

Consensus Rule Making Statement

6 NYCRR § 485.1

The Department of Environmental Conservation (Department) is proposing to repeal 6 NYCRR § 485.1 – Who must pay and how much. New York State Environmental Conservation Law (ECL) Article 72 and 6 NYCRR Part 481 provide that all persons who need a permit, certificate, or approval pursuant to a state environmental regulatory program, or who are subject to regulation under a state environmental regulatory program, are required to submit an annual fee to the Department. Specifically, State Pollutant Discharge Elimination System (SPDES) program fees are articulated in ECL § 72-0602 and 6 NYCRR § 485.1.

The last time the Department updated 6 NYCRR § 485.1 was in 1991 after ECL § 72-0602 was amended in the 1989-1990 state budget. In the last 17 years, the Legislature has amended ECL § 72-0602 four times – in 2003, 2004, 2009, and 2015. However, there has been no update to 6 NYCRR § 485.1 since 1991. The Department has included an update to the SPDES program fees on its Regulatory Agenda for the last ten years.

The provisions of this proposed rule making do not involve any discretion by the Department because SPDES program fees are established and amended by the Legislature. This proposed rule making only removes the SPDES program fees from the regulations, the fees are still required pursuant to the ECL. As such, operators are required to comply with the statute and any future fee changes passed by the Legislature. The proposed repeal is necessary to avoid confusing the public with outdated references and to alleviate the need to update the regulations in the future

when the ECL is amended. For these reasons, the Department has determined that no person is likely to object to this rule making.