



## NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Title 24 of the Rules of the City of New York

**What are we proposing?** The Department of Health and Mental Hygiene (the “Department”) is proposing to add a penalty schedule to Chapter 31 (Water Tank Inspections) of Title 24 of the Rules of the City of New York to provide penalties for building owners that are found to be in violation of the requirement to record and report the results of their annual inspections of drinking water tanks to the Department in accordance with Chapter 31, the Administrative Code of the City of New York and the New York City Health Code.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rules. The public hearing will take place at 2PM to 4PM on April 14, 2016. The hearing will be at:

New York City Department of Health and Mental Hygiene  
Gotham Center  
42-09 28th Street, 3<sup>rd</sup> Floor, Room 3-32  
Long Island City, NY 11101-4132

**How do I comment on the proposal?** Anyone can comment on the proposal by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov)
- **Mail.** You can mail written comments to:  
New York City Department of Health and Mental Hygiene  
Office of General Counsel  
Attn: Svetlana Burdeynik  
42-09 28<sup>th</sup> Street, CN31  
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposal at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on April 14, 2016. You can speak for up to five minutes.

**Is there a deadline to submit written comments?** Written comments must be received on or before 5:00 p.m. on April 14, 2016.

**Do you need assistance to participate in the hearing?** You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by March 31, 2016.

**Can I review the comments made on the proposed amendments?** You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

**What authorizes the Department to make this rule?** Section 556 of the New York City Charter (the "Charter") authorizes the Department to regulate all matters affecting health in New York City, and specifically to supervise and regulate the purity and public health aspects of the water supplied in the City. Section 17-194 of the New York City Administrative Code (the "Administrative Code") authorizes the Commissioner of the Department to make rules with regard to annual water tank inspection records and reporting. This rule was not included in the Department's regulatory agenda because of an administrative oversight.

**Where can I find the Department's rules?** The rules of the Department of Health and Mental Hygiene can be found in Title 24 of the Rules of the City of New York.

**What rules govern the rulemaking process?** This notice is made according to the requirements of City Charter §1043.

### **Statement of Basis and Purpose**

#### ***Background***

Administrative Code § 17-194 provides that any owner of a building that has a water tank as part of its drinking water supply system must have it inspected at least once annually and requires the inspection to comply with applicable provisions of the New York City Health Code ("Health Code"). Inspection results must be recorded in a manner prescribed by the Commissioner of the Department.

Article 141 of the Health Code regulates certain aspects of the purity and sanitary condition of the City's potable water supply, including roof top water storage tanks. Water for thousands of New York City buildings is kept in these types of tanks. Health Code §141.07 ("Building Drinking Water Storage Tanks") requires that these tanks be inspected annually and that the person in control of a building using water storage tanks keep copies of the inspection records and make them available to the Department upon request.

Owners of buildings with water tanks are required to report annually to the Department the fact that the tanks have been inspected. Requiring annual reporting promotes building owner compliance with the inspection mandate and facilitates the Department's ability to monitor compliance. Data from these reports will be made publically available.

**Administrative Code provisions.** Administrative Code § 17-194, enacted as Local Law 11 for the year 2009, provides for the annual inspections of water tanks, with results to be recorded in accordance with Department rules, maintained for five years from the date of inspection, and made available to the Department within five business days of receiving a request. Administrative Code § 17-194(e) allows for penalties of \$250 to \$1,000 per violation for violations of Administrative Code § 17-194 (b), and for a maximum of \$250 per violation for violations of Administrative Code § 17-194 (c). This proposed rule would set the penalties for these violations within those ranges.

§ 17-194(b) requires that tanks be inspected annually for compliance with applicable laws; results of inspections be recorded in a manner prescribed by the Commissioner; results of inspections be

maintained for five years; and results of inspections be made available to the Department within five business days of being requested.

§ 17-194 (c) requires a building owner to post a notice in a building informing tenants how to obtain the results of inspections..

**Health Code provisions.** Health Code Article 141 (“Drinking Water”) supports maintenance of the purity and sanitary condition of the City’s potable water supply. Health Code §141.07 regulates building drinking water storage tanks as follows:

§141.07 (b) requires that owners and other persons in control of buildings serviced by water storage tanks annually inspect the physical condition of tanks and sample tank water for bacteriological quality.

§141.07(c) requires written reports of these inspections to be maintained for at least five years, and provided to the Department within five business days of a request by the Department. As of January 1, 2015, documentation of the inspections must be submitted to the Department, indicating whether the results of the inspection were satisfactory.

§141.07(d) requires a building owner to post a notice in a building informing tenants how to obtain the results of inspections.

§141.07(e) requires owners to immediately correct any unsanitary conditions identified in the water tank inspections; to clean the tank when indicated in accordance with Health Code §141.09; and to report any unsatisfactory findings in bacteriological sampling to the Department within 24 hours of receipt of such findings.

§141.07(f) provides that failure to submit reports to the Department when requested, or failure to submit the required annual documentation of an inspection, is prima facie evidence that no inspection was done at that time, and that separate violations may be issued for each year for which a required inspection report was not submitted.

§141.09 (“Building Water Tank Cleaning, Painting and Coating”) requires that when water storage tanks are cleaned, painted or coated, that work be done in accordance with industry standards, incorporating appropriate disinfection processes, by a duly qualified person or entity.

**Department rules.** In April 2015, the Department adopted a new Chapter 31 (“Drinking Water Tank Inspections”) of Title 24 RCNY. Section 31-02(a) of this new chapter requires building owners or their agents to report the results of the annual inspections of their drinking water storage tanks to the Department no later than January 15<sup>th</sup> of the following year.

### ***Proposed Changes***

The proposed rule amends Chapter 31 to establish a penalty schedule for sustained violations adjudicated at the Office of Administrative Trials and Hearings of the City of New York (OATH).

Notices of violations will be written, and penalties will be requested for each violation related to each drinking water tank in a building, for each year to which the violation applies. A new section 31-03 provides that penalties set forth in Appendix 31-A must be imposed for sustained violations. Violations related to record keeping will be \$250, to be doubled to \$500 if the owner or other person served with a notice of violation or a summons fails to appear at a hearing and is found in default. Penalties for failure

to conduct inspections and to clean tanks, report conditions or otherwise correct violations are established at \$500, and doubled if the owner or other person served with a notice of violation or a summons fails to appear at a hearing and is found in default to \$1,000.

***Statutory Authority***

These amendments to Chapter 31 of Title 24 of the Rules of the City of New York are authorized under §§ 556 and 1043 of the Charter; § 17-194 of the Administrative Code; and §141.07 of the Health Code. Pursuant to § 556 of the Charter, the Department has jurisdiction to regulate all matters affecting health in the City, and specifically to supervise and regulate the purity and public health aspects of the water supplied in the City. Section 1043 of the Charter gives the Department rulemaking powers. Administrative Code § 17-194(b) and Health Code §141.07(b) authorize the Commissioner of the Department to adopt rules for annual water tank inspection recording and reporting.

The proposed changes are as follows:

Underlined matter is new.

“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.

Section 1. Chapter 31 of Title 24 of the Rules of the City of New York is hereby amended by adding new section 31-03 and appendix 31-A to read as follows:

§31-03 Penalties. Owners or operators of buildings with drinking water tanks or other persons found to be in violation of any of the following provisions of law by a hearing officer at the Office of Administrative Trials and Hearings or successor tribunal must pay the penalties set forth in Appendix 31-A of this Chapter for each such violation sustained with respect to each building drinking water tank for each year to which such violation pertains.

**APPENDIX 31-A**

**BUILDING DRINKING WATER TANK PENALTIES**

<b><u>Citation</u></b>	<b><u>Violation Description</u></b>	<b><u>Penalty</u></b>	<b><u>Default</u></b>
<u>24 RCNY 31-02(a)</u>	<u>Failure to submit report of previous year’s inspection results by January 15</u>	<b><u>\$250</u></b>	<b><u>\$500</u></b>
<u>Admin. Code 17-194(b)</u>	<u>Failure to maintain records of inspections for one of the preceding five years</u>	<b><u>\$250</u></b>	<b><u>\$500</u></b>
<u>Admin. Code 17-194(c)</u>	<u>Failure to post notice of availability of inspection reports</u>	<b><u>\$250</u></b>	<b><u>\$250</u></b>
<u>NYCHC 141.07(b)</u>	<u>Failure to inspect drinking water tank, including testing water for bacteriological content.</u>	<b><u>\$500</u></b>	<b><u>\$1000</u></b>
<u>NYCHC 141.07(c)</u>	<u>Failure to provide results of drinking water tank inspection within five business days after receipt of Department’s request</u>	<b><u>\$250</u></b>	<b><u>\$500</u></b>

<u>NYCHC 141.07(e)</u>	<u>Failure to correct unsanitary condition of drinking water tank</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.07(e)</u>	<u>Failure to report to Department noncompliant bacteriology sample of water from drinking water tank within 24 hours</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.07(e)</u>	<u>Failure to clean drinking water tank when required</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.09(b)</u>	<u>Drinking water tank cleaned, painted and/or coated by an unqualified person or entity</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.09(c)</u>	<u>Failure to clean, paint or coat water tank in accordance with applicable law or industry standards</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.09(d)</u>	<u>Failure to disinfect water tank in accordance with applicable law or industry standards</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.09(e)</u>	<u>Failure to collect water sample following painting or treating of tank interior</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.09(f)</u>	<u>Failure to maintain or provide records of water tank work</u>	<u>\$250</u>	<u>\$500</u>

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

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

**RULE TITLE: Penalties for Violation of Requirements Relating to Building Drinking Water Tanks**

**REFERENCE NUMBER: DOHMH-66**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

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) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the violations could pose significant risks to public health and safety.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

February 18, 2016  
Date

**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:** Penalties for Violation of Requirements Relating to Building Drinking Water Tanks

**REFERENCE NUMBER:** 2016 RG 003

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

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: February 18, 2016