

New York City Department of Environmental Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection is proposing rules that would establish requirements that heavy duty trade waste hauling vehicles to use the best available retrofit technology.

When and where is the hearing? The Department of Environmental Protection will hold a public hearing on the proposed rule. The public hearing will take place at 2PM on June 13th, 2018. The hearing will be in the Department's 9th floor hearing room at 59-17 Junction Boulevard, Flushing NY 11373.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail comments to Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on June 13th, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by June 6th, 2018.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 718-595-6531. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by DATE.

This location has the following accessibility option(s) available: wheelchair accessibility.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at

<http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at a few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing, NY, 11373.

What authorizes the Department of Environmental Protection (DEP) to make this rule? Sections 1043 of the City Charter and Sections 24-163.11 and 24-105 of the Administrative Code authorize DEP to make this proposed rule. This proposed rule was included in DEP's regulatory agenda for this Fiscal Year.

Where can I find the DEP's rules? The DEP's rules are in Title 15 of the Rules of the City of New York.

What laws govern the rulemaking process? DEP must meet the requirements of Section 1043(c) of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed 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 proposed 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 proposed 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 proposed rule will add a new Chapter 51 to Title 15 of the Rules of the City of New York.

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.

Proposed Rule Amendment

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.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Fuel Requirements for Heavy Duty Trade Waste Hauling Vehicles

REFERENCE NUMBER: 2018 RG 034

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 30, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Fuel Requirements for Heavy Duty Trade Waste Hauling Vehicles

REFERENCE NUMBER: DEP-45

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

April 30, 2018
Date