

**City of New York
Environmental Control Board**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Environmental Control Board (ECB) proposes to amend 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).

When and where is the Hearing? ECB will hold a public hearing on the proposed rules. The public hearing will take place at 2:00 p.m. on September 12, 2014. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, NY, NY 10038.

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

- **Website.** You can submit comments to the ECB through the NYC rules Web site 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: James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038.
- **Fax.** You can fax written comments to ECB, 212-361-1900.
- **By Speaking 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. You can also sign up in the hearing room before the hearing begins on September 12, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to September 12, 2014.

Do you need assistance to participate in the Hearing? You must tell ECB staff 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 September 5, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the 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 the ECB's office located at 66 John Street, 10th Floor, New York, NY 10038.

What authorizes ECB to adopt this rule? Section 1049-a of the New York City Charter. 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? The ECB's rules are in Title 48 of the Rules of the City of New York.

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

Statement of Basis and Purpose

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 these proposed changes have been requested to address evolving industry practices that raise safety concerns, while other changes are being introduced in response to revisions of the Rules of City of New York (RCNY). Cure periods are not included in the proposed provisions, because the governing statutes mandate the imposition of minimum penalties.

Requested 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 amends 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 proposes to add 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 is also adding 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.

Requested 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 proposes to retain the existing penalty for 12-18(a) with an amended description.

Additionally, ECB proposes to add 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.

Currently, 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), it is proposed that the penalties for 24-177 are adopted for these two new 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 st Offense Penalty	1 st Violation Stipulation	2 nd Offense Penalty	2 nd Offense Stipulation
Ad. Code <u>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 st Offense Penalty	1 st Violation Stipulation	2 nd Offense Penalty	2 nd 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 adding three additional entries immediately thereafter, to read as follows:

Section/Rule	Description	1 st Offense Stip.	1 st Offense	Default Penalty	2 nd Offense	2 nd Stip.	3 rd & Subsq.	3 rd \$ 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>

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 st Offense Stip.	1 st Offense	Default	2 nd Offense	2 nd Stip.	3 rd & Subseq. Offense	3 rd & 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 st Offense Stip.	1 st Offense	Default	2 nd Offense	2 nd stip.	3 rd & Subseq. Offense	3 rd & 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>

**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: Amendment of Asbestos and Air Code Penalty Schedules

REFERENCE NUMBER: 2014 RG 053

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: July 23, 2014

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

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

RULE TITLE: Amendment of Asbestos and Air Code Penalty Schedules

REFERENCE NUMBER: OATH-ECB-47

RULEMAKING AGENCY: OATH

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/ [Lincoln Restler]
Mayor's Office of Operations

July 23, 2014]
Date