

## ADOPTION OF FINAL RULE

### **New York City Department of Environmental Protection**

Notice is hereby given pursuant to the authority vested in the Commissioner of Environmental Protection by Section 1403(d) of the City Charter and Sections 24-222 and 24-228 of the Administrative Code that the Department promulgates and adopts rules that establish a process to appeal a stop work order issued pursuant to Section 24-223.1 of the Administrative Code.

#### **Statement of Basis and Purpose of Rule**

Local Law Number 53 of 2018 amended the Administrative Code by adding a new Section 24-223.1, which provides for the issuance of a stop work order when it is found that work is being performed in violation of the provisions of Section 24-222 or 24-228 or any rules promulgated thereunder.

DEP is promulgating these rules, as required by Section 24-223.1, to establish a procedure for requesting a hearing to appeal a written stop work order by amending Chapter 45 of Title 15 of the Rules of the City of New York (RCNY).

DEP is also amending Chapter 32 of Title 15 of the RCNY to add the hearing for appeal of written stop work orders provided for in the new Chapter 45 to the list of adjudicatory hearings that can be conducted by DEP.

DEP received no comments at the public hearing nor were any submitted to DEP.

Consistent with the above, DEP promulgates the following new Rule, to be found at 15 RCNY Chapter 45 and 15 RCNY Chapter 32.

The Rule is authorized by Section 1043 of the Charter and Sections 24-204 and 24-223.1 of the Administrative Code.

The text of the Rule follows.

Section 1. Subdivision (d) of Section 32-01 of Chapter 32 of Title 15 of the Rules of the City of New York is amended to read as follows:

(d) Appeal of a Stop Work Order issued pursuant to Administrative Code § 24-136(h) or 24-223.1.

§ 2. Section 45-01 of Chapter 45 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 45-01 Abatement and Stop Work Orders Issued Pursuant to [Section] Sections 24-146 and 24-223.1.

(a) The department may issue an abatement order whenever it is found that work is being performed in violation of the provisions of subdivisions (a) through (f) of section 24-146 of the administrative code, or 15 RCNY Chapter 13, and that such work poses a threat to human health and safety. Such circumstances may include, but are not limited to causing or permitting the emission of dust as a result of the transportation or storage of any material that may generate dust, the construction or alteration of a building or its appurtenances or a road, the spraying of any insulating material in or upon any building or other structure during its construction, alteration or repair, or the causing or permitting a building or other structure to be demolished. Upon issuance of an abatement order, the activity giving rise to the violation shall immediately stop unless otherwise specified.

(b) The department may issue a stop work order if it finds that work is being performed in violation of the provisions of section 24-223.1 of the administrative code, or any rules promulgated thereunder. For the purposes of section 24-223.1, work that poses a threat to human health and safety may include, but is not limited to, causing or permitting noise above the decibel levels set forth in section 24-223 or 24-228, or prescribed decibel levels contained in an approved alternative noise mitigation plan. Upon the issuance of a stop work order, the activity giving rise to the violation must immediately stop unless otherwise specified by the department

~~[(b) Such]~~ (c) An abatement order may be given orally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons performing the work. A stop work order may be given as provided in subdivision (b) of section 24-223.1 of the administrative code. Except as provided in subdivision ~~[(c)]~~ (d), a verbal order ~~[shall]~~ must be followed promptly by a written order and ~~[shall]~~ must include the reason for the issuance of ~~[an abatement]~~ the order. The order may require all such work to be done as may be necessary, in the opinion of the commissioner, to remove the danger therefrom.

~~[(c)]~~ (d) An abatement order issued pursuant to subdivision (a) of this section or a stop work order issued pursuant to subdivision (b) of this section may be appealed in accordance with 15 RCNY § 45-02. In the case of a verbal abatement or stop work order, if the commissioner determines that the condition that gave rise to the order has been immediately corrected, such order shall be lifted at once and shall not be followed by a written order.

§ 3. Section 45-02 of Chapter 45 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 45-02 Procedure to Appeal a Written Abatement Order Issued Pursuant to Section 24-146 or a Written Stop Work Order Issued Pursuant to Section 24-223.1.

(a) Notice and opportunity to be heard.

(1) The appeal shall be filed on a form to be prescribed by the department.

(2) Upon filing of an appeal, a hearing will be scheduled in accordance with the provisions of 15 RCNY Chapter 32. The hearing will be held within 14 days of the filing of the appeal.

(3) After the hearing, the department may lift the abatement or stop work order if it is determined that the order was not properly issued, or upon the submission of proof satisfactory to the commissioner that the requirements of such order have been satisfied.