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NEGATIVE DECLARATION

CEQR Number: 08DEP031Y Date Issued: December 22, 2011

NAME: Amendment to Chapter 31 of Title 15 of the Rules of the City of New York, "Standards for Stormwater Release Rates"

LOCATION: Citywide

SEQR CLASSIFICATION: Unlisted

DESCRIPTION:

The New York City Department of Environmental Protection (DEP) is proposing to amend Chapter 31 of Title 15 of the Rules of the City of New York (RCNY), the existing rules governing house and site connections to the city's sewer system ("existing rules"). The proposed rule amendment would modify the flow rate of stormwater to the city's combined sewer system for new and existing development, as part of sewer availability and connection approvals ("proposed action"). The proposed action would apply to development lots where new buildings ("new developments") or alterations of existing buildings that would result in an expansion of building footprint or impervious surfaces ("alterations") are proposed.

The purpose of the proposed rule amendment is to more stringently control the flow of stormwater runoff from development lots to the city's sewer system in an effort to improve the performance of the system and provide additional capacity in the system, while ensuring that the system is protected from uncontrolled or pressurized flow. The regulated community would be applicants proposing house and/or site connections to the city's sewer system or modifications of onsite drainage as a result of a proposed new development or alteration.

Statement of No Significant Effect

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York and 6NYCRR, Part 617, State Environmental Quality Review, DEP assumed the role of lead agency for the environmental review of the proposed project. Based on a review of information about the project contained in an environmental assessment statement (EAS) dated April 8, 2011, related stakeholder outreach conducted and comments reviewed as part of the public comment period for the Citywide Administrative Procedures Act (CAPA) rulemaking process, DEP has determined that the proposed action would not have a potential

significant adverse impact on the environment.

Reasons Supporting this Determination

The above determination is supported by the above mentioned EAS, and incorporated by reference herein. The EAS finds, because the proposed project would modify the flow rate of stormwater to the City's sewer system for new and existing development as part of sewer availability and connection approvals, that:

1. The proposed action would more stringently control the flow of stormwater runoff to the city's sewer system, compared to existing and no action conditions.
2. Slower release rates to the city's sewer system are expected to free up and provide additional capacity in the future as the number of new developments and alterations increase within a drainage area.
3. The proposed action provides substantial flexibility for applicants to comply with stricter release requirements based on the availability and applicability of different technologies.
4. Costs for compliance as part of new developments and alterations are expected to be less than 1.5% of total development costs.
5. The proposed rule amendment is an integral component of the 2010 *NYC Green Infrastructure Plan* and the City's comprehensive approach to reduce combined sewer overflows (CSOs).
6. Implementation of the proposed rule amendment would allow for a phased approach toward attaining future and potentially more stringent federal and state stormwater requirements.
7. No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable.

The proposed action requires promulgation pursuant to authority granted to the Commissioner of the Department of Environmental Protection as set forth in Section 24-500 and related subsections of the Administrative Code of the City of New York.

While the above findings identified in the EAS remain consistent and applicable, the proposed rule amendment, in order to be promulgated in accordance with CAPA, includes several subsequent modifications added since the publication of the lead agency letter and above mentioned EAS. Specifically, the attached rule includes:

- Applicability criteria for combined sewer areas of the city only;
- Alterations are as defined in the Construction/Plumbing Codes and related requirements for any horizontal building enlargement or any proposed increase in impervious surfaces;
- For infiltration practices, the 10% cap was removed for proposed volume reductions as demonstrated by soil borings and in-situ permeability tests;

- Similar allowances and requirements as above for infiltration practices also apply for stormwater recycling systems;
- Clarification of overall site runoff coefficient reductions for different surface types including open space, green roofs, permeable pavement and other infrastructure techniques;
- Requirements for system operations and maintenance for all onsite stormwater management systems;
- Requirements for developments that involve phased construction or a subdivision of lots to submit master/phased plan site connection application proposal; and
- Setback requirements for tree plantings adjacent to existing water and sewer infrastructure.

The application of the proposed action in combined sewer areas of the city only is consistent with the objectives of the proposed rule amendment, current city policies related to green infrastructure and existing procedures for applicants seeking sewer availability certification and sewer connection permits. In other areas of the city, including separate storm sewer areas, sewer availability and connection requirements would not change from existing conditions. Applicants requesting connections to the combined sewer system would incur a small incremental cost to comply with the proposed rule amendment compared to total development costs. For these applicants, the costs included in the EAS remain consistent and applicable. Therefore, the proposed action is not expected to result in potential significant adverse socioeconomic impacts.

The applicability of the proposed rule amendment to existing development was modified to include alterations that would result in an expansion of building footprint or impervious surfaces as defined in the Construction Codes. Specifically, the threshold of 20% or greater increases in building footprint or impervious surfaces over existing impervious surfaces was removed to ensure consistency with the Construction Codes. While a similar threshold is included in the current Plumbing Code, the New York City Department of Buildings (DOB) is in the process of updating these codes. It is expected that DOB will also remove the 20% threshold but that certain exceptions may apply. Therefore, a greater number of alteration applications may be affected by the proposed rule amendment but which types are currently unknown. It is also expected that the cost of compliance estimated for new development would remain consistent and similar for alterations as defined by DOB given the conservative assumptions built into the cost estimates and flexibility afforded applicants by the various stormwater technologies available to comply with the proposed rule amendment.

Infiltration practices or systems designed to infiltrate detained stormwater into subsurface soils are one of several options for compliance. A maximum 10% credit toward detained stormwater volume was specified for infiltration practices and subsequently removed in the proposed rule amendment to encourage retention rather than detention and provide the development community more flexibility during system selection and site planning. The requirements for substantiating the feasibility of onsite infiltration were also modified to disallow permeability tests performed at a laboratory, as testing performed in situ is considered more accurate and reliable. All applicants proposing a volume reduction must submit soil borings and in-situ

permeability tests to DEP to substantiate groundwater elevations, subsurface soil types and infiltration rates appropriate for infiltration practices.

Similar to infiltration practices, allowances and requirements for detention volume reductions associated with stormwater recycling systems were added to the proposed rule amendment to encourage the use of these innovative technologies and provide additional options and flexibility to the development community. These modifications do not change the stormwater release rate requirements for new developments and alterations. Therefore, the proposed action is not expected to result in any potential significant adverse environmental impacts.

All applicants proposing to construct any type of stormwater management system (in separate storm and combined sewer areas) must comply with operations and maintenance requirements as part of the proposed action. Landowners and their successors must properly maintain onsite systems, file deed restrictions, and submit triennial certifications of proper operation. This is a common practice for state stormwater requirements and DOB requirements for drywells. The proper operations and maintenance of stormwater management systems over the course of their useful lives is intended to protect connected buildings and adjacent properties from unnecessary damage and related costs. The cost of triennial inspections by a licensed professional is expected to be nominal and would differ based on system and lot size. Therefore, operations and maintenance requirements added to the proposed action are not expected to result in any potential significant adverse environmental impacts.

Stormwater management systems for developments that include multiple construction phases or a subdivision of lots must be submitted to DEP for review and approval as a master/phased plan site connection application proposal. Similar to operations and maintenance requirements, this requirement applies to all house/site connection proposal applications in both separate and combined sewer areas. Through this requirement, development lots will be restricted as a whole according to the required release rate or allowable flow as opposed to the sum of multiple release rates or allowable flows for each subdivided lot or phased development site, which in most cases would result in a greater total flow rate to the city's sewer system. This requirement is also consistent with state stormwater requirements for construction activities that involve "disturbances of less than one acre that are part of a larger common plan of development."

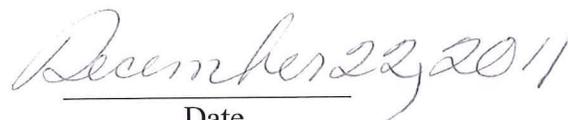
The proposed rule amendment includes requirements for tree plantings adjacent to existing water and sewer infrastructure. Specifically, "trees shall be planted at least six feet center to center from distribution mains; eight feet center to center from mains greater than twenty inches in diameter; and four feet outside the sheeting area for sewers." These distances are similar to existing practices as DEP currently recommends that applicants maintain minimum setbacks from water and sewer infrastructure when planting trees to minimize damage to mains and pipes, adjacent properties and planted trees. These distances are to be memorialized in the proposed rule amendment following extensive coordination between DEP and the New York City Department of Parks and Recreation (DPR) to ensure consistency with city tree planting programs including Million Trees. In addition, the proposed action includes specifications for variance procedures, should minimum distances be determined to be infeasible based on site conditions and where additional root protections would be installed. Therefore, the proposed action is not expected to result in any potential significant adverse environmental impacts.

DEP has determined that the findings of the EAS remain consistent and applicable with the proposed rule amendment as modified since the publication of the lead agency letter and EAS. Therefore, the proposed rule amendment is not anticipated to have any potential significant adverse impacts on the quality of the environment. The above determination is based on an environmental assessment that finds that the proposed action would not result in significant effects on the environment that requires the preparation of an Environmental Impact Statement.

This Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law (SEQRA).



Angela Licata
Deputy Commissioner



Date

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