

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 to make minor revisions and corrections to the Asbestos Control Program rules and Air Asbestos Penalty Schedule.

When and where is the hearing? DEP will hold a public hearing on the proposed rule. The public hearing will take place at 10:30 am on July 22, 2019. The hearing will be held in DEP's 8th floor 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 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 July 22nd, 2019. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by July 22, 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 July 15th, 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 24-105 and 24-136 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 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 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043 of the City Charter and sections 24-136 and 24-105 of the Administrative Code.

Statement of Basis and Purpose of Proposed Rule

On January 6, 2019, DEP amended its asbestos rules, which are found at Title 15, Chapter 1 of the Rules of the City of New York (RCNY). After DEP promulgated these rules, companies engaged in asbestos abatement requested several minor clarifications. In response, DEP is proposing to revise the rules as follows:

- Clarify section 1-29 by specifying that only air monitoring technicians need to have their license at the work place, not all individuals;
- Clarify the requirements of section 1-36(b) as to how many air sampling technicians need to be present during sampling;
- Clarify that the requirements of section 1-42(a) regarding the placement of air samples apply to all asbestos projects, not only those that are conducted indoors;
- Change the requirements for lettering on notices to be posted under sections 1-81(a) and 1-125(a), as contractors advised that the required font sizes were impractical.

In addition, it was noted that the new Air Asbestos Penalty Schedule, found at Title 53 of Chapter 1 of the RCNY, which also became effective on January 6, 2019, had failed to carry over certain sections from the penalty schedule which had previously been located in the rules of the Office of Administrative Trials and Hearings. Accordingly, DEP proposes to amend the penalty schedule to correct those omissions.

Finally, the proposed rule divides the penalty schedule into three subdivisions (specifically, the RCNY, the New York State Industrial Code, and the New York City Administrative Code). No substantive change is intended with respect to the amendments made by sections six and nine of the proposal other than the addition of a penalty for a violation of Administrative Code § 24-1002.

Consistent with the above, DEP proposes to promulgate the following amendments, to be found at 15 RCNY Chapter 1 and 53.

The rule is authorized by section 1043 of the Charter and sections 24-105 and 24-136 of the Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory obligations and are used interchangeably in the rules as amended.

The text of the rule follows.

Section 1. Paragraph 1 of subdivision (d) of section 1-29 of subchapter C of chapter 1 of title 15 of the Rules of the City of New York is amended to read as follows:

(1) The DEP certificate number of all [individuals] air monitoring technicians who worked on the project;

§ 2. Subdivision (b) of section 1-36 of part 1 of subchapter D of chapter 1 of title 15 of the Rules of the City of New York is amended to read as follows:

(b) One air sampling technician must be present per three work areas in one work site to observe and maintain air sampling equipment for the duration of the air sample collection, except that if there are multiple work areas on the same floor, only one air sampling technician is required for that floor.

§ 3. Subdivision (a) of section 1-42 of part 3 of subchapter D of chapter 1 of title 15 of the Rules of the City of New York is amended to read as follows;

(a) The sampling zone for [indoor] air samples shall be representative of the building occupants' breathing zone. However, at no time shall the sampling cassette be placed less than 4 feet from the ground. Air samplers shall be placed so that they are not influenced by unusual air circulation patterns or by the configuration of the space or by each other. Air sampling cassettes shall be mounted upon commercially-available aluminum tripods and shall not be placed within two feet of walls or obstructions such as the corners of rooms or furniture.

§ 4. Subdivision (a) of part 2 of subchapter F of chapter 1 of section 1-81 of title 15 of the Rules of the City of New York is amended to read as follows:

(a) The building owner or designated representative must provide notification to all occupants of the work place and immediate adjacent areas of the asbestos project. Information provided in the notification must include contractor, project location and size, amount and type of ACM, abatement procedure, dates of expected occurrence and the Call Center "311" for government information and services. Postings of this notification must be in English and Spanish, at eye level, in a conspicuous, well-lit place, at the entrances to the work place and immediate adjacent areas. The notice must have the following heading: **NOTICE OF ASBESTOS ABATEMENT**, in a minimum of [two] one inch sans serif, gothic or block style lettering, with the balance of the lettering of the notice to be of the same type lettering in a minimum of one quarter inch size. The notices must be posted 7 calendar days prior to the start of the project and must remain posted until clearance air monitoring is satisfactorily concluded. A lessee initiating an asbestos project must give 10 calendar days notice to the owner of the subject building.

§ 5. Subdivision (a) of section 1-125 of part 2 of subchapter G of chapter 1 of title 15 of the Rules of the City of New York is amended to read as follows:

(a) Prior to the start of abatement activities on asbestos projects the building owner or designated representative must post a general notification at all main entrances to the structure. Postings of this notification must be in English and Spanish, at eye level in a conspicuous well-lit place that can be viewed by the public without obstruction. Information provided in the notification must include contractor, project location, that the project is regulated by NYC DEP, and the Call Center "311" for government information and services. The notice must have the following heading: **NOTICE OF ASBESTOS ABATEMENT**, in a minimum of [2 inches] one inch sans serif, gothic or block style lettering, with the balance of the lettering of the notice to be of the same type lettering in a minimum of [1] one quarter inch size. The notification must be posted throughout all abatement activities.

§ 6. The opening paragraph of subdivision (a) of section 53-02 of chapter 53 of title 15 of the Rules of the City of New York is amended to read as follows:

Penalty Table for Violations of Title 15 of the Rules of the City of New York.

§ 7. The penalty for a violation of 15 RCNY § 1-91(n) in subdivision (a) of section 53-02 of chapter 53 of title 15 of the Rules of the City of New York is amended to read as follows:

15 RCNY § [1-91(n)] 1-91(o)	Failed to smoke test/inspect/monitor ducts to ensure no fiber release	\$1,200	\$1,000	\$2,400	\$1,500
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§ 8. Subdivision (a) of section 53-02 of chapter 53 of title 15 of the Rules of the City of New York is amended by adding new penalties for violations of 15 RCNY § 1-91(n), 15 RCNY § 1-94(f), 15 RCNY § 1-94(g) and Admin. § 24-146.1(h) in alphanumeric order to read as follows:

<u>15 RCNY § 1-91(n)</u>	<u>Failed to install ducting to prevent fiber release</u>	<u>\$1,200</u>	<u>\$1,000</u>	<u>\$2,400</u>	<u>\$1,500</u>
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<u>15 RCNY § 1-94(f)</u>	<u>Failed to document daily inspection to ensure exits have been checked against blockage</u>	<u>\$2,400</u>	<u>\$1,500</u>	<u>\$4,800</u>	<u>\$3,000</u>
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<u>15 RCNY § 1-94(g)</u>	<u>Failed to stop abatement activities if exits are found blocked</u>	<u>\$4,800</u>	<u>\$3,000</u>	<u>\$9,600</u>	<u>\$6,000</u>
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§ 9. The penalties for a Violation of New York State Industrial Code Rule 56 – level 1, a Violation of New York State Industrial Code Rule 56 – level 2, a Violation of New York State Industrial Code Rule 56 – level 3, and Admin. § 24-146.1(h) in subdivision (a) of section 53-02 of chapter 53 of title 15 of the Rules of the City of New York are REPEALED, and two new subdivisions (b) and (c) are added to read as follows:

(b) Penalty Table for Violations of New York State Industrial Code.

<u>Section</u>	<u>Violation Description</u>	<u>1st</u>	<u>1st</u>	<u>2nd</u>	<u>2nd</u>
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		<u>Offense Penalty</u>	<u>Offense Stipulation</u>	<u>Offense Penalty</u>	<u>Offense Stipulation</u>
<u>12 NYCRR Part 56</u>	<u>Violation of New York State Industrial Code Rule 56 - level 1</u>	<u>\$4,800</u>	<u>\$3,000</u>	<u>\$9,600</u>	<u>\$6,000</u>
<u>12 NYCRR Part 56</u>	<u>Violation of New York State Industrial Code Rule 56 - level 2</u>	<u>\$2,400</u>	<u>\$1,500</u>	<u>\$4,800</u>	<u>\$3,000</u>
<u>12 NYCRR Part 56</u>	<u>Violation of New York State Industrial Code Rule 56 - level 3</u>	<u>\$1,200</u>	<u>\$1,000</u>	<u>\$2,400</u>	<u>\$1,500</u>

(c) Penalty Table for Violations of New York City Administrative Code.

<u>Section</u>	<u>Violation Description</u>	<u>1st Offense Penalty</u>	<u>1st Offense Stipulation</u>	<u>2nd Offense Penalty</u>	<u>2nd Offense Stipulation</u>
<u>Admin. § 24- 146.1(h)</u>	<u>Resumed work in violation of stop-work order</u>	<u>\$4,400</u>	<u>\$2,750</u>	<u>\$8,800</u>	<u>\$5,500</u>
<u>Admin. § 24-1002</u>	<u>Violated Master Environmental Remediation Technician Law</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$1,000</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: Amendment of Asbestos Rules and Air Asbestos Penalty Schedule.

REFERENCE NUMBER: 2019 RG 016

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: 6/6/2019

**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 Asbestos Rules and Air Asbestos Penalty Schedule

REFERENCE NUMBER: DEP-63

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/ Francisco X. Navarro
Mayor's Office of Operations

June 7, 2019
Date