FINAL REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS (RFA)
BEACH ACT STANDARDS AND RECLASSIFICATION RULE
6 NYCRR PARTS 700, 703, and 890

The New York State Department of Environmental Conservation (Department or DEC) has adopted revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department has also adopted upgrades to the classification of two water bodies.

1. Effect of Rule

The Department reviewed the rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16) of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed *E. coli* standard is considered to be *de minimus*, as existing treatment facilities with disinfection discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments. However, there may be an increased cost for laboratory analysis, depending on how the Department implements the proposed *E. coli* standards for dischargers to the Great Lakes. The Department is not repealing the existing total and fecal coliform standards. Incorporation of the standards into State Pollutant

Discharge Elimination System (SPDES) permits, after adoption of the rule, will comply with all applicable laws, regulatoins, and criteria. The approach will be protective of the best uses, while avoiding unnecessary duplication. At this time, the Department has not determined whether the *E. coli* standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require such facilities to sample and report both *E. coli* and fecal coliform. At this time, DEC has not determined whether the *E. coli* standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

The Department revised the express terms so that the proposed standards for *E. coli* in Class A, A-Special, AA, and AA-Special waters would not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

Under the adopted enterococci standards, 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is $512,676/MGD design flow in capital costs with an estimated O&M cost of $10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the

estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of $10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost $220,000/MGD. The average O&M cost of approximately $18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and $27,900/MGD per year for facilities that currently chlorinate but would need to add de-chlorination facilities. The Department estimates that 9 municipal wastewater treatment facilities and 2 PCI facilities will incur a collective capital cost of approximately $55 million to construct chlorination/dechlorination and that all 29 impacted facilities will incur increased O&M costs, collectively totaling approximately $14 million per year.

There may also be an increased cost for laboratory analysis, depending on how the Department implements the new enterococci standards for dischargers to the marine coastal recreation waters. The Department is not repealing the existing total and fecal coliform standards. The method for implementation of the standards into SPDES permits as limitations would be determined following adoption of the criteria. Additional costs for laboratory analysis of up to $208,620 may occur should the Department require such facilities to sample and report both enterococci and coliform. The Department revised the express terms so that the proposed standards for enterococci in Class SA waters will not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

Certain coastal Class SB waters (including waters reclassified from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q), and adhere to the terms of the 2005 Consent Order between the Department and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated from this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The reclassification causes a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these reclassified waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard will be attained and not likely result in additional costs.

2. Compliance Requirements

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances include in their permit. The adopted regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This rule does not require the submission of any new forms. As mentioned above, the Department has identified costs associated with the rule that may be incurred by small businesses or local governments.

3. Professional Services

There may be professional engineering services needed for the facilities potentially affected by the adopted rule, as mentioned above, to upgrade existing disinfection systems.

4. Compliance Costs

The Department reviewed the rule and identified the likely anticipated costs that are set forth in this section. The estimated total financial impact for capital and O&M costs is for the municipal wastewater treatment facilities and PCI facilities to meet the proposed standards is a capital cost of approximately $55 million and a net increase in O&M costs of approximately $14 million per year. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require facilities to sample and report both *E. coli* and fecal coliform. Additional

costs for laboratory analysis of up to $208,620 may occur should the Department require facilities to sample and report both enterococci and coliform. For a more detailed discussion please see above.

5. Economic and Technological Feasibility

The Department has concluded that compliance by regulated parties is both economically and technologically feasible. Under the adopted enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased O&M costs resulting from higher dosing.

6. Minimizing Adverse Impact

In developing this rulemaking, consideration was given to approaches that would minimize adverse economic impacts of the rule on small businesses and local governments such as differing requirements, outcome standards, and potential exemptions from coverage. Given the nature of this rule, and in order to adequately protect the waters of the State and to meet the requirements of federal law, differing requirements or potential exemptions for small businesses and local governments were not feasible. However, for the potentially impacted facilities subject to this rule, the Department will allow necessary time to establish a path to compliance.

These regulatory changes will take effect on the date stated in the Notice of Adoption that is published in the State Register. The Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately.

After the rulemaking becomes effective it would be implemented in permits when they are modified. If additional treatment is required, a compliance schedule may be included in the permit on a case-by-case basis. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review, modify, and renew affected permits within five years of the effective date of promulgation.

7. Small Business and Local Government Participation

The Department has informed the public about the proposed rule through the Department website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. The Department has held two public information meetings and two public hearings pertaining to the rule making. The public has had the opportunity to comment on the proposed rule by attending a public hearing or by submitting written comments to the Department. The public also had an opportunity to comment on the revisions to the proposed rule by submitting written comments to the Department.