

Memo on Unified Stormwater Rule Compliance and Rooftop Conflicts

This memo is intended to clarify for HPD development teams, the applicability of and compliance thresholds for stormwater management practices (SMPs) required under DEP's **Unified Stormwater Rule (USWR)**. This memo is also meant to alert HPD development teams to certain potential conflicts between stormwater management requirements and solar requirements.

DEP's Unified Stormwater Rule – RCNY Title 15 Chapter 31 and Chapter 19.1

- **DEP's Unified Stormwater Rule**, which went into effect February 15, 2022, extended Citywide DEP's Stormwater Construction Permitting program for permitting, inspection, and enforcement of construction and post-construction projects. The USWR updated and aligned water quantity requirements (Title 15 Chapter 31) in the city's combined sewer drainage areas with water quality requirements, originally only in separately sewerage drainage areas. The USWR also reduced the soil disturbance threshold triggering Stormwater Permitting requirements from 1 acre to 20,000 square feet and added as additional triggers the creation of 5,000 square feet of impervious surface and certain covered maintenance activities.
- **DEP's Stormwater Construction Permit** authorizes development activity on land on which there is a **covered development project**. A covered development project is any development in New York City, public or private, that meets one or more of the following criteria:
 - Disturbs 20,000 sf or more of soil; disturbance may include a wide range of development activities, such as construction, demolition, renovation, restoration, land clearing, land grading, or excavation.
 - OR creates 5,000 sf or more new impervious area; (note that certain "pervious" surfaces are considered impervious unless permeability rate is sufficient, per a geotechnical investigation)
 - OR is a covered maintenance activity (covered maintenance activities apply only to Right-of-Way projects of 20,000 square feet or more).
- **DEP's Stormwater Requirements:** The USWR emphasizes a retention-first, green infrastructure approach to stormwater management practice selection and design.
 - Green infrastructure practices, also referred to as SMPs, are designed to protect, restore, or mimic the natural water cycle within built environments by retaining, detaining, and/or treating stormwater runoff.
 - SMPs generally include practices such as rain gardens, green or blue roofs, porous pavement, subsurface stormwater storage systems, and stormwater reuse systems.

Where opportunities for on- or in-ground green infrastructure SMPs are limited, either due to building footprint or other site constraints, DEP has stipulated that green roofs are the only way to comply with the regulations and it is likely that additional storage or filtration will be necessary. Note that a variety of rooftop vegetated storage practices may be available to meet DEP green roof performance standards. Refer to DEP's Stormwater Manual for more information.

Local Law 92/94 of 2019 – NYC Building Code Chapter 15

Since November 2019, all new buildings, new roofs resulting from enlargement of existing buildings, and existing buildings replacing an entire existing roof deck or roof assembly have been required to calculate a “sustainable roofing zone” and require 100% of the [Sustainable Roofing Zone](#) to be covered in either green roofs and/or solar energy systems. Affordable housing was treated differently: until November 2024, affordable housing projects could submit an exemption letter to DOB if HPD deemed solar or green roofs to be financially infeasible. To better assess feasibility, HPD launched its Solar Where Feasible program requiring Solar Feasibility Analyses to determine feasibility and to build capacity prior to the phase out. However, after November 2024, all Affordable Housing is expected to comply LL92/94 with no exemptions and HPD has phased out the requirement for Solar Feasibility Analyses for new construction as of July 2024. Instead, projects are now subject to LL92/94 and DEP requirements, and HPD expects design teams to develop designs that maximize roof use and sustainability/ resiliency.

How does this affect HPD New Construction Projects?

All HPD projects should assess whether they are subject to the Unified Stormwater Rule as early in the process as possible. Projects with designs underway may need to be redesigned to accommodate DEP's requirements. As noted above, inclusion of rooftop solar or an HPD Solar waiver does not exempt a project from meeting USWR requirements, and LL92/94 exemptions for solar for projects filing with DOB after the November 15 2024 will no longer be accepted.

Project teams should expect the following conditions to apply:

- **Buildings with projects subject to the USWR must obtain a DEP Stormwater Construction Permit before DOB can issue its construction permit.** All projects that do not yet have DOB permits should assess whether they are subject to the USWR requirements and take steps to design/redesign their projects as needed. Information on DEP stormwater management resources and contact information can be found below.
 - Neither HPD nor DEP's Stormwater Permitting Unit can waive compliance with the USWR for any HPD covered development project.
- **Projects subject to the USWR requirements should assess their designs early on to determine how the project can best meet the USWR requirements.** Projects that can

sufficiently accommodate vegetated infiltration practices on site will not likely be required to use their roofs for stormwater management.

- For projects that can't accommodate infiltration practices on the site (e.g., zero lot line buildings), DEP requires projects demonstrate that they are using the maximum feasible amount of the buildings' available roof area(s) regardless of whether they are calculated as part of the "sustainable roofing zone".
- If a project has extenuating circumstances that does not allow implementation of sizable amounts of green roof area and the project team proposes to move down to the next tier in the stormwater management practice hierarchy, a strong narrative for why the full water quality volume (WQv) can't be met in a tier 1 practice must be included. Implementing any area of green roof to capture some of the WQv before moving to the next tier can help meet the maximum extent practicable case for tier 1 SMPs:
 - This could include a) a cost/benefit analysis of rooftop solar showing the importance of solar for project economics; b) demonstrating meeting other HPD or City requirements furthering public health or resiliency (e.g., a solar trellis over a mandatory shaded outdoor space); or, c) alternative rooftop green infrastructure practices including rooftop planters that are designed to filtrate stormwater.
 - Ensuring stormwater management practices and rooftop solar strategies meet DEP standards should be done as early as possible. Teams may work with Solar One for free to develop a solar design.
- **HPD's New Construction Design Guidelines and Design Consultation review process now require development teams to establish USWR compliance.** Project teams are expected to have a defined stormwater management plan and initiated the SWPPP approval process by the Design Consultation.
Projects in an MS4 area are subject to DEC permitting and approval. DEP has no flexibility on sites subject to DEC permitting.

Resources for Development Teams:

Project teams are strongly encouraged to contact DEP's Stormwater Permitting Unit for a pre-application meeting.

- If you have additional questions regarding the permitting process, please email stormwaterpermits@dep.nyc.gov.
- To request a pre-application meeting, send an email to stormwaterpermits@dep.nyc.gov with the subject line "SWPPP Pre-Application Meeting Request (Project Name, Address, SWPTS Request ID)". Attach as much information about the project as possible including existing site conditions, existing

- sewer type, and any preliminary design information. Include three proposed time blocks (must be a minimum of 2 weeks from request date).
- Learn about the [Unified Stormwater Rule](#)
 - Download the [NYC Stormwater Manual](#)
 - Read the FAQs: [unified-stormwater-rule_faqs.pdf \(nyc.gov\)](#)
 - Information about LL92/94 and the Sustainable Roofing Zone can be found here: [solar-green-roofs](#).
 - Learn about [HPD's Solar Where Feasible Program](#).

If you have any questions about the Unified Stormwater Rule and stormwater management practices, please contact Resiliency@hpd.nyc.gov. If you have questions about solar, please contact sustainability@hpd.nyc.gov.