

City of New York  
Environmental Control Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

**What are we proposing?** The Environmental Control Board (ECB) proposes to amend 48 RCNY §3-100 of its rules of procedure and repeal its Air Code Penalty Schedule. This 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 contains penalties for notices of violation issued by the New York City Department of Environmental Protection (DEP) for violations of the Air Code. The proposed changes will allow hearing officers to impose penalties pursuant to penalty schedules contained in enforcement agency rules.

**When and where is the Hearing?** ECB will hold a public hearing on the proposed rule. The public hearing will take place at **10:30 AM** on **May 16, 2016**. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the ECB through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules\_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to ECB, Attention: Counsel to the Board, ECB, c/o Helaine Balsam, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to ECB at 212-361-1900.
- **Hearing.** You can speak at the hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Elizabeth Nolan at 212-436-0708, or you can also sign up in the hearing room before the hearing begins on May 16, 2016. You can speak for up to three (3) minutes.

**Is there a deadline to submit written comments?** You may submit written comments up to May 16, 2016.

**What if I need assistance to participate in the Hearing?** You must tell us if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0708. You must tell us by May 9, 2016.

**Can I review the comments made on the proposed rule?** You can review the comments that have been submitted online by visiting the NYC rules website at

<http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at ECB, 66 John Street, New York, NY 10038.

**What authorizes ECB to make this rule?** Sections 1049-a of the City Charter authorizes ECB to make this proposed rule. This proposed rule was not included in ECB's regulatory agenda for this Fiscal Year because it was not contemplated when ECB published the agenda.

**Where can I find the ECB's rules?** ECB's rules are in Title 48 of the Rules of the City of New York.

**What rules govern the rulemaking process?** ECB must meet the requirements of Section 1043(b) of the City Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049-a of the City Charter.

### Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) is centralizing and streamlining its hearings to make it more efficient for the public to have their cases heard. As part of this process, OATH ECB is proposing to amend 48 RCNY §3-100, which instructs Hearing Officers to impose penalties set forth in OATH ECB's rules, to instruct Hearing Officers to impose penalties set forth in the current or future rules of enforcement agencies.

In addition, OATH ECB is repealing its Air Code Penalty Schedule. This schedule is found in 48 RCNY §3-102, and contains penalties for summonses issued by the New York City Department of Environmental Protection (DEP) for violations of the Air Code. At the same time, DEP will also enact a penalty schedule within its own rules at 15 RCNY Chapter 43. In the future, OATH ECB will repeal all penalty schedules in its rules at Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) so that they, like the Air Code Penalty Schedule, can be relocated to the rules of the agencies with primary rulemaking and policymaking jurisdiction over the laws underlying the violations.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has until now promulgated penalty schedules, the enforcement agencies have the expertise to recommend appropriate penalties based on the severity of each violation and its effect on City residents. Moving the penalty schedule will also make it easier for the public to find the penalties, which will be located within the same chapter as the rules supporting the violations alleged in the summonses. Finally, the proposed rule repeal will speed up the rulemaking process by eliminating the need for OATH ECB approval of proposed or amended penalties for agency rules that have already gone through the City Administrative Procedure Act ("CAPA") rulemaking process. The public will still have the opportunity to comment on proposed penalties during this process.

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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

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**Section 1. Section 3-100 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to read as follows:**

Whenever a respondent is found in violation of any [of the following provisions] provision of the New York City Administrative Code, Rules of the City of New York, New York City Health Code, New York State Public Health Law, New York Codes, Rules and Regulations, New York City Zoning Resolution, New York State Vehicle and Traffic Law, or New York State Environmental Conservation Law, and the summons (as defined in §6-01 of this Title) for such violation is returnable to the Environmental Control Board, any civil [penalties] penalty recommended by a Hearing Officer pursuant to §3-57(a) [and/or], any default [penalties] penalty imposed pursuant to §3-81(a) and in accordance with §1049-a(d)(1)(d) of the Charter, and/or any civil [penalties] penalty imposed for admissions of violation(s) pursuant to §3-32 or late admissions pursuant to §3-81(b) will be imposed pursuant to the [penalty schedules] Penalty Schedules set forth below. If no Penalty Schedule is contained in these rules, any such civil penalty and default penalty will be imposed pursuant to the Penalty Schedule contained in the rules of the agency with primary jurisdiction to enforce the provisions of law related to the violation alleged in the summons.

Please note that some of the penalties in the Penalty Schedules set forth below are established by law as flat penalties. Thus, for some of the penalties set forth below, no range of dollar amounts is set forth in the Administrative Code or other applicable law. However, solely for the convenience of the public, these flat penalties are included in the Penalty Schedules set forth below, to ensure, to the extent possible, that these Penalty Schedules are comprehensive.

**§ 2. The 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, is REPEALED, effective May 6, 2016.**

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Penalty Determinations by Hearing Officers of Environmental Control Board; Repeal of Air Code Penalty Schedule of Environmental Control Board

**REFERENCE NUMBER:** 2016 RG 025

**RULEMAKING AGENCY:** Environmental Control Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: March 28, 2016

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

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

**RULE TITLE: Penalty Determinations by Hearing Officers of Environmental Control Board; Repeal of Air Code Penalty Schedule of Environmental Control Board**

**REFERENCE NUMBER: OATH ECB-67**

**RULEMAKING AGENCY: OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

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) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ [Stephen Narloch]  
Mayor's Office of Operations

[March 28, 2016]  
Date