

**City of New York
Office of Administrative Trials and Hearings
Environmental Control Board**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB), in accordance with Sections 1049 and 1043 of the New York City Charter, that OATH ECB repeals Section 3-111 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY), the Hazardous Substances Emergency Response Law (Hazardous Materials) Penalty Schedule. The proposed rule was published in *The City Record* on August 8, 2019, and a public hearing was held on September 10, 2019.

No testimony was given at the public hearing concerning the rule and OATH did not receive any written comments from the public.

Statement of Basis and Purpose of Final Rule

OATH ECB repeals its Hazardous Materials Penalty Schedule, which contains penalties for violations of Chapter 6 of Title 24 of the Administrative Code, because the Department of Environmental Protection is adopting substantially all of the OATH ECB Penalty Schedule into a new Chapter 59 of Title 15 of the RCNY.

OATH ECB is currently in the process of repealing all penalty schedules in its rules, codified in Subchapter G of Chapter 3 of Title 48 of the RCNY, with the intent that the penalty schedules be incorporated into the rules of the applicable agencies. This is being done because it is the agencies, not OATH ECB, that possess the rule- and policy-making authority over the laws which underlie the violations detailed in the penalty schedules. In addition, such repeals will serve OATH's core function as an adjudicatory body, as well as help to alleviate any false public perceptions that OATH is an enforcement agency, rather than a neutral arbiter.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has, until now, promulgated penalty schedules, the City's regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violations of their own rules and laws, based on the severity of each violation and its effect on City residents. The shifting of penalty schedules from OATH ECB to the rules of the enforcement agency will also make it easier for the public to find these penalties, as they will be located within the same chapter as the agency rules that support the violations alleged in their summonses. Finally, the rule repeal will speed up the rulemaking process by eliminating the need for OATH ECB to approve proposed or amended penalties for agency rules that have already been adopted by the City legislature and/or completed the steps required by the City Administrative Procedure Act (CAPA), during which the public still has the opportunity to comment on proposed penalties.

Working with the City's rulemaking agencies, the NYC Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective

review of the City’s existing rules, identifying those rules that could be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to increase public understanding and compliance. OATH’s rule repeal has been identified as meeting the criteria for this initiative.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 3-111 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, setting forth the Hazardous Material Penalty Schedule, is REPEALED.