

NOTICE OF PUBLIC HEARING

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

Date / Time: June 14, 2011 / 3:30 p.m.

Location: ECB
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

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

Proposed Rule Amendment

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, 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, 10th Floor, New York, N.Y. 10038, on or before June 14, 2011. Members of the public may also submit comments on the rule electronically through NYC RULES at www.nyc.gov/nycrules.
- A public hearing regarding the proposed rule will be held on June 14, 2011 at 3:30p. m., at ECB, 66 John Street, 10th 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, 10th Floor, New York, N.Y. 10038, (212) 361-1515 on or before June 14, 2011.
- Individuals who need a sign language interpreter or other accommodation for a disability should notify James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038, (212) 361-1515 by June 14, 2011.
- Individuals 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, 10th Floor, New York, N.Y. 10038.

Statement of Basis and Purpose of Proposed Rule

The Environmental Control Board is amending its Air Asbestos Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) to add two new charges for violations of section 15 RCNY 1-109.

Amendments to the Department of Environmental Protection’s Asbestos Control Program Rules went into effect on February 3, 2011. The amendments include two new provisions, 1-109(e) and 1-109(f), that apply to projects involving asbestos abatement for vertical exterior surfaces of a structure. The Construction Codes define structure as “that which is built or constructed, including among others, buildings, stadia, tents, reviewing stands, platforms, stagings, observation towers, radio towers, tanks, trestles, open sheds, shelters, fences and display signs.”

Subsection (e) precludes abatement during adverse weather conditions. As defined in DEP’s rule, 15 RCNY 1-02, abatement means “any and all procedures physically taken to control fiber release from asbestos-containing materials.” This includes removal, encapsulation, enclosure and repair.” The term “adverse weather conditions” is not defined, but examples include rain, snow, sleet, high winds, and temperatures below 32 degrees Fahrenheit.

Subsection (f) requires the use of High Efficiency Particulate Air (HEPA) filters on all power tools used in the removal of asbestos. As defined in DEP’s rule, 15 RCNY 1-02, a HEPA filter is a filter capable of trapping and retaining 99.97 percent of asbestos fibers greater than 0.3 micrometers mass median aerodynamic equivalent diameter.

Penalties for violations of 1-109 charged under subsections (e) or (f) range from \$1,000 to \$10,000. The default penalty for each charge in this penalty schedule is \$10,000. If a stipulation (STIP.) is offered and accepted at a hearing, the stipulation penalty will be imposed.

Section 1. The Air Asbestos Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by adding two new charges immediately following the charge in that penalty schedule for 1-109(d), “Failure to conduct required air monitoring,” to read as follows:

New matter in the following rule is underlined
Deleted material is in [brackets]

SECTION	DESCRIPTION	1ST VIOLATION		2ND VIOLATION	
		Penalty	STIP.	Penalty	STIP.
1-109(e)	<u>Conducting asbestos abatement during adverse weather conditions</u>	<u>\$1,200</u>	<u>\$1,000</u>	<u>\$2,400</u>	<u>\$1,500</u>
1-109(f)	<u>Failure to use HEPA filters on power tools used in asbestos abatement</u>	<u>\$1,200</u>	<u>\$1,000</u>	<u>\$2,400</u>	<u>\$1,500</u>

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

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

RULE TITLE: Amendment of Asbestos Abatement Penalty Schedule

REFERENCE NUMBER: OATH/ECB-4

RULEMAKING AGENCY: OATH/ECB

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 a cure period would run counter to the proposed rule's goal of preventing risks to public health and worker safety.

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

3/30/11
Date