

April, 1995

**MODEL GROUNDWATER
RULES & REGULATIONS**

Pursuant to the authority vested in the State Commissioner of Health by Section 1100 of the Public Health Law, section _____ of Part _____ Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to be effective upon publication of a Notice of Adoption is hereby amended to read as follows:

Section _____, County.

(a) Application: The rules and regulations set forth in this Section duly made and enacted in accordance with the provisions of Section 1100-1107 of the Public Health Law shall apply to the source of the public water supply of the _____. Said water supply is located in the _____ of _____, _____ County, New York, _____ identified as _____ County Office of Real Property Tax number _____. The location of boundaries designated for the protection zones, which comprise the _____ public water supply watershed, are described on the watershed protection zone map filed with the New York State Commissioner of Health, Albany, New York, and with the _____ Clerk of the _____, _____ County, New York, and included as Appendix A of these Rules.

(b) Definitions:

(1) Agricultural associated animal waste shall mean manure obtained from agricultural industries.

(2) Aquifer shall mean a consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells, springs or infiltration galleries.

(3) Commissioner of Health unless otherwise noted, shall be the Commissioner of Health of the State of New York.

(4) Deicing chloride salt shall mean any bulk quantities of chloride compounds and other deicing compounds intended for application to roads, including mixtures of sand and chloride compounds in any proportion where the chloride compounds constitute over eight percent of the mixture. A bulk quantity of chloride compounds means a quantity of one thousand pounds or more, but does not include any chloride compounds in a solid form, including granules, which are packaged in waterproof bags or containers which do not exceed one hundred pounds each.

(5) Disposal shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, radioactive material, hazardous waste, or wastewater into or on any land or water so that such solid waste, radioactive material, hazardous waste, or wastewater will remain on the land or water and will not be removed.

(6) Environmental assessment form shall be a form used by an agency to assist it in determining the environmental significance or nonsignificance of actions as defined in 6 NYCRR, Part 617.

(7) Fertilizers shall be any commercially produced mixture generally containing phosphorous, nitrogen, and potassium which is applied to the ground to increase nutrients to plants.

(8) Flood plain shall be the land contiguous to streams, ponds, estuaries, and lakes which would

be inundated by the flood having a one percent chance of being equalled or exceeded in any given year.

(9) Groundwater shall be any water beneath the land surface in the saturated zone.

(10) Hazardous substance means any substance listed as a hazardous substance in Part 597 of this Title or a mixture thereof.

Petroleum as defined in section 597.1 of this Title and hazardous wastes as identified or listed in Part 371 of this Title are not hazardous substances for the purposes of this Part.

(11) Hazardous waste means a hazardous waste as defined in Part 371 of 6 NYCRR.

(12) Herbicides shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, and being those substances defined as herbicides pursuant to Environmental Conservation Law Section 33-0101.

(13) Human excreta shall mean human feces and urine.

(14) Manure shall mean animal feces and urine.

(15) Non-agricultural associated animal waste shall mean manure obtained from non-agricultural industries.

(16) Non-point discharge shall mean discharges of pollutants not subject to SPDES (State Pollutant Discharge Elimination System) permit requirements.

(17) Open storage shall mean the holding of a material in a way that the material is exposed to

the elements of nature.

(18) Pest shall mean (1) any insect, rodent, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism (except viruses, bacteria or micro-organisms on or in living man or other living animals) which the Commissioner of Environmental Conservation declares to be a pest as provided by Environmental Conservation Law Section 33-0101.

(19) Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant, and being those substances defined as pesticides pursuant to Environmental Conservation Law Section 33-0101 et seq.

(20) Point Source discharge shall mean pollutants discharged from a point source as defined in Environmental Conservation Law Section 17-0105.

(21) Protection zone shall mean any of the watershed management zones, as delineated on the watershed protection zone map, dated _____ and included as Appendix A of these rules. The zones shall be designated Zone G-I, G-II, and G-III.

(22) Radioactive material shall mean any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials whose receipt, possession, use and transfer are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or United States Nuclear Regulatory Commission.

(23) Radiation shall mean ionizing radiation; that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

(24) Recyclables handling and recovery facility shall mean a solid waste management facility, other than pickup and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected, for collection, storage, and off-site shipment.

(25) Septage shall be the contents of a septic tank, cesspool, or other individual wastewater treatment work which receives domestic sewage wastes.

(26) Sludge shall be the solid, semi-solid or liquid waste generated from a waste processing facility, but does not include the liquid stream of effluent.

(27) Solid waste shall mean all putrescible and nonputrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form, and being those wastes defined as solid waste pursuant to Environmental Conservation Law Section 27-0701.

(28) Solid waste management facility means any facility employed beyond the initial waste collection process including, but not limited to, transfer stations, bailing facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolyzation of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities, as defined in Environmental Conservation Law Section 27-0701 et seq.

(29) Spill shall mean any escape of a substance from the containers employed in storage, transfer, processing, or use.

(30) State Pollutant Discharge Elimination System or "SPDES" shall mean the system established pursuant to Article 17 Title 8 of Environmental Conservation Law for issuance of permits authorizing discharges to the waters of the State of New York.

(31) Stormwater runoff recharge basins shall mean a man-made device capable of retaining surface water runoff to induce groundwater infiltration.

(32) Supplier of Water shall mean the _____, _____ County, New York, incorporated under the laws of New York State.

The _____ is the owner and operator of the public water supply facilities located within the watershed protection zones as described on the watershed protection zone map filed with the New York State Commissioner of Health, Albany, New York, and with the _____, _____ County, New York, and included as Appendix A of these Rules.

(33) Subdivision means any tract of land which is divided into five or more parcels of five acres or less, along an existing or proposed street, highway, easement or right-of-way, for sale or for rent as residential lots or residential building plots. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the fifth residential lot or residential building plot therefrom within any consecutive three year period.

(34) Surfacewater means lakes, bays, sounds, ponds, impounding reservoirs, and springs, rivers, stream, creeks, wetlands, and marshes, and all other perennial bodies of surface water, natural or artificial, public or private.

(35) Wastewater treatment work shall mean any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, collection and distribution pipes, on-site disposal systems and seepage units, constructed drainage ditch or surface water intercepting ditch, or other works not specifically mentioned in this paragraph, installed for the purpose of transport, treatment, neutralization, stabilization, storage, or disposal of wastewater.

(36) Wastewater shall mean aqueous carried waste including, but not limited to, dredge spoil, solid waste, hazardous waste, incinerator ash and residue, septage, garbage, refuse, sludge, chemical waste, infectious waste, biological material, radioactive materials, heat, and industrial, municipal and agricultural waste.

(37) Water supply shall mean the public water supply of the _____.

(38) Watercourse means a visible path through which surface water travels on a regular basis, including an intermittent stream, which is tributary to the water supply. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snowmelt shall not be considered to be a watercourse.

(39) Watershed shall mean that land area which contributes water to a specific stream, aquifer or aquifer recharge area or portion(s) thereof and shall include the three designated protection zones known as Zone G-I, Zone G-II, and Zone G-III.

(40) Well shall mean any present or future artificial excavation used as a source of public water supply which derives water from the interstices of the rocks or soils which it penetrates including bored wells, drilled wells, driven wells, infiltration galleries, and trenches with perforated piping, but excluding ditches or tunnels, used to convey groundwater to the surface.

(41) Zone G-I shall mean the Well Head Protection Zone and shall include the well head and land which contain the public water supply facilities and the well cone of depression.

(42) Zone G-II shall mean the Primary Recharge Protection Zone and shall include the land area that contribute groundwater to the public water supply wells.

(43) Zone G-III shall mean the Watershed Protection Zone shall include the land area, which is tributary to Zone G-II and is the tributary surface area from which the aquifer is replenished by runoff.

(c) General Provisions.

(1) The manufacture, use, storage, disposal or discharge of any products, materials or by-products, such as wastewater, solid waste, hazardous waste or any pollutant within the identified protection zones must conform to the requirements of these Rules.

(2) Any person or entity preparing an environmental assessment form or an environmental impact statement for a project in Zones G-I, G-II, or G-III as defined in this section shall file a copy with the Commissioner of Health and the supplier of water.

(3) Spills: Within any of the herein defined Protection Zones, any person who is the owner of, or in actual or constructive possession or control of a hazardous material, petroleum, or radioactive material, or any agent or employee thereof, or any person in a contractual relationship therewith, who is responsible for, or has knowledge of any spill, as defined in subdivision (b) above, of any hazardous material, petroleum, or radioactive material to the ground surface or any water body, shall notify the supplier of water, the New York State Department of Environmental Conservation and the _____.

All spills shall be reported to the supplier of water, the New York State Department of Environmental Conservation and the _____ within two (2) hours of such spill, or when knowledge of such spill is obtained.

(d) Specific Regulations: Zone G-I Well Head Protection Zone

(1) All land shall be protected and controlled through direct ownership of the land or through the acquisition of protective easements or other appropriate measures by the supplier of water in order to prevent contamination.

(2) All systems, facilities, and activities are prohibited except for physical pumping and treatment facilities and controls. The area shall not be used for any purpose other than public water supply except when a permit has been issued by the _____ for non-intrusive recreation uses such as hunting, fishing, picnicking, nature study, or hiking.

(3) The development of the water supply sources shall be designed, constructed and maintained subject to the approval and enforcement authority of the New York State Department of Environmental Conservation and New York State Department of Health so as to eliminate the opportunity for pollution to enter the water sources.

(4) The physical pumping facilities and controls shall be protected against damage from tampering by fencing or other enclosures or by their manner of construction and installation.

(5) The area shall be posted prohibiting trespass for any purpose except as permitted in subdivision (d)(2) above.

(e) Specific Regulations: Zone G-II Water Supply Primary Recharge Zone

(1) Wastewater Treatment Works:

(i) All on-site wastewater treatment systems (septic systems) serving residential properties discharging to groundwater and receiving wastewater without the admixture of industrial or other wastes, as those terms are defined in Environmental Conservation Law, Section 17-0701, in quantities of less than 1,000 gallons per day shall be designed, installed and maintained in accordance with the standards established in 10 NYCRR Part 75 (Appendix 75A) and any wastewater disposal standards promulgated by County Health Departments where such standards are more stringent. Where possible, room for a fifty percent (50%) expansion of the leaching component of the wastewater treatment works shall be provided.

Where required, permits for the installation or continued use of wastewater treatment works shall be obtained and may be denied when rapid percolation is found; and

(ii) all other wastewater treatment works, including design, installation and maintenance, are subject to the approval and enforcement authority of the New York State Department of Environmental

Conservation.

(2) Point Source Discharge. Point source discharges, other than stormwater runoff conduits and discharges pursuant to Subdivision f(1)(i) of this section, are prohibited except pursuant to an authorization issued by the New York State Department of Environmental Conservation.

(3) Solid Waste Management Facility, Septage and Sludge:

(i) storage of septage, sludge or human excreta, other than storage associated with the operation of an individual wastewater treatment work, is prohibited; and

(ii) the land application of septage, sludge or human excreta is prohibited.

(4) Solid Waste Management facilities may be established or operated pursuant to a valid permit, regulatory exemption, or other authorization issued by the New York State Department of Environmental Conservation except as provided in the section on septage and sludge.

(5) Animal Waste Storage. Areas utilized for the storage or stockpiling of manure and agricultural associated animal waste shall be constructed and maintained such that seepage, leachate or runoff from storage or stockpiling of animal waste to cause or contribute to the contravention of a water quality standard.

(6) Hazardous Substances. Storage, use and disposal of hazardous substances are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation.

(7) Hazardous Waste:

(i) storage and use of hazardous waste are subject to the approval and enforcement authority of the State Department of Environmental Conservation and

(ii) disposal of hazardous waste is prohibited.

(8) Radioactive Material. Storage, use and disposal of radioactive material are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation, the State Department of Health, and any other state or federal agency having jurisdiction.

(9) Fertilizer and Manure Use:

(i) open storage of fertilizers for non-farm and non-residential use is prohibited;

(ii) agricultural use of fertilizers and land application of manure shall be in conformance to the degree practicable with "Controlling Agricultural Nonpoint Source Water Pollution in New York State - A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality", dated 1991, prepared by Patricia Longabucco, published by the Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12223, and available for public inspection and copying from the New York State Department of Health, Bureau of Management Services, Empire State Plaza, Corning Tower, Room 2230, Albany, NY 12237; and

(iii) fertilizer use for non-farm and non-residential usage shall not be applied in a manner or at rates consistent with best management practices.

(10) Pesticide and Herbicide Use:

(i) pesticide and herbicide storage and use are subject to the authorization and enforcement authority of the New York State Department of Environmental Conservation;

(ii) disposal of pesticides (including herbicides) other than for those uses set forth in subdivision (f)(9)(i) of this section, is prohibited;

(iii) disposal of water used for make-up water or for washing of equipment is prohibited except pursuant to an authorization issued by the New York State Department of Environmental Conservation; and

(iv) use of streams as a direct source of water or for make-up water or washing of equipment used in conjunction with pesticides and herbicides is prohibited.

(11) Petroleum Storage:

(i) aboveground or underground petroleum storage tanks, including design, installation and maintenance, are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation as per Environmental Conservation Law Sections 17-0303 and 17-1001 et seq; and

(ii) abandoned petroleum tanks are subject to the closure requirements of 6 NYCRR,

Section 613.9.

(12) Stockpiles. Storage of deicing materials is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff.

(13) Deicing chloride salt use is restricted to the minimum amount needed for public safety.

(14) Construction and Closure of Wells:

oil and gas well construction, maintenance and abandonment are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation; and

(15) Sediment Generation:

(i) farm tillage practices shall be in conformance to the degree practicable with "Controlling Agricultural Nonpoint Source Water Pollution in New York State - A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality", dated 1991, [and included as Appendix C of these rules] prepared by Patricia Longabucco, published by the Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12223, and available for public inspection and copying from the New York State Department of Health, Bureau of Management Services, Empire State Plaza, Corning Tower, Room 2230, Albany, NY 12237; and

(ii) Stormwater pollution prevention plans shall be prepared for the activities listed in this paragraph. Such plans shall be prepared and implemented in accordance with the requirements of Part III of the New York State Department of Environmental Conservation General Permit No. GP-93-06. Such plans shall

also be subject to the prior review and approval of the Supplier of Water. The activities are:

(1) Plans for development or sale of land that will result in the disturbance of five (5) or more acres of total land area;

(2) Construction of a subdivision;

(3) A land clearing or land grading project, involving two or more acres, located at least in part within the limiting distance of 100*feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake or on a slope exceeding 15 percent; or

(4) Construction of a new solid waste management facility or alteration or modification of an existing solid waste management facility.

(f) Specific Regulations: Zone G-III Watershed Protection Zone

(1) Wastewater Treatment Works:

(i) all wastewater treatment works discharging to groundwater and receiving wastewater without the admixture of industrial or other wastes, as those terms are defined in Environmental Conservation Law, Section 17-0701, in quantities of less than 1,000 gallons per day shall be designed, installed and maintained in accordance with the standards established in 10 NYCRR Part 75 (Appendix 75A). Where required, permits for the installation or continued use of wastewater treatment works shall be obtained; and

(ii) all other wastewater treatment works, including design, installation and maintenance, are

subject to the approval and enforcement authority of the New York State Department of Environmental Conservation, or its agent.

(2) Point Source Discharge. Point source discharges, other than stormwater runoff conduits and discharges pursuant to subdivision (g)(1)(i) of this section, are prohibited except pursuant to an authorization issued by the New York State Department of Environmental Conservation.

(3) Solid Waste Management Facility Septage and Sludge:

(i) land application, as defined in 6 NYCRR Part 360-1.2, of septage, sludge or human excreta within 200 linear feet of any surface water or watercourse or Zone I or Zone II boundary is prohibited; and

(ii) land application of septage, sludge or human excreta which is permitted under this subdivision shall be pursuant to a permit issued by the New York State Department of Environmental Conservation or New York State Department of Health as appropriate.

(4) Solid Waste Management facilities may be established or operated pursuant to a valid permit, regulatory exemption, or other authorization issued by the New York State Department of Environmental Conservation.

(5) Animal Waste Storage. Areas utilized for the storage or stockpiling of manure and agricultural associated animal waste shall be constructed and maintained such that seepage, leachate or runoff from storage or stockpiling of animal waste cannot adversely impact the quality of the groundwater or surface water.

(6) Hazardous Substances. Storage, use and disposal of hazardous substances are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation.

(7) Hazardous Waste:

(i) storage and use of hazardous waste are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation.

(ii) disposal of hazardous waste is prohibited.

(8) Radioactive Material. Storage, use, or disposal of radioactive material are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation, New York State Department of Health and other state or federal agencies having jurisdiction.

(9) Fertilizer and Manure Use:

(i) open storage of fertilizers for non-farm and non-residential use is prohibited;

(ii) agricultural use of fertilizers and land application of manure shall be in conformance to the degree practicable with "Controlling Agricultural Nonpoint Source Water Pollution in New York State - A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality", dated 1991, [and included as Appendix C of these rules] prepared by Patricia Longabucco, published by the Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12223, and available for public inspection and copying from the New York State

Department of Health, Bureau of Management Services, Empire State Plaza, Corning Tower, Room 2230, Albany, NY 12237; and

(iii) fertilizer use for nonfarm and non-residential usage shall not be applied in a manner or at rates consistent with best management practices.

(10) Pesticide, including Herbicide, Use:

(i) all pesticide, including herbicide, storage, application and use shall be subject to authorization and enforcement authority of the New York State Department of Environmental Conservation;

(ii) disposal of pesticides, including herbicides, other than those uses set forth in subdivision (g)(9)(i) of this section, is prohibited unless authorized by the New York State Department of Environmental Conservation;

(iii) disposal of water used for make-up water or for washing of equipment is prohibited except pursuant to an authorization issued by the New York State Department of Environmental Conservation; and

(iv) use of streams as a direct source for make-up water or washing of equipment used in conjunction with pesticides and herbicides is prohibited.

(11) Petroleum Storage:

(i) aboveground or underground petroleum storage tanks shall be installed, operated and maintained as required by Environmental Conservation Law Sections 17-0303 and 17-1001 et seq; and

(ii) abandoned petroleum tanks are subject to the closure requirements of 6 NYCRR, Section 613.9.

(12) Stockpiles:

(i) storage of deicing salts is prohibited except in structures designed to minimize contact with precipitation and constructed on low permeability pads designed to control seepage and runoff; and

(13) Deicing Salt Application. Deicing chloride salt use is restricted to a minimum amount needed for public safety.

(14) Construction and Closure of Wells:

oil and gas well construction, maintenance and abandonment are subject to the approval and enforcement authority of the New York State Department of Environmental Conservation; and

(15) Sediment Generation:

(i) farm tillage practices shall be in conformance to the degree practicable with "Controlling Agricultural Nonpoint Source Water Pollution in New York State - A Guide to the Selection of Best Management Practices to Improve and Protect Water Quality", dated 1991, [and included as Appendix C of these rules] prepared by Patricia Longabucco, published by the Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12223, and available for public inspection and copying from the New York State Department of Health,

Bureau of Management Services, Empire State Plaza, Corning Tower, Room 2230, Albany, NY 12237; and

(ii) Stormwater pollution prevention plans shall be prepared for the activities listed in this paragraph. Such plans shall be prepared and implemented in accordance with the requirements of Part III of the New York State Department of Environmental Conservation General Permit No. GP-93-06. Such plans shall also be subject to the prior review and approval of the Supplier of Water. The activities are:

(1) Plans for development or sale of land that will result in the disturbance of five (5) or more acres of total land area;

(2) Construction of a subdivision;

(3) A land clearing or land grading project, involving two or more acres, located at least in part within the limiting distance of 100*feet of a watercourse or wetland, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake or on a slope exceeding 15 percent.

(g) Inspections:

(i) The supplier of water may at a reasonable time and in a reasonable manner, inspect any place or facility to ascertain compliance with these regulations, and without fee or hindrance, shall enter, examine and survey all grounds, structures, buildings and places on the watershed tributary to the sources of the water supply to ascertain compliance with these regulations.

(ii) The supplier of water may make such inspections of the sources of the water supply as may be necessary to ascertain whether the regulations are complied with, and shall make such regular or special inspections as the Commissioner may prescribe.

The aforesaid shall report to the State Commissioner of Health in writing annually, prior to the 30th day of January, the results of the regular inspections made during the preceding year. The report shall state the number of inspections which were made, the number of violations abated and the general conditions of the protection zones at the time of the last inspection.

(g) Variances:

(1) The Commissioner of Health, or his authorized representative, may, upon written application from the owner, operator, or person in charge of a site, grant a variance from the requirements of these regulations, provided that a variance may only be granted if the regulated activity, alone or cumulatively with any other proposed activity, will not cause the contamination or degradation of the water supply. The issuance of a variance shall not authorize any use or extension of use in Zones G-I, G-II, G-III for which a permit is required by any local, state or federal authority, but shall authorize the filing of a permit application.

(2) An application for a variance must:

(i) include the applicant's name, address, and his interest in the subject property; and the owner's name and address if different from the applicant;

(ii) include the owner's signed consent to the application if made by any person or entity other than the owner of the site;

(iii) include the street address and legal description of the subject site;

(iv) include a sketch plan illustrating all proposed site alterations, all structures existing on site, the existing uses and zoning of adjacent parcels, site contours and drainage patterns;

(v) demonstrate that the regulated activity will not cause an increased risk of contamination or degradation of the water supply;

(vi) identify the specific provision of these Rules and Regulations from which the variance is sought;

(vii) demonstrate that due to conditions unique and peculiar to the applicant's situation, compliance with these Rules and Regulations would be unduly burdensome or result in substantial hardship that cannot be otherwise mitigated;

(viii) demonstrate that any undue burden or substantial hardship was not created by the applicant, and cannot be avoided except by a variance;

(ix) demonstrate that alternatives to the regulated activity have been considered and that there is no available alternative which would not require a variance;

(x) demonstrate the regulated activity as proposed includes adequate mitigation measures to justify such variance; and

(xi) be submitted to the supplier of water and the Commissioner.

(3) Review by the Supplier of Water. Within ninety (90) days of the receipt of an application

for variance, the supplier of water shall make a written recommendation to the Commissioner as to whether the applicant has met the standards for a variance. In order to make its recommendation, the supplier of water may request additional information from the applicant. The supplier of water may also hold a public hearing on the application, upon thirty (30) days notice. The supplier of water's written recommendation shall be forwarded by the supplier of water to the Commissioner and served on the applicant.

(4) Decision of the Commissioner:

(i) The Commissioner or this authorized representatives may solicit the views of the supplier of water on a variance application. After reviewing the application and any recommendations provided by the supplier of water, the Commissioner will render a decision to grant, grant with conditions or deny a variance application. The requirements of subdivision (h)(2) of this section shall be used as the basis for each decision.

The Commissioner may hold a public hearing on the application, if deemed necessary, to seek further information prior to rendering a final decision;

(ii) The Commissioner shall impose such conditions as he or she may deem necessary or prudent to preserve the quality of the water supply. All conditions shall be expressly set forth and the reasons for such conditions specified. Violations of the conditions of a variance shall be a violation of these Rules and Regulations;

(iii) The issuance of a variance from a requirement imposed by this section shall not act as a variance from any regulation or requirement of any other federal, state or local agency, or any other regulation or requirement of the Department of Health; and

(iv) In granting a variance or a conditioned variance, the Commissioner may require financial

security, impose time limitations or limit transfer of the approval.

(i) Remedies for Violation: Remedies for violation of these rules and regulations shall be those specified by Sections 1102 and 1103 of the Public Health Law.

[Appendix A: Watershed Protection Zone Map]

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