

REGULATORY IMPACT STATEMENT (RIS)  
SPDES Incorporation by Reference  
Amendments to 6 NYCRR § 750-1.25

6 NYCRR sec. 750-1.25 incorporates by reference the Clean Water Act (CWA) and regulations promulgated by the United States Environmental Protection Agency (EPA) at Titles 33 and 40 of the C.F.R., as well as miscellaneous federal, interstate, and state guidance documents. The proposed rule making updates outdated, inaccurate and/or redundant references to the federal regulations, as well as guidance documents.

1. Statutory authority:

The New York State Department of Environmental Conservation's (NYSDEC) general authority to promulgate regulations is found in New York State Environmental Conservation Law (ECL) art. 3, title 3. ECL §§ 3-0301(2)(a) and (2)(m) provide that the Commissioner of NYSDEC may adopt regulations to carry out the purposes of the ECL in general. Authority to promulgate regulations with respect to the State Pollutant Discharge Elimination System (SPDES) program is found at ECL §§ 17-0303(3), 17-0801, 17-0803, 17-0804, and 17-0811. As an approved SPDES program, NYSDEC must maintain a program at least as stringent as the federal program (i.e., the National Pollutant Discharge Elimination System) including the CWA 33 U.S.C. §§ 1251, et seq. (Federal Water Pollution Control Act) and implementing regulations.

2. Legislative objectives:

It is the objective of the ECL that NYSDEC regulates the administration and procedures of the SPDES permitting program to prevent unlawful discharges of pollutants into waters of the state. The CWA directs EPA to promulgate technology-based Effluent Limitation Guidelines (ELGs) (i.e., 40 C.F.R. Parts 405 – 471) that reflect pollutant reductions achievable in categories or subcategories of industrial point sources through

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implementation of available treatment technologies. 33 U.S.C. §§ 1311(b) and 1314(b). The proposed amendments to sec. 750-1.25 update references to accurately reflect the current ELGs, as well as other federal regulations and guidance documents.

3. Needs and benefits:

The proposed rule making is necessary to update outdated, inaccurate and/or redundant references to federal regulations and guidance documents. To maintain an approved SPDES program, NYSDEC must operate a program that is at least as stringent as the federal program. In accordance with NYSDEC's approved SPDES program, the state must adopt and include in its SPDES permits the minimum federally established guidance, as well as the guidelines (i.e., ELGs) included in 40 C.F.R. Parts 405 – 471, unless the state has more stringent requirements. Therefore, this update is necessary to comply with that federally approved program.

This proposed rule making adds five (5) ELGs to sec. 750-1.25 that were promulgated after the last update to sec. 750-1.25 in 2003 (40 C.F.R. Parts 438, 441, 449, 450, 451). Additionally, EPA has updated fourteen (14) ELGs since the last update to sec. 750-1.25; this proposed rule making updates the references to those ELGs (40 C.F.R Parts 412, 420, 423, 429, 430, 432, 434, 435, 437, 439, 442, 444, 455, 465). Since 2002, EPA has not updated the remaining 40 ELGs listed in sec. 750-1.25, therefore, no substantive updates are necessary. However, for consistency and accuracy, all dates referenced in sec. 750-1.25 are amended to reflect the most recent version of the documents, not necessarily the latest substantive update.

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When NYSDEC staff undertakes a full technical review, SPDES permits are reviewed to determine if EPA has established minimum ELGs that apply to the permittee's specific industrial category. If the SPDES permit is for an industrial category where EPA has established minimum technology-based requirements, then those minimum ELGs, along with other updates necessary to meet state requirements, are incorporated into the renewed and/or modified SPDES permit. In order to be as stringent as the federal program, NYSDEC staff refer directly to the federal ELGs when drafting SPDES permits (as required by ECL § 17-0801, 17-0811 and as outlined in SPDES permit writing guidance Technical and Operational Guidance Series (TOGS) 1.2.1); therefore, this proposed rule making does not impact facilities where these updated ELGs already apply.

In addition to updating the references to the current ELGs, this proposed rule making updates references to other federal regulations. For example, the General Pretreatment Regulation Revisions (40 C.F.R. Part 403) reduce the overall regulatory burden on both industrial users and Publicly Owned Treatment Works (POTWs) with approved pretreatment programs. Updates to 40 C.F.R. Part 122 require permittees to use "sufficiently sensitive" analytical test methods when quantifying the presence of pollutants.

#### 4. Costs

A) to NYSDEC, the State, and local governments:

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The proposed rule making does not impose costs upon NYSDEC, the State, or local governments because SPDES permits are written to include the most current ELGs or more stringent state requirements.

B) to regulated persons:

The proposed rule making does not impose costs upon regulated persons because SPDES permits are written to include the most current ELGs or more stringent state requirements. Additionally, EPA already considered the economic impact to these industrial categories when EPA promulgated the current ELGs. The regulated community had an opportunity to comment or object to that economic impact and other aspects of the ELGs at the time of the federal rule making.

5. Local government mandates:

The proposed rule making does not impose mandates on local governments and actually lessens the burden in some circumstances. As discussed in Section 4 of this statement, the proposed rule making also does not impose any mandates that are not already required. The General Pretreatment Regulation Revisions (40 C.F.R. Part 403) reduces the overall regulatory burden on both industrial users and Publicly Owned Treatment Works (POTWs) with approved pretreatment programs.

6. Paperwork:

No paperwork - record keeping or reporting – is imposed.

7. Duplication:

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The proposed rule making does not duplicate, overlap or conflict with any other state or federal law or regulations, but rather incorporates by reference federal regulations, as well as guidance documents.

8. Alternative:

Alternatives considered to this proposed rule making include: (1) No action, or not updating sec. 750-1.25.

No Action - Not updating sec. 750-1.25 is not an available alternative because doing so fails to maintain NYSDEC's approved SPDES program so it is at least as stringent as the federal program.

9. Federal standards:

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

10. Compliance schedule:

The proposed rule, if adopted, would take effect on the date that the Notice of Adoption is published in the State Register, or on an effective date established in the Notice of Adoption. The proposed rule making does not require a compliance schedule. The process to update SPDES permits is described above.