

NOTICE OF ADOPTION OF FINAL RULE

New York City Department of Environmental Protection

Notice is hereby given pursuant to the authority vested in the Commissioner of Environmental Protection by section 1043 of the New York City Charter and section 24-713 of the New York City Administrative Code (Ad Code), that the Department of Environmental Protection (DEP or the Department) promulgates and adopts a rule to establish penalties for violations of Title 24, Chapter 7 of the Administrative Code, also known as the Community Right-to-Know Law, and Title 15, Chapter 41 of the Rules of the City of New York, also known as the Community Right-to-Know Rules. The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) is adopting a companion rule removing the Community Right-to-Know Law Penalty Schedule from Title 48 of the Rules of the City of New York (RCNY).

Statement of Basis and Purpose of Rule

DEP has adopted a new rule, adding a new Chapter 54 of Title 15 of the (RCNY, to govern the siting and storage of hazardous substances stored in portable containers. The rule is authorized by section 1043 of the Charter of the City of New York and section 24-716(b) of the Ad Code.

The addition of this new rule requires a change to the existing Community Right-to-Know Penalty Schedule, in order to add penalties for 15 RCNY section 41-14 as specified in section 24-713(d) of the Ad Code.

The current Community Right-to-Know Law Penalty Schedule, which is located in OATH's rules at 48 RCNY § 3-104, will be repealed by OATH on the same day that this rule takes effect.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has until now promulgated penalty schedules, the regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violations of the rules and of the laws within their jurisdiction based on the severity of each violation and its effect on City residents.

Moving the penalty schedule to DEP's rules will also make it easier for the public to find the penalties.

Finally, the rule relocation will speed up the rulemaking process by eliminating the need for OATH ECB approval of proposed or amended penalties for agency rules that have already been established by the legislature and/or that have already undergone the City Administrative Procedure Act (CAPA) process by the enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Working with the City's rulemaking agencies, the Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. The repeal of 48 RCNY §3-104 was identified as meeting the criteria for this initiative.

DEP received no comments regarding the rule.

DEP's authority for this rule is found in New York City Charter section 1043 and Section 24-713 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

The text of the Rule follows.

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 54 to read as follows:

Chapter 54. Community Right-To-Know Law Penalty Schedule.

§54-01 General

- (a) For the purposes of this chapter, the term Extremely Hazardous Substance (EHS) has the same meaning as provided by section 24-702(h) of the administrative code.
- (b) Whenever a respondent is found in violation of any of the following provisions of the administrative code or the rules of the city of new york, any civil penalties recommended by a hearing officer pursuant to 48 RCNY §6-17(a) in accordance with §1049-A(d)(1)(d) of the Charter and/or any civil penalties imposed for admissions of violations pursuant to 48 RCNY§6-09(a) or late admissions pursuant to 48 RCNY §3-17 will be imposed pursuant to the penalty schedule set forth below.
- (c) A second or subsequent offense is a violation by the same respondent of the same section within five years of the prior violation.
- (d) Mitigating and Aggravating Factors:
 - (1) All additions and subtractions are cumulative, except that factors J and K cannot be applied together, and factors A, B, and L may only be applied when at least one aggravating factor is also present (i.e., they cannot be used to reduce the penalty to less than the legal minimum).
 - (2) Where the application of multiple aggravating factors would cause the legal maximum penalty to be exceeded, the legal maximum penalty (same as the default penalty) shall be imposed.

- A Subtract \$1,750 for compliance by first hearing date.
- B Subtract \$3,750 for compliance by first hearing date.
- C Add \$250 if there are any EHS stored at the facility.
- D Add \$1,750 if there are any EHS stored at the facility.
- E Add \$3,750 if there are any EHS stored at the facility.
- F Add \$100 for each unlabeled non-EHS hazardous substance more than one; add \$2,000 for each unlabeled EHS.
Add \$1,000 if there are 25 or more hazardous substances stored at the facility; add \$5,000 if there are more than 50 hazardous substances stored at the facility or if any EHS are stored at the facility. NOTE: This factor may only be applied until the legal maximum penalty has been reached.
- G Add \$5,000 for willful refusal to allow access to the facility, or physical interference with or obstruction of the inspection.
- H Add \$1,000 if there was an emergency response to the facility.
- I Add \$2,500 if there was a release of a hazardous substance at the facility.
- J Add \$4,500 if release of a hazardous substance at the facility resulted in injury to any person, or injury to plant or animal life, or damage to property or business.
- K Subtract \$250 where the existence of the violation was voluntarily disclosed to DEP by respondent.
- L Mitigate to zero where correction certified within 30 days of summons issuance.

Section 54-02 Community Right-to-Know Law Penalty Schedule

Section	Description	Offense	Penalty	Default	Stipulation	Mit/Agg
24-706(a)	<u>Failed to file a completed Facility Inventory Form</u>	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	Yes No No	CIJKL ADIJKL BEIJKL
-	<u>Failed to file a facility inventory update</u>	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	Yes No No	CIJKL ADIJKL BEIJKL
24-706(b)	<u>Failed to submit a Material Safety Data Sheet</u>	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	Yes No No	IJKL AIJKL BIJKL
24-706(c)	<u>Failed to make copy of FIF or MSDS available at facility</u>	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	No No No	IJKL IJKL IJKL
24-711	<u>Failed to properly label hazardous substance</u>	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	No No No	FIJKL FIJKL FIJKL
24-712	<u>Failed to give access to inspect facility</u>	1st 2nd	\$2500 \$5000	\$20000 \$20000	No No	GH GH

24-718	<u>Failed to properly file risk management plan</u>	1st 2nd 3rd	<u>\$1000</u> <u>\$3500</u> <u>\$7500</u>	<u>\$5000</u> <u>\$10000</u> <u>\$20000</u>	<u>No</u> <u>No</u> <u>No</u>	<u>IJKL</u> <u>AJKL</u> <u>BIJKL</u>
15 RCNY 41-14	<u>Failed to properly site/store hazardous substances stored in portable containers</u>	1st 2nd 3rd	<u>\$500</u> <u>\$3500</u> <u>\$7500</u>	<u>\$5000</u> <u>\$10000</u> <u>\$10000</u>	<u>Yes</u> <u>No</u> <u>No</u>	<u>M</u> <u>M</u> <u>M</u>