

**City of New York
Office of Administrative Trials and Hearings**

Notice of Adoption of Rule

Pursuant to the authority vested in the Office of Administrative Trials and Hearings (OATH) by sections 1043, 1049, and 1049-a of the New York City Charter, OATH has adopted amendments updating penalties for violations of the Water Supply Law, rules pertaining to backflow devices, and rules that govern drilling and excavation.

The Environmental Control Board voted to approve a proposed version of these amendments on October 5, 2021. A proposed version of these amendments was published in The City Record on October 13, 2021. A public hearing was held on November 16, 2021. No testimony regarding the amendments was given at the public hearing, and OATH did not receive any written comments from the public. The Environmental Control Board voted to approve a final version of these amendments on December 9, 2021.

Statement of Basis and Purpose of Rule

Pursuant to the authority set forth in sections 1043, 1049, and 1049-a of the New York City Charter, the Office of Administrative Trials and Hearings (OATH) has adopted amendments updating penalties for violations of title 24, chapter 3 of the Administrative Code, also known as the Water Supply Law; title 15, chapter 20 of the Rules of the City of New York (RCNY), pertaining to backflow devices; and 15 RCNY, chapter 57, Drilling and Excavation Rules, recently adopted by the Department of Environmental Protection (DEP). OATH's Water Penalty Schedule is located in 48 RCNY § 3-126. The provisions codified in 48 RCNY, chapter 6 govern Environmental Control Board adjudicatory proceedings, as well as other proceedings under the jurisdiction of OATH's Hearings Division.

The amendments to the provisions of 48 RCNY § 3-126:

- Add a penalty for a violation of section 24-303.1 of the Administrative Code, a recent addition that prohibits the illegal discharge of fracking waste. The penalty of \$2,500 and the default penalty of \$10,000 are provided for in the statute.
- Update the description for a violation of 15 RCNY § 20-04(d) to include failure to submit an initial test report for a backflow prevention device, in addition to failure to install. This reflects the description that is generally used on summonses.
- Add a penalty for a violation of 15 RCNY § 20-04(i), a newly added provision that prohibits the removal, swapping, or bypassing of a backflow prevention device without DEP approval. The penalty of \$700 is the same as that for failing to install a backflow device.
- Add a penalty for a violation of 15 RCNY § 20-05(t), a newly added provision that requires the plumber who removes a water meter to submit a photograph of the meter to DEP. The penalty of \$350 is in line with the existing penalty for meter removal without a permit.

- Add a penalty for a violation of 15 RCNY § 20-08(b)(4), which requires the installation of a backflow device on connections to fire hydrants. While this is not a new rule, it has been added to the penalty schedule as it is cited somewhat frequently and should, therefore, have its own penalty instead of being under the miscellaneous provision. The penalty of \$300 is a greater incentive to comply than the miscellaneous penalty of \$150.
- Add penalties for violations of the Drilling and Excavation Rules. These rules, which recently went into effect and are found in 15 RCNY chapter 57, include requirements for drilling and excavation activities conducted in areas where DEP has underground infrastructure, such as water tunnels, in order to prevent possible damage to such infrastructure. The penalty of \$900 is nearly as high as possible (since the legal maximum is \$1,000) while still allowing for a higher default penalty, as violations of these rules will be issued to property owners and real estate developers, and the penalty needs to be as much of a deterrent as possible in order to avoid the possibility of very costly damage to DEP infrastructure.

Deleted material is in [brackets].

New material is underlined.

Section 1. One penalty under the heading “General Provisions,” set forth in section 3-126 of title 48 of the Rules of the City of New York, is amended, and new penalties are added under the headings “General Provisions” and “Drilling & Excavation Rules,” to read as follows:

	GENERAL PROVISIONS		
<u>A.C. § 24-303.1</u>	<u>Illegal discharge of fracking waste</u>	<u>\$2500</u>	<u>\$10000</u>
A.C. § 24-308	Illegal Use of Hydrant(s)	\$750	\$1000
A.C. § 24-337	Illegal waste of water (Residential)	\$250	\$500
A.C. § 24-339	Distribution/Sale/Import/Installation of water wasting plumbing fixtures	\$475	\$950
A.C. § 24-346(b)	Failure to comply with Commissioner’s Order	\$750	\$1000
15 RCNY § 20-01(b)(1)	Plumbing work w/o permit	\$250	\$500
15 RCNY § 20-01(e)	Failed to produce permit on demand	\$150	\$300
15 RCNY § 20-01(f)	Failed to obtain/return emergency permit	\$250	\$500
15 RCNY § 20-02(b)	Unlawful connection to City main	\$700	\$1000
15 RCNY § 20-03(k)(4)	Failed to protect curb valve/box from damage	\$250	\$500
15 RCNY § 20-03(w)	Failed to replace old service pipes upon establishment of new water service	\$250	\$500
15 RCNY § 20-03(x)	Failed to install meter on unmetered property when service pipe is replaced/repaired/relaid/installed	\$350	\$700
15 RCNY § 20-04(d)	Failed to install a backflow preventer <u>or submit initial test report</u>	\$700	\$1000
15 RCNY § 20-04(e)	Failed to submit an annual test report for a backflow preventer	\$500 or mitigation	\$1000

		penalty of \$50	
<u>15 RCNY § 20-04(i)</u>	<u>Removed/swapped/bypassed backflow device without DEP approval</u>	<u>\$700</u>	<u>\$1000</u>
15 RCNY § 20-05(a)	No meter in place	\$250	\$500
15 RCNY § 20-05(b)(1)	Meter repair/removal w/o permit	\$350	\$700
15 RCNY § 20-05(b)(2)	Failed to return meter permit	\$350	\$700
15 RCNY § 20-05(d)(5)	No reading receptacle for remote pad	\$250	\$500
15 RCNY § 20-05(g)	Improper size/type of meter	\$250	\$500
15 RCNY § 20-05(i)(1)	Meter not readily accessible	\$250	\$500
15 RCNY § 20-05(i)(2)-(12)	Improper setting of meter	\$250	\$500
15 RCNY § 20-05(i)(12)	Failed to design meter setting to ensure electrical continuity	\$150	\$300
15 RCNY § 20-05(j)	Prohibited meter bypass	\$500	\$1000
15 RCNY § 20-05(k)	Improper meter pit/box/vault construction	\$350	\$700
15 RCNY § 20-05(m)(1)	Failed to install new meter after unpermitted disconnection of old meter	\$750	\$1000
15 RCNY § 20-05(n)	Breaking seal on equipment w/o permit	\$500	\$1000
15 RCNY § 20-05(p)	Inadequate protection of meter/remote receptacle/AMR Transmitter/wiring	\$250	\$500
15 RCNY § 20-05(p)(2)	Relocated remote receptacle or AMR transmitter without permit	\$250	\$500
<u>15 RCNY § 20-05(t)</u>	<u>Failed to submit photo of meter to DEP</u>	<u>\$350</u>	<u>\$1000</u>
15 RCNY § 20-06	A.C./refrigeration violation	\$350	\$700
15 RCNY § 20-07(c)	Failed to submit self-certification of domestic water service pipe installation	\$250	\$500
15 RCNY § 20-08(a)(6)	Lawn/garden watering prohibited time/manner	\$150	\$300
15 RCNY § 20-08(a)(7)	Sidewalk flushing prohibited time/manner	\$150	\$300
15 RCNY § 20-08(a)(9)	Prohibited use of water for car washing	\$150	\$300
<u>15 RCNY § 20-08(b)(4)</u>	<u>Failed to install backflow preventer on hose connected to fire hydrant</u>	<u>\$300</u>	<u>\$600</u>
15 RCNY Chapter 20	Violation of miscellaneous rules regarding use and supply of water	\$150	\$300
	<u>DRILLING & EXCAVATION RULES</u>		
<u>15 RCNY § 57-03</u>	<u>Drilling or excavating in restricted area without permit</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)</u>	<u>Violating general condition(s) of drilling/excavation permit</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(1)</u>	<u>Failure to notify DEP 30 days prior to commencement of drilling or excavation</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(2)</u>	<u>Failure to drill/excavate only to depth specified in permit</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(3) and (5)</u>	<u>Failure to abandon and/or seal any unpermitted borehole or well</u>	<u>\$900</u>	<u>\$1000</u>

<u>15 RCNY § 57-05(b)(4) and (6)</u>	<u>Failure to abandon and/or fill any unpermitted excavation</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(7)</u>	<u>Failure to use blowout preventer when required</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(10)</u>	<u>Failure to provide required, certified documentation within 30 days of completion of drilling or excavation</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(11)</u>	<u>Failure to conduct required deviation survey</u>	<u>\$900</u>	<u>\$1000</u>