

City of New York
Environmental Control Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Environmental Control Board (ECB) is proposing to amend its rules of procedure to allow for service of hearing officer decisions and orders by hand delivery or by mail. The changes will also allow for regular mailing of Cease and Desist Orders and Notices of Special Hearing.

When and where is the Hearing? ECB will hold a public hearing on the proposed rule. The public hearing will take place at 2:00 pm on June 15, 2015. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

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

- **Website.** You can submit comments to the ECB through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail comments to ECB, Attention: James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, NY 10038.
- **Fax.** You can fax comments to ECB at 212-361-1900.
- **Hearing.** You can speak 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 or you can also sign up in the hearing room before the hearing begins on June 15, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to June 15, 2015.

What if I need assistance to participate in the Hearing? You must tell us 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 June 8, 2015.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules 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 ECB, 66 John Street, New York, NY 10038.

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

Statement of Basis and Purpose of Proposed Rule

Hand Delivery of Hearing Officer Decisions and Orders

The Environmental Control Board (ECB) is proposing to amend sections 48 RCNY 3-57, 3-71 and 3-73 of its rules of procedure. The proposed changes will allow for service by ECB of hearing officer decisions and orders by hand delivery or by mail.

ECB's current rule, 48 RCNY 3-57, requires ECB to serve decisions and orders on all parties but is silent as to how decisions are served. However, sections 3-71 and 3-73 refer to "mailing" of decisions and orders. Currently, ECB serves all decisions and orders by mail. To reduce costs, provide an additional service option, and to further clarify when the time to appeal begins to run, ECB is amending the rule to allow for both mailing and hand delivery of decisions and orders.

The amendment to 48 RCNY 3-57 also requires amending sections 3-71 and 3-73 of ECB's rules because, as stated above, those rules currently only refer to "mailing" of decisions and orders.

Delivery of Cease and Desist Orders and Notices of Special Hearing by Regular Mail

ECB is also amending 48 RCNY 3-91 to allow ECB to serve Cease and Desist Orders and Notices of Special Hearing by regular mail instead of by certified mail, return receipt requested. The Board issues a Cease and Desist order after the Department of Environmental Protection (DEP) has issued a respondent a notice of violation or several notices of violation, ECB has found the respondent in violation and the respondent has failed to correct the condition for which the violation was issued. The Cease and Desist Order requires the respondent to appear at a special hearing or have the equipment that is the subject of the violation sealed.

ECB has determined based on experience that service of these orders by certified mail is not needed since the DEP also serves these orders by delivering them to respondents at the address where the equipment at issue to be sealed is located. Furthermore, ECB records show that the United States Postal Service returns many of these mailings to ECB

because respondents fail to go to the post office to pick them up. Finally, ECB rules provide for prompt hearing (post-sealing special hearing) should equipment be sealed based on a failure to appear at a pre-sealing hearing.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise

Section 1. Subdivision (a) of section 3-57 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) *Hearing Officer's Recommended Decision and Order.* As soon as possible after conclusion of the hearing, the hearing officer shall prepare a recommended decision and order. The hearing officer's decision shall set forth findings of fact and conclusions of law, and it shall set forth the hearing officer's reasons for findings on all material issues. If the charges contained in the notice of violation are upheld, the hearing officer shall prepare an order setting forth the penalty, and if the board is authorized by law to impose remedial relief or other sanction, the relief or sanctions recommended. The recommended decision and order shall be filed with the executive director and served on all parties or their authorized representatives either personally or by mail.

§ 2. Subdivision (a) of section 3-71 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

(a) *Filing.* Any party aggrieved by the hearing officer's recommended decision and order may, within 30 days of [mailing] service of the same on that party, file written exceptions with the tribunal. A copy of the exceptions shall be served upon all parties, and proof of such service filed with the tribunal within 30 days of the [mailing] service of said decision and order on the party filing exceptions. Written exceptions must contain a concise statement of the issues presented, specific objections to the findings of fact and conclusions of law set forth in the hearing officer's recommended decision and order, and arguments presenting clearly the points of law and fact relied on in support of the position taken on each issue.

§ 3. Section 3-73 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

§3-73 Payment of Penalty.

a) No appeal by a respondent shall be permitted unless, within 20 days of the [mailing] service of the hearing officer's recommended decision and order on the respondent or the

respondent's authorized representative, the civil penalty imposed by said order is paid or the respondent shall have posted a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from.

(b) Any application for a waiver of such prior payment of the civil penalty must be made within 20 days of the [mailing] service of the hearing officer's recommended decision and order on the respondent or the respondent's authorized representative and must be supported by evidence of financial hardship. Waivers of such prepayment may be granted in the discretion of the executive director.

§ 4. Paragraph (c) of section 3-91 of chapter 3 of title 48 of the Rules of the City of New York is amended to read as follows:

(c) *Service*. The order to cease and desist and notice of special hearing shall be served personally [or] and by [certified] regular mail [, return receipt requested].

**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: Service of Decisions and Orders

REFERENCE NUMBER: 2015 RG 047

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: April 13, 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: Service of Decisions and Orders

REFERENCE NUMBER: OATH-ECB-58

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

April 13, 2015
Date