

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 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 proposing a companion rule removing the Community Right-to-Know Law 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 11 a.m. on January 16, 2019. The hearing will be in the Department's 19th floor fishbowl conference room 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 website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail comments to DEP, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax 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 rule 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 January 16, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by January 16, 2019.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs 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 718-595-6531. Advance notice is required to allow sufficient time to arrange the accommodation. Please tell us by January 9, 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 rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at a few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing, NY, 11373.

What authorizes the DEP to make this rule? Sections 1043 of the City Charter and Sections 24-713 of the Administrative Code authorize DEP to make this proposed rule. This proposed rule was not included in DEP's regulatory agenda for this Fiscal Year.

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

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

The current Community Right-to-Know Law Penalty Schedule, which is located in the rules of the Office of Administrative Trials and Hearings (OATH) at 48 RCNY § 3-104, 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 Environmental Control Board (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 §3-104 was identified as meeting the criteria for this initiative.

DEP's authority for these rules is found in sections of the 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.
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- 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.
- G 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.
- H Add \$5,000 for willful refusal to allow access to the facility, or physical interference with or obstruction of the inspection.
- I Add \$1,000 if there was an emergency response to the facility.
- J Add \$2,500 if there was a release of a hazardous substance at the facility.
- K 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.
- L Subtract \$250 where the existence of the violation was voluntarily disclosed to DEP by respondent.
- M 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)	Failed to file a completed Facility Inventory Form	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	Yes No No	CIJKL ADIJKL BEIJKL
-	Failed to file a facility inventory update	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	Yes No No	CIJKL ADIJKL BEIJKL
24-706(b)	Failed to submit a Material Safety Data Sheet	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	Yes No No	IJKL AIJKL BIJKL
24-706(c)	Failed to make copy of FIF or MSDS available at facility	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	No No No	IJKL IJKL IJKL
24-711	Failed to properly label hazardous substance	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$20000	No No No	FIJKL FIJKL FIJKL
24-712	Failed to give access to inspect facility	1st 2nd	\$2500 \$5000	\$20000 \$20000	No No	GH GH
24-718	Failed to properly file risk management plan	1st 2nd 3rd	\$1000 \$3500 \$7500	\$5000 \$10000 \$20000	No No No	IJKL AIJKL BIJKL
15 RCNY 41-14	Failed to properly site/store hazardous substances stored in portable containers	1st 2nd 3rd	\$500 \$3500 \$7500	\$5000 \$10000 \$10000	Yes No No	M M M

**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: Promulgation of Right to Know Penalty Schedule

REFERENCE NUMBER: 2018 RG 107

RULEMAKING AGENCY: Department of Environmental Protection

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Douglas Giuliano
Mayor's Office of Operations

December 3, 2018
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: Promulgation of Right to Know Penalty Schedule

REFERENCE NUMBER: 2018 RG 107

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: November 30, 2018