

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

### **New York City 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 24-105 and 24-163.11 of the Administrative Code, that the Department promulgates and adopts rules requiring that heavy duty trade waste hauling vehicles operate using the best available retrofit technology.**

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

Local Law number 38 for the year 2015, as codified in Section 24-163.11 of the Administrative Code, requires the Department of Environmental Protection (“DEP”) to promulgate rules requiring heavy duty trade waste hauling vehicles to operate using the best available retrofit technology.

This rule sets forth DEP’s determinations as to precautions that must be used to comply with the requirements of Section 24-163.11. The goal of this rule is to reduce particulate matter emission from the vehicles by requiring controls that will limit the amount of particulate matter emitted into the open air from a heavy duty trade waste hauling vehicle.

This rulemaking is authorized by Section 1043 of the Charter of the City of New York and sections 24-105 and 24-163.11 of the Administrative Code. The rule adds a new Chapter 51 to Title 15 of the Rules of the City of New York.

DEP received written comments from one individual and two comments during the public hearing concerning issues with installing BART where some but not all engines in an engine family are verified on the EPA and CARB websites. DEP has a variance procedure in place to address such situations.

Consistent with the above, DEP promulgates the following Rule to be found at 15 RCNY Chapter 51.

Matter underlined is new. Matter in [brackets] is to be deleted.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rule of this department unless otherwise specified or unless the context clearly indicates otherwise.

#### **Final Rule**

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 51, to read as follows:

**§51-01 Definitions**

“Best Available Retrofit Technology” or “BART” means technology verified by the United States Environmental Protection Agency (“EPA”) or the California Air Resources Board (“CARB”) for reducing the emission of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies that is applicable to a particular engine and application that has been approved for use by the commissioner or is installed with an EPA certified engine year 2007 or later.

“Commissioner” means the Commissioner of the New York City Department of Environmental Protection or his or her designee.

“Heavy duty trade waste hauling vehicle” means any diesel-fuel powered vehicle with a gross weight of over sixteen thousand pounds that is owned or operated by an entity that is required to be licensed or registered by the New York City Business Integrity Commission pursuant to section 16-505 of the Administrative Code and that is operated in New York City for collection and/or removal of trade waste.

“Trade Waste” shall have the same meaning as set forth in subdivision f of section 16-501 of the Administrative Code.

**§51-02 Best Available Retrofit Technology in Heavy Duty Trade Waste Hauling Vehicles.**

Pursuant to section 24-163.11 of the Administrative Code, any heavy duty trade waste hauling vehicle shall use the BART as defined in section 51-01 of this chapter. Owners and operators of these vehicles shall consult the EPA and CARB verified lists at <https://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel> and <https://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>.

**§51-03 Classification Level to Select Best Available Retrofit Technology**

Level I

The BART selected to comply with section 51-02 of this chapter must meet the classification level specified in this section.

Any Diesel Particulate Filter (DPF) or other technology verified for a specific engine type from either EPA or CARB verified lists that reduces particulate matter emissions by 85 percent or more, or reduces engine emissions to less than or equal to 0.01 grams diesel particulate matter

per brake horsepower-hour or applicable 2007 EPA standard for particulate matter as set forth in section 86.007-11 of title 40 of the United States Code of Federal Regulations or to any subsequent EPA standard for such pollutant that is at least as stringent shall be deemed to be in compliance with this regulation.

#### **§51-04 Record Submittal Documentation**

Any heavy duty trade waste hauling vehicle that meets the definition set forth in section 51-01 of this chapter shall utilize BART and the vehicle owner or operator must identify in list form and submit to the department all types of pollution control technology devices utilized for such vehicle as set forth in section 51-03 of this chapter. In order to meet this certification requirement, evaluation documents from the vendor/installer including a data logging record must be submitted to the department by the owner and operator of these vehicles.

#### **§51-05 Variance Procedure**

(a) An owner or operator of a heavy duty trade waste hauling vehicle that meets the definition set forth in section 51-01 of this chapter may apply to the Commissioner no later than June 1, 2019 for a variance pursuant to Section 24-110 of the Administrative Code if upon evaluation by the Department, there is a lack of feasibility or unavailability finding for either spatial constraints or safety concerns. Nothing in this section shall preclude the Business Integrity Commission from issuing a financial hardship waiver, pursuant to Section 24-163.11(c) of the Administrative Code.