



5/1/21

New York City Department of Environmental Protection FY22 Regulatory Agenda

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, 2021 and ending June 30, 2022. Listed below each section are an approximate schedule for adopting the proposed rules and the name and telephone number of a DEP official knowledgeable about each subject area involved.

I. New proposed rules not included in prior years and anticipated to start the CAPA process after May 1, 2021.

1. Drilling and Excavation

A. Description

Expansion of Drilling and Excavation Rule to cover DEP Bureau of Water and Sewer Operations (BWSO) deep tunnel sewers and interceptors and Bureau of Wastewater Treatment (BWT) deep tunnel sewers, sewer outfall pipes, sewer and sludge force mains, pump stations, regulators and sewer interceptors, and to include corrective action requirements for violations of the Rule.

B. Reasons

Existing provisions protect New York City's water tunnels and shafts; this rule would protect additional critical infrastructure. Revisions would also require corrective action to be taken by violators of the Rule.

C. Anticipated contents

The rule will set forth specific standards for the application for and permitting of drilling and/or excavation in close proximity to BWSO deep tunnel sewers and interceptors and BWT deep tunnel sewers, outfall pipes, sewer and sludge force mains, pump stations, regulators and sewer interceptors. The rule will also set forth corrective action requirements for violations of the rule.



D. Objectives

To guarantee and protect the integrity of New York City's water supply and sewer facilities.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code §24-302; 15 RCNY Chapter 34

G. Individuals and entities affected:

Engineers and contractors whose projects include drilling and/or excavation within the five boroughs of NYC.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

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

2. Asbestos Rule Clarifications

A. Description

General revision and update of asbestos control regulations, including clarification of logbook requirements and provision prohibiting false statements.

B. Reasons

The Asbestos Rules are periodically revised in view of enforcement experience, to clarify, update, add or remove various provisions.

C. Anticipated contents

A variety of changes will be made to existing provisions of the rules, including clarification of the requirement that project logbooks be permanently bound and clarification that the prohibition on making false statements extend to submissions to city agencies other than DEP.



D. Objectives

To make sure the Asbestos Rules are as clear and current as possible.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code section 24-105, 15 RCNY Chapter 1

G. Individuals and entities affected:

Asbestos companies, licensed asbestos workers, building owners

H. Approximate Schedule:

1Q FY 2022

I. Agency Contact:

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

3. Citizen Complaint Submissions

A. Description

Local law 58 of 2018 required the DEP to post requirements of what is necessary to file a citizen complaint regarding vehicle idling. Although no rule is legally mandated, DEP believes it would be helpful to the public to codify the requirements that are posted on the DEP website.

B. Reasons

To better inform citizens of what the minimum requirements are to file a citizen complaint regarding vehicle idling.

C. Anticipated contents

Codifying the instructions currently posted on the DEP website to citizen complainants provide the necessary evidence to support the issuance of a summons.



D. Objectives

To assist citizens in submitting the required evidence for the citizen complaint process.

E. Provide a summary of the legal basis for the proposed rule.

New York City Charter Sections 1043 and 1403(c)

F. Relevant local laws and rules:

Local Law 58/2018 and NYC Administrative Code 24-163 and 24-182

G. Individuals and entities affected:

Citizens filing complaints regarding idling vehicles

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

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

4. Air/Noise Zero Penalties with Opportunity to Cure

A. Description

Establish zero penalties for certain violations of Title 24, Chapters 1 and 2 of the Administrative Code.

B. Reasons

These amendments are intended to provide relief from fines for businesses that have established to the Department's satisfaction that the violating condition has been corrected.

C. Anticipated contents

The revisions will establish zero penalties for certain violations in the Air and Noise Penalty Schedules.

D. Objectives

Allow for the ability to mitigate certain offenses to zero.



E. Provide a summary of the legal basis for the proposed rule.

New York City Charter 1043 and sections 24-105 and 24-204 of the Administrative Code.

F. Relevant local laws and rules:

15 RCNY Chapters 43 and 47, NYC Administrative Code 24-216(d), 24-220(b), 24-223(d), 24-226(b), 24-228.1, 24-237(d), 24-238(a), 24-244(a), 24-108(f) and 24-113

G. Individuals and entities affected:

Those owners and operators of businesses that operate the devices and/or equipment that may violate the above sections.

H. Approximate Schedule:

2Q FY 2022

I. Agency Contact:

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

II. Rules included in prior agenda(s) that did not begin the CAPA process but are anticipated to start the process this fiscal year.

1. Unified Stormwater Rule

A. Description

Expansion of MS4 Stormwater Rule to the Combined Sewer areas of NYC to provide a consistent stormwater management policy, and update of the DEP Bureau of Water and Sewer Operations (BWSO) peak flow requirements for site/house connection proposals, superseding the 2012 Stormwater Performance Standard.

B. Reasons

Require more on-site stormwater management to improve water quality, reduce urban flooding, lessen the burden on infrastructure and reduce energy demands.

C. Anticipated contents

Revision of Chapter 19.1 to reduce the threshold for soil disturbance that triggers post-construction stormwater controls and expand MS4 stormwater control requirements citywide; revision of Chapter 31 to update release rates and allowable flow.



D. Objectives

The proposed rules are designed to align with the NYC Climate Mobilization Act by increasing green space, to contribute to improved water quality in NYC waterbodies by further managing stormwater runoff, and to streamline the site/house connection permit application, design and review processes.

E. Provide a summary of the legal basis for the proposed rule.

NYC Administrative Code Chapter 5-A § TBD

F. Relevant local laws and rules:

NYC Administrative Code Chapter 5-A § TBD, Title 15 RCNY Chapters 19.1 and 31

G. Individuals and entities affected:

Owners and Developers required to obtain DEP Stormwater Construction/Post-Construction permits and Site/House Connection permits.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

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

2. Work Permit Exceptions

A. Description

Rule will define certain equipment that the department may exempt from requirements for a work permit under the Air Pollution Control Code.

B. Reasons

Certain equipment, which is not explicitly exempted from the work permit requirement in section 24-121 of the Air Code, does not need a work permit for various reasons including how DEC classifies certain sources. DEP seeks to clarify and expand the existing list of sources for which a registration or exemption from filing is acceptable instead of a work permit.

C. Anticipated contents



The rule will set forth the equipment or apparatus that the department may exempt from the requirements for a work permit.

D. Objectives

Simplify compliance requirements and streamline permitting.

E. Legal basis:

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code Section 24-121(a)(21)

G. Individuals and entities affected:

Engineers, architects, and those who file in the regulated community.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

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

3. Fee Rule Amendment

A. Description

Rule will establish a fee for variances from the Air Pollution Control Code.

B. Reasons

The department receives requests for variances from the Air Code, which require a review by engineers and other staff. The department needs a fee to cover its costs for reviewing these applications.

C. Anticipated contents

The rule will establish a fee for review of applications for a variance from the Air Code.



D. Objectives

Ensure sufficient receipt of revenue to review and evaluate variances.

E. Legal basis:

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code Section 24-105 (c)

G. Individuals and entities affected:

Those who seek a variance from the Air Code.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

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

4. Penalty Schedule Amendments

A. Description

Rules that will amend the penalty schedule for the Air Code, Noise Code, Asbestos Rules, and Water Code.

B. Reasons

Recent or pending changes will require the amendment of penalty schedules related to summonses issued by DEP.

C. Anticipated contents

Addition and deletion of affected provisions from current penalty schedules.

D. Objectives



Update penalty schedules to be consistent with current laws and rules.

- E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

- F. Relevant local laws and rules:

NYC Administrative Code §24-178, 24-105, 24-204, 24-257 and 15 RCNY Chapter 1.

- G. Individual and entities affected:

Entities and individuals who receive summonses issued by DEP.

- H. Approximate Schedule:

4Q FY 2022

- I. Agency Contact:

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

5. Cook Stove Rules

- A. Description

Rule that will establish requirements for restaurants in operation before May 6, 2016 to install emission controls.

- B. Reasons

The Air Code requires that DEP promulgate a rule to prescribe emission control technologies required on cook stoves installed before May 6, 2016.

- C. Anticipated contents

The rule will require similar control technologies as those currently installed on cook stoves that came into operation on or after May 6, 2016.



D. Objectives

The installation of emission controls on cook stoves and char broilers will result in a reduction in emissions and odors.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403 and Title 24, Chapter 1 of the Administrative Code.

F. Relevant local laws and rules:

NYC Administrative Code § 24-149.5, 24-105

G. Individuals and entities affected:

Restaurants with cook stoves installed prior to May 6, 2016.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

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

6. Design and Construction of Private Sewers

A. Description

Revisions to Chapters 23 and 31 of the Rules of the City of New York, governing construction of private sewers or private drains and house/site connections to the sewer system..

B. Reasons

The proposed amendments will clarify the permit requirements and achieve regulatory consistency.

C. Anticipated contents

The proposed rules will include various revisions to Chapters 23 and 31.

D. Objectives



To ensure that private sewers are constructed to DEP standards and specifications.

E. Provide a summary of the legal basis for the proposed rule

NYC Charter Section 1403 and NYC Administrative Code Title 24.

F. Relevant local laws and rules:

NYC Administrative Code Title 24 and RCNY Title 15.

G. Individuals and entities affected:

Any person or entity constructing a private drain or sewer or connections to the City sewer.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

Susan Gordon, DEP Legal Affairs, (718) 595-4260

7. Design and Construction of Private Water Mains

A. Description

Rules for design and construction of private water mains.

B. Reasons

Establish rules for private water mains that are consistent with rules for private sewers.

C. Anticipated contents

The rules will establish requirements for those 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.

D. Objectives

To ensure that private water mains are constructed to DEP standards and specifications.

E. Provide a summary of the legal basis for the proposed rule.



NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 23

G. Individuals and entities affected:

Builders and developers

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

Susan Gordon, DEP Legal Affairs (718) 595-4260

8. Community Right-to-Know Rules

A. Description

Update and revision of the Community Right-To-Know Regulations for entities involved in the processing, storage, handling, or use of hazardous substances, extremely hazardous substances, and regulated toxic substances.

B. Reasons

DEP promulgated these rules almost 25 years ago, and they contain many outdated and obsolete references.

C. Anticipated contents

Revisions to the Hazardous Substances List to conform to the current federal and state lists

D. Objectives

To protect the public from the dangers associated with hazardous substances.

E. Provide a summary of the legal basis for the proposed rule.



NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 41, §§ 24-703 and 24-706 of the New York City Administrative Code

G. Individuals and entities affected:

Owners of facilities where hazardous substances are stored.

H. Approximate Schedule:

4Q FY 2022

I. Agency Contact:

Hannah Polakowski, DEP Legal Affairs, (718) 595-6539

III. Rules that are currently under CAPA review by the Law Department and the Mayor's Office of Operations but have yet to be certified

1. Basement Apartment Rules

A. Description

Rules governing vapor intrusion barrier system installations, indoor air and soil vapor sampling, environmental site assessments, and soil testing in connection with a demonstration program in East New York.

B. Reasons

Local Law No. 2019/049 requires DEP to promulgate rules for basement or cellar apartments enrolled in the demonstration program to comply with certain requirements before they may obtain a certificate of occupancy or temporary certificate of occupancy

C. Anticipated Contents

The rule will establish requirements, and where applicable, exemptions, for the installation of vapor intrusion barrier systems, indoor air and soil vapor sampling, environmental site assessments, and soil testing in basement apartments in the East New York demonstration program.



D. Objectives

To facilitate the creation and alteration of habitable apartments in basements and cellars of certain one- and two-family dwellings in the East New York demonstration program.

E. Legal Basis

§§15(e) and 1043 of the Charter of the City of New York

F. Relevant Local Laws & Rules

Local Law No. 2019/049.

G. Individuals and entities affected

Owners of certain one- and two-family dwelling in East New York seeking to enroll in the City's demonstration program. Builders/contractors/Qualified Environmental Professionals working on such Owners' properties.

H. Approximate Schedule

2Q FY 2022

I. Agency Contact

Casey McCormack, DEP Legal Affairs (718) 595-6503

2. Sewer Use Rules – On-Site Digestion Systems

A. Description

Revisions to “Use of the Public Sewers” rules, establishing performance standards for on-site digestion systems installed by food service and other commercial establishments to manage organic waste ..

B. Reasons

Ensure that discharges from on-site digestion systems do not negatively impact the NYC wastewater system with increased pollutant loadings and volume.

C. Anticipated contents



Modifications to the definition section, standards for the types of on-site digestion systems covered establishments may install.

D. Objectives

Keep the sewer system and Wastewater Resource Recovery Facilities functioning at their best and keep NYC's surrounding waterways clean.

E. Provide a summary of the legal basis for the proposed rule.

Section 1403 of NYC Charter and section 24-523(e) of the NYC Administrative Code

F. Relevant local laws and rules:

15 RCNY Chapter 19

G. Individuals and entities affected:

Covered food service and commercial establishments with on-site digestion systems discharging to the public sewer system.

H. Approximate Schedule:

2Q FY 2022

I. Agency Contact:

Charles Taule, DEP Bureau of Wastewater Treatment, (718) 595-4717

3. Water Shortage Rules

A. Description

Amendment of existing rules to apply in all situations of water shortage (including those caused by natural hydrological conditions as well as other circumstances, such as planned or unplanned infrastructure outages or repairs) and to update the existing prohibitions.

B. Reasons

Update the existing prohibitions to reflect current conservation studies and understanding of water use by consumers.



C. Anticipated contents

The rule will set forth prohibitions and restrictions on water usage during periods of water shortage.

D. Objectives

Ensure an adequate water supply during periods of water shortage caused by natural hydrological conditions and/or other circumstances, such as planned or unplanned infrastructure outages or repairs.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 21

G. Individuals and entities affected:

All consumers of New York City water

H. Approximate Schedule:

3Q FY 2022

I. Agency Contact:

Casey McCormack, DEP Legal Affairs (718) 595-6503

4. Water Use Rules

A. Description

Amend rules governing and restricting the use and supply of water in order to clarify language; update references to national standards and local codes; and reflect changes in technology and practice related to the installation, repair, and maintenance of water services and service connections, and to the selection, sizing, and use of water meters.

B. Reasons



The rules are being amended to clarify technical terms, update references, clarify backflow testing requirements, and remove obsolete language to make the rules clearer and more understandable for regulated individuals and entities.

C. Anticipated contents

The proposed rules will include modifications to the definition section, various updates and clarifications

D. Objectives

To make the rules clearer and more understandable.

E. Provide a summary of the legal basis for the proposed rule.

Section 1403 of NYC Charter and section 24-346 of the NYC Administrative Code

F. Relevant local laws and rules:

15 RCNY Chapter 20

G. Individuals and entities affected:

Property owners, plumbers, businesses

H. Approximate Schedule:

3Q FY 2022

I. Agency Contact:

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

5. Denial of Permit for Unpaid Civil Penalties

A. Description

Rules that will allow DEP to deny an application for a permit, license or registration or renewal thereof, or to suspend, terminate or revoke a permit, license or registration, based on failure of applicant, licensee, permittee or registrant to timely pay civil penalties imposed upon it by OATH.

B. Reasons



LL 47 of 2016 directed agencies that issue permits, licenses or registrations and issue summonses returnable to OATH to promulgate rules implementing the authority granted by the Local Law as described in section A above.

C. Anticipated contents

The proposed rules will set forth factors DEP will consider in determining whether to deny suspend, terminate or revoke any permit, license or registration, including the status of an entity's payment of any civil penalties imposed on that entity, the amount of penalties owed and the nature of the underlying violations.

D. Objectives

The proposed rules will increase compliance by entities in their payment of outstanding civil penalties imposed by OATH.

E. Provide a summary of the legal basis for the proposed rule.

Local Law 47 of 2016 amending NYC Charter Chapter 45-A § 1049-b

F. Relevant local laws and rules:

NYC Charter Chapter 45-A § 1049-b, Title 15 RCNY Chapters 19.1 and 31, NYC Water Board Water and Wastewater Rate Schedule.

G. Individuals and entities affected:

Applicants for and holders of DEP permits, licenses or registrations

H. Approximate Schedule:

2Q FY 2022

I. Agency Contact:

Musa Ali, DEP Legal Affairs, (718)595-7030

6. Public Rulemaking Petitions

A. Description

The proposed rule will establish procedures governing the submission, consideration and disposition of public rulemaking petitions.

B. Reasons



Section 1043(g) of the Charter directed agencies to promulgate rules prescribing the procedure for submission, consideration and disposition of public rulemaking petitions.

C. Anticipated contents

The proposed rule will set forth the procedures for submitting petitions and for the agency's consideration of and response to petitions.

D. Objectives

The proposed rule will inform the public as to the procedures for submitting petitions and the agency's procedures for responding to petitions.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Chapter 45, § 1043(g)

F. Relevant local laws and rules:

None

G. Individuals and entities affected:

Members of the public wishing to file rulemaking petitions

H. Approximate Schedule:

2Q FY 2022

I. Agency Contact:

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

7. Idling Rule Exemptions

A. Description

Establish exceptions to the idling law to define as emergency vehicles buses being used as cooling centers and armored cars being used to pick up valuables.

B. Reasons

These activities are to be exempted from the idling law to ensure public health and safety.

C. Anticipated contents



The rule will add to the cooling center buses and armored cars to the definition of emergency vehicles that are not subject to the idling law.

D. Objectives

To facilitate the operation of vehicles that provide necessary services and need to operate their engines to perform their functions.

E. Provide a summary of the legal basis for the proposed rule.

Section 1043 and 1403(c) of the New York City Charter

F. Relevant local laws and rules:

Section 24-163 of the NYC Administrative Code.

G. Individuals and entities affected:

Owners and operators of cooling center buses and armored cars.

H. Approximate Schedule:

1Q FY 2022

I. Agency Contact:

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