

**EXPRESS TERMS**  
**APPLICATION OF SITE-SPECIFIC CRITERIA TO CLASS I & CLASS SD WATERS**  
 Amendments to 6 NYCRR § 703.4

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) § 703.4, entitled “Water quality standards for coliforms, enterococci, and E. coli.” is amended as follows:

A new subdivision (g) within section 703.4 is adopted to read as follows:

(g) Site-Specific Enterococci

Standards in the table below will be assessed as a geometric mean of samples collected over a 30-day period during the recreational season of May 1st through October 31st. The recreational season may be expanded in any instance where the department determines it necessary to protect human health or the best usages of the waters, or where required by State or Federal law or interstate compact. Units for the standard are number per 100 mL (colony-forming units or most probable number).

<u>Waterbody Name</u>	<u>Regulatory Segment ID</u>	<u>Waterbody Classification</u>	<u>Site-Specific Standard Boundaries</u>	<u>Standard</u>
<u>Hudson River (portion)</u>	<u>864-1</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Coney Island Creek</u>	<u>890-5</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>315</u>
<u>Erie Basin</u>	<u>890-6.1</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Gowanus Canal</u>	<u>890-7</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Raritan Bay Portion</u>	<u>890.11</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Arthur Kill (portion)</u>	<u>890-12</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Arthur Kill (portion)</u>	<u>890-13</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>70</u>
<u>Newark Bay</u>	<u>890-14</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Kill Van Kull</u>	<u>890-15</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>New Creek</u>	<u>890-18</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Great Kill Creek</u>	<u>890-19</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Oakwood Creek</u>	<u>890-20</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Bedell Avenue Creek</u>	<u>890-27</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Mill Creek</u>	<u>890-28</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Tribs. of Arthur Kill</u>	<u>890-30</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Fresh Kills</u>	<u>890-34</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Tribs. of Arthur Kill</u>	<u>890-41</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>115</u>

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<u>Trib. of Arthur Kill</u>	<u>890-42</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Bridge Creek</u>	<u>890-44</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Bodine Creek</u>	<u>890-45</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Trib. of Kill Van Kull</u>	<u>890-49</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Trib. of Kill Van Kull</u>	<u>890-50</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>East River</u>	<u>890-52</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>East River</u>	<u>890-53</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Lower Newtown Creek, Whale Creek, Dutch Kills, and Maspeth Creek</u>	<u>890-54</u>	<u>SD</u>	<u>From the mouth at East River upstream to the head of the turning basin, just north of Maspeth Ave. Includes all of Whale Creek, Dutch Kills and Maspeth Creek.</u>	<u>35</u>
<u>Upper Newtown Creek and English Kills</u>	<u>890-54</u>	<u>SD</u>	<u>From the head of the turning basin, just north of Maspeth Ave, upstream to terminus of the main stem of the Creek and all other upstream tribs. Includes all of English Kills.</u>	<u>115</u>
<u>Harlem River, Little Hell Gate, Bronx Kill</u>	<u>890-56</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Harlem River</u>	<u>890-56.1</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Tribs. of Jamaica Bay</u>	<u>891-2</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Hook Creek</u>	<u>891-3</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Trib. of Hook Creek</u>	<u>891-4</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Thurston Basin</u>	<u>891-8</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Bergen Basin</u>	<u>891-12</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>150</u>
<u>Hawtree Basin</u>	<u>891-13</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Shellbank Basin</u>	<u>891-14</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Trib. of Jamaica Bay</u>	<u>891-15</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Old Mill Creek</u>	<u>891-16</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Tribs. of Jamaica Bay</u>	<u>891-17</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Sheepshead Bay</u>	<u>891-21</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>

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<u>East River (10.1-12.3)</u>	<u>935-1</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>East River (12.3-14.5)</u>	<u>935-2</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Steinway Creek</u>	<u>935-4</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Trib. of East River</u>	<u>935-5</u>	<u>SD</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Flushing Creek</u>	<u>935-6</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>115</u>
<u>Tribs. of East River</u>	<u>935-11</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Alley Creek</u>	<u>935-13</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>70</u>
<u>Trib of Little Neck Bay</u>	<u>935-17</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Bronx River</u>	<u>935-18</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>35</u>
<u>Westchester Creek and Pugsley Creek</u>	<u>935-47</u>	<u>I</u>	<u>Entire Regulatory Segment</u>	<u>70</u>

REGULATORY IMPACT STATEMENT (RIS)  
APPLICATION OF SITE-SPECIFIC CRITERIA TO CLASS I & CLASS SD WATERS  
Amendments to 6 NYCRR § 703.4

The waters of New York State (both freshwater and saline) are grouped into classes and, within those classes, criteria are assigned to protect their best usages. There are five classes of marine waters defined in Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 701: SA, SB, SC, I, and SD.

The New York State Department of Environmental Conservation (NYSDEC) is proposing amendments to 6 NYCRR § 703.4 to improve protection of the secondary contact recreation and fishing best uses in Class I and Class SD waters. Through this proposed rule making, NYSDEC is adding site-specific fecal indicator bacteria (FIB) for select Class I and Class SD waters (I/SD waters). The proposed site-specific FIB criteria are based on measurements of enterococcus bacteria and would supplement the current total and fecal coliform FIB criteria for these waters.

The proposed rule making would add a new paragraph (g) to 6 NYCRR § 703.4. The proposed rule making does not make any changes to 6 NYCRR § 701.13 or 701.14. The best uses of the I/SD waters were, and remain, “secondary contact recreation and fishing” and “fishing,” respectively.

The proposed rule making would impact limited waters of the State; the affected I/SD waters are located in and around New York City (NYC).

1. Statutory authority:

The general authority to promulgate regulations is found in New York State Environmental Conservation Law (ECL) § 3-0301(2)(a). ECL § 3-0301(2)(a) provides that the Commissioner of NYSDEC may adopt regulations to carry out the purposes of the ECL in general.

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ECL § 17-0301(5)(c)(3) requires NYSDEC to adopt basic criteria for coliform FIB to protect for “Sources of water for bathing, fishing, boating, and any other usages except shellfishing for market purposes in tidal salt waters...” ECL § 17-0301(5)(c)(7) further authorizes NYSDEC to “adopt and assign more restrictive standards for the best usages of the waters of the state.” Using that authority, the proposed rule making adds site-specific FIB criteria to provide additional protections for the I/SD waters but does not alter or modify the existing FIB criteria (total and fecal coliform). The proposed site-specific FIB criteria are for enterococcus criteria.

2. Legislative objectives:

ECL § 3-0301(2)(a) was enacted with the purpose of providing NYSDEC the authority to “adopt, amend, or repeal environmental standards, criteria, and those rules and regulations having the force and effect of standards and criteria...”

ECL § 17-0301(5)(c) provides more specific requirements on how FIB criteria shall be regulated in NYS waters to protect, among other things, recreational uses.

ECL § 17-0301(5)(c)(7) provides the authority to impose more restrictive criteria.

3. Needs and benefits:

The current FIB criteria that protect secondary contact recreation and fishing best uses in the Class I waters are fecal and total coliform criteria, as per ECL § 17-0301(5)(c)(3) and 6 NYCRR § 703.4 (as amended in 2015). Those same FIB criteria are also used to protect the fishing best use in the Class SD waters. Pursuant to ECL § 17-0301(5)(c)(7) the Department has the authority to impose more restrictive criteria. The

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proposed site-specific FIB enterococcus criteria are more restrictive than the current criteria and are a better indicator of fecal pollution in marine waters.

NYC is currently under an administrative consent order with NYSDEC to abate and control combined sewer overflows (CSOs) which discharge raw sewage to the waters in and around NYC during wet weather events. A key component of the consent order is that NYC must draft and submit Long Term Control Plans (LTCPs) to NYSDEC for approval, and then implement such approved LTCPs. The LTCPs detail the CSO loads to the waters, the impacts those loads have on water quality, recommended plans to eliminate or reduce the CSO loads, and identify practices to implement based on a cost-benefit analysis. LTCPs includes a Financial Capability Analysis performed according to the “Combined Sewer Overflows: Guidance for Financial Capability Assessment and Schedule Development” (USEPA, 1997). In these analyses, NYC is required to assess the cost of CSO abatement measures for water quality improvement against the median household income of ratepayers (the “Residential Indicator” or “RI”) and the “Financial Capability Indicators” (FCI) of the City as a whole, considering among other things municipal bond rating, unemployment rates, and tax revenues. The scores of these analyses are combined into a matrix to determine overall impact, and most of the NYC CSO projects are classified as a “medium-burden” financially. This is ideal, as a “high-burden” project would mean NYC is overextending financial capability, and a “low-burden” score means NYC is not maximizing available resources.

The current NYC LTCPs also include evaluations of enterococcus levels in the subject waters. This includes modeling of enterococcus levels following construction of

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the practices included in the LTCPs. The proposed rule making takes the modeled enterococcus attainment levels and memorializes them in NYS regulations as site-specific FIB criteria to provide a better measure of the health of the waterbodies.

4. Costs to NYSDEC, the State, and local governments:

The proposed rule making does not impose costs upon NYSDEC, the State, or local governments.

The proposed rule making memorializes water quality attainment levels projected to be reached by completion of LTCPs, which NYC is currently obligated to complete under an administrative consent order. Funds to complete those LTCPs have already been committed and are not affected by the proposed rule making.

A) New York City

In NYC, there are numerous municipal wastewater treatment plants and several other regulated parties that discharge into I/SD waters. All current dischargers are required to disinfect their effluent, as such, no significant additional costs will be incurred by these facilities. As mentioned above, NYC is already obligated through an administrative consent order to implement its LTCPs, and therefore, the proposed rule making does not impose costs on regulated persons or local governments in NYC above and beyond costs that are currently required.

5. Local government mandates:

The proposed rule making does not impose mandates on local governments. As discussed in Section 4 of this statement, the proposed rule making also does not impose any mandates that are not already required.

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6. Paperwork

No paperwork - record keeping or reporting - will be imposed.

7. Duplication:

The amendments to 6 NYCRR § 703.4 cause no duplication, overlap or conflict with any other state or federal government programs or rules.

8. Alternative:

Alternatives to this proposal include: (1) No action, or not amending 6 NYCRR § 703.4.

No Action – Although NYC is under an administrative consent order to complete the LTCPs, there is no regulatory mechanism in place to ensure that the water quality end goals projected by the LTCPs are attained.

9. Federal standards:

There are currently no federal FIB criteria required or recommended for the protection of secondary contact recreation and fishing best uses.

10. Compliance schedule:

The proposed rule making does not require a compliance schedule.



REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL  
GOVERNMENT (RFA)  
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1. Effect of Rule:

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

2. Compliance Requirements:

In NYC, there are numerous municipal wastewater treatment plants and several other regulated parties that discharge into I/SD waters. All current dischargers are required to disinfect their effluent, as such, no significant additional costs will be incurred by these facilities. NYC is already obligated, through an administrative consent order, to implement its Long Term Control Plans (LTCPs), and therefore, the proposed rule making does not impose any costs on regulated entities or local governments beyond those costs that are currently required.

The proposed rule making does not require a compliance schedule.

3. Professional Services:

NYC is already obligated to implement its LTCPs, 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 provide the sampling and analysis, modeling, engineering, facilities planning, project development and management expertise to assist NYC in implementation of future projects.

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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. The regulated parties are currently required by legal consent orders to implement LTCPs. Upon completion of construction projects prescribed by the LTCPs, the site-specific FIB criteria established in the rule making are projected to be attained.

5. Economic and Technological Feasibility:

The proposed rule making further protects the existing secondary contact recreation and fishing best uses in the I/SD waters by creating site-specific FIB criteria based on measurements of enterococcus. The site-specific FIB criteria are more stringent criteria than currently is required for these waters. However, various technologies exist that can be used for pollution abatement to comply with the site-specific criteria. NYC is already obligated, through implementation of their LTCPs, 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. The proposed rule making takes the modeled enterococcus attainment levels from the LTCPs and memorializes them in NYS regulations as site-specific

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FIB criteria. NYC is already obligated to develop and implement the LTCPs under an administrative consent order.

LTCPs includes a Financial Capability Analysis performed according to the “Combined Sewer Overflows: Guidance for Financial Capability Assessment and Schedule Development” (USEPA, 1997). In these analyses, NYC is required to assess the cost of CSO abatement measures for water quality improvement against the median household income of ratepayers (the “Residential Indicator” or “RI”) and the “Financial Capability Indicators” (FCI) of the City as a whole, considering among other things municipal bond rating, unemployment rates, and tax revenues. The scores of these analyses are combined into a matrix to determine overall impact, and most of the NYC CSO projects are classified as a “medium-burden” financially. This is ideal, as a “high-burden” project would mean NYC is overextending financial capability, and a “low-burden” score means NYC is not maximizing available resources.

7. Small Business and Local Government Participation:

The proposed rule making relies upon ECL §§ 3-0301 and 17-0301 for statutory authority, both of which require 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.

RURAL AREA FLEXIBILITY ANALYSIS (RAFA)  
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The proposed rule making does not impact any rural areas as defined in New York State Administrative Procedure Act Section 102(10). The proposed rule making would impact limited waters of the state, the affected Class I and SD waters are located in and around New York City. There are no designated rural areas in New York City. Therefore, the New York State Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

JOB IMPACT STATEMENT (JIS)  
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A job impact statement is not required for the proposed rule making because it does not have a substantial adverse impact on jobs and employment opportunities. The New York State Department of Environmental Conservation (NYSDEC) is proposing amendments to 6 NYCRR § 703.4 to add site-specific fecal indicator bacteria (FIB) criteria to Class I and Class SD waters (I/SD waters) to protect the secondary contact recreation and fishing best usages. The proposed site-specific FIB criteria are based on measurements of enterococcus bacteria and would supplement the current total and fecal coliform FIB criteria for these waters.

The proposed rule making would impact limited waters of the state; the affected I/SD waters are located in and around New York City (NYC).

The proposed rule making does not result in the loss of any jobs in New York State. Therefore, NYSDEC has determined that a Job Impact Statement is not required.