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Wednesday, March 2, 2022

Statement in opposition to Department of Environmental Protection's proposed amendment of its rules to define what constitutes a processing device for the purposes of the idling provision on section 24-163 of the Administrative Code, with public hearing today

TO:  
NYC Department of Environmental Protection

Dear Commissioner Aggarwala and others:

Thank you for the opportunity to voice my opposition to your proposed rule change at today's public hearing. Please enter these written comments into the public record, as well.

It is obvious that we citizen complainers are interested in this program because we want to combat idling. We think: The DEP should be interested in the same thing. However, the proposed rule is written in a way that defines definite exemptions from the law and then leaving space for more exceptions in its vagueness. It is specific in where idling is allowed and vague in when idling may or may not be allowed. It further adds a cargo/substance temperature control exception that is absent from the law. City Council already considered this language and rejected. Why is DEP proposing this? Is this an attempt to protect idlers against us, the citizen complainers, and the law? And should such a reversal of a City Council decision not be left to ... the City Council?

I do agree, however, that the process question is often disagreed upon between citizen complainers, DEP reviewers, operators, and OATH hearing officers. Where clarity can be improved, I am all for it. However, it should not dilute the law but instead strengthen it by way of making it clearer and removing friction and opacity. Manhattan Community Board has made a very good proposal which does an excellent job of defining processing devices that excuse idling:

“an industrial lift, industrial crane, industrial pump, industrial drill, industrial hoist, or industrial mixer necessary to accomplish, and actually being used at the time of the

idling to accomplish, the work for which the vehicle or equipment was designed, and having such a power consumption requirement as to be incapable of being powered by commercially available auxiliary equipment, including but not limited to a battery, backup battery, generator, or auxiliary engine.”

Excused idling must power a process that depends on the powerful vehicle engine and cannot be powered by a smaller auxiliary device, such as a generator or battery. It also excludes any temperature control from accepted idling purposes, as appears was the intent of city council: Our streets are not warehouses for refrigerated or heated goods. When temperature control is needed, it is not an unusual hardship for businesses to rely on cooling/heating as provided by the engine when the vehicle is in motion, and to keep doors closed and stops short when not. Or, as explicitly encouraged by the city, operators can use self-powered temperature control units.

Therefore, I encourage DEP to discard this proposed rule and adopt the one unanimously approved and submitted by Manhattan Community Board 4. Thank you!

Sincerely,

A handwritten signature in black ink, appearing to read "Dietmar Detering". The signature is fluid and cursive, with a large loop at the end.

Dietmar Detering, PhD