

DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BOARD OF HEALTH

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NOTICE OF ADOPTION TO AMEND ARTICLE 143  
AND REPEAL ARTICLE 145 OF THE NEW YORK CITY HEALTH CODE

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In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of intention to amend Article 143 (Disposal of Sewage) and repeal Article 145 (“Water Pollution Control”) of the New York City Health Code (the “Health Code”) was published in the City Record on June 26, 2009 and a public hearing was held on the proposal on July 30, 2009. No written comments or testimony were received. At its meeting on September 22, 2009 the Board of Health adopted the following resolution.

**STATUTORY AUTHORITY**

The amendments to Article 143 and the repeal of Article 145 of the New York City Health Code (“Health Code”) are promulgated pursuant to §§556, 558 and 1043 of the Charter. Section 556 of the Charter provides the Department of Health and Mental Hygiene (“DOHMH” or “Department”) with jurisdiction to regulate all matters affecting health in the city of New York. Section 558(b) and (c) of the Charter empowers the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

**STATEMENT OF BASIS AND PURPOSE**

1. Amend Article 143.

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the Board of Health is amending Article 143, covering the disposal of sewage, repealing provisions for construction of private sewage disposal systems, and the issuance of permits for site and sub-soil evaluation related to such construction, in order to better reflect practice and the current regulatory environment. In addition, for the reasons stated below, the Board is repealing Article 145 (Water Pollution Control).

Article 143 broadly addresses disposal of wastes within the City, in particular, the disposal of human, household, and commercial liquid wastes which are not directly discharged into City waters. Article 145 complements Article 143 by regulating wastes directly entering City waters.

Under Health Code §§143.03 and 143.05, the Department regulates private sewage disposal systems, such as septic tanks and privies that are not connected to the City’s sewage disposal system and that discharge into a local site and underlying sub-soil.

Health Code §143.07 requires proof of proper maintenance of private sewage disposal systems. Health Code §143.09 regulates private sewage disposal systems for one and two family dwellings. Health Code §143.13 provides that private sewage disposal systems are subject to Department inspection and be operated so as not to create a nuisance.

When Local Law 50/1991 was enacted, amending Charter §1403, the New York City Department of Environmental Protection was granted jurisdiction over the “location, construction, alteration, repair, maintenance and operation of all sewers” including the “authority to supervise and adopt rules regarding private sewage disposal systems...and to prescribe civil penalties for the violation of such rules...and to issue permits pursuant to such rules for the construction and maintenance of such private sewage disposal systems...”

Local Law 65/1996 amended New York City Building Code §27-157(4) to remove a reference requiring that a site and sub-soil evaluation be obtained from the Department prior to the construction of a private sewage disposal system. Also, under Charter §643(5), the Buildings “[C]ommissioner may approve the installation of and issue a permit for the construction of an individual on site private sewage disposal system for premises. Such permit shall be issued in accordance with the commissioner, in consultation with the commissioner of environmental protection, for the installation of an individual on site private sewage disposal system.”

Therefore, based on the above, Health Code §§ 143.03, 143.05, 143.07, 143.09 and 143.13 are no longer necessary as the Department is no longer responsible for regulating private sewage disposal facilities. Under New York City charter provisions §643 and §1403, the Department of Buildings issues permits for individual private sewage disposal systems and the Department of Environmental Protection has enforcement authority regarding these systems

The current definitions set forth in §143.01 are being kept and subdivision (c) is being amended to make clear that the Health Department does not regulate portable toilets such as those found on street locations or at construction sites; and a new subdivision (e) defining “community private sewage disposal systems” is being added to §143.01 as this term is not defined in the Health Code, although the Health Department currently regulates such sewage disposal systems under §143.11.

## 2. Repeal Article 145

Article 145 (“Water Pollution Control”) requires a permit from the Department for discharge of sewage into City waters. The Board hereby repeals Article 145 as no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

The resolution is as follows.

Matter to be deleted is in brackets [ ]  
Matter underlined is new

RESOLVED, that subdivision (c) of §143.01 (Definitions) of Article 143 (Disposal of Sewage) of the New York City Health Code found in Title 24 of the Rules of the City of New York, be, and the same is, amended, and a new subdivision (e) is added, to be printed with explanatory notes to read as follows.

### **§143.01 Definitions.**

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(c) Privy means a permanent facility for urinating or defecating embedded in the subsurface which is not water flushed and which does not connect, directly or otherwise, to a private sewage disposal system or the municipal sewage disposal system, and includes a chemical toilet[.] but does not include portable toilets such as those found in transportation facilities or at construction or other street locations.

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(e) Community private sewage disposal system means a private sewage disposal system which services fifteen or more dwellings.

Notes:

Subdivision (c) was amended and a new subdivision (e) was added by resolution adopted by the Board of Health on September 22, 2009 to redefine “privy” and to add a definition of “community private sewage disposal system.”

RESOLVED, that §143.03 (Disposal of sewage generally; use of private sewage disposal system and privies) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the seventh of November nineteen hundred sixty, be and the same hereby is, repealed.

RESOLVED, that §143.05 (Private sewage disposal systems; permit for site and sub-soil evaluation; standards, exception) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the fifteenth of January nineteen hundred seventy-six, be and the same hereby is, repealed.

RESOLVED, that §143.07 (Private sewage disposal systems; proof of proper maintenance) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, repealed.

RESOLVED, that §143.09 (Private sewage disposal systems; requirements for one and two family dwellings) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the twenty-third of September nineteen hundred seventy-one, be and the same hereby is, repealed.

RESOLVED, that §143.13 (Private sewage disposal systems; inspection; operation) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the eighteenth of December nineteen hundred sixty-nine, be and the same hereby is, repealed.

RESOLVED, that the list of section headings of Article 143 (Disposal of sewage) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, amended, to be printed together with Introductory Notes, to read as follows.

**ARTICLE 143**

**DISPOSAL OF SEWAGE**

**§143.01 Definitions.**

**[§143.03 Disposal of sewage generally; use of private sewage disposal system and privies.**

**§143.05 Private sewage disposal systems; permit for site and sub-soil evaluation; standards, exception.**

**§143.07 Private sewage disposal systems; proof of proper maintenance.**

**§143.09 Private sewage disposal systems; requirements for one and two family dwellings.]**

**§143.11 Community private sewage disposal system.**

**[§143.13 Private sewage disposal systems; inspection; operation.]**

**§143.15 Privies.**

**§143.17 Modification by Commissioner.**

Introductory Notes:

As part of a comprehensive review of the Code, Article 143 was amended by resolution of the Board on September 22, 2009 to better reflect practice and the regulatory environment, and to harmonize its provisions with related provisions of local law, §143.01 was amended, and §§143.03, 143.05, 143.07, 143.09 and 143.13 were repealed as no longer necessary. In accordance with Local Law 50/1991 and Local Law 65/1996, the New York City Department of Buildings and the New York City Department of Environmental Protection have jurisdiction over the activities formerly regulated by the Department.

RESOLVED, that Article 145 (Water Pollution Control) of the New York City Health Code found in Title 24 of the Rules of the City of New York, as amended by resolution on the twentieth day of December nineteen hundred and seventy-three be and the same hereby is repealed.

Notes:

Article 145 was repealed by resolution adopted on September 22, 2009 as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).