

New York City Department of Environmental Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection is proposing rules governing industrial, commercial, construction, and post-construction stormwater sources.

When and where is the hearing? The Department of Environmental Protection will hold a public hearing on the proposed rule. The public hearing will take place at 10 a.m. on October 10, 2018. The hearing will be in the Department's 8th floor conference room at 59-17 Junction Boulevard, Flushing NY 11373.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail comments to Department of Environmental Protection, Bureau of Legal Affairs, Att: Rulemaking Attorney, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on October 10, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by October 10, 2018.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 718-595-6531. Advance notice is required to allow sufficient time to arrange the accommodation. Please tell us by October 3, 2018.

This location has the following accessibility option(s) available: wheelchair accessibility.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing, NY, 11373.

What authorizes the Department of Environmental Protection (DEP) to make this rule? Sections 1043 of the City Charter and Chapter 5-A of Title 24 of the Administrative Code of the city of New York authorize DEP to make this proposed rule. This proposed rule was included in DEP's regulatory agenda for this Fiscal Year.

Where can I find the DEP's rules? DEP's rules are in Title 15 of the Rules of the City of New York.

What laws govern the rulemaking process? DEP must meet the requirements of Section 1043(c) of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose

Section 1403(b-1) of the Charter of the City of New York provides that the Commissioner of Environmental Protection ("Commissioner") has "the power to administer and enforce provisions of law, rules and regulations relating to the management and control of discharges and runoff from public and private property, including but not limited to stormwater discharges, which may convey pollutants and other materials that may enter and have an adverse impact on the waters of the state." Title 24 of the Administrative Code of the city of New York, Chapter 5-A provides that its purpose and intent are to "(i) reduce pollutants discharged in stormwater runoff from construction activities in such areas to the maximum extent practicable through appropriate erosion and sediment controls; (ii) minimize, to the maximum extent practicable, increases in stormwater runoff volume and velocity, and pollutant loading in stormwater runoff, from development sites in such areas; (iii) ensure the proper maintenance of post-construction stormwater management practices; and (iv) ensure compliance by certain industrial facilities in such areas with applicable requirements to manage stormwater runoff in order to reduce pollutants in stormwater from industrial activities to the maximum extent practicable."

Chapter 19.1 is needed to comply with the New York City municipal separate storm sewer system permit (NYC MS4 permit), which is issued by the New York State Department of Environmental Conservation (NYSDEC). The NYC MS4 permit requires the City to implement a number of programs in the portions of the City served by the City's MS4 – the municipal separate storm sewer system – with the goal of reducing pollutants in the stormwater that enters surface waters from the MS4 to the "maximum extent practicable." Specifically, the proposed Chapter enables the Commissioner to protect waters of the state by establishing two new regulatory programs required by the NYC MS4 permit:

- (i) an inspection and enforcement program to ensure that industrial stormwater sources are in compliance with state and local stormwater requirements; and
- (ii) a permitting, inspection and enforcement program for covered development projects, as defined in the rule, including requirements for construction and post-construction stormwater controls, standards for such controls, and penalties for non-compliance with the rules and permit conditions.

Permit issuance for covered development projects in the MS4 area, meaning projects that involve or result in at least one acre of soil disturbance within the municipal separate storm sewer system (MS4) area, is not subject to environmental review pursuant to 6 NYCRR Section 617.5(c)(19). However, issuance of a variance under the rule is subject to environmental review.

DEP expects to publish the final version of sections 19.1-01 through 19.1-02 of these rules in December of 2018. The final rules will establish the effective date of these sections, which relate to general administration, enforcement, and industrial and commercial stormwater sources. The effective date will be 45 days after approval by NYSDEC of the City's stormwater management plan.

DEP expects to publish the final version of section 19.1-03 of these rules within 30 days from the final approval by NYSDEC of the storm water management plan. The final rules will establish the effective date of this section, which relates to construction and post-construction stormwater sources. The effective date will be between 45 and 180 days after approval by NYSDEC of the City's stormwater management plan.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the department, unless otherwise specified or unless the context clearly indicates otherwise.

Title 15 of the Rules of the City of New York is amended by addition of a new Chapter 19.1, to read as follows:

§ 19.1-01 General Administration and Enforcement

§ 19.1-01.1 Applicability

Applicability. These rules apply to the discharge of stormwater from property within those portions of the city of New York served by the municipal separate storm sewer system (MS4) including, but not limited to, discharges from industrial stormwater sources and covered development projects.

§ 19.1-01.2 Definitions

Allowable runoff. The term “allowable runoff” means non-stormwater discharges associated with firefighting activities or as otherwise authorized by the commissioner pursuant to chapter 19 of Title 15 of the rules of the city of New York.

Applicant. The term “applicant” means the person filing the online application for a stormwater construction permit or a stormwater maintenance permit. This may be the owner, developer, qualified professional or other person that is a registered user in the online application system.

Authorized inspection agent. The term “authorized inspection agent” means an individual who has been authorized pursuant to a contract entered into by the department to conduct inspections on behalf of the department.

Best management practices or BMPs. The term “best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements (if deemed necessary by the department), operating procedures, and practices to control site runoff, spillage and leaks, sludge or waste disposal, or drainage from raw material storage.

Certification of no exposure. The term “certification of no exposure” means the document submitted to NYSDEC to obtain a conditional exclusion of no exposure from NYSDEC under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP).

Commence (Commencement of) development activities. The term “commence development activities” means the initial disturbance of soils associated with clearing, grading or excavation activities; or other construction related activities that disturb or expose soils such as demolition, stockpiling of fill material, and the initial installation of erosion and sediment control practices required in the Stormwater Pollution Prevention Plan (SWPPP).

Commissioner. The term "commissioner" means the commissioner of the New York City department of environmental protection.

Commissioner's order. The term “commissioner's order” means any order issued by the Commissioner that may be necessary for the enforcement of these rules.

Covered development project. The term “covered development project” means development activity, private or public, that involves or results in an amount of soil disturbance within the MS4 area greater than or equal to one acre. Such term includes development activity that is part of a larger common plan of development or sale involving or resulting in soil disturbance within the MS4 area greater than or equal to one acre. Such term must include all development activity within

the MS4 area that requires a SWPPP pursuant to the New York State Department of Environmental Conservation (NYSDEC) construction general permit.

Department. The term “department” means the New York City department of environmental protection.

Detention system. The term "detention system" means a system that slows and temporarily holds stormwater runoff so that it can be released at a controlled rate.

Developer. The term “developer” means a person that owns or leases land on which development activity that is part of a covered development project is occurring, or a person that has operational control over the development activity’s construction plans and specifications, including the ability to make modifications to the construction plans and specifications.

Development activity. The term “development activity” means soil disturbance on a site including but not limited to land contour work, clearing, grading, excavation, demolition, construction, reconstruction, new development, redevelopment, creation or replacement of impervious surface, stockpiling activities or placement of fill. Clearing activities include but are not limited to the cutting and skidding of trees, stump removal, and brush root removal. Such term does not include routine maintenance (such as road resurfacing) performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

Discharge. The term "discharge" means the introduction or release of any substance, whether knowing or unknowing, accidental or otherwise, to a public sewer or private sewer connected to a public sewer or to waters of the State, and shall include indirect discharges as defined herein.

Erosion and sediment controls. The term “erosion and sediment controls” means stormwater management practices designed to minimize the discharge of pollutants during development activities including, but not limited to, structural erosion and sediment control practices, construction sequencing to minimize exposed soils, soil stabilization, dewatering control measures, and other pollution prevention and good housekeeping practices appropriate for construction sites.

Final stabilization. The term “final stabilization” means that all soil disturbance activities have ceased and a uniform, perennial, vegetative cover with a density of 80 percent over the entire pervious surface has been established; or other equivalent stabilization measures, such as permanent landscape mulches, rock rip-rap or washed/crushed stone, have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement.

Flood management project. The term “flood management project” means a project designed and functioning to capture, detain or convey overland flow from a large drainage area to prevent downstream flooding associated with a 100-year or greater storm event, excluding projects such as installation and maintenance of storm sewers, high level storm sewers, Bluebelt storm sewers

and drainage inlets, and other projects to improve drainage, alleviate localized flooding or reduce coastal flooding.

Impaired water. The term “impaired water” includes (i) a water body for which NYSDEC has established a total maximum daily load (“TMDL”), (ii) a water body for which NYSDEC expects that existing controls such as permits will resolve the impairment, and (iii) a water body identified by NYSDEC as needing a TMDL. A list of impaired waters is issued by NYSDEC pursuant to section 303(d) of the federal water pollution control act, chapter 26 of title 33 of the United States code.

Impervious area (cover). The term “impervious area (cover)” means all impermeable surfaces that cannot effectively infiltrate rainfall. This includes paved, concrete and gravel surfaces (e.g., parking lots, driveways, roads, runways and sidewalks); building rooftops and miscellaneous impermeable structures such as patios, pools, and sheds.

Indirect discharge. The term "indirect discharge" means a discharge from a private sewer to a public sewer, or a discharge to any street, gutter, pipe, channel, pumping station, catch basin, drain, waterway, or other conveyance leading to or connecting with a public sewer, including but not limited to the placement or abandonment of any substance which could reasonably enter a public sewer under the force of stormwater or other influence.

Industrial activity. The term “industrial activity” means the categories of activities designated as industrial by the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) (GP-0-17-004).

Industrial stormwater source. The term “industrial stormwater source” means any premises or facility that is subject to the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP).

Larger common plan of development or sale. The term “larger common plan of development or sale” means a contiguous area where multiple separate and distinct development activities are occurring, or will occur, under one plan. The term “plan” in “larger common plan of development or sale” is broadly defined as any announcement or piece of documentation including a sign, public notice of hearing, sales pitch, advertisement, drawing, permit application, uniform land use review procedure (ULURP) application, state environmental quality review act (SEQRA) or city environmental quality review (CEQR) application, application for a special permit, authorization, variance or certification pursuant to the zoning resolution, subdivision application, computer design, or physical demarcation (including boundary signs, lot stakes, and surveyor markings) indicating that development activities may occur on a specific plot. Such term does not include area-wide rezonings or projects discussed in general planning documents. For discrete development activities that are located within a larger common plan of development or sale that are at least 1/4 mile apart, each activity can be treated as a separate plan of development or sale

provided that any interconnecting road, pipeline or utility project that is part of the same “common plan” is not concurrently being disturbed.

MS4 SWPPP acceptance form. The term “MS4 SWPPP acceptance form” means the form developed by NYSDEC to be used to indicate acceptance of a SWPPP by a municipality.

MS4 area. The term “MS4 area” means those portions of the city of New York served by separate storm sewers and separate stormwater outfalls owned or operated by the city of New York or areas served by separate storm sewers owned or operated by the city of New York that connect to combined sewer overflow pipes downstream of the regulator owned or operated by the city of New York, and areas in which municipal operations and facilities drain by overland flow to waters of the state, as determined by the department and described on maps of the MS4 area set forth in these rules and available on the department’s website.

Multi-sector general permit or “MSGP.” The term “multi-sector general permit” or “MSGP” means the NYSDEC SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-17-004 or its successor.

Municipal operations and facilities. The term “municipal operations and facilities” means any operation or facility serving a New York city governmental purpose and over which the City of New York has operational control.

New development. The term “new development” means any construction or disturbance of a parcel of land that is currently undisturbed or unaltered by human activities and in a natural state.

No exposure. The term “no exposure” means that all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

Nonpoint source. The term “nonpoint source” means any source of water pollution that does not meet the definition of “point source,” as defined in these rules.

Notice of intent or NOI. The term “notice of intent” or “NOI” means the document submitted to NYSDEC to obtain coverage under the NYSDEC construction general permit or the MSGP.

Notice of termination or NOT. The term “notice of termination” or “NOT” means the document submitted to NYSDEC to terminate coverage under the NYSDEC construction general permit or the MSGP.

NYC MS4 permit. The term “NYC MS4 permit” means the SPDES permit for MS4s of New York city, SPDES No. NY-0287890 or its successor.

NYSDEC. The term “NYSDEC” means the New York State Department of Environmental Conservation.

NYSDEC construction general permit. The term “NYSDEC construction general permit” means the SPDES general permit for stormwater discharges from construction activities, Permit No. GP-0-15-002 or its successor.

Owner. The term “owner” means a person having legal title to premises, a mortgagee or vendee in possession, a trustee in bankruptcy, a receiver, or any other person having legal ownership or control of premises.

Person. The term “person” means an individual, corporation, partnership, limited-liability company or other legal entity.

Point source. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged.

Pollutant. The term “pollutant” means dredged soil, filter backwash, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, and agricultural waste discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the standards or guidance values adopted as provided in 6 New York codes, rules and regulations (“NYCRR”) section 750-1.2(a).

Pollutants of concern (POCs). The term “pollutants of concern” or “POCs” means pollutants that might reasonably be expected to be present in stormwater in quantities that may cause or contribute to an exceedance of water quality standards. These pollutants include but are not limited to nitrogen, phosphorus, silt and sediment, pathogens, floatables, petroleum hydrocarbons, heavy metals, and polycyclic aromatic hydrocarbons (PAHs).

Post-construction stormwater management facility or post-construction facility. The term “post-construction stormwater management facility” or “post-construction facility” means a stormwater management practice serving a developed site and consisting of technology or strategies designed to reduce pollutants in stormwater runoff or reduce runoff rate or volume from the developed site through infiltration, retention, detention, direct plant uptake, filtration, or other method or treatment. Such term includes, but is not limited to, detention systems and retention systems.

Premises. The term “premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

Private sewer. The term “private sewer” means a private sanitary, storm, or combined sewer that is designed and constructed in accordance with the requirements of the City drainage plan to serve a specific development and discharges into an approved outlet.

Public sewer. The term “public sewer” means a sewer that is owned by the City of New York.

Qualified inspector. The term “qualified inspector” means a person who is knowledgeable in the principles and practices of erosion and sediment control, such as a licensed Professional Engineer, a Certified Professional in Erosion and Sediment Control (CPESC), or a Registered Landscape Architect.

It can also mean someone working under the direct supervision of, and at the same company as, the licensed Professional Engineer or Registered Landscape Architect, provided that person has training in the principles and practices of erosion and sediment control. Training in the principles and practices of erosion and sediment control means that the individual working under the direct supervision of the licensed Professional Engineer or Registered Landscape Architect has received four (4) hours of NYSDEC endorsed training in proper erosion and sediment control principles from a Soil and Water Conservation District, or other NYSDEC endorsed entity. After receiving the initial training, the individual working under the direct supervision of the licensed Professional Engineer or Registered Landscape Architect shall receive four (4) hours of training every three (3) years.

It can also mean a person that meets the Qualified Professional qualifications in addition to the Qualified Inspector qualifications.

Note: Inspections of any post-construction stormwater management practices that include structural components, such as a dam for an impoundment, shall be performed by a licensed Professional Engineer.

Qualified professional. The term “qualified professional” means a person who is knowledgeable in the principles and practices of stormwater management and treatment such as a licensed professional engineer or a registered landscape architect or other NYSDEC endorsed individual(s).

Individuals preparing SWPPPs that require the post-construction stormwater management practice component must have an understanding of the principles of hydrology, water quality management practice design, water quantity control design, and, in many cases, the principles of hydraulics. All components of the SWPPP that involve the practice of engineering, as defined by Article 145 of the NYS Education Law, shall be prepared by, or under the direct supervision of, a professional engineer licensed to practice in the State of New York.

Redevelopment. The term “redevelopment” means reconstruction of or modification to any existing previously developed land such as residential, commercial, industrial, institutional or road/highway, which involves soil disturbance. Redevelopment is distinguished from new development in that new development refers to construction on land where there had not been previous construction. Redevelopment specifically applies to constructed areas with impervious surface or fill.

Retention system. The term “retention system” means a system that captures stormwater runoff on site with no release.

Routine maintenance activity. The term “routine maintenance activity” means a construction activity that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility, including, but not limited to:

- Re-grading of gravel roads or parking lots;
- Stream bank restoration projects (does not include the placement of spoil material);
- Cleaning and shaping of existing roadside ditches and culverts that maintains the approximate original line and grade, and hydraulic capacity of the ditch;
- Cleaning and shaping of existing roadside ditches that does not maintain the approximate original grade, hydraulic capacity and purpose of the ditch if the changes to the line and grade, hydraulic capacity or purpose of the ditch are installed to improve water quality and quantity controls (e.g. installing grass lined ditch);
- Placement of aggregate shoulder backing that makes the transition between the road shoulder and the ditch or embankment;
- Full depth milling and filling of existing asphalt pavements, replacement of concrete pavement slabs, and similar work that does not expose soil or disturb the bottom six inches of subbase material;
- Long-term use of equipment storage areas at or near highway maintenance facilities;
- Removal of sediment from the edge of the highway to restore a previously existing sheet-flow drainage connection from the highway surface to the highway ditch or embankment; and
- Replacement of curbs, gutters, sidewalks, and guide rail posts.

Separate stormwater outfall. The term “separate stormwater outfall” means a point where stormwater from a storm sewer or other source of concentrated stormwater flow, owned or operated by the city of New York, is discharged into a water of the state or to a separate storm sewer system that requires coverage under the NYSDEC MS4 general permit.

Sewer. The term “sewer” means a pipe or conduit for carrying sewage and/or stormwater. Except where otherwise specified or where the context clearly dictates otherwise, the term “sewer” as used in this chapter must refer to a public sewer.

Storm sewer. The term “storm sewer” means a sewer, the primary purpose of which is to carry stormwater.

Stormwater or stormwater runoff. The term “stormwater” or “stormwater runoff” means the runoff that is generated when precipitation from rain events or snowmelt flows overland and does not percolate into the ground.

Stormwater construction permit. The term “stormwater construction permit” means a permit issued by the department authorizing development activity on land on which there is a covered development project with an approved SWPPP.

Stormwater maintenance permit. The term “stormwater maintenance permit” means a permit issued by the department where maintenance is required of post-construction stormwater management facilities by owners of real property benefited by such facilities.

Stormwater management practices or SMPs. The term “stormwater management practices” or “SMPs” means measures to prevent flood damage or to prevent or reduce point source or nonpoint source pollution inputs to stormwater runoff and water bodies. Such term includes erosion and sediment controls, post-construction stormwater management facilities, and practices to manage stormwater runoff from industrial activities.

Stormwater pollution prevention plan or SWPPP. The term “stormwater pollution prevention plan” or “SWPPP” means (i) when used in connection with a covered development project, a plan for controlling stormwater runoff and pollutants during construction and, where required by these rules, after construction is completed, or (ii) when used in connection with an industrial stormwater source, a plan, which is required by the MSGP, for controlling stormwater runoff and pollutants.

Temporary shutdown. The term “temporary shutdown” means the suspension of development activity at a site with an approved stormwater construction permit.

Trained contractor. The term “trained contractor” means an employee of a contracting (construction) company, who has received four hours of NYSDEC-endorsed training in proper erosion and sediment control principles from a soil and water conservation district, or other NYSDEC-endorsed entity. After receiving the initial training, the trained contractor must receive four hours of training every three years. The term can also mean an employee of a contracting (construction) company who meets the qualifications required to be a qualified inspector. The trained contractor is responsible for the day-to-day implementation of the SWPPP during development activities.

Waters of the state. The term “waters of the state” means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

§ 19.1-01.3 Inspectors and Authorized Inspection Agents

As provided for Subchapter 4 of Chapter 5-A of Title 24 of the Administrative Code of the City of New York, §§ 24-581 through 24-590, inspectors and authorized inspection agents may issue orders and summonses for failure to comply with any provision or section of these rules, any condition of any permit issued under these rules, or any term or condition of a SWPPP approved by the department pursuant to these rules. All orders and summonses issued by inspectors and authorized inspection agents are subject to approval by the department.

§ 19.1-01.4 Penalties and Sanctions

Any person who is in violation of or fails to comply with any provision of any section of these rules; any condition of any permit issued under these rules or any term or condition of an approved SWPPP; or any order or determination issued pursuant to this chapter will be subject to the fines, penalties and other sanctions provided in § 24-558 and Subchapter 4 of Chapter 5-A (§§ 24-580 through 24-587) of Title 24 of the Administrative Code of the City of New York.

§19.1-01.5 Appeals of Commissioner’s Orders

- (a) Within the time specified for compliance in a commissioner's order issued pursuant to Chapter 5-A of the Administrative Code of the City of New York, or as otherwise specified in the order, the party named in the order may submit a written statement appealing the commissioner's order to the department in the manner specified in the order except that the time for appeal of a commissioner's order shall not be less than 10 days from the date of service of such order.
- (b) In the event that the department determines that non-compliance with the order poses a significant risk of imminent harm to public health or safety or to the environment, the party will be notified and will be required to comply with the order in the specified time, or within an alternative time specified by the department, notwithstanding that an appeal is taken.
- (c) The department must review appeals and make a final written determination regarding the appeal within a reasonable period of time. The department will mail final determinations to the party named in the order.
 - (1) If the department sustains an appeal in whole or in part, then the stated terms of the final determination on appeal will replace the original requirements of such order.
 - (2) If an appeal is denied, the final determination will specify a reasonable period of time for compliance based on the circumstances, except in the case of an order where compliance is required at an earlier time as described in subdivision (b) of this section. The final determination by the department is subject to review pursuant to article 78 of the civil practice laws and rules.

§ 19.1-02 Industrial and Commercial Stormwater Sources

§ 19.1-02.1 Applicability

This section applies to industrial stormwater sources within the MS4 area and industrial or commercial premises or facilities in the MS4 area that the department determines may generate significant contributions of pollutants of concern into impaired waters. All industrial stormwater sources must comply with all applicable conditions of the MSGP.

§ 19.1-02.2 Notification to the Department

Upon submittal to NYSDEC, an industrial stormwater source must submit to the department at the address provided on the department's website copies of the following documents: (i) completed NOI, (ii) certification of no exposure (if applicable), and (iii) NOT. Such facility must also submit copies of any correspondence between the facility and NYSDEC to the department at the address provided on the department's website.

§ 19.1-02.3 Inspections

- (a) MSGP-permitted facilities

The department or an authorized inspection agent may enter and inspect any industrial stormwater source, including, but not limited to, its equipment, practices, operations and records, and will, at a minimum, conduct inspections of such sources in accordance with the schedule and requirements for such inspections set forth in the NYC MS4 Permit and these rules. The department or an authorized inspection agent must conduct such entry and inspection during normal operating hours for purposes of determining compliance with the MSGP and these rules. Such inspections may include, but need not be limited to, the following:

- (1) Conducting a visual observation for evidence of unauthorized discharges, illicit connections, and potential discharges of pollutants to stormwater;
- (2) Evaluating the facility's compliance with applicable MSGP requirements; and
- (3) Evaluating the facility's compliance with any other relevant local stormwater requirements.

(b) Unpermitted industrial and commercial facilities

The department or an authorized inspection agent may enter and inspect any unpermitted premises or facilities within the MS4 area, as required by the MS4 permit, during normal operating hours. The department will inspect unpermitted facilities to identify those that generate significant contributions of pollutants of concern to impaired waters and will refer those to NYSDEC. The department or an authorized inspection agent may inspect the facility, including, but not limited to, its equipment, practices, operations and records, consistent with applicable law.

(c) Access for inspections

If access to property the department seeks to inspect pursuant to this section is denied, the department may seek judicial authorization, and an authorized representative of the department may enter pursuant to such authorization. In the event of exigent circumstances, an authorized representative of the department may enter on any property without such judicial authorization to inspect for compliance with these rules or Chapter 5-A of Title 24 of the Administrative Code of the City of New York or to execute orders of the commissioner issued pursuant thereto.

§ 19.1-02.4 Recordkeeping

- (a) Industrial stormwater sources must submit to the department copies of all documents submitted to NYSDEC under the MSGP, including, but not limited to, Discharge Monitoring Reports (DMRs), Annual Certification Reports, and Corrective Action Forms, and must copy the department on all permit-related correspondence with NYSDEC.
- (b) Industrial stormwater sources shall maintain and preserve copies of the NOI, NOT, Acknowledgement Letters, and the SWPPP for no fewer than five years from the date that the NYSDEC receives a complete NOT submitted in accordance with the MSGP, and shall

maintain and preserve all monitoring records for a period of at least 5 years from the date of the sample, measurement, report, or application.

- (c) Industrial stormwater sources must retain on-site and, upon request, make immediately available to the department, in accordance with applicable law, the following documents as evidence of compliance with applicable MSGP requirements:
- (1) Copies of the MSGP and NOI, as submitted to NYSDEC;
 - (2) SWPPP;
 - (3) Annual Certification Reports;
 - (4) Comprehensive site inspection results;
 - (5) Quarterly visual monitoring;
 - (6) Annual dry weather flow monitoring;
 - (7) Required monitoring data, including, but not limited to numeric benchmark monitoring;
 - (8) Compliance monitoring for discharges subject to numeric effluent limitations;
 - (9) Monitoring of discharges from secondary containment at storage and transfer areas;
and
 - (10) Monitoring of discharges to impaired waterbodies.

§ 19.1-03 Construction and Post-Construction Stormwater Sources

§ 19.1-03.1 Applicability

- (a) This rule applies to the permitting of covered development projects within the MS4 area.
- (b) Grandfathering. This rule does not apply to any development activity with a letter of acknowledgment of notice of intent for coverage under the NYSDEC construction general permit issued by NYSDEC before the effective date of this rule.

§ 19.1-03.2 Inspections

- (a) The department or an authorized inspection agent may inspect, at a reasonable time and in a reasonable manner, anything that affects or may affect the quality of the waters of the state, including but not limited to the premises where a covered development project is being conducted; or the premises for which an application has been filed with the department for plan or permit approval; or the premises for which the department has issued a stormwater construction permit or stormwater maintenance permit.
- (b) The department or an authorized inspection agent may enter onto property subject to a maintenance easement in accordance with the terms of such easement. For property that is not subject to a maintenance easement, an authorized representative of the department may enter on any property to inspect for compliance with this chapter or Chapter 5-A of

Title 24 of the Administrative Code of the City of New York or to execute orders of the commissioner issued pursuant thereto. If access to such property is denied, the department may seek judicial authorization, and such representative may enter pursuant to such authorization. In the event of exigent circumstances, an authorized representative of the department may enter on any property without such judicial authorization to inspect for compliance with these rules or Chapter 5-A of Title 24 of the Administrative Code of the City of New York or to execute orders of the commissioner issued pursuant thereto. Inspections pursuant to this paragraph may include observation, sampling and testing as necessary.

§ 19.1-03.3 Permits

(a) Permit Program Requirements

- (1) Permit applications and applications to amend permits must be filed electronically on the department's web site.**
- (2) The developer and owner of a site must certify that the application is being submitted on their behalf.**
- (3) Qualified professionals who have prepared application materials are required to certify that the materials submitted meet the technical standards included in the NYSDEC Construction General Permit and these rules.**
- (4) Stormwater management practices must be designed and constructed in accordance with the following technical standards for performance and design:**
 - (i) The New York State Stormwater Management Design Manual January 2015 or its successor including the enhanced phosphorus removal standards.**
 - (ii) New York Standards and Specifications for Erosion and Sediment Control, dated November 2016, or its successor.**
 - (iii) The New York City Stormwater Design Manual.**

(b) Stormwater Construction Permit

- (1) No developer may commence development activity in connection with a covered development project located in the MS4 area without having first obtained a stormwater construction permit from the department. The commissioner, in his or her discretion, may impose such terms and conditions in the permit as he or she deems necessary to protect the MS4 system or to protect the public health or welfare.**
- (2) The following activities are not considered covered development projects:**
 - (i) Routine maintenance activities;**
 - (ii) Repairs to any stormwater management practice or facility deemed necessary by the department; and**

(iii) Emergency activities that are immediately necessary for the protection of life, property, or natural resources.

(3) Permit application requirements

(i) To obtain a permit, an applicant must complete and file an application available on the department's website. The application must be accompanied by a processing fee of \$1,000 dollars in addition to a \$2,000 dollar fee per acre of land disturbed.

(ii) All components of the SWPPP that involve the practice of engineering, as defined by Article 145 of the NYS Education Law, must be prepared by, or under the direct supervision of, a professional engineer licensed to practice in the State of New York.

(iii) The application must include a SWPPP prepared, signed, and sealed by a qualified professional. The SWPPP must be submitted in an electronic format acceptable to the department, as further detailed on the department's website, and must contain all the elements required in the NYSDEC construction general permit and in these rules, as follows:

A. Background information about the scope of the project, including type and size of project;

B. Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show:

(1) The total site area;

(2) All improvements including underground utilities;

(3) Areas of disturbance;

(4) Areas that will not be disturbed;

(5) Existing vegetation;

(6) On-site and adjacent off-site surface water(s);

(7) Wetlands and drainage patterns that could be affected by the construction activity;

(8) Existing and final contours;

(9) Location of soil types with boundaries;

(10) Material, waste, borrow or equipment storage areas located on adjacent properties; and

(11) Location(s) of the stormwater discharge(s).

C. A description of the soil(s) present at the site;

D. A construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance;

- E. A description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
 - F. A description of the minimum erosion and sediment control practices to be installed or implemented for each construction activity that will result in soil disturbance, including a schedule that identifies the timing of initial placement or implementation of each erosion and sediment control practice and the minimum time frames that each practice should remain in place or be implemented;
 - G. A site map or construction drawing or drawings specifying the location, size and length of each erosion and sediment control practice;
 - H. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - I. A temporary and permanent soil stabilization plan that meets the requirements of these rules and the technical standard, for each stage of the project, including initial land clearing and grubbing to project completion and achievement of final stabilization;
 - J. An implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and the duration that each practice should remain in place;
 - K. A maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practices;
 - L. The name or names of the receiving waters;
 - M. A delineation of SWPPP implementation responsibilities for each part of the site;
 - N. A description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit the runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - O. Any existing data that describe the stormwater runoff at the site including but not limited to calculations to size erosion control practices.
- (4) SWPPPs for projects that require post-construction stormwater management practices must be prepared, signed, and sealed by a qualified professional who has an understanding of the principles of hydrology, water quality management practice design, water quantity control design, and, in many cases, the principles of hydraulics, and the SWPPPs must include the following items:
- (i) All information required in § 19.1-03.3(b)(3), above;
 - (ii) A description of each post-construction stormwater management practice;

- (iii) A site map or construction drawing or drawings showing the specific location and size of each post-construction stormwater management practice;
- (iv) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
- (v) A hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms that includes, but is not limited to:
 - A. Map or maps showing pre-development conditions, including watershed/subcatchments boundaries, flow paths/routing and design points;
 - B. Map or maps showing post-development conditions, including watershed/subcatchments boundaries, flow paths/routing, design points and post-construction stormwater management practices;
 - C. Results of stormwater modeling (i.e. hydrology and hydraulic analysis) for the required storm events. Include supporting calculations (model runs), methodology, and a summary table that compares pre- and post-development runoff rates and volumes for the different storm events;
 - D. Summary table, with supporting calculations, which demonstrates that each post-construction stormwater management practice has been designed in conformance with the sizing criteria included in the technical standards, as further described in § 19.1-03.3(a)(4) above; and
 - E. Identification of any elements of the design that are not in conformance with the performance criteria in the technical standards. Include the reason or reasons for the deviation or alternative design and provide information, which demonstrates that the deviation or alternative design is equivalent to the technical standards.
- (vi) Soil testing results and locations (test pits, borings);
- (vii) Infiltration testing results and locations when an infiltration practice will be implemented;
- (viii) An operations and maintenance plan that includes inspection and maintenance schedules and actions to ensure continuous and effective operation of each post-construction stormwater management practice. The plan must identify the entity that will be responsible for the long-term operation and maintenance of each practice;
- (ix) For flood management projects, the SWPPP must include an analysis of the impact of the project on existing water quality of receiving waters;
- (x) For covered development projects located in the watersheds identified in Appendix 2 of the MS4 permit and for which there is an increase in impervious area, the SWPPP must include a pollutant loading analysis that demonstrates that the proposed post- construction stormwater management practices meet the no net

increase requirement provided in the New York City Stormwater Management Design Manual;

- (xi) Certification by a developer that the covered development project that is the subject of the application is in full compliance with City Environmental Quality Review, Chapter 5 of Title 62 of the Rules of the City of New York; and
- (xii) Plans, drawings and maps that are part of the SWPPP must be submitted at a scale not smaller than 1"=50' unless otherwise specified by the department.

(5) Additional requirements for projects that disturb five acres or more

The owner or operator of a construction activity must not disturb greater than five acres of soil at any one time without prior written authorization from the department. At a minimum, the owner or operator must comply with the following requirements in order to be authorized to disturb greater than five acres of soil at any one time:

- (i) The owner or operator must have a qualified inspector conduct at least two site inspections in accordance with the NYSDEC Construction General permit every seven-calendar days, for as long as greater than five acres of soil remain disturbed. The two inspections must be separated by a minimum of two full calendar days;
- (ii) In areas where soil disturbance activity has temporarily or permanently ceased, the application of soil stabilization measures must be initiated by the end of the next business day and completed within seven days from the date the current soil disturbance activity ceased. The soil stabilization measures selected must be in conformance with the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated November 2016;
- (iii) The owner or operator must prepare a phasing plan that defines maximum disturbed area per phase and shows required cuts and fill; and
- (iv) The owner or operator must install any additional site-specific practices needed to protect water quality.

(6) Application review and determinations

- (i) The department will review applications for compliance with the NYSDEC construction general permit and these rules.
- (ii) The department will issue a determination within 45-days of submittal of the complete application and fee to the department.
- (iii) If an application meets the standards set forth herein, the department will provide the applicant with an MS4 SWPPP acceptance form for submission to NYSDEC as required by the NYSDEC Construction General Permit. If the developer does not obtain a stormwater construction permit for the project within two years from the date of issuance of the SWPPP acceptance form, the plan approval will expire and a new permit application must be submitted.

- (iv) If an application does not meet the standards set forth herein, the department will send notice to the developer indicating the specific deficiencies that caused the department to reject the application. Applicants may re-apply upon addressing the deficiencies.
- (7) Issuance of the Stormwater Construction Permit.
- (i) Permit issuance under the rule is not subject to environmental review pursuant to 6 NYCRR § 617.5(c)(19).
 - (ii) The owner or developer must file a Permit Initiation Form, including the name and contact information for a qualified inspector.
 - (iii) Before the department will issue a stormwater construction permit, the applicant must provide a copy of the NYSDEC SPDES permit number and NOI acknowledgement letter.
 - (iv) The contractor with primary responsibility for the project site must file a Permit Request Form that includes a certification that the contractor will comply with these rules, with the SWPPP and with the terms and conditions of this permit and provides credentials for the trained contractor who will be responsible for overseeing day-to-day operations at the project site during construction.
 - (v) When the department requires post-construction stormwater management practices, it must not issue a stormwater construction permit for the project until the execution and recording of a maintenance easement, as follows:
 - A. The maintenance easement will be binding on all subsequent owners of the real property served by such post-construction stormwater management practice.
 - B. The maintenance easement must provide for access to post-construction stormwater management practices at reasonable times in accordance with the law for periodic inspection by the department or qualified professionals authorized by the department to ensure that such practices are maintained in good working condition to meet the applicable design standards.
 - C. The grantor must record the maintenance easement in the office of the city register or, if applicable, the county clerk, after approval by the corporation counsel.
 - D. A maintenance easement is not required when the corporation counsel has determined that such a maintenance easement is not necessary due to the property's ownership or use by a public agency or instrumentality. For post-construction stormwater management practices subject to such an exception, when there is a subsequent conveyance or cessation of public use, the corporation counsel may require the execution and recording of a maintenance easement at that time.
- (8) Permit conditions

- (i) The applicant and all contractors and subcontractors responsible for implementation of the SWPPP must comply with these rules, the SWPPP and the terms and conditions of the stormwater construction permit.
 - (ii) A stormwater construction permit must be renewed every two years from date of issuance.
 - (iii) An application for permit renewal for two years or for a permit extension for a shorter period must be submitted to the department pursuant to § 19.1-03.3(b)(9).
 - (iv) The contractor or developer must notify the department no fewer than 7 days prior to the start of development activity.
 - (v) A copy of the permit must be retained and displayed at the site of the development activity during construction, from the date of initiation of development activities to the date of final stabilization of the site.
 - (vi) A copy of the approved SWPPP must be retained at the site of the development activity from the date of initiation of construction activities to the date of final stabilization.
 - (vii) The developer must notify the department of an anticipated temporary shutdown a minimum of seven days before the shutdown, and submit documentation showing that the site is stable and that all stormwater management practices are operational. The developer will be responsible for having a qualified inspector visit the site and inspect it at least once every 30 days during the shutdown. In addition, all permits must be kept current during the suspension of development activity.
 - (viii) If the developer terminates construction without completing the project, the developer must submit a closure plan demonstrating that the site will remain stable and that all completed stormwater management practices are operating as designed and in compliance with department rules. Any project that has post-construction stormwater management practices that are constructed and operating must comply with § 19.1-03.3(c) of these rules.
 - (ix) All amendments to the SWPPP must be submitted to the department.
 - (x) Major amendments to the SWPPP must be submitted to the department and will be processed and approved or disapproved in the same manner as the original SWPPP. An application must be accompanied by a \$1,000 dollar fee per disturbed acre for processing the amendment. Major amendments include, but are not limited to:
 - A. Changes to structural stormwater management practices; or
 - B. Changes that require new stormwater modeling or changes to modeling methodology.
- (9) Expiration, renewal, and extension of approval.
- (i) The department may, upon written presentation of sufficient justification for delay made prior to the expiration of a plan approval, grant an extension of time to request a permit after the department has issued a plan approval of up to one year. The department may grant an extension of a plan approval upon written request at least

30 days prior to the expiration date of the plan approval. A plan approval will expire if the permit is not requested within two years of issuance.

(ii) The department may, upon written presentation of sufficient justification for delay made prior to the expiration of a permit, grant an extension of time to begin or complete the work prescribed under the permit of up to one year. The department may grant an extension of an original permit upon written request at least 30 days prior to the expiration date of the original permit. Expired permits will require re-application as detailed in the permit conditions.

A. A stormwater construction permit will expire if the commencement of development activities does not take place within one year or is not completed by a date specified in the permit.

B. A stormwater construction permit will expire if the permitted work is suspended or abandoned for a continuous period of 12 months unless such permit expires earlier.

(iii) An application for renewal must be submitted to the department no less than 30 days prior to the permit expiration date and must be accompanied by a processing fee in the amount of \$1,000 dollars in addition to a \$2,000 dollar fee per acre of land disturbed.

(10) Termination of Permit Coverage. An owner or operator of a covered development project that does not require post-construction stormwater management practices under these regulations must submit a completed NYSDEC NOT to the department once the following conditions have been met:

(i) All construction activity identified in the SWPPP has been completed;

(ii) All areas of disturbance have finally stabilization; and

(iii) All temporary structural erosion and sediment control measures have been removed.

(11) Recordkeeping. The developer must keep and maintain records of all inspections and tests required to be performed during construction throughout the period of construction and for five years after completion of construction.

(c) Stormwater Maintenance Permit

(1) Permit application

(i) Upon final stabilization of the site, covered development projects requiring a SWPPP that includes post-construction stormwater management practices under these regulations will be required to obtain and maintain a stormwater maintenance permit.

(ii) To obtain a permit, an owner must file an application on the department's website. The application must be accompanied by the following:

- A. NYSDEC NOT, including stormwater management certification signed by a qualified professional;
 - B. As-built plan of the site's stormwater management practices, including inverts in and out of all structures, at a scale no less than 1" to 50' in an electronic format acceptable to the department signed and sealed by a qualified professional;
 - C. An operation and maintenance manual, in an electronic format acceptable to the department;
 - D. Name and contact information for the person or company designated to maintain the practices; and
 - E. Sewer certification, as required by the department (pursuant to Chapter 19 of Title 15 of the Rules of the City of New York).
- (2) Post-construction stormwater management practices are not required for the following covered development projects:
- (i) Covered development projects identified as activities that require only an erosion and sediment control component in the NYSDEC construction general permit except for the installation of underground, linear utilities, such as gas lines, fiber-optic cable, cable TV, electric, telephone, sewer mains, and water mains; and
 - (ii) Installation of underground, linear utilities, such as gas lines, fiber-optic cable, cable TV, electric, telephone, sewer mains, and water mains where surface will be restored to the existing condition.
- (3) Permit conditions
- (i) The owner must submit to the department, every year on the anniversary date of the stormwater maintenance permit, a certification signed by the owner that the stormwater management practices are operating as designed.
 - (ii) The owner of the site must renew the stormwater maintenance permit every five years. An application for renewal must be submitted to the department no less than 30 days prior to the permit expiration date and must be accompanied by a report certified by a qualified professional that the stormwater management practices are operating as designed.
 - (iii) A licensed professional engineer must perform inspections and certifications of any post-construction stormwater management practices that include structural components, such as a dam for an impoundment.
 - (iv) The owner of the site must notify the department of any sale or conveyance of the premises and must provide the name of and contact information for the new owner.
- (4) Modification of a practice covered by a stormwater maintenance permit

- (i) Should the owner wish to modify a stormwater management practice covered by a stormwater maintenance permit, the owner must submit an application for modification of the stormwater maintenance permit (available on the department's website).
 - (ii) The application for modification of the stormwater maintenance permit must include calculations and supporting documentation to demonstrate that the practice is at least as protective of water quality as the existing practice and that it controls stormwater flows as required by the NYSDEC construction general permit.
 - (iii) The department will review the application following the criteria for new applications.
- (5) Inspections. As also provided in § 19.1-03.2, the department or an authorized inspection agent may conduct periodic inspections to ensure that post-construction stormwater management practices are maintained in good working condition to meet the applicable design standards.
- (6) Recordkeeping. The owner must keep and maintain records of all inspections and tests required after construction for five years after performance of such inspections or tests. The owner must keep and maintain all as-built drawings for the life of the post-construction stormwater management facility.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Rules for MS4 Industrial Stormwater and Construction/Post-Construction Programs

REFERENCE NUMBER: DEP-53

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Where appropriate, the construction and post-construction program will include a cure period in its enforcement policy. Similarly, the industrial and commercial program will include a cure period for facilities that are found to be non-compliant with the permit requirements in its enforcement policy. The construction and post-construction program does not provide for a cure period because the violations pose significant risks to public health and safety.

/s/ Casimir Peters

Mayor's Office of Operations

July 17, 2018

Date

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Rules for MS4 Industrial Stormwater and Construction/Post-Construction Programs

REFERENCE NUMBER: 2018 RG 075

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: July 17, 2018

Acting Corporation Counsel