

## **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 1049-a and 1043 of the New York City Charter and Section 28-202.1 of the New York City Administrative Code. The ECB has amended its Department of Buildings (DOB) Penalty Schedule. This schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. It contains penalties for notices of violation issued by the New York City DOB. The proposed rule was published in the City Record on October 8, 2015 and a public hearing was held on November 10, 2015.

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

The New York City Environmental Control Board (“ECB”) has modified the ECB Buildings Penalty Schedule to reflect the 2014 updates to the NYC Construction Codes and to more clearly and effectively allow the New York City Department of Buildings (“DOB”) to enforce particular sections of law.

The ECB held a public hearing on November 10, 2015 regarding amendments to its Department of Buildings Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. One representative from DOB attended the public hearing. No written comments or oral testimony concerning this Proposed Rule were received at the November 10, 2015 public hearing.

The 2014 updates to the NYC Construction Codes amended the Administrative Code of the City of New York, the New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code and the New York City Fuel Gas Code, and brought these codes up to date with the 2009 editions of the International Building, Mechanical, Fuel Gas and Plumbing Codes.

The updates amended existing requirements, added new requirements and renumbered existing sections of these Codes. The Buildings Penalty Schedule has been amended to reflect some of these changes. The rule amends the Buildings Penalty Schedule by:

- updating sections of law for certain violations (“Failure to provide pedestrian protection for sidewalks and walkways,” “New building or open lot occupied without a valid certificate of occupancy,” and “Failure to obey a vacate order”),
- updating descriptions for certain violations (“New building or open lot occupied without a valid certificate of occupancy” and “Failure to obey a vacate order”),
- deleting one existing violation (“Use of supported scaffold without a scaffold user certificate”), and
- adding one new violation (“Scaffold training certificate card not readily available for inspection”).

Penalty amounts for all existing violations remain unchanged. All penalties fall within the guidelines for all classes of violations, as stated in Section 28-202.1 of the New York City Administrative Code. The statutory maximum for each class of violation is:

- Class 3 (lesser violation) -\$500,
- Class 2 (major violation) - \$10,000, and
- Class 1 (immediately hazardous violation) - \$25,000.

Eligible Class 2 (major) violations, and all Class 3 (lesser) violations, are indicated as curable in the penalty schedule.

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

**Section 1. The Environmental Control Board has amended its Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by deleting the following violation:**

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 (\$)
[BC 3314.4.6]	[Class 1]	[Use of supported scaffold without a scaffold user certificate]	[No]	[No]	[1600]	[No]	[8000]	[4000]	[16000]	[8000]	[25000]

**§ 2. The Environmental Control Board has amended the following violations in its Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York 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 (\$)
BC3307.3 (2008 Code) and BC 3307.1 (2014 Code)	Class 1	Failure to provide pedestrian protection for sidewalks and walkways	No	No	4800	No	24000	12000	25000	24000	25000
[28-118.2] <u>28-118.1</u>	Class 1	[New building] <u>Building</u> or open lot occupied without a valid certificate of occupancy	No	No	1000	No	5000	2500	10000	5000	25000

[28-207.4] 28-201.1	Class 1	Failure to obey a Vacate Order by the Commissioner per 28-207.4	No	No	4800	No	24000	12000	25000	24000	25000
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**§ 3. The Environmental Control Board has amended its Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new violation after the entry in that schedule for BC3314.4.5 (2008 Code) & BC3314.4.5.1 (2014 Code), Unqualified supervisor or worker performing work on scaffold, 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>BC 3314.4.6 (2008 code) &amp; BC 3314.4.5.8 (2014 code)</u>	Class 2	<u>Scaffold training certificate card not readily available for inspection</u>	<u>Yes</u>	<u>No</u>	<u>800</u>	<u>Yes</u>	<u>4000</u>	<u>2000</u>	<u>8000</u>	<u>4000</u>	<u>10000</u>