

NEW YORK CITY
ADMINISTRATIVE CODE

TITLE 24
ENVIRONMENTAL PROTECTION AND
UTILITIES

CHAPTER 1:
AIR POLLUTION CONTROL



**Environmental
Protection**

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Title 24
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Title 24

ENVIRONMENTAL PROTECTION AND UTILITIES

CHAPTER 1: AIR POLLUTION CONTROL

SUBCHAPTER 1, SHORT TITLE, POLICY, AND DEFINITIONS

§ 24-101 Short Title.

Chapter one of this title of the code of the City of New York shall be known and may be cited as the "New York City Air Pollution Control Code".

§ 24-102 Declaration of policy.

It is hereby declared to be the public policy of the City to preserve, protect and improve the air quality of the City so as to promote health, safety and welfare, prevent injury to human, plant and animal life and property, foster the comfort and convenience of its inhabitants and facilitate the enjoyment of the natural attractions of the City. It is the public policy of the City that every person is entitled to air that is not detrimental to life, health and enjoyment of his or her property. It is hereby declared that the emission into the open air of any harmful or objectionable substance, including but not limited to smoke, soot, fly ash, dust, fumes, gas, vapors, odors or any products of combustion or incomplete combustion resulting from the use of fuel burning equipment or refuse burning equipment is a menace to the health, welfare and comfort of the people of the City and a cause of extensive damage to property. For the purpose of controlling and reducing air pollution, it is hereby declared to be the policy of the City to actively regulate and eliminate such emissions. The necessity for legislation by the enactment of the provisions of this chapter is hereby declared as a matter of legislative determination. This code shall be liberally construed so as to effectuate the purposes described in this section. Nothing herein shall be construed to abridge the emergency powers of the board of health of the department of health and mental hygiene or the right of such department to engage in any of its necessary or proper activities.

§ 24-104 Definitions.

When used in the New York City air pollution control code:

- (1). "Air" means all the respirable gaseous mixture available for human, animal or plant respiration.
- (2). "Air contaminant" means any particulates, aerosol or any gas or any combination thereof in the open air, other than uncombined water.
- (3). "Air contaminant detector" means a device or combination of devices that cause audible and/or visible signals in the presence of an air contaminant of a particular concentration, density or opacity.
- (4). "Air contaminant recorder" means an apparatus that produces a record of the time, duration, concentration and density or opacity of an air contaminant.
- (5). "Air pollution" means the presence in the open air of one or more contaminants in quantities, of characteristics and of a duration that are or may be injurious to human, animal or plant life or to property or that unreasonably interfere with the comfortable enjoyment of life and property.
- (6). "Alteration" means any modification or change of the design, capacity, process or arrangement, or any increase in the connected load of equipment or any apparatus that will affect the kind of air contaminant emitted or increase the amount of an air contaminant emitted. Alteration does not include replacement or repair of worn out or defective equipment.
- (7). "Anthracite coal" means anthracite coal as classified by the ASTM standard D388-12.

- (8). "Apparatus" means any device that prevents, controls, detects, or records the emission of any air contaminant from fuel burning equipment.
- (9). "Architectural coating" means coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Adhesives and coatings applied in shop applications or to nonstationary structures such as airplanes, ships, boats, railcars, and automobiles are not considered architectural coatings for the purposes of this code.
- (10). "Biodiesel" means a fuel, designated B100, that is composed exclusively of mono-alkyl esters of long chain fatty acids derived from feedstock and that meets the specifications of ASTM standard D6751-12.
- (11). "Bioheating fuel" means a fuel comprised of biodiesel blended with petroleum heating oil that meets the specifications of ASTM standard D396-12, or other specifications as determined by the commissioner.
- (12). "Board" means the environmental control board of the City of New York.
- (13). "Boiler" means equipment that is used to heat water for the purpose of generating hot water and/or steam. The hot water and/or steam generated by a boiler may be used for heating, processing, or generating power or for other purposes, including but not limited to, cooking and sanitation.
- (14). "British thermal unit" or "Btu" means the amount of energy needed to heat one pound of water by one degree Fahrenheit.
- (15). "Capacity rating" means the fuel burning equipment manufacturer's guaranteed maximum heat input rating in millions of Btu per hour, or the maximum four-hour average actual rate, whichever is higher.
- (16). "Certificate of operation" means a document issued by the department authorizing the operation of a specific piece of equipment or apparatus that may emit an air contaminant.
- (17). "Chain-driven commercial char broiler" means a commercial char broiler that is a semi-enclosed cooking device with a mechanical chain that automatically moves food through the device.
- (18). "Charter" means the New York City charter.
- (19). "City" means the City of New York.
- (20). "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.
- (21). "Clean wood" means wood or wood pellets that have not been painted, stained, or treated with any coating, glue or preservative.
- (22). "Cogeneration system" means equipment for the simultaneous production of electricity and heat from a single fuel source, such as natural gas, biomass, waste heat, or oil. Cogeneration system is also known as a combined heat and power system.
- (23). "Combustion controller" means an apparatus that automatically and continually maintains the proper fuel to air ratio for the optimum combustion of fuel.
- (24). "Combustion shutoff" means an apparatus that is designed to halt automatically a combustion process when proper combustion conditions are not being maintained.
- (25). "Commercial char broiler" means a device that consists primarily of a grated grill and a heat source and that is used to cook meat, including beef, lamb, pork, poultry, fish, and seafood, for human consumption at a food service establishment, as such term is defined in section 81.03 of the New York city health code.
- (26). "Commissioner" means the commissioner of environmental protection.
- (27). "Control apparatus" means any device that prevents or controls the emission of an air contaminant.
- (28). "Cook stove" means any wood fired or anthracite coal fired appliance used primarily for cooking food for onsite consumption at a food service establishment, as such term is defined in section 81.03 of the New York City Health Code.
- (29). "Demolition" means the complete or partial removal, razing, or dismantling of any exterior part of a building or structure.

- (30). "Department" means the department of environmental protection.
- (31). "Dust" means solid particulates that have been released into the air by natural forces or by manual or mechanical processes.
- (32). "Emergency generator" means an internal combustion engine that operates as a mechanical or electrical power source only when the usual source of power is unavailable.
- (33). "Emission" means dispersion of an air contaminant into the open air of the City.
- (34). "Emission rate potential" means the rate in pounds per hour at which an air contaminant would be emitted to the open air in the absence of air pollution control facilities or other control measures. The emission rate potential for cyclic operations shall be determined by considering both the instantaneous emission potential and the total emission potential over the time period of the cycle.
- (35). "Emission source" means a point at which an emission occurs.
- (36). "Engine" means a motor designed to convert energy into useful mechanical motion.
- (37). "Environmental rating" means a rating as established in part two hundred twelve of title six of the New York codes, rules and regulations.
- (38). "Equipment" means any device capable of causing the emission of an air contaminant into the open air, or any stack, conduit, flue, duct, vent or similar device connected or attached to, or serving such device.
- (39). "Exhaust" or "ventilation source" means a system that removes or transports an air contaminant to the exterior of a building or other structure.
- (40). "Experimental installation" means equipment not previously used or tested in the City, or equipment using fuel not regulated by this code or rules promulgated thereunder.
- (41). "Fireplace" means a hearth and fire chamber or similar prepared place in which a fire may be made and which is built in conjunction with a chimney.
- (42). "Flare" means an open or closed flame gas combustion device used for burning off unwanted gas or flammable gas. A flare may include some or all of the following components: the foundation, flare tip, structure support, burner, ignition, flare controls including air injection or steam injection systems, flame arrestors, knockout pots, piping and header systems.
- (43). "Fuel burning equipment" means equipment, other than a motor vehicle, designed to burn oil, natural gas, or renewable fuel.
- (44). "Fuel oil grade no. 1" means a fuel oil meeting the definition of fuel oil grade no. 1 as classified by ASTM standard D396-12.
- (45). "Fuel oil grade no. 2" means a fuel oil meeting the definition of fuel oil grade no. 2 as classified by ASTM standard D396-12.
- (46). "Fuel oil grade no. 4" means a fuel oil meeting the definition of fuel oil grade no. 4 as classified by ASTM standard D396-12.
- (47). "Fuel oil grade no. 6" means a fuel oil meeting the definition of fuel oil grade no. 6 as classified by ASTM standard D396-12.
- (48). "Generator" means any internal combustion engine that operates as a mechanical or electrical power source.
- (49). "Heat input" means the quantity of heat generated by fuel fed into equipment under conditions of complete combustion, measured in British thermal units. Heat input includes sensible heat, calculated above sixty degrees Fahrenheit, available from materials introduced into the combustion zone.
- (50). "Horsepower" means a unit of power in the United States Customary System, equal to 745.7 watts or thirty-three thousand foot-pounds per minute.
- (51). "Installation" means the placement, assemblage or construction of equipment or apparatus at the premises where the equipment or apparatus will be used, and includes all preparatory work at such premises.
- (52). "Kilowatt" means a unit of electrical power equal to one thousand watts.
- (53). "Mobile food vending unit" shall have the same meaning as set forth in section 89.03 of the New York City Health Code.

- (54). "Motor vehicle" means equipment that is propelled by an engine in or upon which a person or material may be transported on the ground.
- (55). "Odorous air contaminant" means any air contaminant that is released in sufficient concentrations to be detected by the human olfactory sense.
- (56). "Open air" means all the air available for human, animal, or plant respiration, but shall not include the air in equipment and private dwellings.
- (57). "Open fire" means any outdoor fire or smoke producing process wherein the products of combustion are emitted directly into open air and are not directed thereto through a stack, conduit, flue, duct, vent or similar device.
- (58). "Outdoor wood boiler" means a device designed to burn wood that is either located outdoors or is specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans, and is used to heat building space or water by means of gas or liquid heated in the device.
- (59). "Owner" means and includes the owner of the premises or lesser estate therein or mortgagee thereof, a lessee or an agent of any of the above persons, a lessee of the equipment or his or her agent, a tenant, operator, or any other person who has regular control of equipment or apparatus.
- (60). "Particulate" means any air or gas-borne material, except water, that exists as a liquid or solid. The quantity of particulates present in a stack shall be determined in accordance with emission testing methods as prescribed by the commissioner by rule. As used in this code, particulate matter shall have the same meaning as particulates.
- (61). "Peak shaving" means the practice of utilizing on-site generating capacity for use at a facility at the request of the primary electricity supplier, provided that peak shaving shall not include emergency generation when the usual sources of heat, power, and lighting are temporarily unavailable.
- (62). "Permissible emission rates" means the maximum rate in pounds per hour (lbs./hr.) at which air contaminants are allowed to be emitted to the open air.
- (63). "Person" means individual or partnership, company, corporation, association, firm, organization, governmental agency, administration or department, or any other group of individuals, or any officer or employee thereof.
- (64). "Portable" means (i) designed to be and capable of being carried or moved from one location to another, and (ii) not kept at one location for more than twelve consecutive months. Mechanisms indicating that an object is designed to be and capable of being carried or moved from one location to another include, but are not limited to, wheels, skids, carrying handles or platforms.
- (65). "Portable equipment" means equipment designed to be transported from place to place for temporary operation and to provide heat or hot water.
- (66). "Portable generator" means any internal combustion engine whose uses may include, but are not limited to, the generation of electric power, designed to be and capable of being carried or moved from one location to another.
- (67). "Process" means any industrial, commercial, agricultural or other activity, operation, manufacture or treatment in which chemical, biological and/or physical properties of the material or materials are changed, or in which the material(s) is conveyed or stored without changing the material(s) (where such conveyance or storage system is equipped with a vent(s) and is non-mobile), and which emits air contaminants to the outdoor atmosphere. A process does not include an open fire, operation of a combustion installation, or incineration of refuse other than by-products or wastes from processes.
- (68). "Professional certification" means certification by a professional engineer or registered architect who is licensed to practice engineering or architecture under section seven thousand two hundred two or seven thousand three hundred two of the education law.
- (69). "Professional engineer" means a person licensed and registered to practice the profession of engineering pursuant to the New York state education law.

- (70). "Refuse burning equipment" means equipment designed to burn biological materials from hospitals or crematoriums, waste material burned for the purpose of energy generation, or such other material as may be designated by the department by rule.
- (71). "Registered architect" is a person licensed and registered to practice the profession of architecture pursuant to the New York state education law.
- (72). "Registered design professional" means a professional engineer or registered architect.
- (73). "Registration" means a notification to the department of the use or operation of equipment that may result in the emission of an air contaminant.
- (74). "Renewable biomass" means crops and crop residue from existing agricultural land, tree residues, animal waste material and byproducts, slash and pre-commercial thinnings from non-federal forest land, biomass cleared from the vicinity of buildings and other areas to reduce the risk of wildfire, algae, and separated yard waste or food waste. Such term shall not include processed materials such as particle board, treated or painted wood and melamine resin-coated panels.
- (75). "Renewable fuel" means fuel produced from renewable biomass or captured from landfills or wastewater treatment.
- (76). "Residual fuel oil" means a fuel oil meeting the current definition of fuel oil grades No. 5 and 6 as classified by the ASTM standard D396-12.
- (77). "Scrubber" means a control apparatus that uses water or other fluids to remove an air contaminant from an exhaust stream.
- (78). "Standard smoke chart" means the Ringelmann chart, as published by the United States bureau of mines, photographically reduced to 1/18th in size for use in the field.
- (79). "Stationary" means (i) not designed to be or capable of being carried or moved from one location to another, or (ii) kept at one location for more than twelve consecutive months.
- (80). "Stationary reciprocating compression ignition internal combustion engine" shall have the same meaning as set forth in section 60.4219 of title forty of the code of federal regulations.
- (81). "This code" means the air pollution control code.
- (82). "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.
- (83). "Under-fired commercial char broiler" means a commercial char broiler that has a grill, a high temperature radiant surface, and a heat source that is located below the food.
- (84). "Water heater" means a boiler used to heat and store water.
- (85). "Wood burning heater" means any enclosed, permanently installed, indoor device burning pellets designed to be used primarily for aesthetic purposes.
- (86). "Work permit" means a permit issued for the installation or alteration of a device or apparatus.

SUBCHAPTER 2, GENERAL PROVISIONS

§ 24-105 General powers of the commissioner.

(a). Subject to the provisions of this code, the commissioner may take such action as may be necessary to control the emission of any air contaminant that causes or may cause, by itself or in combination with other air contaminants, detriment to the safety, health, welfare or comfort of the public or to a part thereof, injury to plant and animal life, or damage to property or business. The commissioner may exercise or delegate any of the functions, powers and duties vested in him or her or in the department by this code. The commissioner may adopt such rules, regulations and procedures as may be necessary to effectuate the purposes of this chapter, including rules, regulations and procedures to establish fees and to authorize and encourage the development and use of environmentally beneficial technologies.

(b). The commissioner shall appoint an advisory committee, which shall include but need not be limited to representatives of the restaurant industry and related industries, representatives of the construction industry, representatives of the environmental protection and environmental justice communities, persons with expertise regarding the health effects of pollutants associated with cooking devices, and

may include employees of the department and of other relevant city agencies. The City council may appoint a representative to serve on the committee. The committee shall provide advice and recommendations to the department relating to the development and use of emissions control technologies for commercial char broilers and shall assist the department in the development of rules regarding emissions control technologies. The commissioner shall consult with the committee regarding any proposed amendments of such rules. In the development of such rules the commissioner shall consider factors such as the availability and cost of proposed technologies.

§ 24-106 Investigations and studies by commissioner.

The commissioner may make or cause to be made any investigation or study that in his or her opinion is desirable for the purpose of enforcing this code or controlling or reducing the amount or kind of air contaminants. For such purposes, the commissioner may make tests, conduct hearings, compel the attendance of witnesses, and take their testimony under oath and may compel the production of books, papers and other things reasonably necessary to the matter under consideration.

§ 24-107 Testing by order of commissioner.

- (a). If the commissioner has reasonable cause to believe that any equipment or fuel is in violation of this code, the commissioner may order the owner of the equipment or fuel to conduct such tests as are necessary in the opinion of the commissioner to determine whether the equipment, its operation, or the fuel is in violation of this code, or whether material used in any manufacturing process is contributing to any violation of this code and to submit the test results to the commissioner within ten days after the tests are completed.
- (b). Such tests shall be conducted in a manner approved by the commissioner. The test shall be certified by a laboratory acceptable to the commissioner. The entire test results shall be reviewed and certified by a professional engineer.
- (c). The owner shall notify the commissioner of the time and place of a test at least seven days before the commencement of such test. Reasonable facilities shall be made available for the commissioner to witness the test.
- (d). If in the opinion of the commissioner tests by the department are necessary, the commissioner may order the owner to provide (1) sampling holes at such points in the stack, conduit, flue, duct or vent, as the commissioner may reasonably request, to provide a power source suitable to the points of testing, and to provide allied facilities, exclusive of sampling and sensory devices, or (2) test ports for gas burning equipment. These provisions shall be made at the expense of the owner of the equipment. The owner shall be furnished with copies of the analytical results of the samples collected.
- (e). If the results of tests conducted pursuant to this section show that the equipment or fuel is in violation of this code, the commissioner shall order the owner to cure the defect within thirty days.

§ 24-108 Inspection and samples.

- (a). The department may inspect at any reasonable time and in a reasonable manner any equipment, apparatus, or fuel that affects or may affect the emission of an air contaminant including but not limited to the premises where the equipment, apparatus, or fuel is used, or where the fuel is stored, purchased, sold, or offered for sale for use in the City of New York.
- (b). The department may inspect at any reasonable time and in a reasonable manner any record relating to a use of equipment or apparatus that affects or may affect the emission of an air contaminant, or relating to the use of fuel, or the distribution, storage or transportation of fuel for use in the City of New York.
- (c). The department may, at any reasonable time and in a reasonable manner, obtain a sample of an air contaminant or any other substance used in a process that affects or may affect the emission of an air contaminant.
- (d). If an authorized employee of the department obtains a sample of an air contaminant or any other substance used in a process that affects or may affect the emission of an air contaminant during the

course of an inspection, he or she shall give to the owner of the equipment or fuel, prior to leaving the premises, a receipt for the sample obtained.

(e). No person shall refuse entry or access into a place of business or into the public areas of a multiple dwelling to an authorized employee of the department who presents appropriate credentials nor shall any person refuse entry or access into any other portion of a premises to an authorized employee of the department who presents appropriate credentials and a search warrant.

(f). The owner of every building, other than a one- or two-family dwelling, shall make the area where the heating system is located readily accessible to members of the department pursuant to the requirements of section 27-2033 of the code.

§ 24-109 Registrations.

- (a). No person shall cause or permit the following unless he or she has first registered with the department:
- (1). The spraying of any insulating material in or upon any building or other structure during its construction, alteration or repair.
 - (2). The demolition of any building or other structure, or part thereof, unless the demolition of the building or structure is being conducted by or on behalf of a city agency pursuant to chapter one of title seventeen of the code or pursuant to an order issued by the department of buildings under article two hundred fifteen of chapter two of title twenty-eight of the code.
 - (3). The installation, alteration, use or operation of an individual boiler or water heater that has a heat input equal to or greater than three hundred fifty thousand Btu per hour but less than four million two hundred thousand Btu per hour.
 - (4). The installation, alteration, use or operation of any boilers, including water heaters, that are owned by the same person in a single building and would not individually require a registration or certificate of operation, if in the aggregate such boilers have a heat input equal to or greater than three hundred fifty thousand Btu per hour. Such boilers shall be registered together in a single registration.
 - (5). The use or operation of fuel burning equipment or portable equipment with a heat input equal to or greater than three hundred fifty thousand Btu per hour but less than four million two hundred thousand Btu per hour, except as otherwise provided in this section.
 - (6). The use or operation of any emergency generator that has an output equal to or greater than forty kilowatts.
 - (7). The use or operation of any portable generator with an output equal to or greater than forty kilowatts.
 - (8). The use or operation of a portable engine with an input equal to or greater than fifty horsepower but less than six hundred horse power, unless such engine is used to power self-propelled construction or landscaping equipment.
 - (9). The use or operation of a stationary generator, other than an emergency generator, with an output equal to or greater than forty kilowatts but less than four hundred fifty kilowatts.
 - (10). The use or operation of a stationary engine with an input of equal to or greater than fifty horsepower but less than six hundred horsepower.
 - (11). The use or operation of an engine with an input equal to or greater than fifty horsepower that is used exclusively at a construction site, unless such engine is used to power self-propelled construction or landscaping equipment.
 - (12). The use or operation of equipment with an environmental rating of C that produces a flow rate equal to or greater than one hundred standard cubic feet per minute but less than two thousand standard cubic feet per minute.
 - (13). The use or operation of a cogeneration system that has a total input equal to or greater than three hundred fifty thousand Btu per hour but less than four million two hundred thousand Btu per hour.
 - (14). The installation, use or operation of any flare.
 - (15). The installation, use or operation of any gasoline dispensing station.
 - (16). The installation, alteration, use or operation of any commercial char broiler.

- (17). Any other emission source or activity not listed in paragraphs one through sixteen of this subdivision that the commissioner requires by rule to be registered with the department, provided that the commissioner shall not require by rule the registration of an engine used to propel a motor vehicle or any emission source or activity located in a one- or two-family dwelling.
- (b). Registration shall not be required for any fuel burning equipment for which a certificate of operation is required pursuant to subchapter four of this code.
- (c). Registration shall be filed on forms prescribed by the department.
 - (1). An application for the registration of any boiler shall include documentation that the boiler has passed a combustion efficiency test. The commissioner shall specify by rule the requirements for such test.
 - (2).
 - (i). An application for the registration of any generator shall include documentation that the generator has passed a smoke test performed in accordance with the procedures set forth in "Method 9 - Visual determination of the opacity of emissions from stationary sources," Appendix A-4 to part sixty of title forty of the code of federal regulations, or documentation in the form of certification by a professional engineer or registered architect that a stack test has been performed in accordance with the rules of the department.
 - (ii). The department may require that any portable generator being registered for the first time be made available for a smoke test to be conducted by the department before the application for registration will be processed. If the department conducts such smoke test, the documentation required in subparagraph (i) of this paragraph shall not be required.
 - (iii). The requirements of this paragraph shall not apply to any newly installed generator that is being registered for the first time and that is equipped with an engine certified to the tier four emissions standards established by the United States environmental protection agency as set forth in table one of section 1039.101 of title forty of the code of federal regulations or to any subsequent United States environmental protection agency emissions standard for such engine that is at least as stringent, provided that the requirements of this paragraph shall apply to such generator upon renewal of such registration.
- (d). Registration shall be filed by the following persons:
 - (1). In the case of registration pursuant to paragraph one of subdivision (a) of this section, by the contractor responsible for the spraying of the insulating material.
 - (2). In the case of registration pursuant to paragraph two of subdivision (a) of this section, by the contractor responsible for the demolition activity.
 - (3). In the case of registration pursuant to any other paragraph of subdivision (a) of this section, by the owner of the equipment or his or her authorized agent.
- (e). After a registration has been approved, the department shall return an approved copy to the registrant. The approved copy shall be displayed in accordance with section 24-113 of this subchapter.
- (f). Any registrant, except a registrant of equipment described in paragraphs seven or eight of subdivision (a) of this section, shall notify the department within fifteen days of any change in the information submitted in the registration. If the change in information relates to a change in ownership of the equipment then the new owner shall notify the department of the change.
- (g). Registrations shall be valid for up to three years from the date of approval, unless cancelled by the department. Registrations shall be renewed in a timely manner prior to expiration. A registration that has been expired for a period of one year or more shall be considered cancelled by the department. Applications for registration renewals shall be submitted on a form prescribed by the department.

- (h). The application for a registration of new equipment shall indicate whether the new equipment is replacing existing registered equipment. The existing registration shall be cancelled upon registration of the new equipment.
- (i). The registrant shall notify the department when removing registered equipment, and the registration shall be cancelled upon such notification.

§ 24-110 Variances.

- (a). The commissioner may grant individual variances whenever it is found, upon presentation of adequate proof, that compliance with any provision of this code, or with any regulation or order of the commissioner in respect to this code, would impose unreasonable hardship. In granting a variance the commissioner may impose such conditions as the policies of this code may require and shall post on the Internet, through a web portal that is linked to nyc.gov or any successor website maintained by or on behalf of the City of New York, no later than seven days after the granting of such variance, the variance and a written opinion, stating the facts and reasons leading to his or her decision.
- (b). Any variance granted pursuant to this section shall be granted for such period of time as shall be specified by the commissioner at the time of the grant of such variance and upon the condition that the person who receives such variance shall provide such documentation as the commissioner shall specify. Such variance may be extended by affirmative action of the commissioner, but only if satisfactory progress has been shown.
- (c). Any person seeking a variance shall do so by filing a petition for variance in a form acceptable to the commissioner. The commissioner shall promptly give written notice of such petition to any person in the city who has in writing requested notice of variance petitions, and shall publish notice of such petition for a variance on the Internet, through a web portal that is linked to nyc.gov or any successor website maintained by or on behalf of the City of New York. If the commissioner, in his or her discretion, concludes that a hearing would be advisable, or if any person files a written objection to the grant of such variance within twenty-one days from the publication of notice as described in this subdivision, then a public hearing shall be held.
- (d). The commissioner may grant individual or group variances beyond the sulfur content restriction prescribed by section 24-169 of this code, whenever it is found, upon presentation of adequate proof, that the supply of fuel oil is insufficient to meet the demands of residents of the City of New York for heat, hot water, and electrical power. Where an applicant can show that it has an insufficient reserve of fuel oil meeting the sulfur content requirements of this code and that it is unable to buy a sufficient amount of such fuel oil to meet its fuel oil demands during the pendency of its variance application, the commissioner may grant a variance for up to forty-five days without complying with the procedural requirements of this section, except for the requirement of subdivision (a) to post a written opinion. During the time in which a temporary variance is running, the commissioner shall review, as soon as practicable, the application for a variance treating it as any other variance application.

§ 24-111 Interfering with or obstructing departmental personnel.

No person shall interfere with or obstruct any department employee in carrying out any official duty.

§ 24-112 False and misleading statements; unlawful reproduction or alteration of documents.

- (a). No person shall knowingly make a false or misleading statement or submit a false or misleading document to the department as to any matter within the jurisdiction of the department.
- (b). No person shall make, reproduce or alter or cause to be made, reproduced or altered a work permit, certificate of operation or other document issued by the commissioner or required by this code if the purpose of such reproduction or alteration is to evade or violate any provision of this code or any other law.

§ 24-113 Display of work permits, certificates of operation, registrations and other notices.

Any work permit, certificate of operation or registration required by this code shall be prominently displayed in a manner visible to any person inspecting the equipment, and in the case of registration pursuant to section 24-109 of this code, shall be displayed in the vicinity of the premises designated on the registration.

§ 24-114 Enforcement of this code by other than compulsory means.

Nothing in this code shall prevent the commissioner from making efforts to obtain voluntary compliance by way of warning, notice or educational means. However, such non-compulsory methods need not be used before proceeding by way of compulsory enforcement.

§ 24-115 Service of papers.

- (a). Service of any written notice, order or decision related to equipment as required by this code shall be made as follows:
 - (1). Either by mailing the notice, order or decision directed to the owner of the equipment at the address listed in his or her application, work permit or certificate of operation or at the address where the equipment is located; or
 - (2). By leaving the notice, order or decision with the owner of the equipment, or if the owner is not an individual, with a member of the partnership or group concerned or with an officer or managing agent of the corporation.
- (b). Service of any written notice, order or decision not related to equipment as required by this code shall be made on a person:
 - (1). By mailing the notice, order or decision directed to the person at his or her principal place of business; or
 - (2). By leaving the notice, order or decision with the person, or if the person is not an individual, with a member of the partnership or group concerned, or with an officer or managing agent of the corporation.
- (c). Service of any written notice required by this code shall be made on the department or the commissioner by mailing the notice to the commissioner.

§ 24-116 Inconsistent provisions.

Insofar as the provisions of this code are inconsistent with the provisions of any other title of the code, or any rule or regulation of any governmental agency of the City of New York, the provisions of this code shall be controlling.

§ 24-116.1 Addition, modification and deletion of referenced standards.

The standards referenced in this code, including standards promulgated by ASTM International, may be added to, deleted or modified by rule of the department.

SUBCHAPTER 3, REFUSE BURNING EQUIPMENT; INCINERATORS AND CREMATORIIUMS

§ 24-118 Installation of refuse burning equipment, municipal equipment, incinerators and crematoriums.

No person shall cause or permit the installation of equipment designed to burn solid waste, as such term is defined in section 16-209 of the code, provided that the following equipment shall not be prohibited:

- (1). An incinerator operated by any hospital, biological laboratory or other medical facility required to incinerate dressings, biological and obstetrical wastes, contagious and infectious materials,

- disposable syringes and needles, amputations, and other materials under any state or local laws, or rules or regulations promulgated thereunder; or
- (2). Equipment operated by the department in connection with sewage treatment plants for energy generation; or
 - (3). Equipment operated by or on behalf of the department of sanitation in connection with solid waste disposal or processing for energy generation or other resource recovery or such other purposes as may be permitted by the rules of the department; or
 - (4). Crematoriums used to reduce human or animal remains to their basic elements using high heat.

§ 24-119- Repealed

SUBCHAPTER 4, WORK PERMITS AND CERTIFICATES OF OPERATION

§ 24-120 Installation and alteration; work permit required.

No person shall cause or permit the installation or alteration of equipment or apparatus, except as provided in section 24-121 of this code, without first obtaining a work permit from the commissioner, and such other licenses or permits as may be required by other governmental agencies and departments.

§ 24-121 Work permits; exemptions.

- (a). A work permit shall not be required for the installation or alteration of the following equipment or apparatus:
 - (1). Air conditioning, ventilating, or exhaust systems not designed to remove air contaminants generated by or released from equipment or exhaust systems for controlling steam and heat.
 - (2). Air contaminant detector or air contaminant recorder.
 - (3). Construction equipment except for generators.
 - (4). Deicing storage tanks.
 - (5). Dilution ventilating systems for control of welding fumes and gases.
 - (6). Equipment with an environmental rating of D.
 - (7). Fuel burning equipment that has a Btu input or a gross output of less than four million two hundred thousand Btu per hour and uses a fuel gas, natural gas, gasoline or fuel oil grade No. 1 or 2.
 - (8). Installations for the preparation of food for on-site consumption or retail purchase, unless required elsewhere in this code or pursuant to rules issued by the commissioner.
 - (9). Internal combustion engines used to power any motor vehicle or any stationary engine that has an output of not more than six hundred horsepower.
 - (10). Laboratory equipment used exclusively for chemical or physical analyses of non-radioactive material.
 - (11). Refrigeration equipment used for cold storage.
 - (12). Steam safety valves.
 - (13). Vents used exclusively by tanks used for the storage of fuel oil, biodiesel, liquid soap, liquid detergent, tallow or vegetable oil, waxes, or emulsions.
 - (14). Vents used exclusively as part of a sanitary or storm drainage systems.
 - (15). Vacuum cleaning systems used exclusively for industrial, commercial or residential housekeeping.
 - (16). Ventilating or exhaust systems for storage rooms or cabinets for paint, ink, or solvents.
 - (17). Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of condensed water for jet or barometric condensers.
 - (18). Equipment for which a registration is required pursuant to section 24-109 of the code.

- (19). Anti-icing trucks used by the department of transportation.
- (20). High-efficiency particulate air (HEPA) vacuum.
- (21). Any other equipment or apparatus exempted by the commissioner by rule.
- (b). A work permit shall not be required for the installation or alteration of equipment or apparatus in one and two-family dwellings.
- (c). Although a work permit is not required for the installation or alteration of the equipment or apparatus listed in subdivisions (a) and (b) of this section, such equipment and apparatus shall otherwise comply with this code.
- (d). A work permit shall not be required to begin an alteration of equipment or apparatus if delaying the alteration may endanger life or the supplying of essential services. The department shall be notified in writing of the alteration within twenty-four hours or on the first working day, after the alteration is commenced, and an application for a work permit shall be filed within fourteen days after the day the alteration is commenced.
- (e). Nothing in this section shall in any way alter, affect, or change any other requirement or law of any other governmental agency or department.

§ 24-122 Certificates of operation and renewal of certificates of operation; when required.

- (a). No person shall cause or permit the use or operation of equipment or apparatus for which a work permit is required without first obtaining a certificate of operation from the commissioner, except the use or operation for the purpose of testing the equipment or apparatus or for the purpose of testing an experimental installation or alteration for a reasonable period of time, as follows:
 - (1). Testing of the equipment, apparatus, or experimental installation or alteration is permitted for an initial period of thirty days beginning upon notification to the department of a start date.
 - (2). If a person discovers during testing of the equipment, apparatus, or experimental installation or alteration that the equipment requires repairs necessitating interruption of the testing, such person shall notify the department of a new start date within ten days of the discovery and shall have an additional period of time not to exceed thirty days from such new start date to test the equipment, provided that the total combined testing period shall not exceed sixty days.
- (b). No person shall cause or permit the use or operation of the following equipment, or cause or permit the keeping of any such equipment so as to be capable of being used or operated, without first obtaining a certificate of operation from the commissioner.
 - (1). Fuel burning equipment;
 - (2). Equipment used in a process, except as otherwise provided by the commissioner by rule;
 - (3). Portable equipment;
 - (4). Equipment described in subdivisions one through four of section 24-118 of the code.
- (c). No certificate of operation shall be required for equipment for which a registration is required pursuant to section 24-109 of the code.
- (d). A certificate of operation for equipment shall be valid for a period of up to three years from the date of issuance, unless sooner revoked or cancelled by the commissioner.
- (e). If equipment or apparatus for which a certificate of operation has been issued is dismantled or rendered inoperable, the owner of such equipment or apparatus shall notify the department within twenty days on forms furnished by the department. If the commissioner finds to his or her satisfaction that such equipment or apparatus has been dismantled or rendered inoperable, renewal of the certificate of operation shall not be required for as long as the equipment or apparatus remains dismantled or inoperable.

§ 24-123 General requirements for applications for work permits, certificates of operation, and renewal of certificates of operation.

- (a). Application for a work permit, for a certificate of operation or for the renewal of a certificate of operation shall be made by the owner of the equipment or apparatus on forms furnished by the department. If the applicant is a partnership or group other than a corporation, the application shall be signed by one individual who is a member of the group. If the applicant is a corporation, the application shall be signed by an officer of the corporation.
- (b). A separate application is required for each unit of equipment or apparatus, unless identical units of equipment or apparatus are to be installed, altered or operated in an identical manner in the same building.
- (c). Each application shall be signed by the applicant and by an architect, engineer or any other professional approved by the commissioner by rule. The architect, engineer or other professional shall certify the accuracy of the technical information concerning the equipment or apparatus contained in the application, plans and other papers submitted. In the case of an application for the certificate of operation required by this code, the certifying architect, engineer or other professional shall also certify that he or she inspected the equipment and that the equipment satisfies the provisions of this code. The signature of the applicant shall constitute an agreement that the applicant will assume responsibility for the installation, alteration or use of the equipment or apparatus concerned in accordance with the requirements of this code.
- (d). Application for the renewal of a certificate of operation shall be filed no later than forty-five days and no earlier than one hundred twenty days prior to the expiration of the certificate of operation.
- (e). Application for a work permit or for a certificate of operation is automatically cancelled if a certificate of workers' compensation and a certificate of disability insurance is not filed with the department within sixty days after service on the applicant of a notice of failure to file such certificate, exclusive of the day of service.
- (f). Information exempt by law from disclosure as confidential commercial information that may be required, ascertained or discovered by the department shall not be disclosed by any department employee, except that the information may be disclosed by the commissioner if the department is subpoenaed for the information or if in the course of a court proceeding or department or administrative hearing, the information is relevant to the proceeding or hearing.

§ 24-124 Repealed

§ 24-125 Standards for granting work permits.

- (a). Except as provided in section 24-126 of this code, no work permit shall be granted unless the applicant certifies to the satisfaction of the commissioner that:
 - (1). The equipment is designed and will be installed or altered to operate in accordance with the provisions of this code and with any applicable rules the commissioner may promulgate pursuant to this code;
 - (2). The equipment has been certified by a registered design professional to meet the current applicable federal, state and city emission standards;
 - (3). Equipment that will have a stack, chimney, or breaching will be provided with:
 - (i) Sampling ports of a size, number and location as the commissioner may require, and
 - (ii) Safe access to each port, and
 - (iii) Such other sampling and testing facilities as the commissioner may require;
 - (4). Refuse burning equipment operated by the department contains control apparatus which meets any performance standards that may be prescribed by the commissioner;
 - (5). When required by the commissioner, fuel burning equipment that will use residual fuel oil will be installed with an air contaminant detector together with either a combustion shutoff or, when acceptable to the commissioner, an air contaminant recorder, except that no combustion shutoff shall be required on fuel burning equipment used to generate steam for off-premises sale or electricity; and

- (6). All parts of the equipment can be readily cleaned and repaired.
- (b). In order to reduce the emission of air contaminants and to insure optimum combustion in fuel burning equipment and refuse burning equipment, such equipment shall be shown to the satisfaction of the commissioner to:
 - (1). Be of a proper size to handle the planned load, be located in a proper place and incorporate appropriate apparatus; and
 - (2). Burn fuel or other material determined by the commissioner to be appropriate for the specific size and type of equipment.
- (c). The commissioner may require that any equipment or apparatus that requires a work permit, or any class or category of such equipment or apparatus, be included on a list of accepted equipment or apparatus maintained by the department. No acceptance for listing of equipment or apparatus shall be granted unless the applicant certifies to the satisfaction of the commissioner that such equipment or apparatus complies with all applicable provisions of this code and such other applicable rules as the commissioner may promulgate pursuant to this code.

§ 24-126 Conditional approval of experimental installations and alterations.

The commissioner may grant a work permit, or an alternative form of approval, for an experimental installation or alteration on conditional approval if it appears likely from all of the information submitted that the installation or alteration when completed may satisfy the standards of section 24-125 of this code. The work permit shall be valid for a period not to exceed three years.

§ 24-127 Expiration of work permits.

- (a). In newly constructed buildings, a work permit shall expire if the installation is not completed within one year from the date of issuance of the work permit or if work on the installation under the work permit is suspended for more than ninety days.
- (b). In existing buildings, a work permit shall expire if the installation or alteration is not begun within ninety days from the date of issuance of the work permit or if the work of the installation or alteration is suspended for more than thirty days or if the installation or alteration is not completed within six months.
- (c). Extensions may be granted for a period of not more than six months per extension, provided that an application for an extension shall be made at least thirty days prior to the expiration of the work permit.
- (d). An expired work permit shall be reinstated if it is filed within one year of the expiration date of the work permit. If an application for reinstatement is not filed within one year of the expiration date of the work permit, then a new application shall be filed with the department.

§ 24-128 Standards for granting or renewing certificates of operation.

- (a). No initial certificate of operation shall be granted for the use or operation of equipment or apparatus for which a work permit is required unless the applicant first requests an inspection by the department to certify that the equipment or apparatus is installed in accordance with the work permit and operates in accordance with this code. Such inspection shall include testing as set forth in subdivision (a) of section 24-129 of this code.
- (b). No certificate of operation shall be granted or renewed for the use or operation of equipment or apparatus unless the applicant shows to the satisfaction of the commissioner that the equipment or apparatus covered by such certificate of operation satisfies the standards established in the code or by rules or regulations promulgated thereunder in effect on the date of the issuance of the original certificate of operation.
- (c). An application for a certificate of operation or any renewal or reinstatement thereof may be denied by the commissioner if any board penalty against the owner of equipment or apparatus which is the subject of the application has not been complied with or satisfied.
- (d). If an owner fails to make an application to renew a certificate of operation within one hundred eighty days from the date of mailing of notice by the commissioner that such application is required, such

owner shall be required to file a new application for a work permit pursuant to sections 24-123 and 24-125 of the code.

§ 24-129 Testing before granting or renewing of certificates of operation.

(a). A certificate of operation shall not be granted or renewed unless the equipment passes such tests as the commissioner may require by rule. The commissioner may require the applicant to conduct such tests. A failing test result shall result in disapproval.

(b). If in the opinion of the commissioner tests by the department are necessary, the facilities for such tests, exclusive of sampling and sensory devices, shall be furnished by and at the expense of the owner or lessee or his or her agent as provided by subdivision (d) of section 24-107 of this code.

§ 24-130 Action on applications for work permits and certificates of operation.

(a). The commissioner shall act within a reasonable time not to exceed forty-five days on an application for a work permit or certificate of operation, or for a renewal of a certificate of operation, and shall notify the applicant in writing of his or her approval or disapproval of the application.

(b). If an application is disapproved, the commissioner shall set forth his or her objections in the notice of disapproval.

(c). Within forty-five days after service on the applicant of the notice of disapproval, the applicant may request the commissioner to reconsider the application by answering in writing the commissioner's objection to the application. The application shall be deemed cancelled if the applicant fails to answer or request an extension of time within forty-five days after the service of the notice of disapproval.

(d). The commissioner shall consider the applicant's answer to his or her objections, and shall notify the applicant in writing within a reasonable time, not to exceed forty-five days, of his or her approval or denial of the application.

(e). The commissioner may grant a temporary certificate of operation for a period not to exceed sixty days upon receipt of an application for the granting or renewal of a certificate of operation and may, at his or her discretion, renew a temporary certificate of operation for an additional period not to exceed sixty days.

§ 24-131 Conditions of work permits and certificates of operation to be observed.

The holder of a work permit or certificate of operation shall comply with the conditions and terms contained in the work permit or in the certificate of operation.

§ 24-132 Suspension or revocation of work permits and certificates of operation.

(a). The commissioner shall suspend or revoke a work permit or certificate of operation when ordered to do so by the board pursuant to subchapter nine of this code.

(b). Suspension or revocation of a work permit or certificate of operation shall become final five days after service of notice on the holder of the work permit or certificate of operation.

§ 24-133 Repealed

§ 24-134 Surrender of work permits and certificates of operation.

A work permit or certificate of operation that has been cancelled or revoked pursuant to this code shall be surrendered to the commissioner within five business days of receipt of the notice of revocation.

§ 24-135 Transfer of work permits and certificates of operation.

(a). A work permit shall not be transferred, except to the new property owner upon conveyance of the property. If the new owner employs a different registered design professional, that registered design professional shall recertify the application.

(b). A certificate of operation shall not be transferred, except to the new property owner upon conveyance of the property.

SUBCHAPTER 5, ASBESTOS

§ 24-136 Asbestos work.

- (a). The purpose of this subchapter is to protect public health and safety and the environment by minimizing the emission of asbestos fibers into the air of the City when buildings or structures that contain asbestos-containing material are renovated, altered, repaired, or demolished.
- (b). For purposes of this section, the following terms shall have the following meanings:
 - (1). "Asbestos" means any hydrated mineral silicate separable into commercially usable fibers, including but not limited to chrysotile (serpentine), amosite (cumingtonite-grunerite), crocidolite (riebeckite), tremolite, anthrophyllite and actinolite.
 - (2). "Asbestos investigator" means an individual certified by the commissioner as having satisfactorily demonstrated his or her ability to identify the presence and evaluate the condition of asbestos in a building or structure.
 - (3). "Asbestos containing material" shall mean asbestos or any material containing more than one percent asbestos by weight.
 - (4). "Asbestos handling certificate" means a certificate issued to a person who has satisfactorily completed an approved asbestos safety and health program.
 - (5). "Asbestos project" means any form of work performed in a building or structure or in connection with the replacement or repair of equipment, pipes, or electrical equipment not located in a building or structure, which will disturb more than twenty-five linear feet or more than ten square feet of asbestos containing material or such smaller amounts as the commissioner may establish by rule.
 - (6). "Asbestos project notification" means a form filed to notify the department that an asbestos project will be taking place.
 - (7). "AHERA" means the asbestos hazard emergency response act of nineteen hundred eighty-six, as amended (15 U.S.C. section 2641, et seq.).
 - (8). "Work place safety plan" means documents prepared by a registered design professional and submitted to the department in order to obtain an asbestos abatement permit.
- (c).
 - (1). It shall be unlawful for any individual to handle asbestos material in the course of performing work for compensation on an asbestos project unless such individual is a holder of a current, valid asbestos handling certificate.
 - (2). It shall be unlawful to employ or otherwise permit any individual to handle asbestos material on an asbestos project when such person is not a holder of a current, valid asbestos handling certificate.
- (d). The commissioner shall promulgate rules establishing procedures for the safeguarding of the health and safety of the public, including procedures to be followed by persons who work at or in the vicinity of an asbestos project. The commissioner, in consultation with the fire commissioner and the commissioner of buildings, shall promulgate rules which give further guidance to contractors on how to maintain egress at asbestos projects, as such projects are defined in the rules of the department, in accordance with all applicable laws, codes, rules and regulations.
- (e).
 - (1). The commissioner shall promulgate rules establishing criteria for certifying individuals as eligible to receive an asbestos handling certificate. The commissioner may restrict the asbestos handling certificate as to certain supervisory and nonsupervisory functions and responsibilities.
 - (2). The commissioner shall promulgate rules establishing criteria for certifying individuals as asbestos investigators.
 - (3). Any certificate issued under this subdivision shall be valid for a period of two years unless sooner suspended or revoked and may be renewed for a period of two years upon

- submission of proof satisfactory to the commissioner that the individual continues to meet the criteria established pursuant to this subdivision.
- (4). The commissioner may suspend or revoke any certificate issued under this subdivision where the holder has violated this section or any rules promulgated thereunder. Determinations made by the environmental control board as to notices of violation issued by the department shall be considered proof of violation for purposes of this section. The certificate holder shall be notified of the suspension or revocation by certified mail sent to the holder's address on file with the department, and shall be given an opportunity to be heard within fifteen calendar days. The hearing shall be conducted in accordance with the rules of the department. The holder's certificate shall be suspended from the date of the notice until the hearing is held and the commissioner makes a final determination.
 - (5). The commissioner shall charge a fee not to exceed two hundred dollars to process the application to issue or renew an asbestos handling certificate and a fee not to exceed five hundred dollars to process the application of an individual as an asbestos investigator.
 - (6). The commissioner may suspend the processing of applications for certification of individuals as asbestos handlers or investigators when the commissioner determines that regulations promulgated pursuant to article thirty of the labor law for the certification of such individuals are essentially equivalent to rules promulgated by the commissioner, and that such certifications are in fact being issued.
 - (7). No certificate issued under this subdivision shall be renewed if the holder has failed to pay in full any civil penalty imposed by the board for violations of this section or any rules promulgated thereunder.
- (f).
- (1). The commissioner shall prescribe forms for and the content of asbestos project notifications to be submitted to the department. Such notifications shall require the furnishing of information deemed relevant by the commissioner for evaluating the scope, complexity and duration of the project and the compliance with the provisions of this section, any rules promulgated thereunder, and any applicable federal, state, or local laws, rules or regulations.
 - (2). If the work to be performed will cause the generation of waste which is asbestos containing material, the asbestos project notification shall include:
 - (i) the name of the person who will remove the waste and the number of the industrial waste transporter permit issued to such person pursuant to article twenty-seven of the environmental conservation law; and
 - (ii) the site at which such waste will be disposed.
- (g). The commissioner may promulgate any rules he or she deems necessary to protect public health and safety and the environment in connection with work not constituting an asbestos project in which asbestos is or is likely to be disturbed.
- (h). An order to stop work may be issued by the commissioner, or his or her authorized representative, at any time when it is found that work is being performed in violation of the provisions of this section, or any rules or regulations promulgated thereunder and which poses a threat to human safety. Upon issuance of a stop work order by the commissioner, all work shall immediately stop unless otherwise specified. Such order may be given orally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons performing the work and may require all persons in or about the building or premises to vacate the same forthwith, and also require such work to be done as, in the opinion of the commissioner, may be necessary to remove the danger therefrom. A verbal stop work order shall be followed promptly by a written order and shall include the reason for the issuance of the stop work order. A stop work order issued pursuant to this subdivision may be appealed in accordance with the rules of the department, and the commissioner shall provide notice and an opportunity to be heard within fourteen days of the filing of such appeal. A stop work order shall be lifted
- (i) if, upon appeal, the commissioner determines that the issuance of such order was not proper, or

- (ii) when it has been determined that the condition that gave rise to its issuance has been corrected. Notwithstanding any inconsistent provision of this subdivision, if, upon inspection, the condition is determined by the inspector to be immediately curable, work shall be stopped only until the condition is corrected.
- (i). The commissioner may grant individual variances for asbestos projects at specific sites, from particular requirements related to asbestos prescribed by this code and rules or orders of the commissioner promulgated thereunder, whenever it is found, upon presentation of adequate proof, that compliance with such requirements would impose unreasonable hardship. In granting a variance the commissioner may impose such conditions as the policies of this code may require.
- (j).
 - (1). In addition to submission of the asbestos project notification, the commissioner may by rule require additional notification to the department prior to the start of the asbestos project. No person shall cause or permit any abatement of asbestos containing material without compliance with any such additional notification requirements.
 - (2). The commissioner may prescribe by rule the circumstances under which an asbestos project notification may be amended, and the circumstances under which a new project notification shall be submitted to the department. The commissioner may consider the extent of the proposed amendment, including but not limited to change in floor size, quantity of asbestos containing material involved, project phasing, project duration, and replacement of abatement contractor.
- (k). The commissioner shall adopt rules specifying the standards for the construction of temporary structures for asbestos abatement activities. In addition to any other requirements, such rules shall provide that materials used in the construction of such structures be non-combustible or flame resistant in compliance with reference standard NFPA 255-06 or NFPA 701-99, as such standards may be modified by local law or by the department of buildings pursuant to applicable rules.
- (l). Sharing the results of inspections. The commissioner, in coordination with the commissioner of buildings and the fire commissioner, shall establish a procedure to share information regarding violations issued pursuant to this section, in accordance with the requirements of section 28-103.7.1 of the code.
- (m).
 - (1). No asbestos abatement activities shall be performed within a building concurrently with demolition work for the full demolition of such building or concurrently with the removal of one or more stories of such building, except as provided in this subdivision and the rules of the department.
 - (2). Prior to the issuance of a full demolition permit by the department of buildings, the owner of the building to be demolished shall submit to the department of buildings
 - (i) certification, in a form to be provided by the rules of the department of environmental protection, that the building is free of asbestos containing material or,
 - (ii) documentation that the commissioner of environmental protection has issued a variance from this requirement pursuant to subdivision (i) of this section and the rules of the department, subject to the additional conditions set forth in paragraph four of this subdivision.
 - (3). Prior to the issuance of an alteration permit by the department of buildings to remove one or more stories of a building, the owner of the building shall submit certification to the department of buildings in a form to be provided by the rules of the department of environmental protection
 - (i) that the stories to be removed are free of asbestos containing material and that no abatement activities will be performed anywhere in the building concurrently with the removal work authorized by such permit or

- (ii) that the commissioner of environmental protection has issued a variance from these requirements pursuant to subdivision (i) of this section and the rules of the department, subject to the additional conditions set forth in paragraph four of this subdivision.
- (4). Prior to granting any variance pursuant to subdivision (i) of this section relating to the full demolition of a building or the removal of one or more stories of a building that would permit the performance of abatement activities concurrent with such demolition or removal work within the same building, the commissioner of environmental protection shall notify and consult with the commissioner of buildings and the fire commissioner regarding the appropriate safeguards for such work. Notwithstanding any inconsistent provision of section 24-138 of this code, where a variance is issued to perform abatement activities and demolition or removal work concurrently within the same building, the asbestos abatement activities may not be performed without an asbestos permit issued pursuant to section 24-138 of this code, regardless of whether such a permit would otherwise be required to perform such activity.
- (5). The commissioner shall post on-line within seven days notice of any variance granted under this subdivision with a statement of the reasons leading to his or her decision.
- (6). This subdivision shall not apply to full demolition or the removal of one or more stories performed as emergency work pursuant to article 215 of chapter 2 of title 28 of the administrative code where the emergency warrants immediate commencement of the work or full demolition with asbestos in place authorized in accordance with 12 NYCRR 56-11.5.
- (n). The owner of a building or structure where asbestos abatement activity occurs or where asbestos-containing material is disturbed shall be responsible for the performance of the work by the agent, contractor, employee, or other representative of such owner.

§ 24-137 Enforcement of the labor law.

Pursuant to subdivision two of section nine hundred ten of the labor law, the commissioner shall have all the powers and responsibility of the commissioner of labor in enforcing the provisions of article thirty of the labor law and the rules and regulations adopted thereunder; provided, however, that the civil penalties authorized pursuant to subdivisions one and two of section nine hundred nine of such law shall be imposed by the environmental control board after a hearing in accordance with the rules of the board.

§ 24-138 Asbestos abatement permit.

- (a). The commissioner shall establish a permit requirement for asbestos projects affecting the safety of a building. On and after a date to be provided in the rules establishing such a permit requirement, it shall be unlawful to commence or engage in such a project unless the commissioner has issued an abatement permit for such project.
- (b). The rules shall be adopted in consultation with the fire commissioner and the commissioner of buildings and shall specify criteria for the issuance of such permits and requirements to enhance safety at the site of such projects. The criteria for the permit requirement shall include, but shall not be limited to, the effect of the project on the maintenance of the means of egress in the building in compliance with applicable provisions of the New York city construction codes, the New York city fire code and other applicable provisions of law, the effect of the project on the fire protection systems of the building and whether the project includes work performed only for the purpose of the asbestos project that may otherwise require a work permit from the department of buildings, such as but not limited to alteration work necessary to expose asbestos material for removal to the extent that such work would otherwise require a work permit pursuant to title 28 of the administrative code.
- (c). Application for an asbestos permit shall be made to the department in such form and containing such information as shall be prescribed in the rules of the department. The fee for such permit shall be set forth in the rules of the department. Where the proposed asbestos project would involve construction work that would otherwise require a work permit from the department of buildings, construction documents, as defined in chapter 1 of title 28 of the administrative code, shall be part of

the abatement permit application filed with the department of environmental protection, except where the submission of such documents is waived by the department of buildings in accordance with the provisions of section 28-104.7.12 of the administrative code. The commissioner of buildings, his or her duly authorized representative, or an employee of the department of environmental protection designated by the commissioner of buildings who is a qualified registered design professional with experience in building construction and design shall approve or accept such construction documents on behalf of the department of buildings in accordance with all applicable provisions of title 28 of the administrative code and no abatement permit shall be issued without such approval or acceptance.

(d). The commissioner may, on written notice to the permit holder, revoke any abatement permit for failure to comply with the provisions of this section or section 24-136 of this code or the rules adopted pursuant thereto or whenever there has been any false statement or any misrepresentation as to a material fact in the application or other documents submitted to the department upon the basis of which such permit was issued; or whenever an abatement permit has been issued in error and conditions are such that the permit should not have been issued. Such notice shall inform the permit holder of the reasons for the proposed revocation and that the applicant has the right to present to the commissioner or his or her representative within 10 business days of delivery of the notice by hand or 15 calendar days of mailing of the notice, information as to why the permit should not be revoked. The commissioner may immediately suspend any permit without prior notice to the permit holder when the commissioner has determined that an imminent peril to life or property exists. The commissioner shall forthwith notify the permit holder that the permit has been suspended and the reasons therefore, that it is proposed to be revoked, and that the permit holder has the right to present to the commissioner or his or her representative within 10 business days of delivery of the notice by hand or 15 calendar days of mailing of the notice information as to why the permit should not be revoked.

(e). The permit shall be posted as specified in the rules of the department for the duration of the asbestos project.

(f). All work shall conform to the approved or accepted construction documents, and any approved amendments thereto.

(g). The permittee shall comply with section 24-136 of this code and the rules of the department adopted pursuant to such section and with article 30 of the labor law and rules adopted pursuant to such article. The commissioner may issue a notice or order to stop work in accordance with the procedure set forth in subdivision (h) of section 24-136 of this code at any time when work is being performed in violation of this section or section 24-136 of this code or rules adopted pursuant to such sections and such work poses a threat to human safety.

§ 24-139 Smoking at abatement sites

(a). Smoking shall not be permitted on any floor of a building where abatement activities, as defined in the rules of the department relating to asbestos control, are taking place.

(b). Tobacco shall not be permitted inside the work place, as such area is defined in the rules of the department relating to asbestos control.

(c). Lighters and matches shall not be permitted in the work place, as such area is defined in the rules of the department relating to asbestos control.

§ 24-140 Spraying of asbestos prohibited.

No person shall cause or permit the spraying of any substance containing asbestos in or upon a building or other structure during its construction, alteration or repair.

Subchapter 6, EMISSION STANDARDS

§ 24-141 Emission of odorous air contaminants.

No person shall cause or permit the emission of an odorous air contaminant or steam or water vapor, if the air contaminant or steam or water vapor causes or may cause detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or causes or may cause damage to property or business, or if it reacts or is likely to react with any other air contaminant or natural air, or is induced to react by solar energy to produce a solid, liquid or gas or any combination thereof which causes or may cause detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or which causes or may cause damage to property or business.

§ 24-142 Emission of air contaminants; standard smoke chart.

- (a). No person shall cause or permit the emission of an air contaminant of:
- (1). A density which appears as dark or darker than number two on the standard smoke chart or of an opacity which obscures vision to a degree equal to or greater than smoke of number two density on the standard smoke chart; or
 - (2). A density which appears as dark or darker than number one on the standard smoke chart, but less than number two on said chart, or of such opacity as to obscure vision to a degree equal to or greater than smoke of number one density on the standard smoke chart, but less than number two on said chart, if such an emission continues for longer than two minutes in the aggregate in any sixty minute period.
- (b).
- (1). The density or opacity of an air contaminant shall be measured in accordance with the procedures set forth in "Method 9 - Visual determination of the opacity of emissions from stationary sources, "Appendix A-4 to part sixty of title forty of the code of federal regulations.
 - (2). The density or opacity of an air contaminant shall be measured at the point of its emission provided that:
 - (i) When the point of emission cannot be readily observed, it may be measured at an observable point on the plume nearest the point of emission; or
 - (ii) In the case of an air contaminant emitted from a source outside of the City of New York, it shall be measured after the plume crosses the jurisdictional boundary of the City of New York.

§ 24-143 Emission of air contaminant from internal combustion engine; visibility standard.

No person shall cause or permit the emission of a visible air contaminant from the internal combustion engine of:

- (a). A motor vehicle while the vehicle is stationary for longer than ten consecutive seconds; or
- (b). A motor vehicle after the vehicle has moved continuously for more than ninety yards.
- (c). The operator or registered owner of a vehicle in violation of this section shall be responsible for such violation.

§ 24-144 Repealed

§ 24-145 Emission of particulates.

- (a). Refuse burning equipment.
- (1). Refuse burning equipment used at a crematorium that is covered by subpart 219-4 of part two hundred nineteen of title six of the New York codes, rules and regulations, must meet the emission limits for particulates set forth in section 219-4.3 of such title.
 - (2). Refuse burning equipment used to burn infectious waste that is covered by subdivision a of section 219-3.3 of title six of the New York codes, rules and regulations must meet the emission limits for particulates set forth in such subdivision.

- (3). Refuse burning equipment used to burn waste material for the purpose of energy generation or that is not otherwise covered under paragraph one or two of this subdivision, and that is covered by subdivision b of section 219-3.3 of title six of the New York codes, rules and regulations must meet the emission limits for particulates set forth in such section.
- (b). Equipment used in a process.
 - (1). Equipment used in a process that is covered by section 212.3 of title six of the New York codes, rules and regulations must meet the emission limits for particulates set forth in such section.
 - (2). Equipment used in a process that is covered by section 212.4 of title six of the New York codes, rules and regulations must meet the emission limits for particulates set forth in such section.
- (c). Fuel burning equipment that meets the definition of a new oil-fired boiler, as such term is used in subpart JJJJJ of part sixty-three of title forty of the code of federal regulations, with a heat input capacity of ten million Btu per hour or greater and that does not meet the definition of a seasonal boiler or limited-use boiler, as such terms are used in such subpart, must meet emission limits for particulate matter applicable to such new oil-fired boilers set forth in table one to such subpart.

§ 24-146 Preventing dust from becoming air-borne; spraying of insulating material and demolition regulated.

- (a). The purpose of this section is to protect public health and safety and the environment by minimizing the emission of dust into the air of the City.
- (b). No person shall cause or permit any material that may generate dust to be transported or stored without taking such precautions as may be ordered by the commissioner or as established by the rules of the department to prevent dust from becoming air-borne.
- (c). No person shall cause or permit a building or its appurtenances or a road to be constructed, altered or repaired without taking such precautions as may be ordered by the commissioner or as established by the rules of the department to prevent dust from becoming air-borne.
- (d). No person shall cause or permit any use, as defined by section 12-10 of the zoning resolution of the City of New York, to be implemented or maintained without taking reasonable precautions as established by the rules of the department, including, but not limited to, planting or covering, to prevent dust from becoming air-borne.
- (e). No person shall cause or permit the spraying of any insulating material, not otherwise prohibited by this code, in or upon any building or other structure during its construction, alteration or repair, unless he or she complies with the rules of the department regarding precautions for the spraying of insulating material.
- (f). No person shall cause or permit a building or other structure to be demolished, unless he or she complies with the following precautions:
 - (1). Demolition by toppling of walls shall not occur except when approved by the commissioner pursuant to section 24-109 of this code, or when conducted by or on behalf of a city agency pursuant to chapter one of title seventeen of the code or pursuant to an order issued by the department of buildings under article two hundred fifteen of chapter two of title twenty-eight of the code.
 - (2). Before the demolition of any section of wall, floor, roof, or other structure, necessary wetting procedures to lay the dust or other precautions to prevent dust from becoming air-borne, as set forth in this section and the rules of the department, shall be employed. All debris shall be thoroughly wetted before loading and while dumping into trucks, other vehicles or containers. In all cases and at all stages of demolition, wetting procedures shall be adequate to lay the dust. Trucks shall be adequately covered or enclosed to prevent dust dispersion while in transit to point of disposal.
 - (3). No structural members shall be dropped or thrown from any floor but shall be carefully lowered to ground level.

- (4). Debris shall not be dropped or thrown outside the exterior walls of the building from any floor to any floor below. In buildings twelve stories or greater in height any debris transported outside the exterior walls of the building shall be transported from the upper floors via enclosed, dust-tight chutes or via buckets or other containers. Where chutes or shaftways are used either inside or outside the building, a water soaking spray shall be employed to saturate the debris before it reaches the point of discharge from the chute or shaftway. Where buckets or other containers are used, the debris shall be adequately wetted to preclude dust dispersion when buckets or other containers are dumped.
- (5).
- (i) In the event particulate matter becomes airborne for a continuous period of fifteen minutes, despite the application of the procedures set forth in this section and the rules of the department, or because freezing temperatures preclude the use of water for laying the demolition dust, the work of demolition shall cease at once until other adequate measures can be taken and procedures shall be evaluated by the commissioner before initiation thereof, provided, however, that if the demolition work is being conducted by or on behalf of a city agency pursuant to chapter one of title seventeen of the code or pursuant to an order issued by the department of buildings under article two hundred fifteen of chapter two of title twenty-eight of the code and freezing temperatures preclude the use of water, then the demolition work may continue as long as necessary to complete the demolition process.
 - (ii) An abatement order may be issued by the commissioner, or his or her authorized representative, at any time when it is found that work is being performed in violation of the provisions of this section, or any rules promulgated thereunder, and such work poses a threat to human health and safety. Upon issuance of an abatement order, the activity giving rise to the violation shall immediately stop unless otherwise specified. Such order may be given orally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons performing the work. Except as provided in subparagraph (iii), a verbal order shall be followed promptly by a written order and shall include the reason for the issuance of an abatement order. The order may require all such work to be done as may be necessary, in the opinion of the commissioner, to remove the danger therefrom.
 - (iii) An abatement order issued pursuant to subparagraph (ii) of this paragraph may be appealed in accordance with the rules of the department, and the commissioner shall provide notice and an opportunity to be heard within fourteen days of the filing of such appeal. An abatement order shall be lifted if, upon appeal, the commissioner determines that the issuance of such order was not proper, or upon the submission of proof satisfactory to the commissioner that the requirements of such order have been satisfied. In the case of a verbal abatement order, if the commissioner determines that the condition that gave rise to the order has been immediately corrected, such order shall be lifted at once and shall not be followed by a written order.

§ 24-147 Emission of nitrogen oxides.

- (a). No person shall cause or permit the use or operation of fuel burning equipment that is covered by subpart 227-2 of part two hundred twenty-seven of title six of the New York codes, rules and regulations in a manner inconsistent with the requirements regarding emission limits for nitrogen oxides set forth in such subpart.
- (b). The commissioner may establish rules regulating nitrogen oxides emissions from boilers not regulated under subpart 227-2 of part two hundred twenty-seven of title six of the New York codes, rules and regulations.

§ 24-148 Architectural coatings; solvents.

No person shall use an architectural coating that is covered by part two hundred five of title six of the New York codes, rules and regulations unless such architectural coating is in compliance with the volatile organic compound limits set forth in section 205.3 of such part.

§ 24-149 Open fires prohibited; exceptions.

No person shall cause or permit the kindling, maintenance or use of any open fire so as to cause the emission of an air contaminant into the open air, except as provided herein:

- (a). Where such fires are allowed by any other law, rule or regulation, outdoor residential picnic and barbecue fires in equipment with a total grate area not exceeding ten square feet and designed to utilize charcoal, or equipped with gas burners;
- (b). outdoor noncommercial barbecue and picnic fires in equipment provided by and located in city parks where such fires are permitted by the appropriate government agency;
- (c). official fires used for the training of fire brigades or similar purposes by persons or corporations requiring such training, but only with the approval of the commissioner and the fire commissioner;
- (d). outdoor fires used in conjunction with tar kettles, coke salamanders, asphalt and snow melting equipment and open natural gas fired infrared heaters of capacity less than one hundred fifty thousand BTU/hr;
- (e). fires used for special effects for the purpose of television, motion picture, theatrical and for other entertainment productions, but only with the approval of the fire commissioner and the commissioner.

§ 24-149.1 Outdoor wood boilers.

- (a). No person shall burn any fuel in an outdoor wood boiler except clean wood, provided that newspaper or other non-glossy, non-colored paper may be used as starter fuel.
- (b). No person shall operate an outdoor wood boiler so as to cause an emission that
 - (1). activates a smoke detector on an adjoining property;
 - (2). impairs visibility on a public street or highway; or
 - (3). causes a visible plume that comes into contact with a building on an adjacent property.
- (c). No person shall operate an outdoor wood boiler with a thermal output rating of two hundred fifty thousand Btu/h or less, unless such outdoor wood boiler:
 - (1). Is in compliance with all applicable certification standards set forth in section 247.8 of title six of the New York codes, rules and regulations;
 - (2). Is located at least one hundred feet from the nearest property boundary line; and
 - (3). Is equipped with a permanent stack extending at least eighteen feet above ground level.
- (d). (d) No person shall operate an outdoor wood boiler with a thermal output rating in excess of two hundred fifty thousand Btu/h.

§ 24-149.2 Fireplaces.

(a). Definitions. As used in this section:

"Existing fireplace" means a fireplace that has been installed before the effective date of the local law that added this section.

"New fireplace" means a fireplace that has been installed on or after the effective date of the local law that added this section.

"Treated firewood" shall have the same meaning as set forth in subdivision thirteen of section 192.5 of title six of the New York codes, rules and regulations.

(b). No person shall operate a fireplace as a primary source of heat, unless the source that normally supplies heat to the building in accordance with applicable state or local law is inoperable due to a fire, explosion, loss of power to the building or natural disaster including, without limitation, earthquakes, floods, winds, or storms, or as otherwise permitted by the rules of the department.

(c). No person shall operate any new fireplace unless it is operated solely on natural gas or on renewable fuel, as such term is defined in this code or as otherwise defined by the rules of the department for the purposes of implementing this subdivision, provided that this subdivision shall not

apply if an application for approval of construction documents for such fireplace was filed with the department of buildings on or before the effective date of the local law that added this section. Any such fireplace shall be deemed to be an existing fireplace and shall be subject to the provisions of law relating to the operation of an existing fireplace.

(d). No person shall operate any existing fireplace unless it is operated with the use of treated firewood having a moisture content of twenty percent or less by weight, renewable fuel, as such term is defined in this code or as otherwise defined by the rules of the department for the purposes of implementing this subdivision, or such other material as may be designated by the rules of the department.

(e). No person shall operate a fireplace unless such fireplace is in compliance with applicable federal emissions standards for particulate matter as set forth in section 60.532 of title forty of the code of federal regulations.

§ 24-149.3 Wood burning heaters.

- (a). No person shall operate any wood burning heater as a primary source of heat, unless the source that normally supplies heat to the building in accordance with applicable state or local law is inoperable due to a fire, explosion, loss of power to the building or natural disaster including, without limitation, earthquakes, floods, winds, or storms, or as otherwise permitted by the rules of the department.
- (b). No person shall operate any wood burning heater unless it
- (i) is operated solely on renewable fuel, as such term is defined in this code or as otherwise defined by the rules of the department for the purposes of implementing this subdivision, and
 - (ii) complies with part sixty of title 40 of the code of federal regulations.

§ 24-149.4 Commercial char broilers.

(a). Definitions. As used in this section:

"New" means installed on or after the effective date of the local law that added this section.

"Existing" means installed before the effective date of the local law that added this section.

"Week" means a period of seven consecutive days starting on Sunday, unless a different start day is specified in the registration filed pursuant to section 24-109 of this code.

(b). No person shall operate any new commercial char broiler or any existing chain-driven commercial char broiler to cook more than eight hundred seventy-five pounds of meat, including but not limited to beef, lamb, pork, poultry, fish, or seafood, per week unless such commercial char broiler is equipped with an emissions control device that meets the requirements of the rules of the department.

(c). On or after January 1, 2018, the commissioner may promulgate rules regulating emissions from: existing chain-driven commercial char broilers used to cook eight hundred seventy-five pounds or less of meat per week or existing under-fired commercial char broilers.

(d). On or after January 1, 2020, the commissioner may promulgate rules regulating emissions from new commercial char broilers used to cook eight hundred seventy-five pounds or less of meat per week.

(e). The operator of a commercial char broiler shall maintain records regarding the dates of installation, replacement, cleaning, and maintenance of any emissions control device. Such records shall be made available to the department upon request.

(f). The operator of a commercial char broiler that is not equipped with an emissions control device that meets the requirements of the rules of the department shall maintain records showing the amount of meat purchased per month. There shall be a presumption that all meat purchased in a given month was cooked on a commercial char broiler. The records required pursuant to this subdivision shall be maintained for not less than one year and shall be made available to the department upon request.

(g). Notwithstanding any other provision this section, where a facility uses more than one commercial char broiler to cook meat, the amount of meat cooked per week shall be calculated for the purposes of this section based on the total amount of meat cooked on all commercial char broilers at the same facility.

§ 24-149.5 Cook stoves.

(a). Definitions. As used in this section:

"New" means installed on or after the effective date of the local law that added this section.

"Existing" means installed before the effective date of the local law that added this section.

(b). No person shall use a new cook stove for the preparation of food intended for on-site consumption or retail purchase without the use of an emission control device for odors, smoke and particulate matter that meets the requirements for such system as established by the rules of the department.

(c). No person shall use an existing cook stove unless such cook stove is in compliance by January 1, 2020, with the requirements for control systems established by the commissioner pursuant to subdivision (b) of this section.

§ 24-149.6 Stationary engines.

(a). Any stationary reciprocating compression ignition internal combustion engine that is required to obtain a certificate of operation pursuant to section 24-122 of this code for the first time on or after January 1, 2018, shall be equipped with an engine certified to the tier four emissions standards established by the United States environmental protection agency as set forth in section 60.4201 of title forty of the code of federal regulations or to any subsequent United States environmental protection agency emissions standard for such engine that is at least as stringent.

(b). On or after January 1, 2025, the certificate of operation for a stationary reciprocating compression ignition internal combustion engine will be renewed only if the owner or operator of such engine can demonstrate in accordance with department rules that the engine meets the tier four emissions standards established by the United States environmental protection agency as set forth in section 60.4201 of title forty of the code of federal regulations or any subsequent United States environmental protection agency emissions standard for such engine that is at least as stringent.

(c). The owner or operator of a stationary reciprocating compression ignition internal combustion engine may apply to the commissioner for additional time to comply with the requirements subdivision (a) or (b) of this section. If the owner or operator can show that the timeframes set forth in subdivision (a) or (b) of this section would constitute an undue hardship, the commissioner may enter into a compliance agreement with the owner or operator. In determining whether the owner or operator has demonstrated undue hardship pursuant to this subdivision, the commissioner may consider whether there is a showing of financial hardship, public necessity, or other emergency condition that would make compliance with the requirements of this section impracticable.

(d). This section shall not apply to any emergency stationary internal combustion engine, as such term is defined in section 60.4219 of title forty of the code of federal regulations, or to any emergency stationary reciprocating internal combustion engine, as such term is defined in section 63.6675 of title forty of the code of federal regulations.

§ 24-150 Repealed

§ 24-151 Emission of air contaminant; concealment and masking restricted.

(a) No person shall cause or permit the installation or use of any device or use of any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of the air contaminant which would otherwise violate subchapter six of this code.

(b) No person shall cause or permit the installation or use of any device or use of any means designed to mask the emission of an air contaminant which causes or may cause detriment to the health, safety or welfare of any person.

§ 24-152 Malfunctions, breakdowns, and removal from service; emergency action plan.

- (a). If any control apparatus required by this code is or will be inoperative for more than six hours, the commissioner shall be provided with a repair and resumption schedule for his or her approval by the owner of the equipment.
- (b). Whenever the emission of an air contaminant, which emission constitutes a violation of any provision of this code, occurs as a result of, malfunction, breakdown or removal from service of equipment or apparatus, the owner of the equipment from which the emission of an air contaminant occurs shall report the emission of the air contaminant and its attendant circumstances to the commissioner not later than thirty minutes from its discovery. The report shall be confirmed in writing, in a form prescribed by the commissioner not later than three days thereafter.
- (c). An owner of such equipment shall not continue it in operation during any malfunction, breakdown, or shutdown of the equipment or of the apparatus which serves the equipment, except with the express permission of the commissioner. Such permission shall be given only as may be necessary to protect the public health and safety. This subdivision shall not apply where the emission of air contaminant is of a type or within the limits permitted by this code.
- (d). This section shall not apply to refuse compacting equipment and fuel burning equipment that primarily serves residents of a building or structure that is occupied in whole or in part as the residence of one or more persons, or that is occupied for transacting business, for rendering professional services, or for rendering public or civic services.
- (e). Whenever the commissioner shall determine that equipment, for which a certificate of operation is required by this code, may emit or be capable of emitting dangerous or odorous air contaminants, either as a result of a malfunction or breakdown of such equipment or as a result of a malfunction or breakdown of the apparatus which serves such equipment, the commissioner may require the owner of such equipment to file with the department an acceptable emergency action plan. The emergency action plan shall detail all activity that will be taken to prevent or control emissions resulting from a malfunction or breakdown.

§ 24-153 Emissions of air contaminant; environmental ratings.

- (a). No person shall cause, permit or allow the emission of an air contaminant from any equipment used in a process covered by part two hundred twelve of title six of the New York codes, rules and regulations where such emission exceeds the permissible emission rates specified in the environmental ratings for process emissions sources as set forth in such part.
- (b). The provisions of this section shall not be construed to allow or permit any person to emit an air contaminant in quantities which alone or in combination with other sources would contravene any air quality standards.
- (c). This section shall be supplemental to all other provisions of this code and in the event of conflict the more stringent section shall control.
- (d). The commissioner may require any owner of equipment used in a process to provide pertinent data concerning emissions so as to show compliance with the requirements of this section.

§ 24-154 Repealed

SUBCHAPTER 7, EQUIPMENT AND APPARATUS: USE AND MAINTENANCE

§ 24-155 Maintenance of equipment and apparatus.

The owner of equipment and apparatus shall maintain such equipment and apparatus in good operating order by regular inspection and cleaning and by promptly making repairs.

§ 24-156 Use of fuel burning equipment without using apparatus prohibited.

(a). Except as provided in subdivision (b) of this section, no person shall cause or permit the use of fuel burning equipment that is fitted with apparatus, other than experimental apparatus, unless the required apparatus is used.

(b). If fuel burning equipment is fitted with apparatus and is designed to use more than one kind of fuel, the equipment shall not be used unless the apparatus appropriate for the particular fuel is used.

§ 24-158 Repealed

§ 24-159 Use of less than fully automatic equipment using fuel oil and use of any fuel burning equipment using residual fuel oil; supervision by licensed person.

No person shall cause or permit the use of fuel burning equipment that uses fuel oil and is less than fully automatic, or the use of fuel burning equipment, whether fully automatic or not, that uses residual fuel oil, except under the direct supervision of a person having a certificate of fitness pursuant to section FC 113 of the New York City Fire Code.

§ 24-160 Use of air contaminant recorder; boilers.

No owner of a boiler with a capacity of five hundred million Btu per hour or more shall operate it without the installation and operation of an air contaminant recorder.

§ 24-161 Use of fuel burning equipment using residual fuel oil; operation and supervision by trained person.

(a). No person shall cause or permit the use of fuel burning equipment using residual fuel oil, except under the operation and supervision of a person who has successfully completed a course of instruction in air pollution control approved by the commissioner.

(b). The commissioner may approve courses of instruction maintained by educational institutions, by industry, or by labor organizations.

(c). No person shall employ an operator or supervisor of fuel burning equipment using residual fuel oil or of refuse burning equipment who does not have an enrollment card or certificate issued by the department.

§ 24-162 Operation of refuse burning equipment, other than municipal; time restriction.

(a). No person shall cause or permit the operation of refuse burning equipment, other than refuse burning equipment operated by the department of sanitation, at any time other than between seven a.m. and five p.m., of the same day, except with the approval of the commissioner.

(b). The person seeking approval to operate refuse burning equipment at a time other than that specified under subdivision (a) of this section shall submit a written request in such form as prescribed by the commissioner.

(c). No person shall cause or permit the resumption of use of refuse burning equipment for which permission has been given for the discontinuance of operation or for which an order of discontinuance has been issued, unless permitted to do so by the commissioner.

§ 24-163 Operation of motor vehicle; idling of engine restricted.

(a). No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes, except as provided in subdivision (f) of this section, while parking as defined in section one hundred twenty-nine of the vehicle and traffic law, standing as defined in section one hundred forty-five of the vehicle and traffic law, or stopping as defined in section one hundred forty-seven of the vehicle and traffic law, unless the engine is used to operate a loading, unloading or processing device. When the

ambient temperature is in excess of forty degrees Fahrenheit, no person shall cause or permit the engine of a bus as defined in section one hundred four of the vehicle and traffic law to idle while parking, standing, or stopping (as defined above) at any terminal point, whether or not enclosed, along an established route.

- (b). The department of transportation shall post signs relating to prohibited idling that shall comply with the standards set forth in the Manual on Uniform Traffic Control Devices and, where practicable, include the maximum penalty that may be imposed for a violation of subdivision a of this section as follows:
 - (1). a sign shall be posted at each exit within the City of New York of each bridge and tunnel having only one terminus in the City of New York;
 - (2). signs shall be posted at a minimum of five locations in each borough where two or more truck routes, whether local or through routes, intersect;
 - (3). a sign shall be posted at each bus layover area (other than school bus layover areas), designated by the commissioner of transportation pursuant to section 4-10(c)(3) of title 34 of the rules of the City of New York;
 - (4). a sign shall be posted at each multiple use bus terminal point;
 - (5). a sign shall be posted in close proximity to each school bus depot; and,
 - (6). signs shall be posted at other appropriate locations throughout the City as jointly determined by the commissioner and the commissioner of transportation, including but not limited to, locations for which the city receives a substantial number of complaints of idling motor vehicles.
- (c). For the purpose of this section only the term "school bus depot" shall mean any garage, lot or other facility where buses that transport children to or from schools are parked overnight and the term "multiple use bus terminal point" shall mean a location that is both a terminal point of at least one bus route (other than a school bus route) and a bus stop (other than a school bus stop) on one or more other bus routes.
- (d). In any proceeding relating to a violation of the restrictions on idling it shall not be a defense that a sign required by this section was absent at the time of the violation.
- (e). In addition to the department and the police department, the department of parks and recreation and the department of sanitation shall have the authority to enforce subdivision a of this section and shall have the power to issue summonses, appearance tickets and/or notices of violation for violations of such subdivision.
- (f). No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than one minute if such motor vehicle is adjacent, as determined by rule, to any public school under the jurisdiction of the New York city department of education or to any non-public school that provides educational instruction to students in any grade from pre-kindergarten to the twelfth grade level, while parking as defined in section one hundred twenty-nine of the vehicle and traffic law, standing as defined in section one hundred forty-five of the vehicle and traffic law, or stopping as defined in section one hundred forty-seven of the vehicle and traffic law, unless the engine is used to operate a loading, unloading or processing device, and provided that idling of an engine of a school bus may be permitted to the extent necessary:
 - (1). for mechanical work;
 - (2). to maintain an appropriate temperature for passenger comfort; or
 - (3). in emergency evacuations where necessary to operate wheelchair lifts. It shall be an affirmative defense that any such school was not easily identifiable as a school by signage or otherwise at the time a violation of this subdivision occurred.
- (g). A report shall be submitted to the City council on an annual basis by:
 - (1). the environmental control board that states the number of notices of violation issued for engine idling violations returnable to the environmental control board, including the total amount of penalties imposed for such notices of violations; and

- (2). the department of finance that states the number of summonses issued for engine idling violations pursuant to subdivision (p) of section 4-08 of title 34 of the rules of the City of New York, including the total amount of penalties imposed for such summonses.

§ 24-163.1 Purchase of cleaner light-duty and medium-duty vehicles.

- (a). Definitions. When used in this section or in section 24-163.2 of this chapter:
 - "Alternative fuel" means natural gas, liquefied petroleum gas, hydrogen, electricity, and any other fuel which is at least eighty-five percent, singly or in combination, methanol, ethanol, any other alcohol or ether.
 - "Alternative fuel motor vehicle" means a motor vehicle that is operated using solely an alternative fuel or is operated using solely an alternative fuel in combination with gasoline or diesel fuel, and shall not include bi-fuel motor vehicles.
 - "Average fuel economy" means the sum of the fuel economies of all motor vehicles in a defined group divided by the number of motor vehicles in such group.
 - "Bi-fuel motor vehicle" means a motor vehicle that is capable of being operated by both an alternative fuel and gasoline or diesel fuel, but may be operated exclusively by any one of such fuels.
 - "Equivalent carbon dioxide" means the metric measure used to compare the emissions from various greenhouse gases emitted by motor vehicles based upon their global warming potential according to the California air resources board or the United States environmental protection agency.
 - "Fuel economy" means the United States environmental protection agency city mileage published label value for a particular motor vehicle, pursuant to section 32908(b) of title 49 of the United States code.
 - "Gross vehicle weight rating" means the value specified by the manufacturer of a motor vehicle model as the maximum design loaded weight of a single vehicle of that model.
 - "Light-duty vehicle" means any motor vehicle having a gross vehicle weight rating of 8,500 pounds or less.
 - "Medium-duty vehicle" means any motor vehicle having a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds.
 - "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, provided, however, that this term shall not include vehicles that are specially equipped for emergency response by the department, office of emergency management, sheriff's office of the department of finance, police department, fire department, department of correction, or office of the chief medical examiner.
 - "Purchase" means purchase, lease, borrow, obtain by gift or otherwise acquire.
 - "Use-based fuel economy" means the total number of miles driven by all light-duty and medium-duty vehicles in the City fleet during the previous fiscal year divided by the total amount of fuel used by such vehicles during the previous fiscal year.
- (b).
 - (1). Except as provided for in paragraphs two and three of this subdivision, beginning July 1, 2006, each light-duty vehicle and medium-duty vehicle that the City purchases shall achieve the highest of the following ratings, with subparagraph one of this paragraph being the highest vehicle rating, applicable to motor vehicles certified to California LEV II standards and available within the applicable model year for a light-duty vehicle or medium-duty vehicle that meets the requirements for the intended use by the City of such vehicle:
 - (i) zero emission vehicle (ZEV)
 - (ii) advanced technology partial zero emission vehicle (ATPZEV)
 - (iii) partial zero emission vehicle (PZEV)
 - (iv) super ultra low emission vehicle (SULEV)
 - (v) ultra low emission vehicle (ULEV)
 - (vi) low emission vehicle (LEV)

- (2). The City shall not be required to purchase a zero emission vehicle or advanced technology partial zero emission vehicle in accordance with paragraph one of this subdivision if the only available vehicle or vehicles that achieve such a rating cost greater than fifty percent more than the lowest bid as determined by the applicable procurement process for a vehicle available in the next highest rating category that meets the requirements for the intended use by the City of such vehicle or if, after consultation with the affected agency, the commissioner determines that the use of such vehicle would be impractical or would unduly hinder the operations of a city agency, or if the commissioner determines that the City lacks the charging and fueling infrastructure to support use of such a vehicle, provided that the next highest rating category that meets the requirements for the intended use by the City of such vehicle shall be selected.
 - (3). Notwithstanding the requirements of paragraph one of this subdivision, such requirements need not apply to a maximum of five percent of the light-duty vehicles and medium-duty vehicles purchased within each fiscal year.
 - (4). For the fiscal year beginning July 1, 2005, at least eighty percent of the light-duty vehicles the City purchases in such fiscal year shall be alternative fuel motor vehicles.
- (c).
- (1). The City shall not purchase additional bi-fuel motor vehicles.
 - (2). Any bi-fuel motor vehicle that is owned or operated by the City shall be powered on the alternative fuel on which it is capable of operating, except that such vehicle may be operated on gasoline or diesel fuel (i) where, as of the date of enactment of this section, such vehicle is no longer mechanically able to operate on such alternative fuel and cannot be repaired, or (ii) solely for the period of time recommended by the vehicle manufacturer.
- (d).
- (1). Not later than October 1, 2005, the City shall complete an inventory of the fuel economy of all light-duty vehicles purchased by the City during the fiscal year beginning July 1, 2004, and shall calculate the average fuel economy of all such light-duty vehicles.
 - (2). the City shall achieve the following minimum percentage increases in the average fuel economy of all light-duty vehicles purchased by the city during the following fiscal years, relative to the average fuel economy of all such vehicles purchased by the City during the fiscal year beginning July 1, 2004, calculated pursuant to paragraph one of this subdivision:
 - (i) For the fiscal year beginning July 1, 2006, five percent;
 - (ii) For the fiscal year beginning July 1, 2007, eight percent;
 - (iii) For the fiscal year beginning July 1, 2008, ten percent;
 - (iv) For the fiscal year beginning July 1, 2009, twelve percent;
 - (v) For the fiscal years beginning July 1, 2010 and July 1, 2011, fifteen percent;
 - (vi) For the fiscal years beginning July 1, 2012, July 1, 2013 and July 1, 2014, eighteen percent;
 - (vii) For the fiscal year beginning July 1, 2015, twenty percent;
 - (viii) For the fiscal year beginning July 1, 2016, twenty percent;
 - (ix) For the fiscal year beginning July 1, 2017, twenty-five percent;
 - (x) For the fiscal year beginning July 1, 2018, twenty-five percent;
 - (xi) For the fiscal year beginning July 1, 2019, thirty percent;
 - (xii) For the fiscal year beginning July 1, 2020, thirty percent;
 - (xiii) For the fiscal year beginning July 1, 2021, thirty-five percent; and
 - (xiv) For the fiscal year beginning July 1, 2022, and for each fiscal year thereafter, forty percent.
- (e).
- (1). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the mayor shall submit to the comptroller and the speaker of the council a report regarding the City's purchase of light-duty vehicles and medium-duty vehicles during the immediately preceding fiscal year. The information contained in this report shall also be included in the

preliminary mayor's management report and the mayor's management report for the relevant fiscal year and shall include, but not be limited to, for each city agency:

- (i) the total number of light-duty vehicles and medium-duty vehicles and all other motor vehicles, respectively, purchased by such agency;
 - (ii) the total number of light-duty vehicles and medium-duty vehicles, respectively, purchased by such agency that are certified to California LEV II standards in each of the six rating categories listed in subdivision b of this section, disaggregated according to vehicle model;
 - (iii) the reason as to why each vehicle model was purchased, rather than a vehicle model rated in a higher category listed in subdivision b of this section;
 - (iv) if an available zero emission vehicle or advanced technology partial zero emission vehicle is not purchased, in accordance with paragraph two of subdivision b of this section, specific information regarding the cost analysis or other basis for such decision;
 - (v) the percentage of light-duty vehicles and medium-duty vehicles purchased within each fiscal year in accordance with paragraphs one and two of subdivision b of this section; and
 - (vi) for the report required not later than January 1, 2007, the percentage of light-duty vehicles purchased by the City during the fiscal year beginning July 1, 2005 that were alternative fuel motor vehicles.
- (2). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the mayor shall submit to the comptroller and the speaker of the council a report regarding the fuel economy of light-duty vehicles purchased by the City during the immediately preceding fiscal year. The information contained in this report shall also be included in the preliminary mayor's management report and the mayor's management report for the relevant fiscal year and shall include, but not be limited to:
- (i) the average fuel economy of all light-duty vehicles purchased by the City during the preceding fiscal year; and
 - (ii) the percentage increase in the average fuel economy of all such light-duty vehicles, relative to the average fuel economy of all light-duty vehicles purchased by the City during the fiscal year beginning July 1, 2004, calculated pursuant to paragraph one of subdivision d of this section, that this total amount represents.
- (3). Not later than January 1, 2016, and not later than January 1 of each year thereafter, the mayor shall submit to the comptroller and the speaker of the council a report regarding the use-based fuel economy for the immediately preceding fiscal year. The information contained in such report shall also be included in the preliminary mayor's management report and the mayor's management report for the relevant fiscal year.
- (f).
- (1). Beginning July 1, 2006, for each fiscal year, the City shall measure the amount of fuel consumed by the City's fleet of motor vehicles and the equivalent carbon dioxide emitted by such vehicles, for each type of fuel consumed by such vehicles.
 - (2). For the fiscal year beginning July 1, 2006, and for each fiscal year thereafter, the department shall publish on its website by October 1 following the close of each fiscal year and the mayor shall include in the preliminary mayor's management report and the mayor's management report for the relevant fiscal year the estimated total amount of fuel consumed by the City's fleet of motor vehicles and the estimated total amount of equivalent carbon dioxide emitted by such vehicles, disaggregated according to fuel type. For the purposes of this subdivision, the City's fleet of motor vehicles shall include vehicles specially equipped for emergency response by the department, office of emergency management, sheriff's office of the department of finance, police department, fire department, or office of the chief medical examiner.
- (g). This section shall not apply:
- (1). where federal or state funding precludes the City from imposing the purchasing requirements of this section;

- (2). to purchases that are emergency procurements pursuant to section three hundred fifteen of the charter; or
- (3). except for subdivision f of this section, to diesel fuel-powered motor vehicles subject to paragraph two of subdivision b of section 24-163.4 of this chapter.
- (h). To the extent not prohibited by law, alternative fuel motor vehicles may be purchased by the City in concert with any public or private entity.

§ 24-163.2 Alternative fuel buses and sanitation vehicles.

- (a). Definitions. When used in this section:
 - "Alternative fuel bus" means a bus that is operated using solely an alternative fuel or is operated using solely an alternative fuel in combination with gasoline or diesel fuel, and shall not include bi-fuel motor vehicles.
 - "Alternative fuel sanitation vehicle" means a sanitation vehicle that is operated using solely an alternative fuel or is operated using solely an alternative fuel in combination with gasoline or diesel fuel, and shall not include bi-fuel motor vehicles.
 - "Alternative fuel street sweeping vehicle" means a vehicle used by the department of sanitation for street cleaning purposes that is operated using solely an alternative fuel or is operated using solely an alternative fuel in combination with gasoline or diesel fuel, and shall not include bi-fuel motor vehicles.
 - "Bus" means a motor vehicle that is designed to transport more than twenty individuals.
 - "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.
 - "Sanitation vehicle" means a vehicle used by the department of sanitation for street cleaning purposes or for the collection of solid waste or 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.
- (b). For the fiscal year commencing July 1, 2005, and for each fiscal year thereafter, at least twenty percent of the buses the City purchases in such fiscal year shall be alternative fuel buses.
- (c).
 - (1). Beginning no later than March 1, 2006, the commissioner of sanitation shall implement a program for testing the mechanical reliability and operational feasibility of alternative fuel street sweeping vehicles. Such program shall include a pilot project regarding the exclusive utilization of alternative fuel street sweeping vehicles in at least four sanitation districts, to be identified at the discretion of the commissioner of sanitation. At least one such district shall be located in an area where high rates of asthma are found and the commissioner shall consider asthma rates in his or her determination of where such other districts will be located.
 - (2). The department of sanitation shall collect and analyze data to further develop its initiatives for and assess the feasibility of incorporating new alternative fuel sanitation vehicles and technology into its fleet.
- (d).
 - (1). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the mayor shall submit to the comptroller and the speaker of the council a report regarding the City's purchase of alternative fuel buses during the immediately preceding fiscal year. This report shall be included in the mayor's preliminary management report and the mayor's management report for the relevant fiscal year and shall include, but not be limited to: (i) the total number of buses purchased by the City in the preceding fiscal year; and (ii) the number

- of such buses that are alternative fuel buses, disaggregated according to agency, bus model and type of alternative fuel used.
- (2). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the commissioner of sanitation shall report to the mayor, the comptroller and the speaker of the council on the department of sanitation's alternative fuel street sweeping vehicle pilot project and all testing, analyses and assessments completed pursuant to subdivision c of this section. Such report shall include, but not be limited to:
 - (i) a description of all testing, analyses and assessments, respectively, completed pursuant to that subdivision and all conclusions based upon such testing, analyses and assessments, including specific information regarding efforts made by the department of sanitation to further develop initiatives for the incorporation of alternative fuel sanitation vehicles into its fleet, in addition to specific information regarding the feasibility of incorporating such vehicles into such fleet;
 - (ii) the number of alternative fuel street sweeping vehicles included in the pilot project required pursuant to paragraph one of that subdivision, the districts where such vehicles are located and the type of alternative fuel used by such vehicles; and,
 - (iii) the total number of alternative fuel sanitation vehicles owned or operated by the department of sanitation, disaggregated according to vehicle model and type of alternative fuel used.
 - (e). Purchases of alternative fuel buses that exceed the minimum mandatory purchase requirements of subdivision b of this section for a particular fiscal year may be used to satisfy such applicable requirements for the immediately succeeding fiscal year.
 - (f). To the extent not prohibited by law, alternative fuel buses and alternative fuel sanitation vehicles may be purchased by the City in concert with any public or private entity.
 - (g). This section shall not apply:
 - (1). where federal or state funding precludes the City from imposing the purchasing requirements of this section;
 - (2). to purchases that are emergency procurements pursuant to section three hundred fifteen of the charter; or
 - (3). to the purchase of buses for use by any city agency where the commissioner of such agency has made a written determination that there are no alternative fuel buses available that meet the needs of such agency with respect to bus size, passenger capacity or other special requirement, and has within ten business days thereafter submitted the determination to the speaker of the council accompanied by the detailed analysis that formed the basis for such determination; provided, however, that the purchase of buses for use by the agency shall become subject to the provisions of this section immediately after a determination by the commissioner, after consultation with the department of citywide administrative services, that an alternative fuel bus that meets such needs has become available; and provided, further, however, that the City shall not be required to purchase an alternative fuel bus for use by the agency if the only available alternative fuel bus that meets the needs of such agency with respect to bus size, passenger capacity or other special requirement costs more than fifty percent more than other buses that meet such needs of such agency.
 - (h). The commissioner may by rule require periodic testing of alternative fuel buses and the submission of information concerning the operation and maintenance of such buses purchased or newly operated in the City to ensure compliance with this section and to collect information for reports required by this section.
 - (i). The commissioner may order a city agency that owns or operates a bus to which this section applies to conduct such tests, or the department may conduct such tests, as are necessary in the opinion of the commissioner to determine whether such bus is in compliance with this section.
 - (j). The department may inspect at a reasonable time and in a reasonable manner any equipment, apparatus, fuel, matter or thing that affects or may affect the proper maintenance or operation of an alternative fuel bus to which this section applies.

§ 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:
- "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.
- "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.
- "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.
- "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.
- "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.
- (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, or shall be equipped with an engine certified to the applicable tier four emissions standards established by the United States environmental protection agency as set forth in section 1039.101 of title forty of the code of federal regulations or to any subsequent United States environmental protection agency emissions standard for such engine that is at least as stringent.
- (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, or shall utilize diesel-powered nonroad vehicles that are equipped with engines certified to the applicable tier four emissions standards established by the United States environmental protection agency as set forth in section 1039.101 of title forty of the code of federal regulations or to any subsequent United States environmental

protection agency emissions standard for such engines that is at least as stringent. All contractors in the performance of such contract shall comply with such specification.

- (d).
 - (1).
 - (i) 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.
 - (ii) 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, as set forth in the executive orders of such board, for use in nonroad vehicles for each engine family. If no such technology exists for a specific engine family, then the commissioner shall select appropriate technology from that which has been verified by the United States environmental protection agency or the California air resources board as set forth in the executive orders of such board, for a different nonroad vehicle engine family. If no such appropriate technology exists for a different nonroad vehicle engine family, then the commissioner may select such technology that he or she deems 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 or on or before July 1, 2017, whichever is later.
- (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 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.
 - (2). 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.
 - (3). 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). 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; and (vi) all findings and waivers, and renewals of such findings and waivers, issued pursuant to paragraph one or paragraph three of subdivision j or subdivision l 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.
- (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). 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 any diesel-powered nonroad vehicle covered under a federal waiver for the use of ultra-low sulfur diesel fuel issued by the United States environmental protection agency pursuant to 42 U.S.C. § 7545(c)(4)(C)(ii) or any regulation promulgated thereunder, provided that the City agency or contractor shall fully comply with the terms of such federal waiver, and that the requirements of paragraph one of subdivision b and paragraph one of subdivision c of this section shall be in full force and effect upon the expiration of such federal waiver.
- (j). 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.
- (k). In determining which technology to use for the purposes of paragraph one or paragraph three of subdivision j 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.

- (l). Any finding or waiver made or issued pursuant to paragraph one or paragraph three of subdivision j 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.
- (m). Any contractor who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code.
- (n). Any contractor that makes a false claim with respect to the provisions of this section to a city agency shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.
- (o). This section shall not apply to any public works contract entered into or renewed prior to June 19, 2004.
- (p). 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.

§ 24-163.4 Use of ultra low sulfur diesel fuel and best available retrofit technology by the City's diesel fuel-powered motor vehicles.

- (a). Definitions. When used in this section:
 - "Best available retrofit technology" means 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 subdivision d of this section, 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.
 - "Gross vehicle weight rating" means the value specified by the manufacturer of a motor vehicle model as the maximum design loaded weight of a single vehicle of that model.
 - "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, provided, however, that this term shall not include vehicles that are specially equipped for emergency response by the department, office of emergency management, sheriff's office of the department of finance, police department or fire department or vehicles, other than buses, specially equipped for emergency response by the department of correction.
 - "Person" means any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.
 - "Reasonable cost" means 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 subdivision d of this section, when considering the cost of the strategies, themselves, and the cost of installation.
 - "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.
 - "Biodiesel" means a fuel, designated B100, that is composed exclusively of mono-alkyl esters of long chain fatty acids derived from feedstock and that meets the specifications of ASTM designation D6751-12.
- (b).

- (1). Each diesel fuel-powered motor vehicle owned or operated by a city agency shall be powered by an ultra low sulfur diesel fuel blend containing biodiesel as follows:
 - (i) for the fiscal years beginning July 1, 2014, and July 1, 2015, an ultra low sulfur diesel fuel blend containing at least five percent biodiesel (B5) by volume; and
 - (ii) for the fiscal year beginning July 1, 2016, and thereafter, between the months of April to November, inclusive, an ultra low sulfur diesel fuel blend containing at least twenty percent biodiesel (B20) by volume, and between the months of December to March, inclusive, an ultra low sulfur diesel fuel blend containing at least five percent biodiesel (B5) by volume.
 - (2). Diesel fuel-powered motor vehicles having a gross vehicle weight rating of more than 8,500 pounds that are owned or operated by city agencies shall utilize the best available retrofit technology or be 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, pursuant to the following schedule:
 - (i) 7% of all such motor vehicles by January 1, 2007;
 - (ii) 14% of all such motor vehicles by January 1, 2008;
 - (iii) 30% of all such motor vehicles by January 1, 2009;
 - (iv) 50% of all such motor vehicles by January 1, 2010;
 - (v) 70% of all such motor vehicles by January 1, 2011;
 - (vi) 90% of all such motor vehicles by January 1, 2012;
 - (vii) 100% of all such motor vehicles by July 1, 2012.
 - (3). Notwithstanding any provision of subdivision c of this section, diesel fuel-powered motor vehicles having a gross vehicle weight rating of more than 8,500 pounds that are owned or operated by city agencies shall utilize the best available retrofit technology that meets the level 4 emission control strategy as defined in subdivision d of this section, or be 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, pursuant to the following schedule:
 - (i) 50% of all such motor vehicles by January 1, 2014;
 - (ii) 70% of all such motor vehicles by January 1, 2015;
 - (iii) 80% of all such motor vehicles by January 1, 2016; and
 - (iv) 90% of all such motor vehicles by January 1, 2017.
- (c).
- (1). The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available retrofit technology to be used for each type of diesel fuel-powered motor vehicle to which this section applies. Each such determination shall be reviewed and revised, as needed, on a regular basis, but in no event less often than once every six months.
 - (2). The commissioner may determine that a technology, whether or not it has been verified by the United States environmental protection agency or the California air resources board, may be appropriate to test, on an experimental basis, on a particular type of diesel fuel-powered motor vehicle owned or operated by a city agency. The commissioner may authorize such technology to be installed on up to five percent or twenty-five of such type of motor vehicle, whichever is less. Any motor vehicle on which such technology is installed may be counted for the purpose of meeting the requirements of paragraph two of subdivision b of this section. Such technology shall not be required to be installed on other motor vehicles of the same type and shall be subject to the provisions of paragraph three of this subdivision.
 - (3). No city agency shall be required to replace best available retrofit technology or experimental technology utilized for a diesel fuel-powered motor vehicle in accordance with the provisions

- of this section within three years of having first utilized such technology for such vehicle, except that technology that falls within Level 4, as set forth in subdivision d of this section, shall not be required to be replaced until it has reached the end of its useful life.
- (d). The classification levels for diesel emission control strategies are as follows, with Level 4 being the highest classification level:
- (i) Level 4 - strategy reduces diesel 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;
 - (ii) Level 3 - strategy reduces diesel particulate matter emissions by between 50 and 84 percent;
 - (iii) Level 2 - strategy reduces diesel particulate matter emissions by between 25 and 49 percent;
 - (iv) Level 1 - strategy reduces diesel particulate matter emissions by between 20 and 24 percent.
- (e).
- (1). Paragraph one of subdivision b of this section, as that paragraph applies to the requirement that each diesel fuel-powered motor vehicle owned or operated by a city agency be powered by ultra low sulfur diesel fuel, shall not apply to any motor vehicle covered under a federal waiver for the use of ultra-low sulfur diesel fuel issued by the United States environmental protection agency pursuant to 42 U.S.C. § 7545(c)(4)(C)(ii) or any regulation promulgated thereunder, provided that the City agency shall fully comply with the terms of such federal waiver, and that the requirements of paragraph one of subdivision b of this section shall be in full force and effect upon the expiration of such federal waiver.
 - (2). The commissioner may issue a waiver for the use of an ultra low sulfur diesel fuel blend that contains the amount of biodiesel required pursuant to subdivision b of this section where a city agency makes a written finding, which is approved, in writing, by the commissioner, that a sufficient quantity of such ultra low sulfur diesel fuel blend containing biodiesel is not available to meet the requirements of this section. Any waiver issued pursuant to this paragraph shall expire after two months, unless the City agency renews the finding, in writing, and the commissioner approves such renewal, in writing.
 - (3). The commissioner may issue a waiver for the use of an ultra low sulfur diesel fuel blend that contains the amount of biodiesel required pursuant to subdivision b of this section where a city agency makes a written finding, which is approved, in writing, by the commissioner, that the use of biodiesel in a particular type of motor vehicle would void the manufacturer's warranty for such vehicle.
- (f).
- (1). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the commissioner shall submit a report to the comptroller and the speaker of the council regarding, among other things, the use of ultra low sulfur diesel fuel and the use of the best available retrofit technology by diesel fuel-powered motor vehicles owned or operated by city agencies during the immediately preceding calendar year. The information contained in this report shall include, but not be limited to, for each city agency:
 - (i) the total number of diesel fuel-powered motor vehicles owned or operated by such agency;
 - (ii) the number of such motor vehicles that were powered by ultra low sulfur diesel fuel;
 - (iii) the total number of diesel fuel-powered motor vehicles owned or operated by such agency having a gross vehicle weight rating of more than 8,500 pounds;
 - (iv) the number of such motor vehicles that utilized the best available retrofit technology, including a breakdown by motor vehicle model, engine year and the type of technology used for each vehicle;
 - (v) the number of such motor vehicles that are 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 particulate matter that is at least as stringent;
 - (vi) the number of such motor vehicles that utilized technology in accordance with paragraph two of subdivision c of this section and the results and analyses regarding the testing of such technology; and
 - (vii) all waivers, findings, and renewals of such findings, issued pursuant to subdivision e of this section, which, for each waiver, shall include, but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated by such agency.
- (2). The report due January 1, 2007 in accordance with paragraph one of this subdivision shall only include the information required pursuant to subparagraphs (i), (ii) and (vii) of such paragraph.
- (g). 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.
- (h). B20 winter pilot program. Not later than December 1, 2016, the commissioner of citywide administrative services shall establish a pilot program to determine the feasibility of utilizing an ultra low sulfur diesel fuel blend containing at least twenty percent biodiesel (B20) by volume in city-owned diesel fuel-powered motor vehicles during the months of December to March, inclusive. The pilot program shall include not less than five percent of the City's total diesel fuel-powered motor vehicle fleet, which shall be representative of the vehicle types and operating conditions of the fleet as a whole, and shall include vehicles from the department of citywide administrative services, department of environmental protection, department of parks and recreation, department of sanitation, and department of transportation and vehicles from other city agencies at the discretion of the commissioner of citywide administrative services. Such pilot program shall continue until March 31 of the second calendar year after such pilot program was initiated, and within four months of the conclusion of such pilot program, the commissioner of citywide administrative services shall issue a report to the mayor and the speaker of the council detailing the findings of such pilot program with recommendations for the use of an ultra low sulfur diesel fuel blend containing at least twenty percent biodiesel (B20) by volume in city-owned diesel fuel-powered motor vehicles during the months of December to March, inclusive.

§ 24-163.5 Use of ultra low sulfur diesel fuel and best available retrofit technology in the fulfillment of solid waste contracts and recyclable materials contracts.

- (a). Definitions. When used in this section:
- "Best available retrofit technology" means technology, verified by the United States environmental protection agency or the California air resources board unless as otherwise deemed appropriate by the commissioner for a nonroad vehicle, 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 subdivision d of this section, 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.
- "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" shall mean 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.

"Reasonable cost" means 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 subdivision d of this section, 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, sludge 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.

(b).

- (1). 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 the performance of such contract that operate primarily within the City of New York shall be powered by ultra low sulfur diesel fuel and all contractors in the performance of such contract shall comply with such specification.
- (2). Any solid waste contract or recyclable materials contract shall specify that, as of March 1, 2006, 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 the best available retrofit technology and all contractors in the performance of such contract shall comply with such specification.
- (3). Notwithstanding any provision of subdivision c of this section, any solid waste contract or recyclable materials contract entered into pursuant to requests for bids and/or requests for proposals issued after the effective date of the local law that added this paragraph shall specify that, as of January 1, 2017, all diesel fuel-powered motor vehicles used in the performance of such contract that operate primarily within the City of New York shall utilize the best available retrofit technology that meets the level 4 emission control strategy as defined in subdivision d of this section, or be 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, and all contractors in the performance of such contract shall comply with such specification.

- (c).
 - (1). The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available retrofit technology to be used for each type of diesel fuel-powered motor vehicle and diesel fuel-powered nonroad vehicle to which this section applies. Each such determination shall be reviewed and revised, as needed, on a regular basis, but in no event less often than once every six months.
 - (2). No contractor shall be required to replace best available retrofit technology or other authorized technology utilized for a diesel fuel-powered motor vehicle or diesel fuel-powered nonroad vehicle in accordance with the provisions of this section within three years of having first utilized such technology for such vehicle, except that technology that falls within Level 4, as set forth in subdivision d of this section, shall not be required to be replaced until it has reached the end of its useful life.
- (d). The classification levels for diesel emission control strategies are as follows, with Level 4 being the highest classification level:
 - (i) Level 4 - strategy reduces diesel 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;
 - (ii) Level 3 - strategy reduces diesel particulate matter emissions by between 50 and 84 percent;
 - (iii) Level 2 - strategy reduces diesel particulate matter emissions by between 25 and 49 percent;
 - (iv) Level 1 - strategy reduces diesel particulate matter emissions by between 20 and 24 percent.
- (e). A city agency shall not enter into a solid waste contract or recyclable materials 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). Paragraph one of subdivision b of this section, as that paragraph applies to all contractors' duty to comply with the specification, shall not apply to any motor vehicle or nonroad vehicle covered under a federal waiver for the use of ultra-low sulfur diesel fuel issued by the United States environmental protection agency pursuant to 42 U.S.C. § 7545(c)(4)(C)(ii) or any regulation promulgated thereunder, provided that the contractor shall fully comply with the terms of such federal waiver, and that the requirements of paragraph one of subdivision b of this section shall be in full force and effect upon the expiration of such federal waiver.
- (g). The commissioner may issue a waiver for the use of the best available retrofit technology by a diesel fuel-powered motor vehicle or diesel fuel-powered nonroad vehicle where the City agency that has entered into the applicable solid waste contract or recyclable materials contract makes a written finding, which is approved, in writing, by the commissioner, that such technology is unavailable for purchase for such vehicle, in which case the contractor shall be required to use the technology for reducing the emission of pollutants that would be the next best best available retrofit technology and that is available for purchase for such vehicle. Any waiver issued pursuant to this subdivision shall expire after three years. The commissioner shall not renew any waiver issued pursuant to this subdivision after January 1, 2014.
- (h).
 - (1). Paragraph two of subdivision b of this section shall not apply to a 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.

- (2). Paragraph two of subdivision b of this section shall not apply to a 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 section 1039.101 of title forty 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.
- (i). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the commissioner shall submit a report to the comptroller and the speaker of the council regarding, among other things, the use of ultra low sulfur diesel fuel and the use of the best available retrofit technology by diesel fuel-powered motor vehicles and diesel fuel-powered nonroad vehicles used in the performance of a solid waste contract or recyclable materials contract during the immediately preceding fiscal year. This report shall include, but not be limited to:
 - (i) the total number of diesel fuel-powered motor vehicles and diesel fuel-powered nonroad vehicles, respectively, used in the performance of solid waste contracts or recyclable materials contracts;
 - (ii) the number of such motor vehicles and nonroad vehicles, respectively, that were powered by ultra low sulfur diesel fuel;
 - (iii) the number of such motor vehicles and nonroad vehicles, respectively, that utilized the best available retrofit technology, including a breakdown by vehicle model, engine year and the type of technology used for each vehicle;
 - (iv) the number of such motor vehicles and nonroad vehicles, respectively, that utilized other authorized technology in accordance with this section, including a breakdown by vehicle model, engine year and the type of technology used for each vehicle;
 - (v) the number of such motor vehicles and nonroad vehicles, respectively, that are equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter in accordance with subdivision h of this section;
 - (vi) the locations where such motor vehicles and nonroad vehicles, respectively, that were powered by ultra low sulfur diesel fuel, utilized the best available retrofit technology, utilized such other authorized technology in accordance with this section or were equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter were used; and
 - (vii) all waivers issued pursuant to subdivision g of this section, which shall include, but not be limited to, all findings and specific information submitted by the City agency or contractor upon which such waivers are based and the type of other authorized technology utilized in accordance with this section in relation to each waiver, instead of the best available retrofit technology.
- (j). 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.
- (k). Any contractor who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code.
- (l). Where a contractor has been found to have made a false claim with respect to the provisions of this section, such contractor shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.
- (m). This section shall not apply to any solid waste contract or recyclable materials contract entered into or renewed prior to September 9, 2005.
- (n). 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.

§ 24-163.6 Use of best available retrofit technology by sight-seeing buses.

- (a). Definitions. When used in this section:
- "Best available retrofit technology" means 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 subdivision d of this section, 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.
- "Reasonable cost" means 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 subdivision d of this section, when considering the cost of the strategies, themselves, and the cost of installation.
- "Sight-seeing bus" means a motor vehicle designed to comfortably seat and carry eight or more passengers operating for hire from a fixed point in the City of New York to a place or places of interest or amusements, and shall also include a vehicle, designed as aforesaid which by oral or written contract is let and hired or otherwise engaged for its exclusive use for a specific or special trip or excursion from a starting point within the City of New York.
- (b).
- (1). Beginning January 1, 2007, any diesel fuel-powered sight-seeing bus that is licensed pursuant to subchapter 21 of chapter 2 of title 20 of the administrative code and that is equipped with an engine that is over three years old shall utilize the best available retrofit technology.
 - (2). Notwithstanding any provision of subdivision c of this section, any diesel fuel-powered sight-seeing bus that is licensed pursuant to subchapter 21 of chapter 2 of title 20 of the administrative code shall utilize the best available retrofit technology that meets the level 4 emission control strategy as defined in subdivision d of this section, or be 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, by January 1, 2017.
- (c).
- (1). The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available retrofit technology to be used for each type of diesel fuel-powered sight-seeing bus to which this section applies. Each such determination shall be reviewed and revised, as needed, on a regular basis, but in no event less often than once every six months.
 - (2). No owner or operator of a diesel fuel-powered sight-seeing bus licensed pursuant to the provisions of subchapter 21 of chapter 2 of title 20 of the administrative code shall be required to replace best available retrofit technology or other authorized technology utilized for a diesel fuel-powered bus in accordance with the provisions of this section within three years of having first utilized such technology for such bus, except that technology that falls within Level 4, as set forth in subdivision d of this section, shall not be required to be replaced until it has reached the end of its useful life.
- (d). The classification levels for diesel emission control strategies are as follows, with Level 4 being the highest classification level:
- (i) Level 4 - strategy reduces diesel 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;
 - (ii) Level 3 - strategy reduces diesel particulate matter emissions by between 50 and 84 percent;
 - (iii) Level 2 - strategy reduces diesel particulate matter emissions by between 25 and 49 percent;

- (iv) Level 1 - strategy reduces diesel particulate matter emissions by between 20 and 24 percent.
- (e). The commissioner may issue a waiver for the use of the best available retrofit technology by a diesel fuel-powered sight-seeing bus where the department of consumer affairs makes a written finding, which is approved, in writing, by the commissioner, that such technology is unavailable for purchase for such bus, in which case the owner or operator of such bus shall be required to use the technology for reducing the emission of pollutants that would be the next best available retrofit technology and that is available for purchase for such bus. Any waiver issued pursuant to this subdivision shall expire after three years. The commissioner shall not renew any waiver issued pursuant to this subdivision after January 1, 2014.
- (f). The requirements of subdivision b of this section shall not apply to a diesel-fuel powered sight-seeing bus 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.
- (g). Not later than January 1, 2008, and not later than January 1 of each year thereafter, the commissioner shall submit a report to the comptroller and the speaker of the council regarding, among other things, the use of the best available retrofit technology by diesel fuel-powered sight-seeing buses during the immediately preceding fiscal year. This report shall include, but not be limited to:
 - (i) the total number of diesel fuel-powered sight-seeing buses licensed pursuant to subchapter 21 of chapter 2 of title 20 of the administrative code;
 - (ii) the number of such buses that utilized the best available retrofit technology, including a breakdown by vehicle model, engine year and the type of technology used for each vehicle;
 - (iii) the number of such buses that utilized other authorized technology in accordance with this section, including a breakdown by vehicle model, engine year and the type of technology used for each vehicle;
 - (iv) the number of such buses that are equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter in accordance with subdivision f of this section;
 - (v) the locations where such buses that utilized the best available retrofit technology, utilized such other authorized technology in accordance with this section or were equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter were used;
 - (vi) the age of the engine with which each bus that did not utilize the best available retrofit technology is equipped; and
 - (vii) all waivers issued pursuant to subdivision e of this section, which shall include, but not be limited to, all findings and specific information submitted by the department of consumer affairs or the owner or operator of a diesel fuel-powered sight-seeing bus upon which such waivers are based and the type of other authorized technology utilized in accordance with this section in relation to each waiver, instead of the best available retrofit technology.
- (h). Any owner or operator of a diesel fuel-powered sight-seeing bus who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code.
- (i). Where an owner or operator of a diesel fuel-powered sight-seeing bus has been found to have made a false claim with respect to the provisions of this section, such owner or operator shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.

§ 24-163.7 Use of ultra low sulfur diesel fuel and best available retrofit technology in school bus transportation.

- (a). Definitions. For the purposes of this section only, the following terms shall have the following meanings:
- "Best available retrofit technology" means 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 subdivision e of this section, 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.
- "Department of education" means the New York city department of education, formerly known as the New York city board of education, and any successor agency or entity thereto, the expenses of which are paid in whole or in part from the City treasury.
- "Reasonable cost" means 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 subdivision e of this section, when considering the cost of the strategies, themselves, and the cost of installation.
- "School bus" means any vehicle operated pursuant to a school bus contract, designed to transport ten or more children at one time, of the designation "Type C bus" or "Type D bus" as set forth in 17 NYCRR §§ 720.1(Z) and (AA), and used to transport children to or from any school located in the City of New York, and excluding any vehicle utilized primarily to transport children with special educational needs who do not travel to and from school in vehicles used to transport general education students.
- "School bus contract" means any agreement between any person and the department of education to transport children on a school bus.
- (b).
- (1). Beginning July 1, 2006, any diesel fuel-powered school bus that is operated by a person who fuels such school bus at any facility at which ultra low sulfur diesel fuel is available, or of which such person has the exclusive use and control, or at which such person has the ability to specify the fuel to be made available, shall be powered by ultra low sulfur diesel fuel.
 - (2). Beginning September 1, 2006, any diesel fuel-powered school bus to which paragraph one of this subdivision does not apply shall be powered by ultra low sulfur diesel fuel.
- (c). Diesel fuel-powered school buses shall utilize the best available retrofit technology in accordance with the following schedule:
- (i) 50% of school buses used to fulfill each school bus contract by September 1, 2006;
 - (ii) 100% of school buses used to fulfill each school bus contract by September 1, 2007 and thereafter.
- (d).
- (1). The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available retrofit technology to be used for each type of diesel fuel-powered school bus to which this section applies. Each such determination shall be reviewed and revised, as needed, on a regular basis, but in no event less often than once every six months.
 - (2). No person shall be required to replace best available retrofit technology or other authorized technology utilized for a diesel fuel-powered school bus in accordance with the provisions of this section within three years of having first utilized such technology for such bus, except that technology that falls within Level 4, as set forth in subdivision e of this section, shall not be required to be replaced until it has reached the end of its useful life.
 - (3). For purposes of this subdivision, any best available retrofit technology, or substantially similar technology, purchased or installed in whole or in part with funds provided by the state of New York or the federal government pursuant to a specific diesel emissions reduction

- program in effect upon the date of enactment of this section, shall constitute the best available retrofit technology for a period of not less than three years from the date on which such equipment was installed.
- (e). The classification levels for diesel emission control strategies are as follows, with Level 4 being the highest classification level:
 - (i) Level 4 - strategy reduces diesel 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;
 - (ii) Level 3 - strategy reduces diesel particulate matter emissions by between 50 and 84 percent;
 - (iii) Level 2 - strategy reduces diesel particulate matter emissions by between 25 and 49 percent;
 - (iv) Level 1 - strategy reduces diesel particulate matter emissions by between 20 and 24 percent.
 - (f). Subdivision b of this section shall not apply to any school bus covered under a federal waiver for the use of ultra-low sulfur diesel fuel issued by the United States environmental protection agency pursuant to 42 U.S.C. § 7545(c)(4)(C)(ii) or any regulation promulgated thereunder, provided that the owner and operator of such school bus shall fully comply with the terms of such federal waiver, and the requirements of subdivision b of this section shall be in full force and effect upon the expiration of such federal waiver.
 - (g). The commissioner may issue a waiver for the use of the best available retrofit technology by a diesel fuel-powered school bus where the department of education makes a written finding, which is approved, in writing, by the commissioner, that such technology is unavailable for purchase for such bus, in which case the owner or operator of such school bus shall be required to use the technology for reducing the emission of pollutants that would be the next best best available retrofit technology and that is available for purchase for such bus. Any waiver issued pursuant to this subdivision shall expire after three years.
 - (h). Subdivision c of this section shall not apply to a diesel-fuel powered school bus 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.
 - (i). Not later than January 1, 2007, and not later than January 1 of each year thereafter, the commissioner shall submit a report to the comptroller and the speaker of the council regarding, among other things, the use of ultra low sulfur diesel fuel and the use of the best available retrofit technology by school buses during the immediately preceding fiscal year. The information contained in this report shall also be included in the mayor's preliminary management report and the mayor's management report for the relevant fiscal year and shall include, but not be limited to:
 - (i) the number of school buses used to fulfill the requirements of school bus contracts;
 - (ii) the number of such buses that were powered by ultra low sulfur diesel fuel;
 - (iii) the number of such buses that utilized the best available retrofit technology, including a breakdown by vehicle model, engine year and the type of technology used for each vehicle;
 - (iv) the number of such buses that utilized other authorized technology in accordance with this section, including a breakdown by vehicle model, engine age and the type of technology used for each vehicle;
 - (v) the number of such buses that are equipped with an engine certified to the applicable United States environmental protection agency standard for particulate matter in accordance with subdivision h of this section;
 - (vi) the school districts where such buses that were powered by ultra low sulfur diesel fuel, utilized the best available retrofit technology, utilized such other authorized technology in accordance with this section or were equipped with an engine certified to the applicable

- United States environmental protection agency standard for particulate matter were used; and
- (vii) all waivers issued pursuant to subdivision g of this section, which shall include, but not be limited to, all findings and specific information submitted by the department of education or a school bus owner or operator upon which such waivers are based and the type of other authorized technology utilized in accordance with this section in relation to each waiver, instead of the best available retrofit technology.
 - (j). This section shall not apply:
 - (1). where federal or state funding precludes the City from imposing the requirements of this section;
 - (2). to purchases that are emergency procurements pursuant to section three hundred fifteen of the New York city charter; or
 - (3). where federal or state law prohibits the application of the requirements of this section.
 - (k). Any person who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code.
 - (l). Where a person has been found to have made a false claim with respect to the provisions of this section, such person shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.
 - (m). This section shall not apply to any school bus contract entered into or renewed prior to May 9, 2005.
 - (n). Nothing in this section shall be construed to limit the authority of the department of education or of the City of New York 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 prequalification as a vendor, or otherwise deny a person or entity city business.

§ 24-163.8 Use of ultra low sulfur diesel fuel in diesel-powered generators used in the production of films, television programs and advertisements, and at street fairs.

- (a). Definitions. When used in this chapter:
 - "Alternative fuel" means a fuel, other than gasoline or standard diesel fuel, which may be used to power a generator subject to the provisions of this section so long as the respective quantities of each pollutant emitted by such generator when operated using such fuel do not exceed the respective quantities of each pollutant emitted when such generator is operated using ultra low sulfur diesel fuel.
- (b).
 - (1). Any diesel-powered generator that is used to provide electrical power for equipment used in the production of any film, television program or advertisement, or for a street fair, where such production or street fair requires a permit from a city agency, shall be powered by ultra low sulfur diesel fuel.
 - (2). The mayor's office of film, theatre, and broadcasting shall issue to all film, television and advertising production companies that apply for a filming permit a notice that recites the provisions of this section and states that any diesel-powered generator that is utilized in a film, television or advertising production must use ultra low sulfur diesel fuel or an alternative fuel.
 - (3). The street activity permit office shall issue to all applicants for a street activity permit for a street fair a notice that recites the provisions of this section and states that any diesel-powered generator that is utilized for a street fair must use ultra low sulfur diesel fuel or an alternative fuel.
- (c). Any person who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code. Any person who has been found to have made a false claim to a city agency with respect to the provisions of this section shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.

§ 24-163.9 Retrofitting of and age limitations on diesel fuel-powered school buses.

- (a). Definitions. For the purposes of this section only, the following terms shall have the following meanings:
- "Department of education" means the New York city department of education, formerly known as the New York city board of education, and any successor agency or entity thereto, the expenses of which are paid in whole or in part from the City treasury.
- "School bus" means any vehicle of the designation "Type A bus," "Type B bus," "Type C bus," or "Type D bus," as set forth in subdivisions x, y, z, and aa of section 720.1 of title seventeen of New York codes, rules and regulations, that is operated pursuant to a school bus contract and is used to transport children to or from any school located in the City of New York.
- "School bus contract" means any agreement between any person and the department of education to transport children on a school bus.
- (b). Diesel fuel-powered school buses shall utilize a closed crankcase ventilation system, selected from among the mobile sources devices identified and approved as part of the diesel retrofit verified technologies list by the United States environmental protection agency or the list of currently verified diesel emission control strategies by the California air resources board, to reduce engine emissions to the school bus cabin, in accordance with the following schedule:
- (1). fifty percent of diesel fuel-powered school buses used to fulfill each school bus contract shall be equipped with such a closed crankcase ventilation system by September 1, 2010;
 - (2). one hundred percent of diesel fuel-powered school buses used to fulfill each school bus contract shall be equipped with such a closed crankcase ventilation system by September 1, 2011;
- (c). Notwithstanding subdivision b of this section, any diesel fuel-powered school bus of the designation "Type A bus" or "Type B bus," as set forth in subdivisions x and y of section 720.1 of title seventeen of New York codes, rules and regulations, with a pre-2007 engine model year shall utilize a closed crankcase ventilation system within six months of a finding by the United States environmental protection agency or the California air resources board that such technology is available for use in such bus and is available from the manufacturer, provided however, that such technology shall not be required to be installed if such bus is scheduled to be retired within twelve months of such finding pursuant to the schedule set forth in paragraph two of subdivision d of this section.
- (d).
- (1). No diesel fuel-powered school bus of the designation "Type A bus" or "Type B bus," as set forth in subdivisions x and y of section 720.1 of title seventeen of New York codes, rules and regulations, with an engine model year of 2007 or later or that is utilizing a closed crankcase ventilation system pursuant to subdivision c of this section and no diesel fuel-powered school bus of the designation "Type C bus" or "Type D bus," as set forth in subdivisions z and aa of section 720.1 of title seventeen of New York codes, rules and regulations, shall be used to fulfill any school bus contract beyond the end of the sixteenth year from the date of manufacture, as noted on the vehicle registration, or the end of the school year in which that date falls, whichever is later.
 - (2). Except for any "Type A bus" or "Type B bus" utilizing a closed crankcase ventilation system pursuant to subdivision c of this section, no diesel fuel-powered school bus of the designation "Type A bus" or "Type B bus," as set forth in subdivisions x and y of section 720.1 of title seventeen of New York codes, rules and regulations, with a pre-2007 engine model year shall be used to fulfill any school bus contract entered into pursuant to a request for proposals or request for bids issued after July 1, 2014 beyond the dates set forth in the following schedule:
 - (i) All 1997 engine model years, September 1, 2014;
 - (ii) All 1998 engine model years, September 1, 2015;
 - (iii) All 1999 engine model years, September 1, 2016;

- (iv) All 2000 engine model years, September 1, 2017, and provided, further, that five percent of any contractor's "Type A buses" or "Type B buses" with 2001 through 2004 engine model years that are not utilizing a closed crankcase ventilation system pursuant to subdivision c of this section that are used to fulfill any school bus contract shall be replaced pursuant to subdivision e of this section by September 1, 2017;
- (v) All 2001 engine model years, September 1, 2018, and provided, further that twenty percent of any contractor's "Type A buses" or "Type B buses" with 2002 through 2005 engine model years that are not utilizing a closed crankcase ventilation system pursuant to subdivision c of this section that are used to fulfill any school bus contract shall be replaced pursuant to subdivision e of this section by September 1, 2018;
- (vi) All 2002 engine model years, September 1, 2019, and provided, further, that twenty percent of any contractor's "Type A buses" or "Type B buses" with 2003 through 2006 engine model years that are not utilizing a closed crankcase ventilation system pursuant to subdivision c of this section that are used to fulfill any school bus contract shall be replaced pursuant to subdivision e of this section by September 1, 2019;
- (vii) All 2003 through 2006 engine model years, September 1, 2020.
- (e). School buses shall be replaced pursuant to subdivision d of this section with
 - (1). a school bus meeting the most recent diesel engine emissions standards issued by the United States environmental protection agency, or
 - (2). an all-electric, gasoline-powered, compressed natural gas, or hybrid school bus, as long as the particulate matter emissions of such school bus do not exceed emission levels permitted in the most recent diesel engine emissions standards issued by the United States environmental protection agency.
- (f). No later than December 31, 2011, and no later than December 31 of every year thereafter, the department of education shall submit a report to the mayor and the speaker of the council on compliance with this section. Such report shall include, but not be limited to, data on the age and crankcase ventilation retrofit status of every school bus pursuant to a school bus contract. The department of education shall also perform yearly reviews on a sample of school buses from at least ten different vendors to verify the accuracy of data reported.
- (g). This section shall not apply:
 - (1). where federal or state funding precludes the City from imposing the requirements of this section;
 - (2). to purchases that are emergency procurements pursuant to section three hundred fifteen of the New York city charter; or
 - (3). where federal or state law prohibits the application of the requirements of this section.
- (h). Any person who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code.
- (i). Where a person has been found to have made a false claim with respect to the provisions of this section, such person shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.
- (j). Nothing in this section shall be construed to limit the authority of the department of education or of the City of New York 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 prequalification as a vendor, or otherwise deny a person or entity city business.

§ 24-163.10 Use of auxiliary power units in ambulances.

(a). When used in this section, "auxiliary power unit" means a device located on or in a vehicle that supplies cooling, heating and electrical power to such vehicle while the vehicle's engine is turned off. Not later than January 1, 2014, the fire department shall develop and implement a pilot project for a period of not less than one year to ascertain the benefits and reliability of utilizing auxiliary power units in ambulances operated by the City of New York. Such pilot project shall employ auxiliary power units

to power the ambulance's electrical load, diagnostic devices, ancillary electrical equipment, tools and cabin temperature without the need to engage the engine or use another source of power.

(b). Not later than July 1, 2015, the fire department shall submit a report to the mayor and the speaker of the council detailing the findings of such pilot project, including but not limited to data on actual reduction in vehicular emissions, and a cost-benefit analysis for equipping the entire ambulance fleet with auxiliary power units.

§ 24-163.11 Trade waste vehicles.

(a). Definitions. When used in this section:

"Best available retrofit technology" means 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 that is applicable to a particular engine and application that has been approved for use by the commissioner.

"Heavy duty trade waste hauling vehicle" means any diesel-fuel powered vehicle with a gross weight of over sixteen thousand pounds that is owned or operated by an entity that is required to be licensed or registered by the New York city business integrity commission pursuant to section 16-505 of the code and that is operated in New York city for collection and/or removal of trade waste.

"Trade waste" shall have the same meaning as set forth in subdivision f of section 16-501 of the code.

(b). Use of best available retrofit technology in heavy duty trade waste hauling vehicles.

(1). Beginning January 1, 2020, any heavy duty trade waste hauling vehicle shall utilize best available retrofit technology or be 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 forty 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.

(2). On or before June 30, 2018, the commissioner shall review the technology verified by the United States environmental protection agency and 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 that is applicable to a particular engine and application and shall promulgate rules setting forth the best available retrofit technology to be used by heavy duty trade waste hauling vehicles to which this section applies. Such rules shall be reviewed on a regular basis, but in no event less often than once every six months, and shall be revised, as needed.

(c). Waivers; financial hardship. The chairperson of the business integrity commission may issue a waiver of the requirements of paragraph one of subdivision b of this section if the chairperson finds that the applicant for such waiver has demonstrated that compliance with such requirements would cause undue financial hardship on the applicant. An application for such waiver must be filed with the business integrity commission on or before January 1, 2019, or in the case of an applicant that applies for a license or registration with the business integrity commission pursuant to section 16-505 of the code for the first time after January 1, 2019, an application for such waiver shall be filed no later than the date on which such license or registration application is filed with the commission. An application for renewal of an existing waiver must be filed no later than one hundred eighty days before the expiration of such waiver. Any waiver issued pursuant to this paragraph shall expire no later than two years after issuance. All waivers issued pursuant to this subdivision shall expire no later than January 1, 2025. The provisions of paragraph one of subdivision b of this section shall not apply to an applicant that has submitted an application for a waiver in accordance with the provisions of this subdivision while such application is pending with the commission, nor for ninety days after the date of a denial of such waiver.

(d). Enforcement.

- (1). In addition to the department, the business integrity commission shall have the authority to enforce this section and shall have the power to issue notices of violation. All notices of violation issued in accordance with this section shall be returnable to the board.
- (2). Any owner or operator of a heavy duty trade waste hauling vehicle that violates any provision of this section shall be liable for a civil penalty of ten thousand dollars per vehicle that is in violation. Each notice of violation shall contain an order of the commissioner or of the chairperson of the business integrity commission directing the respondent to correct the condition constituting the violation and to file with the department or the business integrity commission electronically, or in such other manner as the department or the business integrity commission shall authorize, respectively, a certification that the condition has been corrected within sixty days from the date of the order. In any proceeding before the board, no civil penalty shall be imposed for a violation of this section if the respondent complies with the order of the commissioner or chairperson to correct and to certify correction of the violation within sixty days. In addition to such civil penalty, a separate additional penalty may be imposed of not more than five hundred dollars for each day that the violation is not corrected beyond sixty days from such order.
- (3). For the purposes of this section, if the board finds that a certification of correction filed pursuant to paragraph two of this subdivision contained material false statements relating to the correction of a violation, such certification of correction shall be null and void and the penalties set forth in this section for the violation may be imposed as if such false certification had not been filed with and accepted by the department or the business integrity commission. It shall be an affirmative defense that the respondent neither knew nor should have known that such statements were false.
- (4). Nothing in this section shall be construed to limit the authority of the business integrity commission to deny, suspend or revoke any license or registration in accordance with chapter one of title 16-A of the code or otherwise enforce the provisions of such chapter.
- (5). The business integrity commission shall have the authority to promulgate any rules necessary to enforce the provisions of this section, including but not limited to establishing criteria for the issuance of waivers pursuant to subdivision c of this section and establishing procedures for owners and operators of heavy duty trade waste hauling vehicles to demonstrate compliance with the requirements of this section.

§ 24-163.12 Mobile food vending units.

Any mobile food vending unit that is equipped with an auxiliary engine that meets applicable tier four emissions standards established by the United States environmental protection agency as set forth in section 1039.101 of title forty of the code of federal regulations or any subsequent United States environmental protection agency emissions standard for such engine that is at least as stringent, or that uses an alternative fuel, as defined by the rules of the department, shall be entitled to a waiver of any fee established by the department for the registration of such engine pursuant to section 24-109 of the code, so long as the engine is installed within eighteen months after the effective date of this section. The waiver of such fee shall remain in effect for twelve years or for the duration of the life of the engine, whichever is shorter, provided that the engine is registered with the department. Failure to renew prior to the expiration date of the registration shall result in the revocation of the fee waiver.

§ 24-164 Operation of soot blower of vessels prohibited.

No person shall cause or permit the soot blower of a vessel, other than a vessel which travels only in waters within the jurisdiction of the city of New York, to operate while the vessel is within the waters of the city.

§ 24-165 Use of air contaminant detectors and recorders.

- (a). Whenever the use of an air contaminant detector is required by this code, the air contaminant detector must automatically cause both an audible signal sufficiently loud to be heard by a person of normal hearing twenty feet from the detector and a readily visible flashing red light upon the emission of an air contaminant of a density which appears darker than number one on the standard smoke chart, or of an opacity which obscures vision to a degree greater than smoke of number one density on the standard smoke chart.
- (b). The signaling devices of the air contaminant detector shall also be located at the principal work location of the person supervising the equipment.
- (c). If two or more units of equipment are connected to a single flue, one air contaminant detector may be used if installed to monitor all of the units.
- (d). If the light source of a photoelectric type of air contaminant detector fails to operate properly, the detector must automatically cause an audible signal sufficiently loud to be heard by a person of normal hearing twenty feet away from the detector and a readily visible flashing red light which shall continue to operate until manually reset.
- (e). Whenever the use of an air contaminant recorder is required by this code, the air contaminant recorder must:
 - (1). continuously produce a record of the time, duration, concentration and density of an air contaminant of a density which appears darker than number one on the standard smoke chart, or of an opacity which obscures vision to a degree greater than number one; or
 - (2). continuously produce a record of the time, duration, and concentration of sulfur dioxide and nitrogen oxides by volume and particulate matter by weight.
- (f). The record made by the air contaminant recorder shall be dated and retained on the premises where the recorder is located for a period of sixty days from the last date appearing on the record.
- (g). The commissioner may recommend to the board that there shall be no civil penalty imposed for a first violation of this section if, within forty five days of the return date set forth on the notice of violation, the respondent admits liability for the violation and files a certification with the department in a form and manner and containing such information and documentation as shall be prescribed in the department's rules that the work has been performed to permanently correct the violation. If the commissioner accepts such certification of compliance, he or she shall recommend to the board that no civil penalty shall be imposed for the violation. Such violation may nevertheless serve as a predicate for purposes of imposing penalties for subsequent violations of this section.

§ 24-166 Use of combustion shutoff; halting of emission of air contaminant.

- (a). Whenever the use of a combustion shutoff is required by this code or by the commissioner, the combustion shutoff must automatically halt the operation of fuel burning equipment using fuel oil within two minutes after the emission of an air contaminant of a density which appears darker than number one on the standard smoke chart, or of an opacity which obscures vision to a degree greater than smoke of number one density on the standard smoke chart.
- (b). No person shall cause or permit the resumption of the normal operation of the fuel burning equipment whose operation was halted by a combustion shutoff until the equipment operates in accordance with the standards of this code.
- (c). The commissioner may recommend to the board that there shall be no civil penalty imposed for a first violation of this section if, within forty five days of the return date set forth on the notice of violation, the respondent admits liability for the violation and files a certification with the department in a form and manner and containing such information and documentation as shall be prescribed in the department's rules that the work has been performed to permanently correct the violation. If the commissioner accepts such certification of compliance, he or she shall recommend to the board that no civil penalty shall be imposed for the violation. Such violation may nevertheless serve as a predicate for purposes of imposing penalties for subsequent violations of this section.

§ 24-167 Improper use of equipment or apparatus prohibited.

No person shall use or permit the use of equipment or apparatus for a purpose or in a manner which causes it to function improperly or not in accordance with its design. Nothing in this section shall be construed to prohibit the use of bioheating fuel in equipment that may be adapted for such use.

SUBCHAPTER 8, FUEL STANDARDS

§ 24-168 Use of proper fuel in fuel burning equipment.

- (a). No person shall cause or permit the use of a kind or grade of fuel in fuel burning equipment that is not designed to burn that kind or grade of fuel. Nothing in this subdivision shall be construed to prohibit the use of bioheating fuel in fuel burning equipment that is adapted for such use.
- (b). No person shall cause or permit the burning of refuse material in fuel burning equipment unless the equipment is designed to burn refuse material.
- (c). No person shall cause or permit a boiler to burn residual fuel on or after January 1, 2020.
- (d). No person shall cause or permit a boiler to burn fuel oil grade no. 4 on or after January 1, 2030.
- (e). No person shall cause or permit the use of a kind or grade of fuel in a diesel powered generator other than ultra low sulfur diesel.

§24-168.1 Clean heating oil.

- (a). Definitions. For the purpose of this section, the following terms shall have the following meanings:
 - “Feedstock” means soybean oil, oil from annual covercrops, algal oil, biogenic waste oils, fats or greases, or non-food grade corn oil, provided that the commissioner may modify the definition of feedstock based on the vegetable oils, animal fats or cellulosic biomass listed in table 1 of section 80.1426 of title 40 of the code of federal regulations.
 - District steam system. The term “district steam system” means a system for the production of steam and for its transmission and distribution through underground pipelines to multiple buildings.
 - Heating oil. The term “heating oil” means oil refined for the purpose of use as fuel for combustion in a heating system and that meets the specifications of ASTM designation D 396-12 or other specifications as determined by the commissioner.
 - Heating system. The term “heating system” means a system that generates heat, hot air, hot water or steam by combustion and distributes it within a building, provided that “heating system” shall not include wood burning stoves.
- (b).
 - (1).
 - (i) No person shall cause or permit the use in any building in the city or delivery to any building in the city for use in such building, heating oil that is fuel oil grade no. 2 if such heating oil contains:
 - (A) less than two percent biodiesel by volume, after October 1, 2012;
 - (B) less than five percent biodiesel by volume, on and after October 1, 2017;
 - (C) less than ten percent biodiesel by volume, on and after the later of October 1, 2025;
 - (D) less than fifteen percent biodiesel by volume, on and after the later of October 1, 2030; and
 - (E) less than twenty percent biodiesel by volume, on and after the later of October 1, 2034.
 - (ii) No person shall cause or permit the use in any building in the city or delivery to any building in the city for use in such building, heating oil that is fuel oil grade no. 4 if such heating oil contains:
 - (A) less than two percent biodiesel by volume, after October 1, 2012; and

- (B) less than five percent biodiesel by volume, on and after October 1, 2017.
- (iii) No person shall cause or permit the use in any building in the city or delivery to any building in the city for use in such building, heating oil that is residual fuel if such heating oil contains:
 - (A) less than two percent biodiesel by volume, after October 1, 2012; and
 - (B) less than five percent biodiesel by volume, on and after October 1, 2017.
- (2). The provisions of this subdivision shall not apply to the use of heating oil or delivery of heating oil for use in [an]:
 - (i) An emergency generator;
 - (ii) A boiler where heating oil from a dual-use tank supplies both such boiler and an emergency generator; or
 - (iii) A backup heating oil tank for a building that uses natural gas as the primary fuel where such heating oil contains greater than five percent biodiesel by volume.
- (3).
 - (i) No later than January 1, 2020, an office or agency designated by the mayor shall submit to the mayor and speaker of the council, and make publicly available online the results of a survey seeking to identify commonly used heating oil equipment in the city that may encounter compatibility issues, including warranty issues, with the use of heating oil containing ten to twenty percent biodiesel by volume and
 - (A) recommending that such equipment be exempted permanently or temporarily from the requirements of clause (C), (D) or (E) of subparagraph (i) of paragraph one of this subdivision,
 - (B) recommending a waiver system for such equipment with respect to the requirements of such clauses or
 - (C) recommending other safeguards or actions for such equipment with respect to the requirements of such clauses. In making such identifications and recommendations, such office or agency shall consult with other relevant offices or agencies, representatives of the heating oil industry, representatives of the biodiesel industry, heating oil equipment manufacturers, building owners and managers and any other person or group with expertise that could assist such office or agency in making such identifications and recommendations. While the survey may identify certain heating oil equipment that may encounter compatibility issues with the use of heating oil containing ten to twenty percent biodiesel by volume, the survey may not identify all heating oil equipment that may pose a risk of incompatibility. Compatibility issues should be addressed with individual manufacturers and the absence of heating oil equipment from the survey should not be construed to mean that the heating oil equipment does not have compatibility issues. The survey is intended to provide guidance to property owners about compatibility issues with commonly used heating oil equipment in the city, if any, and to provide recommendations to the commissioner concerning such issues.
 - (ii) No later than July 1, 2020, the commissioner shall adopt rules implementing any such recommendations it deems appropriate.
- (4). In 2023, by no later than September 30, the commissioner shall submit to the mayor and the speaker of the council, and make publicly available online, a report on whether a sufficient quantity of biodiesel is expected to be available to meet the requirements of clauses (C), (D) and (E) of subparagraph (i) of paragraph one of this subdivision.
- (5). The commissioner may authorize the use of any renewable fuel in heating systems if the commissioner determines that such fuel meets an applicable ASTM International

standard or other standard as determined by the commissioner, and the emissions from such fuel contain equal or lesser amounts of particulate matter, sulfur dioxide, nitrogen oxides and lifecycle greenhouse gas emissions, as such term is defined in section 7545 of title 42 of the United States code, than the emissions from the heating oil required to be used pursuant to paragraph one of this subdivision.

(c). The commissioner may waive the requirements of paragraph one of subdivision b of this section in accordance with the provisions of this subdivision.

- (1). A waiver may be issued for a particular type of boiler or fuel if the commissioner finds that:
 - (i) a sufficient quantity of bioheating fuel is not available in the city for that boiler type;
 - (ii) (A) the price of available bioheating fuel for that boiler type is at least fifteen percent more than the price of a comparable fuel oil grade of one hundred percent petroleum heating oil or (B) the average price of available bioheating fuel for that boiler type for the preceding calendar year is at least eight percent more than the average price of a comparable fuel oil grade of one hundred percent petroleum heating oil for such year;
 - (iii) the use of bioheating fuel would void the manufacturer's warranty for that boiler type or the manufacturer has certified that the use of bioheating fuel would cause compatibility issues with the boiler that do not have a technical solution or for which a technical solution would exceed fifteen percent of the replacement costs of a new, compatible boiler; or
 - (iv) there is no applicable ASTM International standard or other standard as determined by the commissioner to govern the specification of the bioheating fuel for purposes of receiving bids and enforcing contracts.
- (2). Any waiver issued pursuant to subparagraph (i) or (ii) of paragraph one of this subdivision shall expire after three months, unless renewed in writing by the commissioner.
- (3). Any waiver issued pursuant to subparagraph (iii) or (iv) of paragraph one of this subdivision shall expire after six months, unless renewed in writing by the commissioner.
- (4). A waiver may be issued for a specific district steam system if the commissioner finds based on documentation submitted by the applicant, including but not limited to a report certified by a professional engineer, that compliance with the requirements of paragraph one of subdivision b of this section would result in damage to equipment used to generate steam within such district steam system. Any waiver issued pursuant to this paragraph shall expire after one year, unless renewed in writing by the commissioner.
- (5). Upon application by the owner of a boiler, the commissioner may waive the requirements of paragraph one of subdivision b of this section for such boiler if such application is submitted to the commissioner on or before October 1, 2017, and such owner shows, to the satisfaction of the commissioner, that (i) such boiler was installed on or before October 1, 2017, (ii) residual fuel was used in such boiler on or before October 1, 2017, and (iii) such boiler is not equipped with valves or seals of a type and material that are appropriate for use with fuel oil that meets the requirements of paragraph one of subdivision b of this section, as set forth in rules promulgated by the commissioner, or compliance with the requirements of paragraph one of subdivision b of this section would otherwise result in damage to such boiler as set forth in rules promulgated by the commissioner. Any waiver issued pursuant to this paragraph shall expire after six months.
- (6). When issuing a waiver for a boiler pursuant to paragraph five of this subdivision, the commissioner shall order the owner of such boiler to undertake such repairs or improvements to such boiler as may be necessary for such boiler to safely comply with the requirements of paragraph one of subdivision b of this section. Upon completion of such repairs or improvements, such owner shall submit a certification that such repairs

or improvements were completed, signed by the person who performed such repairs or improvements, to the commissioner. An owner who fails to comply with such order or to submit such certification before such waiver expires shall be subject to a civil penalty of \$5,000.

- (d).
- (1). No later than September 1, 2013, and no later than September 1 of every year thereafter, the commissioner shall submit a report to the mayor and the speaker of the council, which shall include:
 - (i) all waivers, findings and renewals of such findings issued pursuant to this section during the immediately preceding calendar year;
 - (ii) a summary of the information received pursuant to subdivision e of this section;
 - (iii) all waivers, findings and renewals of such findings issued pursuant to subdivision b of section [24-169](#) of this code during the immediately preceding calendar year; and
 - (iv) determinations made by the commissioner regarding renewable biomass pursuant to paragraph two of subdivision b of this section and any recommendations with respect to the use of renewable biomass in the city, considering appropriate standards and experiential use.
 - (2). The report required pursuant to this subdivision may be satisfied by including such information in the management report and preliminary management report made public and submitted to the council by the mayor pursuant to section twelve of the New York city charter.
- (e).
- (1). The commissioner shall require persons who supply heating oil directly to buildings in the city to disclose annually to the commissioner the following information regarding fuel oil supplied:
 - (i) the amount in gallons of each fuel oil grade supplied by such person to buildings by zip code; and
 - (ii) the average percentage of biodiesel blended into each fuel oil grade supplied by such person within the city and the types of feedstock used in the creation of such biodiesel.
 - (2). The commissioner shall prescribe the form in which required information shall be reported annually to the department. Such form shall be certified by the person supplying the information as to the completeness and accuracy of the information provided.
 - (3). The department shall require that records be maintained to substantiate the information provided pursuant to this subdivision and that such records shall be made available for inspection and audit by the department for a period up to three years.
- (f). The department shall require that building owners who receive shipments of heating oil maintain such records as may be required by the commissioner by rule and make available such records for inspection and audit by the department for a period of up to three years. Such records may be maintained electronically.
- (g). The term "fuel oil" as used in any provision of the administrative code of the city of New York or the rules of the city of New York shall be deemed to include heating oil that is fuel oil grade no. 2, no. 4 or no. 6 containing biodiesel.
- (h). The commissioner shall have the authority to sample, test and analyze heating oil supplied to buildings in the city to determine compliance with this section. No later than six months after the end of each fiscal year, the commissioner shall submit to the mayor and the speaker of the council, and make publicly available online, a report detailing enforcement efforts taken pursuant to this subdivision, including the following information disaggregated by borough: (i) the number of such samples tested and analyzed during the fiscal year, disaggregated by the source of such sample, (ii) the results of such testing and analysis and (iii) the number of violations issued as a result of such testing and analysis, disaggregated by the type of entity receiving such violation.

- (i). Use of biodiesel for heating purposes by city buildings.
 - (1). After October 1, 2014, all no. 2, no. 4 and no. 6 heating oil purchased for use in any building owned by the city shall be bioheating fuel containing not less than five percent biodiesel (B5) by volume except that the provisions of this subdivision shall not apply to the use of emergency generators.
 - (2). The commissioner of citywide administrative services shall institute a pilot program to use greater amounts of biodiesel in city-owned buildings. Such pilot program shall require that beginning October 1, 2014, the heating oil burned in not less than five percent of city-owned buildings shall contain at least ten percent biodiesel (B10) by volume. Such pilot program shall continue until October 1, 2015 and within six months of the conclusion of such pilot program, the commissioner of citywide administrative services shall issue a report to the mayor and the speaker of the council detailing the findings of such pilot program, including the utility of and any impediments to the use of ten percent biodiesel (B10) by volume in city-owned buildings and any recommendations for the use of ten percent biodiesel (B10) by volume in all city-owned buildings.
 - (3). The commissioner of citywide administrative services in conjunction with the office of long-term planning and sustainability shall undertake a one year study on the feasibility of the use of five percent biodiesel (B5) by volume in all buildings throughout the city. Such study shall include recommendations on whether and when the city should require the use of five percent biodiesel (B5) by volume in heating oil in all buildings and shall be issued to the mayor and the speaker of the council by April 2, 2015.

§ 24-169 Sulfur content of fuel restricted.

Except for ocean-going vessels engaged in international or interstate trade, no person shall cause or permit the use, or if intended for use in the city of New York, the purchase, sale, offer for sale, storage or transportation of:

- (a). Fuel oil grade no. 2 that contains more than the amount of sulfur set forth in section 19-0325 of the environmental conservation law or as provided by an executive order of the governor issued pursuant to such section.
- (b). Residual fuel oil and fuel oil grade no. 4 that contain more than the following percentages of sulfur by weight:
 - (1). for residual fuel oil 0.30 percent and
 - (2). for fuel oil grade no. 4 more than 0.15 percent, provided that the commissioner may waive the requirements of this paragraph if the commissioner finds that there is an insufficient quantity of fuel oil grade no. 2 that contains no more than 0.0015 percent of sulfur by weight. Any waiver issued pursuant to this subdivision shall expire after three months, unless renewed in writing by the commissioner. The percentage provided in paragraph one of this subdivision shall apply as the maximum percentage for fuel oil grade no. 4 during the period such waiver is in effect.
- (c). Sulfur by weight shall be calculated by the methods of the ASTM designation D 2622-10.

§ 24-170 Repealed

§ 24-171 Repealed

§ 24-172 Repealed

§ 24-173 Use of coal.

- (a). No person shall cause or permit the use of any type of coal in fuel burning equipment, except for the use of anthracite coal in one of the following:
 - (1). in the generation of electricity for utilities; or

- (2). as provided in section 24-149.5 of this code.

§ 24-174 Repealed

§ 24-175 Repealed

§ 24-176 Fuel information ticket required for shipment or delivery of fuel into the city of New York.

No person shall cause or permit the shipment or delivery of fuel into the city of New York for use in the city without first reporting the shipment or delivery on a form prescribed by the department to be known as a fuel information ticket. A fuel information ticket shall not be required for fuel shipped into the city of New York in the engine fuel tank of a motor vehicle. A shipment or delivery includes any sale or non-sale transaction, or any transaction between shipper and recipient who are identical.

§ 24-177 General requirements for fuel information tickets.

- (a). Each fuel information ticket shall contain the following statement signed by the shipper of the fuel: "I hereby attest that I have shipped to the recipient named hereon the fuel specified in this ticket."
- (b). Copies of the fuel information ticket required to be retained by the shipper of fuel by subdivision (c) of this section shall be kept at the shipper's place of business. The copy of the fuel information ticket required to be retained by the recipient of the fuel by subdivision (c) of this section shall be kept at his or her place of business or at the place where the delivery was received.
- (c). All records relating to the use of fuel, or the distribution, storage or transportation of fuel for use in the city of New York shall be retained for not less than one year and shall be kept readily available at all times during business hours for inspection by the department.
- (d). This section shall apply to all shipments of fuel into the city and it shall be no defense to non-compliance that the shipment was not made pursuant to a sales transaction between the shipper and the recipient or that the shipper and the recipient are identical.

SUBCHAPTER 9, ENFORCEMENT

§ 24-178 Powers of the board.

- (a). The board may, upon notice pursuant to this chapter, and after a hearing pursuant to the rules of the board:
 - (1). Order the commissioner to seal any equipment or apparatus which causes or is maintained or operated so as to cause a violation of any provision of this code or order or rule promulgated by the commissioner or the board, except as provided in subdivision (b) of this section;
 - (2). Order any person to cease and desist from any activity or process that causes or is conducted so as to cause, a violation of any provision of this code or any order or rule promulgated by the commissioner or the board, except as provided in subdivision (b) of this section;
 - (3).
 - (i) Impose a civil penalty in each instance in an amount as hereinafter set forth in the table of civil penalties against any person who violates any provision of this code or of any order or rule promulgated thereunder.

TABLE OF CIVIL PENALTIES		
Violation	Minimum	Maximum
24-108	\$200	\$800
24-109(a)(1)-(2)	800	3200
24-109(a)(3)-(17)	400	1600
24-109(f)	400	1600
24-109(g)	400	1600
24-111	400	1600
24-112	400	1600
24-113	200	800
24-118	1600	6400
24-120	800	3200
24-122	800	3200
24-123(d)	800	3200
24-131	200	800
24-136	1000	15000
24-138	1000	15000
24-139	1600	6400
24-141	400	1600
24-142	400	1600
24-143	200	800
24-143.1	200	800
24-145	800	3200
24-146(b)-(d)	400	1600
24-146(e),(f)	800	3200
24-147	800	3200
24-148	800	3200
24-149	200	800
24-149.1	400	1600
24-149.2	400	1600
24-149.3	400	1600
24-149.4	800	3200
24-149.5	400	1600
24-151	800	3200
24-152	200	800
24-153	800	3200
24-155	400	1600
24-156	400	1600
24-159	200	800
24-160	400	1600
24-161	200	800
24-163	200	2000
24-163.3, 24-163.5, 24-163.6, 24-163.7, 24-163.9	1000{1}	10000{1}
24-163.8	500	500
24-163.11	0	10000{2}
24-164	400	1600
24-165	0	1600
24-166	0	875
24-167	200	800
24-168	800	3200
24-168.1	800	3200
24-169	1600	6400
24-173	1600	6400
24-176	200	800
24-177	200	800
All other sections, subdivisions and paragraphs of this chapter	400	1600
{1} Plus twice the amount saved by failing to comply.		
{2} Plus five hundred dollars per day for each day the violation is not corrected beyond sixty days from the date of an order of the commissioner or of the chairperson of the business integrity commission to correct the violation.		

- (ii) Impose a separate penalty for each day on which a violation under this code shall have occurred.
 - (iii) Impose an additional civil penalty, in the amount of ten percent (10%) of the penalty originally imposed, for late payment of a penalty for each month or part thereof that the penalty payment is in arrears. In no event shall the total additional civil penalty exceed the maximum set forth in the table of civil penalties.
- (4). Impose a civil penalty of not less than one thousand nor more than four thousand dollars on any person who willfully breaks, or causes or permits the breaking of, a seal placed on equipment pursuant to this section.
- (b). The board may, upon notice pursuant to section 24-180 of this code, order any person to:
- (1). Cease and desist from the installation or alteration of equipment or apparatus, without a permit as required by section 24-120 of this code;
 - (2). Cease and desist from the operation of any equipment or apparatus without a certificate and the board may also order the commissioner to seal any such equipment or apparatus;
 - (3). Cease and desist from the spraying of insulating material on, or the demolition of, any building or structure which does not conform to the requirements of section 24-109 or 24-146 of this code or any rule promulgated thereunder. The board may also order the commissioner to seal any equipment used therefor.
- (c). The board may order the commissioner to install any apparatus or to clean, repair, or alter any equipment or apparatus which causes or is maintained or operated so as to cause a violation of an order issued pursuant to paragraph two of subdivision (a) of this section, where such installation, cleaning, repairing, or alteration can reasonably be expected to correct such a violation. Any work required under such an order may be executed by the commissioner through the officers, agents or contractors of the department. The department shall be reimbursed promptly for all costs and expenses of such work by the owner of the equipment or apparatus to which the order relates and in respect to which such expenses were incurred. Such expenses may be recovered in a civil action brought in the name of the commissioner.
- (d). If an order of the board issued pursuant to subdivisions (a) and (b) of this section provides for a period of time during which a person subject to the order is permitted to correct a violation, the board may require the respondent to post a performance bond or other security with the department in a form and amount sufficient to assure the correction of such violation within the prescribed time. In the event of a failure to meet the schedule prescribed by the board, the sum named in the bond or other security shall be forfeited and shall be paid to the commissioner.
- (e). The board may order any person to cease and desist from an activity which it reasonably believes causes an emission of an air contaminant which creates an imminent peril to the public health. Such order shall be effective upon service thereof. Any party affected by such an order may request a hearing on written notice, and he or she shall be afforded a hearing, within twenty-four hours after service of such request, pursuant to the rules of the board. If such an accelerated hearing is not requested, then a hearing shall be afforded within ten days of the issuance of the order. The board shall issue its final decision and order thereon within three days from the conclusion of a hearing held pursuant to this subdivision.

§ 24-179 Repealed

§ 24-180 Notice of violation.

- (a). Notice, required by this subchapter, shall be given by issuance of a notice of violation.
- (b). Whenever the commissioner has reasonable cause to believe that a violation of any provision of this code or any order or rule promulgated thereunder may exist, he or she may cause to have a notice of violation issued and served on:
 - (1). The person in violation; or
 - (2). An owner of the equipment in violation.
- (c). A notice of violation shall include the information specified in the rules of the board.

§ 24-181 Repealed

§ 24-182 Citizen's complaint.

- (a). Any person, other than personnel of the department and employees of the city of New York authorized by law to serve summonses for violations of the code, may serve upon the department a complaint, in a form prescribed by the department, alleging that a person has violated any provision of this code or order or regulation promulgated by the commissioner or the board, except with respect to sections 24-143 and 24-163 of this code, but still applicable to buses as defined in section one hundred four of the vehicle and traffic law and trucks as defined in section one hundred fifty eight of the vehicle and traffic law, together with evidence of such violation. With respect to section 24-142 of this code, only such person who has been certified as a smoke watcher, by passing a course of smoke observation approved by the department within three years prior to the observation, may serve such complaint.
- (b). A person who has served a complaint pursuant to subdivision (a) of this section may serve upon the person allegedly in violation, and upon the board, a notice of violation in a form prescribed by the board within forty-five days from service of such complaint if;
 - (1). The department has failed to serve a notice of violation, pursuant to the rules of the board, for the violation alleged in a complaint pursuant to subdivision (a) of this section; or
 - (2). The department fails to serve a written notice upon the complainant of its determination that his or her complaint is frivolous or duplicitous.
- (c). A person commencing a proceeding pursuant to this section shall prosecute such proceeding at his or her own expense. The department may intervene in such a proceeding at any time.
- (d). In any proceeding brought by the department after receiving a complaint, pursuant to subdivision (a) of this section, pertaining to a violation of this code or any regulation or order promulgated by the commissioner or the board, wherein the source of the violation is a manufacturing or industrial facility or a facility for the generation of steam for off-premises sale or electricity or equipment used by any such facility, the board shall award the complainant, out of the proceeds collected, an amount which shall not exceed twenty-five percent of such proceeds, for disclosure of information or evidence, not in the possession of the department prior to the receipt of the complaint by the department, which leads to the imposition of the civil penalty.
- (e). In any proceeding brought by a complainant pursuant to subdivision (a) of this section, the board shall award, out of the proceeds collected, fifty percent of any civil penalty as fair and reasonable compensation to such person.

§ 24-183 Adjudication, settlement and settlement by stipulation.

The adjudication, settlement or settlement by stipulation of any notice of violation issued pursuant to this subchapter shall be in accordance with section 1049-a of the New York city charter and the applicable rules of the board.

§ 24-184 Repealed

§ 24-185 Repealed

§ 24-187 Repealed

§ 24-188 Repealed

§ 24-189 Procedural rules.

The board shall have authority from time to time to make, amend, and rescind such procedural rules as may be necessary to carry out the provisions of this subchapter.

§24-190 Criminal penalties; fines and imprisonment.

(a). Any person who shall knowingly make a false statement or who shall knowingly falsify or allow to be falsified any certification, registration, form, signed statement, application or report required under the provisions of this code or regulation promulgated by the commissioner or the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment not to exceed five months, or both.

(b). Any person, other than a corporation, who violates any order of the commissioner or the board or any provision of section 24-120, 24-122 or 24-146 of this code or who illegally breaks a seal on equipment, upon conviction shall be punished for each offense by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not more than thirty days or by both. Any corporation which violates any order of the commissioner or the board or any provision of section 24-120, 24-122 or 24-146 of this code, or which illegally causes a seal to be broken, upon conviction shall be punished for each offense by a fine of not less than one hundred dollars nor more than two thousand dollars. Every day during which such violation occurs constitutes a separate offense.

(c). The failure of any shipper or recipient to keep on file the fuel information tickets as required by section 24-177 of this code shall be deemed a separate and distinct violation as to each such ticket, and upon conviction thereof he or she shall be punished for each offense by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

(d). Any shipment or delivery of fuel except in the manner provided for in this code shall be deemed a separate and distinct violation as to each such shipment or delivery and upon conviction thereof the shipper shall be punished for each offense by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both fine and imprisonment.

(e). Any shipper or recipient of fuel who shall in any manner misrepresent any of the information required to be contained in the fuel information ticket shall be guilty of a violation of this code and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or by imprisonment for not more than sixty days or by both such fine and imprisonment.

(f). Any person convicted of violating any of the provisions of this code or any regulation of the board not otherwise provided for by this section shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for twenty days or both for the first offense, and by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not more than thirty days or both for a second offense, and by a fine of not less than four hundred dollars nor more than five thousand dollars or by imprisonment for not more than four months or both for a third or subsequent offense.

(g). Twenty-five percent of any fine that is imposed pursuant to this section, may be paid to the person or persons giving information which shall lead to conviction.