



# New York City Department of Environmental Protection

## FY17 Regulatory Agenda

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In compliance with section 1042 of the New York City Charter, the following is the regulatory agenda for rules that the New York City Department of Environment of Protection (DEP) anticipates it may promulgate during the fiscal year beginning July 1, 2016 and ending June 30, 2017. An approximate schedule for adopting the proposed rules and the name and telephone number of a DEP official knowledgeable about each subject area involved are listed below each section.

### **1. Construction Noise Mitigation Rules**

When the New York City Noise Control Code was revised in 2004, it regulated construction noise through enforcement of “construction noise mitigation plans” that contractors are required to complete prior to beginning work. The specific requirements of the plans are set forth by rules that DEP promulgated in 2005. DEP seeks to update the rules regarding noise mitigation practices and requirements for street plates, jackhammers, and noise barriers. The amendments could include additional insulating material between street plates and the ground to further reduce noise, additional noise barriers for structures over 20 feet, and include additional technologies for mitigation of jackhammer noise during nighttime construction activities. Builders and contractors are the persons most likely to be affected by these amendments.

Reference: 15 RCNY §28-100 et seq.; NYC Administrative Code §24-219, Noise Mitigation Rules of the Noise Control Code and 34 RCNY §2-11(10) (e), Street Openings and Excavations.  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs (718) 595-6531

### **2. Air Code-related Rules**

The 2016 revised Air Pollution Control Code (Air Code) requires DEP to promulgate rules that give DEP flexibility in accommodating new and evolving technologies for reducing the emission of air contaminants. The potential rules to implement the Code could affect property owners, business owners, contractors, and equipment manufacturers and suppliers.



Reference: NYC Administrative Code Title 24, Chapter 1.  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs (718) 595-6531

### **3. Fireplaces**

The Air Code added a new section 24-149.2 concerning fireplaces. DEP will be promulgating a rule defining renewable fuel for fireplace usage and setting forth the emergency situations in which a fireplace can be used as a primary source of heat. Owners or occupants of residences with fireplaces would be most likely to be affected by this rule.

Reference: NYC Administrative Code 24-149.2  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs, (718) 595-6531

### **4. Wood Burning Heaters**

The Air Code added a new section 24-149.3 concerning wood burning heaters. DEP will be promulgating a rule defining renewable fuel for use in wood burning heaters. Owners of residences with wood burning heaters would be most likely to be affected by this rule.

Reference: NYC Administrative Code 24-149.3  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs, (718) 595-6531

### **5. Open Industrial Use Dust Mitigation**

Section 24-146(d) of the Air Code requires that reasonable measures be taken to prevent the spread of dust from any use of an open area located within an industrial lot. DEP will be promulgating a rule to establish precautions to be employed by users of open areas located within industrial lots to prevent dust from becoming airborne. Owners of open industrial lots would be most likely to be affected by this rule.

Reference: NYC Administrative Code 24-146(d)  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs, (718) 595-6531

### **6. Dust Stop-Work Orders**

Section 24-146(f)(5)(iii) of the Air Code provides that a dust abatement order issued by DEP may be appealed. DEP will be promulgating a rule to establish procedures for the appeal of such abatement orders. Construction companies would be most likely to be affected by this rule.



Reference: NYC Administrative Code 24-146(f)(5)(iii)  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs, (718) 595-6531

### **7. Insulation Spraying**

The Air Code repeals the existing requirements found in section 24-146(e) pertaining to precautions to be taken when spraying insulation materials, and provides that such precautions are to be established by rule. DEP will be promulgating a rule to establish precautions to be employed during the spraying of insulation materials. Construction companies would be most likely to be affected by this rule.

Reference: NYC Administrative Code 24-146(e)  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs, (718) 595-6531

### **8. Mobile Food Vending Units**

The Air Code added a new section 24-163.12 concerning mobile food vending units. DEP will be promulgating a rule setting forth the alternative fuel requirements which must be complied with in order to qualify for a waiver of the registration fee for such units. Owners and operators of mobile food vending units would be most likely to be affected by this rule.

Reference: NYC Administrative Code 24-163.12  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs, (718) 595-6531

### **9. Drilling and Excavation**

In order to guarantee and protect the integrity of New York City's water supply and facilities, the New York City Department of Environmental Protection must set forth uniform standards for the application for and permitting of all drilling and/or excavation in close proximity to a Facility or shaft. Existing provisions of the Administrative Code mandate that the DEP Commissioner protect New York City's water supply in general terms; this Rule would provide explicit protections. It will likely prescribe the specific standards for the application for and permitting of drilling and/or excavation in close proximity to a Facility or shaft. The persons most likely to be affected are those who conduct drilling and/or excavation to a depth greater than 50' from ground surface within each of the lots located within blocks delineated by DEP.

Reference: 15 RCNY [new chapter]  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Melinda Sherer, DEP Legal Affairs (718) 595-6613



## **10. Use of On-site Aerobic and Anaerobic Digestion Equipment**

Under the OneNYC plan, New York City is implementing its Zero Waste Initiative, which calls for a 90% reduction in food waste from designated food serve establishments (FSEs) being sent to landfills. To meet this level of reduction in food waste, FSEs will need to find alternatives to their disposing of food waste via municipal waste collection; these alternatives include On-site Food Waste Treatment (OFWT) systems such as aerobic and anaerobic digesters. These OFWT options have the potential to generate a sewer discharge that may have impacts on the sewer conveyance system, combined sewer over-flows, or the wastewater treatment plants. To avoid and/or reduce potential impacts from OFWT systems, DEP is proposing to adopt rules and guidelines for the FSEs' use of these systems.

Reference: 15 RCNY [new chapter]

Anticipated Schedule: to be promulgated in FY 2017

Contact: Melinda Sherer, DEP Legal Affairs (718) 595-6613

## **11. Water Shortage Rules**

Because of the age of the New York City water supply infrastructure and the need to have an adequate water supply during periods of weather-related drought and/or large conveyance infrastructure repair and/or failure, DEP has recognized the need to amend the Drought Emergency Rules, including the title of the rules. The rules will be amended to apply in all situations of water shortage (rather than only in drought situations), to further clarify the implementation of an emergency rate and to update the existing prohibitions to reflect our current conservation studies and understanding of water use by consumers. The persons most likely to be affected are all consumers of New York City water.

Reference: 15 RCNY, Chapter 21

Anticipated Schedule: to be promulgated in FY 2017

Contact: William Mirrer, DEP Legal Affairs (718) 595-6539

## **12. Asbestos Rules**

In light of its recent experience in enforcing these rules and in light of feedback from the regulated community regarding how certain provisions are affecting their operations, DEP proposes to amend these rules to refine current provisions and to clarify that the rules have as their primary purpose protection of air quality. Affected parties include asbestos abatement contractors, air monitoring companies, and property owners.

Reference: 15 RCNY, Chapter 1

Anticipated Schedule: to be promulgated in FY 2017

Contact: Russ Pecunies, DEP Legal Affairs (718) 595-6531



### **13. Design and Construction of Private Water Mains**

DEP is proposing to adopt rules to correspond to rules for private sewers, and will require builders or developers who construct private water mains in mapped streets at their own expense (and connect such water mains to City water mains or other private water mains) to transfer ownership of such mains to the City within a prescribed period of time. Affected parties include builders and developers.

Reference: 15 RCNY (new chapter)  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Russ Pecunies, DEP Legal Affairs (718) 595-6531

### **14. Green Infrastructure Grant Program**

DEP is proposing to establish the Green Infrastructure Grant Program to provide funding for the design and construction of green infrastructure to manage stormwater runoff in New York City. The program is available to private property owners within the five boroughs whose property is served by a combined sewer. DEP seeks to promulgate rules regarding the program, which will include, *inter alia*, applicant eligibility and requirements of the program.

Reference: 15 RCNY [new chapter]  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Alison Gilgore, DEP Legal Affairs (718) 595-6542

### **15. Watershed - Revocable Land Use Permits**

DEP is proposing to amend 15 RCNY Chapter 17, which governs the issuance of revocable land use permits for NYC-owned land in nine upstate counties. The amendment will revise the insurance provisions in order to give DEP greater discretion to allow acceptable activities on City-owned land without imposition of unduly burdensome insurance requirements, provides greater clarification on language, removes the requirement for a bond for pump stations and adds a new fee category for “lawn mowing or other small-scale uses incidental to residential dwellings.”

Reference: 15 RCNY, Chapter 17  
Anticipated Schedule: to be promulgated in FY 2017  
Contact: Eve Fox DEP BWS and May Chin, DEP Legal Affairs (845) 340-7204

### **16. Watershed – Rules for the Recreational Use of Water Supply Lands and Waters**



DEP is proposing to amend 15 RCNY Chapter 16, which governs public use of certain water supply property owned by the City of New York and includes the issuance of permits and permissions for certain commercial activities and additional uses. These amended rules will emphasize new recreational uses such as trolling motors and Public Access Areas for East of Hudson water supply lands, management strategies to manage natural resources, and will further align property designations with beneficial use principles.

Reference: 15 RCNY, Chapter 16

Anticipated Schedule: to be promulgated in FY 2017

Contacts: Paul Lenz, DEP BWS and William Mirrer, DEP Legal Affairs (718) 595-6539

### **17. Watershed – Watershed Regulations**

DEP is proposing to update certain wastewater sections of the *Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources* (Watershed Regulations). Many of the proposed Watershed Regulation changes are made pursuant to the revisions made by the New York State Department of Environmental Conservation (DEC) to the Design Standards for Intermediate-Sized Wastewater Treatment Systems (effective March 5, 2014), and the New York State Department of Health Appendix 75-A revisions effective February 2, 2010. DEP must update the Watershed Regulations to reference the updated version of the most recent state regulations. DEP will be adding enhancements for water supply protection based on some of the revisions to these state regulations and based on its implementation of the existing Watershed Regulations.

Reference: 15 NYCRR, Chapter 18

Anticipated Schedule: to be promulgated in FY 2017

Contacts: Brenda Drake, DEP BWS (845-340-7215) and Robin Levine, DEP Legal Affairs (718) 595-6586

### **18. Community Right-to-Know Rules**

DEP is planning to update and revise the Community Right-To-Know Regulations, which are found at 15 RCNY Chapter 41. These rules have not been updated since they were promulgated almost 25 years ago and contain many outdated and obsolete references. The Hazardous Substances List, which is part of these Rules, must be revised to conform to the current federal and state lists. Affected parties include owners of facilities where hazardous substances are stored.

Reference: 15 RCNY, Chapter 41

Anticipated Schedule: to be promulgated in FY 2017

Contact: Russell Pecunies, DEP Legal Affairs (718) 595-6531



## **19. Sewer Use Rules**

DEP promulgated “Use of the Public Sewers” (15 RCNY 19-01 *et seq.*) incorporating federal pretreatment standards and requirements, establishing sewer use limits and implementing the federal pretreatment program. The proposed amendments to 15 RCNY Chapter 19 are intended to provide more clarity and specificity to the regulations in order to avoid confusion, promote higher rates of compliance, and facilitate DEP inspectors’ performance of comprehensive inspections. The changes include modifications to the definition section, the Best Management Practices for Non-Residential Direct and Indirect Dischargers of Grease to the Public Sewer System, the rules regarding groundwater discharge permits, and various other sections.

Reference: 15 RCNY Chapter 19

Anticipated Schedule: to be promulgated in FY 2017

Contact: Russ Pecunies, DEP Legal Affairs (718) 595-6531

## **20. MS4**

The issuance of a New York State Pollutant Discharge Elimination System Permit for the NYC Municipal Separate Storm Sewer System (MS4) may require DEP to promulgate rules that would give DEP new or additional authority to regulate certain sources of pollution in order to protect water quality and meet the City’s obligations under the MS4 permit. The potential rules could affect property owners, business owners, contractors and the general public.

Reference: 15 RCNY [new chapter]

Anticipated Schedule: to be promulgated in FY 2017

Contact: Melinda Sherer, DEP Legal Affairs (718) 595-6613