



**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments to the New York City Health Code**

What are we proposing? The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 131 of the New York City Health Code to lower the level at which perchloroethylene ("PERC") vapors from dry cleaning facilities is defined as a nuisance. When PERC is measured at the nuisance level in areas adjacent to dry cleaning facilities, the Department requires dry cleaners using PERC to take measures to reduce excess emissions.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments on April 27, 2016 from 10AM to 12PM at:

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 3rd floor, Room 3-32
Long Island City, NY 11101-4132

How do I comment on the proposed amendments to the Health Code? Anyone can comment on the proposed amendments on or before April 27, 2016 by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us/>
- **Email.** You can email comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax comments to New York City Department of Health and Mental Hygiene at 347-396-6087
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling at 347-396-6078. You can also sign up in the hearing room before or during the hearing on April 27, 2016. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on April 27, 2016.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by April 13, 2016.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Board of Health to make these amendments? Section 558 of the City Charter authorizes the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. This proposed amendment was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find the Health Code and the Department's rules? The Health Code and the rules of the Department of Health and Mental Hygiene are in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Board of Health must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Background

When the Department receives a complaint of persistent perchloroethylene (PERC) odors from occupants of residential and other premises adjacent to or near dry cleaners, an inspection and measurements of PERC are made at the premises. If the level exceeds the nuisance level defined in Health Code §131.17 ("Dry cleaning facilities"), the Department will order the owners of the dry cleaning business and/or the owner of the premises in which the dry cleaner is located to find the cause and abate the nuisance by providing proper exhaust ventilation, adjusting operation of dry cleaning equipment and installing barriers, if necessary, to prevent fumes from escaping.

The Department proposes that the Board amend Health Code §131.17 to reduce the nuisance level for emissions of PERC vapors found in residential, child-occupied and other occupied buildings emanating from dry cleaning facilities located in the same or adjacent buildings. The amendment would lower the current nuisance level from 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 30 $\mu\text{g}/\text{m}^3$. The reduction of the nuisance level is based on studies by the US Environmental Protection Administration (EPA), which classifies PERC as "likely to be carcinogenic in humans by all levels of exposure" and a recently revised New York State Department of Health guideline for PERC air levels.¹

EPA's rules prohibit using PERC dry cleaning machines in residential buildings after December 21, 2020.² Until then, dry cleaning facilities that use PERC must control emissions in accordance with EPA rules.

Statutory Authority

¹ See <http://www.health.ny.gov/environmental/chemicals/tetrachloroethene/>

² See 40 CFR §63.322 (o); see also discussion in Federal Register of EPA intent to phase out PERC equipment by 2020, available at <https://federalregister.gov/a/06-6447>

This amendment to the New York City Health Code (the Health Code) is promulgated pursuant to Sections 558 and 1043 of the New York City Charter (the Charter). Section 558(b) and (c) of the Charter empowers the Board of Health (the Board) to amend the Health Code and to include in the Health Code all matters to which the authority of New York City Department of Health and Mental Hygiene (the Department) extends. Section 1043 grants the Department rule-making authority.

The proposal is as follows:

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.
[Deleted material is in brackets.]

RESOLVED, that subdivision (b) of Section 131.17 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is hereby amended, to be printed together with explanatory notes, to read as follows:

§131.17 **Dry cleaning facilities.**

* * *

(b) *Nuisance level.* Detection of perchloroethylene vapors from dry cleaning facilities in dwellings, child-occupied facilities, or other occupied premises at levels at or above [100] 30 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) shall constitute a nuisance.

* * *

Notes: Subdivision (b) of §131.17 was amended by resolution of the Board of Health adopted at its meeting on XXX, reducing the nuisance level for perchloroethylene from 100 to 30 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), reflecting current State Department of Health and US Environmental Protection Administration determinations on its health effects.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

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

RULE TITLE: Reduction of Permissible PERC Air Levels (Health Code Article 131)

REFERENCE NUMBER: DOHMH-64

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/ Francisco X. Navarro
Mayor's Office of Operations

March 9, 2016
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Reduction of Permissible PERC Air Levels (Health Code Article 131)

REFERENCE NUMBER: 2015 RG 131

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: March 9, 2016