

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. The Environmental Control Board (ECB) has amended its Sanitation, Air and Noise Codes Penalty Schedules. The Sanitation Penalty Schedule is found in Section 3-122 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; and the Noise Code Penalty Schedule is found in Section 3-115 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 Departments of Sanitation (DSNY) and Environmental Protection (DEP). The rule was published in The City Record on April 2, 2014 and Public Hearing was held on May 5, 2014.

Statement of Basis and Purpose of Final Rule

On December 20, 2013, Mayor Bloomberg signed Intro. 1213-A of 2013, which became Local Law 153 of 2013 (LL 153/13). This law amended the Administrative Code (Ad. Code) to give respondents receiving a first violation for certain provisions the opportunity to avoid paying a civil penalty if they cure the violations within a specific time period. The proposed rule has added a \$0 mitigated penalty to three ECB penalty schedules upon a showing that the underlying violations have been cured.

The ECB held a public hearing on May 5, 2014 regarding amendments to its Sanitation, Air, and Noise Codes Penalty Schedules. The Sanitation Penalty Schedule is found in Section 3-122 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; and the Noise Code Penalty Schedule is found in Section 3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented at the May 5, 2014 public hearing concerning the Proposed Rule regarding amendments to ECB's Sanitation, Air, and Noise Codes Penalty Schedules.

Ad. Code § 16-116(d)(i)

Paragraph (i) of subdivision d of section 16-116 of the Administrative Code provides the penalty for violations of subdivisions a and b of this section. LL 153/13 amended paragraph (i) of subdivision d of section 16-116 to provide for a cure period for a respondent who received a notice of violation ("NOV") of subdivision b of section 16-116 for the first time. A respondent may receive a mitigated penalty of \$0 if he or she provides proof to ECB that the violation was corrected before the date of the initial

hearing. Such proof may include a copy of the actual decal, written receipts or an agreement from the private carter.

Ad. Code §§ 24-165 and 24-166 (Air Code)

Section 24-165 sets forth requirements for air contaminant detectors. Section 24-166 sets forth requirements for combustion shutoffs, which are installed to automatically shut down oil-burning equipment when an emission which exceeds the prescribed opacity or density is detected. LL 153/13 added a new subdivision (g) to section 24-165 and a new subdivision (c) to section 24-166. The new subdivisions are identical and provide that the DEP Commissioner can recommend the imposition of a zero penalty to the Board for a first offense of section 24-165 or 24-166 if, within 45 days of the return date indicated on the notice of violation (NOV), respondent admits the violation and submits evidence satisfactory to DEP that work has been performed to permanently correct the violation.

Ad. Code § 24-227 (Noise Code)

This section prohibits excessive noise from circulation devices. LL 153/13 added a new subdivision (d) to section 24-227. It provides that the DEP Commissioner can recommend to ECB that no civil penalty be imposed for a first violation of this section if, within 45 days of the return date on the NOV, the respondent admits liability for the violation and files a certification with DEP that improvements have been made to the establishment and that measurements substantiate that the establishment is in full compliance with the sound levels described in section 24-227. The violation may nevertheless serve as a basis for imposing penalties for subsequent violations of section 24-227.

ECB has included these changes and accompanying head notes in its penalty schedule to comply with the requirements of the new law.

ECB's authority for these rules is also found in section 1049-a of the New York City Charter.

New material is underlined.

[Deleted material is in brackets.]

Section 1. The Environmental Control Board has amended its Sanitation Penalty Schedule found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has revised the head notes appearing after the words "Late filing of medical waste plans or reports within 30 days as per 16 RCNY 11-02(c)" to read as follows:

(Mitigation: 0¹) For a first-time violator, such penalty to be mitigated to \$0 if proof is submitted that such condition has been cured prior to initial return date of the notice of violation.

Section 2. The Environmental Control Board has amended its Sanitation Penalty Schedule found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following mitigated penalty on showing a first violation is cured:

Section/Rule	Description	Offense	Penalty	Default
16-116(b)	Posting of sign/permit	1st	100 <u>(Mitigation: 0¹)</u>	100

Section 3: The Environmental Control Board has amended its Air Code Penalty Schedule found in Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added a headnote after the words “Schedules E, F and G are set forth as tables at the end of this section” to read as follows:

(Mitigation: 0¹) A zero penalty may be imposed for a first offense upon submission to DEP (within 45 days of the return date indicated on the NOV) of acceptable certification of compliance and admission of liability by respondent.

Section 4: The Environmental Control Board has amended its Air Code Penalty Schedule found in Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following language to read as follows:

Section	Description	1st Off.	1st Stip.	2ND/3RD &SUBSQ OFF.	2ND/3RD &SUBSQ. STIP	DEFAULT
24-165	Failure to use air contaminant detector/recording as required	Sch. E, F, G <u>(Mitigation: 0¹)</u>	Sch. E, F, G	Sch. E, F, G	Sch. E, F, G	Sch. E, F, G
24-166	Use of inadequate combustion shut-off device	350 <u>(Mitigation: 0¹)</u>	350	545	545	875

Section 5: The Environmental Control Board has amended its Noise Code Penalty Schedule Section 3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added a headnote after the words “...of acceptable certification of compliance as set forth in §24-231(b)(1)” to read as follows:

(Mitigation: 0¹) A zero penalty may be imposed for a first offense upon submission to DEP (within 45 days of the return date on the NOV) of acceptable certification of compliance and admission of liability by respondent.

Section 6: The Environmental Control Board has amended its Noise Code Penalty Schedule found in Section 3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following language to read as follows:

Section	Description	Violation offense	Penalty	Default	Stip.
24-227(a)	Noise from circulation device in excess of 42 dB(A).	1 st 2 nd 3 rd	560 (<u>Mitigation: 0¹⁾</u> 1120 1680	875 1751 2625	Y
24-227(b)	Cumulative impact from circulation device exceeded 45 dB(A).	1 st 2 nd 3 rd	560 (<u>Mitigation: 0¹⁾</u> 1120 1680	875 1751 2625	Y
24-227(c)	Failure to reduce cumulative impact from multiple circulation devices exceeding 50 dB(A).	1 st 2 nd 3 rd	560 (<u>Mitigation: 0¹⁾</u> 1120 1680	875 1751 2625	Y