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February 1, 2016

Selvin Trevor Southwell, P.E.  
Deputy Regional Water Engineer, Division of Water  
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47-40 21<sup>st</sup> Street  
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Dear Mr. Southwell:

In accordance with Part III.B.1a of the New York City Municipal Separate Storm Sewer System (MS4) Permit (SPDES Number NY-0287890), the City has reviewed its existing legal authority to control discharges into and from its MS4. As set forth in the accompanying submission, the City is proposing a schedule for the adoption of comprehensive legal authority, with interim milestone dates that do not exceed nine month intervals. The appendix to the submission describes the City's existing legal authority.

Sincerely,

Stephen Louis

Chief

Division of Legal Counsel

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**New York City Municipal Separate Storm Sewer (MS4) Permit  
(SPDES Number NY-0287890)**

**Description of the City of New York’s Legal Authority to Control Discharges to the MS4**

Submitted Pursuant to Permit Part III.B.1.a.

February 1, 2016

The Department of Environmental Conservation has issued State Pollutant Discharge Elimination System (“SPDES”) Permit, SPDES Number NY-0287890 (“the permit”) to the City of New York (“City”), effective August 1, 2015. Within two years of the effective date of the permit, the City must “provide a written certification statement prepared by its NYC Corporation Counsel or his designee” that the City has developed “adequate authority to control pollutant discharges into and from its MS4.” Permit part III.B.1. A list of the required elements of legal authority that the City must certify is provided in permit part III.B.2. Part III.B.1 of the permit requires the City, within six months of the effective date of the permit, to “provide a description of existing legal authority to control discharges to the MS4. If existing legal authority is not sufficient to meet the criteria provided in Part III.B.2, the description shall list additional authorities that will be necessary and shall contain a schedule for adoption of the necessary authorities with interim milestone dates not to exceed nine month intervals.”

The required elements of the legal authority that the City must obtain relate to both municipal operations and the conduct of private parties.

**Description of Legal Authority with respect to Municipal Operations and Facilities**

The structure of government established in the New York City Charter provides adequate legal authority to the Mayor and mayoral agencies to manage their operations and facilities and to ensure coordination and sharing of information for the City’s compliance with the permit. To memorialize the City’s coordination and information sharing practices, the Mayor signed an Executive Order, “Coordination and Implementation of Matters Pertaining to Stormwater Controls and Municipal Separate Storm Sewer System Permit Requirement,” on October 15, 2013 (Executive Order No. 429), in anticipation of the permit taking effect.<sup>1</sup> Executive Order No. 429 directs the Department of Environmental Protection (DEP) “to act on behalf of the City, and to coordinate the efforts of City agencies, with respect to all matters relating to the City’s Stormwater SPDES Permit Requirements,” and directs the heads and staff of all mayoral agencies and the Department of Education<sup>2</sup> to cooperate with DEP in planning and implementing stormwater controls. In particular, the Charter and Executive Order No. 429 ensure that the City has authority to:

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<sup>1</sup> Executive Order No. 429 was signed by then-Mayor Bloomberg, and continued pursuant to Executive Order 1 of 2014 by Mayor de Blasio.

<sup>2</sup> The Department of Education is established pursuant to the New York Education Law and, through written concurrence of the Chancellor, is encompassed within Executive Order No. 429.

- Ensure installation, implementation and maintenance of control measures for, and to inspect, municipal operations and facilities, pursuant to permit part IV.G., Pollution Prevention/Good Housekeeping for Municipal Operations and Facilities;
- Receive and collect information pursuant to permit part IV.J., Monitoring and Assessment of Controls; and
- Describe opportunities for implementing cost-effective and feasible green infrastructure pilot projects and other structural retrofits in Priority MS4 Waterbodies pursuant to permit subpart II.B.2.a.iv.

Accordingly, the City currently has adequate legal authority for those functions listed in permit parts III.B.2.e. (with respect to permit parts IV.G. and II.B.2.a.iv.) and III.B.2.g. (with respect to permit part IV.G.).

### **Description of Legal Authority with respect to the Conduct of Private Parties**

With respect to the portions of the permit that require the City to regulate the conduct of private parties,<sup>3</sup> and concomitantly with respect to the remaining functions listed in permit subdivision III.B.2., the City has identified existing legal authority to regulate certain sources of pollution in the City's MS4 (see Appendix). Such existing legal authority was enacted before the permit took effect, and without the explicit purpose of enabling the City to comply with the permit. Recognizing that such authority is incomplete or could be made clearer, the City intends to meet the certification requirement in permit part III.B.2.a by enacting new legislation and promulgating associated rules that address the permit's requirements. Such an approach will allow the City to design a comprehensive legislative and regulatory program tailored to meeting the City's obligations under the permit, while effectively utilizing existing agency programs and expertise.

We anticipate that such legislation would be proposed upon the request of the Mayor, and that the Administration would work with the City Council and other stakeholders to seek to enact appropriate legislation and promulgate rules. In particular, we propose the following interim milestones pursuant to permit part III.B.1.a:

1. Sept. 15, 2016: Mayor proposes legislation authorizing comprehensive stormwater program to the Council
2. May 24, 2017: City agencies propose necessary rules to implement stormwater program
3. July 24, 2017: City agencies publish final rules to implement stormwater program

The City recognizes that the Council is an elected legislative body with independent discretion to enact legislation. In the event that the legislation described above is not timely

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<sup>3</sup> These provisions will apply to municipal as well as to private activities.

enacted, the City will continue to work with the Council toward enactment of such legislation while also taking all practicable steps to maintain and secure adequate legal authority to control pollutant discharges into and from its MS4.

Notwithstanding the City's plan to develop new, comprehensive legal authority to implement the permit, as required by permit part III.B.1.a, a description of the City's existing legal authority is provided in the accompanying Appendix. This description follows the structure of permit part III.B.2 and addresses the areas of illicit discharge detection and elimination, construction and post-construction controls, and regulation of industrial facilities.

**New York City Municipal Separate Storm Sewer (MS4) Permit  
(SPDES Number NY-0287890)**

**Appendix: Description of Existing Legal Authority**

As noted, the City plans to develop new, comprehensive legal authority to implement the permit. The New York City Charter provides broad authority to the Mayor and mayoral agencies, providing a robust framework for the targeted legislative and regulatory scheme that will authorize all aspects of permit implementation. In addition, the City's submission certifies that this existing authority is sufficient to allow mayoral agencies to manage their own operations and facilities and to ensure coordination and sharing of information as needed for the City's compliance with the permit.

In satisfaction of permit part III.B.1.a, this Appendix describes the City's existing legal authority with respect to the remaining elements of the permit, following the structure of permit part III.B.2 and addressing the areas:

- I. Illicit discharge detection and elimination;
- II. Construction controls;
- III. Post-construction controls; and
- IV. Regulation of industrial facilities.

In accordance with permit part III.B.2.d., each of the sections above includes a description of existing enforcement mechanisms to enforce the substantive requirements in each of these areas. Some provisions cited herein are relevant to more than one section but have not been repeatedly cited. It should be assumed that reference to a particular provision denotes enforcement authority with respect to all relevant permit requirements, regardless of the section in which the provision is cited.

The provisions listed below reflect the City's diligent research efforts to identify existing legal authority related to implementation of the permit. To the extent there are permit requirements for which corresponding legal authority is not listed below, our research has not identified existing authority. As noted, the City intends to develop a comprehensive legislative and regulatory framework to provide adequate legal authority to implement all elements of the permit.

**I. Authority to Prohibit Illicit Discharges & Connections (Permit Part IV.D; describing legal authority described in permit parts III.B.2.a, III.B.2.b and III.B.2.c and, with respect to illicit discharge detection and elimination (IDDE), parts III.B.2.d, including the references to Part III.C, and III.B.2.g)<sup>1</sup>**

**A. Authority to Prohibit Illicit Discharges and Connections (Part III.B.2.a)**

**1. Prohibition of Illicit Discharges (Part IV.D; Model Local Law § 6.1)**

The New York City Charter (Charter) grants the Department of Environmental Protection (DEP) broad powers to prevent water pollution and to “regulate and control emissions into the water within and about the city of New York of harmful or objectionable substances, contaminants and pollutants” and to “enforce all laws, rules and regulations with respect to such emissions.” Charter § 1403(a)(3). Additionally, DEP exercises control over all matters “relating to public sewers and drainage” and is charged with “the management, care and maintenance of sewer and drainage systems.” Charter § 1403(b)(1).

The authority described in these provisions is set forth in more detail in the New York City Administrative Code (Admin. Code), largely in Chapter 5 of Title 24. See, e.g., § 24-517 (prohibiting injury to sewers, drains, receiving basins or manholes, or depositing over one ton of any substance into any sewer or drain); § 24-519 (prohibiting discharge of volatile flammable liquids, gases or vapors into any sewer or drain); § 24-520 (prohibiting discharge of steam or hot water into any sewer or drain).

DEP has promulgated rules pursuant to its authority in the Charter and Administrative Code further regulating stormwater discharges (See chapter 19 of title 15 of the Rules of the City of New York (RCNY)). For example, 15 RCNY § 19-02(e) provides that “No substance, other than stormwater shall be discharged so as to enter a catchbasin or manhole, without the written approval of the Commissioner.”

In addition to DEP’s authority discussed here, the Environmental Control Board is empowered to “adopt and amend regulations not inconsistent with any provision of law... regulating or prohibiting the emission into the waters within and about the city of New York from any source whether fixed or movable and whether on land or water of any harmful or objectionable substances, contaminants and pollutants.” Charter § 1049-A(b)(2).

The Charter bestows upon the Department of Health and Mental Hygiene (DOHMH) the authority to “supervise and regulate the public health aspects of water supply and sewage disposal and water pollution” Charter § 556(c)(7). Likewise, a building with inadequate sewerage or drainage is classified as a “nuisance” under the City’s Administrative Code, and a

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<sup>1</sup> Part IV.D.3 of the permit requires that the City’s mechanism for prohibiting illicit discharges to the MS4 be “equivalent” to the State’s model IDDE local law, “New York State Department of Environmental Conservation (NYSDEC) Model Local Law to Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems” (April 2005) (“Model Local Law”). Accordingly, we also include references to Model Local Law sections.

wilful omission or refusal to abate the nuisance, as ordered by either DOHMH or the Board of Health is a misdemeanor. Admin. Code §§ 17-142, 17-143.

Additionally, DOHMH has authority to enforce the New York City Health Code, which prohibits any person from allowing “filthy matter of any kind...to run or fall into any street, public place, sewer, receiving basin or river, any standing or running water or into any other waters of the City...” New York City Health Code § 153.09; see also Admin. Code § 16-118(6). The Health Code places a similar prohibition on dropping, spilling or scattering “any offensive matter” from any vehicle into any street or public.” Id. at § 153.11.<sup>2</sup>

The Department of Sanitation is authorized to enforce related provisions under title 16 of the Administrative Code with respect to littering and dumping. See Admin. Code §§ 16-118(1) (prohibiting “rubbish and refuse of any kind whatsoever, in or upon any street or public place”); 16-118(2) (requiring owners and occupants to keep property and abutting sidewalk, flagging and curbstone free from garbage, refuse, rubbish, litter, debris and other offensive material); 16-118(3) (prohibiting certain activities that cause release of particulates or fragments into the street); 16-118(4) (prohibiting littering from vehicles). Such littering provisions are punishable by civil penalties of up to \$250,000, as well as fines and/or imprisonment. Admin. Code §§ 16-118(8), (9). See also Admin. Code §§ 16-119 (prohibiting “dirt, sand, gravel, clay, loam, stone, rocks, rubble, building rubbish, sawdust, shavings or trade or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort or any other organic or inorganic material or thing or other offensive matter” from being transported in a vehicle to be dumped, deposited or otherwise disposed of in or upon any street, lot, park, public place, wharf, pier, dock, bulkhead, slip, navigable waterway or other area”) and 16-127 (requiring property owners, occupants and agents to remove encumbrances and obstacles caused by “by the caving in or falling off of any earth, rocks or rubbish, or anything whatever,” onto any lot adjoining such sidewalk or roadway; authorizing the Commissioner of Sanitation to remove such materials at the owner’s, occupant’s or agent’s expense; and authorizing enforcement of violations with civil penalties, fines and/or imprisonment).

The Department of Buildings (DOB) has authority to enforce the New York City Construction Codes,<sup>3</sup> which include the Fuel Gas Code, the Plumbing Code, the Mechanical Code and the Building Code for the regulation of building construction in the city of New York. The Plumbing Code explicitly prohibits discharge of detrimental or dangerous materials into building drainage systems and requires that neutralizing measures be taken before potentially corrosive substances are discharged into public sewers, in accordance with DEP Rules. New York City Plumbing Code §§ 302, 803; 15 RCNY Chapter 19. The Plumbing Code also sets

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<sup>2</sup> Examples of “offensive matter” include “dirt, sand, gravel, clay, loam, stone, building rubbish, hay, straw, shavings, saw dust or other light materials of any sort, ashes, trade, household or manufacturing wastes, rubbish, manure, garbage or refuse.” Id.

<sup>3</sup> The Commissioner of Small Business Services is authorized to enforce the provisions of the Construction Codes with respect to buildings and structures on waterfront property owned by the City and structures on privately owned waterfront property that are used in conjunction with or in furtherance of waterfront commerce or navigation, including wharves, piers, docks, bulkheads and structures wholly or partly thereon. Admin. Code § 28-103.1.2; Charter §§ 643(7), 1301(2).



forth requirements that an approved method for stormwater discharges be adopted before construction may occur, addressing situations including where connection to a public combined or storm sewer is feasible, where such connection is not feasible, and where people seek to install private stormwater systems or may install or increase impervious substances on the lot in question. Plumbing Code §§ 106.6.2, 1101 (underscoring that DEP shall determine the feasibility of such connections and requiring compliance with the Building Code for private installations).

Similarly, the Building Code requires those who apply for permits to construct or repair catch basins and sewers to provide certification from DEP of their compliance with DEP requirements (Building Code § 105.9) and requires construction permit applicants to indicate in submittal documents compliance with approved methods of stormwater discharges (Building Code § 107.11.2). The Mechanical Code also sets stormwater drainage requirements. See, e.g., New York City Mechanical Code § 801.21 (“a drain shall be provided for all chimneys and gas vents to remove rain water and condensation”).

In addition, the Fire Department has authority to enforce the New York City Fire Code, which restricts discharge of liquid combustion by-products, oil-soaked waste, and hazardous materials. New York City Fire Code §§ 317.2, 2211.2.3, 2703.3. The Fire Department has also established rules regulating disposal of flammable gases. 3 RCNY § 4835-01(e)(1) (requiring compliance by pre-existing acetylene storage facilities with former Admin. Code § 27-4101(g), stating that “[a]ll solid residue of calcium carbide shall be promptly removed from the building and disposed of; and it shall be unlawful to discharge any such residue into a public drain or sewer”).

The Business Integrity Commission, under its Charter § 2101 authority to establish regulations relating to public markets, has additionally promulgated rules prohibiting acts at public wholesale markets and seafood distribution areas that may result in the pollution of water or damage or clog drains or sewers. 17 RCNY §§ 11-19(a)(12), (13), 12-18(a)(10), (11). See also 17 RCNY §§ 11-19(a)(3); 12-18(a)(3) (prohibiting littering at public wholesale markets and seafood distribution areas). Similarly, the Department of Parks and Recreation prohibits by rule the throwing or leaving in park waters any substance that may result in pollution of those waters. 56 RCNY § 1-04(c)(2).

Finally, as authorized under Charter § 1301, the Department of Small Business Services has promulgated a rule prohibiting the loading, unloading, storage or discharge of any hazardous, flammable or explosive substances on waterfront properties or marginal streets or the keeping of shipment vehicles containing gasoline at those locations. 66 RCNY § 2-11.

## **2. Prohibition of Illicit Connections (Part III.B.2.a; Part IV.D; Model Local Law § 6.2)**

The DEP Commissioner is granted “charge and control over the location, construction, alteration, repair, maintenance and operation of all sewers including intercepting sewers and sewage disposal plants, and of all matters in the several boroughs relating to public sewers and drainage.” Charter § 1403(b)(1). The Commissioner is authorized to “initiate and make all plans for drainage and shall have charge of all public and private sewers in accordance with such

plans; and shall have charge of the management, care and maintenance of sewer and drainage systems therein.” Charter §1403(b)(1).

New York City’s Administrative Code prohibits construction of “any sewer, sewage disposal plant or drain in the city” except in accordance with the City’s official “plan for the proper sewerage and drainage of the city,” which the DEP commissioner is required to establish pursuant to section 24-503. Admin. Code § 24-504. Likewise, “connection with any sewer or drain without the written permit of the commissioner of environmental protection” is generally prohibited. *Id.* at § 24-509(b). The latter prohibition is reflected in DEP’s rules. 15 RCNY § 19-02(d). Additionally, DEP approval is required before construction of sewers in City streets, construction of private sewers or drains, or the connection with any sewers or drains built in any street. Admin. Code §§ 24-507; 24-508; Plumbing Code §§ 105.6, 106.6.2, 1101; Building Code § 107.11.2; 15 RCNY § 19-02. The Plumbing Code also requires separation of a structure’s sanitary and storm drainage systems and outlines requirements for combined building drains (Plumbing Code § 1104).

### **3. Allowable Non-Stormwater Discharges (Part III.B.2.b; Part IV.D.1; Model Local Law § 6.1.1)**

Under DEP rules, non-stormwater discharges are only allowed to enter catchbasins or manholes “with the written approval of the Commissioner.” 15 RCNY § 19-02(e).

#### **B. Authority to Prohibit Spills or Other Releases (Part III.B.2.c; Part IV.D)**

Under Charter § 1403, DEP has broad powers to prevent water pollution and to “regulate and control emissions into the water within and about the city of New York of harmful or objectionable substances, contaminants and pollutants.” More specifically, the DEP Commissioner is authorized “to respond to emergencies caused by releases or threatened releases of hazardous substances and to collect and manage information concerning the amount, location and nature of hazardous substances.” Charter § 1403(a)(3), (i). In the event of a release or threatened release of hazardous substances into the environment, the Commissioner “may (1) implement any response measures deemed to be necessary to protect the public health or welfare or the environment from a release or threat of release, (2) order responsible persons to undertake response measures, and (3) recover the costs of response measures incurred by the department from responsible persons.” Charter § 1403(h). See also Admin. Code, Title 24 Chapter 6 and 15 RCNY Chapters 11 and 12.

Specifically, the Administrative Code authorizes the Commissioner to order all responsible persons to implement response measures, and to assist the commissioner in implementing any response measures necessary to protect the public health or welfare or the environment, when the Commissioner has reason to believe that there has been a release or a substantial threat of a release of a hazardous substance which may present an immediate and substantial danger to the public health or welfare or the environment. See Admin. Code § 24-608. “Hazardous substance” is defined as “each listed hazardous substance or any other chemical substance which when released into the environment may present a substantial danger to the public health or welfare or the environment.” Admin. Code § 24-603(b). DEP’s designation of hazardous substances is set forth at 15 RCNY § 11-04.

These requirements are further detailed in DEP's rules, which require individuals and facilities to provide protection from accidental discharge of non-stormwater substances into the City's storm sewers and authorize DEP to require "construction and/or installation of special facilities to prevent accidental discharges and the submission of detailed plans, for review, prior to the construction and/or installation." 15 RCNY § 19-03(d)(1). Any person involved in an accidental discharge that enters or has the potential to enter the City's public sewers must immediately notify DEP by telephone and take immediate steps to mitigate the effects of such discharge and commence clean-up. 15 RCNY § 19-03(d). DEP also requires that specific spill containment measures be taken with respect to perc in dry cleaning equipment (15 RCNY § 12-11).

Additionally, the Plumbing Code prohibits the performance of "site grading or land contour work... that would cause storm water to flow across sidewalks or onto an adjacent property" (Plumbing Code § 1101), and the Building Code requires that stormwater disposal proposals meet restrictions on minimum distances from lot lines, upon certification by DEP of unavailability or non-feasibility for public sewer connections (Building Code § 107.11.1.2).

The Fire Code, the Health Code, the Department of Parks and Recreation, Small Business Services and the Business Integrity Commission each set discharge restrictions enumerated in section A.1 above; these discharge restrictions also serve to prohibit spills. The Fire Code also prescribes specific spill control and secondary containment measures, including measures to prevent flammable and combustible liquids from spilling and thus potentially entering storm drains, and express provisions requiring the owner of a facility where there has been an accidental discharge of hazardous materials into storm drains or surrounding waterways to take remedial action. Fire Code Chapter 34 and § 2703.3. See also Fire Code §§ 1207.2.3 ("Curbs, drains, or other provisions for spill control and secondary containment shall be provided in accordance with FC2704.2 to collect solvent leakage and fire protection water and direct it to a safe location."), 3405.3.8.1 ("Outdoor handling and use of flammable and combustible liquids, including the dispensing areas for such liquids, shall be provided with spill control"). The Health Department likewise sets forth spill control requirements for mobile food vending units (24 RCNY §§ 6-04, 89.25), and, with respect to food preparation and food establishments generally, requires that wastewater be discharged into properly trapped, sewer-connected plumbing lines (24 RCNY §§ 81.20, 88.13).

**C. Authority to Require Compliance and Take Enforcement Action (Part III.B.2.d with respect to Part IV.D; Part III.C with respect to Part IV.D)**

Pursuant to § 1403(b)(3) of the Charter, the DEP Commissioner has broad powers to: "regulate and control emissions into the water within and about the city of New York of harmful or objectionable substances, contaminants and pollutants; enforce all laws, rules and regulations with respect to such emissions; make such investigations and studies as may be desirable for the purpose of such enforcement and of controlling and eliminating pollution of such waters, and for such purpose shall have the power to compel the attendance of witnesses and to take their testimony under oath." The Commissioner also has authority "to respond to emergencies caused by releases or threatened releases of hazardous substances and to collect and manage information

concerning the amount, location and nature of hazardous substances.” Charter § 1403 (introductory paragraph).

The Commissioner may order remedial action and, where appropriate, to take such remedial action immediately to mitigate a “substantial threat of a release into the environment of a hazardous substance<sup>4</sup> which may present an immediate and substantial danger to the public health or welfare or the environment,” and recover the costs of response measures incurred by the department from responsible persons. Charter § 1403(h); Admin. Code §§ 24-608(a), 24-610. Failure to comply with such an order may result in civil penalties of up to ten thousand dollars per day and up to three times the City’s costs, recoverable in a civil action, or in a proceeding before the Environmental Control Board. A knowing failure to comply with an order is a misdemeanor, punishable by a fine of up to twenty-five thousand dollars and by imprisonment of up to one year. Admin. Code § 24-610.

Additionally, the DEP Commissioner is authorized to issue a “cease and desist” order whenever she “has reasonable cause to believe that a discharge in violation of the provisions of sections 24-504 through 24-522 and 24-523 of this chapter or any order, rule or regulation issued by the board or commissioner or in violation of the conditions of any permit issued pursuant to such provisions creates or may create an imminent danger to the sewer system or to the public health or to the life or safety of persons...” Admin. Code § 24-524(b)(1). If the order is not complied with, or not fully complied with in a timely manner, the Commissioner may cut off or restrict the violator’s access to the “sewer system,” cut off the water supply to the premises, cut off a private sewer, or take “any other means or method that is reasonable under the circumstances.” Admin. Code § 24-524(b)(3). Likewise, after notice and hearing, the Environmental Control Board may issue a “cease and desist” order, and if the order is not complied with, the Board may cut off or restrict the violator’s access to the sewer system or cut off the water supply to the premises. Admin. Code § 24-524(d)(1).

In the case of a failure to comply with an order, the Corporation Counsel may bring an action to compel compliance. Admin. Code § 24-524(e). Further, any person who violates the illicit discharge or illicit connection provisions of Admin. Code, Title 24, Chapter 5 “or any order, rule or regulation issued by the environmental control board or commission of environmental protection pursuant thereto or with the conditions of any permit issued pursuant thereto” is liable for a civil penalty of up to \$10,000, subject to certain exceptions, with fines assessed each day for continuing violations. Admin. Code § 24-524(f). Notices of violation are returnable to the Environmental Control Board and final decisions and orders of such Board are generally enforceable as monetary judgments. Additionally, a person who knowingly violates or fails to comply with such provisions is guilty of a misdemeanor and subject to a fine of up to \$10,000 and up to 30 days imprisonment, subject to certain exceptions, with fines assessed each day for continuing violations. Admin. Code § 24-524(g).

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<sup>4</sup> “Hazardous substance” includes substances listed by DEP and any “chemical substance which when released into the environment may present a substantial danger to the public health or welfare or the environment.” Admin. Code § 24-603(b).

Section 3.11 of the Health Code provides that any violation of the Health Code is subject to a fine of between \$200 and \$2000, and allows a fine to be assessed each day for continuous violations. Willful violations of the Health Code are misdemeanors pursuant to Charter § 558(e), and can be prosecuted criminally. DOHMH has authority to issue notices of violations for monetary judgments returnable to the Environmental Control Board or the Office of Administrative Trials and Hearings (OATH) pursuant to Health Code § 3.12. The Health Department is also authorized to “take such action as may become necessary to assure the maintenance of public health . . .” Health Code § 3.01(c). These enforcement provisions, as with all other requirements of the Health Code, are to be “liberally construed for the protection of the health and safety of the people of the city of New York.” Health Code § 3.29.

Several agencies are granted general powers to enforce the City’s laws. The Police Department is authorized under section 435 of the Charter to “enforce and prevent the violation of all laws and ordinances in force in the city.” Likewise, the Corporation Counsel is authorized “to institute actions in law or equity and any proceedings provided by law in any court...or to collect any money, debts, fines or penalties or to enforce the laws.” Charter § 394(c).

**D. Authority to Inspect (Part III.B.2.g with respect to Part IV.D)**

The DEP Commissioner is authorized to “make such investigations and studies as may be desirable for the purpose of such enforcement and of controlling and eliminating pollution of such waters, and for such purpose shall have the power to compel the attendance of witnesses and to take their testimony under oath.” Charter §1403(a)(3). Additionally, the DEP commissioner is granted powers “to collect, compile and manage information concerning the amount, location and nature of hazardous substances present in the city.” *Id.* at §1403(i). See also Admin. Code § 24-523(b)(3); 15 RCNY § 19-10(d).

DOB is authorized to “enter and inspect any building, structure, enclosure, premises or any part thereof or anything therein or attached thereto.” Charter § 649. Similarly, the Fire Department is authorized to enter premises and inspect private property to enforce the Fire Code pursuant to Charter § 492 and DOHMH has inspection authority to enforce the Health Code pursuant to Charter § 566. Furthermore, the Health Code grants the Health Department authority to “inspect any premises, matter or thing within its jurisdiction including . . . any premises where an activity regulated by [the Health] Code is carried on, and any record required to be kept . . .” and to “investigate or authorize an investigation to be made of any matter, incident, thing, person or event within its jurisdiction.” Health Code § 3.01(a) and (b). Likewise the Commissioner of Transportation may “enter upon public or private property the purpose of making surveys, borings or other investigations necessary for the exercise of the powers or the performance of the duties of the department.” Charter § 2905.

Additionally, Charter § 398 provides that where “entry to a location or premises to be inspected pursuant to an agency's powers and duties is not gained on consent, or if circumstances call for entry without prior notice, the commissioner of such agency, or his or her authorized representative, may request the corporation counsel to make an application, ex parte, in any court of competent jurisdiction for an order directing the entry and inspection of such premises or location and, in accordance with applicable law, to abate any nuisance thereon.”

**II. Authority to Require Installation, Implementation and Maintenance of Construction Site Stormwater Runoff Control Measures (Permit Part IV.E; describing legal authority described in permit parts III.B.2.e and, with respect to construction site stormwater runoff, parts III.B.2.d, including the references to Part III.C, III.B.2.f, and III.B.2.g)**

**A. Authority to Require Installation, Implementation and Maintenance of Control Measures (Part III.B.2.e with respect to construction site stormwater controls, permit Part IV.E)**

Admin. Code § 19-137 provides that, whenever “land contour work” is performed (including clearing, grubbing, grading, and excavating), “[n]o condition shall be created or maintained...that will interfere with existing drainage unless a substitute therefor is provided which is satisfactory to the commissioner [of transportation] and the commissioner of environmental protection in accordance with criteria established by such commissioners in consultation with the department of health and mental hygiene.” The provision further requires that “[w]atercourses, drainage ditches, conduits and other like or unlike means of carrying off water or disposing of surface water shall not be obstructed by refuse, waste, building materials, earth, stones, tree stumps, branches or by any other means that may interfere with surface drainage or cause the impoundment of surface waters either within or without the area on which contour work is performed,” and, in addition, that “[a]ll excavations shall be drained and the drainage maintained as long as the excavation continues or remains.”

These requirements may be enforced, in case of violation, by a notice to correct issued by the Commissioner of Transportation, and a permit from DOT is required before land contour work commences. Admin. Code § 19-137(e)(1); 34 RCNY § 2-06. However, where land contour work is performed in the course of construction work permitted by the DOB, enforcement authority is given to the Commissioner of Buildings. Admin. Code § 19-137(d).

A similar provision of the New York City Plumbing Code, also enforced by the Commissioner of Buildings, prohibits the performance of “site grading or land contour work... that would cause storm water to flow across sidewalks or onto an adjacent property” (Plumbing Code § 1101).

The Building Code prohibits the unregulated discharge of concrete washout water in construction sites. Building Code §3303.15 (“Concrete washout water shall not be allowed to enter any sewer, catch basin, drain, or body of water or leach into the ground.”) This includes a requirement that all concrete washout water be collected and contained in the concrete mixer truck or in pre-manufactured watertight containers (Building Code § 3303.15.1); that concrete washout water containers and rinsing operations not be located within 30 feet of any sewer, drain, catch basin or body of water unless approved in writing by the Commissioner of Buildings (Building Code § 3303.15.2); and that collected concrete washout water be transported off site for treatment or disposal or allowed to evaporate completely on site (Building Code § 3303.15.3).

**B. Authority to Collect and Receive Information (Part III.B.2.f with respect to part IV.E)**

The New York City Construction Codes give employees and agents of the Commissioner of Buildings authority “to enter upon and inspect, at all reasonable times, any buildings, enclosure, premises, or any part thereof, ... for the purpose of determining compliance with the provisions of this code and other applicable building laws and rules.” Admin. Code §28-103.13. See also Admin. Code §28-103.16 (authority to enter and inspect existing buildings for code compliance).

**C. Authority to Inspect (Part III.B.2.g with respect to Part IV.E)**

The New York City Construction Codes and the Building Code authorize the Commissioner of Buildings “to make or require inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department.” Admin. Code § 28-116.2.2; Building Code § 110.3.6. Inspections may be made by DOB or by inspection agencies approved by the Department. Building Code § 110.1. The construction contractor must be notified of “defective work and discrepancies with the approved construction documents”, and the owner must be notified of “uncorrected discrepancies and defective work[.]” Admin. Code § 28-116.1.1.

**D. Authority to Require Compliance and Take Enforcement Action (Part III.B.2.d with respect to Part IV.E; Part III.C with respect to Part IV.E)**

As noted above in part I.C of this Appendix, DEP and several other City agencies have authority to enforce the City’s various illicit discharge prohibitions, which include illicit discharges from construction sites within the City’s MS4. See, e.g., Charter § 1403; Admin. Code chapters 5 and 6. .

The New York City Construction Codes give the Commissioner of Buildings a number of enforcement options in case of a violation of any of their requirements. Admin. Code § 28-201.3. These are:

(a) Issuance of a stop work order, also known as a peremptory order (Admin. Code § 28-207.2). This “may require all persons to vacate the premises...and may also require such work to be done as, in the opinion of the commissioner, may be necessary to remove any danger therefrom.” Admin. Code § 28-207.2.1. A stop work order may be enforced in a civil proceeding brought by the Corporation Counsel, who may seek a restraining order, preliminary injunction or other provisional relief. Admin. Code § 28-205.1.1. In addition to penalties for the violation which occasioned a stop work order, failure to comply with the order (including failure to correct the violation) is punishable by a civil penalty of \$5,000 for the first violation and \$10,000 for every subsequent violation. Admin. Code § 28-207.2.6.

(b) Issuance of a Commissioner’s order to correct an unlawful use or condition (Admin. Code § 28-209.1). This may be used when an unlawful use or condition is discovered after the work giving rise to it has been completed. A Commissioner’s order may be

enforced in a civil proceeding brought by the Corporation Counsel, who may seek a restraining order, preliminary injunction or other provisional relief. Admin. Code § 28-205.1.1.

(c) Issuance of a notice of violation (Admin. Code § 28-204.1). Notices of violation may be issued by DOB employees or by employees of any other City agency designated by the Commissioner of Buildings. Admin. Code § 28-201.3.1. Each notice of violation is tried before the Environmental Control Board. It contains “an order of the commissioner directing the respondent to correct the condition constituting the violation and to file with the department...a certification that the condition has been corrected.” Admin. Code § 28-204.2. All violations that are not immediately hazardous violations must be corrected within thirty days of the order. Failure to correct a condition constituting a violation or to certify that the condition has been corrected is punishable by a civil penalty in addition to penalties for the violation which occasioned the notice of violation. Admin. Code § 28-204.4.

(d) All violations of the Construction Codes are punishable by civil penalties, consisting of fines imposed by the tribunal which tries the violation. Admin. Code § 28-202.1.

(e) All violations of the Construction Codes may also be tried in criminal court and are punishable by a criminal fine and/or term of imprisonment. Admin. Code § 28-203.1.

**III. Authority to Require Installation, Implementation and Maintenance of Post-Construction Stormwater Management Measures (Permit Part IV.F; describing legal authority described in permit parts III.B.2.e and, with respect to post-construction stormwater management, parts III.B.2.d, including the references to Part III.C, III.B.2.f, and III.B.2.g)**

**A. Authority to Require Installation, Implementation and Maintenance of Control Measures (Part III.B.2.e with respect to post-construction stormwater controls, Part IV.F)**

The New York City Construction Codes require that construction documents, setting forth all features of work for which a building permit is required, be submitted and approved by DOB prior to the issuance of the permit. Admin. Code § 28-104.1.

The Building Code provides that construction documents submitted by certain permit applicants (permits for new buildings, for building alterations involving horizontal building enlargement and for alterations that increase impervious surfaces on the lot) must show, among other things, “the availability and feasibility of a public combined or storm sewer or other approved method for stormwater discharge[.]” Building Code § 107.11.2. Where a public combined sewer is available and connection therewith is feasible, the permit applicant must submit either a certification to that effect issued by the Commissioner of DEP or, pursuant to DEP rules, a self-certification to that effect issued by a professional engineer or registered



architect. Id.; 15 RCNY § 31-02(b)(1).<sup>5</sup> Where such a certification is issued by the Commissioner of DEP, it “may be conditioned...on part or all of the stormwater runoff to be disposed through an on-site detention or retention system, or by use of alternative disposal methods including but not limited to ditches, swales or watercourses[.]” Building Code § 107.11.2.1. Where a public combined sewer or public storm sewer is not available or connection therewith is not feasible, the applicant must submit either a certification to that effect issued by the Commissioner of DEP or a self-certification to that effect issued by a professional engineer or registered architect and, further, “[a] proposal for the design and construction of a system for the onsite disposal of stormwater conforming to the provisions of this code and other applicable laws and rules including but not limited to minimum required distances from lot lines or structures and subsoil conditions.” Building Code §§ 107.11.2.1, 107.11.2.2. (NOTE: Substantially identical requirements regarding the specification of means of stormwater discharge in construction documents are found in Plumbing Code§ 106.6.2.)

A parallel provision, Admin. Code § 24-526, requires that the owner of a development or lot on which a building is being constructed convey stormwater falling or coming to rest on such development or lot to the nearest public combined sewer or public storm sewer located within 500 feet of any point on the boundary of such development or lot into which it would be feasible to discharge stormwater. However, if no public combined sewer or public storm sewer into which it would be feasible to discharge stormwater is located within five hundred feet of any point on the boundary of such lot or development, the owner of such development or lot is required to dispose of stormwater falling or coming to rest on such development or lot through onsite disposal such as drywells or other means acceptable to the Commissioner of Environmental Protection and the Commissioner of Buildings. This requirement must be satisfied prior to the issuance of a certificate of occupancy for the building or buildings being constructed on such development or lot.

In addition, Admin. Code § 24-526.1 requires the City to issue and periodically update a “sustainable stormwater management plan,” whose purpose is to “identify and provide for the implementation throughout the city, on both public and private properties, of efficient, effective and feasible technological and non-technological source control measures to reduce the volume of water flowing into the city’s sewer system and the pollution loadings carried by stormwater into the city’s waterbodies.” This study, first published in 2008, surveys the City’s existing stormwater controls, assesses the feasibility of new techniques, and establishes an inventory of post-construction stormwater management practices.

Admin. Code § 28-104.9.3 requires that construction documents for construction in “a tidal wetland, tidal wetland adjacent area, freshwater wetland, freshwater wetland adjacent area or coastal erosion hazard area” must show that all required approvals have been issued by NYSDEC “and such other governmental agencies as are applicable[.]”

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<sup>5</sup> DEP rules provide that a certification of availability and feasibility may be issued for new construction by the Commissioner of Buildings. 15 RCNY § 31-02(b)(2).

**B. Authority to Receive and Collect Information (Part III.B.2.f with respect to part IV.F)**

The section of the New York City Construction Codes that allows applicants to submit construction documents combines substantive requirements (including stormwater management) with the provision of information to DOB and DEP regarding how those requirements will be met. Admin. Code § 28-104.1.

**C. Authority to Inspect (Part III.B.2.g with respect to Part IV.F)**

The inspection provisions of the New York City Construction Codes, set forth in Admin. Code §§ 28-116.1 *et seq.*, authorize inspections only prior to the issuance of a certificate of occupancy or letter of completion. Admin. Code § 28-116.2.4. However, the Commissioner’s right to enter premises, established in Admin. Code §§ 28-103.13 and 28-103.16, is not limited in this way.

Admin. Code § 28-103.16 specifically authorizes the Commissioner to “make or require inspections of existing buildings...to ascertain compliance with the provisions of this code and other laws that are enforced by the department.” (Emphasis added)

**D. Authority to Require Compliance and Take Enforcement Action (Part III.B.2.d with respect to Part IV.F; Part III.C with respect to Part IV.F)**

Of the enforcement provisions set forth in the Construction Codes, the following are relevant to enforcement of post-construction stormwater management plans: issuance of a Commissioner’s order to correct an unlawful use or condition (Admin. Code § 28-205.1.1); issuance of a notice of violation (Admin. Code § 28-204.1); and civil and criminal penalties (Admin. Code §§ 28-202.1, 28-203.1). Additionally, as noted above in part I.C of this Appendix, DEP and several other City agencies have general authority to enforce the City’s existing prohibitions regarding illicit discharges, and DEP has authority to enforce the City’s requirements regarding stormwater drainage from buildings and connections to the City’s sewer systems. See, e.g., Charter § 1403; Admin. Code chapters 5 and 6; 15 RCNY chapter 19.

**IV. Authority to Require Installation, Implementation and Maintenance in connection with Industrial and Commercial Stormwater Sources (Permit Part IV.H; describing legal authority described in permit parts III.B.2.e and, with respect to industrial and commercial stormwater sources, parts III.B.2.d, including the references to Part III.C, III.B.2.f, and III.B.2.g)**

**A. Authority to Inspect (Part III.B.2.g with respect to Part IV.H)**

The New York City Charter grants DEP broad powers to prevent water pollution and to “regulate and control emissions into the water within and about the city of New York of harmful or objectionable substances, contaminants and pollutants” and to “enforce all laws, rules and regulations with respect to such emissions.” Charter § 1403(a)(3). Additionally, DEP exercises control over all matters “relating to public sewers and drainage” and is charged with “the management, care and maintenance of sewer and drainage systems.” Charter § 1403(b)(1).

The Commissioner is also authorized to undertake investigations as needed for the purposes of “enforcement and of controlling and eliminating pollution of such waters.” Charter § 1403(a)(3). Accordingly, the Commissioner may inspect industrial and commercial facilities to investigate stormwater runoff entering the MS4 from these locations.

Provisions in the Charter focused upon emergency response and “community right-to-know” authorize DEP to implement measures, including inspections, to respond to threatened or actual releases of hazardous substances, and to collect information concerning hazardous substances present in the City. Charter § 1403(h), (i). Admin. Code Title 24, Chapters 6 and 7, and 15 RCNY Chapters 11 and 41 further implement DEP’s Charter authority.

Specifically, Admin. Code § 24-608, contained within the City’s Hazardous Substances Emergency Response Law (Admin. Code Title 24, Chapter 6), authorizes the DEP Commissioner to order a range of measures and cooperative actions by private parties, which may include providing site access, in response to a release or substantial threat or release of a hazardous substance.

The City’s “Community Right-to-Know Law” (Admin. Code Title 24, Chapter 7) authorizes the DEP Commissioner to regulate and inspect certain industrial and commercial facilities covered by the law.<sup>6</sup> Specifically, the law grants DEP authority to inspect any facility covered by the law with prior notice during business hours, and without prior notice whenever there is a reason to believe that a facility is in violation of the requirements of the law. Admin. Code § 24-712(a). At the time of inspection, the Commissioner may also seek to ensure compliance with the risk management plan requirements applicable to facilities where extremely hazardous or regulated toxic substances are present. Admin. Code § 24-718(e).

The City’s Fire Code and implementing rules similarly govern the storage of fuels and particular substances on sites within the City. See, e.g., 3 RCNY §§ 3404-03, 4834-01. The Charter authorizes the Fire Department to enter private property to enforce the Fire Code and the FDNY’s rules. Charter § 492.

**B. Authority to Require Installation, Implementation and Maintenance of Control Measures (Part III.B.2.e with respect to Part IV.H; Part II.B with respect to Part IV.H)**

As described above, the Administrative Code authorizes the Commissioner to order all responsible persons to implement response measures, and to assist the commissioner in implementing any response measures necessary to protect the public health or welfare or the

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<sup>6</sup> Admin. Code § 24-702(i) provides that “facility” includes “all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned, leased or operated by the same person, or by any person which controls, or is controlled by or under common control with, such person, including any building, structure, installation or area involved in the processing, storage, handling, treatment, placement, disposal or use of any hazardous substance.” “Hazardous substances” are designated by DEP’s commissioner by DEP rule.

environment, when the Commissioner has reason to believe that there has been a release or a substantial threat of a release of a hazardous substance which may present an immediate and substantial danger to the public health or welfare or the environment. Admin. Code § 24-608.

The City's Community Right-to-Know Law requires that any facility containing an extremely hazardous substance or a regulated toxic substance in an amount that equals or exceeds the threshold planning quantities established by the United States Environmental Protection Agency submit to DEP a risk management plan to prevent and mitigate damage from unintended releases from such sites. Admin. Code §24-718. These requirements are further detailed in DEP's rules. See 15 RCNY Chapter 41. The risk management plan must take into account extreme weather, such as flooding, and must include a safety review of design for new and existing equipment and processes, a preventive maintenance program for equipment, training for equipment operators, a risk assessment program and an emergency response. Admin. Code § 24-718(c); 15 RCNY §§41-10, 41-11, 41-12. Compliance with DEP's final determinations concerning content of plans is mandatory and DEP may inspect such sites to verify compliance. Admin. Code § 24-718(e).

Additionally, facilities covered by the hazardous substance requirements of the Community Right-to-Know Law are subject to labeling requirements and must provide to DEP a description of the manner of storage of such substances, including how such storage takes into account potential flooding and other extreme weather events, along with a certification that storage of such substances is in compliance with department rules and all other applicable federal, state, and local laws, rules, and regulations. Admin. Code § 24-705(a)(7). Finally, pursuant to DEP rules, dry cleaning facilities are subject to control measures, including operational and maintenance requirements to prevent leakage of perchloroethylene. 15 RCNY Chapter 12.

In addition to direct Charter and Administrative Code authority described here, for any industrial and commercial activities occurring on City-owned property or supported by City funds, the City may also utilize its ability to impose conditions through real property transactions or economic development agreements, but, as noted in the introduction to this submission, the City expects to address industrial and commercial activities through generally applicable legislation.

### **C. Authority to Require Compliance and Take Enforcement Action (Part III.B.2.d with respect to Part IV.H; Part III.C with respect to Parts IV.E and IV.F)**

As described above, the DEP Commissioner has broad powers "to respond to emergencies caused by releases or threatened releases of hazardous substances into the environment," including implementing response measures deemed necessary to protect the public health or welfare or the environment from a release or threat of release, ordering responsible persons to undertake response measures, and recovering the costs of response measures. Charter § 1403(h).

More specifically, the Commissioner may order remedial action and, where appropriate, to take such remedial action immediately to mitigate a “substantial threat of a release into the environment of a hazardous substance which may present an immediate and substantial danger to the public health or welfare or the environment,” and recover the costs of response measures incurred by the department from responsible persons. Charter §1403(h); Admin. Code § 24-608(a). Any responsible person who fails to comply with such an order may be liable for daily civil penalties of up to ten thousand dollars per day and up to three times the City’s costs, recoverable in a civil action, or in a proceeding before the Environmental Control Board. A knowing failure to comply with an order is a misdemeanor, punishable by a fine of up to twenty-five thousand dollars and by imprisonment of up to one year. Admin. Code § 24-610.

Further, DEP may take enforcement actions to ensure that the requirements of the Community Right-to-Know Law are met. Violations of the requirements regarding facility inventory forms, labelling of hazardous substances and risk management plans may be subject to civil penalties of up to twenty thousand dollars for repeat violations and false statements in such documents may be subject to fines or imprisonment. Admin. Code § 24-713(a), (b); 15 RCNY § 41-14. Refusal to allow DEP inspectors on a site without cause is punishable by up to twenty thousand dollars in civil penalties. Admin. Code § 24-713(c).

**D. Authority to Receive and Collect Information (Part III.B.2.f with respect to Part IV.H)**

Pursuant to section 1403 of the Charter and as noted above, DEP is authorized “to respond to emergencies caused by releases or threatened releases of hazardous substances” and to “collect and manage information concerning the amount, location and nature of hazardous substances.” Charter § 1403(a)(3), (h) (i). In certain circumstances, as noted above, DEP may order a range of cooperative measures in the event of a release or threatened release of a hazardous substance. Admin. Code § 24-608. Any responsible person who knows or has reason to know of any release of a listed hazardous substance is required to immediately notify DEP. Admin. Code § 24-609; 15 RCNY § 11-03.

Further, sites that contain hazardous substances, as defined by City code and rule, are required to file an inventory form. In addition to general information about the site, its owner, and conduct on the premises, this document also requires “a brief description of the manner of storage of each hazardous substance present at the facility, a certification that such storage is in compliance with department rules promulgated pursuant to this chapter and all other applicable federal, state, and local laws, rules, and regulations, and a description of how such storage takes into account potential flooding and other extreme weather events.” Admin. Code §§ 24-705(a)(7) and 24-706(a); 15 RCNY § 41-05.

DEP has previously received this type of information when conducting industrial sites inventories in the MS4 at the request of DEC. Admin. Code § 24-707. Recently, the DEP’s Bureau of Planning and Analysis and the State Department of Labor entered into an agreement to give BEPA access to state databases to assist in conducting inventories.

As described above, the Community Right-to-Know Law also requires certain facilities containing extremely hazardous substance or regulated toxic substances to file risk management plans, subject to review and approval of DEP. Admin. Code § 24-718; 15 RCNY § 41-08.