

ENVIRONMENTAL CONTROL BOARD

Notice of Promulgation of Rule

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by Sections 1043 and 1049-a of the New York City Charter, and in accordance with Sections 19-121(b)(7), 19-147, and 19-150 of the New York City Administrative Code, the Environmental Control Board hereby promulgates the following rule that amends Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (the DOT Penalty Schedule), amending penalties for offenses adjudicated by the Environmental Control Board. The rule was published in The City Record on February 21, 2013 and a Public Hearing was held on March 25, 2013.**

**Statement of Basis and Purpose of Final Rule**

The Environmental Control Board (“ECB”) held a Public Hearing on March 25, 2013 regarding fine increases to four charges contained in ECB’s Department of Transportation (DOT) Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. A representative from the Department of Transportation attended the Public Hearing. Neither written comments nor oral testimony were presented at the March 25, 2013 Public Hearing concerning the Proposed Rule.

The existing fine structure for these charges is extremely low or inconsistent with similar charges within the fine structure. For this reason, there is little incentive for contractors or others to comply with the city’s laws and rules.

In addition, the penalties associated with these charges have remained unchanged since their creation. In some instances, the penalty for the violating condition is less than the expense of compliance. To serve as an effective deterrent, the fine structure must be greater than the cost of doing business.

For each of these charges, before issuing a violation, DOT will issue either a Commissioner’s Order to correct or a Corrective Action Request giving the responsible party 30 days to correct the violating condition. The penalties are within the statutory limits set forth in section 19-150 of the New York City Administrative Code.

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

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

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**Section 1. The Environmental Control Board has amended four existing charges in its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to read as follows:**

| <b>SECTION</b>        | <b>DESCRIPTION</b>                | <b>PENALTY</b>         | <b>DEFAULT</b>          |
|-----------------------|-----------------------------------|------------------------|-------------------------|
| Admin. Code 19-138(b) | Defacement of roadway or sidewalk | [\$50]<br><u>\$250</u> | [\$150]<br><u>\$750</u> |

|                           |  |                         |                         |
|---------------------------|--|-------------------------|-------------------------|
| 34 RCNY 2-11(e)(12)(viii) | Failure to seal street opening joints                                  | [\$100]<br><u>\$250</u> | [\$300]<br><u>\$750</u> |
| 34 RCNY 2-11(e)(16)(iii)  | Failure to comply with DOT Standard Specifications                     | [\$400]<br><u>\$750</u> | \$1000                  |
| 34 RCNY 2-11(e)(14)(iii)  | Failure to install a color coding marker at the end of the restoration | [\$50]<br><u>\$250</u>  | [\$150]<br><u>\$750</u> |