

Notice of Public Hearing
New York City Department of Environmental Protection

What are we proposing? The New York City Department of Environmental Protection is proposing amendments to Chapter 21 of Title 15 of the Rules of the City of New York, the Drought Emergency Rules, to address water shortage emergencies due to circumstances other than natural conditions.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on February 1, 2017. The hearing will be held in the 20th floor conference room at 59-17 Junction Boulevard, Flushing, New York.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on February 1, 2017. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by February 1, 2017.

Do you need assistance to participate in the hearing? You must tell the Bureau of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 718-595-6531. You must tell us by January 25, 2017.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the department to make this rule? Section 1403 of the Charter of the City of New York and Sections 24-337 and 24-346 of the Administrative Code of the City of New York authorize the Department to make this proposed rule. This proposed rule was included in the Department’s regulatory agenda for this fiscal year.

Where can I find the department’s rules? The Department’s rules are in Chapter 21 of Title 15 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

Statement of Basis and Purpose

Section 1403 of the Charter of the City of New York and Sections 24-337 and 24-346 of the Administrative Code of the City of New York authorize the New York City Department of Environmental Protection (“DEP”) to amend the “Drought Emergency Rules” (15 RCNY Chapter 21) in order to address water shortage emergencies due to circumstances other than natural conditions, such as planned and unplanned infrastructure outages and repairs. The proposed amendments also add, remove, and change certain water use prohibitions during the different stages of water shortage emergencies, to better reflect DEP’s current understanding of City water use. Although the proposed rule does not apply to routine residential water use such as water used for drinking, bathing, or dishwashing, the Department expects that when the restrictions in the proposed rule are implemented during a water shortage emergency, public awareness of the restrictions will lead to decreased residential water use. The new rules include the following important changes and additions:

Restrictions on Water Use for Reasons Other than Hydrological Conditions

The proposed rule addresses the need for DEP to impose water use restrictions whenever there is a water shortage, regardless of whether such shortage is caused by natural hydrological conditions or other circumstances such as planned and unplanned infrastructure outages and repairs.

Amendments to Water Use Restrictions to Reflect Updated Studies

In 2012, DEP completed several studies to better understand water use in the City among different types of users and for different types of land uses. These studies analyzed how water uses vary in residential, commercial, and high-rise buildings, and single-family homes. The

studies also analyzed industrial water uses. The revised rules reflect DEP’s updated understanding of the City’s water use.

Amendments to Defined Terms

DEP proposes amending the defined terms to replace “drought emergencies” with “water shortage emergencies,” in order to capture water shortages caused by other, non-drought circumstances, such as planned or unplanned infrastructure outages. DEP also proposes to include additional terms related to golf courses and to clarify other existing terms.

Clarifications to Exemptions from Water Use Restrictions

The proposed amendments clarify when one can apply for an exemption from the rules restricting water use, as well as the process for applying for the exemption.

Clarifications to Setting a Water Shortage Rate

The proposed amendments authorize the Commissioner to request and recommend that the New York City Water Board set a water shortage rate in advance of a water shortage emergency, which can be implemented during a water shortage emergency. A water shortage rate is the increased rate in effect during a water shortage emergency to encourage water conservation.

Amendments to Signage Requirements

The proposed rule clarifies and broadens the categories of residential units required to display signs during Stage II and Stage III water shortage emergencies.

Changes and Restrictions for Certain Activities and Specific High Volume Users

The rule establishes new percentages by which water use must drop for certain activities during different stages of a water shortage emergency. The new requirements apply to nurseries, golf course tee boxes and greens, playgrounds, athletic playfields, and certain bottling plants, paper recycling facilities, and hotels.

Please note that the new text is underlined and the deleted text is [bracketed].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in these rules, unless otherwise specified or unless the context clearly indicates otherwise.

Section one. Chapter 21 of Title 15 of the Rules of the City of New York is amended to read as follows:

Chapter 21

[Drought] Water Shortage Emergency Rules

Subchapter A

General Provisions

§ 21-01. Introduction.

The provisions of this subchapter apply to all stages of [Drought] a Water Shortage Emergency in the City, unless otherwise specifically provided herein.

§ 21-02. Definitions.

Acceptable [Irrigation Controller] irrigation controller. “Acceptable [Irrigation Controller] irrigation controller” means a microprocessor-based controller for the valve(s) of an irrigation system that can be programmed for the various time and date intervals set forth in § [21-09(e), 21-10(e) and 21-11(e)] 21-11 [of these Rules], and that incorporates a rain sensor, soil moisture sensor or evapo-transpiration control.

Active [Source] source. “Active source” means any sprinkling device or system and any device that delivers water under pressure.

City. “City” means the City of New York.

City water. “City water” means water supplied by or taken from the City water supply system.

City water supply system. “City water supply system” means [the City water supply system] any public water supply system owned or operated by the City.

Commissioner. “Commissioner” means the commissioner of the [department] Department or his or her designee or successor in function.

Department. "Department" means the New York City Department of Environmental Protection or its successor in function.

[Drought emergency. "Drought emergency" as declared by the commissioner, exists when, in the opinion of the commissioner, there is a reasonable probability that without the implementation of stringent measures to reduce consumption, a protracted dry period would cause the City's reservoirs to drop to levels that would threaten public health and safety.]

ECB. "ECB" means the New York City Environmental Control Board.

Golf course fairway. "Golf course fairway" means the turf between the golf course tee box and green.

Golf course tee box and green. "Golf course tee box and green" means the area from which golf balls are teed up or placed for the first stroke on a hole, and the area immediately surrounding the golf hole or the green where putts are played, which is not considered golf course fairway for the purposes of these rules.

Health care facilities. "Health care facilities" means hospitals, hospices, medical clinics, physician's offices, nursing homes or any other facility caring for persons who are ill, aged or infirm, where, in the opinion of the commissioner, relief from the prohibition contained in § 21-10(j) is necessary to protect the health and well-being of such persons.

Non-turf plants. "Non-turf plants" means all plants, including trees, but excluding turf.

Nursery. "Nursery" means the private or public grounds and premises on or in which nursery stock is propagated, grown, or cultivated for the commercial purpose of distributing or selling the same.

Person. "Person" means an individual, firm, partnership, company, corporation, association, society, institution, organization, governmental agency, administration, department, or other group of individuals or legal entity, or an officer or employee thereof.

Turf. "Turf" means grasses used as ground cover or lawn.

Waste of City water. “Waste of City water” means (i) any leak or waste from any water pipe, valve, faucet, conduit, equipment, facility, or device connected to the City water supply system, or (ii) any failure to reduce water consumption as required by this chapter.

Water Board. “Water Board” means the New York City Water Board.

Water-conserving [Irrigation System] irrigation system. “Water-conserving [Irrigation System] irrigation system” means an irrigation system that delivers water at low pressure and low flow rate directly to the roots of non-turf plants, [including trees,] such as “drip irrigation systems,” “soaker hoses,” or “Tregators.”

Water shortage emergency. “Water shortage emergency” means a declaration by the Commissioner that there is a reasonable probability of a shortage of City water, or an expected shortage of City water, that would threaten public health and safety absent the implementation of measures to reduce water consumption. The Commissioner may declare any of three stages of a water shortage emergency, based on the anticipated severity of the shortage and the need to reduce consumption, as described in these rules.

Water shortage rate. “Water shortage rate” means a water rate in effect during a water shortage emergency which is intended to encourage water conservation by increasing the cost of City water by such amounts as the Commissioner may recommend and which the Water Board in its sole discretion determines to be appropriate.

Well water. “Well water” means an individual source of potable water that is not connected to the City water supply system, and is drawn from a subsurface well under permit from the New York City Department of Health and Mental Hygiene and/or the New York State Department of Environmental Conservation.

§ 21-03. Sanctions.

(a) Violations of the rules [contained] in this chapter or of the terms and conditions of any variances granted pursuant to § 21-04 [of these rules,] shall be punishable by fines and penalties established by [the Administrative Code,] §§ 24-337 and 24-346 of the Administrative Code, and may be returnable before the ECB.

(b) [In addition to any penalties that may be imposed by the ECB, where] Where a leak and waste notice has been served in accordance with § 24-337 of the Administrative Code and the condition to which such notice relates has not been corrected within the time set for compliance, a fine of up to fifty dollars per day may be imposed by the commissioner in addition to any penalties that may be imposed by the ECB.

(c) [A] The Department may install a flow restrictor [may be installed] or terminate water service [may be terminated] for a violation of any provision of the rules [contained] in this chapter [for any waste of water].

§ 21-04. Variances.

(a) The Commissioner may appoint a “[Drought] Water Shortage Emergency Variance Board” (the “Variance Board”) for the purpose of entertaining requests for variances from compliance with any of the requirements of the rules [contained] in this chapter. Variance Board members shall [only] be appointed only from the personnel of the Department or the [New York City] personnel of the Water Board.

(b) Any person [or entity] applying for a variance must submit a notarized application for a variance to the Variance Board. The [applicant] person must demonstrate, at a minimum, to the satisfaction of the Variance Board, that:

(1) [that] compliance with such rules would result in an undue hardship;

(2) [that] there are no reasonable alternatives;

(3) [that] the [applicant] person has taken and will continue to take all possible measures to conserve water, [with] and will provide a complete description of such measures that have been implemented to achieve reductions under this rule and the water savings to be effected; and

(4) [that] such variance is not inconsistent with the purpose of such rules.

(c) The Variance Board may grant a variance relieving a person [or entity] from compliance with any of the requirements of the rules in this [subchapter] chapter. In connection with any variance that may be granted, the Variance Board [shall] may impose [such] terms and conditions as deemed appropriate. Requests for variances [shall] must be processed in a timely fashion, and determinations [shall] must not be unreasonably withheld or delayed. The filing or pendency of a variance application [shall] does not relieve any person [or entity] from complying with [these rules] any of the requirements of this chapter, including any rules cited in the variance application, and [shall] does not [immunize] grant immunity to any person [or entity] from any civil or criminal prosecution or sanction under the rules.

(d) Variance application forms may be obtained at 59-17 Junction Boulevard, Flushing, NY 11373, Attention: Office of the General Counsel, or by calling 311.

(e) Appeals.

(1) [An applicant] A person may appeal the denial of a variance [issued], or the imposition of an arbitrary and substantial condition in the grant of a variance, by the Variance Board [under the rules of this subchapter] by filing a notarized petition in writing with the Commissioner within thirty (30) days of the date the denial notification was mailed. The appeal [shall] must state the name and address of the petitioner and [shall] must include a short and plain statement of the matters to be adjudicated, identifying the [variance sought by the petitioner with citation to the applicable provisions of such rules] specific provision of these rules from which the variance is sought, the proposed location of the activity, and the date of the Variance Board's denial. A copy of the denial notification being appealed [shall] must be attached to the petition.

(2) [The applicant] A person may appeal only the [issue] issues of whether the Variance Board abused its discretion in denying a request for a variance or in imposing [a] an arbitrary and substantial condition in a grant of a variance.

(3) Upon review of any appeal filed pursuant to [§ 21-04(e)] this section, the Commissioner may, in his/her discretion, grant a variance relieving a person [or entity] from compliance with any of [the requirements of] the rules in this chapter. In connection with any variance that may be granted, the Commissioner may impose such terms and conditions as deemed appropriate. Appeals [shall] must be processed in a timely fashion, and determinations [shall] must not be unreasonably withheld or delayed.

(4) The filing of an appeal shall not relieve [the petitioner] a person from complying with any of the requirements of the rules of this [subchapter] chapter, including any rules cited in the variance application, and shall not [immunize] grant immunity to any person [or entity] from any civil or criminal prosecution or sanction authorized under such rules.

(f) The Commissioner may delegate to personnel of the Department or of the [New York City] Water Board any or all of his or her powers relating to [the Drought Emergency Rule variances and/or appeals thereof] this section.

§ 21-05. [Drought Emergency] Water Shortage Rate and Plan.

[At any time after the actual declaration of a Phase I Drought Emergency, the] The Commissioner may at any time recommend and request that the [New York City] Water Board [consider the adoption of a drought emergency contingency rate plan that conforms with § 24-360 of the Administrative Code of the City of New York] (i) adopt, subject to the requirements of any financing agreement between the Water Board and the New York City Municipal Water Finance Authority and to § 1045(j) of the New York State Public Authorities Law, a water

shortage rate, and (ii) in conjunction with the Department, prepare and adopt a plan to implement the water shortage rate. Such [rate] plan [shall have as its goal the creation of enhanced incentives for water conservation by increasing the cost of city water] may aim to reduce water use by such amounts, and for such duration, as the Commissioner may recommend and which the Water Board in its sole discretion [shall consider] considers appropriate.

§ 21-06. “Save Water” Signage.

(a) Introduction. Immediately upon the declaration of any stage of [Drought Emergency] a water shortage emergency by the Commissioner, “Save Water” signs, as described below, [shall] must be prominently posted in every building or premises connected to the [city] City water supply system or in which [city] City water is used, in the locations specified below. [It shall be the responsibility of every] Every person [or entity] owning, using, leasing, managing, operating or controlling any such building or premises [to assure] must ensure that such signs are properly posted. The provisions set forth in this [§ 21-06] section do not apply to one-, two- or three- [or four-] family dwellings.

(b) Sign size and content. Such signs required pursuant to [§ 21-06(a) above shall not] this section must be [less than 6] at least six inches in height by [9] nine inches in [size] width. The heading “Save Water” on the signs should be in letters not less than three-quarters inch (3/4”) in height. The signs [shall include the following wording and] may include any artwork or additional language[,], related to water conservation[, which may be] that is desired by the person [or entity] posting the sign, and must include the following wording:

SAVE WATER
Report Leaks and Water Waste
Call 311

(c) Sign locations. Such signs [shall] must be prominently posted in the following locations:

(1) Multiple dwellings (four units or more). [In multiple dwellings (five units or more):] At each entrance, near mailboxes, in each elevator and on each floor with more than one dwelling.

(2) Hotels. [In hotels:] At each entrance, near each check-in desk and cashier, near each entrance to each restaurant or other public eating place, in each elevator, in the public hallway on every floor and in each bathroom (except signs in private bathrooms in individual hotel rooms may be reduced to three inches by five inches in size).

(3) Hospitals. [In hospitals:] At each entrance, in each elevator, on every floor by an elevator, in each bathroom and shower room, in each laboratory, and in each restaurant or cafeteria.

(4) Office buildings. [In office buildings:] At each entrance, in each elevator, on every floor by an elevator, in each bathroom and in each dining room or cafeteria or other places where food is sold.

(5) Restaurants. [In restaurants:] In each bathroom and at each table (except signs at tables may be reduced to three inches by five inches in size).

(6) All other nonresidential buildings[. In all other nonresidential buildings], including all commercial and industrial buildings[:], schools, universities and community centers. At each entrance, in each elevator, on every floor by an elevator, in each bathroom and shower room, above each sink or group of sinks, in each eating area and in the work area of every process or operation using any water.

§ 21-07. “Water-Conserving Irrigation System” Signage.

Immediately upon the declaration of any stage of [Drought Emergency] a water shortage emergency by the Commissioner, [“Water-Conserving Irrigation System”] water-conserving irrigation system signs, as described below, [shall] must be prominently posted [at] in every building or premises connected to the City water supply system or in which [city] City water is used in [Water-conserving Irrigation Systems] water-conserving irrigation systems for [the irrigation of] non-turf plants. [It shall be the responsibility of every] Every person [or entity] owning, using, leasing, managing, operating or controlling any such building or premises [to assure] must ensure that such signs are properly posted. A sign [not less than 6] at least six inches in height by [9] nine inches in [size] width must be prominently posted at the watering location indicating that a [Water-conserving irrigation system] water-conserving irrigation system is in use. The sign shall include the following wording and] may include any artwork or additional language[,] related to water conservation[, that may be] desired by the person [or entity] posting the sign and must include the following wording, which should be in letters not less than three-quarters inch (3/4”) in height:

SAVE WATER
WATER-CONSERVING IRRIGATION SYSTEM IN USE
REPORT LEAKS AND WATER WASTE
CALL 311

If applicable, the sign must include the time periods in which such water-conserving irrigation systems are permitted to be in use pursuant to §§ 21-09, 21-10 and 21-11.

§ 21-08. Well Water Use Prohibition Exceptions.

No person shall cause, permit or allow the use of well water for any purpose for which the use of [city] City water is prohibited by the rules [contained] in this chapter, unless:

(a) such installation is covered by a valid permit from the New York City Department of Health and Mental Hygiene; and

(b) there are no cross-connections, and either all swing-joint connections have been replaced by permanent rigid piping or the connection to the [city] City water supply system has been sealed; and

(c) immediately upon the declaration of any stage of a water shortage emergency, signs are prominently displayed, not less than [8½] eight and a half inches in height by [11] eleven inches in [size] width and with lettering not less than one inch in height, bearing the following wording including the permit number:

[DROUGHT] WATER SHORTAGE EMERGENCY
PRIVATE WELL WATER IN USE
HEALTH DEPT PERMIT NO. _____

The permission to use well water granted by this [§ 21-07] section may be revoked by the [commissioner] Commissioner for any violation of the foregoing conditions, or of these rules, or of any applicable laws, rules or regulations.

Subchapter B

Stage I

§ 21-09. Prohibitions and Reductions.

(a) Prohibitions. Upon declaration [of] by the Commissioner of a Stage I [Drought Emergency] water shortage emergency, no person [or entity] shall cause, permit or allow:

[(a)] (1) The continuing of any [leak or] waste [from any water pipe, valve, faucet, conduit, equipment, facility or device connected to the city water system, or that utilizes city water,] of City water on or in any premises owned, used, leased, managed, operated or controlled by such person [or entity];

[(b)] (2) The use of [city] City water to wash any vehicle (including any aircraft, watercraft or land vehicle whether on- or off-road), provided that this provision shall not be construed to prohibit;

(i) the reasonable use of [city] City water for washing [of] such vehicles where mandated by law or for health or safety purposes, or

(ii) the use of well water for such purposes, provided § 21-08 is complied with;

[(c)] (3) The use of [city] City water to spray, wash or wet any hard or paved surfaces, including, but not limited to, streets, sidewalks, driveways, outdoor areaways (including any recreational areas, whether at ground level or on a structure), parking areas or outdoor steps[. This]; provided, however, that this provision[, however,] shall not be construed to prohibit the washing of such surfaces, particularly the exterior surface of a building, where such washing is required as part of repairs mandated by the Administrative Code or to protect the health and safety of the public, [assuming such use is] consistent with the provisions set forth in § 24-332 of the Administrative Code of the City of New York and § [20-08(a)(5)] 20-08(a)(8) [of Title 15 of the Rules of the City of New York];

[(d)] (4) The use of [city] City water for any ornamental or aesthetic purpose, including, but not limited to, use in fountains, [artificial] waterfalls, reflecting pools, lakes and ponds, unless the pond or lake is a habitat for animals living in such body of water prior to the declaration of a [drought emergency. In the case where city] water shortage emergency, and provided further that where City water is not used (e.g., a private well), a sign not less than [6] six inches in height by [9] nine inches in width must be prominently posted at the location indicating that the water being used in such fountain, waterfall, pool, lake or pond is not [city] City water;

[(e)] (5) In accordance with the provisions set forth in § [20-08(a)(5) of Title 15 of the Rules of the City of New York] 20-08(a)(6), the use of [city] City water by means of a hose or other active source to water any turf or any non-turf plants, except that:

[(1) city] (i) City water may be used to water any turf[, except for golf course fairways,] from [7:00 a.m.] 10:00 a.m. to [9:00 a.m. and from 7:00 p.m. to 9:00 p.m.] 12:00 p.m. and from 10:00 p.m. to 12:00 a.m., on the following schedule, based on the final digit or letter of the house number:

[(i) At even numbered addresses, city water may be so used during the above-specified hours on even-numbered days of the month;

(ii) At odd-numbered addresses, city water may be used during the above-specified hours on odd-numbered days of the month.]

(a) On Mondays, if the house number ends in 0 or 1;

(b) On Tuesdays, if the house number ends in 2 or 3;

(c) On Wednesdays, if the house number ends in 4 or 5;

(d) On Thursdays, if the house number ends in 6 or 7;

(e) On Fridays, if the house number ends in 8, 9, or a letter.

[(2)] (ii) newly seeded or newly sodded turf (excluding golf course fairways) or newly planted non-turf plants, may be irrigated with [city] City water, in addition to the scheduled times in [(e)(1)(i) and (ii)] § 21-09(a)(5)(i), on the day of planting and for the two days following planting;

[(3)] (iii) if hand-held hoses equipped with nozzle tips or in-line flow regulators, or water conserving irrigation systems that effectively limit water output to a maximum flow rate of five gallons per minute, are utilized, [city] City water may be used to water non-turf plants (except in nurseries) from [7:00 a.m.] 10:00 a.m. to [9:00 a.m.] 12:00 p.m. and from [7:00 p.m. to 9:00 p.m.] 10:00 p.m. to 12:00 a.m., on the following schedule, based on the final digit or letter of the house number:

[(i) At even numbered addresses, city water may be used during the above specified hours on even-numbered days of the month;

(ii) At odd-numbered addresses, city water may be used during the above specified hours on odd-numbered days of the month;]

(a) On Mondays, if the house number ends in 0 or 1;

(b) On Tuesdays, if the house number ends in 2 or 3;

(c) On Wednesdays, if the house number ends in 4 or 5;

(d) On Thursdays, if the house number ends in 6 or 7;

(e) On Fridays, if the house number ends in 8, 9, or a letter.

[(4)] (iv) If a hand-held [containers] container or a water conserving irrigation [systems] system with an acceptable irrigation automatic controller is utilized, [city] City water may be used for any two two-hour periods on the appropriate day [of the month] as set forth above, provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by § 21-07 [of these Rules];

[(f)] (6) The opening or use of any fire hydrant, or of the [city] City water therefrom, for any purpose other than fire protection, except in accordance with the terms and conditions set forth in a permit obtained from the Department[, in accordance with the provisions set forth in] pursuant to § 20-08(b) [of Title 15 of the Rules of the City of New York];

[(g)] (7) The serving of water from the [city] City water supply system to any patron of a restaurant, club, hotel, café, cafeteria or other public place where food is served or offered for sale, unless specifically requested by such patron;

[(h)] (8) The use of [city] City water to fill or maintain the water level in any swimming pool, except that pools operated with recirculating equipment may be filled with [city] City water once during each calendar year and may thereafter use the minimum amount of [city] City water necessary to maintain the water level at a level no greater than that necessary to ensure continued operation of such recirculating equipment[;

(i) The use, or the maintaining so as to be capable of use, of any shower head in any residential building or premises, or in any nonresidential building or premises, including any commercial or industrial building or premises, unless it flows at a maximum rate of 2.5 gallons of water per minute at a constant water pressure of eighty pounds per square inch].

(b) Reductions. Upon declaration by the Commissioner of a Stage I water shortage emergency:

(1) Notwithstanding subdivision (a), nurseries may continue to use City water to water non-turf plants but must reduce their water use by at least 5% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency;

(2) Golf course tee boxes and greens, playgrounds, and athletic play fields may be irrigated using City water, provided that (i) all irrigation is done using hand-held hoses equipped with nozzle tips or in-line flow regulators, or water-conserving irrigation systems that effectively limit water use, and (ii) water use is reduced by at least 15% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency;

(3) Persons operating bottling plants, paper recycling facilities, or hotels in the City, any of which use an average of at least 100,000 gallons of City water per day as calculated on an annual basis, must reduce water use at each such plant, facility, or hotel by at least 5% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency; provided, however, that such person may instead reduce total water use by at least 5% per month, if such person demonstrates in writing to the Department that such reduction equals or exceeds the sum of reducing water use at each such plant, facility, or hotel by at least 5% per month.

Subchapter C

Stage II

§ 21-10. Prohibitions and Reductions.

(a) Prohibitions. Upon declaration [of] by the Commissioner of a Stage II [Drought Emergency] water shortage emergency, no person [or entity] shall cause, permit or allow:

[(a)] (1) The continuing of any [leak or] waste [from any water pipe, valve, faucet, conduit, equipment, facility or device connected to the city water system, or that utilizes city water,] of City water on or in any premises owned, used, leased, managed, operated or controlled by such person [or entity];

[(b)] (2) The use of [city] City water to wash any vehicle (including any aircraft, watercraft or land vehicle whether on- or off-road), provided that this provision shall not be construed to prohibit:

(i) the reasonable use of [city] City water for washing [of] such vehicles where mandated by law or for health or safety purposes, or

(ii) the use of well water for such purposes, provided § 21-08 is complied with;

[(c)] (3) The use of [city] City water to spray, wash or wet any hard or paved surfaces, including, but not limited to, streets, sidewalks, driveways, outdoor areaways (including any recreational areas, whether at ground level or on a structure), parking areas or outdoor steps[. This]; provided, however, that this provision[, however,] shall not be construed to prohibit the washing of such surfaces, particularly the exterior surface of a building, where such washing is required as part of repairs mandated by the Administrative Code or to protect the health and safety of the public, as determined by the Commissioner, [assuming such use is] consistent with the provisions set forth in § 24-332 of the Administrative Code of the City of New York and § [20-08(a)(5) of Title 15 of the Rules of the City of New York] 20-08(a)(8);

[(d)] (4) The use of City water from any source for any ornamental or aesthetic purpose, including, but not limited to, use in fountains, [artificial] waterfalls, reflecting pools, lakes and ponds, unless the pond or lake is a habitat for animals living in such body of water prior to the [drought] water shortage emergency, and provided further that where City water is not used (e.g., a private well), a sign not less than six inches in height by nine inches in width must be prominently posted at the location indicating that the water being used in such fountain, waterfall, pool, lake or pond is not City water;

[(e)] (5) In accordance with the provisions set forth in § [20-08(a)(5) of Title 15 of the Rules of the City of New York] 20-08(a)(6), the use of [city] City water by means of a hose or other active source to water any turf or any other non-turf plants, except that:

[(1)] (i) newly seeded or newly sodded turf (excluding golf course fairways) or newly planted non-turf plants may be irrigated with [city] City water on the day of planting and for the first day following planting;

[(2)] (ii) if hand-held hoses equipped with automatic shut-off nozzles or in-line hose flow regulators that effectively limit water output to a maximum flow rate of five gallons per minute at eighty pounds per square inch[;], or water-conserving [low-flow/low pressure] irrigation systems are utilized, [city] City water may be used to water non-turf plants (except in nurseries) in accordance with the schedule set forth in [subchapter B above] § 21-09(a)(5)(iii);

[(3)] (iii) if a hand-held [containers] container or a [water conserving] water-conserving irrigation system [with an acceptable irrigation controller] is utilized, [city] City water may be used to water non-turf plants intended as food for human consumption for any two two-hour

periods on the appropriate day [of the month] as set forth in [Subchapter B above] § 21-09(a)(5)(iii), provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by § 21-07 [of these Rules];

[(f)] (6) The opening or use of any fire hydrant, or of the [city] City water therefrom, for any purpose other than fire protection, except in accordance with the terms and conditions set forth in a permit obtained from the Department[, in accordance with the provisions set forth in] pursuant to § 20-08(b) [of Title 15 of the Rules of the City of New York];

[(g)] (7) The serving of water from the [city] City water supply system to any patron of a restaurant, club, hotel, café, cafeteria or other public place where food is served or offered for sale, unless specifically requested by such patron;

[(h)] (8) The use of [city] City water to fill or maintain the water level in any swimming pool, except that [city] City water may be used to fill municipally-operated swimming pools and other swimming pools open to the general public[,] that are operated with recirculating equipment and are filled once during each calendar year, and thereafter may be used as necessary to maintain the water level in such pools open to the general public at a level no greater than that necessary to ensure continued operation of such recirculating equipment[;

(i) The use, or the maintaining so as to be capable of use, of any shower head in any residential building or premises, or in any nonresidential building or premises, including any commercial or industrial building or premises, unless it flows at a maximum rate of 2.5 gallons of water per minute at a constant water pressure of eighty pounds per square inch].

(b) Reductions. Upon declaration by the Commissioner of a Stage II water shortage emergency:

(1) Notwithstanding subdivision (a), nurseries may continue to use City water to water non-turf plants but must reduce their water use by at least 10% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency;

(2) Golf course tee boxes and greens, playgrounds, and athletic play fields may be irrigated using City water, provided that (i) all irrigation is done using hand-held hoses equipped with nozzle tips or in-line flow regulators, or water-conserving irrigation systems that effectively limit water use, and (ii) water use is reduced by at least 30% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency;

(3) Persons operating bottling plants, paper recycling facilities, or hotels in the City, any of which use an average of at least 100,000 gallons of City water per day as calculated on an annual basis, must reduce water use at each such plant, facility, or hotel by at least 10% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency; provided, however, that such person

may instead reduce total water use by at least 10% per month, if such person demonstrates in writing to the Department that such reduction equals or exceeds the sum of reducing water use at each such plant, facility, or hotel by at least 10% per month.

Subchapter D

Stage III

§ 21-11. Prohibitions and Reductions.

(a) Prohibitions. Upon declaration [of] by the Commissioner of a Stage III [Drought Emergency] water shortage emergency, no person [or entity] shall cause, permit or allow:

[(a)] (1) The continuing of any [leak or] waste [from any water pipe, valve, faucet, conduit, equipment, facility or device connected to the city water system, or that utilizes city water,] of City water on or in any premises owned, used, leased, managed, operated or controlled by such person [or entity];

[(b)] (2) The use of [city] City water to wash any vehicle (including any aircraft, watercraft or land vehicle whether on- or off-road), provided that this provision shall not be construed to prohibit: (i) the reasonable use of [city] City water for washing [of] such vehicles where mandated by law or for health or safety purposes, or (ii) the use of well water for such purposes, provided §21-08 is complied with;

[(c)] (3) The use of [city] City water to spray, wash or wet any hard or paved surfaces, including, but not limited to, streets, sidewalks, driveways, outdoor areaways (including any recreational areas, whether at ground level or on a structure), parking areas or outdoor steps[. This]; provided, however, that this provision[, however,] shall not be construed to prohibit the washing of such surfaces, particularly the exterior surface of a building, where such washing is required as part of repairs mandated by the Administrative Code or to protect the health and safety of the public, as determined by the Commissioner, [assuming such use is] consistent with the provisions set forth in § 24-332 of the Administrative Code of the City of New York and § [20-08(a)(5) of Title 15 of the Rules of the City of New York] 20-08(a)(8);

[(d)] (4) The use of City water from any source for any ornamental or aesthetic purpose, including, but not limited to, use in fountains, [artificial] waterfalls, reflecting pools, lakes and ponds; provided that where City water is not used (e.g., a private well), a sign not less than six inches in height by nine inches in width must be prominently posted at the location indicating that the water being used in such fountain, waterfall, pool, lake or pond is not City water;

[(e)] (5) In accordance with the provisions set forth in § [20-08(a)(5) of Title 15 of the Rules of the City of New York] 20-08(a)(8), the use of [city] City water by means of a hose or other active source to water any turf or any [other] non-turf plants, except that:

[(1)] (i) newly seeded or newly sodded turf (excluding golf course [fairways] tee boxes and greens) or newly planted non-turf plants may be irrigated with [city] City water on the day of planting;

[(2)] (ii) if hand-held hoses equipped with nozzle tips or in-line [hose] flow regulators, or water conserving irrigation systems that effectively limit water output to a maximum flow rate of five gallons per minute [at eighty pounds per square inch or water conserving irrigation systems], are utilized, [city] City water may be used to water non-turf plants (except in nurseries) only in accordance with the schedule set forth in [subchapter B above] § 21-09(a)(5)(iii);

[(3)] (iii) if a hand-held [containers] container using recycled water from a non-prohibited use or a water-conserving irrigation [systems] system using recycled water from a non-prohibited use with an acceptable irrigation controller is utilized, [city] City water may be used to water non-turf plants intended as food for human consumption for any two two-hour periods on the appropriate day of the month as set forth in [Subchapter B above] § 21-09(a)(5)(iii), provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by § 21-07 [of these Rules];

[(f)] (6) The opening or use of any fire hydrant, or of the [city] City water therefrom, for any purpose other than fire protection, except in accordance with the terms and conditions set forth in a permit obtained from the Department[, in accordance with the provisions set forth in] pursuant to § 20-08(b) [of Title 15 of the Rules of the City of New York];

[(g)] (7) The serving of water from the [city] City water supply system to any patron of a restaurant, club, hotel, café, cafeteria or other public place where food is served or offered for sale, unless specifically requested by such patron;

[(h)] (8) The use of [city] City water to fill or maintain the water level in any swimming pool, except that [city] City water may be used to fill municipally-operated swimming pools and other swimming pools open to the general public, that are operated with recirculating equipment and are filled once during each calendar year, and thereafter may be used as necessary to maintain the water level in such pools open to the general public at a level no greater than that necessary to ensure continued operation of such recirculating equipment;

[(i)] The use, or the maintaining so as to be capable of use, of any shower head in any residential building or premises, or in any nonresidential building or premises, including any commercial or industrial building or premises, unless it flows at a maximum rate of 2.5 gallons of water per minute at a constant water pressure of eighty pounds per square inch;

(j)] (9) The use of any [non air-cooled] air conditioning system utilizing water from the [city] City water supply system [unless the] to cool a room [dry-bulb temperature is not permitted to fall] below 79 degrees Fahrenheit, except that:

[(1)] (i) this [subdivision (j)] subparagraph shall not apply in health care facilities or to buildings that do not use [non-city] City water for cooling tower makeup water;

[(2)] (ii) when essential for the continuous operation of electronic data processing equipment, the temperature in a room or floor occupied predominantly by such equipment may be maintained lower than 79 degrees Fahrenheit but at the highest temperature compatible with such continuous operation[. The], provided that the burden [or] of proof shall be upon the respondent in any administrative proceeding to show that the temperature maintained was the highest temperature compatible with continuous operation of such equipment, and respondent's proof must include documentation of the manufacturer's temperature control specification for such equipment.

(b) Reductions. Upon declaration by the Commissioner of a Stage III water shortage emergency:

(1) Notwithstanding subdivision (a), nurseries may continue to use City water to water non-turf plants but must reduce their water use by at least 15% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency;

(2) Golf course tee boxes and greens, playgrounds, and athletic play fields may be irrigated with City water, provided that (i) all irrigation is done using hand-held hoses equipped with nozzle tips or in-line flow regulators, or water- conserving irrigation systems that effectively limit water use, and (ii) water use is reduced by at least 50% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency;

(3) Persons operating bottling plants, paper recycling facilities, or hotels in the City, any of which use an average of at least 100,000 gallons of City water per day as calculated on an annual basis, must reduce water use at each such plant, facility, or hotel by at least 15% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the water shortage emergency; provided, however, that such person may instead reduce total water use by at least 15% per month, if such person demonstrates in writing to the Department that such reduction equals or exceeds the sum of reducing water use at each such plant, facility, or hotel by at least 15% per month.

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Amendment of Water Emergency Rules

REFERENCE NUMBER: 2013 RG 062

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: December 12, 2016

Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment of Water Emergency Rules

REFERENCE NUMBER: DEP-9

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not change current enforcement. Since enforcement only occurs during a water shortage emergency, the short time period and urgent nature of a water shortage emergency does not allow for a cure period. In the event of a water shortage, a water shortage emergency will be publicly declared and educational outreach will be conducted; therefore, residents will be on notice of their obligations and the elements required for compliance.”

/s/ Francisco X. Navarro

Mayor's Office of Operations

December 12, 2016

Date

