

**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 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.

When and where is the Hearing? ECB will hold a public hearing on the proposed rule. The public hearing will take place at 2:00p.m. on September 21, 2015. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, NY, NY 10006.

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 21, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to September 21, 2015.

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 14, 2015

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 and 1043 of the New York City Charter and Chapter 3 of Title 28 of the Administrative Code authorize ECB to adopt 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? 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 New York City Environmental Control Board (ECB) is proposing a rule to modify the ECB 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 to enforce Local Law 77 of 2015.

In response to a recent outbreak of Legionnaires' disease in the South Bronx, the City Council enacted and the Mayor signed into law Local Law 77 of 2015, which goes into effect on August 18, 2015. Section one of Local Law 77 of 2015 adds a new Article 317, entitled "Cooling Towers" to chapter three of title 28 of the New York City Administrative Code (the Code).

Section 28-317.3, entitled "Registration," requires all cooling towers to be registered with the Department of Buildings (DOB) before initial operation as required by the DOB commissioner. Owners of existing cooling towers must register their towers within 30 days of the law's effective date.

Section 28-317.3.1, entitled "Discontinued use," requires owners or operators of cooling towers to notify DOB within 30 days of removing or permanently discontinuing use of a cooling tower and to include in their notice a statement that the tower was drained and sanitized in compliance with Department of Mental Health and Hygiene (DOHMH) rules for discontinuance of a cooling tower.

Section 28-317.5, entitled "Annual certification," requires owners or operators of cooling towers to certify that the cooling tower was inspected, tested, cleaned and disinfected in compliance with section 17-194.1 of the Code and the rules of DOHMH, and that a maintenance program and plan has been developed and implemented as required by such section. The owner or operator must submit the certification by November 1, 2016 and every November 1 of each year thereafter, or as otherwise specified in DOB's rules.

Section 28-317.7, entitled "Enforcement," makes failure to register a cooling tower or submit a certification or statement required by new article 317 a major (also called Class 2) violation. The statutory maximum for a major violation is \$10,000.

To support enforcement of this new law, the Board is adding three new charges to the Buildings Penalty Schedule.

[Deleted material is in brackets.]

New material is underlined.

Section 1. The Environmental Control Board proposes to amend its DOB 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 to add three new charges after the entry in that schedule for NYC Admin. Code 28-305.4.7.3, Failure to file an amended condition assessment acceptable to Department indicating correction of unsafe conditions, 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>28-317.3</u>	<u>Class 2</u>	<u>Failure to register cooling tower prior to operation</u>	No	No	<u>2,000</u>	<u>Yes</u>	<u>10,000</u>	<u>5,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
<u>28-317.3.1</u>	<u>Class 2</u>	<u>Failure to notify of discontinued use or removal of cooling tower</u>	Yes	Yes	<u>800</u>	<u>Yes</u>	<u>4,000</u>	<u>2,000</u>	<u>10,000</u>	<u>4,000</u>	<u>10,000</u>
<u>28-317.5</u>	<u>Class 2</u>	<u>Failure to file an annual certification of cooling tower inspection/testing/cleaning/disinfecting/maintenance plan per Adm. Code 17-194.1</u>	No	No	<u>2,000</u>	<u>Yes</u>	<u>10,000</u>	<u>5,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</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 Buildings Penalty Schedule (Cooling Towers Registration)

REFERENCE NUMBER: 2015 RG 101

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: August 19, 2015

**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 Buildings Penalty Schedule (Cooling Towers Registration)

REFERENCE NUMBER: OATH-ECB-60

RULEMAKING AGENCY: OATH-ECB

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 a cure period would present a substantial risk to public health and safety.

/s/ Francisco Navarro
Mayor's Office of Operations

August 19, 2015
Date