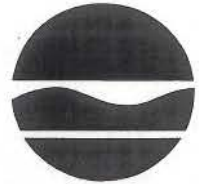


New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

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.

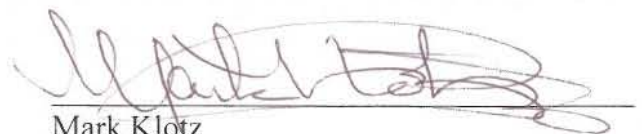
Administration of the SPDES program is accomplished through the issuance of wastewater discharge permits, including both *individual* permits and *general* permits. Individual SPDES permits are issued to cover a single facility in one location possessing unique discharge characteristics and other factors. 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

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

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Abbreviations and Acronyms

ALJ - Administrative Law Judge
BECI - Bureau of Environmental Criminal Investigation
BMP - Best Management Practices
CAFO - Concentrated Animal Feeding Operation
CNMP - Comprehensive Nutrient Management Plan
CSO - Combined Sewer Overflow
CWA - Clean Water Act
CWSRF - Clean Water State Revolving Fund
DLE - Division of Law Enforcement
DMR - Discharge Monitoring Report
DOW - Division of Water
ECL - Environmental Conservation Law
ECO - Environmental Conservation Officer
EPA - Environmental Protection Agency
MCC - Municipal Compliance Certification
MS4 - Municipal Separate Storm Sewer System
MSGP - Multi-Sector General Permit
NOHC - Notice of Hearing and Complaint
NOV - Notice Of Violation
NPDES - National Pollutant Discharge Elimination System
NYCW - New York City Watershed
NYCRR - New York Codes, Rules and Regulations
NYS - New York State
OAG - Office of the Attorney General
POTW - Publically Owned Treatment Works
RFI - Request for Information
SNAP - Significant Non-Compliance Action Program
SNC - Significant Non-Compliance
SPDES - State Pollutant Discharge Elimination System
SSO - Sanitary Sewer Overflow
SWMP - Stormwater Management Program
SWPPP - Stormwater Pollution Prevention Plan
TMDL - Total Maximum Daily Load
TOGS - Technical and Operational Guidance Series
UAT - Uniform Appearance Ticket
WICSS - Water Integrated Compliance Strategy System
WQIP - Water Quality Improvement Project

Section I - Guidance

The Department will take appropriate action to ensure all regulated point source and non-point source dischargers comply with applicable laws and regulations to protect public health and the intended best use of the waters of the state. This guidance applies to all SPDES permits including: individual SPDES permits, General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer System (MS4), General Permit for Concentrated Animal Feeding Operation (CAFO), General Permit for Stormwater Discharges from Construction Activity, and Multi-Sector General Permit (MSGP).

This guidance supplements existing Department policy¹ regarding civil enforcement actions for dischargers subject to individual and general permits and provides the minimum enforcement response and penalty (if applicable). When appropriate, more stringent enforcement responses may be utilized. This guidance neither creates rights, nor establishes standards for compliance with the law. This guidance does not replace established procedures for pre-enforcement review of violations. Refer to other guidance for developing strategies, docketing and regional priority setting for the initiation of formal enforcement actions.

The focus of compliance and enforcement activities will be based on significant non-compliance (SNC) of *major* and *significant minor* point source discharges,² and of wet weather discharges as defined by EPA.³ Any point source or non-point source discharge to an identified current year CWA Section 303(d) List of Impaired Waters segment; waterbodies with a TMDL strategy or other restoration measure; or a sole-source and/or primary aquifer is also a priority. Discharges from non-significant class facilities and unregulated non-point source discharges remain subject to compliance and enforcement activities as necessary for the protection of public health and the intended best use of the waters of the state.

Protection of the state's water resources is required regardless of the Department's compliance and enforcement priorities. Any discharge that causes or contributes to a contravention of the water quality standards contained in 6NYCRR Part 700 et seq. (or guidance values adopted pursuant thereto), or impairs the quality of waters, or otherwise creates a nuisance or menace to health, is a violation of Article 17 of the Environmental Conservation Law (ECL) and is subject to enforcement.

Discharging without the appropriate permit is a violation of Article 17 of the ECL and 6NYCRR Part 750. A facility discharging without a permit is subject to enforcement prior to issuance of a permit. Therefore, processing and review of a permit application may be suspended if an enforcement action is commenced.

¹New York State Department of Environmental Conservation Division of Environmental Enforcement (DEE) et seq. policies.

²As defined in TOGS 1.2.2 Administrative Procedures and Environmental Benefit Permit Strategy for Individual SPDES Permits, June 4, 2003.

³Interim Significant Noncompliance Policy for Clean Water Act Violations associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources ("Interim Wet Weather SNC Policy), dated October 23, 2007. At the issuance of this guidance, EPA was in the process of finalizing the definition of SNC for wet weather discharges. The Department will be consistent with EPA's final policy.

Section II - Compliance Evaluation

SPDES permits are issued to wastewater and stormwater dischargers for the protection of the waters of the State. Operation and maintenance of SPDES permitted facilities must comply with applicable regulations pursuant to 6 NYCRR Part 750 and additional facility specific and general permit conditions. When conditions of a permit, enforcement order or court decree are neither met nor implemented according to a schedule, water quality may be negatively impacted. Permit compliance leads to protection of the public health and the intended best use of the waters of the State.

Once Water Priority Violations⁴ are detected, Department staff will respond according to the process outlined in “TOGS 1.4.1 Water Integrated Compliance System Strategy (WICSS)”. WICSS was developed to ensure a consistent approach to addressing SNC and returning the facility to compliance. The Department defines SNC in accordance with EPA memoranda⁵. The Department’s SPDES permit compliance program is directly supported by the following elements which allow the Department to evaluate the compliance status of any regulated facility and determine whether violations constitute SNC.

1. **Periodic Self-Reporting** - The Department controls discharges of pollutants from some SPDES permitted facilities by establishing pollutant specific effluent limits and operating conditions in the permit and/or Order on Consent. Compliance with these limitations and conditions via self-reporting is critical to the protection of water quality.

Some SPDES permits and Orders on Consent require reporting of pollutants that are discharged on a Discharge Monitoring Report (DMR). The DMR is used by the Department to evaluate a facility’s compliance with permit limitations. The information reported on DMRs is entered into a database system for compliance assessment, tracking and reporting purposes. Timely and accurate filing of DMRs is vital to ensuring compliance with the permit.

The Division of Water (DOW) also relies on other reports (e.g., monthly operating, annual, toxicity testing and status reports) and notifications (e.g., completion of permit or Order on Consent compliance schedules), to determine the compliance status of a facility. These documents may supplement or be submitted in lieu of a DMR, as specified in each permit or enforcement order.

2. **Inspection** - The Department conducts site inspections and effluent sampling to monitor facility performance, and to detect, identify and assess the magnitude of violations by a discharger. The primary focus for inspections of individually permitted facilities is on major and significant minor point source discharges and facilities that pose the highest risk to public health and safety. The number and type of inspections to be performed at permitted facilities are determined during DOW’s annual work planning process. The primary focus for inspections of general permitted facilities is established annually through the same work planning process. Standardized inspection forms have been developed to assist

⁴Water Priority Violations are established in “TOGS 1.4.1 Water Integrated Compliance System Strategy (WICSS)”

⁵“Revision of NPDES Significant Noncompliance Criteria to Address Violations of Non-Monthly Average Limits,” dated September 21, 1995; and “Interim Wet Weather SNC Policy,” dated October 23, 2007.

Department inspectors in assessing the compliance status of dischargers in relation to the permit conditions, regulatory and record keeping requirements.

Inspection information is entered into a database system for compliance evaluation, tracking and reporting purposes. Inspection findings can be rated “satisfactory,” “marginal” or “unsatisfactory”. An unsatisfactory rating is considered a priority and may be subject to informal and/or formal enforcement.

The Department may use inspection information provided by federal, state and local governmental entities to supplement compliance evaluations.

3. **Citizen Complaints** - Citizen complaints and observations of possible violations may assist the Department's compliance and enforcement efforts in the SPDES Program. The Department will evaluate the authenticity of alleged violations and impacts to the environment and/or public health and safety to determine an appropriate response. This response may include enforcement. A “Notice of Intent to Sue” is a formal legal letter of intent served by private parties alleging violations of federal environmental laws, specifically the Clean Water Act (CWA). The Department has established a systematic approach in reviewing and responding to such Notices. The detailed response procedures can be found in the Department’s Citizen Suit Policy (DEE-19).⁶

⁶The Clean Water Act Citizen Suit provision is described in 33 U.S.C. § 1365.

Section III - Compliance Tools

The Department employs a wide range of compliance assurance tools to achieve the goal of compliance with ECL Article 17 and 6NYCRR Part 750. Depending upon the circumstances, the following tools may be used individually or in concert with each other.

A. Compliance Assistance

1. Inspection

In addition to their formal compliance evaluation function, inspections may also provide an opportunity for DOW staff to informally and routinely communicate with facility operators to help them understand requirements, emerging issues and the important role they play in helping to preserve and protect water resources. Likewise, inspections provide an opportunity for facility operators to communicate with the Department regarding their particular concerns and circumstances.

2. Financial Assistance

Public and private wastewater infrastructure projects and stormwater activities covered by SPDES permits can be costly. Routine maintenance and adequate capital investment are required for wastewater facilities and stormwater management practices to perform as designed and maintain compliance with statutes, regulations and permits. Inadequate funding for routine system maintenance, repairs and improvement can lead to major system failure and violations. In most cases, it is less expensive to prevent violations than to correct them.

If and when state budget funding has been appropriated, the Department may provide grants through the Water Quality Improvement Projects (WQIP) Program to municipalities for wastewater treatment improvement and stormwater planning and construction projects. The grants are awarded through a competitive process.

The Department works jointly with other state agencies to administer water-related funding programs, including the Clean Water State Revolving Fund (CWSRF) and the Department of Agriculture and Markets' grant programs. The Department identifies state and federal funding mechanisms available to assist municipalities with demonstrated financial needs. When municipalities are financially impacted by new regulations, the Department provides guidance and support for securing the funding necessary to achieve compliance.

3. Training and Outreach Programs

Voluntary compliance is the most cost effective means for the regulated community to meet requirements. The Department is committed to provide training and outreach for new and existing regulatory programs. The outreach program surveys the needs of the regulated community on a regular basis. Once needs are identified, training is designed and delivered on a repeating schedule to maximize continued compliance. The Department also works with other professional organizations to promote voluntary compliance. When new regulations are promulgated, the Department will provide guidance and outreach materials for the regulated community.

4. Technical Assistance

The Department considers technical assistance an integral component of a comprehensive compliance assurance program for the publicly owned wastewater treatment (POTW) facilities. The Department has

developed criteria⁷ to identify facilities suitable for technical assistance before initiating enforcement actions. Although priority is given to permitted POTWs with Water Priority Violations which are being addressed through the WICSS process⁸, Department technical staff occasionally helps small industrial facilities return to compliance. If technical assistance fails to return the facility to compliance, then the facility may still be subject to formal enforcement.

B. Enforcement

The Department detects, investigates and resolves violations which are likely to impact the public health or the water quality of the state. Staff will respond to each water priority violation using the appropriate tools, including formal enforcement actions if necessary, to expedite a return to compliance. To promote statewide consistency in the handling of water priority violations in all SPDES programs, the Department developed the SPDES Compliance and Enforcement Response Guide (Appendix A). Staff will follow the procedures outlined in Appendix A when enforcement is necessary to bring the facility back to compliance.

1. Informal Enforcement

Informal enforcement should be exercised to promote voluntary compliance with the regulations and permit requirements. When successful, voluntary compliance can be cost effective and efficient.

Oral and Electronic Communications

When noncompliance is identified, oral or electronic communication can be productive in returning the facility to compliance. This communication can include discussion of the operating status of the facility, a reminder of a compliance milestone date or a notification that formal enforcement may commence. This may take the form of inspections, telephone calls, emails, and compliance conferences (see description as follows).

Warning Letter

The Department has the discretion to provide the facility written notification of an actual or potential violation to alert the responsible party of its regulatory obligations prior to the Department issuing a Notice of Violation. Depending upon the type of violation, the notification period varies from a few days to 30 days. An example of a warning letter includes 30-day warning letters.

Notice of Violation

A Notice of Violation (NOV) is written notification of noncompliance from Division of Water staff to the violator. A NOV should be the minimum Department response to all SNC. Often, a NOV is the last informal enforcement activity prior to commencement of formal enforcement. A NOV should, at a minimum, include a list of all violations, a statement referencing the maximum penalty allowed by the ECL § 71-1929, corrective actions required, a date for the permittee to come into compliance and notice

⁷ At time of writing, screening criteria is outlined in the Bureau of Water Compliance document, “Wastewater Technical Assistance Screening Criteria,” 12/10/08

⁸Water Priority Violations and the WICSS process are established in “TOGS 1.4.1 Water Integrated Compliance System Strategy (WICSS)”

that the violator may be subject to formal enforcement as a result of the violations.

Compliance Conference

During a compliance conference, which could occur as part of formal or informal enforcement, representatives of the responsible party and Department staff meet to review and discuss the alleged violations and attempt to agree upon corrective actions. Presence of Department legal counsel at compliance conferences in each region is at the discretion of the respective Regional Water Engineer and Regional Attorney.

2. Formal Enforcement

All SPDES violations are subject to formal enforcement actions (i.e. the Department has the authority to take formal enforcement on any violation). When a voluntary return to compliance is not achieved, or as other conditions may warrant, formal enforcement will be considered, and a penalty will be determined following the guidance attached as Appendices B, C and D of this document. A voluntary return to compliance does not inhibit the Department from pursuing formal enforcement. In addition to the tools listed below, there may be other statutory requirements or obligations DOW staff need to comply with.

Environmental Conservation Officer (ECO) Issued Tickets

A UT-50 is a ticket issued by an Environmental Conversation Officer, which initiates formal judicial proceedings of a criminal, rather than civil nature. Conversely, ECO NOVs are administrative tickets issued and are resolved by the ECO with assistance from DOW staff.

Order on Consent

An Order on Consent (Order) is a legally binding document negotiated by the Department and respondent(s) to address noncompliance. Orders will require a payable penalty, and may also include suspended and/or stipulated penalties, interim effluent limits and/or a compliance schedule for corrective action. The Department uses “long form” and “short form” Orders on Consent.⁹ A long form Order on Consent is negotiated through the Office of General Counsel.

Cease and Desist Directive

A Cease and Desist Directive is a directive from the Department to the violator to stop certain activities when violations are occurring. This can be packaged with a Notice of Violation and a short form Order on Consent to address violations. More information on Cease and Desist Directives can be found in Division of Water guidance.¹⁰

Stop Work Order

A Stop Work Order is a directive from the Department to the violator to stop work at a construction site permitted under the General Permit for Stormwater Discharges from Construction Activity, when there are significant permit violations or contravention of water quality standards, or when said violations are

⁹Required elements of an Order on Consent are found in the Order on Consent Policy (DEE-2) and guidance on short form orders from General Counsel James Ferreira, dated May 12, 2003.

¹⁰“Compliance Assurance Strategic Plan for SPDES General Permit GP-02-01 Storm Water Discharges from Construction Activity”, dated September 26, 2006, et seq.

considered by the Regional Water Engineer to have a “potential significant water quality impact”. This can be packaged with a Notice of Violation and a short form Order on Consent to address permit violations. More information on Stop Work Orders and significant permit violations can be found in DOW guidance.¹⁰

Notice of Hearing and Complaint

A Notice of Hearing and Complaint (NOHC) is a set of documents issued by Department legal staff to initiate the adjudicatory process. The Notice of Hearing component puts the respondent on notice of where the hearing will be held, that translation services are available and that the respondent has 20 days to serve an answer. The Complaint is the Department’s legal instrument, which describes the actions the respondent took to cause the violation. DOW staff may assist Department legal staff on a case-by-case basis and may provide oral testimony at hearing.

Administrative Hearing Process & Commissioner's Order

When civil violations cannot be settled through the negotiation of an Order, DOW staff work with Department legal staff in the drafting of a Notice of Hearing and Complaint. If the case goes to an administrative hearing, DOW staff may be asked to provide witness testimony and explain written exhibits. The Department bears the burden of proof and must meet a legal standard (in civil cases known as preponderance of the evidence) showing Respondent committed the violations alleged in the complaint. The Administrative Law Judge (ALJ) will issue a ruling after the hearing. If the Commissioner concurs with the findings made by the ALJ, then the Commissioner issues an order (known as a “Commissioner’s Order”) adopting the ALJ's ruling. The Commissioner has the authority to adjust the penalty and corrective actions.

Referral to the Attorney General’s Office

The New York State Office of the Attorney General (OAG) represents the Department in court proceedings. Referral of individual cases to the OAG is made by the Department’s legal staff. DOW staff may be asked to assist the case attorney from the OAG in case development and may provide oral and/or written testimony.

Summary Abatement Order

The Commissioner of the Department is authorized by the Environmental Conservation Law (ECL § 71-0301) and 6 NYCRR Part 620 to issue Summary Abatement Orders. These orders require discontinuation of conditions or activities presenting an imminent danger to public health or welfare or are likely to result in irreparable damage to natural resources. The respondent is entitled to a hearing within 15 days of issuance. DOW staff will consult with Department legal staff on a case-by-case basis to recommend such orders and may provide oral testimony at hearing.

Referral for Criminal Enforcement

Criminal enforcement is outside the scope of DOW staff authority; however, where elements of a crime can be proven, referral to the DLE, BECI, OAG, local District Attorney or United States Attorney may be appropriate. DOW staff should consult with their Regional Water Engineer prior to bringing such matters to the attention of Department legal staff for their consideration.

C. Other Actions

Denial, Suspension or Revocation of a SPDES Permit

6 NYCRR Part 621.13 sets forth the criteria by which permits can be modified, suspended or revoked at any time by the Department. In addition to these criteria, 6 NYCRR Part 750-1.20 sets forth the additional criteria by which the Department can deny, suspend or revoke an application for a SPDES Permit. DOW staff should review the aforementioned regulations and consult with their Regional Water Engineer to determine when recommending this option is appropriate. Once a determination has been made to deny, suspend or revoke a SPDES permit, DOW staff would submit a request to the Division of Environmental Permits.

Suspension or Revocation of Operator Certification

TOGS 5.1.6 - Wastewater Treatment Plant Operator Certification, outlines the process to address concerns related to operator certification. 6NYCRR Part 650 (Qualifications of Operators of Wastewater Treatment Plants) provides the legal basis for suspension or revocation of an operator's certification. Division of Water staff should review these documents and consult with their Regional Water Engineer if operator misconduct is suspected.

Appendix A

SPDES Compliance and Enforcement Response Guide

This guide contains the DOW minimum compliance and enforcement response to violations of the CWA, the ECL and 6NYCRR Part 750. It is consistent with the Department's enforcement policies.¹¹ DEC staff should use their best professional judgement to determine when more stringent enforcement responses are necessary as well as whether a violation that occurs more than once is considered "infrequent" or "repeated".

The primary goals of enforcement are for the discharger to return to compliance and to deter the recurrence of violations by the violator and other parties in the regulated community. Department response to violations should occur within thirty (30) days of detection. The extent of enforcement depends upon the severity of the violation, environmental or health impact, and the action or inaction of the violator. Recurring violations should be treated with an increased level of enforcement. Failure to comply with requirements in a Notice of Violation may also be considered for increased enforcement. The Department may use a variety of informal and formal enforcement tools to promote and achieve compliance with the applicable environmental statutes and regulations. Informal and formal enforcement tools are described in Section III, B. Parts 1 & 2.

The "SPDES Compliance and Enforcement Response Guide" tables list "Formal Enforcement" as the Department's response for certain violations and circumstances. Department staff should refer to the listing of formal enforcement tools in Section III, B. Part 2, to determine which tool is appropriate to address the non-compliance in their case. In certain instances, DOW staff should consult with the attorney assigned to the case to make this decision.

¹¹These policies include (DEE-1) Civil Penalty Policy, June 20, 1990; (DEE-2) Order on Consent Enforcement Policy, August 28, 1990; (DEE-3) Water Pollution Control Enforcement Policy, December 13, 1984; (DEE-19) Citizen Suit Enforcement Policy, July 23, 1994.

Violations of Individual SPDES Permit Requirements

A. Violations of Reporting Requirements¹²

Violation	Circumstance	Department's Minimum Response
Failure to report on any routine permit requirement within 30 days of date due	i) Isolated, infrequent and no known public health risk or environmental damage ii) Repeated violation or failure to submit report by 60 days or more	i) NOV ii) Formal Enforcement
Sampling and/or monitoring deficiencies	i) Isolated, infrequent and minor ii) Repeated or major	i) Phone call (document in records) or NOV ii) Formal Enforcement
Failure to respond to request for information (RFI)	i) More than 30 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement
Failure to comply with incident reporting requirements pursuant to Part 750-2.7	All	NOV
Reporting false information	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.

¹²Includes failure to submit a DMR, failure to include all necessary information on a DMR, failure to submit items required by the permit schedule, failure to provide compliance notice pursuant to 750-1.14(d) and failure to notify DEC of effluent violations. If reporting violations coincide with other violations, the more stringent response applies.

B. Violations of Individual SPDES Permit Requirements

Violation	Circumstance	Department's Minimum Response
Failure to meet non-significant permit requirements ¹³	All	No minimum response is prescribed, but any of the compliance tools described in Section III may be used in order to achieve compliance.
Significant inspection deficiencies	i) Unsatisfactory inspection or audit ii) Failure to correct deficiencies in accordance with schedule iii) Failure to correct deficiencies in accordance with schedule in NOV	i) Warning letter with, if necessary, schedule for correction ii) NOV iii) Formal Enforcement

C. Violations of Permit Schedule Requirements

Violation	Circumstance	Department's Minimum Response
Missed interim date	i) Will not delay final date by 90 days or more and there is no previous order affecting schedule ii) Will cause delay of final date by 90 days or more	i) NOV ii) Modify permit schedule ¹⁴ , collect stipulated penalties or obtain Order on Consent
Missed final date	i) No previous order impacting schedule; delay less than 90 days ii) By 90 days or more	i) NOV ii) Order on Consent

¹³This violation listing is intended to capture any other violations not specifically listed in Appendix A for this SPDES Permit type.

¹⁴Permit modification must include justification of request and should not be used primarily to avoid enforcement. All modifications must be in accordance with 6 NYCRR Parts 750-1.14 and 750-1.18.

D. Violations of Order on Consent Schedule Requirements

Violation	Circumstance	Department's Minimum Response
Missed interim date	i) By 30 days or more	i) Refer to DEC legal staff to determine next step. Measures include collection of suspended or stipulated penalties, subject to Order on Consent provisions providing for modification to the Order, force majeure, etc. and/or escalating the level of enforcement, to include such measures as referral to the OAG.
Missed final date	i) By 30 days or more	i) Refer to DEC legal staff to determine next step. Measures include collection of suspended or stipulated penalties, subject to Order on Consent provisions providing for modification to the Order, force majeure, etc. and/or escalating the level of enforcement, to include such measures as referral to the OAG.

E. Violations of Effluent Requirements

Violation	Circumstance	Department's Minimum Response
Exceeding permit interim or final limits	i) Water Priority Violations ¹⁵ not meeting EPA's definition of SNC ¹⁶ . ii) Violations meeting criteria of EPA's definition of SNC.	i) Phone call (document in records), warning letter or NOV ii) NOV and follow SNAP procedures ¹⁷
Exceeding Order on Consent interim or final limits	i) Water Priority Violations ¹⁵ not meeting EPA's definition of SNC. ¹⁶ ii) Violations meeting criteria of EPA's definition of SNC.	i) Phone call (document in records), warning letter or NOV ii) NOV and follow SNAP procedures ¹⁷ ; contact DEC Legal staff regarding collection of any applicable stipulated or suspended penalties
Unauthorized discharge at a permitted facility ¹⁸	i) Single occurrence with no known public health risk and/or environmental damage. ii) Single occurrence resulting in public health risk and/or environmental damage. iii) Continuing occurrences	i) NOV ii) Formal Enforcement iii) Formal Enforcement; Investigate for potential criminal prosecution

¹⁵Water Priority Violations are defined in TOGS 1.4.1 Water Integrated Compliance System Strategy (WICSS).

¹⁶EPA defines SNC in “Revision of NPDES Significant Noncompliance Criteria to Address Violations of Non-Monthly Average Limits”, dated September 21, 1995; and “Interim Wet Weather SNC Policy”, dated October 23, 2007.

¹⁷The DEC/EPA Memorandum of Understanding, March 1983, details the Significant Non-Compliance Action Program (SNAP), which prescribes specific responses to SNC violations.

¹⁸This applies to unauthorized pollutants at a permitted facility or any discharge from an unpermitted outfall at a permitted facility. For enforcement responses for SSOs, see Section O of this Appendix.

<p>Discharge at an unpermitted facility</p>	<p>i) Single occurrence with no known public health risk and/or environmental damage.</p> <p>ii) Single occurrence resulting in public health risk and/or environmental damage.</p> <p>iii) Continuing occurrences</p>	<p>i) NOV</p> <p>ii) Formal Enforcement</p> <p>iii) Formal Enforcement; Investigate for possible criminal prosecution</p>
<p>Causing or contributing to a Water Quality Standards violation (surface water or ground water discharge)</p>	<p>i) Demonstrated Water Quality Standards violation (non-TMDL or 303(d) listed waters)</p> <p>ii) Demonstrated Water Quality Standards violation in a TMDL or 303(d) listed waters</p> <p>iii) Repeated Water Quality Standards violations</p>	<p>i) NOV</p> <p>ii) Additional permit conditions addressing Water Quality Standards violation</p> <p>iii) Formal Enforcement</p>

F. Violations of Pretreatment Requirements at Approved Pretreatment Programs

Violation	Circumstance	Department's Minimum Response
Violation of reporting requirements	All	Refer to EPA ¹⁹
Non-enforcement of local or National Categorical Pretreatment Standards	i) Infrequent ii) Repeated	i) Refer to EPA ¹⁹ ii) Refer to EPA ¹⁹

G. Violations of Pretreatment Requirements at POTWs without Approved Pretreatment Programs (this includes the DEC Mini-Pretreatment program)

Violation	Circumstance	Department's Minimum Response
Violation of reporting requirements	All	NOV
Non-enforcement of local or categorical limits which are not subject to National Categorical Pretreatment Standards	i) Infrequent ii) Repeated	i) Phone Call (document in records) or NOV ii) NOV

H. Violations of Annual Flow Certification Form Requirements

Violation	Circumstance	Department's Minimum Response
Failure to submit the Annual Flow Certification Form	i) More than 60 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement
Failure to submit plan(s) identified as required by the Annual Flow Certification Form	i) More than 60 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement

¹⁹Compliance and enforcement activities for Approved Pretreatment Programs are detailed in the Memorandum of Understanding (MOU) with EPA, 1992 and the “Workplan Guidelines for Pretreatment Program Oversight between the Department and EPA,” 2006. EPA has lead authority for compliance monitoring and enforcement related to implementation of Approved Local Pretreatment Programs and at industries subject to National Categorical Pretreatment Standards. DEC has lead authority for compliance monitoring and enforcement at POTWs without approved pretreatment programs, and at Significant Industrial Users (SIUs) that are not subject to National Categorical Pretreatment Standards.

Violations of General Permit Requirements, Combined Sewer Overflows and Sanitary Sewer Overflows

I. Violations of CAFO General Permit Requirements (this includes all general permits for CAFO facilities)

Violations	Circumstance	Department's Minimum Response
Failure to submit Annual Compliance Report which must include certification that the CNMP has been updated	i) 60 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement
Failure to submit initial CNMP Certification	i) 60 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement
Failure to apply for coverage under the CAFO General Permit	i) Large CAFO or Medium CAFO	i) Order on Consent with penalty and compliance schedule
Failure to implement the CNMP or significant permit requirements	i) Environmental health impact ii) Multiple substantive violations iii) Building an undesigned open waste storage structure iv) All others	i) Formal Enforcement ii) Formal Enforcement iii) Formal Enforcement iv) NOV
Failure to meet consistent “annual progress” requirement of the permit ²⁰	i) First offense ii) Second and subsequent offense	i) NOV ii) Formal Enforcement
Failure to amend the CNMP	i) First offense ii) Second and subsequent offense	i) NOV ii) Formal Enforcement
Failure to comply with deadline stipulated in NOV	All	Formal Enforcement
<i>A significant unauthorized discharge</i> (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i>)	All	Formal Enforcement. Consult with DEC law enforcement or legal staff to assess potential criminal prosecution.

²⁰Schedules and applicability for this requirement are established in the General Permit(s) for CAFOs.

Failure to meet non-significant permit requirements ²¹	All	No minimum response is prescribed, but any of the compliance tools described in Section III may be used in order to achieve compliance.
Causing or contributing to a Water Quality Standards violation	i) Demonstrated Water Quality Standards violation ii) Repeated Water Quality Standards violations	i) NOV ii) Formal Enforcement
Failure to meet major milestones or reporting requirements (including failure to respond to an information request) set forth in an administrative or judicial order	i) More than 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	All	NOV
Reporting false information	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.

²¹This violation listing is intended to capture any other violations not specifically listed in Appendix A for this SPDES Permit type.

J. Violations of General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) Requirements

Violations	Circumstance	Department's Minimum Response
Failure to obtain or transfer coverage under the General Permit	i) Upon discovery by Department ii) More than 90 days after discovery by Department	i) NOV ii) Formal Enforcement
Failure to submit Annual Report and/or MCC Form	i) 60 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement
Causing or contributing to a Water Quality Standards violation	i) Demonstrated Water Quality Standards violation ii) Repeated Water Quality Standards violations	i) NOV ii) Formal Enforcement
Failure to comply with major milestones in an Order on Consent or the MS4 permit	i) 60 days overdue ii) More than 90 days overdue	i) NOV ii) Formal Enforcement
<i>A significant unauthorized discharge</i> (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i>)	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.
Failure to meet significant permit requirements. Examples include, but are not limited to: - substantially inadequate SWMPs as determined by review of the Annual Report, - substantial failure to develop the SWMP as determined by a SWMP audit inspection resulting in the rating of unsatisfactory, - substantial failure to implement the SWMP as determined by a SWMP audit inspection resulting in a rating of unsatisfactory, and - substantial failure to implement MS4 requirements.	i) Unsatisfactory annual report or audit ii) Failure to correct deficiencies in accordance with schedule iii) Duration of noncompliance is longer than 6 months	i) Deficiency letter with schedule for correction ii) NOV iii) Formal Enforcement

Failure to meet non-significant permit requirements ²²	All	No minimum response is prescribed, but any of the compliance tools described in Section III may be used in order to achieve compliance.
Failure to meet major milestones or reporting requirements (including failure to respond to an information request) set forth 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 comply with incident reporting requirements pursuant to Part 750-2.7	All	NOV
Reporting false information	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.

²²This violation listing is intended to capture any other violations not specifically listed in Appendix A for this SPDES Permit type.

K. Violations of General Permit for Stormwater Discharges from Construction Activity Requirements

Violations	Circumstance	Department's Minimum Response
Causing or contributing to a Water Quality Standards violation	i) Demonstrated Water Quality Standards violation ii) Repeated Water Quality Standards violations	i) NOV ii) Formal Enforcement
Failure to obtain coverage under the General Permit and are employing appropriate erosion & sediment control practices	i) One or more acres of disturbed area (or 5,000 sq ft - 1 acre for east of Hudson in the New York City Watershed (NYCW)) ii) One or more acres of disturbed area - violation continued for 30 or more days after discovery by DEC (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW- violation continued for 15 or more days, after discovery by DEC) iii) One or more acres of disturbed area - violation continued for 60 or more days after discovery by DEC (5,000 sq ft - 1 acre for east of Hudson in the NYCW- violation continued for 30 or more days, after discovery by DEC) iv) > 1 acre for east of Hudson in the NYCW upon discovery by DEC v) > 1 acre for east of Hudson in the NYCW violation continued for 15 or more days, after discovery by DEC	i) Notice of Violation ii) Cease and Desist Directive iii) Formal Enforcement iv) Cease and Desist Directive v) Formal Enforcement

<p>Failure to obtain coverage under the General Permit and no or minimal erosion & sediment control practices</p>	<p>i) One up to five acres of disturbed area (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW upon discovery by DEC)</p> <p>ii) One up to five acres of disturbed area - violation continued for 15 or more days, after discovery by DEC</p> <p>iii) One up to five acres of disturbed area - violation continued for 30 or more days after discovery by DEC (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW violation continued 15 days after Cease and Desist Directive)</p> <p>iv) Five or more acres</p> <p>v) Five or more acres - violation continued for 30 or more days after discovery by DEC (or > 1 acre for east of Hudson in the NYCW upon discovery by DEC)</p>	<p>i) Notice of Violation (For east of Hudson in the NYCW: Notice of Violation and Cease and Desist Directive)</p> <p>ii) Cease and Desist Directive</p> <p>iii) Formal Enforcement</p> <p>iv) Cease and Desist Directive</p> <p>v) Formal Enforcement</p>
<p>Has coverage under the General Permit and has SNC violations of permit</p>	<p>i) One up to five acres of disturbed area (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW)</p> <p>ii) Failure to correct deficiencies in accordance with schedule: One up to five acres of disturbed area (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW)</p> <p>iii) Five or more acres (or > 1 acre for east of Hudson in the NYCW)</p>	<p>i) Warning letter with schedule for correction (NOV Optional)</p> <p>ii) Order on Consent and/or Stop Work Order</p> <p>iii) Order on Consent and/or Stop Work Order</p>
<p><i>A significant unauthorized discharge (refer to draft EPA Wet Weather SNC Policy et seq.)</i></p>	<p>All</p>	<p>Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.</p>

<p>Failure to meet significant permit requirements. Examples of such violations include, but are not limited to:</p> <ul style="list-style-type: none"> - lack of or a substantially inadequate SWPPP, - substantial failure to implement or maintain BMPs, and - substantial failure to perform required monitoring 	<ul style="list-style-type: none"> i) Unsatisfactory inspection ii) Failure to correct deficiencies in accordance with schedule iii) Duration of noncompliance is longer than 60 days. 	<ul style="list-style-type: none"> i) Inspection report with listed deficiencies and schedule for correction ii) NOV iii) Formal Enforcement
<p>Failure to meet non-significant permit requirements²³</p>	<p>All</p>	<p>No minimum response is prescribed, but any of the compliance tools described in Section III may be used in order to achieve compliance.</p>
<p>Failure to meet the major milestones or reporting requirements (including failure to respond to an information request) set forth in an administrative or judicial order or in a permit</p>	<ul style="list-style-type: none"> i) 30 days overdue ii) more than 60 days overdue 	<ul style="list-style-type: none"> i) NOV ii) Formal Enforcement
<p>Failure to comply with incident reporting requirements pursuant to Part 750-2.6 and Part 750-2.7</p>	<p>All</p>	<p>NOV</p>
<p>Reporting false information</p>	<p>All</p>	<p>Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.</p>

²³This violation listing is intended to capture any other violations not specifically listed in Appendix A for this SPDES Permit type.

L. Violations of Multi-Sector General Permit (MSGP) Requirements

Violations	Circumstance	Department's Minimum Response
Failure to obtain or transfer coverage under the General Permit	i) Upon discovery by DEC ii) 90 days after discovery by DEC	i) NOV ii) Formal Enforcement
Failure to renew coverage under the General Permit	i) 60 days overdue ii) 90 days overdue	i) NOV ii) Formal Enforcement
Failure to submit DMR or Annual Certification Report	i) 60 days overdue ii) more than 90 days overdue	i) NOV ii) Formal Enforcement
Causing or contributing to a Water Quality Standards violation	i) Demonstrated Water Quality Standards violation ii) Repeated Water Quality Standards violations	i) NOV ii) Formal Enforcement
<i>A significant unauthorized discharge</i> (refer to draft EPA Wet Weather SNC Policy et seq.)	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.
Failure to meet significant permit requirements. Examples of such violations include, but are not limited to: - substantially inadequate SWPPPs as determined by review of the Annual Certification Report or DMR, - substantial failure to develop the SWPPP as determined by a SWPPP inspection resulting in the rating of unsatisfactory, - substantial failure to implement the SWPPP as determined by a SWPPP inspection resulting in a rating of unsatisfactory, and - substantial failure to implement MSGP requirements.	i) Unsatisfactory Annual Certification Report or inspection ii) Failure to correct deficiencies in accordance with schedule iii) Duration of noncompliance is longer than 6 months	i) Inspection letter with listed deficiencies and schedule for correction ii) NOV iii) Formal Enforcement

Failure to meet non-significant permit requirements ²⁴	All	No minimum response is prescribed, but any of the compliance tools described in Section III may be used in order to achieve compliance.
Exceeding interim or final limits	i) All	i) NOV
Failure to meet the major milestones or reporting requirements (including failure to respond to an information request) set forth 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 comply with incident reporting requirements pursuant to Part 750-2.6 and Part 750-2.7	All	NOV
Reporting false information	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.

²⁴This violation listing is intended to capture any other violations not specifically listed in Appendix A for this SPDES Permit type.

M. Violations of General Permit for Discharge of 1,000 – 10,000 gpd to Groundwater Requirements

Violations	Circumstance	Department's Minimum Response
Failure to obtain or transfer coverage under the General Permit	i) Upon discovery by DEC ii) 90 days after discovery by DEC	i) NOV ii) Formal Enforcement
Failure to renew coverage under the General Permit	i) 60 days overdue ii) 90 days overdue	i) NOV ii) Formal Enforcement
Failure to have PE Certification or local health agency approval of Treatment Works	i) Upon discovery by DEC ii) More than 60 days after discovery by DEC	i) NOV ii) Formal Enforcement
Failure to maintain the facility in effective working condition	i) Visible system failure ii) Caused public health impact	i) NOV ii) Formal Enforcement
Failure to maintain required records, including but not limited to: -certified disposal facility plans, specifications, engineering reports, as built drawings and required health agency approval -Facility maps, drawings and special conditions	All	NOV
Causing or contributing to a Water Quality Standards violation	i) Demonstrated Water Quality Standards violation ii) Repeated Water Quality Standards violations	i) NOV ii) Formal Enforcement

<p>Unauthorized discharge at a permitted facility</p>	<p>i) Single occurrence with no known public health risk and/or environmental damage.</p> <p>ii) Single occurrence resulting in public health risk and/or environmental damage.</p> <p>iii) Continuing occurrences</p>	<p>i) NOV</p> <p>ii) Formal Enforcement</p> <p>iii) Formal Enforcement; Investigate for potential criminal prosecution</p>
<p>Reporting false information</p>	<p>All</p>	<p>Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.</p>

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.

O. Violations of Sanitary Sewer Overflow (SSO) Requirements

Violations	Circumstance	Department's Minimum Response
Multiple significant unauthorized discharges or multiple significant overflows (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i>)	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.
Failure to report overflow(s) or discharge event(s) as required ²⁵	i) Type I or Type II Wet weather overflow ii) Type I or Type II Dry weather overflow iii) Type III Overflow	i) NOV ii) Formal Enforcement iii) Formal Enforcement
Failure to meet and implement the major milestones or reporting requirements (including failure to respond to an information request) set forth in an administrative order, judicial decree, or in a permit.	i) 30 days overdue ii) More than 60 days overdue	i) NOV; contact DEC Legal staff regarding collection of any applicable stipulated or suspended penalties ii) Formal Enforcement
Failure to comply with incident reporting requirements pursuant to Part 750-2.6 and Part 750-2.7	All	NOV
Reporting false information	All	Consult with DEC law enforcement or legal to assess potential criminal prosecution or civil enforcement.

²⁵For definitions of overflow types, refer to DEC document, "Permitting and Compliance Assurance Strategy for Bypasses and SSOs," April 19, 2007, *et seq.*

Appendix B

SPDES Penalty Guidance

I. Penalty Components

In order for the Department to protect New York's natural resources, the regulated communities must understand that it is not beneficial to them to disregard their environmental responsibilities. To achieve deterrence, both the violator and the regulated community should recognize that the penalty places the violator in a worse position than those who have voluntarily complied. Any system for calculating penalties must allow flexibility and must identify a fair and effective penalty amount.

This guidance provides staff with a consistent method to determine penalties that will deter additional violations, eliminate any unfair economic advantage gained and consider the unique characteristics of each case. This guidance only applies to penalty calculations for civil enforcement cases related to the Department's SPDES programs. The total penalty is calculated by using a base penalty for each violation, adjustments for case specific factors and an economic benefit component.

In addition to the penalty assessment for SPDES violations, DOW staff should consider assessing a penalty for natural resource damages caused by the violations. Some instances where natural resource damages could occur are when fish are killed, or when there is visible evidence of contaminants or oil on the water's surface or along its shores. DOW staff should refer to the Department's website on Natural Resource Damages (NRD) in making these determinations and follow up with appropriate NRD staff identified on the website.

$$\text{Total Penalty} = [(\text{Total Base Penalty}) * (\text{Calculated Adjustment Factor})] + \text{Economic Benefit}$$

The base penalty is the amount that should be assessed for specific violations. This component of the penalty focuses on the extent of the actual or potential loss or harm to the environment and human health. The base penalty is intended to reflect the gravity of the violation (i.e., the relative importance of the violation in the regulatory scheme, and the potential harm or actual damage to the environment resulting from that violation), and serve as a deterrent for future non-compliance.

The base penalty amounts need to be adjusted for inflation or deflation every two years. It is appropriate to adjust the base penalty to be in line with the current purchasing power of the dollar. DOW staff will update Table 1 and Appendix D using the Consumer Price Index (CPI).²⁶

Adjustment factors are provided to allow flexibility and fairness in the penalty calculation. Consistent with the Commissioner's Civil Penalty Policy,²⁷ the following adjustment factors are used in this guidance: culpability, cooperation, history of non-compliance, ability to pay and other unique factors. These factors and their recommended ranges defined herein, allow the base penalty to be increased to the statutory maximum penalty of \$37,500 per day per violation.

²⁶Consumer Price Index (CPI) published by the U.S. Department of Labor, Bureau of Labor Statistics.

²⁷Department's Civil Penalty Policy (Commissioner Policy DEE-1), last revised on June 20, 1990.

The economic benefit component is an estimate of the economic benefit gained through delayed compliance. It should include the present value of permanently avoided costs which would have been expended if compliance was achieved when required. Calculation and recovery of the economic benefit of noncompliance ensures an unfair advantage is not gained by violators.

The total penalty equals the sum of the adjusted total base penalty and the economic benefit. The calculation of each of the major components is further explained in Section II. The total penalty is the amount that should be recommended by the Division in the corresponding enforcement action. During negotiations, the Department's legal staff will finalize the total assessed penalty and determine whether the entire amount will be payable or include a suspended portion. The use of a suspended penalty is discretionary. The suspended amount should be consistent with the guidelines laid out in the Commissioner's Civil Penalty Policy.

An Order on Consent may include negotiated stipulated penalties to deter violations of the Order. Use of this penalty is an incentive to adhere to schedules and other conditions established in the Order. Stipulated penalties are incremental penalties associated with achievement of milestone dates and individual requirements. Guidance on calculation of stipulated penalties is found in Section III of this Appendix.

II. Penalty Calculation

DOW staff should document penalty calculations and retain a copy.

A. Base Penalty

The base penalty is the starting point for penalty calculation. A base penalty rate for each violation takes into consideration the violation's relative importance in the regulatory scheme. Environmental significance multipliers represent various degrees of potential harm or actual damage to the environment resulting from a violation. The base penalty tables and the environmental significance multipliers found in Appendix C of this document should be used to calculate the base penalty for each violation included in the legal referral. The base penalty for each violation is equal to the applicable base penalty rate multiplied by the duration of the violation (i.e., number of days/months/events) multiplied by the environmental significance multiplier. The duration begins on the earliest day that the Department can prove non-compliance. When non-compliance is not continuous, the duration is considered to be the number of days violations occurred. The total base penalty is equal to the sum of the individual base penalties.

$$\text{Total Base Penalty} = \text{SUM} (\text{Base Penalty Rate}_n * \text{Duration}_n * \text{Environmental Significance Multiplier}_n) \text{ where } n = 1,2,3\dots$$

DEC Commissioner's Policy on Small Business Self-Disclosure, CP-19 outlines an exception to the calculation of a base penalty. CP-19 describes that if a specific set of criteria is met, then the gravity component of the penalty calculation (i.e. Total Base Penalty) is eliminated and the penalty is limited only to the economic benefit component. Please reference CP-19 for the specific requirements of this policy.

B. Adjustment Factors

To address the uniqueness of each enforcement case, adjustment factors (multipliers) should be applied to the total base penalty. These factors are: culpability (Cu), cooperation (Co), history of noncompliance (H) and unique or other factors (OF). A multiplier for each adjustment factor must be determined by using the tables in Appendix D. The calculated adjustment factor is equal to the product of the individual adjustment factors.

$$\text{Calculated Adjustment Factor} = (Cu * Co * H * OF)$$

C. Economic Benefit

Economic benefit is the amount of money which a violator saved by failing to comply in a timely manner. The total recommended penalty should include recovery of this benefit gained through delayed and/or avoided compliance by the violator. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, the violator is able to avoid the interest costs associated with borrowing funds for environmental compliance; both of which can result in a financial advantage over those entities which have complied with the regulations. Without recovery, other regulated entities may then see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Every effort should be made to calculate and recover the economic benefit of noncompliance.

1. **Economic Benefit Analysis**

The economic benefit of non-compliance is considered to be the benefits of avoided costs for the period from the first provable date of violation until the date of compliance. When considering the economic benefit gained, staff should look at the following:

- Capital investments (e.g., pollution control equipment)
- One-time non-depreciable expenditures (e.g., setting up a reporting system, or acquiring land)
- Recurring costs (e.g., operating and maintenance costs, sampling costs, staffing costs, or off-site disposal costs)
- Other avoided costs

The economic benefit shall be considered to be the present value of the avoided cost or can be calculated through use of the U.S. Environmental Protection Agency's BEN computer model.

2. **Economic Benefit Component Adjustments**

Staff may consider adjustments to the economic benefit penalty component in the following circumstances:

a. **De Minimus or Indeterminate Benefits**

The commitment of significant Department resources may not be warranted in cases where the magnitude of the economic benefit component is insignificant. In such matters, Department enforcement staff has the professional discretion not to seek the economic benefit component of the penalty.

b. **Compelling Public Interest**

In the exercise of discretion, the Department attorney, in consultation with Regional and/or Program Directors, may reduce or suspend payment of the economic benefit component of the penalty where the public interest would not be served by taking the

penalty action to full adjudicatory hearing. In such cases, it may be necessary to settle the case for less than the economic benefit component. Such settlements might be appropriate in the following circumstances: removal of the economic benefit would result in plant closure, bankruptcy, or other extreme financial burdens, and there is public interest in allowing the firm to continue in business; in enforcement actions against not-for-profit public entities such as municipalities, the circumstances might include situations where assessment of the civil penalty threatens to disrupt continued provision of essential public services. In situations where a plant is likely to close anyway, or where there is a likelihood of continued harmful non-compliance, the full economic benefit should be recovered.

D. Total Penalty

The total penalty is the sum of the total base penalty multiplied by the calculated adjustment factor plus the economic benefit. The Division should recommend this value in the legal referral.

$$\text{Total Penalty} = [(\text{Total Base Penalty}) * (\text{Calculated Adjustment Factor})] + \text{Economic Benefit}$$

III. **Stipulated Penalty Assessment**

A stipulated penalty is a negotiated penalty included in an Order on Consent to be collected if the respondent violates the terms of the Order. The penalty increases incrementally depending on the duration of noncompliance and is intended to deter noncompliance with the Order. Stipulated penalties should be included whenever there are interim limits or a compliance schedule and are not subject to further negotiation.

Table 1 contains the minimum recommended stipulated penalties for violations of Orders on Consent. When appropriate, these amounts can be scaled upwards to account for environmental impacts.

For wastewater treatment plants, the capacity of the facility (permitted flow) should be considered when developing stipulated penalties. Facilities with greater capacity have a greater potential for negative impacts to the environment. The multipliers in Table 2 should be used to adjust each stipulated penalty rate.

Table 1 Minimum Recommended Stipulated Penalties

Violation	Circumstance	Penalty Rate
Failure to meet a major milestone or complete a schedule item (i.e., start construction, end construction, meet final effluent limits)	a) 1 st - 30 th day	a) \$250/day
	b) 31 st - 59 th day	b) \$350/day
	c) over 60 days	c) \$500/day
Failure to meet other (non-major) milestone or complete a schedule item	a) 1 st - 30 th day	a) \$100/day
	b) 31 st - 59 th day	b) \$175/day
	c) over 60 days	c) \$250/day

Non-toxic effluent interim limit violation ²⁸	a) Daily Max b) 7 day average c) 30 day average	a) \$500/parameter/violation b) \$1,250/parameter/violation c) \$2,500/parameter/violation
Toxic effluent interim limit violation ²⁸	a) Daily Max b) 7 day average c) 30 day average	a) \$1,000/parameter/violation b) \$2,500/parameter/violation c) \$5,000/parameter/violation

Table 2 Wastewater Treatment Plant Permitted Flow

Permitted Flow	Multiplier
Permitted Flow is ≤ 0.1 MGD	0.75
Permitted Flow is >0.1 - 1 MGD	1.0
Permitted Flow is >1 - 5 MGD	1.1
Permitted Flow is >5 - 10 MGD	1.25
Permitted Flow is >10 - 30 MGD	1.5
Permitted Flow is >30 - 50 MGD	1.75
Permitted Flow is > 50 MGD	2.0

²⁸Toxic and Non-Toxic parameters are listed in Exhibit A of “Revision of NPDES Significant Noncompliance Criteria to Address Violations of Non-Monthly Average Limits,” dated September 21, 1995.

Appendix C

Base Penalty Tables

The Base Penalty Tables and Environmental Significance Multipliers in Appendix C apply only to civil enforcement cases related to the Department’s SPDES programs. Base Penalties are grouped by permit type for ease of use. The base penalty rates listed represent the minimum recommended penalties for specific violations and are to be used as a component in the calculation of the Total Base Penalty. The Environmental Significance Multipliers are applied to each violation and are used in calculation of the Total Base Penalty.

In the case of unpermitted discharges or Water Quality Standards violations at facilities that failed to obtain a required individual permit, are not required to obtain an individual permit or are not required to obtain coverage under a general permit (ex. a small farm which does not require a CAFO General Permit), the base penalty rates listed in Table C would apply. If unpermitted discharges or Water Quality Standards violations are found at facilities required to obtain coverage under a general permit, the base penalty rates listed in the tables for that specific permit would apply.

Individual SPDES Permits

A. Violations of Reporting/Recordkeeping Requirements

Violation	Base Penalty Rate
Failure to: <ul style="list-style-type: none"> • Report on any routine permit requirement within 30 days of due date • Submit application for permit renewal • Respond to a <i>Request For Information</i> pursuant to 750-1.6(d) • Notify Department of compliance or non-compliance with an interim or final permit schedule requirement by 14 days after due date 	\$500/event
Failure to submit application for permit transfer (i.e., permit not valid)	\$1,000/month
Failure to report on Action Level follow up	\$1,000/month
Failure to submit a report required by an Order on Consent	\$1,000/month
Sampling and/or monitoring deficiencies or failure to report non-toxic parameters	\$500/parameter
Sampling and/or monitoring deficiencies or failure to report toxic parameters	\$1,000/parameter
Failure to submit DMR ²⁹	\$1,000/month
Failure to submit Annual Flow Certification	\$1,000/event
Failure to submit: Flow Management Plan or Plan for Future Growth (if required)	\$1,500/month

²⁹For the purpose of this penalty determination, a single “DMR” is considered to be all unsubmitted outfalls for one month. For example, a facility failing to submit 001M, 001V and/or 002Q for one month would be considered to have one overdue DMR.

Violation	Base Penalty Rate
Failure to: <ul style="list-style-type: none"> Maintain copy of permit or DMRs on-site Install and maintain outfall signs 	\$500/event
Failure to retain records as required	\$2,500/event
Failure to submit corrected information upon discovery by permittee	\$1,000/event
Failure to comply with incident reporting requirements pursuant to Part 750-2.7	\$500/event
Tampering with monitoring devices ³⁰	\$7,000/event
Falsifying information on DEC submittal ³⁰	\$10,000/report

B. Violations of SPDES Permit or Order on Consent³¹ Schedule Requirements

Violation	Base Penalty Rate
Failure to meet a major milestone or complete a schedule item (i.e., start construction, end construction, meet final effluent limits, pretreatment report).	\$250/day
Failure to meet other (non-major) milestone or complete a schedule item.	\$100/day
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

³⁰ 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.

³¹If previously existing Order on Consent contains stipulated penalties those may be collected. In the case that stipulated penalties did not exist, or a modified or new Order on Consent will be executed, DEC staff may use the penalty rates contained in this table.

C. Violations of Effluent Requirements, Unpermitted Discharges and Water Quality Standards³²

Violation	Base Penalty Rate
Exceeding interim or final effluent limits for non-toxic parameter under SPDES permit: <ul style="list-style-type: none"> • Daily max/min discharge (each day = 1 violation= 1 event) • Daily Average (7 day average = 7 violations³³ = 1 event) • Daily Average (30 day average = 30 violations³⁴ = 1 event) or Monthly Average 	<ul style="list-style-type: none"> \$1,000/event \$1,500/event \$2,000/event
Exceeding interim or final limits for toxic parameter under SPDES permit: <ul style="list-style-type: none"> • Daily max/min discharge (each day = 1 violation = 1 event) • Daily Average (7 day average = 7 violations³³ = 1 event) • Daily Average (30 day average = 30 violations³⁴ = 1 event) or Monthly Average 	<ul style="list-style-type: none"> \$2,000/event \$3,000/event \$4,000/event
Discharge at unpermitted facility ³⁵	\$5,000/day
Unauthorized discharge at permitted facility ³⁶	\$2,500/day
SSO, overflow or unapproved bypass ³⁵	\$3,000/day
Causing or contributing to a Water Quality Standards violation ³⁵	\$5,000/event
Construction/modification of waste disposal system without DEC approval and appropriate permit(s) ³⁷	\$5,000/event

³²For facilities that do not have an individual permit or are not required to obtain an individual or general permit use “Discharge at unpermitted facility” and “Causing or contributing to a Water Quality Standards violation” to address those types of violations.

³³Exceedence 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.”

³⁴Exceedence 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.”

³⁵ 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.

³⁶This applies to unauthorized pollutants at a permitted facility or any discharge from an unpermitted outfall at a permitted facility.

³⁷ 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.

Violation	Base Penalty Rate
ECL Article 17 violations not related to permit including, but not limited to: <ul style="list-style-type: none"> • Pollution of waters of marine district (ECL §17-0503) • Failure to provide minimum secondary treatment (ECL §17-0509) • Vessel sewage discharge to designated non-discharge zones (ECL § 17-1745) 	\$250/day
Failure to comply with applicable standards promulgated by an interstate agency	\$250/day

D. Other Individual SPDES Permit Violations

Violation	Base Penalty Rate
Failure to employ a Certified Operator when required	\$250/day
Failure to allow inspection/sampling by the Department	\$5,000/event
Non-enforcement of local or categorical limits (pretreatment)	\$1,500/month

General SPDES Permits and Other

E. Concentrated Animal Feeding Operation (CAFO) General Permit

Violation	Base Penalty Rate
Failure to submit Annual Compliance Report	\$3,000/event
Failure to submit CNMP Certification	\$3,000/event
Failure to apply for and maintain appropriate (i.e. size) coverage under the CAFO General Permit	\$5,000/event
Failure to file appropriate notice of change of ownership	\$1,000/month
Failure to implement the CNMP or significant permit requirements, for example: <ul style="list-style-type: none"> • Environmental health impact • Multiple substantive violations confirmed (e.g. grossly inadequate record keeping, failure to maintain adequate freeboard for waste structure, etc) • Building an undesigned open waste storage structure 	\$3,000/event
Failure to meet consistent “annual progress” permit requirement (second and subsequent offense) ³⁸	\$3,000/event
Failure to update the CNMP	\$1,000/event
Significant unauthorized discharge (refer to draft EPA Wet Weather SNC Policy <i>et seq.</i>)	\$3,000/event
Unauthorized discharge	\$2,500/event
Causing or contributing to a Water Quality Standards violation	\$5,000/event
Failure to meet a major administrative or judicial order milestone	\$250/day
Failure to meet other (non-major) administrative or judicial order milestone	\$100/day
Failure to meet non-significant permit requirement	\$500/event
Failure to submit required report (including failure to respond to information request)	\$500/month
Failure to retain records as required	\$500/event
Failure to allow inspection/sampling by the Department	\$5,000/event
Unauthorized disposal of materials into the manure retention facility (other than discharges associated with proper operation and maintenance of a CAFO) or unauthorized retention (i.e., not specified in CNMP) of incidental food processing wastewater	\$1,000/event

³⁸ Schedules and applicability for this requirement are established in the General Permit(s) for CAFOs.

Falsifying information on DEC submittal ³⁹	\$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

³⁹ 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.

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

Violation	Base Penalty Rate
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"> • Lack of or a substantially inadequate SWPPP or SWMP; • Substantial failure to implement or maintain BMPs, or • Substantial failure to perform required monitoring 	\$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 ⁴⁰	\$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

⁴⁰ 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 appropriate erosion & sediment control practices	<p>< 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 >1 acre for east of Hudson in the NYCW) \$1,500/day</p>
Failure to obtain coverage under General Permit and is employing minimal or no erosion & sediment control practices	<p>< 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW) \$1,500/day</p> <p>≥5 acres (or >1 acre for east of Hudson in the NYCW) \$3,000/day</p>
Failure to develop and implement a SWPPP	\$3000/event
Has coverage under General Permit, and has significant permit violations including but not limited to: <ul style="list-style-type: none"> • Substantial failure to implement or maintain BMPs 	<p>< 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW) \$1,000/day</p> <p>≥5 acres (or >1 acre for east of Hudson in the NYCW) \$2,500/day</p>

Has coverage under General Permit, and has non-significant permit violations	<p>< 5 acres (or 5,000 sq ft - 1 acre for east of Hudson in the NYCW) \$500/day</p> <p>≥5 acres (or >1 acre for east of Hudson in the NYCW) \$1,000/day</p>
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 ⁴¹	\$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

⁴¹ 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"> Substantially inadequate SWPPPs; Substantial failure to develop or implement the SWPPP; Substantial failure to implement or maintain BMPs; Substantial failure to implement MSGP requirements. 	\$3,000/event
Exceeding interim or final effluent limits for non-toxic parameter under SPDES permit: <ul style="list-style-type: none"> Daily max/min discharge (each day = 1 violation= 1 event) Daily Average (7 day average = 7 violations⁴² = 1 event) Daily Average (30 day average = 30 violations⁴³ = 1 event) or Monthly Average 	\$1,000/event \$1,500/event \$2,000/event
Exceeding interim or final limits for toxic parameter under SPDES permit: <ul style="list-style-type: none"> Daily max/min discharge (each day = 1 violation = 1 event) Daily Average (7 day average = 7 violations³² = 1 event) Daily Average (30 day average = 30 violations³³ = 1 event) or Monthly Average 	\$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

⁴²Exceedence 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.”

⁴³Exceedence 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 ⁴²	\$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

⁴²The 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.

I. Base Penalty for General Permit for Discharge of 1,000 – 10,000 gpd to Groundwater Requirements

Violation	Base Penalty Rate
Failure to apply for coverage under the General Permit	\$3,000/event
Failure to renew or transfer coverage under the General Permit	\$1,000/month
Failure to have PE Certification or local health agency approval of Treatment Works	\$2,000/event
Failure to maintain the facility in effective working condition	\$1,000/event
Causing or contributing to a Water Quality Standards violation	\$5,000/event
Unauthorized discharge at a permitted facility	\$2,500/event
Failure to retain records as required	\$500/event
Failure to allow inspection/sampling by the Department	\$5,000/event
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

Environmental Significance Multipliers

The Environmental Significance multiplier considers whether and to what extent the violation resulted in actual or potential damage to the environment or human health. This figure is multiplied by the base penalty rate and the duration of the violation to calculate the base penalty.

Environmental Significance	Multiplier
Minimal impact to environment or human health; low toxicity of discharge or release; no violation of Water Quality Standards; designated use not impacted	1.0
Moderate impact to environment or human health, and designated use is threatened due to violation; documented Water Quality Standards violation	1.25
Considerable impact to environment or human health; toxicity or moderate degree of deviation from Water Quality Standards; designated use is impaired due to violation; 303(d) TMDL waters or designated ground aquifers impacted by contaminants of concern; significant sediment deposition	1.5
Significant impact to environment or human health; high toxicity of discharge or release; significant deviation from Water Quality Standards; expected long-term impacts (i.e., long recovery time anticipated); designated use is precluded due to violation; fish kill	2.0

Appendix D

Penalty Adjustment Factors

Culpability (Cu)

<u>Culpability (Cu)</u>	Multiplier
The Culpability factor will only be considered as an escalating factor to increase a penalty. It considers the intent, recklessness or negligence associated with a violation.	
Limited/Accidental - Violation could not have reasonably been prevented and was beyond violator's control.	1.0
Negligence - Violator failed to respond quickly to minimize damage or failed to act responsibly; should have foreseen a problem.	1.25
Recklessness - Reasonable precautions not taken, Violator disregarded risks; Violator knew or should have known of hazard, law or requirement	1.5

Cooperation (Co)

<u>Cooperation (Co)</u>	Multiplier
The overall cooperation of the violator in remedying the violation is considered here.	
Excellent - Violator voluntarily and upon own initiative, responded quickly; took other proactive and mitigating measures; and is cooperating fully.	0.5 to 0.75
Good - Violator took prompt action and performed activities as requested.	1.0
Poor - Violator took inadequate action or no action. No indication of willful violation.	1.1
Uncooperative - Willful violation, refusal to comply, must be ordered to take action.	1.25

History of Noncompliance (H)

<u>History of noncompliance (H)</u>	Multiplier
The history of violations and any previous enforcement is considered here. Unless the violations are the result of factors beyond the control of the permittee, the penalties should be more severe with subsequent enforcement.	
No previous violations	1.0
Previous violation(s) of a similar nature three or more years ago	1.1
Previous violations of a similar nature at same site within three years	1.25

Previous violations of a similar nature at same site within three years and at other site(s) under the respondent's control, within the last three years	1.5
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Unique or Other Factors (OF)

Unique or other factors may be appropriate to consider in the final penalty assessment to promote fairness and effectively deter violations. These factors are determined by the best professional judgement of Department staff. This multiplier can range from 0.75 to 1.25.

For wastewater treatment plants, one factor that should be considered is the capacity of the facility (permitted flow). Facilities with greater capacity have a greater potential for negative impacts to the environment.

Wastewater Treatment Plant Permitted Flow The permitted flow at a wastewater treatment plant is considered here.	Multiplier
Permitted Flow is ≤ 0.1 MGD	0.75
Permitted Flow is >0.1 - 1 MGD	1.0
Permitted Flow is 1 - 5 MGD	1.1
Permitted Flow is >5 - 10 MGD	1.25
Permitted Flow is >10 - 30 MGD	1.5
Permitted Flow is >30 - 50 MGD	1.75
Permitted Flow is > 50 MGD	2.0

The ability of the respondent to pay penalties and implement corrective actions is another factor to be considered. However; inability to pay is not a means to avoid compliance with environmental requirements. It is the respondent's responsibility to demonstrate financial hardship. Refer to the Commissioner's Civil Penalty Policy, (DEE-1).

Definitions

Discharge: When used without qualification, “discharge” means any addition of any pollutant or combination of pollutants to the waters of the United States from any point source. See 40 CFR §122.2

Major milestones: Significant actions or corrective measures that a permit or enforcement order requires to be completed by a designated date. Major milestones do include, but are not limited to, the actions and associated deadlines for the following: begin construction of corrective measures, end construction of corrective measures, achieve final compliance, implement best management practices (BMPs)⁴³, submit and implement a nutrient management plan (NMP), and pay a penalty.

Overflow: Any release, or spill of wastewater from or caused by a sewage collection system, and not private laterals, to public or private property (including building backups) whether or not it reaches the waters of the United States.

Unauthorized discharge: A discharge that is not authorized by a SPDES permit or that is in violation of a SPDES permit.

Significant Noncompliance (SNC): A term used to describe the most serious level of violation as defined by EPA. SNC is defined by EPA in the following documents: “Revision of NPDES Significant Noncompliance Criteria to Address Violations of Non-Monthly Average Limits,” dated September 21, 1995; and “Interim Wet Weather SNC Policy,” dated October 23, 2007.

Water Priority Violation: A water related violation meeting the criteria defined in TOGS 1.4.1 Water Integrated Compliance Strategy System (WICSS).

⁴³For CAFO facilities, this applies to those BMPs “required” to be implemented as per the general permit.