

**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 December 29, 2014. 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, 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 212-436-0708. You can also sign up in the hearing room before the hearing begins on December 29, 2014. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** You may submit written comments up to December 29, 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 December 22, 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 and 1043 of the New York City Charter and Chapter 14 of Title 17 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 is proposing a rule to modify the ECB Buildings Penalty Schedule to enforce Local Law 141 of 2013 (LL 141), also known as the 2014 NYC Construction Code update.

LL 141, which goes into effect on December 31, 2014, amends the Administrative Code of the City of New York, the New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code and the New York City Fuel Gas Code and brings these codes up to date with the 2009 editions of the International Building, Mechanical, Fuel Gas and Plumbing Codes.

LL 141 amended some requirements, added new requirements and renumbered existing sections of these codes. The penalty schedule needs to be amended to reflect these changes. The proposed rule amends the penalty schedule by:

- updating sections of the Administrative Code,
- updating descriptions to the table of classifications,
- deleting some existing violations that no longer apply or could be combined with existing descriptions, and
- adding new violations and their classifications.

Penalty amounts for all existing infractions remain unchanged. All penalties fall within the guidelines for all classes of violations, as stated in Section 28-202.1. The statutory maximum for each class of violation is:

- Class 3 -\$500,
- Class 2 - \$10,000, and
- Class 1 - \$25,000.

New violations that are not immediately hazardous (Class 1) are indicated as curable in the penalty schedule.

[Deleted material is in brackets.]  
 New material is underlined.

**§ 1. The Environmental Control Board proposes to amend the Headnotes to the DOB Penalty Schedule for Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding new paragraphs 9.) and 10.) to read as follows:**

9.) References to the 2008 code pertain to the New York City Construction Codes effective on July 1, 2008 and any applicable subsequent amendments prior to December 31, 2014.

10.) References to the 2014 code pertain to the amendments and additions to the New York City Construction Codes effective on December 31, 2014 and any applicable subsequent amendments.

**§ 2. 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 by deleting the following three sections of law:**

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 (\$)
[1 RCNY 9-03]	[Class 1]	[Licensed Rigger failed to ensure scaffold worker met minimum req.]	[No]	[No]	[1600]	[No]	[8000]	[4000]	[16000]	[8000]	[25000]
[1 RCNY 9-03]	[Class 2]	[Licensed Rigger failed to ensure scaffold worker met minimum req.]	[No]	[No]	[800]	[Yes]	[4000]	[2000]	[8000]	[4000]	[10000]
[28-210.2]	[Class 2]	[Plumbing work contrary to approved app'n/plans that assists/maintain s convers'n of indust/manuf occupancy for resid use]	[No]	[Yes]	[1500]	[Yes]	[7500]	[3750]	[10000]	[7500]	[10000]

**§ 3. The Environmental Control Board proposes to amend the following charges in 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 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 (\$)
27-369 [ & ] BC 1020.2 (2008 code) & BC 1023.2 (2014 code)	Class 1	Failure to provide unobstructed exit passageway.	No	No	1200	No	6000	3000	12000	6000	25000
27-371_[ & ] BC 715.3.7 (2008 code) & BC 715.4.8 (2014 code)	Class 2	Exit door not self-closing.	Yes	No	500	Yes	2500	1250	5000	2500	10000
27-383(b), [ & ] BC 403.16 (2008 code) & BC 403.5.5 (2014 code)	Class 1	Failure to install <u>luminous egress</u> or photoluminescent exit path marking in a high-rise building.	No	No	4800	Yes	24000	12000	25000	24000	25000
27-393_[ & ] BC 1019.1.7 (2008 code) & BC 1022.8 (2014 code)	Class 2	Stair <u>and/or floor</u> identification signs missing and/or defective.	Yes	Yes	500	Yes	2500	1250	5000	2500	10000
27-509_[ & ] BC 3111.1 (2008 code) & BC 3112.1 (2014 code)	Class 3	Fence exceeds permitted height.	Yes	Yes	200	Yes	500	500	500	500	500
27-528_[ & ] BC 1024.1.3 (2008 code) & BC 1028.1.3 (2014 code)	Class 2	Approved Place of Assembly plans not available for inspection.	Yes	No	500	Yes	2500	1250	5000	2500	10000
27-921(a), [ & ] PC 107.3 (2008 code) & PC107.4 (2014 code)	Class 1	Failure to have new or altered plumbing system tested.	No	No	1000	No	5000	2500	10000	5000	25000

27-921(a), [&] PC 107.3 (2008 code) & PC107.4 (2014 code)	Class 2	Failure to have new or altered plumbing system tested.	Yes	No	500	Yes	2500	1250	5000	2500	10000
27-972(h), [&] BC 907.2.12.3 (2008 code) & BC 907.2.13.3 (2014 code)	Class 2	Failure to install an acceptable two-way voice communication system with central station connection.	Yes	No	500	Yes	2500	1250	5000	2500	10000
28-104.2.2	Class 2	Failure to provide approved/accepte d [plans] <u>construction</u> <u>documents</u> at job site at time of inspection.	Yes	No	500	Yes	2500	1250	5000	2500	10000
28-202.1	Class 1	Additional daily penalty for Class 1 violation of 28- 210.1 [ - 1 or 2 family converted to 4 or more families] or 28- <u>210.2.</u>	No	No	1000	No	45000	N/A	N/A	N/A	N/A
28-210.1	Class 1	[Residence altered for occupancy] <u>1-</u> or <u>2-</u> family <u>residence</u> <u>converted to or</u> <u>maintained</u> as a dwelling [from 1 or 2 families to] <u>for 4 or more</u> families.	No	No	2400	No	12000	6000	24000	12000	25000
28-210.1	Class 2	Residence altered [for occupancy] as a dwelling for more than the <u>number of</u> <u>families</u> legally [approved number of families] <u>authorized by the</u> <u>C of O or official</u> <u>records.</u>	No	No	1200	No	6000	3000	10000	6000	10000

28-210.2	Class 2	[Maintain or permit conversion of industrial] <u>Industrial/manufacturing [bldg to] building converted, maintained or occupied for residential use [w/out] contrary to the C of O [code compliance] or official records.</u>	No	No	2400	No	10000	6000	10000	10000	10000
[28-216.12.1] <u>28-217.1.1</u>	Class 2	Failure to submit required report of inspection of potentially compromised building.	Yes	Yes	800	Yes	4000	2000	8000	4000	10000
[28-216.12.6] <u>28-217.16</u>	Class 1	Failure to immediately notify Department that building or structure has become potentially compromised	No	No	1200	No	6000	3000	12000	6000	25000
28-301.1	Class 1	Failure to maintain building in a code compliant matter. Failure to provide number of required means of egress for every floor per BC 1018.1 (2008 code), [ & ] 27-366; BC 1021.1 (2014 code).	No	No	1200	No	6000	3000	12000	6000	25000
28-301.1	Class 1	Failure to maintain building in code-compliant manner: floor numbering signs missing and/or defective per BC 1019.1.7 (2008 code); 27-392; BC 1022.8 (2014 code).	No	No	1000	No	5000	2500	10000	5000	25000

28-301.1	Class 2	Failure to maintain building in code-compliant manner: floor numbering signs missing and/or defective per BC 1019.1.7 (2008 code); 27-392; BC 1022.8 (2014 code).	Yes	Yes	500	Yes	2500	1250	5000	2500	10000
28-301.1	Class 2	Failure to maintain building in code-compliant manner: failure to provide non-combustible proscenium curtain or stage water curtain per BC410.3.5; 27-546.	Yes	Yes	500	Yes	2500	1250	5000	2500	10000
28-301.1	Class 1	Failure to maintain building in code-compliant manner: Improper exit/exit access doorway arrangement per BC 1014.2 (2008 code); 27-361; BC 1015.2 (2014 code).	No	No	1200	No	6000	3000	12000	6000	25000
BC 1704.21.1 (2008 code) & BC 1704.23.1 (2014 code)	Class 1	Fail to perform hydrostatic pressure test – sprinkler	No	No	2400	No	12000	6000	24000	12000	25000
BC 1704.22.1 (2008 code) & BC 1704.24.1 (2014 code)	Class 1	Fail to perform hydrostatic pressure test – standpipe	No	No	2400	No	12000	6000	24000	12000	25000
BC 1905.6.3.2 (2008 code) & BC 1905.6.3.3 (2014 code)	Class 2	Failure to comply with ASTM C31 standards for concrete cylinder test samples	No	No	1600	No	8000	4000	10000	8000	10000
BC 3301.8	Class 1	Failure to promptly notify the Department of an accident or damage to adjoining property at construction/demolition site.	No	No	2500	No	12500	6250	25000	12500	25000

BC 3303.3 [& 27-1020](2008 code)	Class 2	Failure to post D.O.T. permit for street/sidewalk closing.	Yes	No	500	Yes	2500	1250	5000	2500	10000
BC 3303.8.1	Class 1	Failure to provide <u>standpipe or</u> air pressurized alarm system for standpipe system during construction or demolition operation.	No	No	2400	No	12000	6000	24000	12000	25000
BC 3307.1.1 (2008 code) & BC 3307.4.6 (2014 code)	Class 1	Prohibited Outdoor Ad. Co. sign on sidewalk shed or construction fence.	No	No	10000	Yes	25000	25000	25000	25000	25000
BC 3307.1.1 (2008 code) & BC 3307.4.6 (2014 code)	Class 2	Posting of unlawful signs, information, pictorial representation, business or advertising messages on structures.	Yes	No	2400	Yes	10000	6000	10000	10000	10000
BC 3307.3.1 (2008 code), [ & ] 27-1021(a) & BC 3307.6.2 (2014 code)	Class 1	Failure to provide sidewalk shed where required.	No	No	4800	No	24000	12000	25000	24000	25000
BC 3307.6.4 (2008 code) & BC 3307.6.4.11 (2014 code)	Class 2	Sidewalk shed does not meet color specification	Yes	No	800	Yes	4000	2000	8000	4000	10000
BC 3310.8.2 (2008 code) & BC 3310.8.2.1 (2014 code)	Class 1	Site safety manager/ coordinator failed to immediately notify the department of conditions as required	No	No	2500	No	12500	6250	25000	12500	25000
BC 3314.1.1 (2008 code), [ & ] 27-1050.1 & BC 3314.4.1.5 (2014 code)	Class 2	Failed to notify Department prior to [use/inst. off C-hooks/outtrigger beams in connection with] <u>installation or removal of</u> Suspended Scaffold.	No	No	800	Yes	4000	2000	8000	4000	10000

BC 3314.4.3.1 (2008 code). [&] 27-1045 & BC 3314.4.3 (2014 code)	Class 1	Failure to perform safe/proper inspection of suspended scaffold.	No	No	10000	No	25000	25000	25000	25000	25000
BC 3314.4.3.1 (2008 code). [&] 27-1045(b) & BC 3314.4.3.4 (2014 code)	Class 1	No record of daily inspection of Suspended Scaffold performed by authorized person at site.	No	No	2400	No	12000	6000	24000	12000	25000
BC 3314.4.5 (2008 code) & BC 3314.4.5.1 (2014 code)	Class 1	[Erected, dismantled repaired, maintained, modified or removed supported scaffold without a scaffold certificate of completion.] <u>Unqualified supervisor or worker performing work on scaffold.</u>	No	No	2400	Yes	12000	6000	24000	12000	25000

**§ 4. 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 one new charge after the entry in that schedule for NYC Admin. Code 28-118.3.2, Changes inconsistent with existing certificate of occupancy, 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 (\$)
28-118.3.2.1	Class 3	<u>Address, block and/or lot, or metes and bounds of zoning lot contrary to certificate of occupancy.</u>	Yes	Yes	400	Yes	500	500	500	500	500

**§ 5. 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 two new charges after the entry in that schedule for NYC Admin. Code 28-210.1, Illegal residential conversion, 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>28-210.1</u>	<u>Class 1</u>	<u>Multiple dwelling converted, maintained or occupied with 3 or more additional dwelling units than legally authorized by the C of O or official records.</u>	<u>No</u>	<u>No</u>	<u>2400</u>	<u>No</u>	<u>12000</u>	<u>6000</u>	<u>24000</u>	<u>12000</u>	<u>25000</u>
<u>28-210.2</u>	<u>Class 1</u>	<u>Industrial/ manufacturing building converted, maintained or occupied for residential use for 3 or more additional dwelling units than legally authorized by the C of O or official records.</u>	<u>No</u>	<u>No</u>	<u>3200</u>	<u>No</u>	<u>16000</u>	<u>8000</u>	<u>25000</u>	<u>16000</u>	<u>25000</u>

**§ 6. 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 two new charges after the entry in that schedule for BC 3010.1 & 27-1006, Accidents, to read as follow:**

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>BC 3301.1.3 (2014 code)</u>	<u>Class 1</u>	<u>Failure to comply with manufacturer specifications.</u>	<u>No</u>	<u>No</u>	<u>1600</u>	<u>No</u>	<u>8000</u>	<u>4000</u>	<u>16000</u>	<u>8000</u>	<u>25000</u>

BC 3301.1.3 (2014 code)	Class 2	Failure to comply with manufacturer specifications.	Yes	No	800	Yes	4000	2000	8000	4000	10000
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**§ 7. 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 two new charges after the entry in that schedule for BC 3301.2 & 27-1009(a), Contractors, to read as follow:**

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 (\$)
BC 3301.7 (2014 code)	Class 1	Failure to maintain/ display on site documents required by BC Chapter 33.	No	No	1000	Yes	5000	2500	10000	5000	25000
BC 3301.7 (2014 code)	Class 2	Failure to maintain/ display on site documents required by BC Chapter 33.	Yes	No	500	Yes	2500	1250	5000	2500	10000

**§ 8. 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 four new charges after the entry in that schedule for BC 3304.4 & 27-1032, Excavation, to read as follow:**

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 (\$)
BC 3304.12 (2014 code)	Class 1	Failure to perform slurry operations in accordance with section.	No	No	2400	No	12000	6000	24000	12000	25000

<u>BC</u> <u>3305.3.1.2</u> <u>1</u> <u>(2014</u> <u>code)</u>	<u>Class 1</u>	<u>Failure to</u> <u>obtain</u> <u>registered</u> <u>design</u> <u>professional</u> <u>evaluation prior</u> <u>to using</u> <u>existing</u> <u>structure to</u> <u>support</u> <u>formwork</u> <u>loads.</u>	<u>No</u>	<u>No</u>	<u>2400</u>	<u>No</u>	<u>12000</u>	<u>6000</u>	<u>24000</u>	<u>12000</u>	<u>25000</u>
<u>BC</u> <u>3305.3.2</u> <u>(2014</u> <u>code)</u>	<u>Class 1</u>	<u>No site-specific</u> <u>formwork</u> <u>design drawings</u> <u>present per</u> <u>3301.7.</u>	<u>No</u>	<u>No</u>	<u>1000</u>	<u>No</u>	<u>5000</u>	<u>2500</u>	<u>10000</u>	<u>5000</u>	<u>25000</u>
<u>BC</u> <u>3305.3.3.2</u> <u>(2014</u> <u>code)</u>	<u>Class 1</u>	<u>Failure to</u> <u>perform</u> <u>required</u> <u>formwork</u> <u>observation.</u>	<u>No</u>	<u>No</u>	<u>2400</u>	<u>No</u>	<u>12000</u>	<u>6000</u>	<u>24000</u>	<u>12000</u>	<u>25000</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 DOB penalty schedule (implementation of LL 141)

**REFERENCE NUMBER:** 2014 RG 072

**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: September 29, 2014

**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: Amendment of DOB penalty schedule (implementation of LL 141)**

**REFERENCE NUMBER: OATH-ECB-48**

**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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

September 29, 2014  
Date