

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 for preventing dust from becoming airborne when insulating material is sprayed.

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 1 pm. on December 20. The hearing will be in the Department's 8th 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 December 20, 2017. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by December 20, 2017.

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 December 13, 2017.

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 and of the City Charter and Sections 24-146(e) 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 amends Title 24 of the Administrative Code of the City of New York by requiring the department to promulgate rules that will require precautions to be in place prior to the spraying of insulating material in or upon any building during construction, alteration or repair.

DEP is proposing these rules, as required by Section 24-146(e), with the goal of reducing dust released into the environment, which is a known cause of asthma and other respiratory complications.

This rulemaking sets forth DEP's determination as to the precautions that must be used to comply with section 24-146(e).

Consistent with the above, DEP proposes the following new Rule, to be found at 15 RCNY Chapter 49. This proposed rule excludes spray on foam applications from the definition of "insulating material." DEP invites comments regarding this exclusion.

The Rule is authorized by Section 1043 of the Charter of the City of New York and section 24-105 and 24-146(e) of the Administrative Code.

The text of the Rule follows.

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 49, to read as follows:

Chapter 49

§49-01 Definitions

Insulating Material. “Insulating Material” means any material or combination of materials, except spray on foam, that retards the flow of heat energy.

Precautions to be Utilized During Spraying of Insulating Material.

§49-02

Precautions to Reduce Emissions from the Spraying of Insulating Material. No person may cause or permit the spraying of any insulating material in or upon any building or other structure during its construction, alteration or repair, unless he or she complies with the following precautions.

(1) Before the start of spraying operations, all floor areas must be shoveled clean. Before the application of insulating material commences, the floor of the areas must be cleared of all objects, material and equipment other than that employed in the application of the insulating material, or all objects, material, and equipment must be covered with plastic or other approved tarpaulins in a manner that precludes the subsequent dispersal of dust.

(2) The entire floor, or the part of the floor to be insulated, must be enclosed with plastic or other approved tarpaulins in a manner which precludes the escape of dust from the enclosure. All interior open areas, such as elevator shafts and stairwells must be enclosed in a manner which prevents the escape of dust from the working area. Stack effect of the shafts and stairwells must be considered in providing proper enclosures. An enclosure will be considered satisfactory only if visible insulating material cannot escape from the enclosure.

(3) Wet insulating material which has fallen to the floor must be swept up to prevent dispersal of dried material. This material must be removed no later than the end of the working day. Swept-up material must be placed in a heavy plastic bag strong enough to resist tearing or breaking under normal handling conditions and clearly marked as containing insulating material waste. The bags must then be placed into containers pursuant to section BC 3303.4.2 of the New York City Building Code. The contents of the aforementioned plastic bags must not be transferred to another container and shall not be combined with any designated recyclable materials pursuant to §§§16-305,16-306, 16-306.1, 16-307, 16-308 and 16-314 of the Administrative Code of the City of New York. The plastic bags shall be placed upon a vehicle for either transfer to a solid waste transfer station pursuant to Chapter 4 of Title 16 of the Rules of the City of New York or disposal at a site approved by the commissioner and regulated under 6 NYCRR Part 360 if located in New York State or that is consistent with the regulations adopted by any locality where such disposal site is located if outside New York State.

(4) All floors must be vacuumed shortly after drying. The contents of the vacuum bag must be carefully placed in a container of the type described in paragraph three of this subdivision and must thereafter be placed on a vehicle for removal and disposal at a site in accordance with all applicable rules of the New York City Department of Sanitation and all other applicable laws and rules.

(5) The materials used to form the enclosure must be thoroughly vacuumed immediately after spraying is completed. The entire floor area, as well as ledges and surfaces including tarpaulins upon which waste insulation material may have fallen, must then be vacuumed or revacuumed before removal of the enclosures.

(6) Enclosures must not be dismantled until the area has been thoroughly vacuumed after completion of spraying and clean-up.

(7) All areas used for opening bags containing insulating material and/or changing of containers must be enclosed in such a manner that prevents insulating material from escaping the immediate area in which such activity takes place.

(8) Signs must be posted outside enclosures warning persons of the hazards of entering the enclosure without appropriate apparel.

(9) Facilities must be provided and procedures instituted and supervised that preclude the removal and dispersal of insulating material from the construction site on the clothing or other accessories of persons leaving the area. All persons involved in the spraying of insulating material at the site must be furnished with suitable coveralls which must be left at the site until properly disposed of in plastic garbage bags. No person will be permitted in an area in which spraying or handling of insulating material is underway or has taken place until the final vacuuming referred to in paragraph five of this subdivision has been accomplished, unless such person is furnished with or wears coveralls of the type described herein.

(10) Any plenum or structures coated with insulating material which are intended for use in circulation of air in the building must be thoroughly cleaned of all debris, dust and waste insulation. All applied insulation material within a plenum or duct must comply with section MC 602.2.1 of the New York City Mechanical Code.

(11) A person must be assigned the full time responsibility of supervising the spraying, preparation and clean-up operations to assure that no insulating material is released from the construction site.

(12) In case of emission of insulation material from the construction site, immediate steps must be taken to cause the cessation of such emissions which may include work stoppage at the source of the emissions. There must then be immediate and complete clean-up of all material that has escaped the construction site using control measures including but not limited to the use of a water hose and HEPA vacuum that prevent further dispersal of any insulating material into the atmosphere.

**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: Limitation of Airborne Particulates in Spraying of insulating Material

REFERENCE NUMBER: 2017 RG 051

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: 10/31/2017

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

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

RULE TITLE: Limitation of Airborne Particulates in Spraying of insulating Material

REFERENCE NUMBER: 2017 RG 051

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/ ALEXANDRA OZOLS
Mayor's Office of Operations

Date: 10/31/2017