

March 7, 2024

Reference Number: DEP-99

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Comment in Opposition to DEP's Proposal to Repeal Its Existing Rule on Adjacency and Replace It with a Weaker Rule that Will Harm Children

Dear Commissioner Aggarwala:

As a proud New York City school teacher of 13 years and a participant in the Citizens Air Complaint Program, I write to oppose in the strongest possible terms the DEP's proposed repeal of the existing rule defining what is "adjacent" to a school. The present rule is not only clear, sensible, and effective, but also easy to understand and apply. Instead, DEP proposes to replace it with a rule that is extremely difficult to understand and which will result in more air pollution, harming our kids, my students, and our environment.

I teach 9th graders in the Bronx's Fordham neighborhood, Roosevelt Campus, of District 10—an area plagued with very high traffic. Every day, there are delivery trucks and school buses that idle both next to my school and the middle school just around the corner, both during and after school. This happens even on the mildest of days. Sometimes I can smell the fumes in my classroom, and I'll have to shut the window. The fumes can be so much that I feel like I can taste them. Sometimes I'll even hear some of my students ask, "What is that smell?" and I'll look out the window. Invariably, there will be a truck or a bus idling. My students and I can see, and breathe, the plumes of smoke leaving the exhaust—and exhaust as we all know travels from across the street, or from down the block.

My students have little idea of the dangers they face when they are standing outside near these buses and trucks. As a participant in the Citizens Air Complaint Program, however, I know full well the damage my students incur, because I understand the health impact of air pollution. I also coach baseball at this building. Every day, as we leave to get ready for practice, there are trucks and buses just sitting there needlessly idling with no regard for anyone's health or the environment. There are two other schools in the vicinity, and it's the same problem. I'll walk by to get lunch and the fumes are overwhelmingly strong, sometimes I'll

put a mask on just to pass. As bad as the pollution currently is, this rule change will make it even worse for my students. It absolutely cannot go forward. Whom does the new rule propose to benefit? Clearly children who are meant to be protected under the law with a heightened safety standard that calls for adjacency to be defined derive absolutely no benefit whatsoever from DEP's narrower, less-protective rule that leaves them MORE exposed to toxic fumes.

I also write as a member of the New York Clean Air Collective ("NYCAC"), which is a non-profit organization dedicated to protecting New Yorkers' right to enjoy clean air, including through helping participants in the Citizens Air Complaint Program. The Citizens Air Complaint Program is the City's primary enforcement mechanism for key portions of the Air Code. It is also the most successful citizen environmental program in the world! In 2023, citizens submitted 82,615 complaints for idling in New York. These complaints resulted in \$38 million in deterrent penalties imposed, up from approximately \$8 million in 2022. Shockingly, DEP has not, to our knowledge, even examined the impact this new rule would have on the program.

I and NYCAC oppose the rule for several reasons, each of which DEP must consider and address before adopting any new rule:

1. The existing rule works, both administratively and to protect children.
2. The proposed rule will weaken the existing rule by up to 99 percent.
3. The proposed rule is unclear and will be impossible to administer.
4. The new rule's administrative complexity will discourage participation in the Citizens Air Complaint Program, which is the City's primary enforcement mechanism for the anti-idling law.

1. The existing school rule works well to protect New York's children.

The existing rule is clear: A vehicle may not idle for more than one minute when it is parked, stopped, or standing on a block that has a school entrance or exit. DEP has issued tens of thousands of summonses under this rule, almost all of them issued through the Citizens Air Complaint Program.

The existing rule makes sense because many schools in New York City, especially in Manhattan and Brooklyn, are located within a part of one city block. For that reason, students are required to walk down part or all of a block to get to their school entrance or exit. **Protecting the *entire* block with the one-minute**

rule is necessary to ensure that children do not breathe excessive idling exhaust just to go to school or use outdoor playgrounds. And as the EPA observes, “Not only can diesel exhaust from idling pollute the air in and around the bus, it can also enter school buildings through air intakes, doors, and open windows,” is designated “carcinogenic to humans,” and “contains significant levels of particulate matter [that] lodge deep into the lungs and heart and are linked to premature death, aggravated asthma, and decreased lung function in children who are more susceptible...because their respiratory systems are still developing and they have faster breathing rates.”

(<https://www.epa.gov/dera/school-bus-idle-reduction>.)

As a teacher, I see every day how important the current rule is to protecting my students' health.

The examples below are trucks that are illegally idling under the existing rule and unquestionably endangering the surrounding area. **DEP's proposed rule would legalize this idling** and shield offenders from a heightened standard designed to protect school children!







The current rule makes it illegal to idle for more than one minute in each of these common, everyday scenarios. **But DEP's new rule will bless and make this pollution legal.**

As my experience shows, idling by school buses is especially dangerous. Scientific studies show this, too: See <https://www.epa.gov/dera/reducing-diesel-emissions-school-buses> and <https://www.ehhi.org/reports/diesel/dieselintr.pdf>

Here is a real-world example of how the entire block needs to be protected by the existing one-minute rule. Buses from this single school in Manhattan line up, filling the entire block with pollution. Under the new rule, buses not directly in front of the school would be allowed to idle for three minutes, not one. Polluting school buses, which by law are not subject to the stricter emissions standards governing most heavy vehicles, were a main driver of the legislation that created the one-minute school-adjacent law.



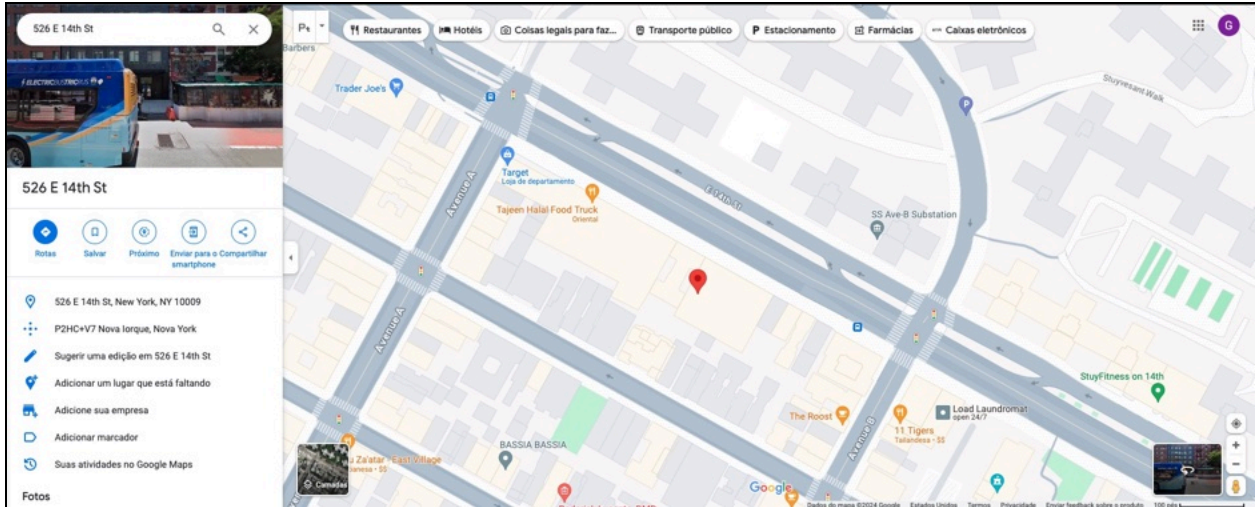


DEP should not implement a rule that would fatally undermine the City Council's one-minute rule, which was intended to protect school children from idling buses, like those shown above.

2. DEP's proposal will dramatically weaken the existing rule by up to 99 percent.

By contrast, DEP's proposed rule reduces the distance from the whole block to just the single traffic lane directly in front of a given school. This change would result in a significant reduction in area covered by the protective one-minute rule and would increase the pollution children breathe on the way to and from school. **Although DEP has offered *no* estimates of how much idling would change and *zero* justification for this rule change, NYCAC has calculated that the new rule will result in a 70–99% reduction in many areas covered by the one-minute rule.**

One school that helps illustrate this reduction is Bright Horizons at East Village, a preschool located at 526 E 14 St in Manhattan. Under the current definition of adjacent, the whole block between Avenue A and Avenue B on E 14 St is covered by the one-minute rule, including the service road across the street. As of February 13, 2024, DEP has issued 137 summonses adjacent to Bright Horizons under the existing one-minute rule.



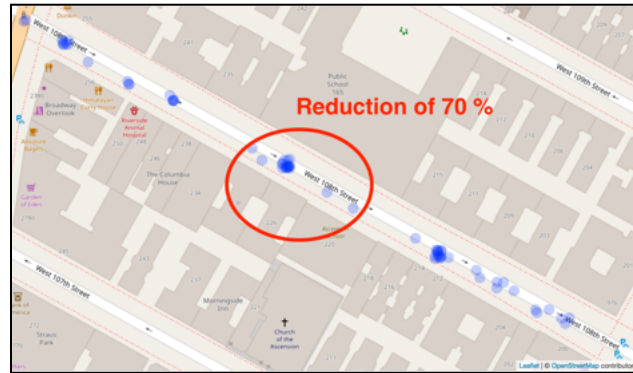
The actual preschool is located in a mixed-use building, with the property lines themselves covering at most 30 feet. On this section of 14 St, vehicles frequently park in the bus lanes and the curb lanes. The area covered as “adjacent” under the current rule is thus about 2,584 feet (i.e., two bus lanes, two travel lanes, multiplied by the 646 foot-long block¹). **By contrast, the new rule would cover, at most, 30 feet of area, or a 99% reduction!**

The new rule’s harmful impact is also apparent when looking at PS 165, in Manhattan which has entrances on West 109th Street and West 108th Street. Over the life of the Citizens Air Complaint Program, DEP has issued 66 summonses for

¹ See here for the distance between Avenue A and Avenue B: <https://stuffnobodycaresabout.com/2012/11/19/all-new-york-city-streets-are-not-created-equal/>

school violations on this block. Based on citizens' periodic observations, these tickets have significantly reduced idling.

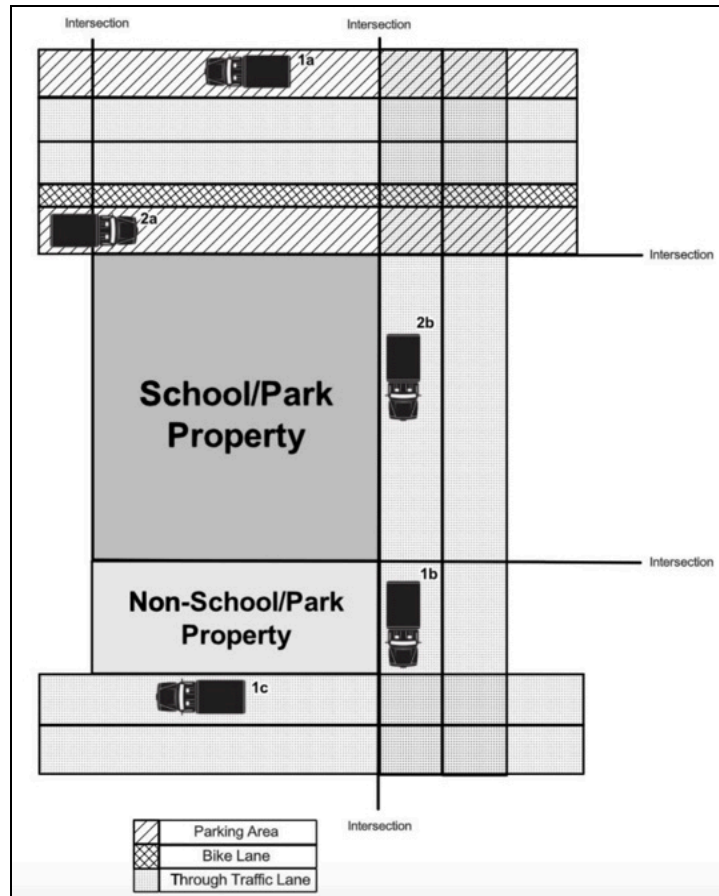
But if DEP had issued one-minute violations for only the address directly in front of the school, it would have issued just 20 tickets—a reduction of 70%!



3. The new rule is unclear and will be impossible to administer.

DEP is charged with enforcing the City's Air Code. Because air pollution is a "menace to the health, welfare and comfort of the people of the city," the City Council has mandated that the Air Code "*shall* be liberally construed so as to effectuate the purposes described in this section." N.Y.C. Admin. Code § 24-102 (emphasis added). Those purposes include "preserv[ing], protect[ing] and improv[ing] the air quality of the city" and "actively regulat[ing] and eliminat[ing] harmful open air] emissions." DEP's new rule is hopelessly unclear, however, and it fails to uphold DEP's mission to "enrich the environment and protect public health for all New Yorkers by...reducing air and hazardous materials pollution."

DEP has included a diagram as to how their definition should be interpreted. But this diagram reveals just how unclear DEP's own rule is and how impossibly difficult it will be to administer.



As complicated as it is, however, the diagram does not address a wide variety of ordinary situations that will affect administration of this rule every single day. These include but are in no way limited to:

- One-way streets;
- When a vehicle is parked illegally in the closest travel lane, bus lane, or bike lane;
- When a vehicle is parked on a sidewalk, “zebra stripe” area, or in other non-traffic areas.
- When road construction and infrastructure activity disrupt, obscure, or reroute lane lines, as often occurs in New York City.
- When vehicles are in the intersection at the corner of a school building, but the planar extension of the property line excludes the intersection.

In each of these cases—and innumerable others—the new rule would TRIPLE the amount of illegal idling, without regard to the fact that the vehicles are proximate to and polluting the air breathed by everyone at the school. That is because DEP’s diagram and definition narrowly define that a vehicle will only be

considered adjacent where the vehicle is in the curb lane or physically abutting school property, meaning that the above situations are not “adjacent.”

What is worse, for each of these scenarios, citizen complainants would have almost no guidance on whether an idling truck is, in fact, adjacent to a school. That is because the rule itself is hopelessly ambiguous. DEP is thus replacing a clear, simple rule with one that is impossible to decipher in numerous, everyday scenarios.

4. DEP has not taken into account the proposal’s negative impacts on the Citizens Air Complaint Program.

The Citizens Air Complaint Program (“program”) administered by DEP has been wildly successful, and is the most successful anti-idling program in the United States. The program is currently the primary mechanism that DEP uses to issue summonses, and thus its primary mechanism for achieving compliance with idling laws.

Under current DEP guidelines, to issue a violation under 24-163(f), DEP does not require any additional documentation from the citizen other than the name of the school. The current practice makes sense, as DEP personnel reviewing complaints can look up the school and the cited place of occurrence from the complaint form, and easily determine whether the violation was adjacent or not.

The new rule will likely raise the required documentary evidence from citizens and increase the administrative burden on DEP personnel reviewing complaints.

1. Historically, OATH has not required highly accurate nor specific locations as long as it was accurate enough for the respondent to form a defense.² As a result, many citizen complainants use location descriptions such as "Intersection of Avenue A and E 14 St" or “E 14 St between Avenue A and Avenue B.” Where an exact house number is currently used (for example, 526 E 14 St), that house number need not be precise, and so, for example, it could be across the street from the actual violation location. Because of the highly specific nature of the new definition of adjacent, these location descriptions

² See Appeal No. 2200769 DEP v. Fedex Custom Critical Inc (Oct. 27, 2022), <https://archive.citylaw.org/wp-content/uploads/sites/12/ecb/2200769.pdf>

would no longer be acceptable for 24-163(f) violations, placing additional burden on citizen complainants.

2. DEP will likely demand additional verification that the vehicle does indeed meet the new, far more stringent definition of adjacent, possibly showing where the school is relative to the vehicle. DEP has not made any statements as to how it intends to change its complaint program best practices based on the new rule. DEP should consider how it will have citizens document property lines, even in shared buildings or cases of ambiguous frontage, as well as any increases in administrative burden for reviewing 24-163(f) violations for its personnel. Even respondents may be confused as to how to mount an affirmative defense.
3. Many citizens are familiar with the current rule, and changing the rule will discourage participation from less active citizen complainants since they have to try to understand the confusing, new rule.

In conclusion, I strongly oppose the proposed rule, which will increase the burden on citizens and DEP personnel, while decreasing participation in the Citizens Air Complaint Program. The proposed rule will also decrease the area covered by the one-minute rule by huge margins, and it will triple the amount of time a truck or bus can legally idle on school blocks. It is a win for polluters and nobody else.

On behalf of my students and all other New Yorkers, I urge DEP to reverse course and withdraw this rule proposal. Instead, DEP should adopt the citizen-proposed expansion of the existing rule on adjacency to cover parks, which is consistent with the City Council's goals in passing anti-idling laws and will help increase the law's protections for our children.

Sincerely,

_____/s/_____
Aaron Jacobs