

## 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 proposing rules that would establish penalties for violations of Title 15, Chapter 19.1 of the Rules of the City of New York.

**When and where is the hearing?** DEP will hold a public hearing on the proposed rules. The public hearing will take place at 11:30 a.m. on January 2, 2019. The hearing will be in the Department's 19 floor Fishbowl hearing 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 DEP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).
- **Mail.** You can mail comments to Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax comments to the Department of Environmental Protection, 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 January 2, 2019. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by January 2, 2019.

**What if I need assistance to participate in the hearing?** You must tell the Bureau 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 December 26, 2018. Any mail notice must be received by this date.

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, a summary of oral comments concerning the proposed rule, and a transcript of the hearing will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing, NY, 11373.

**What authorizes DEP to make this rule?** Sections 1043 of the New York City Charter ("City Charter") and Chapter 5-A of Title 24 of the Administrative Code authorize DEP to make these proposed rules. These proposed rules were not included in DEP's regulatory agenda for this Fiscal Year, as they were not anticipated at the time the agenda was published.

**Where can I find the DEP's rules?** 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 or the "Department") is proposing a new Chapter 55 to amend Title 15 of the Rules of the City of New York (RCNY) that would establish penalties for violations of Chapter 19.1 of Title 15 of the Rules of the City of New York. The proposed Chapter 19.1 rules are needed to comply with the New York City municipal separate storm sewer system permit (NYC MS4 permit), which requires the City to reduce pollutants in stormwater runoff that discharge to the local waterbodies. The NYC MS4 permit was issued by the New York State Department of Environmental Conservation (NYSDEC) on August 1, 2015, in accordance with the federal Clean Water Act.

Chapter 19.1, which is being promulgated under separate rulemaking, enables the Commissioner to protect waters of the state by establishing two new regulatory programs:

- (i) an inspection and enforcement program to ensure that industrial stormwater sources are in compliance with state and local stormwater requirements; and
- (ii) a permitting, inspection and enforcement program for covered development projects, as defined in proposed Chapter 19.1, including requirements for construction and post-construction stormwater controls, standards for such controls, and penalties for non-compliance with the rules and permit conditions.

The proposed Chapter 55 penalty schedule is intended to enforce the program described in (ii) above. The fine range is based on the lowest possible permit fee- \$3000.00 (1-acre of development) - and the highest allowed by the MS4 legislation. The program described in (i) above will have a separate penalty schedule.

The proposed rules are authorized by section 1043 of the Charter of the City of New York and Chapter 5-A of Title 24 of the 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 55 to read as follows:

Chapter 55. Stormwater Penalty Schedule

§55-01 General

- (a) Whenever a respondent is found in violation of any of the following provisions of the Rules of the City of New York, 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(a) or late admissions pursuant to 48 RCNY §3-17 will be imposed pursuant to the penalty schedule set forth below.
- (b) A second offense occurs when a respondent is found to be in violation of the same section of the rules twice within two years. A third offense occurs when a respondent is found to be in violation of the same section of the rules for the third time within two years.
- (c) Mitigation is available for first offenses where respondent has satisfied the conditions set forth in the “Mitigation” column of the penalty schedule set forth below.
- (d) “Default” refers to a failure by respondent to appear or to make a request to reschedule.

§55-02 Stormwater Penalty Schedule

(a) Penalty Table

<u>Rule</u>	<u>Description</u>	<u>Violation</u>		<u>Default</u>
		<u>Penalty</u>	<u>Mitigation</u>	
<u>15 RCNY 19.1-03.3 (b)(1)</u>	<u>Commencing a covered development activity without a Stormwater Construction Permit from the department.</u>		<u>Fine may be reduced if a DEP inspector has inspected the site and confirmed that construction has been stopped prior to the first hearing date, and the permit application is received on or before the first hearing date.</u>	
<u>1st offense</u>		<u>3000</u>	<u>1000</u>	<u>6000</u>
<u>2nd offense</u>		<u>6000</u>		<u>8000</u>
<u>3rd offense</u>		<u>8000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(5)</u>	<u>Failure to have a qualified inspector conduct at least two site inspections (in accordance with the NYSDEC Construction General permit) every seven calendar days as long as greater than five acres of soil are disturbed.</u>			

<u>1st offense</u>		<u>2000</u>		<u>3000</u>
<u>2nd offense</u>		<u>3000</u>		<u>6000</u>
<u>3rd offense</u>		<u>4000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit.</u>			
<u>1st offense</u>		<u>1500</u>		<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit by not providing weekly inspection reports by a Qualified Inspector.</u>		<u>Fine may be reduced if the required weekly inspection reports for the required days, dated and signed by a Qualified Inspector, are submitted to DEP on or before the first hearing date.</u>	
<u>1st offense</u>		<u>1000</u>	<u>500</u>	<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit by not complying with the recommendations of the Qualified Inspector.</u>			
<u>1st offense</u>		<u>2000</u>		<u>4000</u>
<u>2nd offense</u>		<u>3000</u>		<u>6000</u>
<u>3rd offense</u>		<u>4000</u>		<u>8000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit by not having a Qualified Inspector inspect the site immediately after a runoff producing precipitation event.</u>			
<u>1st offense</u>		<u>2000</u>		<u>4000</u>
<u>2nd offense</u>		<u>3000</u>		<u>6000</u>

<u>3rd offense</u>		<u>4000</u>		<u>8000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit resulting or likely to result in a discharge of (i) washout of concrete, (ii) washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials, (iii) fuels, oils or other pollutants used in vehicle and equipment operation and maintenance, (iv) soap or solvents used in vehicle and equipment operation and maintenance; (v) toxic or hazardous substances from a spill or other release.		Fine may be reduced if DEP receives on or prior to the first hearing date photos that show the appropriate erosion and sediment control/pollution prevention practice implemented, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the approved SWPPP is in place and the applicable terms and conditions of the permit have been met.	
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit resulting or likely to result in a discharge that causes a substantial visible contrast to natural conditions of the waters of the state.		Fine may be reduced if DEP receives on or prior to the first hearing date photos that show the appropriate erosion and sediment control practice implemented, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the approved SWPPP is in place and terms and conditions of the permit have been met	
<u>1st offense</u>		<u>3000</u>	<u>1500</u>	<u>6000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	Failure to install and maintain erosion and sediment control practices in compliance with approved SWPPP.		Fine may be reduced if DEP receives on or prior to the first hearing date photos that show the appropriate erosion and sediment control practice implemented, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the approved SWPPP is in place and terms and	

			<u>conditions of the permit have been met.</u>	
<u>1st offense</u>		<u>3000</u>	<u>1500</u>	<u>6000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to follow the construction phasing plan included in the approved SWPPP.</u>		<u>Fine may be reduced if DEP receives, on or prior to the first hearing date, photos that show the appropriate erosion and sediment control practice implemented, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the approved SWPPP is in place and terms and conditions of the permit have been met.</u>	
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to implement pollution prevention measures included in the approved SWPPP.</u>		<u>Fine may be reduced if DEP receives, on or prior to the first hearing date, photos that show the appropriate pollution prevention practice(s) implemented, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the approved SWPPP is in place and terms and conditions of the permit have been met.</u>	
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7600</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(i)</u>	<u>Failure to implement the temporary and permanent stabilization plans in accordance with the approved SWPPP.</u>		<u>Fine may be reduced if DEP receives, on or prior to the first hearing date, photos that show the appropriate erosion and sediment control practice implemented, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the approved SWPPP is in place and terms and conditions of the permit have been met.</u>	
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>

<u>15 RCNY 19.1-03.3 (b)(8)(ii) or (iii)</u>	<u>Failure to renew or extend a stormwater construction permit.</u>		<u>Fine may be reduced if the applicant renews the permit on or before the first hearing date.</u>	
<u>1st offense</u>		<u>3000</u>	<u>1000</u>	<u>6000</u>
<u>2nd offense</u>		<u>6000</u>		<u>8000</u>
<u>3rd offense</u>		<u>8000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(iv)</u>	<u>Failure to notify the department prior to starting construction.</u>			
<u>1st offense</u>		<u>1000</u>		<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(v)</u>	<u>Failure to post the stormwater construction permit at the site.</u>		<u>Fine may be reduced if DEP receives, on or prior to the first hearing date, photos that show the permit has been posted at the work site.</u>	
<u>1st offense</u>		<u>1000</u>		<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3 (b)(8)(vi)</u>	<u>Failure to retain a copy of the SWPPP at the development site.</u>			
<u>1st offense</u>		<u>1000</u>		<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3(b)(8)(vii)</u>	<u>Failure to notify the department of a temporary shutdown or inspect the site during a temporary shutdown.</u>		<u>Fine may be reduced if DEP receives, on or prior to the first hearing date, photos that show the site is stabilized, and a signed statement from a Qualified Inspector that contains a stamp or a seal confirming that the site will be inspected every 30 days and immediately after rainfall events of more than 1.5".</u>	
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(b)(8)(viii)</u>	<u>Failure to submit a closure plan prior to terminating construction.</u>		<u>Fine may be reduced if DEP receives, on or prior to the first hearing date, photos that show the site is stabilized and a closure plan is submitted to the Department for review.</u>	

<u>1st offense</u>		<u>3000</u>	<u>1000</u>	<u>6000</u>
<u>2nd offense</u>		<u>6000</u>		<u>8000</u>
<u>3rd offense</u>		<u>8000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(b)(8)(ix)</u>	<u>Failure to submit amendments.</u>		<u>Fine may be reduced if a minor amendment(s) submission is received by DEP on or before the first hearing date.</u>	
<u>1st offense</u>		<u>1000</u>	<u>0</u>	<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3(b)(8)(x)</u>	<u>Failure to submit major amendments to the SWPP for review and approval.</u>		<u>Fine may be reduced if an application for major amendment(s) is received by DEP on or before the first hearing date.</u>	
<u>1st offense</u>		<u>1500</u>	<u>1000</u>	<u>3000</u>
<u>2nd offense</u>		<u>3000</u>		<u>6000</u>
<u>3rd offense</u>		<u>4000</u>		<u>8000</u>
<u>15 RCNY 19.1-03.3(b)(11)</u>	<u>Failure to maintain records of all inspections and tests required throughout the period of construction and for 5-years after the completion of construction.</u>		<u>Fine may be reduced if records of all inspections and tests required through the period of construction and for 5-years after the completion of construction are submitted to DEP on or before the first hearing date.</u>	
<u>1st offense</u>		<u>1000</u>	<u>500</u>	<u>3000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3 (c )(1)(i)</u>	<u>Failure to obtain a stormwater maintenance permit.</u>			
<u>1st offense</u>		<u>3000</u>		<u>6000</u>
<u>2nd offense</u>		<u>4000</u>		<u>8000</u>
<u>3rd offense</u>		<u>5000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(c ) (3)(i)</u>	<u>Failure to submit annual certification to the department.</u>			
<u>1st offense</u>		<u>1500</u>		<u>3000</u>
<u>2nd offense</u>		<u>3000</u>		<u>6000</u>
<u>3rd offense</u>		<u>4500</u>		<u>9000</u>
<u>15 RCNY 19.1-03.3(c ) (3)(ii)</u>	<u>Failure to renew a stormwater maintenance permit.</u>			

<u>1st offense</u>		<u>3000</u>		<u>6000</u>
<u>2nd offense</u>		<u>4000</u>		<u>8000</u>
<u>3rd offense</u>		<u>5000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(c)(3)(iv)</u>	<u>Failure to notify the department of a change of ownership.</u>			
<u>1st offense</u>		<u>3000</u>		<u>6000</u>
<u>2nd offense</u>		<u>4000</u>		<u>8000</u>
<u>3rd offense</u>		<u>5000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(c)(4)(i)</u>	<u>Failure to get approval to modify a practice covered by a stormwater maintenance permit.</u>		<u>Fine may be reduced if a DEP inspector has inspected and confirmed that construction is suspended before the first hearing date, and an application for modification is received by DEP before the first hearing date</u>	
<u>1st offense</u>		<u>3000</u>	<u>1000</u>	<u>6000</u>
<u>2nd offense</u>		<u>6000</u>		<u>8000</u>
<u>3rd offense</u>		<u>8000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(c)(5)</u>	<u>Failure to maintain a stormwater management practice in good working condition to meet the applicable design standards.</u>		<u>Fine may be reduced if on or before the first hearing date DEP receives photos of the repaired or replaced stormwater management practice, and a signed written certification by a qualified professional that the stormwater management practice is repaired and in good working condition.</u>	
<u>1st offense</u>		<u>3000</u>	<u>1000</u>	<u>6000</u>
<u>2nd offense</u>		<u>6000</u>		<u>8000</u>
<u>3rd offense</u>		<u>8000</u>		<u>10000</u>
<u>15 RCNY 19.1-03.3(c)(6)</u>	<u>Failure to keep and maintain records.</u>			<u>3000</u>
<u>1st offense</u>		<u>1000</u>		<u>6000</u>
<u>2nd offense</u>		<u>2000</u>		<u>9000</u>
<u>3rd offense</u>		<u>3000</u>		<u>10000</u>

**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: Stormwater Penalty Schedule**

**REFERENCE NUMBER: 2018 RG 129**

**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 21, 2018

**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: Stormwater Penalty Schedule**

**REFERENCE NUMBER: 2018 RG 129**

**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) Mitigated penalties are available as set forth in the proposed rule.

/s/ Swetha Saseedhar  
Mayor's Office of Operations

November 26th, 2018  
Date