

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(b) and 1049-a of the New York City Charter. ECB has amended its rules of procedure to allow for service of hearing officer decisions and orders by hand delivery or by mail. The changes will also allow for regular mailing of Cease and Desist Orders and Notices of Special Hearing. The rule was published in The City Record on May 15, 2015, and a public hearing was held on June 15, 2015.

Statement of Basis and Purpose of Final Rule

The Environmental Control Board (ECB) held a public hearing on June 15, 2015, regarding amendments to its rules of procedure to allow for service of hearing officer decisions and orders by hand delivery or by mail. The changes will also allow for regular mailing of Cease and Desist Orders and Notices of Special Hearing. One member from the public attended the June 15, 2015, public hearing and did not wish to present oral testimony. ECB received and considered one written comment on the proposed rule regarding amendments to its rules of procedure.

Hand Delivery of Hearing Officer Decisions and Orders

The Environmental Control Board (ECB) has amended sections 48 RCNY 3-57, 3-71 and 3-73 of its rules of procedure. The changes will allow for service by ECB of hearing officer decisions and orders by hand delivery or by mail.

ECB's current rule, 48 RCNY 3-57, requires ECB to serve decisions and orders on all parties but is silent as to how decisions are served. However, sections 3-71 and 3-73 refer to "mailing" of decisions and orders. Currently, ECB serves all decisions and orders by mail. To reduce costs, provide an additional service option, and to further clarify when the time to appeal begins to run, ECB has amended the rule to allow for both mailing and hand delivery of decisions and orders.

The amendment to 48 RCNY 3-57 also requires amending sections 3-71 and 3-73 of ECB's rules because, as stated above, those rules currently only refer to "mailing" of decisions and orders.

Delivery of Cease and Desist Orders and Notices of Special Hearing by Regular Mail

ECB has amended 48 RCNY 3-91 to allow ECB to serve Cease and Desist Orders and Notices of Special Hearing by regular mail instead of by certified mail, return receipt requested. The Board issues a Cease and Desist order after the Department of Environmental Protection (DEP) has issued a respondent a notice of violation or several notices of violation, ECB has found the respondent in violation and the respondent has failed to correct the condition for which the violation was issued. The Cease and Desist

Order requires the respondent to appear at a special hearing or have the equipment that is the subject of the violation sealed.

ECB has determined based on experience that service of these orders by certified mail is not needed since the DEP also serves these orders by delivering them to respondents at the address where the equipment at issue to be sealed is located. Furthermore, ECB records show that the United States Postal Service returns many of these mailings to ECB because respondents fail to go to the post office to pick them up. Finally, ECB rules provide for prompt hearing (post-sealing special hearing) should equipment be sealed based on a failure to appear at a pre-sealing hearing.

New material is underlined.

[Deleted material is in brackets.]

“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

Section 1. Subdivision (a) of section 3-57 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) *Hearing Officer's Recommended Decision and Order.* As soon as possible after conclusion of the hearing, the hearing officer shall prepare a recommended decision and order. The hearing officer's decision shall set forth findings of fact and conclusions of law, and it shall set forth the hearing officer's reasons for findings on all material issues. If the charges contained in the notice of violation are upheld, the hearing officer shall prepare an order setting forth the penalty, and if the board is authorized by law to impose remedial relief or other sanction, the relief or sanctions recommended. The recommended decision and order shall be filed with the executive director and served on all parties or their authorized representatives either personally or by mail.

§ 2. Subdivision (a) of section 3-71 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) *Filing.* Any party aggrieved by the hearing officer's recommended decision and order may, within 30 days of [mailing] service of the same on that party, file written exceptions with the tribunal. A copy of the exceptions shall be served upon all parties, and proof of such service filed with the tribunal within 30 days of the [mailing] service of said decision and order on the party filing exceptions. Written exceptions must contain a concise statement of the issues presented, specific objections to the findings of fact and conclusions of law set forth in the hearing officer's recommended decision and order, and arguments presenting clearly the points of law and fact relied on in support of the position taken on each issue.

§ 3. Section 3-73 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

§3-73 Payment of Penalty.

a) No appeal by a respondent shall be permitted unless, within 20 days of the [mailing] service of the hearing officer's recommended decision and order on the respondent or the respondent's authorized representative, the civil penalty imposed by said order is paid or the respondent shall have posted a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from.

(b) Any application for a waiver of such prior payment of the civil penalty must be made within 20 days of the [mailing] service of the hearing officer's recommended decision and order on the respondent or the respondent's authorized representative and must be supported by evidence of financial hardship. Waivers of such prepayment may be granted in the discretion of the executive director.

§ 4. Paragraph (c) of section 3-91 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

(c) *Service*. The order to cease and desist and notice of special hearing shall be served personally [or] and by [certified] regular mail [, return receipt requested].