

# 1 RCNY §102-05

## CHAPTER 100

### Subchapter B Enforcement

#### **§102-05 Penalty for failure to certify correction of certain immediately hazardous violations.**

- (a) **Penalty amount.** Pursuant to §28-219.1 of the Administrative Code, and in addition to any penalties otherwise authorized by article 202 of chapter 2 of title 28 of the Administrative Code and the rules of the department, whenever any person fails to submit certification of correction of an immediately hazardous violation that was issued at a construction site and poses a threat of imminent danger to public safety or property, a penalty of \$5,000 shall be paid to the department.

Exception: This penalty does not apply to one- to four-family dwellings.

- (b) **Issuance of permits or certificates of occupancy; rescission of stop work order; approval of Certificates of Correction.** No permit or certificate of occupancy shall be issued, no stop work order may be rescinded, nor shall any Certificate of Correction for the immediately hazardous violation giving rise to the civil penalty be approved at the property until such penalty is paid to the department. Failure to pay such penalty shall not prevent the issuance of a permit for work to be performed pursuant to articles 215 or 216 of chapter 2 of title 28 of the Administrative Code.

(c) **Process.**

- (1) Where the department determines that a Certificate of Correction of the underlying immediately hazardous violation that is returnable to the Environmental Control Board/Office of Administrative Trials and Hearings (ECB/OATH) has not been submitted as provided in §28-219.1 of the Administrative Code, the department will send a notice of the civil penalty pursuant to this section to the owner of the property at which the immediately hazardous violation occurred and, if the owner is not the respondent named in the notice of violation for the underlying immediately hazardous violation, to such respondent. The notice will indicate the manner in which a challenge to the penalty may be made in accordance with this subdivision and that the penalty will be imposed unless the department receives such a challenge within 30 days after the date of such notice. The notice will include the bases on which such a challenge may be made. The department will send the notice by regular mail.
- (2) A challenge to the penalty may be made by the owner and/or the respondent named in the ECB/OATH notice of violation for the immediately hazardous violation. Such challenge must be made in a form and manner as set forth on the web site of the department.
- (3) The basis for such a challenge must be one of the following:
  - (i) the immediately hazardous ECB/OATH violation was dismissed,
  - (ii) the immediately hazardous ECB/OATH violation was downgraded to a major or lesser violation,
  - (iii) an acceptable Certificate of Correction for the immediately hazardous violation was submitted to the department within 30 days after the date of the notice sent pursuant to paragraph (1) of this subdivision;  
or
  - (iv) the immediately hazardous violation was issued on or after May 15, 2022 at a construction site for a one-to four-family dwelling.
- (4) The department will review any documents or evidence submitted by the person challenging the penalty and will mail or email notice of its determination to such person. If the challenge is denied, the penalty amount will be imposed 10 days after the date of such notice. The determination shall be the final determination of the department for purposes of review pursuant to article 78 of the civil practice law and rules.