

**Adoption of Regulations to Implement
ECL § 17-0826-a (Sewage Pollution Right to Know Act)
Summary of Assessment of Public Comments**

Introduction

In June of 2015, the New York State Department of Environmental Conservation (“DEC”) filed a Notice of Proposed Rulemaking to revise provisions of 6 NYCRR Parts 750 and 621 to implement ECL 17-0826-a, known as the Sewage Pollution Right to Know Act (“SPR TK”). DEC accepted public comments from June 17, 2015 until the close of business on August 3, 2015. DEC re-filed the identical proposed rule on June 13, 2016 and accepted additional public comments from June 29, 2016 until the close of business on August 15, 2016.

The Assessment of Public Comments responds to all substantive comments received during both public comment periods. Changes were made to the proposed rule based upon comments received. The changes made are non-substantive and do not require a revised or new rule making. DEC recognizes the time, effort, and dedication taken by the individuals and groups who have participated in this process.

This is a Summary of the full Assessment of Public Comments which can be found at the DEC website: <http://www.dec.ny.gov/regulations/39559.html>. The comments have been consolidated and grouped by subject category.

I. CSO Reporting Requirements

A. Wet Weather CSO Reporting

Comments

A number of comments were received regarding wet weather CSO reporting and whether or not such reporting should be required under the rule.

Response

Consistent with SPR TK, the final rule requires CSOs to be reported by POTWs and POSSs immediately, but in no case later than two hours from discovery of the discharge. Likewise, four hour notifications to municipalities and the general public include CSOs. The final rule as modified in response to comments also requires expeditious issuance of CSO advisories by POTWs and POSSs based upon actual rainfall data or predictive models in situations where there is no monitoring equipment to detect CSOs when they may occur. These advisories may be made on a waterbody basis.

II. Implementation of the Law

A. Common Electronic Reporting System

Comments

Several commenters urged DEC to mandate use of the same reporting system to satisfy all of the rule's electronic reporting and notification requirements. Other commenters noted the difficulty associated with keeping track of the contact information for municipalities that are entitled to be notified of untreated and partially treated sewage discharges.

Response

In response to these comments, the rule has been changed to require use of the DEC approved electronic system (currently NY-Alert) for all of the rule's electronic reporting and notification requirements. In addition, the final rule now expressly provides that POTWs and POSSs are in compliance with the rule's electronic reporting and notification requirements if they register to use the DEC approved electronic system and submit timely and sufficient reports and notifications when required. NY-Alert has been developed so that anyone can sign up to receive alerts without charge. Therefore, it is unnecessary to obligate POTWs and POSSs to keep track of the contact information for municipalities.

B. Registration Program for POSSs

Comments

Some commenters wanted clarification whether the rule required POSSs to obtain registrations rather than SPDES permits. Commenters also wanted to ensure that POSSs obtained the required registrations.

Response

POSSs are only required to obtain registrations, not SPDES permits (See, new 750-1.22). POSS operation and maintenance requirements have been relocated to new 750-2.8(g). The final rule revises the headings of 6 NYCRR Subparts 750-1 and 750-2 to reference POSS registrations. DEC has determined that 98% of POTWs and an estimated 70% POSSs have registered with DEC to be authorized to report using NY-Alert.

C. Scope of Reporting Requirements

Comments

Some comments raised questions about what precise sewage releases needed to be reported citing examples of various scenarios and asking for clarification.

Response

Under SPRTK and these regulations, all untreated and partially treated sewage discharges to surface and ground water, irrespective of volume, must be reported immediately, but in no case later than two hours from discovery of the discharge, except that partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not need to be reported. The final rule clarifies that CSOs are considered to be untreated sewage for purposes of § 750-2.7 and that they are subject to two hour reporting and four hour notifications. The modified provision regarding CSO advisories also applies to those CSOs for which real-time telemetered discharge monitoring and detection does not exist. See, new 750-2.7(b)(2)(iii).

D. Implementation Costs

Comments

Some commenters asserted that DEC's assessment of the costs was too low, especially for employee services necessary to satisfy the requirements of the rule.

Response

DEC's assessment was based upon the average treatment plant operator hourly wage (\$34.80 to \$60.85 per hour) and the estimated time for reporting each SSO event. DEC estimates that POTWs and POSSs will have, on average, two SSO events per year. DEC acknowledges that some communities with combined sewer systems will have a considerable number CSO events each year and that the pay rate for a qualified individual to report these events will be comparable. Costs will vary based upon the municipality and circumstances associated with each sewage release event. There is no charge to use NY-Alert, but some regulated entities may also need to incur expenses of about \$1,000 to purchase computers to use NY-Alert.

E. Enforcement

Comments

Some commenters wanted to know how penalties would be assessed for those that violated the new regulations.

Response

ECL Article 71, Title 19 contains penalty provisions under the law that apply to violations of SPRTK and the new regulations. DEC will refer to applicable enforcement guidance when pursuing enforcement.

III. Draft Regulations and Process

A. Steps Taken to Contain the Discharge

Comments

Commenters pointed out that under SPRTK, there is no requirement to report the steps taken to contain the discharge if the discharge is a wet weather combined sewer overflow discharge.

Response

The rule has been revised in response to these comments and now aligns more closely with SPRTK.

B. Timeframe for Reports and Notifications

Comments

Some commenters indicated that the language in the proposed rule should be revised to include the words “immediately, but in no case later than” for two hour reporting and “as soon as possible, but no later than” with respect to four hour notifications to match SPRTK.

Response

In response to these comments, the rule has been revised to include the above language.

C. Daily and Termination Reports

Comments

DEC received several comments about daily and termination reports. Issues raised by the comments included: CSOs should be exempted; who could make these reports; the timeframe for making reports; authority for the requirement; burdens associated with these reports; and concern that the public could misinterpret reports.

Response

In response to the comments, the final rule now specifies that daily and termination reports are not required for wet weather CSO events and that these reports must be made within 24 hours of the previous report. Daily and termination reports may be made by any authorized notifier and the notifier does not need to be the same person that made the initial discharge report or a previous daily report. Daily and termination reports are consistent with DEC's authority to promulgate rules and regulations that are necessary to implement SPRTK. Although there is some burden associated with these reports, DEC believes the reports provide an important benefit to DEC, health authorities and the general public since they track the status of a discharge until it terminates. The New York State Department of Health ("DOH") and local health departments will assess the public health risk.

D. Volume of the Discharge

Comments

Some commenters asserted that there should be a minimum volume for the reporting of untreated and partially treated sewage discharges.

Response

DEC considered these comments, but decided to leave the rule unchanged in this regard because SPRTK does not specify a minimum volume. DEC also consulted with DOH regarding this aspect of the rule and it was decided not to specify a minimum volume since even a small volume may present some public health threat.

E. Five Day Written Incident Reports

Comments

Some comments pointed out that there is no requirement that five day written incident reports be made for wet weather combined sewer overflow events.

Response

DEC agrees that under the prior version of 6 NYCRR 750-2.7(b)-(d) there is no requirement to file a five day written incident report for wet weather combined sewer overflows in accordance with a DEC approved plan or permit and that SPRTK does not change this aspect of the law. The final rule expressly clarifies that five day written incident reports are

not required for wet weather CSO events that are in compliance with a DEC approved plan or permit. See, revised 750-2.7(d).

Comments

Some commenters stated that five day written incident reports should not be required if termination reports are required.

Response

DEC has not eliminated the requirement to file five day written incident reports. Termination reports do not have a legal certification statement. Under the final rule, DEC may waive five day written incident reports in certain circumstances.

IV. Clarification of Definitions

A. “Adjoining Municipality”

Comments

A number of commenters indicated that they believed that the scope of the municipal notification requirement was too narrow and urged DEC to extend the notification requirement to all potentially impacted downstream communities and media outlets. Other organizations commenting on behalf of the regulated community felt that the definition was too broad and that a notification should not be required for an upstream adjacent community, but rather only for downstream adjacent communities in the flow path of a sewage discharge.

Response

SPRTEK requires notification to adjoining municipalities “that may be affected.” Consistent with SPRTEK, the final regulations add the words “that may be affected.” The definition of “adjoining municipality” in the final rule has not been changed from the definition previously proposed in 750-2.7(b)(2)(ii)(a). Although only adjacent municipalities that may be affected by a surface water discharge must be notified, anyone including downstream communities that are not adjacent to the municipality where the discharge occurred and the media may sign up to receive alerts at no charge.

B. “Discharge”

Comments

Some commenters stated that clarification was needed regarding definition of the term “discharge.”

Response

DEC believes that the definition of “discharge” in 6 NYCRR 750-1.2(a)(26), re-numbered to be 750-1.2(a)(28), is clear and has left this definition unchanged.

C. “Partially Treated Sewage” and “Untreated Sewage”

Comments

Some comments questioned the meaning of the definitions of “partially treated sewage” and “untreated sewage.”

Response

DEC has revised the definitions of “partially treated sewage” and “untreated sewage” to clarify the meaning of these terms.

D. Impact of Definition of “Partially Treated Sewage”

Comments

Some commenters expressed concern about the previously proposed definition of “partially treated sewage.” SPRTK does not require reporting for “partially treated sewage discharged directly from a POTW that is in compliance with a department approved plan or permit.” These commenters indicated concern that any type of treatment, such as chlorination in the collection system, could have the unintended consequence of rendering a discharge occurring before the treatment plant something other than raw sewage, thereby placing it beyond the scope of SPRTK reporting.

Response

The final rule revises the definition of “partially treated sewage” to mean “sewage that is diverted around any portion of the treatment plant of a sewage treatment works after it enters the treatment plant.” Furthermore, the final rule adds language to 750-2.7(b)(2) explaining that a CSO is considered to be untreated sewage for purposes of the requirement to make two hour reports, four hour notifications, and CSO advisories. This eliminates the concern raised by the comment by clarifying that a discharge before the treatment plant is considered untreated sewage

rather than partially treated sewage even if there is some treatment in the collection system.