

Department of Environmental Protection  
Promulgation of Amendments to  
Chapter 14 of Title 15 of the Rules of the City of New York  
Rules Governing the Use of Ultra-Low Sulfur Diesel Fuel and Control Technology in  
Nonroad Vehicles Used in City Construction

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Commissioner of Environmental Protection by Sections 1043 and 1403 (b) of the Charter of the City of New York, and Section 24-163.3 of the Administrative Code of the City of New York, and in accordance with the requirements of Section 1043 of the Charter of City of New York, that the Department of Environmental Protection promulgates a rule governing the use of ultra-low sulfur diesel fuel and control technology in nonroad vehicles used in City construction. These amendments were proposed and published on June 23<sup>rd</sup>, 2011 in the City Record. The required hearing was held on July 25<sup>th</sup>, 2011.**

**Proposed Rule Amendment**

Pursuant to the authority vested in the Commissioner of Environmental Protection by Section 1043 and 1403(b) of the Charter of the City of New York and Sections 24-163.3 of the Administrative Code of the City of New York, the Department of Environmental Protection is proposing to amend its rules concerning the Use of Ultra-Low Sulfur Diesel Fuel and Emissions Control Technology in Nonroad Vehicles Used in City Construction. The proposed rule was listed in the Department's fiscal year 2010 Regulatory Agenda.

**Statement of Basis and Purpose**

*Statutory Authority*

Pursuant to the authority vested in the Commissioner of Environmental Protection by Section 1043 and 1403(c) of the Charter of the City of New York and section 24-163.3 of the Administrative Code of the City of New York ("Administrative Code"), the Department of Environmental Protection is amending its rules governing the use of ultra-low sulfur diesel fuel and best available emissions control technology by nonroad vehicles in City construction. (15 RCNY §14-01 *et. seq.*)

*Summary of Provisions*

The United States Environmental Protection Agency ("EPA") has adopted rules that require the use of high-efficiency after treatment systems known as Tier IV Exhaust Emission Standards. The entire Tier IV Exhaust Emission Standards final rule is available at <http://www.epa.gov/nonroad-diesel/2004fr.htm>. Tier IV Emission Standards

are catalytic exhaust emission-control devices for diesel engines that work particularly well in the area of particulate matter (PM) control. Those developments, and recent developments in diesel nitrogen oxide (NOx) exhaust emission control devices, make the widespread commercial use of highly efficient diesel exhaust emission controls feasible. The Department of Environmental Protection (“DEP”) has reviewed the Tier IV Exhaust Emission Standards, and determined that an engine certified to meet the Tier IV Exhaust Emission Standards constitutes the best available technology (“BAT”), as required by section 24-163.3 of the Administrative Code, in reducing the emissions of particulate matter.

The proposed rule amends section 14-02 of Title 15 of the Rules of the City of New York to provide that additional retrofit technology is not required when an engine is certified to meet the EPA’s Tier IV Exhaust Emission Standards.

### *Statement of Purpose*

As required by §24-163.3 (d)(1), the DEP is required to review and make determinations as to which technology constitutes the best available technology for reducing the emission of pollutants for each type of diesel-powered nonroad vehicle covered by this section. This amendment reflects DEP’s determination that an engine certified to meet EPA’s Tier IV Exhaust Emission Standards is utilizing the best available technology.

Section 1. The introductory paragraph of 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.

An engine that has been certified to meet the United States Environmental Protection Agency’s (“EPA”) Tier IV Exhaust Emission Standards is deemed to be using the Best Available Technology (“BAT”), and does not require additional retrofit technologies. EPA’s Tier IV Exhaust Emission Standards are described in Table 1 of the EPA’s Clean Air Nonroad Diesel Rule Fact Sheet, EPA420-F-04-032, May 2004, available at <http://www.epa.gov/nonroaddiesel/2004fr/420f04032.htm>.

[Pursuant] If an engine has not been certified to meet the Tier IV Exhaust Emission Standards, pursuant to §24-163.3 of the Administrative Code, the [Best Available Technology (“BAT”)] 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:

