



**Department of
Environmental
Conservation**

RESPONSIVENESS SUMMARY

for

Public Comments Received

on the

**NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION (NYSDEC)**

SPDES GENERAL PERMIT

for

**PRIVATE, COMMERCIAL, AND INSTITUTIONAL
DISCHARGES TO GROUNDWATER OF TREATED SANITARY SEWAGE**

Permit No. GP-0-25-002

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

Issuance Date: April 23, 2025

Effective Date: May 11, 2025

Expiration Date: May 10, 2035

Introduction

On April 23, 2025, the New York State Department of Environmental Conservation (Department) issued the State Pollutant Discharge Elimination System (SPDES) General Permit for Private, Commercial and Institutional Discharges to Groundwater of Treated Sanitary Sewage, GP-0-25-002. GP-0-25-002 will be effective May 11, 2025. GP-0-25-002 replaces the previous general permit, GP-0-15-001, which expires May 10, 2025.

On November 13, 2024, NYSDEC publicly noticed draft GP-0-25-002 for public review and comment in the Environmental Notice Bulletin. No later than November 16, 2024, NYSDEC publicly noticed draft GP-0-25-002 for public review and comment in statewide newspapers. The public comment period ended on December 19, 2024.

This responsiveness summary addresses all comments timely received. Minor edits that were not raised in these comments were also made to GP-0-25-002. The comments in the responsiveness summary are direct quotations.

No.	Commenter
1	Office of Parks, Recreation and Historic Preservation
2	New York City Department of Environmental Protection
3	Taconic, LLC
4	Save the Sound

Part I.A.

Comment #1: If one facility has multiple OWTS that meet the eligibility criteria for daily flow, but has one OWTS that is less than 1000 gallons/day, what permit approval/coverage is required for the one OWTS with daily flow less than 1000 gallons/day? **(3)**

- Response #1: In response to this comment, no changes were made to GP-0-25-002. Consistent with ECL 17-0701(6), an OWTS with a discharge of less than 1,000 gpd does not require a SPDES permit and, therefore, is not eligible for coverage under GP-0-25-002.

Comment #2: In Part I.A.2, consider changing the text from “Because construction of the OWTS may have the potential to adversely affect a species...” to “If construction activities may adversely affect a species...” otherwise, it appears EVERY project would require a Take Permit or letter of non-jurisdiction. This text is notably different than the text provided on page 6 of the Draft 2025 SPDES Construction General Permit (CGP) for Stormwater Discharges from Construction Activity (Permit No. GP-0-25-001). The Draft Fact Sheet for Permit No. GP-0-25-002 indicates this requirement only for “where construction of an OWTS may adversely affect threatened or endangered species.” **(1)**

- Response #2: In response to this comment, changes were made to GP-0-25-002. The text “*Because construction of the OWTS may have the potential to adversely affect a species...*” was changed to “*If construction activities may adversely affect a species*”, to be consistent with the 2025 Construction General Permit for Stormwater Discharges from Construction Activity (GP-0-25-001), and to clarify that only those sites where there are known records of threatened or endangered species are subject to a Part 182 permit or further inquiry about permit jurisdiction.

Comment #3: This section indicates pertaining only to threatened and endangered species and not special concern species. Page 6 of the Draft 2025 SPDES Construction General Permit (CGP) for Stormwater Discharges from Construction Activity (Permit No. GP-0-25-001) includes special concern species as well. Why is there a difference? **(1)**

- Response #3: In response to this comment, no changes were made to GP-0-25-002. The final 2025 SPDES Construction General Permit (GP-0-25-001) does not include reference to special concern species. Please see the Responsiveness Summary for the 2025 SPDES Construction General Permit Comment #13.

Comment #4: DEP notes that the Fact Sheet includes useful guidance concerning an important new requirement related to State regulated wetlands: “Part I.A.8. of draft GP-0-25-002 is new and requires the owner to obtain a jurisdictional determination from NYSDEC to determine whether a New York State regulated wetland exists on the property (and if one does exist, to determine or delineate the wetland boundaries).

This requirement, along with Part I.B.1.b., ensures that the facility will not be located in tidal or freshwater wetlands or adjacent areas as defined in Articles 24 and 25. Part II.C.1. of draft GP-0-25-002 requires the owner to attach the jurisdictional determination, in PDF, to the submission of the e-NOI to enable secure transfer of information.” Part I.A.8 of the Draft GP-0-25-002 also includes the following statement in this regard: “The owner must obtain a jurisdictional determination by NYSDEC that the OWTS will not be located in freshwater or tidal wetlands or adjacent areas as defined in State Environmental Conservation Law (ECL) Articles 24 and 25.”

Part I.A.8 requires the owner to obtain a jurisdictional determination by NYSDEC that the OWTS will not be located in freshwater or tidal wetlands or adjacent areas as defined in State Environmental Conservation Law (ECL) Articles 24 and 25. In conjunction with the introductory sentence for Part I.A. “To be covered under this permit, the owner must meet all eligibility requirements in Part I.A...,” this text suggests that ALL projects require a jurisdictional determination. This is substantiated by the Draft Fact Sheet on page 5. What if there are clearly no freshwater or tidal wetlands or adjacent areas within or near the project site? Is this still a requirement, including for state agencies? **(1), (2)**

- Response #4: In response to this comment, no changes were made to GP-0-25-002. The determination of whether there are freshwater or tidal wetlands or adjacent areas within or near the project site must be made by NYSDEC, even in

instances where the owner does not believe that there are wetlands present on the facility site. All projects require a jurisdictional determination from NYSDEC to be eligible for coverage under GP-0-25-002. This approach confirms that there are no jurisdictional wetlands on the facility site or, if there are, that OWTS construction will not occur in wetlands or wetlands adjacent areas.

Comment #5: In addition, if a jurisdictional determination is needed for every project, would this permit no longer be considered a ministerial permit, and would therefore require lead agency coordination with DEC under SEQR whenever this general permit is identified as needed? **(1)**

- Response #5: In response to this comment, no changes were made to GP-0-25-002. The PCI GP is ministerial because there is no discretion on the part of NYSDEC in terms of granting coverage; coverage is based on the ability of applicants to verify that they have met the eligibility requirements in Part I.A. of GP-0-25-002.

Part I.B.

Comment #6: As NYSDEC is undoubtedly aware, there are still a significant number of commercial septic systems with design flows equal to or greater than 1,000 gpd but less than 10,000 gpd that are not permitted by NYSDEC under the SPDES program. Unless NYSDEC intends for these systems to be grandfathered, the draft permit should include provisions to clarify that the rules are applicable to unpermitted systems that meet the criteria and not just those systems that currently possess a SPDES permit. **(2)**

Response #6: In response to this comment, changes were made to Part II.B. of GP-0-25-002 to clarify that a facility with an OWTS that was never permitted must submit an eNOI and meet the requirements of Part II.B. for obtaining coverage under GP-0-25-002.

In reviewing this comment, NYSDEC became aware of the need to further clarify Part II.F. to distinguish between an OWTS that was never permitted from an OTWS with an expired individual permit. Therefore, Part II.F. was revised to articulate that an existing OWTS, operating in accordance with the conditions of an individual SPDES permit that has expired, is also eligible for coverage under GP-0-25-002. See also Part II.F. of the Fact Sheet.

Comment #7: Part II.A of GP-0-25-002 states “The Request to Continue Coverage also includes a certification by the owner that the OWTS design components have not changed and that the OWTS meets the requirements of GP-0-25-002.” The draft permit does not clarify what “meets the requirements of GP-0-25-002” means. What specific requirements of the 2025 general permit need to be met by existing systems (with no modifications) to be able to Request to Continue Coverage? **(3)**

- Response #7: In response to this comment, changes were made to GP-0-25-002 to clarify that the requirements in Part I.C and Parts III through VII of GP-0-25-002 must be met to be able to submit a request to continued coverage.

Comment #8: If the design and construction of existing systems, previously approved by local health departments, include minor variances for the recommended design standards, such as reduction in recommended separation distances, could these systems (that have not been modified) still be covered under GP-0-25-002 for existing systems? **(3)**

- Response #8: In response to this comment, no changes were made to GP-0-25-002. GP-0-15-001 permitted OWTS that had been previously approved by local health departments, including those with minor variations from the recommended design standards. All existing OWTS, operating in accordance with GP-0-15-001, can be covered under GP-0-25-002 if the OWTS will be operated in accordance with Part I.C. and Parts III through VII of GP-0-25-002.

Comment #9: If one facility has multiple OWTS and only one system will be modified, is a new eNOI submitted for the entire facility or is a Request for Continuing Coverage submitted for the systems that were not modified with a new eNOI submitted for the modified system? **(3)**

- Response #9: In response to this comment, no changes were made to GP-0-25-002. An eNOI should be submitted by an owner for authorization to discharge from one or more OWTS at a facility. Even if one of the OWTS at that facility will be modified, a new eNOI for that facility must be submitted that includes all the OWTS.

Part II.B.

Comment #10: Part II, Section B (page 7) of the Fact Sheet incorrectly references GP-0-15-002 rather than GP-0-15-001: “The design standards in Part II.B. of draft GP-0-25-002 did not change from GP-0-15-002 and are the most current design standards.” **(2)**

- Response #10: In response to this comment, the typographical error noted in this comment was corrected in the Fact Sheet.

Comment #11: Save the Sound is also glad to see the addition of terms requiring owners to demonstrate consideration of future physical climate risks by siting and designing on-site wastewater treatment systems (OWTS) to prevent inundation of critical equipment. See GP-0-25-002 Part II.B. We are particularly glad to see that it seems DEC has employed the climate-informed, science-based flood-risk management guideline elevation preferred under the New York State Flood Risk Management Guidance for Implementation of the Community Risk and Resiliency Act (“Flood Risk Management Guidance”). But the language in this part of the draft permit is confusing and does not clearly state what action it requires of OWTS owners.

We therefore recommend DEC add language clarifying that this part describes what constitutes a flood hazard area and prohibiting siting of OWTSs in these areas. These additions will help to provide the best protection feasible for both water quality and critical equipment as impacts from climate change increase in the coming years. An exception could be provided for unusual circumstances, such as where siting the OWTS elsewhere is not possible or would cause the owner extreme hardship. To obtain such an exception, the owner should be required to explain the circumstances and the nature of the hardship in their permit application. And if DEC grants the exception, the owner should be required to implement and maintain advanced design components to prevent inundation of critical equipment. **(4)**

- Response #11: In response to this comment, changes were made to simplify Part II.B. language in GP-0-25-002 and to identify limiting elevations below which OWTS may not be sited and still be eligible for GP-0-25-002 coverage. There are no exceptions to this requirement. In such instances, the owner would need to apply for individual SPDES permit coverage. See also the fact sheet for further explanation of the climate change siting restriction.

Part II.C.

Comment #12: Save the Sound recommends that DEC strengthen protections for freshwater and tidal wetlands and their adjacent areas by requiring owners of existing OWTSs to request a new jurisdictional determination that the OWTS is not located in freshwater or tidal wetlands or their adjacent areas before the OWTS can be modified or replaced. At the time of writing, DEC is in the process of finalizing major amendments to New York's freshwater wetlands regulations pursuant to the 2022 Freshwater Wetlands Act. To best effectuate these new regulations, it is sensible to re-evaluate the siting of OWTSs originally constructed under now defunct regulatory schemes when owners seek to modify or replace those systems. **(4)**

- Response #12: In response to this comment, no changes were made to GP-0-25-002. Prior to modifying an existing OWTS, the owner must submit a new eNOI and attach a new wetlands jurisdictional determination letter from NYSDEC.

Part III.D.

Comment #13: We are glad to see the addition of specific adverse incident reporting requirements, but as currently drafted these requirements can be improved to better protect public health and welfare. The two-hour oral reporting requirement should apply to any discharge of untreated or partially treated sewage, regardless of whether the owner believes the discharge would affect bathing areas during the bathing season, shell fishing, or public drinking water intakes. See GP-0-25-002 Part III.D. **(4)**

- Response #13: In response to this comment, no changes were made to GP-0-25-002. The reporting requirements in GP-0-25-002 are protective and provide adequate notification to NYSDEC. GP-0-25-002 reporting and notification requirements in Part III.D. are drawn directly from NYCRR 750-2.7(b) and (d). Part

III.D.2. 24-hour oral reporting is required in instances of discharge of untreated or partially treated sewage where human health is not expected to be immediately impacted. Part III.D.1. 2-hour oral reporting is only required where human health can be expected to be immediately impacted.

Comment #14: First, sewage discharges can be harmful regardless of their proximity to particular water resources, especially when they occur in residential areas. Discharges should not be allowed to languish and burden the public and the environment for up to twenty-four hours prior to reporting simply because they do not appear to immediately threaten bathing areas, shell fishing, or public drinking water intakes. Relatedly, the question of whether a discharge “would affect” certain water resources is in one sense often too technical (if the expectation is that the decision would be made based on the hydrology of the relevant area) and in another too subjective (if the expectation is based on a lay-person’s knowledge) to hinge upon it whether an adverse incident report must be made within two hours of discovery or twenty-four. It is not realistic to rely on every owner to understand when a discharge can be expected to affect bathing areas, shell fishing, or public drinking water intakes, or even to expect them to know where these areas exist in their community. Better to simply require all discharges to be reported within two hours of discovery. Finally, an oral report of a discharge is a simple task, so there is no need to delay the report up to twenty-four hours. **(4)**

- Response #14: In response to this comment, no changes were made to GP-0-25-002. See Comment Response #13.

Comment #15: In addition, the local health department should be included on all adverse incident reporting, including the oral report regarding discharges that would affect bathing areas during bathing season, shell fishing, or public drinking water intakes and the five-day written incident report. **(4)**

- Response #15: In response to this comment, no changes were made to GP-0-25-002. Local health departments may have additional reporting requirements. However, those are not included in GP-0-25-002 which is administered by NYSDEC. See also Comment Response #13.

Part VII.

Comment #16: In Part VII. Standard Permit Conditions J.1.c., the term principal executive officer is only defined for a Federal Agency. Does this need a revision to add State Agency as well for clarity? This would seem to make it clearer that a State-level Regional Director could sign the application. It could be as simple as revising it to “...For purposes of this section, a principal executive officer of a Federal/State agency includes...” **(1)**

- Response #16: In response to this comment, no changes were made to GP-0-25-002. The cited language is drawn directly from 40 CFR 122.22. This standard language is consistent with all other NYSDEC general permits. NYSDEC interprets the language in 40 CFR 122.22 to apply to state agencies the same way as federal

agencies; a State-level Regional Director may sign notices of intent and of termination.

Part IX.A.

Comment #17: Part IX.A.4.b of the NYSDEC SPDES GP for Stormwater Discharges from MS4s (GP-0-24-001) requires that MS4 Operators in the NYC East of Hudson Phosphorus Impaired Watershed ensure that residential septic tanks/cesspools are pumped out “once every five (5) years.” However, while Draft GP-0-24-002 requires a stricter annual inspection of private, commercial and institutional septic tanks, the required tank pump out frequency noted in Draft GP-0-25-002 is based on an entirely different standard than the residential MS4 five-year requirement. Specifically, Draft GP-0-25-002 requires tank pump outs be performed “to remove scum and sludge accumulations such that the accumulations do not exceed $\frac{1}{4}$ of the liquid depth” of the tank. If the stated goal is to ensure that on-site wastewater systems are properly operated and do not contribute pollutants to the environment, NYSDEC should consider providing a consistent standard in this regard across all statewide permits that address the frequency of septic tank pump outs. **(2)**

- Response #17: In response to this comment, no changes were made to GP-0-25-002. While residential OWTS, i.e. septic systems with design flows less than 1,000 gpd, typically have consistent discharge rates, the PCI GP facilities that are authorized under GP-0-25-002 vary in design flow, from 1,000 to 30,000 gpd. Given those variations in flow, some PCI GP septic tanks will need pump-outs annually while others, particularly seasonal facilities, may not need pump-outs for several years. It is appropriate to require pump-outs based on sludge accumulation where flows vary widely from facility to facility. The language specifying when a pump-out must occur is consistent with all PCI GPs issued since PCI GP-95 in 1995.