



The wait is almost over! A New York winery, brewery and hard cidery general SPDES permit for process wastewater to groundwater is coming

By Libby Ford, QEP Sr. Env. Health Engineer, and Amy Reichhart

Introduction

New York State has become a mecca for wine, beer and hard cider producers. However, in addition to crafting high quality beverages, each of these facilities also generates process wastewater. Facilities located in urban areas can often discharge their wastewater to the local sewer system. However, rural craft beverage facilities typically do not have this luxury. Most often their wastewater is discharged to a septic tank and leachfield, usually without a discharge permit. Under both federal and State law, these “industrial wastewater” discharges must be covered by a State-issued permit or their owners risk fines of up to \$50,000 a day. While to date, the New York State Department of Environmental Conservation (NYSDEC) has exercised its enforcement discretion by providing leeway to unpermitted craft beverage producers, this is expected to change once a General State Pollutant Discharge Elimination System (SPDES) permit for these wastewater discharges is issued.

Proposed SPDES general permit

After over two and a half years of informal discussions and some focused outreach, on March 28, 2018, NYSDEC finally published a detailed [Advanced Notice of Proposed Permit](#) (ANPP) regarding a SPDES General Permit for discharges of winery, brewery, and hard cidery process wastewater to groundwater. Through this ANPP, NYSDEC is soliciting stakeholder input on potential conditions that may be included in the SPDES General Permit.

Process wastewater generated through the production of wine, beer, and hard cider is considered an industrial wastewater and, as such, its discharge to surface water or into the ground needs to be covered by a SPDES permit. SPDES permits can be site-specific and tailored to an individual site or issued as a “General Permit” that covers an entire class of dischargers. Due to the similar nature of operations, pollutant content, associated control measures and effluent limits applicable to the production of wine, beer and hard cider, NYSDEC believes that a General Permit is appropriate. To comply with the Environmental Conservation Law, the proposed SPDES General Permit would provide coverage by applying uniform standards for management of process and sanitary

wastewater. According to the ANPP, the SPDES General Permit would also streamline the permitting process for these producers by reducing the costs and administrative burden to both NYSDEC and the regulated entities.

Your comments requested

The ANPP solicits input on a number of specific issues:

Eligibility

Coverage under the General Permit would be limited to existing and newly licensed wineries, breweries and hard cideries statewide that discharge process wastewater - with or without the admixture of sanitary wastewater - to groundwater from onsite wastewater treatment systems that have a design peak flow of less than 10,000 gallons per day (GPD).

Obtaining coverage—existing facilities

Recognizing that there are existing facilities that currently discharge wastewater to onsite septic systems (usually designed to only treat household wastewater), NYSDEC is considering including separate requirements for existing producers that were in operation prior to the effective date of the General Permit. Comments are sought on a proposal to allow existing producers (who are currently discharging without a permit) to obtain coverage under the General Permit without modifying their current system unless/until a modification is needed for an expansion that cannot be properly managed by the existing system, or if the system is in need of replacement/modification due to failure. Under this scenario, existing producers would be required to retain a New York licensed Professional Engineer (PE) to assess their current system(s) and certify that the system is operating correctly and is properly maintained. This certification would require a determination of the approximate age of the existing system and a brief description of the system (including a description of the soil profile for the absorption area) and its operation/maintenance needs. The owner/operator would then submit the PE certification and a *Notice of Intent* to receive General Permit coverage to the NYSDEC.

Obtaining coverage —new facilities

Under the contemplated General Permit, facilities constructed after the effective date must have their wastewater systems designed by a New York-licensed PE. New facilities would be provided some flexibility in design of the treatment process prior to the subsurface system. By employing wastewater stabilization, screening/ filtering, septic (aerobic/anoxic) tank(s) or other proven processes that meet specified-design criteria, the discharge to the subsurface drainage field would be treated to concentrations typical of septic tank effluent loadings. As part of the application process for obtaining permit coverage, NYSDEC may require that a New York-licensed PE certify that the proposed wastewater treatment system meets specified criteria listed in the ANPP.

Operation and maintenance

The ANPP contemplates requiring all facilities to develop a written operation and maintenance plan to ensure long-term performance of the treatment system. At a minimum, facilities would need to undertake flow monitoring and perform periodic inspections.

Monitoring

The ANPP indicates that the General Permit will include detailed monitoring provisions at specified frequencies, with an annual reporting requirement (see the discussion of Reporting & Recordkeeping requirements below). All facilities would be required to collect quarterly grab samples from the inlet to the subsurface treatment system to be analyzed for BOD₅, Total

Suspended Solids, Total Dissolved Solids, pH, Total Phosphorus and Total Nitrogen. Existing facilities would not be subjected to numeric permit limits for these constituents, but NYSDEC is considering including benchmark concentrations¹ for each of these parameters for new facilities. Once permit coverage is obtained, if benchmark concentrations are exceeded, the owner/operator would be required to document corrective actions taken and provide that information in the next annual report, but they would not be deemed to have violated their permit.

Recordkeeping and reporting

Both existing and new facilities would be subjected to annual reporting requirement and detailed records retention provisions. Consistent with other SPDES permits, all records would have to be kept on site for a minimum of five years. In addition, the ANPP contemplates requiring verbal and written reporting requirements when a failure is identified. The owner/operator would be required to immediately cease the discharge and give NYSDEC verbal notice within 24 hours of discovery and written notification within five-days.

Estimated costs

NYSDEC anticipates the following approximate costs will be associated with compliance with the General Permit:

- Sampling - \$50-60 per round
- Certified inspector septic tank inspections - \$200
- General Permit fee - \$110 per year
- PE evaluation of existing system - \$500- \$1,500

Comment deadline and logistics

NYSDEC will accept comments on the ANPP until May 31, 2018. Written comments must be submitted:

- by mail to Doug Ashline, NYSDEC—Division of Water, Bureau of Water Permits, 625 Broadway, Albany, NY 12233-3505;
- by e-mail to WBCinfo@dec.ny.gov (include a reference to "ANPP for WBHC General Permit Comments" in the subject line).

What to include in your comments

While NYSDEC will consider all comments submitted, it is explicitly seeking input on [16 questions listed in the ANPP](#). Submitting facility-specific answers to these questions may increase the potential that an existing system already in use (or being contemplated for use) by a craft winery, brewery or hard cidery will be eligible for coverage under the General Permit. If a craft winery,

¹ *Benchmark concentrations* are a pollutant level that is intended to provide a guideline for the owner/operator to determine the overall effectiveness of their treatment system. The benchmark concentrations do not constitute direct effluent limitations and therefore exceedances are not considered a permit violation.

brewery or hard cidery is already using or contemplating a totally different treatment system than that described in the ANPP, but which ultimately discharges to groundwater, describing it in a comment letter may improve the potential that this alternate system will be covered by the draft General Permit when it is formally proposed.

Nixon Peabody has worked with craft beverage producers on wastewater management issues for many years and would be happy to assist in preparing effective comments. For more information on the content of this alert, please contact your regular Nixon Peabody attorney or:

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