

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection (“Department” or “DEP”) is proposing to amend its Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources (“Watershed Regulations”); Title 10 of the New York Codes, Rules and Regulations Part 128 (10 NYCRR 128).

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

- **Website.** You can submit comments to the Department 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, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department, Bureau of Legal Affairs, at 718-595-6543.

A public hearing on this proposed rule will not be held because it would serve no public purpose.

Is there a deadline to submit written comments? Yes, you must submit written comments by January 6, 2025.

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/>.

What authorizes the Department to make these rules? Section 1100 of the New York State Public Health Law, section 1043(a) of the New York City Charter (“City Charter”) and section 24-302 of the Administrative Code of the City of New York authorize the Department to make these proposed rules which were included in the Department’s regulatory agenda for fiscal year 2025.

Where can I find the Department’s rules? The Department’s rules are in Title 15, Chapter 18 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

These amendments revise the definition of “wetland” in DEP’s rules to ensure continuity as the New York State Department of Environmental Conservation (NYSDEC) amends its freshwater wetlands regulations (6 NYCRR Part 664) (“NYSDEC Amendments”) to align the State rules with amendments to the New York State Freshwater Wetlands Act (codified at Article 24 New York State Environmental Conservation Law) (“Article 24 Amendments”) which take effect on January

1, 2025. *See* Section 19 of Part QQ of Chapter 58 of the Laws of 2022. Under the Article 24 Amendments, as of January 1, 2025, NYSDEC wetland delineations will no longer be based on the NYSDEC mapping process that currently governs such delineations. Accordingly, these amendments are designed to preserve DEP's existing jurisdiction within specified limiting distances from wetlands subject to NYSDEC jurisdiction as of December 31, 2024, thereby maintaining the status quo.

In addition, these amendments add a new subdivision to section 18-17 of DEP's rules that incorporates by reference maps identifying wetlands in the watershed subject to NYSDEC jurisdiction as of December 31, 2024, and makes these maps available to the public for inspection and copying at New York State Department of Health, Office of Regulatory Affairs, Tower Building, Room 2415, Empire State Plaza, Albany, NY 12237. The maps are also available on NYSDEC's Environmental Resource Mapper website: <https://gisservices.dec.ny.gov/gis/erm/>.

Finally, subdivisions (1) through (11) of section 18-17 are also amended to add web page access links to each of the referenced materials.

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.

The text of the Rule follows.

Section 1. Paragraph (144) of subdivision (a) of section 18-16 of Title 15 of the Rules of the City of New York is amended to read as follows:

(144) **Wetland** means [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] an area in the watershed that was mapped by the New York State Department of Environmental Conservation as a regulated wetland on or before December 31, 2024.

§ 2. Section 18-17 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 18-17 **References.**

The following laws, guidance documents, regulations or technical material have been incorporated by reference in this Chapter 18. These references are available online at the web pages listed below and for physical inspection and copying at the Department of Environmental Protection, Bureau of Water Supply, Division of Water Quality, 465 Columbus Avenue, Valhalla, New York, 10595, and at the New York State Department of Health, Office of Regulatory Affairs, Tower Building, Room 2415, Empire State Plaza, Albany, NY 12237, or can be directly obtained from the sources listed for the given reference.

(1) Federal Categorical Pretreatment Standards, 40 CFR Part 403, 1992, Superintendent of Documents, United States Government Printing Office, Washington, D.C., 20402, available at <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-N/part-403>.

(2) USDA Soil Conservation Service Soil Type Boundaries, USDA SCS, Room 771, Federal Building, 100 South Clinton Street, P.O. Box 7248, Syracuse, New York, 13261-7248, available at <https://websoilsurvey.nrcs.usda.gov/app/>.

(3) National Engineering Handbook, Part 630, Chapter 7, Hydrologic Soil Groups, U.S. Department of Agriculture, National Resources Conservation Service, 2009, U.S. Department of Agriculture 1400 Independence Ave., Washington, D.C. 20250, available at <https://efotg.sc.egov.usda.gov/references/public/FL/FL7-3a-b.pdf>.

(4) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.1.1, Ambient Water Quality and Guidance Values and Groundwater Effluent Limitations (October 22, 1993, Reissue Date June 1998, as modified and supplemented by the January 1999 Errata Sheet and the April 2000 and June 2004 Addenda), New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, available at https://extapps.dec.ny.gov/docs/water_pdf/togs111.pdf.

(5) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1, Total Maximum Daily Loads and Water Quality Based Effluent Limits (July 8, 1996, Revised February 1998), including Amendments A through E (July 8, 1996), New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233.

(6) New York State Department of Environmental Conservation Technical and Operational Guidance Series (TOGS) 1.3.1B, Total Maximum Daily Loads and Water Quality-Based Effluent Limits, Amendments-Low and Intermittent Stream Standards (July 8, 1996), New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, available at https://extapps.dec.ny.gov/docs/water_pdf/togsb96.pdf.

(7) New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity, Permit No. GP-0-15-002, Effective January 29, 2015, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, available at <https://www.nyc.gov/site/dep/environment/regulations.page>

(8) New York State Design Standards for Intermediate Sized Wastewater Treatment Systems, 2014, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, available at https://extapps.dec.ny.gov/docs/water_pdf/2014designstd.pdf.

(9) New York State Stormwater Design Manual, 2015, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, available at <https://extapps.dec.ny.gov/fs/docs/pdf/stormwaterdesignmanual2015.pdf>.

(10) Model Sewer Use Law, 1994, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, available at https://extapps.dec.ny.gov/docs/water_pdf/modelseweruselaw.pdf.

(11) Recommended Standards for Wastewater Facilities, Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2014, Health Education Services, Health Education Services Division, P.O. Box 7126, Albany, New York 12224, available at <https://extapps.dec.ny.gov/fs/projects/spdes/TenStateStrdsWastewater.pdf>.

(12) Maps delineating New York State Department of Environmental Conservation regulated wetlands in the watershed on or before December 31, 2024, available at <https://www.nyc.gov/site/dep/environment/regulations.page>.

§ 3. This rule takes effect on January 1, 2025.

**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 Rules Relating to Wetlands in City Watershed

REFERENCE NUMBER: DEP-109

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/ Francisco X. Navarro
Mayor's Office of Operations

November 27, 2024
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: Amendment of Rules Relating to Wetlands in City Watershed

REFERENCE NUMBER: 2024 RG 119

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: November 27, 2024