this section [shall also be provided] within five days of [the time] discovery by the permittee or the owner or operator of the POSS [becomes aware of the circumstances]. The written report shall be submitted on a form prescribed by the department and, at a minimum, shall contain a description of the discharge, bypass, upset, or other incident and its cause; the period of the discharge, bypass,

upset, or other incident, including exact dates and times, and if the discharge, bypass, upset, or other incident has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent the discharge, bypass, upset, or other incident and its reoccurrence. The [regional water engineer] department may waive the written report on a case-by-case basis if [the oral report has] reports have been received within the time periods required under subdivisions (b) and (c) of this section. Five day written incident reports are not required for wet weather combined sewer overflows that are in compliance with a department approved plan or permit.

A new subdivision (g) is added to section 750-2.8 to read:

(g) *POSS Operation Requirements*. Owners and operators of POSSs must properly operate and maintain the POSS. Proper operation and maintenance includes at a minimum, the following:

- (1) a preventive/corrective maintenance program for all critical components of the collection system that includes provisions requiring the maintenance of installed backup or auxiliary components or similar systems when the proper operation of such component or system is essential for preventing discharges of untreated or partially treated sewage; and
- (2) written procedures for operation and maintenance of the POSS and training new operators.

750-2.9(b), paragraph (1) is amended as follows:

- (1) All POTWs shall comply with the provisions contained in 40 CFR 403.5(a), (b), (c) and (d) (see section [750-1.24] 750-1.25 of this Part).

750-2.9(b), paragraph (3) is amended as follows:

(3) POTWs required by the department to develop a pretreatment program in accordance with 40 CFR 403.8 shall submit an approvable program application in accordance with 40 CFR 403.8 (see section [750-1.24] 750-1.25 of this Part).

750-2.9(b), paragraph (4) is amended as follows:

(4) The approval authority, as defined by 40 CFR 403.3 (see section [750-1.24] 750-1.25 of this Part), shall review, require changes to, approve and/or disapprove such a program in accordance with 40 CFR 403.9 and 403.11 (see section [750-1.24] 750-1.25 of this Part).

750-2.9(b), paragraph (5) is amended as follows:

(5) POTWs and industrial users shall submit reports as required in accordance with 40 CFR 403.12 (see section [750-1.24] 750-1.25 of this Part).

750-2.9(b), paragraph (6) is amended as follows:

(6) Industrial users may obtain intake credits in accordance with 40 CFR 403.15 (see section [750-1.24] 750-1.25 of this Part).

750-2.9(b), paragraph (7) is amended as follows:

(7) Modifications to pretreatment programs shall be made in accordance with 40 CFR 403.18 (see section [750-1.24] 750-1.25 of this Part).

750-2.10(g), paragraph (1) is amended as follows:

(1) ten states standards (see section [750-1.24] 750-1.25 of this Part) for use in designing POTWs and POTW collection systems;

750-2.10(g), paragraph (2) is amended as follows:

(2) intermediate design standards (see section [750-1.24] 750-1.25 of this Part) for use in designing facilities that are not POTWs, which treat only sanitary sewage; and

A new subdivision (j) is added to section 750-2.10 to read:

(j) Owners of new or modified POSSs as defined in paragraph (a)(70) of section 750-1.2 of this Part must comply with the registration requirements of section 750-1.22 of this Part before construction and connection to any existing POTW or POSS.

621.2(g), paragraph (2) is amended as follows:

(2) Clean Water Act (CWA) amendments, 33 United States Code 1251 *et seq.*, 1987 (see section [750-1.24] 750-1.25 of this Title) for State pollutant discharge elimination systems (SPDES) involving discharge to surface waters of the State, see Part 750 of this Title, under ECL article 17, titles 7 and 8; and

Subdivision (b) of section 621.16 is amended as follows:

(b) Federal Water Pollution Control Act (Clean Water Act); see sections [750-1.24] 750-1.25 and 360-1.3 of this Title.