

## **NOTICE OF PUBLIC HEARING**

- Subject:** Opportunity to comment on the proposed rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB) related to concrete washout water and exterior wall safety.
- Date / Time:** June 12, 2012 / 3:30 p.m.
- Location:** ECB  
66 John Street  
10<sup>th</sup> Floor, Conference Room  
New York, N.Y. 10038
- Contact:** James Macron  
Counsel to the 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 New York City Charter and Chapter 2 of Title 28 of the New York City Administrative Code, the Environmental Control Board proposes to amend Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, creating penalties for offenses adjudicated by the Environmental Control Board related to concrete washout water and exterior wall safety.

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**

- Prior to the hearing, you may submit written comments about the proposed rule to Mr. Macron by mail at the address above or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by June 12, 2012. Individuals seeking to testify at the hearing should also notify Mr. Macron by June 12, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Mr. Macron by June 5, 2012.
- After the hearing, individuals interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to Mr. Macron.

## Statement of Basis and Purpose

The Environmental Control Board proposes to amend its Department of Buildings (DOB) Penalty Schedule. This schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The proposed amendments will create penalties for certain sections of the New York City Building Code, Administrative Code, and RCNY in order to better enforce these provisions.

### Section 1. Concrete Washout Water

Concrete washout water damages New York City’s environment, sewer and drainage systems. The proposed amendment creates penalties for violations of Section 3303.15 of the New York City Building Code as added by Local Law 70 of 2011. Local Law 70 of 2011 regulates concrete washout water, defined as wastewater from the rinsing of equipment used to mix, transport, convey and/or place concrete. Local Law 70 of 2011 will take effect July 1, 2012.

### Sections 2 through 4. Public Safety Measures for the Maintenance of Exterior Walls

When the exterior walls and appurtenances (façades) of a building become unsafe, they pose a serious threat to public safety. The proposed amendments create penalties for violations of the following provisions, which require certain procedures for the safe maintenance of building façades:

- Section 28-302.3 of the Administrative Code;
- Section 28-302.5 of the Administrative Code; and
- Section 103-04(b)(5)(iii) of Title 1 of the RCNY.

Article 302 of Title 28 of the Administrative Code sets forth maintenance requirements for the façades of buildings greater than 6 stories. Section 28-302.3 requires a registered design professional who learns of an unsafe condition upon examining a façade to immediately notify the DOB. When an unsafe condition is reported, Section 28-302.5 requires the building owner, the owner’s agent, or the person in charge of the building to take immediate steps to remedy those conditions.

Section 103-04(b)(5)(iii) of Title 1 of the RCNY requires the building owner, the owner’s agent, or the person in charge of the building to get approval from the DOB before removing a shed or protective measure from a building’s exterior.

New matter is underlined.

**Section 1. The Environmental Control Board is amending its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following violation after the violation “BC 3303.8.1, Failure to properly conduct planned removal from service of standpipe system and/or standpipe pressurized alarm”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
BC 3303.15	2	<u>Failure to perform proper concrete washout water procedures at construction site</u>	No	No	1,200	No	6,000	3,000	10,000	6,000	10,000

**Section 2. The Environmental Control Board is amending its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following violation after the violation “28-302.1, Failure to maintain building wall(s) or appurtenances”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-302.3</u>	1	<u>Failure of registered design professional to immediately notify Department of unsafe condition</u>	<u>No</u>	<u>No</u>	<u>1,200</u>	<u>No</u>	<u>6,000</u>	<u>3,000</u>	<u>12,000</u>	<u>6,000</u>	<u>25,000</u>

**Section 3. The Environmental Control Board is amending its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following violation after the violation “28-302.5, Failure to file an amended report acceptable to this Department indicating correction of unsafe conditions”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-302.5</u>	1	<u>Failure to timely correct unsafe condition</u>	<u>No</u>	<u>No</u>	<u>2,400</u>	<u>No</u>	<u>12,000</u>	<u>6,000</u>	<u>24,000</u>	<u>12,000</u>	<u>25,000</u>

**Section 4. The Environmental Control Board is amending its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following violation after the violation “1 RCNY 101-07, Failure of Approved agency to comply with requirements of 1 RCNY 101-07”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>1 RCNY §103-04(b)(5)(iii)</u>	2	<u>Removal of shed or protective measure without Department approval</u>	<u>No</u>	<u>No</u>	<u>800</u>	<u>Yes</u>	<u>4,000</u>	<u>2,000</u>	<u>8,000</u>	<u>4,000</u>	<u>10,000</u>

**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: Amendment of Buildings Penalty Schedule (Concrete Washout and Unsafe Facades)**

**REFERENCE NUMBER: OATH/ECB-23**

**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 the violations pose a risk to the environment, public health and safety.

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

4/19/2012  
Date