

ENVIRONMENTAL CONTROL BOARD

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board by Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the Charter and Section 15-229 of the New York City Administrative Code, the Environmental Control Board hereby promulgates the following rule. The rule was published in The City Record on July 9, 2012 and a Public Hearing was held on August 9, 2012.

Statement of Basis and Purpose of Final Rule

The Environmental Control Board (ECB) held a Public Hearing on August 9, 2012 regarding amendments to its Fire Department (FDNY) Penalty Schedule. This schedule is found in Section 3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). No comments (neither written comments nor oral testimony) were presented at the August 9, 2012 Public Hearing.

The two amendments are described as follows:

Section 1: ECB has amended its FDNY Penalty Schedule to reflect a change in Section 109-02 of Title 3 of the RCNY related to the failure to prevent unnecessary or unwarranted alarms.

- Section 109-02 of Title 3 of the RCNY sets forth violation categories for the laws, rules, and regulations enforced by the Fire Department through the issuance of notices of violations returnable before the ECB. The failure to prevent unnecessary or unwarranted alarms pursuant to Section 907.20.6 of the Fire Code and Section 907-01(c) of Title 3 of the RCNY had previously been enforced as a Violation Category (VC) 11 violation. Section 109-02 was amended to clarify that the failure to prevent unnecessary or unwarranted alarms would be enforced under VC 12, rather than VC 11.
- *Penalties:* The penalties for a VC 12 violation are generally higher than the penalties for a VC 11 violation. Although the failure to prevent unnecessary or unwarranted alarms is now included within VC 12, the penalties for this violation remain unchanged. ECB is thus amending its penalty schedule to reflect that the penalties for this particular VC 12 violation will be the same as the penalties for a VC 11 violation.

Section 2: ECB has added two new entries to its FDNY Penalty Schedule related to two provisions of the Fire Code (FC).

- The first entry establishes penalties for the violation of FC 2609.8.
 - FC 2609.8 sets forth requirements related to the use of piped natural gas with oxygen in any hot work operation, including requirements for the use of certain protective equipment, and applies to both new and existing installations.
- The second entry establishes penalties for the violation of FC 3205.4.
 - FC 3205.4 sets forth requirements related to the filling and dispensing of cryogenic fluids. A cryogenic fluid is defined as a fluid having a boiling point lower than -130°F (-89.9°C) at 14.7 pounds per square inch absolute (psia) (an absolute pressure of 101.3 kPa).
- *Penalties:* The penalties for violations of these two Fire Code provisions are within the guidelines set forth in Section 15-229 of the New York City Administrative Code. Section 15-229 authorizes a maximum penalty of \$1000 for a first violation and a maximum penalty of \$5000 for second and subsequent violations. No minimum penalty is mandated.

New text is underlined, and deleted material is in [brackets].

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

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Section 1. The Environmental Control Board has amended its FDNY Penalty Schedule found in Section 3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) and has added the following entry after the entry for Violation Category 12 “Fire Protection Systems” to read as follows:

SECTION /VIOLATION CATEGORY	DESCRIPTION	FIRST VIOLATION			SECOND OR SUBSEQUENT VIOLATION		
		PENALTY	MIT.	MAX.	PENALTY	MIT.	MAX.
<u>Violation Category 12</u>	<u>Fire Protection Systems: Failure to Prevent Unnecessary or Unwarranted Alarms</u>	<u>750</u>	<u>375</u>	<u>1000</u>	<u>1875</u>	<u>935</u>	<u>5000</u>

Section 2. The Environmental Control Board has amended its FDNY Penalty Schedule found in Section 3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) and has added two new entries following the entry for FC 1404.1 “Smoking on Construction Site” to read as follows:

SECTION /VIOLATION CATEGORY	DESCRIPTION	FIRST VIOLATION			SECOND OR SUBSEQUENT VIOLATION		
		PENALTY	MIT.	MAX.	PENALTY	MIT.	MAX.
<u>FC 2609.8</u>	<u>Fail to Provide/Maintain Flashback Arrestor and Backflow Check Valve or Gas Booster</u>	<u>900</u>	<u>450</u>	<u>1000</u>	<u>2250</u>	<u>1125</u>	<u>5000</u>
<u>FC 3205.4</u>	<u>Filling and Dispensing of Cryogenic Fluids</u>	<u>600</u>	<u>300</u>	<u>1000</u>	<u>1500</u>	<u>750</u>	<u>5000</u>