

Proposed Int. No. 416-A

By the Speaker (Council Member Miller) and Council Members McMahon, Gennaro, Yassky, Quinn, Avella, Brewer, Clarke, Comrie, Fidler, Gerson, Gioia, Gonzalez, James, Jennings, Koppell, Liu, Martinez, Monserrate, Nelson, Palma, Recchia Jr., Reed, Rivera, Sanders Jr., Stewart, Vallone Jr., Weprin, DeBlasio, Lopez, Gentile, Foster, Baez, Moskowitz, Katz, Jackson, Barron, Perkins and Reyna

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to reducing the emission of pollutants from vehicles that handle, transport or dispose of the City's solid waste and recyclable materials.

Be it enacted by the Council as follows:

Section 1. Chapter one of Title 24 of the administrative code of the city of New York is amended by adding thereto a new section 24-163.5 to read as follows:

§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:

(1) "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.

(2) “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.

(3) “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.

(4) “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.

(5) “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.

(6) “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.

(7) “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.

(8) “Person” means any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

(9) “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.

(10) “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.

(11) “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.

(12) “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.

(13) “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.

(14) “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

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.

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. The commissioner shall issue a written determination that permits the use of diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of paragraph one of subdivision b of this section if ultra low sulfur diesel fuel is not available to meet the needs of contractors to fulfill the requirements of this section. Such determination shall expire after six months and shall be renewed in writing every six months if such lack of availability persists, but in no event shall be in effect after September 1, 2006.

g. The commissioner may issue a waiver for the use of ultra low sulfur diesel fuel 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 a sufficient quantity of ultra low sulfur diesel fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to subdivision f of this section, is not available to meet the requirements of this section, provided that the contractor, to the extent practicable, shall use whatever quantity of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available for its diesel fuel-powered vehicles. Any waiver issued pursuant to this subdivision shall expire after two months, unless the city agency renews the finding, in writing, and the commissioner approves such renewal, in writing.

h. 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.

i. (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 the Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel; Final Rule, published in the federal register on June 29, 2004 at 69 Fed. Reg. 38,958 et seq., or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent.

j. (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 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 i 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; (vii) all waivers, findings, and renewals of such findings, issued pursuant to subdivision g of this section, which shall include, but not be limited to, for each waiver, the quantity of diesel fuel needed by the contractor to power diesel fuel-powered motor vehicles and diesel fuel-powered nonroad vehicles used to fulfill the requirements of a solid waste contract or recyclable materials contract; specific information concerning the availability of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to subdivision f of this section; and detailed information concerning the contractor's efforts to obtain ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to subdivision f of this section; and (viii) all waivers issued pursuant to subdivision h 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.

(2) Where a determination is in effect pursuant to subdivision f of this section, information regarding diesel fuel that has a sulfur content of no more than thirty parts per million shall be reported wherever information is requested for ultra low sulfur diesel fuel pursuant to paragraph one of this subdivision.

k. 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.

l. Any contractor who violates any provision of this section, except as provided in subdivision m of this section, shall be liable for a civil penalty of not less than one thousand dollars and not more than ten thousand dollars, in addition to twice the amount of money saved by such contractor for failure to comply with this section.

m. Where a contractor has been found to have made a false claim with respect to the provisions of this section, such contractor shall be liable for an additional civil penalty of twenty thousand dollars.

n. This section shall not apply to any solid waste contract or recyclable materials contract entered into or renewed prior to the effective date of this section.

o. 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.

§2. Subparagraph (i) of paragraph 5 of subdivision b of section 24-178 of the administrative code of the city of New York is amended by inserting the following lines in the Table of Civil Penalties, immediately following the line regarding civil penalties for a violation of section 24-163.3 of this chapter:

24-163.5; plus twice the amount of money
saved by the contractor for failure to comply
with such section; provided that such \$1,000

- \$10,000 penalty and additional penalty shall not apply to 24-163.5(m).....	10,000	1,000
24-163.5(m).....	20,000	20,000

§3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§4. This local law shall take effect four months after its enactment, except that the commissioner of environmental protection shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect.

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 LS # 1437
 4/12/05 10:00 p.m.