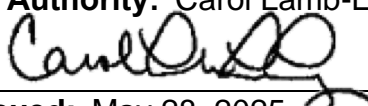


<b>DOW #1.2.6: Interpretation and Implementation of 6 NYCRR 750-1.26</b>	
<b>New York State Department of Environmental Conservation</b>	
<b>DEC Program Policy</b>	
<b>Issuing Authority:</b> Carol Lamb-Lafay 	<b>Title:</b> Director, Division of Water
<b>Date Issued:</b> May 28, 2025	<b>Latest Date Revised:</b> new

**I. Summary:**

This Policy sets forth the Department’s interpretation of 6 NYCRR 750-1.26 and clarifies its implementation.

Simultaneous with a request for an adjudicatory proceeding in a State Pollutant Discharge Elimination System (SPDES) permit matter, Section 750-1.26 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) requires a permittee to identify the new or changed conditions of a final renewed or modified (i.e., “new”) SPDES permit that are contested and explain why those conditions are contested. Contested conditions (and related inseverable conditions) are stayed pending an adjudicatory proceeding, provided that the permittee makes a good-faith effort to provide the information required by 6 NYCRR 750-1.26. Conditions of the new SPDES permit that are not contested by the permittee become effective instead of being stayed during an adjudicatory proceeding, which is consistent with federal regulations implementing the Clean Water Act.

The Director for the Division of Water (Director) reviews the information the permittee provides pursuant to 6 NYCRR 750-1.26. The Director reviews only for procedural compliance and does not make any merits-based determinations. The Director notifies the permittee of the stay of those conditions that the permittee has identified as contested or inseverable, and for which the permittee has made a good faith effort, based on its knowledge, to provide the information required by 6 NYCRR 750-1.26(c).

6 NYCRR 750-1.26 does not change: 1) the role of the Administrative Law Judge (ALJ), who determines whether any contested conditions (and related inseverable conditions) present adjudicable issues or 2) the standards for permit issuance or adjudicable issues as set forth in 6 NYCRR 624.4(c). 6 NYCRR 750-1.26 does not add any substantive requirements as a prerequisite to an adjudicatory proceeding under 6 NYCRR Part 624.

**II. Purpose, Benefits, and Background:**

On August 21, 2024, the Department adopted several regulatory changes. The existing 6 NYCRR Part 624 was repealed and replaced with a new Part 624. Furthermore, amendments to 6 NYCRR Subpart 750-1 enacted a new section 750-1.26. That section requires permittees, requesting an adjudicatory

proceeding relating to conditions of a final renewed or modified SPDES permit, to simultaneously submit certain information to the Director. Additionally, 6 NYCRR Part 621 was amended to require compliance with the updated procedural requirements of 6 NYCRR Part 624 and 6 NYCRR 750-1.26. (collectively, Rules).

Prior to the Rules, the Department's regulations did not provide a procedure to distinguish between contested and uncontested conditions in a renewed or modified SPDES permit. Consequently, under then-existing regulations, all conditions of a new SPDES permit were stayed during the pendency of an adjudicatory proceeding. Water quality improvements that could result from implementation of the uncontested conditions of the new SPDES permit were, therefore, substantially delayed. The procedural changes in 6 NYCRR 750-1.26—and complementary changes to 6 NYCRR Part 624, 621.10(h), 621.11(g), and 621.13(d)—promote consistency with federal regulations and improve water quality by staying only the contested conditions in the new SPDES permit during the pendency of an adjudicatory proceeding.

Additionally, 6 NYCRR 750-1.26 facilitates procedural efficiencies. Prior to the Rules, 6 NYCRR 621.10(h), 621.11(g), and 621.13(d) did not require any specific content in a permittee's request for an adjudicatory proceeding. Thus, the Department was often unable to clearly ascertain the disputed condition(s), the underlying regulatory basis, or the permittee's desired remedy until an adjudicatory proceeding under 6 NYCRR Part 624 was underway. 6 NYCRR 750-1.26, and complementary changes to 6 NYCRR Part 624, 621.10(h), 621.11(g), and 621.13(d), require a permittee to identify contested SPDES permit conditions, thereby providing information that assists the Department in understanding the permittee's challenge(s).

6 NYCRR 750-1.26 only applies to new or changed conditions in a renewed or modified (i.e., "new") individual SPDES permit. 6 NYCRR 750-1.26 does not apply to new discharges; SPDES general permits; or where a permittee is also simultaneously requesting an adjudicatory proceeding for another Department-administered permit, for the same facility, that was issued with the new SPDES permit. 6 NYCRR 750-1.26 also does not apply where the Department proposes to suspend or revoke an existing SPDES permit, or where the Department denies a SPDES renewal application. In such instances, the permittee's request for an adjudicatory proceeding does not "involve [a] new SPDES permit" (6 NYCRR 750-1.26(c); see 750-1.26(b)).

Because the requirements of 6 NYCRR 750-1.26 are new, this Policy will assist permittees in complying with their regulatory obligations and understanding the Department's actions.

### **III. Policy:**

The stay requirements of 6 NYCRR 750-1.26 are met when the permittee identifies the contested condition(s) (and related inseverable conditions) and

shows a good faith effort, based on the permittee's knowledge, to provide the information required by 6 NYCRR 750-1.26(c). Upon such submission, the contested and inseverable conditions will be stayed during the adjudicatory proceedings. The standards that ALJs then apply for determining adjudicable issues (6 NYCRR 624.4 (c)) remain unchanged. Since the Director reviews the information provided pursuant to 6 NYCRR 750-1.26 only for procedural compliance, the Director does not make any merits-based determinations.

#### **IV. Procedure:**

When 6 NYCRR 750-1.26 applies, a permittee must send the following information to the Director, simultaneous with the permittee's request for an adjudicatory proceeding:

1. Identify the contested and inseverable conditions, with an explanation for the permittee's basis for why the latter are inseverable;
2. Indicate whether issues concerning the contested conditions were previously raised or not raised;
3. Provide the legal and/or factual basis as to why the contested condition should be stayed—i.e., the legal and/or factual basis for the permittee's dispute of the contested condition;
4. If the permittee is contesting a water quality-based effluent limitation for a pollutant that is currently authorized to be discharged in the original SPDES permit, the permittee should identify temporary structural or non-structural measures, if any, that the permittee would be willing to undertake that could partially meet the contested condition; and
5. If the permittee is contesting a water quality-based effluent limitation in the new SPDES permit for a pollutant for which discharges are not explicitly listed in the original SPDES permit, the permittee should use the application for its original SPDES permit to identify the discharge concentrations for the pollutants: 1) "reported in the SPDES permit application record as detected in the discharge" or 2) if not detected, "as something the permittee knows or has reason to believe to be present in the discharge" (6 NYCRR 750-1.2(a)(29)(iv)). The permittee may propose a monitoring frequency and identify temporary structural and non-structural measures, if any, the permittee would be willing to undertake that could partially meet the contested condition.
6. Based on the permittee's knowledge, indicate whether there are other Department-administered permits, for the facility, issued with the new SPDES permit for which the permittee is simultaneously requesting an adjudicatory proceeding.

#### **6 NYCRR 750-1.26(c)(1)**

To identify the contested condition in the new SPDES permit, the permittee can cite to the page number of the new SPDES permit, title of the section of the new SPDES permit, and condition or footnote number within that section.

Alternatively, the permittee may copy and paste, or summarize, the text of the contested condition from the new SPDES permit.

6 NYCRR 750-1.26(c)(2)

To provide an explanation of why a condition is inseverable from a contested condition in the new SPDES permit, the permittee can explain why the inseverable condition cannot be implemented without the permittee complying, or partially complying, with the contested condition. For each inseverable condition, the permittee should provide the corresponding number of the contested condition identified for 6 NYCRR 750-1.26(c)(1), as well as cite to the title of the section of the new SPDES permit, condition or footnote number, and page number of the new SPDES permit where the inseverable condition is found.

6 NYCRR 750-1.26(c)(3)

To demonstrate that an issue associated with the contested condition in the new SPDES permit was raised during the public comment period, the permittee can cite to the comment number and response in the responsiveness summary associated with the new SPDES permit. Alternatively, the permittee may provide a copy of the relevant comment letter and highlight the issue, or provide the date of the public hearing where the comment was made and the name of the commenter.

6 NYCRR 750-1.26(c)(4)

To explain why an issue associated with the contested condition in the new SPDES permit was not raised during the public comment period, the permittee can explain why timing, a good faith lack of knowledge, or other events, prevented the permittee from identifying the issue until after the public comment period. For example, the permittee may identify an issue with a condition that was changed in response to another comment.

6 NYCRR 750-1.26(c)(5)

For an issue that the Department addressed in the public comment responsiveness summary, the permittee can cite to the comment number and response in the responsiveness summary associated with the new SPDES permit. The permittee can identify, in a few sentences, the legal and/or factual basis for the permittee's disagreement with the response. A full brief is not required at this issue-identification stage.

6 NYCRR 750-1.26(c)(6)

For the permittee to demonstrate that each contested condition is based on a finding of fact or conclusion of law that is clearly erroneous, an exercise of discretion, or an important policy consideration for the Commissioner to consider reviewing, the permittee can set forth, in a few sentences, the legal and/or factual basis for the permittee's dispute of the contested condition. A full brief is not required at this issue-identification stage, particularly if the information is already in the public comment that the permittee submitted on the draft SPDES permit.

#### 6 NYCRR 750-1.26(c)(7)(i) and (ii)

For contested water quality-based effluent limitations in the new SPDES permit, the permittee may use any technical resources available to the permittee and propose temporary structural or non-structural measures, if any, that the permittee is willing to undertake in relation to the contested condition(s). The permittee may reach out to Department staff with questions or to discuss possible measures. The permittee is encouraged to ask such questions early. The permittee can consider cost, site constraints, availability of materials and labor, timing of other upgrades at the facility, and any other relevant factors. 6 NYCRR 750-1.26(c)(7) does not require the permittee to invest any threshold level of capital. 6 NYCRR 750-1.26(c)(7) also does not establish a technical minimum for the chosen measure. Permittees may also propose measures that will be implemented for uncontested conditions of the new SPDES permit that bear on the contested conditions. Examples of temporary structural measures include: modifying baffles; renting portable treatment units; and redirecting the discharge to alternate outfalls. Examples of temporary non-structural measures include: changes in operations; modifying dosing of water treatment chemicals; adjusting valve throttling; performing more frequent equipment maintenance; adjusting introduction of hauled waste; modifying pretreatment limits; and rerouting flow to optimize treatment. This is not an exhaustive list and the measures are permit-specific. If the permittee does not propose temporary structural or non-structural measures, the permittee must operate the facility so as to maintain its existing level of treatment.<sup>1</sup>

#### 6 NYCRR 750-1.26(c)(7)(ii)

6 NYCRR 750-1.26(c)(7)(ii) applies only to contested water quality-based effluent limitations in the new SPDES permit that are not explicitly listed in the original SPDES permit. The permittee can use the application for its original SPDES permit to identify the discharge concentrations for the pollutants: 1) “reported in the SPDES permit application record as detected in the discharge”<sup>2</sup> or 2) if not detected in the discharge, “as something the permittee knows or has reason to believe to be present in the discharge” (6 NYCRR 750-1.2(a)(29)(iv)).

The permittee may want to monitor its discharge for these pollutants in order to evaluate the pollutant levels during the pendency of the adjudicatory proceeding. The permittee can use Technical and Operational Guidance Series 1.2.1<sup>3</sup> or

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<sup>1</sup> 6 NYCRR 750-2.8(a)

<sup>2</sup> As required by 6 NYCRR 750-1.7(a), (b), and (d) and 750-1.19(d), a permittee submits a priority pollutant scan as part of the full SPDES application for a renewal. NY-2A for municipal permittees [SPDES Permitting Program: New and Existing Publicly Owned Treatment Works, Application Form NY-2A](#) and NY-2C for industrial permittees [SPDES Permitting Program: New and Existing Publicly Owned Treatment Works, Application Form NY-2C](#).

<sup>3</sup> [https://extapps.dec.ny.gov/docs/water\\_pdf/togs121.pdf](https://extapps.dec.ny.gov/docs/water_pdf/togs121.pdf)

1.3.3<sup>4</sup> to propose a monitoring frequency for the discharge, which accounts for “normal effluent variability” anticipated in, and authorized by, 6 NYCRR 750-1.2(a)(29)(iv).

The permittee may reach out to Department staff with questions. The permittee is encouraged to ask such questions early.

#### 6 NYCRR 750-1.26(c)(8)

The permittee indicates whether there are other Department-administered permits that were issued with the new SPDES permit, for the same facility, for which the permittee is simultaneously requesting an adjudicatory proceeding.

Within 15 business days after receiving a permittee’s section 750-1.26 submission, the Director notifies the permittee of the conditions stayed pending an adjudicatory proceeding. The uncontested or severable conditions in the new SPDES permit become effective and enforceable 30 days after this notification. As to all stayed conditions, the original SPDES permit governs in the interim. The notice also identifies the permittee’s proposed, voluntary temporary measures that will become effective and enforceable 30 days after the notification, as well as the discharge concentrations<sup>5</sup> and permittee’s proposed monitoring frequency for disputed water quality-based effluent limitations not explicitly listed in the original SPDES permit.

The notice also identifies any deficiencies in the information required by 6 NYCRR 750-1.26(c). Deficiencies are where the permittee has not identified conditions that are being contested and/or where the permittee failed to make a good-faith effort, based on its knowledge, to provide the information required by 6 NYCRR 750-1.26(c). Where deficiencies exist, the Director notifies the permittee that conditions not stayed will be governed by the new SPDES permit. The Director’s notification of conditions not stayed pending an adjudicatory proceeding is a final agency action for purposes of judicial review.

#### **V. Responsibility:**

It is the responsibility of the Director for the Division of Water, in consultation with the Office of General Counsel, to maintain this Policy and implement the procedures described in this Policy.

#### **VI. Definitions of Key Terms:**

Adjudicatory proceeding - a proceeding conducted pursuant to the New York State Environmental Conservation Law section 70-0119, article 3 of the State Administrative Procedure Act, and 6 NYCRR Part 624. The adjudicatory proceeding is presided over by an administrative law judge and may include

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<sup>4</sup> [https://extapps.dec.ny.gov/docs/water\\_pdf/togs133.pdf](https://extapps.dec.ny.gov/docs/water_pdf/togs133.pdf)

<sup>5</sup> Pending resolution of the adjudicatory proceeding on the stayed condition, the permittee is authorized to discharge the identified discharge concentration, with normal effluent variability (6 NYCRR 750-1.2(a)(29)(iv)).

public comment hearings, issues conferences, and evidentiary hearings held pursuant to 6 NYCRR Part 624 to determine the legal rights, duties or privileges of the named parties and potential parties on a record and after an opportunity for a hearing.

Administrative law judge or ALJ - the Commissioner's representative who conducts the adjudicatory proceeding.

New SPDES permit – the renewed or modified SPDES permit that is issued pursuant to 6 NYCRR 621.10, 621.11 or 621.13.

Original SPDES permit - the SPDES permit that was in effect before the new SPDES permit.

**VII.Related References:**

6 NYCRR Part 624 (last updated August 21, 2024)

6 NYCRR Part 621 (last updated August 21, 2024)

**VIII.Attachments**

Form - Additional procedural requirements for an adjudicatory proceeding applicable to SPDES permits

**IX.Revision History:**

<b>Date</b>	<b>Description of Change</b>	<b>Reviewer</b>
May 28, 2025	Issued – new	Carin Spreitzer