

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF INTENTION TO AMEND ARTICLE 143
AND REPEAL ARTICLE 145 OF THE NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of said Charter, notice is hereby given of the proposed amendment of Article 143 (“Disposal of Sewage”) and the repeal of Article 145 (“Water Pollution Control”) of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON THURSDAY, JULY 30, 2009 FROM 10AM TO 12PM. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. WEDNESDAY, JULY 29, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY THURSDAY, JULY 16, 2009. REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10A.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., THURSDAY, JULY 30, 2009. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT’S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>

STATUTORY AUTHORITY

The amendments to Article 143 and the repeal of Article 145 of the New York City Health Code (“Health Code”) are promulgated pursuant to §§556, 558 and 1043 of the Charter. Section 556 of the Charter provides the Department of Health and Mental Hygiene (“DOHMH” or “Department”) with jurisdiction to regulate all matters affecting health in the city of New York. Section 558(b) and (c) of the Charter empowers the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

1. Amend Article 143.

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the DOHMH proposes that the Board of Health amend Article 143, covering the disposal of sewage, repealing provisions for construction of private sewage disposal systems, and the issuance of permits for site and sub-soil evaluation related to such construction, in order to better reflect practice and the current regulatory environment. In addition, for the reasons stated below, the Department proposes that the Board repeal Article 145 (Water Pollution Control).

Article 143 broadly addresses disposal of wastes within the City, in particular, the disposal of human, household, and commercial liquid wastes which are not directly discharged into City waters. Article 145 compliments Article 143 by regulating wastes directly entering City waters.

Under Health Code §§143.03 and 143.05, the Department regulates private sewage disposal systems, such as septic tanks and privies that are not connected to the City’s sewage disposal system and that discharge into a local site and underlying sub-soil.

Health Code §143.07 requires proof of proper maintenance of private sewage disposal systems. Health Code §143.09 regulates private sewage disposal systems for one and two family dwellings. Health Code §143.13 provides that private sewage disposal systems are subject to Department inspection and be operated so as not to create a nuisance.

When Local Law 50/1991 was enacted, amending Charter §1403, the New York City Department of Environmental Protection was granted jurisdiction over the “location, construction, alteration, repair, maintenance and operation of all sewers” including the “authority to supervise and adopt rules regarding private sewage disposal systems...and to prescribe civil penalties for the violation of such rules...and to issue permits pursuant to such rules for the construction and maintenance of such private sewage disposal systems...”

Local Law 65/1996 amended New York City Building Code §27-157(4) to remove a reference requiring that a site and sub-soil evaluation be obtained from the Department prior to the construction of a private sewage disposal system. Also, under Charter §643(5), the Buildings “[C]ommissioner may approve the installation of and issue a permit for the construction of an individual on site private sewage disposal system for premises. Such permit shall be issued in accordance with the commissioner of environmental protection, for the installation of an individual on site private sewage disposal system.”

Therefore, based on the above, Health Code §§ 143.03, 143.05, 143.07, 143.09 and 143.13 are no longer necessary as the Department is no longer responsible for regulating private sewage disposal facilities regulated by the Department of Buildings and Department of Environmental Protection.

It is proposed that the current definitions in §143.01 be kept and that subdivision (c) be amended to make clear that the Health Department does not regulate portable toilets such as those found on street locations or at construction sites; and that a new subdivision (e) defining “community private sewage disposal systems” be added to §143.01 as this term is not defined in the Health Code, although the Health Department currently regulates such sewage disposal systems under §143.11.

2. Repeal Article 145

Article 145 (“Water Pollution Control”) requires a permit from the Department for discharge of sewage into City waters. The Department requests that the Board repeal Article 145 as no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

The resolution is as follows.

Matter to be deleted is in brackets []

Matter underlined is new

RESOLVED, that subdivision (c) of §143.01 (Definitions) of Article 143 (Disposal of Sewage) of the New York City Health Code found in Title 24 of the Rules of the City of New York, be, and the same is, amended, and a new subdivision (e) is added, to be printed with explanatory notes to read as follows.

§143.01 Definitions.

* * *

(c) Privy means a permanent facility for urinating or defecating embedded in the subsurface which is not waterflushed and which does not connect, directly or otherwise, to a private sewage disposal system or the municipal sewage disposal system, and includes a chemical toilet[.] but does not include portable toilets such as those found in transportation facilities or at construction or other street locations.

* * *

(e) Community private sewage disposal system means a private sewage disposal system which services fifteen or more dwellings.

Notes:

Subdivision (c) was amended and a new subdivision (e) was added by resolution adopted by the Board of Health on XXX to redefine “privy” and to add a definition of “community private sewage disposal system.”

RESOLVED, that §143.03 (Disposal of sewage generally; use of private sewage disposal system and privies) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the seventh of November nineteen hundred sixty, be and the same hereby is, repealed.

RESOLVED, that §143.05 (Private sewage disposal systems; permit for site and sub-soil evaluation; standards, exception) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the fifteenth of January nineteen hundred seventy-six, be and the same hereby is, repealed.

RESOLVED, that §143.07 (Private sewage disposal systems; proof of proper maintenance) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, repealed.

RESOLVED, that §143.09 (Private sewage disposal systems; requirements for one and two family dwellings) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the twenty-third of September nineteen hundred seventy-one, be and the same hereby is, repealed.

RESOLVED, that §143.13 (Private sewage disposal systems; inspection; operation) of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, amended by resolution adopted on the eighteenth of December nineteen hundred sixty-nine, be and the same hereby is, repealed.

RESOLVED, that the list of section headings of Article 143 (Disposal of sewage) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, amended, to be printed together with Introductory Notes, to read as follows.

ARTICLE 143

DISPOSAL OF SEWAGE

§143.01 Definitions.

[§143.03 Disposal of sewage generally; use of private sewage disposal system and privies.
§143.05 Private sewage disposal systems; permit for site and sub-soil evaluation; standards, exception.
§143.07 Private sewage disposal systems; proof of proper maintenance.
§143.09 Private sewage disposal systems; requirements for one and two family dwellings.]
§143.11 Community private sewage disposal system.
[§143.13 Private sewage disposal systems; inspection; operation.]
§143.15 Privies.
§143.17 Modification by Commissioner.

Introductory Notes:

As part of a comprehensive review of the Code, Article 143 was amended by resolution of the Board on XXX to better reflect practice and the regulatory environment, and to harmonize its provisions with related provisions of local law, §143.01 was amended, and §§143.03, 143.05, 143.07, 143.09 and 143.13 were repealed as no longer necessary. In accordance with Local Law 50/1991 and Local Law 65/1996, the New York City Department of Buildings and the New York City Department of Environmental Protection have jurisdiction over the activities formerly regulated by the Department.

RESOLVED, that Article 145 (Water Pollution Control) of the New York City Health Code found in Title 24 of the Rules of the City of New York, as amended by resolution on the twentieth day of December nineteen hundred and seventy-three be and the same hereby is repealed.

Notes:

Article 145 was repealed by resolution adopted on XXX as part of a Health Code revision process intended to modernize and update the Health Code as this provision is no longer necessary. The discharge of waste into City waters is comprehensively regulated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 22 U.S.C.A. §1251 et seq., and by the New York State Department of Environmental Conservation under 6 NYCRR Part 750 (State Pollutant Discharge Elimination System).

6/5/09

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