

New Unified Stormwater Rule in NYC: Why Now and What Developers Need to Know

By Karen Mintzer, Helen Mauch and Christine Morano

With the increasing frequency of intense rainstorms, there is a growing awareness among the general public of the need to manage stormwater during rainstorm events. In New York City, however, efforts by the New York State Department of Environmental Conservation (DEC) and the New York City Department of Environmental Protection (NYC DEP) to manage stormwater have been underway for years, and these efforts have most recently culminated in the adoption of the New York City's Unified Stormwater Rule (USWR) on February 15, 2022. The USWR applies throughout New York City to all development projects that involve the disturbance of 20,000 square feet or more of soil or the creation of 5,000 square feet or more of impervious surface, and to all projects requiring a new sewer connection. This article will discuss the recent history of stormwater management in the city and the requirements of the USWR.

Background on Stormwater Management in New York City

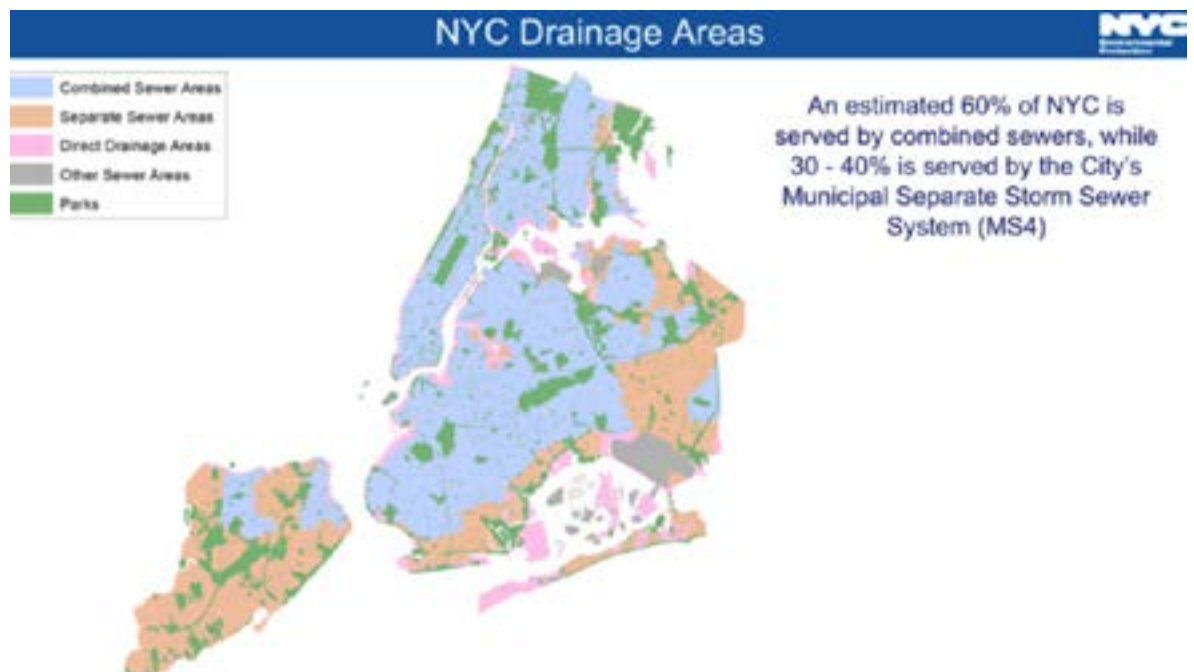
The USWR is partially an outgrowth of requirements that were first imposed in 2019 by NYC DEP on the geographic areas of the city that were serviced by the city's municipal separate storm sewer system (MS4). The MS4, which covers approximately 30-40% of the city, collects and conveys stormwater through streets, ditches, catch basins and storm drains and ultimately directs runoff to local waterbodies. As stormwater flows over streets and other impervious surfaces, it collects pollutants that are ultimately discharged along with the stormwater. In 2015, as required under the federal Clean Water Act, DEC issued New York City its first MS4 permit. The permit requires the city to, among other things, reduce polluted stormwater

runoff from its own property within the MS4 area and establish a construction and post-construction stormwater permit program to reduce polluted stormwater runoff from private development in the MS4 area.

Most of the remainder of the city that is not within the MS4 area is connected to a combined sewer system (CSS).¹ In a CSS, a single pipe carries both stormwater and sewage from buildings and this mix is ultimately conveyed to one of the city's wastewater treatment plants for treatment, during which contaminated sludge is removed and clean water is ultimately discharged into local waterbodies. During heavy rainstorms, the treatment plants are unable to handle the combined flow of stormwater and sewage, which often exceeds twice the design capacity of the treatment plants. As a result, a mix of stormwater and untreated sewage is discharged directly into the city's waterways—a combined sewage overflow (CSO).

The map below shows the various drainage areas within New York City, with blue representing areas within the CSS and orange representing areas within the MS4. Unsewered areas are represented in grey as "Other Sewer Areas."

In addition to the requirements of the MS4 permit, the city is subject to several ongoing consent orders with DEC that require the city to undertake various tasks to reduce



CSOs to improve the quality of the city's waterbodies. These tasks include making major upgrades to treatment plants, long term planning to monitor and control CSOs, and green infrastructure projects. However, controlling runoff from its own property and increasing the capacity of its water treatment plants will only take the city so far in tackling the negative impacts on water quality from both CSOs within CSS areas and polluted runoff within the MS4 area. With heavy rainstorms becoming more common, the challenge of managing stormwater in both MS4 and CSS areas is not going away. The USWR is a citywide approach to address this problem.

The USWR—Applicability and Requirements

The USWR sets uniform, citywide rules applicable to private property within the MS4 and CSS areas (i) for construction and post-construction stormwater practices to manage water quality and (ii) for volume requirements and maximum stormwater release rates for *all* new sewer connections in order to maintain optimal stormwater quantity and flow rates.² With the USWR, the city is stepping up requirements only recently applicable to development in the MS4 area and applying these stepped-up requirements to MS4 and CSS areas, with the goal of reducing negative impacts from stormwater overflow.

Under the USWR requirements set forth in Chapter 19, projects in the MS4 and CSS areas that involve either a soil disturbance of 20,000 square feet or more or the creation of 5,000 square feet of impervious surface must obtain a NYC DEP stormwater construction permit. To obtain a stormwater construction permit, the project must have a stormwater pollution prevention plan (SWPPP). Depending on the type of project, the SWPPP will have to include stormwater management practices (SMPs) to meet up to four requirements: Erosion and Sediment Controls (always required); Water Quality; Runoff Reduction; and No Net Increase of certain pollutants of concern. For example, the SWPPP for a commercial development project, institutional development such as a hospital, school or university, or an industrial development must have SMPs to meet Erosion and Sediment Controls, Water Quality and Runoff Reduction requirements during construction and then continue the Water Quality and Runoff Reduction stormwater practices post-construction. However, the SWPPP for a project involving the establishment of vegetated open space, or road construction disturbing less than one acre, for example, would only need SMPs to meet Erosion and Sediment Controls during construction.

Where Water Quality SMPs are required, infiltration and retention requirements must be satisfied in a hierarchy dictated by the NYC DEP's Stormwater Design Manual.³ Under the hierarchy, vegetated retention practices, such as green roofs, rain gardens, vegetated swales, or constructed wetlands, must be used to the maximum extent practical. Where vegetated retention practices are not possible or cannot fully manage stormwater volume due to site con-

straints (e.g., soils with low permeability, soil contamination that would increase the risk of runoff contamination, or surface constraints such as land use rules requiring the use of paved surfaces), then non-vegetated retention practices must be used to the maximum extent possible. Non-vegetated retention practices include rain barrels, cisterns, permeable pavement, or sand or organic filters. The infeasibility of vegetated retention practices must be documented in the SWPPP. In cases where both vegetated and non-vegetated retention practices are not possible to meet runoff reduction requirements (as documented in the SWPPP), any remaining requirements for runoff reduction in CSS areas must be met using either vegetated or non-vegetated detention practices (e.g., constructed wetlands, ponds, detention tanks), and any remaining requirements for runoff reduction in MS4 areas must be met by using either vegetated or non-vegetated treatment practices (e.g., constructed wetlands, porous pavement, synthetic turf, sand or organic filters, ponds, or other systems with treatment capability).

Under Chapter 31, when a project proposes a new sewer connection, or New York City's building code requires a house or site connection, the project must be able to certify that it can provide specified stormwater detention volume and maximum stormwater release rates, which differ depending on whether the project is in a CSS or MS4 and involves a house connection or an entire site connection. Notably, the green infrastructure SMPs used to meet SWPPP requirements under Chapter 19.1 may achieve the detention volume and release rates required for a new sewer connection.

For a project that requires both a stormwater construction permit and a new sewer connection, the applicant must submit a SWPPP approval application to NYC DEP's Bureau of Environmental Planning and Analysis (BEPA). At the same time, the applicant must submit a Site Connection Proposal to NYC DEP's Bureau of Water and Sewer Operations (BWSO). Upon approval of the SWPPP and approval of the Site Connection Proposal certification, the applicant may apply to BEPA for a stormwater construction permit. Once BEPA grants a stormwater construction permit, construction may begin, and the applicant may thereafter apply to BWSO for a Site Connection Permit. Once that permit is granted, site connection work may begin. For projects with SWPPPs that require post-construction stormwater management practices, the applicant must apply for a post-construction permit supported by an as-built plan, and an operation and maintenance manual that designates the entity that will be responsible for the long-term maintenance of the SMPs set forth in the SWPPP. In addition, property owners may have to grant a maintenance easement to NYC DEP to allow the agency to inspect to determine compliance. Thereafter, the owner of the property must submit an annual certification to NYC DEP showing that the SMPs are being maintained and the post-construction permit must be renewed every five years. Note that while the NYC DEP is now the primary regulator of storm-

water within New York City, there remain some additional DEC stormwater requirements associated with construction activities that must be followed as well.

Conclusion

With the new USWR, some of the burden of managing New York City's stormwater is placed on the private sector. There is no longer a free pass for development in CSS areas. Private development projects in both MS4 and CSS areas must now meet stormwater management requirements during construction and post-construction to varying extents depending on the type of project and its location, and all projects requiring a new sewer connection must meet specified stormwater detention volume and maximum stormwater release rates.

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Endnotes

1. A small percentage of land within the city is a direct drainage area, meaning that stormwater flows over the land directly to surface waters. In addition, another small percentage of land within the city is unsewered, within private dry wells and septic systems.
2. The New York City Department of Environmental Protection's Unified Stormwater Rule is set forth within Title 15, Chapters 19.1 and 31 of the Rules of the City of New York.
3. NYC DEP, *New York City Stormwater Design Manual* (2022), <https://www1.nyc.gov/assets/dep/downloads/pdf/water/stormwater/ms4/stormwater-manual-final.pdf>.



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