

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection (“DEP”) is considering changing its rules. The changes would update and clarify the existing rules on use of the public sewers.

When and where is the hearing? The department will hold a public hearing on the proposed rule amendments. The public hearing will take place at 10 a.m. on October 25, 2017. The hearing will be held in the 11th 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 October 25, 2017. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by October 25, 2017.

What if I 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 postal mail or email to the addresses given above. You may also tell us by telephone at 718-595-6531. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 18, 2017.

This location has the following accessibility option(s) available: Wheelchair accessible.

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(b) of the City Charter and section 24-523(e) of the City Administrative Code authorize the Department to make this proposed rule, which 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 Title 15 of the Rules of the City of New York.

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

Statement of Basis and Purpose

The proposed amendments to Title 15 RCNY Chapter 19 (“Chapter 19”) are intended to add more clarity and specificity to the existing agency regulations in order to avoid confusion, and promote higher rates of compliance.

In addition, section 24-520.1 of the Administrative Code of the City of New York authorizes the Commissioner to regulate non-stormwater discharges into separate storm sewers. Specifically, DEP is authorized to establish “allowable runoff” through rules that are consistent with the City’s State Pollutant Discharge Elimination System (SPDES) Municipal Separate Storm Sewer System (MS4) permit and the proper maintenance and purpose of storm sewers.

Accordingly, the proposed amendments are intended to add more clarity and specificity to the existing agency regulations in order to comply with the City’s Municipal Separate Storm Sewer System (MS4) permit, issued by the New York State Department of Environmental Conservation on August 1, 2015 pursuant to the federal Clean Water Act. The MS4 Permit requires the City to reduce pollutants in stormwater runoff that discharge to the local waterbodies.

Specifically, the proposed amendments clarify that only stormwater and allowable runoff may enter a storm sewer, catch basin or manhole without written approval.

The proposed amendments add §19-13 to allow for and delineate an appeals process for Commissioner’s Orders issued pursuant to sections 24-581 or 24-524(a) of the New York City Administrative Code.

The proposed amendments would make Chapter 19 clearer as well as more detailed and comprehensive, in order to make it easier for the regulated community to determine what needs to be done to attain compliance.

The Department of Environmental Protection's authority for these rules is found in Section 1403(b) of the City Charter and section 24-523(e) of the City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The following definitions in section 19-01 of title 15 of the rules of the city of New York are amended and a new definition of the term "allowable runoff" is added in alphabetical order to read as follows:

§19-01 Definitions.

Allowable Runoff. "Allowable runoff" shall mean non-stormwater discharges associated with firefighting activities or as otherwise authorized by the Commissioner pursuant to this chapter.

[Catchbasin] Catch basin. "[Catchbasin] Catch basin" shall mean a structure or device designed to collect and convey stormwater to a storm or combined sewer. It captures some of the debris and heavy solids carried by the flow in a settlement chamber and stores this material for periodic removal.

Flammable. "Flammable" shall mean any waste stream with a closed [up] cup flash point of less than [140 degrees Fahrenheit or 60 degrees Centigrade, using the test methods specified in 40 CFR 261.21] 100 degrees Fahrenheit or 38 degrees Centigrade using the test methods specified in the definition of "flash point" in New York City Fire Code Section FC 3402.

Indirect discharge. "Indirect discharge" shall mean a discharge from a private sewer to a public sewer, or [or other wastewater discharged so as to enter a public sewer] a discharge to any street, gutter, pipe, channel, pumping station, catch basin, drain, waterway, or other conveyance leading to or connecting with a public sewer, including but not limited to the placement or abandonment of any substance which could reasonably enter a public sewer under the force of stormwater or other influence.

Sewer. "Sewer" shall mean a pipe or conduit for carrying sewage and/or stormwater. Except where otherwise specified or where the context clearly dictates otherwise, the term "sewer" as used in this chapter shall refer to a public sewer.

Storm sewer. "Storm sewer" shall mean a sewer, the [specific] primary purpose of which is to carry [only] stormwater.

Stormwater. "Stormwater" shall mean [the excess water running off from the surface of a drainage area during and immediately following a period of precipitation] runoff that is generated when precipitation from rain events or snowmelt flows overland and does not percolate into the ground.

§2. Subdivisions c and e of section 19-02 of title 15 of the rules of the city of New York are amended to read as follows:

§19-02 Disposal of Wastewater, Stormwater and Groundwater.

(c) [Except with the written approval of the Commissioner only stormwater shall be discharged so as to enter a storm sewer.] No person shall discharge or cause to be discharged, directly or indirectly, into any storm sewer any substance other than stormwater or allowable runoff.

(e) [No substances, other than stormwater shall be discharged so as to enter a catchbasin or manhole, without the written approval of the Commissioner.] No person shall discharge or cause to be discharged, directly or indirectly, into any catch basin or manhole any substance other than stormwater or allowable runoff.

§3. Section 19-02 of title 15 of the rules of the city of New York is amended by adding a new subdivision j to read as follows:

(j) General application for non-stormwater discharges into storm sewers.

(1) Notwithstanding any other provision of this chapter, any person may apply to the department for written approval to discharge a substance other than stormwater or groundwater into a storm sewer in accordance with the requirements of this subdivision.

(2) An applicant may apply by submitting an application on the form and in a format approved by the Commissioner and made available on the city's website.

(3) Such written approval shall be granted for a period determined by the Commissioner, not to exceed one year. The Commissioner may approve additional discharge periods upon new application by the discharger.

(4) The commission shall disapprove an application for a discharge pursuant to this section if, in the determination of the Commissioner, the discharge is reasonably likely to be:

(a) Inconsistent with the proper maintenance and purpose of the city's storm sewers, including but not limited to the capacity of such storm sewers; or

(b) A significant contributor of pollutants to the sewer system or to surface waters of the state, or otherwise inconsistent with the state pollutant discharge elimination system (SPDES) permit for municipal separate storm sewer systems of New York city, SPDES No. NY-0287890 or its successor.

(5) The Commissioner may impose such terms and conditions that he or she deems necessary to protect the sewer system, the surface waters of the state, or to protect the public health or the environment.

(6) The applicant may file with the Commissioner a written appeal of a denial of an application submitted pursuant to paragraph (1) of this subdivision or of the terms or conditions of a written approval imposed pursuant to paragraph (5) of this subdivision. Such appeal must be filed within 30 days of the determination on the application. Appeals shall be reviewed by the Department and a final determination regarding the appeal shall be made within a reasonable period of time.

(7) If the terms or conditions of a written approval are not complied with at all times, the written approval may be revoked upon notice to the discharger and an opportunity to be heard, except that the Department may, upon a finding that the continued discharge presents an imminent harm to public health or safety or to the environment, immediately revoke such written approval without prior notice. In such case, the Commissioner shall forthwith notify the individual of such revocation, the reasons for such revocation and that the individual has the right to request a hearing within a reasonable period of time.

§ 4. Chapter 19 of title 15 of the rules of the city of New York is amended by adding a new section 19-13 to read as follows:

§ 19-13: Appeal of Commissioner's Orders.

- (a) Within the time specified for compliance in a Commissioner's Order issued pursuant to subdivision (a) of section 24-524 or section 24-581 of Administrative Code, and/or as otherwise specified in the Order, the party named in the Order may submit a written statement appealing the Commissioner's Order in the manner directed on the Order. In the event that the Department determines that non-compliance with the Order poses a significant risk of imminent harm to public health or safety or to the environment, the party shall be so notified and shall comply with the order forthwith, or otherwise within the time specified by the Department, notwithstanding that an appeal is taken.
- (b) Appeals shall be reviewed by the Department and a final determination regarding the appeal shall be made within a reasonable period of time.
- (c) If an appeal is sustained in whole or in part, then the stated terms of the final determination on appeal shall replace the original requirements of such Order. If

an appeal is denied, the final determination shall specify a reasonable period of time for compliance based on the circumstances, except in the case of an Order where compliance is required at an earlier time as described in subdivision (a) of this section.

**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: Regulation of Discharges into Storm Sewers and Catch Basins

REFERENCE NUMBER: 2017 RG 081

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 provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Shifra M. Goldenberg
Mayor's Office of Operations

September 18, 2017
Date

**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: Regulation of Discharges into Storm Sewers and Catch Basins

REFERENCE NUMBER: 2017 RG 081

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
Acting Corporation Counsel

Date: September 18, 2017