

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.

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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)] FTE 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.