

Responsiveness Summary
for
Public Comments Received
on the

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES PERMIT
FOR
PRIVATE, COMMERCIAL, AND INSTITUTIONAL (P/C/I) FACILITIES

Permit No. GP-0-15-001

Issued Pursuant to Article 17, Titles 7, 8 and Article 70
of the Environmental Conservation Law

BACKGROUND

The Clean Water Act provides that sanitary wastewater discharges to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. In New York State, EPA has approved the State program which is enacted through the administration of the State Pollutant Discharge Elimination System (SPDES) program.

The SPDES General Permit for Groundwater Discharges of Treated Sanitary Sewage (GP-0-15-001) issued pursuant to Article 17, Titles 7, 8 and Article 70 of the ECL, will replace GP-0-05-001) due to expire in May 2015. This general permit applies to private, commercial and institutional (P/C/I) facilities with onsite wastewater treatment systems (OWTS) discharging from 1,000 gpd to less than 10,000 gpd (ECL Section 70-0117). A P/C/I facility may have more than one OWTS to serve multiple sources of sanitary wastewater if sufficient land area and useable soils allow, but the facility's total discharge must be less than 30,000 gpd (6 NYCRR Part 702.21(a)(i)-(iii)).

The SPDES General Permit GP-0-15-001 becomes effective on May 11, 2015.

INTRODUCTION

The New York State Department of Environmental Conservation has prepared this responsiveness summary to address the comments that were received on the draft General Permit for Groundwater Discharge of Treated Sanitary Sewage (GP-0-15-001). The draft permit was published for public review and comment in the Environmental Notice Bulletin (ENB) on November 5, 2014 with comments being due by January 5, 2015 (after a 30-day extension).

Comment #1: The proposed tripling of allowable discharge violates federal and state antidegradation requirements by removing discharges of between 10,000 and 30,000 gallons per day (gpd) from the requirement to obtain site-specific individual SPDES permits.

Response: The proposed general permit does not violate antidegradation requirements. The permit provides for the discharge of a limited quantity of treated sanitary sewage without the admixture of industrial waste to groundwater. The proposed general permit ensures that the discharge will not degrade receiving groundwater.

Although the proposed general permit allows the permittee to seek general permit coverage for combined discharges until they reach the 30,000 gpd threshold, but not 10,000 gallons per day or more from any individual system, this does not mean that the

general permit is any less protective of the environment than an individual permit. The Legislature contemplated the use of general permits for facilities such as these. The general permit, like an individual permit, requires that the on-site wastewater treatment system (“OWTS”) be properly designed, constructed, operated and maintained. Therefore, the system is not likely to fail. Furthermore, the same 10,000 gallon per day limit for individual treatment systems that was provided for in the 2005 P/C/I General Permit also applies to individual treatment systems under the proposed 2015 P/C/I General Permit. Thus, the administrative efficiencies associated with the general permit do not compromise environmental protection.

The general permit does not authorize a discharge in violation of ECL § 17-0501. Specifically, Condition #7 of the proposed general permit states that the discharge must not cause or contribute to a violation of water quality classifications and standards. Moreover, the 30,000 gpd limit for combined discharges is consistent with the exception to groundwater effluent limitation criteria set forth in 6 NYCRR § 702.21(a)(i)-(iii).

Comment #2: The proposed tripling of allowable discharge would undermine NYSDEC’s TMDL obligations to EPA generally, and specifically under the Phase II Watershed Implementation Plan for Chesapeake Bay.

Response: These discharges will not undermine DEC’s TMDL obligations to EPA because the discharge consists of a limited quantity of treated sanitary sewage without the admixture of industrial waste only to groundwater. The maximum flow from each individual treatment system is still capped at 10,000 gallons per day consistent with the requirement in the current 2005 P/C/I General Permit. An engineering review of the design of the treatment system and its construction is required. This is the same type of review that is required for an individual permit. The general permit, like an individual permit, requires that the OWTS be properly designed, constructed, operated and maintained in accordance with the *New York State 2014 Design Standards for Intermediate Sized Wastewater Treatment Systems*. An OWTS that meets these standards is not likely to fail. The focus of the Phase II Watershed Implementation Plan for Chesapeake Bay regarding OWTSs is to eliminate direct discharges to surface water and inadequate systems. The EPA Chesapeake Bay Program projects that there will be a decrease in the number of on-site septic systems in the New York State portion of the watershed. In the years since the Susquehanna-Chemung Watershed Restoration and Protection Strategy, several communities have been sewered to replace substandard on-site systems. Therefore, the general permit will not undermine NYSDEC’s TMDL obligations.

Comment #3: The proposed tripling of allowable discharge violates antibacksliding requirements.

Response: The proposed 2015 P/C/I General Permit does not violate antibacksliding requirements. First, the permit does not allow discharges to groundwater with less stringent effluent limitations. The permit maintains the maximum allowable discharge from a single system at below 10,000 gpd, which is identical to the existing 2005 P/C/I General Permit. Second, the general permit, like the individual permit, requires that the OWTS be properly designed, constructed, operated and maintained so as to protect the environment. Third, the 30,000 gpd amount is only for the combined capacity of a facility with multiple treatment systems and discharge outlets, not for the individual system flow capacity. Thus, the proposed 2015 P/C/I General Permit maintains the same effluent quantity limitations for each treatment system as the existing 2005 P/C/I General Permit.

Comment #4: The tripling of allowable discharge has not been justified.

Response: Each treatment system authorized to discharge under this P/C/I General Permit is still limited to discharging less than 10,000 gpd through an OWTS. A facility with more than one treatment system also may only discharge less than 10,000 gpd from each system with the total facility capacity limited to less than 30,000 gpd. The 30,000 gpd amount is chosen to promote administrative efficiency in the permit process without compromising environmental protection.

No surface discharges are allowed under the P/C/I General Permit. These systems must be located on the site, and designed, with construction overseen and inspected, by a professional engineer licensed to practice in New York State. The land area required to construct an OWTS increases with increasing flow. The design flow cannot be tripled and discharged to the same OWTS without causing the system to fail in a short time. The OWTS is designed based on the soil's absorption capacity and the required size increases from sandy soils to loamy soils to clays. Therefore, the Department believes that proper justification has been provided to allow the proposed 2015 P/C/I General Permit to cover a facility with multiple treatment systems/outlets and a combined capacity of less than 30,000 gpd.

Comment #5: Enforcement mechanisms should be specified in the permit to ensure compliance.

Response: The proposed general permit requires that the septic tank installed as part of the treatment system be inspected by the permittee or his agent for scum and sludge

accumulation at intervals not to exceed one year's duration and that the permittee remove scum and sludge before it exceeds one-fourth of the liquid depth so that no settleable solids will leave in the septic tank effluent. Records of annual septic tank inspections and pumping information must be retained on site and maintained for 5 years for DEC inspection. The treatment facility must also be maintained in effective working condition at all times. In addition, the facility is subject to inspection by the Department. The Department believes that these safeguards ensure that the OWTS will function properly.

The Department is authorized to take enforcement action seeking compliance and penalties for violations. Permittees must comply with applicable provisions of the Environmental Conservation Law as well as applicable provisions in 6 NYCRR Subparts 750-1 and 750-2. Penalty ranges for violations are set by statute in the Environmental Conservation Law. The Division of Water's enforcement guidance for P/C/I facilities is contained in TOGS 1.4.2.

Comment #6: Additional exclusions and permit conditions should be added to be protective of groundwater and related surface waters.

Response: On-site wastewater treatment systems are not likely to fail when they are properly designed, constructed, operated and maintained as required by the proposed permit. The general permit provides for the discharge of a limited volume of treated sanitary sewage without the admixture of industrial waste to groundwater. The general permit and the design standard protect the receiving groundwater to ensure that the groundwater standard is not violated. The Department does not believe that it is necessary for the permit to specify the nearest surface water of potential impact because surface waters do not receive a direct discharge.

The Department also does not believe that discharges authorized by the General Permit have the "reasonable potential to cause, or contribute to an excursion above any state water quality standard." In fact, permit condition #7 prohibits such discharges. Properly designed and maintained systems, as required by the general permit, ensure that both groundwater and surface water are protected.

Although the proposed general permit does not contain an exclusion for discharges to an aquifer that is the sole or primary drinking water supply or to consolidated rock or bedrock, the Department appreciates the need to protect these resources. The Department takes the location of the discharge into account when determining the appropriate type of permit or whether any permit should be issued at all. The Department, however, does not believe that discharges to primary and principal aquifers

or to consolidated rock or bedrock warrant an individual permit in every instance. Both general permits and individual permits are protective of the State's water resources.

The State does not classify waters as "High Quality Waters and Outstanding National Resource Waters" as suggested by the comment. However, the permit includes exclusions from general permit coverage for wild, scenic and recreational river corridors as well as freshwater and tidal wetlands and their adjacent areas.

The Legislature contemplated the use of general permits for these types of facilities. However, the Department has retained its authority to require individual permit coverage whenever it believes that such coverage is appropriate. The proposed general permit contains language to this effect. The administrative efficiencies of the general permit do not compromise environmental protection.

No discharge is authorized to impaired waterways on the 303(d) list or to surface waters for which a TMDL has been established. Discharge is only authorized to groundwater.

The Department notes the comments regarding submittal of additional information at the time that the permittee seeks general permit coverage, but believes that the information that it requires is sufficient.

Comment #7: The conditions in the General Permit should be used, where they are more stringent, to revise existing permits.

Response: The comment is noted.

Comment #8: The Department should consider ways this permit can support emerging ecological treatment options.

Response: The Department is receptive to the concept of using new technologies with ecological design to more effectively treat wastewater. These technologies, however, will require an individual permit.

Comment #9: The Department must consider the impacts of climate change in the permit.

Response: The proposed general permit takes climate change into account by excluding from permit coverage facilities that are located in a 100 year flood plain. In addition, General Condition 5d. provides that the Department reserves its authority to modify, suspend or revoke the General Permit based upon, among other things, a

material change in environmental conditions. The Department notes the comment regarding considering a 5 year permit term rather than a 10 year term. The 10 year permit term in the proposed general permit is consistent with the time period set forth in 6 NYCRR § 750-1.15.