

**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 Water Penalty Schedule

REFERENCE NUMBER: 2021 RG 076

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: September 30, 2021

**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 Water Penalty Schedule

REFERENCE NUMBER: OATH-ECB-109

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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/ Francisco X. Navarro
Mayor's Office of Operations

September 30, 2021
Date

**City of New York
Office of Administrative Trials and Hearings**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings is proposing amendments that would update penalties for violations of the Water Supply Law, rules pertaining to backflow devices, and rules that govern drilling and excavation.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place **from 10:00 a.m. through 11:00 a.m. on November 16, 2021**. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, visit:

<https://nyc-oath.webex.com/nyc-oath/j.php?MTID=m7e932415290f00cfb535b8b136af30f1>

When prompted, enter **Meeting ID: 2336 470 3597**
Password: OATH

- **Phone.** For access, dial: **1-646-992-2010**
When prompted, enter **Meeting ID: 23364703597##**

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

- **Website.** You can submit comments to OATH through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Joy Thompson, Assistant General Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Joy Thompson, Assistant General Counsel, at 212-361-1900.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing may 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 written comments? You may submit written comments until **5:00 p.m. on November 16, 2021**.

What if I need assistance to participate in the hearing? You must tell us in advance if you need a reasonable accommodation of a disability at the hearing, including a sign language interpreter. You may contact us by email at enolan@oath.nyc.gov or by telephone at (212) 436-0708 to request a reasonable accommodation. Please tell us by **November 15, 2021**.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>. Shortly after the public hearing, a summary of oral comments and copies of all written comments will be available to the public on OATH's website, at <https://www1.nyc.gov/site/oath/about/legal-resources-and-rule-making.page>.

What authorizes OATH to make this rule? Sections 1043, 1049, and 1049-a of the New York City Charter authorize OATH to make this proposed rule. This proposed rule is included in OATH's regulatory agenda for this Fiscal Year.

Where can I find OATH's rules? OATH's rules are located in title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? OATH must comply with the requirements of section 1043, 1049, and 1049-a of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043, 1049, and 1049-a of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

Pursuant to the authority set forth in sections 1043, 1049, and 1049-a of the New York City Charter, the Office of Administrative Trials and Hearings (OATH) is proposing to update penalties for violations of title 24, chapter 3 of the Administrative Code, also known as the Water Supply Law; title 15, chapter 20 of the Rules of the City of New York (RCNY), pertaining to backflow devices; and 15 RCNY, chapter 57, Drilling and Excavation Rules, recently adopted by the Department of Environmental Protection (DEP). OATH's Water Penalty Schedule is located in 48 RCNY § 3-126. The provisions codified in 48 RCNY, chapter 6 govern Environmental Control Board adjudicatory proceedings, as well as other proceedings under the jurisdiction of OATH's Hearings Division.

The proposed rule would make the following changes to 48 RCNY § 3-126:

- Add a penalty for a violation of section 24-303.1 of the Administrative Code, a recent addition that prohibits the illegal discharge of fracking waste. The penalty of \$2,500 and the default penalty of \$10,000 are provided for in the statute.
- Amend the description for a violation of 15 RCNY § 20-04(d) to include failure to submit an initial test report for a backflow prevention device, in addition to failure to install. This reflects the description that is generally used on summonses.
- Add a penalty for a violation of 15 RCNY § 20-04(i), a newly added provision that prohibits the removal, swapping, or bypassing of a backflow prevention

device without DEP approval. The proposed penalty of \$700 is the same as that for failing to install a backflow device.

- Add a penalty for a violation of 15 RCNY § 20-05(t), a newly added provision that requires the plumber who removes a water meter to submit a photograph of the meter to DEP. The proposed penalty of \$350 is in line with the existing penalty for meter removal without a permit.
- Add a penalty for a violation of 15 RCNY § 20-08(b)(4), which requires the installation of a backflow device on connections to fire hydrants. While this is not a new rule, it is being added to the penalty schedule as it is cited somewhat frequently and should, therefore, have its own penalty instead of being under the miscellaneous provision. The proposed penalty of \$300 is a greater incentive to comply than the miscellaneous penalty of \$150.
- Add penalties for violations of the Drilling and Excavation Rules. These rules, which recently went into effect and are found in 15 RCNY chapter 57, include requirements for drilling and excavation activities conducted in areas where DEP has underground infrastructure, such as water tunnels, in order to prevent possible damage to such infrastructure. The proposed penalty of \$900 is nearly as high as possible (since the legal maximum is \$1,000) while still allowing for a higher default penalty, as violations of these rules would be issued to property owners and real estate developers, and the penalty needs to be as much of a deterrent as possible in order to avoid the possibility of very costly damage to DEP infrastructure.

Deleted material is in [brackets].

New material is underlined.

Section 1. Section 3-126 of title 48 of the Rules of the City of New York is amended by changing the entries under the heading “General Provisions” and adding new entries under the heading “Drilling & Excavation Rules” to read as follows:

	GENERAL PROVISIONS		
<u>A.C. § 24-303.1</u>	<u>Illegal discharge of fracking waste</u>	<u>\$2500</u>	<u>\$10000</u>
A.C. § 24-308	Illegal Use of Hydrant(s)	\$750	\$1000
A.C. § 24-337	Illegal waste of water (Residential)	\$250	\$500
A.C. § 24-339	Distribution/Sale/Import/Installation of water wasting plumbing fixtures	\$475	\$950
A.C. § 24-346(b)	Failure to comply with Commissioner’s Order	\$750	\$1000
15 RCNY § 20-01(b)(1)	Plumbing work w/o permit	\$250	\$500
15 RCNY § 20-01(e)	Failed to produce permit on demand	\$150	\$300
15 RCNY § 20-01(f)	Failed to obtain/return emergency permit	\$250	\$500
15 RCNY § 20-02(b)	Unlawful connection to City main	\$700	\$1000
15 RCNY § 20-03(k)(4)	Failed to protect curb valve/box from damage	\$250	\$500
15 RCNY § 20-03(w)	Failed to replace old service pipes upon establishment of new water service	\$250	\$500

15 RCNY § 20-03(x)	Failed to install meter on unmetered property when service pipe is replaced/repared/relaid/installed	\$350	\$700
15 RCNY § 20-04(d)	Failed to install a backflow preventer <u>or submit initial test report</u>	\$700	\$1000
15 RCNY § 20-04(e)	Failed to submit an annual test report for a backflow preventer	\$500 or mitigation penalty of \$50	\$1000
<u>15 RCNY § 20-04(i)</u>	<u>Removed/swapped/bypassed backflow device without DEP approval</u>	<u>\$700</u>	<u>\$1000</u>
15 RCNY § 20-05(a)	No meter in place	\$250	\$500
15 RCNY § 20-05(b)(1)	Meter repair/removal w/o permit	\$350	\$700
15 RCNY § 20-05(b)(2)	Failed to return meter permit	\$350	\$700
15 RCNY § 20-05(d)(5)	No reading receptacle for remote pad	\$250	\$500
15 RCNY § 20-05(g)	Improper size/type of meter	\$250	\$500
15 RCNY § 20-05(i)(1)	Meter not readily accessible	\$250	\$500
15 RCNY § 20-05(i)(2)-(12)	Improper setting of meter	\$250	\$500
15 RCNY § 20-05(i)(12)	Failed to design meter setting to ensure electrical continuity	\$150	\$300
15 RCNY § 20-05(j)	Prohibited meter bypass	\$500	\$1000
15 RCNY § 20-05(k)	Improper meter pit/box/vault construction	\$350	\$700
15 RCNY § 20-05(m)(1)	Failed to install new meter after unpermitted disconnection of old meter	\$750	\$1000
15 RCNY § 20-05(n)	Breaking seal on equipment w/o permit	\$500	\$1000
15 RCNY § 20-05(p)	Inadequate protection of meter/remote receptacle/AMR Transmitter/wiring	\$250	\$500
15 RCNY § 20-05(p)(2)	Relocated remote receptacle or AMR transmitter without permit	\$250	\$500
<u>15 RCNY § 20-05(t)</u>	<u>Failed to submit photo of meter to DEP</u>	<u>\$350</u>	<u>\$1000</u>
15 RCNY § 20-06	A.C./refrigeration violation	\$350	\$700
15 RCNY § 20-07(c)	Failed to submit self-certification of domestic water service pipe installation	\$250	\$500
15 RCNY § 20-08(a)(6)	Lawn/garden watering prohibited time/manner	\$150	\$300
15 RCNY § 20-08(a)(7)	Sidewalk flushing prohibited time/manner	\$150	\$300
15 RCNY § 20-08(a)(9)	Prohibited use of water for car washing	\$150	\$300
<u>15 RCNY § 20-08(b)(4)</u>	<u>Failed to install backflow preventer on hose connected to fire hydrant</u>	<u>\$300</u>	<u>\$600</u>
15 RCNY Chapter 20	Violation of miscellaneous rules regarding use and supply of water	\$150	\$300
	<u>DRILLING & EXCAVATION RULES</u>		
<u>15 RCNY § 57-03</u>	<u>Drilling or excavating in restricted area without permit</u>	<u>\$900</u>	<u>\$1000</u>

<u>15 RCNY § 57-05(b)</u>	<u>Violating general condition(s) of drilling/excavation permit</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(1)</u>	<u>Failure to notify DEP 30 days prior to commencement of drilling or excavation</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(2)</u>	<u>Failure to drill/excavate only to depth specified in permit</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(3) and (5)</u>	<u>Failure to abandon and/or seal any unpermitted borehole or well</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(4) and (6)</u>	<u>Failure to abandon and/or fill any unpermitted excavation</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(7)</u>	<u>Failure to use blowout preventer when required</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(10)</u>	<u>Failure to provide required, certified documentation within 30 days of completion of drilling or excavation</u>	<u>\$900</u>	<u>\$1000</u>
<u>15 RCNY § 57-05(b)(11)</u>	<u>Failure to conduct required deviation survey</u>	<u>\$900</u>	<u>\$1000</u>