

**Watershed Regulations – Proposed Revisions
February 2018**

§ 18-12 Purpose and Findings.

DEP proposes to eliminate outdated text.

...

(f) The City reserves the right to re-examine these rules and regulations periodically to insure that they continue to further the goal and intent referred to in paragraph (d) of this subdivision and the purposes referred to in paragraph (e) of this subdivision. ~~Without limiting the foregoing, and without limiting the City's rights to continue, modify, amend, suspend, waive or revoke any or all of these rules and regulations at any time in accordance with applicable law, the City intends to re-examine these rules and regulations ten (10) years after the effective date hereof to ascertain whether, and to what extent, these rules and regulations should be modified or amended so that they continue to serve their intended purposes.~~

§ 18-15 Local Representatives.

DEP proposes to update information and make minor clarifications.

...

(b) Petitions for a hearing on a determination by the Department to revoke, suspend, or modify a determination or variance in accordance with § 18-26, petitions for appeal of a determination issued by the Department in accordance with § 18-28, and petitions for a hearing on a cease and desist order issued by the Department in accordance with § 18-29 must be submitted to the address listed in paragraph (1), with a copy to the address listed in paragraph (2).

- (1) New York City Office of Administrative Trials and Hearings
~~40 Rector Street~~100 Church Street, 12th floor
New York, New York ~~10006-1705~~10007
Telephone: ~~(212) 442-4900~~ (844) 628-4692

...

(d) Addresses and phone numbers contained ~~herein in this section~~ are informational and persons subject to these rules and regulations shall utilize addresses and phone numbers specified herein, or successor addresses and phone numbers where appropriate.

§ 18-16 **Definitions.**

Except as noted, the proposed revisions to definitions are explained in the context of the substantive provisions where the terms are used. The definitions are not numbered in this document; all the definitions will be renumbered alphabetically.

Absorption field means the area to which sewage is distributed for infiltration to the soil by means of a network of pipes. A gravelless absorption system is a type of absorption field.

Access road means an impervious private or public road, other than a driveway, which connects a parcel to an existing public or private road and which is necessary in order to enable the parcel to be developed. ~~Access road does not include an internal road within a subdivision or within an area of common development involving two (2) or more parcels.~~

Construction or construction activity means any building, demolition, renovation, replacement, restoration, rehabilitation or alteration of any ~~new or existing~~ structure or road, or land clearing, land grading, excavation, filling or stockpiling activities that result in soil disturbance.

Designated Main Street Area means a defined area of limited size located within the East of Hudson Watershed which is an existing center of commercial, industrial, residential, or mixed use ~~and which has been~~. Designated Main Street Areas were proposed defined and designated by a local government local governments in the East of Hudson Watershed in 1997 and approved by the Department pursuant to these rules and regulations.

Discontinuation means an interruption in the use of a regulated activity including a noncomplying regulated activity. The period of discontinuation shall commence on the date when regular or seasonal use ceases. Incidental or illegal use of an unoccupied structure shall not be sufficient to interrupt a period of discontinuation.

Driveway means a route accessible by a motor vehicle between a ~~residential building~~ an individual residence and a public or private road to provide ingress and egress from the ~~residential building~~ individual residence.

Enhanced subsurface sewage treatment system means a subsurface sewage treatment system that provides enhanced treatment of wastewater to reduce the amount of biochemical oxygen demand (BOD) and total suspended solids (TSS) of wastewater effluent prior to distribution to an absorption field. Enhanced subsurface sewage treatment systems include, but are not limited to, aerobic treatment units, peat filters, and textile filters.

Existing, where used to describe storage of hazardous substances, storage of petroleum products, or the siting of junkyards and solid waste management

facilities, means physically constructed, functioning and operational prior to ~~the effective date of these rules and regulations~~ May 1, 1997.

Gravelless absorption system means an absorption field using a wastewater distribution system designed to be installed without gravel or stone aggregate. Gravelless absorption systems may involve the use of geotextile, sand, or other media.

Hot spot runoff means runoff from an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater, such as vehicle service and maintenance facilities, fleet storage areas, industrial sites, marinas, and facilities that generate or store hazardous materials. Runoff from residential, institutional, and office development, non-industrial rooftops, roads, and pervious surfaces is not generally hot spot runoff.

Hydrologic soil group means the designation of soils based on the National Engineering Handbook, Part 630, Chapter 7, Hydrologic Soil Groups, U.S. Department of Agriculture, National Resources Conservation Service, 2009, in which soils are categorized into four runoff potential groups, ranging from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

Impervious surface means an area which is either impervious to water or which substantially prevents the infiltration of water into the soil at that location. Impervious surfaces include, but are not limited to, paving, concrete, asphalt, rooftops, and other hard surfacing materials, and do not include dirt, crushed stone, ~~or gravel surfaces~~, or other surfacing materials determined by the Department to be pervious for their intended purpose.

Individual residence means a building consisting of one or two residential ~~unit~~ units.

Mapped stream means a protected stream as defined in 6 NYCRR § 608.1.

New, where used to describe storage of hazardous substances, storage of petroleum products, and the siting of junkyards and solid waste management facilities, means ~~any regulated activity~~ undertaken, constructed, installed, or implemented after May 1, 1997.

As amended, all of the definitions of design storms will now refer to the DEC Design Manual rather than to DEP's Watershed Water Quality Annual Report, consistent with SAPA and Executive Law requirements.

One hundred-year, twenty-four hour storm means the storm, with a twenty-four hour duration, that statistically has a one percent chance of occurring in any given year, as set forth in the "New York State Stormwater Design Manual," New York State Department of Environmental Conservation (2015).

One-year, twenty-four hour storm means the storm, with a twenty-four hour duration, that statistically has a 100 percent chance of occurring in any given year, ~~as specified in the most recent Watershed Water Quality Annual Report as set forth in the “New York State Stormwater Design Manual,” New York State Department of Environmental Conservation (2015).~~

Portable toilet means a non-waterborne sewage system with offsite residual disposal, as identified in 10 NYCRR Appendix 75-A.

Qualifying municipal sewer use law means a local law or ordinance that includes provisions substantially similar to Articles 1 - 3, 5 - 7, 11 - 14, and the Appendix of the New York State Department of Environmental Conservation Model Sewer Use Law, dated 1994, or which the New York State Department of Environmental Conservation has otherwise accepted pursuant to the SPDES permit for the wastewater treatment plant served by a municipal sewer system.

Redevelopment project means the reconstruction or modification of any previously developed land such as residential, commercial, industrial, or road/highway, which involves soil disturbance. Redevelopment is distinguished from new development in that new development refers to ~~construction soil disturbance~~ on land which has not been developed. The term “redevelopment project” specifically applies to areas previously developed with impervious surfaces.

Remediation means the repair or replacement, other than routine repair or maintenance as described in § 18-38(a)(9)(b)(5)(iii) of Subchapter C, of a subsurface sewage treatment system ~~that is failing~~. Remediation does not include alteration or modification as defined in these rules and regulations.

Reserve absorption field means an area identified in the design for a subsurface sewage treatment system as suitable for infiltration of sewage to the soil by means of a network of pipes.

Sewer connection ~~or lateral~~ means the connection between a building, residence, or other structure and a sewer system except that any connection designed and intended to convey 2,500 gallons per day or more of ~~residential sewage, industrial waste or other wastes~~ shall be considered a sewer extension. Sewer connections designed to facilitate additional sewer connections, which are proposed on or after [effective date of the amendments], shall be considered sewer extensions.

Solid waste management facility means any facility employed beyond the initial solid waste collection process and managing solid waste, including but not limited to: storage areas or facilities; transfer stations; rail-haul or barge-haul facilities; landfills; ~~construction and demolition processing facilities~~; disposal facilities; solid waste incinerators; refuse-derived fuel processing facilities, pyrolysis facilities; C&D debris processing facilities; land application ~~landspreading~~ facilities; composting facilities; surface impoundments; ~~waste used~~ oil storage, reprocessing and rerefining facilities; recyclables handling and

recovery facilities; ~~and~~ waste tire storage facilities; and regulated medical waste treatment facilities, as defined in 6 NYCRR § 360-1.2.

Stormwater bioretention practice means a stormwater management practice that uses landscaping and soils to treat stormwater runoff by collecting it in shallow depressions, before filtering through a fabricated planting soil media.

Superintendent, where used in connection with a municipality with a qualifying municipal sewer use law, means “superintendent” as defined in that law.

Ten-year, twenty-four hour storm means the storm, with a twenty-four hour duration, that statistically has a ten percent chance of occurring in any given year, ~~as specified in the most recent Watershed Water Quality Annual Report as set forth in the “New York State Stormwater Design Manual,” New York State Department of Environmental Conservation (2015).~~

Two-year, twenty-four hour storm means the storm, with a twenty-four hour duration, that statistically has a fifty percent chance of occurring in any given year, as set forth in the “New York State Stormwater Design Manual,” New York State Department of Environmental Conservation (2015).

Water Quality Volume (WQ_v) means the storage needed to capture and treat 90% of the average annual stormwater runoff volume. WQ_v is calculated as follows:

$$\frac{WQ_v = (P)(R_v)(A)}{12}$$

where:

- WQ_v = water quality volume (in acre-feet)
- P = 90% Rain Event Number ~~(A map of the 90% Rainfall in New York State appears in the most recent Watershed Water Quality Annual Report.)~~ as set forth in the “New York State Stormwater Design Manual,” New York State Department of Environmental Conservation (2015).
- R_v = 0.05 + 0.009(I), where I is percent impervious cover
- A = site area in acres

~~A minimum WQ_v of 0.2 inches per acre shall be met at residential sites that have less than 17% impervious cover.~~

Watershed Water Quality Annual Report means the report prepared annually by the Department in accordance with § 18-48 of these Rules and Regulations. ~~The Watershed Water Quality Annual Report includes the results of its annual review of its reservoirs and controlled lakes as described in § 18-48 of~~

~~these Rules and Regulations as well as the current New York State rainfall values for the one and ten year, twenty-four hour storms and a map of the 90% rainfall in New York State.~~

§18-17 **References.**

The references are not numbered in this document; all the references will be renumbered in the rules.

~~Standard Methods for the Examination of Water and Wastewater, 12th edition, 1965, Table 18, “Qualitative Description of Odors,” page 306, American Public Health Association, American Water Works Association, and Water Pollution Control Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.~~

~~Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, American Public Health Association, American Water Works Association, and Water Environment Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.~~

~~Methods for Chemical Analysis of Water and Wastes, 1979, Environmental Protection Agency (EPA), Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

~~State Environmental Quality Review Act, New York State Environmental Conservation Law, Article 8 (ECL §8-0101 et seq.), Department of State, 162 Washington Avenue, Albany, New York 12231.~~

~~Public Water Supplies; Sewerage and Sewage Control, New York State Public Health Law, Article 11 (PHL §1100 et seq.), Department of State, 41 State Street, Albany, New York 12231.~~

~~Classifications and Standards of Quality and Purity, 6 NYCRR Parts 701 and 703, Department of State, 41 State Street, Albany, New York 12231.~~

~~Standards for Individual Water Supply and Wastewater Treatment Systems, 10 NYCRR Part 75 and Appendix 75-A, Department of State, 41 State Street, Albany, New York 12231.~~

National Engineering Handbook, Part 630, Chapter 7, Hydrologic Soil Groups, U.S. Department of Agriculture, National Resources Conservation Service, 2009, U.S. Department of Agriculture 1400 Independence Ave., Washington, D.C. 20250.

New York State Department of Environmental Conservation Model Sewer Use Law, 1994, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

New York State Department of Environmental Conservation SPDES General Permit for ~~Storm Water~~ Stormwater Discharges from Construction Activities Activity, Permit No. ~~GP-0-10-001~~ GP-0-15-002, ~~Dated Effective~~ January 29, 2010 2015, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

New York State Design Standards for ~~Wastewater Treatment Works~~, Intermediate Sized ~~Sewerage Facilities~~ Wastewater Treatment Systems, 1988 2014, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

New York State Stormwater Design Manual, 2015, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

Recommended Standards for Wastewater Facilities, Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2004 2014, Health Education Services, Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

§18-23 Application Procedures and Requirements.

DEP recognizes email as a primary means of communication.

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(c) An application shall contain the following information:

...

(4) An application for review and approval of any regulated activity shall include the name, address, telephone number, email address, and fax number of the applicant or the applicant's authorized representative, and of the design professional(s), if any, involved in preparing the application.

§ 18-26 Modification, Suspension or Revocation of Approvals and Variances.

The changes to this section clarify that hearings on DEP decisions to modify, suspend, or revoke approvals or variances will be heard by OATH and provide details about the procedures.

(a) An approval or variance issued by the Department pursuant to these rules and regulations may be modified, suspended or revoked at any time upon the Department's initiative, on any of the grounds set forth in paragraphs (1)

through (5) of this subdivision. ~~The grounds for modification, suspension or revocation include:~~

- (1) Materially false or inaccurate statements in the approval or variance application or supporting documents;
- (2) Failure by the person named in the approval or variance to comply with any terms or conditions of the approval or variance;
- (3) The scope of the project, as described in the application, is exceeded;
- (4) Newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or rules and regulations since the issuance of the existing approval or variance; or
- (5) Noncompliance with previously issued approval or variance conditions, orders of the Commissioner, or with any provisions of the rules and regulations of the Department related to the activity.

(b) The Department shall send a notice of intent to modify, suspend or revoke an approval or variance to the person named in the approval or variance by certified mail, return receipt requested or by personal service. The notice shall ~~state the alleged facts or conduct which appear to warrant the intended action~~ specify the ground or grounds on which the modification, suspension, or revocation is sought, as well as the alleged facts on which the modification, suspension, or revocation is based.

(c) Within fifteen calendar days of receipt of a notice of intent, the person named in the approval or variance may submit a written statement to the Department, giving reasons why the approval or variance should not be modified, suspended or revoked, ~~or requesting a hearing, or both.~~ Failure by such person to timely submit a statement shall result in the Department's action becoming effective on the date specified in the notice of intent.

(d) Within fifteen calendar days of receipt of such person's statement, the Department shall either:

- (1) ~~If a statement without a request for a hearing is submitted, rescind or confirm~~ Rescind the notice of intent based on a review of the information provided by such person; ~~or~~
- (2) ~~If a statement with a request for a hearing is submitted, notify such person of a date and place for a hearing, to be commenced not later than sixty calendar days from this notification~~ Confirm the Department's intent

to modify, suspend, or revoke the approval or variance as stated in the notice of intent; or

(3) Amend the Department's notice of intent, specifying the Department's revised intent to modify, suspend, or revoke the approval or variance.

~~(e) In the event such a hearing is held, the Commissioner shall, within thirty calendar days of receipt of the complete record, issue a written decision, stating the findings and reasons therefor, to the person named in the approval or variance. The decision shall:~~

~~(1) Continue the approval or variance in effect as originally issued;~~

~~(2) Modify the approval or variance or suspend it for a stated period of time or upon stated conditions; or~~

~~(3) Revoke the approval or variance, including, where ordered by the Commissioner, removal or modification of all or any portion of a project, whether completed or not.~~

If the Department confirms or amends its intent to modify, suspend, or revoke the approval or variance, the person named in the approval or variance may request a hearing on the Department's determination by submitting a petition in writing to the Office of Administrative Trials and Hearings ("OATH"), and sending a copy of the petition to the Commissioner, within thirty (30) days of receipt of confirmation of the Department's intent, in accordance with the following:

(1) Form and content of petition. The petition shall state the name, address, and email address of the petitioner and shall include a short and plain statement of the matters to be heard by OATH. The following documents shall be included with the petition: the Department's notice of intent to modify, suspend, or revoke the approval or variance; the petitioner's statement giving reasons why the approval or variance should not be modified, suspended or revoked; the Department's confirmation or amendment of its intent; and a completed OATH intake sheet. Blank intake sheets are available from the Department.

(2) Department response. Within twenty (20) days of receipt of the petition, the Commissioner may respond to the petition and must include the record on which the determination was based. A copy of any response shall be sent to the petitioner.

(3) Proceedings before OATH. Upon receipt of the petition for a hearing, OATH shall schedule a hearing promptly at a time and date which shall not be less than thirty (30) days, nor exceed one hundred twenty (120) days, from the date of receipt by OATH of the petition for a hearing unless the parties and the ALJ agree to another date. The hearing may be held in the district of the Department where the activity that is the subject of the order is located, except that hearings may be held at the Department's offices in Valhalla, New York for petitions relating to regulated activities in the East of Hudson watershed and at the Department's offices in Kingston, New York for petitions relating to regulated activities in the West of Hudson watershed. The hearing may also be held by video conferencing or other electronic means, or as otherwise agreed to by the parties and the ALJ. Notice of such hearing shall be provided in writing to the petitioner and to the Department.

(4) Burden of proof. The Department shall have the burden of proving, by a preponderance of the evidence, facts supporting the modification, suspension or revocation.

(5) The hearing shall be held before an OATH ALJ. The ALJ shall cause a record of the hearing to be made, and shall make a recommendation to the Commissioner within thirty (30) days of the close of the hearing record, setting forth the appearances, the relevant facts and arguments presented at the hearing, findings of fact and conclusions of law, and a recommendation as to whether approval or variance should be modified, suspended, or revoked and the reasons therefor. Transcripts of the record of the hearing shall be made available at the petitioner's request and expense.

(f) Within thirty (30) days of receipt of the recommendation of the ALJ, the Commissioner shall issue a final decision approving, rejecting, or modifying the ALJ's recommendation and shall serve that decision on the parties to the proceeding. If the Commissioner does not act within that time, the ALJ's recommendation shall be deemed adopted by the Commissioner.

(g) Where the Department proposes to modify, suspend, or revoke an approval or variance, and the person named in the approval or variance requests a hearing on the proposed modification, suspension, or revocation, the original conditions of the approval or variance shall remain in effect until a decision has been issued by the Commissioner pursuant to subdivision (e-f) of this section. At such time the modified conditions shall take effect.

(g-h) Nothing in this section shall preclude or affect the ~~Commissioner's~~ Department's authority to use the remedy of summary abatement or to issue a cease and desist order under these rules and regulations, or any other law or

regulation or to seek injunctive relief to enforce these rules and regulations, or any other law or regulation, in a court of competent jurisdiction.

§18-27 Noncomplying Regulated Activities.

DEP proposes extensive modifications to the NCRA provisions including:

- *Retaining general provisions allowing NCRA's to continue except where specifically prohibited or where the Commissioner determines that they threaten public health – § 18-27(a);*
- *Consolidating the requirements for alterations and modifications and restrictions on discontinuation of NCRA septic systems into Section 18-38 (as explained below) – new § 18-27(b);*
- *Reorganizing and clarifying the requirements, currently in § 18-27(a), for alterations and modifications and restrictions on discontinuation of all other NCRA's (storage of hazardous substances, storage of petroleum products, and the siting of junkyards and solid waste management facilities) – new § 18-27(c); and*
- *Eliminating the outdated provisions regarding a directory of NCRA's – existing § 18-27(b).*

(a) General requirements.

(1) A noncomplying regulated activity may be continued except where specifically prohibited from continuing by these rules and regulations.

(2) A noncomplying regulated activity shall come into compliance with these rules and regulations where specifically required to do so by these rules and regulations.

(3) Should any noncomplying regulated activity cause contamination to or degradation of the water supply, such that the activity is a threat to the life, health, or safety of water supply users, the Commissioner may order that such noncomplying regulated activity conform either in whole or in part to the requirements of these rules and regulations, immediately or within a limited period of time at the Commissioner's discretion, or be discontinued immediately. Any person who receives such an order may request a hearing on such order in the manner provided in §18-29.

(4) Any owner or operator of a noncomplying regulated activity ~~who was not required by these rules and regulations to notify the Department pursuant to paragraph (1) of subdivision (b) of this section,~~ may request, in writing, a determination from the Department that such property or activity is a noncomplying regulated activity. The written request shall include ~~all of the information required in such paragraph~~ a description of

the property or activity and its location, and the name, telephone number, and email address of a contact person. The Department shall determine, based upon the submission, whether the property or activity is a noncomplying regulated activity, and shall notify the owner or operator of such determination in writing.

~~(b) — Commercial, industrial, institutional or governmental noncomplying regulated activities.~~

~~(1) — Commercial, industrial, institutional or governmental owners or operators of a noncomplying regulated activity shall notify the Department, in writing, of the existence of the noncomplying regulated activity within one (1) year of the effective date of these rules and regulations. The notification shall include a description of the noncomplying regulated activity and its location, and the name and telephone number of a contact person.~~

~~(2) — The Department shall publish a directory of all commercial, industrial, institutional or governmental noncomplying regulated activities located in the watershed based upon the information submitted pursuant to paragraph (1) of this subdivision, and any additional information available to the Department.~~

~~(3) — The directory shall be published in a newspaper of general circulation for two consecutive weekdays in each of two consecutive weeks.~~

~~(4) — Within sixty days of the last date of such publication, any commercial, industrial, institutional, or governmental owner or operator of a noncomplying regulated activity shall notify the Department in writing of any objection to the information set forth in the directory. Furthermore, any owner or operator of a noncomplying regulated activity shall notify the Department in writing of the omission from the directory of his or her noncomplying regulated activity.~~

~~(5) — Within 120 days of the last date of publication of the directory, the Department shall publish a revised directory, in accordance with the procedures provided for in paragraph (3) of this subdivision.~~

~~(6) — If, within five years of the effective date of these rules and regulations, a commercial, industrial, institutional or governmental owner or operator of a noncomplying regulated activity discovers that his or her property should have been included in the final directory and was not included, such owner or operator shall write to the Department and request that the property be added to the directory. The request shall include all of~~

~~the facts surrounding the omission from the listing and the reason why the property should be designated a noncomplying regulated activity, as well as all supporting documentary evidence, such as title searches, deeds, etc. Based upon the submission, the Department shall determine whether to add the property to the directory and shall notify the petitioner in writing of its decision.~~

~~(7) — Upon written notification by the Department, a commercial, industrial, institutional, or governmental owner or operator of a noncomplying regulated activity may be required to submit any results of local, state or federally mandated or conducted tests or environmental audits. In addition, such owner or operator may be required to provide to the Department copies of any reports or applications submitted to local, state and federal agencies relating to the noncomplying regulated activity.~~

~~(8) — Upon written notification by the Department, a commercial, industrial, institutional, or governmental owner or operator of a noncomplying regulated activity may be required to submit, within ninety days of receipt of mailing, for review and approval by the Department, a plan to protect the water supply from the potential for contamination or degradation posed by such activity. Such plan may include, but shall not be limited to, restriction or management of activities, use of best management practices, drainage control, development of procedures to address the potential contamination or degradation (including disposal procedures) and training of employees.~~

~~(i) — The decisions whether to require submission of a plan and whether to approve a plan shall be based upon the risk of potential for contamination to or degradation of the water supply based upon such factors as: location, intensity of use, record of adequate maintenance and operation of any existing structure or facility, compliance with existing local, state, and federal laws and rules and regulations, and the burden upon the noncomplying regulated activity.~~

(b) Subsurface Sewage Treatment Systems. The regulations applicable to discontinuation, and the standards for alteration or modification, of noncomplying regulated activities that are subsurface sewage treatment systems are set forth in Section 18-38(b).

(c) Storage of hazardous substances, storage of petroleum products, and the siting of junkyards and solid waste management facilities.

(1) No noncomplying regulated activity involving storage of hazardous substances, storage of petroleum products, or the siting of

junkyards and solid waste management facilities shall be substantially altered or modified without the prior review and approval of the Department. The Department shall review and approve such an alteration or modification in accordance with the standards and procedures set forth in Subchapter F (variances).

- (i) ~~However, Such~~ a noncomplying regulated activity may be reduced in size or extent, or replaced with a regulated activity that complies with the provisions of these rules and regulations, without such review and approval provided that such reduction does not cause any increase in any existing discharge or any increase in the potential for contamination to or degradation of the water supply.
- (ii) An application for a regulated activity to be located on a site with such a noncomplying regulated activity, which does not involve a substantial alteration or modification of a noncomplying regulated activity, shall be reviewed in accordance with the standards for that regulated activity.

(2) In the case of storage of hazardous substances, storage of petroleum products, and the siting of junkyards and solid waste management facilities, a noncomplying regulated activity shall come into compliance with these rules and regulations if, for any reason, there is a discontinuation for a period of two consecutive years. If it cannot come into compliance, it shall permanently desist. A period of discontinuation shall commence on the date when regular or seasonal use ceases. Incidental or illegal use of an unoccupied structure shall not be sufficient to interrupt a period of discontinuation, and intent to resume a noncomplying regulated activity shall not confer the right to do so. The burden of proof for showing that a noncomplying regulated activity has not been substantially discontinued shall be on the owner or operator.

~~(3) — In the event that any noncomplying regulated activity is discontinued for a period of one year or more, it shall permanently desist. However, a noncomplying regulated activities shall not be deemed discontinued in the following situations:~~

- ~~(i) — Seasonal use of a residence or business;~~
- ~~(ii) — Destruction of 75 percent or more of the market value of a noncomplying regulated activity and its related property, by flood, fire, or other natural disaster, provided that any replacement of a noncomplying regulated activity shall be identical in capacity, intensity, volume and type to the~~

~~former noncomplying regulated activity and provided that such replacement shall take place within two years of such destruction, and provided further that such replacement shall comply with these rules and regulations, where possible;~~

- ~~(iii) — Transfer, sale, or lease of a residence or business provided further that the noncomplying regulated activity is not changed to a different noncomplying regulated activity, unless approved by the Department, and provided that such transfer, sale or lease occurs within three years of the offering for sale or lease of the residence or business.~~

§ 18-28 Appeals.

The minor proposed updates and revisions to Section 18-28 are for clarity and administrative efficiency.

(a) An applicant may appeal a final determination issued by the Department under these rules and regulations by filing a petition in writing with the Department and with the New York City Office of Administrative Trials and Hearings (“OATH”) within thirty (30) days of the date the determination was mailed. The petition shall state the name, address, and email address of the petitioner and shall include a short and plain statement of the matters to be adjudicated, identifying the approval or variance sought by the petitioner with citation to the applicable provisions of these rules and regulations, the regulated activity for which the Department issued the determination, the proposed location of the activity, and the date of the Department’s determination. The petition should also indicate whether the petitioner is requesting a hearing. A copy of the determination being appealed shall be attached to the petition. In addition, a completed OATH intake sheet shall be included with the petition. Blank intake sheets are available from the Department.

- (b) The following determinations of the Department are appealable:
- (1) A denial of an application for approval of a regulated activity.
 - (2) A denial of an application for a variance.
 - (3) The imposition of a substantial condition in an approval of a regulated activity.
 - (4) The imposition of a substantial condition in a grant of a variance.

(c) Petitions for appeal shall be referred to a City administrative law judge (ALJ) for hearing, where allowed by this section, and determination as defined in subdivision (g).

(d) The following issues are ~~adjudicable~~ reviewable on appeal:

(1) Whether the regulated activity proposed by the petitioner will be in compliance with the requirements of these rules and regulations.

(2) Whether the imposition of a substantial condition in an approval of a regulated activity is appropriate to ensure that the regulated activity will comply with the requirements of these rules and regulations.

(3) Whether the Commissioner has abused his or her discretion in denying a request for a variance or in imposing a substantial condition in a grant of a variance.

(4) Except where the Department has acted as lead agency, the ALJ shall not adjudicate any issues relating to compliance with the State Environmental Quality Review Act (SEQRA).

(e) Except for appeals from determinations relating to variances, the petitioner shall have the burden of proving by a preponderance of the evidence that the proposed regulated activity is in compliance with the requirements of these rules and regulations. For appeals from determinations relating to variances, the petitioner shall have the burden of proving that the Commissioner has abused his or her discretion.

(f)(1) Appeals from determinations relating to individual sewage treatment systems or variances shall be decided on the record before the Department in its review of the application and any other written submissions allowed by the ALJ.

(2) A petitioner may request ~~an adjudicatory~~ a hearing on appeals from all other determinations issued by the Department. If a petitioner does not request a hearing, the petition shall be decided on the record before the Department in its review of the application and any other written submissions allowed by the ALJ.

(i) ~~Unless otherwise agreed to by the parties and the ALJ, the~~ The hearing shall may be held in the district of the Department in which the regulated activity was proposed to be located, except that hearings may be held at the Department's offices in Valhalla, New York for appeals relating to regulated activities in the East of Hudson watershed and at the Department's offices in Kingston, New York for appeals relating to regulated activities in the West of Hudson watershed. The hearing may also be held by video conferencing or other electronic means, or as otherwise agreed to by the parties and the ALJ.

(g) The ALJ shall submit a report to the Commissioner within 60 days after the record on appeal is closed with a recommendation as to whether the determination appealed from should be approved, modified or rejected. The Commissioner shall issue a final decision approving, rejecting, or modifying the ALJ's recommendation within 30 days of receipt of the ALJ's report. If the Commissioner does not act within that time, the ALJ's recommendation shall be deemed approved by the Commissioner.

(h) This section shall not apply to determinations made by local governments administering provisions of these rules and regulations pursuant to Subchapter G.

(i) An applicant shall have the option whether to file an ~~administrative~~ appeal under this section and nothing in this section shall preclude an applicant from challenging a the final determination issued by the Department in a court of competent jurisdiction, including instituting a proceeding under Article 78 of the Civil Practice Law and Rules, without first filing a petition for appeal pursuant to this section.

§18-29 Hearings on Cease and Desist Orders

DEP proposes revisions to (d) to adjust the burden of proof; the proposed revisions to (h) are for clarity, based on recommendations from the Mayor's Office of Operations.

(a) Any person who receives a cease and desist order may request a hearing on the order by submitting a petition in writing to the Commissioner and to the Office of Administrative Trials and Hearings ("OATH") within seven (7) days of receipt of the cease and desist order. The petition for a hearing shall state the name, address, and email address of the petitioner and shall include a short and plain statement of the matters to be adjudicated, identifying the activity that is the subject of the order, the location of the activity, and the date of the cease and desist order. A copy of the order shall be attached to the petition. In addition, a completed OATH intake sheet shall be included with the petition. Blank intake sheets are available from the Department.

(b) Upon receipt of the petition for a hearing, OATH shall schedule a hearing promptly in the district of the Department where the activity that is the subject of the order allegedly occurred, and at a time and date which shall not exceed fifteen (15) days from the date of receipt by OATH of the petition for a hearing unless the parties and the ALJ agree to another location and date, except that hearings may be held at the Department's offices in Valhalla, New York for petitions relating to regulated activities in the East of Hudson watershed and at the Department's offices in Kingston, New York for petitions relating to regulated activities in the West of Hudson watershed. The hearing may also be held by video conferencing or other electronic means. Notice of such hearing shall be provided in writing to the petitioner and to the Department.

(c) A petition for a hearing shall not stay compliance with the cease and desist order, and it shall continue to be the duty of the petitioner to discontinue the activity pursuant to the terms of the order. Failure to do so shall be a violation of the order and these rules and regulations.

(d) At the hearing, the ~~petitioner~~ Department shall have the burden of proving ~~that the activity that is the subject of the order does not come within the provisions of §18-21(a)(5) and §18-27(a)(5) of these rules and regulations, by a preponderance of the evidence, facts supporting the cease and desist order.~~

(e) The failure of the petitioner to appear at the time, date and place set forth in the notice of hearing shall constitute a ~~default waiver~~ of the right to a hearing on the cease and desist order ~~and the matter will be dismissed.~~ ~~The Department shall provide a notice of default in writing to the petitioner within five (5) days of the petitioner's failure to appear.~~

(f) The hearing shall be held before an OATH ALJ. The ALJ shall cause a record of the hearing to be made, and shall make a report to the Commissioner within ten (10) days of the close of the hearing record, setting forth the appearances, the relevant facts and arguments presented at the hearing, findings of fact and conclusions of law, and a recommendation as to whether the order should be continued, modified or vacated and the reasons therefor. Transcripts of the record of the hearing shall be made available at the petitioner's request and expense.

(g) Within ten (10) days of receipt of the recommendation of the ALJ, the Commissioner may continue, vacate, or modify the order. If the Commissioner does not act within that time, the ALJ's recommendation shall be deemed adopted by the Commissioner.

(h) The results of the hearing on the cease and desist order ~~shall be without prejudice to~~ do not affect the right of a person to apply for an approval or variance for a regulated activity under these regulations ~~and shall also be without prejudice to the authority of the Department or any other person to.~~ In reviewing an application in connection with a regulated activity that has been the subject of a cease and desist order, however, the Department may take action on account of any violation of law, rule, regulation or order arising out of the events, situations or circumstances which led to the issuance of the order.

...

§18-34 Petroleum Products.

DEP proposes revisions to conform to the revised State regulations and also edits for clarity based on recommendations from the Mayor's Office of Operations.

...

(b) New aboveground and underground petroleum storage facilities, which require registration under 6 NYCRR Part ~~612~~ 613, or new tanks which expand the capacity of existing facilities which require registration under 6 NYCRR Part ~~612~~ 613, are prohibited within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake. ~~Notwithstanding this prohibition, the expansion of an existing aboveground or underground petroleum storage facility shall be allowed within the aforesaid limiting distances provided that~~ If, however, the owner or operator of such facility demonstrates to the Department that the application of the limiting distances would preclude the continuation of an existing business, the facility may be expanded within the limiting distances set forth in this paragraph.

(c) New home heating oil tanks not requiring registration under 6 NYCRR Part ~~612~~ 613, within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake, are prohibited from being installed underground and shall be located either aboveground or contained in a basement with a concrete or other impervious floor.

(d) New aboveground and underground petroleum storage tanks of 185 gallons or more, which are neither home heating oil tanks regulated under subdivision (c) of this section nor located at facilities requiring registration under 6 NYCRR Part ~~612~~ 613, are prohibited within the limiting distance of 25 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake, ~~except that such new tanks may be allowed within the aforesaid limiting distances provided that~~. If, however, the applicant demonstrates to the Department that application of the limiting distances would preclude the continuation of an existing business or the continued identical use of the existing facility, the facility may be expanded within the limiting distances set forth in this paragraph.

...

§18-35 Human Excreta, ~~and~~ Holding Tanks, and Portable Toilets.

DEP proposes to establish regulatory standards for holding tanks and portable toilets. DEP will not have authority to review and approve holding tanks or portable toilets; rather, these revisions establish standards consistent with applicable State guidance.

(a) Unless otherwise permitted by these rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge, of human excreta, or a discharge, or storage which is reasonably likely to lead to a discharge, from a holding tank, into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(b) Emptying, discharging or transferring the contents of a holding tank or other sewage receptacle into any watercourse, wetland, reservoir, reservoir stem, or controlled lake is prohibited.

(c) All new holding tanks and non-waterborne systems designed for sewage in quantities of less than 1,000 gallons per day from residential properties that are either permitted or not prohibited under 10 NYCRR Appendix 75-A may be used in the watershed provided that they are constructed and operated in accordance with the following standards:

(1) Such holding tanks shall have a capacity equal to at least five (5) days' design flow, with a minimum capacity of 1,000 gallons.

(2) Such holding tanks shall be equipped with an alarm (audible and visible) located in a conspicuous place to indicate when pump-out is necessary.

(3) Such holding tanks shall be designed, installed and maintained in a manner to promote ease of access for pumping and cleanup.

(4) If such holding tanks will be used in the winter, the tanks shall be protected from freezing.

(d) New holding tanks designed for sewage in quantities of 1,000 gallons per day or more, or from non-residential properties, that are either permitted or not prohibited under state law, may be used in the watershed provided that they are constructed and operated in accordance with the following standards:

(1) The owner of such a holding tank shall have and maintain an agreement with a professional hauler for disposal of waste at a facility that is permitted to accept septage, as defined in 6 NYCRR Part 364.

(2) Such holding tanks shall have a capacity equal to at least twice the volume of waste to be generated between anticipated removal dates, with a minimum capacity of 1,000 gallons.

(3) Such holding tanks shall have a high-level alarm positioned to allow storage of at least three days' volume of waste after activation.

(4) If such holding tanks will be used in the winter, the tanks shall be protected from freezing.

(e) Portable toilets shall not be located within the limiting distance of 50 feet of a mapped stream, wetland, reservoir, reservoir stem, or controlled lake and, to the extent practicable, are not located within the limiting distance of 50 feet from a watercourse other than a mapped stream.

§18-36 Wastewater Treatment Plants.

DEP proposes edits for clarity based on recommendations from the Mayor's Office of Operations and also updated references to the current applicable guidance documents.

(a) Minimum Requirements

(1) Unless otherwise permitted by these rules and regulations, the design, construction, or operation of a wastewater treatment plant is prohibited where such design, construction, or operation causes a discharge, or storage which is reasonably likely to lead to a discharge, of sewage or sewage effluent into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(2) The design of new wastewater treatment plants, and the plans and specifications resulting from that design, require the review and approval of the Department. ~~The construction of a new~~ New wastewater treatment plants ~~shall~~ must be constructed in ~~conformance~~ accordance with the plans and specifications approved by the Department.

(3) The design for an expansion or an alteration or modification of ~~new or existing~~ wastewater treatment plants, and the plans and

specifications resulting from that design, require the review and approval of the Department. ~~The construction of the~~ Any expansion or alteration or modification ~~shall~~ of a wastewater treatment plant must be constructed in accordance with the plans and specifications approved by the Department.

(4) The owner or operator of a ~~new or existing~~ wastewater treatment plant shall operate and maintain the wastewater treatment plant in accordance with the operations and maintenance manual for the plant. Such manual shall be prepared by the owner and approved by the Department. Such manual shall be prepared or revised, and submitted to the Department for approval, within ninety (90) days after construction, expansion, alteration or modification of a wastewater treatment plant is completed

(5) No new wastewater treatment plants with a surface discharge, or expansion or alteration or modification of ~~new or existing~~ wastewater treatment plants, shall cause a contravention of the water quality standards set forth in Subchapter D of these rules and regulations or the phosphorus water quality values set forth in the New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality Standards and Guidance Values (October 22, 1993).

...

(d) *Treatment requirements for wastewater treatment plants located within the 60 day travel time to intake*

(1) The map indicating the demarcation line for the watershed areas that are located within the 60 day travel time to intake appears in Appendix 18-A. Large detailed maps of such areas are available to be reviewed by the public during business hours at the regional offices listed in § 18-15 of Subchapter A.

(2) Within the 60 day travel time to the intake the following requirements are applicable:

- (i) New wastewater treatment plants with surface discharges, or expansions of existing wastewater treatment plants with surface discharges, are prohibited except as provided in § 18-82(e). A variance from this provision may be sought in accordance with the requirements set forth in § 18-61(e);
- (ii) Existing wastewater treatment plants with SPDES permitted surface discharges may continue to operate provided the wastewater treatment plant provides sand

filtration or a Department-approved alternative technology to sand filtration, disinfection, phosphorus removal, and microfiltration or a Department-approved equivalent technology to microfiltration, as required by these rules and regulations;

- (iii) ~~New and existing wastewater~~ Wastewater treatment plants with subsurface discharges may commence or continue to operate provided that the wastewater treatment plant provides sand filtration or a Department-approved alternative technology to sand filtration and phosphorus removal, and for SPDES permitted discharges greater than 30,000 gallons per day (gpd), disinfection, as required by these rules and regulations.

(e) *Treatment requirements for wastewater treatment plants located in the watershed and beyond the 60 day travel time to intake*

(1) The map indicating the demarcation line for the watershed areas that are located beyond the 60 day travel time to intake appears in Appendix 18-A. Large detailed maps of such areas are available to be reviewed by the public during business hours at the regional offices listed in § 18-15 of Subchapter A.

(2) Beyond the 60 day travel time to the intake the following requirements are applicable:

- (i) New wastewater treatment plants with surface discharges into a reservoir, reservoir stem, controlled lake, or wetland are prohibited;
- (ii) All new surface discharges into a watercourse, and any existing wastewater treatment plants with SPDES permitted surface discharges may commence or continue to operate, provided that the wastewater treatment plant provides sand filtration or a Department-approved alternative technology to sand filtration, disinfection, phosphorus removal, and microfiltration or a Department-approved equivalent technology to microfiltration, as required by these rules and regulations;
- (iii) ~~New and existing wastewater~~ Wastewater treatment plants with subsurface discharges may commence or continue to operate, provided that the wastewater treatment plant provides sand filtration or a Department-approved alternative technology to sand filtration and phosphorus removal, and for SPDES permitted discharges greater than 30,000 gallons per day (gpd), disinfection, as required by these rules and regulations.

(f) *Design, Operation and Maintenance Requirements*

(1) This subdivision (f) shall apply to ~~new and existing~~ wastewater treatment plants.

(2) The criteria used by the Department to approve the design for any new wastewater treatment plant or the portion of any ~~new or existing~~ wastewater treatment plant which is being expanded or altered or modified shall be all applicable requirements of law, including the standards set forth in the following documents:

- (iv) “~~New York State Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities Wastewater Treatment Systems~~” New York State Department of Environmental Conservation (~~1988~~2014); and
- (v) “Recommended Standards for Wastewater Facilities,” Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (~~2004~~2014).

...

(5) All wastewater treatment plants shall meet the following requirements to insure uninterrupted reliable operation:

- (i) All wastewater treatment plants shall provide standby power units sufficient to run the entire plant in order to ensure uninterrupted reliable operation in the event of utility power failure and these units shall be equipped with an alarm and automatic start-up capability;
- (ii) All vital plant structures, mechanical and electrical equipment of ~~new or existing~~ wastewater treatment plants located or designed within the 100-year flood plain shall be protected from damage from a 100-year flood that may affect or disrupt its function or general performance. Such structures and equipment shall remain fully operational in a 5-year flood.
- (iii) The disinfection system shall be provided with backup units, an alarm and equipment that will insure processing of the plant flow without interruption and the backup electrical and/or mechanical equipment shall be equipped with automatic start-up capability.
- (iv) Sand filtration or a Department-approved alternative technology to sand filtration shall be implemented in units

of sufficient number and size to ensure that the flow they are designed to accommodate, consistent with the “New York State Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities Wastewater Treatment Systems,” New York State Department of Environmental Conservation (1988~~2014~~) and/or the “Recommended Standards for Wastewater Facilities,” Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (2004~~2014~~), can be processed in the event that the largest such unit is off line;

...

(g) *Application Requirements*

...

(2) An application for review and approval of an expansion or of an alteration or modification of a ~~new or existing~~ wastewater treatment plant shall include all of the information required in subdivision (g)(1) of this section where applicable, and shall either:

...

§18-37 Sewer Systems, Service Sewer Connections and Discharges to Sewer Systems.

DEP’s proposed modifications to the provisions concerning sewer systems and sewer connections include clarifications in terminology (see also changes to several related definitions). The substantive changes are:

- *Eliminating the requirement to test new sewer connections, which has not proven necessary or useful – existing § 18-37(c);*
- *Clarifying when new sewer connections require DEP review and approval, and the submission requirements when DEP review is required – new § 18-37(c) and changes to §§ 18-37(e) and (f);*
- *Updating references to applicable guidance documents – § 18-37(f);*
- *Consolidating and clarifying the application requirements for sewer systems and sewer extensions in § 18-37(j), which includes deleting § 18-37(d)(1); and*
- *Establishing that sewer systems and sewer extensions must be maintained to prohibit inflow and infiltration that causes a bypass – § 18-27(g)(3).*

(a) Combined sewer systems are prohibited from discharging within the watershed.

(b) A new service sewer connection or sewer extension to a sewer system is prohibited where the wastewater treatment plant to which the sewer system has been connected and which discharges within the watershed has had a SPDES flow parameter violation in the prior twelve months, or where the additional flow from the new service sewer connection or sewer extension will cause or can be expected to cause such wastewater treatment plant to have a SPDES flow parameter violation as defined herein.

~~(e) — All new service connections shall be tested in accordance with the standards set forth in “Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities,” New York State Department of Environmental Conservation (1988), and the standards in “Recommended Standards for Wastewater Facilities,” Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, §§33.92-33.95 (2004). A copy of the results of the tests shall be forwarded to the Department as soon as they are available.~~

~~(d) — Except for the owner of an individual or two family residence, the owner of any property which will be served by a new sewer connection to a sewer system, or by any alteration or modification of a sewer connection to a sewer system, shall submit all plans or designs for such sewer connection or such alteration or modification to the Department prior to or simultaneously with the delivery of the notice to the Department required under paragraph (d)(1) below. The owner of an individual or two family residence to be served by a new sewer connection to a sewer system, or by an alteration or modification of a sewer connection to a sewer system, shall not be required to submit the plans or designs for such sewer connection or such alteration or modification to the Department, unless specifically requested by the Department. If so requested, such owner shall submit such plans or designs to the Department prior to or simultaneously with the delivery of the notice to the Department required under paragraph (d)(1) below or, if the request is made by the Department after such notice has been given, within ten (10) days after such request has been made.~~

~~(1)(c)~~ Sewer Connections.

~~(1) — The owner of any property which individual residence that will be served by a new sewer connection to a sewer system, or by an alteration or modification of a sewer connection to a sewer system, shall notify the Department 48 hours prior to the installation of such sewer connection or of such alteration or modification, and provide an opportunity to the Department to observe the work. If required or requested pursuant to subsection 18-37(d) specifically requested by the Department, the owner shall submit to the Department all plans or designs for such sewer connection or for such alteration or modification prior to or simultaneously with the delivery of such notice to the Department.~~

~~(2) — The owner of a structure other than an individual residence that will be served by a new sewer connection, or by an alteration or~~

modification of a sewer connection, to a sewer system that is subject to a qualifying municipal sewer use law shall:

- (i) provide to the Department, at least 48 hours prior to the installation of such sewer connection or of such alteration or modification, a written permit from the superintendent of the sewer system authorizing such connection; and
- (ii) notify the Department 48 hours prior to the installation of such sewer connection or of such alteration or modification, and provide an opportunity to the Department to observe the work.

(3) The plans for a new sewer connection, or for an alteration or modification of a sewer connection, to a sewer system for a treatment facility with a SPDES permit, which is not subject to a qualifying municipal sewer use law, from a structure other than an individual residence, require review and approval of the Department. As a condition of approval, the Department will require the applicant to notify the Department 48 hours prior to the installation of such sewer connection or of such alteration or modification, and provide an opportunity to the Department to observe the work. An application for review and approval of such a new sewer connection or alteration or modification of a sewer connection shall include:

- (i) A written statement from the owner or operator of the treatment facility certifying that the new sewer connection or alteration or modification of a sewer connection will not require a modification of the treatment facility's SPDES permit, and
- (ii) Plans and specifications for the sewer connection.

(4) New sewer connections, or alterations or modifications of sewer connections, to treatment facilities that do not have SPDES permits shall be reviewed in accordance with § 18-38 of these rules and regulations.

~~(e)~~(d) The design, construction and plans for a new sewer system or sewer extension shall require the review and approval of the Department. Any proposed alteration or modification of a sewer system, ~~including a sewer system that is a noncomplying regulated activity,~~ shall require the review and approval of the Department.

~~(1) The Department may require an engineering report, construction plans and specifications, and any environmental assessments and determinations in compliance with Article 8 of the Environmental Conservation Law when reviewing any application pursuant to this~~

~~subdivision for a new sewer system or sewer extension or a proposed alteration or modification of a sewer system.~~

~~(2)(e)~~ Any approval of a new or an alteration or modification of an existing sewer system, ~~or sewer extension, or sewer connection subject to Department approval pursuant to subdivision 18-37(c)(3),~~ issued by the Department shall expire and thereafter be null and void unless construction is ~~commenced~~ completed within five (5) years of the date of issuance. Following expiration of the approval, the plans for the sewer system may be resubmitted to the Department for consideration for a new approval.

(f) The criteria used by the Department to approve any new sewer system, ~~or sewer extension, or sewer connection subject to Department approval pursuant to subdivision 18-37(c)(3)~~ or the portion of any sewer system or such sewer connection which is being altered or modified, shall be all applicable requirements of law, including the standards set forth in the following documents:

(1) “New York State Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities Wastewater Treatment Systems,” New York State Department of Environmental Conservation (~~1988~~2014);

(2) “Recommended Standards for Wastewater Facilities,” Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (~~2004~~2014);

(3) 19 NYCRR Part 1222 (Plumbing Code of New York State).

(g) All sewer systems and sewer extensions connected to a wastewater treatment plant which discharges within the watershed shall be designed, operated and maintained in such manner as to prevent inflow or infiltration which causes ~~either~~ one or more of the following:

(1) The SPDES authorized flow limit of the wastewater treatment plant to be exceeded; or

(2) The strength of the sewage influent to the wastewater treatment plant to be diluted to a level that adversely affects the efficacy of the SPDES permitted and Department approved treatment process; or

(3) A bypass of any portion of a treatment facility that would be prohibited pursuant to 6 NYCRR Subpart 750-2.

(h) All sewer systems and sewer extensions shall be designed, operated and maintained to prevent exfiltration from such systems.

(i) The owner or operator of a facility which disposes of wastes regulated pursuant to the Federal Categorical Pretreatment Standards, 40 CFR Part 403, shall submit three copies of the engineering report, plans and

specifications, prepared by a licensed design professional, in compliance with 40 CFR Parts 403, 406-471 and any applicable local regulations, to the Department for its review and approval.

(j) Application Requirements for Sewer Systems and Sewer Extensions. An application for review and approval of any sewer system or sewer extension shall include the following information:

(1) Tax map number and, where available, building permit number, for each property to be served by the proposed sewer system or sewer extension;

(2) ~~Copy of the applicable municipal Sewer Use Ordinance, if any;~~

~~(3)~~—Letter of flow acceptance from the owner of the receiving wastewater treatment plant, when available;

~~(34)~~ An engineering report presenting the proposed flow and supporting design calculations; and

~~(45)~~ Four (4) sets of plans showing:

(i) site location in relation to established sewer district;

(ii) distances to wells, watercourses, rock outcroppings, wetlands, controlled lakes and reservoirs;

(iii) system profile including all connections, manholes and required pump stations;

(iv) design details and specifications of system components including pipe sizes and pump capacities;

(v) where applicable, a copy of the application for modification of the SPDES permit for the receiving wastewater treatment plant and, if available, any draft revisions to such SPDES permit; and

(vi) construction phasing.

(5) An application for review and approval of a sewer system shall include an operation and maintenance plan for the sewer system, which may be a component of the operation and maintenance plan for the treatment facility served by the sewer system; and

(6) An Environmental Assessment form and State Environmental Quality Review Act determination, if applicable.

(k) All approvals for sewer systems are conditioned on the applicant's submission of as-built drawings, prepared by a design professional, once construction is complete.

(l) As a condition of approval the Department may require evidence of financial security prior to construction, from any owner or operator of a new sewer system or sewer extension or a substantial alteration or modification to an existing sewer system. Such financial security shall consist of a bond, or an equivalent guaranty, to be deposited with the Department, covering the full cost of the construction of such facility and an additional bond or an equivalent guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, a bond or equivalent guaranty may be required for the maintenance and operation of the facility for a period of five years post-construction. No bond or guaranty is required where the owner or operator of such a facility is a village, town, county or city.

§ 18-38 Subsurface Sewage Treatment Systems.

These are the most substantive of the proposed modifications to the Regulations. Most importantly, DEP proposes to replace the existing framework for evaluating alterations and modifications of SSTs – and for determining whether systems that have not been used in some time can be brought back into service – with an approach that is based on public health and water quality. These changes also update references to applicable guidance documents. The substantive changes include:

- *The requirements for new systems are now stated separately, entirely independent of the standards for systems that need repair, are being altered or modified, or are being brought back into use after a period of discontinuation – § 18-38(a).*
- *Section 18-38(b) now includes all the standards applicable to alteration and modification, repair and remediation, and commencement of use of discontinued systems. In particular:*
 - *As is currently the case, all systems that are currently operating may continue to be used – § 18-38(b)(1);*
 - *If the use of an SST is discontinued (see definition of “discontinuation”) for 5 years or more, it must come into compliance with the standards in § 18-38(b)(4) or else use must permanently desist – § 18-38(b)(2);*
 - *Section 18-38(b)(3) establishes when alterations or modifications of SSTs require DEP review and approval, including exemptions for certain ancillary uses of residential systems;*
 - *Section 18-38(b)(4) establishes the standards DEP will apply when reviewing proposed alterations or modifications, or requests to resume use of a system subject*

to discontinuation. The default is that systems must meet the standards applicable to new systems, but this provision also allows for compliance to the extent possible, so long as the applicant demonstrates that such use will not pose a threat to public health or water quality. In such instances, applicants must submit the information specified in § 18-38(d)(4) in addition to standard application materials;

- *The standards and procedures for failures remain the same – § 18-38(b)(5);*
- *A property owner may request a determination from DEP that an SSTS is capable of treating a specified volume and type of wastewater flow – the determination is binding on DEP for five years and may be useful to a property owner seeking financing or interested in selling the property – § 18-38(b)(8);*
- *There is a new prohibition against drip and low profile dispersal systems, which are permitted under the 2014 DEC Design Standards but were prohibited under the 1988 standards – § 18-38(c)(2)(ii).*
- *Consistent with Appendix 75-A, field size reductions are now allowed for enhanced treatment systems under certain circumstances – §§ 18-38(c)(2)(iv) and (v).*
- *New requirements relating to notifying DEP of construction – § 18-38(e).*

(a) Minimum Requirements for new subsurface sewage treatment systems

(1) The design, treatment, construction, maintenance and operation of new subsurface sewage treatment systems, and the plans therefor, require the review and approval of the Department, provided that the requirements of this section shall not apply to subsurface sewage treatment systems necessary for an agricultural activity that are designed, provide treatment and are constructed, maintained and operated in compliance with State and Federal law.

(2) All new individual sewage treatment systems shall comply with the requirements of 10 NYCRR Part 75 and Appendix 75-A except where a local government or agency has enacted, or these rules and regulations specify, more stringent standards, in which case, the more stringent standards shall apply.

(3) All new intermediate sized sewage treatment systems shall comply with the requirements set forth in New York State Design Standards for Intermediate Sized Wastewater Treatment Works, Intermediate Sized Sewerage Facilities Systems, New York State Department of Environmental Conservation (~~1988~~2014), except where a local

government or agency has enacted, or these rules and regulations specify, more stringent standards, in which case, the more stringent standards shall apply.

- (i) As a condition of approval the Department may require evidence of financial security prior to construction, from any owner or operator of a new intermediate sized sewage treatment system or a substantial alteration or modification to an existing intermediate sized sewage treatment system. Such financial security shall consist of a bond, or an equivalent guaranty, to be deposited with the Department, covering the full cost of the construction of such facility and an additional bond or an equivalent guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, a bond or equivalent guaranty may be required for the maintenance and operation of the facility for a period of five years post-construction. No bond or guaranty is required where the owner or operator of such a facility is a village, town, county or city.

(4) No part of any absorption field for any new subsurface sewage treatment system shall be located within the limiting distance of 100 feet of a watercourse or wetland or 300 feet of a reservoir, reservoir stem or controlled lake. For a new conventional individual subsurface sewage treatment system or for a new Ulster County Fill System the Department may recommend a greater limiting distance from an absorption field to a watercourse, wetland, reservoir, reservoir stem or controlled lake.

(5) Raised systems, as described in 10 NYCRR Part 75 and Appendix 75-A, are allowed on undeveloped lots not located in a subdivision or on undeveloped residential lots located in a subdivision which was approved prior to the effective date of these rules and regulations, where site conditions are not suitable for a conventional system provided that:

- (i) The system shall be located at least 250 feet from any watercourse or wetland and 500 feet from any reservoir, reservoir stem or controlled lake provided that the greater limiting distance for raised systems does not preclude construction on the subject lot or lots of the use proposed by the applicant, and further provided that the site conditions and the subsurface sewage treatment system comply with the other provisions of these rules and regulations and other applicable Federal, State and local laws, as cited in §18-38(a)(1); or

- (ii) Raised systems which cannot meet the limiting distances set forth in subparagraph (i) due to size or location of the lot shall be located at the greatest limiting distance possible within the property lines and at least 100 feet from any watercourse or wetland and 300 feet from any reservoir, reservoir stem or controlled lake.

(6) Where a watershed county has adopted a subdivision code that allows a raised system, as described in 10 NYCRR Part 75 and Appendix 75-A, or where any system that has been modified from the Standards outlined in Appendix 75-A has been approved by the New York State Department of Health as an alternative system, or where the New York State Department of Health approved such raised or modified alternative systems for use in subdivisions located in the watershed, such raised or alternative systems are allowed in subdivisions that are approved subsequent to the effective date of these rules and regulations, provided that no part of such systems shall be located within 250 feet of a watercourse or wetland or 500 feet of a reservoir, reservoir stem or controlled lake.

(7) Any approval of a subsurface sewage treatment system issued by the Department shall expire and thereafter be null and void unless construction is substantially completed ~~commenced~~ such that the system is functioning as designed within five (5) years of the date of issuance for systems located within approved subdivisions, or within two (2) years of the date of issuance for all other subsurface sewage treatment systems. Following expiration of the approval, the plans for the subsurface sewage treatment system may be resubmitted to the Department for consideration for a new approval.

(b) Minimum requirements for alteration and modification, repair and remediation, and discontinuation of subsurface sewage treatment systems

~~(7) Any proposed alteration or modification of any subsurface sewage treatment system, including a noncomplying regulated activity, requires the review and approval of the Department.~~

- ~~(i) Any proposed alteration or modification of any individual sewage treatment system that is an existing or a noncomplying regulated activity shall be performed in accordance with the requirements applicable to new subsurface sewage treatment systems under this section. Alterations or modifications of such individual sewage treatment systems that cannot meet these requirements, due to site constraints, shall be performed in accordance with~~

~~these requirements to the extent possible. In addition, unless such an alteration or modification is limited to a replacement in kind, reduces the potential for contamination to or degradation of the water supply from an existing subsurface sewage treatment system, or reduces flow to an existing subsurface sewage treatment system, the applicant shall demonstrate adequate mitigation measures to avoid contamination to, or degradation of, the water supply which are at least as protective of the water supply as the requirements that cannot be met.~~

~~(ii) — Any proposed alteration or modification of any new individual sewage treatment system (i.e., any individual sewage treatment system constructed after May 1, 1997) shall be performed in accordance with the requirements applicable to new subsurface sewage treatment systems under this section. If such an alteration or modification reduces the potential for contamination to or degradation of the water supply from a new subsurface sewage treatment system, or reduces flow to a new subsurface sewage treatment system, and such alteration or modification cannot meet these requirements due to site constraints, it shall be performed in accordance with these requirements to the extent possible.~~

~~(iii) — Any proposed alteration or modification of any intermediate sized subsurface sewage treatment system is prohibited unless such alteration or modification complies with the requirements of this section.~~

~~(a)(8)(1) All existing subsurface sewage treatment systems, which are operating in accordance with their Federal, State, and local approvals on the effective date of these rules and regulations, but which do not comply with the additional requirements for new subsurface sewage treatment systems set forth in this section, shall be allowed to continue to operate and shall be considered noncomplying regulated activities.~~

(2) If the use of a subsurface sewage treatment system is, for any reason, subject to discontinuation for a period of five consecutive years or more, operation may resume if it comes into compliance with the standards for alterations or modifications of subsurface sewage treatment systems in accordance with § 18-38(b)(4) below. If, however, the system cannot come into compliance with these standards, the use shall permanently desist. The owner or operator bears the burden of proof for showing that there has been no discontinuation in the use of a subsurface sewage treatment system.

(3) Any proposed alteration or modification of any subsurface sewage treatment system requires the review and approval of the Department, except as provided in subparagraphs (i) through (iii) below.

- (i) The volume, character, or strength of the flow to a subsurface sewage treatment system may be reduced without review and approval provided that such reduction does not cause any increase in the existing discharge or any increase in the potential for contamination to or degradation of the water supply from that discharge. If the reduction in the volume, character, or strength results from an alteration or modification of a system component, or the addition of a new system component (such as installation of a peat filter or aerobic treatment unit), then such alteration, modification, or addition requires review and approval of the Department, except that:

 - a. Any such review and approval shall be limited to the affected system component; and
 - b. No such review and approval is required where the alteration, modification, or addition of the system component is otherwise exempt from review under this section (such as the replacement of a septic tank with a larger tank of an appropriate size for the subsurface sewage treatment system).
- (ii) Except as set forth in this subdivision, for an intermediate sized subsurface sewage treatment system that has a State Pollutant Discharge Elimination System (SPDES) permit, review and approval is not required for any proposed alteration or modification that does not deviate from the engineering design and site plan approved by the New York State Department of Environmental Conservation.

 - a. Review and approval by the Department is required if the alteration or modification requires a modification of the SPDES permit for the SSTS for any reason including, but not limited to:
 - i. the alteration or modification involves physical alteration or modification of the SSTS, or
 - ii. the alteration or modification results in the system receiving sewage that either exceeds the treatment system design flow, or has a strength or characteristic beyond the design capability of the treatment system.
 - b. If the Department has previously issued an approval for an intermediate sized subsurface sewage

treatment system, review and approval by the Department is required for any alteration or modification that results in the system receiving sewage that either exceeds the design flow of the system as approved by the Department, or has a strength or characteristic beyond the design capability of the system as approved by the Department.

- (iii) In the following circumstances, where an ancillary, non-residential use of a residence served by an individual subsurface sewage treatment system does not result in an increase in or change in the nature of the flow of sewage, the subsurface sewage treatment system shall not be considered an intermediate-sized sewage treatment system, nor shall such use require review and approval by the Department:
- a. Where the residence is used to provide accommodations for transient lodgers and no food service is provided other than to overnight guests, unless such use requires a temporary residence permit pursuant to 10 NYCRR Subpart 7-1.
 - b. Where the individual residence is used for a home office or home business, provided that:
 - i. The individual who operates the home office or home business occupies the home as his or her primary or secondary residence;
 - ii. The home office or home business is of a type that is estimated to generate 50 gallons per day of water or less based on Table B-3 of the New York State Design Standards for Intermediate Sized Wastewater Treatment Systems, New York State Department of Environmental Conservation (2014); and
 - iii. The conversion does not involve an increase in the individual residence's number of bedrooms.

(4) Standards for Alterations or Modifications of Subsurface Sewage Treatment Systems

- (i) Any proposed alteration or modification of any subsurface sewage treatment system shall be performed in accordance with the requirements applicable to new subsurface sewage treatment systems under this section.
- (ii) Alterations or modifications of subsurface sewage treatment systems that cannot meet these requirements, due

to site constraints, shall be performed in accordance with the requirements applicable to new subsurface sewage treatment systems to the extent possible. Applications for proposed alterations or modifications of such subsurface sewage treatment systems must include the information described in subdivision 18-38(d)(4).

- (iii) Standard of review. The department will authorize use of a subsurface sewage treatment system that has been subject to a period of discontinuation for five consecutive years or more, or a proposed alteration or modification of a subsurface sewage treatment system, if the applicant demonstrates that such use, alteration, or modification does not present a threat to public health or water quality as determined by the Department.

~~(a)(9)(5)~~ ~~regulations~~ If at any time after the effective date of these rules and regulations a subsurface sewage treatment system fails or needs remediation, the owner or operator of the subsurface sewage treatment system shall comply with the following:

- (i) Any proposed remediation of any part of a subsurface sewage treatment system shall require the prior review and approval of the Department, and if approved, shall be completed as soon as possible in accordance with a schedule approved by the Department;
- (ii) Any proposed remediation of any part of a subsurface sewage treatment system shall be implemented, to the extent possible, in accordance with the design standards set forth in this section, and shall require the prior review and approval of the Department. However, if the Department determines, based upon the application submitted by the owner or operator of the subsurface sewage treatment system, that such system cannot comply with this section, the owner or operator of the subsurface sewage treatment system shall cooperate with the Department to determine the most suitable location and design for the system on the specific site. The Department may require the owner to agree to a regular schedule for the pump out of the septic tank or other remedial action, including the use of holding tanks, before the proposed remediation is approved by the Department and implemented; and
- (iii) The provisions of this paragraph shall not apply to the routine repair and maintenance of a subsurface sewage treatment system, including, but not limited to, the pump

out of a septic tank, the replacement of a septic tank, whether in kind or with a larger tank of an appropriate size for the subsurface sewage treatment system, the repair of a broken lateral, the leveling of a distribution box, or the removal of a blockage.

(6) Any approval issued by the Department to use a subsurface sewage treatment system following a discontinuation shall expire and thereafter be null and void unless any required enhancements are implemented and such use is commenced within one (1) year of the date of issuance or such longer period as the Department may authorize in writing. Following expiration of the approval, the plans for the subsurface sewage treatment system may be resubmitted to the Department for consideration for a new approval.

(7) Any approval of an alteration or modification of a subsurface sewage treatment system issued by the Department shall expire and thereafter be null and void unless any required enhancements are implemented within two (2) years of the date of issuance. Following expiration of the approval, the plans for the subsurface sewage treatment system may be resubmitted to the Department for consideration for a new approval.

(b)(c) Design, Operation, Treatment, and Maintenance Requirements

(1) All subsurface sewage treatment systems shall be designed, operated and maintained to prevent the exposure of sewage to the surface of the ground or the discharge of sewage to groundwater.

(2) Limitations on certain systems in the watershed.

(i) Mound systems, galley systems, seepage pits, evaporation-transpiration (ET) and evaporation-transpiration absorption (ETA) systems are prohibited from use for subsurface sewage treatment systems installed in the watershed on or after June 30, 2002.

(ii) Drip and low profile dispersal systems, as described in New York State Design Standards for Intermediate Sized Wastewater Treatment Systems, New York State Department of Environmental Conservation (2014) are prohibited from use for subsurface sewage treatment systems installed in the watershed on or after [effective date of revisions].

(iii) Sand filters are prohibited from use for individual sewage treatment systems in the watershed.

- (iv) For new subsurface sewage treatment systems within the 60-day travel time, and for new subsurface sewage treatment systems that require State Pollutant Discharge Elimination System (SPDES) permits, field size reductions will not be offered for use of any enhanced subsurface sewage treatment systems.
- (v) No field size reductions shall be granted for use of any open-bottom gravelless absorption system, as described in 10 NYCRR Appendix 75-A.8(c)(3)(i). One linear foot of a gravelless absorption system is equivalent to one linear foot of conventional (24" wide) absorption trench.

(3) An additional area of at least 100 percent of the primary absorption field shall be set aside as a reserve absorption field for any subsurface sewage treatment system.

(4) No part of any primary or reserve absorption field shall be built under pavement or other impervious surfaces, and pavement and other impervious surfaces shall not be built over such absorption fields after installation.

(5) At least one percolation test and at least one deep hole test shall be performed in the primary absorption field. At least one percolation test and at least one deep hole test shall be performed in the reserve absorption field area. An applicant shall notify the Department in writing at least seven (7) days prior to performance of such tests, and specify the location and the time of the tests. Such soils testing shall be performed during normal business hours on weekdays other than legal holidays. At the option of the Department, a Department representative may witness such tests.

(6) Proposed sites with soil percolation rates faster than 3 minutes per inch or slower than 60 minutes per inch shall not be approved by the Department for locating a subsurface sewage treatment system.

(7) Whenever possible, gravity flow systems shall be used for subsurface sewage treatment systems. The use of electrically operated pumps shall require a chamber equipped with an alarm to indicate malfunction and any other safety features required by the Department to prevent sewage overflow. An intermediate sized sewage treatment system that uses electrically operated pumps is required to have either a backup pump or a backup storage tank capable of holding two days' flow. An individual sewage treatment system that uses electrically operated pumps shall have a backup storage tank capable of holding one day's flow.

(8) A reserve absorption field is intended to be left undisturbed to be used in the event that the primary absorption field fails in the future. If the reserve absorption field is used because the primary absorption field has failed, the owner should, but is not required to, identify a new reserve absorption field. If the reserve absorption field is used for purposes of expanding the subsurface sewage treatment system, a new reserve absorption field or Department-approved alternative must be identified.

(ed) Application Requirements

(1) An application for review and approval of any subsurface sewage treatment system shall include the following information:

- (i) Soil investigation report including:
 - a. percolation test results;
 - b. deep hole test pit results or boring analysis indicating the depth of useable soil;
 - c. indication of surface water or ledge rock observed;
 - d. design rate of flow; and
 - e. delineation of United States Department of Agriculture Soil Conservation Service soil type boundaries.
- (ii) Building permit number and tax map number where available.
- (iii) Four (4) sets of plans prepared by a design professional showing:
 - a. site location, including distances to wells, watercourses, rock outcroppings, wetlands, controlled lakes and reservoirs, and any property boundaries within 10 feet of any subsurface sewage treatment system component;
 - b. site/system plans, drawn to scale, with topography showing two-foot contours intervals;
 - c. system profile;
 - d. details of system components; and
 - e. a report containing:

- i. a description of the project characteristics; and
- ii. a detailing of the design process.

(2) An application for review and approval of an intermediate sized sewage treatment system shall include all of the information in paragraph (1) of subdivision (c) of this section, and additionally shall contain:

- (i) An Environmental Assessment form and State Environmental Quality Review Act determination, if applicable; and
- (ii) A SPDES permit, if applicable.

(3) All approvals for new subsurface sewage treatment systems are conditioned on the applicant's submission of as-built drawings, prepared by a design professional, once construction is complete.

(4) An application for review and approval of an alteration or modification of a subsurface sewage treatment system, or of the resumption of use of a subsurface sewage treatment following discontinuation, that cannot satisfy the requirements applicable to new subsurface sewage treatment system shall include all of the information in paragraph (1) of subdivision (d) of this section, except that the Department may, at its option, waive the requirement to submit a soil investigation report. For an intermediate sized sewage treatment system, the application shall include the information in paragraph (2) of subdivision (d) of this section. An application shall also contain:

- (i) Plans or other design information, consisting of:
 - a. If available, design plans for the subsurface sewage treatment plans, indicating all known regulatory approvals for such plans;
 - b. If design plans are not available, a description of the components of the system prepared by a licensed professional engineer;
- (ii) A proposal for enhancements to the system to meet the standards in § 18-38 applicable to a new subsurface sewage treatment system to the extent possible, including the information required under § 18-38(c); and
- (iii) Any additional information demonstrating any or all of the following:

- a. A reduction in the potential for contamination to or degradation of the water supply from the subsurface sewage treatment system.
- b. A reduction in flow to the subsurface sewage treatment system, or
- c. Mitigation measures to avoid contamination to, or degradation of, the water supply.

(e) Construction Requirements

(1) The applicant must notify the Department at least two business days before the start of construction of a subsurface sewage treatment system. The locations of the absorption field corners, septic tanks, pump or dosing chambers, and other treatment components must be staked out before the start of construction, so that the Department can, at its option, verify compliance with separation distance to wells, watercourses, and property lines. The ends of absorption trenches and the corners of absorption beds must be staked out before the start of construction. Stakes must be marked with applicable line and grade information and may not be disturbed during construction.

(2) If construction of a subsurface sewage treatment system ceases for more than seven days, the applicant must make best efforts to notify the Department at least two business days before restarting construction.

(3) The applicant must notify the Department at least one day before burying any component of a subsurface sewage treatment system.

(4) All notifications to the Department pursuant to this subsection (d) shall be made via the email address and/or telephone number listed on the approval.

§18-39 Stormwater Pollution Prevention Plans and Impervious Surfaces.

Many of the proposed revisions to Section 18-39 relate to the incorporation of the NYSDEC 2015 Construction General Permit and Stormwater Design Manual. Others include:

- *Giving more flexibility to design internal subdivision roads sensibly, to minimize impervious surfaces in limiting distances, in response to some unintended consequences of the current language – § 18-39(a)(6)(ii) and the definition of “access road”;*
- *Incorporating Table 1 of Appendix B of the NYSDEC Construction General Permit, allowing the SWPPPs for certain projects to include only erosion and sediment controls – § 18-39(b)(3)(ii);*

- *Establishing a category of small non-residential projects for which SWPPPs can be simpler, akin to individual residential stormwater permits – §§ 18-39(b)(3)(iii) and 18-39(b)(9);*
- *Allowing for treatment of the lesser, rather than the greater, of the water quality volume and the 1-year, 24-hour storm for infiltration practices and certain bioretention practices – § 18-39(c)(3).*

(a) *Impervious Surfaces*

...

(6) The following requirements are applicable to construction of an impervious surface for a new road or the widening of an existing road:

(i) Construction of an impervious surface for a new road within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake is prohibited, except paving an existing dirt or gravel road is permitted. Construction of a new impervious surface by paving an existing dirt or gravel road requires a stormwater pollution prevention plan which complies with subdivisions (b), (c) and (d) of this section.

(ii) Construction of an impervious surface for a new road within the limiting distance of 50 feet of an intermittent stream or wetland, or within the limiting distance of 100 feet of a perennial stream, is prohibited, except for paving an existing dirt or gravel road or where necessary to provide an access road ~~to two or more parcels or to a subdivision~~. Construction of an impervious surface for paving such existing dirt or gravel road or for such a new access road requires a stormwater pollution prevention plan which complies with the requirements of subdivisions (b), (c) and (d) of this section for the entire impervious surface. ~~Any~~ An access road constructed pursuant to this paragraph shall be constructed as far as practicable from all watercourses and wetlands, as determined by the Department.

...

(10) Maintenance of an existing impervious surface ~~that is a noncomplying regulated activity~~ shall not require the review and approval of the Department.

(11) The following requirements are applicable to creation of an impervious surface in the East of Hudson watershed within a Designated Main Street Area:

- (i) Creation of any new impervious surface within a Designated Main Street Area requires a stormwater pollution prevention plan which complies with the requirements of subdivisions (b), (c), and (d) of this section, except that the foregoing requirements of this subparagraph shall not apply to the creation of a new impervious surface for an activity set forth in paragraph (2) of this subdivision which complies with the provisions of paragraph (2).
- (ii) ~~Within thirty (30) days of the effective date of these rules and regulations, a local government may define by metes and bounds, tax maps or other geographic boundaries a proposed Designated Main Street Area within its boundaries, and apply to the Department for approval of such proposal. Within thirty (30) days of such application the Department may approve, disapprove, or approve with modifications, such Designated Main Street Area. If the Department disapproves the application, the local government shall have an additional thirty (30) days in which to submit a revised application for approval of the proposed Designated Main Street Area, and the Department shall approve or disapprove the application within thirty (30) days of receipt of such revised application. The Department will approve only a limited number of Designated Main Street Areas and local governments may not designate all areas of population concentrations in the East of Hudson watershed as Designated Main Street Areas. The approved boundary description descriptions of a all Designated Main Street Area Areas shall be made available by the Department for public inspection at its field offices in the East of Hudson watershed.~~

...

(b) *Stormwater Pollution Prevention Plans*

- (1) Stormwater pollution prevention plans shall not be required to be prepared pursuant to this section for agricultural and silvicultural activities.
- (2) Stormwater pollution prevention plans shall not be required to be prepared pursuant to this section for clear cutting and mining activities, provided, however, that such activities shall be subject to the requirements

set forth in the applicable New York State Department of Environmental Conservation SPDES Permit which may be required pursuant to Environmental Conservation Law §17-0808.

(3) Stormwater pollution prevention plans shall be prepared for the activities listed in ~~this paragraph~~ subparagraph (4) of this subdivision. Such plans shall also be subject to the prior review and approval of the Department. Such plans shall be prepared and implemented in accordance with the requirements of Part III of the New York State Department of Environmental Conservation SPDES General Permit No. ~~GP-0-10-001~~ GP-0-15-002 that are applicable to construction activities identified in Table 2 of Appendix B, and in accordance with the requirements of subdivision (c) of this section, except for that:

- (i) ~~plans for redevelopment projects and stormwater retrofits, which shall be prepared and implemented in accordance with subdivision (b)(78),~~
- (ii) plans for construction activities identified in Table 1 of Appendix B shall be prepared and implemented in accordance with the requirements of Part III of the New York State Department of Environmental Conservation SPDES General Permit No. GP-0-15-002 that are applicable to construction activities identified in Table 1 of Appendix B. A construction activity will be deemed to “alter hydrology from pre to post development conditions,” for purposes of Table 1 of Appendix B, if the post-development peak rate of flow for the activity has increased by more than 5% of the pre-developed condition for the one-year, twenty-four hour storm, the ten-year, twenty-four hour storm, or the one hundred-year, twenty-four hour storm as defined herein. A construction activity that is excluded from coverage under Table 1 of Appendix B because it alters hydrology from pre to post development conditions shall comply with the requirements of subdivision (b)(3) above.
- (iii) plans for construction activities requiring Department review and approval of a stormwater pollution prevention plan under this section that involve disturbance of less than one (1) acre of total land area, other than construction of gasoline stations and construction, alteration, or modification of solid waste management facilities, and which will not result in hot spot runoff, shall be prepared and implemented in accordance with subdivision (b)(9), and
- (iv) ~~No~~ no activity shall be exempt from any such requirements as a result of the size or nature of the watercourse(s) to

which stormwater from such activity discharges, except with prior written approval from the Department. Such plans shall also be subject to the prior review and approval of the Department.

(4) The activities for which a stormwater pollution prevention plan must be prepared under ~~this paragraph~~ subparagraph (3) of this subdivision are:

- (i) Plans for development or sale of land that will result in the disturbance of five (5) or more acres of total land area as described in the definition of larger common plan of development or sale in Appendix A of SPDES General Permit No. ~~GP-0-10-001~~ GP-0-15-002;
- (ii) Construction of a subdivision;
- (iii) Construction of a new industrial, institutional, municipal, commercial, or multi-family residential project that will result in creation of an impervious surface totaling over 40,000 square feet in size;
- (iv) A land clearing or land grading project, involving two or more acres, located at least in part within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake or on a slope exceeding 15 percent;
- (v) Construction of a new solid waste management facility or alteration or modification of an existing solid waste management facility within 300 feet of a watercourse or wetland or 500 feet of a reservoir, reservoir stem or controlled lake;
- (vi) Construction of a gasoline station;
- (vii) Construction of an impervious surface for a new road, an access road, or an existing dirt or gravel road, as required by paragraph (a)(6) of this section;
- (viii) Construction of an impervious surface in the West of Hudson watershed within a village, hamlet, village extension or area zoned for commercial or industrial uses, as required by paragraph (a)(8) of this section;
- (ix) Up to a 25 percent expansion of an existing impervious surface at an existing commercial, institutional, municipal, ~~or industrial~~, or multi-family residential facility which is within the limiting distance of 100 feet of a watercourse or

wetland, as required in subdivision (a)(4)(iii) of this section; or

- (x) Construction of an impervious surface in the East of Hudson Watershed in a Designated Main Street Area.

(45) If there is a significant change in design, construction, operation, or maintenance of an activity which is subject to a Stormwater Pollution Prevention Plan pursuant to subdivision (b)(3) which may have a significant effect on the potential for the discharge of pollutants to surface waters and which has not otherwise been addressed in the Stormwater Pollution Prevention Plan, or if the Stormwater Pollution Plan proves to be ineffective in eliminating or significantly minimizing erosion and sedimentation or the discharge of pollutants associated with construction activity, the Stormwater Pollution Prevention Plan must be amended. Such amended stormwater pollution prevention plan shall be submitted to the Department for prior review and approval and shall comply with the requirements of this section.

(56) Any approval of a stormwater pollution prevention plan issued by the Department shall expire and thereafter be null and void unless construction is completed within five (5) years of the date of issuance or within any extended period of time approved by the Department upon good cause shown. Following expiration of the approval, the application for the stormwater pollution prevention plan may be resubmitted to the Department for consideration for a new approval.

(67) As a condition of approval the Department may require evidence of financial security prior to construction from any owner or operator of a stormwater management system pursuant to a stormwater pollution prevention plan. Such financial security shall consist of a bond, or an equivalent guaranty, to be deposited with the Department, covering the full cost of the construction of such facility and an additional bond or an equivalent guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, a bond or equivalent guaranty may be required for the maintenance and operation of the facility for a period of five years post-construction. No bond or guaranty is required where the owner or operator of such a facility is a village, town, county or city.

(78) Where portions of an activity that ~~requires~~ require a stormwater pollution prevention plan pursuant to subdivision (b)(3) ~~is a~~ constitute redevelopment ~~project or a stormwater retrofit~~ as defined herein, those portions of such plan shall:

- (i) be prepared and implemented, to the extent possible, in accordance with the requirements of Part III of the New York State Department of Environmental Conservation

SPDES General Permit No. ~~GP-0-10-001~~ GP-0-15-002 that are applicable to the construction activities identified in Table 2 of Appendix B;

- (ii) be prepared and implemented, to the extent possible, in accordance with the additional requirements for stormwater pollution prevention plans set forth in subsection (c) below; and
- (iii) provide an improvement in stormwater management and/or stormwater treatment as compared with conditions prior to the activity.

(9) Where an activity requiring Department review and approval of a stormwater pollution prevention plan under this section that involves disturbance of less than one (1) acre of total land area, other than construction of a gasoline station or construction, alteration, or modification of a solid waste management facility, and which will not result in hot spot runoff, requires a stormwater pollution prevention plan pursuant to subdivision (b)(3) above, the application shall consist of:

- (i) A plan of the proposed activity, identifying the area of disturbance, the location of any existing or proposed impervious surfaces, and the location of any watercourses, wetlands, reservoirs, reservoir stems or controlled lakes on or adjacent to the property;
- (ii) A description and depiction of proposed erosion controls sufficient to prevent sedimentation of the receiving watercourse, wetland, reservoir, reservoir stem or controlled lake on or adjacent to the property during construction. Erosion controls typically consist of sediment barriers, such as hay bales and silt fencing, temporary sediment traps and temporary stormwater flow diversions;
- (iii) A schedule for construction, including grading and site stabilization; and
- (iv) A description and depiction of proposed permanent stormwater management practices designed to filter, detain, or infiltrate runoff from impervious surfaces, thereby minimizing the post-construction increase in pollutant loading to the receiving watercourse, wetland, reservoir, reservoir stem or controlled lake.

Plans. (c) *Additional Requirements for Stormwater Pollution Prevention*

...

(3) Stormwater Treatment Volume. All stormwater pollution prevention plans prepared pursuant to this section shall include measures to capture and treat the greater of the volume of runoff generated by the 1-year, 24-hour storm or the Water Quality Volume (WQv), except that a stormwater management practice may be designed to capture and treat the lesser of those volumes if it is a stormwater infiltration practice or it is a bioretention practice in hydrologic soil group A or B. Stormwater management practices which provide treatment shall be designed to accommodate the quantity of runoff flowing to the stormwater management practice, including runoff from off-site areas.

(4) Where a stormwater pollution prevention plan prepared pursuant to this section includes a stormwater infiltration practice, to the maximum extent practicable, no portion of such stormwater infiltration practice shall be located within 100 feet of any portion of the absorption ~~area~~ field of a subsurface sewage treatment system.

...

(7) For purposes of the design criteria incorporated by reference in New York State Department of Environmental Conservation SPDES General Permit ~~GP-0-10-001~~ No. GP-0-15-002, “detention time” shall mean the time runoff is detained in a stormwater management practice. It can be computed using either the center of mass method or the plug flow method.

(d) *Application requirements and procedures.*

(1) An application for approval of a stormwater pollution prevention plan shall include:

- (i) The pollution prevention plan; and
- (ii) The information required in a Notice of Intent under New York State Department of Environmental Conservation SPDES General Permit No. ~~GP-0-10-001~~ GP-0-15-002.

...

§18-61 Variances.

DEP proposed to eliminate the hardship criterion, which has not proven to further water quality goals.

(a) The Commissioner may, in his or her discretion, upon written application from the applicant, grant a variance from the requirements of these

rules and regulations for a regulated activity and for the alteration or modification of a noncomplying regulated activity.

- (1) An application for a variance for a regulated activity or for an alteration or modification of a noncomplying regulated activity shall:
 - (i) Identify the specific provision of the rules and regulations from which the variance is sought or identify the nature and extent of the alteration or modification of the noncomplying regulated activity;
 - (ii) Demonstrate that the variance requested is the minimum necessary to afford relief; and
 - (iii) Demonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in these rules and regulations; ~~and~~
 - ~~(iv) Demonstrate that for the proposed use or activity for which the variance is requested, compliance with the identified provision of the rules and regulations would create a substantial hardship due to site conditions or limitations.~~

...

(e) *Variances Within the 60 Day Travel Time to Intake in the Croton System.*

...

- (3) A new or expanded wastewater treatment plant authorized pursuant to a variance under this subdivision, and its sewer system, shall meet the following conditions:

...

- (iv) All wastewater pumping stations in the sewer system serving the new or expanded wastewater treatment plant, ~~both new and existing~~, shall meet the alarm systems and emergency operation requirements applicable to new wastewater pumping stations as set forth in "Recommended Standards for Wastewater Facilities," Great Lakes – Upper Mississippi River Board of State Public Health and Environmental Managers (2004); and

§18-82 Watershed Planning in the Croton System.

DEP proposes to eliminate the description of phosphorus offset pilot program, which had a limited term and was completed.

...

(e) The Croton Plan may allow for the siting of a new wastewater treatment plant with a surface discharge or the expansion of an existing wastewater treatment plant with a surface discharge in the Croton system within a phosphorus restricted basin or a basin located within the 60 day travel time, but not within a coliform restricted basin, pursuant to the following conditions:

- (1) Site constraints prevent the proposed new wastewater treatment plant or the expanded existing wastewater treatment plant from discharging subsurface;
- (2) The municipal government and the County in which the wastewater treatment plant would be sited, confirms in writing that the proposed new wastewater treatment plant or the expansion of an existing wastewater treatment plant is consistent with the Croton Plan;
- (3) The Department, in consultation with the New York State Department of Health, determines that the proposed new wastewater treatment plant or expansion of an existing wastewater treatment plant is consistent with the water quality objectives of the Croton Plan; and
- (4) The discharge from the new wastewater treatment plant or the expansion of an existing wastewater treatment plant complies with one of the following conditions:
 - (i) The total volume (or flow) of surface discharge from such new wastewater treatment plant or expansion of an existing wastewater treatment plant, together with the total volume of surface discharges from all other new wastewater treatment plants and expansions of wastewater treatment plants which have been permitted in the subject County pursuant to this subparagraph (i), shall not, in the aggregate, exceed 10 percent of the total volume (or flow) of surface discharge from wastewater treatment plants located in the Croton system, within the subject County, which previously discharged into the Croton system but have been permanently diverted, since the effective date of these rules and regulations, to a discharge point outside of the Watershed. The Department may approve applications to construct new wastewater treatment plants with surface discharges pursuant to this subdivision prior to the permanent diversion of wastewater, and allow construction

to begin on such new wastewater treatment plants, provided that the wastewater treatment plant may not commence operation until the diversion for which the credit is received has actually occurred; or

- ~~(ii) In phosphorus restricted basins located outside of the sixty day travel time, provided that the Department has determined pursuant to §18-84, based upon the results of the pilot programs set forth in §§18-82(g) and 18-83(a), or of other studies conducted within the watershed, that the phosphorus offsets sought by the pilot programs have been achieved, the Department may require that for each one (1) kilogram of projected increase in the phosphorus load resulting from the proposed new wastewater treatment plant, together with any accompanying non-point source runoff, is actually offset by at least three (3) kilograms of reductions in phosphorus loading within the basin within which the proposed project is located, including reductions from measures identified in and implemented in accordance with the Croton Plan pursuant to paragraph (c)(8) above, and otherwise eligible for an offset hereunder, whether the source of the offsets is in the same basin or within an upstream, hydrologically connected phosphorus restricted basin.~~

(5) With respect to any new or expanded wastewater treatment plant allowed pursuant to this subdivision (e), the Department will not impose additional requirements on the siting of such new or expanded wastewater treatment plant other than the requirements specifically set forth in these rules and regulations applicable to all wastewater treatment plants, the requirements of this subdivision (e), and, with respect to new or expanded wastewater treatment plants in phosphorus restricted basins relying on phosphorus offsets, the requirements of any phosphorus offset program pursuant to §§18-82(g), 18-83(a) and 18-84.

(g) ~~In Putnam County, provided that Putnam County has committed in writing to participate in the development of the Croton Plan pursuant to subdivision (d) above, the Department shall allow for a pilot program to evaluate the effectiveness of phosphorus offsets as a potential basis for allowing construction of new wastewater treatment plants within phosphorus restricted basins in the Croton system. Such pilot program shall be limited to a term of five (5) years, commencing on the effective date of these rules and regulations and expiring on the fifth anniversary thereof. During the term of the pilot program, the Department may approve within a Putnam County municipality which has committed in writing to participate in development of the Croton Plan, the~~

construction of a new wastewater treatment plant with a surface discharge within a phosphorus restricted basin in the Croton system provided that the following conditions are met:

(1) — ~~The applicant proposing a new wastewater treatment plant demonstrates that the County or municipality agrees to the plant's inclusion in the pilot program;~~

(2) — ~~The applicant demonstrates, and commits to take action to insure, that for every one (1) kilogram of projected increase in the phosphorus load resulting from the new wastewater treatment plant and accompanying non point source runoff, there will be an offset which achieves at least three (3) kilograms of reduction in phosphorus within the basin in which the new wastewater treatment plant is located, whether the source of the offset is in the same basin or within an upstream hydrologically connected phosphorus restricted basin;~~

(3) — ~~All new wastewater treatment plants proposed to be constructed pursuant to this pilot program shall be reviewed and approved by the Department in accordance with §18-36 of these rules and regulations;~~

(4) — ~~No more than three (3) wastewater treatment plants with surface discharges may be located in the Croton system in Putnam County pursuant to this pilot program. The total capacity, as constructed, for the three (3) proposed wastewater treatment plants shall not exceed a maximum of 150,000 gpd aggregate surface discharge; and~~

(5) — ~~Any wastewater treatment plant constructed pursuant to this pilot program shall be designed and operated to meet a total phosphorus effluent limit of .2 mg/l.~~

(h) — Nothing in this Subpart is intended to constrain, limit or preclude an applicant from seeking, or the Department from issuing, approval of or a variance for a proposed regulated activity under any other applicable provision of these rules and regulations.

(i)(h) Nothing in this section or in the Croton Plan is intended to constrain or limit the authority of local governments under State law to make local land use and zoning decisions, and nothing in this section or the Croton Plan should be construed to have the effect of transferring such local land use and zoning authority from the participating local governments to the Department or any other entity.

~~§18-83 Watershed Planning in the West of Hudson Watershed.~~

DEP proposes to eliminate the description of the West of Hudson phosphorus offset pilot program, which had a limited term and which is no

longer relevant because there are no phosphorus-restricted basins West of Hudson.

(a) — ~~The Department shall establish a pilot program to evaluate the effectiveness of phosphorus offsets as a potential basis for allowing the construction of new wastewater treatment plants, or the expansion of existing plants, with a surface discharge in a phosphorus restricted basin located in the West of Hudson watershed. Such pilot program shall be limited to a term of five (5) years, commencing on the effective date of these rules and regulations and expiring on the fifth anniversary thereof. During the term of the pilot program, the Department may approve the siting of a new wastewater treatment plant, or the expansion of an existing plant, with a surface discharge in a phosphorus restricted basin located in the West of Hudson watershed, provided that the following conditions are met:~~

(1) — ~~The County in which the new wastewater treatment plant, or the expansion of an existing plant, is proposed to be sited has prepared, or is in the process of preparing, a Comprehensive Strategy, in partnership with the Department and with the local governments located within the County and affected by the Comprehensive Strategy. The Comprehensive Strategy should identify existing economic resources, water quality problems, potential remedies for such problems and potential strategies and recommendations of economic development initiatives that could be undertaken to sustain local economies while remaining protective of the water supply.~~

(2) — ~~The applicant demonstrates that the new wastewater treatment plant, or the expansion of an existing plant, together with the offsets the applicant is proposing to make under paragraph (3) below, is consistent with the Comprehensive Strategy.~~

(3) — ~~The applicant demonstrates, and commits to take action to insure, that every one (1) kilogram of projected increase in the phosphorus load resulting from the new wastewater treatment plant or the expansion of an existing plant, and the accompanying non-point source runoff will be actually offset by at least three (3) kilograms of reductions in phosphorus loading within the basin in which such new wastewater treatment plant, or the expansion of an existing plant, is located. For purposes of this subdivision, the applicant may use as an offset any phosphorus reduction funded by the Catskill Fund for the Future or achieved from stormwater pollution prevention measures installed on existing structures or impervious surfaces in a village center or hamlet and funded by the Department.~~

(4) — ~~All new wastewater treatment plants, or expansions of existing plants, proposed to be constructed pursuant to this pilot program shall be reviewed and approved by the Department;~~

~~(5) — No more than three (3) new wastewater treatment plants, or expansions of existing plants, with surface discharge shall be allowed into any phosphorus restricted basin pursuant to this pilot program. The total capacity, as constructed, of the three (3) plants shall not exceed a maximum of 100,000 gpd aggregate surface discharge.~~

~~(6) — Any wastewater treatment plant, or expansion of an existing plant, constructed pursuant to this pilot program shall be designed and operated to meet the total phosphorus effluent limit of .2 mg/l.~~

~~(b) — Nothing in this Subpart is intended to constrain, limit or preclude an applicant from seeking, or the Department from issuing, approval of or a variance for a proposed regulated activity under any other applicable provision of these rules and regulations.~~

~~§18-84 Permanent Phosphorus Offset Program.~~

Based on the results of the two pilot programs, noted above, DEP announced in 2007 that it is not pursuing a permanent phosphorus offset program, and therefore plans to eliminate this section of the Regulations.

~~(a) — Upon completion of the pilot programs set forth in §§18-82(g) and 18-83(a), the Department may determine, based on the results of the pilot program or of other studies conducted in the Watershed that:~~

~~(1) — Phosphorus offsets sought pursuant to §§18-82(g) and 18-83(a) have been achieved and that a permanent phosphorus offset program should be established, with such conditions as may be appropriate based on the results of the pilot program or other studies conducted in the Watershed.~~

~~(i) — Pending completion of any necessary rulemaking for the continuation of a permanent phosphorus offset program, including any appropriate modifications thereto, the Department may allow the construction of new wastewater treatment plants with surface discharges into phosphorus restricted basins located outside of the sixty day travel time on a case-by-case basis pursuant to the standards set forth in subsection 18-61 and subject to such conditions as may be appropriate based upon the results of the pilot program and other studies conducted in the watershed; or~~

~~(2) — There is insufficient data on which to make a determination that phosphorus offsets have been achieved; therefore, the time frame for the pilot programs shall be extended for a period not to exceed five years to allow for the acquisition of further data. Nothing contained in this subdivision shall allow for an increase in the number or size of the~~

wastewater treatment plants allowed pursuant to the pilot programs as set forth in §§18-82(g) and 18-83(a).

~~(3) — In the West of Hudson watershed, in any permanent phosphorus offset program, provided the applicant demonstrates, and commits to take action to insure, that every one (1) kilogram of projected increase in the phosphorus load resulting from the new wastewater treatment plant or the expansion of an existing plant, and the accompanying non-point source runoff will be actually offset by at least three (3) kilograms of reductions in phosphorus loading within the basin in which such new wastewater treatment plant, or the expansion of an existing plant, is located, the applicant may use as an offset any phosphorus reduction funded by the Catskill Fund for the Future or achieved from stormwater pollution prevention measures installed on existing structures or impervious surfaces in a village center or hamlet and funded by the Department.~~

APPENDIX 18-A
WATERSHED MAPS

DEP will re-issue the maps included as Appendix 18-A of the Regulations. The maps will be updated to reflect information from DEP's LiDAR survey of the watershed.

(a) The watershed area for the New York City water supply lies in the parts of the following counties and towns that are delineated on Map 18-A.1:

APPENDIX 18-B
 SYSTEM SPECIFIC WATER QUALITY CHARACTERISTICS
AND APPLICABLE MONITORING CRITERIA

DEP proposes to combine Appendices 18-B and 18-C, make a couple of technical corrections, and clarify the standards it uses for analysis of water quality samples.

(a) The system specific water quality characteristics of the reservoirs and reservoir stems, as of September 1990, are set forth in Tables 1 and 2 of this Appendix. It is the intention of the Department that the system specific characteristics be maintained at the stated levels by implementation and enforcement of these rules and regulations.

TABLE 1
 System Specific Characteristics: Reservoir Standards (mg/L)

	Croton System		Catskill/Delaware System (including Kensico)	
	Annual Mean	S/S/M*	Annual Mean	S/S/M*
Alkalinity (mg CaCo(3)/L)	≥40.00		≥10.00	
Ammonia Nitrogen	0.05	0.10	0.05	0.10
Chloride	30.00	40.00	8.00	12.00
Nitrite + Nitrite - N	0.30	0.50	0.30	0.50
Organic Nitrogen	0.50	0.70	0.50	0.70
Sodium	15.00	20.00	3.00	16.00
Sulfate	15.00	25.00	10.00	15.00
Total Diss. Solids	150.00	175.00	40.00	50.00
Total Organic Carbon	6.00	7.00	3.00	4.00
Total Susp. Solids	5.00	8.00	5.00	8.00

Chlorophyll-a	0.01	0.015	0.007	0.012
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*S/S/M means Single Sample Maximum

TABLE 2
System specific characteristics: Reservoir Stem Standards (mg/L)

	Croton System		Catskill/Delaware System (including Kensico)	
	Annual Mean	S/S/M*	Annual Mean	S/S/M*
Alkalinity (mg CaCO ₃ /L)	>40.00		>10.00	
Ammonia Nitrogen	0.10	0.2	0.05	0.25
Chloride	35.00	100.00	10.00	50.00
Nitrite + Nitrate - N	0.35	1.50	0.40	1.50
Organic Nitrogen	0.50	1.50	0.50	1.50
Sodium	15.00	20.00	5.00	10.00
Sulfate	15.00	25.00	10.00	15.00
Total Diss. Solids	150.00	175.00	40.00	50.00
Total Organic Carbon	9.00	25.00	9.00	25.00
Total Susp. Solids	5.00	8.0	5.00	8.00

*S/S/M means Single Sample Maximum

~~APPENDIX 18 C~~
~~TESTS FOR ANALYTICAL DETERMINATION~~
~~OF CONCENTRATIONS OF ELEMENTS~~

(b) ___ The following ~~tests and~~ monitoring methods are used by the Department in assessing the impacts of a regulated activity on a reservoir,

reservoir stem or controlled lake. An applicant may conduct sampling in waters owned by the City as set forth herein with prior authorization by the Department.

~~(a)~~(c) Collection of Samples and Assessment of Impacts

(1) In conducting tests or making analytical determinations to ascertain conformity or nonconformity with the standards set forth in Subchapter D, samples should be collected from locations which are representative of the general quality of water in the watercourse, reservoir, reservoir stem or controlled lake.

(2) In assessing the impact of a proposed regulated activity on a watercourse, reservoir, reservoir stem, or controlled lake, or in determining compliance with the standards set forth in Subchapter D, the Department will examine the impacts of the proposed activity throughout the year and the impacts on the photic, metalimnion and hypolimnion zones of the reservoir, reservoir stem or controlled lake.

(3) Impacts on reservoirs will be determined on the basis of samples taken on a schedule which is sufficient to reflect temporal variability and to meet regulatory requirements.

(4) Sampling locations in reservoirs will include: dams, intakes, mid-pool stations, and main ~~tributaries~~ tributary arms into each reservoir. At every station, ~~an integrated~~ a sample of the photic zone shall be taken. At deeper stations, samples will be collected from the metalimnion and hypolimnion.

(5) Reservoir stem samples should be collected in the section of the reservoir stem that is free-flowing and unimpeded by the reservoir when the impoundment is at full pool elevation.

~~(b)~~(d) Tests and Analytical Determinations. ~~Tests or analytical determinations to determine compliance or noncompliance with the water quality standards in Subpart 128-4 should be made in accordance with:~~

~~(1) — Standard Methods for the Examination of Water and Wastewater, 12th edition, 1965, Table 18, Qualitative Description of Odors, page 306. American Public Health Association, American Water Works Association, and Water Pollution Control Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.~~

~~(2) — Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, American Public Health Association, American Water Works Association, and Water Environment Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.~~

~~(3) — Methods for Chemical Analysis of Water and Wastes, 1979, Environmental Protection Agency (EPA), Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; and~~

~~(4) — By other methods approved by the Commissioner as giving results equal or superior to methods listed in any of the above documents.~~

~~(e) — All materials referenced in this Appendix are available for inspection and copying at the Department of Environmental Protection, 465 Columbus Avenue, Valhalla, New York 10595.~~

In determining compliance or noncompliance with the water quality standards in Subchapter D, the Department will only consider tests or analytical determinations made by laboratories certified by the New York State Department of Health.