

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

Date / Time: August 9, 2012 / 3:30p.m.

Location: ECB
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

Contact: James Macron
Counsel to the Board
ECB
66 John Street, 10th Floor
New York, N.Y. 10038
(212) 361-1515

Proposed Rule Amendment

Pursuant to Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the Charter and Section 15-229 of the New York City Administrative Code, the Environmental Control Board proposes to amend subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, creating penalties for offenses adjudicated by the Environmental Control Board. This rule was not included in the Environmental Control Board's regulatory agenda because it was not anticipated at the time the agenda was created.

Instructions

- Prior to the hearing, you may submit written comments about the proposed rule to Mr. Macron by mail or electronically through NYC RULES at www.nyc.gov/nycrules. Individuals seeking to testify at the hearing should also notify Mr. Macron.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Mr. Macron by August 2, 2012.
- After the hearing, individuals interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to Mr. Macron.

Statement of Basis and Purpose

The Environmental Control Board (ECB) proposes to amend its Fire Department (FDNY) Penalty Schedule. This schedule is found in Section 3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY).

ECB proposes two amendments, described as follows:

Section 1: ECB is proposing an amendment to its FDNY Penalty Schedule to reflect a change in Section 109-02 of Title 3 of the RCNY related to the failure to prevent unnecessary or unwarranted alarms.

- Section 109-02 of Title 3 of the RCNY sets forth violation categories for the laws, rules, and regulations enforced by the Fire Department through the issuance of notices of violations returnable before the ECB. The failure to prevent unnecessary or unwarranted alarms pursuant to Section 907.20.6 of the Fire Code and Section 907-01(c) of Title 3 of the RCNY had previously been enforced as a Violation Category (VC) 11 violation. Section 109-02 was amended to clarify that the failure to prevent unnecessary or unwarranted alarms would be enforced under VC 12, rather than VC 11.
- *Penalties:* The penalties for a VC 12 violation are generally higher than the penalties for a VC 11 violation. Although the failure to prevent unnecessary or unwarranted alarms is now included within VC 12, the penalties for this violation remain unchanged. ECB is thus amending its penalty schedule to reflect that the penalties for this particular VC 12 violation will be the same as the penalties for a VC 11 violation.

Section 2: ECB is proposing to add two new entries to its FDNY Penalty Schedule related to two provisions of the Fire Code (FC).

- The first entry establishes penalties for the violation of FC 2609.8.
 - FC 2609.8 sets forth requirements related to the use of piped natural gas with oxygen in any hot work operation, including requirements for the use of certain protective equipment, and applies to both new and existing installations.
- The second entry establishes penalties for the violation of FC 3205.4.
 - FC 3205.4 sets forth requirements related to the filling and dispensing of cryogenic fluids. A cryogenic fluid is defined as a fluid having a boiling point lower than -130°F (-89.9°C) at 14.7 pounds per square inch absolute (psia) (an absolute pressure of 101.3 kPa).
- *Penalties:* The proposed penalties for violations of these two Fire Code provisions are within the guidelines set forth in Section 15-229 of the New York City Administrative Code. Section 15-229 authorizes a maximum penalty of \$1000 for a first violation and a maximum penalty of \$5000 for second and subsequent violations. No minimum penalty is mandated.

New text is underlined, and deleted material is in [brackets].

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

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Section 1. The Environmental Control Board is amending its FDNY Penalty Schedule found in Section 3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) to add the following entry after the entry for Violation Category 12 “Fire Protection Systems” to read as follows:

SECTION /VIOLATION CATEGORY	DESCRIPTION	FIRST VIOLATION			SECOND OR SUBSEQUENT VIOLATION		
		PENALTY	MIT.	MAX.	PENALTY	MIT.	MAX.
<u>Violation Category 12</u>	<u>Fire Protection Systems: Failure to Prevent Unnecessary or Unwarranted Alarms</u>	<u>750</u>	<u>375</u>	<u>1000</u>	<u>1875</u>	<u>935</u>	<u>5000</u>

Section 2. The Environmental Control Board is amending its FDNY Penalty Schedule found in Section 3-106 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) to add two new entries following the entry for FC 1404.1 “Smoking on Construction Site” to read as follows:

SECTION /VIOLATION CATEGORY	DESCRIPTION	FIRST VIOLATION			SECOND OR SUBSEQUENT VIOLATION		
		PENALTY	MIT.	MAX.	PENALTY	MIT.	MAX.
<u>FC 2609.8</u>	<u>Fail to Provide/Maintain Flashback Arrestor and Backflow Check Valve or Gas Booster</u>	<u>900</u>	<u>450</u>	<u>1000</u>	<u>2250</u>	<u>1125</u>	<u>5000</u>
<u>FC 3205.4</u>	<u>Filling and Dispensing of Cryogenic Fluids</u>	<u>600</u>	<u>300</u>	<u>1000</u>	<u>1500</u>	<u>750</u>	<u>5000</u>

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of FDNY Penalty Schedule

REFERENCE NUMBER: OATH-ECB-25

RULEMAKING AGENCY: OATH-ECB

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

(i) Provides a cure period.

/s/ Rachel Squire
Mayor's Office of Operations

6/22/12
Date