

# 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 (“the Department”) is proposing to add a new rule governing how covered facilities site and store containers holding hazardous substances in order to prevent releases of hazardous substances in case of an extreme weather event.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10 am on Wednesday, July 11, 2018. The hearing will be held in the 11th 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’s 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 July 11, 2018. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by July 11, 2018.

**What if I 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 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 July 9, 2018.

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 rule 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 Department's Bureau of Legal Affairs.

**What authorizes the Department to make this rule?** Sections 1043(a) of the City Charter and LL143 of 2013 which amended section 24-716 of the New York City Administrative Code authorize the department to make this proposed rule. This proposed rule was not included in the Department's regulatory agenda for this fiscal year.

**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 laws 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**

Local Law 143 of 2013 amended Section 24-716 of the Administrative Code by adding a new subdivision (b) requiring that the Department of Environmental Protection (DEP) promulgate rules "for the proper siting and storage of hazardous substances, taking into consideration all safety issues..." In response, after consulting with other emergency response agencies, as well as

the Law Department, the Mayor's Office of Operations, and the New York State Department of Environmental Conservation, DEP has developed amendments to the existing Community Right-to-Know Regulations (Title 15, Chapter 41 of the Rules of the City of New York) which add a new Section 41-14 to require spillage prevention measures for all portable containers of hazardous substances in order to prevent releases of hazardous substances in case of an extreme weather event, and to impose spillage prevention requirements for facilities located in a Special Flood Hazard Area. The proposed rule also authorizes DEP to perform inspections at facilities and to issue summonses for violations of the rule, and adds definitions for terms found in the new section 41-14.

The proposed rule also deletes Section 41-11(b)(i)(4), which refers to a provision of the New York State regulations that no longer exists, and includes a number of simple, plain language revisions throughout.

DEP's authority for this rule is found in New York City Charter section 1043 and section 24-716 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.

The text of the Rule follows:

**Section 1. Section 41-03 of Title 15 of the Rules of the City of New York is amended to read as follows:**

**§ 41-03 Definitions.**

**Base Flood Elevation.** "Base Flood Elevation" means the elevation of the base flood, including wave height, as specified on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) 360497 or as determined in accordance with Section G103.3 of Appendix G of the New York City Building Code. In areas designated as ZONE AO, the base flood elevation shall be the elevation of the highest existing grade of a building's perimeter plus the depth number (in feet) specified on FEMA FIRM 360497 or as determined in accordance with Section G103.3 of Appendix G of the New York City Building Code .

**Chemical name.** "Chemical name" [shall ]means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Services (CAS) rules of nomenclature.

**Combustible.** "Combustible" [shall ]means any liquid [which has]with a flashpoint at or above 100 degrees F (37.8 degrees C) and below 300 degrees F (148 degrees C). Commissioner. "Commissioner" [shall ]means the Commissioner of the New York City Department of Environmental Protection.

**Compressed gas.** "Compressed gas" [shall ]means a gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 degrees F (21.1 degrees C); or a gas mixture of gases having, in a container, an absolute pressure exceeding 140 psi at 130 degrees F (or 54.4 degrees C) regardless of the pressure at 70 degrees (21.1 degrees C); or a liquid having a vapor pressure exceeding 40 psi at 100 degrees F (37.8 degrees C) as determined by ASTM D-323-72.

**Container.** "Container" means a device used to store, transport, treat, dispose of or otherwise handle a hazardous substance.

**Corrosive.** "Corrosive" [shall ]means any liquid or solid that causes [ ]visible destruction or irreversible alterations in human skin tissue at the site of [the ]contact; or any aqueous solution with a pH less than or equal to 2, or greater than or equal to 12.5, as determined by a pH meter, or equivalent methods; or any liquid that corrodes steel (SAE 1020) at a rate greater than 5.35 mm (0.25 inch) per year at a test temperature of 130 degrees F (55 degrees C).

**Covered process.** "Covered process" [shall ]means any process in which there is an EHS or regulated toxic substance present in an amount at or above the TPQ for that substance.

**Department.** "Department" [shall ]means the New York City Department of Environmental Protection.

**Emergency response personnel or responders.** "Emergency response personnel" or "responders" [shall ]means any member of the departments of fire, police, environmental protection, health, transportation and sanitation, the division of emergency services of health and hospitals corporation and any other government agency participating in response measures undertaken in connection with a fire, or a spill, or release or threatened release of a hazardous substance into the environment. The term "response measures" shall include actions taken by a city agency within the meaning of subdivision (f) of §24-603 of the New York City Administrative Code.

**Equipment.** "Equipment" [shall ]means equipment whose failure or improper operation could directly or indirectly result in a release of an extremely hazardous substance and/ or regulated toxic substance from a covered process.

**Explosive.** "Explosive" [shall ]means a substance that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

**Extreme weather watch.** "Extreme weather watch" means any watch, advisory or warning for high wind, inland or coastal flooding, hurricane, or a tropical storm issued by the National Weather Service (NWS). The NWS watch, advisory or warning can be issued up to 48 hours in advance of an extreme weather event.

**Extremely hazardous substance (EHS).** "Extremely hazardous substance (EHS)" [shall ]means a hazardous substance listed by the United States Environmental Protection Agency as an extremely hazardous substance pursuant to 42 U.S.C. section 11002(a) of the Emergency Planning and Community Right-to-Know Act, as contained in 40 CFR Part 355 Appendix A.

**Facility.** "Facility" [shall ]means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned, leased or operated by the same person, or by any person which controls, or is controlled by or under common control with, such person, including any building, structure, installation or area involved in the processing, storage, handling, treatment, placement, disposal or use of any hazardous substance.

**Facility inventory form (FIF).** "Facility inventory form (FIF)" [shall ]means a standard written form, developed by the Department for completion by a responsible party at each privately or publicly owned facility in the City of New York.

**Flammable.** "Flammable" [shall ]means any liquid having a flashpoint below 100 degrees F (37.8 degrees C).

**Flashpoint.** "Flashpoint" [shall ]means the minimum temperature at which a liquid gives off vapor in a test vessel of sufficient concentration to form an ignitable mixture with air near the surface of the liquid. Such temperature shall be determined: by a Pensky-Martens Closed Cup Tester using the test method specified in ASTM Standard D93-79 or D93-80; or by a Setaflash Closed Cup Tester using the test method specified in ASTM Standard D-327878; or by a Tag Closed Cup Tester using the test method specified in ASTM D-56-79.

**Flooding.** "Flooding" means the covering, overflowing, or submerging of any portion of a facility or storage area with water.

**Hazard analysis.** "Hazard analysis" [shall ]means the step-by-step systematic analysis of covered processes and procedures for handling EHS's and regulated toxic substances to identify the potential mishaps which may occur and their consequences.

**Hazardous substance.** "Hazardous substance" [shall ]means any chemical which is a physical hazard or a health hazard and which is listed on the hazardous substance list. The term "hazardous substance" [shall not include the following]excludes:

(1) any food, food additive, color additive, drug, or cosmetic regulated by the Federal Food and Drug Administration;

(2) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(3) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(4) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer;

(5) any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of [nineteen hundred seventy-six]1976, as amended (42 U.S.C. §6901, et seq.);

(6) tobacco or tobacco products;

(7) wood or wood products;

(8) articles, which for purposes of this definition [shall ]means manufactured items which

(i) are formed to a specific shape or design during manufacture;

(ii) which have an end use function or functions dependent in whole or in part upon their shape or design during end use; and

(iii) which do not release, or otherwise result in exposure to, a hazardous substance, under normal conditions of use;

(9) food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(10) foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(11) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. §2051, et seq.) and Federal Hazardous Substances Act (15 U.S.C. §1261, et seq.) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers;

(12) any drug, as that term is defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. §301, et seq.), when it is in solid, final form for direct administration to a patient.

**Hazardous substance list.** "Hazardous substance list" [shall ]means a list of hazardous substances established pursuant to §41-02 of these rules.

**Health hazard.** "Health hazard" [shall ]means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed persons. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.

**Heptatoxin.** "Heptatoxin" [shall ]means a substance that causes liver damage.

**Highly toxic agent.** "Highly toxic agent" [shall ]means any substance which has any of the following properties: an LD50 (lethal dose) of less than 50 mg/kg (oral dose in rats); or an LD50 of less than 200 mg / kg (24-hour rabbit skin contact); or an LC50 (lethal concentration) of less than 200 ppm (one-hour inhalation in rats).

**Ignitable.** "Ignitable" [shall ]means any substance which has any of the following properties: it is a solid which is capable under standard temperature and pressure of causing fire through friction, absorption of moisture, or spontaneous chemical changes; and which, when ignited, burns so vigorously and persistently that it creates a hazard; or it is flammable compressed gas, as defined in 49 CFR 173.300, and as determined by the test methods described in that regulation; or it is an oxidizer as defined in 49 CFR 173.151.

**Incompatible substances.** “Incompatible substances” means those substances, which if allowed to come in contact with each other, are likely to create an adverse environmental impact such as releasing a toxic gas or vapor, causing or intensifying a fire, causing an explosion, or causing any other adverse reaction which may threaten human health or the environment.

**Irritant.** "Irritant" [shall ]means a substance which is not corrosive but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A substance is a skin irritant if, when tested on the skin of Albino rabbits by methods 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A substance is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

**Mixture.** "Mixture" [shall ]means a combination of two or more substances not involving a chemical reaction.

**Mutagen.** "Mutagen" [shall ]means a substance that causes mutations and meets the criteria established by any of the following agencies: the International Agency for Research Against Cancer (IARC), or the National Toxicology Program (NTP), or the National Cancer Institute (NCI), or the National Institute for Environmental Health Sciences (NIEHS), or the National Institute for Occupational Health and Safety (NIOSH), or the Environmental Protection Agency (EPA), or the Occupational Safety and Health Administration (OSHA), or the Food and Drug Administration (FDA), or the Agency for Toxic Substances and Diseases Registry (ASTDR), or the Center for Diseases Control CDC).

**Nephrotoxin.** "Nephrotoxin" [shall ]means a substance that causes kidney damage.

**Neurotoxin.** "Neurotoxin" [shall ]means a substance that produces toxic effects on the nervous system.

**Off-site area.** "Off-site area" [shall ]means the area beyond the property line of a facility or areas within the property line of a facility to which the public has unrestricted access.

**One tenth of one percent substances list.** "One tenth of one percent substances list" shall mean a list of hazardous substances compiled pursuant to §24-703 of the New York City Administrative Code set forth in Appendix B to these Regulations.

**Organic peroxide.** "Organic peroxide" [shall ]means any substance having the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

**Oxidizer.** "Oxidizer" [shall ]means a substance other than a blasting agent or explosive as defined in OSHA §1910.109(a) that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

**Physical hazard.** "Physical hazard" [shall ]means a chemical for which there is scientifically valid evidence that it is combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

**Process.** "Process" [shall ]means any activity involving an EHS or a regulated toxic substance, including any use, storage, manufacturing, handling, or on-site movement of any such substance, or any combination of the foregoing activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located in such close proximity to each other at a facility that a fire, explosion, or other catastrophic accident or event could result in a release of an EHS or regulated toxic substance from all such vessels, shall be considered a single process.

**Pyrophoric.** "Pyrophoric" [shall ]means a substance that will ignite spontaneously in air at a temperature of 130 degrees F (54.4 degrees C) or below.

**Radioactive substance or device.** "Radioactive substance or device" [shall ]means any substance, material or device emitting any particulate or electromagnetic radiations. For purposes of this regulation the term "radioactive substance or device" [shall ]include any substance or device that is the subject of reporting to any of the following agencies:

- (1) New York City Health Department, Bureau of Radiation Control,
- (2) New York State Department of Environmental Conservation, Division of Environmental Remediation,
- (3) New York State Department of Labor, Radiological Health Unit, or
- (4) U.S. Nuclear Regulatory Commission.

For purposes of this Regulation the term "radioactive substance or device" [shall not include]excludes a substance, material or device:

- (1) used as a fixed source for diagnostic or therapeutic purposes,
- (2) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051, et seq.) and Federal Hazardous Substances Act (15

U.S.C. Section 1261, et seq.) respectively, where the facility operator can demonstrate it is used in the same manner as a normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers.

**Reactive.** "Reactive" [shall ]means any substance which has any of the following properties:

[ it ](1) is normally unstable and readily undergoes violent change without detonating; or

[ it ](2) reacts violently with water; or it forms potentially explosive mixtures with water; or

[ it ](3) is a cyanide or sulfur bearing substance which, when exposed to pH conditions between 2 and 12.5, can generate gases, vapors or fumes in a quantity sufficient to present a danger for human health or the environment; or

[ it ](4) is capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or

[ it ](5) is a forbidden explosive as defined in 49 CFR [173.88] 173.54.

**Regulated toxic substance.** "Regulated toxic substance" [shall ]means any substance listed by the United States Environmental Protection Agency as a regulated toxic substance pursuant to 42 U.S.C. Section 7412(r) of the Clean Air Act, as contained in 40 CFR Part 68.

**Release.** "Release" [shall ]means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, or the abandonment of a container or containers containing hazardous substance or substances.

**Reproductive toxin.** "Reproductive toxin" [shall ]means substances which affect the reproductive capabilities including chromosomal damage (mutations), effects on fetuses (teratogenesis) and other adverse effects on reproductive functions.

**Responsible party.** "Responsible party" [shall ]means an owner, operator, manager, or corporate officer of the person who owns, leases or operates a facility, provided that if such facility is leased, the responsible party shall be the lessee of the facility or his or her representative.

**Risk management plan.** "Risk management plan" [shall ]means a plan for a facility where an EHS and / or regulated toxic substance is present at or above the TPQ for such substance, prepared in accordance with this chapter and filed with the Department by a responsible party of such facility.

**Safety Data Sheet (SDS).** “Safety data sheet (SDS)” means written or printed material concerning a hazardous substance which is identical in form and content to the data sheet described at 29 CFR part 1910.1200 and required under subdivision (a) of §311 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001, et seq.)

**Sanitized.** "Sanitized" [shall ]means a version of a document from which information claimed as trade secret or confidential has been omitted or withheld.

**Sensitizer.** "Sensitizer" [shall ]means any substance that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the substance.

**Significant accidental release.** "Significant accidental release" [shall mean]s any accidental release of an EHS and/or regulated toxic substance from a covered process that has caused or has the potential to cause adverse effects to human health or the environment in an off-site area or to cause the public to shelter-in-place or be evacuated to avoid such consequences.

**Special Flood Hazard Area (SFHA).** “Special Flood Hazard Area (SFHA)” means the land in the flood plain delineated as subject to a one percent or greater chance of flooding in any given year. Such areas are designated on the FEMA Flood Insurance Rate Map (FIRM) as A-Zones or V-Zones. Such areas are also known as the base flood plain or one hundred year flood plain.

**Special health hazard.** "Special health hazard" [shall ]means any carcinogen, mutagen, teratogen, radioactive substance or device, or other reproductive hazards as such terms are defined in this section. Substances presenting a special health hazard [shall]must be reported when present [at] in any amount [required] pursuant to §24-704(a) of the Administrative Code.

**Special physical hazard.** "Special physical hazard" [shall ]means any water reactive, flammable, organic peroxide, oxidizer, pyrophoric, or ignitable as defined in this section.

**Specific chemical identity.** "Specific chemical identity" [shall ]means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

**Spillage.** “Spillage” means any escape of a substance from a container employed in the course of storage, transfer, processing or use.

**Storage vessel.** "Storage vessel" [shall ]means any vessel that contains or is designated to contain an EHS or regulated toxic substance.

**Teratogen.** "Teratogen" [shall] means any substance which affects the development of the fetus.

**Threshold Planning Quantity (TPQ).** "Threshold Planning Quantity" (TPQ) [shall] means the amount of an EHS and/or regulated toxic substance above which a responsible party of a facility where such substance is present must submit a risk management plan to the Department.

(1) The TPQ's for EHS's are set forth in federal regulations contained in 40 CFR Part 355 Appendix A. The TPQ's for an EHS should be determined in accordance with the provisions of such Appendix.

(2) The TPQ's for regulated toxic substances are set forth in federal regulations contained in 40 CFR Part 68. The TPQ for a regulated toxic substance should be determined in accordance with the provisions of such part.

(3) Where a substance is classified as both an EHS and a regulated toxic substance and different TPQ's have been established, the lower TPQ [shall] apply.

**Threshold reporting quantities.** "Threshold reporting quantities" [shall] means the amount of a substance above which this substance must be reported when it is present in pure form or in a mixture.

**Toxic agent.** "Toxic agent" [shall] means any substance which has any of the following properties:

(1) an LD50 between 50 mg/kg and 500 mg/kg (oral dose in rats); or

(2) an LD50 between 200 mg/kg and 1000 mg/kg (24-hour rabbit skin contact); or

(3) an LC50 (lethal concentration) between 200 ppm and 2000 ppm (one-hour inhalation in rats).

**Trade secret.** "Trade secret" [shall] means any confidential formula, pattern, process, device, information or compilation of information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it.

**Unstable substance.** "Unstable substance" [shall] means any substance which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense or become half-reactive under conditions of shock, pressure, or high temperature.

**Unusual physical hazard.** "Unusual physical hazard" [shall] means any explosive or unstable substance as such terms are defined in this section.

**Worst-case release.** "Worst-case release" [shall ]means the instantaneous release of the entire quantity of an EHS and/or regulated toxic substance from a covered process.

**Section 2. Subsection (b) of Section 41-11 of Title 15 of the Rules of the City of New York is amended to read as follows:**

(b) The risk reduction program shall include the following components:

(1) Consideration of the use of alternative substances and equipment to eliminate or reduce the use of EHS's or regulated toxic substances in a covered process(es). A facility that eliminates or reduces the use of EHS's or regulated toxic substances below the TPQ for such substances by implementing alternatives will not be required to comply with §§ 41-08 through 41-12 of this chapter.

(i) A responsible party [shall] must make the following considerations with respect to the use of alternative substances and equipment;

(A) an assessment of the uses of EHS's and regulated toxic substances in a covered process(es);

(B) an examination of alternative substances and equipment to reduce or eliminate the use of EHS's and/or regulated toxic substances in a covered process(es);

(C) a timetable for implementing alternatives that are technically and economically feasible.

(ii) [M] mechanisms to facilitate the use of alternative substances and equipment shall include but not be lim[m]ited to any of the following:

(A) modification or redesign of production processes and/or products;

(B) changes in materials usage, handling and storage practices, including improved inventory control, preventive maintenance and spill and leak prevention;

(C) use of closed-loop reclamation, reuse or recycling processes;

(D) use of other on-site recycling techniques.

(iii) To verify compliance with this section, a responsible party [shall] must submit a summary report demonstrating the consideration of the use of alternative substances and equipment.

[(iv) A facility that has filed an approved toxic chemical reduction plan with the New York State Department of Environmental Conservation (NYSDEC) in accordance with 6 NYCRR Part 378 for EHS's or regulated toxic substances shall be exempt from complying with this section. To qualify for this exemption, a responsible party shall submit certification of NYSDEC approval of the facility's toxic chemical reduction plan.]

**Section 3. Section 41-14 of Title 15 of the Rules of the City of New York is renumbered as Section 41-15, and a new Section 41-14 shall read as follows:**

**§ 41-14 Siting and Storage of Portable Containers.**

(a) Applicability. This section applies to any responsible party who:

- (1) is obligated to file a facility inventory form in accordance with § 41-05 of this Chapter; and
- (2) owns, operates or manages any portable container used to store fewer than 2,200 pounds of any hazardous substance(s).

(b) Spillage Prevention. Portable containers storing hazardous substances may not be used during extreme weather watches. Responsible parties must ensure that every portable container is managed in accordance with the following requirements, whenever such container holds a hazardous substance and is not currently in use, and whenever such container holds a hazardous substance during an extreme weather watch.

Measures that must be implemented to prevent spillage include:

1. To the extent possible, every portable container must be water tight, and must be tightly sealed. If storage in water tight containers is not possible, hazardous substances must be stored using double containment drums or “over packs”.
2. Portable containers holding incompatible substances must not be stored in in close proximity to one another, such that they would likely come in contact with one another in case of a spill.
3. Facilities where loss of power would increase the likelihood of a hazardous substance spillage must have manual means to safely transfer substances to secure containment vessels.
4. Every portable container must be stored on drum spill containment pallets or equivalent structures to prevent contact with wet floors.

(c) Facilities in the Special Flood Hazard Area. Portable containers storing hazardous substances may not be used during extreme weather watches. The following additional measures must be implemented at facilities located in Special Flood Hazard Areas to secure portable containers storing hazardous substances during extreme weather watches:

1. Every portable container must be stored on a shelf or in a cabinet, such as a flammable or chemical storage cabinet, that is:

- i. Located in a facility area that is least susceptible to flooding, including, when possible, areas at higher elevations, in protected areas, or above the ground floor;
  - ii. Securely anchored to ensure they do not tip or move if they encounter wave action, flooding, or high winds; and
  - iii. Elevated to, at a minimum, three feet above the base flood elevation.
2. If elevation to a minimum of three feet above the base flood elevation is not possible, a portable container must be stored on drum spill containment pallets or equivalent structures that are securely anchored to ensure they do not tip or move if they encounter wave action, flooding, or high winds.
3. To the extent possible, every portable container must be stored indoors to avoid exposure to any anticipated rainfall and flooding conditions. If indoor storage is not possible, responsible parties must implement measures to cover, securely anchor or otherwise restrain, elevate, and prevent exposure of the container to water. Such measures must also be sufficient to protect the container from high wind exposure.
4. Sufficient aisle space must be available to allow for quick access and movement of substances from one facility area to another area that is less susceptible to flooding.
5. During an extreme weather watch, responsible parties must not permit the delivery of any new hazardous substances until after the extreme weather watch concludes. Scheduled deliveries of hazardous substances must be postponed until after an extreme weather watch concludes.
6. Operations using hazardous substances must be suspended and all hazardous substances must be returned to watertight containers and storage, as described in subsections (i) through (iv) above no less than 6 hours prior to an anticipated extreme weather event in accordance with the extreme weather watch alerts from NWS and/or DEP.

(d) Enforcement.

- (1) The Department may perform inspections of facilities to determine if the storage of hazardous substances is in compliance with the requirements set forth in this section.
- (2) Failure to comply with the requirements of this section may be deemed a violation of this section subject to the issuance of a notice of violation returnable to the Office of Administrative Trials and Hearings pursuant to section 1049-a of the Charter. Any such notice of violation shall be accompanied by an order of the Commissioner directing the responsible party, within thirty days from the date of

the order, to correct the condition constituting the violation and to file with the Department a certification that the condition has been corrected.

**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:** Siting and Storage of Hazardous Materials

**REFERENCE NUMBER:** 2018 RG 036

**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

Date: May 21, 2018

Acting Corporation Counsel

**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: Siting and Storage of Hazardous Materials**

**REFERENCE NUMBER: DEP-46**

**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) Provides a cure period.

/s/ Francisco X. Navarro

Mayor's Office of Operations

May 21, 2018

Date