

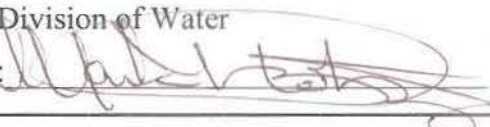
# DOW 1.2.2 Administrative Procedures and the Environmental Benefit Permit Strategy for Individual SPDES Permits

New York State Department of Environmental Conservation, Division of Water

## DEC PROGRAM POLICY

Issuing Authority: Mark Klotz

Director, Division of Water

Signature: 

Title: Administrative Procedures and the Environmental Benefit Permit Strategy for Individual SPDES Permits

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### \*\*\* NOTICE \*\*\*

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## I. SUMMARY:

This document describes the administrative steps for developing new, renewed and modified permits under the SPDES permit program. It also describes the procedures for ranking a permit by calculating a priority score, the documentation pathways used in the permitting process, and the procedures for developing the public notice published annually in the *Environmental Notice Bulletin* (ENB). The Environmental Benefit Permit Strategy (EBPS) program is administered by the Department's Division of Water (DOW) and Division of Environmental Permits (DEP).

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## **ACRONYMS LIST**

**BAT** - Best Available Technology Economically Achievable  
**BCT** - Best Conventional Pollutant Control Technology  
**BPJ** - Best Professional Judgment  
**BWP** - Bureau of Water Permits  
**CFR** - Code of Federal Regulations  
**CSO** - Combined Sewer Overflow  
**DART** - Department Application Review Tracking system  
**DMR** - Discharge Monitoring Report  
**DNA** - Discharge Notification Act  
**DOW** - Division of Water  
**EBPS** - Environmental Benefit Permit Strategy  
**ECL** - Environmental Conservation Law  
**EDP** - Effective Date of Permit  
**ENB** - Environmental Notice Bulletin  
**DEP** - Division of Environmental Permits  
**EPA** - United States Environmental Protection Agency  
**ExDP** - Expiration Date of Permit  
**ICS** - Individual Control Strategy  
**MGD** - million gallons per day  
**NPDES** - National Pollutant Discharge Elimination System  
**NSPS** - New Source Performance Standard  
**NYCRR** - New York Codes, Rules and Regulations  
**RPA** - Regional Permit Administrator  
**RWE** - Regional Water Engineer  
**SAPA** - State Administrative Procedures Act  
**SEQRA** - State Environmental Quality Review Act  
**SIC** - Standard Industrial Code  
**SPDES** - State Pollutant Discharge Elimination System  
**SSO** - Sanitary Sewer Overflow  
**STP** - Sewage Treatment Plant  
**TMDL** - Total Maximum Daily Loading  
**UPA** - Uniform Procedures Act  
**WLA** - Waste load allocation  
**WQ** - Water quality  
**303(d)** – Section 303(d) of the Clean Water Act

## **II. POLICY:**

ECL §17-0817 authorizes the Department to develop a priority ranking system and an administrative renewal process to effectively manage the large volume of SPDES permits processed by the Department. This management system developed by the Department's Division of Water (DOW) is known as the Environmental Benefit Permit Strategy (EBPS). The EBPS system became effective on August 2, 1994.

The EBPS is designed to achieve two crucial objectives: 1) establish a system that provides for timely renewal of SPDES permits and avoid a backlog of pending permit renewal applications; and 2) identify and prioritize permits that have the greatest potential for causing significant environmental harm. Thus, the EBPS is a program designed for maximizing the efficiency of developing and managing permits in accordance with the Department's SPDES program, while attaining the highest levels of environmental protection.

The EBPS has three parts:

1. New permits will follow the existing permit application procedures in accordance with 6NYCRR Part 750 (Obtaining a SPDES Permit) and Part 621 (Uniform Procedures Act) regulations.
2. Administrative renewal of all permits will be based on a short application form filed by the permittee prior to the permit expiration date. Permits that cannot be administratively renewed due to identified deficiencies will be placed on the No Administrative Renewal List and must be modified prior to renewal.
3. Review of the SPDES permit will be done by DOW technical staff in priority order based on a ranking system developed for the EBPS to determine whether any modifications are needed. Modifications are any changes that need to be made to the permit. They can occur because of a change in regulations, a change in the operation of the industry or compliance issues. Either the permittee or the Department can request a modification.

The EBPS priority ranking system uses numerical scores based on the environmental benefit that may be gained by modifying the SPDES permit. For example, a permit modification which may result in significantly reducing a water quality violation, water use impairment or a serious environmental problem would generally receive a higher priority for review than a permit modification that may have little or no effect on a standards violation, water use impairment or serious environmental problem. The EBPS system enhances the DOW's ability to improve water quality by directing staff resources to make permit modifications with the greatest potential environmental benefits

This guidance is to be used for implementing the requirements for discharges authorized under the State Pollutant Discharge Elimination System (SPDES); developing new SPDES permits; and renewing, modifying, priority ranking and tracking existing SPDES permits using the EBPS system.

## **III. PURPOSE AND BACKGROUND:**

The federal Clean Water Act authorized the development of the *National Pollutant Discharge Elimination System* (NPDES) for implementing the requirements for all discharges to surface waters of the United States (NPDES does not cover discharges to ground water). The New York State Department of Environmental Conservation (Department) was subsequently charged under New York State Environmental Conservation Law to develop and administer the State's program for meeting the requirements of NPDES. This program, which is authorized by the United States Environmental Protection Agency (EPA), is referred to as the SPDES.

The SPDES program goes beyond the requirements of the federal NPDES program in that the SPDES program also regulates discharges to ground waters of the State. The minimum threshold for applicability of SPDES to ground water discharges is 1,000 gallons per day for sanitary wastewater. Discharges that include any industrial wastewater have no minimum threshold. Discharges of less than 1000 gallons per day consisting of only sanitary wastewater are regulated by the New York State Department of Health (DOH). The Department is authorized to issue SPDES permits for ground water discharges for a maximum period of 10 years and permits for discharges to surface waters for a maximum period of 5 years.

## General and Individual Permits

Administration of the SPDES program is accomplished through the issuance of wastewater discharge permits including both *general* permits and *individual* permits.

General SPDES permits are issued to cover a category of discharges that:

- Involve the same or similar types of operations,
- Discharge the same types of pollutants,
- Require the same effluent limitations or operating conditions,
- Require the same or similar monitoring, and
- Typically have a less significant impact on the environment, either individually or cumulatively, when carried out in conformance with permit provisions.

Discharges for which general SPDES permits are issued currently include:

- Private, commercial, or institutional (P/C/I) sanitary discharges to ground water of 1000 to 10,000 gallons per day,
- Storm water discharges associated with industrial activity,
- Storm water discharges associated with construction,
- Storm water discharges associated with municipal separate storm sewer systems (MS4s), and
- Concentrated animal feeding operations.

Individual SPDES permits are issued to cover a single facility in one location that is unique with respect to discharge characteristics and other factors. It is noted that the Environmental Benefit Permit Strategy (EBPS) applies only to individual SPDES permits and does not apply to the Department's general SPDES permit programs.

## **WASTEWATER DISCHARGE CATEGORIES AND PERMIT CLASSIFICATIONS**

All discharges requiring individual SPDES permits are classified into Major, Significant Minor, Non-Significant Minor, and Petroleum Remediation according to size, type and, in some cases, EPA classification. Also considered in classifying a discharge is whether it is municipal, industrial, commercial, institutional or private.

The Division of Water (DOW) manages over 8,000 active individual SPDES permits for wastewater discharges to surface and ground waters. Of these, about 72 percent are sewage-type Non-Significant Minor private/commercial/institutional (Class 02) permits, and about 8 percent are Non-Significant Minor Industrial permits (Class 04). Although these two categories of permits account for approximately 80 percent of the total SPDES permits in New York State, they are responsible for only an estimated 10 percent of the water pollution generated. The remaining permits (approx. 20 percent) account for most of the water pollution generated and include most discharges that contain toxic elements.

### **I. Wastewater Discharge Categories**

The SPDES program places industrial, municipal, and private/commercial/institutional (P/C/I) facilities into separate discharge categories for the purpose of identifying specific requirements for permit development and compliance. The following are descriptions of the various categories of wastewater discharges that are managed under the SPDES program. See Attachment 1 - *SPDES Permit Classification Diagram* for the relationship between discharge categories and permit classifications (discussed in the following section), and Attachment 2 - *Number of Individual SPDES Permits Per Region by Class for Surface (S) and Ground Water (G) Discharges* for the numbers of various permits by classification, type and Department Region.

## **A. Industrial Discharge**

An industrial discharge is the discharge of liquid, gaseous, solid or waste substances, or a combination of them, resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause, pollution of waters of the State in contravention of the water quality standards in Article 17 of the Environmental Conservation Law (ECL). Examples include but are not limited to:

- Animal feeding operations
- Mining and silviculture operations
- Solid waste management facilities
- Water treatment plants, including municipally owned/operated facilities which treat raw water for potable, industrial, or other uses
- Power generation stations
- Cooling water discharges
- Ground water remediation operations
- Pharmaceutical research facilities
- Manufacturing operations

Note that more discharges are included in this definition of “industrial discharge” than in the Regulatory Fee Program definition of industrial facility found in ECL § 72-0602.

## **B. Municipal Discharge**

A municipal discharge is the discharge of municipal sewage from a publicly owned treatment works (POTW). Municipal sewage is defined as wastewater composed primarily of discharge of sanitary sewage from residences, primarily from facilities not owned by a municipality, with or without the admixture of industrial wastewater. A POTW is defined as any device or system used in the treatment (including recycling and reclamation) of municipal sewage that is owned by a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. It should be noted that a discharge of domestic sewage not treated by a POTW for a single or small building complex is not considered a “municipal discharge” (see C below).

## **C. Private/Commercial/Institutional (P/C/I) Discharge**

A P/C/I discharge is the discharge of primarily domestic sewage without the admixture of industrial waste, or a discharge specifically identified below. A P/C/I discharge generally refers to wastewaters generated by a single facility or building complex under single ownership and may or may not be publicly owned. In addition, for a discharge to be considered a P/C/I discharge, there can be no addition of industrial waste to the domestic sewage, and it can have no other separate industrial waste discharge outfalls. Examples of P/C/I discharges include, but are not limited to:

- Parks
- Comfort stations
- Hospitals, rehabilitation, and psychiatric centers
- Marinas
- Community centers
- Domestic sewage from airports, garages, and industrial facilities
- Correctional facilities

- Educational facilities
- Apartments and condominium complexes
- Mobile home parks
- Restaurants and shopping centers

**D. Discharges Not Requiring a Permit**

There are a number of discharges that do not require a permit as defined under Title 6 of the Codes, Rules, and Regulations of the State of New York (6 NYCRR) Part 750-1.5. Please review the Part 750 regulations for the definition of these discharges.

**II. Permit Classifications**

The following designations are used for the eight categories of SPDES permits and their associated SPDES classifications (refer to Attachment 1 - *SPDES Permit Classification Diagram*). Note that the EPA only maintains permit classifications for **surface water** discharges, which equate to the State’s classifications as follows:

<b>EPA Classifications</b>	<b>DEC Classifications</b>
EPA Major	Industrial - Class 03 Municipal - Class 05
EPA Non-Major	Industrial - Classes 01, 04, and 10 Municipal - Class 07 Private, Commercial, Institutional (P/C/I) - Classes 02 and 09

Note that not all of the permits contained in classes 01, 02, 04, 07, 09, and 10 are EPA Non-Major permits. Approximately 60 percent of these permits discharge to ground water and therefore are not part of EPA’s regulatory program.

**A. Major Permit**

This type of SPDES permit is included in a list of permits closely audited by the EPA. A Major permit *generally* applies to an industrial or municipal discharge to surface water that is relatively large in volume and/or has “toxicity potential” as described in the EPA NPDES Permit Rating Worksheet.

Industrial and municipal discharges qualify for EPA Major status by meeting the following criteria:

- **Industrial - Class 03:**  
Achieving 80 or more points on a NPDES Permit Rating Worksheet.
- **Municipal - Class 05:**  
1.0 MGD or greater - Always an EPA Major  
0.5 MGD to 1.0 MGD - Usually an EPA Major (New York)
- NOTE: Less than 0.5 MGD is not an EPA Major

Regardless of the above criteria, a permit is not an EPA Major unless it is so listed by the EPA. Since the Clean Water Act (CWA) and EPA regulate only discharges to surface water, a Major permit can only cover a discharge to surface water.



## **B. Significant Minor Permit**

The EPA considers any discharge that is not a Major discharge to be a Non-Major discharge. An EPA Non-Major discharge can only be a discharge to surface water since NPDES does not regulate discharges to ground water. In New York State, however, ECL and the SPDES regulations [see 6 NYCRR Part 750] do address discharges to ground water. Therefore, the Department considers discharges to either surface water or ground water to be Significant Minor discharges if these discharges:

- Are not EPA Major discharges;
- Are not a Petroleum Remediation Permit; and
- Are not identified by a Regional Water Engineer (RWE) as Non-Significant Minor.

A discharge is classified as Significant Minor if: a) it contains or has the potential to contain toxics, or b) if routine inspection, monitoring and/or submission of Discharge Monitoring Reports are necessary.

Significant Minor discharge permits have the following classifications:

- **Industrial - Class 01**
- **Municipal - Class 07**
- **P/C/I - Class 09**

## **C. Non-Significant Minor Permit**

A Non-Significant Minor permit may cover a discharge to either surface water or ground water. This type of SPDES permit is determined by the RWE to pose a minimal water quality risk and does not contain limitations for Priority Pollutants or other toxic constituents. Tables 6 -10 of Form NY-2C, which is available on DEC's website, can be referred to for the lists of Priority Pollutants and toxic substances.

The DOW will not generally conduct routine inspection or monitoring of these facilities, and monthly submission of Discharge Monitoring Reports (a summary of sampling results) is not required. However, for surface water permits, submission of an Annual Monitoring Report is required. The DOW will respond to complaints and water quality problems at Non-Significant Minor facilities, and the Regions may choose to provide some technical assistance to these facilities at their discretion.

Non-Significant Minor permits have the following classifications:

- **Industrial - Class 04**
- **P/C/I - Class 02**

## **D. Petroleum Remediation Permit**

This type of SPDES permit has been issued for some oil and gasoline spill cleanups. A Petroleum Remediation permit may cover a discharge to either surface water or ground water. They may require intensive Department oversight and supervision as a matter of procedure. New discharges in this category are now typically authorized by permit equivalents (requirements equivalent to a SPDES permit) administered by the Division of Environmental Remediation via a Consent Order, although some NYSDEC regions still require these facilities to obtain a SPDES permit.

Petroleum Remediation permits have the following classification:

- **Industrial - Class 10**

## **III. Permit Reclassifications**

It is possible to *reclassify* a permit from one classification to another in certain circumstances. This involves issuing a minor permit modification in accordance with the Uniform Procedures Act. Below are the possible reclassifications and procedures for achieving them:

**A. EPA Major Class to EPA Non-Major Class or EPA Non-Major Class to EPA Major Class**

Although infrequent, it is possible that the EPA will change the classification of a municipal or industrial facility from EPA Major to EPA Non-Major, or EPA Non-Major to EPA Major. If this occurs, the EPA notifies the Department of the change. The Department then changes the discharge class on the first page of the permit and the reporting requirements on the last page of the permit (Recording, Reporting and Additional Monitoring Requirements).

It is also possible that the DEC would change the classification. This is done by the DEC submitting the EPA Permit Rating Worksheet to the EPA for review and approval.

**B. Significant Minor Class to Non-Significant Minor Class**

To change the classification from Significant Minor to Non-Significant Minor, the DOW permit writer changes the discharge class on the first page of the permit and the reporting requirements on the last page (Recording, Reporting and Additional Monitoring Requirements) of the permit. To comply with 40 CFR Part 122.44(i)(2), monitoring results for discharges to surface waters must be submitted no less than once per year. For Non-Significant Minor discharges to surface waters, permit writers should check the box on the last page that requires an annual report to be submitted to the Region. For Non-Significant Minor discharges to ground waters, the box on the last page should be checked if the RWE believes that it is necessary.

**C. Non-Significant Minor or Petroleum Remediation Class to Significant Minor Class**

To change the classification from Non-Significant Minor or Petroleum Remediation to Significant Minor, the DOW permit writer changes the discharge class on the first page of the permit and the reporting requirements on the last page (Recording, Reporting and Additional Monitoring Requirements) of the permit. For Significant class permits, check the box on the last page that requires Discharge Monitoring Reports to be submitted to the Bureau of Water Compliance and the RWE.

## **IV. RESPONSIBILITY:**

The EBPS program is administered by the Department's Division of Water (DOW) and Division of Environmental Permits (DEP). The DOW is responsible for revising this policy document.

## **V. PROCEDURE:**

### **PERMIT RANKING UNDER THE ENVIRONMENTAL BENEFIT PERMIT STRATEGY (EBPS)**

The EBPS is authorized under the ECL, Title 8, Section 17-0817 and under 6 NYCRR Part 750-1.19.

The EBPS ranking is an ongoing process that takes place throughout the year. Priority ranking of SPDES permits is therefore a continuing process. Ranking scores are generally adjusted following:

- Any technical permit modifications or permit renewal using information provided by the applicant in the renewal application;
- Information received in the form of public comments following a public notice of intent to renew or modify a permit;
- Information collected by the Department;
- New waste load allocations through approved TMDLs;
- Promulgation of new effluent standards; or
- Promulgation of other regulations or guidance.

Department-initiated permit modifications are the core of the EBPS. The purpose of the EBPS is to ensure that those permits whose discharges pose the greatest potential risk to the environment, are significantly overdue for modification, or are otherwise in substantial need of modification, receive the most expedient attention. The EBPS process accomplishes this by determining a numerical rank for each permit that reflects its relative priority for modification. DOW staff initiates the process by completing a SPDES Priority Ranking Work Sheet (see Attachment 3). Included in the EBPS process for calculating priority ranks are Priority Ranking Factors, Water Quality Enhancement Multipliers, and a Permit Priority Longevity Score, all explained below.

Final rankings for permits are determined by the office having permit writing responsibility for the particular permit. The general public, the permittee, and Department staff always have the opportunity to provide input into a permit's final ranking for all permit classifications subject to EBPS.

The ECL requires that an update of the permit priority rankings be published annually. To meet this requirement, the Priority Ranking List is generally published each April in the *Environmental Notice Bulletin (ENB)*, which initiates a public comment period. This process is explained in Section III (EBPS Priority Ranking List and Public Notice) below.

## **I. Key Terms in the EBPS**

### **A. Priority Ranking Factors**

Priority Ranking Factors for SPDES permit modifications consist of 13 possible factors (reasons or justifications) describing why a permit may need to be modified. These are generic permit conditions or elements that may need to be changed or updated in order to make the permit conform to present laws, regulations and/or policy of the SPDES permit program. The factors are each assigned a numeric factor value ranging from two to ten points, reflecting the factor's relative importance for modifying a permit. The Priority Ranking Factors describe a variety of considerations, including:

- Conformance with other programs or initiatives;

- New information based on monitoring or studies;
- Required change due to implementation of a strategy to update limits based on new water body reclassification; and
- Compliance issues.

A companion document entitled *Guidance for Use of Permit Priority Ranking Factors* is used to assist with the evaluation of the ranking factors. See Table 1 for a listing of all Priority Ranking Factors and Attachment 4 for the *Guidance for Use of Permit Priority Ranking Factors*.

## **B. Water Quality Enhancement Multipliers**

Each Priority Ranking Factor is multiplied by one of three Water Quality Enhancement Multipliers that describe the general environmental benefit of modifying the permit to address that factor. Water Quality Enhancement Multipliers apply to both surface and ground water bodies. The multipliers are attributed as follows:

1. The multiplier will be 10 if the modification will eliminate a water quality standards violation, water use impairment or correct other serious environmental problems.
2. The multiplier will be 5 if the modification will significantly reduce but not eliminate a water quality standards violation, water use impairment, or serious environmental problem.
3. The multiplier will be 1 if the modification will have little or no effect on a water quality standards violation, water use impairment or serious environmental problem.

See Table 2 for more details about the Water Quality Enhancement Multipliers.

## **C. Permit Longevity Score**

The Permit Longevity Score is based on the length of time that has elapsed since the last time the permitted facility was required to submit a Long Form SPDES permit application together with comprehensive effluent sampling. Points for the Permit Priority Longevity Score are tiered based on permit classification:

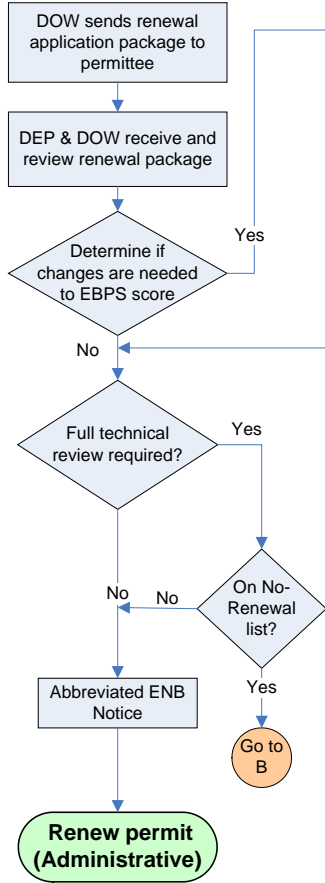
- The Permit Longevity Score for Major Permits (Class 03 and 05) add 5 points per year for years 1 through 5, 10 points per year for years 6 through 10, and 15 points per year for years 11 and up .
- The Permit Longevity Score for all other permits (Class 01, 07, 09, and 10) adds 3 points per year for years 1 through 5, 6 points per year for years 6 through 10, and 9 points per year for years 11 and up .
- A Permit Longevity Score is not assigned for Class 02 and 04 permits since these permits are a low priority in the EBPS system and have a ranking score of 0. However, a higher score can be assigned if the RWE justifies the need to raise the priority in the EBPS system in a written memo to the DOW's Director of the Bureau of Water Permits (BWP).

# NYSDEC Division of Water SPDES Administrative Renewal and EBPS Permit Processing flow chart

**A**

## Administrative Renewal

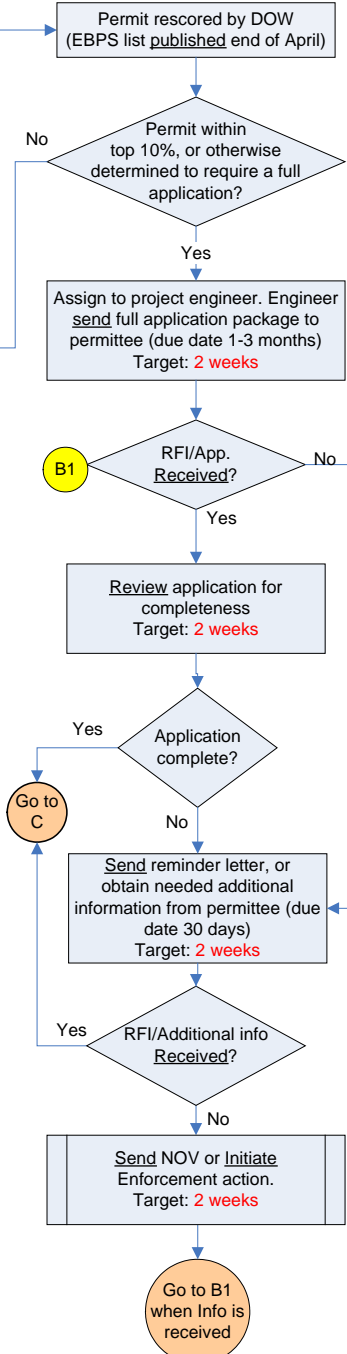
Renewals processed on a five year cycle based upon initial date of permit issuance.



**B**

## EBPS Permit Processing

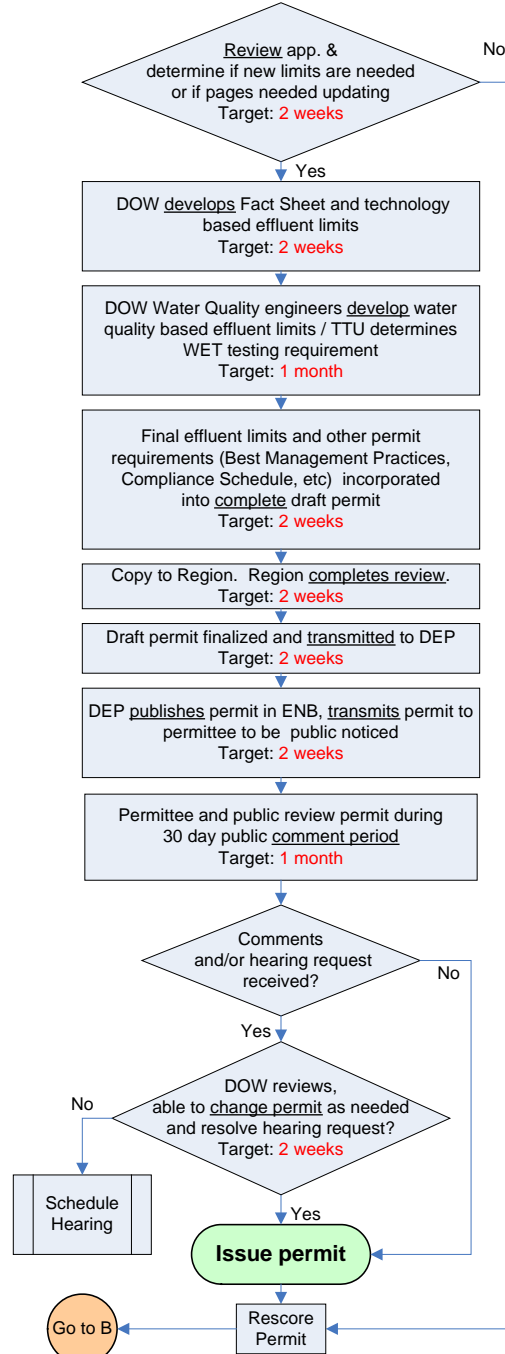
EBPS Scores published annually in ENB; application process initiated based upon potential environmental impact.



**C**

## Full Technical Review

Reviews performed based upon potential water quality impact or major changes to the facility's flow and wastewater treatment system.



**Legend**

Decision point:

Work activity:

Go-to reference:

Final action:

DOW: NYSDEC Division of Water

DEP: NYSDEC Division of Environmental Permits

ENB: Environmental Notice Bulletin

06/10

## II. EBPS Ranking Procedures and Formulas

The following procedure is used to calculate the Total Permit Priority Score, using a **SPDES Priority Ranking Work Sheet** (see Attachment 3):

1. Evaluate the 13 Priority Ranking Factors from Table 1 (below), and select the factors that apply to the permit being modified. List them on the SPDES Priority Ranking Work Sheet. Refer to Attachment 4 for guidance in evaluating the possible permit Priority Ranking Factors. Refer to TOGS 1.2.1 for the list of Bioaccumulative/Persistent Toxic Substances when considering Priority Ranking Factor 5a.
2. For each Priority Ranking Factor listed, place a Factor Value in the appropriate column on the SPDES Priority Ranking Work Sheet. Then multiply the Factor Value by a Water Quality Enhancement Multiplier listed in Table 2 (below). The result is a Factor Score for each Priority Ranking Factor.
3. Calculate the Permit Priority Longevity Score points by: 1) multiplying either a factor of 5 or 3 (dependent on permit class) by the number of years since the last Long Form application was received, up to 5; 2) a factor of 10 or 6 (dependent on permit class) for the number of years between 6 and 10; and 3) a factor of 15 or 9 (dependent on permit class) for the number of years above 10. These three values would then be added together to obtain the permit priority longevity score. The results of this calculation for up to 15 years are in Table 3 (below).
4. Sum all Factor Scores and the Permit Priority Longevity Score to obtain the Total Work Sheet Priority Score.

Note that occasionally, several individuals may be involved in completing SPDES Priority Ranking Work Sheets for a particular permit. For example, a Regional DOW inspector, Regional DOW engineer and Central Office DOW engineer may all complete a SPDES Priority Ranking Work Sheet for a particular facility. In this case, all non-overlapping Priority Ranking Factors from all SPDES Priority Ranking Work Sheets are summed and added to the Permit Priority Longevity Score for determining the Total Worksheet Priority Score. The higher the Total Worksheet Priority Score is, the higher the permit's rank will be on the EBPS Priority Ranking List. The Central or Regional Office responsible for writing the permit makes the final determination on the priority. Appeals of priority rankings are handled by the DOW Director's Office.

5. Following review of a completed SPDES Priority Ranking Work Sheet, DOW staff enters the scoring information listed on the Work Sheet into the EBPS database maintained by Central Office DOW staff.

The above process can be summarized with the following formulas:

**Factor Score** = [Factor Value per Priority Ranking Factor] x [Environmental Multiplier]

**Longevity Score** = [5 (EPA Major) or 3 (all others)] x [No. years from 1 through 5, since filing a Long Form Application, with sampling] + [10 (EPA Major) or 6 (all others)] x [No. years from 6 through 10, since filing a Long Form Application, with sampling] + [15 (EPA Major) or 9 (all others)] x [No. years from 11 and up, since filing a Long Form Application, with sampling]

**Total Work Sheet Priority Score** =  $\sum$  Factor Scores + Longevity Score

**TABLE 1**

## Priority Ranking Factors and Values for SPDES Permits Under the EBPS

<b>FACTOR NO.</b>	<b>PERMIT PRIORITY FACTORS</b>	<b>FACTOR VALUE</b>
1	Permit needs to be modified to conform to the State Combined Sewer Overflow (CSO)/Sanitary Sewer Overflow (SSO) Strategy	Primary 10 Secondary 5
2	Permit needs modification as part of a Department or Department accepted EPA initiative (e.g., watershed Total Maximum Daily Load (TMDL) implementation, multimedia permitting, Discharge Notification Act (DNA), 303D listing as impaired, etc.)	Primary 10 Secondary 5
3	Permit needs to be modified to add industrial pretreatment requirements	Primary 10 Secondary 5
4	Permit needs to be modified to add industrial Best Management Practice (BMP), Pollutant Minimization Program (PMP), or storm water requirements	Primary 10 Secondary 5
5	Permit needs to be modified for one effluent limit parameter. (Rate separately for each parameter; both surface and groundwater):	
	a. Bioaccumulative/Persistent Toxic (PCB, Dioxin, etc.)	10
	b. Parameter change for completed stream reclassification, new Water Quality (WQ) standard or important substance relative to WQ	5
	c. Other minor parameter (e.g. water treatment chemicals, pH, temperature, suspended solids, action level, etc., not associated with water quality)	2
6	Permit needs to be adjusted for a new wastewater treatment technology requirement for a parameter not identified in No. 5 above:	
	a New EPA technology regulation; BAT, BCT or NSPS	5
	b Change in Best Professional Judgment (BPJ) evaluation	2
7	Permit needs to be adjusted due to Consent Order or Permit Non-Compliance Issue	10
8	Permit is for an existing facility which triggers antidegradation	5
9	Permit appears on an EPA 304(l) toxic list and requires an Individual Control Strategy (ICS)	5
10	Permit is a municipal STP project on the State Revolving Fund loan list	5
11	Permit needs toxicity testing	5
12	Permit generated substantial public concern	10
13	Permit is a power plant needing modification for fish impingement or other fish and wildlife studies	10

**TABLE 2**

Water Quality Enhancement Descriptions and Multipliers for SPDES Permits under the EBPS

Water Quality Enhancement and/or Longevity	Multiplier
1. 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 wasteload allocation (WLA), will eliminate a water use impairment as identified by the Priority Water Bodies List (PWL); or correct other important environmental problems.	10
2. 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 PWL list; the WQ standard(s) violation or use impairment will not be eliminated by the modification.	5
3. Modification will have little or no effect on a WQ standard(s) violation, water use impairment or serious environmental problem.	1

**TABLE 3**

Longevity Scores

Number of years since last Long Form application (with sampling) filed	EPA Major (A)	EPA Non Major (B)	Longevity factor (C)	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



### **III. EBPS Priority Ranking List and Public Notice**

The ECL requires the Department to annually publish the EBPS Priority Ranking List in the Environmental Notice Bulletin (ENB) so that the public has an opportunity to comment on the suitability of the priority ranking score or provide additional information that may affect a change to a permit's score.

The EBPS Priority Ranking List shows the priority ranking scores, indicating the permit's priority for full application submittal by the permittee, full technical review by the DOW and Department-initiated modification of the SPDES permit when warranted. The ranking is determined by the total of the scores from the completed SPDES Priority Ranking Work Sheet(s) as described above for a facility. The higher the Total Worksheet Priority Score, the higher the priority for full technical review and modification.

The EBPS Priority Ranking List contains sub-lists for Central Office permits and permits originating in each of the nine Regional Offices, for a total of ten sub-lists. These are combined into one EBPS Priority Ranking List for publication. The complete EBPS Priority Ranking List is published in the *ENB*, generally every April.

Publication of the EBPS Public Notice and Priority Ranking List is the responsibility of the DOW. Before publication, a number of internal administrative steps are taken. These are summarized as follows:

1. In February, DOW staff in Central Office and Regional Offices review the permit rankings of the permits for which they are responsible.
2. Re-scoring may be done at any time that the office that drafts the permits receives input that would change a permit's priority. However, permit scores must be reviewed after notice of administrative renewal and upon issuance of a Department-initiated permit modification. Re-scoring of permits is done using a SPDES Priority Ranking Work Sheet for each facility that needs updating.
3. All new priority ranking information is sent to the BWP for entry into the EBPS database, the computerized permit database maintained by the DOW. After all scores are updated, the priority rankings are automatically adjusted by the database.
4. Once priority rankings are complete, a separate list is created for each Region and the Central Office.
5. The Central Office list and lists for each Region are then generated for the public notice, listing the SPDES #, Region, Permittee Name, Facility Name, and individual factor and total EBPS Scores for each facility.

The Priority Ranking Lists are published in the *ENB* during April of each year. Once published, the lists and the scoring sheets for the facilities on each list should be stored for reproduction, as requests for lists and scoring sheets will occasionally be received from the public.

### **IV. Mass Modifications**

The Department may choose to modify a number of permits of similar type to include similar or identical provisions. This may be necessary to implement provisions of law or regulations that apply to large numbers of permits (e.g. implementing the Discharge Notification Act). When this strategy is chosen, the action is considered to have a priority weighted by the number of modifications to be made. If the modification would have a priority score of five for a single permit, the total priority score for the mass modification would be five times the number of permits that need to be modified.

### **V. Permittee Initiated Modifications and EBPS**

Whenever modifying the SPDES permit in response to a permittee request, the Department should also review the EBPS Priority Ranking Factors and consider addressing these issues in the same modification. If the permittee request is substantial and the EBPS score significant, the Department will request that a long

form permit application with sampling be submitted. The Department will then simultaneously process the permittee initiated modification and address the permit issues identified in the facility's EBPS score.

A Long Form application should be required if a full application with sampling data has not been received in the last 15 years. Processing of both the permittee initiated modification and the long form application would occur simultaneously.

These procedures will reduce the overall number of permit modifications and conserve staff resources.

## **VI. Administrative Renewals and Cost Associated with EBPS**

Under the EBPS for SPDES permits, most renewals are typically administrative and only a notice in the *ENB* is required. The *ENB* notice is handled by DEC staff and there is no cost to the permittee for this notice. Even though the DEC typically refers to the modified permits issued through the EBPS process as "EBPS Modifications", they are actually Department initiated modifications treated as new in accordance with 6 NYCRR Part 750-1.19(d) and so are processed in accordance with 6 NYCRR Part 621.6. Therefore, permittees are responsible for the administrative costs related to EBPS modifications. These costs would include newspaper notices, hearing costs (if necessary), and other associated costs.

# **PERMIT PROCESSING PROCEDURES**

## **I. Effective Periods of SPDES Permits**

The maximum effective period for SPDES permits for discharges to surface waters is five (5) years,  
The maximum effective period for SPDES permits for discharges to ground waters is ten (10) years.

## **II. New Permits (First-Time Applications)**

### **A. Overview**

Regional staff in the Division of Environmental Permits (DEP) receive all new permit applications, except for certain project categories managed in the DEP Central Office. The DEP office that receives the application logs it into the Department Application Review Tracking system (DART), which assigns a Department identification number to the application. The DART system is a computer database that serves as a tracking system and work management tool for permit applications subject to the requirements of the Uniform Procedures Act (UPA) at 6 NYCRR Part 621.

DEP determines administrative completeness for each application, assigns a SPDES permit number, and has lead responsibility for coordinating review among involved Department programs. DEP also assures compliance with the requirements of the UPA and the State Environmental Quality Review Act (SEQRA). If the application is determined to be incomplete for any reason, it is DEP's responsibility to prepare the Notice of Incomplete Application and transmit it to the applicant. If determined to be complete, the DEP Regional Office sends the application to the Regional Water Engineer (RWE).

An application for a SPDES permit can be denied by the Department for reasons set forth in the UPA or SPDES regulations. When a permit is denied, the DOW sends a determination for denial to DEP, which then notifies the applicant of such determination.

The RWE has the primary responsibility for classifying an industrial, municipal or P/C/I permit as Major, Significant Minor, Non-Significant Minor, or Petroleum Remediation. The classification is based on:

1. The Standard Industrial Code (SIC) for the facility, and the discharge category under SPDES, i.e., industrial, municipal or P/C/I;
2. The facility characteristics;
3. The potential for a discharge to create serious problems including, but not limited to:
  - a. nuisance conditions,
  - b. impact on water supply or bathing area,
  - c. contamination of sole source, primary or principal aquifers, or
  - d. significant public concern;
4. The need to limit Priority Pollutants and other toxic constituents;
5. Specific knowledge of the discharge or applicant.

The classification of the discharge is the primary factor in deciding if a permit should be drafted in the Regional Office (a "decentralized" permit) or Central Office (a "centralized" permit). If the RWE determines that the permit should be centralized, the application is sent to the Bureau of Water Permits (BWP) for permit drafting. If the RWE determines that the permit should be decentralized, the permit application remains with the Region for permit drafting. *TOGS 1.2.3 - Decentralization of Technical Permit Drafting Authority* addresses this topic in detail.

## B. Procedures

Below are the specific procedures for processing new permit applications and finalizing new permits:

1. All new permit applications are received by the appropriate DEP Regional Office, and DEP staff complete the following tasks:
  - Review administrative completeness;
  - Initiate SEQRA review;
  - Evaluate the project for possible environmental impacts and ascertain if additional information is necessary to determine significance under SEQRA;
  - Identify other permit jurisdictions (other permits needed for the facility in addition to SPDES, i.e., air permit); and
  - Send the Notice of Incomplete Application if additional information is required.
2. When a permit application is considered administratively complete and sufficient for technical review, the DEP Regional Office transmits it to the RWE with concerns/questions and identified permit jurisdictions. The completeness deadline is 60 days from receipt by DEC of new applications for industrial or municipal SPDES permits, and 15 days for P/C/I permits.
3. The RWE makes the initial determinations for: a) Facility classification; and b) Whether the permit is centralized or decentralized. The RWE can change these initial determinations at a later time if necessary.
4. If the RWE determines that the permit should be centralized, he/she transmits the application to the BWP, noting who the DEP permit analyst will be and any DEP questions. BWP responds to the RWE with the name of the Central Office permit writer who will draft the permit. If additional time beyond that allowed by the UPA will be necessary to process the application, BWP notifies DEP and DEP requests a time extension from the applicant.
5. The DOW Regional or Central Office permit writer determines technical completeness of the application. If the permit writer determines that the application is not technically complete, he/she should prepare comments on the Memorandum of Incomplete Application (MIA), which replaces the existing Summary of Technical Deficiencies. The completed MIA should be transmitted via e-mail to the DEP permit analyst for subsequent transmittal to the permittee. It is important to use the MIA to maintain a consistent format among all Department Regions and the Central Office. If the MIA is developed in the Central Office, a copy should be sent to the appropriate RWE for information purposes.

Once the permit writer transmits the MIA to DEP, it is included in the Notice of Incomplete Application and sent to the permit applicant within 60 days.

Permit writers may directly make informal non-written requests for clarifications to the permit applicant, but should be sure the applicant understands that such informal communications do not restart the UPA time frames. It is imperative that the permit writer exercise caution in obtaining technical clarification informally to avoid having the permit applicant control (through delay in applicant response time) Department review time and risk exceeding a UPA time frame; this could result in a determination of completeness by default. To avoid this possibility, the permit writer should take into consideration how far along in the UPA time frame the application review has proceeded, and use judgment in setting a deadline for the permit applicant to respond with requested information. The permit writer should strongly consider verbally stating a deadline for response. Information submitted as a result of an informal request should be submitted to DEP in addition to DOW so that both files are accurate, and the SEQRA record is based on complete information. If the information needed is substantive, the request should be formalized through DEP so that deadlines or time frame suspensions can be documented.

6. If the application is complete:
  - DOW develops the draft permit
  - DEP completes SEQRA review
  - DEP develops a Notice Of Complete Application
7. DEP sends the Notice of Complete Application and draft permit to the permittee and publishes the Notice of Complete Application in the *ENB*. The permittee is then required to publish the Notice of Complete Application in a newspaper of general circulation for the area in which the project is located. The notice should announce a 30-day comment period (minimum).
8. The DEP and DOW consider comments from the applicant and interested parties and determine if a public hearing is necessary.
9. If a hearing is held, it is held in accordance with 6 NYCRR Part 624 and Department procedures for hearings.
10. Public comments are reviewed by the DOW and DEP and a responsiveness summary is prepared by the permit writer and distributed.
11. The permit is finalized by the DOW after comments or other requirements are addressed.
12. The final permit is issued by the DEP office managing the review.

### **III. Reauthorization of Indefinitely Extended Permits**

Starting in the early 1980s, the Department indefinitely extended the maximum effective period for many Non-Significant Minor P/C/I (Class 02) permits for administrative expediency. This decision recognized that a wastewater discharge in this class is minor and has an insignificant impact on the environment. The Department is now taking action to establish a finite effective period and require periodic renewal of these permits.

Permittees are required to submit a signed application for a permit and to answer questions regarding the status of their discharge and wastewater treatment system. After satisfying the procedural requirements of the UPA, including public notice, permits are recertified but with a new finite effective period. Discharge Notification Act requirements are also addressed during a permit reauthorization (see the section Discharge Notification Act Procedures, in this TOGS). Permit reauthorizations are administered in the Central Office by the BWP and DEP. Recertified permits are subject to the same renewal procedures as other SPDES permits.

### **IV. No Administrative Renewal List**

#### **A. Overview**

The 1972 Clean Water Act requires permits to be renewed every five years (maximum) for EPA-delegated permits (permits for discharges to surface waters). In addition, the ECL requires non-delegated permits (discharges to ground waters) to be renewed every ten years (maximum). All permit renewals are administered in the Central Office. A permit renewed administratively extends the effective period of a SPDES permit without modifying the requirements.

Most permits only require an administrative renewal. Certain permits cannot be administratively renewed as they have identified deficiencies or missing requirements, and must be modified before they can be renewed. The DOW maintains a list of these permits, called the “No Administrative Renewal List” (NARL). Permits are added to the NARL if they fall into any of the following categories:

1. Permits requiring modification based on new Waste Load Allocations required by a TMDL;
2. Permits that require incorporation of effluent limits based on new EPA Effluent Limit Guidance. If limits apply to a majority of SPDES permits, DEC and EPA will develop an implementation schedule;

3. Permits for which the EPA and the Department have determined a full technical review is necessary to include provisions in or make changes necessary to comply with the Clean Water Act;
4. Class 01, 03, 05, 07, 09 or 10 permits for which the permittee noted that a permit modification is needed;
5. Any permit for facilities that discharge into a 303(d) listed water (or into waters that NYSDEC believes may need to be added to the 303(d) list), if
  - a. the permittee discharges a pollutant that is the cause of the impairment and
  - b. the effluent limit for that pollutant is not water quality based (Section 303(d) of the Clean Water Act requires states to identify impaired waters, where specific designated uses are not fully supported); and
6. Permits for facilities needing review of Clean Water Act Part 316 (a) and (b) requirements (for cooling water intakes and thermal discharges)

Division of Water staff review each of the above categories on a periodic basis and, as necessary, add or remove facilities from the No Administrative Renewal List. For example, revisions to the 303(d) list are reviewed to determine whether facilities which discharge to the listed waterbodies are contributing any pollutants that are the cause of impairment to these waterbodies.

## B. Procedure

DOW maintains the No Administrative Renewal List and updates it annually. Permittees are sent an administrative renewal application in accordance with Section V. below. It is imperative that the permittee complete and submit the renewal application to the Department in a timely and sufficient manner. When the renewal application is received in a timely and sufficient manner, processing of the renewal application is put on hold until such time as the permit has been modified to account for the condition that caused it to be placed on the No Administrative Renewal List as well as any other outstanding issues. Facilities with SPDES permits that are placed on the No Administrative Renewal List and expire before they are renewed can continue to operate under the State Administrative Procedures Act (SAPA) if they submitted a timely and sufficient renewal application. However, when the permit is ready to be renewed, the renewal and modification processes would combine, and the permit will have a new effective date based on the renewal date. The continuing of the renewal increments used in the administrative renewal process would not be used where the expiration date of the previous permit has been exceeded.

## V. Administrative Renewals of SPDES Permits

### A. Overview

Permit renewals under the EBPS require:

- an abbreviated application;
- administrative review of the application and existing permit (including checking to see if it is on the No Administrative Renewal List and whether the EBPS priority ranking is up to date.); and
- public notice to obtain comments that may help in determining a permit priority ranking or placing the facility on the No Administrative Renewal List.

Discharge Notification Act requirements are also addressed during all permit renewals (see Discharge Notification Act Procedures, p 27 of this TOGS).

In describing SPDES permit renewals, it is necessary to differentiate between Class 02 dischargers and all other discharge permit classifications, as the Class 02 permit renewal forms are slightly different than those used for all other types of permits.

## B. Procedure

1. Approximately 10 months before the Expiration Date of Permit (ExDP), the BWP sends a short form application packet containing the following forms to the permittee:
  - SPDES Notice/Renewal Application/Permit (Part 1 is completed by the BWP before sending);
  - Questionnaire (Part 4 of the application);
  - Wastewater Characteristics Form (WCF; only for significant permits and non-significant permits to surface water);
  - Request for SPDES Application Forms; and
  - Instructions, Background, and a Permit Self Evaluation List.

The BWP notifies permittees of the requirement to submit a renewal application. However, the permittee still has the responsibility to submit a timely application in the event no notification is received, as noted in 6 NYCRR Part 750-1.16(a). Note that the Department may choose to require the applicant to complete a full application for permit renewal.

2. The permittee returns the Notice/Renewal Application/Permit to the DEP Central Office, with Part 2 (SPDES Renewal Application) and Part 4 (SPDES Renewal Application Questionnaire) of the packet completed and signed, and the sampling information required by Wastewater Characteristics Form attached to the signed application.
3. DEP reviews Parts 2 and 4 of the renewal application, forwards a copy of the application and sampling information to the permit writer for review, and following this review makes a determination of application sufficiency. If the forms are not complete, a Notice of Incomplete Application is transmitted to the permittee requesting the missing information. During this review, DEP also checks the No Administrative Renewal List. If the facility is on the list, DEP sends a letter to the facility indicating that the permit needs a full technical review prior to renewal and that the DOW will contact the facility. The letter also explains the status of the renewal request and states that the current permit will remain operative past the expiration date in accordance with SAPA. The DOW is copied on the letter.
4. DEP reviews the SPDES renewal application and Questionnaire to determine whether the permit is a significant class permit. If determined to be non-significant (Classes 02 and 04), DEP sends a copy of the renewal application to the RWE for review and Central Office DEP renews the permit. The region may modify the permit after review of the short form renewal application. If determined to be significant, the application is sent to the BWP who processes it for review and approval prior to administrative renewal moving forward.
5. When the BWP receives an application for review, the following is performed:
  - If the questionnaire notes that a modification of the permit is already underway for a significant class permit, BWP should speak with the DEP to determine whether the renewal should be placed on hold and the facility added to the No Administrative Renewal List until the permit is modified. One issue to be discussed is the expiration date of the permit and how it relates to the submittal date of the renewal notice, as a permit can only be SAPA extended if the renewal application was timely and sufficient. In order to provide uninterrupted permit coverage to the permittee, the permit may be renewed while it is being modified.
  - If the questionnaire notes that no modification is necessary or it is unclear whether a modification is necessary for a significant class permit, the BWP reviews the information to determine if the administrative renewal can move forward or if the facility needs to be placed on the No Administrative Renewal List.
  - If the questionnaire notes that a modification of the permit is necessary, the BWP reviews the modification request. If the modification request includes any of the factors listed in Section IV.A above, BWP places the facility on the NARL. If the request is minor and does not include any of the factors in IV.A. above, the facility is not placed on the NARL and the BWP reviews the request

for completeness. Once a complete modification request has been submitted, BWP modifies the permit in accordance with established regulations and guidance.

- If review of the Wastewater Characteristics Form shows that the discharge contains pollutants not contained in the current permit, the BWP may modify the EBPS priority ranking score or choose to call the permit in for full technical review.
  - The BWP completes the “Memo and Tracking Log for Administrative Renewals” for significant class permits and transmits the memo to DEP indicating whether administrative renewal can proceed or if the facility will be placed on the No Administrative Renewal List. The BWP may modify the EBPS priority ranking score for the permit.
6. DEP performs one of the following actions:
- If administrative renewal can proceed, DEP publishes the consolidated Public Notice for SPDES Renewal in the *ENB* to signal the Department’s intent to issue a renewed permit with no substantive changes in permit provisions. A 30-day public comment period is provided by this notice.
  - If the administrative renewal cannot proceed, DEP transmits a letter notifying the permittee and informing them of the required next steps. The procedure would then be the same as that for permittee-initiated permit modifications, which would require a full application and technical review.
7. If there are **no substantive or significant comments** received during the public notice of the administrative renewal, as determined by DOW and DEP in concert, DEP issues a Notice/Renewal Application/Permit by signing and dating Part 3 of 4 of the short form renewal application that renews the existing permit and is intended to be stapled to the top of the existing permit. A copy is sent to the BWP Permit Coordinator, the DEP Regional Permit Administrator, and the RWE. It is also sent to Suffolk County Department of Health Services when applicable.
8. If there are **substantive or significant comments**, they are factored into the priority scoring for the permit by BWP, and a response to public comments is prepared by the permit writer. In limited circumstances where the comments justify immediate permit modification, the permit is referred to a permit writer for revision. In addition, the permit may be placed on the No Administrative Renewal List and/or referred to the permit writer to address the comments in a permit modification.
9. If necessary, DEP will, coincident with renewal, modify the existing permit to include the Discharge Notification Act pages with the final permit before transmitting it to the permittee (See Discharge Notification Act Procedures in this guidance).

## VI. Permittee-Initiated Permit Modifications

### A. Overview

A permit modification may be initiated by a permittee at any time. For example, the permittee may request an adjustment to, or addition of, an effluent parameter due to a change in process; a lessening or elimination of a permit limit or monitoring requirement; or modification of reporting requirements.

### B. Procedure

Under the UPA, decisions on permit modification are to be made within 15 calendar days of receipt of such request, unless one of the following conditions is true: 1) the Department determines that an application for modification is to be treated as a new application per criteria contained in the UPA (all discharges to surface waters are treated as “new” for the purposes of the UPA), or 2) the modification is for an EPA-delegated SPDES permit that must be treated as a new application per federal requirement.

If the Department determines to treat the application as new and it is a UPA Major, DEP publishes a Notice of Complete Application in the *ENB* and the permittee publishes the notice in a newspaper of general circulation for the area in which the facility is located. The notice identifies the proposed permit changes and the availability of the draft permit. DEP has lead responsibility for coordinating review among involved Department programs and for compliance with the requirements of the UPA and SEQRA.



When the Department determines that the permittee-initiated permit modification is to be treated as a new application, the procedures are the same as those for new permits, although this type of action is less likely to trigger full SEQRA or technical review. Refer to the procedures under New Permits (First-Time Applications) above for the detailed steps involved.

## **VII. Department-Initiated EBPS Permit Modifications (EBPS Mod)**

### **A. Overview**

EBPS modifications are priority driven. The order in which permits are modified is typically determined by the priority ranking score in the EBPS Priority Ranking List. When the priority ranking score meets the working threshold, i.e., the score in which the DOW begins working on permit modifications, an information request is sent to the permittee. Once the complete application is received, the DOW permit writer conducts a full technical review of the existing permit and the information provided by the permittee about its facility operations and wastewater treatment.

The Department may at any time rescore facilities and/or initiate an EBPS modification on any facility on the EBPS Priority Ranking List. Examples of situations which may increase a permittee's priority ranking include: a permit writer's best professional judgment (BPJ); a change in a receiving water's classification; a change in a categorical limit; a change to an existing water quality standard; changes to other regulatory or program requirements; or significant or chronic non-compliance by a permittee.

The UPA does not affect this process until the public notice of the proposed modification. DEP has lead responsibility for coordinating review among involved Department programs and for compliance assurance with the requirements of the UPA and SEQRA.

### **B. Procedure**

1. The BWP (for a centralized permit) or the RWE (for a decentralized permit) mails an information request package to the permittee that includes a cover letter and one or more of the following forms, as applicable:
  - EBPS SPDES Priority Ranking Work Sheet
  - Application Form NY-2A for Municipal Facilities
  - EPA Form 2B - NPDES - Concentrated Animal Feeding Operations
  - Application Supplement for EPA Form 2B
  - Application Form NY-2C for Industrial Facilities
  - EPA Application Form 2E - Facilities Which Do Not Discharge Process Wastewater
  - EPA Form 2F - NPDES - Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity
  - Mixing Zone Analysis
  - Request for Information Cover sheet
  - Application Completeness Review Checklist
  - EBPS Information Summary
  - Additional Information Request
2. The permittee submits the completed forms to BWP or the appropriate Regional Office, in accordance with the deadline required by the information request
3. The appropriate DOW office performs a full technical review (evaluation of all aspects of the permit to ensure consistency with current regulations, standards, guidance and policy) and determines if permit modifications are necessary. If modifications are not necessary, the DOW transmits a letter to the

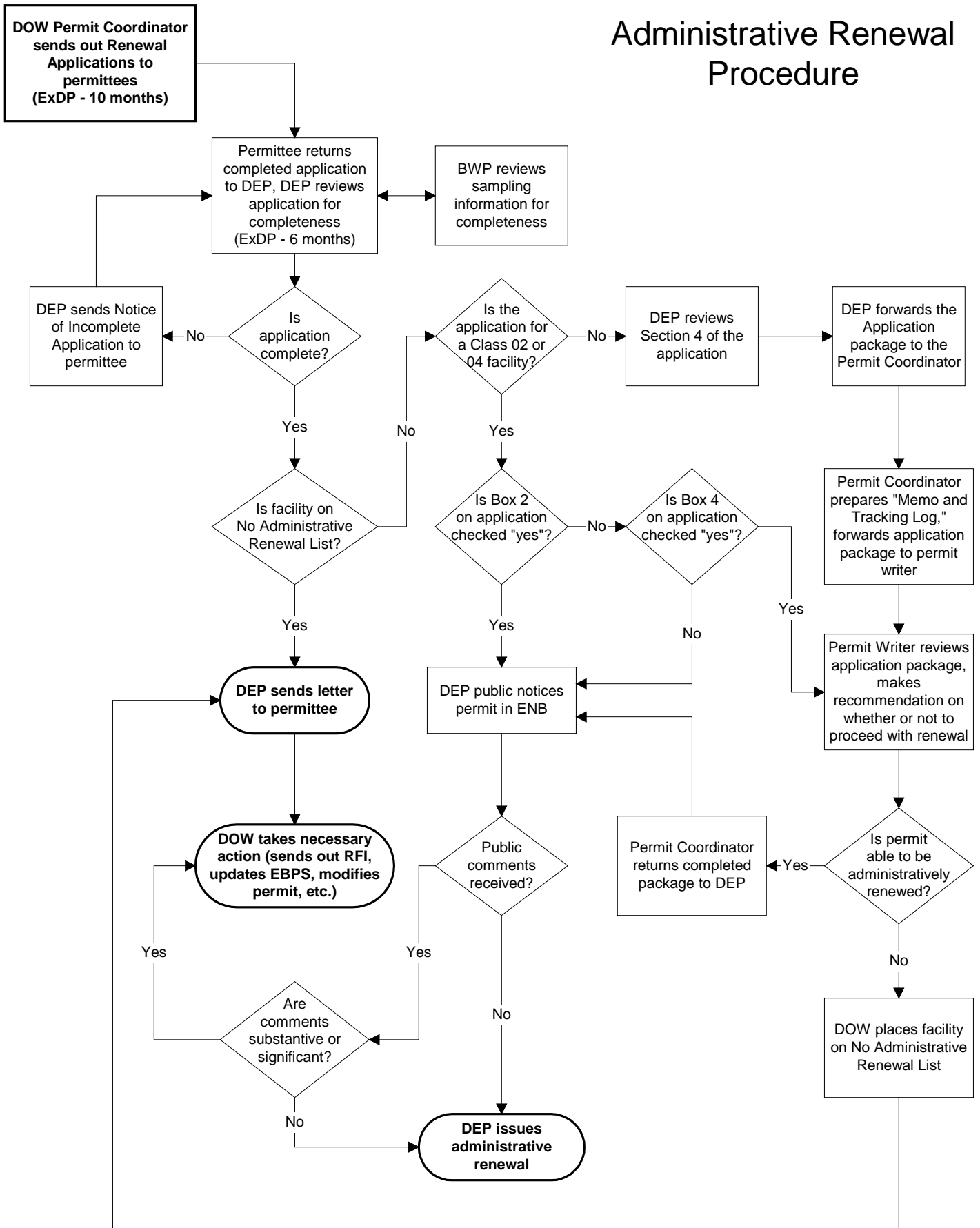
permittee notifying them that no modification is necessary. If modifications are necessary, the DOW drafts the modification and does the following:

- If it is a centralized permit, the DOW Central Office transmits the draft modifications to the DOW Regional Office for comment. The DOW Central Office and DOW Regional Office resolve any issues. Once resolved, the DOW Central Office transmits the draft permit with Fact Sheet to the appropriate DEP Office, with a copy to the DOW Regional Office.
  - If it is a Regional permit, the DOW Regional Office transmits the draft permit with Fact Sheet directly to the appropriate DEP Office.
4. When the DEP receives a draft permit, DEP sends the permittee a letter communicating the Department's intent to modify the permit and a copy of the draft permit. The letter includes the reasons for modification and the permittee's right to submit comments and/or request a hearing should he or she find the permit changes unacceptable.

For all modifications that change the permit requirements, DEP publishes a Notice of Intent to Modify in the *ENB*, and the permittee publishes the notice in a newspaper in general circulation for the area in which the facility is located. The Intent to Modify identifies the proposed permit changes and the availability of the draft permit. The permittee is responsible for the cost of newspaper publication as well as other administrative costs noted under the section called *EBPS Priority Ranking List & Public Notice* in this guidance. A minimum 30-day comment period is required.

5. The permittee has the following choices after receiving the draft modifications:
- Request an extension of the comment period;
  - Make a statement against the draft modifications;
  - Request a hearing;
  - Accept the draft modifications;
  - Make no response (considered a *de facto* acceptance).
6. The permit is finalized by the DOW after comments or other requirements are addressed (there may be additional iterations to the draft modifications). As part of this process, the permit may be renoticed if the permit has been redrafted and either substantial changes or less stringent requirements have been included.
7. The final modified permit is issued by the appropriate DEP Office with an ENB Notice.
8. Following issuance of the final permit, the permit writer will rescore the priority ranking of the facility.

# Administrative Renewal Procedure



# DISCHARGE NOTIFICATION ACT PROCEDURES

## I. General Information

### A. Overview

The Discharge Notification Act (DNA) was enacted by the New York State Legislature as a means to provide notice to boaters, anglers, swimmers, and all other members of the public of the presence of a wastewater discharge to a surface water and possible contact with contaminated wastewater. It became effective on October 1, 1996.

The DNA requires that a sign be posted near the outfall of a discharge. It also requires the discharging facility to maintain a data repository for Discharge Monitoring Reports and make it accessible to the public. The Department established the requirement for the sign to be at least 18" x 24" with white letters on a green background. It is important to note that there are two exclusions to having to comply with the DNA. The DNA does **not** apply to:

- Discharges to ground water - The DNA is entirely inapplicable to ground water discharges.
- Discharges composed exclusively of stormwater - Caution must be exercised here, because stormwater that is contaminated with pollutants (e.g. toxics, petroleum, or other types of man-induced substances) before discharge, such as from a contaminated stormwater retention pond, are **not** considered "exclusively stormwater," and are therefore subject to the DNA.

Even though the statutory requirements of the DNA specify applicability to EPA Major discharges, the Department applies the DNA to all surface water, including Significant Minor, Non-Significant Minor, and Petroleum Remediation, unless waived (waivers explained below). These three classifications are referred to as Non-Major. The Department initiated Phase I of the DNA to incorporate the requirements into the permits for the Major dischargers first. Subsequently, Phase 2 of the DNA was initiated to address Non-Major discharges. For existing discharges, the DNA has been applied to all EPA Major permits. For Non-Major discharges, modification of existing permits is ongoing.

Recognizing the diminished potential for environmental impacts from a Non-Major discharge, Phase 2 has simpler waiver application procedures than those used for EPA Major dischargers. First, DNA applicability for Non-Major dischargers is addressed only at the time of permit renewal, rather than taking immediate action to amend an existing permit. Second, if a discharge meets any of several criteria, a Non-Major permittee does not have to apply for a waiver from the DNA, but need only submit a Notice of Waiver advising the Department of its belief that the DNA does not apply.

The Notice of Waiver form for Non-Major dischargers is different from the Waiver Request form, which is only used for EPA Major dischargers. It should also be noted that an RWE may disagree with a Notice of Waiver and impose DNA requirements on any Non-Major discharger, if justified. Both forms of waiver are discussed in detail below.

When any surface water discharge permit is newly developed, modified or renewed, the DNA must be taken into consideration. This always involves the insertion of a DNA requirement in the permit. Even if an outfall may eventually be waived from DNA requirements, it is still necessary to include the DNA requirement in every SPDES permit for a surface water discharge. Note that the possibility of a waiver comes after a newly developed, modified or renewed permit becomes effective. The provision for DNA posting must be included in every permit with the caveat that compliance is not required where waiver criteria are met. This ensures that the Department can take enforcement action in those instances in which self-waiver determinations are subsequently determined not to be in satisfaction of the waiver criteria. Sample permit pages can be found at L:\DOW\SPDESFORMS\REORGANIZED PERMIT FORMS; for regions it would be the Q drive.

## **II. Major Discharger Permits**

### **A. Overview**

The first phase of DNA program implementation, which covered only Major SPDES dischargers, was initiated on September 26, 1997. The Department sent letters to all Major discharge permittees giving each a Notice of Intent (NOI) to modify their permit to incorporate DNA requirements. All facilities receiving the NOI had until October 31, 1997, or if they submitted a Waiver Request form, 90 days from the date of the Department decision letter granting or denying the waiver, to comply with the DNA.

By submitting a Waiver Request form, it was possible for a Major facility to receive a waiver from the DNA if the outfall in question met any of the following criteria:

- A sign cannot reasonably be maintained. Examples include seasonal flooding or ice damage.
- A sign is not consistent with another law. An example would be a conflict with transportation law for a discharge in a rail corridor.
- The location of a sign would not provide for a public purpose. Examples include a sign located on private, inaccessible property, or a below grade outfall that discharges into another outfall.
- The discharge is temporary. An example would be a discharge from a construction site.
- The discharge is authorized under a general permit. An example would be a discharge authorized under the stormwater general permit.

### **B. Procedure**

#### **1. New Major Permits**

The need for developing a new permit that the Department believes will qualify as a Major in New York State is relatively infrequent. If the need arises to develop a new EPA Major facility permit, however, the permit writer must include the DNA page “MAJORNEW.DOCX” in the permit. A Waiver Request form should be transmitted to the permittee with the permit, when finalized.

#### **2. Modification of Major Permits**

During any Major permit modification, the presence of a DNA requirement in the permit should be verified. If a DNA permit page is already present in the permit, it must be replaced with either the form “CONTINUE.DOCX” or similar language for continuing compliance with the DNA in the modified permit, since DNA requirements have already been addressed. If the DNA permit page is not present, the permit writer should contact the BWP for follow-up.

#### **3. Renewal of Major Permits**

Permit renewals for Major dischargers are typically initiated by the BWP with the mailing of a Notice/Renewal Application/Permit. After these forms are completed by the permittee, they are sent back to the DEP Central Office, where DEP does one of two possible steps:

- For a permit that is logged in the EBPS database as having DNA requirements already in the permit, the permit writer should add the DNA Continuation form or add similar language to the permit. The DEP Central Office then sends out a page extending the existing permit.
- For a permit not containing DNA requirements, DEP modifies the permit by including the DNA Requirements permit page in the final permit.

#### **4. Waiver Request Procedures (Major Permits Only)**

There may be cases where an existing Major discharger adds a new outfall to its facility or changes its existing outfall configuration. There may also be a case where a facility is newly-listed (by the EPA) as a Major discharge facility. If any of these scenarios occurs and the permittee wishes to request a waiver from the DNA for an outfall, the permit writer should contact the BWP to obtain the form and procedures for requesting the waiver.

NOTE: A Waiver Request form can be used only by a Major discharge permittee. It is not a part of the permit, and remains a separate document. It should be mailed to the permittee along with the new, renewed, or modified permit, when the permittee has not yet addressed DNA requirements.

### **III. Non-Major (Significant Minor, Non-Significant Minor, and Petroleum Remediation) Discharger Permits**

#### **A. Procedure**

##### **1. New Non-Major Permits**

In developing a new Non-Major permit, the permit writer must include the DNA pages from the document MINORNEW.DOCX in the final permit. The permit writer must also include the Notice of Waiver form with the final permit transmitted to the DEP.

##### **2. Modification of Non-Major Permits**

It is possible that during modification of a Non-Major permit, DNA-related pages or requirements will already be included from a previous modification. It is also possible that a permittee may have already put up a sign and established a data repository independent of and before permit modification, after hearing of DNA requirements. Procedures for addressing DNA requirements during Non-Major permit modification are as follows:

- a. *If the Permittee is Already Complying With the DNA:* If it is known that a permittee is already complying with the DNA at the time of permit modification, and it is only a matter of the permittee continuing to comply with the DNA, the form CONTINUE.DOCX or DNA requirements should be included in the final modified permit. In this case, no further action has to be taken to address the DNA by the Regional Office, Central Office, or permittee unless facility operations change that warrant a re-examination of DNA requirements.

Whether a modification is taking place in a Regional Office or the Central Office, it is necessary for the permit writer to ensure that the DNA permit pages continue to be included in the permit undergoing modification. This must be done even if a DNA waiver had been granted in the past, since conditions may have changed.

- b. *If the Permittee is Not Yet Complying With the DNA:* If the DNA has not yet been addressed during a permit modification, the DNA page MINORMOD.DOCX must be included with the final permit. The DOW permit writer assembles the final permit language and related documents and transmits them to the appropriate DEP Office, where the permit is finalized and sent to the permittee. The DEP must also include a Notice of Waiver form with the transmittal, if not already included by the BWP.

##### **3. Renewal of Non-Major Permits**

Permit renewals for Non-Major dischargers are typically initiated by the BWP, with the mailing of a Notice/Renewal Application/Permit. After these forms are completed and returned to the DEP Central Office, DEP does one of two possible steps:

- For a permit that is logged in to the EBPS database as having DNA requirements already in the permit at the time of renewal, the DEP Central Office sends out a page extending the existing permit.
- For a permit not containing DNA requirements, DEP will add the form MINORMOD.DOCX to the final permit and a Notice of Waiver form for transmittal with the permit to the permittee.

#### **4. Notice of Waiver Procedures (Non-Major Permits Only)**

*Notice of Waiver forms can be used by only Non-Major discharge permittees.* They are sent with new permits, renewed permits, or modified permits that do not use the CONTINUE.DOCX page. The following procedures summarize Notice of Waiver steps to be taken by the BWP and DEP.

- a. A Notice of Waiver form is added to a permit package by either the BWP or DEP, as follows:
  - For a new or modified permit, the BWP includes the Notice of Waiver form with the permit and related documents in the transmittal to DEP. DEP includes this form with the transmittal of the final permit to the permittee.
  - For a renewed permit, DEP includes the Notice of Waiver form with the permit renewal and related documents for transmittal to the permittee.
- b. If a permittee believes that its discharge falls into any waiver category itemized in the Notice of Waiver, it can complete that form and send it to the BWP.
- c. The BWP sends an Acknowledgment Letter to the permittee and provides copies of both the Notice of Waiver and Acknowledgment Letter to the RWE.
- d. The BWP and appropriate Regional DOW office permanently file the permittee's Notice of Waiver and Acknowledgment Letter.
- e. If the RWE disagrees with the permittee's Notice of Waiver, he or she notifies BOTH the permittee and Central Office that DNA signage and public repository requirements must be complied with.

#### **NOTE:**

- A Notice of Waiver form is not a part of the permit and remains a separate document. It should be mailed to the permittee along with the new, renewed, or modified permit, as long as the permittee has not yet been subject to the DNA.
- The RWE can disagree with a Notice of Waiver upon receipt of the copy from the Central Office, or at any time thereafter, such as discovery of certain facts during an inspection, a change in a permittee's discharge quality, or for any other reason.

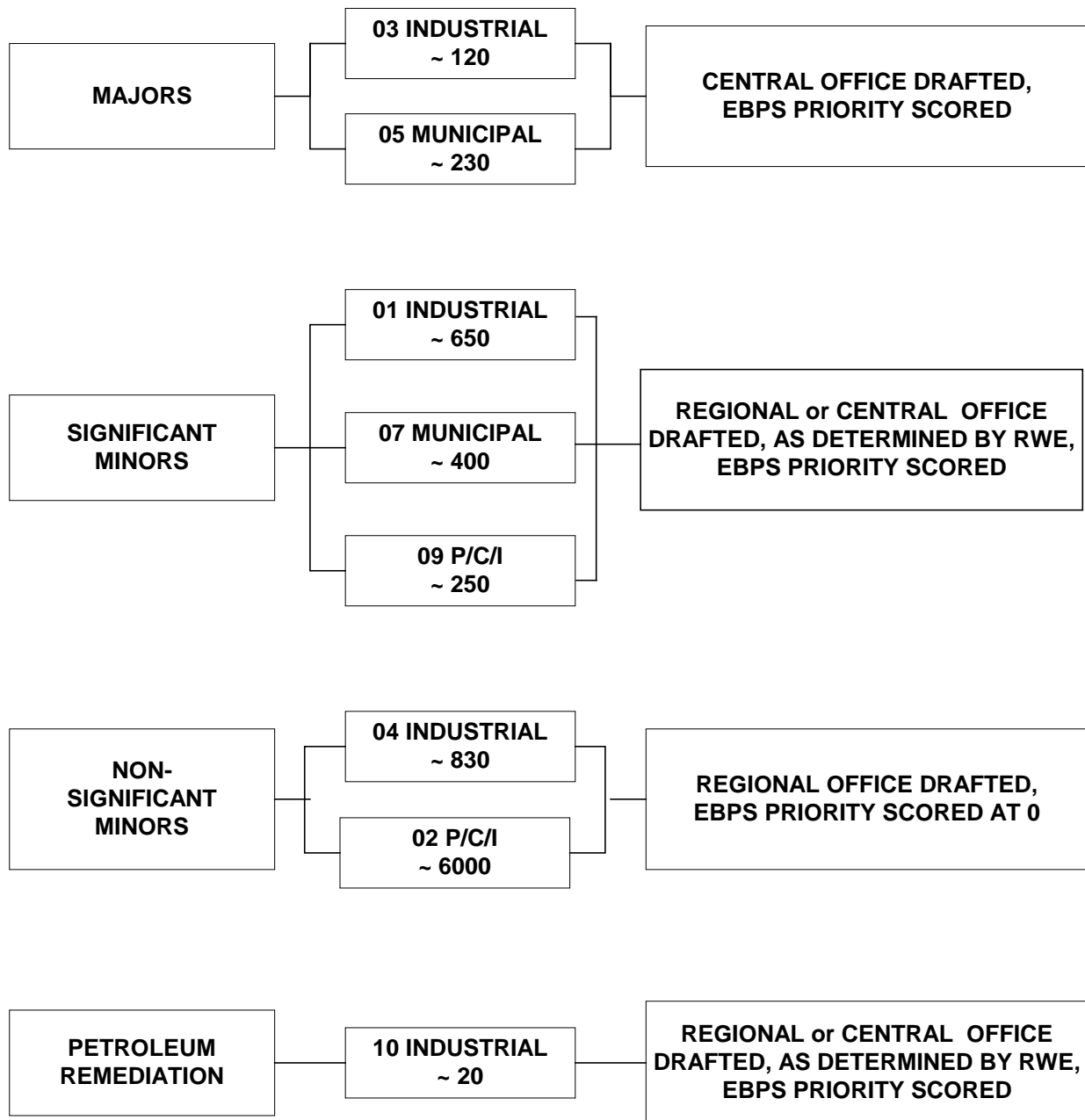
## **VI. RELATED REFERENCES:**

Other related TOGS can also be referenced for guidance with industrial and municipal permitting. These include all TOGS within the 1.1.x - 1.3.x series.

# ATTACHMENT 1: SPDES PERMIT CLASSIFICATION DIAGRAM

## SPDES PERMIT CLASSIFICATION DIAGRAM

Data from FEE System March 19, 2007





**ATTACHMENT 2: INDIVIDUAL SPDES PERMITS PER REGION BY CLASS/TYPE FOR SURFACE (S) AND GROUND WATER (G) DISCHARGES**

Data from FEE System July 18, 2010

Class	Type	Region									Total
		1	2	3	4	5	6	7	8	9	
<b>01</b>	<b>G</b>	69	3	7	12	2	1	4	17	8	<b>123</b>
	<b>S</b>	24	45	116	67	12	38	64	60	54	<b>480</b>
<b>02</b>	<b>G</b>	2138	8	640	330	339	249	273	235	307	<b>4519</b>
	<b>S</b>	9	5	495	264	84	120	122	230	240	<b>1569</b>
<b>03</b>	<b>G</b>	1	0	1	0	0	0	0	0	0	<b>2</b>
	<b>S</b>	4	10	10	11	10	14	19	13	24	<b>115</b>
<b>04</b>	<b>G</b>	162	6	22	24	45	10	15	15	14	<b>313</b>
	<b>S</b>	9	10	115	77	47	59	69	65	93	<b>544</b>
<b>05</b>	<b>G</b>	0	0	0	1	1	0	0	0	0	<b>2</b>
	<b>S</b>	19	14	37	26	16	21	27	33	35	<b>228</b>
<b>07</b>	<b>G</b>	23	0	2	4	7	1	4	0	3	<b>44</b>
	<b>S</b>	5	0	93	49	32	52	42	45	44	<b>362</b>
<b>09</b>	<b>G</b>	155	0	1	3	0	0	3	0	0	<b>162</b>
	<b>S</b>	5	2	18	26	8	2	30	5	2	<b>98</b>
<b>10</b>	<b>G</b>	0	0	1	0	1	1	0	0	0	<b>3</b>
	<b>S</b>	0	1	3	1	0	2	0	0	0	<b>7</b>
<b>Total</b>	<b>G</b>	2548	17	674	374	395	262	299	267	332	<b>5168</b>
<b>Total</b>	<b>S</b>	75	87	887	521	209	308	373	451	492	<b>3403</b>
<b>Total</b>	<b>All</b>	2623	104	1561	895	604	570	672	718	824	<b>8571</b>

# ATTACHMENT 3: SPDES PRIORITY RANKING WORK SHEET

<b>Environmental Benefit Permit Strategy: SPDES Priority Ranking Work Sheet</b>			
		SPDES No: NY	June 23, 2006
Permittee Name:		SPDES No: NY	
Name of Person Scoring:		Phone Number of Scorer:	
Organization with:		Date:	

In the table below select the appropriate factors which apply to this facility and provide the following:

1) Select the value factor as described in the factor description.

2) Select the appropriate multiplier for the selected factor from the following list and enter into the appropriate box below.

- 10 Pts.      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 PWL list; or correct other important environmental problems;
  
- 5 Pts.      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 PWL list; the WQ standard(s) violation or use impairment will not be eliminated by the modification;
  
- 1 Pt.        Modification will have little or no effect on a WQ standard(s) violation, water use impairment or serious environmental problem.

3) For Factors 5a, 5b, 5c, 6a, and 6b list each parameter separately in the notes section and place the total number of factors in the appropriate box.

Factor # & Description	Staff Notes	Factor Value	Mult	Score
1. Permit needs to be modified to conform to the State CSO/SSO Strategy. (VALUE FACTOR: 10 pts for Primary: 5 Pts for Secondary)				0
2. Permit needs modification as part of a Department or Department accepted EPA initiative (e.g., watershed TMDL implementation, multimedia permitting, DNA, etc) (VALUE FACTOR: 10 pts for Primary: 5 Pts for Secondary)				0
3. Permit needs to be modified to add industrial requirements. (VALUE FACTOR: 10 pts for Primary: 5 Pts for Secondary)				0
4. Permit needs to be modified to add industrial BMP, PMP, or storm water requirements. (VALUE FACTOR: 10 pts for Primary: 5 Pts for Secondary)				0
5. Permit needs to be modified for one effluent limit parameter.  Factor a: Bioaccumulative/Persistent/Toxic (PCB, Dioxin, etc ) Factor b: Parameter change for completed stream reclassification, new WQ standard or important substance relative to WQ. Factor c: Other minor parameter (e.g. water treatment chemicals, pH, Temp., Suspended Solids, action level, etc., not associated with WQ.	List parameter separately. If more than one, list with factor and multiplier. In boxes place numeric values to equal total score.			0
6. Permit needs to be adjusted for a new wastewater treatment technology requirement for a parameter not identified in No.5 above.  Factor a: New EPA technology regulation :BAC, BCT or NSPS Factor b: Change in BPJ evaluation	List parameter separately. If more than one, list with factor and multiplier. In boxes place numeric values to equal total score.			0
7. Permit needs to be adjusted due to Consent Order or Permit non-compliance issues:		10		0
8. Permit is for an existing facility which triggers antidegradation:		5		0
9. Permit appears on an EPA 304(I) toxic list and requires an Individual Control Strategy (ICS)		5		0
10. Permit is municipal STP project on the State Revolving Fund loan list:		5		0
11. Permit needs toxicity testing		5		0
12. Permit generated substantial public concern		10		0

13. Permit is a power plant needing modification for fish impingement or other fish and wildlife studies.		10		0
14. Longevity Score: Determine class and provide the following: 1) 3 <sup>rd</sup> box over place year when last Long Form Application with comprehensive effluent sampling was submitted. 2) 4 <sup>th</sup> box over place number of years is above form submitted.	Class 03 and 05      YEAR:		5	0
	Class 01, 07, 09, 10      YEAR:		3	0
<b>TOTAL PRIORITY SCORE:</b>				<b>0</b>

# **ATTACHMENT 4: GUIDANCE FOR USE OF PERMIT PRIORITY RANKING FACTORS**

Page 1 of 2

## **Factor No.**

- 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 a minor update in language in a SPDES permit to conform to an element of the State CSO Strategy. Permits identified in a SSO strategy should also be scored under this factor.
- 2 The facility has been identified as subject to a Department initiative such as multimedia permitting, watershed TMDL implementation, Discharge Notification Act requirements, or etc. not addressed by one of the other factors. An example of a “primary” initiative would be the inclusion of effluent limits or other requirements affecting water quality resulting from the implementation of a TMDL. An example of a “secondary” initiative would be the inclusion of requirements that do not directly affect water quality but are required by legislation or other Department action.
- 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 “mini pretreatment program” language into a municipal SPDES permit in order to resolve a significant negative impact on the STP from industrial indirect discharges. A “secondary” pretreatment modification might be changes in the permit language to conform to federal regulations but which would not resolve any significant problems 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 toxics. 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 in question has been identified as potentially needing an effluent limit for a Bioaccumulative/Persistent Toxic Substance.
- 5b The permit is identified as needing to be modified to add or change an important effluent parameter because: the receiving water body has been formally reclassified (not just proposed for reclassification); or 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 another parameter such as a water treatment chemical, pH, temperature, or suspended solids limit or action level, that has a very 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 wastewater treatment technology regulation for Best Available Treatment Technology Economically Achievable (BAT), Best Conventional Pollutant Control Technology (BCT), or New Source Performance Standards.

- 6b The permit writer concludes that an effluent parameter needs to be added or changed based on a reevaluation of Best Professional Judgment (BPJ) treatment technology.
- 7 The permit in question needs to be modified in order to resolve an issue of permit non-compliance or to ensure consistency between the permit and a court order or negotiated consent order. Examples include: a permittee that cannot verify compliance with a permit limit that proves to be lower than the effluent specific lab detectability limit; or a permittee that builds a BPJ treatment system to achieve a BPJ effluent limit (not an effluent limit based on water quality) only to find that the system cannot achieve the permit limit despite effective operation.
- 8 As required by the Federal Clean Water Act, USEPA and New York State are proceeding with initiatives which in the near future 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 which exceed present day actual discharges of those toxics. The Great Lakes Toxic Initiative is the most highly developed initiative at this time. This priority evaluation factor will only be utilized when these initiatives are finalized and implemented.
- 9 Under Section 304(1) of the Federal Clean Water Act, the USEPA is obligated to list specific discharges which must be upgraded with Individual Control Strategies (ICS) to further control toxic releases. This factor will be associated with SPDES permits which must be modified because they are listed in the 304(1) list and require an ICS (ICS is synonymous with SPDES/NPDES permits).
- 10 The State Revolving Fund (SRF) list identified 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 in question should be modified to incorporate a requirement for whole effluent biological toxicity testing in conformance with the Department's policy.
- 12 The Department has received substantive public interest in the facility's discharge.
- 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.

### **Permit Longevity Score**

During development of the permit priority ranking system, concern was expressed about low priority permits going for years without any systematic evaluation of the need to modify the permit. To eliminate this occurrence, for 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 has elapsed since the last time the facility submitted a long form permit application together with required comprehensive effluent sampling. The Permit Priority Longevity Score for all other EBPS permits (Class 01, 07, 09, and 10) adds 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. A Permit Priority Longevity Score of 0 is assigned for Class 02 and 04 permits since these permits are the lowest priority in the EBPS system. Use of this longevity factor will ensure that all permits will gradually rise in priority score until they must be actively evaluated for modification