

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by section 1049-a of the New York City Charter, and in accordance with section 1043 of the Charter, that the Environmental Control Board hereby promulgates the following rule. The rule was published in The City Record on August 13, 2010, and a Public Hearing was held on September 14, 2010.

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

Section 1. The Air Asbestos Code Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the entries for sections 1-22 (B) and 1-25 (C) found under the heading "NOTIFICATION," to read as follows:

		1ST VIOLATION		2ND VIOLATION	
SECTION	DESCRIPTION	Penalty	STIP.	Penalty	STIP.
1-22(B)	[Owner failed to determine the amount of ACM to be disturbed by permitted activity] <u>Failure to submit required certification to Buildings Department</u>	2400	1500	4800	3000
1-25(C)	Failed to file Asbestos [inspection report] <u>Project Notification</u> 7 days before work starts	2400	1500	4800	3000

Section 2. The Air Asbestos Code Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to delete the entry for section 1-42 (C) found under the heading "AIR MONITORING," and to revise the entries for sections 1-42(D), 1-42 (E) and 1-42 (F) also found under the heading "AIR MONITORING," to read as follows:

		1ST VIOLATION		2ND VIOLATION	
SECTION	DESCRIPTION	Penalty	STIP.	Penalty	STIP.
[1-42(C)]	[Placed Air sampling equipment in corners or near obstructions]	[1200]	[1000]	[2400]	[1500]
1-42[(D)](C)	Failed to have a chain of custody record for air samples	2400	1500	4800	3000
1-42 [(E)](D)	Failed to follow specified area sampling schedule for air monitoring	2400	1500	4800	3000
1-42 [(F)](E)	Failed to conduct air sampling for [glovebag and tent procedures] <u>small projects</u> as required	2400	1500	4800	3000

Section 3. The Air Asbestos Code Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the entry for section 1-51 (F) found under the heading "WORKER PROTECTION REQUIREMENTS," to read as follows:

		1ST VIOLATION		2ND VIOLATION	
SECTION	DESCRIPTION	Penalty	STIP.	Penalty	STIP.
1-51 (F)	Failed to have required info [in clean room]at work place	2400	1500	4800	3000

Section 4. The Air Asbestos Code Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the entries for sections 1-61 (A) and 1-61 (G) found under the heading "MATERIALS AND EQUIPMENT," to read as follows:

		1ST VIOLATION		2ND VIOLATION	
SECTION	DESCRIPTION	Penalty	STIP.	Penalty	STIP.
1-61 (A)	Did not <u>properly</u> store replacement materials outside work area as required	2400	1500	4800	3000
1-61 (G)	Failed to use HEPA filtration as required on [hand] power tools	1200	1000	2400	1500

Statement of Basis and Purpose of Final Rule

The Environmental Control Board (ECB) held a Public Hearing on September 14, 2010 on amendments to ECB's Air Asbestos Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. One member of the public attended the Public Hearing held on September 14, 2010. The individual gave brief testimony unrelated to the rule. No written comments were received.

In the fall of 2009, the Environmental Control Board undertook a comprehensive revision of its Air Asbestos Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The changes contained in this rule reflect changes that should have been made at that time but were not due to oversight. These changes were necessitated by the report of Mayor Bloomberg's Construction, Demolition and Abatement Working Group, created in the aftermath of the August 18, 2007 fire at the Deutsche Bank building in lower Manhattan, which killed two New York City firefighters.

Additional changes were also needed in order to conform the Rules and this penalty schedule to the New York State Department of Labor rules (Industrial Code Rule 56), which were extensively revised in 2006.

The corresponding updates to the Department of Environmental Protection rules were initially published in the City Record on July 30, 2009. After the required public hearing, final publication took place on September 11, 2009. The revised Department of Environmental Protection rules became effective on November 13, 2009.