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MEMORANDUM

**\*\*\* NOTICE \*\*\***  
*This document has been developed to provide Department of Environmental Conservation staff with guidance on how to ensure compliance with statutory and regulatory requirements, including case law interpretations, and to provide consistent treatment of similar situations. This document may also be used by the public to gain technical guidance and insight regarding how the Department staff may analyze an issue and factors in their consideration of particular facts and circumstances. This guidance document is not a fixed rule under the State Administrative Procedure Act, section 102(2)(a)(i). Furthermore, nothing set forth herein prevents staff from varying from this guidance as the specific facts and circumstances may dictate, provided staff's actions comply with applicable statutory and regulatory requirements. This document does not create any enforceable rights for the benefit of any party.*

Date: JUN 24 2010  
TO: Regional Water Engineers, Bureau Directors, Section Chiefs  
SUBJECT: Division of Water Technical and Operational Guidance Series (1.4.2)  
COMPLIANCE AND ENFORCEMENT OF SPDES PERMITS  
(Originators: Meredith Streeter/Karen Baker)

I. PURPOSE

This document establishes the Division of Water's (DOW) guidance on compliance and enforcement activities related to the State Pollutant Discharge Elimination System (SPDES) program. It provides DOW staff with enforcement options and operating guidelines to implement the compliance component of the program.

The goal of this guidance is to ensure consistent statewide understanding and implementation of the SPDES compliance and enforcement program in order to protect public health and the intended best use of the waters of the state. This guidance supercedes *Division of Water Technical and Operational Guidance Series (1.4.2) Compliance and Enforcement of SPDES Permits*, dated September 30, 1988.

## II. DISCUSSION

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. The New York State Department of Environmental Conservation (the Department) was subsequently charged, pursuant to the New York State Environmental Conservation Law (ECL), to develop and administer the state's program for meeting the requirements of NPDES. This program, which is authorized by the Environmental Protection Agency (EPA), is referred to as the *State Pollutant Discharge Elimination System* (SPDES).

Regulation of discharges of pollutants to waters of the state, both surface and groundwaters, is authorized by Article 17 of the ECL. Specific controls on point source discharges are authorized by Article 17, Title 8 of the ECL. New York's SPDES program is more stringent than the federal NPDES program in that the SPDES program also regulates discharges to groundwater. The minimum threshold for applicability of SPDES to groundwater discharges is 1,000 gallons per day for sanitary wastewater, while discharges which include any industrial wastewater have no minimum threshold. The New York State Department of Health regulates discharges of less than 1,000 gallons per day consisting of only sanitary wastewater. The Department is authorized to issue SPDES permits for groundwater discharges for a maximum period of 10 years; permits for discharges to surface waters are issued for a maximum of 5 years.

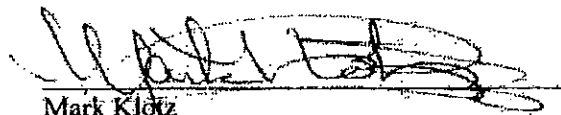
Administration of the SPDES program is accomplished through the issuance of wastewater discharge permits, including both *individual* permits and *general* permits. Individual SPDES permits are issued to cover a single facility in one location possessing unique discharge characteristics and other factors. General SPDES permits are issued to cover a category of discharges involving 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 do not have a significant impact on the environment, either individually or cumulatively, when carried out in conformance with permit provisions.

The Department is vested with the authority pursuant to state and federal law to enforce the SPDES permit requirements. The primary objective of the SPDES compliance and enforcement program is to protect water quality by ensuring that all point sources of pollution obtain a SPDES permit and comply with all terms and conditions of the permit.

The Department will employ any available compliance mechanisms that may be necessary, including formal enforcement, to attain the goal of SPDES permit compliance.

## III. GUIDANCE

Refer to the attached document as TOGS 1.4.2 Compliance and Enforcement of SPDES Permits. The penalty tables contained within Appendices B and C should be used only for settlement purposes.

  
Mark Klotz  
Director, Division of Water

# **Division of Water**

## **Technical & Operational Guidance Series (TOGS)**

### **1.4.2**

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#### **Compliance and Enforcement of State Pollutant Discharge Elimination System (SPDES) Permits**

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**F. Municipal Separate Storm Sewer Systems (MS4s) General Permit**

<b>Violation</b>	<b>Base Penalty Rate</b>
Failure to renew or transfer coverage under the General Permit	\$1000/month
Failure to apply for coverage under the MS4 General Permit for traditional MS4	\$5,000/event
Failure to apply for coverage under the MS4 General Permit for non-traditional MS4	\$1,000/event
Failure to develop and implement a Storm Water Management Program (SWMP)	\$3000/event
Failure to submit Annual Compliance Status Report and/or Municipal Compliance Certification Form	\$3000/event
Causing or contributing to a Water Quality Standards violation	\$5000/event
Failure to meet major permit milestone	\$250/day
Failure to meet other (non-major) milestone or other non-significant permit violations	\$100/day
Significant unauthorized discharge (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i> )	\$3000/event
Unauthorized discharge	\$1,000/event
Significant permit requirement violations including but not limited to: <ul style="list-style-type: none"> <li>• Lack of or a substantially inadequate SWPPP or SWMP;</li> <li>• Substantial failure to implement or maintain BMPs, or</li> <li>• Substantial failure to perform required monitoring</li> </ul>	\$3,000/event
Failure to submit required report (including failure to respond to an information request)	\$500/month
Failure to retain records as required	\$500/event
Failure to allow inspection/sampling by the Department	\$5,000/event
Falsifying information on DEC submittal <sup>40</sup>	\$10,000/report
Failure to comply with other (not specifically noted in this Appendix) applicable requirements set forth in 6 NYCRR Part 750-2, "Operating in Accordance with a SPDES Permit"	\$100/day
ECL Article 17 violations not related to permit	\$250/day

<sup>40</sup> The penalty calculated based on this Base Penalty Rate and the maximum adjustment factors may exceed the statutory limitation (currently \$37,500 per day per violation.) A separate calculation for this violation using the case specific adjustment factors should be performed first. If the assessed penalty exceeds the statutory limitation, the penalty assessed for this violation must be changed to the statutory maximum.

**G. Construction Stormwater General Permit**

Violation	Base Penalty Rate
Failure to obtain coverage under General Permit and is employing <b>appropriate</b> erosion & sediment control practices	<p>&lt; 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the New York City Watershed (NYCW)) \$1,000/day</p> <p>≥5 acres (or &gt;1 acre for east of Hudson in the NYCW) \$1,500/day</p>
Failure to obtain coverage under General Permit and is employing <b>minimal or no</b> erosion & sediment control practices	<p>&lt; 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW) \$1,500/day</p> <p>≥5 acres (or &gt;1 acre for east of Hudson in the NYCW) \$3,000/day</p>
Failure to develop and implement a SWPPP	\$3000/event
<p>Has coverage under General Permit, <b>and</b> has significant permit violations including but not limited to:</p> <ul style="list-style-type: none"> <li>• Substantial failure to implement or maintain BMPs</li> </ul>	<p>&lt; 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW) \$1,000/day</p> <p>≥5 acres (or &gt;1 acre for east of Hudson in the NYCW) \$2,500/day</p>

Has coverage under General Permit, and has non-significant permit violations	< 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW) \$500/day  ≥5 acres (or >1 acre for east of Hudson in the NYCW) \$1,000/day
Significant unauthorized discharge (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i> )	\$3,000/event
Unauthorized discharge	\$1,000/event
Causing or contributing to a Water Quality Standards violation	\$5,000/event
Failure to meet major milestones required in a permit or administrative or judicial order	\$250/day
Failure to meet other (non-major) milestone or other non-significant permit violations	\$100/day
Failure to submit required report (including failure to respond to an information request)	\$500/month
Failure to retain records as required	\$500/event
Failure to allow inspection/sampling by the Department	\$5,000/event
Falsifying information on DEC submittal <sup>41</sup>	\$10,000/report
Failure to comply with other (not specifically noted in this Appendix) applicable requirements set forth in 6 NYCRR Part 750-2, "Operating in Accordance with a SPDES Permit"	\$100/day
ECL Article 17 violations not related to permit	\$250/day

<sup>41</sup> The penalty calculated based on this Base Penalty Rate and the maximum adjustment factors may exceed the statutory limitation (currently \$37,500 per day per violation.) A separate calculation for this violation using the case specific adjustment factors should be performed first. If the assessed penalty exceeds the statutory limitation, the penalty assessed for this violation must be changed to the statutory maximum.

**H. Multi-Sector General Permit (MSGP)**

Violation	Base Penalty Rate
Failure to renew or transfer coverage under General Permit	\$1,000/month
Failure to apply for coverage under the General Permit	\$3,000/event
Failure to submit DMR or Annual Certification Report	\$1000/event
Failure to develop and implement a SWPPP or SWMP	\$3000/event
Causing or contributing to a Water Quality Standards violation	\$5000/event
Significant unauthorized discharge (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i> )	\$3,000/event
Unauthorized discharge	\$1,000/event
Failure to meet significant permit requirements including but not limited to: <ul style="list-style-type: none"> <li>• Substantially inadequate SWPPPs;</li> <li>• Substantial failure to develop or implement the SWPPP;</li> <li>• Substantial failure to implement or maintain BMPs;</li> <li>• Substantial failure to implement MSGP requirements.</li> </ul>	\$3,000/event
Exceeding interim or final effluent limits for <b>non-toxic</b> parameter under SPDES permit: <ul style="list-style-type: none"> <li>• Daily max/min discharge (each day = 1 violation= 1 event)</li> <li>• Daily Average (7 day average = 7 violations<sup>42</sup> = 1 event)</li> <li>• Daily Average (30 day average = 30 violations<sup>43</sup> = 1 event) or Monthly Average</li> </ul>	\$1,000/event \$1,500/event \$2,000/event
Exceeding interim or final limits for <b>toxic</b> parameter under SPDES permit: <ul style="list-style-type: none"> <li>• Daily max/min discharge (each day = 1 violation = 1 event)</li> <li>• Daily Average (7 day average = 7 violations<sup>32</sup> = 1 event)</li> <li>• Daily Average (30 day average = 30 violations<sup>33</sup> = 1 event) or Monthly Average</li> </ul>	\$2,000/event \$3,000/event \$4,000/event
Failure to meet major milestones required in a permit or administrative order or judicial decree	\$250/day
Failure to meet other (non-major) milestone or other non-significant permit violations	\$100/day

<sup>42</sup>Exceedence of the 7-day average constitutes seven violations. 7-day average, as defined in 40CFR133.101(a), is "the arithmetic mean of pollutant parameter values of samples collected in a period of 7 consecutive days."

<sup>43</sup>Exceedence of the 30-day average constitutes thirty violations. Legal precedence for this has been established by federal court rulings. The 30-day average, as defined, in 40CFR133.101(b), is "the arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days."



Failure to submit required report (including failure to respond to an information request)	\$500/month
Failure to retain records as required	\$500/event
Failure to allow inspection/sampling by the Department	\$5,000/event
Falsifying information on DEC submittal <sup>42</sup>	\$10,000/report
Failure to comply with other (not specifically noted in this Appendix) applicable requirements set forth in 6 NYCRR Part 750-2, "Operating in Accordance with a SPDES Permit"	\$100/day
ECL Article 17 violations not related to permit	\$250/day

<sup>42</sup>The penalty calculated based on this Base Penalty Rate and the maximum adjustment factors may exceed the statutory limitation (currently \$37,500 per day per violation.) A separate calculation for this violation using the case specific adjustment factors should be performed first. If the assessed penalty exceeds the statutory limitation, the penalty assessed for this violation must be changed to the statutory maximum.

**N. Violations of Combined Sewer Overflow (CSO) Requirements**

Violations	Circumstance	Department's Minimum Response
Multiple significant unauthorized discharges or multiple significant overflows (refer to draft EPA Wet Weather SNC Policy et seq.)	All (permitted and unpermitted outfalls)	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.
Substantial failure to implement any of the nine minimum controls (NMCs) as required in an administrative or judicial order or in a permit.	i) 30 days overdue ii) More than 60 days overdue	i) NOV ii) Formal Enforcement
Failure to report overflow(s) or discharge(s) at permitted CSOs in Annual BMP Report as required in an administrative or judicial order or in a permit.	All	NOV
Failure to submit an approvable Long Term Control Plan (LTCP), as required in an administrative order, judicial decree, or in a permit.	i) 30 days overdue ii) More than 60 days overdue	i) NOV ii) Formal Enforcement
Failure to meet and implement the major milestones (including LTCP milestones) or reporting requirements (including failure to respond to an information request) required in an administrative order, judicial decree, or in a permit.	i) 30 days overdue ii) More than 60 days overdue	i) NOV ii) Formal Enforcement
Failure to comply with incident reporting requirements pursuant to Part 750-2.6 and Part 750-2.7. This includes failure to report overflow(s) or discharge(s) at unpermitted CSOs.	All	NOV
Reporting false information	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.