

Department of Environmental Protection
Promulgation of
Chapter 27 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 on Vehicles
that are used in the fulfillment of Department of Sanitation contracts

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 of the New York City Charter and section 24-163.5 of the Administrative Code of the City of New York that the Department of Environmental Protection promulgates a rule concerning the use of ultra low sulfur diesel fuel and emissions control technology on vehicles that are used in the fulfillment of Department of Sanitation contracts (15 RCNY 27-01 *et seq.*) These amendments were proposed and published on July 17, 2007 in the City Record. The required hearing was held on August 22nd, 2007.

Statement of Basis and Purpose

On May 9, 2005, Mayor Michael Bloomberg signed Local Law 40 for the year 2005. 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 retrofit technology (“BART”) by vehicles that handle, transport or dispose of the City’s solid waste and recyclable materials. The law requires that any solid waste contract or recyclable materials contract specify that diesel fuel-powered vehicles and diesel fuel-powered nonroad vehicles used in the performance of such contracts be powered by ULSDF. The law further requires that any solid waste or recyclable materials contract specify that all diesel fuel-powered vehicles and diesel fuel-powered nonroad vehicles used in the performance of such contracts utilize BART for reducing the emission of pollutants. The law provides that the Commissioner shall make determinations, and shall publish a list of such determinations, as to the BART for reducing the emission of pollutants to be used for each type of diesel fuel-powered motor vehicle and diesel fuel-powered nonroad vehicle affected by the law.

This rulemaking sets forth the initial determinations of the Commissioner as to what constitutes BART for the purposes of compliance with section 24-163.5 of the Administrative Code.

The Rule is authorized by section 1043 of the Charter of the City of New York and section 24-163.5 of the Administrative Code of the City of New York.

The text of Rule follows.

Chapter 27 of Title 15 of the Rules of the City of New York is hereby enacted to read as follows:

Chapter 27
Rules Concerning the Use of Ultra Low Sulfur Diesel Fuel and Emissions Control
Technology on Solid Waste Vehicles

Subchapter

A General Provisions

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

Subchapter A

General Provisions

§ 27-01 Definitions.

§ 27-01 Definitions.

“Best available retrofit technology” means a technology, verified by the United States environmental protection agency or the California air resources board, for reducing the emission of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies, as set forth in §27-04 of subchapter B of this chapter, that is applicable to the particular engine and application. Such technology shall also, at a reasonable cost, achieve the greatest reduction in emissions of nitrogen oxides at such particulate matter reduction level and shall in no event result in a net increase in the emissions of either particulate matter or nitrogen oxides.

“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.

“Commissioner” means the Commissioner of the New York City Department of Environmental Protection or her designee.

“Contractor” means any person or entity that enters into a solid waste contract or recyclable materials 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 solid waste contract or recyclable materials contract.

“Motor vehicle” means a vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except electrically-driven mobility assistance devices operated or driven by a person with a disability.

“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 the fulfillment of any solid waste contract or recyclable materials contract.

“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, front loaders, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment.

“Operate primarily within the city of New York” means that greater than fifty percent of the time spent or miles traveled by a motor vehicle or nonroad vehicle during the performance of a solid waste contract or recyclable materials contract occurs within the city of New York.

“Person” means any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

“Reasonable cost” shall mean that such technology does not cost greater than thirty percent more than other technology applicable to the particular engine and application that falls within the same classification level for diesel emission control strategies, as set forth in § 27-04, when considering the cost of the strategies, themselves, and the cost of installation.

“Recyclable materials” means solid waste that may be separated, collected, processed, marketed and returned to the economy in the form of raw materials or products, including but not limited to types of metal, glass, paper, plastic, food waste, tires and yard waste.

“Recyclable materials contract” means a contract with a city agency, the primary purpose of which is to provide for the handling, transport or disposal of recyclable materials.

“Solid waste” means all materials or substances discarded or rejected as being spent, useless, or worthless, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous forms.

“Solid waste contract” means a contract with a city agency, the primary purpose of which is to provide for the handling, transport or disposal of solid waste.

“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 Retrofit Technology and Ultra Low Sulfur Diesel Fuel

§ 27-02 Best Available Retrofit Technology Determination

§ 27-03 Motor Vehicles That Are Not Subject to BART

§ 27-04 Classification Levels

§ 27-05 Selection Process

§ 27-06 Best Available Retrofit Technology Selection Applicability

§ 27-07 Use of Ultra Low Sulfur Diesel Fuel

§ 27-02 Best Available Retrofit Technology Requirement. Pursuant to section 24-163.5 of the Code, any solid waste contract or recyclable materials contract shall specify that all diesel fuel-powered motor vehicles and diesel fuel-powered nonroad vehicles used in

use the Best Available Retrofit Technology (“BART”). All contractors in the performance of such contract shall utilize the “BART”, as defined in §27-01. In making their selections, contractors are directed to consult the EPA and CARB verified lists at <http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm> and <http://www.arb.ca.gov/diesel/verdev/background.htm>.

§ 27-03 Motor Vehicles and Nonroad Vehicles That Are Not Subject to BART. Any diesel fuel-powered motor vehicle that is equipped with an engine certified to the applicable 2007 United States Environmental Protection Agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent, shall not be required to utilize the BART as defined in §27-01 of subchapter A of this chapter. Any diesel fuel-powered nonroad vehicle that is equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter for such vehicle as set forth in the Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel; Final Rule as set forth in the federal register at 69 Fed. Reg. 38,958 et seq., or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent shall not be subject to the BART as defined in §27-01 of subchapter A of this chapter.

§ 27-04 Classification Levels.

Level 4

A Closed Crankcase Filtration System in combination with any Diesel Particulate Filter (DPF) or other technology verified for a specific application from either the CARB or EPA verified lists that reduces particulate matter emissions by 85 percent or greater, or reduces engine emissions to less than or equal to 0.01 grams diesel particulate matter per brake horsepower-hour.

Level 3

A Closed Crankcase Filtration System in combination with any DPF or Flow Through Filter or combination of technologies verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by between 50 and 84 percent.

Level 2

A Closed Crankcase Filtration System in combination with any DOC or Flow Through Filter or other technology verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by between 25 and 49 percent.

Level 1

A Closed Crankcase Filtration System in combination with any DOC or emulsified diesel fuel or Flow Through Filter or other technology verified for a specific application from either the CARB or EPA verified lists that reduces diesel particulate matter emissions by between 20 and 24 percent.

§ 27-05 Selection Process.

(a) For each solid waste or recyclable materials contract that specifies that all diesel fuel-powered motor vehicles and diesel fuel-powered nonroad vehicles used in the performance of such contract that operate primarily within the city of New York shall utilize BART, the contractor operating such vehicle must identify, in list form, all types of pollution control technology devices verified for such vehicle at classification Level 4.

(b) All types of pollution control technology devices identified by the contractor as classification Level 4 devices that are not technologically feasible for use with respect to the particular vehicle, engine or application are to be eliminated from such list. To eliminate all types of pollution control technology devices identified by the contractor at classification Level 4, or a specific type of pollution control technology, or a particular pollution control technology device, the contractor must demonstrate to the satisfaction of the Commissioner that operational constraints or physical, chemical or engineering principles preclude the successful and effective use of the vehicle when used with such types of technology devices, or type of technology, or particular pollution control technology device.

(c) If, after the elimination process, no pollution control technology devices remain in classification Level 4 from which the contractor can select a BART, the same identification and elimination process must be done for classification Level 3. If, after the elimination process, no pollution control technology devices remain in classification Level 3 from which the contractor can select a BART, the same identification and elimination process must be done for classification Level 2. If, after the elimination process, no pollution control technology devices remain in classification Level 2 from which the contractor can select a BART, the same identification and elimination process must be done for classification Level 1.

(d) Once a level is selected as provided for in subdivisions (a), (b), and (c) of this section, an economic impact analysis is to be performed on the remaining technologies where the technology reduces both PM and nitrogen oxide (NO_x). The contractor shall select the technology achieving, at a reasonable cost, the greatest reduction in NO_x emissions. If the NO_x emission does not meet the reasonable cost test, the technology that achieves the greatest PM reduction from the other remaining technologies must be selected.

§ 27-06 Best Available Retrofit Technology Selection Applicability.

No contractor shall be required to replace a selected BART within three years of having first utilized such technology. Furthermore, no contractor shall be required to replace Level 4 technology until it has reached the end of its useful life.

§ 27-07 Use of Ultra Low Sulfur Diesel Fuel.

All solid waste or recyclable materials contracts shall specify that diesel fuel-powered motor vehicles and diesel fuel-powered nonroad vehicles used in the performance of such contracts that operate primarily in the City of New York shall be powered by ultra low sulfur diesel fuel (“ULSDF”).

Subchapter C
Waiver Procedures

§ 27-08 Application for Approval of a Written Finding of Unavailability for ULSDF

§ 27-09 Application for Approval of a Written Finding of Unavailability for BART

§ 27-08 Application for Approval of a Written Finding of Unavailability for ULSDF

(a) Once the solid waste contract or recyclable materials contract has been entered into, the Commissioner may issue a waiver for the use of ULSDF where the city agency that has entered into the contract makes a written finding that a sufficient quantity of ULSDF is unavailable.

Any application for approval of a Written Finding of Unavailability for the ULSDF must contain the following information:

- (1) The name of the contractor applying for approval of the Written Finding of Unavailability;
- (2) The name and identification number of the subject contract;
- (3) Identification of the specific diesel-fuel powered vehicle or diesel fuel-powered nonroad vehicle that is the subject of the Written Finding of Unavailability;
- (4) An explanation as to why the ULSDF is unavailable.

(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) Waivers shall expire two months 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.

§ 27-09 Application for Approval of a Written Finding of Unavailability for BART

(a) If the BART required for a diesel fuel-powered motor vehicle or diesel fuel-powered nonroad vehicle that is subject to a solid waste contract or recyclable materials contract with a city agency is unavailable, and the city agency that has entered into the applicable contract has made a written finding that such technology is unavailable, the city 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 BART must contain the following information:

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

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

(3) Identification of the specific diesel-fuel powered vehicle or diesel fuel-powered nonroad vehicle that is the subject of the Written Finding of Unavailability;

(4) Identification of the required BART;

(5) An explanation as to why the BART is unavailable. Such explanation must include all documentation generated in the BART 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 BART.

(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) Waivers shall expire three years 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.