



LEAD AGENCY DECLARATION AND NOTICE OF INTENT TO CONDUCT AN ENVIRONMENTAL REVIEW

DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-17 Junction Boulevard
Flushing, New York 11373

Emily Lloyd
Commissioner

October 27, 2008

Proposed Amendments to Chapter 18 of Title 15 of the Rules of the City of New York: "Watershed Regulations for the Protection from Contamination, Degradation, and Pollution of the New York City Water Supply and Its Sources"

CEQR No. 04DEP207U

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Angela Licata
Deputy Commissioner

**Bureau of Environmental
Planning & Analysis**

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Under authority granted to it by section 1100 of the Public Health Law and section 24-302 of the New York City Administrative Code, the New York City Department of Environmental Protection ("DEP") is amending sections 18-14 through 18-17, 18-23, 18-32, 18-35 through 18-40, 18-42, 18-48, 18-61, and 18-82 of its Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources ("Watershed Regulations"). 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 proposed 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 eleven years.

The proposed 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-0-08-001. 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. Similarly, the proposed amendments incorporate the DEC SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems ("MS4s"), Permit No. GP-0-08-002, by making clear that miscellaneous point source discharges now covered by the Watershed Regulations include discharges from MS4s.

Other changes include new regulations for DEP approval of new holding tanks and alterations to existing holding tanks. With respect to subsurface sewage treatment systems, what were formerly referred to as "other" systems would be considered "intermediate" systems under the proposed revisions. These amendments also clarify the regulatory status of sewer systems, consistent with existing State standards.



The proposed revisions also 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 proposes to revise 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.

In addition, the proposed amendments 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.

In accordance with section 1100 of the Public Health Law, DEP will not adopt these amendments until the State Department of Health has approved them.

The Bureau of Environmental Planning and Analysis has concluded that the proposed action is classified as a Type I Action. In accordance with the State Environmental Quality Review Act (SEQRA) authorized by Article 8 of the Environmental Conservation Law and its implementing regulations as set forth in 6NYCRR Part 617, and the New York City Environmental Quality Review (CEQR) process as set forth in Executive Order 91 of 1977 and its amendments, this Department believes it is the appropriate Lead Agency and assumes responsibility for conducting the SEQRA/CEQR review for the above referenced action. The long environmental assessment form and attachments have been prepared for the proposed action and are attached for your review.

We request that Involved Agencies contact this office within 30 days from this notification should there be any objection to the Department assuming Lead Agency for this environmental review.

If you have any comments or questions, please contact Mr. Mark N. Page, Jr. at (718) 595-4395 or mpage@dep.nyc.gov.

Sincerely,



Esther Siskind
Assistant Commissioner

Enclosures

cc: Town Supervisors and Village Mayors within the Catskill, Delaware, and Croton Systems
Scott M. Stringer, Manhattan Borough President
Marty Markowitz, Brooklyn Borough President
Adolfo Carrión, Jr., Bronx Borough President
Helen Marshall, Queens Borough President
James Molinaro, Staten Island Borough President
Samara Swanson, City Council
Hector Diaz, City Clerk
Dean Frazier, Delaware County Department of Watershed Affairs
Roger P. Akeley, Dutchess County Planning Department
Warren Hart, Greene County Department of Planning and Economic Development
John J. Lynch, Putnam County Department of Planning/Development
Alicia Terry, Schoharie County Planning and Development Agency
Dr. William J. Pammer, Jr., Sullivan County Division of Planning and Community
Development
Dennis Doyle, Ulster County Planning Department
Gerard E. Mulligan, Westchester County Department of Planning
Tom O'Brien, Watershed Agricultural Council
Alan L. Rosa, Catskill Watershed Corporation
Dennis Lucas, Coalition of Watershed Towns
William C. Harding, Watershed Protection and Partnership Council
Lisa Rainwater, Catskill Center for Conservation and Development
Philip Sweeney, USEPA Region 2
Roger Sokol, NYSDOH
Philip Bein, Watershed Inspector General
Thomas Snow, NYSDEC
Suzanne Y. Mattei, NYSDEC Region 2
Willie Janeway, NYSDEC Region 3
Gene Kelly, NYSDEC Region 4
Robert Kennedy, Jr., Riverkeeper, Inc.
Jay Simpson, Riverkeeper, Inc.
Eric Goldstein, NRDC
Cathleen Breen, NYPIRG
Robert Kulikowski, NYCOEC
Susan Amron, NYC Corporation Counsel
Hilary Meltzer, NYC Corporation Counsel
Paul Rush, NYCDEP
David Warne, NYCDEP
Matthew Warne, NYCDEP
Robin Levine, NYCDEP
Sandra Jackson, NYCDEP
Melissa Siegel, NYCDEP
Mark Page, Jr., NYCDEP

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project: Part 1 Part 2 Part 3
Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore **a negative declaration will be prepared.**
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore **a CONDITIONED negative declaration will be prepared.***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore **a positive declaration will be prepared.**

*A Conditioned Negative Declaration is only valid for Unlisted Actions
Proposed Amendments to the New York City Department of Environmental Protection Watershed Rules and Regulations

Name of Action

New York City Department of Environmental Protection

Name of Lead Agency

Esther Siskind

Print or Type Name of Responsible Officer in Lead Agency

Assistant Commissioner

Title of Responsible Officer



Signature of Responsible Officer in Lead Agency



Signature of Preparer (If different from responsible officer)

10/27/08

Date

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Proposed Amendments to the New York City Department of Environmental Protection Watershed Rules and Regulations

Location of Action (include Street Address, Municipality and County)

New York City Watershed Lands in the Counties of Delaware, Greene, Schoharie, Ulster, Sullivan, Dutchess, Putnam, and Westchester

Name of Applicant/Sponsor New York City Department of Environmental Protection

Address 465 Columbus Avenue

City / PO Valhalla State NY Zip Code 10595

Business Telephone (914) 742-2099

Name of Owner (if different) _____

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Please see attached Action Description

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other Watershed Lands

2. Total acreage of project area: 1,262,075 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	_____ acres	_____ acres
Other (Indicate type) _____	_____ acres	_____ acres

3. What is predominant soil type(s) on project site? N/A

- a. Soil drainage: Well drained _____% of site Moderately well drained _____% of site.
 Poorly drained _____% of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? _____ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? Yes No

a. What is depth to bedrock _____ (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% _____% 10- 15% _____% 15% or greater _____%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No

8. What is the depth of the water table? Varies (in feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No Only adjacent to the New Croton Reservoir

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

New York State Natural Heritage Program

Identify each species:

Bald eagle (*Haliaeetus leucocephalus*), Long-beaked bald-rush (*Rhynchospora scirpoides*), Timber rattlesnake (*Crotalus horridus*), Indiana Bat (*Myotis sodalis*), Climbing fern (*Lygodium palmatum*), Small whorled pogonia (*Sotria medioloides*), Bog turtle (*Glyptemys muhlenbergii*), Blunt-lobed grape fern (*Botrychium oneidense*), and Bigleaf yellow avens (*Geum macrophyllum*)

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

Many of the Counties within the New York City Watershed contain unique or unusual land forms.

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

Large portions of the Counties within the New York City Watershed are utilized by the public for recreational purposes.

14. Does the present site include scenic views known to be important to the community? Yes No

Multiple throughout subject watershed counties.

15. Streams within or contiguous to project area:

Multiple throughout subject watershed counties.

a. Name of Stream and name of River to which it is tributary

Multiple throughout subject watershed counties.

16. Lakes, ponds, wetland areas within or contiguous to project area:

Multiple throughout subject watershed counties.

b. Size (in acres):

17. Is the site served by existing public utilities? Yes No N/A
- a. If YES, does sufficient capacity exist to allow connection? Yes No
- b. If YES, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No
20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: 118,948 acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. %
- f. Number of off-street parking spaces existing 0; proposed 0
- g. Maximum vehicular trips generated per hour: 0 (upon completion of project)?
- h. If residential: Number and type of housing units:
- | | One Family | Two Family | Multiple Family | Condominium |
|------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Initially | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| Ultimately | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
- i. Dimensions (in feet) of largest proposed structure: height; width; length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed Yes No N/A
- a. If yes, for what intended purpose is the site being reclaimed?
-
- b. Will topsoil be stockpiled for reclamation? Yes No
- c. Will upper subsoil be stockpiled for reclamation? Yes No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? N/A acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes No

6. If single phase project: Anticipated period of construction: N/A months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No

9. Number of jobs generated: during construction N/A; after project is complete

10. Number of jobs eliminated by this project N/A.

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No

a. If yes, what is the amount per month? _____ tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name _____; location _____

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? Yes No

19. Will project routinely produce odors (more than one hour per day)? Yes No

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

As a result of the revisions, NYCDEP could fund some of the incremental costs above federal and state regulations.

25. Approvals Required:

			Type	Submittal Date
City, Town, Village Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____
City, Town, Village Planning Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____
City, Town Zoning Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____
City, County Health Department	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____
Other Local Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	NYC CAPA Process	_____
			_____	_____
			_____	_____
Other Regional Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____
State Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	NYSDOH SAPA Process	_____
			_____	_____
			_____	_____
Federal Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	_____	_____
			_____	_____
			_____	_____

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? Yes No

If Yes, indicate decision required:

- | | | | |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan | <input type="checkbox"/> Other |

2. What is the zoning classification(s) of the site?

Multiple throughout subject watershed counties.

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

N/A

4. What is the proposed zoning of the site?

N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Multiple throughout subject watershed counties.

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? _____

a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?
 Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

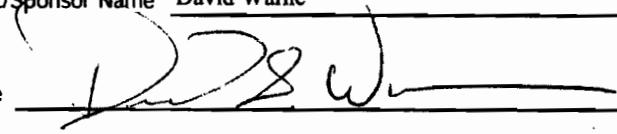
D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name David Warne Date 9/24/08

Signature 

Title Assistant Commissioner, Bureau of Water Supply

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

- ! In completing the form the reviewer should be guided by the question: Have my responses and determinations been **reasonable**? The reviewer is not expected to be an expert environmental analyst.
- ! The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- ! The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- ! The number of examples per question does not indicate the importance of each question.
- ! In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer **Yes** if there will be any impact.
- b. **Maybe** answers should be considered as **Yes** answers.
- c. If answering **Yes** to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in Part 3.

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
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Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
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- Construction or expansion of a sanitary landfill. Yes No
- Construction in a designated floodway. Yes No
- Other impacts: Yes No

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO YES

- Specific land forms: Yes No

Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO YES

Examples that would apply to column 2

- Developable area of site contains a protected water body. Yes No
- Dredging more than 100 cubic yards of material from channel of a protected stream. Yes No
- Extension of utility distribution facilities through a protected water body. Yes No
- Construction in a designated freshwater or tidal wetland. Yes No
- Other impacts: Yes No

4. Will Proposed Action affect any non-protected existing or new body of water?

NO YES

Examples that would apply to column 2

- A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease. Yes No
- Construction of a body of water that exceeds 10 acres of surface area. Yes No
- Other impacts: Yes No

1	2	3	
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change	

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON AIR

7. Will Proposed Action affect air quality?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the density of industrial development within existing industrial areas. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?

NO YES

Examples that would apply to column 2

• Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?

NO YES

Examples that would apply to column 2

• The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO YES

Examples that would apply to column 2

• Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Project components that will result in the elimination or significant screening of scenic views known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO YES

Examples that would apply to column 2

• Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Any impact to an archaeological site or fossil bed located within the project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • The permanent foreclosure of a future recreational opportunity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • A major reduction of an open space important to the community. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

NO YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action to locate within the CEA? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quantity of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quality of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will impact the use, function or enjoyment of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Alteration of present patterns of movement of people and/or goods. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in major traffic problems. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Blasting within 1,500 feet of a hospital, school or other sensitive facility. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Odors will occur routinely (more than one hour per day). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will remove natural barriers that would act as a noise screen. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

NO YES

If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

Instructions (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

Action Description and Project Purpose

Under authority granted to it by section 1100 of the Public Health Law and section 24-302 of the New York City Administrative Code, the New York City Department of Environmental Protection (“DEP”) is amending sections 18-14 through 18-17, 18-23, 18-32, 18-35 through 18-40, 18-42, 18-48, 18-61, and 18-82 of its Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources (“Watershed Regulations”). 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 proposed 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 eleven years.

The proposed 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-0-08-001. 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. Similarly, the proposed amendments incorporate the DEC SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (“MS4s”), Permit No. GP-0-08-002, by making clear that miscellaneous point source discharges now covered by the Watershed Regulations include discharges from MS4s.

Other changes include new regulations for DEP approval of new holding tanks and alterations to existing holding tanks. With respect to subsurface sewage treatment systems, what were formerly referred to as “other” systems would be considered “intermediate” systems under the proposed revisions. These amendments also clarify the regulatory status of sewer systems, consistent with existing State standards.

The proposed revisions also 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 proposes to revise 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.

In addition, the proposed amendments 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.

In accordance with section 1100 of the Public Health Law, DEP will not adopt these amendments until the State Department of Health has approved them.

Environmental Assessment

The environmental review of the Proposed Revisions to the Watershed Regulations evaluates the potential for significant adverse impacts that could occur as a result of the modifications. This assessment utilizes the existing Watershed Regulations, which came into effect on May 1, 1997, as well as current State regulations, to establish the baseline condition relative to the Proposed Watershed Regulations in order to evaluate the environmental effects of the changes.

An increment analysis of the proposed revisions (see Appendix A) was conducted to determine which revisions could result in new regulatory requirements and potential environmental impacts. Based on this increment analysis, the revisions that require further environmental assessment were identified. Regulated activities identified for further review include human excreta and holding tanks, subsurface sewage treatment systems, stormwater management, and phosphorus standards.

Below is an assessment of those revisions requiring further review. This analysis focuses on potential impacts to socioeconomic conditions, water quality, and community character because the proposed changes are only anticipated to have a potential for an impact in these environmental assessment categories.

The discussion is organized by regulated activity. Within each activity, the analysis begins with the increment analysis followed by the evaluation of the potential impacts from the revision.

REGULATION REVISIONS ARE SHOWN AS FOLLOWS: DELETIONS ARE IN BRACKETS AND ADDITIONS ARE UNDERLINED.

HUMAN EXCRETA AND HOLDING TANKS

Regulatory Increment Analysis

§18-35 (b)(2) Holding tanks for sewage, serving industrial, institutional, municipal, commercial, or multifamily residential facilities may be approved on a case by case basis, based on the Department's consideration of, among other things: (i) the intensity of the proposed use of the holding tank; (ii) whether a permanent wastewater treatment and disposal solution, such as a sewer connection, is planned and, if so, the timing of implementation of such a permanent solution; (iii) the potential water quality impacts associated with the proposed holding tank, and (iv) the costs of other potential interim wastewater treatment and disposal options. Such use of holding tanks must be in accordance with the standards set forth in the "Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities," New York State Department of Environmental Conservation (1988) and will be subject to reasonable conditions including, but not limited to, limitations on occupancy of structures served

by the holding tanks, inspections by Department staff, reporting requirements, and expiration and/or renewal dates.

- (3) All holding tanks, which are operating in accordance with any necessary federal, State, or local approvals on March 1, 2009, but which do not comply with the requirements set forth in this section, shall be allowed to operate as noncomplying regulated activities.

Increment:

New regulatory requirements would be imposed by this amendment. Although this amendment incorporates existing State standards, DEC issued those standards as guidance, and has no authority to enforce them unless a SPDES permit is also required for the facility. In general, DEC does not require SPDES permits for holding tanks because there are no discharges associated with holding tanks. The DEC standards indicate an absolute prohibition against holding tanks for “year-round usage on a permanent basis.” Instead of incorporating this prohibition, DEP instead would approve (or deny) the use of holding tanks on a case-by-case basis, based on factors such as those listed.

- (4) Any proposed alteration or modification of any holding tank, including a noncomplying regulated activity, requires the review and approval of the Department. Department review and approval shall not be required for the routine repair and maintenance of holding tanks including, but not limited to, in-kind replacement of equipment.

Increment:

New regulatory requirements would be imposed by this revision, which requires review and approval for alterations or modifications of holding tanks. Currently the alteration or modification of holding tanks does not require Department review or approval.

- (5) An application for review and approval of a holding tank to serve an industrial, institutional, municipal, commercial use, or multi-family residential facility, including an alteration or modification of such a holding tank, shall include the following information:
- (i) Tax map number.
 - (ii) Four (4 sets) of plans showing:
 - (a) site location, including distances to wells, watercourses, wetlands, controlled lakes and reservoirs; and

- (b) site/tank plans including an alarm system, a back-up pump if pumping is required, and appropriate measures to prevent overflow.
- (iii) A report describing the reasons for and duration of the proposed use of the holding the tank.
- (iv) A schedule for the tank to be pumped by an entity licensed by the New York State Department of Environmental Conservation under 6 NYCRR Part 364.

Increment:

New regulatory requirements would be imposed by this explanation of application requirements. Currently no applications are required for such holding tanks.

Socioeconomic Conditions Impact Assessment

The revisions would introduce DEP review and approval authority for alterations or modifications to existing holding tanks and the construction of new tanks serving industrial, institutional, municipal, commercial, or multifamily residential facilities. DEP would evaluate such facilities on a case-by-case basis.

Since there is minimal enforcement of the standards (although certain County Departments of Health inspect holding tanks) and data on existing holding tanks are unavailable, it is assumed for purposes of this evaluation that existing holding tanks are generally not built to DEC standards.

New Holding Tanks

The regulation of new holding tanks for seasonal and year-round use is not anticipated to significantly burden development in the watershed. The regular pump-out costs and construction costs associated with holding tanks for sewage storage are very high. Consequently, it is expected that holding tank use in the watershed is limited and that holding tanks are only utilized for unique land uses that experience sporadic demand such as public recreation facilities. Therefore, wherever possible, septic systems or connection to wastewater treatment plants are utilized to handle and treat sewage. Holding tanks may, at times, be constructed in areas where geologic conditions are not amenable to siting septic systems and therefore septic systems could be costly.

To assess the impact resulting from the proposed amendments, a baseball field with typical weekend use was evaluated. Assuming approximately 500 gallons per day of use (100 uses per day at 5 gallons per person/day) and a 2-day pump out schedule, 1,000 gallons of capacity would be needed. However, under existing conditions, it is assumed that at least 3 days storage, or 1,500 gallons per day would be provided to avoid overflow of tanks should the pump out schedule be delayed or additional unanticipated usage occurs.

Under the proposed Watershed Regulations, it is assumed that with DEP review and approval, compliance with 1998 NYSDEC Design Standards for Wastewater Treatment Works would be required. Under those standards, capacity must be provided to accommodate twice the volume of flow generated between pump-outs. That would mean 4 days of storage for the 2-day pump-out interval. Therefore, the incremental increase required as a result of the proposed Watershed Regulations would be 500 gallons (increase in capacity from 1,500 gallons to 2,000 gallons). The cost of installing holding tanks is approximately \$3 per gallon; therefore incremental costs associated with these provisions would be approximately \$1,500.

In addition, the proposed revisions, since they are introducing DEP review and approval of holding tanks, would introduce new application requirements. It is not anticipated that these new application requirements would result in substantial new administrative costs since much of the material requested would have been prepared in order to properly design and build a holding tank.

Alterations and Modifications

It is anticipated that the socioeconomic impacts associated with alterations or modifications of existing holding tanks would be similar to those for new tanks.

Conclusions

Few holding tanks are known to exist in the watershed and few new tanks are expected to be constructed into the future. Costs associated with DEP review and approval would not substantially affect the installation of these facilities. Therefore, no potential significant displacement or other socioeconomic effects are expected.

Water Quality Impact Assessment

The Proposed Watershed Regulations, which would require that existing and new holding tanks conform to DEC standards and meet certain standards under DEP's review and approval authority, would provide for additional storage and back-up to ensure that sewage from these systems is properly handled. Therefore, no adverse impact to water quality in the watershed is anticipated as a result of the proposed amendments.

SUBSURFACE SEWAGE TREATMENT SYSTEMS

Regulatory Increment Analysis

Definitions

§18-16 (a)(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, or commercial property, or a multi-family residential facility, and receiving sewage without the admixture of industrial wastes or other wastes, as defined in the Environmental Conservation Law section 17-0701.

Increment:

New regulatory requirements may be imposed by this amendment. They are discussed in connection with the specific provisions where the term is used in Section 18-38.

This amendment clarifies the scope of septic systems for which the applicable standards are set forth in 10 NYCRR Appendix 75-A as opposed to in the NYSDEC 1988 Design Standards, consistent with how those standards are applied by the relevant State and local agencies. This revision would be made to close the gap that exists under the current DEP regulations, between individual sewage treatment systems and intermediate sized sewage treatment systems. Under the regulations as they are proposed to be amended, the systems that currently fall into the "other" category would be classified as intermediate systems.

Regulations

§18-38 (a)(7)(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.

Increment:

While this provision is not proposed to be amended, it will effectively impose new regulatory requirements because it will apply to systems formerly categorized as "other" systems which, under the proposed revisions, will now be regulated as intermediate sized sewage treatment systems. Thus, alterations or modifications of such systems will now be required to comply with all current standards applicable to intermediate systems.

§18-38 (a)(9)(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] designed and performed, to the extent possible, in accordance with the design standards set forth in this section, and shall require the prior review and approval of the Department. However, if the Department determines, based upon the application submitted by the owner or operator of the subsurface sewage treatment system, that such system cannot comply with this section, the owner or operator of the

subsurface sewage treatment system shall cooperate with the Department to determine the most suitable location and design for the system on the specific site. The Department may require the owner to agree to a regular schedule for the pump-out of the septic tank or other remedial action, including the use of holding tanks, until the proposed remediation is approved by the Department and implemented [of any failed subsurface sewage treatment system]; and

Increment:

New regulatory requirements would be imposed by this revision. As noted with respect to the previous subparagraph, this clarifies that the requirements pertaining to systems that need remediation apply to all SSTs, not just to NCRAs. In addition, however, the proposed revision would authorize the Department to require a schedule including remedial actions other than regular pump-outs for a failed SST. The proposed revision distinguishes between pump-outs of septic tanks required in connection with septic system remediations and pump-outs of holding tanks.

Socioeconomic Conditions Impact Assessment

Alterations or Modifications

The proposed revisions include reclassifying SSTs that were previously classified as “other” (non-residential systems less than 1,000 gpd) as intermediate systems. This change would result in new requirements for these systems if they are proposed to be altered or expanded since these systems would need to conform to the requirements for intermediate systems. Under the proposed revisions, compliance with the standards for intermediate systems would only be required when these systems are altered or expanded.

The population of “Other” systems is small (the population West of Hudson through 2007 is estimated to be 1,326 (no number is available for East of Hudson)). Since the amended regulations only affect alterations or expansions of SSTs and not other existing facilities it is anticipated that the number of systems affected by the proposed revisions will be very small.

To evaluate the potential socioeconomic impact of this regulatory change, DEP evaluated a prototype that represents a reasonable worst case upgrade of an expansion of a small non-residential SST from 100 gpd to a large SST of 999 gpd (the maximum size not regulated under State SPDES) due to a change in use at an existing facility. This analysis assumes that a business would choose to expand to just below the current limit for an intermediate system. It was assumed, due to the large difference in size, that a new SST would be installed to replace the old system. Below are the assumptions that were included in the analysis along with the cost estimates.

The design for the 999 gpd SST assumed a conservatively slow percolation rate of 60 minutes per inch (mpi), which represents only a small percentage of soils in the watershed. Based on the 1998 DEC Standards, the septic tank was sized to be 150 percent of the daily flow rate.

With these assumptions, the costs for an expansion of this prototypical SSTS under the proposed Watershed Regulations would be approximately \$24,300. This is highly conservative for a number of reasons, and costs would typically be smaller. As discussed above, the scenario analyzed assumed that the existing system had to be entirely replaced. It is likely that some components of existing SSTSs could be utilized for expansions. In addition, the expansion size selected is the highest capacity that could be built without a SPDES permit; if a 1,000 gallon system were to be proposed, the system would be required, under existing State regulations, to comply with DEC Design Standards. In addition, the above scenario assumes that, absent DEP regulations, an owner would not expand their SSTS even with a substantial change in use and/or wastewater flow; however, it is expected that many property owners would in fact do so rather than to risk septic failure and associated health and property damage issues by overloading undersized equipment. Lastly, the analysis assumed a very low percolation rate of 60 mpi, while the average percolation rate in the watershed is between 10 and 30 mpi. It is estimated that an SSTS built utilizing the design assumptions presented above but with a percolation rate of between 10 and 30 mpi would cost between \$10,000 and \$15,000.

In addition to this analysis, DEP has observed, through its experience reviewing and approving SSTSs under the Catskill Watershed Corporation West of Hudson Septic Program for the last 10 years, that the cost of a majority of residential systems (under 1,000 gpd) have fallen within a range of \$10,000 to \$35,000, with an extreme of up to \$50,000 as a result of extremely adverse site conditions.

The cost to meet the intermediate system standards for expansion of an existing "Other" SSTS would fall between \$10,000 and \$35,000. It is likely that much of this cost would be borne by businesses absent DEP requirements because they would choose to expand their septic systems with substantial expanded use.

Due to the small number of systems that would be affected and the costs that would likely be borne by businesses absent DEP requirements, the recategorization of "Other" to intermediate systems is not anticipated to result in potential significant displacement effects or a significant adverse impact on socioeconomic conditions within the Watershed.

Failures of SSTSs

The proposed revisions include revised requirements for interim measures to be implemented until a failed SSTS can be remediated. This revision expands the interim remedial actions DEP can require beyond regular pump-outs of a failed SSTS. These expanded options would not likely result in substantial burden on owners of systems since these measures would be temporary until the permanent solution is put in place.

Therefore, it is not anticipated that these proposed revisions would result in potential significant displacement effects or a significant adverse impact on socioeconomic conditions within the Watershed.

Water Quality Impact Assessment

The proposed revisions for certain alterations and modifications and failing SSTs discussed above would provide for the additional treatment of wastewater. Therefore, no potential significant adverse water quality impacts are expected.

STORMWATER MANAGEMENT

Regulatory Increment Analysis

§18-39 (c)(4)(ii) No portion of a stormwater management practice shall be located within the limiting distance of 100 feet of a wetland, except where necessary to treat stormwater from an impervious surface allowed to be constructed within or immediately adjacent to such wetland.

Increment:

New regulatory requirements may be imposed by this provision. No current law or applicable standard imposes this restriction in precisely this form. Construction of a stormwater management practice within 100 feet of a wetland would, however, generally require a permit, under the New York State Environmental Conservation Law. See 6 NYCRR § 663.4. While this provision would introduce a new regulatory requirement under the DEP regulations, development within 100 feet of a wetland is already regulated by NYSDEC.

Socioeconomic Impact Assessment

While the proposed revisions to prohibit siting stormwater management practices within the limiting distance of 100 feet of a wetland would introduce a new regulatory requirement under DEP regulations, development within 100 feet of a wetland is already regulated by NYSDEC and therefore the additional restrictions are not anticipated to add a substantial burden to development. Within the Watershed, only approximately 3.6 percent of vacant lands are within the limiting distance (11,097 acres out of 312,484 acres). Of the vacant parcels that intersect with the 100 foot buffer, on average approximately 27.4 percent of the parcel is within the buffer. It is expected that the proposed revision would affect very few developments and in these cases there will often be the potential to site stormwater best management practices in the portions of the parcels outside of the limiting distance with little impact on the development size. Therefore, it is not anticipated that these proposed revisions would result in potential significant displacement effects or a significant adverse impact on socioeconomic conditions within the Watershed.

Water Quality Impact Assessment

The proposed revisions would result in further protection of wetland areas by prohibiting certain development activity in the vicinity of wetlands. Therefore, the proposed revision is not

anticipated to result in potential significant adverse impacts to water quality within the watershed.

WATER QUALITY STANDARDS

Regulatory Increment Analysis

Definitions

§18-16 (a)(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 Section [18-48(c)] 18-48(e) of Subchapter D.

Increment:

New regulatory requirements would be imposed by this revision, as discussed below in connection with Section 18-48.

Regulation

§18-48 (a)(2)(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.

Increment:

New regulatory requirements may be imposed in connection with this provision. The lower threshold for the City's seven source water reservoirs means that those reservoirs are more likely to become, or remain, phosphorus restricted. Because of the restrictions on new and expanded wastewater treatment plants in phosphorus restricted basins, this provision could therefore result in increased regulatory requirements in the basins of source water reservoirs. Part or all of the watersheds of each source water reservoir is within the 60-day travel time; in those areas, this

would not be a new restriction because new and expanded wastewater treatment plants are already prohibited within the 60-day travel time.

Socioeconomic Conditions Impact Assessment

The proposed revisions to the Watershed Regulations would decrease the phosphorus concentration limit for designating a source water reservoir basin as phosphorus restricted from 20 micrograms per liter to 15 micrograms per liter.

Under the proposed revisions, in order to determine whether a basin should be designated as “phosphorus-restricted,” DEP measures the phosphorus concentration within reservoirs in each watershed, averaging them together to obtain an annual value. A five-year annual average value is compared to a DEC “guidance value” of 20 micrograms per liter for non-source water reservoirs or 15 micrograms per liter for source water reservoirs. A basin is designated unrestricted if the five-year mean plus standard error is below the guidance value, and designated restricted if it is equal to or greater than the guidance value. In addition, it should be noted that the Department may determine, exercising its best professional judgment, that the phosphorus restricted designation is due to an unusual and unpredictable event unlikely to occur in the future. In that case, the Department may decide not to restrict the basin based solely on the concentration data.

The source water reservoirs include Ashokan, Rondout, West Branch, Cross River, Croton Falls, New Croton, and Kensico Reservoirs. Of these, Croton Falls and New Croton Reservoirs are already phosphorus restricted. Rondout, West Branch Reservoir, and Kensico Reservoirs have concentrations significantly below the 15 µg/L threshold; however, they are within the 60 day travel time and therefore new and expanded surface discharging wastewater treatment plants are already restricted, a requirement that would not change as a result of the revisions.

Ashokan Reservoir had concentrations above the 15 µg/L threshold due to high phosphorus values in 2005 in the West Basin. These elevated concentrations were due to high turbidity levels as a result of DEP’s diverting maximum flows through the Shandaken Tunnel in order to keep Schoharie Reservoir low during the rehabilitation of the Gilboa Dam. Since these values resulted from high turbidity levels in the Shandaken Tunnel diversions and not from wastewater treatment plant discharges or non-point sources within the Ashokan basin, it is anticipated that DEP would exercise best professional judgment and not restrict the Ashokan Reservoir.

Only the Cross River Reservoir has a potential to be newly designated as phosphorus-restricted in the foreseeable future as a result of the proposed revisions. In the 2002-2006 and 2003-2007 assessment periods, its phosphorus concentrations were above the 15 µg/L threshold.

In order to evaluate the socioeconomic effect of designating this reservoir as phosphorus-restricted, the socioeconomic conditions of communities that have been designated as phosphorus-restricted since the promulgation of the Watershed Regulations in 1997 were compared to communities, within the same county, that are not within restricted basins. Table 1 shows the number of housing units in towns with *more than 10 percent* of their land area within

a WWTP-restricted area compared with other towns in each county. Housing unit growth in towns with more than 10 percent of their land area within a WWTP-restricted area was, on average, greater than housing units growth within other towns in the same county.

Table 1: Housing units, 1990, 2000, and 2007

	1990	2000	2007	1990-2000	2000-2007
Dutchess County	97,629	106,103	112,476	8.7%	6.0%
Pawling	2,580	3,101	3,430	20.2%	10.6%
Beekman	3,201	4,207	4,764	31.4%	13.2%
East Fishkill	7,265	8,495	9,190	16.9%	8.2%
Subtotal (in WWTP-restricted towns)	13,046	15,803	17,384	21.1%	10.0%
Rest of Dutchess County	84,583	90,300	95,092	6.8%	5.3%
Westchester County	336,733	349,445	357,433	3.8%	2.3%
Somers	6,240	7,098	8,294	13.8%	16.8%
North Salem	1,799	1,979	2,036	10.0%	2.9%
Yorktown	11,878	12,852	13,127	8.2%	2.1%
Lewisboro	4,313	4,465	4,602	3.5%	3.1%
Bedford	5,987	6,020	6,026	0.6%	0.1%
Pound Ridge	1,814	1,868	1,925	3.0%	3.1%
Cortlandt	14,103	14,065	14,236	-0.3%	1.2%
Mount Kisco	3,965	4,103	4,081	3.5%	-0.5%
New Castle	5,545	5,825	5,874	5.0%	0.8%
North Castle	3,529	3,706	3,972	5.0%	7.2%
Subtotal (in WWTP-restricted towns)	59,173	61,981	64,173	4.7%	3.5%
Rest of Westchester County	277,560	287,464	293,260	3.6%	2.0%
Putnam County	31,898	35,030	36,915	9.8%	5.4%
Kent	5,073	5,353	5,630	5.5%	5.2%
Carmel	10,152	11,283	12,039	11.1%	6.7%
Patterson	3,172	3,746	3,992	18.1%	6.6%
Southeast	5,709	6,412	6,663	12.3%	3.9%
Putnam Valley	3,986	4,253	4,534	6.7%	6.6%
Subtotal (in WWTP-restricted towns)	28,092	31,047	32,858	10.5%	5.8%
Rest of Putnam County	7,792	8,236	8,591	5.7%	4.3%

Restrictions on siting wastewater treatment plants in the watershed under the current Watershed Regulations do not appear to have curtailed real estate development. As of August 2008 a few examples of large developments are underway in these restricted areas.

- In Carmel, the 212 homes are under construction at The Retreat at Carmel and more than 400 housing units are under review.
- The Town of Patterson is currently reviewing the proposal for Patterson Crossing, a complex that would add 372,000 square feet of retail space.
- The Town of North Salem is reviewing several development proposals that include the 126-unit Highgate / Woodlands project and a rezoning application to develop a conference center at Orchard Hill.
- The Stonecrest development in the Town of Southeast was completed in 2005 and added 136 dwelling units.
- The Campus at Fields Corner Subdivision in the Town of Southeast was approved in 2006.

A review of DEP issued permits can also highlight trends in development.

- Between 1997 and 2008, DEP approved an average of 30 Stormwater Pollution Prevention Plans (SPPP) per basin in basins that had always been designated as phosphorus-restricted and 16 SPPP's per basin in basins that had never been phosphorus-restricted.
- Between 1997 and 2008, DEP approved an average of 335 Subsurface Sewage Treatment Systems (SSTS) per basin in basins that had always been designated as phosphorus-restricted and 311 SSTS's per basin in basins that had never been phosphorus-restricted.

Based on an analysis of demographic and other data, there is little evidence that areas designated as phosphorus-restricted (or towns within the 60-day travel time areas with similar WWTP development restrictions) have as a result suffered from slower growth, or been less prosperous than, communities not subject to such restrictions.

In addition, the Cross River watershed towns potentially affected by the new rules already have in place low density zoning and/or plans and policies designed to limit development, or to concentrate it in areas that are not environmentally sensitive (see Table 2). Preserving open space for natural beauty and recreation is a common thread in towns that could be subject to phosphorus restrictions.

Table 2: Land Use Policies in the Cross River Reservoir Watershed

Town	Summary
Bedford	<ul style="list-style-type: none"> • Bedford's 2002 Comprehensive Plan emphasizes the protection of open space and maintenance of low-density housing in the Town.
Lewisboro	<ul style="list-style-type: none"> • Lewisboro's 1985 Master Plan highlights the need to preserve open spaces and to reduce the density of residential development. About 89 percent of the Town's residential land is zoned for rural or low density.
Pound Ridge	<ul style="list-style-type: none"> • Pound Ridge's 1981 Master Plan sought to protect the quality of its surface and sub-surface water supplies. The Town's zoning code defines only three residential zones: three-acre, two-acre, and one-acre per dwelling unit.
North Salem	<ul style="list-style-type: none"> • North Salem's 2006 Comprehensive Plan Update seeks to preserve the town's rural character and preserve open spaces. More than 75 percent of its land area is zoned as low-density residential.

It is also important to note that the communities potentially affected by the proposed revisions might effectively be required under federal and State regulations to comply with the same standards for allowable phosphorus levels. In order to obtain a SPDES permit for surface-discharge wastewater treatment plants in New York State, applicants must demonstrate that the permit is in compliance with any existing total maximum daily loads (TMDLs). For the New York City watershed, the same phosphorus targets were used for the reservoir TMDLs as are proposed for the Watershed Regulations. In light of this requirement, the City's action may in

practice impose no new conditions on development in phosphorus-restricted basins beyond those that would already be required by the State.

As shown in Table 3, there are currently four wastewater treatment plants (WWTP) in the Cross River Reservoir Basin (Lewisboro Elementary School, Meadows at Cross River, Michael Estates, and Waccabac Country Club.) All four of these WWTPs have excess capacity and are unlikely to require expansions in the foreseeable future; therefore, they would not be affected by the restrictions on expansions of WWTPs. The table also documents that very little development in the basin is supported by WWTPs and most development relies on septic systems. Therefore, growth should not be substantially affected by the restrictions on new WWTPs.

Table 3: Waste Water Treatment Plants in the Cross River Reservoir Basin		
	Permitted Flow (MGD)	Average Actual Flow (MGD)
Lewisboro Elementary School	0.01	0.001
Meadows at Cross River	0.059	0.018
Michael Estates	0.06	0.026
Waccabac Country Club	0.008	0.001

And finally, while surface discharging wastewater treatment plants are prohibited within phosphorus-restricted basins, subsurface discharging wastewater treatment plants and subsurface sewage treatment systems are not. So communities would continue to have these alternatives to accommodate wastewater management needs within restricted basins if the need were to arise.

Therefore, given the above, it is not anticipated that the proposed reduction of the phosphorus limit within source water reservoirs would adversely impact socioeconomic conditions within the watershed.

Water Quality Impact Assessment

The proposed Revision to reduce the permitted total phosphorus concentrations in the City’s seven source water reservoirs from 20 micrograms per liter to 15 micrograms per liter would result in greater protection to these reservoirs through restricting the siting and expansion of surface discharge wastewater treatment plants. Therefore, the proposed revision would not result in a potential significant adverse impact to water quality.

Appendix A

Increment Analysis

INCREMENT ANALYSIS:
PROPOSED AMENDMENTS TO THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATERSHED RULES AND REGULATIONS

§ 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.

Increment:

New regulatory requirements would be imposed by this amendment with respect to holding tanks serving facilities other than one and two family residences. The proposed requirements concerning holding tanks for one and two family residences set forth below in Section 18-35(b)(1) are identical to the requirements currently applicable to such holding tanks under 10 NYCRR Appendix 75-A.10(a). The current and proposed requirements concerning holding tanks serving other facilities are discussed below in connection with Section 18-35.

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

Increment:

No new regulatory requirements would be imposed by this correction, which is made throughout the regulations. Where the only proposed amendment is this correction, sections are not included in this analysis.

§ 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.

Increment:

No new regulatory requirements would be imposed by this definition. The terms “absorption area” and “absorption field” are used interchangeably in the existing regulations. An “absorption area” can include structures such as seepage pits. The term is used in the proposed amendment to § 18-38(b)(4) and in proposed § 18-39(c)(4)(i), below.

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

Increment:

No new regulatory requirements would be imposed by this definition. The terms “absorption area” and “absorption field” are used interchangeably in the existing regulations. “Absorption field” refers exclusively to a field containing a network of perforated pipes.

(6) **Agricultural activity** means (i) an activity that occurs on “land used in agricultural production” as that term is defined in Section 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.

Increment:

No new regulatory requirements would be imposed by this amendment. Regulatory restrictions would be somewhat reduced under this amendment because it expands the exemptions for agricultural activities from certain regulatory requirements (see §§ 18-38(a)(1), 18-39(a)(2)(ii), 18-39(b)(1), and 18-44(a)(1)) to include any farm covered by a whole farm plan, whether or not it meets the thresholds defined in Section 301(4) of the New York State Agriculture and Markets Law. The amendment would be made to assist start-up farms, which may not meet the definition in the Agriculture and Markets Law because it requires at least two years of income data.

While this amendment would reduce regulatory requirements, no water quality impacts are expected due to the fact that only farms covered by a whole farm plan would be permitted. Whole farm plans provide protection against the same pollutant sources as the NYCDEP regulations from which agricultural activities are exempt.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. This amendment clarifies that remediations are to be addressed under the regulatory framework of septic system failures and not under regulations for alterations or modifications of properly functioning systems.

(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.

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in the proposed definition of stormwater §§ 18-16(a)(34) and 18-39(c)(5)(i), below.

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

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in the proposed § 18-39(c)(5)(i) & 18-39(c)(6), below.

(49) **Hamlet** means a population center designated as a hamlet by a Town Board in the West of Hudson watershed pursuant to a Water Supply Permit duly issued by the New York State Department of Environmental Conservation [for Project No. 0-9999-00051/00001].

Increment:

No new regulatory requirements would be imposed by this definition. Regulatory restrictions would be somewhat reduced under this amendment because it allows for expansions of the areas that are exempt from the general prohibition against new impervious surfaces within the limiting distances specified in § 18-39(a)(1). However, no potential water quality impacts are expected because an SPPP would be required under the regulations.

(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.

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in the proposed amendments to § 18-35.

(54) **Impervious surface** means an area which is either impervious to water or which substantially prevents the infiltration of water into the soil at that location [resistant to penetration by moisture. Impervious materials include, but are not limited to, paving, concrete, asphalt, roofs, or other hard surfacing materials]. 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.

Increment:

No new regulatory requirements would be imposed by the amendment of this definition, which is consistent with the definition used by the New York State Department of Environmental Conservation (NYSDEC), with the exception that the NYCDEP regulations consider gravel to be a pervious surface while the NYSDEC regulations consider gravel as an impervious surface.

(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 Section 17-0701 [in quantities of less than 1,000 gallons per day].

Increment:

No new regulatory requirements are imposed by this amendment. This clarifies the scope of septic systems for which the applicable standards are set forth in 10 NYCRR Appendix 75-A as opposed to in the NYSDEC 1988 Design Standards, consistent with how those standards are applied by the relevant State and local agencies.

(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.

Increment:

No new regulatory requirements are imposed by this clarification.

(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 section 17-0701.

Increment:

New regulatory requirements may be imposed by this amendment. They are discussed in connection with the specific provisions where the term is used in Section 18-38.

This amendment clarifies the scope of septic systems for which the applicable standards are set forth in 10 NYCRR Appendix 75-A as opposed to in the NYSDEC 1988 Design Standards, consistent with how those standards are applied by the relevant State and local agencies. This revision would be made to close the gap that exists under the current NYCDEP regulations, between individual sewage treatment systems and intermediate sized sewage treatment systems. Under the regulations as they are proposed to be amended, the systems that currently fall into the “other” category would be classified as intermediate systems.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. This provision corrects the definition of microfiltration and is consistent with how the term is currently applied. The term is used in Sections 18-36(d)(2)(ii) and 18-36(e)(2)(ii).

[(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.]

Increment:

No new regulatory requirements will be imposed by the deletion of this term, which is no longer used in the Regulations.

(77) **One-year, twenty-four hour storm** means the storm, with a twenty-four hour duration, that has a 100 percent chance of occurring in any given year, as specified in the most recent Watershed Water Quality Annual Report.

Increment:

No new regulatory requirements would be imposed by this definition, which is consistent with the State-wide definition of the term. The term is used in the proposed § 18-39(c)(3), below.

(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 Section [18-48(c)] 18-48(e) of Subchapter D.

Increment:

New regulatory requirements would be imposed by this amendment, as discussed below in connection with Section 18-48.

(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.

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in the proposed § 18-39(b)(7), below. The current NYCDEP regulations do not distinguish between redevelopment projects and any other construction, so if a redevelopment meets any of the thresholds for requiring an SPPP, it must comply with the regulatory requirements. Under this amendment, the standards for SPPPs for redevelopment projects would be more flexible. This is not expected to result in an adverse water quality impact because SPPPs prepared for redevelopments must provide an improvement in stormwater management and/or water quality as compared with the conditions prior to the redevelopment activity.

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

Increment:

No new regulatory requirements would be imposed by this amendment. No DEP review or approval is required for “routine repairs” or maintenance of a system. This is consistent with how the current NYCDEP regulations have been applied.

(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.

Increment:

New regulatory requirements would be imposed by this provision. Compliance with this provision would require structures with a flow of 2,500 gallons/day or more to obtain DEP’s design review and approval prior to constructing a connection to an existing sewer system pursuant to § 18-37(d). The change in this definition is consistent with DEC’s regulations, 6 NYCRR § 750-1.2(a)(79), but in connection with adopting that definition, DEP will create an approval requirement that does not currently exist under State law. The term is used in Section 18-37. This modification would result in additional approval requirements, but is not expected to add significantly to the total project costs especially given that it would likely affect only larger developments.

(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 and to convey sewage, industrial waste or other wastes to a sewer system.

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in § 18-37.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. Including sewer extensions as parts of sewer systems is a clarification consistent with how the current NYCDEP regulations have been applied.

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

Increment:

New regulatory requirements would be imposed by this amendment, as discussed below in connection with Section 18-48.

(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.

Increment:

No new regulatory requirements would be imposed by this definition. This term is used in the proposed § 18-39(c)(2), below.

(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.

Increment:

No new regulatory requirements would be imposed by this definition. This term is used in the proposed §§ 18-39(c)(4)(i), 18-39(c)(5)(ii), and 18-39(c)(6) below.

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

Increment:

No new regulatory requirements would be imposed by this definition. This term is used in the proposed § 18-39(c), below, as well as in the definitions of “stormwater conveyance measure” and “stormwater retrofit.”

(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.

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in proposed amendments to § 18-39(b)(3) and § 18-39(b)(7), below. The current NYCDEP regulations do not distinguish between stormwater retrofits and any other construction, so if a retrofit meets any of the thresholds for requiring an SPPP, it must comply with the regulatory requirements. Under this amendment, the standards for SPPPs for retrofits would be more flexible. This is not expected to result in an adverse water quality impact because SPPPs prepared for retrofits must provide an improvement in stormwater management and/or water quality as compared with the conditions prior to the retrofit.

(125) **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 a Water Supply Permit duly issued by the New York State Department of Environmental Conservation [for Project No. 0-9999-00051/00001].

Increment:

No new regulatory requirements would be imposed by this definition. Regulatory restrictions would be somewhat reduced under this amendment because it allows for expansions of the areas that are exempt from the general prohibition against new impervious surfaces within the limiting distances specified in § 18-39(a)(1). However, no potential water quality impacts are expected because an SPPP would be required under the regulations.

(126) **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.

Increment:

No new regulatory requirements will be imposed by this renumbering and clarification. It would clarify the difference between subsurface discharging wastewater treatment plants and septic systems.

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

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

where:

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

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

Increment:

New regulatory requirements will be imposed by this provision. This term is used in (and the increment addressed in conjunction with) Section 18-39(c)(3).

(131) **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.

Increment:

No new regulatory requirements would be imposed by this definition. The term is used in the proposed amended definition of “agricultural activity,” in § 18-16(a)(4), above.

(132) **Watershed Water Quality Annual Report** means the report prepared annually by the Department in accordance with Section 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 Section 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.

Increment:

No new regulatory requirements would be imposed by this definition.

§ 18-17 **References.**

[(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.]

Increment:

No new regulatory requirements would be imposed by this deletion, as discussed below in connection with Section 18-38(a)(7).

(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.

Increment:

No new regulatory requirements would be imposed by this amendment.

(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) New York State Environmental Conservation SPDES General Permit for Storm Water Discharges from Construction Activities, Permit No. [GP-93-06] GP-0-08-001, Dated [July 14, 1993] May 1, 2008, New York State Department of Environmental Conservation, [50 Wolf Road] 625 Broadway, Albany, New York 12233.

Increment:

New regulatory requirements would be imposed by this amendment, as discussed below in connection with proposed changes to Section 18-39(b) below.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment.

(16) New York State Environmental Conservation SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-0-08-002, Dated May 1, 2008, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

Increment:

No new regulatory requirements would be imposed by this reference, as discussed in connection with the proposed changes to Section 18-40(a), below.

§ 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.

Increment:

No new regulatory requirements would be imposed by this amendment. This clarifies that because the Department's evaluation is not generally made by a licensed surveyor, the surveyor's map is annotated, not amended.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. This clarifies that because the Department's evaluation is not generally made by a licensed surveyor, the surveyor's map is annotated, not amended.

(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 for the design professional(s), if any, involved in preparing the application.

Increment:

No new regulatory requirements would be imposed by this amendment. This information is currently required on the application forms.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. The suspension of the review period from the time the Department requests a revision until such revisions are received has generally been accomplished through written agreements between the applicant and the Department, but this amendment would simplify the process.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. The suspension of the review period from the time the Department requests a revision until such revisions are received has generally been accomplished through written agreements between the applicant and the Department, but this amendment would simplify the process.

§ 18-32 Hazardous Substances and Hazardous Wastes

[(e) Reference is made to the Hazardous Waste Standards set forth in Appendix A8-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.]

Increment:

No new regulatory requirements would be imposed by this deletion. DEP is no longer seeking new State standards regarding hazardous substances in the Watershed.

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

- (b) Holding tanks
 - (1) Where holding tanks for sewage, serving year-round one and two family residential properties, are allowed under applicable State laws and regulations, such holding tanks shall comply with the requirements of 10 NYCRR Appendix 75-A.

Increment:

No new regulatory requirements would be imposed by this amendment, which is consistent with applicable State regulations for holding tanks for residences.

- (2) Holding tanks for sewage, serving industrial, institutional, municipal, commercial, or multifamily residential facilities may be approved on a case by case basis, based on the Department's consideration of, among other things: (i) the intensity of the proposed use of the holding tank; (ii) whether a permanent wastewater treatment and disposal solution, such as a sewer connection, is planned and, if so, the timing of implementation of such a permanent solution; (iii) the potential water quality impacts associated with the proposed holding tank, and (iv) the costs of other potential interim wastewater treatment and disposal options. Such use of holding tanks must be in accordance with the standards set

forth in the “Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities,” New York State Department of Environmental Conservation (1988) and will be subject to reasonable conditions including, but not limited to, limitations on occupancy of structures served by the holding tanks, inspections by Department staff, reporting requirements, and expiration and/or renewal dates.

Increment:

New regulatory requirements would be imposed by this amendment. Although this amendment incorporates existing State standards, DEC issued those standards as guidance, and has no authority to enforce them unless a SPDES permit is also required for the facility. In general, DEC does not require SPDES permits for holding tanks because there are no discharges associated with holding tanks. The DEC standards indicate an absolute prohibition against holding tanks for “year-round usage on a permanent basis.” Instead of incorporating this prohibition, DEP instead would approve (or deny) the use of holding tanks on a case-by-case basis, based on factors such as those listed.

(3) All holding tanks, which are operating in accordance with any necessary federal, State, or local approvals on March 1, 2009, but which do not comply with the requirements set forth in this section, shall be allowed to operate as noncomplying regulated activities.

Increment:

No new regulatory requirements will be imposed by this amendment, which exempts holding tanks existing on the date that these proposed amendments become effective from the new requirements for holding tanks.

(4) Any proposed alteration or modification of any holding tank, including a noncomplying regulated activity, requires the review and approval of the Department. Department review and approval shall not be required for the routine repair and maintenance of holding tanks including, but not limited to, in-kind replacement of equipment.

Increment:

New regulatory requirements would be imposed by this amendment, which requires review and approval for alterations or modifications of holding tanks. Currently the alteration or modification of holding tanks does not require Department review or approval.

(5) An application for review and approval of a holding tank to serve an industrial, institutional, municipal, commercial use, or multi-family residential facility, including an alteration or modification of such a holding tank, shall include the following information:

(i) Tax map number.

- (ii) Four (4 sets) of plans showing:
 - (a) site location, including distances to wells, watercourses, wetlands, controlled lakes and reservoirs; and
 - (b) site/tank plans including an alarm system, a back-up pump if pumping is required, and appropriate measures to prevent overflow.
- (iii) A report describing the reasons for and duration of the proposed use of the holding the tank.
- (iv) A schedule for the tank to be pumped by an entity licensed by the New York State Department of Environmental Conservation under 6 NYCRR Part 364.

Increment:

New regulatory requirements would be imposed by this explanation of application requirements. Currently no applications are required for such holding tanks.

- (6) Any approval of a holding tank issued by the Department shall expire and thereafter be null and void unless construction is commenced within two (2) years of the date of issuance. Following expiration of the approval, the plans for the holding tank may be resubmitted to the Department for consideration for a new approval.

Increment:

New regulatory requirements would be imposed by this provision. Currently no approvals are required, and thus approvals do not expire, for such holding tanks.

- (c) 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.

Increment:

No new regulatory requirements would be imposed by this clarification.

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

Increment:

No new regulatory requirements would be imposed by this deletion. DEP has determined that there is no need for the City to regulate transportable sewage receptacles, which are already regulated by the State.

§ 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, or alteration or modification of a wastewater treatment plant is completed.

Increment:

No new regulatory requirements would be imposed by this amendment. Under NYSDEC Design Standards and the current NYCDEP regulations, operating manuals are required. Department approval of operation and maintenance manuals has always been required for WWTPs in the Watershed. This amendment would change the time by which the manuals must be submitted from the current requirement of at the time of application from § 18-36(g) to within 90 days after construction. This timing requirement is more practical, because operation manuals are prepared based on information provided by manufacturers and supplier that is not available when applications are submitted.

(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.

Increment:

No new regulatory requirements would be imposed by this clarification.

(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.

Increment:

No new regulatory requirements would be imposed by this updated reference.

(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 Section 18-82(e). A variance from this provision may be sought in accordance with the requirements set forth in section 18-61(e);

Increment:

This change allows new or expanded WWTPs within the 60 day travel time limit, if a variance is granted in accordance with the provisions of Section 18-61(e). It is not anticipated that the proposed modification would result in water quality impacts, since the variance provisions of Section 18-61(e) specifically require strict measures to avoid impacts from the introduction of WWTPs, the WWTPs would only be permitted in order to correct existing water quality problems, and it is anticipated that the construction of new WWTPs in these areas would be very infrequent. The reference to Section 18-82(e) does not change the regulatory requirements associated with this provision but, rather, acknowledges that since 1997, Section 18-82(e) has allowed for new or expanded wastewater treatment plants in the 60 day travel time under limited circumstances in which, among other things, a Croton Plan has resulted in diversion of existing surface discharges out of the watershed.

- (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;

Increment:

No new regulatory requirements would be imposed by this amendment. This amendment will provide additional flexibility in the design of wastewater treatment plants, particularly in situations where a single treatment technology performs multiple functions. It recognizes that unconventional systems exist where a sand filter following other treatment would actually impair rather than improve water quality. For example, wastewater that passes through certain membrane filters will have a higher quality if it does not pass through a sand filter afterwards.

- (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.

Increment:

No new regulatory requirements would be imposed by this amendment. As noted above, this amendment will provide additional flexibility in the design of wastewater treatment plants, particularly in situations where a single treatment technology performs multiple functions.

(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;

Increment:

No new regulatory requirements would be imposed by this amendment. As noted above, this amendment will provide additional flexibility in the design of wastewater treatment plants, particularly in situations where a single treatment technology performs multiple functions.

- (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.

Increment:

No new regulatory requirements would be imposed by this amendment. As noted above, this amendment will provide additional flexibility in the design of wastewater treatment plants, particularly in situations where a single treatment technology performs multiple functions.

(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).

Increment:

No new regulatory requirements would be imposed by this updated reference.

(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] unless inflow or infiltration into, or exfiltration from, a [sewerage] sewer system connected to such wastewater treatment plant [which causes either:] has been eliminated to the extent practicable.

- (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 system connected to such wastewater treatment plant.]

Increment:

No new regulatory requirements would be imposed by this amendment. This amendment establishes the same standard for infiltration and exfiltration, recognizing that they are caused by the same underlying conditions and avoided or remediated by the same type of measures addressing exfiltration, which was previously addressed in paragraph 4, and now in paragraph 3, which addresses inflow/infiltration. There is little practical effect of these modifications from a cost or water quality perspective.

(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;

Increment:

No new regulatory requirements would be imposed by this amendment. This allows for increased flexibility in DEP’s review of the design of WWTPs so that either sand filters or alternative technology can used, as long as the redundancy requirement of the existing rule is met, i.e. there must be enough units, of sufficient size, so that the full plant flow could be treated even if the largest unit were to go offline.

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

Increment:

No new regulatory requirements would be imposed by these clarifications.

- (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.

Increment:

No new regulatory requirements would be imposed by these amendments. See discussion above in connection with the proposed amendments to Section 18-36(a)(4).

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

(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.

Increment:

No new regulatory requirements would be imposed by these clarifications, since SPDES permit violations are not allowed under State law.

(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 [the] such notice to the Department.

Increment:

No new regulatory requirements would be imposed by the correction of these terms.

(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.

Increment:

New regulatory requirements would be imposed by these amendments, in that the connection of a single user generating more than 2,500 gpd would now require Department approval (rather than just Department review, under Section 18-37(d)) because such a connection meets the State (and the Department's proposed) definition for a sewer extension. (Department approval for sewer extensions involving multiple connections is required under the existing regulations because they constitute alterations or modifications of sewer systems.) This modification for additional approval requirements is not expected to add significantly to the total project costs, especially given that it would affect only larger developments.

(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.

Increment:

No new regulatory requirements would be imposed by the correction of these terms.

(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.

Increment:

New regulatory requirements would be imposed by this amendment, which establishes a five-year expiration provision for Department approvals. There is no current expiration for these approvals, unlike for all other Department approvals granted under these regulations. This provision is not expected to add significantly to project costs.

(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:

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

Increment:

No new regulatory requirements will be imposed by this updated reference.

(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:], or exfiltration to the extent practicable.

- (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.]

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

Increment:

No new regulatory requirements would be imposed by these amendments. This amendment establishes the same standard for infiltration and exfiltration, recognizing that they are caused by the same underlying conditions and avoided or remediated by the same type of measures addressing exfiltration previously required in paragraph 4, and now in paragraph 3, which addresses inflow/infiltration. There is little practical effect of these modifications from a cost or water quality perspective.

(i) 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.

Increment:

No new regulatory requirements would be imposed by this amendment. In practice, under the current NYCDEP regulations, the Department will not consider an application complete without these components. This amendment, however, clarifies what the Department expects to receive in an application.

§ 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.]

Increment:

No new regulatory requirements would be imposed by this deletion. Under the proposed change to the definition of “intermediate sized sewage treatment system,” there would be no category of SSTs that did not fall under paragraphs (2), and (3) of this subdivision, because all systems that do not meet the definition of “individual” would be considered “intermediate.” The requirements that are proposed to be deleted are the same as the requirements for intermediate systems, and thus would still apply to new systems that would be considered “other” systems under the current NYCDEP regulations.

(4) 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.

Increment:

No new regulatory requirements would be imposed by this amendment. These requirements already applied to all types of new SSTs, whether they were considered “individual,” “intermediate,” or part of the third category of systems.

(7) Any proposed alteration or modification of any subsurface sewage treatment system, including a noncomplying regulated activity, requires the review and approval of the Department[, 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] which 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 which cannot meet these requirements, due to site constraints, shall be performed in accordance with these requirements to the extent possible, and 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.

Increment:

No new regulatory requirements would be imposed by this amendment.

The current NYCDEP regulations establish an explicit standard only for systems within limiting distances (and that standard is related to a version of the uniform fire and building code which has been superseded since 1997). Since DEP review and approval was required for alterations and modifications to any system, however, the standard DEP has applied (where not otherwise specified) is full compliance with the standards for new systems.

This amendment clarifies that any alteration or modification of an existing individual SSTS must be performed in compliance with the standards for new SSTSs, but allows alterations or modifications “to the extent possible” where site conditions won’t allow full compliance, so long as the applicant provides mitigation. This is somewhat more flexible than the Department’s current practice in that the Department currently requires a variance, subject to the hardship and minimum variance criteria as well as mitigation, if current standards cannot be met. It is not anticipated that this modification would result in water quality impacts because the provision specifically requires the applicant to demonstrate measures to mitigate any potential impact to water quality.

Because those systems that are considered “other” systems under the current NYCDEP regulations are treated under the proposed amendments as intermediate sized systems, the standard applicable to alterations or modifications for such systems would be governed by the provision that has been renumbered Section 18-38(a)(7)(iii) (which requires full compliance with the standards for new systems). Thus, alterations or modifications of such systems will now be required to comply with all current standards applicable to intermediate systems.

- (ii) Any proposed alteration or modification of any new individual sewage treatment system shall be performed in accordance with the requirements applicable to new subsurface sewage treatment systems under this section.

Increment:

No new regulatory requirements are associated with this change. If an individual sewage treatment system was approved after May 1, 1997, any alteration or modification must conform to current standards. This provision does not apply to systems that existed as of May 1, 1997 and were subsequently repaired, altered, or modified.

- (iii) Any proposed alteration or modification of any intermediate sized a subsurface sewage treatment system is prohibited unless such

alteration or modification complies with the requirements of this section.

Increment:

While this provision is not proposed to be amended, it will effectively impose new regulatory requirements because it will apply to systems formerly categorized as “other” systems which, under the proposed amendments, will now be regulated as intermediate sized sewage treatment systems. Thus, alterations or modifications of such systems will now be required to comply with all current standards applicable to intermediate systems.

(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;

Increment:

No new regulatory requirements would be imposed by this amendment. The current reference in this provision is to “such existing” SSTS – that is, to NCRAs. While this provision does not currently refer explicitly to the requirements applicable to new SSTSs, new SSTSs are subject to comparable requirements under Section 18-38(a)(1). This amendment clarifies that the requirements applicable to NCRA SSTSs that fail or need remediation apply to all SSTSs that fail or need remediation.

- (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] designed and performed, 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, until the proposed remediation is approved by the Department and implemented; and

Increment:

New regulatory requirements would be imposed by this revision. As noted with respect to the previous subparagraph, this clarifies that the requirements pertaining to systems that need remediation apply to all SSTs, not just to NCRAs. In addition, however, the proposed amendment would authorize the Department to require a schedule including remedial actions other than regular pump-outs for a failed SST. The proposed amendment distinguishes between pump-outs of septic tanks required in connection with septic system remediations and pump-outs of holding tanks.

- (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.

Increment:

No new regulatory requirements would be imposed by this amendment, which clarifies that the replacement of a tank is routine maintenance.

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

Increment:

No new regulatory requirements would be imposed by this amendment. Seepage pits meet the definition of galley systems, and therefore are prohibited under the current NYCDEP regulations. The proposed revisions also correct the designations of evaporation-transpiration and evaporation-transpiration absorption systems to conform with current terminology. Finally, the proposed revisions reduce the regulatory restrictions for intermediate sized sewage treatment systems, which would be allowed to use sand filters. The removal of the prohibition for the use of sand filters for intermediate sized sewage treatment systems is not anticipated to result in an adverse water quality impact since sand filters provide additional treatment beyond what was allowed under the current NYCDEP regulations.

(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.

Increment:

No new regulatory requirements would be imposed by these corrections.

(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.

Increment:

No new regulatory requirements would be imposed by these clarifications.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. The restrictions would be somewhat reduced, in that an alarm and backup storage capacity would be required only for SSTs with electrical pump systems, not for purely mechanical systems, as required under the current NYCDEP regulations. Mechanical systems do not need alarms and back-up storage because they would not fail during a power outage, like an electrical pump system would.

(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;

Increment:

No new regulatory requirements would be imposed by these revisions. Requiring that site plans show two-foot contours is consistent with Appendix 75-A, Figure 1, and the Department's current practice.

(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:

Increment:

New regulatory requirements would be imposed by these revisions. Currently, an application for an “other” SSTS would not require this additional information.

§ 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 or construction of an impervious surface for a driveway serving such a 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 a residence constructed or having obtained all discretionary approvals necessary for construction prior to March 1, 2009;

Increment:

No new regulatory requirements will be imposed by these amendments (which include dividing what had been subparagraph 18-39(a)(2)(i) into three subparagraphs). Regulatory requirements would be somewhat relaxed by this amendment, because creation of new impervious surfaces within the limiting distances for driveways serving existing residences are restricted under current NYCDEP regulations. The proposed modification of the regulations is not anticipated to result in a water quality impact because only a minimal increase in impervious surface would occur.

- (vi) 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;

Increment:

No new regulatory requirements will be imposed by this amendment. Regulatory requirements would be somewhat relaxed by this amendment, because under the current NYCDEP regulations, new wastewater treatment plants are not exempt from the general

prohibition in § 18-39(a)(1) against the construction of an impervious surface within the limiting distances. WWTPs are water dependent uses, and requiring them to be constructed outside the limiting distance leads to more overall disturbance because the effluent must be piped to the receiving water. The creation of new impervious surface as a result of constructing new WWTPs is not anticipated to result in a negative water quality impact because new WWTPs would require a SPPP, and the siting of new WWTPs is infrequent.

(a)(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:

- (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.

Increment:

No new regulatory requirements would be imposed by these revisions. These amendments would clarify the scope of this exemption from the general prohibition against new impervious surfaces within the limiting distances, in accordance with the Department's current practice. Exempting these additional uses would not result in a water quality impact because they would be required to implement SPPPs.

- (5) The following requirements are applicable to construction of a new individual residence and of impervious surfaces for driveways serving new individual residences:

Increment:

No new regulatory requirements would be imposed by these amendments. These revisions reflect a non-substantive reorganization of certain sections of these Rules and Regulations so that the provisions concerning driveways are included with the provisions concerning the new individual residences they serve, rather than with the provisions concerning roads. See also § 18-39(a)(6), below.

- (i) Whether or not a new individual residence will be located in a subdivision, construction of a new individual residence or of an impervious surface for a driveway to serve such a residence within

the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake is prohibited;

- (ii) Construction of a new individual residence [in a subdivision] within the limiting distance of 100 feet of a watercourse or wetland, or 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 to serve such a residence. is prohibited in a subdivision where:

Increment:

No new regulatory requirements would be imposed by these amendments. These revisions reflect a non-substantive reorganization of certain sections of these Rules and Regulations so that the provisions concerning driveways are included with the provisions concerning the individual residences they serve, rather than with the provisions concerning roads.

- (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 to serve a new individual residence not in a subdivision, or in a subdivision approved before October 16, 1995 and not prohibited by clause (b) of subparagraph (ii) of paragraph (5) of subdivision (a) of this section, 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.

Increment:

No new regulatory requirements would be imposed by this amendment. Under the corresponding language in the current Section 18-39(e)(1)(iii), driveways within the limiting distances may be paved only if the residences they serve are within the limiting distances (in which case an individual residential stormwater permit is required for both the residence and the driveway). The existing regulations thus create an incentive on certain lots to construct residences within the limiting distances so that the driveways can be paved. This amendment, along with the proposed elimination of the current § 18-39(a)(6)(iv), would eliminate that incentive, allowing the construction of residences and the paving of driveways to be evaluated separately to determine first whether the impervious surface is allowed and second the need for an individual residential stormwater permit. The amended provisions are less restrictive than current requirements

in that paved driveways serving new residences can always be built in the limiting distances, subject to individual residential stormwater permits. In addition, like the previous two proposed changes, it reflects a non-substantive reorganization of the provisions dealing with driveways.

The proposed modification is not anticipated to result in a water quality impact because such driveways result in only a very small amount of impervious surface being created. In addition, a SPPP would be required.

- (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.

Increment:

No new regulatory requirements would be imposed by these amendments. These revisions reflect a non-substantive reorganization of certain sections of these Rules and Regulations so that the provisions concerning driveways are included with the provisions concerning the individual residences they serve, rather than with the provisions concerning roads. See also § 18-39(a)(5), above.

- [(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.]

Increment:

No new regulatory requirements would be imposed by this deletion, which reflects a non-substantive reorganization of certain sections of these Rules and Regulations so that the provisions concerning driveways are included with the provisions concerning the individual residences they serve, rather than with the provisions concerning roads. This change also eliminates an incentive created under the current NYCDEP regulations to

locate new residences within the limiting distances so that the driveways serving them can be paved. See also § 18-39(a)(5), above.

(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 General Permit No. [GP-93-06] GP-0-08-001 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 subsection (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:

Increment:

No new regulatory requirements would be imposed by these revisions. Under the current NYCDEP regulations, an SPPP for any project meeting the thresholds for Department review and approval pursuant to this section must be designed and implemented in accordance with the technical standards incorporated into the New York State Department of Environmental Conservation's ("NYSDEC's") General Permit GP-93-06, which NYSDEC subsequently replaced with GP-02-01, and now with GP-0-08-001. Under the proposed revisions, the Department will now also use GP-0-08-001 as the basis for SPPPs, with some additional requirements described below in connection with certain portions of § 18-39(c). This provision, along with the revisions to § 18-39(c) below, represents a shift in the overall approach to the design requirements of stormwater pollution prevention plans ("SPPPs") so that state and DEP regulation schemes are more similar. In particular, under GP-93-06 and the 1997 Rules and Regulations, SPPPs were designed based on specified pollutant removal assumptions and targets. Under GP-0-08-001 and these proposed revisions, SPPPs are to be designed based upon volumes of stormwater that must be treated and design standards for stormwater management practices to ensure appropriate treatment for such volumes.

Currently, for projects requiring SPPPs under the Rules and Regulations as well as under NYSDEC's GP-0-08-001, SPPPs must be designed to accommodate both approaches. These revisions will thus, among other things, relieve the significant regulatory burden currently (since January 2003) facing developers in the Watershed associated with designing SPPPs to achieve disparate goals.

In addition to the specified regulatory requirements proposed to supplement the requirements of GP-0-08-001, which are addressed individually in connection with certain subsections of § 18-39(c), we note the following:

(1) The modifications do not result in adverse water quality or socioeconomic impacts because GP-0-08-001 is currently a requirement of the

State and any changes from GP-93-06 that could have resulted in adverse water quality impacts have been incorporated into these proposed regulations.

(2) No change in the scope of the Department's regulatory authority is proposed. That is, the new projects that will require SPPPs that have been reviewed and approved by the Department under the proposed revisions are precisely those projects requiring Department review and approval of SPPPs under the 1997 Regulations.

(3) No new regulatory requirements would be imposed as a result of applying GP-0-08-001 as it applies to construction activities identified in Table 2 of Appendix B." While some projects requiring SPPPs under the current NYCDEP regulations do not meet any of those conditions and would therefore be exempt from certain requirements under NYSDEC's General Permit alone, those requirements – erosion and sediment controls and long-term monitoring and maintenance – are currently required for such projects in the Watershed under the current NYCDEP regulations.

(4) No new regulatory requirements would be imposed in connection with redevelopment and retrofit projects. See discussion in connection with § 18-39(b)(7), below.

(5) No new regulatory requirements would be imposed by the provision noting that "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." This refers to a provision in the New York State Stormwater Management Design Manual that exempts projects discharging to fourth order streams from stream channel protection volume requirements. Design Manual, Section 4.3. The Department does not currently allow exemptions from such requirements under the 1997 Rules and Regulations.

- (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-0-08-001;

Increment:

No new regulatory requirements would be imposed by this updated reference. The relevant language in General Permit No. GP-0-08-001 is similar to the corresponding language in General Permit GP-93-06.

- (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;

Increment:

New regulatory requirements might be imposed by this amendment. The amendment would clarify the types of projects that require Department approval because they involve creation of over 40,000 square feet of impervious surface, in accordance with the Department's current practice. In the unlikely event that a new institutional project resulted in 40,000 square feet of impervious surface but did not trigger any of the other thresholds for requiring a Department-approved SPPP, the requirement for DEP approval for such a project would be a new requirement. Such a project would require an SPPP under State law, however, because it would necessarily involve disturbance of at least one acre of soil. This modification would result in additional approval requirements, but it is not expected to add significantly to total project costs especially given that it would affect larger developments over 40,000 square feet. In addition the Department would pay for incremental costs West of Hudson.

- (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

Increment:

No new regulatory requirements would be imposed by these revisions. This amendment makes this provision conform with the clarification proposed in § 18-39(a)(4)(iv), above, of the scope of the corresponding exemption from the general prohibition against new impervious surfaces within the limiting distances.

- (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 subsection (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.

Increment:

No new regulatory requirements would be imposed by this amendment. The new language requires review and approval of an amended stormwater pollution prevention plan under circumstances in which such review and approval would have been required under General Permit GP-93-06 (and therefore under the current NYCDEP regulations).

(7) Where an activity that requires a stormwater pollution prevention plan pursuant to subsection (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-0-08-001 that are applicable to construction activities identified in Table 2 of Appendix B;
- (ii) to the extent possible, be prepared and implemented 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 quality as compared with conditions prior to the activity.

Increment:

No new regulatory requirements would be imposed by this provision. Under the 1997 Rules and Regulations, if a project that requires Department review and approval of an SPPP is a redevelopment project or stormwater retrofit, the SPPP must meet the requirements applicable to all SPPPs. This provision recognizes the special nature of redevelopment projects and stormwater retrofits and, in particular, the limitations that may inhere at a developed site, and allows for compliance with the applicable standards “to the extent possible,” provided that the SPPP provides an overall improvement in stormwater quality, and therefore there would be a beneficial water quality impact.

(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.]

Increment:

No new regulatory requirements would be imposed by this deletion. The current provision is based on the concept that post-development pollutant loadings must be less than pre-development pollutant loadings. The elimination of this provision is consistent

with the approach reflected throughout the proposed amendments to Section 18-39 and in GP-0-008-01. Furthermore, it is not anticipated that the removal of the requirement for analysis of phosphorus runoff would result in a water quality impact as SPPPs in phosphorus limited reservoir basins in the New York City Watershed will be required to meet the enhanced phosphorus removal standards established in Chapter 10 of the New York State Stormwater Design Manual. Chapter 10 states that “Enhanced phosphorus treatment specifically refers to a measurable, significant improvement in phosphorus treatment performance over the design methodology used for standard practices.”

[(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.]

Increment:-

No new regulatory requirements would be imposed by this deletion. The current provision is based on the concept that post-development pollutant loadings must be less than pre-development pollutant loadings. The elimination of this provision is consistent with the approach reflected throughout the proposed amendments to Section 18-39 and in GP-0-08-001. It is not anticipated that the removal of the requirement for the analysis of coliform runoff would result in a water quality impact because reservoirs would still need to meet the stringent coliform standards set forth in Section 18-48.

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

Increment:-

No new regulatory requirements would be imposed by this deletion. Regulatory requirements would be somewhat reduced, no longer requiring plans to include an analysis of the 25 year storm. It is not anticipated that removal of this requirement would result in a water quality impact as the 25-year storm is typically associated with the sizing of stormwater conveyance measures and not with the treatment of stormwater runoff.

(2) Stormwater Conveyance Measures. Stormwater pollution prevention plans prepared pursuant to this section shall be designed to preserve natural drainage systems, including perennial and intermittent streams, in an open condition, and to use open conveyances, such as swales and drainage ditches, 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.

Increment:

No new regulatory requirements would be imposed by these provisions. These requirements were included in Appendix D of GP-93-06 and are therefore existing requirements under current NYCDEP regulations.

- (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_v). 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.

Increment:

New regulatory requirements may be imposed by this provision. As noted above, with these amendments, the pollutant loading analysis at the core of the requirements for SPPPs under the 1997 Rules and Regulations would be replaced by the Water Quality Volume scheme underlying GP-0-08-001. This amendment requires treatment of the greater of the 1-year, 24-hour storm, or the Water Quality Volume. This is a new regulatory requirement in the West of Hudson watershed because GP-0-08-001 generally requires treatment of the Water Quality Volume, which for most sites is less than the 1-year, 24-hour storm. In the East of Hudson Watershed, however, where GP-0-08-001 requires the Enhanced Phosphorus Removal Standards, the treatment volume is the 1-year, 24-hour storm and therefore no incremental costs are expected East of Hudson. Incremental costs West of Hudson would be paid by the City and therefore there would be no significant costs associated with this regulatory requirement.

- (4) Siting Restrictions.
 - (i) Where a stormwater pollution prevention plan prepared pursuant to this section includes a stormwater infiltration practice, to the 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.

Increment:

No new regulatory requirements may be imposed by this provision. These requirements were included in Appendix D of GP-93-06 and are therefore existing requirements under current NYCDEP regulations.

- (ii) No portion of a stormwater management practice shall be located within the limiting distance of 100 feet of a wetland, except where necessary to treat stormwater from an impervious surface allowed to be constructed within or immediately adjacent to such wetland.

Increment:

New regulatory requirements may be imposed by this provision. No current law or applicable standard imposes this restriction in precisely this form. Construction of a stormwater management practice within 100 feet of a wetland would, however, generally require a permit, under the New York State Environmental Conservation Law. See 6 NYCRR § 663.4. While this provision would introduce a new regulatory requirement under the NYCDEP regulations, development within 100 feet of a wetland is already regulated by NYSDEC.

(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.

Increment:

No new regulatory requirements would be imposed by this provision. Under the 1997 Rules and Regulations, which incorporate the technical standards of GP-93-06, applicants must design SPPPs to meet these criteria.

- (ii) To minimize loss of annual recharge to groundwater by maximizing the use of stormwater infiltration practices where suitable soil conditions exist.

Increment:

No new regulatory requirement would be imposed by this amendment. Under the 1997 Rules and Regulations, which incorporate the technical standards of GP-93-06, SPPPs must be designed to incorporate infiltration practices where possible.

(6) If an activity requiring a stormwater pollution prevention plan will result in impervious surfaces covering twenty percent (20%) or more of any given drainage area, 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 if the stormwater management practice provided is a stormwater infiltration practice, only one stormwater management practice is required.

Increment:

New regulatory requirements would be imposed by this provision. If more than 20% of a drainage area is impervious, either an infiltration practice or two different types of stormwater management practices must be included in the SPPP. GP-0-08-001 requires

only a single stormwater management practice, regardless of the percent imperviousness of the drainage area. The current NYCDEP regulations incorporate the technical standards of GP-93-06, and SPPPs must be designed to meet specified pollutant removal goals. Under the current NYCDEP regulations, two or more stormwater management practices in series are typically required to achieve these goals, but the current NYCDEP regulations do not require that the practices be of different types. The requirement of different types of practices is not, however, likely to result in a significant increase in costs, since the costs of the two least expensive practices – ponds, wetlands, and open channel systems – are similar.

Moreover, under GP-0-08-001, filtering practices may be used as primary practices, which were not allowed as primary practices under GP-93-06 and therefore are not considered primary practices under the current NYCDEP regulations. This change will allow the use of a filter practice, which can be placed under pavement, as one of the two required practices on a site triggering this requirement. Overall, this flexibility will allow more intensive development of many sites, with less total land area being allocated for stormwater treatment practices than under the current NYCDEP regulations.

To the extent there are any incremental costs associated with this requirement, they will be paid for by the City in the West of Hudson watershed. East of Hudson, the City will pay such costs for low-income housing projects and half of these costs for projects undertaken by small businesses.

(7) For purposes of the design criteria incorporated by reference in GP-0-08-001, “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.

Increment:

No new regulatory requirements would be imposed by the definition of this term. This amendment explains the usage of the term “detention time” in the New York State Stormwater Management Design Manual. The Department believes that it is necessary to clarify because only the Enhanced Phosphorus Removal portion of the Manual, which does not apply throughout the Watershed contains a definition of the term.

(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 General Permit No. [GP-93-06; and] GP-0-08-001.

Increment:

No new regulatory requirements would be imposed by this updated reference. The NOI required under General Permit No. GP-0-08-001 calls for more information than the NOI that was attached to General Permit GP-93-06, but the information must be compiled in conformance with State requirements in any event.

- [(iii) A phosphorus and/or coliform analysis when required by this section.]

Increment:

No new regulatory requirements would be imposed by this deletion. As discussed above in connection with the proposed revisions to § 18-39(b)(3), the quantitative comparison of pollutant loadings before and after land disturbance, which is at the core of the requirements for SPPPs under the 1997 Rules and Regulations, would be replaced by the scheme underlying GP-0-08-001. See also the discussion of the deletions of former sections (c)(1) and (3) above.

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

- (iii) Construction of an impervious surface for a driveway 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].

Increment:

No new regulatory requirements may be imposed by this deletion. See analysis of the corresponding revisions to Section 18-39(a)(5)(iii).

§ 18-40 **Miscellaneous Point Sources.**

(a) Unless otherwise permitted by the rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge into the environment (including into groundwater), from industrial facilities, including vehicle washing facilities, or from a municipal separate stormwater sewer system requiring coverage under New York State Department of Environmental Conservation General Permit No. GP-0-08-002, 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.

Increment:

No new regulatory requirements would be imposed by this amendment. This amendment would prohibit discharges from municipal separate stormwater sewer systems only if: (1) they cause, or are reasonably likely to cause, a discharge into the environment which is

reasonably likely to cause degradation of surface water quality or of the water supply, and (2) the discharges violate the applicable SPDES permit.

§ 18-43 **Pesticides.**

[(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.]

Increment:

No new regulatory requirements would be imposed by this deletion. The Department no longer plans to pursue the promulgation of regulations regarding the use of pesticides in the watershed by DEC.

§ 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.]

Increment:

No new regulatory requirements would be imposed by these deletions. This language has been moved to the proposed § 18-48(d), below.

- (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.

Increment:

No new regulatory requirements would be imposed by this updated reference.

(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.

Increment:

New regulatory requirements may be imposed in connection with this provision. The lower threshold for the City's seven source water reservoirs means that those reservoirs are more likely to become, or remain, phosphorus restricted. Because of the restrictions on new and expanded wastewater treatment plants in phosphorus restricted basins, this provision could therefore result in increased regulatory requirements in the basins of source water reservoirs. Part or all of the watersheds of each source water reservoir is within the 60-day travel time; in those areas, this would not be a new restriction because new and expanded wastewater treatment plants are already prohibited within the 60-day travel time.

(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:

Increment:

No new regulatory requirements would be imposed by this re-lettering or amendment.

(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.

Increment:

No new regulatory requirements would be imposed by this amendment. The addition of the term "terminal" clarifies that the fecal coliform measurements described in this paragraph only need to be taken for the five terminal reservoirs.

(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.]

Increment:

No new regulatory requirements would be imposed by these deletions. This language has been moved to the proposed § 18-48(d)(2), below.

(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.

Increment:

No new regulatory requirements would be imposed by this reorganization. These provisions have been moved from §§ 18-48(a)(1) and (c), above.

(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.

Increment:

No new regulatory requirements would be imposed by this renumbering, which reflects the reorganization identified above in connection with the proposed § 18-48(d).