

## **NOTICE OF PUBLIC HEARING**

**Subject:** Opportunity to comment on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

**Date / Time:** November 9, 2011 at 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 Charter, 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. New matter in the following rule is underlined, and deleted material is in brackets. 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, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, N.Y. 10038, on or before November 9, 2011. 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 November 9, 2011 at 3:30 p.m., at ECB, 66 John Street, 10<sup>th</sup> Floor, Conference Room, New York, N.Y. 10038. Persons seeking to testify are requested to notify James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, N.Y. 10038, (212) 361-1515 on or before November 9, 2011.
- Persons who need a sign language interpreter or other accommodation for a disability are asked to notify James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, N.Y. 10038, (212) 361-1515 by November 2, 2011.
- Persons interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to: James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, N.Y. 10038.

## **Statement of Basis and Purpose of Proposed Rule**

The Environmental Control Board proposes to increase the fines related to emergency work by utility companies on critical roadways during restricted hours. ECB expects these increases to encourage better compliance with existing rules, as detailed below. Specifically, this proposed rule will increase the fines from \$1,000 to \$2,000 for:

- Opening a utility access cover without an authorization number, and,
- Doing non-emergency work on a critical roadway during restricted hours.

These fines are found in the Environmental Control Board Department of Transportation (DOT) Penalty Schedule. This schedule is found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY).

### **Background**

34 RCNY § 2-07 provides that utility companies may access their underground facilities on critical roadways without prior authorization during off-peak hours and on weekends. Section 2-07(c)(1) prohibits utility companies from accessing their underground facilities on critical roadways during restricted hours, except in an emergency. Section 2-01(c)(2) prohibits emergency work requiring cover or grating openings on critical roadways during specified hours without an emergency authorization number. If an emergency arises on a critical roadway during peak hours, section § 2-07(c)(4)(i) requires that the companies get an emergency authorization number from DOT prior to performing the emergency work. Section 2-01 defines “emergency” as “a situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise to be continuously maintained.”

DOT has designated critical roadways and restricted hours based on the need for smooth traffic flow during the business day. Commonly referred to as “rush hours,” these restricted hours are times when roadways are congested with commuter traffic. Interruptions to the free flow of traffic can create major traffic stalls and hazardous conditions for motorists, pedestrians and bicyclists.

### **Analysis of Emergency Work Permit Requests**

Since emergency work permit requests are for emergencies only, the number of emergency permits issued should vary from year to year. DOT reviewed emergency permit data for the past six years and found that the number of emergency permits issued each year is fairly constant. DOT also found that 60 per cent of the requests are sent to DOT at the beginning of the work day, between 7 AM and 10 AM. In Fiscal Year 2011 DOT issued 2,700 violations for work conducted for routine maintenance using an emergency permit. Based on this data DOT concludes that the emergency permitting system is being misused and that utility companies are requesting authorization numbers for non-emergency, routine maintenance.

### **Need for Increased Penalties**

The penalties associated with these violations have not changed in more than five years. In some cases, the \$1,000 penalty may be less than the expense of complying with the law; that is, companies may be choosing to work during restricted hours on critical roadways rather than incur the business cost of working outside of the regular business day. Therefore, ECB proposes to raise the penalties for these charges to encourage utility companies to get authorization numbers when needed and to deter them from requesting emergency permits for routine

maintenance. The changes would increase the penalties for the two charges from \$1000 to \$2000. The default penalties will remain at \$3000.

The proposed rule does not provide for obtaining an authorization number after the utility company has blocked traffic, or allowing companies to change or cancel a request for an authorization number after the authorization number has been given. Allowing utility companies to obtain an authorization number after the occurrence would encourage them to work without authorization until an inspection. Furthermore, if the authorization number has been requested under false pretenses, allowing contractors to change or cancel the emergency request would promote further misuse of the emergency permitting system.

Section 1. The Environmental Control Board is amending its 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 (RCNY) to read as follows:

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

<b>SECTION</b>	<b>DESCRIPTION</b>	<b>Penalty</b>	<b>DEFAULT</b>
34 RCNY 2-07 (c) (4)(i)	Opening a utility access cover without an authorization number	[\$1000] <u>\$2,000</u>	3,000
34 RCNY 2-07(c) (1)	Doing non-emergency work on a critical roadway during restricted hours	[\$1000] <u>\$2,000</u>	3,000