

## ENVIRONMENTAL CONTROL BOARD

**NOTICE OF OPPORTUNITY TO COMMENT** on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

**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, that the Environmental Control Board proposes to amend subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, setting forth 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.

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 July 13, 2010. A public hearing regarding the proposed rule will be held on July 13, 2010, at 5:00 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 July 13, 2010. 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 July 6, 2010. 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.

New material is underlined.

Section 1. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by adding two new entries immediately following the entry in such Penalty Schedule for 28-105.1, Class 2, “Outdoor sign on display structure without a permit,” to read as follows:

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>28-105.1</u>	<u>Class 1</u>	<u>Work After Hours Without a Variance Permit contrary to 28-105.12.5</u>	<u>No</u>	<u>No</u>	<u>\$1600</u>	<u>Yes</u>	<u>\$8,000</u>	<u>\$4,000</u>	<u>\$16,000</u>	<u>\$8,000</u>	<u>\$25,000</u>
<u>28-105.1</u>	<u>Class 2</u>	<u>Work After Hours Without a Variance Permit contrary to 28-105.12.5</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>

### Statement of Basis and Purpose of Proposed Rule

The Environmental Control Board (ECB) proposes adding two new charges to ECB’s Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The addition of these charges will enhance enforcement against construction activities being conducted contrary to the noise control code without variance permits issued by the Department of Buildings.

NYC Administrative Code (Code) Section 28-105.1 makes it unlawful to, “construct, enlarge, alter, repair, move, demolish, remove or change the use or occupancy of any building or structure in the city, or to erect, install, alter, repair, or use or operate any sign or service equipment in or in connection therewith, or to erect, install, alter, repair, remove, convert or replace any gas, mechanical, plumbing or fire suppression system in or in connection therewith or to cause any such work to be done unless and until a written permit therefore shall have been issued by the commissioner” of the Department of Buildings.

Under Code 28-105.12.1, “Permits shall be deemed to incorporate the provisions that the applicant, the owner, their agents, employees, and contractors shall carry out the permitted work in accordance with the provisions of this code and other applicable laws and rules, whether specified or not, except as variations have been legally permitted or authorized.”

Code Section 28-105.12.5 states that. “All work shall be performed in compliance with the provisions of the New York City noise control code... Failure to comply with sections 24-222 and 24-223 of the Administrative Code shall be a violation of this code.”

Code Section 24-222 makes it unlawful to, “engage in or to cause or permit any person to engage in construction work other than on weekdays between the hours of 7 a.m. and 6 p.m. A person may however perform construction work in connection with the alteration or repair of an existing one or two family owner-occupied dwelling classified in occupancy group J-3 or a convent or rectory on Saturdays and Sundays between the hours of 10 a.m. and 4 p.m. provided that such dwelling is located more than 300 feet from a house of worship.”

Working after hours and on weekends, more often than not, is a nuisance to quality of life throughout the City. In addition, such work often seeks to evade regular monitoring efforts of the Department of Buildings and other enforcement agencies, thereby posing varying degrees of

threat to life, health, safety and the public interest. For this reason, there will be both Class 1 (immediately hazardous) and Class 2 (major) charges. The assignment of the severity classification (class 1 or class 2) will be made by the Department of Buildings inspector based on the nature/type and scope of work being performed and its effect on life, health, safety and the public interest.