

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Amended Proposed Rules

What are we proposing? The Department of Environmental Protection is issuing rules that establish requirements for stack tests and smoke tests to measure smoke emissions from generators with an output of 40 kilowatts or more.

When and where is the hearing? The department will hold a public hearing on the proposed rule. The public hearing will take place at 10 a.m. on November 16, 2016. The hearing will be held in the 9th floor conference room at 59-17 Junction Boulevard, Flushing, New York. The prior hearing was held on August 10, 2016.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on November 16, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by November 16, 2016.

Do you need assistance to participate in the hearing? You must tell the Bureau of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 718-595-6531. You must tell us by November 9, 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the department to make this rule? Section 1043 of the City Charter and sections 24-105, 24-109(c)(2)(i), and 24-125(a)(1) of the Administrative Code authorize the

department to make this proposed rule. This proposed rule was included in the department's regulatory agenda for this fiscal year.

Where can I find the department's rules? The department's rules are in Title 15 of the Rules of the City of New York.

What rules govern the rulemaking process? The department must meet the requirements of Section 1043(c) of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

This rule defines the method that must be used in performing a smoke test or stack test for generators with an output of 40 kilowatts or more.

Local Law Number 38 for the year 2015 amends Title 24 of the Administrative Code of the City of New York. It defines required procedures that a professional engineer (P.E.) or registered architect (R.A.) must follow in order to certify that any generator with an output of 40 kilowatts or more has passed a stack test. This rule only sets forth the test method that a P.E. or R.A. shall follow if a Method 9, “Visual determination of the opacity of emissions from stationary sources” test is not used to meet the requirements set forth in Section 24-109(c)(2)(i).

Section 24-109(c)(2)(i) specifically requires the Department to establish by rule a method for the stack test that generators must pass before registration of the generator that may be used instead of conducting a Method 9 test. This rule also meets the requirement set forth in section 24-125(a) that requires the Department to issue a rule that establishes criteria that must be met prior to a work permit being granted for any equipment, including a generator.

DEP has clarified the requirements and standards required in this rule based on comments received at the hearing and in writing. Comments that were submitted that pertained to Code requirements, including but not limited to what types of generators need to obtain a registration or work permit and certificate of operation, are not addressed by this rule as these requirements have already been affirmatively provided for in the Air Pollution Control Code.

The Rule is authorized by Section 1043 of the Charter and section 24-105 24-109(c)(2)(i), and 24-125(a)(1) of the Administrative Code.

The text of the Rule follows.

Section 1. Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 44, to read as follows:

New material is underlined.
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 44

Standard Test Procedures to Determine Smoke Emissions from Generators with an Output of 40 kw or More

44-01 Definitions

“Generator” means any internal combustion engine that operates as a mechanical or electrical power source.

“Kilowatt” means a unit of electrical power equal to one thousand watts.

44-02 Test Procedures

(a) Exemptions

The following generators are not subject to this rule’s testing requirements: Generators that are (1) certified Tier IV as set forth in table one of section 1039.101 of title 40 of the code of federal regulations or any subsequent United States environmental protection agency, and (2) newly installed and being registered for the first time.

(b) Test Procedures

All generators that are subject to the test requirements of this rule must be tested in accordance with the procedures set forth in paragraph (1) or (2) below.

(1) Stack Test Procedure

- (a) Generators must meet equivalent Tier IV particulate matter (PM) emissions standards established by the United States Environmental Protection Agency (EPA) as set forth in table one of section 1039.101 of title 40 of the code of federal regulations or any subsequent United States EPA emissions standard for such generator that is at least as stringent.
- (b) In order to demonstrate that the PM emissions from the stack of a generator meet the Tier IV PM emissions standard, testing must be performed by the equipment owner following EPA Method 5, titled “Determination of particulate matter emissions from stationary sources” (Appendix A-3 to part 60 of title 40 of the code of federal regulations). The P.E. or R.A. must certify the stack test results.

(2) Smoke Test Procedure

A smoke test on a generator shall be performed in accordance with the procedures set forth in EPA Method 9, titled “Visual determination of the opacity of emissions from stationary sources” (Appendix A-4 to part 60 of title 40 of the code of federal regulations). The test results shall indicate less than 20 percent opacity for any two

consecutive minutes in any 60-minute period. The smoke test must be performed and certified by a qualified visible emissions evaluator.

(c) Recordkeeping

(1) For generators that require a registration under section 24-109 of the administrative code (those stationary generators with an output from 40 kw to less than 450 kw and all emergency and portable generators with an output of 40 KW or greater), proof that the generator passed either a stack test using EPA Method 5 or a smoke test using EPA Method 9 must be submitted to the department upon request.

(2) For generators that require a certificate of operation under section 24-122 of the administrative code (those with an output of 450 kw or more), proof that the generator passed either a stack test using EPA Method 5 or a smoke test using EPA Method 9 must be submitted to the department with the application for an original inspection request to obtain the Certificate of Operation.

(3) Records of tests required by this rule shall be maintained by the equipment owner for five years.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Measurement of Stack Emissions of Certain Generators

REFERENCE NUMBER: 2016 RG 077

RULEMAKING AGENCY: New York City Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 5, 2016

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Measurement of Stack Emissions of Certain Generators

REFERENCE NUMBER: DEP-28

RULEMAKING AGENCY: New York City Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ [Stephen Narloch]
Mayor's Office of Operations

[October 5, 2016]
Date