

Final Regulations

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

Final Regulations

CHAPTER 18
NEW YORK CITY

SUBCHAPTER A	GENERAL PROVISIONS	1
Section 18-11	Preface	1
Section 18-12	Purpose and Findings	1
Section 18-13	Authority	3
Section 18-14	Applicability	3
Section 18-15	Local Representatives	5
Section 18-16	Definitions	7
Section 18-17	References	21
SUBCHAPTER B	STANDARDS AND PROCEDURES FOR REGULATED ACTIVITIES AND NONCOMPLYING REGULATED ACTIVITIES	24
Section 18-21	Standards for Regulated Activities	24
Section 18-22	Procedures for Notification and/or Reporting	25
Section 18-23	Application Procedures and Requirements	25
Section 18-24	Emergency Procedures	31
Section 18-25	Optional Pre-application Conference	32
Section 18-26	Modification, Suspension or Revocation of Approvals and Variances	33
Section 18-27	Noncomplying Regulated Activities	34
Section 18-28	Appeals	38
Section 18-29	Hearings on Cease and Desist Orders	40
Section 18-30	State Environmental Quality Review Act (SEQRA)	41
SUBCHAPTER C	REGULATED ACTIVITIES	43
Section 18-31	Pathogenic Materials	43
Section 18-32	Hazardous Substances and Hazardous Wastes	43
Section 18-33	Radioactive Materials	45
Section 18-34	Petroleum Products	45
Section 18-35	Human Excreta	47
Section 18-36	Wastewater Treatment Plants	47
Section 18-37	Sewerage Systems, Service Connections and Discharges to Sewerage Systems	57
Section 18-38	Subsurface Sewage Treatment Systems	59

Final Regulations

Section 18-39	Stormwater Pollution Prevention Plans and Impervious Surfaces	66
Section 18-40	Miscellaneous Point Sources	77
Section 18-41	Solid Waste	78
Section 18-42	Agricultural Activities	79
Section 18-43	Pesticides	79
Section 18-44	Fertilizers	79
Section 18-45	Snow Disposal and Storage and Use of Winter Highway Maintenance Materials	80
SUBCHAPTER D WATER QUALITY STANDARDS FOR RESERVOIRS AND CONTROLLED LAKES		
Section 18-48	Water Quality Standards	82
SUBCHAPTER E ENFORCEMENT		
Section 18-51	Enforcement	84
SUBCHAPTER F VARIANCES		
Section 18-61	Variances	85
SUBCHAPTER G ADMINISTRATION AND ENFORCEMENT BY LOCAL GOVERNMENTS		
Section 18-71	Certification of Administrative Programs	87
Section 18-72	Administrative Determinations	88
Section 18-73	Annual Review of Administrative Programs	88
Section 18-74	Decertification or Modification of Administrative Programs	89
Section 18-75	Certification of Enforcement Programs	89
Section 18-76	Annual Review of Enforcement Programs	91
Section 18-77	Decertification or Modification of Enforcement Programs	91
Section 18-78	Consent of the City	92
SUBCHAPTER H WATERSHED PROTECTION PLANS		
Section 18-81	Local Government Stormwater Protection Plans	93
Section 18-82	Watershed Planning in the Croton System	96
Section 18-83	Watershed Planning in the West of Hudson Watershed	105
Section 18-84	Permanent Phosphorus Offset Program	106
SUBCHAPTER I SEVERABILITY		
Section 18-91	Severability	108

Final Regulations

APPENDICES		
Appendix 18-A	Watershed Maps	109
Appendix 18-B	System Specific Water Quality Characteristics	111
Appendix 18-C	Tests for Analytical Determination of Concentrations of Elements	113
Appendix 18-D	Hazardous Waste Standards and Pesticide Standards	115

Final Regulations

SUBCHAPTER A GENERAL PROVISIONS

Section 18-11 Preface

(a) The health, welfare and economic well-being of nearly nine million residents in the five counties of New York City ("the City"), and of an increasing number of upstate New York communities is inextricably tied to the quality of the source waters in the watersheds of the New York City Water Supply located in Westchester, Putnam, Dutchess, Delaware, Ulster, Greene, Sullivan and Schoharie Counties, and Fairfield County in Connecticut. The high quality of these waters faces a continuing threat from the cumulative and episodic impacts of pollution sources generated by certain land uses and activities in the watersheds. It is the duty of the Commissioner of the New York City Department of Environmental Protection (the "Department") to protect the high quality of waters from which the City's water supply is drawn and preserve it from degradation for the purpose of protecting the health and general welfare of its consumers.

(b) These rules and regulations repeal in their entirety and supersede the Rules and Regulations for the Department of Water Supply, Gas and Electricity of the City of New York enacted the 11th day of June, 1953.

(c) These rules and regulations are hereby enacted pursuant to the authority vested in the Commissioner of the Department of Environmental Protection, as set forth in Section 18-13.

Section 18-12 Purpose and Findings

(a) The quality of the drinking water supplied to the City and upstate communities which draw from the New York City water supply depends primarily on the quality of the source waters which feed the reservoirs. The source waters and reservoirs are vulnerable to degradation and contamination from various sources and activities, including, but not limited to:

(1) Wastewater discharges to surface water and groundwater;

(2) Urban, suburban, rural, mining, silvicultural and agricultural land use practices that result in nonpoint source runoff of pollution and/or in

Final Regulations

adverse changes in the natural rate at which water flows into and through a delineated drainage basin; and

(3) Improper use, handling, storage, transport and/or disposal of substances, including but not limited to, hazardous substances, radioactive materials, pesticides, fertilizers, winter highway maintenance materials, solid wastes, and animal wastes.

(b) The Department finds that such sources and activities, either alone or in conjunction with any other related activities, may constitute a source of contamination to or degradation of the water supply, may cause a contravention of the State water quality standards set forth in 6 NYCRR Parts 701-705, and Subchapter D of these rules and regulations, and may result in the impairment of the use of the water supply for drinking, culinary or food processing purposes.

(c) In response to the Safe Drinking Water Act Amendments of 1986, the United States Environmental Protection Agency has begun implementing a significant expansion of regulatory requirements for public water systems. In order to protect the public health, and to satisfy the legislative mandates of the Safe Drinking Water Act Amendments and the rules and regulations in 40 CFR Parts 141 and 142, the New York State Department of Health has amended the State Sanitary Code, 10 NYCRR Part 5, Subpart 5-1, Public Water Systems, which contains New York State's Surface Water Treatment Rule. Although both Federal and State law propose filtration as a method for water quality treatment for pathogen control, the effectiveness of the filtration process and complexity of plant operation is dependent upon the quality of the water entering the filtration plant. In addition, many contaminants are not removed by conventional filtration. Therefore, it is clear that enhancement of the City's existing watershed rules and regulations would be necessary even if the City were to build filtration plants to filter its entire water supply.

(d) It is the goal and intent of these rules and regulations to protect the public health by averting future contamination to and degradation of the water supply and by remediating existing sources of pollution or degradation of the New York City water supply. These rules and regulations implement the Department's intention to minimize the discharge of pollutants into the source waters from both point and nonpoint sources, minimize the adverse impacts of erosion, limit the discharge of phosphorus to source waters which may accelerate the eutrophication process, and provide notification to the City of ongoing or proposed activities, which either alone or in conjunction with other existing and proposed regulated activities, may cause contamination to or degradation of the water supply.

Final Regulations

(e) It is the purpose of these rules and regulations to insure compliance with the Federal and State standards by providing a comprehensive watershed protection program. Furthermore, these rules and regulations articulate an anti-degradation policy for the New York City water supply system. These rules and regulations are promulgated to govern those activities in the watershed that threaten the quality of the water supply of the numerous upstate communities and the City of New York. While bound by its responsibility to protect the public health, the City has also taken the needs of the communities and businesses in the New York City watershed into consideration in drafting and promulgating these rules and regulations.

(f) The City reserves the right to re-examine these rules and regulations periodically to insure that they continue to further the goal and intent referred to in paragraph (d) of this subdivision and the purposes referred to in paragraph (e) of this subdivision. Without limiting the foregoing, and without limiting the City's rights to continue, modify, amend, suspend, waive or revoke any or all of these rules and regulations at any time in accordance with applicable law, the City intends to re-examine these rules and regulations ten (10) years after the effective date hereof to ascertain whether, and to what extent, these rules and regulations should be modified or amended so that they continue to serve their intended purposes.

Section 18-13 Authority

These rules and regulations are promulgated pursuant to Article 11 of the New York State Public Health Law and Section 24-302 of the New York City Administrative Code, and have been duly promulgated by the Commissioner of the Department of Environmental Protection of the City of New York and approved by the Commissioner of the New York State Department of Health. These rules and regulations shall become effective upon completion of any conditions set forth in the approval issued by the New York State Department of Health pursuant to section 1100(1) of the Public Health Law; publication of these rules and regulations pursuant to section 1100(2) of the Public Health Law; and upon completion of the requirements of the New York City Administrative Procedure Act.

Section 18-14 Applicability

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

Final Regulations

- (1) Discharge or storage of pathogenic materials.
- (2) Discharge or storage of hazardous substances and hazardous wastes.
- (3) Discharge or storage of radioactive materials.
- (4) Discharge or storage of petroleum products.
- (5) Discharge or transport of human excreta.
- (6) Design, construction and operation of wastewater treatment plants.
- (7) Design, construction and operation of sewerage systems and service connections.
- (8) Design, construction and operation of intermediate sized and individual sewage treatment systems.
- (9) Discharge of stormwater and sediment, and preparation and implementation of stormwater pollution prevention plans.
- (10) Construction of impervious surfaces.
- (11) Discharge from miscellaneous point sources.
- (12) Discharge of solid waste, including the siting of junkyards and solid waste management facilities.
- (13) Discharge from agricultural activities.
- (14) Discharge or storage of pesticides.
- (15) Application and storage of fertilizers.
- (16) Snow disposal and application and storage of winter highway maintenance materials.

(b) These rules and regulations apply to substantial alterations or modifications of the activities described in subdivision (a) of this section.

(c) These rules and regulations apply to a substantial alteration or modification of any noncomplying regulated activity, as set forth in these rules and regulations.

(d) These rules and regulations apply to noncomplying regulated activities that are required to come into compliance with these rules and regulations as set forth in these rules and regulations.

(e) The boundaries of the New York City watershed have been delineated on United States Geological Survey maps, which are available for inspection at the offices of the local representatives of the Department listed in Section 18-15 of this subchapter. A map of the watershed is provided in Appendix 18-A of this Part for reference purposes only.

Final Regulations

Section 18-15 Local Representatives

(a) Information about these rules and regulations and application and other forms required by these rules and regulations may be obtained from the following offices of the Department. Applications for Department approval of a regulated activity must be submitted to one of the offices of the Department listed in subdivision (b). Petitions appealing from a determination issued by the Department or requesting a hearing on a cease and desist order issued by the Department must be submitted to the offices listed in subdivision (c).

- (1) New York City Department of Environmental Protection
Chief, Engineering Section
465 Columbus Avenue
Valhalla, New York 10595
Telephone: (914) 742-2069
- (2) New York City Department of Environmental Protection
5 Jay Street
Katonah, New York 10536
Telephone: (914) 232-5171
City Tie-line: (212) 349-4017
- (3) New York City Department of Environmental Protection
Deputy Chief, Engineering
P.O. Box 370
Route 28A
Shokan, New York 12481
Telephone: (914) 657-6972
- (4) New York City Department of Environmental Protection
P.O. Box 358
Grahamsville, New York 12740
Telephone: (914) 985-2275
City Tie-line: (212) 349-1930
- (5) New York City Department of Environmental Protection
P.O. Box D
Downsville, New York 13755
Telephone: (607) 363-7000

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

Final Regulations

- (1) New York City Department of Environmental Protection
Deputy Chief, Engineering
465 Columbus Avenue
Valhalla, New York 10595
Telephone: (914) 773-4418

- (2) New York City Department of Environmental Protection
Deputy Chief, Engineering
P.O. Box 370
Route 28A
Shokan, New York 12481
Telephone: (914) 657-6972

(c) Petitions for appeal of a determination issued by the Department in accordance with Section 18-28 and petitions for a hearing on a cease and desist order issued by the Department in accordance with Section 18-29 must be submitted to the address listed in paragraph (1), with a copy to the address listed in paragraph (2).

- (1) New York City Office of Administrative Trials and Hearings
40 Rector Street
New York, New York 10006-1705
Telephone: (212) 442-4900

- (2) New York City Department of Environmental Protection
General Counsel
59-17 Junction Boulevard
19th Floor
Corona, New York 11368-5107
Telephone: (718) 595-6555

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

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

Final Regulations

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

Section 18-16 Definitions

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

(1) Access road means an impervious private or public road, other than a driveway, which connects a parcel to an existing public or private road and which is necessary in order to enable the parcel to be developed. Access road does not include an internal road within a subdivision or within an area of common development involving two (2) or more parcels.

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

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

(4) Agricultural activity means an activity that occurs on "land used in agricultural production" as that term is defined in Section 301(4) of the Agriculture and Markets Law.

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

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

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

Final Regulations

(8) Base Flow means visible sustained or fair weather runoff of water, including groundwater.

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

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

(11) CFR means the Code of Federal Regulations.

(12) City means the City of New York.

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

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

(15) Combined sewerage system means a structure used for conveying both sewage and stormwater.

(16) Commissioner means the Commissioner of the New York City Department of Environmental Protection or its successors.

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

Final Regulations

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

(19) Contamination means the introduction of any pollutant to the water supply.

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

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

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

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

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

(25) Designated Main Street Area means a defined area of limited size located within the East of Hudson Watershed which is an existing center of commercial, industrial, residential, or mixed use and which has been defined and designated by a local government in the East of Hudson Watershed and approved by the Department pursuant to these rules and regulations.

(26) Designated Village Center means an area in the Croton System described by the metes and bounds of a village center, whether or not located in an incorporated village, designated by a local government(s) in a Comprehensive Croton Water Quality Protection Plan prepared and agreed to in accordance with Section 18-82 of these rules and regulations by submitting to the Department a description of the metes and bounds of such proposed Designated Village Center, a map of the described area, and a statement of the features which qualify the area as a Designated Village Center. A Designated Village Center must be an existing center of commercial, residential or mixed uses.

Final Regulations

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

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

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

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

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

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

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

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

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

Final Regulations

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

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

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

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

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

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

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

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

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

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

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

Final Regulations

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

(48) Impervious means resistant to penetration by moisture. Impervious materials include, but are not limited to, paving, concrete, asphalt, roofs, or other hard surfacing material. Impervious surfaces do not include dirt, crushed stone or gravel surfaces.

(49) Individual residence means a building consisting of one residential units.

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

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

(52) Infiltration means water, other than wastewater, that enters a sewerage system, including sewer service connections, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

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

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

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

Final Regulations

(56) Intermediate sized sewage treatment system means a subsurface sewage treatment system, typically with a treatment process utilizing a septic tank followed by subsurface disposal, treating sewage or other liquid wastes for discharge into the groundwater of the State and where a SPDES permit is required for such a system. Intermediate sized sewage treatment systems shall not include wastewater treatment plants as defined in these rules and regulations.

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

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

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

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

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

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

(63) Microfiltration means a process in which treated effluent passes through a membrane filter having a molecular weight cutoff rate of 500,000 or less.

Final Regulations

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

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

(66) New means any regulated activity that is not an existing or noncomplying regulated activity, as defined herein.

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

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

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

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

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

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

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

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

Final Regulations

- (71) One hundred year flood plain means the land susceptible to being inundated by a flood that has a one percent or greater chance of recurring in any given year.
- (72) Operator means any person who leases, operates, controls or supervises a facility.
- (73) Owner means any person who has legal or equitable title to a facility.
- (74) Pathogenic means capable of causing disease from organisms, including but not limited to: bacteria, fungi, viruses, and protozoa (such as Giardia and Cryptosporidium).
- (75) Person means any individual, public or private corporation, political entity, agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever, except that person shall not mean the State of New York or any State department, agency, board, public benefit corporation, public authority or commission.
- (76) Perennial stream means a watercourse that flows throughout the year from source to mouth.
- (77) Pesticide means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans, or other animals, which the Commissioner of the New York State Department of Environmental Conservation shall declare to be a pest or (ii) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant.
- (78) Petroleum product means oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.
- (79) Phosphorus restricted basin means the drainage basin of a reservoir or controlled lake in which the phosphorus load to the reservoir or controlled lake results in the phosphorus water quality values established by the New York State Department of Environmental Conservation and set forth in its Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality and Guidance Values (October 22, 1993) being exceeded as determined by the Department pursuant to its annual review conducted under Section 18-48 (c) of Subchapter D.

Final Regulations

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

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

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

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

(84) Radioactive material means any material in any form that emits radiation spontaneously.

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

(86) Remediation means the repair or replacement of a subsurface sewage treatment system.

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

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

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

Final Regulations

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

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

(92) Sewerage system means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

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

(94) Small quantity generator has the meaning set forth in 6 NYCRR Section 370.2(b)(154).

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

(96) Solid waste management facility means any facility employed beyond the initial solid waste collection process and managing solid waste including but not limited to: storage areas or facilities; transfer stations; rail-haul or barge-haul facilities; landfills; construction and demolition processing facilities; disposal facilities; solid waste incinerators; landspreading facilities; composting facilities; surface impoundments; waste oil storage, reprocessing and rerefining facilities; recyclables handling and recovery facilities; and waste tire storage facilities, as defined in 6 NYCRR Section 360-1.2.

Final Regulations

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

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

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

(100) Stormwater Project Review Committee (“Committee”) means a Committee formed in each Town or Village in the watershed to assist the Department in implementing subdivision 18-39 (b) and (c) of Subchapter C, and consisting of the following four Committee members: a representative of the Department, who shall act as chairperson; a representative of the New York State Department of Environmental Conservation from the region in which the activity requiring a stormwater pollution prevention plan is proposed to be located; a representative of the Town or Village in which the activity requiring a stormwater pollution prevention plan is proposed to be located or if no one is designated by the Town, or if the activity is proposed for a village, the Village, a representative of the appropriate County Planning Department, provided, however, that a Town, or if the activity is proposed for a village, the Village, may at any time designate a representative to replace the one designated by the County Planning Department; and a representative of the County Department of Health from the County in which the activity requiring a stormwater pollution prevention plan is proposed to be located, or in a County without a County Department of Health, a representative of the County Soil and Water Conservation Service.

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

Final Regulations

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

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

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

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

(106) Two year, twenty-four hour storm means the storm, with a twenty-four hour duration, that has a fifty percent chance of occurring in any given year.

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

(108) Ulster County Fill System means a subsurface sewage treatment system used in Ulster County which has been approved by the New York State Department of Health for use in Ulster County and which is built upon two (2) feet of in situ soil that has a percolation rate between 3 to 60 minutes/inch, and which uses at least four (4) feet of fill material, including at least three (3) feet between the bottom of the trench and the in situ soil, that has a percolation rate between 3 and 10 minutes/inch. Ulster County Fill System shall include the Ulster County Fill System when used in a county other than Ulster if the New York State Department of Health has approved the system for use in such other county.

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

(110) Village extension means an area immediately adjoining a main road extending a maximum distance of one quarter mile outside an existing village which has been designated as a village extension by the Town Board of the Town in which the village is located in the West of Hudson watershed pursuant to a

Final Regulations

Water Supply Permit issued by the New York State Department of Environmental Conservation for Project No. 0-9999-00051/00001.

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

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

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

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

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

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

(117) Winter highway maintenance materials means the solid compounds or the solutions that are commonly used for traction on, or for the abatement of, winter road ice, including, but not limited to, chloride compounds, mixtures of sand and chloride compounds, sand and coal combustion bottom ash and ash from

Final Regulations

solid waste incinerators that meet the requirements of 6 NYCRR Section 360-3.5(h).

Section 18-17 References

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

(1) Federal Categorical Pretreatment Standards, 40 CFR Part 403, 1992, Superintendent of Documents, United States Government Printing Office, Washington, D.C., 20402.

(2) USDA Soil Conservation Service Soil Type Boundaries, USDA SCS, Room 771, Federal Building, 100 South Clinton Street, P.O. Box 7248, Syracuse, New York, 13261-7248.

(3) Standard Methods for the Examination of Water and Wastewater, 12th edition, 1965, Table 18, "Qualitative Description of Odors," page 306, American Public Health Association, American Water Works Association, and Water Pollution Control Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.

(4) Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, American Public Health Association, American Water Works Association, and Water Environment Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.

(5) Methods for Chemical Analysis of Water and Wastes, 1979, Environmental Protection Agency (EPA), Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(6) State Environmental Quality Review Act, New York State Environmental Conservation Law, Article 8 (ECL section 8-0101 et seq.), Department of State, 162 Washington Avenue, Albany, New York 12231.

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

Final Regulations

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

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

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

(11) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality and Guidance Values (October 22, 1993), New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

(12) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1, Total Maximum Daily Loads and Water Quality-Based Effluent Limits (July 8, 1996).

(13) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1B, Total Maximum Daily Loads and Water Quality-Based Effluent Limits, Amendments-Low and Intermittent Stream Standards (July 8, 1996), New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

(14) New York State Environmental Conservation SPDES General Permit for Storm Water Discharges from Construction Activities, Permit No. GP-93-06, Dated July 14, 1993, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

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

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

Final Regulations

Final Regulations

SUBCHAPTER B
STANDARDS AND PROCEDURES FOR REGULATED ACTIVITIES
AND NONCOMPLYING REGULATED ACTIVITIES

Section 18-21 Standards for Regulated Activities

(a) The following general standards apply to all regulated activities unless specifically noted otherwise, whether or not the regulated activity also requires the review and approval of the Department. In addition, certain regulated activities must meet additional standards or procedures where specifically set forth in this subchapter or in other subchapters:

(1) All regulated activities shall be planned, designed, scheduled and conducted in such manner as to not constitute a source of contamination to or degradation of the water supply.

(2) The Department shall base its review and approval of any regulated activity on compliance with these rules and regulations, including the water quality standards set forth in Subchapter D, and shall additionally take into consideration the system specific water quality characteristics set forth in Appendix 18-B.

(3) The burden of demonstrating compliance with the requirements of these rules and regulations shall be on the person proposing to engage in a regulated activity. In the event that any person finds that compliance with any standard set forth in these rules and regulations is not possible, then she or he may apply for a variance in accordance with the provisions of Subchapter F of these rules and regulations. Variances may be granted provided that the Department makes the findings required by Subchapter F of these rules and regulations.

(4) Failure to comply with the conditions of any approval issued by the Department under these rules and regulations shall be a violation of these rules and regulations.

(5) The Department may order that a regulated activity cease, and/or a facility where such regulated activity is taking place be closed or removed, if such regulated activity is causing contamination to or degradation of the water supply, such that the activity is a threat to the life, health, or safety of water supply users that requires immediate corrective action. Any person who receives such an order may request a hearing on such order in the manner provided in Section 18-29.

Final Regulations

Section 18-22 Procedures for Notification and/or Reporting

Where any notification, application or reporting to the Department required by these rules and regulations is to be made in writing, it shall be sent by certified mail to both the local Department representative in the portion of the watershed in which the regulated activity takes place and to the Engineering Section. Addresses are listed in Section 18-15 of Subchapter A of these rules and regulations.

Section 18-23 Application Procedures and Requirements

- (a) These procedures shall apply to the following:
 - (1) Applications for review and approval of regulated activities, including renewals of approvals of regulated activities. An application for renewal of an approval of a regulated activity shall be submitted to the Department no less than 180 days prior to the expiration of the approval. This deadline shall apply unless stated otherwise in a special condition of the approval.
 - (2) Applications for review and approval of a substantial alteration or modification of any regulated activity;
 - (3) Applications for review and approval of any substantial alteration or modification of a noncomplying regulated activity; and
 - (4) Applications for variances pursuant to Subchapter F of these rules and regulations.
- (b) The applicant shall meet the following requirements:
 - (1) No person shall undertake any activity listed in Section 18-14 of Subchapter A of these rules and regulations which requires the review and approval of the Department without first obtaining written approval from the Department, except where a temporary emergency approval has been obtained from the Department pursuant to Section 18-24 of this Subchapter.
 - (2) Any person proposing to undertake any activity listed in Section 18-14 of Subchapter A of these rules and regulations which requires the review and approval of the Department, shall submit to the Department, at the address of the Department representative for the area where the regulated activity is to be undertaken set forth in Section 18-15 of

Final Regulations

Subchapter A of these rules and regulations, an application for review and approval which includes a plan of the activity which meets the requirements of this Subchapter and any additional requirements for the specific activity set forth in these rules and regulations. Failure by the applicant to submit information to the Department or to follow the Department procedures set forth in these rules and regulations is sufficient grounds to deny the approval.

(3) Any person seeking approval of an activity may be subject to such terms and conditions as the Department may require, including time limitations and limitations on transfer of the approval given by the Department.

(4) (i) An applicant shall affirmatively state in the application whether any enforcement action has been commenced during the five (5) years preceding the application against the applicant, or any principal or affiliate of the applicant, for alleged violations of law related to the specific regulated activity for which the approval is sought, or related to the facility or site at which the activity is located. The applicant shall supply the following information with respect to each enforcement action: the agency or entity commencing the action, the date of commencement, the facility location and address where the alleged violation occurred, and disposition of the action.

(ii) Failure to fully and accurately disclose any material information required to be disclosed pursuant to subparagraph 4(i) shall be a basis for the Department to deny a permit application.

(iii) Failure to cure any adjudicated violation of this Chapter or any law, rule or regulation enforced by the Department shall be a basis to deny a permit application.

(iv) If the Department or the City has commenced an enforcement action against the applicant for violations of law related to the facility or site at which the activity for which the approval is sought is located, the Department may suspend processing of the application until such alleged violations are cured.

(5) Any property owner may request that the Department perform a site visit and evaluation to determine and flag the presence of a watercourse, reservoir, reservoir stem or controlled lake on the owner's

Final Regulations

property. If the property owner supplies the Department with a surveyor's map of the property which includes a representation of the flagged watercourses, reservoirs, reservoir stems or controlled lakes identified by the Department, the Department shall confirm or amend the findings upon the surveyor's map as soon as is practicable. A confirmed survey map shall be binding upon the Department for five years following the date of the confirmation.

(6) If an applicant for Department review and approval of a regulated activity requests that the Department conduct a site visit and evaluation to determine and flag the presence of a watercourse, reservoir, reservoir stem or controlled lake on the applicant's property the Department shall do so as soon as is practicable. If the applicant supplies the Department with a surveyor's map of the property which includes a representation of the flagged watercourses, reservoirs, reservoir stems or controlled lakes identified by the Department, the Department shall confirm or amend the findings upon the surveyor's map within 20 business days of receipt thereof. A confirmed survey map shall be binding upon the Department for five years following the date of the confirmation. The absence of a Department confirmed surveyor's map will not cause an application to be considered incomplete.

(c) An application shall contain the following information:

(1) An application for the review and approval of any activity listed in Section 18-14 of Subchapter A of these rules and regulations shall provide a description of the activity, the location and topography of the area of the activity, identification of any existing structures at the location, and any engineering, construction or other plans which detail the methods to be used in undertaking the activity such that it shall meet the requirements of this Subchapter and any additional requirements for the specific activity set forth in these rules and regulations.

(2) An application for review and approval of any activity listed in Section 18-14 of Subchapter A of these rules and regulations shall include a copy of any Environmental Assessment Form (EAF), and either a Draft Environmental Impact Statement (DEIS) or a determination of non-significance by the lead agency, where such documents are prepared pursuant to Article 8 of the Environmental Conservation Law and the rules and regulations promulgated thereunder.

Final Regulations

(3) When a regulated activity requires a related approval from any other agency or more than one approval from the Department, the application for review and approval shall include a list of such approvals which the applicant knows to be required, and a statement of the status of any required approval at the time of filing of the application with the Department.

(d) Review and Approval Procedures:

(1) The applicant proposing to engage in any activity listed in Section 18-14 of Subchapter A of these rules and regulations which requires the review and approval of the Department shall certify in writing that she or he believes that the application is complete and in compliance with the requirements of this Subchapter and any additional requirements for the specific activity set forth in these rules and regulations.

(2) An application is complete when it is determined by the Department to contain sufficient information for the purpose of commencing review of the application. The Department retains the right to seek additional information in order to enable the Department to make a determination pursuant to these rules and regulations. Within ten (10) days of receiving an application for review and approval of a conventional individual sewage treatment system to be installed on an individual lot which is not within a subdivision, or within twenty (20) days of receiving any other type of application for review or approval, the Department shall either:

- (i) Notify the applicant in writing that the application is complete and that the Department shall commence its review; or
- (ii) Notify the applicant in writing that the application is incomplete and specifically request all additional information from the applicant as the Department deems necessary. If additional information is requested or comments are issued by the Department that need to be addressed by the applicant, the twenty (20) day period described in paragraph (d)(4) of this subdivision or the forty-five (45) day period described in paragraph (d)(5) of this subdivision shall not commence to run. The Department shall notify the applicant in writing within ten (10) days of receiving the additional information that has been requested either that the application is complete and that the Department has commenced its review or that further information is required.

Final Regulations

- (iii) Except in cases where the applicant has submitted false or misleading information or where a change in relevant law has occurred or changes have been proposed for the project, the Department may require further information based only upon the additional information submitted by the applicant or new issues raised by such information. In addition, the Department may also require further information based on a change in ownership of the property, the identity of the applicant, or the identity of the applicant's owners, principals, shareholders, directors, or officers.

(3) If the Department fails to notify an applicant in writing of its determination as to the completeness or incompleteness of the application within the time periods set forth in paragraph (d)(2) of this subdivision, the applicant may notify the Department of its failure by means of certified mail, return receipt requested, to the local Department representative identified in Section 18-15 who is responsible for processing the application and a copy to the Engineering Section. If the Department fails to notify the applicant of its determination as to the completeness or incompleteness of the application within ten (10) business days of receiving the notice, the application shall be deemed complete as of the eleventh day.

(4) The Department shall notify the applicant in writing of its determination within twenty (20) days of determining that an application for review and approval of a conventional individual sewage treatment system to be installed on an individual lot which is not within a subdivision is complete pursuant to the procedures set forth in paragraph (d)(2) of this subdivision unless the Department and the applicant mutually agree in writing upon an extension of the twenty (20) day review period.

(5) For all applications for review and approval, other than for a conventional individual sewage treatment system to be installed on an individual lot which is not within a subdivision, the Department shall notify an applicant in writing of its determination within forty-five (45) days of notifying the applicant that the application is complete pursuant to the procedures set forth in paragraph (d)(2) of this subdivision unless the Department and the applicant mutually agree in writing upon an extension of the forty-five (45) day review period.

(6) If the Department fails to notify an applicant in writing of its determination within the twenty (20) day time period set forth in paragraph (d)(4) of this subdivision or the forty-five (45) day time period set forth in

Final Regulations

paragraph (d)(5) of this subdivision, the applicant may notify the Department of its failure by means of certified mail, return receipt requested to the local Department representative identified in Section 18-15 of Subchapter A of these rules and regulations who is responsible for processing the application and a copy to the Engineering Section. The notice shall contain the applicant's name, location of the proposed project, the office in which the application was filed, and a statement that a decision is sought in accordance with this subdivision. Any notice failing to provide this information will not invoke this provision.

- (i) If the Department fails to notify the applicant of its decision within ten (10) business days of the receipt of such notice, the application shall be deemed approved subject to the standard terms and conditions applicable to such an approval.

(7) Notwithstanding the time period for notifying an applicant of the Department's determination specified in paragraphs (d)(4), (d)(5) and (d)(6) of this section, if a lead agency has determined that a project may have a significant effect on the environment for purposes of the State Environmental Quality Review Act (SEQRA), such time periods shall be suspended pending receipt from the lead agency of either a Final Environmental Impact Statement (FEIS) or a determination of nonsignificance. Upon receipt of either document, the time periods shall resume, provided, however, that the Department shall have at least twenty (20) days to notify an applicant of its determination.

(8) Notwithstanding the time periods for decisions specified in this subdivision, the Department may condition an approval on the applicant providing satisfactory proof of any bonds required by the Department within thirty days of the applicant receiving the conditional approval from the Department.

(9) Any notice required or permitted to be given by the Department under this Subchapter shall be given in such manner designed to reach the applicant, as the Department deems appropriate, and may include, but is not limited to, regular mail, certified mail return receipt requested, or telecopier.

Final Regulations

Section 18-24 Emergency Procedures

(a) Notwithstanding any other provision of this Subchapter, where an expedited review and approval of a regulated activity is necessary to respond to an imminent threat to the health and safety of humans or animals, or to respond to a substantial imminent threat to property, an applicant seeking such review and approval shall notify the Department by telephone at the office of the local representative listed in Section 18-15 of Subchapter A of these rules and regulations, and shall meet with the Department within 24 hours. At the meeting the applicant shall present to the representative of the Department such available information regarding the regulated activity as would otherwise be required in a written application for review and approval of the regulated activity. Additionally, the applicant shall provide an explanation of the nature of the imminent threat that necessitates the expedited review. The Department shall review the information supplied by the applicant and shall issue a temporary determination to approve or disapprove the application within 24 hours of receipt of the information required by this subdivision.

(1) An applicant shall not be required to notify the Department before undertaking the routine repair and maintenance of a subsurface sewage treatment system, including, but not limited to, the pump-out of a septic tank, the repair of a broken lateral, the leveling of a distribution box, or the removal of a blockage.

(b) An approval granted by the Department pursuant to the emergency expedited review procedure shall be a temporary approval only, and shall not be considered to be a final approval of the Department. The temporary approval may contain conditions and time limitations and shall be limited to whatever actions are necessary to abate the imminent threat. A final approval shall be issued by the Department only after review and approval of a complete written application submitted in accordance with the procedures and standards set forth in subdivision (c) of this section, and any other applicable provisions of this Subchapter and these rules and regulations.

(c) An applicant who has received a temporary approval for a regulated activity pursuant to the emergency expedited review procedure shall, within twenty days of such approval, submit a written application to the Department containing all of the information required to be provided by these rules and regulations for the particular regulated activity.

Final Regulations

Section 18-25 Optional Pre-application Conference

(a) If a proposed regulated activity requires one or more Department reviews or approvals, or the preparation of an Environmental Impact Statement pursuant to the State Environmental Quality Review Act, the prospective applicant may request an optional pre-application conference with the appropriate Department staff as a means of clarifying application procedures to be followed in order to comply with the requirements set forth in these rules and regulations.

(b) The request for a pre-application conference should be made at the earliest possible stage of the applicant's planning process. Such request shall be made in writing to the Department representative for the area where the regulated activity is to be undertaken, as set forth in Section 18-15 of Subchapter A of these rules and regulations. A mutually agreed upon time and place shall be scheduled for the pre-application conference.

(c) In order to assist the prospective applicant, prior to the pre-application conference, the prospective applicant shall submit to the Department representative the following information:

(1) A description of the proposed regulated activity, a site plan or sketch showing the location and topography of the area of the activity, identification of any existing structures at the location, and any engineering, construction or other plans which describe the methods to be used to meet the requirements of these rules and regulations;

(2) A statement of the prospective applicant's timetable and financial plans for carrying out the proposed regulated activity, if known;

(3) A statement of any governmental financial aid, facilities, or other assistance which the prospective applicant expects to be provided or plans to request for the regulated activity; and

(4) Such other information as the Department deems reasonably necessary.

(d) At the pre-application conference, the proposed project will be informally discussed. Based on information provided by the applicant, review and approval requirements will be identified and the applicant will be provided with guidance concerning the application and review process. Participation in the pre-application process shall not relieve an applicant from the requirements of

Final Regulations

obtaining all approvals otherwise necessary under these rules and regulations or any other law or rules and regulations, prior to commencing the regulated activity.

Section 18-26 Modification, Suspension or Revocation of Approvals and Variances

(a) An approval or variance issued by the Department pursuant to these rules and regulations may be modified, suspended or revoked at any time upon the Department's initiative, on any of the grounds set forth in paragraphs (1) through (5) of this subdivision. The grounds for modification, suspension or revocation include:

- (1) Materially false or inaccurate statements in the approval or variance application or supporting documents;
- (2) Failure by the person named in the approval or variance to comply with any terms or conditions of the approval or variance;
- (3) The scope of the project, as described in the application, is exceeded;
- (4) Newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or rules and regulations since the issuance of the existing approval or variance; or
- (5) Noncompliance with previously issued approval or variance conditions, orders of the Commissioner, or with any provisions of the rules and regulations of the Department related to the activity.

(b) The Department shall send a notice of intent to modify, suspend or revoke an approval or variance to the person named in the approval or variance by certified mail, return receipt requested or by personal service. The notice shall state the alleged facts or conduct which appear to warrant the intended action.

(c) Within fifteen calendar days of receipt of a notice of intent, the person named in the approval or variance may submit a written statement to the Department, giving reasons why the approval or variance should not be modified, suspended or revoked, or requesting a hearing, or both. Failure by such person to timely submit a statement shall result in the Department's action becoming effective on the date specified in the notice of intent.

Final Regulations

(d) Within fifteen calendar days of receipt of such person's statement, the Department shall either:

(1) If a statement without a request for a hearing is submitted, rescind or confirm the notice of intent based on a review of the information provided by such person; or

(2) If a statement with a request for a hearing is submitted, notify such person of a date and place for a hearing, to be commenced not later than sixty calendar days from this notification.

(e) In the event such a hearing is held, the Commissioner shall, within thirty calendar days of receipt of the complete record, issue a written decision, stating the findings and reasons therefor, to the person named in the approval or variance. The decision shall:

(1) Continue the approval or variance in effect as originally issued;

(2) Modify the approval or variance or suspend it for a stated period of time or upon stated conditions; or

(3) Revoke the approval or variance, including, where ordered by the Commissioner, removal or modification of all or any portion of a project, whether completed or not.

(f) Where the Department proposes to modify an approval or variance, and the person named in the approval or variance requests a hearing on the proposed modification, the original conditions of the approval or variance shall remain in effect until a decision has been issued by the Commissioner pursuant to subdivision (e) of this section. At such time the modified conditions shall take effect.

(g) Nothing in this section shall preclude or affect the Commissioner's authority to use the remedy of summary abatement or to issue a cease and desist order under these rules and regulations, or any other law or regulation.

Section 18-27 Noncomplying Regulated Activities

(a) General requirements.

(1) A noncomplying regulated activity may be continued except where specifically prohibited from continuing by these rules and regulations.

Final Regulations

(2) A noncomplying regulated activity shall come into compliance with these rules and regulations where specifically required to do so by these rules and regulations.

(3) Except where otherwise provided in these rules and regulations, no noncomplying regulated activity shall be substantially altered or modified without the prior review and approval of the Department. The Department shall review and approve such an alteration or modification in accordance with the standards and procedures set forth in Subchapter F (variances). However, a noncomplying regulated activity may be reduced in size or extent without such review and approval provided that such reduction does not cause any increase in any existing discharge or any increase in the potential for contamination to or degradation of the water supply. An application for a regulated activity to be located on a site with a noncomplying regulated activity, which does not involve a substantial alteration or modification of a noncomplying regulated activity, shall be reviewed in accordance with the standards for that regulated activity.

(4) In the event that any noncomplying regulated activity is discontinued for a period of one year or more, it shall permanently desist. However, a noncomplying regulated activity shall not be deemed discontinued in the following situations:

- (i) Seasonal use of a residence or business;
- (ii) Destruction of 75 percent or more of the market value of a noncomplying regulated activity and its related property, by flood, fire, or other natural disaster, provided that any replacement of a noncomplying regulated activity shall be identical in capacity, intensity, volume and type to the former noncomplying regulated activity and provided that such replacement shall take place within two years of such destruction, and provided further that such replacement shall comply with these rules and regulations, where possible;
- (iii) Transfer, sale, or lease of a residence or business provided further that the noncomplying regulated activity is not changed to a different noncomplying regulated activity, unless approved by the Department, and provided that such transfer, sale or lease occurs within three years of the offering for sale or lease of the residence or business.

(5) Should any noncomplying regulated activity cause contamination to or degradation of the water supply, such that the activity is a threat to the

Final Regulations

life, health, or safety of water supply users, the Commissioner may order that such noncomplying regulated activity conform either in whole or in part to the requirements of these rules and regulations, immediately or within a limited period of time at the Commissioner's discretion, or be discontinued immediately. Any person who receives such an order may request a hearing on such order in the manner provided in Section 18-29.

(6) Any owner or operator of a noncomplying regulated activity who was not required by these rules and regulations to notify the Department pursuant to paragraph (1) of subdivision (b) of this section, may request, in writing, a determination from the Department that such property or activity is a noncomplying regulated activity. The written request shall include all of the information required in such paragraph. The Department shall determine, based upon the submission, whether the property or activity is a noncomplying regulated activity, and shall notify the owner or operator of such determination in writing.

(b) Commercial, industrial, institutional or governmental noncomplying regulated activities.

(1) Commercial, industrial, institutional or governmental owners or operators of a noncomplying regulated activity shall notify the Department, in writing, of the existence of the noncomplying regulated activity within one (1) year of the effective date of these rules and regulations. The notification shall include a description of the noncomplying regulated activity and its location, and the name and telephone number of a contact person.

(2) The Department shall publish a directory of all commercial, industrial, institutional or governmental noncomplying regulated activities located in the watershed based upon the information submitted pursuant to paragraph (1) of this subdivision, and any additional information available to the Department.

(3) The directory shall be published in a newspaper of general circulation for two consecutive weekdays in each of two consecutive weeks.

(4) Within sixty days of the last date of such publication, any commercial, industrial, institutional, or governmental owner or operator of a noncomplying regulated activity shall notify the Department in writing of any objection to the information set forth in the directory. Furthermore,

Final Regulations

any owner or operator of a noncomplying regulated activity shall notify the Department in writing of the omission from the directory of his or her noncomplying regulated activity.

(5) Within 120 days of the last date of publication of the directory, the Department shall publish a revised directory, in accordance with the procedures provided for in paragraph (3) of this subdivision.

(6) If, within five years of the effective date of these rules and regulations, a commercial, industrial, institutional or governmental owner or operator of a noncomplying regulated activity discovers that his or her property should have been included in the final directory and was not included, such owner or operator shall write to the Department and request that the property be added to the directory. The request shall include all of the facts surrounding the omission from the listing and the reason why the property should be designated a noncomplying regulated activity, as well as all supporting documentary evidence, such as title searches, deeds, etc. Based upon the submission, the Department shall determine whether to add the property to the directory and shall notify the petitioner in writing of its decision.

(7) Upon written notification by the Department, a commercial, industrial, institutional, or governmental owner or operator of a noncomplying regulated activity may be required to submit any results of local, state or federally mandated or conducted tests or environmental audits. In addition, such owner or operator may be required to provide to the Department copies of any reports or applications submitted to local, state and federal agencies relating to the noncomplying regulated activity.

(8) Upon written notification by the Department, a commercial, industrial, institutional, or governmental owner or operator of a noncomplying regulated activity may be required to submit, within ninety days of receipt of mailing, for review and approval by the Department, a plan to protect the water supply from the potential for contamination or degradation posed by such activity. Such plan may include, but shall not be limited to, restriction or management of activities, use of best management practices, drainage control, development of procedures to address the potential contamination or degradation (including disposal procedures) and training of employees.

(i) The decisions whether to require submission of a plan and whether to approve a plan shall be based upon the risk of potential for contamination to or degradation of the water

Final Regulations

supply based upon such factors as: location, intensity of use, record of adequate maintenance and operation of any existing structure or facility, compliance with existing local, state, and federal laws and rules and regulations, and the burden upon the noncomplying regulated activity.

Section 18-28 Appeals

(a) An applicant may appeal a final determination issued by the Department under these rules and regulations by filing a petition in writing with the Department and with the New York City Office of Administrative Trials and Hearings (“OATH”) within thirty (30) days of the date the determination was mailed. The petition shall state the name and address of the petitioner and shall include a short and plain statement of the matters to be adjudicated, identifying the approval or variance sought by the petitioner with citation to the applicable provisions of these rules and regulations, the regulated activity for which the Department issued the determination, the proposed location of the activity, and the date of the Department’s determination. The petition should also indicate whether the petitioner is requesting a hearing. A copy of the determination being appealed shall be attached to the petition. In addition, a completed OATH intake sheet shall be included with the petition. Blank intake sheets are available from the Department.

(b) The following determinations are appealable:

(1) A denial of an application for approval of a regulated activity.

(2) A denial of an application for a variance.

(3) The imposition of a substantial condition in an approval of a regulated activity.

(4) The imposition of a substantial condition in a grant of a variance.

(c) Petitions for appeal shall be referred to a City administrative law judge (ALJ) for hearing, where allowed by this section, and determination as defined in subdivision (g).

(d) The following issues are adjudicable on appeal:

(1) Whether the regulated activity proposed by the petitioner will be in compliance with the requirements of these rules and regulations.

Final Regulations

- (2) Whether the imposition of a substantial condition in an approval of a regulated activity is appropriate to ensure that the regulated activity will comply with the requirements of these rules and regulations.
- (3) Whether the Commissioner or the First Deputy Commissioner abused his or her discretion in denying a request for a variance or in imposing a substantial condition in a grant of a variance.
- (4) Except where the Department has acted as lead agency, the ALJ shall not adjudicate any issues relating to compliance with the State Environmental Quality Review Act (SEQRA).
 - (e) Except for appeals from determinations relating to variances, the petitioner shall have the burden of proving by a preponderance of the evidence that the proposed regulated activity is in compliance with the requirements of these rules and regulations. For appeals from determinations relating to variances, the petitioner shall have the burden of proving that the Commissioner or First Deputy Commissioner has abused his or her discretion.
 - (f)(1) Appeals from determinations relating to individual sewage treatment systems or variances shall be decided on the record before the Department in its review of the application and any other written submissions allowed by the ALJ.
 - (2) A petitioner may request an adjudicatory hearing on appeals from all other determinations issued by the Department. If a petitioner does not request a hearing, the petition shall be decided on the record before the Department in its review of the application and any other written submissions allowed by the ALJ.
 - (i) Unless otherwise agreed to by the parties and the ALJ, the hearing shall be held in the district of the Department in which the regulated activity was proposed to be located, except that hearings may be held at the Department's offices in Valhalla, New York for appeals relating to regulated activities in the East of Hudson watershed and at the Department's offices in Kingston, New York for appeals relating to regulated activities in the West of Hudson watershed.
 - (g) The ALJ shall submit a report to the Commissioner within 60 days after the record on appeal is closed with a recommendation as to whether the

Final Regulations

determination appealed from should be approved, modified or rejected. The Commissioner shall issue a final decision approving, rejecting, or modifying the ALJ's recommendation within 30 days of receipt of the ALJ's report. If the Commissioner does not act, the ALJ's recommendation shall be deemed approved.

(h) This section shall not apply to determinations made by local governments administering provisions of these rules and regulations pursuant to Subchapter G.

(i) An applicant shall have the option whether to file an administrative appeal under this section and nothing in this section shall preclude an applicant from challenging a final determination issued by the Department in a court of competent jurisdiction, including instituting a proceeding under Article 78 of the Civil Practice Law and Rules, without first filing a petition for appeal pursuant to this section.

Section 18-29 Hearings on Cease and Desist Orders

(a) Any person who receives a cease and desist order may request a hearing on the order by submitting a petition in writing to the Commissioner and to the Office of Administrative Trials and Hearings ("OATH") within seven (7) days of receipt of the cease and desist order. The petition for a hearing shall state the name and address of the petitioner and shall include a short and plain statement of the matters to be adjudicated, identifying the activity that is the subject of the order, the location of the activity, and the date of the cease and desist order. A copy of the order shall be attached to the petition. In addition, a completed OATH intake sheet shall be included with the petition. Blank intake sheets are available from the Department.

(b) Upon receipt of the petition for a hearing, OATH shall schedule a hearing promptly in the district of the Department where the activity that is the subject of the order allegedly occurred, and at a time and date which shall not exceed fifteen (15) days from the date of receipt by OATH of the petition for a hearing unless the parties and the ALJ agree to another location and date, except that hearings may be held at the Department's offices in Valhalla, New York for petitions relating to regulated activities in the East of Hudson watershed and at the Department's offices in Kingston, New York for petitions relating to regulated activities in the West of Hudson watershed. Notice of such hearing shall be provided in writing to the petitioner and to the Department.

(c) A petition for a hearing shall not stay compliance with the cease and desist order, and it shall continue to be the duty of the petitioner to discontinue

Final Regulations

the activity pursuant to the terms of the order. Failure to do so shall be a violation of the order and these rules and regulations.

(d) At the hearing, the petitioner shall have the burden of proving that the activity that is the subject of the order does not come within the provisions of Section 18-21(a)(5) and Section 18-27(a)(5) of these rules and regulations.

(e) The failure of the petitioner to appear at the time, date and place set forth in the notice of hearing shall constitute a default of the right to a hearing on the cease and desist order. The Department shall provide a notice of default in writing to the petitioner within five (5) days of the petitioner's failure to appear.

(f) The hearing shall be held before an ALJ. The ALJ shall cause a record of the hearing to be made, and shall make a report to the Commissioner within ten (10) days of the close of the hearing record, setting forth the appearances, the relevant facts and arguments presented at the hearing, findings of fact and conclusions of law, and a recommendation as to whether the order should be continued, modified or vacated and the reasons therefor. Transcripts of the record of the hearing shall be made available at the petitioner's request and expense.

(g) Within ten (10) days of receipt of the recommendation of the ALJ, the Commissioner may continue, vacate, or modify the order, If the Commissioner does not act, the ALJ's recommendation shall be deemed adopted.

(h) The results of the hearing on the cease and desist order shall be without prejudice to the right of a person to apply for an approval or variance for a regulated activity under these regulations, and shall also be without prejudice to the authority of the Department or any other person to take action on account of any violation of law, rule, regulation or order arising out of the events, situations or circumstances which led to the issuance of the order.

Section 18-30 State Environmental Quality Review Act (SEQRA)

The following activities are deemed by the Department to be "Type II" actions under SEQRA and its implementing regulations, and the Department shall not require an environmental impact statement or any other determination or procedure under SEQRA for these activities:

- (1) Installation of a new individual sewage treatment system on an individual lot which is not within a subdivision, or within a subdivision

Final Regulations

which has been approved as of the effective date of these rules and regulations.

- (2) Any alteration or modification of an existing individual sewage treatment system.

Final Regulations

SUBCHAPTER C REGULATED ACTIVITIES

Section 18-31 Pathogenic Materials

Unless otherwise permitted by these rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge, of pathogenic materials into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this section that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

Section 18-32 Hazardous Substances and Hazardous Wastes

(a) Unless otherwise permitted by these rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge, of hazardous substances or hazardous wastes into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(b) New storage facilities or new tanks at an existing facility for the storage of hazardous substances regulated under 6 NYCRR Part 596, and new process tanks, as defined in 6 NYCRR section 596.1(c)(35), which would be regulated under 6 NYCRR Part 596 if not for the exemption of process tanks under 6 NYCRR section 596.1(b)(3)(i), are prohibited within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake, except as provided in subdivision (d) of this section.

(c) The owner or operator of a new facility, or a new or substantially modified tank at an existing facility, for the storage of hazardous substances which is regulated under 6 NYCRR Part 596 and which is located between the limiting distance of 100 and 250 feet of a watercourse or wetland, must comply with the following conditions:

(1) The owner or operator shall submit to the Department a copy of any registration forms required by 6 NYCRR Sections 596.2(d) and (e) and

Final Regulations

any notification forms required by 6 NYCRR Section 596.2(f) at the time such forms are submitted to the New York State Department of Environmental Conservation. When, on an emergency basis, new storage tanks are installed or existing storage tanks are substantially modified in order to protect public health, safety or the environment, the owner or operator shall notify the Department no later than two hours after the decision is made by the owner or operator to install or substantially modify the tank.

(2) The owner or operator shall submit to the Department a copy of any spill prevention report required to be prepared or updated by 6 NYCRR Section 598.1(k), within thirty (30) days of preparing or updating such report.

(3) Failure to comply with the provisions of 6 NYCRR Section 596.6 (spill response, investigation and corrective action) is a violation of these rules and regulations.

(4) Failure to comply with 6 NYCRR Part 599 (Standards for New or Modified Hazardous Substance Storage Facilities) is a violation of these rules and regulations.

(d) Subdivision (b) of this section shall not apply to:

(1) The storage of any hazardous substance that is a noncomplying regulated activity, including the replacement in kind of an existing storage tank provided that the replacement tank is designed and installed in compliance with Federal, State and local law. To the extent practicable, the new tank shall be located outside of the limiting distances of 100 feet of a watercourse or wetland, or outside of the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake;

(2) The storage of hazardous substances where such storage is necessary to operate a wastewater treatment plant approved by the Department; and

(3) The storage of hazardous substances where such storage is made necessary by construction of a new facility or the alteration or modification of an existing facility used in connection with the operation of a public water supply system.

Final Regulations

(e) Reference is made to the Hazardous Waste Standards set forth in Appendix 18-D to these rules and regulations. The Department states its intention to seek:

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

Section 18-33 Radioactive Materials

Unless otherwise permitted by these rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge, of radioactive materials into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this section that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

Section 18-34 Petroleum Products

(a) Unless otherwise permitted by these rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge, of petroleum products into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(b) New aboveground and underground petroleum storage facilities, which require registration under 6 NYCRR Part 612, or new tanks which expand the capacity of existing facilities which require registration under 6 NYCRR Part 612, are prohibited within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake. Notwithstanding this prohibition, the expansion of an existing aboveground or underground petroleum storage facility shall be allowed within the aforesaid limiting distances provided that the owner or operator of such facility

Final Regulations

demonstrates to the Department that the application of the limiting distances would preclude the continuation of an existing business.

(c) New home heating oil tanks not requiring registration under 6 NYCRR Part 612, within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake are prohibited from being installed underground and shall be located either aboveground or contained in a basement with a concrete or other impervious floor.

(d) New aboveground and underground petroleum storage tanks of 185 gallons or more which are neither home heating oil tanks regulated under subdivision (c) of this section nor located at facilities requiring registration under 6 NYCRR Part 612, are prohibited within the limiting distance of 25 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake, except that such new tanks may be allowed within the aforesaid limiting distances provided that the applicant demonstrates to the Department that application of the limiting distances would preclude the continuation of an existing business or the continued identical use of the existing facility.

(e) Subdivisions (b), (c), and (d) shall not apply to:

- (1) The storage of any petroleum products that is a noncomplying regulated activity;
- (2) The storage of petroleum products for agricultural purposes;
- (3) The replacement in kind of existing petroleum storage facilities or tanks;
- (4) The storage of petroleum products where such storage is necessary to operate a wastewater treatment plant approved by the Department; and
- (5) The storage of petroleum products where such storage is made necessary by construction of a new facility or the alteration or modification of an existing facility used in connection with the operation of a public water supply system.

Final Regulations

Section 18-35 Human Excreta

(a) Unless otherwise permitted by these rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge, of human excreta into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(b) Emptying, discharging or transferring the contents of a sewage vault or other sewage receptacle into any watercourse, wetland, reservoir, reservoir stem, or controlled lake is prohibited.

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

Section 18-36 Wastewater Treatment Plants

(a) Minimum Requirements

(1) Unless otherwise permitted by these rules and regulations, the design, construction, or operation of a wastewater treatment plant is prohibited where such design, construction, or operation causes a discharge, or storage which is reasonably likely to lead to a discharge, of sewage or sewage effluent into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(2) The design of new wastewater treatment plants, and the plans and specifications resulting from that design, require the review and approval of the Department. The construction of new wastewater treatment plants shall be in conformance with the plans and specifications approved by the Department.

(3) The design for an expansion or an alteration or modification of new or existing wastewater treatment plants, and the plans and specifications resulting from that design, require the review and approval of the

Final Regulations

Department. The construction of the expansion or alteration or modification shall be in accordance with the plans and specifications approved by the Department.

(4) The owner or operator of a new or existing wastewater treatment plant shall operate and maintain the wastewater treatment plant in accordance with the operations and maintenance manual for the plant. Such manual shall be prepared by the owner and approved by the Department.

(5) No new wastewater treatment plants with a surface discharge, or expansion or alteration or modification of new or existing wastewater treatment plants, shall cause a contravention of the water quality standards set forth in Subchapter D of these rules and regulations or the phosphorus water quality values set forth in the New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality Standards and Guidance Values (October 22, 1993).

(6) No part of any seepage unit or absorption field for a subsurface discharge from a wastewater treatment plant shall be located within the limiting distance of 100 feet of a watercourse or wetland or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake.

(7) Wastewater treatment plants with surface discharges into the watershed shall be capable of achieving 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of enteric viruses.

(8) Wastewater treatment plants with either surface or subsurface discharges within the watershed shall provide phosphorus removal using the best treatment technology so that the wastewater treatment plant is designed to be operated and maintained to meet the following requirements:

SPDES Permitted Total Flow (gallons/day)	Total Phosphorus Limit (mg/l)
≤50,000	1.0
>50,000 and <500,000	0.5
≥500,000	0.2

Final Regulations

(9) Wastewater treatment plants with surface discharges to intermittent streams in the watershed shall be operated and maintained to meet the intermittent stream effluent limits set forth in the New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1, Total Maximum Daily Loads and Water Quality-Based Effluent Limits (July 8, 1996) and New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1B, Total Maximum Daily Loads and Water Quality-Based Effluent Limits, Amendments-Low and Intermittent Stream Standards (July 8, 1996), provided however, that the effluent limit for a discharge of a pollutant to an intermittent stream shall in no case be less stringent than the effluent limit which would apply to the same discharge of the pollutant to the first downstream perennial stream.

(10) Within one year of the effective date of these rules and regulations, the owners of all existing wastewater treatment plants shall submit to the Department for review and approval an operations and maintenance plan and a schedule setting forth a plan for bringing the wastewater treatment plant into compliance with all of the requirements of this section. Any such plan that is disapproved by the Department shall be revised and resubmitted to the Department for review and approval within ninety (90) days after the initial disapproval. Owners of existing wastewater treatment plants must secure final Department approval of such operation and maintenance plans and such a schedule setting forth a plan for bringing the plant into compliance by no later than eighteen (18) months from the effective date of these rules and regulations, and must complete all work in order for such plants to be brought into compliance with the requirements of this section by no later than five (5) years from the effective date of these rules and regulations or any extended period of time approved by the Department upon good cause shown.

(11) Existing wastewater treatment plants with surface discharges are prohibited from expanding if they are located in an area where new wastewater treatment plants with surface discharges are prohibited by these rules and regulations. This paragraph shall not apply to existing wastewater treatment plants which discharge subsurface or the expansion of existing wastewater treatment plants where the expanded portion discharges subsurface.

(12) Existing wastewater treatment plants with surface discharges may expand if they are located in an area where new wastewater treatment plants with surface discharges are allowed by these rules and regulations.

Final Regulations

The plans submitted to expand the wastewater treatment plant shall meet all of the requirements of this section.

(13) Existing wastewater treatment plants with subsurface discharges may expand. The expanded portion of such wastewater treatment plants shall meet all of the design standards and other requirements of this section.

(14) Any approval of a new or expanded wastewater treatment plant issued by the Department shall expire and thereafter be null and void unless construction is completed within five (5) years of the date of issuance of such approval or any extended period of time approved by the Department upon good cause shown. Following expiration of the approval, the plans for the wastewater treatment plants may be resubmitted to the Department for consideration for a new approval.

(b) Requirements for wastewater treatment plants located within phosphorus restricted basins. No new wastewater treatment plants with surface discharges, or expansions of existing wastewater treatment plants with surface discharges, shall be allowed in a phosphorus restricted basin. A variance from this provision may be sought in accordance with the requirements set forth in Section 18-61 (d) of Subchapter F.

(c) Requirements for wastewater treatment plants located in coliform restricted basins. No new wastewater treatment plants with surface discharges, or expansions of existing wastewater treatment plants with surface discharges, shall be allowed in a coliform restricted basin. A variance from this provision may be sought in accordance with the requirements set forth in Section 18-61(d)(1) of Subchapter F.

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

(1) The map indicating the demarcation line for the watershed areas that are located within the 60 day travel time to intake appears in Appendix 18-A. Large detailed maps of such areas are available to be reviewed by the public during business hours at the regional offices listed in Section 18-15 of Subchapter A.

(2) Within the 60 day travel time to the intake the following requirements are applicable:

Final Regulations

- (i) New wastewater treatment plants with surface discharges, or expansions of existing wastewater treatment plants with surface discharges, are prohibited;
 - (ii) Existing wastewater treatment plants with SPDES permitted surface discharges may continue to operate provided the treated effluent is also subject to sand filtration, disinfection, phosphorus removal, and microfiltration or a Department-approved equivalent technology to microfiltration, as required by these rules and regulations;
 - (iii) New and existing wastewater treatment plants with subsurface discharges may commence or continue to operate provided that the treated effluent is also subject to sand filtration and phosphorus removal, and for SPDES permitted discharges greater than 30,000 gallons per day (gpd), disinfection, as required by these rules and regulations.
- (e) Treatment requirements for wastewater treatment plants located in the watershed and beyond the 60 day travel time to intake.
- (1) The map indicating the demarcation line for the watershed areas that are located beyond the 60 day travel time to intake appears in Appendix 18-A. Large detailed maps of such areas are available to be reviewed by the public during business hours at the regional offices listed in Section 18-15 of Subchapter A.
 - (2) Beyond the 60 day travel time to the intake the following requirements are applicable:
 - (i) New wastewater treatment plants with surface discharges into a reservoir, reservoir stem, controlled lake, or wetland are prohibited;
 - (ii) All new surface discharges into a watercourse, and any existing wastewater treatment plants with SPDES permitted surface discharges may commence or continue to operate, provided that the treated effluent is also subject to sand filtration, disinfection, phosphorus removal, and microfiltration or a Department-approved equivalent technology to microfiltration, as required by these rules and regulations;
 - (iii) New and existing wastewater treatment plants with subsurface discharges may commence or continue to operate, provided that the treated effluent is also subject to

Final Regulations

sand filtration and phosphorus removal, and for SPDES permitted discharges greater than 30,000 gallons per day (gpd), disinfection, as required by these rules and regulations.

(f) Design, Operation and Maintenance Requirements

(1) This subdivision (f) shall apply to new and existing wastewater treatment plants.

(2) The criteria used by the Department to approve the design for any new wastewater treatment plant or the portion of any new or existing wastewater treatment plant which is being expanded or altered or modified shall be all applicable requirements of law, including the standards set forth in the following documents:

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

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

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

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

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

- (i) All wastewater treatment plants shall provide standby power units sufficient to run the entire plant in order to ensure

Final Regulations

- uninterrupted reliable operation in the event of utility power failure and these units shall be equipped with an alarm and automatic start-up capability;
- (ii) All vital plant structures, mechanical and electrical equipment of new or existing wastewater treatment plants located or designed within the 100-year flood plain shall be protected from damage from a 100-year flood that may affect or disrupt its function or general performance. Such structures and equipment shall remain fully operational in a 25-year flood.
 - (iii) The disinfection system shall be provided with backup units, an alarm and equipment that will insure processing of the plant flow without interruption and the backup electrical and/or mechanical equipment shall be equipped with automatic start-up capability.
 - (iv) In wastewater treatment plants with a SPDES permitted surface discharge of 50,000 gpd or less, there shall be a minimum of two (2) sand filters, each rated to handle the full plant flow. In wastewater treatment plants with a SPDES permitted surface discharge greater than 50,000 gpd, there shall be a minimum of three (3) sand filters, each rated to handle one-half ($\frac{1}{2}$) of the full plant flow;
 - (v) All wastewater treatment plants must be equipped with a flow meter that includes a recording device; and
 - (vi) All alarm systems shall require telemetering to a central location with around the clock operator presence or, in the alternative, to an operator's residence so that a response shall be initiated immediately.
- (6) The following requirements shall apply to all wastewater treatment plants with subsurface discharges or absorption fields located in the watershed:
- (i) The loading rate to the absorption trench may be 25 percent greater than that required under the design standards listed in subdivision (f)(2) of this section;
 - (ii) An additional area of at least 50 percent of the absorption field area shall be set aside as a reserve field area;
 - (iii) At a minimum, one percolation and one deep hole test shall be performed in both the primary absorption field area and in the reserve absorption field area. An applicant shall notify the Department in writing at least 7 business days prior to performance of such tests, and specify the location and the

Final Regulations

- time of the tests. At the option of the Department, a Department representative may witness these tests; and
- (iv) The use of pumping, mechanical dosing or other mechanical devices requires a pump chamber equipped with an alarm to indicate malfunction, a backup pump, and any other safety features required by the Department to prevent overflow.
- (7) (i) All owners or operators of Department approved wastewater treatment plants in the watershed shall, prior to commencement of construction of such wastewater treatment plants, deposit with the Department a performance bond for the completion of the construction of the wastewater treatment plant and an additional bond or other guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, prior to commencement of operation of the approved wastewater treatment plant, the owners or operators of the approved wastewater treatment plant shall provide a surety bond, or a reasonable guaranty, that they shall continue to maintain and operate the system for a period of five years. The surety bond or guaranty shall be in an amount sufficient to insure the full and faithful performance by the owners or operators of the wastewater treatment plants, and their successors and assigns, with regard to their obligation to properly maintain and operate the wastewater treatment plants in accordance with all requirements of law and according to the conditions set by the Department in its approval; provided, however, that such surety bond or guaranty shall not be required by the Department where the owners or operators of the wastewater treatment plant have provided a surety bond or guaranty for the maintenance and operation of the wastewater treatment plant to the local governing body, in an amount necessary to insure the full and faithful performance of the operation and maintenance of the wastewater treatment plant; provided further, that such surety bond or guaranty shall not be required where the owner or operator of the wastewater treatment plant is a village, town, county or city. The Commissioner may, at his or her discretion, increase the amount of such surety bond

Final Regulations

or guaranty, but not to exceed an amount necessary to insure the full and faithful performance of the operation of the wastewater treatment plant. All such bonds shall be prepared on the forms of bonds authorized by the City of New York and shall have as a surety such company or companies that shall be approved by the City of New York and are authorized to do business in the State of New York.

- (ii) The Commissioner may authorize the provision of other security, including cash, if the Commissioner finds that compliance with the bond requirement is not reasonably possible and the public interest would be served by such authorization. The alternative security shall be deposited with the Comptroller of the City of New York.
- (iii) Whenever an owner or operator of a wastewater treatment plant deposits securities or other obligations with the City of New York, in lieu of a performance bond, it shall be with the understanding that the Comptroller of the City of New York, or his or her successors, may sell and use the proceeds thereof for any purpose for which the principal or surety on such bond would be liable under the terms of the approval. If money is deposited with the Comptroller, the owner or operator of the wastewater treatment plant shall not be entitled to receive interest on such money from the City of New York.

(8) The transfer of any approval or permit issued by the Department for the construction and/or operation of any wastewater treatment plant shall require Department approval. The Department shall approve such transfer provided that the transferee demonstrates sufficient financial, technical, and professional capability to construct, operate and/or maintain the subject wastewater treatment plant in compliance with applicable laws, as cited in section 18-36(a)(1), the provisions of these rules and regulations, and the terms and conditions of any approval or permit granted by the Department.

(g) Application Requirements

- (1) An application for review and approval of a new wastewater treatment plant shall include the following information:
 - (i) A Department application form and an Environmental Assessment Form (EAF Long Form);

Final Regulations

- (ii) A facility plan which shall include: a description of the project, flow and waste load estimations, site characteristics, evaluation of existing system, if applicable, and existing local or related facilities, including any related water quality problems, examination of the project service area, estimation of growth, examination of alternative solutions and explanation of why the proposed option was chosen, analysis of potential impacts, analysis of hydraulic and organic capacities (including Waste Assimilation Capacity analysis), description of unit processes and explanation of sizing, operation under emergency conditions, and sludge processing, storage and disposal methods, estimation of costs, proposed financing methods and anticipated user fees, outline of operation and maintenance requirements (including cost projections), and regulatory review and permitting requirements;
- (iii) An engineering plan which shall include: location plan, site plan, schematic of plant hydraulic profile, piping schematic, location, dimension and elevations of plant process units and appurtenances, mechanical system layout, electrical system layout, and erosion and sediment control and stormwater management plan.
- (iv) Construction specifications, including material and equipment specifications;
- (v) Construction schedule;
- (vi) In cases where a draft environmental impact statement ("DEIS") is to be prepared for an activity and the DEIS complies with the requirements of Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder, and includes the information required in this part, the DEIS may constitute all or part of the application for review and approval under this part. In such case the applicant will provide the Department with notice and a copy of the DEIS; however, no approval shall be issued by the Department prior to review of the FEIS and issuance of a finding to approve; and
- (vii) A copy of the draft SPDES permit, if any, and, when issued, a copy of the final SPDES permit. Copies of any revisions to the draft SPDES permit shall also be provided to the Department as they become available to the applicant.

Final Regulations

- (2) An application for review and approval of an expansion or of an alteration or modification of a new or existing wastewater treatment plant shall include all of the information required in subdivision (g)(1) of this section where applicable, and shall either:
- (i) Certify that the wastewater treatment plant is in compliance with all of the requirements of this section, and all requirements of its SPDES permit; or
 - (ii) Certify that a schedule for the wastewater treatment plant to come into compliance with the requirements of this section and with the requirements of its SPDES permit has been submitted to the Department for approval. A copy of such compliance schedule shall be attached to the application.
- (3) An application for review and approval of a plan for bringing an existing wastewater treatment plant into compliance with the requirements of this section shall include the operation and maintenance manual for the wastewater treatment plant.
- (4) All approvals for new or expansion of existing wastewater treatment plants are conditioned on the applicant's submission of record drawings and an operation and maintenance manual once construction is complete.

Section 18-37 Sewerage Systems, Service Connections and Discharges to Sewerage Systems

- (a) Combined sewerage systems are prohibited from discharging within the watershed.
- (b) A new service connection to a sewerage system is prohibited where the wastewater treatment plant to which the sewerage system has been connected and which discharges within the watershed has had a SPDES flow parameter violation in the prior twelve months, or where the additional flow from the new service connection will cause or can be expected to cause such wastewater treatment plant to have a SPDES flow parameter violation.
- (c) All new service connections shall be tested as required by and in accordance with the standards set forth in "Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities," New York State Department of Environmental Conservation (1988), and the standards in "Recommended Standards for Wastewater Facilities," the Great Lakes--Upper Mississippi River Board of State Public Health and Environmental Managers,

Final Regulations

Sections 33.92-33.94 (1990). A copy of the results of the tests shall be forwarded to the Department as soon as they are available.

(d) Except for the owner of an individual or two family residence, the owner of any property which will be served by a new service connection to a sewerage system, or by any alteration or modification of a service connection to a sewerage system, shall submit all plans or designs for such service connection or such alteration or modification to the Department prior to or simultaneously with the delivery of the notice to the Department required under paragraph (d)(1) below. The owner of an individual or two family residence to be served by a new service connection to a sewerage system, or by an alteration or modification of a service connection to a sewerage system, shall not be required to submit the plans or designs for such service connection or such alteration or modification to the Department, unless specifically requested by the Department. If so requested, such owner shall submit such plans or designs to the Department prior to or simultaneously with the delivery of the notice to the Department required under paragraph (d)(1) below or, if the request is made by the Department after such notice has been given, within ten (10) days after such request has been made.

(1) The owner of any property which will be served by a new service connection to a sewerage system, or by an alteration or modification of a service connection to a sewerage system, shall notify the Department 48 hours prior to the installation of such service connection or of such alteration or modification, and provide an opportunity to the Department to observe the work. If required or requested pursuant to subsection 18-37(d), the owner shall submit to the Department all plans or designs for such service connection or for such alteration or modification prior to or simultaneously with the delivery of the such notice to the Department.

(e) The design, construction and plans for a new sewerage system shall require the review and approval of the Department. Any proposed alteration or modification of a sewerage system, including a sewerage system that is a noncomplying regulated activity, shall require the review and approval of the Department.

(1) The Department may require an engineering report, construction plans and specifications, and any environmental assessments and determinations in compliance with Article 8 of the Environmental Conservation Law when reviewing any application pursuant to this subdivision for a new sewerage system, or a proposed alteration or modification of a sewerage system.

Final Regulations

(f) The criteria used by the Department to approve any new sewerage system or the portion of any sewerage system which is being altered or modified, shall be all applicable requirements of law, including the standards set forth in the following documents:

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

(2) "Recommended Standards for Wastewater Facilities," the Great Lakes--Upper Mississippi River Board of State Public Health and Environmental Managers (1990).

(g) All sewerage systems connected to a wastewater treatment plant which discharges within the watershed shall be designed, operated and maintained in such manner as to prevent inflow or infiltration which causes either:

(1) The SPDES authorized flow limit of the wastewater treatment plant to be exceeded; or

(2) The strength of the sewage influent to the wastewater treatment plant to be diluted to a level that adversely affects the efficacy of the SPDES permitted and Department approved treatment process.

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

(i) The owner or operator of a facility which disposes of wastes regulated pursuant to the Federal Categorical Pretreatment Standards, 40 CFR Part 403, shall submit three copies of the engineering report, plans and specifications, prepared by a licensed design professional, in compliance with 40 CFR Parts 403, 406-471 and any applicable local regulations, to the Department for its review and approval.

Section 18-38 Subsurface Sewage Treatment Systems

(a) Minimum Requirements

(1) The design, treatment, construction, maintenance and operation of new subsurface sewage treatment systems, and the plans therefor, require the review and approval of the Department, provided that the requirements of this section shall not apply to subsurface sewage treatment systems

Final Regulations

necessary for an agricultural activity that are designed, provide treatment and are constructed, maintained and operated in compliance with State and Federal law.

(2) All new individual sewage treatment systems shall comply with the requirements of 10 NYCRR Part 75 and Appendix 75-A except where a local government or agency has enacted, or these rules and regulations specify, more stringent standards, in which case, the more stringent standards shall apply.

(3) All new intermediate sized sewage treatment systems shall comply with the requirements set forth in Design Standards for Wastewater Treatment Works, Intermediate Sized Sewerage Facilities, New York State Department of Environmental Conservation (1988), except where a local government or agency has enacted, or these rules and regulations specify, more stringent standards, in which case, the more stringent standards shall apply.

- (i) As a condition of approval the Department may require evidence of financial security prior to construction, from any owner or operator of a new intermediate sized sewage treatment system or a substantial alteration or modification to an existing intermediate sized sewage treatment system. Such financial security shall consist of a bond, or an equivalent guaranty, to be deposited with the Department, covering the full cost of the construction of such facility and an additional bond or an equivalent guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, a bond or equivalent guaranty may be required for the maintenance and operation of the facility for a period of five years post-construction. No bond or guaranty is required where the owner or operator of such a facility is a village, town, county or city.

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

Final Regulations

government or agency has enacted, or these rules and regulations specify, more stringent standards, in which case, the more stringent standards shall apply.

- (i) As a condition of approval the Department may require evidence of financial security prior to construction, from any owner or operator of a new subsurface sewage treatment system or a substantial alteration or modification to an existing subsurface sewage treatment system. Such financial security shall consist of a bond, or an equivalent guaranty, to be deposited with the Department, covering the full cost of the construction of such facility and an additional bond or an equivalent guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, a bond or equivalent guaranty may be required for the maintenance and operation of the facility for a period of five years post-construction. No bond or guaranty is required where the owner or operator of such a facility is a village, town, county or city.

(5) No part of any absorption field for a new conventional individual subsurface sewage treatment system, as described in Appendix 75-A of 10 NYCRR Part 75, or for the types of sewage treatment systems described in paragraphs (3) and (4) of this subdivision, or for an Ulster County Fill System, shall be located within the limiting distance of 100 feet of a watercourse or wetland or 300 feet of a reservoir, reservoir stem or controlled lake. For a new conventional individual subsurface sewage treatment system or for a new Ulster County Fill System the Department may recommend a greater limiting distance from an absorption field to a watercourse, wetland, reservoir, reservoir stem or controlled lake.

(6) Raised systems, as described in 10 NYCRR Part 75 and Appendix 75-A, are allowed on undeveloped lots not located in a subdivision or on undeveloped residential lots located in a subdivision which was approved prior to the effective date of these rules and regulations, where site conditions are not suitable for a conventional system provided that:

- (i) The system shall be located at least 250 feet from any watercourse or wetland and 500 feet from any reservoir, reservoir stem or controlled lake provided that the greater limiting distance for raised systems does not preclude

Final Regulations

construction on the subject lot or lots of the use proposed by the applicant, and further provided that the site conditions and the subsurface sewage treatment system comply with the other provisions of these rules and regulations and other applicable federal, State and local laws, as cited in section 18-38(a)(1); or

- (ii) Raised systems which cannot meet the limiting distances set forth in subparagraph (i) due to size or location of the lot shall be located at the greatest limiting distance possible within the property lines and at least 100 feet from any watercourse or wetland and 300 feet from any reservoir, reservoir stem or controlled lake.

(7) Where a watershed county has adopted a subdivision code that allows a raised system, as described in 10 NYCRR Part 75 and Appendix 75-A, or where any system that has been modified from the standards outlined in Appendix 75-A has been approved by the New York State Department of Health as an alternative system, or where the New York State Department of Health approved such raised or modified alternative systems for use in subdivisions located in the watershed, such raised or alternative systems are allowed in subdivisions that are approved subsequent to the effective date of these rules and regulations, provided that no part of such systems shall be located within 250 feet of a watercourse or wetland or 500 feet of a reservoir, reservoir stem or controlled lake.

(8) Any proposed alteration or modification of any subsurface sewage treatment system, including a noncomplying regulated activity, requires the review and approval of the Department, and shall also be subject to the following, where applicable:

- (i) Any proposed alteration or modification of any individual sewage treatment system or any other kind of subsurface sewage treatment system described in paragraphs (3) and (4) of this subdivision located within the limiting distances set forth in this section shall be performed in accordance with the New York State Fire Prevention and Building Code, Executive Law Section 370 et seq.
- (ii) Any proposed alteration or modification of any intermediate sized sewage treatment system is prohibited unless such alteration or modification complies with the requirements of this section.

Final Regulations

(9) All existing subsurface sewage treatment systems, which are operating in accordance with their Federal, State, and local approvals on the effective date of these rules and regulations, but which do not comply with the additional requirements set forth in this section, shall be allowed to continue to operate and shall be considered noncomplying regulated activities. However, if at any time after the effective date of these rules and regulations such subsurface sewage treatment system fails or needs remediation, the owner or operator of the subsurface sewage treatment system shall comply with the following:

- (i) Any proposed remediation of any part of such existing subsurface sewage treatment system shall require the prior review and approval of the Department, and if approved, shall be completed as soon as possible in accordance with a schedule approved by the Department;
- (ii) Upon the failure of any subsurface sewage treatment system, it shall be remediated, to the extent possible, in accordance with the design standards set forth in this section, and shall require the prior review and approval of the Department. However, if the Department determines, based upon the application submitted by the owner or operator of the subsurface sewage treatment system, that such system cannot comply with this section, the owner or operator of the subsurface sewage treatment system shall cooperate with the Department to determine the most suitable location and design for the system on the specific site. The Department may require the owner to agree to a regular schedule for the pump-out of any failed subsurface sewage treatment system; and
- (iii) The provisions of this paragraph shall not apply to the routine repair and maintenance of a subsurface sewage treatment system, including, but not limited to, the pump-out of a septic tank, the repair of a broken lateral, the leveling of a distribution box, or the removal of a blockage.

(10) Any approval of a subsurface sewage treatment system issued by the Department shall expire and thereafter be null and void unless construction is commenced within five (5) years of the date of issuance for systems located within approved subdivisions, or within two (2) years of the date of issuance for all other subsurface sewage treatment systems. Following expiration of the approval, the plans for the subsurface sewage treatment system may be resubmitted to the Department for consideration for a new approval.

Final Regulations

- (b) Design, Operation, Treatment, and Maintenance Requirements
 - (1) All subsurface sewage treatment systems shall be designed, operated and maintained to prevent the exposure of sewage to the surface of the ground or the discharge of sewage to groundwater.
 - (2) Mound systems, intermittent sand filters, and evapotranspiration/absorption systems are prohibited from use in the watershed.
 - (3) An additional area of at least 100 percent of the primary absorption field area shall be set aside as a reserve absorption field area for any subsurface sewage treatment system.
 - (4) Primary and reserve absorption fields may not be built under pavement or other impervious surfaces, and pavement and other impervious surfaces may not be built over such absorption fields after installation.
 - (5) At least one percolation test and at least one deep hole test shall be performed in the primary absorption field. At least one percolation test and at least one deep hole test shall be performed in the reserve absorption field area. An applicant shall notify the Department in writing at least seven (7) days prior to performance of such tests, and specify the location and the time of the tests. At the option of the Department, a Department representative may witness such tests.
 - (6) Proposed sites with soil percolation rates faster than 3 minutes per inch or slower than 60 minutes per inch shall not be approved by the Department for locating a subsurface sewage treatment system.
 - (7) Whenever possible, gravity flow systems shall be used for subsurface sewage treatment systems. The use of pumping, mechanical dosing or other mechanical devices shall require a pump chamber equipped with an alarm to indicate malfunction and any other safety features required by the Department to prevent sewage overflow. An intermediate sized sewage treatment system or any other kind of subsurface sewage treatment system as described in paragraphs (3) and (4) of subdivision (a) of this section is required to have either a backup pump or a backup storage tank capable of holding two days' flow. An individual sewage treatment system shall have a backup storage tank capable of holding one day's flow.

Final Regulations

- (c) Application Requirements
 - (1) An application for review and approval of any subsurface sewage treatment systems shall include the following information:
 - (i) Soil investigation report including:
 - (a) percolation test results;
 - (b) deep hole test pit results or boring analysis;
 - (c) indication of surface water or ledge rock observed;
 - (d) design rate of flow; and
 - (e) delineation of United States Department of Agriculture Soil Conservation Service soil type boundaries.
 - (ii) Building permit number and tax map number where available.
 - (iii) Four (4) sets of plans showing:
 - (a) site location, including distances to wells, watercourses, rock outcroppings, wetlands, controlled lakes and reservoirs;
 - (b) site/system plans;
 - (c) system profile;
 - (d) details of system components; and
 - (e) a report containing:
 - (1) a description of the project characteristics; and
 - (2) a detailing of the design process.
 - (2) An application for review and approval of an intermediate sized sewage treatment system and for any other subsurface sewage treatment system as described in paragraph (4) of subdivision (a) of this section, shall include all of the information in subdivision (c) of this section, and additionally shall contain:
 - (i) An Environmental Assessment form and State Environmental Quality Review Act determination, if applicable; and
 - (ii) A SPDES permit, if applicable.

Section 18-39 Stormwater Pollution Prevention Plans and Impervious Surfaces

- (a) Impervious Surfaces
 - (1) The construction of an impervious surface within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting

Final Regulations

distance of 300 feet of a reservoir, reservoir stem, or controlled lake, is prohibited.

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

- (i) Construction of a new individual residence, which shall comply with paragraph (5) of this subdivision, or non-commercial ancillary improvements or additions to an individual residence;
- (ii) Agricultural activities;
- (iii) Construction of bridges or crossings of watercourses or wetlands constructed pursuant to a valid permit from the appropriate regulatory agencies. If a permit from a regulatory agency other than the Department is not required, the applicant shall comply with paragraph (9) of this subdivision;
- (iv) Creation of an impervious surface to alter or modify a wastewater treatment plant approved by the Department;
- (v) Creation of an impervious surface that is made necessary by the construction of a new facility or alteration or modification of an existing facility used in connection with the operation of a public water supply system; or
- (vi) Creation of an impervious surface, such as a culvert, needed as an integral component of diversion or piping of a watercourse, but only with the review and approval of the Department and only if the Department determines that such impervious surface will not have an adverse impact on water quality.

(3) Paragraph (1) shall not apply to creation of an impervious surface in the West of Hudson watershed within a village, hamlet, village extension, or area zoned for commercial or industrial uses, which complies with paragraph (8) of this subdivision or to the creation of an impervious surface in the East of Hudson watershed within a Designated Main Street Area, which complies with paragraph (11) of this subdivision.

(4) Paragraph (1) shall not apply to the creation of an impervious surface in connection with the following activities occurring in the East of Hudson watershed outside a Designated Main Street Area or in the West of Hudson watershed outside a village, hamlet, village extension, or an area zoned for commercial or industrial uses:

Final Regulations

- (i) Construction of a new road or driveway, or widening of an existing road, which shall comply with paragraph (6) of this subdivision;
 - (ii) Creation of an impervious surface within a designated village center, which shall comply with paragraph (7) of this subdivision; or
 - (iii) Expansion of an existing impervious surface within the limiting distance of 100 feet of a watercourse or wetland, at an existing commercial or industrial facility, provided that the total area of all expanded impervious surfaces does not exceed 25 percent of the area of the existing impervious surface at that commercial or industrial facility, which shall comply with subdivisions (b), (c) and (d) of this section.
- (5) The following requirements are applicable to construction of a new individual residence:
- (i) Whether or not a new individual residence will be located in a subdivision, construction of a new individual residence within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake is prohibited;
 - (ii) Construction of a new individual residence in a subdivision within the limiting distance of 100 feet of a watercourse or wetland is prohibited where:
 - (a) The subdivision plat received preliminary approval on or after October 16, 1995; or
 - (b) The subdivision plat received preliminary approval before October 16, 1995, the person who owned the subdivision on October 16, 1995 was the same person, or a principal or affiliate of the person, who owned the subdivision at the time the subdivision plat received preliminary approval, and construction activity related to infrastructure improvements for the subdivision had not begun as of October 16, 1995;
 - (iii) Construction of a new individual residence not in a subdivision, or in a subdivision approved before October 16, 1995 and not prohibited by paragraph (a)(5)(ii)(b) of this subdivision, within the limiting distance of 100 feet of a perennial stream or wetland requires an individual residential stormwater permit from the Department, pursuant to subdivision (e) of this section.

Final Regulations

- (6) The following requirements are applicable to construction of an impervious surface for a new road or driveway or the widening of an existing road:
- (i) Construction of an impervious surface for a new road or driveway within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake is prohibited, except paving an existing dirt or gravel road is permitted. Construction of a new impervious surface by paving an existing dirt or gravel road requires a stormwater pollution prevention plan which complies with subdivisions (b), (c) and (d) of this section.
 - (ii) Construction of an impervious surface for a new road within the limiting distance of 50 feet of an intermittent stream or wetland, or within the limiting distance of 100 feet of a perennial stream is prohibited, except for paving an existing dirt or gravel road or where necessary to provide an access road to two or more parcels or to a subdivision. Construction of an impervious surface for paving such existing dirt or gravel road or for such a new access road requires a stormwater pollution prevention plan which complies with the requirements of subdivisions (b), (c) and (d) of this section. Any access road constructed pursuant to this paragraph shall be constructed as far as practicable from all watercourses and wetlands.
 - (iii) Construction of an impervious surface for a new road between the limiting distances of 50 feet and 100 feet of an intermittent stream or wetland requires a stormwater pollution prevention plan which complies with the requirements of subdivisions (b), (c) and (d) of this section.
 - (iv) Construction of an impervious surface for a driveway within the limiting distance of 50 feet of an intermittent stream or wetland, or within the limiting distance of 100 feet of a perennial stream is prohibited except where necessary to provide access to an existing home or a new individual residence allowed to be constructed within such limiting distances pursuant to paragraph (5) above. If construction of the individual residence served by the driveway would require a stormwater pollution prevention plan or an individual residential stormwater permit, construction of the impervious surface for the driveway shall also require a stormwater pollution prevention plan or an individual residential stormwater permit, respectively.

Final Regulations

- (v) Widening of an existing road located within the limiting distance of 50 feet of an intermittent stream or wetland, within the limiting distance of 100 feet of a perennial stream, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake shall be performed on the side of such existing road furthest from the watercourse, wetland, reservoir, reservoir stem or controlled lake, to the extent practical.
- (7) The following requirements are applicable to creation of an impervious surface within a designated village center:
- (i) A local government in the Croton System may delineate an area within the local government's boundaries to be a "designated village center" in a Comprehensive Croton Water Quality Protection Plan prepared and agreed to in accordance with Section 18-82 of these rules and regulations. Such designated village center shall comply with the requirements of this paragraph with regard to the construction of impervious surfaces.
 - (ii) Within a designated village center the construction of a new impervious surface within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake requires the review and approval of the Department. An approval issued by the Department pursuant to this subparagraph shall contain a determination by the Department that there is no reasonable alternative to the creation of the proposed new impervious surface within the applicable limiting distance and that the best available measures have been taken to prevent adverse impacts on the quality of the drinking water supply.
- (8) The following requirements are applicable to creation of an impervious surface in the West of Hudson watershed within a village, hamlet, village extension or area zoned for commercial or industrial uses:
- (i) Creation of any new impervious surface within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake, within a village, hamlet, village extension or area zoned for commercial or industrial uses as of the effective date of these rules and regulations, requires

Final Regulations

a stormwater pollution prevention plan which complies with the requirements of subdivisions (b), (c) and (d) of this section, except that the foregoing requirements of this subparagraph shall not apply to the creation of a new impervious surface for an activity set forth in paragraph (2) of this subdivision which complies with the provisions of paragraph (2).

- (ii) If a local government in the West of Hudson watershed adopts a zoning ordinance designating additional areas for commercial or industrial use after the effective date of these rules and regulations, it may apply to the Department to allow construction of new impervious surfaces in the newly zoned commercial or industrial areas located within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake. The Department shall approve such application if the Department determines that allowing new impervious surfaces in such newly zoned commercial or industrial area is consistent with the objectives of these rules and regulations and with previously approved zoning ordinances. If approved by the Department, creation of new impervious surfaces within such newly zoned commercial or industrial areas within the aforesaid limiting distances shall be allowed subject to the requirements of subparagraph (8)(i) above.

(9) Construction of a bridge or crossing of a watercourse or wetland which does not require a permit from a regulatory agency other than the Department shall require the review and approval of the Department. Such bridge or crossing shall be constructed to prevent adverse impacts on the quality of the water supply.

(10) Maintenance of an existing impervious surface that is a noncomplying regulated activity shall not require the review and approval of the Department.

(11) The following requirements are applicable to creation of an impervious surface in the East of Hudson watershed within a Designated Main Street Area:

- (i) Creation of any new impervious surface within a Designated Main Street Area requires a stormwater

Final Regulations

pollution prevention plan which complies with the requirements of subdivisions (b), (c), and (d) of this section, except that the foregoing requirements of this subparagraph shall not apply to the creation of a new impervious surface for an activity set forth in paragraph (2) of this subdivision which complies with the provisions of paragraph (2).

- (ii) Within thirty (30) days of the effective date of these rules and regulations, a local government may define by metes and bounds, tax maps or other geographic boundaries a proposed Designated Main Street Area within its boundaries, and apply to the Department for approval of such proposal. Within thirty (30) days of such application the Department may approve, disapprove, or approve with modifications, such Designated Main Street Area. If the Department disapproves the application, the local government shall have an additional thirty (30) days in which to submit a revised application for approval of the proposed Designated Main Street Area, and the Department shall approve or disapprove the application within thirty (30) days of receipt of such revised application. The Department will approve only a limited number of Designated Main Street Areas and local governments may not designate all areas of population concentrations in the East of Hudson watershed as Designated Main Street Areas. The approved boundary description of a Designated Main Street Area shall be made available by the Department for public inspection at its field offices in the East of Hudson watershed.

(b) Stormwater Pollution Prevention Plans

- (1) Stormwater pollution prevention plans shall not be required to be prepared pursuant to this section for agricultural and silvicultural activities.
- (2) Stormwater pollution prevention plans shall not be required to be prepared pursuant to this section for clear cutting and mining activities, provided, however, that such activities shall be subject to the requirements set forth in the applicable New York State Department of Environmental Conservation SPDES Permit which may be required pursuant to Environmental Conservation Law Section 17-0808.

Final Regulations

- (3) Stormwater pollution prevention plans shall be prepared for the activities listed in this paragraph. Such plans shall be prepared and implemented in accordance with the requirements of Part III of the New York State Department of Environmental Conservation General Permit No. GP-93-06. Such plans shall also be subject to the prior review and approval of the Department. The activities are:
- (i) Plans for development or sale of land that will result in the disturbance of five (5) or more acres of total land area as described in General Permit No. GP-93-06;
 - (ii) Construction of a subdivision;
 - (iii) Construction of a new industrial, municipal, commercial, or multi-family residential project that will result in creation of an impervious surface totaling over 40,000 square feet in size;
 - (iv) A land clearing or land grading project, involving two or more acres, located at least in part within the limiting distance of 100 feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake or on a slope exceeding 15 percent;
 - (v) Construction of a new solid waste management facility or alteration or modification of an existing solid waste management facility within 300 feet of a watercourse or wetland or 500 feet of a reservoir, reservoir stem or controlled lake;
 - (vi) Construction of a gasoline station;
 - (vii) Construction of an impervious surface for a new road, as required by paragraph (a)(6) of this section;
 - (viii) Construction of an impervious surface in the West of Hudson watershed within a village, hamlet, village extension or area zoned for commercial or industrial uses, as required by paragraph (a)(8) of this section;
 - (ix) Up to a 25 percent expansion of an existing impervious surface at an existing commercial or industrial facility which is within the limiting distance of 100 feet of a watercourse or wetland, as required in subdivision (a) (4)(iii) of this section; or
 - (x) Construction of an impervious surface in the East of Hudson Watershed in a Designated Main Street Area.
- (4) If the owner or operator of any activity which is subject to a Stormwater Pollution Prevention Plan pursuant to subsection (b)(3), alters or modifies such activity in a manner which would require an amended

Final Regulations

stormwater pollution prevention plan pursuant to Part III.C of the New York State Department of Environmental Conservation General Permit No. GP-93-06, if such activity were governed by General Permit No. GP-93-06, such amended stormwater pollution prevention plan shall be submitted to the Department for prior review and approval and shall comply with the requirements of this section.

(5) Any approval of a stormwater pollution prevention plan issued by the Department shall expire and thereafter be null and void unless construction is completed within five (5) years of the date of issuance or within any extended period of time approved by the Department upon good cause shown. Following expiration of the approval, the application for the stormwater pollution prevention plan may be resubmitted to the Department for consideration for a new approval.

(6) As a condition of approval the Department may require evidence of financial security prior to construction from any owner or operator of a stormwater management system pursuant to a stormwater pollution prevention plan. Such financial security shall consist of a bond, or an equivalent guaranty, to be deposited with the Department, covering the full cost of the construction of such facility and an additional bond or an equivalent guaranty for the payment of labor and material furnished in the course of such construction. Upon completion of construction and payment of labor and materials, such bonds or other guaranties shall be released. Additionally, a bond or equivalent guaranty may be required for the maintenance and operation of the facility for a period of five years post-construction. No bond or guaranty is required where the owner or operator of such a facility is a village, town, county or city.

(c) Additional Requirements for Stormwater Pollution Prevention

Plans

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

(2) When any activity listed in paragraph (3) of subdivision (b) of this section is proposed to be undertaken in the drainage basin of a terminal reservoir, as identified on the watershed maps in Appendix 18-A, the

Final Regulations

stormwater pollution prevention plan shall include analysis of coliform runoff, before and after the land disturbance activity.

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

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

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

(d) Application Requirements and Procedures

(1) An application for approval of a stormwater pollution prevention plan shall include:

- (i) The pollution prevention plan;
- (ii) The information required in a Notice of Intent under New York State Department of Environmental Conservation SPDES General Permit No. GP-93-06; and
- (iii) A phosphorus and/or coliform analysis when required by this section.

(2) When the Department notifies an applicant that an application for approval of a stormwater pollution prevention plan is complete pursuant to subdivision 18-23(d)(2) and (3) of Subchapter B, the Department shall also issue a written notification to the Stormwater Project Review Committee ("Committee") for the Town(s) or Village in which the activity requiring preparation of the stormwater pollution prevention plan is proposed to be located, of the Department's receipt of a complete application.

Final Regulations

- (i) If requested by one or more members of the Committee, the Department shall submit a copy of the complete application to the Committee for its review and shall convene a meeting, in person or by telephone, of the Committee.
 - (ii) The Department shall not be required to meet with or otherwise further consult with a member of the Committee concerning an application where the Committee member declines to review the application or fails to attend a meeting of the Committee convened to consider the application.
- (3) Upon completion of their review of the application, and upon a majority vote of the Committee members, including the Department's Committee member, who reviewed the application, the Committee may recommend to the Department that an application for approval of a stormwater pollution prevention plan be approved, approved with conditions or disapproved.
- (i) If the Department's Committee member agrees with the majority recommendation of the Committee, the Department may proceed to issue its determination to the applicant.
 - (ii) If the Department's Committee member disagrees with the majority recommendation of the Committee, the application, together with the written recommendation of the Committee, shall be submitted to the First Deputy Commissioner of the Department for review and a determination. The First Deputy Commissioner shall issue a written record of decision setting forth the basis for the determination and responding to any contrary written recommendations submitted by any member of the Committee.
 - (iii) If the Committee fails to make a recommendation to the Department at least fifteen (15) days prior to the date the Department is required to notify an applicant in writing of its determination pursuant to subdivision 18-23(d)(5) of Subchapter B, the Department may proceed to issue its determination and the Department shall not be required by these rules and regulations to further consult with or consider the comments of the Committee or any member of the Committee.

Final Regulations

(4) Failure of any Committee member, other than the Department Committee member, to act in accordance with the procedures or within the time frames set forth in these rules and regulations, shall relieve the Department of any obligation to consult with or consider the comments of the Committee member. Failure of any Committee member, other than the Department Committee member, to act in accordance with the procedures or within the time frames set forth in these rules and regulations, shall not invalidate any determination issued by the Department.

(5) A Committee may only make recommendations to the Department and shall have no authority to make decisions on behalf of the Department. For purposes of SEQRA, the Department's determination on an application, not the Committee's recommendation to the Department, shall be considered a final decision.

(e) Individual Residential Stormwater Permits

- (1) An individual residential stormwater permit is required for:
- (i) Construction of a new individual residence, not located within a subdivision, and located within the limiting distance of 100 feet of a perennial stream or wetland;
 - (ii) Construction of a new individual residence located within a subdivision approved before October 16, 1995, and not prohibited by paragraph (a)(5)(ii)(b) of this section, and located within the limiting distance of 100 feet of a perennial stream or wetland; and
 - (iii) Construction of an impervious surface for a driveway located within the limiting distances of 50 feet of an intermittent stream or wetland or within 100 feet of a perennial stream, provided that the driveway is necessary for access to an individual residence which is not located within a subdivision and where the individual residence accessed by the driveway would be required to obtain an individual residential stormwater permit pursuant to this section.
- (2) Application requirements. An application for issuance of an individual residential stormwater permit shall include:
- (i) A plan of the proposed individual residence and/or driveway;

Final Regulations

- (ii) A plan or map identifying the location of any watercourses, wetlands, reservoirs, reservoir stems or controlled lakes on or adjacent to the property;
- (iii) A plan showing the approximate area of site disturbance;
- (iv) A description and depiction of proposed erosion controls sufficient to prevent sedimentation of the receiving watercourse or wetland during construction. Erosion controls typically consist of sediment barriers, such as hay bales and silt fencing, and temporary stormwater diversions;
- (v) A schedule for construction, including grading and site stabilization; and
- (vi) A description and depiction of proposed stormwater best management practices designed to filter, detain, or filtrate runoff from the individual residence or driveway, thereby minimizing the post-construction increase in pollutant loading to the receiving perennial stream or wetland.

(3) An individual residential stormwater permit issued by the Department shall expire and thereafter be null and void unless construction is completed within two (2) years of the date of issuance of the permit, or within any extended period of time approved by the Department upon good cause shown. Following expiration of the permit, the application for the individual residential stormwater permit may be resubmitted to the Department for consideration for a new permit.

Section 18-40 Miscellaneous Point Sources

(a) Unless otherwise permitted by the rules and regulations, a discharge, or storage which is reasonably likely to lead to a discharge into the environment (including into groundwater), from industrial facilities, including vehicle washing facilities, and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(b) Any new point source, excluding point sources otherwise regulated pursuant to these rules and regulations, is prohibited from discharging into a reservoir or controlled lake, reservoir stem, or wetland.

Final Regulations

Section 18-41 Solid Waste

(a) Siting or horizontal expansion of a junkyard or a municipal solid waste landfill, within the limiting distance of 250 feet of a watercourse or wetland, or the siting or horizontal expansion of a junkyard or a solid waste management facility within the limiting distance of 1000 feet of a reservoir, reservoir stem or controlled lake is prohibited except for:

- (1) Recyclable handling and recovery facilities that handle non-putrescible solid waste, such as newspapers, magazines, corrugated boxes, glass, cans and plastic, but not non-putrescible solid waste such as batteries, car batteries, and waste oil;
- (2) Composting facilities for individual households for personal use; or
- (3) Expansion of the existing permitted municipal solid waste landfill located within Delaware County.

(b) Discharge of solid waste directly into any watercourse, wetland, reservoir, reservoir stem or controlled lake is prohibited. For purposes of this subdivision, solid waste includes materials that are otherwise exempt from compliance with 6 NYCRR Part 360, as described in 6 NYCRR Part 360-1.2(a)(4). This subdivision shall not apply to discharge of treated leachate in accordance with the requirements of these rules and regulations and a valid SPDES permit.

(c) Only construction and demolition debris that is recognizable uncontaminated concrete, asphalt pavement, brick, soil, stone, trees or stumps, wood chips, or yard waste may be used as fill in the watershed.

(d) All new solid waste management facilities, or altered or modified existing solid waste management facilities within the limiting distance of 300 feet of a watercourse or wetland, or within the limiting distance of 500 feet of a reservoir, reservoir stem, or controlled lake, are required to submit stormwater pollution prevention plans to the Department for review and approval, in accordance with Section 18-39(b)(3)(v) of these rules and regulations.

Section 18-42 Agricultural Activities

Any intentional, knowing or reckless act or omission that in the course of an agricultural activity significantly increases pollutants in the water supply is prohibited.

Final Regulations

Section 18-43 Pesticides

(a) Unless otherwise permitted by these rules and regulations, the discharge or use, or storage of pesticides which is reasonably likely to lead to a discharge, of pesticides into the environment (including into groundwater), and which is reasonably likely to cause degradation of surface water quality or of the water supply, is prohibited. It shall be an affirmative defense under this subsection that such discharge, or storage likely to lead to a discharge, is either permitted or not prohibited under federal law, and is either permitted or not prohibited under state law.

(b) Reference is made to the Pesticide Standards set forth in Appendix 18-D to these rules and regulations. The Department states its intention to seek:

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

Section 18-44 Fertilizers

(a) The requirements of this section shall not apply to the application or storage of fertilizers for:

- (1) An agricultural activity performed in compliance with State or Federal law; and
- (2) Non-commercial application by an individual on residential premises.

(b) No fertilizer activity shall be considered to be a noncomplying regulated activity.

(c) Discharge from the washing of fertilizer application equipment into any watercourse, wetland, reservoir, reservoir stem or controlled lake is prohibited.

(d) Use of water directly from a reservoir, reservoir stem or controlled lake for fertilizer make-up is prohibited.

Final Regulations

- (e) Use of water directly from a watercourse for fertilizer make-up without the use of an anti-siphon device is prohibited.
- (f) Open storage of fertilizer is prohibited.

Section 18-45 Snow Disposal and Storage and Use of Winter Highway Maintenance Materials

(a) Whenever feasible removed snow shall not be disposed of directly into a watercourse, wetland, reservoir, reservoir stem or controlled lake. However, this subdivision shall not be construed to require an owner or operator to transport the removed snow in a vehicle for offsite disposal.

(b) No snow disposal activity shall be considered to be a noncomplying regulated activity.

(c) Commercial, industrial, governmental, or institutional entities shall be restricted to the use of the substances defined in these rules and regulations as winter highway maintenance materials and to the use of the minimum amount needed of such substances in order to protect the public safety. In determining the minimum amount needed for public safety, such entities should consider best management practices developed by the New York State Department of Transportation.

(d)(1) Commercial, industrial, governmental, or institutional entities that store winter highway maintenance materials in quantities of 1000 pounds or more that contain greater than eight percent chloride compounds shall store such materials in structures constructed on low permeability storage pads.

(2) Any outdoor areas used for loading, handling or mixing of winter highway maintenance materials shall be constructed and maintained to prevent seepage and runoff from entering any watercourse, wetland, reservoir, reservoir stem or controlled lake.

(e) All commercial, industrial, governmental, or institutional entities that store winter highway maintenance materials in quantities and composition not otherwise subject to paragraph (1) of subdivision (d) of this section, shall store such materials in a manner that minimizes runoff into any watercourse, wetland, reservoir, reservoir stem, or controlled lake. Runoff may be controlled by use of control measures such as berms and covers.

Final Regulations

(f) A winter highway maintenance material storage facility may be enlarged provided that the enlarged facility is in compliance with the storage requirements set forth in this section, and any other applicable requirements of these rules and regulations.

(g) Winter highway maintenance material storage facilities that are noncomplying regulated activities shall come into compliance with this section no later than two years from the effective date of these rules and regulations.

Final Regulations

SUBCHAPTER D WATER QUALITY STANDARDS FOR RESERVOIRS AND CONTROLLED LAKES

Section 18-48 Water Quality Standards

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

- (1) 6 NYCRR Parts 701 (narrative standards) and 703 (standards applicable to Class AA waters):
 - (i) For purposes of determining compliance with this subchapter, the Department shall take water samples from the reservoirs; and
 - (ii) Where total coliform standards exceed the standards set forth in 6 NYCRR Parts 701 and 703, and are determined by the Department to be due to a non-perennial, non-anthropogenic source, such exceedances shall not be included in calculating whether a violation of these rules and regulations has occurred.
- (2) The New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality Standards and Guidance Values (October 22, 1993) which sets forth the ambient water quality standards and guidance values for principal organic chemicals and synthetic organic chemicals.

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

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

Final Regulations

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

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

Final Regulations

SUBCHAPTER E ENFORCEMENT

Section 18-51 Enforcement

(a) The City shall enforce the rules and regulations set forth herein, in a manner consistent with applicable Federal, State and local laws.

(b) The City may, in enforcing the rules and regulations set forth herein, exercise all of its rights and remedies under applicable Federal, State and local laws, including, but not limited to: inspecting facilities engaging in regulated activities and sources of the water supply in accordance with applicable federal and State constitutional requirements; issuing notices of violation or of intention to sue; instituting civil or criminal actions; seeking injunctive relief and legal damages; imposing penalties in accordance with Public Health Law Section 1103; and entering into consent orders and agreements.

(c) Nothing contained in these rules and regulations shall be construed as limiting the City's ability to exercise any of its rights and remedies under any other law, statute, rule, regulation, or order, including, but not limited to, the Federal Water Pollution Control Act (a/k/a the Clean Water Act), 33 U.S.C. Sections 1251 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq.; the Oil Pollution Act, 33 U.S.C. Sections 2701 et seq.; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq.; Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; New York State Public Health Law; New York State Environmental Conservation Law; New York State Navigation Law; New York State Department of Health septic system requirements (10 NYCRR Appendix 75-A); New York State Real Property Actions and Proceedings Law; and New York State Penal Law.

(d) Upon completion of the requirements of the State Administrative Procedure Act (SAPA) and the promulgation of these rules and regulations by the New York State Department of Health as State rules and regulations, the requirements of these rules and regulations may also be enforced by the Commissioner of the New York State Department of Health.

Final Regulations

SUBCHAPTER F VARIANCES

Section 18-61 Variances

(a) The Commissioner or the First Deputy Commissioner may, in his or her discretion, upon written application from the applicant, grant a variance from the requirements of these rules and regulations for a regulated activity and for the alteration or modification of a noncomplying regulated activity.

- (1) An application for a variance for a regulated activity or for an alteration or modification of a noncomplying regulated activity shall:
 - (i) Identify the specific provision of the rules and regulations from which the variance is sought or identify the nature and extent of the alteration or modification of the noncomplying regulated activity;
 - (ii) Demonstrate that the variance requested is the minimum necessary to afford relief;
 - (iii) Demonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in these rules and regulations; and
 - (iv) Demonstrate that for the proposed use or activity for which the variance is requested, compliance with the identified provision of the rules and regulations would create a substantial hardship due to site conditions or limitations.

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

(3) Any proposed substantial alteration or modification of an activity that has been granted a variance under this Subchapter shall require the review and approval of the Department and shall comply with the provisions of this Subchapter.

(4) The burden of proof for a variance shall be on the applicant.

Final Regulations

(5) Except for a variance granted for an alteration or modification of a noncomplying regulated activity, a grant of a variance for a regulated activity shall not be deemed to make such activity a noncomplying regulated activity under these rules and regulations.

(b) An appeal of a denial of a variance for a regulated activity or a denial of a variance for an alteration or modification of a noncomplying regulated activity may be made in the manner specified in Section 18-28 of Subchapter B of these rules and regulations.

(c) Failure to comply with any condition of a variance for a regulated activity, or for a variance for an alteration or modification of a noncomplying regulated activity shall be a violation of these rules and regulations. The Department shall review the terms and conditions of each variance granted at least once every five years to determine whether the terms and conditions of the variance have been complied with.

(d) Variances within Coliform and Phosphorus Restricted Basins

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

(2) A request for a variance from the prohibition of expanding an existing wastewater treatment plant located in a phosphorus restricted basin which does not meet the criteria set forth in subdivision (d)(1) may be granted only if the applicant demonstrates that subsurface discharge is impossible and that every one (1) kilogram of projected increase in the phosphorus load resulting from the expansion of the existing wastewater treatment plant and accompanying non-point source runoff, is offset by two (2) kilograms of reductions in phosphorus loading within such basin provided by enhanced treatment, basin-wide phosphorus trading, and/or a watershed protection plan developed pursuant to Subchapter H.

Final Regulations

SUBCHAPTER G
ADMINISTRATION AND ENFORCEMENT
BY LOCAL GOVERNMENTS

Section 18-71 Certification of Administrative Programs

(a) The local government of a town, city, village or county may apply to the Department, care of the Engineering Section (see Section 18-15), for certification of a program to administer specific provisions of these rules and regulations.

(b) A local government's proposed program for administration of specific provisions of these rules and regulations may include processing and review of, and determinations on, applications for approval of specific regulated activities.

(c) An application for certification of a local government's administrative program shall include the following information:

- (1) Identification of the specific substantive and procedural provisions of the rules and regulations that the local government is requesting to administer;
- (2) Number, technical expertise and experience of personnel and identification of other resources that will be dedicated to administration of the program;
- (3) Identification of funding or revenue sources for implementation of the program, including a commitment of such funding for the next fiscal year;
- (4) Identification of the specific department, unit or officials who will be designated to administer these rules and regulations;
- (5) Identification of information management capability to insure efficient administration and adequate record keeping;
- (6) Identification of applicable existing local laws and rules and regulations and plans for coordination of such laws and rules and regulations with the requirements of these rules and regulations; and
- (7) Any other information requested by the Department.

Final Regulations

- (d) (1) The Department shall review an application for certification of an administrative program and make a preliminary determination to certify or deny certification of a program within 60 business days of receipt of such application. A determination to certify shall be based upon a finding by the Department that the resources, funding and administrative program proposed by the applicant will provide a level of efficiency and effective protection of the water supply equal to that which would otherwise be provided by the Department under these rules and regulations. Notice of the preliminary determination shall be provided in writing by the Department to the designated representative of the local government submitting the application for certification.
- (2) Within 60 business days of the Department's preliminary certification of the administrative program, the Department and the local government shall commence negotiating and writing a draft memorandum of understanding setting forth the requirements and conditions of the program.
- (3) A governmental agency or unit of a town, city, village or county that has a program for administration and/or enforcement that has been certified by the Department pursuant to this subchapter shall be referred to as a "certified local government."

Section 18-72 Administrative Determinations

- (a) Each administrative program submitted by a local government under this subchapter shall contain provisions governing the extent and frequency of Department review and approval of administrative determinations made by the local government, as the Department shall agree upon.
- (b) Pursuant to each administrative program submitted by a local government under this subchapter, the local government shall provide the Department (Attention: Chief, Sources Division) with a copy of each administrative determination made by such local government, at the same time that the determination is made available to the applicant.

Section 18-73 Annual Review of Administrative Programs

- (a) The administrative program of a certified local government shall be reviewed annually by the Department. Such review shall be based upon records that demonstrate the effectiveness of the program which include objective criteria such as:

Final Regulations

- (1) A review of determinations on applications for approval of regulated activities;
- (2) A review of the adequacy of financial, personnel and other resources for the previous year, and evidence of future commitment of adequate financial, personnel, and other resources to continue the administrative program; and
- (3) A review of such other records as the certified local government may be required to keep.

Section 18-74 Decertification or Modification of Administrative Programs

(a) The administrative program of a certified local government shall be continued unless decertified or modified by the Commissioner. A preliminary determination to decertify or modify shall be made at any time if the Commissioner determines that the local government's administration of any element of the program is inadequate to protect the water supply.

(b) Where the Commissioner has made a preliminary determination to decertify or modify a local government's administrative program pursuant to subdivision (a) of this section, a notice of proposed decertification or modification, and the reasons therefor, shall be sent by certified mail, to the designated representative of the certified local government. The certified local government may, within ten business days of the sending of such notice, submit information addressing the reasons for decertification or modification stated in the notice. The Commissioner, after receipt and consideration of any information submitted by the certified local government, shall make a final determination to continue, modify, or decertify the program within thirty business days of sending of the notice of proposed decertification or modification. Upon decertification of an administrative program the administration of the rules and regulations set forth herein shall revert to the Department.

(c) A local government which has received a determination of decertification may reapply for certification after one year.

Section 18-75 Certification of Enforcement Programs

- (a) The local government of a town, city, village or county may apply

Final Regulations

to the Department, care of the Engineering Section (see Section 18-15) for certification of a program to enforce specific provisions of these rules and regulations.

(b) A local government's proposed program for enforcement of specific provisions of these rules and regulations may include the following:

- (1) Inspection of premises for potential violations of these rules and regulations and the preparation of written reports detailing the results of each such inspection; and
- (2) Issuance of notices of violation of specific provisions of these rules and regulations.

(c) An application for certification of a local government's enforcement program shall include the following information:

- (1) Identification of the specific provisions of the rules and regulations that the local government intends to enforce;
- (2) Number, technical expertise and experience of personnel and identification of other resources that will be dedicated to the enforcement program;
- (3) Identification of funding or revenue sources for implementation of the program, including a commitment of such funding for the next fiscal year;
- (4) Identification of the specific department, unit or officials who will be designated to enforce the rules and regulations;
- (5) Identification of information management capability to insure efficient administration and adequate record keeping; and
- (6) Any other information requested by the Department.

(d) The Department shall review an application for certification in accordance with the procedures set forth in subdivision (d) of Section 18-71. A determination to certify shall be based upon a finding by the Department that the resources, funding and enforcement program proposed by the applicant will provide a level of efficiency and effective protection of the water supply equal to

Final Regulations

that which would otherwise be provided by the Department under these rules and regulations. Any memorandum of understanding for an enforcement program shall provide that the designated enforcement personnel of the local government shall be agents of the Department for purposes of enforcement of specific provisions of these rules and regulations, and provided further, that such memorandum of understanding shall state that the Department shall retain the authority to enforce these rules and regulations in addition to any enforcement by the local government.

Section 18-76 Annual Review of Enforcement Programs

(a) The enforcement program of a certified local government shall be reviewed annually by the Department. Such review shall be based upon records that demonstrate the effectiveness of the program which include objective criteria, such as:

- (1) A review of notices of violation issued by the certified local government;
- (2) A review of inspection reports prepared by the certified local government;
- (3) A review of the determinations made by courts or administrative tribunals on notices of violation issued by the certified local government;
- (4) A review of compliance with notices of violation issued by the certified local government;
- (5) A review of the adequacy of financial, personnel and other resources for the previous year, and evidence of future commitment of adequate financial, personnel and other resources to continue the enforcement program in accordance with any requirements of a memorandum of understanding; and
- (6) A review of such other records as the certified local government may be required to keep in accordance with a memorandum of understanding.

Section 18-77 Decertification or Modification of Enforcement Programs

(a) The enforcement program of a certified local government shall be continued unless decertified or modified by the Commissioner. A preliminary determination to decertify or modify shall be made at any time if the Commissioner

Final Regulations

determines that the local government's administration of any element of the program is inadequate to protect the water supply.

(b) Where the Commissioner has made a preliminary decision to decertify or modify a local government's enforcement program pursuant to subdivision (a) of this Section, a notice of proposed decertification or modification, and the reasons therefor, shall be sent by certified mail to the designated representative of the certified local government. The certified local government may, within ten business days of the sending of such notice, submit information addressing the reasons for decertification or modification stated in the notice. After receipt and consideration of any information submitted by the certified local government, the Commissioner shall make a final determination to continue, modify, or decertify the program within thirty business days of sending of the notice of proposed decertification or modification. Upon decertification of an enforcement program, the enforcement of the rules and regulations set forth herein shall be the sole responsibility of the Department.

(c) A local government which has received a determination of decertification may reapply for certification after one year.

Section 18-78 Consent of the City

Nothing in this Subchapter shall be construed to allow the designated administrative or enforcement personnel of a certified local government, or any representative or attorney of a certified local government, to appear in any court proceeding or before any administrative tribunal on behalf of the City or the Department, for the purpose of enforcing violations of these rules and regulations or defending against any claim or action arising from these rules and regulations without the written consent of the City.

Final Regulations

SUBCHAPTER H WATERSHED PROTECTION PLANS

Section 18-81 Local Government Stormwater Protection Plans

(a) A local government of a town, village, or county in the watershed may submit to the Department for review and approval a proposed local government stormwater protection plan (“Stormwater Plan”) to undertake all or some aspects of watershed protection as set forth in Section 18-39 of these rules and regulations. The Stormwater Plan may be submitted individually by a local government or jointly with one or more adjoining local government(s) in accordance with the requirements of this Subchapter.

- (i) Within 90 days of receipt by the Department of a proposed Stormwater Plan, the Department shall review the proposed Stormwater Plan to determine whether it meets the requirements of this Section and notify the local government, in writing, whether the proposed Stormwater Plan is approved;
- (ii) If the Department fails to notify the local government(s) in writing of its determination within the 90 day period set forth in paragraph (a)(i) of this subdivision, the local government(s) may notify the Department of its failure by means of certified mail, return receipt requested to the local Department representative who is responsible for processing the Stormwater Plan;
- (iii) If the Department fails to notify the local government(s) within ten (10) business days of the receipt of such notice the Stormwater Plan shall be deemed approved subject to the terms and conditions set forth in the most recent submission by the local government(s).

(b) Pursuant to the terms and conditions of an approved Stormwater Plan, the Department may issue a waiver from specific provisions of section 18-39 of these rules and regulations, including the prohibition of construction of an impervious surface within the limiting distance of 100 feet of a watercourse or wetland or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake, for all applicants of projects located within some or all of the geographical area of the local government(s). The Department may issue such waivers after a local government(s) has an approved Stormwater Plan.

(c) An approvable Stormwater Plan shall include:

- (1) The specific provision(s) of section 18-39 of these rules and regulations from which the waiver is sought;

Final Regulations

- (2) A description of the metes and bounds of the geographical area (town, village, county, or part thereof) for which the waiver is sought, including a map of the described area;
 - (3) Mechanisms to be established by the local government that are at least as protective of the watershed reservoir drainage basin in which the waiver will be effective as the specific provisions of Section 18-39 of these rules and regulations from which the waiver is sought;
 - (4) A commitment by the local government(s) to implement each element of the Stormwater Plan in accordance with the terms of the Stormwater Plan and a schedule for implementation of all elements of the Stormwater Plan;
 - (5) An agreement by the local government(s) to coordinate with the Department any review by the local government(s) required under the State Environmental Quality Review Act for regulated activities, as defined in these rules and regulations;
 - (6) The rights, obligations and roles of the local government(s) and the Department under the Stormwater Plan; and
 - (7) Identification of the approximate number, technical expertise and experience of personnel and all other resources that will be dedicated to carrying out such plan.
- (d) The mechanisms to be established pursuant to paragraph (c)(3) of this subdivision may include:
- (1) Stormwater control structures, or best management practices, that capture and treat stormwater from existing non-point pollution sources such as areas of concentrated impervious surfaces;
 - (2) Mechanisms or programs that address the capture and treatment of stormwater from future non-point pollution sources on a community-wide basis such as the creation of a stormwater district;
 - (3) Land use controls, zoning, and other local laws, ordinances and rules and regulations that will protect the quality of the water supply, including but not limited to laws and rules and regulations concerning wetland protection, protection of hydrologically sensitive areas, and control of runoff from nonpoint pollution sources; or

Final Regulations

- (4) Educational programs providing information to residents of the town, village, or county whose local government is involved in the watershed protection plan process concerning:
- (i) The challenges of protecting water quality and the Federal, State and local requirements for watershed protection;
 - (ii) The water supply system as a natural resource and source of drinking water; and
 - (iii) Actions that can be taken by residents and the local government to enhance water quality protection.

(e) An annual report shall be submitted by the local government to the Department on each anniversary of the date of the signing of the approved Stormwater Plan. The annual report shall include, but need not be limited to the following information:

- (1) A statement by the local government of its compliance with the terms and conditions of the approved Stormwater Plan; and
- (2) A statement of future commitment of adequate financial, personnel and other resources to continue compliance with the terms and conditions of the approved Stormwater Plan.

(f) Once the Stormwater Plan is approved by the Department, the Stormwater Plan shall be considered valid and effective.

- (1) The local governments proposing the Stormwater Plan may, upon written notice to the City, modify the plan at any time after it has been agreed upon. If the Stormwater Plan is proposed to be modified, the Department shall make a determination within 60 days of notice of the proposed modification, whether the Stormwater Plan as modified shall continue to be valid and effective. In making such a determination, the Department shall consider whether the Stormwater Plan as modified, taken as a whole, continues to be at least as protective of the watershed as the specific provisions of Section 18-39 of these rules and regulations from which the waiver applies. The Stormwater Plan shall continue to be valid and effective during the period of the Department's review of any proposed modification. If the Department determines that the proposed modification would cause the stormwater plan to be not as protective as the provisions of Section 18-39 of these rules and regulations which are being waived, the Department shall so notify the local government(s). The existing and approved Stormwater Plan will then remain valid and effective until and

Final Regulations

unless the local government(s) implemented the proposed changes to the Stormwater Plan.

(2) If at any time the Department determines that the local government's administration of all or part of the Stormwater Plan is not as protective as the provisions of Section 18-39 of these rules and regulations which are being waived, the Department may revoke or modify the Stormwater Plan after notice has been given to the local government and an opportunity to meet and discuss the problem has been provided.

(3) Upon a final determination to revoke the Stormwater Plan the waivers issued thereunder shall be void and the watershed rules and regulations contained herein shall be applicable in the area of the watershed that was previously exempt pursuant to the waivers issued under the Stormwater Plan.

(4) Any Stormwater Plan agreed to shall be reviewed by the parties agreeing to such plan fifteen (15) years after such plan becomes effective in order to determine whether such plan has met and will continue to meet its goals.

Section 18-82 Watershed Planning in the Croton System

(a) Notwithstanding the prohibitions set forth in Section 18-36 on new or expanded wastewater treatment plants with surface discharges within the sixty day travel time to intake or within phosphorus restricted basins, the Department shall allow for the preparation and implementation of a Comprehensive Croton System Water Quality Protection Plan ("Croton Plan") and an accompanying phosphorus offset program and diversion credit program in accordance with this Section 18-82. Section 18-82 is independent of, does not govern, and is not governed by, Section 18-81.

(b)(1) At the request of Dutchess, Putnam or Westchester County, and in partnership with Dutchess, Putnam or Westchester County, and the municipalities located in the Croton system watershed, the Department shall prepare or assist in the preparation of a Croton Plan only in a participating County or Counties which:

- (i) Identifies significant sources of pollution to the Croton system;
- (ii) Recommends measures to be taken by the Department, the Counties, and the municipalities which, in conjunction with other federal, State, local and Department water quality

Final Regulations

- protection programs, will prevent degradation to, and improve, water quality, with the long term goal of attaining water quality standards in the Croton system; and
- (iii) Recommends measures to be taken to protect the character and special needs of communities located within the watershed.

(2) A County wishing to do so may, when joined by a majority of municipalities located within the County's watershed, choose to prepare the Croton Plan for the portion of the watershed located within the County. Such Croton Plan shall be prepared in partnership with the Department.

(3) The Croton Plan shall be developed in the manner set forth in subdivisions (c), (d) and (e) below and may allow for new wastewater treatment plants with a surface discharge or for the expansion of existing wastewater treatment plants with a surface discharge, provided the additional flow is either offset by a diversion of wastewater off of the watershed pursuant to subparagraph (e)(4)(i), or the additional phosphorus load is offset pursuant to subparagraph (e)(4)(ii).

(4) Any data that would benefit the Croton Planning process that is in the possession of the Department or one of the Counties or municipalities participating in the development of a Croton Plan shall be shared among the participants and appropriately considered in developing a Croton Plan.

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

- (1) Identification of water quality problems and community character needs. Such identification shall include the following elements:
 - (i) An identification of growth or development projected to occur under existing municipal zoning and master plans and allowed under existing land use controls, other than these rules and regulations, and including development necessary to maintain community character, public facilities and institutions and to serve local, regional or special needs;
 - (ii) An identification of specific existing water quality problem areas and specific sources of pollution to the Croton system, including areas of existing or imminent subsurface sewage treatment system failures, areas of concentrated point source discharges and substantial non-point source pollution, and areas in need of streambank stabilization.

Final Regulations

- (iii) An assessment of future water quality impacts related to growth or development identified in paragraph (i) above.
 - (iv) An identification of areas identified in paragraph (i) above where site constraints may prevent the siting of new subsurface sewage treatment systems in accordance with the requirements set forth in these rules and regulations.
 - (v) An identification of areas identified in paragraph (i) above where these rules and regulations prohibit new surface discharges from wastewater treatment plants and site constraints prevent the siting of a new wastewater treatment plant with a subsurface discharge.
- (2) Identification of investments to correct existing water quality problems in accordance with developed priorities. Such identification shall include the following elements:
- (i) The identified investments may include investments (i.e., capital projects and best management practices) implemented during the development of the Croton Plan, investments that the participating Counties and municipalities commit to implement, and an identification of priorities for future investments, without any commitment on the part of the Counties and municipalities to implement such investments.
 - (ii) Proposed measures to address water quality problems identified in paragraph (c)(1)(ii) above. Such measures may include subsurface sewage treatment system maintenance, rehabilitation and replacement programs, installation of community septic systems, the construction of sewer extensions or new sewerage systems, stormwater controls, and the permanent diversion of wastewater to a discharge point outside of the watershed.
- (3) Strategies for prevention of future water quality problems and the consideration of future community character needs in conjunction with the water quality goals of the Croton Plan. Such strategies shall include the following:
- (i) An assessment of the economic, water quality, community character, and special needs impacts of directing growth away from areas identified in paragraphs (c)(1)(iv) and (v) above;
 - (ii) An identification of the economic, water quality and community character impacts of allowing growth within

Final Regulations

- those areas identified in paragraphs (c)(1)(i), (iv) and (v) above, if directing growth in accordance with paragraph (c)(3)(i) above is not feasible or practical;
- (iii) An identification of potential areas for the construction of new or expanded wastewater treatment plants, as provided for in (e) below, either under a future permanent phosphorus offset program or utilizing the 10 percent credit provision for an implemented diversion project and a statement of the reasoning for the selection of such potential areas;
 - (iv) An identification of land use and local laws and regulations that the participating Counties and municipalities have already implemented and/or agree to implement in the future which are intended, in combination with other measures in the Croton Plan, to mitigate the water quality impacts identified in subsection (c)(1)(iii) above;
 - (v) With respect to future land use issues, identification of mechanisms to ensure the improvement and protection of water quality is taken into consideration by the local government and that the local government agrees to use best efforts to implement such mechanisms; and
 - (vi) At the option of the local government, designation of "village centers" as provided for in Section 18-39(a)(7)(i) of these rules and regulations.

(d)(1) If a County requests, pursuant to Section 18-82(b), that a Croton Plan be developed within five (5) years of the effective date of these rules and regulations, the Department, in partnership with the participating Counties and municipalities, and in consultation with the New York State Department of Health, shall complete a draft Croton Plan and release such draft Croton Plan for public review and comment. If a Croton Plan has been prepared by a County and its municipalities, the County and municipalities, in partnership with the Department and in consultation with the New York State Department of Health, shall complete a draft Croton Plan within five (5) years of the effective date of these rules and regulations and release such draft Croton Plan for public review and comment. The Department, the participating Counties and municipalities shall consider and respond to comments received from the public in preparing the final Croton Plan.

(2) Within six (6) months after the release of the draft Croton Plan, the final Croton Plan shall be agreed to by the Department and the Counties

Final Regulations

and municipalities which participated in the preparation of the Croton Plan, and in consultation with the New York State Department of Health. In determining whether to agree to the Croton Plan, the Department will consider the Croton Plan, including the level of commitments therein, taken as a whole and consistent with subsection (d) of this section, meets the overall goals of the Croton Plan, set forth in subsection (b) of this section. The Department will not approve or disapprove individual components of the Croton Plan. The Department and the participating Counties and municipalities shall make a reasonable effort to resolve any and all issues which preclude their agreement to the Croton Plan. The five (5) year period referred to in paragraph (1) above, and/or the six (6) month period referred to in this paragraph (2) may be extended by agreement of the Department and the participating Counties and municipalities. In addition, the participating Counties and municipalities may, at any time, agree to discontinue the development of the Croton Plan.

(3) A failure of any participating County or municipality to agree to the Croton Plan shall not affect the ability of another participating County or municipality to agree to the Croton Plan and to site new wastewater treatment plants or to expand existing wastewater treatment plants with a surface discharge in accordance with subdivision (e).

(4) Once the Croton Plan is agreed to by the Department and the participating Counties and municipalities, the Croton Plan shall be considered valid and effective. The participating Counties and municipalities agreeing to the Croton Plan may, upon 60 days written notice to the City, modify the Plan at any time after it has been agreed upon. If the Croton Plan is proposed to be modified, the Department shall make a determination within sixty (60) days of notice of the proposed modification, whether the Croton Plan, as modified, shall continue to be valid and effective. In making such a determination, the Department shall consider whether the Croton Plan, as modified and taken as a whole, is consistent with subsection (d) of this section and meets the overall goals of the Croton Plan set forth in subsection (b) of this section. Any approved Croton Plan remains in effect pending any determination on a proposed modification and shall remain in effect until and unless either the Department agrees to a modification or a local government modifies it without the Department's approval or ceases to implement it.

(5) Any Croton Plan agreed to shall be reviewed by the participants to the plan fifteen (15) years after the Croton Plan becomes effective in order

Final Regulations

to determine whether the Croton Plan has met and will continue to meet its goals, and to determine whether new goals are appropriate.

(6) The Counties and the municipalities agreeing to the Croton Plan shall submit to the Department an annual report each year the Croton Plan is in effect. The annual report shall be submitted on the anniversary of the date the Croton Plan became effective and shall include:

- (i) A statement of the status of the development or implementation of measures proposed in the Croton Plan;
- (ii) A statement of expenditures incurred by the Counties and municipalities in implementing, and administering measures proposed in the Croton Plan; and
- (iii) An identification of the financial, personnel and other resources needed to continue implementation and administration of the measures proposed in the Croton Plan.

(e) The Croton Plan may allow for the siting of a new wastewater treatment plant with a surface discharge or the expansion of an existing wastewater treatment plant with a surface discharge in the Croton System within a phosphorus restricted basin or a basin located within the 60 day travel time, but not within a coliform restricted basin, pursuant to the following conditions:

- (1) Site constraints prevent the proposed new wastewater treatment plant or the expanded existing wastewater treatment plant from discharging subsurface;
- (2) The municipal government and the County in which the wastewater treatment plant would be sited, confirms in writing that the proposed new wastewater treatment plant or the expansion of an existing wastewater treatment plant is consistent with the Croton Plan;
- (3) The Department, in consultation with the New York State Department of Health, determines that the proposed new wastewater treatment plant or expansion of an existing wastewater treatment plant is consistent with the water quality objectives of the Croton Plan; and
- (4) The discharge from the new wastewater treatment plant or the expansion of an existing wastewater treatment plant complies with one of the following conditions:
 - (i) The total volume (or flow) of surface discharge from such new wastewater treatment plant or expansion of an existing wastewater treatment plant, together with the total volume

Final Regulations

of surface discharges from all other new wastewater treatment plants and expansions of wastewater treatment plants which have been permitted in the subject County pursuant to this subparagraph (i), shall not, in the aggregate, exceed 10 percent of the total volume (or flow) of surface discharge from wastewater treatment plants located in the Croton system, within the subject County, which previously discharged into the Croton System but have been permanently diverted, since the effective date of these rules and regulations, to a discharge point outside of the Watershed. The Department may approve applications to construct new wastewater treatment plants with surface discharges pursuant to this subdivision prior to the permanent diversion of wastewater, and allow construction to begin on such new wastewater treatment plants, provided that the wastewater treatment plant may not commence operation until the diversion for which the credit is received has actually occurred; or

- (ii) In phosphorus restricted basins located outside of the sixty day travel time, provided that the Department has determined pursuant to section 18-84, based upon the results of the pilot programs set forth in sections 18-82(g) and 18-83(a), or of other studies conducted within the watershed, that the phosphorus offsets sought by the pilot programs have been achieved, the Department may require that each one (1) kilogram of projected increase in the phosphorus load resulting from the proposed new wastewater treatment plant, together with any accompanying nonpoint source runoff, is actually offset by at least three (3) kilograms of reductions in phosphorus loading within the basin within which the proposed project is located, including reductions from measures identified in and implemented in accordance with the Croton Plan pursuant to paragraph (c)(8) above, and otherwise eligible for an offset hereunder, whether the source of the offsets is in the same basin or within an upstream, hydrologically connected phosphorus restricted basin.

- (5) With respect to any new or expanded wastewater treatment plant allowed pursuant to this subdivision (e), the Department will not impose additional requirements on the siting of such new or expanded wastewater treatment plant other than the requirements specifically set forth in these

Final Regulations

rules and regulations applicable to all wastewater treatment plants, the requirements of this subdivision (e), and, with respect to new or expanded wastewater treatment plants in phosphorus restricted basins relying on phosphorus offsets, the requirements of any phosphorus offset program pursuant to Sections 18-82(g), 18-83(a) and 18-84.

(f)(1) A County or municipality wishing to participate in the preparation of the Croton Plan shall indicate its intention to participate by written notice to the Department given within one year of the effective date of these rules and regulations. Such notice shall include a commitment by the subject County or municipality to cooperate with the Department in generating and analyzing the data and information reasonably necessary to address the Croton Plan elements identified in subdivision (c) above, and an agreement to minimize the use of offsets as a basis for new wastewater treatment plants or expansions of existing wastewater treatment plants pursuant to subdivision (e), to the extent that the economic and social needs of such County or municipality can be reasonably addressed without the use of such offsets.

(2) Within thirty (30) days after receipt of a notice as described in subdivision (f)(1) above, the Department shall notify a County or municipality of its inclusion in the preparation of a Croton Plan.

(3) If a County and its municipalities wish to prepare a Croton Plan, in accordance with subdivision (b)(2) above, the Department shall, within thirty (30) days of receipt of a notice as described in subdivision (f)(1) above, authorize the County and municipalities to begin preparation of such a Croton Plan. Such authorization shall include a commitment by the Department to cooperate with the County and municipalities in generating the data and information reasonably necessary to address the Croton Plan elements identified in subdivision (c) above.

(4) The provisions of subdivision (e) above shall not apply in any County or municipality which fails to participate in the preparation of the Croton Plan, fails to cooperate with the Department in the manner described in paragraph (f)(1) above in preparing the Croton Plan; fails or ceases to implement any water quality protection measures which such County or municipality has committed to implement as part of the final Croton Plan agreed upon by the County, municipality and the Department; or where a previously agreed upon Croton Plan is no longer valid and effective.

Final Regulations

(g) In Putnam County, provided that Putnam County has committed in writing to participate in the development of the Croton Plan pursuant to subdivision (d) above, the Department shall allow for a pilot program to evaluate the effectiveness of phosphorus offsets as a potential basis for allowing construction of new wastewater treatment plants within phosphorus restricted basins in the Croton system. Such pilot program shall be limited to a term of five (5) years, commencing on the effective date of these rules and regulations and expiring on the fifth anniversary thereof. During the term of the pilot program, the Department may approve within a Putnam County municipality which has committed in writing to participate in development of the Croton Plan, the construction of a new wastewater treatment plant with a surface discharge within a phosphorus restricted basin in the Croton system provided that the following conditions are met:

- (1) The applicant proposing a new wastewater treatment plant demonstrates that the County or municipality agrees to the plant's inclusion in the pilot program;
- (2) The applicant demonstrates, and commits to take action to insure, that for every one (1) kilogram of projected increase in the phosphorus load resulting from the new wastewater treatment plant and accompanying non-point source runoff, there will be an offset which achieves at least three (3) kilograms of reduction in phosphorus within the basin in which the new wastewater treatment plant is located, whether the source of the offset is in the same basin or within an upstream hydrologically connected phosphorus restricted basin;
- (3) All new wastewater treatment plants proposed to be constructed pursuant to this pilot program shall be reviewed and approved by the Department in accordance with Section 18-36 of these rules and regulations;
- (4) No more than three (3) wastewater treatment plants with surface discharges may be located in the Croton system in Putnam County pursuant to this pilot program. The total capacity, as constructed, for the three (3) proposed wastewater treatment plants shall not exceed a maximum of 150,000 gpd aggregate surface discharge; and
- (5) Any wastewater treatment plant constructed pursuant to this pilot program shall be designed and operated to meet a total phosphorus effluent limit of .2 mg/l.

Final Regulations

(h) Nothing in this Subpart is intended to constrain, limit or preclude an applicant from seeking, or the Department from issuing, approval of or a variance for a proposed regulated activity under any other applicable provision of these rules and regulations.

(i) Nothing in this section or in the Croton Plan is intended to constrain or limit the authority of local governments under State law to make local land use and zoning decisions, and nothing in this section or the Croton Plan should be construed to have the effect of transferring such local land use and zoning authority from the participating local governments to the Department or any other entity.

Section 18-83 Watershed Planning in the West of Hudson Watershed

(a) The Department shall establish a pilot program to evaluate the effectiveness of phosphorus offsets as a potential basis for allowing the construction of new wastewater treatment plants, or the expansion of existing plants, with a surface discharge in a phosphorus restricted basin located in the West of Hudson watershed. Such pilot program shall be limited to a term of five (5) years, commencing on the effective date of these rules and regulations and expiring on the fifth anniversary thereof. During the term of the pilot program, the Department may approve the siting of a new wastewater treatment plant, or the expansion of an existing plant, with a surface discharge in a phosphorus restricted basin located in the West of Hudson watershed, provided that the following conditions are met:

(1) The County in which the new wastewater treatment plant, or the expansion of an existing plant, is proposed to be sited has prepared, or is in the process of preparing, a Comprehensive Strategy, in partnership with the Department and with the local governments located within the County and affected by the Comprehensive Strategy. The Comprehensive Strategy should identify existing economic resources, water quality problems, potential remedies for such problems and potential strategies and recommendations of economic development initiatives that could be undertaken to sustain local economies while remaining protective of the water supply.

(2) The applicant demonstrates that the new wastewater treatment plant, or the expansion of an existing plant, together with the offsets the applicant is proposing to make under paragraph (3) below, is consistent with the Comprehensive Strategy

Final Regulations

(3) The applicant demonstrates, and commits to take action to insure, that every one (1) kilogram of projected increase in the phosphorus load resulting from the new wastewater treatment plant or the expansion of an existing plant, and the accompanying non-point source runoff will be actually offset by at least three (3) kilograms of reductions in phosphorus loading within the basin in which such new wastewater treatment plant, or the expansion of an existing plant, is located. For purposes of this subdivision, the applicant may use as an offset any phosphorus reduction funded by the Catskill Fund for the Future or achieved from stormwater pollution prevention measures installed on existing structures or impervious surfaces in a village center or hamlet and funded by the Department.

(4) All new wastewater treatment plants, or expansions of existing plants, proposed to be constructed pursuant to this pilot program shall be reviewed and approved by the Department;

(5) No more than three (3) new wastewater treatment plants, or expansions of existing plants, with surface discharge shall be allowed into any phosphorus restricted basin pursuant to this pilot program. The total capacity, as constructed, of the three (3) plants shall not exceed a maximum of 100,000 gpd aggregate surface discharge.

(6) Any wastewater treatment plant, or expansion of an existing plant, constructed pursuant to this pilot program shall be designed and operated to meet the total phosphorus effluent limit of .2 mg/l.

(b) Nothing in this Subpart is intended to constrain, limit or preclude an applicant from seeking, or the Department from issuing, approval of or a variance for a proposed regulated activity under any other applicable provision of these rules and regulations.

Section 18-84 Permanent Phosphorus Offset Program

(a) Upon completion of the pilot programs set forth in sections 18-82(g) and 18-83(a), the Department may determine, based on the results of the pilot program or of other studies conducted in the Watershed that:

(1) Phosphorus offsets sought pursuant to sections 18-82(g) and 18-83(a) have been achieved and that a permanent phosphorus offset program should be established, with such conditions as may be appropriate based on the results of the pilot program or other studies conducted in the Watershed.

Final Regulations

- (i) Pending completion of any necessary rulemaking for the continuation of a permanent phosphorus offset program, including any appropriate modifications thereto, the Department may allow the construction of new wastewater treatment plants with surface discharges into phosphorus restricted basins located outside of the sixty day travel time on a case-by-case basis pursuant to the standards set forth in subsection 18-61 and subject to such conditions as may be appropriate based upon the results of the pilot program and other studies conducted in the watershed; or
- (2) There is insufficient data on which to make a determination that phosphorus offsets have been achieved; therefore, the time frame for the pilot programs shall be extended for a period not to exceed five years to allow for the acquisition of further data. Nothing contained in this subdivision shall allow for an increase in the number or size of the wastewater treatment plants allowed pursuant to the pilot programs as set forth in sections 18-82(g) and 18-83(a).
- (3) In the West of Hudson watershed, in any permanent phosphorus offset program, provided the applicant demonstrates, and commits to take action to insure, that every one (1) kilogram of projected increase in the phosphorus load resulting from the new wastewater treatment plant or the expansion of an existing plant, and the accompanying non-point source runoff will be actually offset by at least three (3) kilograms of reductions in phosphorus loading within the basin in which such new wastewater treatment plant, or the expansion of an existing plant, is located, the applicant may use as an offset any phosphorus reduction funded by the Catskill Fund for the Future or achieved from stormwater pollution prevention measures installed on existing structures or impervious surfaces in a village center or hamlet and funded by the Department.

Final Regulations

SUBCHAPTER I SEVERABILITY

Section 18-91 Severability

The provisions of these rules and regulations shall be severable, and if any item, subclause, clause, sentence, subparagraph, paragraph, subdivision, section or Subchapter of these rules and regulations, or the applicability thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, and the application thereof, but shall be confined in its operation to the item, subclause, clause, sentence, subparagraph, paragraph, subdivision, section or Subchapter thereof, or to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

Final Regulations

APPENDIX 18-A WATERSHED MAPS

(a) The watershed area for the New York City water supply lies in the parts of the following counties and towns that are delineated on Map 18-A.1:

- (1) Delaware County: In the towns of Andes, Bovina, Colchester, Delhi, Deposit, Franklin, Hamden, Harpersfield, Kortright, Masonville, Meredith, Middletown, Roxbury, Sidney, Stamford, Tompkins, Walton.
- (2) Dutchess County: In the towns of Beekman, East Fishkill, Pawling.
- (3) Fairfield County (Connecticut): In the towns of Danbury, Greenwich, New Fairfield, Ridgefield, Sherman.
- (4) Greene County: In the towns of Ashland, Halcott, Hunter, Jewett, Lexington, Prattsville, Windham.
- (5) Putnam County: In the towns of Carmel, Kent, Patterson, Putnam Valley, Southeast.
- (6) Schoharie County: In the towns of Broome, Conesville, Gilboa, Jefferson.
- (7) Sullivan County: In the towns of Fallsburg, Liberty, Neversink.
- (8) Ulster County: In the towns of Denning, Hardenburgh, Hurley, Kingston, Marbletown, Olive, Rochester, Shandaken, Wawarsing, Woodstock.
- (9) Westchester County: In the towns of Bedford, Cortlandt, Harrison, Lewisboro, Mount Kisco, Mount Pleasant, New Castle, North Castle, North Salem, Pound Ridge, Somers, Yorktown.

(b) The watershed areas for the New York City water supply that lie within the 60 day travel time to intake are delineated on Map 18-A.2

- (1) In the East-of-Hudson System, the entire reservoir and controlled lake drainage basins of Boyds Corner, Croton, Kensico, Lake Gleneida, Muscoot, West Branch, and parts of the reservoir drainage basins of

Final Regulations

Amawalk, Cross River, Croton Falls, and Titicus are within the 60 day travel time to intake.

(2) In the West-of-Hudson System, the entire reservoir drainage basin of Rondout, and parts of the reservoir drainage basins of Ashokan, Cannonsville, Neversink and Pepacton are within the 60 day travel time to intake.

(c) The reservoir drainage basins for each reservoir are delineated on Map 18-A.3.

(d) Detailed maps of each area within the 60 day travel time to intake are available at the regional offices listed in Section 18-15 of Subchapter A.

Final Regulations

APPENDIX 18-B
SYSTEM SPECIFIC WATER QUALITY CHARACTERISTICS

The system specific water quality characteristics of the reservoirs and reservoir stems, as of September 1990, are set forth in Tables 1 and 2 of this Appendix. It is the intention of the Department that the system specific characteristics be maintained at the stated levels by implementation and enforcement of these rules and regulations.

TABLE 1
System Specific Characteristics: Reservoir Standards (mg/L)

	Croton System		Catskill/Delaware System (including Kensico)	
	<u>Annual Mean</u>	<u>S/S/M*</u>	<u>Annual Mean</u>	<u>S/S/M*</u>
Alkalinity (mg CaCO ₃ /L)	≥40.00		≥10.00	
Ammonia Nitrogen	0.05	0.10	0.05	0.10
Chloride 30.00	40.00	8.00	12.00	
Nitrite + Nitrate - N	0.30	0.50	0.30	0.50
Organic Nitrogen	0.50	0.70	0.50	0.70
Sodium	15.00	20.00	3.00	16.00
Sulfate	15.00	25.00	10.00	15.00
Total Diss. Solids	150.00	175.00	40.00	50.00
Total Organic Carbon	6.00	7.00	3.00	4.00
Total Susp. Solids	5.00	8.00	5.00	8.00
Chlorophyll-a	0.01	0.015	0.007	0.012

*S/S/M means Single Sample Maximum

Final Regulations

TABLE 2
System specific characteristics: Reservoir Stem Standards (mg/L)

	Croton System		Catskill/Delaware System (including Kensico)	
	<u>Annual Mean</u>	<u>S/S/M*</u>	<u>Annual Mean</u>	<u>S/S/M*</u>
Alkalinity (mg CaCO ₃ /L)		≥40.00		≥10.00
Ammonia Nitrogen	0.10	0.2	0.05	0.25
Chloride	35.00	100.00	10.00	50.00
Nitrite + Nitrate - N	0.35	1.50	0.40	1.50
Organic Nitrogen	0.50	1.50	0.50	1.50
Sodium	15.00	20.00	5.00	10.00
Sulfate	15.00	25.00	10.00	15.00
Total Diss. Solids	150.00	175.00	40.00	50.00
Total Organic Carbon	9.00	25.00	9.00	25.00
Total Susp. Solids	5.00	8.0	5.00	8.00

*S/S/M means Single Sample Maximum

Final Regulations

APPENDIX 18-C TESTS FOR ANALYTICAL DETERMINATION OF CONCENTRATIONS OF ELEMENTS

The following tests and methods are used by the Department in assessing the impacts of a regulated activity on a reservoir, reservoir stem or controlled lake. An applicant may conduct sampling in waters owned by the City as set forth herein with prior authorization by the Department.

- (a) Collection of Samples and Assessment of Impacts
 - (1) In conducting tests or making analytical determinations to ascertain conformity or nonconformity with the standards set forth in Subchapter D, samples should be collected from locations which are representative of the general quality of water in the watercourse, reservoir, reservoir stem or controlled lake.
 - (2) In assessing the impact of a proposed regulated activity on a watercourse, reservoir, reservoir stem, or controlled lake, or in determining compliance with the standards set forth in Subchapter D, the Department will examine the impacts of the proposed activity throughout the year and the impacts on the photic, metalimnion and hypolimnion zones of the reservoir, reservoir stem or controlled lake.
 - (3) Impacts on reservoirs will be determined on the basis of samples taken on a schedule which is sufficient to reflect temporal variability and to meet regulatory requirements.
 - (4) Sampling locations in reservoirs will include: dams, intakes, mid-pool stations, and main tributaries into each reservoir. At every station, an integrated sample of the photic zone shall be taken. At deeper stations, samples will be collected from the metalimnion and hypolimnion.
 - (5) Reservoir stem samples should be collected in the section of the reservoir stem that is free-flowing and unimpeded by the reservoir when the impoundment is at full pool elevation.

Final Regulations

(b) Tests and Analytical Determinations

Tests or analytical determinations to determine compliance or noncompliance with the water quality standards in Subchapter D should be made in accordance with:

(1) Standard Methods for the Examination of Water and Wastewater, 12th edition, 1965, Table 18, "Qualitative Description of Odors," page 306. American Public Health Association, American Water Works Association, and Water Pollution Control Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.

(2) Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, American Public Health Association, American Water Works Association, and Water Environment Federation, 2626 Pennsylvania Avenue NW, Washington, D.C. 20037.

(3) Methods for Chemical Analysis of Water and Wastes, 1979, Environmental Protection Agency (EPA), Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; and

(4) By other methods approved by the Commissioner as giving results equal or superior to methods listed in any of the above documents.

(c) All materials referenced in this Appendix are available for inspection and copying at the Department of Environmental Protection, 465 Columbus Avenue, Valhalla, N.Y. 10595.

Final Regulations

APPENDIX 18-D HAZARDOUS WASTE AND PESTICIDE STANDARDS

(A) Hazardous Waste Standards

New facilities for the storage of hazardous wastes are prohibited within the limiting distance of 500 feet of a watercourse or wetland, or within the limiting distance of 1000 feet of a reservoir, reservoir stem, or controlled lake. This standard shall not apply to the storage of hazardous wastes by small quantity generators.

(B) Pesticide Standards

(a) Minimum Requirements

(1) The requirements of these standards regarding application of pesticides shall not apply to the application of pesticides for an agricultural activity done in compliance with State or Federal law.

(2) Application of pesticides shall not be performed by any person, whether or not required to be certified by the State, within the limiting distance of 250 feet of any watercourse or wetland or 1,000 feet of any reservoir, reservoir stem or controlled lake without the prior review and approval of the Department. This paragraph shall not apply to:

- (i) Applications of pesticides within fully enclosed structures; or
- (ii) The non-commercial application of pesticides by an individual for residential premises.

(3) No pesticide application activity shall be considered to be a noncomplying regulated activity.

(4) No application of pesticides shall violate the water quality standards set forth in Subchapter D.

(5) (i) The Department shall be given full access and opportunity to make all inquiries, observations, inspections, tests, and to take any other actions it deems desirable to the monitoring and control of any

Final Regulations

pesticide application activity that requires the review and approval of the Department.

- (ii) The Department may require the modification or suspension of a pesticide application activity if the Department determines that such suspension or modification is advisable to protect the water supply.

(6) No pesticide application activity, whether or not subject to review and approval by the Department, shall use water directly from a watercourse for pesticide make-up without the use of an anti-siphon device.

(7) Notwithstanding any other provision of these standards, where an application of pesticide is necessary to respond to an imminent threat to the health or safety of humans or animals, or to respond to a substantial imminent threat to property, and the Department's annual or individual approval has not been obtained, the applicator shall notify the Department by telephone at the office of the local representative listed in Section 18-15 of Subchapter A of these regulations, not less than 24 hours prior to engaging in such application, and advise where the application activity will occur. Such telephone notice shall include the same information required by subdivision (b)(2) of these standards, and an explanation of the nature of the imminent threat. Within seven business days after such telephone notice, the applicator shall send a written notice to the Department by certified mail containing the information described in subdivision (b)(2) of these standards and a written explanation of the imminent threat that necessitated the application of pesticide.

(b) Requirements for applications within the limiting distances

(1) The Department shall review and approve applications for pesticide application activity that will take place within the limiting distances set forth in paragraph (a)(2) of these standards, on an annual basis, or individually when the application activity will not recur in a given year.

(2) An application for review and approval of a pesticide application activity within the limiting distances shall be made by an applicator certified by the State Department of Environmental Conservation, when the State requires such certification, or by the

Final Regulations

person proposing to perform the pesticide application, where certification by the State is not required. The application for review and approval and shall include the following information:

- (i) Identification of the area proposed for the application activity in relation to wetlands, watercourses, reservoirs, reservoir stems, and controlled lakes in the drainage basin;
 - (ii) Explanation of the purpose of the application activity;
 - (iii) For the chemicals being applied, the following information:
 - (a) scientific name of chemical;
 - (b) trade name of chemical;
 - (c) USEPA and NYSDEC registration numbers for chemicals;
 - (d) name of manufacturer;
 - (e) formulation and concentration to be used;
 - (f) rate of proposed application; and
 - (g) total quantity of chemical to be used;
 - (iv) Proposed manner of application activity;
 - (v) Proposed time period of application activity;
 - (vi) Certification number of applicant, where applicable; and
 - (vii) Permit number, where applicable.
- (3) The Department shall impose reasonable conditions regulating:
- (i) The time for applying the pesticide, based upon climatic conditions;
 - (ii) The place for applying the pesticide, based upon proximity to the aqueduct effluent chamber located at a terminal reservoir and potential water quality impacts; and
 - (iii) The manner for applying the pesticide.
- (4) As a condition to approval of an application to apply pesticides, the Department may require that the permit include a provision providing for Department monitoring of the pesticide application activity. If the Department is to monitor, the applicant shall provide the Department with access to their, his, or her property at the time of the pesticide application activity. The

Final Regulations

Department may visually inspect the manner of application and/or perform pre- or post- application water quality monitoring.

(5) If multiple applications are received by the Department for applying a pesticide with the same active ingredient within the same drainage basin or stream segment which also request permission to apply such pesticide during the same time period, the Department will issue permits with staggered assigned dates, as appropriate, to minimize the water quality impact in the drainage basin or stream segment. If multiple applicants request to apply the same pesticide on the same date, the date assigned by the Department on an approved permit shall be based entirely upon the order in which the application was received by the Department.

(6) If a pesticide application activity takes place within 250 feet of any watercourse or wetland or within 1,000 feet of any reservoir, reservoir stem or controlled lake, all chemicals and containers shall be removed from the site of application at the end of each day.