

## **ENVIRONMENTAL CONTROL BOARD**

### **Notice of Promulgation of Rule**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the** Environmental Control Board (ECB) in accordance with Sections 1043(a) and 1049-a of the New York City Charter. The ECB has amended its Air Asbestos and Air Code Penalty Schedules. The Air Asbestos Penalty Schedule is found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York; the Air Code Penalty Schedule is found in Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. These sections contain penalties for notices of violation issued by the New York City Department of Environmental Protection (DEP). The rule was published in The City Record on August 12, 2014 and a public hearing was held on September 12, 2014.

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

The Department of Environmental Protection (DEP) has requested that the Environmental Control Board (ECB) amend the Air Asbestos and Air Code Penalty Schedules. Some of the changes were requested to address evolving industry practices that raise safety concerns, while other changes were introduced in response to revisions of the Rules of City of New York (RCNY). Cure periods are not included in the provisions, because the governing statutes mandate the imposition of minimum penalties.

The ECB held a public hearing on September 12, 2014 regarding amendments to its Air Asbestos and Air Code Penalty Schedules. The Air Asbestos Penalty Schedule is found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York; the Air Code Penalty Schedule is found in Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. A representative from the NYC Department of Environmental Protection (“DEP”) and one member from the public attended the September 12, 2014 public hearing. The member from the public did not wish to testify. Three (3) written comments were received. The Board has considered the 3 written comments.

### **Changes to the Air Asbestos Penalty Schedule**

#### **Ad. Code § 24-1002(c)**

On February 4, 2014, Mayor de Blasio signed Local Law 3 of 2014, which amended Title 24 of the Administrative Code by adding a new Chapter 10. The amendment requires the DEP to establish a program to provide for the registration of practicing Master Environmental Hazard Remediation Technicians. Since the registration program

will be administered by the Asbestos Control Program, ECB has added the following penalty for this provision to the Air Asbestos Penalty Schedule.

Section 24-1003 specifies a minimum penalty of \$1000 for any violation of Chapter 10. No maximum penalty is set forth. A review of section 24-1002(c) makes it unlawful to identify oneself as a Master Hazard Remediation Technician without being registered by the DEP.

### **15 RCNY 1-91(n)**

ECB has also added a penalty to the Air Asbestos Penalty Schedule for section 15 RCNY 1-91(n), a provision of the subchapter on engineering controls. This section requires contractors to carefully install ducting for negative pressure units because improper installation threatens the release of asbestos fibers into uncontaminated building areas.

### **Changes to the Air Code Penalty Schedule**

#### **15 RCNY 12-18(a), 12-18(b), 12-18(c), and 12-18(d)**

15 RCNY 12-18 provides for the posting of notices by dry cleaning facilities. The notices address the use of chemicals in the dry cleaning process.

Penalties for the section are governed by the Air Code Table of Civil Penalties. This table is found at 24-178(b)(5). The Air Code Penalty Schedule currently provides a penalty for failure to post a required notice in an easily visible location in dry cleaning facilities. This notice is required by New York State. ECB is retaining the existing penalty for 12-18(a) with an amended description.

Additionally, ECB has added penalties for subdivisions (b), (c) and (d). Section 12-18(b) requires dry cleaners using perc (also known as PCE and perchloroethylene) to post a notice informing customers that the chemical is used in its dry cleaning process. The notice must include a web address where the Material Safety Data Sheet can be viewed. The sign required by 12-18(b) differs from the sign required by 12-18(a); 12-18(a) complies with New York State law and thus its penalty is higher than the penalties for 12-18(b), (c) and (d). Section 12-18(c) requires dry cleaners using alternatives to perc, known as non-perchloroethylene (non-perc) to post a sign identifying the chemical being used along with a web address where the Material Safety Data Sheet for the chemical can be viewed. Section 12-18(d) requires dry cleaners using perc and non-perc to post notices as required by subdivisions (a), (b), and (c).

#### **15 RCNY 2-09 and 15 RCNY 40-02(b)**

15 RCNY Chapter 2 sets forth performance standards and engineering criteria for boilers and water heaters. Specifically, Section 2-09 states that boilers requiring a certificate of operation undergo an annual tune-up and combustion efficiency test. These results must be kept and submitted to DEP upon request.

15 RCNY Chapter 40 states that emergency generators (defined in 15 RCNY 40-01) must be registered and pass a smoke test. Specifically, section 40-02(b) requires the owner or operator of an emergency generator to maintain records documenting the generator’s hours of operation and provide these records to the DEP upon request.

There are no existing penalties for 15 RCNY 2-09 and 15 RCNY 40-02(b). Since these sections are most similar to the recordkeeping provisions of 24-177(b) and (c), ECB has added that the penalties for 24-177 are adopted for these two charges.

**Ad. Code § 24-168.1**

Paragraph (1) of subdivision (b) of section 24-168.1 of the Air Pollution Control Code prohibits the use or delivery of heating oil that contains less than two per cent biodiesel by volume. Local Law 43 of 2010 added two penalties related to these provisions to the Air Code Table of Civil Penalties found in Administrative Code section 24-178(b)(5). The first provision states that the minimum and maximum penalties for a violation of 24-168.1 of using noncompliant heating oil are “as per schedule E.” The second provision sets a minimum penalty of \$1000 and a maximum of \$10,000 for the delivery of noncompliant heating oil, in addition to “twice the amount of money saved for failure to comply.”

New material is underlined.

[Deleted material is in brackets.]

**Section 1. 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 a new entry to the end of the Air Asbestos Penalty Schedule, to read as follows:**

Section/Rule	Description	1 <sup>st</sup> Offense Penalty	1 <sup>st</sup> Violation Stipulation	2 <sup>nd</sup> Offense Penalty	2 <sup>nd</sup> Offense Stipulation
<u>Ad. Code 24-1002(c)</u>	<u>Identifying oneself as Master Environmental Hazard Remediation Technician when not registered with the Department of Environmental Protection</u>	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>

**Section 2: 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 one entry to the Air Asbestos Penalty Schedule immediately following the entry for Section 1-91(m), to read as follows:**

Section	Description	1 <sup>st</sup> Offense Penalty	1 <sup>st</sup> Violation Stipulation	2 <sup>nd</sup> Offense Penalty	2 <sup>nd</sup> Offense Stipulation
<u>1-91(n)</u>	<u>Failure to carefully install ducting to ensure against fiber release of asbestos fibers</u>	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>

**Section 3. Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by amending the Air Code Penalty Schedule entry for Section 12-18(a) and by adding three additional entries immediately thereafter, to read as follows:**

Section/Rule	Description	1 <sup>st</sup> Offense Stip.	1 <sup>st</sup> Offense	Default Penalty	2 <sup>nd</sup> Offense	2 <sup>nd</sup> Stip.	3 <sup>rd</sup> & Subsq.	3 <sup>rd</sup> \$ Subq. Stip
12-18(a)	[Failure to post public notice in conspicuous location] <u>Failure to post New York State perc notice in easily visible location</u>	400	400	875	500	No	500	No
<u>12-18(b)</u>	<u>Failure to post perc notice in easily visible location</u>	<u>220</u>	<u>220</u>	<u>875</u>	<u>440</u>	<u>No</u>	<u>440</u>	<u>No</u>
<u>12-18(c)</u>	<u>Failure to post notice regarding non-perc chemical in easily visible location</u>	<u>220</u>	<u>220</u>	<u>875</u>	<u>440</u>	<u>No</u>	<u>440</u>	<u>No</u>

<u>12-18(d)</u>	<u>Failure to post perc and non-perc notices</u>	<u>220</u>	<u>220</u>	<u>875</u>	<u>440</u>	<u>No</u>	<u>440</u>	<u>No</u>
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**Section 4: Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by adding two entries to the Air Code Penalty Schedule immediately following the entry for Section 24-125(c), to read as follows:**

Section	Description	1 <sup>st</sup> Offense Stip.	1 <sup>st</sup> Offense	Default	2 <sup>nd</sup> Offense	2 <sup>nd</sup> Stip.	3 <sup>rd</sup> & Subseq. Offense	3 <sup>rd</sup> & Subseq. Stip.
<u>15 RCNY 2-09</u>	<u>Failure to retain records related to combustion efficiency testing</u>	<u>350</u>	<u>350</u>	<u>875</u>	<u>545</u>	<u>545</u>	<u>545</u>	<u>No</u>
<u>15 RCNY 40-02(b)</u>	<u>Failure to maintain records of hours of operation for emergency generator</u>	<u>350</u>	<u>350</u>	<u>875</u>	<u>545</u>	<u>545</u>	<u>545</u>	<u>545</u>

**Section 5: Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by adding the following two entries to the Air Code Penalty Schedule immediately following the entry for Section 24-168, to read as follows:**

Section	Description	1 <sup>st</sup> Offense Stip.	1 <sup>st</sup> Offense	Default	2 <sup>nd</sup> Offense	2 <sup>nd</sup> stip.	3 <sup>rd</sup> & Subseq. Offense	3 <sup>rd</sup> & Subseq. Stip.
<u>24-168.1</u>	<u>Use of heating oil containing less than 2% biodiesel</u>	<u>Schedule E</u>	<u>Schedule E</u>	<u>Schedule E</u>	<u>Schedule E</u>	<u>Schedule E</u>	<u>No</u>	<u>No</u>
<u>24-168.1</u>	<u>Delivery of heating oil containing less than 2% biodiesel</u>	<u>No</u>	<u>2000 (plus agg. pen. for excess profit)</u>	<u>10000</u>	<u>4000 (plus agg. pen. for excess profit)</u>	<u>No</u>	<u>No</u>	<u>No</u>