

**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 Transportation (DOT) Penalty Schedule. This schedule is found in Section 3-124 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 DOT.

**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, New York, 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, 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038.
- **Fax.** You can fax written comments to ECB at 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?** Sections 1049-a and 1043 of the New York City Charter and Sections 19-144 and 19-150 of the New York City 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 New York City Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049-a of the Charter.

### **Statement of Basis and Purpose**

The Environmental Control Board (“ECB”) proposes amendments to the Department of Transportation (DOT) penalty schedule, codified in Section 3-124 of Title 48 of the Rules of the City of New York. In an effort to support Mayor de Blasio’s Small Business First initiative and set penalties that are reasonable in relation to the violations cited, DOT has requested that ECB:

- lower the penalty for failure to obtain a confirmation number for a street opening permit on a protected street, and
- add a separate penalty for failure to obtain a confirmation number two hours prior to the commencement of a backfill on a protected street.

This amendment and the additional charge will clarify the difference between a respondent’s failure to notify the department prior to commencing a backfill on a protected street versus a respondent’s failure to obtain a confirmation number for any street opening permit on a protected street. They will also ensure that the penalty is proportionate to the violating condition cited, and will promote consistency within DOT’s fine structure by setting similar penalties for similar offenses.

### **Fine Decrease for 34 RCNY § 2-11(f)(2)(ii). Failure to obtain a confirmation number for a street opening permit on a protected street.**

In June 2013, 34 RCNY § 2-11(f)(2) of the Highway Rules was amended to require all permittees who have obtained a street opening permit on a protected street to also obtain a confirmation number. The purpose of this amendment was to clarify that a confirmation number is required for all such permits on protected streets regardless of whether a permittee engages in a backfill. As an unintended consequence of the rule change, permittees who fail to obtain a confirmation number but whose work does not involve a backfill or impact the roadway currently receive the same penalty as permittees who fail to obtain a confirmation number before performing a backfill in the roadway. Therefore, ECB proposes that the penalty for failing to obtain a confirmation number for a street opening permit on a protected street, where the

permittee is not engaging in backfill, be reduced from \$750 to \$250 with a default penalty of \$750.

**New Code Request for 34 RCNY § 2-11(f)(4)(i). Failure to obtain a confirmation number two hours prior to the commencement of a backfill on a protected street.**

When a permittee conducts a backfill without a confirmation number, it impacts DOT’s ability to conduct appropriate oversight of the construction activity taking place. Therefore, this charge imposes a penalty if a permittee fails to obtain such confirmation number at least two hours prior to the scheduled start time for the backfill, except as otherwise authorized by the Commissioner. The new charge, “Failing to obtain a confirmation number on a protected street two hours prior to the commencement of a backfill,” carries a penalty of \$750 with a default penalty of \$2,250.

[Deleted material is in brackets.]

New material is underlined.

**§ 1. The Environmental Control Board proposes to amend its DOT Penalty Schedule, found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to read as follows:**

Section/Rule	Description	Penalty	Default
34 RCNY 2-11(f)(2)(ii)	Failure to obtain a confirmation number prior to expiration of street opening permit (protected street)	[ <del>\$750</del> <u>\$250</u> ]	[ <del>\$2,250</del> <u>\$750</u> ]

**§ 2. The Environmental Control Board proposes to amend its DOT Penalty Schedule, found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, by adding a new charge immediately following the entry in that penalty schedule for 34 RCNY § 2-11(f)(2)(ii), “Failure to obtain confirmation number prior to expiration of street opening permit (protected street),” as follows:**

Section/Rule	Description	Penalty	Default
<u>34 RCNY 2-11(f)(4)(i)</u>	<u>Failure to obtain a confirmation number two hours prior to the commencement of a backfill on a protected street</u>	<u>\$750</u>	<u>\$2,250</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 Transportation Penalty Schedule (Confirmation Numbers)

**REFERENCE NUMBER:** 2014 RG 074

**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 24, 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 Transportation Penalty Schedule (Confirmation Numbers)

**REFERENCE NUMBER:** OATH/ECB-49

**RULEMAKING AGENCY:** Environmental Control Board

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) Reduces a penalty and adds a separate penalty, neither of which have cure periods because cure periods are not practicable under the circumstances.

    /s/ Norma Ponce    

Date: September 24, 2014

Mayor's Office of Operations