

## **NOTICE OF ADOPTION OF FINAL RULE**

### **Department of Environmental Protection**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** by Section 1043(c) of the City Charter and Sections 24-146(e) and 24-105 of the Administrative Code, that the Department of Environmental Protection promulgates and adopts amendments to its rules by adding a new Chapter 49 to Title 15 of the Rules of the City of New York regarding the requirements for preventing dust from becoming airborne when insulating material is sprayed. These amendments were proposed and published in the City Record on November 8<sup>th</sup>, 2017 and written comments were received. A public hearing was held on December 20<sup>th</sup>, 2017 and testimony was provided based upon one of the submitted public comments.

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

Local Law Number 38 for the year 2015 amends Title 24 of the Administrative Code of the City of New York by requiring the department to promulgate rules that will require precautions to be in place prior to the spraying of insulating material in or upon any building during construction, alteration or repair.

DEP promulgates these rules, as required by Section 24-146(e), with the goal of reducing dust released into the environment, which is a known cause of asthma and other respiratory complications.

This rulemaking sets forth DEP's determination as to the precautions that must be followed to comply with Section 24-146(e).

Consistent with the above, DEP promulgates the following new Rule, to be found at 15 RCNY Chapter 49. This rule excludes spray on foam applications from the definition of "insulating material." DEP revised the rule both in the applicability section as well as clarified precautions that must be taken based on industry practices as well as city and state regulations governing this subject matter.

The Rule is authorized by Section 1043 of the New York City Charter and section 24-105 and 24-146(e) of the Administrative Code.

The text of the Rule follows.

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 49, to read as follows:

### **Chapter 49 Spraying Insulating Material**

### **§49-01 Definitions.**

For the purposes of this chapter, the following term has the following meaning:

Insulating Material. “Insulating Material” means any material or combination of materials, except spray on foam, that restricts the flow of heat energy.

### **§49-02 Applicability.**

This chapter is not applicable to new construction.

### **§49-03 Precautions to be Taken During Spraying of Insulating Material.**

No person may cause or permit the spraying of any insulating material in or upon any building or other structure during its construction, alteration or repair, unless he or she complies with the following precautions.

(1) Before the start of spraying operations all floor areas must be shoveled clean. Before the application of insulating material commences, the floor of the areas must be cleared of all objects, material and equipment other than that employed in the application of the insulating material, or all objects, material, and equipment must be covered with plastic or other approved tarpaulins in a manner that prevents the subsequent dispersal of dust.

(2) The entire floor, or the part of the floor to be insulated, must be enclosed with plastic or other approved tarpaulins in a manner that prevents the escape of dust from the enclosure. All interior open areas, such as elevator shafts and stairwells must be enclosed in a manner that prevents the escape of dust from the working area. Stack effect of the shafts and stairwells must be considered in providing proper enclosures. An enclosure will be considered satisfactory only if visible insulating material cannot escape from the enclosure.

(3) Wet insulating material that has fallen to the floor must be shoveled and scraped to prevent dispersal of dried material. This material must be removed no later than the end of the working day. Shoveled and scraped material must be placed in a heavy plastic bag strong enough to resist tearing or breaking under normal handling conditions and clearly marked as containing insulating material waste. The bags must then be placed into containers pursuant to section BC 3303.4.2 of the New York City Building Code. The contents of the aforementioned plastic bags must not be transferred to another container and must not be combined with any designated recyclable materials pursuant to §§16-305, 16-306, 16-306.1, 16-307, 16-308 and 16-314 of the Administrative Code of the City of New York. The plastic bags must be placed upon a vehicle for either transfer to a solid waste transfer station pursuant to Chapter 4 of Title 16 of the Rules of the City of New York or disposal at a site approved by the commissioner and regulated under 6 NYCRR Part 360 if located in New York State or that is consistent with the regulations adopted by any locality where such disposal site is located if outside New York State.

(4) All areas used for opening bags containing insulating material and/or changing of containers must be vacuumed with a HEPA air filtration vacuum or a dust collection system.

(5) Signs must be posted outside enclosures warning persons that entering the enclosure without appropriate apparel may be a hazard.

(6) Facilities must be provided and procedures instituted and supervised that prevent the removal and dispersal of insulating material from the construction site on the clothing or other accessories of persons leaving the area. All persons involved in the spraying of insulating material at the site must be furnished with personal protective equipment specified in the applicable Safety Data Sheet, including suitable coveralls which must be left at the site until properly disposed of in plastic garbage bags. No person will be permitted in an area in which spraying or handling of insulating material is underway or has taken place until the final vacuuming referred to in paragraph four of this subdivision has been accomplished, unless such person is furnished with or wears personal protective equipment in accordance with this paragraph.

(7) Any plenum or structures coated with insulating material which are intended for use in circulation of air in the building must be thoroughly cleaned of all debris, dust and waste insulation. All applied insulation material within a plenum or duct must comply with section MC 602.2.1 of the New York City Mechanical Code.

(8) A person who is fully trained in accordance with current standard industry practice must be assigned the full-time responsibility of supervising the spraying, preparation and clean-up operations to ensure that no insulating material is released from the construction site.

(9) In case of emission of insulation material from the construction site, immediate steps must be taken to cease such emissions which may include work stoppage at the source of the emissions. There must then be immediate and complete clean-up of all material that has escaped the construction site using control measures including but not limited to the use of a water hose and HEPA vacuum that prevent further dispersal of any insulating material into the atmosphere.