

## NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Notice of Public Hearing and Opportunity to Comment on Proposed Rule

**What are we proposing?** The Department of Environmental Protection (“DEP”) is proposing a rule to amend the penalty schedule for violations of the City’s Air Pollution Control Code to include an additional penalty that may be imposed in certain circumstances where building owners, managing agents, or their employees self-perform mold assessment, abatement or remediation work or cause such work to be performed by a person who is not properly licensed to perform such work.

**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. 2020 on October 22, 2020. The hearing will be conducted by video conference and is accessible by:

**Internet Video and Audio.** For access, control click on this link: [Join Microsoft Teams Meeting](#)

- **Phone.** For access, dial: 347-921-5612  
When prompted, enter Meeting ID: 611 782 63#

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

- **Website.** You can submit comments to DEP through the NYC Rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).
- **Mail.** You can mail written comments to DEP at the following address: Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to DEP’s 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 for up to three minutes. Please access the public hearing by internet video and audio or by telephone using the instructions above.

**Is there a deadline to submit comments?** Yes, you must submit comments by October 22, 2020.

**What if I need assistance to participate in the hearing?** You must tell the Bureau of Legal Affairs if you need a reasonable accommodation because of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by e-mail at [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov) . You may also tell us by telephone at 718-595-6531. Advance notice is

requested to allow sufficient time to arrange the accommodation. Please tell us by October 15, 2020.

**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/>. Shortly after the public hearing, a transcript and copies of all written comments will be available to the public upon request by email [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).

**What authorizes DEP to make this rule?** Section 1043 of the City Charter and Sections 24-105 and 24-154 of the Administrative Code authorize DEP to make this proposed rule. This proposed rule was 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 laws 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.

### **Statement of Basis and Purpose of Proposed Rule**

DEP is proposing 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 defined "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 would subject 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 proposes to establish 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.

This rule amendment exclusively establishes an amount of fees. Consequently, pursuant to item (iii) of Paragraph (4) of Subdivision (d) of Section 1043 of the New York City Charter, this rule amendment is exempt from the analysis procedure set forth in subdivision (d) therein.

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 <sup>st</sup> Offense Stip (\$)	1 <sup>st</sup> Offense (\$)	Default Penalty (\$)	2 <sup>nd</sup> Offense (\$)	2 <sup>nd</sup> Stip (\$)	3 <sup>rd</sup> and Subsq. Offense (\$)	3 <sup>rd</sup> 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 (1<sup>st</sup> offense)/5000 (2<sup>nd</sup> offense)/10000 (3<sup>rd</sup> offense)</u>	<u>1600</u>	<u>1600</u>	<u>2400</u>	<u>2400</u>