

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 (DEP) is proposing an amendment to its rules that would establish standards for the curing of violations of sections 24-165, 24-166, and 24-227 of the Administrative Code, which relate to air and noise pollution.

When and where is the hearing? DEP will hold a public hearing on the proposed rule. The public hearing will take place at 10 a.m. on September 24, 2014. The hearing will be held in the 8th floor conference room at 59-17 Junction Boulevard, Flushing, New York.

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

- **Website.** You can submit comments to DEP through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to DEP, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to DEP, 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 September 24, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by September 24, 2014.

Do you need assistance to participate in the hearing? You must tell the Bureau 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. You must tell us by September 17, 2014.

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, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the department to make this rule? Section 1043 of the New York City Charter and sections 24-165, 24-166 and 24-227 of the New York City Administrative Code authorize DEP to make this proposed rule. This proposed rule was not included in the

department's regulatory agenda for this fiscal year as the rule could not have been anticipated since the law was changed after the agenda was developed.

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

What rules govern the rulemaking process? DEP must meet the requirements of Section 1043 of the New York 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 153 (LL 153) for the year 2013 amended various sections of the Administrative Code of the City of New York, including two sections in the Air Pollution Control Code (24-165 and 24-166) and one section in the Noise Control Code (24-227). The amendments to Sections 24-165, 24-166 and 24-227 made by LL 153 give respondents an opportunity to avoid paying a civil penalty for a first violation of these sections if they admit liability and provide a certification that demonstrates that they have cured the violation within a forty-five day time period.

LL 153 requires the Commissioner of the DEP to promulgate rules that prescribe the information and documentation needed for a respondent to certify that he or she has permanently corrected a violation issued under Section 24-165, 24-166 or 24-227. A certification of compliance is necessary for the Commissioner to recommend that no monetary penalty be imposed for a first violation of these sections.

Consistent with the above, DEP proposes the following new rule, to be found at 15 RCNY Chapter 36.

This rule is authorized by Section 1043 of the Charter of the City of New York and sections 24-165(g), 24-166(c), and 24-227(d) of the Administrative Code.

The text of the rule follows.

New material is underlined.
[Deleted material is in brackets.]

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

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 36 to read as follows:

Chapter 36
Cure Period for Certain Air and Noise Code Violations

§36-01 Definitions

As used in this Chapter, the following terms are defined as follows:

- (a) "Board" means the New York City Environmental Control Board.
- (b) "Code" means the New York City Administrative Code.
- (c) "Commissioner" means the Commissioner of the Department of Environmental Protection.
- (d) "Department" means the New York City Department of Environmental Protection.

§36-02 Certification of Cure - Violation of Section 24-165

(a) Pursuant to subdivision g of §24-165 of the Code, the Commissioner may recommend to the Board that no civil penalty be imposed for a first violation of such section provided that, within 45 days after the return date, the respondent admits liability and files a certification with the Department containing the information and documentation prescribed in subdivision b of this section.

(b) The certification required by subdivision a of this section must be made by a licensed oil burner installer in a notarized letter to the Department that includes:

(1) A certification that the air contaminant recorder is functioning properly and is in compliance with §24-165 of the Code.

(2) A description of the work that was done to bring the device into compliance.

(c) If the Commissioner accepts the certification required by this section, he or she will recommend to the Board that no civil penalty be imposed for the violation. The violation may still serve as a predicate for purposes of imposing penalties for subsequent violations of §24-165 of the Code.

§36-03 Certification of Cure - Violation of Section 24-166

(a) Pursuant to subdivision (c) of §24-166 of the Code, the Commissioner may recommend to the Board that no civil penalty be imposed for a first violation of such section provided that, within 45 days after the return date, the respondent admits liability and files a certification with the Department containing the information and documentation prescribed in subdivision b of this section.

(b) The certification required by subdivision (a) of this section must be made by a licensed oil burner installer in a notarized letter to the Department that includes:

(1) A certification that the combustion shutoff is functioning properly and is in compliance with §24-166 of the Code.

(2) A description of the work that was done to bring the device into compliance.

(c) If the Commissioner accepts the certification required by this section, he or she will recommend to the Board that no civil penalty be imposed for the violation. The violation may still serve as a predicate for purposes of imposing penalties for subsequent violations of section 24-166 of the Code.

§36-04 Certification of Cure - Violation of Section 24-227

(a) Pursuant to paragraph (d) of §24-227 of the Code, the Commissioner may recommend to the Board that no civil penalty be imposed for a first violation of such section provided that, within 45 days after the return date, the respondent admits liability and files a certification with the Department containing the information and documentation prescribed in subdivision b of this section.

(b) The certification required by subdivision (a) of this section must be made by a contractor or consultant retained by the owner of the circulation device in a notarized letter to the Department that includes:

(1) A certification that the circulation device is in compliance with the sound levels set forth in §24-227 of the Code.

(2) A description of all permanent improvements and modifications made to achieve compliance with such sound levels, including but not limited to, the installation of appropriate sound insulation, isolators, suspension mounting and/or sound mitigation devices or materials, and diagrams of such work, together with copies of all bills and receipts for such work, and;

(3) All sound level measurements taken at a location within the two closest receiving properties abutting the establishment and/or in a location specified by the Department. If there is difficulty gaining entry to any receiving property, the Department must be informed and will set an alternate location. All such measurements must be performed by a noise consultant or contractor. In the alternative, the respondent may request the Department to take measurements.

(c) If the Commissioner determines that the work described in the certification required by this section is insufficient to correct the violation, the Commissioner may not recommend a zero penalty. If the Commissioner accepts the certification required by this section, he or she will recommend to the Board that no civil penalty be imposed for the violation. Such violation may still serve as a predicate for purposes of imposing penalties for subsequent violations of §24-227 of the Code.

§36-05 Effect of Certification

Before the Commissioner recommends that no civil penalty be imposed for a first violation pursuant to Section 36-02, 36-03, or 36-04 of this Chapter, the Department may independently verify the documentation submitted by a respondent or the qualifications of the licensed oil burner installer, consultant, or contractor who performs the required corrective measures.

**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: Cure Periods for Environmental Violations

REFERENCE NUMBER: 2014 RG 056

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: August 8, 2014

**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: Cure Periods for Environmental Violations

REFERENCE NUMBER: DEP-15

RULEMAKING AGENCY: DEP

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

August 11, 2014
Date