

IV. OVERVIEW OF THE REGULATORY FRAMEWORK FOR THE PROTECTION OF WATER RESOURCES

A. LOCAL, STATE, AND FEDERAL ENTITIES INVOLVED IN WATER RESOURCE PROTECTION

1. LOCAL AGENCIES

1. Local Government Programs: In New York State, municipalities have significant land use powers that can be used to effectively address a wide variety of environmental issues. The comprehensive plan, zoning, and a host of tools such as site plan review, subdivision regulation, erosion and sediment control ordinances, and special use permits can be used separately or in combination to produce the desired environmental outcomes of a community.

2. County Planning Departments/County Planning Boards: Counties also affect land use regulation on a more limited basis through the review of certain municipal zoning and development actions. These reviews, conducted pursuant to Section 239 of New York State General Municipal Law, are often referred to as “239 reviews.” County planning departments also assist local governments with land use issues.

3. County Water Quality Coordinating Committee (WQCC): Water Quality Coordinating Committees represent municipalities, agencies and organizations that conduct planning, education, regulation or operations that affect water quality. The WQCC identifies water quality problems, prioritizes needed actions, seeks funding for projects, coordinates programming and recommends policy to protect and improve water resources in the County and its watersheds.

4. Soil and Water Conservation Districts (SWCDs): County Soil and Water Conservation Districts (SWCD) are created through an act by the county governing body. SWCDs play a pivotal role in watershed, recreation and conservation planning, management, stewardship and education and outreach activities across New York State. SWCDs often work with the agricultural community on voluntary programs, such as Agricultural Environmental Management (AEM).

5. County Health Departments: County health departments manage and regulate county sanitary codes and are responsible for onsite sewage disposal systems.

6. Regional Planning Boards: Also called “Regional Planning and Development Boards,” or “Regional Planning Councils,” these are voluntary public entities formed by groups of counties to address regional issues and assist with local planning efforts. Water resource protection, especially at the watershed-level, is a key regional issue that many Regional Planning Boards address.

2. STATE AGENCIES

1. New York State Department of State (NYS DOS), Division of Coastal Resources: The Division of Coastal Resources helps protect and enhance coastal and inland water resources and encourage appropriate land use. The Division also works in partnership with local governments in preparation of Local Waterfront Revitalization Programs, which serve as comprehensive land and water use plans, as well as intermunicipal watershed management plans which identify problems and threats and opportunities for achieving long lasting improvements in water quality and establish priorities for action. Financial assistance for the preparation and implementation of such programs and plans is available through the Environmental Protection Fund (EPF).

2. New York State Department of Environmental Conservation (NYS DEC): The DEC works to reduce water pollution through technical assistance for prevention, education, and monitoring; provides financial

assistance for demonstration programs, existing facilities improvement, and construction of new facilities. The Department has extensive regulatory authority through its administration of the New York State Environmental Conservation Law (ECL).

3. New York State Department of Agriculture and Markets: NYS Dept. of Ag and Markets provides administrative support to the State Soil and Water Conservation Committee (SWCC), which in turn provides guidance to the county Soil and Water Conservation Districts (SWCD); in addition the Department of Agriculture and Markets oversees many aspects of farming that cannot be regulated by municipalities.

4. New York State Department of Health (NYSDOH): The DOH monitors impacts of nonpoint source pollution through water quality monitoring and reporting programs. New York Public Health Law contains statutes regulating the protection of public water supplies from contamination due to source and nonpoint source pollution.

3. FEDERAL AGENCIES

1. US Environmental Protection Agency: The mission of the EPA is to protect human health and the environment. Developing and enforcing environmental regulations, providing financial assistance, performing environmental research, sponsoring and promoting partnerships and programs, and monitoring hazardous materials and reporting related information to the public are several of the duties of the EPA. The EPA provides funding to be used by the responsible state agencies for enforcement and implementation of policies outlined in the federal laws and regulations.

2. Natural Resource Conservation Service: The Natural Resource Conservation Service (NRCS) is a U.S. Department of Agriculture (USDA) agency that assists private land owners with conserving soil, water and other natural resources.

3. Army Corps of Engineers (US Department of Defense): The US Army Corps of Engineers (USACE) is responsible for flood control, navigation, shore protection, environmental restoration, hazardous, toxic and radiological waste site management, and water resource management and regulation.

4. Fish and Wildlife Service (US Department of the Interior): The US Fish and Wildlife Service (USFWS) mission is to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.

5. United States Geologic Survey (USGS): The USGS offers an array of services and data related to hydrologic research and development, wildlife and fisheries management, invasive species, geographic information systems, mapping, costal management and watershed planning.

6. National Oceanic and Atmospheric Administration (NOAA): NOAA has several roles directly related to watershed protection including its role in the stewardship of coastal waters.

B. SYNOPSIS OF RELEVANT LAWS WITH REGARD TO EROSION AND SEDIMENT CONTROL AND NPS POLLUTION, WITH SPECIFIC RELEVANCE TO LOCAL MUNICIPALITIES

1. Article 15, Title 5 – Environmental Conservation Law: Protection of Waters:¹ The Protection of Waters Regulatory Program was created by the DEC in order to protect the ecological balance of lakes, streams and ponds of New York State. The program is designed to prevent undesirable activities on waterbodies by establishing and enforcing regulations that:

1. Are compatible with the preservation, protection and enhancement of the present and potential values of the water resources;
2. Will protect the public health and welfare; and
3. Will be consistent with the reasonable economic and social development of the state.

The Program establishes a Classification of Waters system based on existing or expected best usage of each waterbody or stream segment. Waterbodies are classified A through D; those classified as A and AA are considered to be of the highest level of water quality, suitable to be used as a source of drinking water. All classification levels can also be appended with the designations “T,” indicating that the waterbody may support a trout population, or “TS,” indicating that the waterbody may support trout spawning. A waterbody designated as AA(TS) may therefore be considered to be of the highest quality.

Certain waters of the state are protected on the basis of their classification. Streams and small water bodies located in the course of a stream that are designated as C(T) or higher are collectively referred to as “protected streams,” and are subject to the stream protection provisions of the Protection of Waters regulations.

The Program regulates categories of activities under the following permit designations:

1. Disturbance of the bed or banks of a Protected Stream or other watercourse;
2. Construction, reconstruction or repair of dams and other impoundment structures;
3. Construction, reconstruction or expansion of docking and mooring facilities;
4. Excavation or placement of fill in navigable waters and their adjacent and contiguous wetlands; and
5. Water quality certification for placing fill or undertaking activities resulting in a discharge to waters of the United States.

The Program regulates several particular activities that may occur on or around the bed and banks of protected streams, whether temporary or permanent in nature. These include (but are not limited to):

- Placement of structures in or across a stream, such as a bridge or culvert;
- Fill placement for bank stabilization or to isolate a work area (i.e. rip-rap or coffer dams);
- Excavations for gravel removal or as part of a construction activity;
- Lowering stream banks to establish a stream crossing
- Utilization of equipment in a stream to remove debris or to assist in-stream construction.

Certain activities are exempt from Article 15 procedures, such as agricultural activities or those specifically agreed upon between the DEC and a municipality. Material such as fallen trees or debris can also be removed from a stream if the banks are not disturbed and no in-stream use occurs.

¹ NYSDEC, “Protection of Waters: Introduction.” Website last viewed 7/5/06. Visit <http://www.dec.state.ny.us/website/dcs/streamprotection/index.html> for a complete summary of Article 15 permits and procedures.

2. Article 23, Title 27 – Environmental Conservation Law: Mined-Land Reclamation:² The Mined-Land Reclamation Program is intended to assure that the economic development of the mining and minerals industry be compatible with sound environmental management practices. Through this program, the Department has established and will enforce regulations that will:

1. Foster and encourage the development of an economically sound and stable mining and minerals industry;
2. Provide for the wise and efficient use of the resources available for mining;
3. Assure the reclamation of mined lands (This involves conditioning the affected land to make it suitable for productive use including, but not limited to, the planting of grass, trees, or crops, and the protection of wildlife or aquatic resources.);
4. Prevent pollution associated with mining activity; and
5. Protect the health, safety, and general welfare, of the public as well as the aesthetic values of the affected land.

The Program applies to all extraction activities from which 1,000 tons or more of a mineral(s) are removed during twelve successive months.

See page 16 of this report for more information on how to deal with extraction activities in your municipality or visit the website referenced at the bottom of this page.

3. Article 24 – Freshwater Wetlands:³ Freshwater wetlands are those which are submerged lands (otherwise known as swamps or bogs) which possess unique vegetative characteristics. These areas provide an area of benefits, such as surface and ground water protection, flood control, and wildlife habitat. The Freshwater Wetlands Regulatory Program is designed to prevent the despoliation and destruction of freshwater wetlands by establishing and enforcing regulations that:

1. Are compatible with the preservation, protection, and enhancement of the present and potential values of wetlands;
2. Will protect the public health and welfare; and
3. Will be consistent with the reasonable economic and social development of the state.

Wetlands which are protected under Article 24 must be 12.4 acres or larger in area. Wetlands that are smaller than this but possessing unusual or unique value may also be protected by special order. All protected wetlands in New York State are delineated on official maps maintained by the DEC (or, in the case of the Adirondack Park, the Adirondack Park Agency).

Almost any activity which may adversely impact the natural value of the wetlands or their adjacent areas is regulated. Examples of such activities include (but are not limited to):

- Construction of buildings, roadways, septic systems, bulkheads, dikes, or dams;
- Placement of fill, excavation, or grading;
- Modification, expansion, or extensive restoration of existing structures;
- Drainage, except for agriculture;
- Application of pesticides.

² NYSDEC, “NYS Mined Land Reclamation Program.” Website last viewed 7/5/06. Visit <http://www.dec.state.ny.us/website/dmn/minedland01.html> for a complete summary of Article 23 permits and procedures.

³ NYSDEC, “Wetland Mapping.” Website last viewed 7/5/06. Visit <http://www.dec.state.ny.us/website/dfwmr/habitat/wetmap/index.html> for a complete summary of Article 24 permits and procedures.

Certain activities are exempt from Article 24 regulations and do not require a permit. Most agriculture activities as well as other routine or low-impact uses of the land (hiking, hunting, trapping, fishing, selective tree removal or routine property maintenance, such as dock repair or painting) generally do not require a permit.

See page 13 of this report for more information on managing and protecting freshwater wetlands in your municipality or visit the website referenced at the bottom of page 10.

4. Article 17 – GP 02-01: SPDES General Permit for Stormwater Discharges from Construction Activity:⁴ On January 8, 2003, the Department of Environmental Conservation finalized new permits for stormwater discharges. A federal regulation, commonly known as Stormwater Phase II, requires permits for stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s) in urbanized areas and for construction activities disturbing one or more acres. To implement the law, the New York State Department of Environmental Conservation has issued two general permits, one for MS4s in urbanized areas and one for construction activities. The permits are part of the State Pollutant Discharge Elimination System (SPDES).

Operators of regulated MS4s must apply for permit coverage by March 10, 2003. In addition, operators of regulated MS4s must pass a local law addressing pre and post construction site stabilization (Minimum Measures 4 and 5). Operators of construction activities that exist on or after March 10, 2003 and that involve one acre or more of land disturbance must obtain SPDES permit coverage through either an individual permit or the new General Construction Permit.

The new SPDES general permits for stormwater runoff, the Designation Criteria and other pertinent data are posted on the website cited in the footnote below.

⁴NYSDEC, “Stormwater Phase II Permits.” Website last viewed 7/5/06. Visit <http://www.dec.state.ny.us/website/dow/PhaseII.html> for a complete summary of Article 17 permits and procedures.