

## 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 regarding the filing of notices of mold remediation projects.

**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 11AM on February 6<sup>th</sup>, 2019. The hearing will be held in the Department's 8<sup>th</sup> 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](mailto: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 February 6, 2019. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by February 6<sup>th</sup>, 2019.

**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 February 1<sup>st</sup>, 2019.

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 Section 24-154 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 61 of 2018 amended the Administrative Code by adding a new Section 24-154, which provides that, before the performance of mold remediation work in certain buildings, the New York State-licensed mold remediation contractor must file a notice of mold remediation with DEP no later than two business days before the project start date.

Section 24-154(c)(3)(b) further provides that notice may be filed within 24 hours after the project starts, instead of at least two days before, if the mold condition to be remediated poses an immediate risk of harm to any person or damage to property. The purpose of this proposed rule is to establish when such a risk of harm exists.

DEP is proposing this rule in conjunction with the Departments of Health and Mental Hygiene, Housing Preservation and Development and Buildings, as required by Section 24-154(c)(3)(b).

Consistent with the above, DEP proposes to promulgate the following rule as a new Chapter 53 in Title 15 of the Rules of the City of New York.

The Rule is authorized by Section 1043 of the Charter and Section 24-154(c)(1)(g) of the Administrative Code.

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 58 to read as follows:

### Chapter 58 Notification of Mold Remediation

#### §58-01 Applicability

(a) This rule applies to mold remediation projects for which a notification to the department of environmental protection is required pursuant to § 24-154 of the administrative code.

#### §58-02 Conditions that Pose an Immediate Threat of Harm to Any Person or Damage to Property.

(a) To determine if a notification of mold remediation must be filed pursuant to § 24-154 of the administrative code, an immediate risk of harm to any person or damage to property is considered to exist when any of the following are present in the dwelling to be remediated:

(1) At least 30 square feet or more of visible mold within one room.

(2) Excessive water accumulation or flooding.

(b) Before commencing work, the mold remediation contractor must determine if any of the conditions listed in subdivision (a) exist, and must indicate in the mold remediation notice which, if any of these conditions exist, and attach appropriate documentation of said condition.

**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:** Notice of Mold Remediation Work

**REFERENCE NUMBER:** 2018 RG 136

**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: 12/28/2018

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

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

**RULE TITLE:** Notice of Mold Remediation Work

**REFERENCE NUMBER:** DEP-61

**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/ Ashley A. Pettaway  
Mayor's Office of Operations

December 31, 2018  
Date