

ARTICLE 167 BATHING BEACHES

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§167.01 Applicability.

- (a) This Article shall apply to all bathing beaches, as defined under §167.03, that are owned, leased or operated by a person, group of persons, firm, corporation, association, organization, institution or city agency, but shall not apply to bathing beaches owned and/or maintained by an individual for the use of the individual and/or family and friends wherein no monetary compensation or any other compensation or consideration is exchanged.
- (b) A camp regulated and permitted under Article 48 of the Health Code shall not require a permit under Article 167 of the Health Code, but shall comply with all other provisions of Article 167.

§167.03 Definitions.

- (a) "Adequate" means sufficient to accomplish the purpose for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this Article.
- (b) "Approval" means an authorization, permit, certification or equivalent determination issued pursuant to requirements promulgated by the Department.

- (c) "Aquatic Supervisory Staff" means an individual possessing the qualifications of Supervision Level I, Supervision Level IIb, or a supervising lifeguard, as defined in §167.19(c) of this Article.
- (d) "*Bathing*" means recreational activities where any part of the human body may come in direct contact with water to the point of complete body submergence. Bathing includes, but is not limited to, swimming, diving, and wading. Bathing does not include any activities where contact with the water is minimal and where ingestion of the water is not probable, such as fishing and boating.
- (e) "*Bathing Beach*" means any waterfront area of the City with associated bathing beach facilities not specifically restricted by the by the provisions contained in §167.05(d), where bathing is permitted regardless of whether it is recommended in accordance with the classifications given in §167.17. Bathing beach facilities include, but are not limited to, buildings, equipment, lavatories, toilets and showers or dressing facilities containing toilets and showers, if any, and the land areas used in connection therewith.
- (f) "*City*" means the City of New York.
- (g) "*Department*" means the New York City Department of Health and Mental Hygiene.
- (h) "*E. coli*" means *Escherichia coli* a bacteria species which is a member of the family enterobacteriaceae which are the predominant facultative anaerobes in humans and warm blooded animal fecal material.
- (i) "*Enterococci*" means enterococci bacteria, a subgroup of fecal streptococci that includes *Enterococcus faecalis*, *Enterococcus faecium*, *Enterococcus avium*, and their variants. Enterococci bacteria are commonly found in the feces of humans and other warm-blooded animals. Although some strains are ubiquitous and not related to fecal pollution, the presence of enterococci in water is an indication of fecal pollution and the possible presence of enteric pathogens.
- (j) "*Fresh Water*" in the City means any pond, lake or river in the City, including the Hudson River.
- (k) "*Geometric Mean*" means the antilog of the summation of the logarithms of the values for samples examined divided by the number of samples.
- (l) "*Major Alteration, Renovation or Modification*" means substantial physical changes to the bathing beach structure, enclosure, and electrical system or to the wastewater system. It does not include normal maintenance or repair.
- (m) "*Marine Water*" means ocean and estuary water bodies. In the City, it means water bodies immediate to The Long Island Sound, Atlantic Ocean, and The New York Bight.
- (n) "*Preemptive Standards—New York City Wet Weather Advisory*." A preemptive standard is a threshold level of precipitation that, when exceeded, can cause combined stormwater and sewage runoff to bypass the waste water treatment plants and overflow onto nearby receiving beach water bodies and may pose a public health threat. Based on hydraulic modeling of City waters, the Department issues Wet Weather Advisories each year for those bathing beaches directly impacted by wet weather.
- (o) "*Public Health Hazard*" is any condition which poses an imminent threat to the health or safety of the public.
- (p) "*Qualified Lifeguard*" means an individual possessing the qualifications of Supervision Level I and IIb as defined in §167.19(c) of this Article.
- (q) "*Responsible Person*" means a competent individual, at least 18 years of age, employed by the owner or operator of the bathing beach, who is capable of exercising control over the

patrons and is trained in the use of lifesaving and safety equipment, in emergency procedures and the Beach Safety Plan.

- (r) "Standard Method" means the most recent edition of the publication entitled Standard Methods for the Examination of Water and Wastewater, as published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

§167.05 Permit Applications.

- (a) No person, group of persons, firm, corporation, association, organization or institution shall construct, operate, modify, maintain or grant permission for the use of any bathing beach without a permit issued by the Department. No bathing establishment shall be constructed nor shall any major renovation or modification be made to any bathing establishment unless a completed application for construction, alteration or addition is submitted to the Department for review and approval prior to commencement of work. The permit shall be posted conspicuously at the facility. The Department may order any bathing beach operating without a permit to close and remain closed until the bathing beach has obtained and displays a valid permit issued by the Department.
- (b) Application. Application for a permit shall be made to the Department at least 30 days prior to the opening of any bathing beach. The application shall include appropriate fees, application forms and other supplemental information as required by the specific circumstances.
- (c) Renewal. A bathing beach permit shall be renewed at least 30 days before reopening for the season. A bathing beach may be closed by the Department for failure to renew a bathing beach operating permit before reopening.
- (d) Restriction. No person shall operate, construct or maintain and no permit shall be issued for a bathing beach within 750 feet of the point of discharge of the outlet of any sanitary sewer, the flow of which would contribute in any way to the pollution of the waters used by the bathers, and located outside the boundary delineated for primary contact recreation as defined by applicable regulations of the New York State Department of Environmental Conservation (see 6 NYCRR §700.1; see also, 6 NYCRR Parts 890, 891). "Primary contact recreation" shall mean recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.
- (e) Requirements for Permit Approval. All bathing beaches shall be designed, constructed and completed in accordance with the requirements of this Article. For permit applications for new bathing beaches, the following must be submitted to the Department:
 - (1) A completed and approved Beach Safety Plan, as required by §167.23.
 - (2) Certificate of Occupancy for the bathing beaches from the City Department of Buildings including certificate of inspection for electrical work and plumbing.
 - (3) Copies of Aquatic Supervisory Certificates, as required by §167.19.
- (f) Change in Ownership. In the event of change in ownership of any bathing beaches permitted under this Article, the owner shall file an application with the Department for a change in ownership within 30 days after such change has occurred.
- (g) Exemption. No permit is required for operation of a bathing beach or for the construction or maintenance of a bathing beach facility by a State or Federal agency.

§167.07 New Construction, Major Renovation or Modification.

No major alteration, renovation or modification shall be made in a bathing beach unless a written description of the alteration or repair or addition is submitted to and approved by the Department in writing prior to commencing work. Repair or remodeling of an existing permitted bathing beach shall be in compliance with the design and construction requirements in this Article. Prior to adapting a water body for use by siting or constructing a public bathing beach, and prior to major renovation or modification of a existing bathing beach, the Department shall review and approve the following:

- (a) Engineering Plans, Specifications and Engineering Reports. Every owner, personally or through his or her engineer or architect, shall submit to the Department engineering plans, specifications and engineer's report covering construction, major alteration or modification of the bathing beach prior to the start of construction. Plans, specifications, and reports shall be prepared by an engineer or architect licensed to practice in the State of New York, and shall include at least the following:
 - (1) A Scope of Work Letter. The letter shall include a detailed discussion of the proposed work to be performed;
 - (2) Engineering plans. Three identical sets of engineering plans each bearing the seal and signature of an engineer or architect licensed to practice in the State of New York. The plans shall include the layout of the bathing beach, including, but not limited to: dimensions, bathhouses, access roads, parking, building, water supplies, sanitary and storm sewers, electrical and telephone services; and
 - (3) Specifications. One set of complete specifications for the construction of the bathing beach.
- (b) Supplemental Information. An application shall be accompanied by any supplemental information, evidence, or documentation that the Department deems necessary.
- (c) Proposed Bathing Beaches. In addition to the requirements set forth in subsections (a) and (b) of this section, an application to locate and/or construct a public bathing beach shall include, but not be limited to, the following:
 - (1) Site Assessment. A site assessment must include the following information:
 - (A) Watershed Map. A detailed map depicting the waterbody and watershed, including but not limited to existing wastewater treatment plant discharge points, combined sewer overflow discharges, septic systems, storm sewer outfalls, agricultural runoff, landfills, commercial or industrial drainage, or other facilities that may have an impact on water quality, adjacent land use and major physical contour, highways, etc. The extent of the watershed to be mapped should be based upon knowledge of the characteristics of the watershed. All potential sources of pollution and wastewater discharge points must be shown on the map.
 - (B) Plot Map. A map drawn to scale, showing bathing beach location, dimensions, contours, existing land use and wastewater discharge points within 10,000 feet of the proposed beach unless otherwise required by the Department.
 - (C) Water Level. Seasonal or anticipated water level variation. If auxiliary water to augment low flow is planned, source, location and flowrate shall be described.
 - (D) Sources of Contamination. Evaluation of: (i) type and size of existing and potential sources of contamination, volume, occurrence and concentration level of

- materials in the effluent that may be of potential hazard to the bathers, and (ii) the potential for additional contamination after a significant rainfall event.
- (E) Weather and Topographical Influences. Prevailing wind direction during the bathing season, rainfall, topography, or environmental factors including current measurements.
 - (F) Water Quality. A history of the bacteriological quality, pH, and the turbidity of the proposed body of water shall be researched from all possible sources. The results of at least one set of representative bacterial samples, each week for a period of eight weeks shall be included. Eight sets of samples shall include at least one set after heavy rains consisting of daily samples for a five-day period.
 - (G) Physical and Chemical. The physical and chemical quality of bathing water, including color, odor, floatable debris, oils and greases, high turbidity and other substances that can potentially present a public health threat. Except at ocean beaches, it shall be possible to see an eight inch black-and-white disk in four feet of water. Clarity tests should be performed at four-foot depth in the bathing area at a minimum of three different locations. A map depicting test locations, dates of sampling, and current conditions should be submitted.
 - (H) Biological. The biological quality of the bathing water, including vegetation types, infectious snails, bird nesting areas, and poisonous or dangerous aquatic organisms.
 - (I) Fishing, Boating and Canoeing. Location and level of boat traffic, number of vessels with marine sanitation devices, marinas or boat dockage areas, and any canoeing activity or fishing.
- (2) Bathymetry. Bathing area boundaries, bottom slopes and material including high and low tide lines, and depth lines at mean high tide on a 5-foot contour.
 - (3) Emergency Services. Location relative to service facilities, such as medical, fire and police protection and communication.
 - (4) Capacity. Maximum and average bathing loads.
 - (5) Any other information that may impact the health or safety of bathers.
- (d) Certification. Prior to operation of a new facility or equipment, the applicant must submit to the Department a construction compliance certificate prepared and signed by a professional engineer or architect licensed to practice in New York State. This certificate must include a written statement that the bathing beach and the building(s) and all appurtenances have been constructed in accordance with plans and specifications approved by the Department.
 - (e) Construction Compliance Inspection. The applicant shall notify the Department of the completion of construction, modification, alteration or addition in order to schedule a required compliance inspection. Approval for a construction compliance inspection will be granted when all of the required items are completed to the Department's satisfaction.
 - (f) Permit Conditions. Approval certificates or permits from other permit issuing agencies, if applicable or required by the Department.

§167.09 Enforcement.

- (a) Public Health Hazards and Closing Criteria. Where a public health hazard condition exists, including one or more of the following, and said hazard(s) is(are) not immediately corrected, the bathing beach may be immediately closed in whole or in part by the Department and shall remain closed until such conditions are corrected to the satisfaction

of the Department and in accordance with the provisions of this Article. The bathing beach in whole or in part shall remain closed until the Department has authorized reopening. Public health hazards shall include, but not be limited to, any of the following:

- (1) Failure to provide adequate supervision of the beach as prescribed in §167.19;
 - (2) Failure to provide all lifesaving and safety equipment as prescribed in §167.21;
 - (3) Water quality inadequate as specified in §167.17(c);
 - (4) Failure to post public notification signs or advisories as prescribed in §167.27 indicating a potential health hazard or hazardous conditions, when water quality exceeds prescribed standards, in the event of sewage spills and pollution events, or when medical waste/hazardous materials are observed;
 - (5) Failure to provide adequate signs indicating that swimming and bathing are prohibited when lifeguards are not on active duty as prescribed in §167.19(a)(4), or when the bathing beach is closed;
 - (6) Medical waste, sewage, petroleum or other hazardous materials observed in beach area as prescribed in §167.13(a)(2);
 - (7) Use of unapproved or contaminated water supply sources for potable water use as prescribed in §167.31(f);
 - (8) Overhead electrical wire within 20 feet horizontally of the bathing beach as prescribed in §167.37(g)(2);
 - (9) Operating a bathing beach without a valid permit issued by the Department as prescribed in §167.05(a), (c);
 - (10) Operating without an approved Beach Safety Plan as prescribed in §167.23(a);
 - (11) Failure to provide depth markings, safety lines and diving requirements as prescribed in §167.29(b)(4), (5);
 - (12) Failure to provide appropriate safety and warning signs as prescribed in §167.37(f)(1), (f)(2)(B), (C); and,
 - (13) Any other condition determined to be a public health hazard by the Department.
- (b) Inspection availability. The most recent inspection report shall be available at the facility at all times and shall be presented for inspection upon request by the Department.

§167.11 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this Article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

§167.13 Water Quality Standards.

- (a) All bathing beaches shall meet the following water quality standards:
- (1) Bacteriological. The water quality in a bathing beach shall be determined through the collection and analysis of water samples for the presence of Enterococci and/or E. coli bacteria using the Standard Methods for the determination of Enterococci bacteria and E. coli approved for bathing beaches. The bacteriological water quality of bathing beaches shall meet the following standards:
 - (A) For marine water beaches

Enterococci geometric mean shall not exceed 35 per 100 ml for a series of five or more samples collected during a 30-day period.

(B) For freshwater beaches

Enterococci geometric mean shall not exceed 33 per 100 ml for a series of five or more samples collected during a 30-day period.

-OR-

E. coli geometric mean shall not exceed 126 per 100 ml for a series of five or more samples collected during a 30-day period.

- (2) *Chemical and Physical Quality.* The water shall be free of deposits, floatable debris, growths, oils and greases, or any foreign substances that may potentially present a public health threat. The water in bathing beaches shall be considered to exceed the chemical and/or physical quality standards when the Department determines that any substance is being discharged or may be discharged into the water that is or may be hazardous to the health of persons using the bathing beach.

- (b) *Preemptive Standards—New York City Wet Weather Advisory.* The bathing beach operator shall post public notifications as prescribed in §167.27(a).

§167.15 Monitoring.

- (a) Collection of samples and analysis for the purpose of surveillance or design shall be performed in accordance with the sampling plan specified by the Department. The sampling procedures will be based on potential pollution sources, storm water discharges, historical water quality data, regional hydrodynamics, beach usage, beach length, and geomorphology for representation of water quality monitoring.
- (b) Laboratory Analysis. Bathing beach samples shall be examined by a laboratory in possession of a valid current New York State Department of Health National Environmental Laboratory Accreditation Certification (NELAC) using approved methods in accordance with City, state, and federal agencies.
- (c) Preemptive Standards—New York City Wet Weather Advisory. For bathing beaches covered under this advisory, the operator shall be knowledgeable of the established wet weather rainfall intensity standards set for the facility. The operator shall monitor rainfall intensity/data on a daily basis during the bathing season.

§167.17 Classifications.

The Department shall assign to each bathing beach one of the classifications listed below based on the evaluation and evidence of information provided by water quality data, sanitary and safety survey, site condition or historical information.

- (a) *Class A: Open for Swimming and Bathing.* All of the following conditions shall be considered in order for a beach to be classified as open and approved for swimming and bathing:
- (1) Bathing beach water quality standards are in accordance with §167.13.
 - (2) Sanitary and safety surveys conducted pursuant to §167.25 are satisfactory to the Department; and
 - (3) The epidemiological history is satisfactory to the Department. No repeated complaints/reports of illness/injury received from the public or from owners/operators of bathing beaches.

(b) *Class B: Under Advisory—Not Recommended for Swimming and Bathing.* When any of the following conditions is present, a bathing beach/facility shall be under advisory, notifying the public of the likelihood of polluted water and recommending that the public avoid swimming in the water to prevent contracting a swimming related illness:

- (1) Rainfall intensities exceed the preemptive standards/threshold of New York City Wet Weather Advisories, as issued by the Department before each bathing season.
- (2) A sanitary and safety survey or investigation reveals the presence of floatable debris, medical/infectious waste, toxic contaminants, petroleum products and/or other contamination on the beach or evidence of sewage and wastewater discharge, which may constitute a potential public health hazard.

(c) *Class C: Closed—Temporarily Restricted for Swimming and Bathing.* When one or a combination of any of the following conditions exist, the beach may be closed for bathing.

- (1) Water quality standards exceed the standards set forth in §167.13; or
- (2) Epidemiological data indicates a significant incidence of related illnesses or repeated complaints/reports of illness/injury received from beach patrons; or
- (3) Sanitary and Safety Survey/Investigation: A sanitary and safety survey or an investigation reveals the presence of floatable debris, medical/infectious waste, toxic contaminants, petroleum products or other contamination on the beach, or there is evidence of sewage and wastewater discharge in sufficient quantities that will adversely affect the quality of the beach water; or
- (4) Presence of public health hazards as illustrated in §167.09.

If a bathing beach is closed due to unsatisfactory water quality sampling data, the beach shall remain closed to the public until appropriate sampling shows that the water quality meets the standards prescribed in §167.13(a). When a bathing beach is closed pursuant to §167.17(c), no one shall be allowed in the water and the beach must not be reopened without the express written permission of the Department. If a beach operator temporarily closes a beach voluntarily, the operator may reopen the beach when the conditions that led to the closing have been corrected.

§167.19 Supervision and Certification.

(a) *Supervision.* Aquatic Supervisory Staff defined under §167.19(c) shall be on duty at the waterside at all times when a bathing beach is used by the bather(s) and shall provide continuous visual supervision and surveillance of the bathers in their assigned or designated area of coverage, without interference or interruption of his/her duties unless additional qualified staff is provided. The staff shall not be subject to duties that will divert their attention from the safety of the bather(s), or that will prevent immediate assistance to persons in distress in the water.

- (1) *Minimum Supervision Requirement.* At least one aquatic supervisory staff person having at least the required supervisory level required under §169.19(c) shall be provided at all times for continuous visual surveillance for each 50 yards of beachfront or fraction thereof. Sufficient aquatic supervisory staff must be provided for visual surveillance of the entire bathing area(s) open for swimming or bathing.
- (2) *Additional Supervision.* The Department may require additional aquatic supervisory staff whenever it is necessary for the protection of the bathers. Factors for additional aquatic supervision requirement may include, but are not limited to: bather loads, currents, tides, and any other conditions which may cause changes in water conditions; size and configuration of beach shape; diving board use; and other bather activities.

- (3) *Area without Supervision.* Legible signs stating "No Swimming or Bathing" must be posted at areas not permitted/approved for bathing on property adjoining the designated bathing area that is owned or under control of the permit holder.
 - (4) *Lifeguard Not on Duty.* When no lifeguard is on duty at a beach, legible signs stating "No Lifeguard on Duty—Bathing and Swimming Prohibited", or language to that effect, shall be posted at every entrance to the bathing area. The sign must be at least 36" × 24" in size, with letters at least two inches high.
- (b) *Operator.* All bathing beach and beach facilities shall be maintained and supervised by a responsible person who, as the operator, shall maintain the beach in compliance with the provisions of this Article. The operator of the bathing facility shall be accountable for, but not be limited to, the following responsibilities:
- (1) Controlling decorum and activities at the bathing site;
 - (2) Hiring and retaining adequate and qualified supervisory personnel;
 - (3) Reporting injuries and deaths to the Department;
 - (4) Public notification for potential contamination, confirmed contamination or public health hazards;
 - (5) Monitoring weather, and other environmental conditions, that impact the beach; and
 - (6) Maintaining the physical facilities as required by this Article.
- (c) *Certifications.* All bathing beaches shall be supervised by the required certified personnel. Copies of certificates or other documents showing possession of such qualifications shall be kept at the facility at all times and shall be presented for inspection by the Department upon request.
- (1) *Lifeguards.* Appropriately certified lifeguards shall be present whenever the beach is open. A minimum of one supervising lifeguard is required for bathing beaches that require three or more lifeguards. The lifeguard shall meet the following minimum requirements:
- (A) *Ocean Surf Beach: Supervision Level I—Surf Lifeguards*
 - (i) Shall be at least 16 years old; and
 - (ii) Shall possess a current American Red Cross Basic Life Support for the Professional Rescuer Cardiopulmonary Resuscitation ("CPR") certificate or American Heart Association Course "C" CPR certificate, or an equivalent certificate approved by the New York State Department of Health. Certification period must not exceed one year; and
 - (iii) Must possess a current Municipal Lifeguard Certification, or accepted equivalent certificate having successfully completed a minimum 20-hour (24-hour if first aid skills are included) surf lifeguard training courses acceptable to The New York State Department of Health. All training and ocean testing must be satisfactorily completed prior to assignment at ocean front. The certification period must not exceed three years.
 - (B) *Non-Surf Beach: Supervision Level IIb—Beach Lifeguard*
 - (i) Shall be at least 16 years old (or 15 years old if supervisory lifeguard is present); and
 - (ii) Shall possess a current American Red Cross Basic Life Support for the Professional Rescuer CPR certificate or American Heart Association Course "C" CPR certificate, or an equivalent certificate approved by the New York

State Department of Health. Certification period must not exceed one year; and

- (iii) Shall successfully complete a minimum 20-hour (24-hour if first aid skills are included) lifeguard training course (including a beach module) acceptable to the New York State Department of Health and possess a current certificate thereof. Certification period must not exceed three years.

(C) *Supervision Level III*

- (i) Shall be at least 18 years old (or 16 years old if certified as Level II Lifeguard);
- (ii) Shall possess a current American Red Cross Community—CPR certificate, or equivalent approved by the New York State Department of Health. Certification period shall not exceed one year; and
- (iii) Shall be competent to:
 - (a) understand and apply the rules and regulations of this Article and implement the safety plan;
 - (b) evaluate environmental hazards;
 - (c) use lifesaving equipment; and
 - (d) undertake bather/crowd control.

(D) *Supervising Lifeguard.* Beaches that require Supervision Levels I and IIb aquatic supervisory staff shall provide a supervising lifeguard when the facility is required to provide three or more aquatic supervisory staff.

- (i) Shall have the lifeguard qualifications specified in §167.19(c)(1)(A) for Ocean Surf Beach or §167.19(c)(1)(B) for Non-Surf Beach, as appropriate for the beach; and
- (ii) Shall have at least two seasons of adequate lifeguard experience.

§167.21 Lifesaving and Safety Equipment.

- (a) Lifesaving equipment shall be kept in good repair, have its function plainly marked, be kept in ready-to-use condition, and be readily accessible at bathing beaches at all times. At a minimum, the following equipment shall be maintained at all times:
 - (1) One rescue tube or torpedo buoy with attached line and a pocket face mask or face shield with a one way valve to assist with CPR for each lifeguard required by this Article, and
 - (2) One rescue board or lifeboat including sterned lifeboat, a catamaran surfboat or other suitable surfboat. The lifeboat or surfboat shall have hanging ropes on each side so that bathers may readily hold on and obtain support. The lifeboat or surfboat shall also be equipped with at least one ring buoy or life preserver with 60 feet or 18 meters of line attached, and
 - (3) One spine board, minimum of 6 feet long and 16 inches wide, provided with straps and head immobilizer to aid immobilization of victim, and 10 handholds, and
 - (4) One First Aid kit, which may be any commercially prepared 24-unit kit, or a supply of bandaids, bandage compresses and self-adhesive bandages.
- (b) At least one set of the items listed in (2), (3) and (4) above shall be provided for each 500 feet of beachfront or fraction thereof, or as specified in the approved Beach Safety Plan, and shall be readily accessible to the lifeguards therein.
- (c) Lifeguard Station

- (1) Elevated Chair. There should be one elevated lifeguard chair for each 50 yards of beach front, or at locations provided in the approved safety plan. Elevated lifeguard chairs or towers shall be high enough to provide a completely unobstructed view of the bathing area under surveillance.
- (2) Lifeguard Apparatus. Each lifeguard chair shall be equipped with a whistle or megaphone, and an umbrella or sunshade.
- (d) Telephone and Emergency Contact List. A telephone, radio, or other suitable means of communication shall be readily accessible to the lifeguards for emergency communications at the bathing beach. A telephone list of local police, emergency medical services, nearest hospital and other entities shall be posted in a conspicuous place. At beaches with multiple lifeguard chairs, at least one radio and telephone shall be readily available from a lifeguard station building.
- (e) Emergency Care/First Aid Room. Every bathing beach capable of accommodating 500 bathers shall have a readily accessible room or area designated and equipped for emergency care. The room shall be equipped with at least the following:
 - (1) Running potable water;
 - (2) A cot or bed with blankets and sheets;
 - (3) Advanced first aid supplies at least equivalent to 24 units; and
 - (4) Resuscitation equipment.

§167.23 Beach Safety Plan.

- (a) The operator of a bathing beach shall develop, maintain, and implement a written Beach Safety Plan that consists of health and safety procedures to be followed by beach personnel during normal operations and in emergency situations. The plan shall include daily procedures and protocols for bather supervision, coverage and surveillance, responsibility and organization of all personnel, injury prevention, reacting to potential incidents, injuries and emergency situations, a list of emergency telephone numbers, location of first aid and rescue equipment, providing first aid and summoning help, and such other information, evidence, or documentation as the Department may require. The safety plan must be approved by the Department in writing before implementation. The safety plan must be kept at the beach facility at all times and be presented for inspection by the Department upon request.
- (b) Revisions. The owner, lessee or operator shall submit to the Department revisions to the Beach Safety Plan whenever a change occurs in the facility, or at the direction of the Department. Revisions to the Beach Safety Plan shall not be implemented without written approval from the Department.

§167.25 Sanitary and Safety Survey.

Prior to opening the bathing beach for operation, the operator or aquatic supervisory staff shall conduct a daily sanitary and safety survey. A sanitary and safety survey shall include, but not be limited to, a visual inspection for untreated sewage discharge, petroleum oil slick, floatable debris, medical/infectious materials or other sources of contamination as per §167.13(a)(2). All refuse (especially items such as syringes and medical refuse), garbage, and debris left on the beach or floating nearby, shall be removed and disposed of properly. The waterfront area of the beach shall be free of potholes, loose rocks, debris, glass containers, and other dangerous objects. If pollution

which may potentially present a public health threat is observed, as described in §167.13(a)(2), the operator shall close the beach immediately and notify the Department for further instructions.

§167.27 Public Notification.

Bathing beach operators shall notify bathers of potential contamination, confirmed contamination, or public health hazards, as classified in §§167.17(b) and (c), by posting signs as prescribed by the Department in a conspicuous and visible place. Signs shall be posted by the bathing beach facility in areas visible to bathers including, but not limited to, beach entrances, bulletin boards, or in the general vicinity of the common bathing areas.

(a) Class B: Under Advisory—Not Recommended For Swimming and Bathing.

(1) Preemptive Standards—New York City Wet Weather Advisory. The bathing beaches covered under the Wet Weather Advisories, as defined under §167.03(n), shall post a "permanent" advisory at their beach operation, in an area visible and accessible to the public, during the entire bathing season, notifying the public of possible water quality standard exceedances and the potential of contracting bathing related illnesses. The operator is responsible for monitoring the rainfall intensities in the area. When the rainfall intensity exceeds the thresholds of the Preemptive Standards—New York City Wet Weather Advisories, as issued by the Department, the operator shall post additional signs approved by the Department indicating that the Wet Weather Advisory is in effect until the required time period has elapsed.

(2) Preemptive Swimming and Bathing Advisory. The operator is responsible for posting signs indicating a Preemptive Swimming and Bathing Advisory when instructed by the Department. The sign must be posted and maintained until further notice from the Department.

(b) Class C: Closed—Temporarily Restricted for Swimming and Bathing.

(1) The bathing beach shall be closed for swimming and bathing by the operator when notified by the Department and must remain closed until the Department authorizes reopening. The operator is responsible for restricting bathers from entering the water and for posting beach closure signs as required by the Department.

(2) If the operator or any aquatic supervisory staff on duty determines that adverse weather or other environmental conditions pose a threat to the health and safety of the public, the operator must close the beach and beach closure signs must be posted.

§167.29 Control of Beach and Water Use.

(a) Each bathing beach shall be under the supervision of a competent operator who shall require the careful observance of sanitary regulations prescribed in this Article and the requirements of the permit issued for such bathing beach.

(b) Waterfront Use.

(1) Bather Loading. The number of bathers permitted in the bathing water of a bathing beach shall not exceed the maximum permissible loading established by §167.37(c). The operator shall be responsible for restricting usage so that the maximum capacity is not exceeded.

(2) Surrounding Property. All areas of an owner's, lessee's, or operator's property that are adjacent to the designated beach and are accessible to the public for entry into the water for bathing shall be supervised or patrolled during hours of operation. Bathing is prohibited in areas where there is not lifeguard supervision.

- (3) Safety Signs or Public Advisory. Signs to be posted shall be maintained and posted conspicuously in manner consistent with the requirements of this Article.
- (4) Depth markings and safety lines shall be provided and maintained in accordance with the provisions of §167.37(e) and be clearly visible and readable.
- (5) Diving. Diving shall not be permitted unless minimum depths in accordance with provisions contained in §167.37(d)(2) of this Article are provided.
- (6) Bathing at 150 feet or more from shore is prohibited.
- (7) Motorized Vehicle. No motorized vehicles shall be permitted on the beach, except emergency and maintenance vehicles operated by the aquatic supervisory staff, lifeguards, or operators.
- (8) Water Sports. No boating, water skiing, fishing, scuba diving, or surfboarding shall be permitted in a bathing area when bathing is allowed. Floating lines, buoys, or signs may designate separate areas for the above activities.
- (9) Swimming and bathing are prohibited outside of established hours, at night, during lightning or a thunderstorm, or in dangerous or unauthorized areas.
- (10) Fishing. Where allowed at a bathing beach during bathing season, fishing shall be permitted only in areas where bathing has been temporarily prohibited.
- (11) Electrical Devices. All plug-in electrical devices, such as portable announcing systems and radios, are prohibited within 20 feet of the water.
- (12) Glass. Glass containers shall not be permitted on the beach.
- (13) Refuse. During bathing season, all refuse, garbage and debris, whether water borne or produced in connection with the normal operation of the bathing beach, must be removed, stored, and disposed of in a sanitary manner to prevent harborage of rodents, insect attraction or breeding, odors, public health hazards, and environmental pollution.

§167.31 Facility Use and Maintenance.

- (a) All bathing beach facilities shall be properly lighted, ventilated, and maintained and operated in a safe, clean, and sanitary condition at all times. The floors, fixtures, showers, and toilets shall be kept clean, free of dirt and debris, and in good condition. Floors shall be maintained in a slip-resistant condition. A supply of toilet paper shall be provided at each toilet at all times.
- (b) Toilet. Toilet and shower facilities shall be provided and maintained at all bathing beaches in accordance with §167.39.
- (c) Hosing. A minimum length of 50 feet of hosing shall be provided and available within the bathhouse to flush the entire area. Vacuum breakers shall be attached to all hose bibbs.
- (d) Lavatories. All lavatories shall be provided with liquid soap in an acceptable dispenser, paper towels or other individual towels or electrical hand-drying units, and a covered waste receptacle. Common use of bar soap or cloth towels shall not be permitted.
- (e) Structural Condition. Walls and floors of the bathing beach facility shall be free from cracks or open joints. The floors must be well drained.
- (f) Drinking Water. Water supply serving all plumbing fixtures, including drinking fountains, lavatories and showers, shall use the City water supply or shall meet the applicable drinking water quality standards for all sources of water supply in New York state. All facilities shall be provided with drinking water through a drinking fountain or served by disposable single-service drinking cups.

§167.33 Drowning, Injury and Illness Incidents.

- (a) 24-Hour Notification. In the event of a drowning, injury or illness in a bathing beach, bathing beach facility, or within the confines of the bathing beach, the owner, lessee, or operator shall notify the Department within 24 hours of occurrence whenever an incident occurs that:
 - (1) Results in death;
 - (2) Requires resuscitation;
 - (3) Requires referral to a hospital or other facility for medical attention; or
 - (4) Involves illnesses associated with the water quality;
- (b) *Reporting*. In the event of an incident referred to in subsection (a) of this section, the owner, lessee, or operator shall submit to the Department a written incident report within seven days. The incident report shall be recorded in the log book and shall include:
 - (1) Name of the lifeguards, supervisor staff or operator;
 - (2) The date, time, exact location and type of incident;
 - (3) Cause of the injuries;
 - (4) The extent of injuries, if any;
 - (5) Actions taken by persons at the site;
 - (6) Witnesses statements; and
 - (7) Lifesaving and safety equipment used, if any.

§167.35 Record Keeping.

The operator shall keep and maintain a log book of daily bathers using the beach, number of lifeguards on duty, weather conditions, water clarity, results of any water quality laboratory results and reports, and any reported rescues, injuries and illnesses. Copies of records shall be submitted to the Department on a monthly basis. The records shall be maintained at the facility for 12 months.

§167.37 General Requirements.

- (a) All bathing beaches shall be designed and constructed in accordance with the requirements contained in this Code. These standards are applicable to the design of new or modified bathing beaches regulated by this Article. The designing architect or engineer shall certify the structural stability and safety of the facility.
- (b) Pre-Qualifications for Proposed Beach. A proposed bathing beach shall meet the following pre-qualification requirements for establishing a beach:
 - (1) Site Assessment. A satisfactory approval by the Department for site assessment contained in §167.07(c);
 - (2) Water Surface Area. The water surface where the beach is to be developed shall be at least one acre. In the event that the area is less than four acres with natural flow-through below 100 gallons per bather per day, a source of dilution water of at least 100 gallons per bather per day must be provided in accordance to the water quality requirements prescribed in §167.13;
 - (3) Land Area. At least 35 square feet of land area per bather shall be provided;
 - (4) Bottom Slope. For depths up to four feet, the slope shall be uniform and not exceed 1:10 for greater depths, the slope should not exceed 1:3;
 - (5) Bottom Material. The bottom up to a water depth of six feet shall consist of sand, pea gravel or other similar material;

- (6) Sewage Discharge. Wastewater discharges from sewage treatment plants, combined sewers or other sources shall be prohibited within 750 feet of the bathing beach;
- (7) Water Currents. Water currents in the bathing area shall not exceed three feet per second; and
- (8) Water Quality. Bathing beaches shall meet the water quality standards for bacteriological, physical and chemical quality contained in §167.13.
- (c) Maximum Permissible Loading. Maximum Bathers. The maximum number of bathers permitted in the shallow water (four feet or less) of a bathing beach shall not exceed one bather per 25 square feet of water surface. In areas of water depth greater than four feet, at least 75 square feet per bather shall be provided.
- (d) Diving.
 - (1) Diving Platforms. Floating diving piers and fixed platforms shall be constructed with a visible 12-inch air space under maximum feasible load. There shall be as little underwater construction as is consistent with adequate support. All braces and struts shall be designed to prevent entrapment of bathers. For solid flotation devices such as foam blocks, no air space is required.
 - (2) Depth. Diving from rafts, piers or other platforms shall be prohibited, unless a minimum water depth at mean low tide of eight feet is provided and maintained for a distance of at least 10 feet forward of the diving direction. For a diving board or other device three or less feet above the water, the depth at the end of it, and for 12 feet beyond it, shall be 10 feet. For heights above water greater than three feet, the depth at those locations shall be 12 feet and 20 feet beyond it. No diving device more than 10 feet above water shall be installed.
- (e) Depth Markers and Safety. Except ocean beaches, marker lines with buoys shall be provided at all beaches to designate the perimeter, the shallow and deep-end areas at a depth of three to four feet, the diving area, drop-offs, and radical changes in slopes or underwater obstructions. A separate wading area up to two feet deep, designated by lines, shall be provided. Lines shall have floats at five-foot intervals and be securely anchored, and have buoys no more than 25 feet apart and at point where lines are joined.
- (f) Safety and Warning Signs.
 - (1) "No Diving" Markers. Clearly visible depth markers shall be provided at all the diving boards, platforms piers, floats and similar facilities, together with warning signs indicating "No Diving" where depth is less than eight feet.
 - (2) Warning Signs. A sign or signs shall be securely posted in a conspicuous place or places at the bathing facility and shall provide the following information:
 - (A) Maximum number of persons permitted at the bathing beach at any time;
 - (B) The hours during which public bathing is allowed, and that entry into water at other times is prohibited; and
 - (C) Beach Closed. "No Swimming and Bathing" signs shall be placed up in areas adjacent to the beach but not open for swimming and bathing, and on the beach during the closed season.
- (g) Electrical Requirements.
 - (1) All electrical wiring shall conform to Chapter 3 of Title 27 of the Administrative Code of the City of New York, entitled the "Electrical Code" and the National Electrical Code of the National Fire Protection Association, or any successor regulation or code.

- (2) Overhead Clearance. No overhead electrical wiring, including lights, or plug-in electrical devices, such as portable announcing systems and radios, shall pass within 20 feet horizontally of the bathing beach high water line.
- (h) Safety Equipment. The bathing beach shall provide the lifesaving and safety equipment identified in §§167.21(a), (b) and (c).
- (j) Emergency Care/First Aid Room. Every bathing beach capable of accommodating 500 bathers shall have a readily accessible room or area designated and equipped for emergency care. The room shall contain the equipment identified in §167.21(d).

§167.39 Bathhouses.

- (a) Materials. Floors of the facility shall be of smooth-finished material with non-slip surfaces, impervious to moisture, cleanable and sloped at least one-fourth inch per foot to drains. Carpeting shall not be permitted in shower and toilet areas or other areas receiving bathers. Junctions between walls and floors shall be coved. Walls and partitions shall be of smooth, impervious materials, free from cracks or open joints. Partitions between dressing cubicles shall maintain at least 10 inches of open space from the floor or shall be placed on continuous raised masonry or concrete bases at least four inches high or on legs with bottom of locker at least 10 inches above the floor.
- (b) Toilets, Washbasins and Showers. All bathing beach facilities shall be provided with an adequate number of toilets and handwashing facilities.
 - (1) A facility shall provide properly lighted, ventilated and maintained toilets and handwashing sinks and an adequate number of showers or a dressing facility containing toilets and showers.
 - (2) Separate toilet facilities shall be provided for each sex. All toilet facilities shall be provided with soap, paper towels or electrical hand drying units, and covered waste receptacles. Suitable sanitary napkin receptacles shall be provided in toilet facilities used by females.
 - (3) Where showers are provided, they shall be supplied with water at a temperature of at least 90 degrees Fahrenheit and no more than 110 degrees Fahrenheit at a rate of at least 1.5 gallons per minute per showerhead. Thermostatic, tempering or mixing valves shall be kept in good operation to prevent scalding of bathers.
- (c) Drinking Water Fountains. Where drinking fountains are provided, at least one drinking fountain for each 500 feet distance or for every 1,000 users shall be provided.
 - (1) Fountains shall be of slanting jet type with surrounding guard and non-submersible opening.
 - (2) Fountains shall be supplied with a minimum water pressure of 20 pounds per square inch.
- (d) Suits and Towels. Where swimming suits and/or towels are provided, these items shall be properly stored and sanitized.
- (e) Lockers. Lockers, where provided, shall be constructed on solid masonry or concrete bases at least four inches high or on legs with bottom of lockers 10 inches above the floor. Lockers shall be vented.