

## SUMMARY OF THE REGULATORY IMPACT STATEMENT

In 1987, the legislature amended ECL Article 43 for the purpose, among others, to establish permit requirements and standards for the protection of Lake George water quality and clarity. To this end, ECL Sections 43-0107(8), (9), (32) and 43-0112(1) empower the New York State Lake George Park Commission to promulgate regulations pertaining to stormwater management. On September 19, 1990 the Commission adopted stormwater regulations for development activity in the Lake George Park. These regulations were subsequently revised in 1998 with few substantive changes save for the findings necessary to issue variances, which were modified from a use variance to the less onerous area variance.

The intent of the proposed revisions is to enhance the protection of the water quality of Lake George and its tributaries mainly through two key provisions: (1) a retrofit requirement for minor stormwater projects, and (2) a restriction on lawn fertilizers within 50' of waterbodies. Two additional modifications are proposed for clarity and practicality in the administration of existing provisions, specifically (3) inclusion of standardized setbacks for infiltration devices based on the stormwater source rather than project category, as currently exists, and (4) updated definitions and language concerning exemptions for agricultural and silvicultural activity. All other modifications proposed are of a relatively minor nature, and are intended to reflect existing policy or provide greater consistency with terms used in the SPDES program.

All proposed modifications are both explicitly and implicitly noted in statute and regulation.

### Costs

The proposed changes are a modest update to the Commission's existing stormwater regulations. As noted above, the proposed amendments include two key provisions: retrofitting for projects meeting the Minor classification as well as fertilizer restrictions.

Stormwater Retrofit costs:

Similar to existing regulations for Major stormwater projects (>15,000sqft of land disturbance), the proposed regulatory amendment will require that all jurisdictional projects (>5,000sqft land disturbance, or >1,000sqft new impervious area) address stormwater runoff from existing impervious areas on a property to the maximum extent practicable with a minimum volume control equal to one half inch of precipitation from existing impervious areas. Typical costs for stormwater retrofit practices can vary from almost zero (minor grading efforts) to low cost (eg. infiltration chambers). There is no requirement to obtain a licensed engineer for these practices. For a typical property, additional costs are anticipated to fall between \$0 and \$4,000. When the minimum volume control requirement of one half inch may not be met, a variance may be granted from this standard. However, in contrast with other variances within stormwater management, the proposed regulations expressly allow the granting of variances from the retrofit standard to be authorized by review staff rather than at the Commission and zoning board level, which is intended to streamline review compared with traditional administrative variance review that may involve multiple board meetings.

The cost to administer this regulation, for both the Commission and for local government, is seen as minimal. The only time that this regulation would take effect is when there is an application for a stormwater permit. The estimated annual number of minor stormwater project applications equates to 5-10 projects per municipality throughout the Lake George watershed (0-1 per month on average). Based on these development numbers, it is estimated that there are roughly 50-80 minor

projects in the watershed each year that are currently subject to the stormwater management requirements of 646-4, and which would be subject to the retrofit standard for minor projects. The review of the proposed minor stormwater retrofits would be a small portion of the overall project review, and is not seen as impacting significantly upon either the Commission or the local government. LGPC staff note that the time to review the retrofit elements of a Major project currently adds an estimated 5-10% of review time per project.

Lawn Fertilizer restriction costs:

The Commission's proposed restrictions on fertilizers within 50 feet of a waterbody are not seen to have a cost impact upon regulated parties. This prohibition will simply disallow the use of fertilizers adjacent to Lake George and its tributaries, and there is no cost associated with not using a commercial product.

The cost of administering and enforcing this regulation is seen as minimal. This regulation already exists in two municipalities within the Lake George Park, and while they do receive occasional calls or complaints that require follow-up, it is not a significant workload for their codes and planning staff.

Updated Infiltration Device Setback costs

By current LGPC stormwater regulations, all stormwater infiltration devices for projects meeting the "Major" project standard as well as those that service areas subject to vehicle traffic for "Minor" development standards must meet a 100 foot setback requirement from all water resources.

The Commission proposes a standard 35 foot setback to water resources for all infiltration devices serving Major and Minor projects, and intends to maintain the 100' setback to water resources for infiltration devices servicing areas subject to high motor vehicle traffic.

If this action has any impact on project costs, it is anticipated to reduce costs. Stormwater infiltration and treatment practices have often required a variance due to the relatively large setback requirement. This major project relief is anticipated to reduce the need for variances, and would thereby potentially reduce project cost. For minor projects, the proposal represents a new minimum setback of 35' for areas such as roofs. Given the minimum building setback of 50' from Lake George, it is reasonable that infiltration devices may be designed outside the 35' setback, and as such no additional costs are anticipated from this change as it relates to minor stormwater projects.

#### Updated Terms for Agricultural and Silvicultural Exemptions

The requirement that a conservation plan be developed to meet the agricultural and silvicultural exemption has been in place for decades. For clarity and to reflect current practice, the Commission has updated the terms utilized for agricultural and silvicultural exemptions. As such, there would no additional cost incurred to develop this information.

The Commission and the municipal stormwater programs are not responsible for approving the soil conservation plans, and so there are little if any increased costs to government anticipated with this modification.

#### Local government mandates

The existing municipalities that administer Commission stormwater programs (the Village of Lake George, and the Towns of Lake George, Queensbury, and Bolton) will be required to adopt the substantive changes proposed. It is noted that comparable fertilizer restrictions already exist within the codes of some municipalities in the basin, and stormwater retrofits are a common requirement sought by the local Planning Boards, as many shoreline development projects are deemed to be "Major" projects due to their location within a Critical Environmental Area. The standardized setbacks for infiltration devices are anticipated to reduce the need of variances for jurisdictional projects, and

therefore will provide relief from review at the municipal level. Updated terms for agricultural and silvicultural exemptions represent a simplification of existing requirements within town stormwater programs, and therefore should not increase local mandates. In its totality, any additional program and review responsibility associated with the proposals are not a significant increase above current levels.

#### Paperwork

The proposed regulations would not necessitate any new reporting requirements. Of note, soil conservation plans for the agricultural and silvicultural exemptions will now be provided to the Commission or municipality rather than to County Soil and Water or DEC; this is not a new reporting requirement but rather a change to an existing reporting requirement. Intended to streamline the process, a soil conservation plan may include such form(s) as may be provided by the Commission.

#### Duplication

#### Stormwater retrofits:

The Commission is statutorily charged with management of stormwater runoff in the Lake George Park, and as such, its jurisdictional thresholds are low compared with the SPDES program administered by DEC and the local MS4 communities. Specifically, development of a stormwater plan with post-construction stormwater control measures is not required by the SPDES program until there is at least 1 acre of land disturbance. Presently, when the Commission's jurisdiction overlaps with those of DEC on properties with greater than 1 acre of land disturbance, the more restrictive standard is applied. In this instance, the Commission would enforce its own regulation.

#### Lawn Fertilizer restriction:

State law prohibits the application of lawn fertilizer within 20 feet of any surface water except where there is a vegetative buffer of at least 10 feet, or where the fertilizer is applied by a device with a

spreader guard, deflector shield or drop spreader at least three feet from surface water. The Commission's proposed fertilizer regulation is more restrictive than the existing statutory prohibition. The more restrictive standard would apply.

Updated Infiltration Device Setback:

Section 6.3.1 of the NYS DEC Stormwater Management Design Manual concerning the required elements for infiltration devices states that infiltration facilities shall be located at least 100 feet horizontally from any water supply well. There is no setback to water bodies. The proposed regulatory modification would provide a minimum setback of 35 feet between infiltration devices and down gradient water resources including water wells and water bodies, and maintain a 100 foot setback to down gradient water resources for infiltration devices servicing high traffic areas. As noted above, when the Commission's jurisdiction overlaps with those of DEC on properties with greater than 1 acre of land disturbance, the more restrictive standard is applied. In this instance, the Commission would enforce its own regulations

Updated Terms for Agricultural and Silvicultural Exemptions:

With respect to stormwater review at the State level, "Forestry" is not listed as an "industrial activity" under 122.26(b)(14) and, therefore, is not subject to SPDES permitting by DEC. Locally, municipalities with Adirondack Park Agency approved local land use programs review logging activity pursuant to their Agency delegated authority over Class B Regional projects including "clearcutting". Though recommended within the State's published best management practices for agriculture and forestry, the Commission's exemption from stormwater management has long been the only regulatory mechanism to ensure conservation plans employing BMP's are developed and followed for these activities.

Alternatives

### Stormwater Retrofits:

No alternatives were strongly considered. The retrofit standard already exists for 'Major' projects, and this modification to include 'Minor' projects is the logical next step to address runoff from existing development. The 'no-action' alternative was discussed but rejected, based on the identified need to slow the decline of water quality in Lake George from stormwater runoff pollution from existing development. Additionally, no action would contradict ECL Section 43-0112(2) and the resulting Retrofit Study and Recommendations.

### Lawn Fertilizers restriction:

No alternatives were strongly considered. The 50' proposal conforms to locally established zoning codes for two municipalities within the basin, and presents a reasonable approach to limiting impacts to Lake George from fertilizer runoff. Having a unified fertilizer standard under Commission regulation that applies to the entire basin will ensure consistent land use protections and associated water quality benefits, and is seen as an administrative efficiency when compared with the alternative of encouraging each municipality in the basin to undertake their own separate fertilizer regulations. The 'no-action' alternative was not accepted based on the identified water quality benefits that such a regulation could offer.

### Updated Infiltration Device Setback

No alternatives were strongly considered. The modification to a 35' setback for infiltration devices servicing areas not subject to high vehicle traffic presents a reasonable approach to stormwater management that dovetails with the Adirondack Park Agency's shoreline cutting restrictions and shoreline structure setbacks; the former is a restriction of vegetative cutting within 35' of water bodies and the latter sets a minimum 50' setback for structures. Additionally, the modification will serve

to provide adequate stormwater treatment while alleviating the need for variances that presently exists for major projects.

Updated Terms for Agricultural and Silvicultural Exemptions:

No alternatives were strongly considered. The modification represents a minor change from current standards exempting agricultural and silvicultural activities.

Federal standards

There are no relevant federal standards.

Compliance schedule

It is anticipated that the Commission and Towns will adopt these regulations by January 1, 2021.