

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2020**

No. 91

Introduced by Council Members Constantinides, Lander, Levin, Reynoso, Ayala, Brannan, Kallos, Louis and Rosenthal (by request of the Mayor).

A LOCAL LAW

To amend the administrative code of the city of New York, the New York city plumbing code and the New York city building code in relation to city-wide stormwater management controls

Be it enacted by the Council as follows:

Section 1. Section 24-540 of the administrative code of the city of New York, as added by local law number 97 for the year 2017, is amended to read as follows:

§ 24–540 Policy. Land development and associated increases in site impervious cover increase stormwater runoff causing flooding, soil erosion, and sediment transport and deposition in waterways. A high percentage of impervious area correlates with a higher rate of stormwater runoff, which generates greater pollutant loadings to the city's separate stormwater and combined sewer systems. Pollutants found in urban runoff include, but are not limited to, nitrogen, phosphorus, silt and sediment, pathogens, floatables, petroleum hydrocarbons, heavy metals, and polycyclic aromatic hydrocarbons (PAHs).

Clearing and grading during construction may increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitats. Improperly designed and constructed stormwater management practices increase the velocity of stormwater runoff thereby increasing erosion and sedimentation. Impervious surfaces allow less water to percolate into the

soil, thereby decreasing groundwater recharge and stream baseflow. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities. Regulation of land development activities by means of performance standards governing long-term stormwater management and site design produces development compatible with the natural functions of a particular site and thereby mitigates the adverse effects of erosion and sedimentation from development.

Material handling and storage, equipment maintenance and cleaning, and other activities at industrial facilities are often exposed to stormwater, which can pick up pollutants and transport them to surface waters directly or via a storm sewer. Appropriate stormwater management at industrial facilities can reduce these impacts.

This chapter establishes stormwater management controls [meeting the requirements of state and federal law in areas of the city where stormwater] *for construction projects to reduce the flow of stormwater runoff and water borne pollutants into sewers that empty directly into the waters of the state or that overflow into such waters because of rain or snowmelt events that exceed the design capacity of wastewater treatment plants.* [In these areas water borne pollutants in stormwater runoff are more likely to enter and have an adverse impact on the waters of the state].

The purpose and intent of this chapter is to (i) reduce pollutants discharged in stormwater runoff from construction activities [in such areas] to the maximum extent practicable through appropriate erosion and sediment controls; (ii) minimize, to the maximum extent practicable, increases in stormwater runoff volume and velocity, and pollutant loading in stormwater runoff, from development sites [in such areas] ; (iii) ensure the proper maintenance of post-construction stormwater management practices; and (iv) ensure compliance by certain industrial facilities [in

such areas] *served by the city separate storm sewer system* with applicable requirements to manage stormwater runoff in order to reduce pollutants in stormwater from industrial activities to the maximum extent practicable.

§2. The definitions of “covered development project”, “MS4 SWPPP acceptance form”, “MS4 area”, “notice of intent” or “NOI”, “notice of termination” or “NOT” and “separate stormwater outfall” in section 24-541 of the administrative code of the city of New York, as added by local law number 97 for the year 2017, are amended to read as follows:

Covered development project. The term “covered development project” means development activity that involves or results in an amount of soil disturbance [within the MS4 area] greater than or equal to one acre or as established pursuant to rules of the department in accordance with subdivision d of section 24-553. Such term includes development activity that is part of a larger common plan of development or sale involving or resulting in soil disturbance [within the MS4 area] greater than or equal to one acre or as established pursuant to rules of the department in accordance with subdivision d of section 24-553. [Such term shall include all development activity within the MS4 area that requires a stormwater pollution prevention plan pursuant to the NYSDEC construction general permit.]

[MS4 area. The term “MS4 area” means those portions of the city of New York served by separate storm sewers and separate stormwater outfalls owned or operated by the city of New York and areas in which municipal operations and facilities drain by overland flow to waters of the state, as determined by the department and described on maps of the MS4 area set forth in the rules of the department.]

Notice of intent or NOI. The term “notice of intent” or “NOI” means *for MS 4 projects* the document submitted to NYSDEC to obtain coverage under the NYSDEC construction general permit.

Notice of termination or NOT. The term “notice of termination” or “NOT” means *for MS 4 projects* the document submitted to NYSDEC to terminate coverage under the NYSDEC construction general permit.

MS4 SWPPP acceptance form. The term “MS4 SWPPP acceptance form” means *for MS 4 projects* the form developed by NYSDEC to be used to indicate acceptance of a SWPPP by a municipality.

[Separate stormwater outfall. The term “separate stormwater outfall” means a point where stormwater from a storm sewer or other source of concentrated stormwater flow, owned or operated by the city of New York, is discharged into a water of the state or to a separate storm sewer system that requires coverage under the NYSDEC MS4 general permit.]

§3. Section 24-521 of the administrative code of the city of New York is amended by adding new definitions of “MS4” and “MS4 covered development project” or “MS 4 project” in alphabetical order to read as follows:

MS4. The term “MS4” means the city municipal separate storm sewer system.

MS4 covered development project or MS 4 project. The term “MS4 covered development project” or “MS 4 project” means a covered development project that is subject to the NYSDEC construction general permit.

§4. Sections 24-550, 24-552, 24-553, 24-554, 24-557, 24-559, 24-560 and 24-570 of the administrative code of the city of New York, as added by local law number 97 for the year 2017, are amended to read as follows:

§24-550 General. This subchapter [governs certain] *regulates* land development activities [within the MS4 area] *of covered development projects*.

§24-552 Review of stormwater pollution prevention plan or SWPPP. Before the commencement of development activity on the site of a covered development project the developer must submit [a copy of the notice of intent and] a stormwater pollution prevention plan, certified by a qualified professional, to the department for review in accordance with the rules of the department *and for MS 4 projects a copy of the notice of intent*. The department or a qualified professional designated by the department shall review the SWPPP within time periods to be specified in the rules of the department. If the department accepts the SWPPP *and all other requested documentation*, the department shall issue a stormwater construction permit to the developer and, *for MS 4 projects* subject to the NYSDEC construction general permit, shall issue an MS4 SWPPP acceptance form for filing with NYSDEC. If the department rejects the SWPPP the department shall send notice of such rejection to the developer indicating the specific deficiencies that caused the department to reject the SWPPP. The department may require that the SWPPP [or] *and* other documents be submitted electronically.

§24-553 Rules. The department shall promulgate rules to carry out the provisions of this subchapter [in accordance with the NYC MS4 permit and the NYSDEC construction general permit], including but not limited to rules that:

a. Set forth the content of SWPPPs, [consistent with the NYSDEC construction general permit], including identifying those development projects requiring only erosion and sediment controls during construction and those development projects requiring erosion and sediment controls and post-construction stormwater management facilities.

b. Establish design standards for erosion and sediment controls and post-construction stormwater management facilities [, which shall not be less stringent than the standards set forth or incorporated by reference in the NYSDEC construction general permit].

c. Establish exemptions from permit requirements, [consistent with the NYC MS4 permit and the NYSDEC construction general permit].

d. [After completion of the lot size soil disturbance study required by the NYC MS4 permit, provide] *Provide* for the regulation of development activity of less than one acre, based either on total disturbance of soil or on amount of impervious surface created or replaced, *where the department determines* an appropriate reduction in the threshold is necessary [in accordance with the NYC MS4 permit] *to carry out the purposes of this chapter. In making such determination, the department shall evaluate the potential costs and the anticipated water quality benefits of lowering the threshold.*

e. Establish procedures and fees for the review of SWPPPs and the issuance and renewal of permits required by this subchapter.

f. Establish training, experience and/or education requirements for qualified professionals and qualified inspectors [, which shall not be less stringent than those required by the NYSDEC construction general permit].

g. Establish record keeping, inspection and reporting requirements for applicants and permittees to monitor compliance with this subchapter and approved SWPPPs.

h. Establish requirements for compliance certifications by contractors to be included with SWPPPs.

i. Establish standards for the maintenance, inspection, repair and replacement of required erosion and sediment controls and post-construction stormwater management facilities.

j. *For MS 4 projects, ensure that such rules are not less stringent than the NYC MS4 permit and the NYSDEC construction general permit.*

§24-554 SWPPP to be retained on site. A copy of the SWPPP shall be retained at the site of the project from the date of initiation of development activities to the date [notice] of termination [is submitted to NYSDEC] *of the project as determined in accordance with the rules of the department* and shall be made available to officers and employees of the department and/or qualified inspectors authorized by the department in accordance with the rules of the department.

§24-557 Suspension or revocation of permit. The department may suspend or revoke a stormwater construction permit, after notice and the opportunity for a hearing in accordance with the rules of the department, when the department or, *in the case of an MS 4 project*, NYSDEC finds that there is substantial non-compliance with this subchapter, the rules of the department, the NYSDEC construction general permit or the SWPPP, including any major change to erosion or sediment controls or any change in a post-construction stormwater management facility during construction that has or could have an effect on the discharge of pollutants, or when a permit was issued in error and conditions are such that a permit should not have been issued. When a permit is revoked or suspended all development activity at the project site shall cease and shall not be

resumed until the issuance of a new permit or until such suspension is terminated except that the department may allow performance of work that is necessary to ensure public safety or to stabilize the construction site.

§24-559 Post-construction stormwater management facilities. Where post-construction stormwater management facilities are required by the department, the department shall not [accept the SWPPP or] issue a stormwater construction permit for the project until the execution and recording of a maintenance easement, which shall be binding on all subsequent owners of the real property served by such post-construction stormwater management facility, except where the corporation counsel has determined that such a maintenance easement is not necessary due to the property's ownership or use by a public agency or instrumentality. For post-construction stormwater management facilities subject to such an exception, when there is a subsequent conveyance or cessation of public use, the corporation counsel may require the execution and recording of a maintenance easement at that time. The easement shall provide for access to post-construction stormwater management facilities at reasonable times in accordance with law for periodic inspection by the department or qualified professionals authorized by the department to ensure that such facilities are maintained in good working condition to meet the applicable design standards. The easement shall be recorded by the grantor in the office of the city register or, if applicable, the county clerk after approval by the corporation counsel.

§ 24-560 Stormwater maintenance permit. It is the duty of all owners of real property, jointly and severally, served by a post-construction stormwater management facility required by a SWPPP accepted by the department pursuant to this subchapter to provide for the inspection and maintenance of such facility in accordance with this section and the rules of the department. The

department shall maintain a record of all such post-construction stormwater management facilities and the property served by each such facility. As soon as practicable after final stabilization of a site, the owner of property served by a post-construction stormwater management facility shall submit to the department [a copy of the notice of termination and] an application for a stormwater maintenance permit for such facility. Such owner shall provide for the renewal of such permit every 5 years in accordance with the rules of the department. The department shall issue or renew such permit upon receipt of a satisfactory inspection report certified by a qualified professional retained by the owner indicating that the facility has been installed and/or is operated and maintained in good working condition to meet applicable design standards and the rules of the department. A facility shall be maintained in good working condition throughout its useful life and replaced in accordance with the rules of the department.

§ 24-570 Applicability. This subchapter applies [only to portions of the city within the MS4 area] *to sites served by the city municipal separate storm sewer system.*

§ 5. Section 28-104.11 of the administrative code of the city of New York, as added by local law number 97 for the year 2017, is amended to read as follows:

§28-104.11 Construction documents for sites [within the MS4 area] *that are covered development projects as defined in section 24-541 of the administrative code.* Construction documents *for sites that are covered development projects as defined in section 24-541 of the administrative code* shall comply with section 28-104.11.1 through 28-104.11.4 [relating to the MS4 area].

§28-104.11.1 Definitions. As used in this code in connection with provisions relating to the jurisdiction of the department of environmental protection, the terms covered development

project, development activity, [MS4 area,] post-construction stormwater management facility, stormwater construction permit, stormwater maintenance permit, and stormwater pollution prevention plan or SWPPP shall have the same definitions as such terms are defined in subchapter 1 of chapter 5-A of title 24 of the administrative code.

§28-104.11.2 Disclosure required. It shall be the duty of an applicant for construction document approval to determine whether the site of the proposed work is part of a covered development project [located within the MS4 area] and to disclose such information on construction documents. Failure to disclose such information on construction documents shall be a violation of this code.

§28-104.11.3 Required documentation. Applications for construction document approval shall include copies of any required stormwater construction permit issued by the department of environmental protection and the stormwater pollution prevention plan for the covered development project.

§28-104.11.4 Revocation of approval of construction documents. Where the department finds after the approval of construction documents that the applicant failed to disclose the information required by this section, the department may revoke such approval and any associated work permits in accordance with the provisions of sections 28-104.2.10 and 28-104.2.10.1.

§ 6. Section 101.6.3 of the New York city plumbing code, as added by local law number 97 for the year 2017, is amended to read as follows:

106.6.3 Post-construction stormwater management facilities. A post-construction stormwater management facility that is constructed as a part of a covered development project [located within

the MS4 area,] shall comply with the rules of the Department of Environmental Protection and with this code.

§ 7. The definition of “MS 4 AREA” in section PC 202 of chapter 2 of the New York city plumbing code is REPEALED.

§ 8. Section 107.11.3 of the New York city building code, as added by local law number 97 for the year 2017, is amended to read as follows:

107.11.3 Post-construction stormwater management facilities. A post-construction stormwater management facility that is constructed as a part of a covered development project [located within the MS4 area] shall comply with the rules of the Department of Environmental Protection and with this code.

§ 9. The definition of “MS 4 AREA” in section BC 202 of the New York city building code is REPEALED.

§ 10. This local law takes effect 180 days after it becomes law and applies to development activity on the site of a covered development project on and after such date except that this local law shall not apply to development activity on the site of a covered development project, other than an MS4 project, where an application for construction document approval for such project is filed with the department of buildings or with the department of small business services prior to such effective date. For the purposes of this section, the terms development activity, covered development project and MS4 project shall be as defined in section 24-541 of the administrative code of the city of New York, as amended by this local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on August 27, 2020 and returned unsigned by the Mayor on September 28, 2020.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 91 of 2020, Council Int. No. 1851 of 2020) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.