

## 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 considering adding rules to establish fees to replace Subchapter 5 of Chapter 1 of Title 24 of the Air Pollution Control Code (the “Air Code”), which will be repealed as of May 6, 2016.

**When and where is the hearing?** The department will hold a public hearing on the proposed rule amendments. The public hearing will take place at 10 a.m. on March 21, 2016. The hearing will be held in the 9<sup>th</sup> 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 the Department of Environmental Protection through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19<sup>th</sup> Floor, Flushing, NY 11373.
- **Fax.** You can fax written 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 March 21, 2016. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by March 21, 2016.

**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 postal mail or email to the addresses given above. You may also tell us by telephone at 718-595-6531. You must tell us by March 21, 2016.

**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 1403(c) of the City Charter and section 24-105 of the Administrative Code authorize the Department to make this proposed rule, which was included in the Department's regulatory agenda for this fiscal year. This rule is, however, exempt from additional review under section 1043(d) of the Charter on the ground that it only establishes new fees.

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

**What rules govern the rulemaking process?** The Department must meet the requirements of Section 1043 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**

Subchapter 5 of Chapter 1 of Title 24 of the Administrative Code, which set forth fees to be imposed under the Air Pollution Control Code, was repealed by Local Law 38 of 2015, which has an effective date of May 6, 2016. The proposed rule establishes fees to replace the repealed subchapter. The new fee schedule retains the existing fees and establishes fees for previously unregulated equipment that will be regulated under the revised Air Code. These sources include

char broilers, which will require a registration, and cogeneration systems, which will require a certificate of operation.

The new fee schedule also reflects the changes that have been made in the revised Air Code to reflect more accurate units of measurement for various types of equipment, such as kilowatts for generators and horsepower for engines. The current code uses British Thermal Units (btu) as the unit of measurement for all types of fuel burning equipment. The revised Air Code clarifies that the output of some types of equipment is more accurately measured by horsepower (HP) or kilowatts (KW) and the new fee schedule reflects this. The use of this more accurate terminology does not affect the fees imposed.

The revised fee schedule also reflects the change that has been made in the Air Code, which increases the threshold for boiler and engine registrations from 2.8 million Btu per hour to 4.2 million Btu per hour. By increasing the threshold, more boiler applications can be filed through the registration process, which is available for on-line filing.

Finally, the asbestos fees, which are set forth in Subchapter 6 of the current Air Code, were also repealed by Local Law 38 and will be replaced by fees set forth in the proposed Rule. The amounts of the existing fees will not be changed.

New text is underlined; deleted material is in [brackets].

The text of the proposed Rule follows.

Section 1. Chapter 34 of Title 15 of the Rules of the City of New York is added to read as follows:

§ 34-01 General Provisions. (a) This chapter establishes fees pursuant to Chapter 1 of Title 24 of the Administrative Code (the “Air Code”).

§ 34-02 Definitions.

All terms shall have the same meaning as the definitions set forth in section 24-104 of the Administrative Code.

§ 34-03 Registration Fees. The fee for a new registration or registration renewal is as follows:

(a) For boilers or water heaters:

<u>Input in MMBTU/HR</u>	<u>Fee No.2 FUEL OIL &amp;/Or NATURAL GAS</u>	<u>Fee No.4 FUEL OIL ONLY OR #4 FUEL OIL &amp; NATURAL GAS</u>
<u>0.35 to less than 1.0</u>	<u>\$110</u>	<u>\$110</u>
<u>1 to less than 2.8</u>	<u>\$190</u>	<u>\$345</u>
<u>2.8 to less than 4.2</u>	<u>\$345</u>	<u>\$345</u>

(b) For demolitions, a person applying for the registration of the demolition of a building shall pay a fee to be computed by multiplying the street frontage in feet by the number of stories of the building times 25 cents, provided that the minimum fee shall not be less than \$250.00. Wherever a building shall have frontage on more than one street, the longer frontage shall be used in the above computation.

(c) For spraying of insulation, a person applying for the registration of the spraying of insulating material shall pay a fee to be computed by multiplying the street frontage in feet by the number of stories of the building times 60 cents, provided that the minimum fee shall not be less than \$250.00. Wherever a building shall have frontage on more than one street, the longer frontage shall be used in the above computation.

(d) For generators:

<u>Output in KW</u>	<u>Fee</u>
<u>40 to less than 100</u>	<u>\$110</u>
<u>100 to less than 280</u>	<u>\$190</u>
<u>280 to less than 450</u>	<u>\$345</u>

For higher outputs, see subdivision (h) of section 34-04 of this chapter.

(e) For engines:

<u>Output in HP</u>	<u>Fee</u>
<u>50 to less than 135</u>	<u>\$110</u>
<u>135 to less than 375</u>	<u>\$190</u>
<u>375 to less than 600</u>	<u>\$345</u>

For higher outputs, see subdivision (i) of section 34-04 of this chapter.

(f) For cogeneration, and other fossil fuel burning equipment:

<u>Total Heat Input in MMBTU/HR</u>	<u>Fee</u>
<u>0.35 to less than 1.0</u>	<u>\$110</u>
<u>1 to less than 2.8</u>	<u>\$190</u>
<u>2.8 to less than 4.2</u>	<u>\$345</u>

(g) For flares, one hundred ninety (190) dollars.

(h) For equipment used in a process with an environmental rating of C:

<u>Emission in CFM</u>	<u>Fee</u>
<u>100 To 2000</u>	<u>\$250</u>

- (i) For gasoline dispensing stations, one hundred (\$190) dollars.
- (j) The fee to amend a registration shall be sixty-five (\$65) dollars.
- (k) The fee to register a commercial char broiler shall be one hundred ten (\$110) dollars.
- (l) The fee to register a mobile food vending unit shall be one hundred ten (\$110) dollars, except that the fee will be waived for up to twelve (12) years if a Tier IV engine is installed.
- (m) The fee for any other registrations shall be one hundred ten (\$110) dollars.

§ 34-04 Fees for Work Permits and Certificates of Operation. The fee for a new work permit required under section 24-121 of the Air Code, or for a new certificate of operation required under section 24-122 of the Air Code, or for a renewal of a certificate of operation, is as follows:

(a) For boilers and water heaters using fuel oil grade # 2 or natural gas:

<u>Input in MMBTU/HR</u>	<u>Fee</u>
<u>4.2 To Less Than 10</u>	<u>\$345</u>
<u>10 To Less Than 20</u>	<u>\$470</u>
<u>20 To Less Than 35</u>	<u>\$595</u>
<u>35 To Less Than 50</u>	<u>\$700</u>
<u>50 To Less Than 70</u>	<u>\$830</u>
<u>70 To Less Than 100</u>	<u>\$940</u>
<u>100 To Less Than 140</u>	<u>\$1,440</u>
<u>140 Or More</u>	<u>\$1,440 plus \$125 per additional 10 MMBTU/HR Or Fraction Thereof Not To Exceed \$ 10,000.</u>

(b) For boilers and water heaters using fuel oil grade #4 or fuel oil grade #6:

<b><u>Input in MMBTU/HR</u></b>	<b><u>Fee</u></b>
<u>4.2 To Less Than 7</u>	<u>\$470</u>
<u>7 To Less Than 14</u>	<u>\$595</u>
<u>14 To Less Than 21</u>	<u>\$700</u>
<u>21 To Less Than 28</u>	<u>\$830</u>
<u>28 To Less Than 35</u>	<u>940</u>
<u>35 To Less Than 42</u>	<u>\$1,440</u>
<u>42 Or More</u>	<u>\$1,440 plus \$125 per additional 10 MMBTU/HR Or Fraction Thereof Not To Exceed \$10,000.</u>

For boiler using both fuel oil and natural gas, the fee imposed will be based on the grade of fuel oil used.

(c) For equipment used in a process with an environmental rating of C:

<b><u>Emission in CFM</u></b>	<b><u>Fee</u></b>
<u>2,001 thru 5000</u>	<u>\$250</u>
<u>5,001 Thru 20,000</u>	<u>\$470</u>
<u>20,001 Thru 50,000</u>	<u>\$700</u>
<u>50,001 Thru 100,000</u>	<u>\$940</u>
<u>100,001 Or More</u>	<u>\$1,405</u>

(d) For equipment used in a process with an environmental rating of B:

<b><u>Emission in CFM</u></b>	<b><u>Fee</u></b>
<u>5,000 Or Less</u>	<u>\$280</u>
<u>5,001 Thru 20,000</u>	<u>\$525</u>
<u>20,001 Thru 50,000</u>	<u>\$795</u>
<u>50,001 Thru 100,000</u>	<u>\$1,060</u>
<u>100,001 Or More</u>	<u>\$1,580</u>

(e) For equipment used in a process with an environmental rating of A:

<b><u>Emission in CFM</u></b>	<b><u>Fee</u></b>
<u>5,000 Or Less</u>	<u>\$315</u>
<u>5,001 Thru 20,000</u>	<u>\$590</u>
<u>20,001 Thru 50,000</u>	<u>\$875</u>
<u>50,001 Thru 100,000</u>	<u>\$1,175</u>

<u>100,001 Or More</u>	<u>\$1,750</u>
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(f) For dry cleaning equipment, two hundred and fifty (\$250) dollars per unit.

(g) For cogeneration, and other fossil fuel burning equipment:

<b><u>Total Heat Input in MMBTU/HR</u></b>	<b><u>Fee</u></b>
<u>4.2 to less Than 10</u>	<u>\$345</u>
<u>10 To Less Than 20</u>	<u>\$470</u>
<u>20 To Less Than 35</u>	<u>\$595</u>
<u>35 To Less Than 50</u>	<u>\$700</u>
<u>50 To Less Than 70</u>	<u>\$830</u>
<u>70 To Less Than 100</u>	<u>\$940</u>
<u>100 To Less Than 140</u>	<u>\$1,440</u>
<u>140 Or More</u>	<u>\$1,440 plus \$125 per additional 10 MMBTU/HR Or Fraction Thereof Not To Exceed \$10,000.</u>

(h) For generators:

<b><u>Output in KW</u></b>	<b><u>Fee</u></b>
<u>450 to less than 1000</u>	<u>\$345</u>
<u>1000 to less than 2000</u>	<u>\$470</u>
<u>2000 to less than 3500</u>	<u>\$595</u>
<u>3500 to less than 5000</u>	<u>\$700</u>
<u>5000 to less than 7000</u>	<u>\$830</u>
<u>7000 to less than 10,000</u>	<u>\$940</u>
<u>10,000 to less than 14,000</u>	<u>\$1,440</u>
<u>Over 14,000</u>	<u>\$1,440 plus \$125 per additional 1000 KW Or Fraction Thereof Not To Exceed \$10,000.</u>

(i) For engines:

<b><u>Output in HP</u></b>	<b><u>Fee</u></b>
<u>600 to less than 1340</u>	<u>\$345</u>
<u>1340 to less than 2680</u>	<u>\$470</u>
<u>2680 to less than 4695</u>	<u>\$595</u>
<u>4695 to less than 6705</u>	<u>\$700</u>
<u>6705 to less than 9385</u>	<u>\$830</u>
<u>9385 to less than 13,410</u>	<u>\$940</u>
<u>13,410 to less than 18,775</u>	<u>\$1,440</u>

<u>Over 18,775</u>	<u>\$1,440 plus \$125 per additional 1350 HP Or Fraction Thereof Not To Exceed \$10,000.</u>
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(j) For refuse burning equipment, incinerators and crematoriums:

<b><u>Cross Section of Chamber in SF</u></b>	<b><u>Fee</u></b>
<u>8 Or Less</u>	<u>\$300</u>
<u>8.1 Through 25</u>	<u>\$475</u>
<u>25.1 Through 50</u>	<u>\$750</u>
<u>50.1 Through 75</u>	<u>\$1,500</u>
<u>75.1 Or More</u>	<u>\$2,400</u>

(k) The fee to amend a work permit or certificate of operation shall be sixty-five (\$65) dollars

(l) The fee for an application to reinstate an expired permit to install or alter equipment or apparatus filed more than thirty days but less than one hundred eighty days after the expiration date of the permit shall be equal to fifty percent of the fee for the permit to install or alter equipment.

(m) The fee for an application to reinstate an expired permit to install or alter equipment or apparatus more than one hundred eighty days after the expiration date of the permit shall be equal to the fee for a permit to install or alter equipment.

§ 34-05 Fees for Equipment Approvals. The fees for equipment approvals are as follows:

(a) For each application for acceptance of fuel burning equipment rated at equal to or greater than 2.8 million Btu per hour input or gross output firing rate, whichever is greater, \$600.00.

(b) For each application for acceptance of apparatus, or of equipment other than fuel burning equipment, \$400.00.

(c) For each application for an amendment of prior acceptance of equipment or apparatus, \$300.00.

§ 34-06 Asbestos Fees.

(a) An asbestos project notification (Form ACP7) shall be submitted with the following filing fee:

<b><u>Project Size in LF or SF</u></b>	<b><u>Fee</u></b>
<u>26 to 99 LF or 11 to 49 SF</u>	<u>\$200</u>
<u>100 to 259 LF or 50 to 159 SF</u>	<u>\$400</u>
<u>260 to 999 LF or 160 to 999 SF</u>	<u>\$800</u>
<u>1000 LF or 1000 SF or more</u>	<u>\$1,200</u>

(b) An application for an asbestos abatement permit shall be submitted with the following filing fee:

<u>Project Size in LF or SF</u>	<u>Fee</u>
<u>More than 25 to 99 LF or More than 10 to 49 SF</u>	<u>\$100</u>
<u>100 to 259 LF or 50 to 159 SF</u>	<u>\$300</u>
<u>Large projects up to 1000 LF or SF</u>	<u>\$500</u>
<u>1000 to 4999 LF or SF</u>	<u>\$700</u>
<u>5000 to 9,999 LF or SF</u>	<u>\$1,100</u>
<u>10,000 or More LF or SF</u>	<u>\$1,300</u>

(c) The fee for a new or renewed asbestos certificate is as follows:

<u>Type of Certificate</u>	<u>Fee</u>
<u>Restricted Asbestos Handler</u>	<u>\$50</u>
<u>Asbestos Handler</u>	<u>\$100</u>
<u>Asbestos Handler Supervisor</u>	<u>\$100</u>
<u>Investigator</u>	<u>\$250</u>

(d) For each variance application where the combined amount (total of both square and linear feet on the ACP-7) of ACM is less than 5000 feet, payment of the variance processing fee shall accompany the application and shall conform with the payment schedule as follows:

(1) Request to modify no more than one lettered subsection in any section category listed in subsection (e) below: \$400 fee.

(2) For each additional subsection in any category listed in subsection (e): \$200 fee.

(3) The maximum fee: \$1200.

(e) For each variance application where the combined amount (total of both square and linear feet on the ACP-7) of ACM is greater than or equal to 5000 feet, payment of the variance processing fee shall accompany the application and shall conform with the payment schedule as follows:

(1) Request to modify no more than one lettered subsection in any section category listed in subsection (e): \$600.

(2) For each additional subsection in any category listed in subsection (e): \$300.

(3) The maximum fee: \$1800.

(e) Section categories shall be as follows:

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CATEGORY

NYC Asbestos

12 NYCRR Part

	<u>Control Program</u>	<u>56 Section #s</u>
	<u>Section #s</u>	
<u>Air Monitoring</u>	<u>31-45</u>	<u>56-4, 6</u>
<u>Materials and Equipment</u>	<u>61</u>	<u>56-7</u>
<u>Work Place Preparation</u>	<u>81-84</u>	<u>56-7</u>
<u>Work Place Procedures</u>	<u>91-94</u>	<u>56-7</u>
<u>Abatement Procedures</u>	<u>101-110</u>	<u>56-8</u>
<u>Clean-up Procedures</u>	<u>111-112</u>	<u>56-9</u>
<u>Pre-Demolition</u>	<u>120-129</u>	<u>—</u>

**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:** Establishment of Fees for Air Pollution Control Code

**REFERENCE NUMBER:** 2015 RG 123

**RULEMAKING AGENCY:** New York City 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: February 9, 2016