

# Watershed Rules and Regulations for Protection of Drinking Water in New York

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*New York's Public Health Law Article 11, §1100 authorizes the New York State Department of Health (NYS DOH) to promulgate regulations "for the protection from contamination of any or all public supplies of potable waters and water supplies of the state ... and their sources within the state...." and these are known as watershed rules and regulations. For water sources from certain watersheds in NY, including the water supply watersheds used for New York City's drinking water supplies, the watershed rules and regulations have been updated in recent years and they are a central part of the drinking water protection program for those water sources. While these regulations have not been updated in many years for most supplies, other regulations have been implemented to address certain water quality risks that were not fully recognized when this law was first adopted, including hazardous waste disposal, storage of fuel oil and chemicals, and pesticide applications.*

## Overview

Protection of water sources used for potable water supplies is one of the most important priorities for protecting human health. Policies and practices to keep sanitary waste and the microbial organisms that cause diseases like cholera removed from drinking water sources became a central element of public health programs in the mid-1800s. This has been among the most important advances in human history for reducing rates of illness and mortality and extending human life spans. Laws and policies for managing human and animal wastes to prevent contamination of drinking water sources were enacted in some parts of the U.S. as early as 1803, and NY's law authorizing watershed rules and regulations was first adopted in 1885 with important modifications in the early 1900s. This law is significant to some existing and potential drinking water watershed protection programs.

## Highlights

- *New York's Public Health Law Article 11, §1100* of the state's public health law provides the basis for the NYSDOH to enact regulations to protect specific public water supplies and their sources from contamination. To implement rules for any given water supply, the DOH must enact separate regulations for that water system and its sources.
- Based on what was known in the early 1900s, regulations for many water supplies were generally written to address pollution sources including privies, cesspools, garbage, animal manure, dead animals, and industrial discharges. They also often addressed fishing, boating, ice cutting, and camping. These early regulations did not address a wide range of potential risks to water quality that are better understood today, such as sediment, fertilizer, pesticides, road salt, oil and grease, etc.
- Over the years separate state regulations have been enacted to protect water resources under the authority of the New York State Department of Environmental Conservation (NYSDEC). Article 15, Title 15 in the Environmental Conservation Law (ECL), states that NYSDOH "may regulate the supply of water for public use from both surface and groundwater resources".
- For wastewater discharges, NYSDOH is responsible for regulations for most onsite (septic) systems, and NYSDOH regulates larger domestic, commercial and municipal discharges.
- While NYSDOH is specifically charged with regulating and overseeing public water supplies, many other regulations for protecting water quality have been adopted by the NYSDOH under their authority in the ECL and many of them are directly relevant to protecting human health. NYSDOH drinking water regulations address pesticide control, hazardous waste management, bulk storage of chemicals and petroleum, and the Protection of Waters permit program for stream beds and banks. Other regulations seek to minimize discharge of phosphorus and the resulting eutrophication and water quality impacts from lawn fertilizer and dishwasher detergent.
- Despite the strong home rule legal framework in New York that gives municipalities control over local land use planning and development decisions, the enactment of watershed rules and regulations by NYSDOH allows local governments to regulate certain activities occurring *in other municipalities* where their water sources are located. Where one community's reservoir or parts of its watershed are located in another municipality, under this extraterritorial authority, the municipality that owns the

water supply can have certain inspection and enforcement powers for regulated activities in the relevant watershed.

- Federal regulations for drinking water systems now include filtration requirements for virtually all community water supplies from surface sources. Together with disinfection requirements and other regulations, the current framework of Federal and state regulations provides other protections to address the microbial health risks that were the original focus of watershed rules and regulations in NY. Additionally, updating and adopting new and revised watershed rules and regulations under NY law is challenging and time-consuming. NYSDOH has focused its available resources for drinking water protection on addressing contaminants of emerging concern and their risks about which less is known. These include pharmaceuticals and certain species of cyanobacteria, which can produce toxins that adversely affect people and animals. NYSDOH and NYS DEC have recently increased resources for research, monitoring, outreach and education on some of these issues.

#### References and Resources

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11. Lloyd Wilson, New York State Department of Health, comments at November 29, 2012. Workshop entitled Working Together to Protect Drinking Water through Watershed Protection, New York State Department of Environmental Conservation's Hudson River Estuary Program et. al.
12. United State Environmental Protection Agency. [Contaminants of Emerging Concern](#).
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