

# 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 (“Department” or “DEP”) is proposing to amend its rules governing management of construction and post-construction stormwater sources (Title 15, chapter 19.1 of the Rules of the City of New York (“RCNY”).

**When and where is the hearing?** The Department will hold a public hearing on the proposed rule amendments. The public hearing will take place at 11 am on January 10, 2022. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 347-921-5612,,98510248#](#)

Phone Conference ID: 985 102 48#

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

- **Website.** You can submit comments to the Department through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).
- **Mail.** You can mail written comments to the Department, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19<sup>th</sup> Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department, 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 speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by January 10, 2022.

**What if I need assistance to participate in the hearing?** You must tell the Department's Bureau 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 postal mail or email to the addresses given above. You may also tell us by telephone at 718-595-6531. You must tell us by January 3, 2022.

**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, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs.

**What authorizes the Department to make these rules?** Section 1043(b-1) of the New York City Charter ("City Charter") and section 24-553 of the Administrative Code of the City of New York authorize the Department to make these proposed rules which were included in the Department's regulatory agenda for fiscal year 2022.

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

**What laws govern the rulemaking process?** The Department must meet the requirements of Section 1043 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**

The New York City Department of Environmental Protection ("DEP" or "Department") proposes to amend its rules governing management of construction and post-construction stormwater sources (Title 15, chapter 19.1 of the Rules of the City of New York ("RCNY")).

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 establishes stormwater management controls for construction projects to reduce the flow of

stormwater runoff and water borne pollutants into sewers that empty directly into the waters of the state or that overflow into such waters because of rain or snowmelt that exceeds the design capacity of wastewater treatment plants.

The proposed amendments to Chapter 19.1 would extend to the combined sewer area the Department's 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.

DEP is proposing these amendments as part of a unified stormwater rule, to be administered citywide, which will align Chapter 19.1 Construction/Post-Construction permitting program water quality requirements with Chapter 31 stormwater quantity and flow rate requirements, encouraging development projects greater than or equal to 20,000 SF to use green infrastructure to meet requirements of both Chapters, where feasible. These amendments will allow for reduction in combined sewer overflows and flooding, increase in green space, greater consistency across stormwater programs, flexibility in design options and improvements in water quality. DEP is also proposing, as an appendix to this chapter, a NYC Stormwater Manual to provide additional procedural and technical guidance to owners, developers and applicants.

The proposed amendments to §19.1-01.2 Definitions would:

- change the definition of "covered development project" to include development activity that involves or results in an amount of soil disturbance greater than or equal to 20,000 square feet or creation of 5,000 square feet or more of impervious surface or covered maintenance activity.
- add a definition for "covered maintenance activity" to include roadway maintenance that involves 20,000 sf or more.
- change the definition of "development activity" to include creation of impervious surface.
- change the definition of "SWPPP acceptance form" to delete reference to the MS4 and the NYS Department of Environmental Conservation.
- change the definition of "MS4 area" to delete reference to the MS4 map.  
add a definition for MS4 project.
- delete the definition of new development.
- change the definitions of "notice of intent" or "NOI" and notice of termination" or "NOT" to add reference to their applicability in the MS4 area.
- add a definition for "NYC Stormwater Manual"
- delete the definition of "redevelopment."
- change the definition of "retention system" for consistency with Chapter 31 of these rules.
- add a definition of "roadway maintenance" as work in the ROW, including milling and filling of existing asphalt pavements, etc.
- change the definition of "routine maintenance activity" to eliminate full depth milling and filling of existing asphalt pavements, etc.

The proposed amendments to §19.1-03.1 Applicability would include deletion of reference to the MS4 map and changes in grandfathering provisions.

The proposed amendments to §19.1-03.3 Permits would clarify permit application requirements including requirement to identify any elements of the design not in conformance with the design criteria in the technical standard, including the reason for the deviation or alternative design and demonstration that the deviation or alternative design is equivalent to the technical standard; and reference to preference for post-construction practices that rely on infiltration/retention to those that rely on filtration/detention.

The proposed amendments would add §19.1-03.4 on Selecting Stormwater Management Practices (SMPs), as further described in the NYC Stormwater Manual, using the SMP Hierarchy, which requires implementing vegetated retention practices to the maximum extent practicable.

Permit issuance for covered development projects, meaning projects that involve or result in at least 20,000 square feet of soil disturbance or creation of 5,000 square feet or more of impervious surface or covered maintenance activities, is not subject to environmental review pursuant to 6 NYCRR Section 617.5(c)(19).

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New material is underlined. Deleted material is shown in [brackets].

“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.

Section 1. Section 19.1-01.1 of Chapter 19.1 of Title 15 of the Rules of the City of New York is amended to read as follows:

**§ 19.1-01.1 Applicability. Applicability.** These rules apply to discharges from industrial stormwater sources within those portions of the city of New York served by the municipal separate storm sewer system (MS4) and 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.

§2. The definitions of “covered development project,” “detention system,” “developer,” “development activity,” “MS4 SWPPP acceptance form,” “MS4 area,” “new development,” “notice of intent” or “NOI,” “notice of termination” or “NOT,” “pollutants of concern” or “POCs,” “Redevelopment,” “retention system,” routine maintenance activity” and “storm sewer” set forth in section 19.1-01.2 of Chapter 19.1 of title 15 of the rules of the city of New York are amended and new definitions of “covered maintenance activity,” “MS4 project” “NYC stormwater manual” and “roadway maintenance” are added to such section to read as follows:

**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] 20,000 square feet or creation of 5,000 square feet or more of impervious surface, or covered maintenance activity. 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] 20,000 square feet or creation of 5,000 square feet or more of impervious surface. [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.]

**Covered Maintenance Activity.** The term “covered maintenance activity” means roadway maintenance that involves 20,000 sf or more.

**Detention system.** The term “detention system” means a system [that slows] designed to slow and temporarily [holds] hold an accumulation of stormwater runoff [so that it can be released] and release it 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 or covered maintenance activity’s plans and specifications, including the ability to make modifications to the construction plans and specifications.

**Development activity.** The term “development activity” means creation of impervious surface and/or 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 logging equipment operation, the cutting and skidding of trees, stump removal, and/or 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].

**[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] the department.

**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 the map of the MS4 area set forth in these rules and available on the department’s website].

**MS4 Project:** The term “MS4 project” means a covered development project that is subject to the NYSDEC construction general permit.

**[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.]

**Notice of intent or NOI.** The term “notice of intent” or “NOI” means for MS4 projects or industrial stormwater sources in the MS4 area 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 for MS4 projects or industrial stormwater sources in the MS4 area the document submitted to NYSDEC to terminate coverage under the NYSDEC construction general permit or the MSGP. For non-MS4 area projects, the term “notice of termination” or “NOT” means the document submitted to DEP to terminate coverage under the DEP SW construction permit.

**NYC Stormwater Manual.** The term “NYC Stormwater Manual” (the “Manual”) refers to the procedural and technical guidance document developed to inform owners/developers/applicants how to meet stormwater requirements set forth in this chapter and in Chapter 31 of these rules; the Manual is attached as an appendix to this chapter.

**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).] causing the impairment of an impaired water segment listed in Appendix I of the New York City MS4 permit, including nitrogen, phosphorus, fecal coliform, and garbage and refuse.

**[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] designed to capture an accumulation of stormwater runoff on site [with no release] through infiltration, evapotranspiration, storage for reuse, or some combination of these.

**Roadway Maintenance.** The term “roadway maintenance” means work in the right of way (ROW) including milling and filling of existing asphalt pavements (“milling and paving”), replacement of concrete pavement slabs, and similar work that does not expose soil or disturb the

bottom six inches of subbase material; and long-term use of equipment storage areas at or near highway maintenance facilities.

**Routine maintenance activity.** The term “routine maintenance activity” means a maintenance 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;
- Replacement of curbs, gutters, sidewalks, and guide rail posts; and
- Repairs made to SMPs to restore them to former condition or to operating order.

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

§3. Subdivision (a) of section 19.1-02.1 of chapter 19.1 of title 15 of the rules of the city of New York is amended to read as follows:

(a) 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] contribute a significant pollutant load to the MS4.

§4. Subdivision (b) of section 19.1-02.3 of chapter 19.1 of title 15 of the rules of the city of New York ia amended to read as follows:

(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] may contribute a significant pollutant load to the MS4 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, nsistent with applicable law.

§5. Section 19.1.3.1 of chapter 19.1 of title 15 of the rules of the city of New York is amended to read as follows:

### **§ 19.1-03.1 Applicability**

(a)[This rule ] Section 19.1-03 of this chapter applies to covered development projects, public and private, that discharge to a [separate storm] sewer system owned or operated by the City, and covered development projects that are located on municipally owned or operated sites that drain by overland flow to waters of the state.

[(b) The MS4 map set forth in these rules is not the sole basis for determining whether a development activity is a covered development project. The map is an approximation of the boundaries of the MS4 area at a point in time. Such boundaries may change with changes to the separate storm sewer system and refinement of the map. The map is intended as a convenience and is not dispositive of whether a development project is within the MS4 area. When in doubt, developers should submit a record request form found on the department’s website for information on sewer drainage.]

[c.] (b) Grandfathering

(1) [This rule] Section 19.1-03 of this chapter 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] June 1, 2019.

(2) [This rule] Section 19.1-03 of this chapter does not apply to any development activity with a valid individual State Pollutant Discharge Elimination System (SPDES) permit issued by NYSDEC for construction activity before [the effective date of this rule] June 1, 2019.

(3) Section 19.1-03 of this chapter does not apply to any covered development project, other than an MS4 project, where an application for construction document approval for the construction of such project was filed with the Department of Buildings or the Department of Small Business Services, as applicable, prior to March 26, 2021.

(4) The amendments to this chapter effective on {insert effective date of rule} do not apply to any development activity with an MS4 SWPPP acceptance form issued within two years prior to such date.



(5) Section 19.1-03 of this chapter does not apply to any covered development project of less than 1 acre (other than a project of less than 1 acre all or any part of which is within an area that was rezoned as a result of a zoning map amendment application filed by the Department of City Planning, that received final approval after November 15, 2021, but before the effective date of this rule, and which project seeks to develop a parcel of land pursuant to the rezoning), if prior to the effective date of the rule an application for construction document approval was filed with the Department of Buildings or the department of small business services for such project.

(6) Section 19.1-03 of this chapter does not apply to any covered development project of less than 1 acre all or any part of which is within an area that was rezoned as a result of a zoning map amendment application filed by the Department of City Planning, that received final approval after November 15, 2021, and which seeks to develop a parcel of land pursuant to the rezoning, if prior to December 10, 2021, a permit for the construction of such project was issued by the Department of Buildings or the Department of Small Business Services, as applicable.

§6. Section 19.1-03.3 of chapter 19.1 of title 15 of the rules of the city of New York is amended to read as follows:

### **§ 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] In addition to technical standards included in this section, stormwater management practices must be designed and constructed in accordance with the following technical standards for performance and design:
  - (i) The New York City Stormwater Manual, incorporated as an appendix to this chapter.
  - ~~(i)~~(ii) The New York State Stormwater Management Design Manual January 2015 or its successor including the enhanced phosphorus removal standards.

[ii] (iii) New York Standards and Specifications for Erosion and Sediment Control, dated November 2016, or its successor.

[(iii)]The New York City StormwaterManual.]

(5) Where, in any specific case, different provisions of this chapter or of the technical standards incorporated by reference specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(b) Stormwater Construction Permit

(1) No developer may commence development activity in connection with a covered development project [located in the MS4 area], public or private, 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] sewer system or to protect the public health or welfare.

(2) The following activities are not considered covered development projects:

(i) Routine maintenance activities; and

(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)When a covered development project consists entirely of installation of an environmental enhancement project made up of one or more stormwater management practices, and does not include other development [or redevelopment], DEP may exempt the owner or developer from payment of any fees associated with these rules.

(iii)The application must include 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.

[(iii)] (iv)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:]

[ (ii)](v) 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. 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 this chapter, 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) Floodplain/floodway boundaries;
  - [(7)] (8) Wetlands and drainage patterns that could be affected by the [construction] development activity;
  - [(8)] (9) Existing and final contours;
  - [(9)] (10) Location of soil types with boundaries;
  - [(10)] (11) Material, waste, borrow or equipment storage areas located on adjacent properties; and
  - [[11]] (12) 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 development 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] development activity that will result in soil disturbance or creation of impervious surface and for each covered maintenance activity, 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 and structural practices that will be used to divert flows from exposed soils;
- 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. A maintenance inspection schedule for the trained contractor(s) to ensure continuous and effective operation of the erosion and sediment control practices;
- K. The name or names of the receiving waters;
- L. A delineation of SWPPP implementation responsibilities for each part of the site;
- M. 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
- N. Any existing data that describe the stormwater runoff at the site including but not limited to calculations to size erosion control practices.

O. Identification of any elements of the design that are not in conformance with the design criteria in the technical standards listed in (a)(4) of this section. Include the reason for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is equivalent to the technical standard.

[iv) When a covered development project consists entirely of repair or installation of an environmental enhancement project made up of one or more stormwater management practices, and does not include other development or redevelopment, DEP may exempt the owner or developer from payment of any fees associated with these rules.]

P. Development activities that are on Table 2.3 of the NYC Stormwater Manual in covered development projects under these rules must prepare a SWPPP that includes post-construction stormwater management practices. However, with respect to covered development projects for road construction or reconstruction that are less than one acre and for covered maintenance activities, erosion and sediment control practices will be required, but no post-construction stormwater management practices will be required.

(4)Development activities that alter hydrology, reduce perviousness or include the reconstruction of an impervious surface that disturbs soil, must develop a SWPPP that includes post-construction stormwater management practices.

[(4)] (5)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 designed to retain or infiltrate stormwater or documentation, as further required by the NYC Stormwater Manual, that retention or infiltration is not possible and a description of the selected 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 1 of the NYC MS4 permit NY-0287890, or most current, 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 as further provided in the New York City Stormwater [Management Design] Manual; and

[(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)] (xi) 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)] (6) Additional requirements for projects that disturb five acres or more

The owner or developer of a development 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 developer 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 developer 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 developer must prepare a phasing plan that defines maximum disturbed area per phase and shows required cuts and fill; and
- (iv) The owner or developer must install any additional site-specific practices needed to protect water quality.

~~(2)~~ [(6)] (7) Application review and determinations

- (i) The department or a qualified professional employed by the City of New York 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. However, with respect to submissions that include non-conforming designs per sections 19.1-03.3 (b)(3)(iv)(O) and 19.1-03.3 (b)(4)(v)(E), the department will issue a determination within 60 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] a 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.

~~(3)~~ [(7)] (8) 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)(25).
- (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 for an MS4 project, 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.

~~(4)~~ [(8)] (9) Permit conditions

- (i) The applicant and all contractors and subcontractors responsible for implementation of the SWPPP must comply with these rules, the SWPPP, NYSDEC construction general permit, if applicable, 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 up to one year 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 development activities to the date of final stabilization

- (vii) The developer must have a trained contractor inspect daily the erosion and sediment control practices and pollution prevention measures being implemented within the active work area to ensure that they are being maintained in effective operating condition at all times. The trained contractor must document (e.g., log) these daily inspections. If deficiencies are identified, the contractor shall begin implementing corrective actions within one business day and shall complete the corrective actions in a reasonable time frame.
- (viii) The developer must have a qualified inspector conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days, as detailed in the NYSDEC construction general permit. If deficiencies are identified, the contractor must begin implementing corrective actions within one business day and must complete the corrective actions in a reasonable timeframe.
- (ix) The developer must notify the department of an anticipated temporary shutdown a minimum of seven days before the shutdown, and must 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.
- (x) 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.
- (xi) All amendments to the SWPPP must be submitted to the department.
- (xii) 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 of 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)] (10) Expiration and extension of plan approval and permit, and permit renewal

- (i) A plan approval will expire if the permit is not requested within two years of issuance of the SWPPP acceptance form. The department may, upon written presentation of sufficient justification for delay and a fee of \$1,000 per disturbed acre, made 30 days prior to the expiration of a plan approval, grant an extension of time of up to one year to request a permit. If the plan approval expires, a new permit application must be submitted.
- (ii) A stormwater construction permit will expire if:
  - A. The commencement of development activities does not take place within one year of the permit issuance; or
  - B. Development activity is not completed by a date specified in the permit; or



- C. The permitted work is suspended or abandoned for a continuous period of 12 months (or less than 12 months if the permit expires earlier).
- (iii) The department may, upon written presentation of sufficient justification for delay and a fee of \$1,000 per disturbed acre made 30 days prior to the expiration of a permit, grant a one-time extension of time of up to one year to begin or complete the work prescribed under the permit. Expired permits will require re-application as detailed in the permit conditions.
- (iv) An application for permit renewal for two years 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)~~ [(10)] (11) Notice of Termination

- (i) An owner or developer of a covered development project that has completed all development activities must submit a completed NOT to the department for sign-off prior to submitting the NOT to NYSDEC. The department will review the completed NOT to ensure that the following conditions have been met:
  - A. All development activities identified in the SWPPP have been completed;
  - B. All areas of disturbance have achieved final stabilization;
  - C. All temporary structural erosion and sediment control measures have been removed; and
  - D. Any post-construction stormwater management practices identified in the SWPPP have been constructed in conformance with the SWPPP and are operational.
- (ii) An owner or developer of a covered development project that requires a planned shutdown with partial project completion must submit a completed NOT to the department for sign-off prior to submitting the NOT to NYSDEC. The department will review the completed NOT to ensure that the following conditions have been met:
  - A. All soil disturbance has ceased;
  - B. All areas disturbed as of the project shutdown date have achieved final stabilization;
  - C. All temporary structural erosion and sediment control measures have been removed; and
  - D. Any post-construction stormwater management practices required for the completed portion of the project have been constructed in conformance with the SWPPP and are operational.

~~(11)~~ [(11)] (12) 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 as provided for under 19.1.3-03(b)(10);
  - 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 Maintenance Entity must document (e.g., log) any maintenance activities undertaken pursuant to the operation and maintenance plan.
  - (ii) The owner must submit to the department annually, not more than 30 days before and not later than the anniversary date of the issuance of the stormwater maintenance permit, a certification signed by the owner that the stormwater management practices are operating as designed.
  - (iii) 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 and a fee of \$1,500.
  - (iv) 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.
  - (v) 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 required post-construction inspections and tests 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 practice.
- (7) Should any provision of these rules and a provision in the NYS construction general permit differ, the more stringent of the two provisions will apply.

§7. Chapter 19.1 of title 15 of the rules of the city of New York is amended by adding a new section 19.1-03.4 to read as follows:

**§ 19.1-03.4 Selecting SMPs using the SMP Hierarchy**

(a)SMPs must be selected, using the SMP hierarchy, as follows, and as more fully described in the NYC Stormwater Manual:

(1) *Vegetated retention* practices must be used to the maximum extent practicable to meet requirements.

(2) Where vegetated retention practices are not possible or cannot meet the entire runoff reduction volume due to site constraints, the site constraints must be documented in the SWPPP and *non-vegetated retention* practices must be used to the maximum extent practicable to meet requirements.

(3) Where both vegetated and non-vegetated retention practices are not possible or cannot meet the entire runoff reduction volume due to site constraints, the site constraints must be documented in the SWPPP and:

(i) In the combined sewer service area, any remaining requirements must be met using either *vegetated or non-vegetated detention* practices;

(ii) In the MS4 area, any remaining requirements must be met using either *vegetated or non-vegetated treatment* practices.

(b)When SMPs are deemed infeasible due to site constraints, including soil, subsurface, “hotspot,” surface and space constraints, the designer must provide the appropriate documentation that demonstrates each constraint.

(c)All documentation for constraints and justification for the selection of practices must be included in the SWPPP and are subject to review and approval by the Department.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
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NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of rules governing construction and post-construction stormwater sources**

**REFERENCE NUMBER: DEP-82**

**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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

November 23, 2021  
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:** Amendment of rules governing construction and post-construction stormwater sources

**REFERENCE NUMBER:** 2021 RG 060

**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: 11/23/2021

Acting Corporation Counsel

