

NOTICE OF ADOPTION OF FINAL RULE

Department of Environmental Protection

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE COMMISSIONER OF THE ENVIRONMENTAL PROTECTION by Section 1043 (c) of the New York City Charter and Sections 24-178 and 24-105 and sections 24-257 and 24-204 of the New York City Administrative Code, that the Department of Environmental Protection has amended the Air Code and Noise Code Penalty Schedules by replacing outdated citations to the rules of the Office of Administrative Trials & Hearings (OATH). These amendments were proposed and published in the City Record on March 27, 2017 and no comments were received. A public hearing was not required.

Statement of Basis and Purpose

On August 7, 2016, OATH made changes to its rules, which are found at Title 48 of the Rules of the City of New York (RCNY). OATH has repealed the Air Code and Noise Code Penalty Schedules from its rules and these penalty schedules have been promulgated by DEP as 15 RCNY 43-01 *et seq.* (Air) and 15 RCNY 47-01 *et seq.* (Noise). When DEP promulgated these penalty schedules in its rules, outdated references to sections of OATH's rules were carried over. The proposed rules replace these outdated references.

Consistent with the above, DEP promulgates the following amendments, to be found at 15 RCNY Chapters 43 and 47.

The text of the Rule follows.

Section 1. The opening paragraph of section 43-02 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 43-02 Air Code Penalty Schedule

When a respondent is found in violation of any of the following provisions of the New York City Administrative Code, Rules of the City of New York, or New York Codes, Rules and Regulations, any

civil penalties [recommended] imposed by a Hearing Officer under 48 RCNY § [3-57(a)] 6-17(a) and/or any default penalties imposed under 48 RCNY § [3-81(a)] 6-20(b) in accordance with § 1049-a(d)(1)(d) of the Charter, and/or any civil penalties imposed for admissions of violation(s) under 48 RCNY § [3-32] 6-09(a) or late admissions under 48 RCNY § [3-81(b)] 3-17, will be imposed in accordance with the following penalty schedule:

Section 2. Sections 47-01 and 47-02 of Title 15 of the Rules of the City of New York are amended to read as follows:

§47-01 General

Whenever a respondent is found in violation of any of the following provisions of the New York City Administrative Code or Rules of the City of New York, any civil penalties [recommended] imposed by a Hearing Officer pursuant to 48 RCNY §[3-57(a)] 6-17(a) and/or any default penalties imposed pursuant to 48 RCNY §[3-81(a)] 6-20(b) in accordance with §1049-a(d)(1)(d) of the New York City Charter and/or any civil penalties imposed for admissions of violation(s) pursuant to 48 RCNY §[3-32] 6-09(a) or late admissions pursuant to 48 RCNY §[3-81(b)] 3-17 will be imposed pursuant to the penalty schedules set forth below.

§47-02 Noise Code Penalty Schedule

All Citations are to the NYC Administrative Code unless otherwise indicated.

A stipulation penalty is imposed if there is a “Y” (Yes) in the Stipulation column in the Penalty Schedule rather than a “N” (No), and if a stipulation is offered and accepted at a hearing.

Definition of 2nd and/or 3rd and/or 4th offense: By the same respondent of the same provision of law, order, rule or regulation as the previous violation and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred, at the same premises as the previous violation (all violations committed within two years).

Pursuant to 48 RCNY §[3-81(b)] 3-17, a late admit fee of \$30.00 will be added to all the below listed penalties for a failure to submit a payment by mail[, as per 48 RCNY §3-32,] within 30 days of the mailing date of the default order issued against respondent.

