

## ENVIRONMENTAL CONTROL BOARD

### Notice of Promulgation of Rule

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED** in the Environmental Control Board (ECB) by Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the Charter, the Environmental Control Board hereby promulgates the following rule. The rule was published in The City Record on September 12, 2012 and a Public Hearing was held on October 16, 2012.

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

The Environmental Control Board (ECB) held a Public Hearing on October 16, 2012 regarding amendments to 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) relating to procedures for adjudications conducted by the ECB. Neither written comments nor oral testimony were presented at the October 16, 2012 Public Hearing.

The 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 rule creates a uniform process that parties, hearing officers, and the Board must follow when making and deciding claims of prior adjudication.

The rule requires the Board itself to review claims of prior adjudication, rather than assigning such review to 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) has been amended and has added 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) has been 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.