

REGULATORY IMPACT STATEMENT (RIS)
CLARIFICATION OF CLASS I & CLASS SD BEST USAGES
Amendment to 6 NYCRR 701.13 & 701.14

The waters of New York State (both freshwater and saline) are grouped into classes and, within those classes, water quality standards (WQS) are assigned to protect their best usages. There are five classes of saline waters defined in Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 701: SA, SB, SC, I, and SD.

The New York State Department of Environmental Conservation (NYSDEC) is proposing amendments to 6 NYCRR 701.13 and 701.14 to clarify the intent of 2015 amendments to 6 NYCRR Parts 701 and 703. The 2015 amendments to 6 NYCRR Parts 701 and 703 adopted more protective total and fecal coliform WQS for Class I and Class SD saline surface waters (2015 I/SD Rule Making). Through this proposed rule making, NYSDEC is clarifying that the best usages of Class I and Class SD waters (I/SD waters) were, and remain, “secondary contact recreation and fishing” and “fishing,” respectively.

The proposed clarifications would impact limited waters in the State; the majority of I/SD waters are located in and around New York City (NYC), with a few waters located in and around Suffolk County.

1. Statutory authority:

The general authority to promulgate regulations is found in New York State Environmental Conservation Law (ECL) § 3-0301(2)(a). ECL § 3-0301(2)(a) provides that the Commissioner of NYSDEC may adopt regulations to carry out the purposes of the ECL in general.

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Relying on ECL § 17-0301 for statutory authority, in 2015, NYSDEC promulgated amendments to 6 NYCRR Parts 701 and 703 to adopt more protective total and fecal coliform WQS for I/SD waters. However, this proposed rule making is different than the 2015 I/SD Rule Making in that it is a clarification of an existing regulation and does not establish WQS. This proposed rule making does not rely upon ECL § 17-0301 for statutory authority. This proposed rule making does not assign new classifications to waters or change the considerations of their best usage. This proposed rule making also does not adopt, alter or modify the standards of quality and purity.

2. Legislative objectives:

ECL § 3-0301(2)(a) was enacted with the purpose of providing NYSDEC the authority to “adopt, amend, or repeal environmental standards, criteria, and those rules and regulations having the force and effect of standards and criteria...”

Utilizing the authority granted in ECL § 3-0301(2)(a), NYSDEC is proposing amendments to 6 NYCRR 701.13 and 701.14 to clarify the intent of the 2015 I/SD Rule Making that the best usages of I/SD waters were, and remain, “secondary contact recreation and fishing” and “fishing,” respectively.

3. Needs and benefits:

The 2015 I/SD Rule Making amended 6 NYCRR Parts 701 and 703, adopting more protective total and fecal coliform WQS for I/SD waters. In promulgating such regulations, NYSDEC did not revise the “best usages” of the I/SD waters. Although

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many comment letters¹ on those regulatory amendments recognized that NYSDEC did not change the best usages of the subject waters, the United States Environmental Protection Agency (USEPA) stated in its review of the 2015 I/SD Rule Making that the record is not clear on that fact.

On March 7, 2018, USEPA issued a formal disapproval of the total and fecal coliform WQS for I/SD waters. On June 13, 2018, NYSDEC sent a letter to USEPA to clarify that the 2015 I/SD Rule Making did not change the best usages of the subject waters and requested that USEPA reconsider its disapproval. On January 29, 2019, USEPA responded to NYSDEC's letter stating if the best usages of the I/SD waters are being misinterpreted, NYSDEC must clarify the intent of the 2015 I/SD Rule Making through "relevant administrative procedures under State law." Therefore, NYSDEC is proposing amendments to 6 NYCRR 701.13 and 701.14 to clarify the intent of the 2015 I/SD Rule Making and that the best usages of I/SD waters were, and remain, "secondary contact recreation and fishing" and "fishing," respectively. This proposed rule making implements the clarification sought by USEPA in its January 29, 2019 letter and cures USEPA's disapproval.

4. Costs to NYSDEC, the State, and local governments:

The proposed rule making does not impose costs upon NYSDEC, the State, or local governments.

¹ including those from the Citizens Advisory Committee of the New York – New Jersey Harbor and Estuary Program, Empire Dragon Boat Team NYC, Friends and Residents of Greater Gowanus, Jamaica Bay Ecowatchers, NYC Friends of Clearwater, NY/NJ Baykeeper and Hackensack Riverkeeper, NYCDEP, Riverkeeper, Inc. and NRDC)

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The proposed rule making, which clarifies the best usage of I/SD waters, affects waterbodies in and around New York City and Suffolk County.

A) Suffolk County

The proposed rule making does not impose any costs on Suffolk County or any regulated persons or local governments within the County. There are no wastewater treatment plants or other regulated parties in Suffolk County that discharge into I/SD waters. Accordingly, the proposed rule making does not impose any costs on regulated persons or local governments in the County because no treatment modifications or facility upgrades are required.

B) New York City

In NYC, there are numerous municipal wastewater treatment plants and several other regulated parties that discharge into I/SD waters. NYC is already obligated to make certain infrastructure upgrade investments, and therefore, the proposed rule making does not impose costs on regulated persons or local governments in NYC above and beyond costs that are currently required.

5. Local government mandates:

The proposed rule making does not impose mandates on local governments. As discussed in Section 4 of this statement, the proposed rule making also does not impose any mandates that are not already required.

6. Paperwork

No paperwork - record keeping or reporting - will be imposed.

7. Duplication:

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The clarification of 6 NYCRR 701.13 and 701.14 that the best usages of I/SD waters were, and remain, “secondary contact recreation and fishing” and “fishing,” respectively. causes no duplication, overlap or conflict with any other state or federal government programs or rules.

8. Alternative:

Alternatives to this proposal include: (1) No action, or not clarifying 6 NYCRR 701.13 and 701.14.

No Action - Not clarifying 6 NYCRR 701.13 and 701.14 is not an available alternative because doing so fails to clarify that the 2015 I/SD Rule Making did not change the best usage of the I/SD waters to primary contact recreation as recognized in communications with USEPA and public comments.

9. Federal standards:

The proposed rule making does not result in the imposition of requirements that exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

The proposed rule making does not require a compliance schedule.