

**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-a and 1043 of the New York City Charter and Section 28-202.1 of the New York City Administrative Code. OATH ECB modifies its Department of Buildings (DOB) Penalty Schedule by amending two existing infractions related to Site Safety Managers/Coordinators and site-specific safety orientation programs, and adding five new infractions related to Construction Superintendents. This schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The proposed rule was published in the City Record on July 8, 2016, and a public hearing was held on August 9, 2016. Two members of the public attended the public hearing but did not provide testimony. OATH ECB did not receive any written comments concerning this rule.

**Statement of Basis and Purpose**

OATH ECB amends the Department of Buildings (DOB) Penalty Schedule, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to continue to promote a zero tolerance policy for safety-related violations and to ensure that penalties for safety-related infractions serve as an effective deterrent.

The amendment to the penalty schedule adds five new infractions and amends two existing infractions:

- The five new infractions reflect penalties for the broadened range of jobs that require a Construction Superintendent's supervision and the duties and responsibilities of a Construction Superintendent. The new infractions allow DOB to effectively enforce the new provisions found in Section 3301-02 of Chapter 3300 of Title 1 of the Rules of the City of New York (effective May 30, 2016), and assist DOB in meeting its mission of enhancing the quality of life for all New Yorkers and making New York City a safer place.
- The amendments to the two existing infractions increase penalty amounts and clarify the infraction descriptions. Failing to designate or provide a Site Safety Manager or Site Safety Coordinator results in unsafe jobsites that are ill-equipped to handle situations involving public or worker safety. In addition, site-specific safety orientation programs prepare workers to perform their jobs properly and in a safe manner, mitigating hazards related to construction work.

[Deleted material is in brackets.]

New material is underlined.

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**Section 1. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“Buildings Penalty Schedule”), is amended by adding two new entries relating to Subdivision (c) of Section 3301-2 of Title 1 of the Rules of the City of New York, and one new entry relating to Paragraph 7 of such Subdivision, after the entry for 1 RCNY 103-04(b)(5)(iii), “Removal of shed or protective measure without Department approval,” to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
1 RCNY 3301-02(c)	Class 1	<u>Construction Superintendent failed to perform duties per rule.</u>	No	No	\$10,000	No	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
1 RCNY 3301-02(c)	Class 2	<u>Construction Superintendent failed to perform duties per rule.</u>	No	No	\$5,000	Yes	\$25,000	\$10,000	\$10,000	\$10,000	\$10,000
1RCNY 3301-02(c)(7)	Class 1	<u>Construction Superintendent failed to immediately notify the department of conditions as required.</u>	No	No	\$2,500	No	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000

**Section 2. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by adding a new entry relating to Section 28-401.20 of the New York City Administrative Code after the entry for NYC Admin. Code 28-401.9, “Failure to file evidence of compliance with Workers Comp, law and/or disability benefits law,” to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
NYC Admin. Code 28-401.20	Class 1	<u>Licensee/registrant failed to fully and completely cooperate as per section.</u>	No	No	\$5,000	No	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000

**Section 3. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by adding a new entry relating to Section 3301.3 of the Building Code and Subdivisions (b) and (c) of Section 3301-02 of Title 1 of the Rules of the City of New York after the entry for BC 3301.2 & 27-1009(a), “Failure to institute/maintain safety equipment measures or temporary construction – No handrails,” to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>BC 3301.3 &amp; 1 RCNY 3301-02(b), (c)</u>	<u>Class 1</u>	<u>Failure to designate and/or have Construction Superintendent present at site as required.</u>	<u>No</u>	<u>No</u>	<u>\$10,000</u>	<u>No</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>

**Section 4. The entry for BC 3310.5 & 27-1009(d), “Failure to have Site Safety Manager or Coordinator present as required,” and the entry for 28-110.1, “Failure to conduct workers’ site-specific safety orientation program per site safety plan,” found in Buildings Penalty Schedule II in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, are amended to read as follows:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>BC 3301.3</u> & BC 3310.5 & <u>BC 3310.5.2</u> [ & 27-1009(d)]	Class 1	Failure to <u>designate and/or</u> have Site Safety Manager or <u>Site Safety</u> Coordinator present <u>at site</u> as required.	No	No	[\$2,400] <u>10,000</u>	[Yes] <u>No</u>	[\$12,000] <u>25,000</u>	[\$6,000] <u>12,500</u>	[\$24,000] <u>25,000</u>	[\$12,000] <u>25,000</u>	\$25,000
[28-110.1] <u>BC 3310.10</u>	Class 1	Failure to conduct [workers’] <u>a</u> site-specific safety orientation program <u>for all workers</u> [per site safety plan].	No	No	[\$1,200] <u>2,500</u>	No	[\$6,000] <u>12,500</u>	[\$3,000] <u>6,250</u>	[\$12,000] <u>25,000</u>	[\$6,000] <u>12,500</u>	\$25,000