

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 promulgating rules that would establish a process to appeal a stop work order issued pursuant to section 24-223.1 of the Administrative Code.

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 August 22, 2018. The hearing will be held 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 August 22, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by August 22, 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 required to allow sufficient time to arrange the accommodation. Please tell us by August 15, 2018.

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 that have been submitted online by visiting the NYC rules website: <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 the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing, N.Y. 11373.

What authorizes the Department of Environmental Protection (DEP) to make this rule? Sections 1043 of the City Charter and Sections 24-204 and 24-223.1 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 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 proposing 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.

Consistent with the above, DEP proposes to promulgate 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.

**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: Amendment of rules regarding the issuance and appeal of a stop work order.

REFERENCE NUMBER: 2018 RG 063

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: 7/10/2018

**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: Amendment of rules regarding the issuance and appeal of a stop work order.

REFERENCE NUMBER: DEP-50

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

July 11, 2018
Date