

NOTICE OF INTENTION

Subject: Opportunity to Comment on proposed amendments of New York City Health Code Rules Governing Waste Disposal.
New York City Department of Health and Mental Hygiene
Board of Health

Contact: Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-15, Box 31
Long Island City, NY 11101-4132

Proposed Rule

Pursuant to the authority vested in the Board of Health (“Board”) by Section 558(b) and (c) of the New York City Charter (“Charter”), and in accordance with §§556, 558 and 1043 of the Charter, the New York City Department of Health and Mental Hygiene (“Department”) is proposing that the Board amend §143.11 of Article 143 of the Health Code to eliminate repealed and superfluous legal references. Accordingly, the Department does not believe that a public hearing is needed on this proposal as it would not serve a public purpose. The proposed amendment was not included in the Department’s Regulatory Agenda because it resulted from a recent analysis by the Department.

Instructions

- You may submit written comments about the proposed amendment to Rena Bryant by mail, electronically through the NYC Rules website at www.nyc.gov/nycrules, by email to resolutioncomments@health.nyc.gov, or online (without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on January 31, 2012.
- Within a reasonable time after receipt, electronic copies of written comments will be available online at the Department’s website, and paper copies will be available between the hours of 9 A.M. and 5 P.M. at: New York City Department of Health and Mental Hygiene, Board of Health, Office of the Secretary to the Board, Attention: Rena Bryant, 2 Gotham Center, 14th Floor, Room 14-05, CN 30, Long Island City, NY 11101-4132

Statement of Basis and Purpose of Proposed Rule

These amendments to Article 143 of the New York City Health Code (“Health Code”) are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (“Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“Department”) with jurisdiction to regulate all matters affecting health in the City of New York. Section 558(b) and (c) of the Charter empowers the Board of Health (“Board”) to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants the Department rulemaking powers.

Background to Article 143

Article 143 broadly addressed disposal of wastes within the City, in particular, the disposal of human, household, and commercial liquid wastes which are not directly discharged into City waters. As part of a

comprehensive review of the Health Code to assess its efficacy in protecting the public health, in 2009, the Board amended and repealed various sections of Article 143, covering the disposal of sewage, repealing provisions for construction of private sewage disposal systems, and the issuance of permits for site and sub-soil evaluation related to such construction, in order to better reflect practice and the current regulatory environment. Definitions in §143.01 were maintained and §143.01(c) was amended to make clear that the Department does not regulate portable toilets (such as those found on street locations or at construction sites), and a new subdivision (e) was added to §143.01 defining “community private sewage disposal systems” as this term was not previously defined in the Health Code; the Department currently regulates such sewage disposal systems under §143.11.

Proposed Changes to Article 143

The Department proposes that the Board amend §143.11, subdivisions (b) and (d), in order to remove repealed and/or superfluous legal references. The amendments are described below:

- Subdivision (b)
 - The current references to Health Code §145.03 and Article 12 of the State Public Health Law will be removed as such legal provisions no longer exist.
 - On September 22, 2009, the Board of Health repealed Article 145 of the Health Code. On April 1, 2011, the State Legislature repealed Article 12 of the Public Health Law.
- Subdivision (d)
 - The current reference to Article 145 relating to a professional engineer is superfluous.
 - The current reference to Article 147 relating to a licensed architect in the State Education Law is redundant.

* * *

Matter that is underlined is new.
Matter in [brackets] is deleted.

The proposal is as follows:

RESOLVED, that subdivisions (b) and (d) of §143.11 of Article 143 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, and last amended on July 1, 1991 be, and the same hereby is, amended to remove repealed and/or redundant legal references, to be printed together with explanatory notes as follows:

ARTICLE 143 DISPOSAL OF SEWAGE

§143.11 Community private sewage disposal systems.

(b) No community private sewage disposal system shall be constructed and maintained without a permit issued by the Commissioner. The permit may contain such conditions as the Commissioner may impose for the protection of public health. [No permit is required and this article shall not apply if a permit must be obtained for a disposal facility pursuant to §145.03 of this Code or pursuant to Article 12 of the Public

Health Law.]

(d) The Department may prescribe the number of copies of and the format in which the information required by sub[section]division (b) of this section shall be submitted. Plans, specifications and other information shall contain the signature, seal and address of a professional engineer or licensed architect [licensed and registered pursuant to Article 145 or Article 147, respectively, of the Education Law].

Notes: The Department proposes that §143.11 of Article 143 be amended to remove certain repealed and/or superfluous legal references in subdivisions (b) and (d).

**NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

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

RULE TITLE: Amendment of Rules Governing Waste Disposal (Health Code Art. 143)

REFERENCE NUMBER: 2011 RG 106

RULEMAKING AGENCY: New York City Department of Health and Mental Hygiene

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

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

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: November 28, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

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

RULE TITLE: Amendment of Rules Governing Waste Disposal (Health Code Art. 143)

REFERENCE NUMBER: DOHMH-11

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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

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

/s/ RACHEL SQUIRE
Mayor's Office of Operations

December 5, 2011
Date