

FUTURE STORMWATER CONTROLS
PROGRAM RULES
(ARTICLE 5)

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Equal Opportunity Employer

CWC Future Stormwater Controls Program Rules

Article 5

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CHAPTER 5:00 – FUTURE STORMWATER PROGRAM OVERVIEW

5:00:01. Definitions

Words used in this article mean:

1. “Applicant,” an entity that has submitted an application to CWC for funding of a project under this program for stormwater planning and control.
2. “BMP,” Best Management Practices for stormwater control, generally defined as practices described as structures, nonstructural controls and operation and maintenance procedures determined to be the most practical and effective in preventing or reducing pollution and / or erosion due to stormwater. General guidelines for such can be found in the *New York Guidelines for Urban Sediment and Erosion Control*.
3. “Board,” the Board of Directors of the CWC.
4. “NYC,” the City of New York.
5. “CWC,” the Catskill Watershed Corporation.
6. “Eligible costs,” as defined in section 5:00:04 of these rules.
7. “Eligible project,” project to design, construct, implement, and maintain new stormwater measures pursuant to stormwater pollution prevention plans required by Section 18-39(b)(3) of the Watershed Regulations and individual residential stormwater plans required by Section 18-39(e) of the Watershed Regulations and not otherwise required by federal and/or State law (with respect to projects west of the Hudson River constructed after the effective date of the Watershed Regulations). For purposes of this program, any action required by a TMDL developed by NYSDEC solely for phosphorus control (for NYC reservoirs in the watershed) shall not constitute a requirement of federal or State law.
8. “IRSP,” an individual residential stormwater plan.
9. “MOA,” New York City Watershed Memorandum of Agreement.
10. “NYCDEP,” the New York City Department of Environmental Protection.
11. “NYSDEC,” New York State Department of Environmental Conservation.
12. “Program,” the CWC Future Stormwater Controls Program to provide funding for eligible costs of eligible projects.
13. “Project Sponsor,” applicant who has been approved by the CWC Board for funding in accordance with these rules.
14. “SPPP,” Stormwater Pollution Prevention Plan.

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15. "Substantially complete," the point at which the project is ready for inspection by CWC or its designated agent to determine project completion.
16. "TMDL," Total Maximum Daily Load.
17. "Watershed," the watershed area serving the New York City Water Supply.
18. "Watershed Regulations," Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources that became effective May 1, 1997.

5:00:02. Purpose and Goals

The purpose of this program is to disburse program funds to pay for reasonable and necessary costs for designing, permitting, constructing, implementing, and maintaining eligible projects as discussed below.

5:00:03. Eligible Projects

This program shall fund new stormwater projects located west of the Hudson River as follows.

1. The project is required solely by Watershed Regulations section 18-39(b)(3) or 18-39(e), not otherwise required by federal and/or State law, and is developed pursuant to one of the following:
 - A Stormwater Pollution Prevention Plan (SPPP)
 - An Individual Residential Stormwater Plan (IRSP)
 - For purposes of this program, any action required by a Total Maximum Daily Loads analysis developed by NYSDEC for a NYC reservoir west of the Hudson River solely for phosphorus control shall not constitute a requirement of federal / State law.

For construction projects that are required to have an SPPP on file by State and Federal regulation, CWC policy identifies such projects as eligible for part of the project costs, as is discussed in the eligible cost portion of these rules, section 5:00:04.

2. The project must be in compliance with the Watershed Regulations, all applicable state and local regulations and these program rules and standards.
3. The project shall be designed, constructed, implemented, operated and maintained by a qualified contractor.
4. Program funds may be used only to pay the costs of eligible projects incurred after the effective date of the Watershed Regulations (May 1, 1997).
5. Program funds shall be used to pay for eligible projects that are not otherwise funded by NYCDEP. The program funds may not be used to pay any costs that have been or will be paid for with funds provided under any other program pursuant to the MOA. The

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following table illustrates portion of projects that may be funded by NYCDEP and portions that may be funded under this program.

Percentage of Costs of New Stormwater Controls Eligible for CWC Funding / NYCDEP Funding, By Property Use

	Low Income Housing	One Family Housing (1)	Small Businesses as defined in MOA (145)	All Other Projects (2)
Funded by this program	0%	Eligible Costs not funded by NYCDEP	Eligible Costs not funded by NYCDEP	Up to 100%
Funded by NYCDEP	100%	100%	Up to 50%	0%

Footnotes:

- (1) Per MOA Section 145, NYCDEP will fund 100% the incremental costs of stormwater measures required solely by the Watershed Regulations for new one family residences where lot constraints prevent the construction of the home outside of the limiting distance, i.e. within 100 feet of a perennial stream or wetland. Any portion not funded by NYC may be eligible under this program.
- (2) All other projects include all other businesses, municipal projects, churches, two or more family residences, etc.
- (3) Small businesses are defined as resident in New York State, independently owned and operated, and employ one hundred (100) or less individuals.

5:00:04. Eligible Costs

In order for the costs of an eligible project to be eligible for payment, the cost must be deemed reasonable and necessary. Potentially eligible costs include the costs of design, construction, permit process, coordination with NYCDEP, implementation, and maintenance of new stormwater measures. Potentially eligible costs may include but are not limited to the following, as incurred solely due to applicable Watershed Regulations. See Table A for explanation of costs solely attributable to the Watershed Regulations.

5:00:04.01. Potentially Eligible Costs for SPPPs/ IRSPs Required by Watershed Regulations

1. Design fees, including fees for permitting and environmental assessments, including those described in Table A. Under the reimbursement funding method, this program will reimburse the design costs after the design has received NYCDEP approval.
2. Cost of easements.
3. Legal fees, excluding litigation.
4. Construction costs. Under the reimbursement funding method, this program will reimburse the construction costs after the construction has received all necessary permits and approvals. Under the Voucher funding method, CWC shall hold a portion of the construction costs as retainage to be paid contingent upon receiving all necessary approvals.
5. The cost of land purchase, as needed for installation of eligible stormwater measures. In the event that a parcel with excess land is proposed for purchase, the program shall pay only for the costs of that portion of land needed for the eligible project. The program may pay for additional land if it is determined that no other appropriate land parcel of lesser size is available for construction of the facility. Land purchase costs shall be justified by

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appropriate documentation, including an appraisal by a licensed appraiser, documentation of closing costs and a phase one environmental site assessment, and shall require approval by the CWC Board. The appraiser's fee and cost of the phase one environmental site assessment shall be eligible costs, for the land or portion thereof approved by the Board.

6. Operation and maintenance costs – Reasonable and necessary costs of operation and maintenance of stormwater measures for projects of which the design and construction have been paid for under this program may be wholly or partly eligible, except for costs that are paid for by insurance, emergency relief funding, NYCDEP funding or other grant funding. All operation and maintenance funding shall be in accordance with a contract with the project sponsor and CWC. This program will reimburse the maintenance costs only of projects that have received all necessary permits and approvals. Per the MOA, maintenance costs can be funded from earnings on the principal of program funds, and not from the principal itself. Thus, CWC funding of operation and maintenance is contingent on the availability of such earnings. In the case of projects that are required by State /Federal Regulations to have a SPPP, this program will fund only those measures that are above and beyond state / federal requirements.
7. Other reasonable and necessary costs.

5:00:04:02. Potentially Eligible Costs for SPPPs Required by State / Federal Regulations

For a site that is required by State/ Federal Regulations to have a SPPP, CWC policy permits partial payment of the project costs. State and Federal regulations require that the facility owner for such a site prepare and follow a SPPP, which plan must be on file at the site. No submission or review process is mandated. The Watershed Regulations require that a SPPP be submitted to NYCDEP for review and approval. Thus, the submission and approval process could potentially require additional eligible costs for the following:

1. Preparation of submittal to NYCDEP.
2. Coordination and meetings for design and construction review.
3. Response to NYCDEP comments.
4. Installation of measures required by NYCDEP that are not otherwise required by State or Federal regulations, and
5. Costs or incremental costs incurred solely to comply with 18-39(c) Watershed Regulations, including but not limited to costs to address a 2-year 24-hour storm as required by NYCDEP that are greater than costs to address a one-year 24-hour storm as required under the NYS General Permit.
6. Any other costs listed in 5:00:04:01 due solely to NYCDEP requirements.

5:00:04:03. Recommended Record-keeping of Potentially Eligible Costs

The potential applicant should maintain records of all out-of-pocket expenses for submissions, meetings and communications with NYCDEP including but not limited to:

1. Hours and hourly rates of consultants and employee time for preparing and maintaining files of submissions and responses to NYCDEP, other than SPPP required by State or Federal regulations;
2. Travel costs;
3. Cost of printing, postage and other communication related to NYCDEP;

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4. Cost of designing, constructing, implementing and maintaining measures required solely by NYCDEP and not otherwise required by state or federal regulations.
5. Date expense was incurred.

Eligible costs will be determined based on a review of actual cost for services, time and materials, and on a CWC schedule of reasonable costs for typical stormwater BMPs. CWC will base its schedule of reasonable costs on the costs contained in NYCDEP's Stormwater Best Management Practices Details, Specifications and Unit Cost Estimates and on costs incurred in this program.

5:00:05. Application for Project Inclusion

An applicant may apply for funding under this program for new stormwater controls measures herein described as an eligible project.

In order to apply for funding for new projects, each applicant shall fill out an application form supplied by CWC, and shall supply information to allow CWC to evaluate project eligibility and to prepare a proposed schedule and budget for each project. The application form shall include the following:

- The proposed site location
- Structural design, facility(ies) being replaced if relevant
- Land purchases and costs
- Itemization administrative costs
- Other estimated costs,
- Tentative schedule and budget if known
- Itemization of claimed eligible costs resulting solely from NYCDEP requirements, and not otherwise required by State or Federal laws or regulations
- Copy Submission of SPPP to NYCDEP
- Copy of Approval Letter of SPPP by NYCDEP, including enumeration of specific claimed NYCDEP only requirements by NYCDEP
- Copy of Funding request to NYCDEP
- Other information as requested by CWC

Each application, with all attached documentation and staff recommendations, shall be presented to the Board for approval of funding through this program.

In order to apply for funding of operation and maintenance costs, the applicant shall apply to enter into contract with CWC for funding of application and maintenance cost. The contract shall itemize which costs are eligible.

5:00:06. Appeals Process

An applicant who believes that his or her application for reimbursement under this Program was wrongly denied, in whole or in part, may request a review of the disputed claim(s) by the CWC Board of Directors. The applicant shall submit such request for appeal in writing to the President of the CWC, by certified mail return receipt requested. In the request for appeal, the applicant shall identify the reason for the appeal, and shall include a completed CWC appeal form. The CWC Board shall act upon each written request no later than the next regularly scheduled CWC Board meeting occurring that is at least fifteen (15) days after CWC's receipt of the completed written request for appeal.

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The CWC Board may reverse the decision to deny reimbursement, in whole or in part, in four instances.

1. The applicant was wrongly deemed ineligible.
2. The applicant was wrongly denied funding, in whole or in part, based upon an incorrect determination that the work for which funding is sought was not necessary.
3. The applicant was wrongly denied funding, in whole or in part, based upon an incorrect determination that the work for which funding is sought was not required solely due to Section 18-39 of Watershed Regulations;
4. That the applicant was wrongly denied funding, in whole or in part, based upon an incorrect determination that the cost of the work for which funding is sought is not reasonable; or
5. That there are special circumstances involved that warrant funding of costs which otherwise would be deemed unreasonable.

The decision of the CWC Board of Directors after appeals is not subject to further review or revision by CWC.

5:00:07. Program Funding

Funding for the program shall be determined annually through the budget process, whereby the Executive Director of the CWC proposes to the CWC Board of Directors for approval an annual budget.

The CWC shall remit the approved payment within 30 days of receipt of a complete request for payment, with a certified voucher and supporting documentation. Eligible projects shall be funded through one of the following payment method:

5:00:07:01. Reimbursement Method

CWC shall reimburse the project sponsor for CWC approved eligible costs / projects within thirty days of submission of the following to CWC:

1. a certified voucher(s) itemizing all costs for which reimbursement is sought and a FSC Program Application certifying that all work being invoiced is in accordance with NYCDEP-approved plans for the eligible project / costs, and if applicable, with the contract between CWC and the project sponsor,
2. a copy of contractor or consultant invoice(s) and canceled check(s) as proof of payment,
3. a copy of NYCDEP approval of the SPPP / IRSP,
4. a copy of NYCDEP or CWC approval of construction of stormwater measures, or a certification is provided to CWC by the contractor that they have completed construction in compliance with the SPPP or IRSP. CWC will give consideration to the NYCDEP punch list of items to be address, if applicable, before reimbursing construction costs.

5:00:07:02. Voucher Method

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CWC may contract with a qualified contractor, such as an consulting firm, municipality or other governmental agency, to provide assistance to project sponsors for eligible projects. In such cases, CWC will pay the project sponsor/ contractor directly for the design costs. Such qualified contractor shall directly or through subcontract assist applicants in designing, constructing, implementing and maintaining eligible projects. Selection of qualified contractors, other than municipalities or other governmental entities, shall be in accordance with the procedures set forth in the contract between CWC and NYCDEP, MOA Attachment FF3, Article 8. The qualified contractor shall forward to CWC, no more frequently than monthly:

1. An invoice documenting the tasks completed under Section 5:00:04.
2. A certified CWC voucher itemizing the costs of the completed tasks and a FSC Program Application certifying that all work being invoiced is in accordance with approved plans and the contract between CWC and the project sponsor.
3. A retainage of 10% will be held contingent upon CWC or NYCDEP approval for projects paid under the voucher method. At least 10% of the design and construction costs for eligible projects shall be retained after substantial completion until CWC or NYCDEP has had an opportunity to schedule a final review / inspection. The retainage for design shall be released after CWC has received documentation that all necessary permits and approvals have been received, or a certification is provided to CWC by the contractor that they have completed construction in compliance with the SPPP or IRSP. After substantial completion of construction, but prior to final completion and release of contract retainages, NYCDEP shall be provided the opportunity to conduct a site inspection to identify punchlist items that need to be addressed. The project sponsor shall notify NYCDEP or CWC of substantial completion and shall give NYCDEP and CWC 10 business days to schedule an inspection before final completion. CWC will give consideration to a NYCDEP punchlist of items to be addressed, if applicable, before reimbursing 100% of construction costs. In the event the NYCDEP and CWC staff have conflicting determinations of construction completeness, based on site visits, release of the retainage may be brought to the Board for approval at the discretion of CWC staff.

5:00:08. Program Contracting

Program contracts shall be required for all payments under this program for voucher funding, for funding of operation and maintenance, and for some reimbursement funding to be determined on a case-by-case basis. Contracts shall be subject to the following constraints.

1. The CWC's preliminary decision to select a contractor or award funds shall be subject to the right of objection specified in MOA paragraph 107(b). Any contract with a municipality shall be accompanied by a resolution passed by the appropriate governing body authorizing the authorized representative (the Town supervisor or other) to enter into contract. CWC shall enter into contracts and allocate funds to eligible applicants based upon project eligibility and availability of program funds.
2. The contract for each project shall be for one of two methods of payment described in section 5:00:07 – Program Funding, the Reimbursement method or the Voucher method.
3. Contracts for operation and maintenance funding shall in addition itemize the types of activities to be funded, frequency of activity, schedule of costs, duration of contract

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4. The contract shall provide that if the cost of designing and implementing stormwater best management practices exceeds the maximum amount of program funds budgeted for the project by the CWC, the project sponsor shall complete construction of the facility using its own resources or funding obtained from other sources. Nothing shall preclude the project sponsor from applying for additional funds from the CWC for reimbursement of any additional unforeseen costs. Such payment shall be at the discretion of CWC Board upon submission of appropriate documentation and shall not be subject to appeal. Any application to CWC shall not reduce the project sponsor's obligation to complete, operate and maintain the project as required by NYCDEP-approved SPPP or IRSP.
5. Any consultant, contractor or subcontractor engaged by CWC shall have insurance as required by the contract between CWC and NYC (attachment A to these rules). Such entities shall submit to CWC certificates of insurance. NYC and CWC shall be named additional insureds on the general liability insurance policy for such entities. NYC has the right to request additional insurance beyond that required by attachment A; however, NYC shall pay the cost of such additional insurance from funds separate from the program funds.
6. All contractors performing work under the voucher method of this program must abide by NYC "VENDEX" requirements. Contractors and engineers to be paid through the reimbursement method do not need to meet NYC "VENDEX" requirements.
7. Contractors for construction or design exceeding \$25,000 shall provide a performance and completion bond in the full amount of the bid / proposal to secure the successful completion of all work, and a payment bond to insure that all material providers and laborers are paid for work performed under this program.
8. Contractors retained by CWC shall be qualified to design, construct, implement, and maintain an eligible project paid for with program funds. If the CWC retains a qualified contractor, the selection of contractors (other than municipal or other governmental entities such as Soil and Water Conservation Districts) will be based on the CWC procurement policies.

5:00:09. Employees of Consultants, Contractors or Subcontractors to CWC

Employees of any contractor, consultant or subcontractor are independent contractors and not employees of CWC. CWC shall not be responsible for the work, direction, compensation, liability for actions, insurance or taxes of such employees. Any contractor, consultant or subcontractor to CWC agrees that it shall provide equal employment opportunities with regards to any work conducted on behalf of CWC.

5:00:10. Program Milestones

CWC has scheduled the following milestone dates for implementing and managing the Future Stormwater Program.

Description of Milestone	Anticipated Date
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Develop draft program standards and policies, with milestones and application forms, in committee	6/10/98
Review and revise program policy at the Board level	6/23/98
Finalize program rules and milestones	7/28/98
Develop public outreach and education workshops, news releases	8/98
Proceed with contracting with / funding eligible applicants.	8//98
Complete establishment of program, including development of trust for long-term operation and maintenance costs, or enter into agreement with NYCDEP to renew the program contract for three years per contract provision 1.03(B)	4/23/2009
Complete establishment of program	4/23/2012

5:00:11. Transfer of Program Funds to Other CWC Programs

CWC shall transfer funds from this program to other programs as required by paragraph 128(e) of the MOA.

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CHAPTER 5:01 - PROGRAM STANDARDS

5:01:01. General Project Standards

In general, stormwater control measures shall be in accordance with the New York State Guidelines for Urban Erosion and Sediment Control and with the NYCDEP manual entitled "NYCDEP Stormwater Best Management Practice Details, Specifications and Unit Cost Estimates". For items not specified in those manuals, stormwater measures implemented shall be the most cost-effective measure required by NYCDEP to reduce erosion and to reduce introduction of sediments and other pollutants into the water supply of New York City.

5:01:02. Consistency with NYC Watershed Rules & Regulations

The Future Stormwater Program and all projects funded under the program shall be consistent with New York City Watershed Rules and Regulations governing stormwater pollution prevention plans and impervious surfaces, per Section 18-39 of the Watershed Rules and Regulations, and with all other applicable rules, laws and regulations.

5:01:03. Coordination with NYCDEP

Each project sponsor shall conduct stormwater projects in accordance with Watershed Regulations.

For projects funded under the Reimbursement method, the project stormwater plan and construction shall be approved by NYCDEP before costs are reimbursed by CWC and the project sponsor enters into any contract with CWC. When NYCDEP grants an approval to an eligible project, NYCDEP shall notify the project sponsor that the project may be eligible for funds from this program and that the project sponsor should contact CWC for further information. At the same time, NYCDEP shall also notify CWC that NYCDEP has approved a potentially eligible project.

For projects funded under the Voucher method, the project sponsor shall coordinate with NYCDEP development of the stormwater plan through use of the following:

1. A preapplication conference(s),
2. Site visits,
3. Submittal of completed stormwater plans to NYCDEP for review and comment.
4. Design documents shall be submitted to CWC following NYCDEP review and approval.
5. Construction shall not be implemented until all needed design approvals have been received.
6. Retainage shall be kept and released in accordance with section 5:00:07 of these rules.

Anything in this section to the contrary, NYCDEP shall be entitled to the full time frames for review allowed in the Watershed Regulations.

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5:01:04. Coordination with Other Regulatory Agencies

The project sponsor, or its agents, shall coordinate with all other regulatory agencies with review authority over the project, and shall complete all permit processes as needed. Such agencies shall be notified of the project upon inception of design. No design shall be considered complete until all reviews and permits are complete.

5:01:05. Public Outreach and Education

CWC will implement public outreach and education to inform the public about the existence and scope of this program. Public outreach and education will include:

1. advertisements placed in local newspapers throughout the watershed,
2. public meetings, and
3. development of a program fact sheet and application form to be distributed annually to signatories of the MOA, Town and Village Clerks, municipal planning boards, contractors, code enforcement officers, real estate agents and NYCDEP.

5:01:06. Amendment of Rules

The Future Stormwater Controls program rules may be amended by the Board at any time.

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TABLE A

Costs Potentially Eligible for Reimbursement

The CWC Future Stormwater Program eligible expenses can include:

- Engineer fees for pre-application conferences and other meetings with NYCDEP staff; and
- Engineer fees for site visits with NYCDEP staff; and
- Where no NYSDEC SWPPP is required, design costs for preparation of SWPPP and related construction costs:
 - or -
- If a NYSDEC SWPPP is also required, design costs and incremental construction costs (if any) for the following items required by the NYC Watershed Regulations, and not otherwise required by federal and/or state law:
 - Peak discharges for the 10-year and 100-year, 24-hour storms must be attenuated to pre-development rates regardless of the size or nature of the receiving stream(s) – Section 18-39(b)(3);
 - For activities in the drainage basin of a terminal reservoir, the SWPPP must include an analysis of coliform runoff, before and after the land disturbance activity – Section 18-39©(1)
 - The use of swales and open drainage systems is required to the maximum extent practicable – Section 18-3(c)(2)
 - Closed conveyances must be sized, at a minimum, to accommodate the 10-year, 24-hour storm – Section 18-39(c)(2)
 - Practices must be sized to capture and treat the volume of runoff generated by the 1-year, 24-hour storm of the WQv (90% storm), whichever is greater, from the contributory drainage area(s) – Section 18-39(c)(3)
 - To the maximum extent practicable, no portion of a stormwater infiltration practice shall be located within 100 feet of any absorption area of a subsurface sewage treatment system – Section 18-39(c)(4)
 - Two different *standard* practices in series are required for all drainage areas that are at least 20% impervious – Section 18-39(c)(6); except if:
 1. The stormwater practice provided is an infiltration system; or
 2. The activity requiring an SWPPP is located in a WOH village, hamlet, or village extension