

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection (DEP) is promulgating rules that would establish penalties for violations of Title 24, Chapter 6 of the Administrative Code, also known as the Hazardous Substances Emergency Response (Hazardous Materials) Law. The Office of Administrative Trials and Hearings is proposing a companion rule removing the Hazardous Substances Emergency Response Law (Hazardous Materials) Penalty Schedule from Title 48 of the Rules of the City of New York.

When and where is the hearing? DEP will hold a public hearing on the proposed rule. The public hearing will take place at 12 noon on September 11, 2019. The hearing will be held in DEP's 19th floor conference room (Fishbowl) at 59-17 Junction Boulevard, Flushing NY 11373.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the DEP through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the DEP Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the DEP Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on September 11, 2019. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by September 11, 2019.

What if I need assistance to participate in the hearing? You may request a reasonable accommodation by contacting DEP by mail at the address given above or by telephone at 718-595-6531. Advance notice is required to allow sufficient time to arrange the accommodation. Please make the request us by September 4, 2019.

This location has the following accessibility option(s) available: wheelchair accessibility.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. Copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the DEP to make this rule? Section 1043 of the City Charter and sections 24-610(c) and 24-611 of the Administrative Code authorize DEP to make this proposed rule. This proposed rule was included in DEP's regulatory agenda for this fiscal year.

Where can I find DEP's rules? DEP's rules are in Title 15 of the Rules of the City of New York.

What rules govern the rulemaking process? DEP must meet the requirements of Section 1043(c) of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Environmental Protection (DEP) is proposing a new Chapter 59 to amend Title 15 of the Rules of the City of New York (RCNY) that would establish a penalty schedule for violations of sections 24-601 *et seq.* of the Administrative Code. The proposed rule is authorized by Section 1043 of the Charter of the City of New York and sections 24-610(c) and 24-611 of the Administrative Code.

The current Hazardous Substances Emergency Response Law Penalty Schedule, which is located in the rules of the Office of Administrative Trials and Hearings (OATH) at 48 RCNY § 3-111, will be repealed by OATH on the same day that this proposed rule takes effect.

The penalty schedule will be moved from OATH Environmental Control Board (ECB) to DEP's rules. 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 proposed 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 proposed repeal of 48 RCNY § 3-111 was identified as meeting the criteria for this initiative.

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 59 to read as follows:

Chapter 59. Hazardous Substances Emergency Response Law Penalty Schedule.

§59-01 General.

(a) Whenever a respondent is found in violation of any of the following provisions of the NYC Administrative Code, any civil penalties imposed by a hearing officer pursuant to 48 RCNY § 6-17(a) in accordance with § 1049-a(d)(1)(d) of the Charter or any civil penalties imposed for admissions of violations pursuant to 48 RCNY § 6-09(c) or late admissions pursuant to 48 RCNY § 3-17 will be imposed pursuant to the penalty schedule set forth below.

(b) All citations, unless otherwise indicated are to the NYC Administrative Code.

(c) A second violation is a violation by the same respondent of the same section of law with a date of occurrence within three (3) years of the date of occurrence of the previous violation.

§59-02 Hazardous Substances Emergency Response Law Penalty Schedule.

* The following shall be considered environmentally sensitive areas: wetlands and wetland buffer areas; National and State parks; critical habitats for endangered and threatened plant and animal species; wilderness and natural areas; marine sanctuaries; conservation areas; preserves; wildlife areas; scenic, wild or recreational rivers; seashore and lakeshore recreational areas; critical biological resource areas; National and State protected and critical environmental areas (CEAS) as defined in 6 NYCRR Section 617.2(i).

<u>Section/Offense/Penalty</u>	<u>Mitigating Factors (Cumulative)</u>	<u>Aggravating Factor (Cumulative, up to a Total Penalty of \$10,000)</u>	<u>Default</u>
<u>Admin. Code § 24-609(b) 1st offense Failed to comply with notification requirements upon release of hazardous substance \$4,000</u>	<u>1. Subtract \$500, if telephone within 24 hours. Telephone notification shall be found where respondent provided DEP with all of the telephone notification requirements as provided</u>	<u>1. Add \$2,500, if release occurred within 1,000 feet of any of the following: residence district as defined by the New York City Zoning Resolution; school, highway, parkway or any other three lane roadway;</u>	<u>\$10,000</u>

	<p><u>in 15 RCNY § 11-03(b) within 24 hours of when respondent knows or has reason to know of a release.</u></p> <p><u>2. Subtract \$500, if respondent did provide written notification. Written notification shall be found where respondent provided DEP with all of the written notification requirements as provided in 15 RCNY § 11-03(c).</u></p> <p><u>3. Subtract \$1,000, if began abating release within 3 hours of when respondent knew or had reason to know of a release.</u></p>	<p><u>environmentally sensitive area*; hazardous/toxic substance(s) industry/facility required to file under the New York City Community Right-to-know Law, Title 24 Chapter 7 of the New York Administrative Code.</u></p> <p><u>2. Add \$2,500, if amount of release was equal to or greater than twice the Reportable Quantity.</u></p> <p><u>3. Add \$2,500, if release caused actual injury to wildlife and/or human health.</u></p> <p><u>4. Add \$2,500 if willful or intentional release of the listed hazardous substance.</u></p>	
<p><u>Admin. Code § 24-609(b)</u> <u>2nd Offense</u> <u>\$9,000</u></p>	<p><u>SAME AS ABOVE</u></p>	<p><u>SAME AS ABOVE</u></p>	<p><u>\$10,000</u></p>
<p><u>Admin Code § 24-610(c) 1st Offense willfully violated or failed or refused to comply with Commissioner's Order</u> <u>\$3,000</u></p>	<p><u>1. Subtract \$1,000, if complied with that portion of Scope of Work Order relating to securing of premises/building.</u></p> <p><u>2. Subtract \$500, if complied with that portion of Scope of Work Order relating to identification of all hazardous substances.</u></p>	<p><u>1. Add \$1,500, if failed to comply with that portion of Scope of Work Order relating to Bills of Lading and Hazardous Waste Manifests.</u></p> <p><u>2. Add \$1,500, if total non-compliance, i.e. failed to comply with any part of Commissioner's Order. (In such cases, there could be no mitigating factors.)</u></p>	<p><u>\$10,000</u></p>
<p><u>Admin. Code § 24-610(c) 2nd Offense \$4,500</u></p>	<p><u>SAME AS ABOVE</u></p>	<p><u>SAME AS ABOVE</u></p>	<p><u>\$10,000</u></p>

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Hazardous Substances Emergency Response Penalty Schedule

REFERENCE NUMBER: 2019 RG 060

RULEMAKING AGENCY: Department of Environmental Protection

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

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 7/26/2019

