

## §414-A. Conditions of licenses

**1. Generally.** The department shall issue a license for the discharge of any pollutants only if it finds that:

A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification; [PL 1973, c. 450, §15 (NEW).]

B. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter; [PL 1973, c. 450, §15 (NEW).]

C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with section 464, subsection 4, paragraph F. The finding must be made following procedures established by rule of the board pursuant to section 464, subsection 4, paragraph F; [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §30 (AMD).]

D. The discharge will be subject to effluent limitations that require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment, after consultation with the applicant and other interested parties of record. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives; and [PL 1997, c. 794, Pt. A, §22 (AMD).]

E. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard is only applicable to applications to discharge pesticides. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §30 (AMD).]

[PL 1997, c. 794, Pt. A, §22 (AMD).]

**1-A. License for copper sulfate applications in public water supplies.** The commissioner may issue licenses to treat public water supplies with copper sulfate or related compounds. The commissioner may not issue more than 2 consecutive licenses for the same body of water.

A. A license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:

- (1) An abundant growth of algae producing taste or odor exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable;
- (2) The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and

(3) The algae cannot effectively be controlled by other methods. [PL 1997, c. 794, Pt. A, §22 (AMD).]

B. Any license issued under this subsection is for one application or series of applications not to exceed 6 months, as provided in the terms of the license. [PL 1997, c. 794, Pt. A, §22 (AMD).]

C. The commissioner shall impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §30 (AMD).]

D. [PL 1997, c. 794, Pt. A, §22 (RP).]  
[PL 1997, c. 794, Pt. A, §22 (AMD).]

**1-B. Licensing of overboard discharges.** The following provisions govern the licensing of overboard discharges.

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge.

(1) The department's finding must be based on documentation from a licensed site evaluator provided by the overboard discharge owner and approved by the department. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharges.

(2) If a technologically proven alternative system is identified and is eligible for grant funding according to the cost-share schedule under section 411-A and grant funding is available, the alternative system must be installed within 180 days of written notification from the department, unless soil conditions are poor due to seasonal weather, in which case the alternative may be installed as soon as soil conditions permit.

(3) If a technologically proven alternative system eligible for grant funding according to the cost-share schedule is identified and funding is not available, then the owner of the overboard discharge is not required to install the system until grant funds are available or as provided in section 413, subsection 3. The department may determine that grant funds are not available when there are insufficient funds available for all alternative systems and the alternative system is not one of the systems identified as a priority for funding from available grant funds by the department.

(4) If a technologically proven alternative system for an overboard discharge from a residence is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2-A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012.

(5) If a technologically proven alternative system for an overboard discharge from a commercial establishment is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2-A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012. [PL 2009, c. 654, §5 (AMD).]

B. For the purposes of this subsection, the department may not require the installation or use of wastewater holding tanks as a "technologically proven alternative method of wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service, when the elimination of the discharge alone or in conjunction with the elimination of other discharges will result in the opening of a shellfish harvesting area or the removal of a public nuisance condition;

(2) All overboard discharges located within the boundaries of a sanitary or sewer district when the district has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district; and

(3) All overboard discharges located within the municipality when the municipality has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the municipality's services who are physically connected to the sewers of the municipality. [PL 2003, c. 246, §11 (AMD).]

C. [PL 2003, c. 246, §12 (RP).]

D. [PL 2003, c. 246, §13 (RP).]

E. At the time of each relicensing of an overboard discharge, the department shall impose all conditions necessary to meet the requirements of this section and all other relevant laws. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §30 (AMD).]

F. For the purposes of this subsection, the department may not require the installation or use of an identified technologically proven alternative system unless the department finds that the identified alternative constitutes best practicable treatment under subsection 1, paragraph D. [PL 2009, c. 654, §5 (NEW).]

[PL 2009, c. 654, §5 (AMD).]

**1-C. License for the use of algicides in Class GPA waters.** The commissioner may issue a license to a municipality for the discharge of copper compounds or other materials registered by the Department of Agriculture, Conservation and Forestry to control excessive algae growth in Class GPA waters when the commissioner has determined that:

A. A lake restoration plan to reduce algae growth has been designed and implemented in cooperation with the department; [PL 1995, c. 642, §5 (NEW).]

B. That plan has been found by the department to have failed to achieve the desired level of restoration in a reasonable period of time; [PL 1995, c. 642, §5 (NEW).]

C. Because of technical or financial limitations, there is no further plan for restoration; [PL 1995, c. 642, §5 (NEW).]

D. The affected water has a recent history of severe algae blooms of less than one meter Secchi disk transparency; [PL 1995, c. 642, §5 (NEW).]

E. A watershed plan to further reduce phosphorus loading to the affected water is being implemented by responsible parties including the department and all affected municipalities; and [PL 1995, c. 642, §5 (NEW).]

F. The Department of Inland Fisheries and Wildlife has found that the discharge will not have an adverse impact on the fishery management plan of that water body. [PL 1995, c. 642, §5 (NEW).]

This license allows for no more than one application of copper compounds or other registered algicides per year for a period not to exceed 5 years. Algicides must be applied in an amount and in a manner that minimizes risk to nontarget organisms. The individual conducting the treatment must be certified by the Board of Pesticides Control for the use of aquatic pesticides. Application of an algicide may only occur after the Secchi disk transparency of the water is less than 2 meters. Relicensing is

contingent upon an assessment of the water quality and the effectiveness of the phosphorus reduction plan for the watershed.

[PL 1995, c. 642, §5 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

**2. Schedules of compliance.** Within the terms and conditions of a license, the department may establish a schedule of compliance for a final effluent limitation based on a water quality standard adopted after July 1, 1977. When a final effluent limitation is based on new or more stringent technology-based treatment requirements, the department may establish a schedule of compliance consistent with the time limitations permitted for compliance under the Federal Water Pollution Control Act, Public Law 92-500, as amended. A schedule of compliance may include interim and final dates for attainment of specific standards necessary to carry out the purposes of this subchapter and must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards.

[PL 1993, c. 501, §1 (RPR).]

**3. Federal law.** When the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended, the department shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after this determination must contain provisions, including effluent limitations, that the department determines necessary to carry out the purposes of this subchapter and any federal laws or regulations.

Notwithstanding the foregoing, the department is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances may be granted only in accordance with the Federal Water Pollution Control Act, Sections 316 and 301(k), as amended, and applicable regulations.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §30 (AMD).]

**4. License conditions affecting bypasses.** In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility, when unavoidable to prevent loss of life, personal injury or severe property damage and otherwise subject to applicable effluent limitations and standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, reasonably controlled and infrequent bypasses will be necessary for this purpose, and there is no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal equipment downtime, the department shall fashion appropriate license allowances and conditions.

[RR 2013, c. 2, §47 (COR).]

**5. Modification, reopening and revocation.** The following actions may be taken to reopen, modify or revoke and reissue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in sections 341-D and 346.

A. The department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed circumstances or new information may be anticipated. [PL 1997, c. 794, Pt. A, §25 (NEW).]

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

- (1) When necessary to correct legal, technical or procedural mistakes or errors;
- (2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;
- (3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;
- (4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water quality violations;
- (5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;
- (6) When necessary to make changes as a result of the failure of one state to notify another state whose waters may be affected by a discharge; or
- (7) When necessary to include pretreatment compliance schedules required pursuant to federal law. [PL 1997, c. 794, Pt. A, §25 (NEW).]

C. Notwithstanding Title 5, section 10051, the board may modify a license and the commissioner may revoke or suspend a license when the board or the commissioner finds that any of the conditions specified in section 342, subsection 11-B exist or upon an application for transfer of a license. [PL 2011, c. 304, Pt. H, §22 (AMD).]

[PL 2011, c. 304, Pt. H, §22 (AMD).]

**6. Cooling water intake structures.** Any standard established by the department pursuant to section 413 or this section with respect to cooling water discharges and applicable to a point source must require that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts.

[PL 2001, c. 232, §11 (NEW).]

#### SECTION HISTORY

PL 1973, c. 450, §15 (NEW). PL 1973, c. 788, §210 (AMD). PL 1979, c. 127, §209 (AMD). PL 1979, c. 281, §4 (AMD). PL 1979, c. 444, §§5-7 (AMD). PL 1979, c. 663, §230 (AMD). PL 1983, c. 566, §19 (AMD). PL 1987, c. 192, §11 (AMD). PL 1987, c. 394, §2 (AMD). PL 1989, c. 442, §3 (AMD). PL 1989, c. 856, §§1,7 (AMD). PL 1989, c. 890, §§A40,B30 (AMD). PL 1991, c. 66, §A7 (AMD). PL 1991, c. 66, §A43 (AFF). PL 1991, c. 483, §2 (AMD). PL 1993, c. 232, §2 (AMD). PL 1993, c. 410, §G6 (AMD). PL 1993, c. 501, §1 (AMD). PL 1995, c. 642, §5 (AMD). PL 1997, c. 794, §§A22-25 (AMD). PL 2001, c. 232, §11 (AMD). PL 2003, c. 246, §§10-13 (AMD). PL 2003, c. 689, §B6 (REV). PL 2009, c. 654, §5 (AMD). PL 2011, c. 304, Pt. H, §22 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). RR 2013, c. 2, §47 (COR).

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