

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed rule regarding amendments to the Department of Transportation (DOT) Penalty Schedule for offenses adjudicated by the Environmental Control Board (ECB).

Date / Time: March 25, 2013 / 3:30 p.m.

Location: ECB
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

Contact: James Macron
Counsel to the Board
ECB
66 John Street
10th Floor
New York, N.Y. 10038
(212) 361-1515

Proposed Rule Amendment

Pursuant to 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 proposes to amend 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. This rule was not included in the Environmental Control Board's regulatory agenda because it was not anticipated at the time the agenda was created.

Instructions

- Written comments regarding the proposed rule may be sent to Mr. Macron at his contact address above on or before March 25, 2013. Members of the public may also submit comments on the rule electronically through NYC RULES at www.nyc.gov/nycrules.
- Individuals who want to testify at the hearing should notify Mr. Macron on or before March 25, 2013.
- Individuals who need a sign language interpreter or other accommodation for a disability should notify Mr. Macron on or before March 18, 2013.
- Individuals interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to Mr. Macron at his contact address above.

Statement of Basis and Purpose of Proposed Rule

The Environmental Control Board (“ECB”) is proposing fine increases to four charges currently contained in ECB’s Department of Transportation (DOT) Penalty Schedule. 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 proposed 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.

Section 1. The Environmental Control Board proposes to amend 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:

SECTION	DESCRIPTION	PENALTY	DEFAULT
Admin. Code 19-138(b)	Defacement of roadway or sidewalk	[\$50] <u>\$250</u>	[\$150] <u>\$750</u>
34 RCNY 2-11(e)(12)(viii)	Failure to seal street opening joints	[\$100] <u>\$250</u>	[\$300] <u>\$750</u>
34 RCNY 2-11(e)(16)(iii)	Failure to comply with DOT Standard Specifications	[\$400] <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] <u>\$250</u>	[\$150] <u>\$750</u>

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of DOT Penalty Schedule (Street Work)

REFERENCE NUMBER: 2012 RG 093

RULEMAKING AGENCY: Environmental Control Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: January 4, 2013

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of DOT Penalty Schedule (Street Work)

REFERENCE NUMBER: 2012 RG 093

RULEMAKING AGENCY: Environmental Control Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Does not create any additional compliance costs; and
- (iii) Does provide a cure period because it establishes a violation, modification of a violation, or modification of the penalties associated with a violation.

Kelly Shultz
Mayor's Office of Operations

January 7, 2013
Date