

Department of Environmental Protection
Promulgation of
Chapter 13 of Title 15 of the Rules of the City of New York
Rules Pertaining to the Prevention of the Emission of Dust from Construction
Related Activities

PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 of the New York City Charter and section 24-146 of the Administrative Code of the City of New York, the Department of Environmental Protection promulgates a rule pertaining to the prevention of the emission of dust from construction related activities (15RCNY 13-01 *et. seq.*)

These amendments were proposed and published on September 15th, 2008 in The City Record. The required public hearing was held on October 21st, 2008.

Statement of Basis and Purpose

Section 24-146(c) of the New York City Administrative Code states, in summary, that no person shall cause or permit a building or road to be constructed without taking such cautions as may be ordered by the Commissioner of Environmental Protection to prevent particulate matter from becoming airborne. Subdivision (f) of the same section states that demolition by toppling of walls shall not occur except when approved by the Commissioner of DEP.

These two provisions authorize the DEP Commissioner to promulgate rules regarding dust control in the above circumstances. No such rules currently exist, and DEP has received requests for guidance regarding methods of compliance with this section of the Air Code.

Consistent with the above, DEP promulgates the following new Rule, to be found at 15 RCNY chapter 13. This Rule sets forth “best management practices,” and is similar to other local laws and rules regulating the construction industry found in many jurisdictions throughout the United States.

The Rule is authorized by section 1043 of the Charter of the City of New York and section 24-146 of the Administrative Code of the City of New York.

The text of the Rules follows.

Title 15 of the Rules of the City of New York is amended by adding a new Chapter 13, to read as follows:

Chapter 13

Rules pertaining to the prevention of the emission of dust from construction related activities

§13-01 Scope and Application

- (a) The following dust prevention regulations, §13-01 et seq., shall apply to all construction related activities occurring within the city of New York.
- (b) Every owner of a building or property where construction related activity occurs shall be responsible for the performance of the construction related activities by his/her agent, contractor, employee, or other representative.
- (c) Every contractor and worker engaged in construction related activities shall comply with the provisions of this chapter except as otherwise specified.
- (d) The Department may inspect, at a reasonable time and in a reasonable manner, any site where construction related activity is being conducted.
- (e) No person shall interfere with or obstruct any employee of the Department in the performance of his/her official duties, including but not limited to the performance of inspections.

§13-02 Definitions

Adequately Wetted shall mean sufficiently mixed or penetrated with liquid to prevent the release of particulate matter. If visible emissions are observed coming from particulate matter, then that material has not been adequately wetted.

Board or ECB shall mean the environmental control board of the city of New York.

City shall mean the city of New York.

Commissioner shall mean the commissioner of environmental protection.

Contractor shall mean a public authority or any other governmental agency or instrumentality thereof, self-employed person, company, unincorporated association, firm, limited liability corporation, partnership or corporation and any owner or operator thereof, which engages in a construction project or employs persons engaged in a construction project.

Control apparatus shall mean any device which prevents or controls the emission of any air contaminant.

Construction shall mean any or all activity necessary or incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private highways, roads, premises, parks, utility lines including such lines in already-constructed tunnels, or other property, including land clearing, grading, excavating and filling.

Construction Material shall mean any material, regardless of composition, designed and customarily used in construction including but not limited to any rails, pillars, columns, beams, bricks, flooring, wall, ceiling, or roofing material, gravel, sand, cement or asphalt.

Controlled Filled Operations shall mean the use of a dust control apparatus that utilizes an exhaust ventilation system which bags the dust, thereby preventing dust from becoming airborne.

Demolition shall mean the dismantling or razing of a building, including all operations incidental thereto and any removal of non-structural interior building walls, partitions, finishes, equipment and fittings as would be required for an interior renovation project.

Department or DEP shall mean Department of Environmental Protection.

Disturbed area shall mean an area that has been significantly disrupted by fugitive dust.

Dust shall mean solid particulate matter which has been released into the open air by natural forces or by mechanical processes.

Emission shall mean dispersion of an air contaminant into the open air of the city.

Open air shall mean all the air that is available for human, animal, or plant respiration, but shall not include the air in equipment and private dwellings.

Owner shall mean and includes the owner of a freehold 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.

Person shall mean an 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.

Re-suspension shall mean dust accumulation that once again becomes airborne.

Sandblasting shall mean the use of a high pressure current of air or stream carrying sand, water, or other material for the cleaning or grinding of hard surfaces, including, but not limited to, stone and metal.

§13-03 Enforcement

Any person who is in violation of or fails to comply with any provision, standard or requirement of these Rules or the terms and conditions of any permit issued pursuant to these Rules shall be subject to the issuance of notice(s) of violation and other civil or criminal enforcement action(s) pursuant to the provisions of Title 24, Chapter 1, Subchapter 9 of the Administrative Code of the city of New York, including but not

limited to payment of civil penalties and compliance with orders of the Commissioner and/or ECB.

§13-04 Wetting

- (a) Provision shall be made at every construction site to control the amount of airborne dust released off site from construction operations, by wetting the construction material as necessary with appropriate spraying agents, provided wetting will not damage utility infrastructure or create any safety hazards. Other means or dust-control apparatus may also be used provided they are acceptable to the Commissioner. Fire hydrants shall not be opened to accomplish this purpose unless a fire hydrant use permit is in effect
- (b) Trucks and other vehicles used to transport particulate mater shall be covered and any particulate matter kept on site shall be sufficiently wetted or stored to prevent particulate matter from becoming airborne.
- (c) The wet method of dust control shall include an adequate and continuous supply of water delivered to the construction site under proper pressure and distributed by a hose system and terminating in suitable water sprays or jets at the several points of application, or shall provide the same facilities by means of a self-contained recirculating system. For excavation jobs, a fine mist is deemed to be an adequate supply of water. The application of water shall be done in such a way so as not to create a slipping hazard. Controlled filled operations shall be exempt from this section. When the fill pile is to remain on site and undisturbed overnight or longer, the pile shall be covered with a tarp.
- (d) Portable hand water sprinklers or hose sprinklers are acceptable means of wetting for dust control. The water sprays or jets shall be designed to break the water stream into small droplets or otherwise to provide effective wetting.
- (e) Suitable drainage means shall be provided for the removal of water and sludge which drains from the operation. When no such drainage is available, the use of access roads and other acceptable methods shall be used.

§13-05 Construction activities requiring wetting

- (a) Prior to the commencement of demolition activities, all exterior surfaces of a building up to six stories in height shall be wetted and shall be maintained adequately wet thereafter while operations continue.
- (b) All construction material shall be sufficiently wetted to prevent dust from becoming airborne before loading into trucks, vehicles or other containers. During transport, such material shall be enclosed or covered to prevent dust dispersion.

- (c) Wetting shall be used to control dust where drilling, grinding, or other similar construction activities occur.
- (d) Sprinklers or other effective means shall be provided to control dust produced at dumps, conveyors, chutes, and other transfer points.
- (e) Wherever water sprinklers are used to control dust at transfer points, they shall be capable of being operated by the person(s) responsible for conducting the loading.
- (f) Soil or debris piles shall be moistened if dust is being emitted from the piles due to prevailing winds and not from a momentary gust. Adequately secured tarps, plastic or other material may be required by the Commissioner to further reduce dust emissions.

§13-06 Construction activities requiring additional forms of dust control

- (a) Where the demolition or renovation of any building or other structure is being performed by hand, debris, bricks, and other material shall be removed by means of chutes, by means of buckets or hoists, or through openings in the floors of the building or other structure in compliance with these Rules and the Administrative Code of the city of New York.
- (b) Where windows and other exterior wall openings in buildings or other structures being renovated are more than 25 feet in height above the ground or grade level and are within 20 feet of any floor opening used for removal of debris from floors above, such windows and other openings shall be solidly boarded up during renovation operations to prevent the emission of dust into the atmosphere so long as applicable OSHA standards are followed.
- (c) During sandblasting or other similar operations, installation and use of hoods, fans and dust collectors to enclose and vent the handling of dusty materials or the use of water sprays or other measures and control apparatuses acceptable to the Commissioner to suppress the dust emission or adequate containment methods shall be employed.
- (d) Open-bodied trucks transporting dust producing construction materials likely to become airborne shall be covered at all times when in motion.
- (e) Removal of earth or other material from paved roads, driveways and parking lots on which earth or other material has been deposited by trucking, earth moving equipment or erosion is required daily. There shall be no re-suspension of roadway dust during the removal process.
- (f) Dry street sweepers, including broom sweeping, may be used if designed to prevent the re-suspension of street/sidewalk particulate matter.

- (g) The use of blower devices for the removal of deposited mud or dirt is prohibited.
- (h) Vehicles entering or exiting construction areas shall travel at slow speeds to minimize dust emissions.
- (i) Disturbed areas shall be stabilized for the duration of the construction activity or until construction work resumes on the inactive disturbed area. All disturbed areas of a construction site, including storage piles of fill dirt and other bulk materials, which are not being actively utilized for construction purposes for a period of seven calendar days or more, shall be stabilized using one or more of the following soil stabilization methods:
 - (1) Water, as a dust suppressant;
 - (2) Chemical dust stabilizer or suppressant;
 - (3) Planting of trees or vegetative ground cover.

Where soil moisture or natural crushing is sufficient to limit visible dust emissions, no action is required

§13-07 Demolition

- (a) A DEP demolition registration shall be filed with the Department 10 days prior to the commencement of demolition. Such registration shall include the following information: name of owner or demolition contractor, address of owner or demolition contractor, description of the building, structure, facility or installation, scheduled starting and completion dates of demolition, method of demolition to be employed, and procedure to be employed to meet the requirements of these Rules .
- (b) Adequate wetting shall be employed before and during the demolition of any section or wall of the structure.
- (c) Debris shall be transported through dust-tight chutes or in buckets and shall not be dropped or thrown from any floor. Any debris in chutes or buckets shall be sufficiently wetted to preclude dust dispersion at the point of discharge.
- (d) Dust and debris from the demolition operations shall be removed daily from the adjacent streets, sidewalks and alleys.
- (e) Any contractor or person who intends to demolish a building, structure, facility or installation to which the provisions of this section apply is exempt from the requirements of this section if such building, structure, facility or installation has

been declared by a state or local governmental authority to be structurally unsound and in danger of imminent collapse.

§13-08 Sandblasting

- (a) No dry sandblasting shall be permitted except where wet sandblasting cannot be done due to unique circumstances.
- (b) Whenever sandblasting is done, contaminant methods such as blast-cleaning machines and cabinets shall be used.
- (c) Whenever sandblasting is done, curtains shall be used as temporary dust-containment structures.
- (d) A minimum of three days notice shall be given by the contractor to owners, tenants and occupants of all structures within one hundred fifty feet of the site on which sandblasting is to be done.

§13-09 Construction Devices

All persons constructing or operating a large article, machine, device, equipment, such as a rock crusher, or other contrivance or facility capable of causing or permitting emission of dust into the atmosphere at a construction site shall keep on site a document detailing such equipment . Information provided on this document shall include the ownership, location, design, make and model, operation, i.e. how does it operate, as well as any other pertinent information requested by the Department. In addition, the measures utilized to reduce dust emissions resulting from the use of these items as set forth in 15 RCNY 13-01 et seq. shall be clearly outlined. This document shall be attached as an addendum sheet to the Noise Mitigation Plan prepared pursuant to Section 24-220 of the Noise Code.

§13-10 Open Areas

Owners shall take sufficient measures including wetting and covering an open area to prevent dust emissions from becoming airborne after demolition is completed.