

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

State Pollutant Discharge Elimination System (SPDES) Environmental Benefit Permit Strategy (EBPS) OVERVIEW

The New York State Department of Environmental Conservation (DEC) Division of Water (DOW), in accordance with Section 17-0817 of the Environmental Conservation Law and the requirements in 6NYCRR Part 750-1.19 to develop a Modification Priority Ranking System, has adopted the *Environmental Benefit Permit Strategy* (EBPS). This system establishes procedures to manage State Pollutant Discharge Elimination System (SPDES) permit renewal applications in a manner that prioritizes permits based upon their potential or actual impact to the environment.

Background

The 1972 Clean Water Act requires that SPDES permits be renewed every five years. In New York State, the renewal process originally included DEC administrative and technical review plus public notification and review of the draft permit. It typically took about a year to complete this process and renew a permit. Modification of a permit could be initiated sooner than five years to accommodate changes in regulation or changes in the operating procedure of the permittee. This system worked well for a while, but, as time went on, the permits became more numerous and more complex while staffing levels fell. The DOW began to accumulate a backlog of permit renewals. As a result, some permits that sorely needed to be modified to protect the waters of the state had to wait their turn, sometimes for years, for review. Other permits that needed only administrative renewal, not technical modifications, were being subjected to the same rigorous technical review as those requiring major modifications.

The DOW had to find a better, more environmentally responsive and efficient way to manage this workload. EBPS was developed to focus staff time on full technical review of the most deficient permits based upon environmental need and the need to better reflect current standards and regulations in the permit, with the results being permits which provide better protection for the environment.

How EBPS Works

The DOW uses the EBPS system to manage the workload of renewing existing SPDES permits. This strategy establishes priorities for reviewing permits based on the environmental benefit that will be gained by modifying the permit. Modifications are any technical changes that need to be made to the permit, and can be initiated by the permittee or by the Department. They can occur because of a change in regulations, a change in the operation of the facility or issues regarding permit compliance.

The EBPS system has four parts:

1. New permits and permittee-requested modifications will be processed in accordance with the Uniform Procedures Act (UPA) time frames listed in 6NYCRR Part 621.
2. Administrative renewals of all non-EPA Major permits are processed using a short form filed prior to permit expiration.
3. Full technical review, to determine if a permit needs modification, will be performed by the DOW technical staff in priority order based on the EBPS ranking system.
4. Placement on the No Administrative Renewal List (NARL) for certain types of permits (EPA Major permits, CSOs, SSOs, power plants, etc.) for which administrative renewals without full technical review are not allowed.

The scope of permits which are subject to EBPS includes all significant minor (Class 01, 07, 09, and 10) SPDES permits. EPA Major permits (Class 03 and 05) are subject to full technical review every five years based upon current agreement with EPA. These permits are still scored in EBPS for purposes of identifying modifications needed for these permits, as well as for purposes of prioritizing workload. Nonsignificant minor (Class 02 and 04) permits are not subject to EBPS based upon the expected minor environmental impacts presented by these permits due to flow and facility activity.

EBPS Ranking Procedures

Each permit receives a numerical score for each of the **Priority Ranking Factors** listed in Table 1 below as they apply to that particular permit. Not every permit will receive a numerical score for each factor. Guidance for use of Priority Ranking Factors (see Attachment 1) has been developed to assist with the evaluation of the ranking factors. For example, if a permit needs to be modified due to a consent order or permit compliance issue, it would receive a priority ranking factor score of 10 points (see Factor 7). If a permit for an existing facility is now subject to a revised effluent limit due to a change in a water quality standard for a parameter with an existing effluent limit, it would receive 5 points (see Factor 5B).

Each priority ranking factor value is then multiplied by one of the three **Water Quality Enhancement Multipliers** listed in Table 2 that describe the general environmental benefit of modifying the permit to address that factor. For example, if the permit modification due to the compliance issue in the first example above would address a major impairment to the receiving water, the multiplier would be 10 points, yielding an EBPS Factor Score for Factor 7 of 100 points. If the revised effluent limit referenced in the second example above would have little or no effect on the water quality of the receiving water, the multiplier would be 1 point, yielding an EBPS Factor Score of 5 points for Factor 5B.

A **longevity score** is added for each permit in accordance with the tiered longevity scoring algorithm listed in Table 3. EPA Major Permits (Class 03 and 05) add 5 points per year for the first 5 years of the permit, 10 points per year for the next 5 years, and 15 points per year for all years over 10 that have elapsed since the last time the facility submitted a long form permit application together with required comprehensive effluent sampling. All other EBPS permits (Class 01, 07, 09, and 10) add 3 points per year for the first 5 years of the permit, 6 points per year for the next 5 years, and 9 points per year for all years over 10 that has elapsed since the last time the facility was required to submit a long form permit application together with required comprehensive effluent sampling. Water Quality Enhancement Multipliers are not used in the determination of the longevity score. The calculated longevity score is included as Factor 14.

The EBPS Score for that permit is then determined by summing each of the calculated Factor Scores for that EBPS worksheet. The above process can be summarized with the following formulas:

$$\begin{aligned} \text{EBPS Factor Score} &= [\text{Priority Ranking Factor Score}] \times [\text{Water Quality Enhancement Multiplier}] \\ \text{Longevity Score} &= [\text{determined per Table 3}] \\ \text{EBPS Priority Ranking Work Sheet Score} &= \sum \text{Factor Scores} + \text{Longevity Score} \end{aligned}$$

Any DOW staff or member of the public can request a SPDES PRIORITY RANKING WORKSHEET (see Attachment 2) for a permit and contribute information to the ranking process. All returned worksheets will be reviewed by staff from the DOW Bureau of Water Permits, and scores adjusted as necessary. Note that if two or more scoring sheets list the same factors for inclusion, the score for that parameter will be included once to prevent duplication of factors. The EBPS Score is determined by summing all of the non-overlapping priority worksheet scores.

$$\text{Total EBPS Permit Priority Score} = \sum \text{Non-Overlapping Work Sheet Scores}$$

EBPS Priority Ranking List and Public Notice

The Department publishes the **EBPS Priority Ranking List** for public notice on an annual basis. The purpose of the list is to give the public an opportunity to comment on the suitability of a priority ranking score and to provide additional information that may affect a change to a permit's score.

The **EBPS Priority Ranking List** shows the priority ranking scores for each of the scored facilities, sorted by permits developed in Central Office and each of the Regional offices. The higher the EBPS Permit Priority Score, the higher the priority that permit has for full technical review and modification. The EBPS Priority Ranking List is published annually in the Environmental Notice Bulletin (ENB), generally in April of each year.

Additional Information

For more information on SPDES permitting and DEC's *Environmental Benefit Permit Strategy*, please visit <http://www.dec.ny.gov/permits/6054.html> or contact the Bureau of Water Permits, 625 Broadway, Albany, NY 12233-3505, or call (518)402-8111.

Table 1

Priority Ranking Factors and Values for SPDES Permits under EBPS

Factor Number	Factor Description	Factor Value
1A	CSO/SSO, Primary: Permit needs a primary modification to conform to the State CSO/SSO Strategy; e.g. submission of a Facility Plan to control or eliminate CSOs known to be contributing to a water quality problem.	10
1B	CSO/SSO, Secondary: Permit needs a secondary modification to conform to the State CSO/SSO Strategy; e.g. minor update in language to conform to an element of the State CSO Strategy.	5
2A	Department initiative/TMDL, Primary: Permit needs a primary modification as part of a Department or Department accepted EPA initiative (e.g., significant issue regarding watershed TMDL implementation, multimedia permitting, DNA, etc.)	10
2B	Department initiative/TMDL, Secondary: Permit needs a secondary modification as part of a Department or Department accepted EPA initiative (e.g., minor issue regarding watershed TMDL implementation, multimedia permitting, DNA, etc.)	5
3A	Pretreatment, Primary: Permit needs to be modified to add industrial pretreatment requirements of primary importance (e.g. inclusion of a mini pretreatment program to resolve a significant negative impact on the WWTP)	10
3B	Pretreatment, Secondary: Permit needs to be modified to add industrial pretreatment requirements of secondary importance (e.g. change in permit language to conform to federal regulations)	5
4A	BMP/PMP, Primary: Permit needs to be modified to add industrial BMP, PMP, or storm water requirements of primary importance (e.g. stormwater discharges from an industry are known to contain toxics)	10
4B	BMP/PMP, Secondary: Permit needs to be modified to add industrial BMP, PMP, or storm water requirements of secondary importance (e.g. regulatory requirement not associated with the discharge of toxics)	5
5A	Discharge of BCCs: Permit needs to be modified for one effluent limit parameter: Bioaccumulative/Persistent/Toxic (PCB, Dioxin, etc.)	10
5B	WQ Parameter: Permit needs to be modified for one effluent limit parameter: parameter change for completed stream reclassification, new WQ standard or important substance relative to WQ	5
5C	Other Parameters: Permit needs to be modified for one effluent limit parameter: other minor parameter (e.g. water treatment chemicals, pH, Temp., Suspended Solids, action level, etc., not associated with WQ.	2
6A	Treatment, BCCs: Permit needs to be adjusted for a new wastewater treatment technology requirement for a parameter not identified in No.5 above: Bioaccumulative/Persistent/Toxic (PCB, Dioxin, etc)	10
6B	Treatment, Other: Permit needs to be adjusted for a new wastewater treatment technology requirement for a parameter not identified in No.5 above: Change in BPJ evaluation	5
7	Noncompliance: Permit needs to be adjusted due to Consent Order or Permit non-compliance issues:	10
8	Antidegradation: Permit is for an existing facility which triggers antidegradation:	5
9	303(d) Listing: Permit contains one or more parameters identified as contributing to an impairment to a water listed on the 303(d) list	5
10	SRF Eligibility: Permit includes a POTW project eligible and listed under the State Revolving Fund.	5
11	Toxicity testing: Permit needs toxicity testing	5
12	Public Concern: Permit generated substantial public concern	10
13	316(b) Listing, Water intake: Permit is a power plant or needing modification for fish impingement or other fish and wildlife studies.	10
99	Other: Other factors not included above, include description and justification for either 10, 5 or 2 points in the comments box	10/5/2

Table 2

Water Quality Enhancement Multipliers and Descriptions for SPDES Permits under EBPS

Water Quality Enhancement	Multiplier
The facility is the sole source or a major source of the pollutant and modification of the SPDES permit is likely to cause a major improvement to water quality; will eliminate a WQ standard(s) violation as determined by a TMDL analysis resulting in a WLA; will eliminate a water use impairment as identified by the PWP list; or correct other important environmental problems.	10
The facility is one of several sources of the pollutant; modification of the SPDES permit will result in reduction of contribution to a water body with a WQ standard(s) violation as determined by a TMDL analysis resulting in a WLA; will reduce a water use impairment as identified by the PWP list; or the WQ standard(s) violation or use impairment will not be eliminated by the modification.	5
Modification will have little or no effect on a WQ standard(s) violation, water use impairment or serious environmental problem.	1

Table 3

Longevity Score Determinations for SPDES Permits under EBPS

Number of years since date of last Long Form application (with sampling)	EPA Major	EPA Non Major	Longevity factor	Longevity Score, EPA Major	Longevity Score, EPA Non Major
1	5	3	1	5	3
2	5	3	2	10	6
3	5	3	3	15	9
4	5	3	4	20	12
5	5	3	5	25	15
6	10	6	1	35	21
7	10	6	2	45	27
8	10	6	3	55	33
9	10	6	4	65	39
10	10	6	5	75	45
11	15	9	1	90	54
12	15	9	2	105	63
13	15	9	3	120	72
14	15	9	4	135	81
15	15	9	5	150	90

**Attachment 1
Environmental Benefit Permit Strategy**

GUIDANCE FOR USE OF PERMIT PRIORITY RANKING FACTORS

Factor Number	Guidance
1	New York State has developed a Combined Sewer Overflow (CSO) Strategy in conformance with USEPA Clean Water Act program guidance. This strategy calls for the State to implement a series of CSO controls through specific SPDES permit conditions. An example of a “primary” CSO requirement would be the submission of a Facility Plan to control or eliminate CSOs known to be contributing to a water quality problem. An example of a “secondary” CSO requirement would be updating the language in a SPDES permit to conform to the “No dry weather discharge” element of the State CSO Strategy.
2	The facility has been identified as subject to a Department initiative such as watershed TMDL or basin plan implementation, disinfection requirements, or Discharge Notification Act requirements. An example of a “primary” initiative would be a significant modification necessary to include effluent limits or other monitoring requirements included in a TMDL or basin plan for a parameter whose limit exceeds the basin’s allocation. An example of a “secondary” initiative would be a minor change needed to address a Department or Department accepted EPA initiative regarding multimedia permitting, DNA, etc. that does not directly impact the facility’s discharge or compliance with applicable effluent limits and monitoring requirements.
3	Some elements of the Federal Industrial Pretreatment regulations are imposed by inserting specific requirements into municipal SPDES permits. An example of a “primary” pretreatment modification would be the insertion of pretreatment or mini pretreatment program language into a municipal SPDES permit. An example of a “secondary” pretreatment modification might be changes in the permit language to conform to federal regulations but which would not resolve any significant issues at the POTW or in the sewer system.
4	The Federal CWA requires Best Management Practice (BMP) plans for all industries which have SPDES permits and which have a potential for toxic contamination of storm water by industrial activity. Modification of a SPDES permit for a BMP would be of “primary” importance if, for example, the storm water discharges from the industry were known to contain PCBs or other toxics, or facility inspection indicates the need for BMPs at the facility. The modification would be of “secondary” importance if the addition of the BMP was a regulatory requirement but was not presently associated with any toxic discharge from the permitted site.
5a	The permit potentially needs to be modified to include an effluent limit for Mercury, PCBs, or other bioaccumulative/persistent toxic substance. See TOGS 1.2.2 Attachment 5 for the list of substances.
5b	The permit needs to be modified to add or change a significant effluent parameter because: the receiving water body has been formally reclassified (not just proposed for reclassification) to a higher water quality standard; a new water quality standard or guidance value has been published for a parameter in the effluent; or a new substance has been identified in the effluent which is important to the achievement of best usage or a water quality standard in the receiving water body.
5c	The permit needs to be modified to add or change a parameter such as pH, temperature, or suspended solids or to include an action level for a parameter that has a low probability of causing a water quality problem.
6a	The permit needs to be modified to add or change an effluent limit parameter that is incorporated in a newly promulgated USEPA effluent limit guideline for Best Available Treatment Technology Economically Achievable (BAT), Best Conventional Pollutant Control Technology (BCT), or New Source Performance Standards (NSPS).
6b	An effluent parameter needs to be added or changed based on a reevaluation of Best Professional Judgement (BPJ) or installation of revised treatment technology not subject to USEPA effluent limit guidelines.

7	The permit needs to be modified in order to resolve an issue of permit non-compliance or to ensure consistency between the permit and a negotiated Order on Consent. Examples include: a permittee that cannot verify compliance with a permit limit that proves to be lower than the effluent matrix specific laboratory detectability limit; or a permittee that builds a treatment system to achieve a BPJ effluent limit (not an effluent limit based on water quality) and, following startup and achieving steady state operation, finds that the system cannot achieve the permit limit despite effective operation.
8	The permit needs to be modified as a result of an antidegradation evaluation. USEPA and New York State are proceeding with initiatives which could trigger antidegradation evaluations for facilities with an existing SPDES permit which either propose facility expansions which would result in increased discharges of pollutants, or presently have permit authorization to discharge toxics at levels which exceed current actual discharge levels of those toxics. This priority evaluation factor will be utilized when these initiatives are finalized and implemented.
9	The permit needs to be modified because it requires an Individual Control Strategy (ICS) in accordance with EPA 304(l) to further control toxic releases to an impaired waterbody on the Section 303(d) list. The ICS requirement has been superseded. For practical purposes, this factor should be used whenever a parameter is being discharged that contributes to an impairment as listed on the 303(d) list.
10	The Clean Water State Revolving Fund (CWSRF) list identifies projects which have applied for and are eligible for State & Federal loans to build needed sewerage and sewage treatment systems. This priority factor will be used for municipal permittees that are on the SRF list.
11	The permit needs to be modified to incorporate requirements for whole effluent biological toxicity testing in conformance with the Department's policy.
12	The Department has received <u>substantive</u> public interest in the facility's discharge, for example substantive comments received as part of a proposed permit action or expansion by the facility
13	The permit is associated with a major electric generating power plant and the permit needs modification to incorporate typical requirements for studies or control measures related to fish impingement or aquatic endangerment, including facilities subject to CP-52 or CWA 316(b) Phase 2 rule requirements.
14	The longevity score is based upon the date of that the last full SPDES permit application with comprehensive effluent sampling (Form NY-2A or NY-2c) was received. This may differ from the date that the permit was renewed. Minor modification requests are not counted when determining the longevity score.
99	The permit needs to be modified for an item not included in Factors 1-14 above. This may include the addition of monitoring and conditions associated with cooling water intake structures for non-power plants (10 points), additions of schedules of submittals for purposes of gathering information on plant operation (5 points), or correction of typographic or other errors that do not require immediate attention (2 points).

