

NOTICE OF ADOPTION OF RULE

New York City Department of Environmental Protection

Pursuant to the authority vested in the Commissioner of the Department of Environmental Protection (“DEP” or the “Department”) by Section 1043 of the New York City Charter and the Administrative Code provisions listed below, the Department has adopted a rule to establish penalties for certain violations of Title 24, Chapter 1 of the Administrative Code, also known as the New York City Air Pollution Control Code. A proposed version of this rule was published in the City Record on September 17, 2020. A public hearing was held on October 22, 2020. One comment was received; however, DEP has decided not to amend the text of this rule based on this comment. This rule will go into effect on December 18, 2020.

Statement of Basis and Purpose of Rule

DEP has adopted a rule to amend the City’s Air Code Penalty Schedule in Chapter 43 of Title 15 of the Rules of the City of New York to establish a new penalty for certain violations of Subdivision (b) of Section 24-154 of the New York City Administrative Code.

Local Law 61 of 2018, which took effect on January 1, 2019, added Section 24-154 to the Administrative Code. Subdivision (a) of such Section defines the term “covered building” to mean “a building that (i) contains ten or more dwelling units or (ii) is located on a zoning lot that contains 25,000 or more square feet of non-residential floor area[.]” and defines the term “covered person” to mean, “with respect to a building, a person who is an owner of such building, a managing agent of such building or an employee of such owner or agent.” This Subdivision (a) also defines “project” to mean the “mold remediation, mold assessment or mold abatement, of areas greater than ten square feet, but does not include full demolition of vacant buildings[.]” Paragraph (1) of Subdivision (b) of such Section provides that, for a covered building, covered persons are prohibited from performing mold assessment, abatement or remediation for a project. Paragraph (2) of Subsection (b) provides that mold assessment, abatement or remediation for a project must be performed by persons licensed to perform such work pursuant to Article 32 of the New York State Labor Law. Subdivision (d) of such Section of the Administrative Code authorizes the City to establish penalties for failing to comply with the provisions of that Section.

On March 25, 2019, pursuant to the authority provided in subdivision (f) of such Section, the Mayor authorized DEP and the City’s Department of Housing Preservation and Development to enforce the relevant provisions of Local Law 61 of 2018.

This amendment to the Air Code Penalty Schedule subjects owners of covered buildings to monetary penalties where mold assessment, abatement or remediation for a project involving a covered building is self-performed by a covered person or performed by a person not properly licensed pursuant to Article 32 of the New York State Labor Law.

DEP has established the following penalties for such violations of Subdivision (b) of Section 24-154: for a first violation, a penalty of \$800; for a second violation, a penalty of \$1600; and for a

third violation and for all subsequent violations, a penalty of \$2400. These monetary penalties will incentivize building owners to cause only property licensed persons to perform mold assessment, abatement or remediation work and deter building owners from performing such work in a manner that could threaten public health.

New material is underlined.

Section one. Section 43-02 of Title 15 of the Rules of the City of New York is amended by adding a new entry to the Air Code Penalty Schedule immediately following the entry for Section 24-153 of the administrative code to read as follows:

Section of Law	Violation Description	Compliance	1 st Offense Stip (\$)	1 st Offense (\$)	Default Penalty (\$)	2 nd Offense (\$)	2 nd Stip (\$)	3 rd and Subsq. Offense (\$)	3 rd and Subsq. Stip (\$)
<u>24-154(b)</u>	<u>Mold assessment, abatement or remediation for a project performed by a covered person or an unlicensed person.</u>	<u>Cause such work to be performed by an authorized person.</u>	<u>800</u>	<u>800</u>	<u>1000 (1st offense)/5000 (2nd offense)/1000 (3rd offense)</u>	<u>1600</u>	<u>1600</u>	<u>2400</u>	<u>2400</u>

§2. The rule takes effect on December 18, 2020.