

## NOTICE OF ADOPTION OF FINAL RULE

### **New York City Department of Environmental Protection**

Notice is hereby given pursuant to the authority vested in the Commissioner of Environmental Protection by Section 1403(d) of the City Charter and Sections 24-204 and 24-207(e) of the Administrative Code, that the Department promulgates and adopts rules that prescribe specific time frames for inspections in response to after hours noise complaints received by the Department.

#### **Statement of Basis and Purpose of Rule**

Local Law 53 of 2018 added a new subdivision (e) to Section 24-207 of the Administrative Code. This new subdivision requires the commissioner to prescribe specific time frames for inspections in response to after hours noise complaints received by the department to ensure that inspections are most likely to occur at a time that the alleged noise is continued from the time of such complaint, or at a time when the alleged noise is likely to be repeated.

DEP promulgates these rules, as required by section 24-207(e), to establish the method and strategy to inspect after hours complaints when the noise will still be continuing and/or likely to be repeated.

DEP received a comment from one individual requesting that an actual numerical value be tied to the inspection process to clearly set forth the parameters for when the after hours inspection must occur. That suggested revision is captured in this rule.

Consistent with the above, DEP promulgates the following rule to be found at Chapter 52 in Title 15 of the Rules of the City of New York.

#### **Final Rule**

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 52 to read as follows:

##### Chapter 52 After Hours Noise Complaints

##### § 52-01 After Hours Response Time at Construction Sites.

(a)(1) When a complaint is made to the Department of Environmental Protection (DEP) concerning after hours noise at a construction site, DEP staff will determine whether an after hours variance has been issued pursuant to Section 24-223(a) of the New York City Noise Control Code by the Department of Buildings (DOB). If there is no variance, an inspection will be conducted the same day if the complaint is received during likely working hours. If the

complaint is not received during likely working hours, the inspection will be conducted the following weekend or during the same after hours period, as applicable.

(2) For locations with a DOB variance, an inspection will be conducted during the next time period during which the after hours variance is in effect.

(b) For locations with a DOB variance, DEP will prioritize inspections based upon the number of complaints received per location on a given day.

(c) DEP staff should also monitor after hour complaints to identify situations where complaints have been received about three or more construction sites within a one mile radius of each other and were received within four hours of each other. Where feasible and when such complaints were received during likely working hours, the inspections will be conducted at such locations whether or not there is a variance.

(d) (1) If an after hours complaint is received regarding noise occurring on a weekday, DEP staff shall inspect the location the following weekday.

(2) If an after hours complaint is received regarding noise occurring on a weekend, DEP staff shall inspect at least 95% of such complaints the following weekend, and the remaining percentage of such complaints, if any, shall be inspected the weekend thereafter.

#### § 52-02 After Hours Response Time for Street Work

(a) When a complaint is reported to DEP concerning after hours noise from street construction, which would require an after hours variance from the Department of Transportation (DOT), DEP staff will check the DOT website. If there is no variance, or a variance only for that one day, an inspection will be conducted that day or night. If it is unclear from the website if there is a variance, or if there is a variance within the first three days of receiving such complaint, DEP will conduct an inspection to ascertain if there is a DOT permit and to monitor for noise. DEP staff should inspect 75% of all street construction complaints within three days or less. The remainder of the 25% of complaints should be inspected by the fourth day.

(b) DEP staff should also monitor after-hour complaints to identify situations where three or more complaints relate to the same work location and are received within four hours of each other. Where feasible and the three or more complaints are received within working hours, the inspection will be conducted for those locations whether or not there is an after hours variance.