

**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 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).

**When and where is the Hearing?** ECB will hold a public hearing on the proposed rules. The public hearing will take place at 3:30 p.m. on May 5, 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, 10<sup>th</sup> 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 212-436-0592. You can also sign up in the hearing room before the hearing begins on May 5, 2014. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** You may submit written comments up to May 5, 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 212-436-0592. You must tell us by April 28, 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, 10<sup>th</sup> 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**

On December 20, 2013, Mayor Bloomberg signed Intro. 1213-A of 2013, which became Local Law 153 of 2013 (LL 153/13). This law amends 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. This proposed rule adds a \$0 mitigated penalty to three ECB penalty schedules upon a showing that the underlying violations have been cured.

#### **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 amends 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 adds 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 adds 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 is including 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.]

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**Section 1. The Environmental Control Board proposes to amend 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 by revising 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: 0<sup>1</sup>) 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 proposes to amend 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 by adding the following mitigated penalty on showing a first violation is cured:**

<b>Section/Rule</b>	<b>Description</b>	<b>Offense</b>	<b>Penalty</b>	<b>Default</b>
16-116(b)	Posting of sign/permit	1st	100 <u>(Mitigation: 0<sup>1</sup>)</u>	100

**Section 3: The Environmental Control Board proposes to amend 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 by adding 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: 0<sup>1</sup>) 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 proposes to amend 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 by adding the following language to read as follows:**

Section	Description	1 <sup>st</sup> Off.	1 <sup>st</sup> Stip.	2 <sup>ND</sup> /3 <sup>RD</sup> & SUBSQ OFF.	2 <sup>ND</sup> /3 <sup>RD</sup> & SUBSQ. STIP	DEFAULT
24-165	Failure to use air contaminant detector/recording as required	Sch. E, F, G <u>(Mitigation: 0<sup>1</sup>)</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: 0<sup>1</sup>)</u>	350	545	545	875

**Section 5: The Environmental Control Board proposes to amend 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 by adding a headnote after the words “...of acceptable certification of compliance as set forth in §24-231(b)(1)” to read as follows:**

(Mitigation: 0<sup>1</sup>) 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 proposes to amend 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 by adding 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 <sup>st</sup>	560 <u>(Mitigation: 0<sup>1</sup>)</u>	875	Y
		2 <sup>nd</sup>	1120	1751	
		3 <sup>rd</sup>	1680	2625	
24-227(b)	Cumulative impact from circulation device exceeded 45 dB(A).	1 <sup>st</sup>	560 <u>(Mitigation: 0<sup>1</sup>)</u>	875	Y
		2 <sup>nd</sup>	1120	1751	
		3 <sup>rd</sup>	1680	2625	

24-227(c)	Failure to reduce cumulative impact from multiple circulation devices exceeding 50 dB(A).	1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup>	560 ( <u>Mitigation: 0<sup>1</sup></u> ) 1120 1680	875 1751 2625	Y
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**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: Cure Period for Certain Violations (Sanitation, Air Code and Noise Code Penalty Schedules)**

**REFERENCE NUMBER: 2014 RG 006**

**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

Date: March 18, 2014

Acting Corporation Counsel

**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:** Cure Period for Certain Violations (Sanitation, Air Code and Noise Code Penalty Schedules)

**REFERENCE NUMBER:** OATH/ECB-44

**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) Provides a cure period.

/s/ Hunter Gradie

Mayor's Office of Operations

March 19, 2014

Date