

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL
GOVERNMENT (RFA)
CLARIFICATION OF CLASS I & CLASS SD BEST USAGES
Amendment to 6 NYCRR 701.13 & 701.14

1. Effect of Rule:

The proposed rule making applies to any local governments and/or small businesses that have permitted discharges of treated sanitary sewage into Class I or Class SD waters (I/SD waters). All of New York's I/SD waters are located in and around New York City (NYC) and Suffolk County.

There are no wastewater treatment plants or other regulated parties that discharge in Suffolk County into I/SD waters. Therefore, the proposed rule making does not apply to any small businesses or local government within Suffolk County.

The proposed rule making applies to the municipality of NYC and several small businesses that have permitted discharges of treated sanitary sewage. NYC is already obligated to make certain infrastructure upgrade investments, and therefore, the proposed rule making does not impose any costs on regulated entities or local governments beyond those costs that are currently required.

2. Compliance Requirements:

The proposed rule making does not require a compliance schedule.

3. Professional Services:

NYC is already obligated to make certain infrastructure upgrade investments, and therefore, the proposed rule making does not require professional services beyond those costs that are currently required. As part of the previously obligated work, professional services of consulting engineers would likely be needed for the design and construction management of pollution abatement facilities. Consulting engineers

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provide the sampling and analysis, modeling, engineering, facilities planning, project development and management expertise to assist NYC in implementation of future projects.

4. Compliance Cost:

The Regulatory Impact Statement (RIS) discusses the costs of complying with the proposed rule making. However, as discussed above and in the RIS, there are no new costs to regulated parties, small businesses, or local and state governments associated with the proposed rule making because regulated parties are currently required to comply with the water quality standards (WQS) clarified in the rule makings.

5. Economic and Technological Feasibility:

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 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.

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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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.

Various technologies exist that can be used for pollution abatement to comply with the current WQS for I/SD waters. However, NYC is already obligated to make certain infrastructure upgrade investments, and therefore, the proposed rule making does not require technologies beyond those already required.

6. Minimizing Adverse Impacts:

As discussed above and in the RIS, there are no new costs to regulated parties, small businesses, or local and state governments associated with the proposed rule making because the regulated parties are currently required to comply with the current WQS, which are not being amended through the rule making. The intent of the rule making is to clarify the best usage of the I/SD waters.

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7. Small Business and Local Government Participation:

The proposed rule making is different than the 2015 I/SD Rule Making in that it does not rely upon ECL § 17-0301 for statutory authority. The proposed rule making does not assign new classifications to waters or change the considerations of their best usage. The proposed rule making also does not adopt, alter or modify the standards of quality and purity. Instead the proposed rule making relies on ECL § 3-0301(2)(a) which requires NYSDEC to hold a public hearing to receive comments from stakeholders on the proposed rule making.

8. Cure Period or Other Opportunity for Ameliorative Action:

The proposed rule making does not modify or establish violations or penalties, therefore no cure period is required.