

DEPARTMENT OF ENVIRONMENTAL PROTECTION

***NOTICE OF ADOPTION***

AMENDMENTS TO CHAPTER 18 OF TITLE 15 OF  
THE RULES OF THE CITY OF NEW YORK:

RULES AND REGULATIONS FOR THE PROTECTION FROM CONTAMINATION,  
DEGRADATION AND POLLUTION OF THE  
NEW YORK CITY WATER SUPPLY AND ITS SOURCES

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Commissioner of the Department of Environmental Protection (“DEP”) by Section 24-302 of the New York City Administrative Code and Section 1100 of the New York State Public Health Law, and in accordance with the requirements of Section 1043(a) of the New York Charter, that DEP hereby amends the provisions of Chapter 18 of Title 15 of the Rules of the City of New York, the *DEP Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources*. The proposed amendments have been approved by the New York State Department of Health pursuant to Section 1100 of the New York State Public Health Law.

Written comments regarding the amendments were received in accordance with notice published in the City Record and public hearings were held on; December 2, 2008, at SUNY Delhi, 2 Main Street, Delhi, NY; December 3, 2008, at Belleayre Mountain, 181 Galli Curci Road, Highmount, NY; December 4, 2008, at Mildred E. Strang Middle School, 2701 Crompond Road, Yorktown Heights, NY; December 8, 2008, at Putnam County Bureau of Emergency Services, 112 Old Route 5, Carmel, NY; December 9, 2008, Onteora High School, 4166 Route 28, Boiceville, NY; and December 11, 2008, at DEP, 59-17 Junction Blvd., Flushing, NY. Written comments and transcripts of oral comments received at the hearings are available for public inspection between the hours of 9:00 a.m. and 5:00 p.m. at the offices of the DEP Bureau of Legal Affairs, 19th Floor, 59-17 Junction Boulevard, Flushing, New York, 11373.

New material is indicated by underlining. Deletions are indicated by brackets.

Section 1. Paragraphs (5) and (7) of subdivision (a) of section 18-14 of title 15 of the Rules of the City of New York are amended to read as follows:

**§18-14 Applicability.**

(a) These rules and regulations apply to all persons undertaking, or proposing to undertake, the activities in the categories listed below, where such activities are specifically regulated in these rules and regulations and occur in the New York City watershed:

.....

- (5) Discharge or transport of human excreta and use of holding tanks.

.....

- (7) Design, construction and operation of [sewerage] sewer systems and service connections.

Section 2. Section 18-15 of title 15 of the Rules of the City of New York is amended to read as follows:

**§18-15 Local Representatives.**

(a) Information about these rules and regulations and application and other forms required by these rules and regulations may be obtained from the following offices of the Department or on the Department's website at [www.nyc.gov/dep](http://www.nyc.gov/dep). Applications for Department approval of a regulatory activity must be submitted to one of [the] these offices [of the Department listed in subdivision (b)]. Petitions appealing from a determination issued by the Department or requesting a hearing on a cease and desist order issued by the Department must be submitted to the offices listed in subdivision [(c)] (b).

- (1) New York City Department of Environmental Protection  
[Chief,] Regulatory and Engineering [Section] Programs  
465 Columbus Avenue  
Valhalla, New York 10595  
Telephone: [(914) 742-2069] (914) 742-2028

- (2) [New York City Department of Environmental Protection  
5 Jay Street  
Katonah, New York 10536  
Telephone: (914) 232-5171  
City Tie-line: (212) 349-4017

- (3)] New York City Department of Environmental Protection  
[Deputy Chief,] Regulatory and Engineering Programs  
[P.O. Box 370] 71 Smith Avenue  
[Route 28A  
Shokan] Kingston, New York [12481] 12401  
Telephone: [(914) 657-6972] (845) 340-7215

- [(4) New York City Department of Environmental Protection  
P.O. Box 358  
Grahamsville, New York 12740  
Telephone: (845) 985-2275  
City Tie-line: (212) 349-1930

- (5) New York City Department of Environmental Protection  
P.O. Box D  
Downsville, New York 13775  
Telephone: (607) 363-7000]

(b) [Applications for Department approval of a regulatory activity must be submitted to one of the following offices of the Department:

- (1) New York City Department of Environmental Protection  
Deputy Chief, Engineering  
465 Columbus Avenue  
Valhalla, New York 10595  
Telephone: (914) 773-4418
- (2) New York City Department of Environmental Protection  
Deputy Chief, Engineering  
P.O. Box 370  
Route 28A  
Shokan, New York 12481  
Telephone: (914) 657-6972

(c)] 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  
New York, New York 10006-1705  
Telephone: (212) 442-4900
- (2) New York City Department of Environmental Protection  
General Counsel  
59-17 Junction Boulevard  
19th Floor  
[Corona] Flushing, New York 113[68]73-5107  
Telephone: (718) 595-6555

[(d)](c)For communications with the Department regarding any known or suspected violations of these rules and regulations or notification of potential contamination of the water supply occurring anywhere in the watershed:

New York City Water Supply Watershed Police Telephone:  
[Croton/Kensico (914) 245-6694  
Beerston (607) 865-4185]

[(e)](d) Addresses and phone numbers contained herein are informational and persons subject to these rules and regulations shall utilize successor addresses and phone numbers where appropriate.

Section 3. Section 18-16 of title 15 of the Rules of the City of New York is amended to read as follows:

**§18-16 Definitions.**

(a) The following terms shall have the stated meanings when used in this Chapter, except where otherwise specifically provided:

(1) **Absorption area** means the area to which wastewater is distributed for infiltration to the soil.

(2) **Absorption field** means the area to which sewage is distributed for infiltration to the soil by means of a network of pipes.

(3) **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.

[(2)](4) **Affiliate** means any agency or person controlled by, controlling, or under common control with an applicant.

[(3)](5) **Agency** means any local, state or federal department, agency, board, public benefit corporation, public authority, commission, district, or governing body, including any city, county, and other political entity of the State.

[(4)](6) **Agricultural activity** means (i) an activity that occurs on “land used in agricultural production” as that term is defined in §301(4) of the Agriculture and Markets Law, or (ii) an activity which is covered by a whole farm plan approved by the Watershed Agricultural Council, or by a New York State Agricultural Environmental Management Plan, or by another federal, state, or other conservation plan determined by the Department to provide water quality protection equivalent to whole farm plans approved by the Watershed Agricultural Council.

[(5)](7) **Alteration or modification** means any change in physical configuration, intensity of use, location, plans, design, site, capacity, treatment standard or method, or other change in a regulated activity or in a noncomplying regulated activity. This term shall not include remediation, routine repairs or maintenance of structures and equipment.

[(6)](8) **Approval** means any final decision by an agency to issue a permit, certificate, license, lease, renewal or other entitlement or to otherwise authorize a proposed project or activity.

[(7)](9) **Area zoned for commercial or industrial uses** means a commercial or industrial zoning district, hamlet zoning district, or highway business zoning district. Areas zoned for commercial or industrial uses shall not include agricultural zoning districts.

[(8)](10) **Base [Flow] flow** means visible sustained or fair weather runoff of water, including groundwater.

[(9)](11) **Best management practices (BMPs)** means methods, measures or practices determined to be the most practical and effective in preventing or reducing the contamination to or degradation of the water supply. Best management practices include, but are not limited to, structural and nonstructural controls and operations and maintenance procedures, that can be applied before, during or after regulated activities to achieve the purposes stated herein.

[(10)](12) **Best treatment technology (BTT)** means methods, measures or practices determined to be the most practical and effective in reducing amounts of phosphorus in both surface and subsurface point source discharges which occur within the New York City watershed. BTT will vary with the size of the wastewater treatment plant, but is generally understood to consist of secondary treatment and chemical removal (usually accomplished by the addition of aluminum salts, iron salts, polymers, or pH adjustments with lime), with media filtration as a final step if necessary to achieve higher removal rates.

[(11)](13) **CFR** means the Code of Federal Regulations.

[(12)](14) **City** means the City of New York.

[(13)](15) **Clear cutting** means cutting all of the trees, not just selected trees, within a specified boundary designated by the owner of the property.

[(14)](16) **Coliform restricted basin** means the drainage basin of a reservoir or controlled lake in which the coliform standards as set forth in §18-48[(a)(1)](c) or [(b)(1)](d) of Subchapter D are exceeded as determined by the Department pursuant to its annual review conducted under § 18-48[(c)](e) of Subchapter D.

[(15)](17) **Combined [sewerage] sewer system** means a structure used for conveying both sewage and stormwater.

[(16)](18) **Commissioner** means the Commissioner of the New York City Department of Environmental Protection or its successors or a deputy commissioner authorized to act for such Department pursuant to law.

[(17)](19) **Construction or construction activity** means any building, demolition, renovation, replacement, restoration, rehabilitation or alteration of any new or existing structure or road.

[(18)](20) **Construction and demolition debris** means uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of structures and roads; and uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup.

[(19)](21) **Contamination** means the introduction of any pollutant to the water supply.

[(20)](22) **Controlled lake** means a lake from which the City may withdraw water pursuant to rights acquired by the City or as a right of ownership. The controlled lakes are: Kirk Lake, Lake Gleneida and Lake Gilead.

[(21)](23) **Croton System** means Middle Branch, Bog Brook, East Branch, Croton Falls, Diverting, Titicus, Amawalk, Muscoot, New Croton, and Cross River Reservoirs, Kirk Lake, Lake Gleneida and Lake Gilead, and their respective drainage basins.

[(22)](24) **Degradation** means a process of reduction or deterioration of the water quality of the water supply, including the process of eutrophication.

[(23)](25) **Department** means the New York City Department of Environmental Protection or its successors.

[(24)](26) **Design capacity** means the approved flow limit of the physical apparatus of a wastewater treatment plant as specified in its SPDES permit.

[(27)] **Design point** means a point where stormwater runoff enters a watercourse or wetland or leaves the site of an activity for which a stormwater pollution prevention plan must be prepared pursuant to this Chapter.

[(27)](28) **Design professional** means a professional engineer or a registered architect who is licensed to practice in the State of New York, or a land surveyor with an exemption under §7208(n) of the Education Law.

[(25)](29) **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 defined and designated by a local government in the East of Hudson Watershed and approved by the Department pursuant to these rules and regulations.

[(26)](30) **Designated Village Center** means an area in the Croton System described by the metes and bounds of a village center, whether or not located in an incorporated village, designated by a local government(s) in a Comprehensive Croton Water Quality Protection Plan prepared and agreed to in accordance with §18-82 of these

rules and regulations by submitting to the Department a description of the metes and bounds of such proposed Designated Village Center, a map of the described area, and a statement of the features which qualify the area as a Designated Village Center. A Designated Village Center must be an existing center of commercial, residential or mixed uses.

[(28)](31) **Discharge** means the intentional or unintentional disposal, deposit, injection, emission, application, dumping, spilling, leaking, washing off, release, running off, draining or placing of any solid, semi-solid, liquid, or any other non-gaseous waste or other substance into or onto any land or water or into any [sewerage] sewer system so that such waste or other substance may directly or indirectly enter into any watercourse, wetland, reservoir, reservoir stem, controlled lake or groundwater.

[(29)](32) **Disturbed area** means the portion of a site for which the imperviousness of the ground has changed from pre-construction conditions as a result of any land clearing, land grading or construction activity. Disturbed areas may include lawns and landscaped areas.

(33) **Drainage Area** means all land and water area from which runoff may run to a common design point.

[(30)](34) **Drainage basin** means the land area which contributes surface water to a reservoir or controlled lake.

[(31)](35) **Driveway** means a route accessible by a motor vehicle between a residential building and a public or private road to provide ingress and egress from the residential building.

[(32)](36) **East of Hudson Watershed** means West Branch, Boyd's Corner, Bog Brook, East Branch, Croton Falls, Diverting, Titicus, Amawalk, Muscoot, New Croton, Cross River, Middle Branch and Kensico Reservoirs, Kirk Lake, Lake Gleneida and Lake Gilead, and their respective drainage basins.

[(33)](37) **Effective Date** means [the date these rules and regulations become effective, which shall be upon completion of any conditions set forth in the approval issued by the New York State Department of Health pursuant to §1100(1) of the Public Health Law; upon publication of these rules and regulations pursuant to §1100(2) of the Public Health Law; and upon completion of the requirements of the New York City Administrative Procedure Act] May 1, 1997.

[(34)](38) **Effluent** means water or wastewater that flows out from a wastewater treatment plant or other treatment process.

[(35)](39) **Epilimnion** means the uppermost, warmest, well-mixed layer of a lake during thermal stratification.

[(36)](40) **Erosion** means the wearing away or the movement of soil by such physical agents as wind or water, that is exacerbated by such practices as the disturbance of ground cover by stripping or removing vegetation, construction activity, or tilling.

[(37)](41) **Exfiltration** means wastewater that leaks out of a [sewerage] sewer system into the surrounding environment, through faulty joints, defective pipes, cracks in pipes, connections, or at manholes.

[(38)](42) **Existing** means physically constructed, functioning and operational prior to the effective date of these rules and regulations.

[(39)](43) **Expansion** means an increase in the permitted flow limit for a wastewater treatment plant as specified in the SPDES permit and/or an increase in the design capacity of a wastewater treatment plant.

[(40)](44) **Facility** means a structure, room or other physical feature designed to perform a particular function and that makes possible some activity.

[(41)](45) **Fertilizer** means any commercially produced mixture, generally containing phosphorus, nitrogen and/or potassium, except compost, that is applied to the ground to increase the supply of nutrients to plants.

[(41.5)](46) **Galley System** means any subsurface system for treating sewage that employs structural chambers in a horizontal or vertical arrangement for the storage of effluent until it can be absorbed into the soil, that is utilized following a septic tank as an alternative to a standard absorption field, and that did not have all discretionary approvals necessary for construction and operation before June 30, 2002.

[(42)](47) **Gasoline station** means an establishment at which gasoline is sold or offered for sale to the public for use in motor vehicles.

[(43)](48) **Groundwater** means any water beneath the land surface in the zone of saturation. The zone of saturation is where water fills all available pore spaces.

[(44)](49) **Hamlet** means a population center designated as a hamlet by a Town Board in the West of Hudson watershed [pursuant to] and described as a hamlet in a Water Supply Permit duly issued by the New York State Department of Environmental Conservation [for Project No. 0-9999-00051/00001] or in any written agreement among the affected parties to the 1997 New York City Watershed Memorandum of Agreement, including the New York State Department of Environmental Conservation.

[(45)](50) **Hazardous substance** means any substance defined or listed in 6 NYCRR Part 597 except that hazardous substance does not mean any petroleum product, including those listed in 6 NYCRR §597.2, Table 1, and also does not mean any hazardous waste.

[(46)](51) **Hazardous waste** means any solid waste, defined or listed as a hazardous waste in 6 NYCRR Part 371.

(52) **Holding tank** means a tank or vault, with no outlet, used for holding sewage before it is pumped out and transported elsewhere for treatment or disposal.

[(47)](53) **Hypolimnion** means the lower, cooler layer of a lake during thermal stratification.

[(48)](54) **Impervious surface** means [resistant to penetration by moisture. Impervious materials include, but are not limited to, paving, concrete, asphalt, roofs, or other hard surfacing material] 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.

[(49)](55) **Individual residence** means a building consisting of one residential unit.

[(50)](56) **Individual sewage treatment system** means an on-site subsurface sewage treatment system serving one or two family residential properties and receiving sewage without the admixture of industrial wastes or other wastes, as defined in the Environmental Conservation Law §17-0701 [in quantities of less than 1,000 gallons per day].

[(51)](57) **Industrial waste** means any liquid, gaseous, solid or waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause contamination to or degradation of the water supply.

[(52)](58) **Infiltration** means water, other than wastewater, that enters a [sewerage] sewer system, including sewer service connections, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow and from treatment of runoff by stormwater infiltration practices.

[(53)](59) **Inflow** means water other than wastewater that enters a [sewerage] sewer system, including sewer service connections, from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

[(54)](60) **In situ soil** means naturally occurring glacial soil; it does not include fill or stabilized fill.

[(55)](61) **Intake** means the points in the New York City water supply located prior to the point of disinfection where the water is no longer subject to surface runoff.

[(56)](62) **Intermediate sized sewage treatment system** means [a subsurface sewage treatment system, typically with a treatment process utilizing a septic tank followed by subsurface disposal, treating sewage or other liquid wastes for discharge into the groundwater of the State and where a SPDES permit is required for such a system. Intermediate sized sewage treatment systems shall not include wastewater treatment plants as defined in these rules and regulations] an on-site subsurface sewage treatment system serving an industrial, institutional, municipal, commercial, or multi-family residential facility, and receiving sewage without the admixture of industrial wastes or other wastes, as defined in the Environmental Conservation Law §17-0701.

[(57)](63) **Intermittent stream** means a watercourse that during certain times of the year goes dry or whose lowest annual mean discharge during seven consecutive days with a recurrence interval of ten years (MA7CD/10) is less than 0.1 cubic foot per second and which periodically receives groundwater inflow. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snow melt shall not be considered to be an intermittent stream.

[(58)](64) **Junkyard** means any place of storage or deposit, whether in connection with another business or not, where four or more unregistered, old, or second hand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts, for the purpose of reclaiming for use some or all of the materials such as metal, glass, or fabric for the purpose of disposing of the same, or for any other purpose.

[(59)](65) **Land clearing** means the exposure of soil by devegetation or the exposure of soil to the forces of erosion.

[(60)](66) **Land grading** means the removal, addition or alteration of surface or subsurface conditions of land by excavation or filling.

[(61)](67) **Limiting distance** means the shortest horizontal distance from the nearest point of a structure or object to the edge, margin or steep bank forming the ordinary high water mark of a watercourse, wetland, reservoir, reservoir stem or controlled lake or to the contour line coinciding with the reservoir spillway elevation.

[(62)](68) **Metalimnion** means an intermediate zone between the epilimnion and hypolimnion where the water temperature drops rapidly with increasing depth.

[(63)](69) **Microfiltration** means a process in which treated effluent passes through a membrane filter having a [molecular weight cutoff rate of 500,000] nominal pore diameter of 0.2 microns or less.

[(64)](70) **Multi-family residence** means a building containing three (3) or more residential units.

[(65)](71) **Municipal solid waste landfill** means a landfill, as defined in 6 NYCRR §360-1.2, which is owned or operated by a municipality.

[(66)](72) **New** means any regulated activity [that is not an existing or noncomplying regulated activity, as defined herein] undertaken, constructed, installed, or implemented after May 1, 1997.

[(67)](73) **Noncomplying regulated activity** means any regulated activity or existing activity which does not conform to the standards set forth in these rules and regulations, but has obtained all discretionary approvals necessary for construction and operation, prior to the effective date of these rules and regulations and/or prior to the effective date of an amendment to these rules and regulations that made the activity noncomplying.

[(68)](74) **Nonpoint source pollution** means pollution sources which are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a point source.

[(69)](75) **NYCRR** means the *Official Compilation of Codes, Rules and Regulations of the State of New York.*

[(70)](76) **Offset** means a reduction in the discharge of phosphorus into a drainage basin which is surplus, quantifiable, permanent, and enforceable, as defined herein:

(i) *Surplus* means that the reduction in phosphorus is not otherwise required by federal, state or local law, including these rules and regulations, or pursuant to the terms of any judgment, decree or order of any court, administrative tribunal or governmental agency, or pursuant to any watershed protection program funded by the Department, except as provided in [subparagraph] subparagraphs 18-83(a)(3) and 18-84(a)(3).

(ii) *Quantifiable* means that a reasonable basis exists for calculating and verifying the amount of the reduction in phosphorus.

(iii) *Permanent* means that the reduction in phosphorus is ongoing and of unlimited duration, as opposed to a temporary reduction.

(iv) *Enforceable* means that the actions and performance standards proposed by the applicant leading to the reduction in phosphorus are incorporated into a legally valid and binding agreement which may be enforced by the City in a court of competent jurisdiction.

[(71)] **One hundred year flood plain** means the land susceptible to being inundated by a flood that has a one percent or greater chance of recurring in any given year.]

[(77)] **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.

[(72)](78) **Operator** means any person who leases, operates, controls or supervises a facility.

[(73)](79) **Owner** means any person who has legal or equitable title to a facility.

[(74)](80) **Pathogenic** means capable of causing disease from organisms, including but not limited to: bacteria, fungi, viruses, and protozoa (such as Giardia and Cryptosporidium).

[(75)](81) **Person** means any individual, public or private corporation, political entity, agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever, except that person shall not mean the State of New York or any State department, agency, board, public benefit corporation, public authority or commission.

[(76)](82) **Perennial stream** means a watercourse that flows throughout the year from source to mouth.

[(77)](83) **Pesticide** means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans, or other animals, which the Commissioner of the New York State Department of Environmental Conservation shall declare to be a pest or (ii) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant.

[(78)](84) **Petroleum product** means oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.

[(79)](85) **Phosphorus restricted basin** means (i) the drainage basin of a source water reservoir in which the phosphorus load to the reservoir results in the phosphorus concentration in the reservoir exceeding 15 micrograms per liter, or (ii) the drainage basin of a reservoir other than a source water reservoir or of a controlled lake in which the phosphorus load to the reservoir or controlled lake results in the phosphorus [water quality values established by the New York State Department of Environmental Conservation and set forth in its Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality and Guidance Values (October 22, 1993) being exceeded,] concentration in the reservoir or controlled lake exceeding 20 micrograms per liter in both instances as determined by the Department pursuant to its annual review conducted under §[18-48(c)] 18-48(e) of Subchapter D.

[(80)](86) **Photic zone** means the region of a lake that receives light, where photosynthesis takes place. The photic zone extends down to a depth where photosynthetic activity and respiration are balanced due to the available light, or to one percent surface illumination.

[(81)](87) **Point source** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, or landfill leachate collection system, from which pollutants are or may be discharged.

[(82)](88) **Pollutant** means unpermitted dredged spoil, solid waste, incinerator residue, sewage, effluent, garbage, sewage sludge, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, and industrial and municipal waste discharged into water.

[(83)](89) **Principal** means an agency or person that owns 10 percent or more of the voting stock or has the ability to control a corporation, partnership or other entity.

[(84)](90) **Radioactive material** means any material in any form that emits radiation spontaneously.

(91) **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 on land which has not been substantially developed. The term “redevelopment project” specifically applies to areas previously developed with impervious surfaces.

[(85)](92) **Regulated activity** means any activity to which these rules and regulations apply, as described in subdivisions (a)-(d) of §18-14 of Subchapter A of these rules and regulations.

[(86)](93) **Remediation** means the repair or replacement, other than routine repair or maintenance as described in §18-38(a)(9)(iii) of Subchapter C, of a subsurface sewage treatment system that is failing.

[(87)](94) **Reservoir** means any natural or artificial impoundment of water owned or controlled by the City which is tributary to the City Water supply system.

[(88)](95) **Reservoir stem** means any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir.

[(89)](96) **Residential lot(s)** means any parcel of land of five acres or less, any point on the boundary line of which is less than one-half mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purposes. Without limiting the generality of the foregoing, the term “residential” shall include temporary, seasonal and permanent residential use.

[(90)](97) **Sediment** means organic or mineral solids or colloids that are transported by the process of hydrologic, hydraulic, or atmospheric transport, including but not limited to erosion.

[(91)](98) **Sewage** means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture of sewage with industrial waste or any other waste as herein defined, shall also be considered “sewage” within the meaning of these rules and regulations.

(99) **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 shall be considered a sewer extension.

(100) **Sewer extension** means newly constructed sewer pipe lines or conduits, and pumping stations and other constructions appurtenant thereto, designed to serve one or more sewer connections.

[(92)](101) **[Sewerage] Sewer system** means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, including sewer extensions, used for conducting sewage, industrial waste or other wastes to a [point of ultimate disposal] treatment facility.

[(93)](102) **Silvicultural activity** means the removal of selected trees within a specified boundary designated by the owner of the property so that adequate numbers of trees are left to provide seed and partial shade for the development of new tree seedlings, and when such activity is in accordance with Federal, State and local laws.

[(94)](103) **Small quantity generator** has the meaning set forth in 6 NYCRR § 370.2(b)(154).

[(95)](104) **Solid waste** means all putrescible and non-putrescible materials or substances that are discarded, abandoned, or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal, except where exempt from compliance with 6 NYCRR Part 360 as described in 6 NYCRR §360-1.2(a)(4).

[(96)](105) **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; landspreading facilities; composting facilities; surface impoundments; waste oil storage, reprocessing and rerefining facilities; recyclables handling and recovery facilities; and waste tire storage facilities, as defined in 6 NYCRR § 360-1.2.

(106) **Source water reservoir** means Ashokan, Cross River, Croton Falls, Kensico, New Croton, Rondout, and West Branch Reservoirs.

[(97)](107) **SPDES flow parameter violation** means two or more violations of a permitted State Pollutant Discharge Elimination System (SPDES) flow parameter limit during a consecutive six month period. A facility that operates less than 6 months per year will be deemed to have a SPDES flow parameter violation if the permitted SPDES flow parameter limit is violated one or more times during any consecutive four month period.

[(98)](108) **State Pollutant Discharge Elimination System (SPDES) permit** means a permit issued pursuant to Titles 7 and 8 of Article 17 of the Environmental Conservation Law.

[(99)](109) **Stormwater** means that portion of precipitation that is in excess of the evaporative or infiltrative capacity of soils, or the retentive capacity of surface features, that flows off the land by surface runoff or by subsurface interflow to watercourses, wetlands, reservoirs, reservoir stems and controlled lakes, i.e., that portion of the water supplied to surface drainage that is not groundwater or base flow.

(110) **Stormwater conveyance measure** means a swale, drainage ditch, pipe, spillway, or other structure located outside a stormwater management practice that is used solely to transport water between stormwater management practices or to a watercourse or wetland. A stormwater conveyance measure constructed to convey stormwater, on a temporary basis, during active construction, which will not be used as a stormwater conveyance measure after construction is complete, is not considered a watercourse under this Chapter. A stormwater conveyance measure that contains water only during and immediately after a rainstorm or a snowmelt is not considered a watercourse.

(111) **Stormwater infiltration practice** means a stormwater management practice designed to collect and temporarily store runoff and to distribute that runoff to the underlying soil for treatment.

(112) **Stormwater management practice** means a stormwater pond, stormwater wetland (also known as a constructed wetland), infiltration system, filter practice, or open channel used primarily for managing and/or treating stormwater, including a Department approved alternative stormwater management practice.

[(100)](113) **Stormwater Project Review Committee (“Committee”)** means a Committee formed in each Town or Village in the watershed to assist the Department in implementing subdivisions 18-39(b) and (c) of Subchapter C, and consisting of the following four Committee members: a representative of the Department, who shall act as chairperson; a representative of the New York State Department of Environmental Conservation from the region in which the activity requiring a stormwater pollution prevention plan is proposed to be located; a representative of the Town or Village in which the activity requiring a stormwater pollution prevention plan is proposed to be located or if no one is designated by the Town, or if the activity is proposed for a village, the Village, a representative of the appropriate County Planning Department, provided, however, that a Town, or if the activity is proposed for a village, the Village, may at any

time designate a representative to replace the one designated by the County Planning Department; and a representative of the County Department of Health from the County in which the activity requiring a stormwater pollution prevention plan is proposed to be located, or in a County without a County Department of Health, a representative of the County Soil and Water Conservation Service.

(114) **Stormwater retrofit** means any construction of a structural stormwater management practice in a previously developed area, the modification of a structural stormwater management practice, or the implementation of a nonstructural practice to improve stormwater management and/or stormwater treatment over current conditions.

[(101)](115) **Stratification** means the physical condition caused primarily by temperature-created differences in water density, which results in the formation of a warm, surface layer (epilimnion), a zone of transition (metalimnion), and a cooler, deep layer of water (hypolimnion).

[(102)](116) **Subdivision** means any tract of land which is divided into five or more parcels of five acres or less, along an existing or proposed street, highway, easement or right-of-way, for sale or for rent as residential lots. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the fifth residential lot therefrom within any consecutive three year period.

[(103)](117) **Subsurface discharge** means discharge to [a seepage unit or] an absorption [field] area, i.e., a process designed to allow filtered, treated sewage effluent to be discharged into the ground as a means of ultimate disposal.

[(104)](118) **Subsurface sewage treatment system** means any underground system used for collecting, treating, and disposing of sewage into the ground including, but not limited to, individual and intermediate sized sewage treatment systems, as defined in these rules and regulations.

(119) **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.

[(105)](120) **Terminal reservoir** means Kensico, West Branch, New Croton, Ashokan and Rondout Reservoirs.

[(106)](121) [**Two year**] **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.

[(107)] **Twenty-five year storm** means the storm that has a four percent chance of occurring in any given year.

(108)](122) **Ulster County Fill System** means a subsurface sewage treatment system used in Ulster County which has been approved by the New York State Department of Health for use in Ulster County and which is built upon two (2) feet of in

situ soil that has a percolation rate between 3 to 60 minutes/inch, and which uses at least four (4) feet of fill material, including at least three (3) feet between the bottom of the trench and the in situ soil, that has a percolation rate between 3 and 10 minutes/inch. Ulster County Fill [System] Systems [shall include the] may be used on individual lots or in subdivisions in Ulster County [Fill System when] and may also be used in a county other than Ulster if the New York State Department of Health has approved the system for use in such other county.

[(109)](123) **Village** means a territory which has been incorporated as a village pursuant to Article 2 of the New York State Village Law.

[(110)](124) **Village extension** means an area immediately adjoining a main road extending [a maximum distance of one quarter mile] outside an existing village which has been designated as a village extension by [the] a Town Board [of the Town in which the village is located] in the West of Hudson watershed [pursuant to] and described in a Water Supply Permit duly issued by the New York State Department of Environmental Conservation [for Project No. 0-9999-00051/00001] or in any written agreement among the affected parties to the 1997 New York City Watershed Memorandum of Agreement, including the New York State Department of Environmental Conservation.

[(111)](125) **Wastewater treatment plant** means any facility which treats sewage or discharges treated effluent not intended to receive further treatment in the watershed, and which requires a permit under Titles 7 or 8 of Article 17 of the Environmental Conservation Law[.]. A wastewater treatment plant is installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage by removal of contaminants accomplished by unit operations or processes or by a combination of such operations and processes[, including any combination of the following: preliminary treatment, flow equalization, primary settling, biological treatment, chemical treatment, secondary settling, filtration, aeration, disinfection, sludge processing, or any other processes] as may be applicable to a given design for a wastewater treatment plant. Wastewater treatment plants shall not include intermediate sized sewage treatment systems as defined in these rules and regulations.

(126) **Water Quality Volume (WQ<sub>v</sub>)** means the storage needed to capture and treat 90% of the average annual stormwater runoff volume. WQ<sub>v</sub> is calculated as follows:

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

where:

$$\underline{WQ_v} = \underline{\text{water quality volume (in acre-feet)}}$$
$$\underline{P} = \underline{90\% \text{ Rain Event Number (A map of the 90\% Rainfall in New York State appears in the most recent Watershed Water Quality Annual Report.)}}$$
$$\underline{R_v} = \underline{0.05 + 0.009(I), \text{ where I is percent impervious cover}}$$

A = site area in acres

A minimum WQ<sub>v</sub> of 0.2 inches per acre shall be met at residential sites that have less than 17% impervious cover.

[(112)](127) **Water supply** means the New York City public water supply system, and includes all watercourses, wetlands, reservoirs, reservoir stems and controlled lakes tributary thereto.

[(113)](128) **Watercourse** means a visible path through which surface water travels on a regular basis, including an intermittent stream, which is tributary to the water supply. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snowmelt shall not be considered to be a watercourse.

[(114)](129) **Watershed** means the land area contributing surface water to the New York City water supply.

(130) **Watershed Agricultural Council** means the Watershed Agricultural Council for the New York City Watershed, Inc., a not-for-profit organization with its principal place of business at 33195 State Highway 10, Walton, New York 13856.

(131) **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.

[(115)](132) **West of Hudson watershed** means the Ashokan, Cannonsville, Pepacton, Neversink, Rondout, and Schoharie Reservoirs and their drainage basins.

[(116)](133) **Wetland** means any area mapped as a wetland by the New York State Department of Environmental Conservation pursuant to the Environmental Conservation Law, which is at least 12.4 acres in size or has been designated as a wetland of unusual local importance.

[(117)](134) **Winter highway maintenance materials** means the solid compounds or the solutions that are commonly used for traction on, or for the abatement of, winter road ice, including, but not limited to, chloride compounds, mixtures of sand and chloride compounds, sand and coal combustion bottom ash and ash from solid waste incinerators that meet the requirements of 6 NYCRR §360-3.5(h).

Section 4. The first unnumbered paragraph, and paragraphs 7 through 16 of section 18-17 of title 15 of the Rules of the City of New York are amended to read as follows:

§18-17 **References.**

The following laws, guidance documents, regulations or technical material have been incorporated by reference in this Chapter 18. These references are available for inspection and copying at the Department of Environmental Protection, Bureau of Water Supply [and Wastewater Collection], Division of [Drinking] Water Quality [Control], 465 Columbus Avenue, Valhalla, New York, 10595, or can be directly obtained from the sources listed for the given reference.

.....

[(7)](7) New York State Fire Prevention and Building Code, New York State Executive Law (Executive Law §3700 *et seq.*), Department of State, 162 Washington Avenue Albany, New York 12231.

[(8)](7) Public Water Supplies; Sewerage and Sewage Control, New York State Public Health Law, Article 11 (PHL §1100 *et seq.*), Department of State, [162 Washington Avenue] 41 State Street, Albany, New York 12231.

[(9)](8) Classifications and Standards of Quality and Purity, 6 NYCRR Parts 701 and 703, Department of State, [162 Washington Avenue] 41 State Street, Albany, New York 12231.

[(10)](9) Standards for Individual Water Supply and Wastewater Treatment Systems, 10 NYCRR Part 75 and Appendix 75-A, Department of State, [162 Washington Avenue] 41 State Street, Albany, New York 12231.

[(11)](10) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality and Guidance Values (October 22, 1993, Reissue Date June 1998, as modified and supplemented by the January 1999 Errata Sheet and the April 2000 and June 2004 Addenda), New York State Department of Environmental Conservation, [50 Wolf Road] 625 Broadway, Albany, New York 12233.

[(12)](11) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1, Total Maximum Daily Loads and Water Quality[-] Based Effluent Limits (July 8, 1996, Revised February 1998), including Amendments A through E (July 8, 1996), New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

[(13)](12) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1B, Total Maximum Daily Loads and Water Quality-Based Effluent Limits, Amendments-Low and Intermittent Stream Standards (July 8, 1996), New York State Department of

Environmental Conservation, [50 Wolf Road] 625 Broadway, Albany, New York 12233.

[(14)](13) New York State Environmental Conservation SPDES General Permit for Storm Water Discharges from Construction Activities, Permit No. [GP-93-06] GP-0-10-001, Dated [July 14, 1993] January 29, 2010, New York State Department of Environmental Conservation, [50 Wolf Road] 625 Broadway, Albany, New York 12233.

[(15)](14) Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities, 1988, New York State Department of Environmental Conservation, [50 Wolf Road] 625 Broadway, Albany, New York 12233.

[(16)](15) Recommended Standards for Wastewater Facilities, Great Lakes—Upper Mississippi River [1990, Board of State Public Health and Environmental Managers] Board of State and Provincial Public Health and Environmental Managers, 2004, Health Education Services, P.O. Box 7126, Albany, New York 12224.

Section 5. Paragraphs (5) and (6) of subdivision (b), paragraph (4) of subdivision (c), and paragraphs (4), (5), and (6) of subdivision (d) of section 18-23 of title 15 of the Rules of the City of New York are amended to read as follows:

**§18-23 Application Procedures and Requirements.**

.....

(b)(5) Any property owner may request that the Department perform a site visit and evaluation to determine and flag the presence of a watercourse, reservoir, reservoir stem or controlled lake on the owner's property. If the property owner supplies the Department with a surveyor's map of the property which includes a representation of the flagged watercourses, reservoirs, reservoir stems or controlled lakes identified by the Department, the Department shall confirm or [amend] annotate the findings upon the surveyor's map as soon as is practicable. A confirmed survey map shall be binding upon the Department for five years following the date of the confirmation.

(6) If an applicant for Department review and approval of a regulated activity requests that the Department conduct a site visit and evaluation to determine and flag the presence of a watercourse, reservoir, reservoir stem or controlled lake on the applicant's property the Department shall do so as soon as is practicable. If the applicant supplies the Department with a surveyor's map of the property which includes a representation of the flagged watercourses, reservoirs, reservoir stems or controlled lakes identified by the Department, the Department shall confirm or [amend] annotate the findings upon the surveyor's map within 20 business days of receipt thereof. A confirmed survey map shall be binding upon the Department for five years following the date of the

confirmation. The absence of a Department confirmed surveyor's map will not cause an application to be considered incomplete.

.....

(c)(4) An application for review and approval of any regulated activity shall include the name, address, telephone number, 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.

.....

(d)(4) The Department shall notify the applicant in writing of its determination within twenty (20) days of determining that an application for review and approval of a conventional individual sewage treatment system to be installed on an individual lot which is not within a subdivision is complete pursuant to the procedures set forth in paragraph (d)(2) of this subdivision unless the Department and the applicant mutually agree in writing upon an extension of the twenty (20) day review period. If, during the twenty (20) day review period, the Department requests revisions to the application, the review period shall be suspended from the date such request is made until the date on which the Department receives such revisions, provided that the Department shall have no fewer than ten (10) days from the date of receipt to issue a determination.

(5) For all applications for review and approval, other than for a conventional individual sewage treatment system to be installed on an individual lot which is not within a subdivision, the Department shall notify an applicant in writing of its determination within forty-five (45) days of notifying the applicant that the application is complete pursuant to the procedures set forth in paragraph (d)(2) of this subdivision unless the Department and the applicant mutually agree in writing upon an extension of the forty-five (45) day review period. If, during the forty-five (45) day review period, the Department requests revisions to the application, the review period shall be suspended from the date such request is made until the date on which the Department receives such revisions, provided that the Department shall have no fewer than ten (10) days from the date of receipt to issue a determination.

(6) If the Department fails to notify an applicant in writing of its determination within the twenty (20) day time period as set forth in paragraph (d)(4) of this subdivision or the forty-five (45) day time period as set forth in paragraph (d)(5) of this subdivision, the applicant may notify the Department of its failure by means of certified mail, return receipt requested to the local Department representative identified in §18-15 of Subchapter A of these rules and regulations who is responsible for processing the application and a copy to [the Engineering Section] Regulatory and Engineering Programs. The notice shall contain the applicant's name, location of the proposed project, the office in which the application was filed, and a statement that a decision is sought in accordance

with this subdivision. Any notice failing to provide this information will not invoke this provision.

Section 6. Paragraph (4) of subdivision (d) and subdivision (e) of section 18-28 of title 15 of the Rules of the City of New York are amended to read as follows:

**§18-28 Appeals.**

.....

(d) The following issues are adjudicable on appeal:

.....

(4) Whether the Commissioner [or the First Deputy 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.

.....

(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 [or First Deputy Commissioner] has abused his or her discretion.

Section 7. Subdivision (e) of section 18-32 of the Rules of the City of New York, relating to the delegation of authority from DEC to the Department to enforce Hazardous Waste Standards, is REPEALED.

Section 8. Section 18-35 of title 15 of the Rules of the City of New York is amended to read as follows:

**§18-35 Human Excreta and Holding Tanks.**

(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 [sewage vault] holding tank or other sewage receptacle into any watercourse, wetland, reservoir, reservoir stem, or controlled lake is prohibited.

[(c) Transportable sewage receptacles shall have tightly fitting covers which shall be securely fastened during transport.]

Section 9. Paragraphs (4), (6), and (9) of subdivision (a), paragraph (2) of subdivision (d), subparagraphs (ii) and (iii) of paragraph (2) of subdivision (e), paragraphs (2), (3), (4), subparagraph (iv) of paragraph (5), and paragraph (6) of subdivision (f), and paragraphs (3) and (4) of subdivision (g) of Section 18-36 of title 15 of the Rules of the City of New York are amended to read as follows:

**§18-36 Wastewater Treatment Plants**

(a) *Minimum Requirements.*

.....

(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.

.....

(6) No part of any seepage unit or absorption [field] area for a subsurface discharge from a wastewater treatment plant shall be located 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.

.....

(9) Wastewater treatment plants with surface discharges to intermittent streams in the watershed shall be operated and maintained to meet the intermittent stream effluent limits set forth in the New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1, Total Maximum Daily Loads and Water Quality-Based Effluent Limits (July 8, 1996, Revised February 1998), including Amendments A through E (July 8, 1996), and New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1B, Total Maximum Daily Loads and Water Quality-Based Effluent Limits, Amendments-Low and Intermittent Stream Standards (July 8, 1996), provided however, that the effluent limit for a discharge of a pollutant to an intermittent stream shall in no case be

less stringent than the effluent limit which would apply to the same discharge of the pollutant to the first downstream perennial stream.

.....

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

.....

(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 treated effluent is also subject to] 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 treatment plants with subsurface discharges may commence or continue to operate provided that [the treated effluent is also subject to] 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.*

.....

- (2)(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 treated effluent is also subject to] 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 treatment plants with subsurface discharges may commence or continue to operate, provided that [the treated effluent is also subject to] 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.*

.....

(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:

- (i) “Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities,” New York State Department of Environmental Conservation (1988); and
- (ii) “Recommended Standards for Wastewater Facilities,” Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers [(1990)](2004).

(3) The Department shall not approve a wastewater treatment plant, or any proposed expansion of a wastewater treatment plant, which discharges within the watershed, if there is inflow or infiltration into a [sewerage] sewer system connected to such wastewater treatment plant which causes either:

- (i) The State authorized flow limit of the wastewater treatment plant to be exceeded; or
- (ii) The strength of the sewage influent to the wastewater treatment plant to be diluted to a level that adversely affects the efficacy of the State permitted and Department approved treatment process.

(4) The Department shall not approve a wastewater treatment plant, or any proposed expansion of a wastewater treatment plant, if there is an indication of exfiltration from a [sewerage] sewer system connected to such wastewater treatment plant.

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

.....

- (iv) [In wastewater treatment plants with a SPDES permitted surface discharge of 50,000 gpd or less, there shall be a minimum of two (2) sand filters, each rated to handle the full plant flow. In wastewater treatment plants with a SPDES permitted surface discharge greater than 50,000 gpd, there shall be a minimum of three (3) sand filters, each rated to handle one-half (1/2) of the full plant flow] 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 “Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities,” New York State Department of Environmental Conservation (1988) and/or the “Recommended Standards for Wastewater Facilities,” Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (2004), can be processed in the event that the largest such unit is off line;

.....

(6) The following requirements shall apply to all wastewater treatment plants with subsurface discharges or absorption [fields] areas located in the watershed:

- (i) The loading rate to the absorption trench may be 25 percent greater than that required under the design standards listed in subdivision (f)(2) of this section;
- (ii) An additional area of at least 50 percent of the absorption [field] area shall be set aside as a reserve [field] area;
- (iii) At a minimum, one percolation and one deep hole test shall be performed in both the primary absorption [field] area and in the reserve absorption [field] area. An applicant shall notify the Department in writing at least 7 business days prior to performance of such tests, and specify the location and the time of the tests. At the option of the Department, a Department representative may witness these tests; and
- (iv) The use of pumping, mechanical dosing or other mechanical devices requires a pump chamber equipped with an alarm to indicate malfunction, a backup pump, and any other safety features required by the Department to prevent overflow.

....

(g) *Application Requirements.*

.....

(3) [An application for review and approval of a plan for bringing an existing wastewater treatment plant into compliance with the requirements of this section shall include the operation and maintenance manual for the wastewater treatment plant.

(4) All approvals for new or expansion of existing wastewater treatment plants are conditioned on the applicant's submission of record drawings [and an operation and maintenance manual] once construction is complete.

Section 10. Section 18-37 of title 15 of the Rules of the City of New York is amended to read as follows:

§18-37 **[Sewerage] Sewer Systems, Service Connections and Discharges to [Sewerage] Sewer Systems.**

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

(b) A new service connection or sewer extension to a [sewerage] sewer system is prohibited where the wastewater treatment plant to which the [sewerage] 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 connection or sewer extension will cause or can be expected to cause such wastewater treatment plant to have a SPDES flow parameter violation.

(c) All new service connections shall be tested [as required by and] 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," [the] Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, §§33.92-[33.94]33.95 [(1990)] (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 [service] sewer connection to a [sewerage] sewer system, or by any alteration or modification of a [service] sewer connection to a [sewerage] sewer system, shall submit all plans or designs for such [service] 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 [service] sewer connection to a [sewerage] sewer system, or by an alteration or modification of a [service] sewer connection to a [sewerage] sewer system, shall not be required to submit the plans or designs for such [service] 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) The owner of any property which will be served by a new [service] sewer connection to a [sewerage] sewer system, or by an alteration or modification of a [service] sewer connection to a [sewerage] sewer system, shall notify the Department 48 hours prior to the installation of such [service] 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), the owner shall submit to the Department all plans or designs for such [service] sewer connection or for such alteration or modification prior to or simultaneously with the delivery of such notice to the Department.

(e) The design, construction and plans for a new [sewerage] sewer system or sewer extension shall require the review and approval of the Department. Any proposed alteration or modification of a [sewerage] sewer system, including a [sewerage] 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 [sewerage] sewer system or sewer extension, or a proposed alteration or modification of a [sewerage] sewer system.

(2) Any approval of a new or an alteration or modification of an existing sewer system or sewer extension issued by the Department shall expire and thereafter be null and void unless construction is commenced 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 [sewerage] sewer system or sewer extension or the portion of any [sewerage] sewer system which is being altered or modified, shall be all applicable requirements of law, including the standards set forth in the following documents:

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

(2) “Recommended Standards for Wastewater Facilities,” [The] Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers [(1990)](2004).

(g) All [sewerage] 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:

- (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.

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

.....

(j) Application Requirements. 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;
- (4) An engineering report presenting the proposed flow and supporting design calculations; and
- (5) 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 of system components including pipe sizes and pump capacities; and

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

(k) 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.

Section 11. Paragraphs (4), (5), (6), (7), (8) and (9) of subdivision (a), paragraphs (2), (3), (4), and (7) of subdivision (b), and the introductory sentence and clause (b) of subparagraph (iii) of paragraph (1) and paragraph (2) of subdivision (c) of Section 18-38 of title 15 of the Rules of the City of New York are amended to read as follows:

**§18-38 Subsurface Sewage Treatment Systems.**

.....

(a)(4) [All new subsurface sewage treatment systems, other than those covered by paragraphs (2) and (3) of this subdivision, shall comply with the applicable requirements of 10 NYCRR Part 75 and Appendix 75-A or the applicable published standards of the Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities, New York State Department of Environmental Conservation (1988), 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 subsurface sewage treatment system or a substantial alteration or modification to an existing subsurface 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.

(5) No part of any absorption field for [a new conventional individual] any new subsurface sewage treatment system[, as described in Appendix 75-A of 10 NYCRR Part 75, or for the types of sewage treatment systems described in paragraphs (3) and (4) of this subdivision, or for an Ulster County Fill 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.

[(6)](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:

.....

[(7)](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.

[(8)](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[, and shall also be subject to the following, where applicable:].

- (i) Any proposed alteration or modification of any individual sewage treatment system [or any other kind of subsurface sewage treatment system described in paragraphs (3) and (4) of this subdivision located within the limiting distances set forth in this section] that is an existing or a noncomplying regulated activity shall be performed in accordance with the [New York State Fire

Prevention and Building Code, Executive Law Section 370 et seq.] 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.

~~[(9)](8)~~ 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 set forth in this section, shall be allowed to continue to operate and shall be considered noncomplying regulated activities.

(9) [However, if] If at any time after the effective date of these rules and regulations [such] 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 [such existing] 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) [Upon the failure of any subsurface sewage treatment system, it] Any proposed remediation of any part of a subsurface sewage treatment system shall be [remediated] 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 [any failed subsurface sewage treatment system] 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.

.....

(b)(2) Mound systems, galley systems, [intermittent sand filters, and evapotranspiration/absorption] 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. Sand filters are prohibited from use for individual sewage treatment systems in the watershed.

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

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

.....

(7) Whenever possible, gravity flow systems shall be used for subsurface sewage treatment systems. The use of [pumping, mechanical dosing or other mechanical devices] electrically operated pumps shall require a [pump] 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 [or any other kind of subsurface sewage treatment system as described in paragraphs (3) and (4) of subdivision (a) of this section] 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.

(c) *Application Requirements.*

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

.....

(iii)(b) site/system plans showing two-foot contours;

.....

(2) An application for review and approval of an intermediate sized sewage treatment system [and for any other subsurface sewage treatment system as described in paragraph (4) of subdivision (a) of this section,] shall include all of the information in paragraph (1) of subdivision (c) of this section, and additionally shall contain:

Section 12. Paragraph (2), subparagraph (iii) of paragraph (4), the introductory sentence and subparagraphs (iii), (iv), and (v) of paragraph (5), the introductory sentence and subparagraphs (i), (iv), and (v) of paragraph (6) of subdivision (a), and the introductory sentence and subparagraphs (i), (iii), and (ix) of paragraph (3), paragraph (4), and paragraph (7) of subdivision (b), subdivision (c), paragraph (1) and subparagraph (ii) of paragraph (3) of subdivision (d), and subparagraph (iii) of paragraph (1) of subdivision (e) of section 18-39 of title 15 of the Rules of the City of New York are amended to read as follows:

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

(a) *Impervious surfaces.*

.....

(2) Paragraph (1) shall not apply to the following activities:

- (i) Construction of a new individual residence, which shall comply with paragraph (5) of this subdivision[, or non-commercial ancillary improvements or additions to an individual residence];
- (ii) Non-commercial ancillary improvements or additions to an individual residence;
- (iii) Construction of an impervious surface for a driveway serving an individual residence constructed or having obtained all discretionary approvals necessary for construction prior to March 1, 2010;
- (iv) Construction of an impervious surface for a driveway serving an individual residence that obtains all discretionary approvals necessary for construction on or after March 1, 2010, which shall comply with paragraph (5) of this subdivision;

[(ii)](v) Agricultural activities;

[(iii)](vi) Construction of bridges or crossings of watercourses or wetlands constructed pursuant to a valid permit from the appropriate regulatory agencies. If a permit from a regulatory agency other than the Department is not required, the applicant shall comply with paragraph (9) of this subdivision;

[(iv)](vii) Creation of an impervious surface [to alter or modify] made necessary by the construction of a wastewater treatment plant or alteration or modification of a wastewater treatment plant approved by the Department;

[(v)](viii) Creation of an impervious surface that is made necessary by the construction of a new facility or alteration or modification of an existing facility used in connection with the operation of a public water supply system; or

[(vi)](ix) Creation of an impervious surface, such as a culvert, needed as an integral component of diversion or piping of a watercourse, but only with the review and approval of the Department and only if the Department determines that such impervious surface will not have an adverse impact on water quality.

.....

(4) Paragraph (1) shall not apply to the creation of an impervious surface in connection with the following activities occurring in the East of Hudson watershed outside a Designated Main Street Area or in the West of Hudson

watershed outside a village, hamlet, village extension, or an area zoned for commercial or industrial uses:

- (i) Construction of a new road [or driveway,] or widening of an existing road, which shall comply with paragraph (6) of this subdivision;

.....

- (iii) Expansion of an existing impervious surface within the limiting distance of 100 feet of a watercourse or wetland, at an existing commercial, institutional, municipal, [or] industrial, or multi-family residential facility, provided that the total area of all expanded impervious surfaces, including all impervious surfaces allowed under this provision after May 1, 1997, does not exceed 25 percent of the area of the existing impervious surface at that commercial, institutional, municipal, [or] industrial, or multi-family residential facility, which shall comply with subdivisions (b), (c) and (d) of this section.

.....

(5) The following requirements are applicable to construction of a new individual residence and of impervious surfaces for driveways serving individual residences that obtain all discretionary approvals necessary for construction on or after March 1, 2010:

.....

- (iii) Construction of a new individual residence not in a subdivision, or in a subdivision approved before October 16, 1995 and not prohibited by paragraph (a)(5)(ii)(b) of this subdivision, within the limiting distance of 100 feet of a perennial stream or wetland requires an individual residential stormwater permit from the Department, pursuant to subdivision (e) of this section;
- (iv) Construction of an impervious surface for a driveway serving an individual residence that obtains all discretionary approvals necessary for construction on or after March 1, 2010 within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake is prohibited;
- (v) Construction of an impervious surface for a driveway to serve an individual residence that obtains all discretionary approvals necessary for construction on or after March 1, 2010, within the limiting distance of 100 feet of a perennial stream or within the limiting distance of 50 feet of an intermittent stream or wetland,

requires an individual residential stormwater permit from the Department, pursuant to subdivision (e) of this section.

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

- (i) Construction of an impervious surface for a new road [or driveway] 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.

.....

- [(iv) Construction of an impervious surface for a driveway 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 where necessary to provide access to an existing home or a new individual residence allowed to be constructed within such limiting distances pursuant to paragraph (5) above. If construction of the individual residence served by the driveway would require a stormwater pollution prevention plan or an individual residential stormwater permit, construction of the impervious surface for the driveway shall also require a stormwater pollution prevention plan or an individual residential stormwater permit, respectively.]

- [(v)](iv) Widening of an existing road located within the limiting distance of 50 feet of an intermittent stream or wetland, within the limiting distance of 100 feet of a perennial stream, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake shall be performed on the side of such existing road furthest from the watercourse, wetland, reservoir, reservoir stem or controlled lake, to the extent practical.

.....

(b)(3) Stormwater pollution prevention plans shall be prepared for the activities listed in this paragraph. 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-93-06] GP-0-10-001 that are applicable to construction activities identified in Table 2 of Appendix B, except for plans for redevelopment projects and stormwater retrofits, which shall be prepared and implemented in accordance with subdivision (b)(7). 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. The activities for which a stormwater pollution prevention plan must be prepared under this paragraph 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 General Permit No. [GP-93-06] GP-0-10-001;
- (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;

.....

- (ix) Up to a 25 percent expansion of an existing impervious surface at an existing commercial, institutional, municipal, or industrial 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

.....

(4) If [the owner or operator of any activity which is subject to a Stormwater Pollution Prevention Plan pursuant to subsection (b)(3), alters or modifies such activity in a manner which would require an amended stormwater pollution prevention plan pursuant to Part III.C of the New York State Department of Environmental Conservation General Permit No. GP-93-06, if such activity were governed by General Permit No. GP-93-06, such] 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.

.....

(7) Where an activity that requires a stormwater pollution prevention plan pursuant to subdivision (b)(3) is a redevelopment project or a stormwater retrofit, 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 General Permit No. GP-0-10-001 that are applicable to 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.

.....

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

(1) [When any activity listed in paragraph (3) of subdivision (b) of this section is proposed to be undertaken in a phosphorus restricted basin, the stormwater pollution prevention plan shall include an analysis of phosphorus runoff, before and after the land disturbance activity. Such plan shall require measures to capture and treat the 2-year, 24-hour storm runoff from the disturbed area created by such activity.

(2)] When any activity listed in paragraph (3) of subdivision (b) of this section is proposed to be undertaken in the drainage basin of a terminal reservoir, as identified in the watershed maps in Appendix 18-A, the stormwater pollution prevention plan shall include analysis of coliform runoff, before and after the land disturbance activity.

- (i) If such proposed activity causes or contributes to the contravention of the coliform standard set forth in § 18-48(b)(1) of Subchapter D, the stormwater pollution prevention plan shall not be approved by the Department, unless the measures required by the stormwater pollution prevention plan in conjunction with any other controls to be imposed that limit future land disturbance at the site, including but not limited to property easements, restrictive covenants, zoning laws and development by-laws, will prevent the contribution of additional coliform.

[(3) When any activity listed in paragraph (3) of subdivision (b) of this section is proposed to be undertaken in a coliform restricted reservoir basin, the stormwater pollution prevention plan shall include an analysis of coliform runoff,

before and after the land disturbance activity. Such plan shall require measures to capture and treat the 2-year, 24-hour storm runoff from the disturbed area created by such activity.

(4) All stormwater pollution prevention plans prepared pursuant to this section shall include an analysis of the 25-year storm.]

(2) Stormwater Conveyance Measures. Stormwater pollution prevention plans prepared pursuant to this section shall provide for the maintenance of natural drainage systems, including perennial and intermittent streams, and the use of swales and drainage ditches in an open condition to the maximum extent practicable. A stormwater pollution prevention plan shall ensure that any closed stormwater conveyance measures are sized appropriately to convey, at a minimum, the 10-year, 24-hour storm flow.

(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 (WQ<sub>v</sub>). 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 of a subsurface sewage treatment system.

(5) To the maximum extent practicable, an activity requiring a stormwater pollution prevention plan, and the stormwater pollution prevention plan prepared for such activity, shall be designed:

- (i) To minimize the alteration of the existing drainage areas and to maintain the volumes of flow at design points at pre-construction levels, except as necessary to alleviate downstream flooding problems or other adverse conditions in existence prior to construction, or to divert runoff from off-site and/or undisturbed areas away from areas proposed to be disturbed.
- (ii) To minimize loss of annual recharge to groundwater by maximizing the use of stormwater infiltration practices where suitable soil conditions exist.

(6) If an activity requiring a stormwater pollution prevention plan will result in impervious surfaces covering twenty percent (20%) or more of the drainage area for which a stormwater management practice is designed, the stormwater pollution prevention plan shall provide for stormwater runoff from

that drainage area to be treated by two different types of stormwater management practices in series, except that only one stormwater management practice is required if either:

- (i) the stormwater management practice provided is a stormwater infiltration practice; or
- (ii) the activity requiring a stormwater pollution prevention plan is in the West of Hudson watershed within a village, hamlet, village extension, or area zoned for commercial or industrial uses or in the East of Hudson watershed within a Designated Main Street Area.

(7) For purposes of the design criteria incorporated by reference in New York State Department of Environmental Conservation General Permit GP-0-10-001, “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-93-06; and] GP-0-10-001.
- [(iii) A phosphorus and/or coliform analysis when required by this section.]

.....

(3) Upon completion of their review of the application, and upon a majority vote of the Committee members, including the Department’s committee member, who reviewed the application, the Committee may recommend to the Department that an application for approval of a stormwater pollution prevention plan be approved, approved with conditions or disapproved.

.....

- (ii) If the Department’s Committee member disagrees with the majority recommendation of the Committee, the application, together with the written recommendation of the Committee, shall be submitted to the [First Deputy] Commissioner of the Department for review and a determination. The [First Deputy] Commissioner shall issue a written record of decision setting forth the basis for the determination and responding to any contrary

written recommendations submitted by any member of the Committee.

.....

(e)(1) An individual residential stormwater permit is required for:

.....

- (iii) Construction of an impervious surface for a driveway to serve an individual residence that obtains all discretionary approvals necessary for construction on or after March 1, 2010, located within the limiting distances of 50 feet of an intermittent stream or wetland or within 100 feet of a perennial stream, [provided that the driveway is necessary for access to an individual residence which is not located within a subdivision and where the individual residence accessed by the driveway would be required to obtain an individual residential stormwater permit pursuant to this section] except that no individual residential stormwater permit is required if the driveway is included in an activity requiring Department approval of a stormwater pollution prevention plan.

Section 13. Section 18-43 of title 15 of the Rules of the City of New York is amended to read as follows:

**§ 18-43 Pesticides.**

[(a)] Unless otherwise permitted by these rules and regulations, the discharge or use, or storage of pesticides which is reasonably likely to lead to a discharge, of pesticides 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)] Reference is made to the Pesticide Standards set forth in Appendix 18-D to these rules and regulations. The Department states its intention to seek:

- (1) Promulgation by the New York State Department of Environmental Conservation of appropriate State regulations, applying such standards to the watershed; and
- (2) Delegation of appropriate authority, from the New York State Department of Environmental Conservation, to administer and enforce such rules and regulations in the watershed.]

Section 14. Section 18-48 of title 15 of the Rules of the City of New York is amended to read as follows:

**§18-48 Water Quality Standards**

(a) The water in all reservoirs, Lake Gilead, and Lake Gleneida, shall meet the following standards of quality:

- (1) 6 NYCRR Parts 701 [(narrative standards)] and 703 (standards applicable to Class AA waters)[:], and
  - (i) For purposes of determining compliance with this subchapter, the Department shall take water samples from the reservoirs; and
  - (ii) Where total coliform standards exceed the standards set forth in 6 NYCRR Parts 701 and 703, and are determined by the Department to be due to a non-perennial, non-anthropogenic source, such exceedances shall not be included in calculating whether a violation of these rules and regulations has occurred.]

(2) 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, Reissue Date June 1998, as modified and supplemented by the January 1999 Errata Sheet and the April 2000 and June 2004 Addenda) which [sets forth] lists the ambient water quality standards and guidance values for principal organic chemicals and synthetic organic chemicals.

(b) In addition, the water in source water reservoirs shall meet the following phosphorus standard:

(1) Total phosphorus concentrations shall be equal to or less than 15 micrograms per liter.

(c) [The] In addition, the water within 500 feet of the aqueduct effluent chamber located at a terminal reservoir (Kensico, West Branch, New Croton, Ashokan and Rondout) shall meet the following coliform standard:

(1) Raw water fecal coliform concentrations shall be equal to or less than 20 colonies per 100 milliliters or total coliform concentration shall be equal to or less than 100 colonies per 100 milliliters in at least 90 percent of the measurements made over any consecutive six month period. For purposes of determining compliance with this [subchapter] paragraph, a minimum of five samples per week will be taken from each terminal reservoir. If both fecal and total coliform analyses are performed, the fecal coliform results shall take precedence over the total coliform analysis.

- (i) Where fecal coliform standards exceed the above standards, and are determined by the Department to be due to non-perennial, non-anthropogenic sources, such exceedances shall not be included in

calculating whether a violation of these rules and regulations has occurred.]

(d) For purposes of determining compliance with this subchapter, the Department shall take water samples from the controlled lakes and reservoirs and shall evaluate them in accordance with subdivisions (a), (b), and (c) of this section.

(1) Where total coliform concentrations exceed the standards set forth in 6 NYCRR Parts 701 and 703, and are determined by the Department to be due to non-perennial, non-anthropogenic sources, such exceedances shall not be included in calculating whether a violation of these rules and regulations has occurred.

(2) Where fecal coliform concentrations exceed the standards set forth in subparagraph (c) above, and are determined by the Department to be due to non-perennial, non-anthropogenic sources, such exceedances shall not be included in calculating whether a violation of these rules and regulations has occurred.

[(c)](e) The Department shall, on an annual basis, conduct a review of [all reservoirs and controlled lakes] water quality data for the purpose of determining whether each reservoir and controlled lake meets or fails to meet the water quality standards set forth in subdivisions (a), [and] (b), and (c) of this section, as applicable. The results of the Department's review, together with the calculations used in arriving at the results for each reservoir, shall be published in a report which shall be made available to the public upon request.

Section 15. Subdivision (a), paragraph (2) of subdivision (a) and paragraph (1) of subdivision (d) of section 18-61 of title 15 of the Rules of the City of New York are amended, and a new subdivision (e) is added, to read as follows:

**§18-61 Variances.**

(a) The Commissioner [or the First Deputy 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.

.....

(2) In granting variances the Commissioner [or the First Deputy Commissioner] may impose specific conditions, including evidence of financial security, time limitations and limitations on any transfer of the variance granted. In addition, the Commissioner [or the First Deputy Commissioner] may grant a lesser variance than that applied for.

.....

(d) *Variances within coliform and phosphorus restricted basins.*

(1) The Department may grant a variance from the prohibition of locating a new wastewater treatment plant or expanding an existing wastewater treatment plant in a coliform restricted basin, or in a phosphorus restricted basin, where the Department determines that conditions in the area to be served by the new or expanded wastewater treatment plant are resulting in the release or discharge of inadequately treated sewage into the water supply, and that there is no other feasible method of correcting such release or discharge of inadequately treated sewage except to provide a variance from such prohibition. Provided, however, that in such cases, the additional treatment capacity of the new or expanded wastewater treatment plant may only be of a size sufficient to service the area identified as the source of contamination and any immediate area of concern as limited or delineated by the Department.

.....

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

(1) The Department may grant a variance from the prohibition set forth in §18-36(d)(2)(i) against locating a new wastewater treatment plant or expanding an existing wastewater treatment plant in the Croton System, within the 60 day travel time to intake, where the Department has made the following determinations:

(i) One of the following situations is present:

(a) conditions in the area to be served by the new or expanded wastewater treatment plant, including failed subsurface sewage treatment systems, are resulting in the release or discharge of inadequately treated sewage into the water supply; or

(b) influent flow rates to an existing wastewater treatment plant exceed the permitted flow limit for the wastewater treatment plant as specified in its SPDES permit and/or the design capacity of the wastewater treatment plant and have caused, or can reasonably be expected to cause, the release of inadequately treated sewage.

(ii) There is no other feasible method of correcting such release or discharge of inadequately treated sewage except by locating a new or expanding an existing surface-discharging wastewater treatment plant within the 60 day travel time to intake; and

(iii) The applicant has demonstrated that there are no sources of inflow or infiltration to the sewer system of the new or expanded wastewater treatment plant, other than sources that are to be eliminated pursuant to a consent order or other commitment binding on the applicant, that can practicably be eliminated.

(2) The applicant must demonstrate to the Department, that the total flow to the new or expanded wastewater treatment plant authorized pursuant to this subdivision will be limited as follows:

- (i) if the applicant seeks to expand a wastewater treatment plant serving a sewer district, the flow to the expanded wastewater treatment plant may include only:
  - (a) flow from facilities within the sewer district that are connected to the wastewater treatment plant as of the date of the application for a variance (based on the flows reported by the wastewater treatment plant pursuant to its SPDES permit in the year preceding the application for the variance); and
  - (b) flow from facilities within the sewer district that are served by subsurface sewage treatment systems as of the date of the application for a variance; and
  - (c) additional flow of no more than ten percent (10%) of the average of the flows reported by the wastewater treatment plant pursuant to its SPDES permit in the year preceding the application for the variance to be allocated within the sewer district; and
  - (d) reasonably anticipated flows from any area(s) outside the sewer district identified as source(s) of contamination pursuant to clause (a) of subparagraph (i) of paragraph (1) of subdivision (e) of this section.
- (ii) if the applicant seeks to expand a wastewater treatment plant without a sewer district, the flow to the expanded wastewater treatment plant may include only:
  - (a) flows to the wastewater treatment plant as of the date of the application for a variance;
  - (b) reasonably anticipated flows from any area(s) identified as source(s) of contamination pursuant to clause (a) of subparagraph (i) of paragraph (1) of subdivision (e) of this section.
- (iii) if the applicant seeks to construct a new wastewater treatment plant, the flow to the new wastewater treatment plant may include only reasonably anticipated flows from the area(s) identified as source(s) of contamination pursuant to clause (a) of subparagraph (i) of paragraph (1) of subdivision (e) of this section.

(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:

- (i) The wastewater treatment plant shall provide 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; and
- (ii) The wastewater treatment plant shall be designed, operated, and maintained to meet a total phosphorus limit of 0.1 mg/l, and the applicant shall seek to have such limit included in the wastewater treatment plant's SPDES permit; and
- (iii) The applicant shall develop and implement a Department-approved Capacity, Management, Operation and Maintenance (CMOM) plan for the entire sewer system serving the wastewater treatment plant, and shall seek to have such plan incorporated into the wastewater treatment plant's SPDES permit. At a minimum, such CMOM plan shall include:
  - (a) a map of the entire collection system;
  - (b) an assessment of the current capacity of the collection system;
  - (c) a program and schedule for routine inspections and testing, and preventive operation and maintenance activities;
  - (d) a list of any structural deficiencies identified in the system and a schedule for short- and long-term rehabilitation measures to address each identified deficiency;
  - (e) an inflow study, and a plan and implementation schedule, to control and eliminate, to the maximum extent practicable, stormwater contributions from sources such as catch basins, downspouts, and sump pumps; and
  - (f) a program for training appropriate personnel on collection system operation and maintenance; and
- (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
- (v) The applicant shall seek to have included in the wastewater treatment plant's SPDES permit a condition providing that in the

event that the SPDES permitted flow limit is violated, the owner will investigate the violation and prepare a corrective action plan.

Section 16. Subparagraph (ii) of paragraph (2) of subdivision (c) of section 18-82 of title 15 of the Rules of the City of New York is amended to read as follows:

**§18-82 Watershed Planning in the Croton System.**

.....

(c) The Croton Plan shall consist of the following three elements:

.....

(2) Identification of investments to correct existing water quality problems in accordance with developed priorities. Such identification shall include the following elements:

.....

(ii) Proposed measures to address water quality problems identified in paragraph (c)(1)(ii) above. Such measures may include subsurface sewage treatment system maintenance, rehabilitation and replacement programs, installation of community septic systems, the construction of sewer extensions or new [sewerage] sewer systems, stormwater controls, and the permanent diversion of wastewater to a discharge point outside of the watershed.

Section 17. Appendix D of chapter 18 of title 15 of the Rules of the City of New York, entitled “Hazardous Waste and Pesticide Standards,” is REPEALED.

STATEMENT OF BASIS AND PURPOSE

These amendments to the *Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources* (“Watershed Regulations”) are promulgated pursuant to the authority of the Commissioner of the Department of Environmental Protection (“DEP”) under section 1100 of the Public Health Law and section 24-302 of the New York City Administrative Code. The DEP Commissioner is authorized to establish and enforce the Watershed Regulations. As required by section 1100 of the Public Health Law, these amendments to the Watershed Regulations have been approved by the State Department of Health. The purpose of the Watershed Regulations is to protect public health by preventing contamination to and degradation of the City’s surface water supply. These amendments incorporate changes in federal and State law since 1997, when the Watershed Regulations were adopted in their present form, and also address issues that have arisen during administration and enforcement of the Regulations over the past twelve years.

DEP is amending sections 18-14 through 18-17, 18-23, 18-28, 18-32, 18-35 through 18-39, 18-43, 18-48, 18-61, and 18-82 of the Watershed Regulations. The amendments to the Watershed Regulations include revisions to the provisions pertaining to stormwater pollution prevention plans so as to incorporate the New York State Department of Environmental Conservation (“DEC”) SPDES General Permit for Stormwater Discharges from Construction Activity, Permit No. GP-10-001. The Watershed Regulations also continue to require the water quality protection standards that DEP has determined are appropriate for stormwater pollution prevention plans in the watershed.

The revisions include provisions authorizing DEP to grant a variance for a new or expanded surface-discharging wastewater treatment plant within the 60-day travel time, in the Croton system only, under specified and limited circumstances. Additionally, DEP has revised the definition of “Phosphorus restricted basin” to incorporate, with respect to basins of source water reservoirs, a phosphorus concentration standard of 15 micrograms per liter, consistent with the Phase II Total Maximum Daily Loads for Phosphorus for New York City’s Drinking Water reservoirs proposed by New York State DEC and approved by EPA. These amendments also clarify the regulatory status of sewer systems, consistent with existing State standards.

The amendments also include technical corrections, such as substituting more recent versions of publications cited in the Watershed Regulations, updating certain technical terminology, and modifying or changing the order of certain text to improve clarity and intelligibility.

After publishing the proposed amendments in the City Record, DEP received comments from the public. The amendments have been clarified, and in some instances modified, to reflect some of the recommendations received. In particular, DEP deleted the proposed review and approval procedures for holding tanks serving industrial, institutional, municipal, commercial, and multi-family residential facilities. DEP also added language to the provisions relating to alteration and modification of septic systems to allow the alteration or modification of an SSTS to meet the “to the extent possible” standard if the alteration or modification would reduce the threat of impairment to water quality, or if it is a replacement in kind of a pre-1997 SSTS.

With respect to the amendments concerning stormwater discharges and impervious surfaces, the driveway provisions have been substantially modified, reflecting both non-substantive clarifications and DEP’s determination that for residences constructed or having obtained all required discretionary approvals prior to March 1, 2010, driveways may be paved without restrictions. Additionally, the prohibition against placement of stormwater management practices within 100 feet of wetlands has been deleted, although DEP will continue to recommend that stormwater management practices be located outside of wetland buffers, where appropriate, during the SEQRA process. In addition, the Watershed Regulations will exempt activities in West of Hudson villages, hamlets, village extensions, or areas zoned for commercial or industrial uses, and in East of Hudson Designated Main Street Area Villages, from the requirement that a second stormwater management practice be installed in series where an activity will result in

impervious surfaces covering 20% or more of the drainage area for which the practice is designed.

DEP has withdrawn its proposal to incorporate the DEC SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (“MS4s”), Permit No. GP-08-002, into the provisions concerning miscellaneous point source discharges. Similarly, DEP has decided against the proposed modification to the criteria for variances requiring mitigation for activities indirectly authorized by a variance.

Also, in the new provisions allowing for variances for certain new or expanded wastewater treatment plants in the Croton system, DEP replaced its proposed condition regarding the consequences of flow violations with a provision noting that DEP will request that the SPDES permits for such plants include a condition that if the flow limit is violated, the owner must investigate the violation and prepare a corrective action plan.

Finally, DEP has amended the definition of “Commissioner” to include deputy commissioners authorized to act on behalf of DEP pursuant to law, and has accordingly deleted several references to the “First Deputy Commissioner.”