



**New York City
Department of Environmental Protection
Bureau of Water Supply**

**Applicant's Guide
to
Variances**

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Variances**

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1.0 INTRODUCTION

The “Rules and Regulations for the Protection from Contamination, Degradation, and Pollution of the New York City Water Supply and Its Sources”^{1, 2} (**Watershed Regulations**) regulate several types of activities in the City of New York’s (**City**) drinking water supply watershed. In some situations, it may not be possible for a project (e.g., a proposed new development, or a modification of an existing structure) to comply with all the requirements of the Watershed Regulations. The New York City Department of Environmental Protection (**DEP**) Commissioner has discretion to grant variances from certain requirements of the Watershed Regulations in the event that a proposed activity is unable to fully comply with the Watershed Regulations so long as the applicant can meet required variance standards.³

The approval of a variance is within the sole discretion of DEP and a variance will only be granted when an applicant has submitted a written application that (1) identifies the specific provision of the Watershed Regulations from which the applicant seeks a variance; (2) demonstrates that the variance requested is the minimum necessary to afford relief; and (3) demonstrates that the activity includes measures that are at least as protective of the water supply as the Watershed Regulations. Variances from certain siting restrictions for wastewater treatment plants are subject to additional requirements, as set forth below. As discussed in further detail in Section 3 below, there are standard conditions which apply to all variances, and DEP may also impose conditions specific to a particular variance.

This guide was developed to identify when an applicant may be eligible for a variance from certain requirements of the Watershed Regulations, to describe the procedures for applying for a variance, to outline the factors DEP considers when reviewing variance applications, to assist in preparing an application for DEP review, and to help expedite the review and approval process. An application form for a variance is included as Appendix B. A checklist of required information is included as Appendix C. A copy of the Watershed Regulations, which are referred to throughout this guide, may be obtained from DEP offices listed in this guide, or on DEP’s website: <https://www1.nyc.gov/site/dep/environment/regulations.page>. If any discrepancies exist between this guide and the Watershed Regulations, the Watershed Regulations will prevail.

2.0 GENERAL PROCEDURES FOR REVIEW AND APPROVAL OF A VARIANCE

2.1 VARIANCE REQUIREMENTS

To demonstrate eligibility for a variance, an applicant must show:

1. The specific provisions of the Watershed Regulations from which the variance is sought;⁴

¹Title 10 of the New York Codes, Rules and Regulations Part 128; Chapter 18 of Title 15 of the Rules of the City of New York (“Watershed Regulations”).

² The Watershed Regulations 2019 amendments are pending enactment into New York State Health Department regulations. .

³ See Watershed Regulations § 18-61.

⁴ See Watershed Regulations § 18-61(a)(1)(i).

2. That the variance requested is the minimum necessary to afford relief;⁵
3. That the proposed activity includes adequate mitigation measures to avoid contamination to or degradation of the City's water supply which are at least as protective of the water supply as the standards for regulated activities set forth in the Watershed Regulations.⁶ The mitigation measures must address each of the impacts from the regulated activity for which a variance is sought.

2.2 VARIANCES FROM OTHER AGENCIES

Some requirements in the Watershed Regulations are identical or refer directly to regulations administered by other regulatory agencies. An applicant must obtain a variance from DEP under the Watershed Regulations even if the applicant has already received a variance from a State or local government agency.

2.3 VARIANCES FOR WASTEWATER TREATMENT PLANTS (WWTPs) LOCATED IN COLIFORM OR PHOSPHORUS RESTRICTED BASINS, OR WITHIN THE 60 DAY TRAVEL TIME TO INTAKE IN THE CROTON WATERSHED

The Watershed Regulations provide for variances for WWTPs in coliform or phosphorus restricted basins or within the 60 day travel time under limited circumstances.^{7, 8}

2.3.1 VARIANCES WITHIN COLIFORM AND PHOSPHORUS RESTRICTED BASINS §18-61(d)

DEP may grant a variance for locating a new surface-discharging WWTP or expanding an existing surface-discharging WWTP in a coliform restricted basin, or in a phosphorus restricted basin, where DEP determines that conditions in the area to be served by the new or expanded WWTP 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 by providing a variance. The additional treatment capacity of the new or expanded WWTP 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 DEP. *See* Watershed Regulations §18-61(d)(1).

A request for a variance for expanding an existing WWTP located in a phosphorus restricted basin which does not meet the criteria set forth above 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 WWTP, and from the 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 Watershed Regulations Subchapter H. *See* Watershed Regulations §18-61(d)(2).

⁵Watershed Regulations § 18-61(a)(1)(ii).

⁶Watershed Regulations § 18-61(a)(1)(iii).

⁷Maps defining the 60 day travel time are on file at DEP offices or on the DEP website.

⁸Watershed Regulations §18-61(d) and (e).

2.3.2 VARIANCES WITHIN THE 60 DAY TRAVEL TIME TO INTAKE IN THE CROTON SYSTEM §18-61(e)

1. In the Croton System, DEP may grant a variance from the prohibition set forth in the Watershed Regulations §18-36(d)(2)(i) against locating a new surface-discharging WWTP or expanding an existing surface-discharging WWTP within the 60 day travel time to the intake, where DEP has made the following determinations:
 - a. One of the following situations is present:
 - (i) conditions in the area to be served by the new or expanded WWTP, including failed subsurface sewage treatment systems (SSTs), are resulting in the release or discharge of inadequately treated sewage into the water supply; or
 - (ii) influent flow rates to an existing WWTP exceed the permitted flow limit for the WWTP as specified in its SPDES permit and/or the design capacity of the WWTP and have caused, or can reasonably be expected to cause, the release of inadequately treated sewage; and
 - b. There is no other feasible method of correcting such release or discharge of inadequately treated sewage except by locating a new or expanding an existing surface-discharging WWTP within the 60 day travel time to intake; and
 - c. The applicant has demonstrated that there are no sources of inflow or infiltration to the sewer system of the new or expanded WWTP that can practicably be eliminated, other than sources that are to be eliminated pursuant to a consent order or other already existing commitment binding on the applicant.
2. The applicant must demonstrate to DEP that the total flow to the new or expanded WWTP will be limited as follows:
 - a. If the applicant seeks to expand a WWTP servicing a sewer district, the flow to the expanded WWTP may include only:
 - (i) flow from facilities within the sewer district that are connected to the WWTP as of the date of the application for a variance (based on the flows reported by the wastewater treatment plant pursuant to its SPDES permit in the year preceding the application for the variance); and
 - (ii) flow from facilities within the sewer district that are served by SSTs as of the date of the application for a variance; and
 - (iii) additional flow of no more than ten percent (10%) of the average of the flows reported by the WWTP pursuant to its SPDES permit in the year preceding the application for variance to be allocated within the sewer district; and

- (iv) reasonably anticipated flows from any area(s) outside the sewer district identified as source(s) of contamination pursuant to the Watershed Regulations §18-61(e)(1)(i)(a).
 - b. If the applicant seeks to expand a WWTP without a sewer district, the flow to the expanded WWTP may include only:
 - (i) flows to the WWTP as of the date of the application for a variance; and
 - (ii) reasonably anticipated flows from any area(s) identified as source(s) of contamination pursuant to the Watershed Regulations §18-61(e)(1)(i)(a).
 - c. If the applicant seeks to construct a new WWTP, the flow to the new WWTP may include only reasonably anticipated flows from the area(s) identified as source(s) of contamination pursuant to the Watershed Regulations §18-61(e)(1)(i)(a).
- 3. A new or expanded WWTP in the Croton System authorized by a DEP variance, and its sewer collection system, shall meet the following conditions:
 - a. The WWTP shall provide sand filtration or a DEP-approved alternative technology to sand filtration, disinfection, phosphorus removal, and microfiltration or a DEP-approved equivalent technology to microfiltration; and
 - b. The WWTP shall be designed, operated, and maintained to meet a total phosphorus limit of 0.1 mg/l, and the applicant shall seek to have such limit included in the WWTP's SPDES permit; and
 - c. All wastewater pumping stations in the sewer system serving the new or expanded WWTP shall meet the alarm systems and emergency operation requirements applicable to new wastewater pumping stations as set forth in "Recommended Standards for Wastewater Facilities," Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (2014 Ten State Standards); and
 - d. The applicant shall seek to include a condition in the WWTPs SPDES permit providing that in the event that the SPDES permitted flow limit is violated, the owner shall investigate the violation and prepare a corrective action plan; and
 - e. The applicant shall develop and implement a DEP-approved Capacity, Management, Operation and Maintenance (CMOM) plan for the entire sewer system serving the WWTP, and shall seek to have such plan incorporated into the WWTP's SPDES permit. At a minimum, such CMOM plan shall include:
 - (i) a map of the entire collection system;
 - (ii) an assessment of the current capacity of the collection system;

- (iii) a program and schedule for routine inspections and testing, and preventive operation and maintenance activities;
- (iv) a list of any structural deficiencies identified in the system and a schedule for short- and long-term rehabilitation measures to address each identified deficiency;
- (v) an inflow study, and a plan and implementation schedule, to control and eliminate, to the maximum extent practicable, stormwater contributions from sources such as catch basins, downspouts, and sump pumps; and
- (vi) a program for training appropriate personnel on collection system operation and maintenance.

3.0 CONDITIONS

DEP may impose specific conditions to the variance, including requiring evidence of financial security, time limitations for undertaking or completing the regulated activity and limitations on the transfer of the variance. DEP may also grant a lesser variance than the variance requested.⁹ All approved variances will be subject to the following conditions:

1. A failure to comply with any term of the variance is a violation of the Watershed Regulations;
2. DEP reserves the right to modify, suspend, or revoke the variance upon its own initiative based upon certain grounds and upon notice and opportunity for a hearing (*See* §18-26(a));
3. In the event that an applicant proposes to substantially alter or modify the activity for which the approved variance was granted, the applicant must submit plans for the proposed alteration or modification to DEP for review and approval (*See* §18-61(a)(3)); and
4. A Variance Determination cannot be transferred to a new property owner without written approval from DEP. Prior to sale or transfer of the title, the applicant shall/must notify DEP in writing of any sale or transfer of the property.

4.0 VARIANCE SUBMISSION REQUIREMENTS

Applications for all variances must include:

1. A description of the activity;
2. Identification of the specific provision of the Watershed Regulations from which a variance is sought;
3. Written proof that the variance sought is the minimum necessary to afford relief, as discussed above;

⁹ Watershed Regulations §18-61(a)(2).

4. A description of the proposed mitigation measures, and a demonstration that the proposed measures are at least as protective as the Watershed Regulations, as discussed above;

As noted above, there are additional submission requirements for variances from the siting restrictions for surface-discharging WWTPs within certain watershed areas. See Section 2.3 above.

5.0 GENERAL SUBMISSION REQUIREMENTS §18-23(c)

The variance application must contain the following information:

1. A completed DEP application form (Appendix B);
2. A description of the activity;
3. The municipality and county in which the project is located;
4. The street address and tax map parcel identification of the proposed project;
5. The name, address, phone number and email address of the owner and applicant;
6. The name, address, phone number and email address of the design professional;
7. The seal and signature of the design professional;
8. A vicinity map (preferably a portion of a 1:24,000 USGS map or equivalent) showing the location of the parcel;
9. A location map (preferably a portion of a tax map) highlighting the exact boundaries of the parcel, including a north arrow.
10. Topography of the area of activity;
11. Identification of existing structures at the location;
12. Where necessary, all design and engineering notes to provide sufficient detail to make a determination on the variance application;
13. Where applicable completed Part 1 of an Environmental Assessment Form and any Draft Environmental Impact Statement or Determination of Non-Significance, prepared pursuant to Article 8 of the Environmental Conservation Law;
14. A list of all other approvals required from DEP and other regulatory agencies, and a statement as to the status of those approvals at the time of filing the application with DEP;
15. If available, Geographic Information System (GIS) information, including a minimum of three (3) geographic coordinates from either New York State (NYS) Plane Survey (1927) or longitude and latitude (degrees, minutes and seconds) and a digital map or site plan of proposed project; and

16. A list of any enforcement actions, including lawsuits or administrative proceedings, commenced against the applicant, or any principal affiliate of the applicant, for any 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, in the five (5) years preceding the application. Failure to provide this information is sufficient grounds to deny, modify, suspend or revoke an application. §18-26(a)(1).

6.0 VARIANCE APPLICATIONS AND PROJECT REVIEW

When an applicant becomes aware that an application for a regulated activity will also require a variance for approval, he or she should submit applications for both the variance and the regulated activity simultaneously. When applications for variances and regulated activities are submitted at the same time, DEP will review the applications concurrently.

If an applicant applies for a variance while the project is already under review for a regulated activity, DEP may suspend review of the underlying application pending review of the variance application.

7.0 APPLICATION PROCESS FOR A VARIANCE

Applications for review and approval by DEP pursuant to the Watershed Regulations are subject to the following process. A flow chart illustrating the time frames and the application process described below is attached as Appendix E.

STEP 1 - OPTIONAL PRE-APPLICATION CONFERENCES

A prospective applicant may meet with DEP representatives at locations in or near the watershed before submitting an application for review and approval to discuss a proposed regulated activity, regulatory requirements, and the application process. DEP has found that a pre-application conference benefits both the applicant and DEP, and therefore encourages each applicant to involve DEP early in the project planning stage.¹⁰ At the pre-application conference, an applicant may also request DEP visit the subject site. Because distances from a watercourse, as well as other water bodies, are relevant to the approval process, a site visit will confirm the presence and status (intermittent or perennial) of a watercourse(s) that are located on or near the site and that may affect project design and layout. To request a pre-application conference, contact the appropriate DEP office listed below. The request form for a Pre-Application Conference is attached as Appendix B and should be mailed or e-mailed to the appropriate office listed below.

East of Hudson

Regulatory and Engineering Programs
DEP
465 Columbus Avenue
Valhalla, NY 10595
Phone (914) 749-5266

Kingston Region (Projects in Greene, Schoharie & Ulster Counties)

Regulatory and Engineering Programs
DEP
71 Smith Avenue
Kingston, NY 12401
Phone (845) 340-7214

¹⁰Watershed Regulations § 18-25.

Arkville Region (Projects in Delaware & Sullivan Counties)

Regulatory and Engineering Programs
DEP
County Highway 38, Suite 2
Arkville, NY 12406
(845) 771-1119

Request to Flag Reservoir, Reservoir Stem, Controlled Lake or Watercourse(s)

Under the Watershed Regulations, property owners and applicants may request that the Department flag the presence of any watercourse, reservoir, reservoir stem, or controlled lake on the property.¹¹ Identification of such bodies of water is key to determining how the Watershed Regulations apply to many of the activities discussed in this guide. The Department will fulfill the request as soon as field schedules permit. Owners or applicants may also supply a surveyor's field map which includes representations of flagged watercourses, reservoirs, reservoir stems or controlled lakes. The Department will review the surveyor's map and confirm or amend it within 20 business days for applicants, and as soon as practicable for other property owners. Following Department confirmation, the survey map will be valid and binding upon the Department for five (5) years following the date of confirmation. Contact the Department at the above-listed offices to request flagging.

The Watershed Regulations address only those wetlands mapped by the NYSDEC. Applicants should consult with the United States Army Corps of Engineers (ACOE) and local authorities to determine if there are federally and/or locally designated wetlands, and if so, what restrictions may apply. The Department does not delineate wetlands. To establish the boundaries of a wetland, property owners must contact NYSDEC, ACOE, or local authorities.

STEP 2 - APPLICATION SUBMISSION

An application for review and approval of an activity governed by the Watershed Regulations, as well as applications for variances, may be submitted to either of DEP offices noted above by mail, electronic mail, or in person between the hours of 8:30am and 4:30pm, Monday through Friday. An application form is attached as Appendix C and a checklist of all elements necessary for DEP approval is attached as Appendix D. An applicant is encouraged to discuss the level of information required with DEP prior to submission of the application. There are no application fees. Where projects require multiple DEP permits or approvals, an applicant is encouraged to submit applications concurrently. As discussed below, when the applicant is not aware of the need for a variance when the application for a proposed project is submitted, the variance application may be submitted at a later date.

STEP 3 - DETERMINATION OF COMPLETENESS §18-23

Upon receipt of a variance application, DEP will review the application and determine if it contains all information necessary to be deemed complete. This determination will be made within 20 calendar days.

¹¹ Watershed Regulations § 18-23(b)(5) and (6).

DEP will either notify the applicant that the application is complete and that DEP has commenced its review, or that the application is incomplete.

If an application is determined to be incomplete, DEP will request the specific information that is needed before the application can be considered complete. Within 10 calendar days of receipt of the requested information, DEP will notify the applicant whether or not the application is complete. Once DEP has asked for more information, DEP will request further information only if the additional information submitted by the applicant raises new questions.¹²

If DEP fails to notify the applicant regarding completeness of the application within the specified time periods, the applicant may notify DEP of its failure to do so by writing to the appropriate DEP office (identified in Step 1, above) by United States Postal Service certified mail, return receipt requested. The notice must contain:

1. the applicant's name;
2. the location of the project;
3. the project name (if applicable); and
4. DEP office where the application was filed.

If DEP does not notify the applicant as to completeness of its application within 10 business days of receiving the applicant's certified letter, the application will be deemed to be complete as of the 11th day. In cases where additional information has been requested and received, the amended application is the one that will be deemed complete, as of the 11th day.

After determining that an application is complete, DEP will begin its review to determine whether the proposed activity meets the variance standards in the Watershed Regulations.

STEP 4 - DETERMINATION: APPROVAL OR DENIAL §18-23(d)

Once DEP notifies the applicant that the application is complete, or once the application is deemed complete as described above, DEP will notify the applicant in writing of its determination to approve or disapprove the application. The determination will be made within 45 days. The 45 day time period does not commence until any additional information, if requested by DEP during Step 3 above, has been supplied, and the application is deemed complete. If during the 45 day review period, DEP requests revisions to the application, the review period is suspended from the date such request is made until the date on which DEP receives such revisions, provided that DEP has no fewer than 10 calendar days from the date of receipt to issue a determination. A determination to approve may include conditions of approval.

If DEP fails to notify the applicant within the specified time periods, the applicant may notify DEP of its failure to do so by writing to the appropriate DEP office (identified above) by certified mail, return receipt requested. The notice must contain:

¹² DEP may also request further information in the following situations: (1) false or misleading information has been submitted; (2) a change in relevant law has occurred; (3) changes have been proposed for the project; (4) there is a new applicant; or (5) the applicant's owners, principals, shareholders, directors, or offices have changed. Watershed Regulations § 18-23(d)(2)(iii).

1. the applicant's name;
2. the location of the proposed project;
3. the project name (if applicable);
4. DEP office in which the application was filed; and
5. a statement that a decision is sought in accordance with the Watershed Regulations § 18-23(d)(6).

If DEP fails to provide a determination to the applicant in writing within 10 business days of receiving the applicant's notice, the application will be deemed approved subject to the standard conditions for that approval. §18-23(d)(6)(i). An applicant's notice that does not contain all of the information listed above will not result in an application being deemed approved. §18-23(d)(6). A variance approval received as a result of this process applies only to the variance itself, not to any proposed regulated activity. An applicant must still obtain DEP approval prior to engaging in any regulated activity.

An applicant may appeal DEP's decision which either denies the variance requested or grants the variance with the imposition of a substantial condition or conditions.¹³ The applicant must file a written appeal by United States Postal Service certified mail, return receipt requested within 30 days of the date DEP's final determination was mailed.¹⁴

State Environmental Quality Review Act (SEQRA):

If the project is subject to review under SEQRA and the Lead Agency for the project has determined that the project may have a significant impact on the environment pursuant to the SEQRA regulations, the time periods specified above for determinations will be suspended until a Final Environmental Impact Statement has been issued by the Lead Agency and submitted to DEP. DEP will consider a project that requires SEQRA review as whole and will attempt to make determinations regarding all applications relating to such a project concurrently. DEP must issue its own Findings Statement before issuing an approval for any project that was subject to an Environmental Impact Statement.

¹³Watershed Regulations § 18-28.

¹⁴Watershed Regulations § 18-22.

APPENDIX A GLOSSARY

Coliform restricted basins: A coliform restricted basin is the drainage basin of a reservoir or controlled lake in which the coliform standards, as set forth in the Watershed Regulations at 15 RCNY § 18-48(c) or (d) of Subchapter D are exceeded as determined by DEP pursuant to its annual review conducted under Section 15 RCNY § 18-48(e) of Subchapter D. At the time this document was prepared, no reservoirs were coliform-restricted.

Controlled lake: A lake from which the City may withdraw water pursuant to rights acquired by the City or as a right of ownership. The three (3) controlled lakes are: Kirk Lake, Lake Gleneida and Lake Gilead.

Croton System: Croton System consists of 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.

Exfiltration: Wastewater that leaks out of a sewer system into the surrounding environment, through faulty joints, defective pipes, cracks in pipes, connections, or at manholes.

Existing: Where used to describe storage of hazardous substances, storage of petroleum products, or the siting of junkyards and solid waste management facilities, existing means physically constructed, functioning, and operational prior to May 1, 1997.

Impervious surfaces: Impervious surfaces are either impervious to water or substantially prevent the infiltration of water into the soil at that location. Impervious materials include, but are not limited to, paving, concrete, asphalt, rooftops, or other hard surfacing material. Impervious surfaces do not include dirt, crushed stones, gravel surfaces or other surfacing materials determined by the Department to be pervious for their intended purpose.

Infiltration: Water, other than wastewater that enters a sewer system, including sewer service connections, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow and from treatment of runoff by stormwater infiltration practices.

Inflow: Water other than wastewater that enters a sewer 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.

Intermediate sized sewage treatment system: Means an on-site subsurface sewage treatment system serving an industrial, institutional, municipal, commercial or multi-family residential facility, and receiving sewage without the admixture of industrial waste or other waste, as defined in the Environmental Conservation Law §17-0701. Intermediate sized sewage treatment systems do not include wastewater treatment plants as defined in the Watershed Regulations.

Intermittent stream: 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 snow melt shall not be considered to be an intermittent stream.

Limiting distance: 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 the contour line coinciding with the reservoir spillway elevation.

Microfiltration: A process in which treated effluent passes through a membrane filter having a nominal pore diameter of 0.2 microns or less.

Perennial stream: A stream that flows throughout the year from source to mouth.

Phosphorus restricted basins: A phosphorus restricted basin is (i) the drainage basin of a source reservoir in which the phosphorus load to the reservoir results in the phosphorus concentration in the reservoir exceeding 15 micrograms per liter, or (ii) the drainage basin of a reservoir other than a source water reservoir or of a controlled lake in which the phosphorus load to the reservoir or controlled lake results in the phosphorus concentration in the reservoir or controlled lake exceeding 20 micrograms per liter in both instances as determined by DEP pursuant to its annual review conducted under §18-48(e) of Subchapter D. Information regarding which basins are phosphorus-restricted is available from DEP offices listed in Section 7.0 of this document.

Reserve absorption field: An area identified in the design for a subsurface sewage treatment system as suitable for infiltration of sewage to the soil by means of a network of pipes.

Reservoir: Any natural or artificial impoundment of water owned or controlled by the City which is tributary to the City water supply system.

Reservoir stem: Any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir.

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 the Watershed Regulations.

Sewer system: Pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, including sewer extensions, used for conducting sewage, industrial waste or other wastes to a treatment facility.

SPDES flow parameter violation: 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 six 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.

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

Subdivision: 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 rent as residential lots. A tract of land shall constitute a subdivision upon the sale, rental, or offer of sale or lease of the fifth residential lot there from within any consecutive three year period.

Subsurface discharge: Discharge to an absorption area, i.e., a process designed to allow filtered, treated sewage effluent to be discharged into the ground as a means of ultimate disposal.

Subsurface sewage treatment system: 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 the Watershed Regulations.

Wastewater treatment plants: Any facility which treats sewage or discharges treated effluent not intended to receive further treatment in the watershed, and which requires a permit under Titles 7 or 8 of Article 17 of the Environmental Conservation Law. A wastewater treatment plant is installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage by removal of contaminants accomplished by unit operations or processes or by a combination of such operations and processes 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 the Watershed Regulations.

Watercourse: 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.

Wetland: 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.



**APPENDIX B
NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
APPLICATION FOR REVIEW AND APPROVAL OF VARIANCES**

You are encouraged to participate in an optional pre-application conference to discuss your proposal and any specific requirements for DEP review and approval. Please contact the appropriate DEP office listed in the accompanying Applicant's Guide to arrange a pre-application meeting.

Project Name: _____

Applicant/Designated Representative:

Name: _____

Address: _____

Phone: _____

Email Address: _____

Design Professional (if applicable):

Name: _____

Address: _____

Phone: _____

Email Address: _____

Project Location: Address: _____

Tax Map Number(s): _____

Town: _____ County: _____

Reservoir Basin: _____

Section of the Watershed Regulations from which the variance is sought: _____

Application submissions must include plans and supporting documents. See Appendix C for a checklist of items to be included.

I believe this application to be complete and in compliance with the Watershed Regulations.

(Signature)

(Print Name)

(Filing Date)

APPENDIX C
CHECKLIST FOR VARIANCE APPLICATIONS

General Requirements:

- The municipality and county in which the project is proposed
- The street address and tax map parcel identification of the proposed project
- The name, address and phone number of the owner/applicant
- The name, address and phone number of the design professional
- The seal and signature of the design professional on the plans
- A vicinity map (preferably a portion of a 1:24,000 USGS map or equivalent)
- A location map (preferably a portion of tax map) with north arrow
- Topography of the area of activity
- Identification of existing structures at the location
- A list of all other approvals required
- Geographic Information System (GIS) information
- A statement as to whether any enforcement action has been commenced during the five (5) years preceding the application against the applicant for alleged violations of law related to the specific regulated activity for which the application is being submitted, or related to the the facility or site at which the activity is located. Watershed Regulations §18-23(b)(4).
- A completed EAF
- A DEIS, FEIS or Negative Declaration, where applicable
- A copy of the draft and final SPDES permit, where applicable

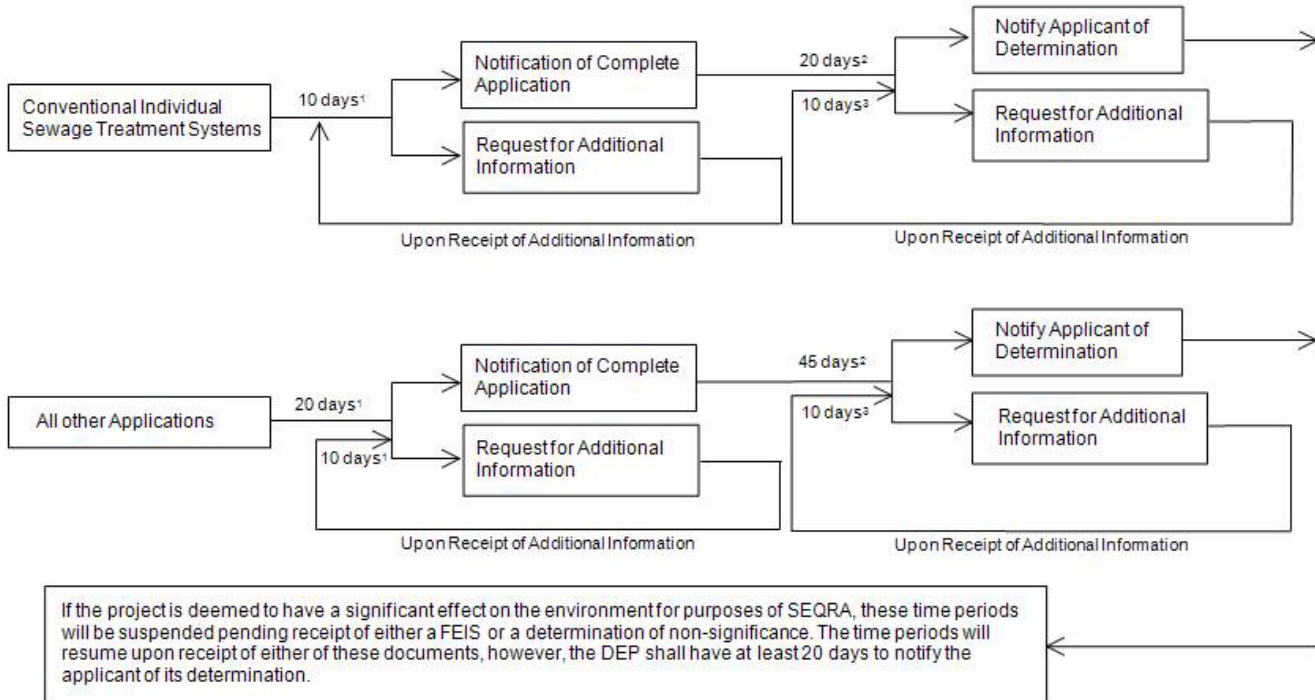
Submitted Applications must include:

- Identification of the specific provision(s) of the Watershed Regulations from which variance(s) is/are sought
- An explanation that the variance sought is the minimum necessary to afford relief
- Description of the proposed mitigation measures, demonstrating that the proposed measures are at least as protective as the Watershed Regulations

Attach Documentation which:

- Justifies the need for the requested variance (e.g., figures, maps, copies of the deed, and a letter from a licensed professional engineer recommending a variance may be included)
- Demonstrates that minimum relief from the Watershed Regulations is being sought
- Demonstrates that mitigation measures proposed to avoid contamination are at least as protective of the water supply as the Watershed Regulations

APPENDIX D PROJECT REVIEW TIMELINES



1. If DEP fails to notify the Applicant in writing within these time periods, the Applicant may notify DEP of its failure to do so, and request a determination of completeness in writing. DEP then has 10 business days to notify the Applicant of the status of the application. If DEP fails to act within those 10 days, the application will be deemed complete as of the eleventh day. For further information, refer to the guide.
2. If DEP fails to notify the Applicant in writing within these time periods, the Applicant may notify DEP of its failure to do so, and request a determination of completeness in writing. DEP then has 10 business days to notify the Applicant of the status of the application. If DEP fails to act within those 10 days, the application will be deemed approved, subject to standard conditions. For further information, refer to the guide.
3. If, during the review period, DEP requests revisions to the application, the review period shall be suspended from the date such request is made until the date on which DEP receives such revisions, provided that DEP shall have no fewer than 10 days from the date of receipt to issue a determination. Refer to the Guide and § 18-23(d)(4) and (5) for more information.