

## 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 is promulgating rules that would amend the Stormwater Penalty Schedule (Title 15, Chapter 55 of the Rules of the City of New York) to reflect recent changes to the rules governing management of construction and post-construction stormwater sources (15 RCNY Chapter 19.1).

**When and where is the hearing?** The Department of Environmental Protection will hold a public hearing on the proposed rule online. The public hearing will take place at 11 am on August 15, 2022. To participate in the public hearing, please follow these instructions:

#### **Microsoft Teams meeting**

Join on your computer or mobile app:

[Click here to join the meeting](#)

Or join by entering a meeting ID:

Meeting ID: 241 174 068 240

Passcode: SqH2uJ

Or call in (audio only) :

[+1 347-921-5612,,324449998#](tel:+13479215612324449998)

Phone Conference ID: 324 449 998#

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

- **Website.** You can submit comments to the Department of Environmental Protection 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 rule 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 by calling 718-595-6531. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit written comments by August 8, 2022.

**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 August 1, 2022.

This location has the following accessibility option(s) available: Not applicable.

**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, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing NY 11373.

**What authorizes the Department of Environmental Protection (DEP) to make this rule?** Sections 1043 of the City Charter and Chapter 5-A of Title 24 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 the DEP's rules?** The 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 proposed rule would amend the Stormwater Penalty Schedule (Title 15, Chapter 55 of the Rules of the City of New York (RCNY)) to reflect recent changes to the rules governing management of construction and post-construction stormwater sources (the "Stormwater Rules", which are found at 15 RCNY Chapter 19.1).

The Stormwater Penalty Schedule became effective on June 1, 2019. The Stormwater Penalty Schedule establishes penalties for violations of the Stormwater Rules, which also went into effect on June 1, 2019.

On February 15, 2022, amendments to the Stormwater Rules set forth in 15 RCNY Chapter 19.1 became effective. As a result of these changes, certain conforming changes are being made to the Stormwater Penalty Schedule, including:

- Renumbering of section numbers;
- Addition of newly added provisions;
- Amendment of existing descriptions to conform to changes in the relevant sections of the Stormwater Rules.

In addition, the proposed rule would amend the requirement for mitigation of specified penalties to require that DEP receive the required documentation one week before the first hearing date of the summons, instead of by the first hearing date, in order to provide DEP with time to review the documentation.

All of the proposed penalties for newly added provisions are within the statutory guidelines for violations of 15 RCNY Chapter 19.1.

Additionally, this rule would add a penalty for failure to keep a stop work order posted until rescinded by the commissioner in violation of Section 24-558(f) of the New York City Administrative Code.

DEP's authority for these rules is found in section 1043 of the New York City Charter and Section 24-553 of the New York City 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. Section 55-02 of Chapter 55 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 55-02 Stormwater Penalty Schedule

(a) Penalty Table

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
15 RCNY 19.1-03.3(b)(1)	[Commencing a covered development activity] <u>Performing development activity in connection with a covered development project</u> without a Stormwater Construction Permit from the department.		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.		Yes
1st offense		3000	1000	6000	3000
2 <sup>nd</sup> offense		6000		8000	6000
3 <sup>rd</sup> offense		8000		10000	8000
<u>15 RCNY 19.1-03.3(b)(6)</u>	<u>Failure to have a written authorization to disturb greater than five (5) acres of soil.</u>				<u>Yes</u>
<u>1st offense</u>		<u>2500</u>		<u>5000</u>	<u>2500</u>
<u>2<sup>nd</sup> offense</u>		<u>5000</u>		<u>10000</u>	<u>5000</u>
<u>3<sup>rd</sup> offense</u>		<u>7500</u>		<u>10000</u>	<u>7500</u>
15 RCNY 19.1-03.3(b)([5]6)(i)	Failure to have a qualified inspector conduct at least two site inspections (in accordance with the NYSDEC Construction General permit) every seven calendar days when greater				Yes

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
	than five acres of soil are disturbed.				
1st offense		2000		3000	2000
2 <sup>nd</sup> offense		3000		6000	3000
3 <sup>rd</sup> offense		4000		9000	4000
15 RCNY 19.1-03.3(b)([8]9)(i)	Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit.				Yes
1st offense		\$1,500		\$3,000	\$1,500
2nd offense		\$2,000		\$6,000	\$2,000
3rd offense		\$3,000		\$9,000	\$3,000
<u>15 RCNY 19.1-03.3(b)(9)(i)</u>	<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.</u>		<u>Fine may be reduced if DEP receives, at least one week 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>Yes</u>
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>	<u>2500</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>	<u>5000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>	<u>7500</u>
[15 RCNY 19.1-03.3 (b)(8)(i)]	[Failure to comply with the approved SWPPP or the terms and conditions of the stormwater construction permit by not providing		[Fine may be reduced if the required weekly inspection reports for the required days, dated and signed by a Qualified Inspector, are submitted to		[Yes]

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
	weekly inspection reports by a Qualified Inspector.]		DEP on or before the first hearing date.]		
[1st offense]		[1000]	[500]	[3000]	[2500]
[2nd offense]		[2000]		[6000]	[5000]
[3rd offense]		[3000]		[9000]	[7500]
[15 RCNY 19.1-03.3 (b)(8)(i)]	[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.]				[Yes]
[1st offense]		[2000]		[4000]	[2500]
[2nd offense]		[3000]		[6000]	[5000]
[3rd offense]		[4000]		[8000]	[7500]
15 RCNY 19.1-03.3 (b)([8]9)(i)	[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		Fine may be reduced if DEP receives [on or], at least one week 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.		

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
	vehicle and equipment operation and maintenance; (v) toxic or hazardous substances from a spill or other release.] <u>Failure to implement pollution prevention measures included in the approved SWPPP.</u>				
1st offense		2500	1500	5000	
2nd offense		5000		10000	
3rd offense		7500		10000	
[15 RCNY 19.1-03.3 (b)(8)(i)]	[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.]				[Yes]
[1st offense]		[2000]		[4000]	[2500]
[2nd offense]		[3000]		[6000]	[5000]
[3rd offense]		[4000]		[8000]	[7500]
15 RCNY 19.1-03.3(b)([8]9)(i)	Failure to install and maintain erosion and sediment control practices in compliance with approved SWPPP.		Fine may be reduced if DEP receives [on or], at least one week 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		Yes

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
			confirming that the approved SWPPP is in place and terms and conditions of the permit have been met.		
1st offense		3000	1500	5000	3000
2nd offense		5000		10000	5000
3rd offense		7500		10000	7500
15 RCNY 19.1-03.3 (b)(8)(i)	Failure to follow the construction phasing plan included in the 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 conditions of the permit have be] <u>at least one week prior to the first hearing date,</u> an amended phasing plan that has been approved by the department		Yes
1st offense		2500	1500	5000	2500
2nd offense		5000		10000	5000
3rd offense		7500		10000	7500
[15 RCNY 19.1-03.3 (b)(8)(i)]	[Failure to implement pollution prevention measures included in the approved SWPPP. ]		[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		[Yes]



Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
			SWPPP is in place and terms and conditions of the permit have been met.]		
[1st offense]		[2500]	[1500]	[5000]	
[2nd offense]		[5000]		[10000]	
[3rd offense]		[7600]		[10000]	
15 RCNY 19.1-03.3 (b)([8]9)(i)	Failure to implement the temporary and permanent stabilization plans in accordance with the approved SWPPP.		Fine may be reduced if DEP receives, [on or] <u>at least one week</u> prior to the first hearing date, photos that show the appropriate [erosion and sediment control practice implemented] <u>stabilization measures are in place</u> , 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.		Yes
1st offense		2500	1500	5000	2500
2nd offense		5000		10000	5000
3rd offense		7500		10000	7500
15 RCNY 19.1-03.3(b)([8]9)(ii) or (iii)	Failure to renew or extend a stormwater construction permit.		Fine may be reduced if the applicant renews the permit [on or before] <u>at least one week prior to the first hearing date.</u>		yes
1st offense		3000	1000	6000	3000
2nd offense		6000		8000	6000
3rd offense		8000		10000	8000
15 RCNY 19.1-03.3(b)([8]9)(iv)	Failure to notify the department prior to starting construction.				Yes

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
1st offense		1000		3000	1000
2nd offense		2000		6000	2000
3rd offense		3000		9000	3000
15 RCNY 19.1-03.3(b)([8]9)(v)	Failure to post the stormwater construction permit.		Fine may be reduced if DEP receives, [on or] at least one week prior to the first hearing date, photos that show the permit has been posted at the work site.		Yes
1st offense		1000	<u>1500</u>	3000	1000
2nd offense		2000		6000	2000
3rd offense		3000		9000	3000
15 RCNY 19.1-03.3(b)([8]9)(vi)	Failure to retain a copy of the SWPPP at the development site.				Yes
1st offense		1000		3000	1000
2nd offense		2000		6000	2000
3rd offense		3000		9000	3000
<u>15 RCNY 19.1-03.3(b)(9)(vii)</u>	<u>Failure of the trained contractor to document daily inspections and/or corrective actions.</u>				<u>Yes</u>
<u>1st offense</u>		<u>1000</u>		<u>3000</u>	<u>1000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>	<u>2000</u>
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>	<u>3000</u>
<u>15 RCNY 19.1-03.3(b)(9)(viii) or (ix)</u>	<u>Failure to have a qualified inspector, inspect at an appropriate interval and document inspections</u>		<u>Fine may be reduced if the 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>Yes</u>
<u>1st offense</u>		<u>1000</u>	<u>500</u>	<u>3000</u>	<u>1000</u>
<u>2nd offense</u>		<u>2000</u>		<u>6000</u>	<u>2000</u>

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
<u>3rd offense</u>		<u>3000</u>		<u>9000</u>	<u>3000</u>
<u>15 RCNY 19.1-03.3(b)(9)(viii)</u>	<u>Failure to begin to implement corrective actions within one business day of Qualified Inspector report.</u>				<u>Yes</u>
<u>1st offense</u>		<u>2000</u>		<u>4000</u>	<u>2000</u>
<u>2nd offense</u>		<u>3000</u>		<u>6000</u>	<u>3000</u>
<u>3rd offense</u>		<u>4000</u>		<u>8000</u>	<u>4000</u>
<u>15 RCNY 19.1-03.3(b)([8]9)([vii]ix)</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] at least one week 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>Yes</u>
<u>1st offense</u>		<u>2500</u>	<u>1500</u>	<u>5000</u>	<u>2500</u>
<u>2nd offense</u>		<u>5000</u>		<u>10000</u>	<u>5000</u>
<u>3rd offense</u>		<u>7500</u>		<u>10000</u>	<u>7500</u>
<u>15 RCNY 19.1-03.3(b)([8]9)([viii]x)</u>	<u>Failure to submit a closure plan prior to terminating construction.</u>		<u>Fine may be reduced if DEP receives, [on or] at least one week prior to the first hearing date, photos that show the site is stabilized and a closure plan is submitted for review</u>		<u>Yes</u>
<u>1st offense</u>		<u>3000</u>	<u>1000</u>	<u>6000</u>	<u>3000</u>
<u>2nd offense</u>		<u>6000</u>		<u>8000</u>	<u>6000</u>
<u>3rd offense</u>		<u>8000</u>		<u>10000</u>	<u>8000</u>
<u>15 RCNY 19.1-03.3(b)([8]9)([ix]xi)</u>	<u>Failure to submit amendments.</u>		<u>Fine may be reduced if an acceptable amendment(s)</u>		<u>Yes</u>

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
			submission is received by DEP [on or before] <u>at least one week prior to the first hearing date.</u>		
1st offense		1000	<u>500</u>	3000	1000
2nd offense		2000		6000	2000
3rd offense		3000		9000	3000
15 RCNY 19.1-03.3(b)( <del>8</del> 9)( <del>x</del> xii)	Failure to submit a major amendment to the SWPPP for review and approval.		[Fine may be reduced if an application for major amendment(s) is received by DEP on or before the first hearing date.]		Yes
1st offense		1500	[1000]	3000	1500
2nd offense		3000		6000	3000
3rd offense		4000		8000	4000
15 RCNY 19.1-03.3(b)( <del>11</del> 12)	Failure to maintain records of all inspections and tests required throughout the period of construction and for 5-years after the completion of construction		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] <u>at least one week prior to the first hearing date.</u>		Yes
1st offense		1000		3000	1000
2nd offense		2000		6000	2000
3rd offense		3000		9000	3000
15 RCNY 19.1-03.3(c)(1)(i)	Failure to obtain a stormwater maintenance permit.				Yes
1st offense		3000		6000	3000
2nd offense		4000		8000	4000
3rd offense		5000		10000	5000
<u>15 RCNY 19.1-03.3(c)(3)(i)</u>	<u>Failure to document activities in compliance with</u>				<u>Yes</u>

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
	<u>operation and maintenance plan.</u>				
<u>1st offense</u>		<u>2000</u>		<u>5000</u>	<u>2000</u>
<u>2nd offense</u>		<u>3000</u>		<u>7500</u>	<u>3000</u>
<u>3rd offense</u>		<u>4000</u>		<u>10000</u>	<u>4000</u>
15 RCNY 19.1-03.3(c)(3)( <u>[i]ii</u> )	Failure to submit annual certification to the department.				Yes
1st offense		1500		3000	1500
2nd offense		3000		6000	3000
3rd offense		4500		9000	4500
15 RCNY 19.1-03.3(c)(3)( <u>[ii]iii</u> )	Failure to renew a stormwater maintenance permit.				Yes
1st offense		3000		6000	3000
2nd offense		4000		8000	4000
3rd offense		5000		10000	5000
15 RCNY 19.1-03.3(c)(3)( <u>[iv]v</u> )	Failure to notify the department of a change in ownership.				Yes
1st offense		3000		6000	3000
2nd offense		4000		8000	4000
3rd offense		5000		10000	5000
15 RCNY 19.1-03.3(c)(4)(i)	Failure to get approval to modify a stormwater management practice covered by a stormwater maintenance permit.		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 <u>at least one week</u> before the first hearing date		Yes
1st offense		3000		<del>1000</del> <u>1500</u>	6000

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
2nd offense		[6000]4000		8000	[6000]4000
3rd offense		8000		10000	8000

15 RCNY 19.1-03.3(c)(5)	Failure to maintain a stormwater management practice in good working condition to meet the applicable design standard.		Fine may be reduced if, [on or before] <u>at least one week prior to the first hearing date</u> , 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.		Yes	
1st offense		3000		[1000] 1500	6000	3000
2nd offense		[6000]4000			8000	[6000]4000
3rd offense		8000			10000	8000
15 RCNY 19.1-03.3(c)(6)	Failure to keep and maintain records.					Yes
1st offense		3000			6000	3000
2nd offense		6000			9000	6000
3rd offense		8000			10000	8000
Administrative Code [24-585]24-558	Failure to comply with [commissioner's order or]a stop work order.					Yes
1st offense		3000			6000	3000
2nd offense		6000			9000	6000
3rd offense		8000			10000	8000
<u>Administrative Code 24-558</u>	<u>Failure to keep a stop work order posted until rescinded by the commissioner.</u>					<u>Yes</u>
<u>1st offense</u>		<u>3000</u>			<u>6000</u>	<u>3000</u>
<u>2nd offense</u>		<u>6000</u>			<u>9000</u>	<u>6000</u>
<u>3rd offense</u>		<u>8000</u>			<u>10000</u>	<u>8000</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 Stormwater Penalty Schedule

**REFERENCE NUMBER:** 2022 RG 033

**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: July 6, 2022



**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: Amendment of Stormwater Penalty Schedule**

**REFERENCE NUMBER: DEP-89**

**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) The rule provides the opportunity to reduce fines under certain conditions.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

July 7, 2022  
Date