New York City Department of Environmental Protection

Notice of Adoption of Rule

Pursuant to the authority vested in the Commissioner of the Department of Environmental Protection ("DEP") by subdivision a of section 1043 of the New York City Charter and section 24-105 of the Administrative Code of the City of New York, DEP is promulgating rules changing and clarifying the criteria for second and third offenses of certain violations, including vehicular idling violations, and providing that such violations can be admitted without going through the stipulation process.

A proposed version of this rule was published in the City Record on January 6, 2023. A public hearing regarding the rule was held on February 8, 2023. The only comments received included various suggestions and complaints regarding the Citizen's Idling Complaint Program but did not address the proposed rule changes.

Statement of Basis and Purpose

Chapter 43 of title 15 of the Rules of the City of New York sets forth the penalties that may be imposed for violations of the Air Pollution Control Code. Section one of this rule amends subdivision (5) of section 43-01 of title 15 of the Rules of the City of New York to revise the existing provision setting forth the time period following a predicate offense in which subsequent offenses may be considered second or third offenses for idling summonses and trigger potentially heightened penalties. Currently, this rule provision differentiates between offenses rooted in violations of section 24-163 of the Administrative Code of the City of New York ("Administrative Code"), which prohibits excessive vehicle idling, and all other Air Pollution Control Code offenses.

The Citizens Idling Complaint Program, authorized by section 24-182 of the Administrative Code, has caused a significant increase in the number of summonses issued for violations of section 24-163 of the Administrative Code. This increase has resulted in delays in the issuance of summonses, meaning that much of the existing two-year period may expire while an initial summons is being issued and adjudicated. In order to address this issue, this rule increases the time period following the date of a predicate first offense of section 24-163 of the Administrative Code during which a subsequent offense can be treated as a second or third offense from two years to three.

This rule amendment also clarifies the time period for issuing penalties for third offenses of Air Pollution Control Code provisions not related to section 24-163 of the Administrative Code, but does not extend the existing two year period for these other penalties.

Consistent with chapter 6 of title 48 of the Rules of the City of New York, sections two and three of this rule add a new subdivision (7) to section 43-01 of title 15 of the Rules of the City of New York and amend the schedule set forth in section 43-02 of such title to provide that respondents may admit violations of section 24-163 instead of entering into a stipulation. Currently, the

Department of Environmental Protection ("DEP") makes a stipulation offer on many Air Code violations, in accordance with section 24-183 of the Administrative Code. Acceptance of the stipulation offer entails admitting the violation, paying the stipulated penalty, and promising to correct the violating condition within a prescribed time period. For idling violations, committing to correct the violating condition is meaningless because of the ephemeral nature of vehicular idling. This rule, by providing for admission instead of stipulation for violations of section 24-163 of the Administrative Code, allows respondents to admit and pay summonses online through the Office of Administrative Trials & Hearings ("OATH") website, instead of waiting to receive a stipulation offer from DEP. This will expedite the handling of these cases and reduce the administrative burden on DEP and OATH that has been created by the rapid expansion in the number of idling summonses.

Subdivision (c) of section 1403 of the New York City Charter and sections 24-105, 24-163 and 24-178 of the Administrative Code authorize the Department to issue this rule.

New text is underlined.

The text of the rule follows:

Section 1. Subdivision 5 of Section 43-01 of Title 15 of the Rules of the City of New York is amended to read as follows:

5. Except in connection with violations of Section 24-163, a second or third offense means a violation of any section of the Air Code by the same respondent within two years of the date of occurrence of the prior violation, at the same premises (if premises-related), and involving the same equipment. In connection with violations of Section 24-163, a second or third or subsequent offense is a violation by the same respondent within [two] three years of the date of occurrence of the prior violation(s) and involving the same [equipment] vehicle, where the prior violation(s) was for a violation of Section 24-163.

§ 2. Section 43-01 of Title 15 of the Rules of the City of New York is amended by adding a new subdivision 7 to read as follows:

7. Each summons for a violation of section 24-163 shall provide that a respondent may admit to such violation and pay the corresponding penalty amount set forth in section 43-02.

§ 3. Section 43-02 of Title 15 of the Rules of the City of New York is amended by changing the entries for sections 24-163 and 24-163(f), as follows:

Section of Law	Violation Description	Compliance	1st Offense Stip. ($)	1st Offense ($)	Default Penalty ($)	2nd Offense ($)	2nd Stip. ($)	3rd and Subsq. Offense ($)	3rd and Subsq. Stip. ($)
24-163	Idling of motor vehicle engine more than three minutes	[Do not idle motor vehicle more than 3 minutes – forthwith] N/A	[350] N/A	350	1st: 1,000; 2nd: 1,500; 3rd and subseq: 2,000	440	[440] N/A	600	[600] N/A
24-163(f)	Idling of motor vehicle engine more than one minute while adjacent to school	[Do not idle motor vehicle more than 1 minute – forthwith] N/A	[350] N/A	350	1st: 1,000; 2nd: 1,500; 3rd and subseq: 2,000	440	[440] N/A	600	[600] N/A