

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to comment on Proposed Rule relating to procedures for adjudications conducted by the Environmental Control Board.

**Date / Time:** October 16, 2012 / 3:30 p.m.

**Location:** Environmental Control Board (ECB)  
66 John Street  
10<sup>th</sup> Floor, Conference Room  
New York, N.Y. 10038

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

### Proposed Rule Amendment

Pursuant to Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the Charter, the Environmental Control Board proposes to amend subchapters C and D of Chapter 3 of Title 48 of the Rules of the City of New York, relating to procedures for adjudications conducted 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 James Macron, at the contact address above, on or before October 16, 2012. Members of the public may also submit comments on the rule electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules).
- A public hearing regarding the proposed rule will be held on October 16, 2012 at 3:30 p. m., at ECB, 66 John Street, 10<sup>th</sup> Floor, Conference Room, New York, N.Y. 10038. Individuals who would like to testify are requested to notify James Macron, at the contact address above, on or before October 16, 2012.
- Individuals who need a sign language interpreter or other accommodation for a disability are asked to notify James Macron, at the contact address above, by October 9, 2012.
- Individuals interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to James Macron, at the contact address above.

## Statement of Basis and Purpose of Proposed Rule

The Environmental Control Board (ECB) proposes to amend its procedural rules found in Subchapters C and D of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY).

This rule establishes the procedure that must be followed when a party claims that a notice of violation has been previously adjudicated. Decisions of the Board, including, for example, Appeal No. 1100289, NYC v. Leon Goldstein, have stated that, in certain circumstances, claims between the same parties that have been previously adjudicated should not be adjudicated again at a subsequent hearing.

Repeated adjudications of the same claims can create inefficiency and weigh against the interests of fairness. This proposed rule would create a uniform process that parties, hearing officers, and the Board must follow when making and deciding claims of prior adjudication.

The proposed rule would require the Board itself to review claims of prior adjudication, rather than hearing officers. Analyzing whether a notice of violation has been previously adjudicated requires a labor intensive examination of the records in two hearings, including listening to the record of the previous hearing. Therefore it would be impractical to have hearing officers review these claims. Board review of these claims would be the best use of limited governmental resources and would best serve the interests of justice.

Decisions regarding the effect of a prior adjudication apply solely to proceedings before the Board

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. Section 3-52 of Subchapter C of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) is amended by adding a new subdivision (f) to read as follows:**

(f) Claims of Prior Adjudication. Whenever one party claims that a notice of violation was previously adjudicated, the hearing officer must allow both parties to present all relevant and material evidence on all the issues in the case, including the claim of prior adjudication. If a party has raised a claim of prior adjudication, the hearing officer must not decide such claim, but must preserve the claim for the purposes of subsequent appeal.

### **Section 2. Subdivision (a) of section 3-74 of Subchapter D of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) is amended to read as follows:**

(a) When exceptions have been filed with the tribunal, the board shall consider the entire matter on the basis of the record before it. The notice of violation, the transcript of the hearing and all briefs filed and exhibits received in evidence, together with the hearing officer's recommended decision and order, shall constitute the hearing record. If, on appeal, a party raises the claim that the notice of violation should not have been adjudicated in a second hearing because it had been previously adjudicated, and if the claim was properly raised and preserved pursuant to section 3-52 of these rules, the Board will review the records of both hearings in order to determine the claim of prior adjudication, taking into account the interests of justice and public safety. Decisions regarding the effect of a prior adjudication apply solely to proceedings before the Board.

**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:** Rule Governing Prior Adjudications

**REFERENCE NUMBER:** 2012 RG 068

**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: August 20, 2012

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

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

**RULE TITLE: Rule Governing Prior Adjudications**

**REFERENCE NUMBER: OATH/ECB-26**

**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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi  
Mayor's Office of Operations

8/24/12  
Date