

Pursuant to the authority vested in the Commissioner of Health by Sections 201(1)(l) and 1100(1) of the Public Health Law, sections 75.3 and 75.6, and appendix 75-A.2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 75.3 is amended to read as follows:

As used in this Part, the following words and phrases shall have the following meanings:

* * *

(c) [*General*] Community [w]Waiver means a waiver that exempts any portion of the standards for individual onsite water supply and/or for individual onsite wastewater treatment systems within an approved realty subdivision or multi-plot tract as designated by real property records on file with a county or municipal clerk because of unique local conditions.

(d) *Specific waiver* means a waiver granted [in an individual situation] to a single residential plot as designated by real property records because of a hardship or other circumstance that makes it impractical to comply with a standard for individual onsite water supply or for individual onsite wastewater treatment systems.

[(e) *Local waiver* means a waiver that allows the routine use of alternative-type wastewater treatment system(s) by a municipality.]

[(f)e] *Design professional* means a person licensed to practice engineering or architecture in New York State by the State Education Department in accordance with Article 145 or Article 147 of Title VIII of the New York State Education Law, respectively, and who is currently registered with the New York State Education Department.

Section 75.6 is amended to read as follows:

75.6 Waivers; [general, specific] community and [local] specific.

(a) [General] Community Waiver.

(1) The State Commissioner of Health may, on written application from a full-service city, county or part-county health department established in accordance with Section 340 of the Public Health Law and supported by documentation, grant a [general] Community [w]Waiver from a provision of this Part, subject to appropriate conditions, where such waiver is consistent with the general purpose and intent of this Part, to a full-[time] service city, county or part-county health department. In an area where a full-service city, county or part-county health department does not exist, a written application for a Community Waiver may be filed by the official of the municipality responsible for designating the zoned status of the affected property.

(2) Such application shall include a site plan that documents all geological, hydrological, and topographic conditions impacting water tables, as well as existing and proposed infrastructure, to demonstrate that local conditions justify a waiver of wastewater treatment requirements as described in appendix 75-A, as well as an explanation and justification of proposed waiver duration.

[(2)](3) Such waiver shall include the effective date, the time period[, if any,] for which the waiver is granted, the requirement(s) being waived, indicate the limitations and conditions of installation, and require that the installation be certified by the county, municipality, a licensed professional engineer, registered architect, or other person authorized under the Education Law to design such a system as complying with the standards and waiver [and any other limiting conditions such as types of systems, local conditions or geographical areas where the waiver can be used].

(b) Specific Waiver. The State Commissioner of Health, [his] a duly designated representative or the designated full-time city, county or part-county health department official, may on written application grant a specific waiver from a provision of this Part, where such waiver is consistent with the general purpose and intent of this Part. Specific waivers shall be expressly limited to a single residential plot as designated by real property records on file with a county or municipal clerk. The applicant receiving such waiver must be advised in writing if the design or conditions approved do not meet State standards and the potential consequences of such deviations. Systems with a surface discharge are prohibited and are not eligible for a waiver.

[(c) Local Waiver.

(1) The State Commissioner of Health or his designated representative may on written application from a municipality, in areas where a city, county or part-county health department does not exist, grant a local waiver to allow the use of an alternative-type sewage treatment system as shown in Appendix 75-A.

(2) Such waiver shall indicate the limitations and conditions of installation, and require that the installation be certified by the municipality, a licensed professional engineer, registered architect, or other person authorized under the Education Law to design such a system as complying with the standards and waiver.]

Subdivision (c) of appendix 75-A.2 is amended to read as follows:

(c) A local health department may not adopt standards less stringent than the State standard unless a [General] Community Waiver has been issued by the State Commissioner of Health or [his] their designated representative as provided in Part 75 of this Title, or the local health department is otherwise legally authorized to adopt such standards.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 201(1)(l) and 1100(1) of the Public Health Law (PHL). Section 201(1)(l) of the PHL establishes the powers and duties of the Department of Health (Department), which include the supervision and regulation of the sanitary aspects of public water supplies. Section 1100(1) allows the Department to make rules and regulations for the protection from contamination of any or all public supplies within the State.

Legislative Objectives:

The legislative objectives of sections 201 and 1100 of the PHL are to ensure that the Department protects public health by maintaining the high quality of the State's water supplies and sources. This includes protecting the waters of the State from potential adverse impacts posed by a municipal, communal, or individual water supply or wastewater treatment system which does not conform with statutory and regulatory requirements.

Needs and Benefits:

These amendments are necessary to clarify the limited availability of waivers from statewide requirements regarding the installation and operation of onsite wastewater treatment systems. The proposed amendments remove vague and overbroad language regarding the applicability of administrative waivers and set forth a more definitive process for obtaining such waivers. The regulations accomplish this by setting forth (1) minimum standards for individual onsite water supply systems; (2) minimum standards for individual onsite wastewater treatment systems; and (3) a process for the Department to grant waivers of particular requirements of the regulation should

limiting conditions make conformance to the regulatory requirements difficult. The amendments benefit the public by ensuring that administrative waivers of onsite wastewater treatment system requirements, that may have broad environmental and public health implications, are limited, justified and properly documented.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

As these amendments do not substantially increase existing administrative burdens on the Department or modify any existing wastewater treatment waivers, the most recent of which dates to 1993, no new implementation or compliance costs are expected.

Costs to State and Local Governments:

This regulation will not impact local or State governments except that the regulations may impact local governments seeking a waiver from the regulations. However, in such instance the proposed regulations should benefit local governments by setting forth clearer guidelines for obtaining such a waiver. The proposed amendments establish plan submission requirements that must be met in order for a community waiver to be approved, such as geological, hydrological, and topographic conditions impacting water tables, as well as existing and proposed infrastructure. The proposed amendments also include requirements that installations be certified by the county, municipality, a licensed professional engineer, registered architect, or other person authorized under the Education Law to design such a system as complying with the standards and waiver.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Local Government Mandates:

Individual onsite water supply or wastewater treatment systems operated by local governments which are not specifically governed by local sanitary codes will be subject to the same requirements as any other individual onsite water supply or wastewater treatment systems.

Paperwork:

The current regulations already require a written application supported by documentation. Therefore, the revision of the regulation does not create a new requirement and the Department does not anticipate that this requirement will be unduly burdensome for the regulated community.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department considered not amending the regulations and also considered different alternatives to revising the regulations, such as issuing guidance. It was determined that the portions of the existing regulations we are proposing to repeal were not consistent with the requirements of the State Administrative Procedures Act.

Federal Standards:

No federal standards apply.

Compliance Schedule:

These revisions would become effective upon publication of a Notice of Adoption in the New York State Register.

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STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis for this amendment is not being submitted because the amendment will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (Department) received comments to the proposed rulemaking from one local health department, Suffolk County Department of Health Services (SCDHS). These comments and the Department's responses are summarized below.

Comment: Please confirm that the revisions will not impact existing approved general waivers received by the Suffolk County Department of Health Services (SCDHS) from the New York State Department of Health (Department).

Response: This rulemaking does not impact existing approved general waivers. No amendments were made as a result of this comment.

Comment: How would this impact current general waiver requests submitted to NYSDOH prior to the adoption of the amendments, which are still pending a decision.

Response: There are no waivers pending a decision. No amendments were made as a result of this comment.

Comment: What is the definition of a multi-plot tract.

Response: In accordance with Public Health Law § 1115 and Environmental Conservation Law § 17-1501, a "multi-plot tract" is parcels of land five acres or less, including contiguous parcels of land, under one ownership or under common control of any group of persons acting in concert as part of a common scheme or plan. No amendments were necessary as a result of this comment.

Comment: The definition of community waiver in proposed section 75.3 appears to conflict with proposed 75-A.2, whereas a community waiver is now limited to a realty subdivision or a multi-plot tract, but local health departments are required to apply for a community waiver when their

standards are proposed to be less stringent than the Department standards. In SCDHS's case, onsite wastewater treatment system standards apply to the entirety of the county so how could SCDHS apply for a waiver (if needed) to receive an exemption from portions of the Department standards due to unique local conditions based on the revised definition of a community waiver (previously general waiver) to allow SCDHS standards to be less stringent than the State standards?

Additionally, SCDHS is not opposed to changing the name of general waiver to community waiver but recommends (if not already existing) a process where local health departments can obtain approval for standards, which may be less stringent than State standards due to local site conditions.

Response: County-wide waivers are inconsistent with the requirements of the State Administrative Procedures Act and therefore the proposed rulemaking limits waivers to single parcels or multi-plot tracts. Any modifications in design standards on a county-wide scale must be promulgated through a formal regulatory amendment to 10 NYCRR Part 75, Appendix 75-A. No amendments were made as a result of this comment.

Comment: Section 75.6(a)(1) of the regulation indicates only a local health department (or when a local health department does not exist a municipality) may apply for a community waiver.

However, since the definition of a general waiver is being amended to community waiver and proposed to be limited to realty subdivisions or multi-plot tracts, should applicants/property owners who are proposing a realty subdivision (which requires a variance for onsite wastewater treatment systems) or the development of a multi-plot tract have the ability to apply to the Department for a community waiver instead of the local health department?

Response: Onsite wastewater treatment system review and approval will remain part of the realty subdivision plan review process. A party seeking a community waiver may apply to replace onsite

wastewater treatment systems in a previously approved realty subdivision. No amendments were made as a result of this comment.

Comment: Similarly, section 75.6(a)(2) of the regulation requires applications to “include a site plan that documents all geological, hydrological, and topographic conditions impacting water tables, as well as existing and proposed infrastructure, to demonstrate that local conditions justify a waiver.” How would this be applied on a countywide basis?

Response: The purpose of this regulatory amendment is to align the onsite wastewater treatment system regulations with the State Administrative Procedures Act. Therefore, no county-wide waivers will be issued and any modifications in design standards on a county-wide scale must be promulgated through a formal regulatory amendment to 10 NYCRR Part 75, Appendix 75-A. No amendments were made as a result of this comment.

Comment: Would SCDHS no longer have the ability to issue variance for onsite wastewater treatment systems for realty subdivisions based on the revised definition of general waiver (proposed to be known as community waiver) which do not comply with SCDHS’s standards for onsite sewage disposal systems? Will these need to be forwarded to the Department for consideration once the proposed rulemaking is adopted?

Response: Onsite wastewater treatment system review and approval will remain part of the realty subdivision plan review process. No amendments were made as a result of this comment.