Rule Applicability – General

1. *When will these new rules apply to my project?*

   Response: It is anticipated that the USWR will be effective in February 2022. Projects in recently rezoned areas (areas that received final rezoning approval after November 15, 2021) that wish to take advantage of the rezoning had to incorporate the USWR as of the date of initial publication of the rules (12/2/21 for Chapter 31; 12/10/21 for Chapter 19.1). For Chapter 31 requirements (in non-rezoned areas), the USWR applies as of the effective date.

   For Chapter 19.1 requirements, applicability is dependent upon drainage area, lot size and permit activity. The new Chapter 19.1 requirements do not apply:

   1. For MS4 development activity ≥ 1 acre
      a. If NYSDEC issued one of the following prior to 6/1/2019: 1) letter of acknowledgment of NOI under NYS CGP or 2) individual SPDES permit for construction activity.
      b. If DEP issued MS4 SWPPP Acceptance Form within 2 years prior to effective date of USWR.

   2. For CSS development activity ≥ 1 acre
      a. If applied to DOB or SBS for construction document approval before 3/26/21.

   3. For MS4 and CSS covered development project < 1 acre
      a. Not located in a rezoned area: if applied to DOB or SBS for construction document approval before effective date of USWR.
      b. Located in a rezoned area and developing the site pursuant to the rezoning: if DOB or SBS issued a permit for construction of the project before 12/10/2021.

   Exempt from the requirements in Chapter 19.1 is any covered development project that drains to waters of the state through an outfall approved by NYSDEC unless the outfall is owned or operated by the City of New York. In addition, upon receiving an application, DEP may determine that a permit is not required for a covered development project where a public combined or storm sewer is not available.

2. *If SCP was certified before the effective date of the new rule, and we need to recertify after the effective date, do we remain under old rule or need to redesign for new rule?*

   Response: For meeting the requirements specified in Chapter 31, generally, projects certified within two years prior to the effective date of the rule will be permitted to use the existing design for recertification with some limitations: if the project proposes to make substantial changes to the site compared to what was originally certified, DEP may require compliance with the USWR. Projects certified prior to that 2-year period will

have to comply with the USWR, if recertifying, unless they've already commenced construction on their sites.

Note also that projects, which are required to obtain a stormwater maintenance permit per Chapter 19.1, may be required to redesign in compliance with the USWR to meet Chapter 19.1 requirements, notwithstanding SCP certification.

3. *Do sites that drain directly to a NYC waterbody have to comply with either Chapter 19.1 or Chapter 31 requirements*?

   Response: For Chapter 19.1, only city-owned direct drainage sites are subject to the rules. Private projects that discharge to waters of the state directly, must comply with state requirements.

   For Chapter 31, because the stormwater is discharging to a water body, the requirements for providing sewer operations (Vv) volume need not be satisfied. However, there may be additional documentation required as part of a site connection.

4. *For landlocked sites with no sewer, waterbody, or wetland available to receive site discharge, do Chapter 19.1 or 31 requirements apply?*

   Response: For Chapter 19.1, if the project cannot connect to a City-owned and operated sewer, it does not require stormwater construction permitting.

   For Chapter 31, if the project proposes to connect to a sanitary or storm sewer by means of an easement through another's property, it must follow the rules for a Site Connection Proposal (SCP). If the applicant requires an SCP for any reason other than a connection to a sewer (e.g., DOB or other agency requirements) and the site is landlocked (i.e., fronts neither a sewer which could receive the stormwater nor a waterbody/wetland), the applicant may need to comply with requirements for private on-site stormwater disposal systems, in accordance with NYC Department of Building (DOB) regulations. The determination as to this requirement (and approval of any septic tanks – see also question 5 below) is under DOB jurisdiction.

5. *If our site is fronted by a Municipal Separate Storm Sewer System (MS4) or combined sewer system (CSS) sewer, must we connect to the sewer or can we opt to use 100% infiltration on site? For non-direct discharge sites where there is an opportunity to connect to a City-owned sewer, but the applicant chooses to implement a private on-site stormwater disposal system, do Chapter 19.1 or 31 requirements apply?*

   Response: You must comply with both Chapters 19.1 and 31. DEP will continue to make the determination of availability and feasibility of connection to a City sewer on a case-by-case basis.

For Chapter 19.1, choosing not to connect to a City-owned or -operated sewer system does not relieve the applicant of responsibility for full compliance with the requirements for Stormwater Construction and/or Stormwater Maintenance permitting.

For Chapter 31, if there is no direct discharge to a water body, the applicant must meet all requirements of the USWR. Per the existing and proposed rules, sites may not build septic tanks unless the available combined or sanitary sewer is more than 500' away. Per the existing and proposed rules, on-site retention may be built in lieu of on-site detention to satisfy the operations (Vv) volume, even when the site is not connecting to the sewer. On-site retention must comply with DOB or applicable agency requirements.

For these same sites, will infiltration of the sewer operations (Vv) volume satisfy the requirements of the USWR?

Response: Infiltration of the Vv may be used to comply with Chapter 19.1 requirements partially or wholly, but the project sponsor/developer would still be obligated to obtain a Stormwater Construction Permit and a Stormwater Maintenance Permit.

For Chapter 31, per the existing and proposed rules, on-site retention may be built in lieu of on-site detention to satisfy the operations (Vv) volume, even when the site is not connecting to the sewer. If the project is not connecting to the sewer, DOB's requirements for on-site retention apply.

For these same sites will infiltration of the sewer operations (Vv) volume satisfy the water quantity requirements of the NYS Department of Environmental Conservation (NYSDEC) Stormwater Construction General Permit (CGP) GP-0-20-001, i.e., 1-, 10-, and 100-year storms?

Response: Infiltration may meet part of the water quantity requirements; however, the obligation to comply with the NYSDEC permit remains. When an application must meet NYSDEC and New York City Department of Environmental Protection (DEP) requirements, DEP must review and approve all parts of the Stormwater Pollution Prevention Plan (SWPPP) prior to issuing the Stormwater Construction Permit.

6. *Do these rules apply to a one- or two-family house?*

   Response: Yes, if they require a site or house connection per Chapter 31 or meet the definition of a covered development project under Chapter 19.1. Note that house connections are now only applicable to fee simple 1, 2, or 3-family sites smaller than 20,000 square feet. 1, 2, or 3-family sites 20,000 square feet or larger require SCPs.

7. *For sites in CSS, do owners have to go through the processes of filing a maintenance easement to provide DEP access to inspect and of obtaining a stormwater construction permit, as they must do in MS4 areas?*

   Response: Yes.

8. *Do I need to submit SWPPP Acceptance form to NYSDEC for projects in CSS areas?*

   Response: No. NYSDEC requires a SWPPP Acceptance form for projects that require coverage under the CGP (≥ 1 acre in MS4 area). Projects in the CSS area must receive a DEP SWPPP Acceptance/Approval prior to their being able to obtain a Stormwater Construction permit.

9. *Under the new rule, will MS4 sites that involve 20,000 SF to 1 acre (43,560 SF) of soil disturbance require a DEC SPDES NOI filing, given that the state threshold is one acre?*

   Response: Not currently; the NYSDEC CGP now applies only to projects disturbing one acre or more of soil.

10. *Do City projects, such as NYCDPR capital projects, require stormwater maintenance permits for post construction SMPs?*

    Response: Yes.

11. *What if I have CSS development activity > 1 acre but there are no DOB or SBS filings? For example – an NYCDPR project site that has > 1 acre of disturbance, no buildings, and no DOB/SBS filings, which discharges to a combined sewer? Please also advise if it matters whether the combined sewer connection is existing vs proposed.*

    Response: For Chapter 19.1, all projects that disturb 20,000 square feet or more of soil or create 5,000 square feet or more of impervious surface area in the combined sewer service area are subject to Chapter 19.1; the status of the sewer connection, existing or proposed is not relevant.

    For Chapter 31, all existing procedures continue to apply. If a new connection is proposed, it always requires an SCP and compliance with the Chapter 31 requirements. If there is an existing connection, and there are no filings with DOB or SBS, an SCP may be required if the owner agency (this is generally the case with city, state, and federal agencies) requires DEP approval; in such case, DEP approval is only granted via the SCP, and the Chapter 31 requirements must be met.

12. *Will projects with approved SCP Master Plans be subject to the new rules, or will the release rates approved on the master plan be accepted?*

    Response: The applicability of existing master plans will be determined on a case-by-case basis depending on the configuration of the stormwater management facilities. Additional volume may be required in some circumstances. Older approved master plans are more likely to require updates, especially if construction has not yet occurred.

13. *If the allowable flow on the Amended Drainage Plan (ADP) is greater than what is calculated via the new method, can you use allowable flow?*

    Response: No, per the Ch 31 language:

    > (ii) Computation of the stormwater release rate shall be in accordance with 15 RCNY § 31-03(a)(1) for connections in a combined or storm sewer system. In no case shall the maximum release rate exceed the allowable flow. If it is determined by DEP that the allowable flow is less than the maximum release rate outlined in 15 RCNY § 31-03(a)(1), then the maximum release rate will be equal to the allowable flow. Computation of allowable flow to be discharged into stormwater or combined sewers or drains shall be based on either the City drainage plan or an approved drainage proposal under which the existing sewers or drains were constructed.

    Accordingly, you use the maximum rates specified in the USWR or the allowable flow, whichever is smaller. Allowable flow will have to be calculated for extremely small sites, but, for most projects, will not be a part of the maximum release rate determination.

14. *How is soil disturbance defined?*

    Response: Soil disturbance is the consequence of development activities including, but not limited to, land contour work, clearing, grading, excavation, demolition, construction, re-construction, stockpiling activities or placement of fill. Clearing activities include but are not limited to logging equipment operation, the cutting and skidding of trees, stump removal, and/or brush root removal.

15. *When do the rules affect a project of less than an acre with no rezoning and no net impervious area increase?*

    Response: Whenever the project needs to connect to a sewer (per Chapter 31) or when the project involves development activities that disturb 20,000 square feet or more of soil or create 5,000 square feet or more of impervious area (per Chapter 19.1)**.**

16. *Are SWPPPs required for all commercial developments that disturb over 20,000 SF?*

    Response: SWPPPs are required for all developments that disturb 20,000 square feet or more of soil where the project can discharge to a City-owned sewer or can discharge to waters of the state through City-owned land**.**

17. *For redevelopment sites, does the NYS DEC reduction in water quality treatment volumes still apply for new code? For example, for redevelopment sites using alternative SMP practices, only 75% of the WQv needs to be treated.*

Response: All projects must capture and treat 100% of the WQv and meet RRv min, per the NYC Stormwater Manual (NYC SWM), an Appendix to Chapter 19.1.

18. *What are the requirements for SWPPP, water quality, and ESC in a combined sewer area when connecting upstream of a regulator and outside MS4 area?*

    Response: When the stormwater construction permit is applicable, the SWPPP, water quality, and ESC requirements are the same across both CSS and MS4 areas; only the hierarchy of practices used to meet water quality goals changes between CSS and MS4 areas.

Rule Applicability – Right-of-Way (ROW)

19. *How do these rules apply to roadway projects?*

    Response: All roadway projects that disturb 20,000 square feet or more of soil or create 5,000 square feet or more of impervious area or are covered maintenance activities, must develop a SWPPP that includes erosion and sediment controls. Covered maintenance activity is defined as roadway maintenance that involves 20,000 square feet or more. Roadway maintenance activities occur in the ROW and include milling and filling of existing asphalt pavements ("milling and paving"), replacement of concrete pavement slabs, and similar work that does not expose soil or disturb the bottom six inches of subbase material; or long-term use of equipment storage areas at or near highway maintenance facilities.

    If a project includes full width roadway reconstruction disturbing one acre of soil or more, the SWPPP may require post-construction practices in compliance with Chapter 6 of the NYC SWM.

    Note that Chapter 6 of the NYC SWM applies to roadway reconstruction (including widening). Projects that involve construction of new roads must comply with the requirements for new construction – see also Chapters 2 and 4 of the NYC SWM.

20. *Please clarify that, under the USWR, only water quality SMPs are required for ROW projects, as outlined in Chapter 6.*

    Response: If the project is a ROW-**only** project, Chapter 6 applies; otherwise, e.g., if the ROW development is part of a larger plan like a subdivision, then the whole project is subject to the other chapters. The sewer operations (Vv) criteria do not apply to ROW projects.

21. *Should roadway milling & overlay and sidewalk replacement within public right-of-way be included in the overall project disturbance calculation? Or is work within the right-of-way considered separate from development sites?*

    Response: All development activities causing disturbances, even those outside the bounds of the developed property, are counted as part of the disturbed area.

22. *Please clarify whether the water quantity requirements of the NYSDEC Stormwater Construction General Permit (i.e., 1-, 10-, and 100-year storms) will be satisfied by implementation of the water quality SMPs outlined in Chapter 6 when the ROW project, discharging to an MS4, exceeds 1 acre of disturbance.*

    Response: No. Wherever NYSDEC requirements apply and are more stringent, the NYS standard will prevail. If the project includes the construction of new roads, it will be required to meet NYSDEC's requirements fully. Note that while the water quality criteria presented in the NYC SWM align with water quality criteria of NYSDEC Stormwater Management Design Manual (SWMDM), meeting the NYC SWM criteria does not relieve the project sponsor/developer of responsibility for a full review of and compliance with all NYSDEC SWMDM requirements, as applicable.

Rule Applicability – Utility Projects

23. *Are projects on sites that are served by privately owned or operated storm sewers considered covered development projects?*

    Response: Yes, if the private systems discharge to public systems.

24. *Are repair and maintenance of existing utility facilities within a previously disturbed ROW considered "routine maintenance activity" that would not trigger SW Construction Permit requirements?*

    Response: Repair and maintenance in the ROW that includes trenchwork disturbing 20,000 square feet or more requires a permit and a SWPPP that includes erosion and sediment controls.

25. *If the actual excavation required to install an underground utility results in soil disturbance less than the 20 K threshold, but an additional area of roadway milling and paving is required to restore the roadway to safe conditions (i.e., if the excavation area of soil disturbance + the area of additional milling and paving ≥ 20K sf), is the project subject to SW Construction permitting?*

    Response: Yes

26. *Utility maintenance and repair projects, even as part of large multi-year utility projects, are divided into individual smaller projects, generally < 20,000 sf, which are typically engineered separately, can stand on their own and are not necessarily dependent on subsequent phases. Must these projects be aggregated and considered a common plan of development?*

    Response: If these projects do not meet the definition of a "common plan of development," as set forth in Chapter 19.1, no permit is required.

27. Are post-construction SMPs required for a utility project done as part of road re-construction when there is no net increase of impervious cover and/or no discernible change in grade?

Response: Yes, when there is road reconstruction or an activity that requires post-construction practices. See Chapter 6, Table 6.1 of the NYC SWM.

Project Review

28. Are self-certifications still allowed under Chapter 31 reviews?

Response: Yes, the existing criteria for self-certifications remain. Importantly, projects that require a hydraulic analysis may not be self-certified. Previously self-certified projects may not be re-certified and will require a new fee and new survey. Projects that do not meet self-certification requirements [see §31-02 (b)(2)] must be re-submitted as regular certifications.

29. Are self-certifications allowed under Chapter 19.1 reviews?

Response: No. There are no self-certifications permitted under Chapter 19.1.

30. For sites that require WQv and Vv, how will the review work?

Response: See Figure 3.1 of the NYC SWM. An applicant may submit the project to both the Bureau of Water and Sewer Operations (BWSO) and the Bureau of Environmental Planning and Analysis (BEPA) for review contemporaneously or sequentially, as the applicant prefers. The Site Connection Proposal (SCP) submitted to BWSO must specify on the site plan the facility that will meet BEPA (construction permitting) requirements, with location, dimensions, and volumes explicitly shown.

If proposing a simultaneous review, the applicant assumes some liability if BEPA or BWSO asks for redesign of any approved or certified project – an applicant may need to re-certify its SCP if the certified plans are different from those BEPA eventually approves.

Project Design

31. For a project that triggers both WQv and Vv requirements, if the designer meets the Vv requirement without using a detention tank SMP must it still provide a tank to meet Vv?

Response: If the project can meet the Vv requirement for the entire site without using a detention tank SMP, then no additional detention facility is needed. Detention volume provided in water quality SMPs, may be counted for Vv as provided in the SMP Hierarchy Checklists found in Appendix A of the NYC SWM. Note that every detention SMP, whether a detention tank or not, requires an outlet control structure (OCS) to regulate the maximum release rate, per Equation 2.5.

32. *How is evapotranspiration factored into the new calculations? Are designers calculating the water quality volume by evapotranspiration or is it only soil porosity volume?*

    Response: The SMP volume for an evapotranspiration (ET) practice is calculated as the volume available in the soil media at the start of a rainfall event. This available volume can be used to store rainfall, which is then evapotranspired over longer periods between rainfall events. Note that Equation 4.4 uses "available porosity" of soil instead of "porosity" to calculate the volume available in soil, recognizing that, in practice, a portion of soil porosity already contains moisture due to recent rainfall or other factors. The available porosity of soil shall be set to 0.2 cf/cf as indicated in Section 4.3 of the NYC SWM.

33. Can the volume of drainage media in ET practices be counted towards the total storage volume of practice?

    Response: No. Typically, the drainage media and soil media in ET practices are separated by geotextile. Therefore, once runoff enters the drainage media there are limited pathways for water uptake to plants and soil that would otherwise promote ET. This is especially true for drainage media on green roofs, where runoff in the drainage media can quickly travel to rooftop drainage systems. As indicated in Section 4.9, innovative ET systems that use alternative storage methods (e.g., storage cells below the soil media) may be approved by DEP for CSS areas provided that designers can demonstrate wicking of water to soil media to promote ET.

34. *For a project that triggers both WQv and Vv requirements, if a designer follows the SMP hierarchy and the only feasible practices are detention SMPs, is the required detention volume the sum of WQv and Vv or only Vv?*

    Response: When only detention SMPs are feasible, the required detention volume is the greater of WQv or Vv. As an example, if the WQv is 100cf and the Vv is 300cf, the required volume of the detention SMP is 300cf. Note that designers must provide adequate documentation to demonstrate that all other higher tier practices were not feasible and/or were used to the maximum extent practicable.

35. *Regarding the SMP hierarchy, will DEP provide quantitative thresholds or benchmarks that constitute sufficient proof of the infeasibility of tiered options? e.g., mechanical equipment or photovoltaics may limit areas available for green roof.*

    Response: Chapter 4, Section 4.2 of the NYC SWM includes a list of potential constraints and describes (or provides a reference to) cases in which the constraint would limit SMP feasibility. These descriptions and cases are not meant to be exhaustive, as DEP cannot cover all site conditions that applicants may experience in NYC. Designers may request additional clarification from DEP on site conditions and constraints for their particular projects as part of the DEP consultation process.

36. *The SMP hierarchy checklist does not include details on nitrogen removal efficiencies in cases where the no-net-increase criteria apply; where can I find this information?*

    Response: Removal efficiencies for total nitrogen can be found in the Nitrogen No Net Increase Calculator Guide (Appendix B).

37. *Are there any instances where SMPs do not need to meet the minimum RRv requirement for runoff reduction from newly created impervious surfaces?*

    Response: No.

38. *In an MS4 area, if we want to use an infiltration system, can we send the overflow directly to the MS4 system without treatment for more than 1.5" rainfall?*

    Response: In cases where both Chapter 19.1 and Chapter 31 are applicable, the system must be designed to meet both the water quality and sewer operations (Vv) criteria. Therefore, meeting the sewer operations criteria may require that overflow be directed to a detention system. Once any applicable design requirements are met, designers should use best practices and engineering judgment on how to direct anticipated runoff in excess of design criteria.

39. *How will post-construction SMPs apply to street plazas with hardscape (no room for vegetation due to large number of utilities – lower Manhattan as an example.)*

    Response: Each project will be evaluated independently to ensure that the rules have been met to the maximum extent practicable.

40. *NYSDEC has a proprietary treatment list. Is DEP planning to issue a list or you will accept NYSDEC/NJDEP list?*

    Response: NYCDEP does not have its own proprietary list. DEP accepts practices for treatment from NYSDEC's list if they meet the Chapter 19.1 requirements. For more information on proprietary practices, see Section 4.9 of the NYC SWM; proprietary practices will remain a treatment alternative in separately sewered areas. For projects that require coverage under the CGP, the proprietary practices must comply with both New York City and New York State requirements**.**

41. *Regarding SMP siting criteria provided in Appendix C to the NYC SWM, are SMPs enclosed in concrete (e.g., a detention tank) subject to the same horizontal setbacks as infiltration practices (e.g., drywells)?*

    Response: No. Siting criteria in Appendix C of the NYC SWM are intended for practices with the potential to infiltrate water. For enclosed practices, designers should evaluate whether any setbacks are needed for reasons other than infiltration, such as structural requirements.

42. *Are the front, rear, and side property lines all subject to the 5-foot setback?*

    Response: Yes. For practices with the potential to infiltrate water, these setbacks apply.

43. *Within Appendix B, specifically for NNI for nitrogen removal, SWPPP preparers can use alternative technologies to achieve TN NNI requirements, so long as they include supporting documentation to verify TN removal. If it is a system that is currently approved by NYSDEC, what would constitute as acceptable for further supporting documentation? Would any studies be applicable?*

    Response: NYSDEC currently identifies several alternative systems that meet the TSS and Phosphorus removal criteria to be considered as practices for new development. If an applicant chooses to use one of these practices to meet no net increase of nitrogen, the applicant must provide data following the third-party verification requirements – see Chapter 3 of the NYS SWMDM for more information.

44. *Would an innovative system that has a vegetation component be applicable for RRv credit and would there be a process to have a system considered for such credit?*

    Response: Yes, if the applicant can demonstrate the percent of total practice volume that is expected to be reduced through infiltration, evapotranspiration, and/or reuse.

45. *The new manual is a fantastic resource and guide for calculations! To ensure that the proper flows are calculated for sites, what calculation should be used as a standard to determine the appropriate treatment flow rate/water quality flow rate when using flow through treatment practices that are not size based on volume?*

    Response: Filtration systems have design criteria for storage volume above the filtration media which are intended to prevent bypass of the water quality event. Other flow-through systems not listed as filtration practices, such as hydrodynamic separators, are covered in Section 4.9 on Innovative Systems. A clarification has been added to Section 4.9 that designers should refer to Appendix B of the NYS SWMDM for flow calculation methods to demonstrate that the water quality event does not bypass.

46. *Can DEP include an example water quality flow rate calculation in Appendix D of the manual?*

    Response: A clarification has been added to Section 4.9 that designers should refer to Appendix B of the NYS SWMDM for flow calculation methods to demonstrate that the water quality event does not bypass.

47. *If NYSDEC issues a new NYS SWMDM will this require changes in the NYC SW Manual?*

Response: It depends upon the extent of the changes in the NYS SWMDM, but the NYC SWM must meet or exceed the requirements within the NYS SWMDM, so changes would be likely.

48. *Currently, Chapter 2 of the draft design manual does not include target load reduction goals, i.e., 80% TSS removal, for pollutants of concern. Are specific numeric load reduction targets in place for stormwater projects in NYCDEP jurisdiction? If so, we recommend including them in the Manual so that SMPs can be selected and sized accordingly.*

    Response: NYSDEC has set removal efficiency targets for TSS (80% removal) and Phosphorous (40% removal). Stormwater management practices designed to meet DEP stormwater construction permitting requirements must meet or exceed NYSDEC performance criteria. Design criteria in NYC SWM Chapter 4 are intended to meet both NYC and NYS requirements.

Other

49. *Is there a map of natural hotspots in NYC?*

    Response: We are not aware of a map of natural hotspots in NYC. For a list of land uses that cause stormwater hotspots, please see Table 4.3 of the NYS SWMDM.

50. *Is there a map where I can see what water quality testing has been done in natural stormwater basins? And what water quality tests are still unknown?*

    Response: We are not aware of such a map.

51. *For research purposes on water quality from excess stormwater running off to local ponds, is there any link I can make use of?*

    Response: The City collects water quality data on a regular basis through the Harbor Survey Program. These data are available on NYC Open Data.