

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2003**

No. 77

Introduced by Council Members Gerson, The Speaker (Council Member Miller), Clarke, Comrie, Jennings, Perkins, Yassky, Avella, Serrano, Koppell, Quinn, Seabrook, Katz, Brewer, Gennaro, Gioia, Gentile, DeBlasio, Moskowitz, Liu, Baez, Lopez, Martinez, James, Weprin, Jackson and Nelson; also Council Members Boyland, Recchia Jr., McMahon and Vallone Jr.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the use of ultra low sulfur diesel fuel and the best available technology by nonroad vehicles in city construction.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Findings and Intent. The Council finds that diesel emissions, due in large part to their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of New York City. Public health organizations, including the National Institute of Occupational Safety and Health, the World Health Organization, the United States Environmental Protection Agency (EPA), the California Environmental Protection Agency and the United States Department of Health and Human Services' National Toxicology Program, have associated diesel exhaust or diesel particulates with an increased risk of cancer. Additionally, the health effects associated with particulate matter include decreased lung function, aggravated asthma, respiratory symptoms and premature death.¹ Nonroad diesel equipment is the single largest mobile source-based source of diesel particulate matter.

Diesel exhaust also contains nitrogen oxides, which combine with volatile organic compounds in the air, such as hydrocarbons -- also emitted by nonroad vehicles -- to form ground-level ozone, or smog, in the presence of heat and sunlight.² Ozone may cause a variety of respiratory problems, including aggravated asthma, decreases in lung capacity and increased susceptibility to respiratory illnesses.³ It is damaging to lung tissue in high concentrations and during long-term exposure.⁴ New York City continues to be classified as a "severe-17 nonattainment area" for ozone.⁵

As mentioned above, increased particulate matter concentrations and nitrogen oxides have been positively linked to increases in the aggravation of asthma, which can lead to increased rates of preventable hospitalization and premature death. The Council finds that reducing particulate matter and nitrogen oxide emissions may help to stem the tide of the asthma epidemic in New York City. In the year 2000 alone, there were 26,868 asthma-related hospitalizations in New York City.⁶ These hospitalizations resulted in \$242,454,056 of medical expenses -- an average of \$9023.90 per hospitalization -- of which 49.4% of the charges, or \$119,772,304, was paid by Medicaid and 23.1% of the charges, or \$56,006,887, was paid by Medicare.⁷

The EPA, recognizing the harmful effects of diesel emissions from nonroad vehicles, issued a proposed rule on April 15, 2003, which would require that sulfur levels in nonroad diesel fuel be limited to 15 parts per million in

¹ United States Environmental Protection Agency, "Health and Environmental Effects of Particulate Matter, Fact Sheet", July 17, 1997, <http://www.epa.gov/ttn/oarpp/naaqs/fin/pmhealth.html>.

² <http://www.epa.gov/otaq/invtory/overview/pollutants/nox.htm>.

³ <http://www.epa.gov/air/oaqps/airtrans/groundoz.html>.

⁴ American Lung Association of New York State, Inc., "Unhealthy to Breathe: Summer Ozone Levels in New York State", October 2002, p. 6.

⁵ This classification means that the area does not meet the national primary or secondary ambient air quality standard for ozone; it has a design value of from 0.190 up to 0.280 ppm for ozone; and, it has until 2007 to attain compliance with the standards.

<http://www.epa.gov/oar/oaqps/d/greenbk/define.html#Designations>.

⁶ New York City Department of Health and Mental Hygiene, "Asthma Facts, Second Edition ("Asthma Facts")", May 2003, Figure 6, p. 12.

⁷ Asthma Facts, Figure 11, p. 13.

2010. This rule would also require, starting in 2008 for smaller nonroad vehicles, that engines meet more stringent emissions standards.

Nonroad vehicles, such as backhoes, bulldozers, excavation machines, generators and cranes, have been and will be used to perform necessary and important functions at Ground Zero and will play a major role in the rebuilding of the area for years to come. The Council finds, however, that the City has a responsibility toward the people who live, work and attend school in Lower Manhattan, to minimize, wherever practical, the pollution such equipment and machinery emit into the air. The Council finds that the use of ultra low sulfur diesel fuel to power the diesel-powered nonroad vehicles operating at Ground Zero and in other parts of Lower Manhattan would reduce the amount of particulates released into the air by these vehicles, thereby improving air quality in that area. The Council further finds that using nonroad vehicles that utilize the best available technology for reducing the emission of harmful pollutants, such as particulate matter and nitrogen oxides, would have a dramatic impact on the level of pollutants being released in Lower Manhattan.

The Council finds that air quality is a concern in all parts of New York City, as well as in Lower Manhattan, particularly since the City suffers from some of the highest asthma rates in the country. Therefore, the Council finds that it is in the best interest of the health of our City's residents, workers and schoolchildren for the City to use ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants in its diesel-powered nonroad vehicles in all areas of the City, in addition to Lower Manhattan. The Council also finds that the City should contract for construction services with contractors who use ultra low sulfur diesel fuel and the best available technology to minimize the release of harmful pollutants in diesel-powered nonroad vehicles. Acting with the discretion allowed any private participant in the market, the City should choose to allocate its purchasing dollars in order to protect the health of its residents, thus decreasing the number of asthma hospitalizations and associated costs to the City, as well.

This legislation requires that any diesel-powered nonroad vehicle, fifty horsepower and greater, that is owned by, operated by or on behalf of, or leased by a City agency be powered by ultra low sulfur diesel fuel and utilize the best available technology for reducing the emission of pollutants. Additionally, this legislation requires that any solicitation for a public works contract and any contract entered into as a result of such solicitation include specifications that all contractors in the performance of such contract use ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants for diesel-powered nonroad vehicles. All contractors in the performance of such contract must comply with such specifications. Although these requirements would apply to such vehicles only in Lower Manhattan at first, they would subsequently apply to nonroad vehicles in all other areas of the City. The Council finds that this legislation will have an important impact on improving the air quality throughout New York City and, consequently, may annually save the City millions of dollars in avoided health care costs.

§ 2. Title 24 of the administrative code of the city of New York is hereby amended by adding a new section 24-163.3 to read as follows:

§ 24-163.3 *Use of ultra low sulfur diesel fuel and best available technology in nonroad vehicles. a. For purposes of this section only, the following terms shall have the following meanings:*

(1) "City agency" means a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Contractor" means any person or entity that enters into a public works contract with a city agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such public works contract.

(3) "Lower Manhattan" means the area of New York county consisting of the area to the south of and within Fourteenth street.

(4) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(5) "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

(6) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine, fifty horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term

shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a nonroad engine of sixty-five horsepower or less and that are not used in any construction program or project.

(7) "Person" means any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

(8) "Public works contract" means a contract with a city agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a city agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a city agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

(9) "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

b. (1) Any diesel-powered nonroad vehicle that is owned by, operated by or on behalf of, or leased by a city agency shall be powered by ultra low sulfur diesel fuel.

(2) Any diesel-powered nonroad vehicle that is owned by, operated by or on behalf of, or leased by a city agency shall utilize the best available technology for reducing the emission of pollutants.

c. (1) Any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall use ultra low sulfur diesel fuel in diesel-powered nonroad vehicles and all contractors in the performance of such contract shall comply with such specification.

(2) Any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall utilize the best available technology for reducing the emission of pollutants for diesel-powered nonroad vehicles and all contractors in the performance of such contract shall comply with such specification.

d. (1) The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available technology for reducing the emission of pollutants to be used for each type of diesel-powered nonroad vehicle to which this section applies for the purposes of paragraph two of subdivision b and paragraph two of subdivision c of this section. Each such determination, which shall be updated on a regular basis, but in no event less than once every six months, shall be primarily based upon the reduction in emissions of particulate matter and secondarily based upon the reduction in emissions of nitrogen oxides associated with the use of such technology and shall in no event result in an increase in the emissions of either such pollutant. In determining the best available technology for reducing the emission of pollutants, the commissioner shall select technology from that which has been verified by the United States environmental protection agency or the California air resources board for use in nonroad vehicles or onroad vehicles where such technology may also be used in nonroad vehicles, but the commissioner may select technology that is not verified as such as is deemed appropriate.

(2) No city agency or contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered nonroad vehicle in accordance with the provisions of this section within three years of having first utilized such technology for such vehicle.

e. A city agency shall not enter into a public works contract subject to the provisions of this section unless such contract permits independent monitoring of the contractor's compliance with the requirements of this section and requires that the contractor comply with section 24-163 of this code. If it is determined that the contractor has failed to comply with any provision of this section, any costs associated with any independent monitoring incurred by the city shall be reimbursed by the contractor.

f. (1) The provisions of subdivision b of this section shall apply to any diesel-powered nonroad vehicle in use in Lower Manhattan that is owned by, operated by or on behalf of, or leased by a city agency and the provisions of subdivision c of this section shall apply to any public works contract for Lower Manhattan upon the effective date of this section.

(2) The provisions of paragraph one of subdivision b of this section shall apply to all diesel-powered nonroad vehicles that are owned by, operated by or on behalf of, or leased by a city agency and the provisions of paragraph one of subdivision c of this section shall apply to all public works contracts six months after the effective date of this section.

(3) *The provisions of paragraph two of subdivision b of this section shall apply to all diesel-powered nonroad vehicles that are owned by, operated by or on behalf of, or leased by a city agency and the provisions of paragraph two of subdivision c of this section shall apply to any public works contract that is valued at two million dollars or more one year after the effective date of this section.*

(4) *The provisions of paragraph two of subdivision c of this section shall apply to all public works contracts eighteen months after the effective date of this section.*

g. (1) *On or before January 1, 2005, and every succeeding January 1, the commissioner shall report to the comptroller and the speaker of the council on the use of ultra low sulfur diesel fuel in diesel-powered nonroad vehicles and the use of the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this section for such vehicles by city agencies during the immediately preceding fiscal year. This report shall include, but not be limited to (i) the total number of diesel-powered nonroad vehicles owned by, operated by or on behalf of, or leased by each city agency or used to fulfill the requirements of a public works contract for each city agency; (ii) the number of such nonroad vehicles that were powered by ultra low sulfur diesel fuel; (iii) the number of such nonroad vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology used for each vehicle; (iv) the number of such nonroad vehicles that utilized such other authorized technology in accordance with this section, including a breakdown by vehicle model and the type of technology used for each vehicle; (v) the locations where such nonroad vehicles that were powered by ultra low sulfur diesel fuel and/or utilized the best available technology for reducing the emission of pollutants or such other authorized technology in accordance with this section were used; (vi) all findings, and renewals of such findings, issued pursuant to subdivision j of this section, which shall include, but not be limited to, for each finding and renewal, the quantity of diesel fuel needed by the city agency or contractor to power diesel-powered nonroad vehicles owned by, operated by or on behalf of, or leased by the city agency or used to fulfill the requirements of a public works contract for such agency; specific information concerning the availability of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to subdivision i of this section; and detailed information concerning the city agency's or contractor's efforts to obtain ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to subdivision i of this section; and (vii) all findings and waivers, and renewals of such findings and waivers, issued pursuant to paragraph one or paragraph three of subdivision k or subdivision m of this section, which shall include, but not be limited to, all specific information submitted by a city agency or contractor upon which such findings, waivers and renewals are based and the type of such other authorized technology, if any, utilized in accordance with this section in relation to each finding, waiver and renewal, instead of the best available technology for reducing the emission of pollutants.*

(2) *Where a determination is in effect pursuant to subdivision i of this section, information regarding diesel fuel that has a sulfur content of no more than thirty parts per million shall be reported wherever information is requested for ultra low sulfur diesel fuel pursuant to paragraph one of this subdivision.*

h. *This section shall not apply:*

(1) *where federal or state funding precludes the city from imposing the requirements of this section; or*

(2) *to purchases that are emergency procurements pursuant to section three hundred fifteen of the charter.*

i. *The commissioner shall issue a written determination that permits the use of diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of paragraph one of subdivision b and paragraph one of subdivision c of this section if ultra low sulfur diesel fuel is not available to meet the needs of city agencies and contractors to fulfill the requirements of this section. Such determination shall expire after six months and shall be renewed in writing every six months if ultra low sulfur diesel fuel is not available to meet the needs of city agencies and contractors to fulfill the requirements of this section, but in no event shall be in effect after September 1, 2006.*

j. *Paragraph one of subdivision b and paragraph one of subdivision c, as that paragraph applies to all contractors' duty to comply with the specification, of this section shall not apply to a city agency or contractor in its fulfillment of the requirements of a public works contract for such agency where such agency makes a written finding, which is approved, in writing, by the commissioner, that a sufficient quantity of ultra low sulfur diesel fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to subdivision i of this section, is not available to meet the requirements of paragraph one of subdivision b or paragraph one of subdivision c of this section, provided that such agency or contractor in its fulfillment of the requirements of a public works contract for such agency, to the extent practicable, shall use whatever quantity of*

ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of paragraph one of subdivision b and paragraph one of subdivision c of this section shall be in full force and effect unless the city agency renews the finding in writing and such renewal is approved by the commissioner.

k. Paragraph two of subdivision b and paragraph two of subdivision c, as that paragraph applies to all contractors' duty to comply with the specification, of this section shall not apply:

(1) to a diesel-powered nonroad vehicle where a city agency makes a written finding, which is approved, in writing, by the commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, in which case such agency or contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle; or

(2) to a diesel-powered nonroad vehicle that is used to satisfy the requirements of a specific public works contract for fewer than twenty calendar days; or

(3) to a diesel-powered nonroad vehicle where the commissioner has issued a written waiver based upon a city agency or contractor having demonstrated to the commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, in which case such city agency or contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.

l. In determining which technology to use for the purposes of paragraph one or paragraph three of subdivision k of this section, a city agency or contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

m. Any finding or waiver made or issued pursuant to paragraph one or paragraph three of subdivision k of this section shall expire after one hundred eighty days, at which time the requirements of paragraph two of subdivision b and paragraph two of subdivision c of this section shall be in full force and effect unless the city agency renews the finding, in writing, and the commissioner approves such finding, in writing, or the commissioner renews the waiver, in writing.

n. Any contractor who violates any provision of this section, except as provided in subdivision o of this section, shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such contractor for failure to comply with this section.

o. No contractor shall make a false claim with respect to the provisions of this section to a city agency. Where a contractor has been found to have done so, such contractor shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such contractor in association with having made such false claim.

p. This section shall not apply to any public works contract entered into or renewed prior to the effective date of this section.

q. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification as a vendor, or otherwise deny a person or entity city business.

§ 3. Subparagraph (i) of paragraph 5 of subdivision b of section 24-178 of the administrative code of the city of New York is amended by inserting the following lines in the Table of Civil Penalties, immediately following the line regarding civil penalties for a violation of section 24-163.2 of this chapter:

24-163.3; plus twice the amount of money saved by the contractor for failure to comply with such section; provided that such \$1,000 - \$10,000 penalty and additional penalty shall not apply to violations of 24-163.3(o).....	10,000	1,000
24-163.3(o); plus twice the amount of money saved by the contractor in association with having made such false claim	20,000	20,000

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not effect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect one hundred eighty days after its enactment, except that the commissioner of environmental protection shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on December 15, 2003, and approved by the Mayor on December 22, 2003.

VICTOR L. ROBLES, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 77 of 2003, Council Int. No. 191-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 15, 2003: 50 for, 0 against, 0 not voting.

Was returned signed by the Mayor on December 22, 2003.

Was returned to the City Clerk on December 22, 2003.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel

LL 77 Amendment

Department of Environmental Protection

Notice of Amendment to

Chapter 14 of Title 15 of the Rules of the City of New York

Rules Concerning the Use of Ultra-Low Sulfur Fuel and Emissions Control Technology in Nonroad Vehicles Used in City Construction

PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 and subdivision (c) of section 1403 of the New York City Charter and section 24-163.3 of the Administrative Code of the City of New York that the Department of Environmental Protection promulgates and amends rules governing the use of ultra-low sulfur diesel fuel and best available control technology by nonroad vehicles in city construction (15 RCNY 14-01 *et. seq.*)

These amendments were proposed and published February 28th, 2008 in the City Record. The required public hearing was held on March 31st, 2008.

Please note Material being deleted is shown below in [brackets] and material being added is underlined.

Statement of Basis of Purpose

On December 22, 2003, Mayor Michael Bloomberg signed Local Law 77 for the year 2003. The law amended the Administrative Code of the City of New York in relation to the use of ultra low sulfur diesel fuel ("ULSDF") and the best available technology ("BAT") by nonroad vehicles in city construction. The law requires that any diesel-powered nonroad vehicle, fifty horsepower and greater, that is owned by, operated by or on behalf of, or leased by a City agency be powered by ULSDF and utilize BAT for reducing the emission of pollutants. The law provides that the Commissioner of the Department of Environmental Protection shall make determinations, and shall publish a list of such determinations, as to the BAT for reducing the emission of pollutants to be used for each type of diesel-powered nonroad vehicle affected by the law.

The amendments to Section 14-02 provide the link to the websites where the best available technology is listed; create subdivisions within Category I that further clarify the hierarchy of what constitutes best available technology; and include a new technology list.

The amendments to Section 14-03 (b) reflect the addition of the new subdivisions within Section 14-02 (a). The amendments to subdivision (c) clarify the elimination procedure process. The amendments to subdivision (e) create an additional requirement for what constitutes BAT for newly purchased vehicles; and the amendments to subdivision (g) clarify the procedure for how BAT will be recorded.

Section 14-04 is amended to include a timeframe for the use of a technology that does not appear on the EPA or CARB verified lists.

This rulemaking sets forth the initial determinations of the Commissioner as to what constitutes BAT for the purposes of compliance with section 24-163.3 of the Administrative Code. In addition, it sets forth the method for obtaining a waiver from the BAT requirements as provided by subdivision k of section 24-163.3.

The Rules are authorized by section 1403 of the Charter of the City of New York and section 24-163.3 of the Administrative Code of the City of New York.

* * *

Chapter 14 of Title 15 of the Rules of the City of New York is enacted to read as follows:

Chapter 14
Rules Concerning the Use of Ultra Low Sulfur Diesel Fuel and Emissions Control
Technology in Nonroad Vehicles Used in City Construction

Subchapter

A General Provisions

B Use of Best Available Technology and Ultra Low Sulfur Diesel Fuel

C Waiver Procedure

Subchapter A

General Provisions

§ 14-01 Definitions

§ 14-01 Definitions

Code shall mean the Administrative Code of the City of New York.

Commissioner shall mean the commissioner of the New York City Department of Environmental Protection or his or her designee.

Nonroad engine shall mean an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

Nonroad vehicle shall mean a vehicle powered by a nonroad engine, fifty horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers, and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a nonroad engine of sixty-five horsepower or less and that are not used in any construction program or project.

Ultra low sulfur diesel fuel shall mean diesel fuel that has a sulfur content of no more than fifteen parts per million.

Subchapter B

Use of Best Available Technology and Ultra Low Sulfur Diesel Fuel

§14-02 Best Available Technology Determination

§14-03 Method of Best Available Technology Selection

§14-04 Best Available Technology Selection Applicability

§14-05 Use of Ultra Low Sulfur Diesel Fuel

§14-06 Public Works Contracts

Section one. Section 14-02 of Title 15 of the Rules of the City of New York is amended to read as follows:

§14-02 Best Available Technology Determination. Pursuant to §24-163.3 of the Administrative Code, the Best Available Technology (“BAT”) that must be utilized is one of the following, provided, that this technology shall achieve the greatest reduction in emissions of particulate matter and shall in no event result in an increase in the emissions of either particulate matter or nitrogen oxides.

Category I (a)

Any properly installed and functioning system utilizing a Diesel Particulate Filter (“DPF”) that primarily reduces emissions of particulate matter (“PM”), demonstrating an 85% or greater reduction in PM, and secondarily nitrogen oxide (“NOx”) that appears on either the United States Environmental Protection Agency (“EPA”) or the California Air Resources Board (“CARB”) verified lists at <http://www.epa.gov/otaq/retrofit/verif-list.htm> and <http://www.arb.ca.gov/diesel/verdev/background.htm> for onroad or nonroad engines [or any properly installed DPF from either of the verified lists].

Category I (b)

Any properly installed DPF from either the EPA or CARB verified lists.

Category I(c)

A filter that has undergone the Verminderung der Emissionen Realer Dieselmotoren im Tunnelbau (“VERT”) test procedure and appears as approved for continuous use on the VERT list maintained by http://akpf.org/pub/vert_filterliste.pdf or similar test procedures to those conducted by EPA/CARB and has demonstrated an 85% or greater reduction in emissions of PM.

Category II

Any properly installed and functioning system utilizing a [Diesel Oxidation Catalyst (“DOC”) or Catalyzed Wire Mesh Filter (“CWMF”)] Flow through Filter (“FTF”) that primarily reduces emissions of particulate matter (“PM”) and secondarily nitrogen oxide (“NOx”) that

appears on either the [United States Environmental Protection Agency (“EPA”) or the California Air Resources Board (“CARB”)] verified lists for onroad or nonroad engines or any properly installed [DOC or (CWMFs)] FTF on the verified list and that produces the greater PM reduction but not less than a 50% reduction in PM.

Category III

Any properly installed and functioning system utilizing a Diesel Oxidation Catalyst (“DOC”) or any emulsified diesel fuel that appears on either the EPA or CARB verified lists for onroad or nonroad engines that produces not less than a 25% reduction in PM. Fuel technologies must be compatible with the use of ultra low sulfur diesel fuel.

§ 14-03 Method of Best Available Technology Selection

(a) Any contractor or agency operating a type of nonroad vehicle must select the appropriate BAT for use with such type of nonroad vehicle. For each type of nonroad vehicle subject to the BAT requirement, the contractor or agency operating such type of vehicle must identify, in list form, all types of pollution control technology devices that qualify as BAT in Category I for such nonroad vehicle.

(b) All types of pollution control technology devices identified by the contractor or agency as Category I (a) BAT that are not technologically feasible for use with the subject type of nonroad vehicle are to be eliminated from the list of Category I (a) BAT. To eliminate a specific type of pollution control technology or individual device, the contractor or agency must demonstrate to the satisfaction of the Commissioner and document that operational constraints or physical, chemical or engineering principles preclude the successful and effective use of the nonroad vehicle when used with the specific pollution control technologies of that type. The contractor or agency shall then consider DPFs that satisfy the requirements set forth in Category I (b). If use of a Category I(b) DPF is technologically feasible, the contractor or agency must notify the Commissioner of the selection and the installation schedule. If none are technologically feasible, the contractor or agency shall select the technology devices set forth in Category I(c).

(c) If, after the elimination process, no technologies remain in Category I (a), (b), or (c) from which the contractor or agency can select a BAT, the contractor or agency shall apply for Approval of a Written Finding of Unavailability. Upon approval by the DEP, the same identification and elimination process [must] shall be done for Category II. If, after the elimination process, no technologies remain in Category II from which the contractor or agency can select a BAT, the same identification and elimination process [must] shall be done for Category III. If, after the elimination process, no technologies remain in Category III from which the contractor or agency can select a BAT, the contractor or agency operating the subject nonroad vehicle [must] shall apply for an Approval of a Written Finding of Unavailability or a Safety Waiver.

(d) Once a category is selected as provided for in (c) above, an economic impact analysis is to be performed on the remaining technologies if the technology reduces both PM and NOx. If the cost of the technology that provides NOx control is equal to or greater than thirty percent more than that of the technology without NOx control, than the technology without NOx control shall be selected. For the purpose of this paragraph, the criteria that shall be considered is the cost of the strategies, themselves and the cost of installation.

(e) For newly purchased vehicles, BAT may be Original Equipment Manufacturer (“OEM”) installed control technology, provided that the technology is selected in a manner such that it provides the greatest reduction in particulate matter above the PM standard that the EPA has certified without increasing NOx, and that reduction is verified by the manufacturer. The BAT need not be on EPA or CARB verified retrofit lists.

(f) The contractor or agency must use the pollution control technology identified as BAT by the process set forth in this subchapter.

(g) [All contracts with City agencies shall include a provision requiring that the contractor fully document all steps in the BAT selection process when such process is required pursuant to this chapter and §24-163.3 of the Administrative Code, and that such documentation be furnished to the Department upon request.] Prior to the installation of the selected technology, the contractor or agency shall notify the DEP of the BAT selection and contact the DEP when the DPF or other BAT is installed pursuant to this chapter and §24-163.3 of the Administrative Code. The contractor or agency shall make arrangements to have the unit inspected and registered and the DEP shall label the vehicle as compliant. The contractor [must] shall retain all documentation generated in the BAT selection process for as long as the selected BAT is in use. A contractor’s failure to fully document the selection process or to provide such documentation shall be considered a violation of subdivision (e) of §24-163.3 and is subject to applicable penalties.

§14-04 Best Available Technology Selection Applicability

(a) The BAT listed in this subchapter may be amended, superseded, or repealed at any time. However, no contractor or agency will be required to replace a selected BAT within three years of first using such BAT on any nonroad vehicle.

(b) A contractor or agency who is using a DPF that does not appear on the EPA or CARB verified lists may use such DPF for three years from the date it was first installed. After such three-year period, if such DPF does not appear on either the EPA or CARB verified lists, such DPF may not be used in nonroad vehicles used in City projects.

(c) A contractor or agency who is using Category I(c) technology may use such technology for three years from the date it was first installed. After such three-year period, if such technology does not appear on either the EPA or CARB verified lists, such technology may not be used in nonroad vehicles used in City projects.

(d) A contractor or agency that has installed technology that appears on either the EPA and/or CARB verified lists at the time of installation, but which has been removed from the EPA and/or CARB verified lists during the thirty months following installation, may not use such technology in nonroad vehicles used in City projects at the conclusion of the three-year period following installation. A contractor or agency that has installed technology that appears on the EPA and/or CARB verified lists at the time of installation, but which has been removed from the EPA and/or CARB verified lists during the six months preceding the conclusion of the three-year period following installation, or at any time after the conclusion of such three-year period, may use such technology in nonroad vehicles for an additional six months following the date it was removed from the EPA and/or CARB verified lists.

§ 14-05 Use of Ultra Low Sulfur Diesel Fuel

All nonroad vehicles subject to this rule must be powered by ultra low sulfur diesel fuel, regardless of which BAT is selected, unless the Commissioner has issued a written determination pursuant to subdivision i of section 24-163.3 permitting the use of diesel fuel that has a sulfur content of no more than thirty parts per million.

§14-06 Public Works Contracts

Any contractor acting pursuant to a public works contract that is subject to the provisions of paragraph four of subdivision f of section 24-163.3, but not paragraph one or three of such subdivision, shall comply with this subchapter and subchapters A and C of this chapter as of June 19, 2005.

Subchapter C
Waiver Procedures

<u>§14-07</u>	<u>Application for Approval of a Written Finding of Unavailability</u>
<u>§14-08</u>	<u>Application for a Safety Waiver</u>

§ 14-07 Application for Approval of a Written Finding of Unavailability

(a) If the BAT required for any nonroad vehicle is unavailable, an agency may submit a Written Finding of Unavailability for the Commissioner's approval. Any application for approval of a Written Finding of Unavailability for the applicable BAT must contain the following information:

(1) The name of the agency applying for approval of the Written Finding of Unavailability;

(2) The name and identification number of the subject contract, if applicable;

(3) Identification of the specific nonroad vehicle that is the subject of the Written Finding of Unavailability;

(4) Identification of the required BAT;

(5) An explanation as to why the applicable BAT is unavailable. Such explanation must include all documentation generated in the BAT selection process described in this chapter;

(6) Identification of a technology for reducing the emission of pollutants, if any, that is available and appropriate for such vehicle, which may include a technology that does not appear on the EPA or CARB verified lists, and that, if available and appropriate, will be used instead of the BAT.

(7) The name and contact number of the applicant.

(b) Applications should be sent to:

Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373

(c) The Department will make a determination whether to approve the Written Finding of Unavailability no later than thirty days after receipt of the Written Finding.

(d) Approvals shall expire 180 days after issuance, unless the agency renews the Written Finding and the Commissioner approves such Finding, in accordance with the procedures set forth in subdivisions (a), (b) and (c) of this section. Any such application for renewal shall be submitted no later than thirty days prior to the expiration date of the approval.

§ 14-08 Application for a Safety Waiver

(a) Any application for a waiver from the applicable BAT must contain the following information:

(1) If a contractor applies, the name of the contractor applying for the waiver and the agency to which the contractor is under contract;

(2) If an agency applies, the name of the agency applying for the waiver;

(3) The name and identification number of the subject contract, if applicable;

(4) Identification of the specific nonroad vehicle that is the subject of the waiver request;

(5) Identification of the required BAT;

(6) A technical explanation as to why use of such Best Available Technology may endanger the operator of the vehicle or those working near the vehicle, due to engine malfunction;

(7) Identification of a technology for reducing the emission of pollutants, if any, that is available and appropriate for such vehicle, which may include a technology that does not appear on EPA or CARB verified lists, and that, if available and appropriate, will be used instead of the BAT;

(8) The name and contact number of the applicant.

(b) Waiver applications should be sent to:

Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.

Flushing, NY 11373

(c) The Department will make a determination whether to issue a waiver no later than thirty days after receipt of the waiver request.

(d) Waivers shall expire 180 days after issuance, unless the Commissioner renews the waiver in accordance with the procedures set forth in subdivisions (a), (b) and (c) of this section. Any such application for renewal shall be submitted no later than thirty days prior to the expiration date of the waiver.