

JOB IMPACT STATEMENT (JIS)
SALINE WATER QUALITY STANDARDS RULE
6 NYCRR Parts 701 & 703

The New York State Department of Environmental Conservation (the Department) is proposing revisions to New York’s water quality standard (WQS) regulations in Title 6 New York Codes, Rules and Regulations (NYCRR) Parts 701 and 703. The proposed regulatory updates include amended WQS to protect the shellfishing best use in Class SA waters; protect the primary contact recreation best use in Class SA and SB waters; maintain water quality suitable for primary contact recreation in Class SC¹ waters; protect the secondary contact recreation best use in Class I waters; and add a wet weather (WW) limited use designation for waters impacted by combined sewer overflow (CSO) discharges and/or municipal separate stormwater sewer systems (MS4) effluents.

1. Nature of Impact

The only businesses or entities that could potentially be adversely impacted by the proposed regulatory updates are those that hold State Pollutant Discharge Elimination System (SPDES) permits and/or operate collection systems with CSOs. New WQS for Class SA waters for the protection of shellfish harvesting best use are not anticipated to have an adverse fiscal or job impact.

2. Categories and Numbers Affected

The Department reviewed the proposed regulatory updates and identified the likely anticipated costs that are set forth in this section. The Department identified twelve municipal

¹ Class SC waters do not have a best use of primary contact recreation assigned to them in 6 NYCRR Part 701, but 701.12 does specify “The water quality shall be suitable for primary and secondary contact recreation...” in Class SC waters. Absent a primary contact recreation best use, Class SC waters are still protected by standards aligning with the swimmable goal of the Clean Water Act.

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wastewater treatment facilities, ranging from 0.24 million gallons per day (MGD) to 120 MGD treatment capacity, discharging to waters subject to Class SA, SB, SC, and I Enterococci WQS amendments in this proposal. Additionally, ten Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to the subject saline waters. Two industrial facilities were also identified with sanitary discharges to saline primary contact recreation waters. An additional nine facilities, owned and operated by the New York City (NYC) Department of Environmental Protection (DEP), were identified but not included in the regulatory impact analysis, because they already have an Enterococci water quality based effluent limitations (WQBELs) included in their SPDES permits. The proposed fecal coliform WQS for class SA waters do not have regulatory impact costs.

The estimated unit cost for building a UV disinfection system is \$634,008/MGD² design flow in capital costs with an estimated O&M cost of \$12,367/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 \$12,367/MGD per year will result solely from increased O&M expenditures. As many of the facilities considered in this analysis are currently using chlorination for disinfection, these proposed regulatory updates will likely require additional chlorination, which may result in a need to add de-chlorination to the treatment system. Because of the likelihood that additional de-chlorination will be needed, the Department determined the capital costs for constructing a de-

² All '\$/MGD' and '\$/MGD per year' rates were adjusted for inflation from 2016 to 2022 values (<https://www.usinflationcalculator.com/>).

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chlorination facility. Construction of a de-chlorination facility is estimated to cost \$272,066/MGD. The Department used the approximately \$23,002/MGD per year average O&M cost to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination, and \$34,503/MGD per year for facilities that currently chlorinate but will need to add de-chlorination facilities. The Department estimates that two municipal facilities and seven PCI facilities will incur a collective capital cost of approximately \$2.4 million to construct chlorination/de-chlorination. Additionally, all twenty-four impacted facilities will incur increased O&M costs collectively totaling approximately \$4.5 million per year, to cover increased chlorine dosing or increased UV intensity, as applicable to their current disinfection practices.

Although these costs are not de minimis, they are spread across a large number of facilities over time and are not likely to impact in any measurable way job opportunities in New York State. To the contrary, these proposed regulatory updates may create job opportunities for engineers and construction firms to design and construct necessary wastewater treatment facility retrofits.

Certain waters subject to the proposed Enterococci WQS are impacted by CSOs that occur in Class SB and Class I waters in and around NYC. NYC's CSO control program is implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the United States Environmental Protection Agency's (USEPA) CSO Control Policy as per the Clean Water Act section 402(q), and must 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"), and NYC's SPDES permits. LTCPs evaluate the cost-effectiveness of a range of control

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options/strategies, including up to 100% CSO capture. The LTCPs are reviewed and approved by the Department, based on currently applicable WQS. The yet to be completed cost of projects detailed in the approved³ LTCPs is \$2.3 billion. The LTCPs will not be immediately opened or renegotiated to attain compliance with the proposed WQS but will be assessed for compliance with the new WQS after completion of the LTCP and validation of LTCP controls through post-construction compliance monitoring (PCCM).

NYC DEP provided water quality model runs to the Department to assess compliance with the proposed Enterococci WQS in the CSO-impacted waters. The model runs indicated that the proposed Enterococci WQS will not be attained in some waters; thus, additional water quality improvements may be needed after the LTCP projects are completed. CSO-impacted waters projected not to attain the proposed Enterococci WQS for Class SB are limited to the Hutchinson River. CSO-impacted waters projected not to attain the proposed Enterococci WQS for Class I include: Alley Creek, Bronx River, Coney Island Creek, Flushing Creek, tributaries of Jamaica Bay and Westchester Creek.

Estimating costs for these CSO-impacted waters to achieve the proposed WQS is difficult because pollutant concentrations at the overflows are unknown and variable, unlike a traditional SPDES outfall where the pollutant concentrations are monitored and the necessary controls to achieve compliance are easily calculated. Although such impacts are not immediate, as noted above, costs for CSO-impacted waters to comply with the proposed Enterococci WQS must still be estimated. Using 100% CSO capture, a highly conservative approach with respect to water

³ The “Combined Sewer Overflow Long Term Control Plan for Citywide/Open Waters” (September 2020) is still under review and has not been approved by the Department. The waters covered by this LTCP were not included in the cost calculations because they were not impacted by the proposed regulatory updates (Class SD waters), or current projections show present or future attainment of the proposed WQS.

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quality, the Department estimated increased control costs for outfalls discharging to Alley Creek, Bronx River, Coney Island Creek, Flushing Creek, Hutchinson River, tributaries of Jamaica Bay and Westchester Creek to meet the proposed Enterococci WQS for Class SB and Class I waters. The total cost of 100% capture for these receiving waters is \$9.7 billion.

The (WW) designation being proposed with the regulatory updates will not be immediately applicable to any waters and therefore has no associated costs. Future rule makings that apply the (WW) designation will detail costs associated with its application.

3. Regions of Adverse Impact

These proposed regulatory updates would set forth new WQS protecting recreation and shellfishing, as applicable, in saline waters of the State. These waters are found along the shores of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester counties. However, as mentioned above, the proposed regulatory updates are not likely to negatively impact, in any measurable way, job opportunities in the state of New York. To the contrary, these proposed regulatory updates may create job opportunities for engineers and construction firms to design and construct necessary wastewater treatment facility retrofits. The proposed regulatory updates may also result in fewer beach closures which, in turn, would potentially increase tourism revenue for the affected areas.

4. Minimizing Adverse Impact

The proposed regulatory updates will take effect on the date specified in the Notice of Adoption. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the

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regulatory updates become effective, they will be implemented in SPDES permits when they are initially issued or renewed. Permit renewals and integration of the proposed WQS will follow the Department's Environmental Benefit Permit Strategy that prioritizes permit renewals having the greatest environmental impact. If additional new, or modified, treatment is required to meet the proposed WQS, a compliance schedule may be included in the permit on a case-by-case basis and may require the permittee to submit a report describing their alternative treatment strategy to meet the WQS, including a schedule for construction. Under such a scenario, the Department would review and, if appropriate, approve the report before construction could commence.

Waters subject to CSO discharges from permitted CSO outfalls will be assessed for compliance with the new WQS after completion of the LTCP and validation of LTCP controls through PCCM. After PCCM is completed and compliance with the WQS are assessed, new CSO control goals may be applied to discharges to waters that fail to meet WQS.

5. Conclusion

The Department determined that this potential impact is not a "substantial adverse impact on jobs and employment opportunities" as that term is defined in section 201-a(6)(c) of the New York State Administrative Procedure Act. In addition, these proposed regulatory updates will not have a measurable impact on self-employment. Therefore, the Department determined that a Job Impact Statement is not required.