

## **New York City Department of Environmental Protection**

### **Notice of Adoption of Final Rule**

Notice is hereby given pursuant to the authority vested in the Commissioner of the Department of Environmental Protection (“DEP” or “Department”) by Section 1043 of the City Charter and Chapter 5-A of Title 24 of the Administrative Code that DEP has promulgated and adopted amendments to the Stormwater Penalty Schedule.

### **Statement of Basis and Purpose**

The rule amends 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 rule amends 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 penalties for newly added provisions are within the statutory guidelines for violations of 15 RCNY Chapter 19.1.

Additionally, the rule adds a penalty for failure to keep a stop work order posted until rescinded by the commissioner in violation of Section 24-558(f) of the New York City Administrative Code.

A public hearing was held on the proposed rule on August 15, 2022. No comments were received.

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

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
1st offense		3000	1000	6000	3000
2 <sup>nd</sup> offense		6000		8000	6000
3 <sup>rd</sup> offense		8000		10000	8000
15 RCNY 19.1-03.3(b)(6)	Failure to have a written authorization to disturb greater than five (5) acres of soil.				Yes
1st offense		2500		5000	2500
2 <sup>nd</sup> offense		5000		10000	5000
3 <sup>rd</sup> offense		7500		10000	7500
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 than five acres of soil are disturbed.				Yes
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
15 RCNY 19.1-03.3(b)(9)(i)	Failure to comply with the approved SWPPP or the		Fine may be reduced if DEP receives, at least one week prior to the first		Yes

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
	<u>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>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>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 weekly inspection reports by a Qualified Inspector.]		[Fine may be reduced if the required weekly inspection reports for the required days, dated and signed by a Qualified Inspector, are submitted to DEP on or before the first hearing date.]		[Yes]
[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]

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
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 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 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>		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/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.		
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				[Yes]

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
	permit by not having a Qualified Inspector inspect the site immediately after a runoff producing precipitation event.]				
[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 confirming that the approved SWPPP is in place and terms and conditions of the permit have been met.		Yes
1st offense		3000	1500	5000	3000
2nd offense		5000		10000	5000
3rd offense		7500		10000	7500
15 RCNY 19.1-03.3 (b)([8]9)(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		Yes

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
			conditions of the permit have be] at least one week prior to the first hearing date, an amended phasing plan that has been approved by the department		
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 SWPPP is in place and terms and conditions of the permit have been met.]		[Yes]
[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] at least one week prior to the first hearing date, photos that show the appropriate [erosion and sediment control practice implemented] stabilization measures are in place, 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	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]at least one week prior to the first hearing date.		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
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	1500	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



Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
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>
<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</u>		<u>Yes</u>

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
			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".		
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)([viii]x)	Failure to submit a closure plan prior to terminating construction.		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 site is stabilized and a closure plan is submitted for review		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)([ix]xi)	Failure to submit amendments.		Fine may be reduced if an acceptable amendment(s) submission is received by DEP [on or before] <u>at least one week prior to the first hearing date.</u>		Yes
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)([8]9)([x]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

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
15 RCNY 19.1-03.3(b)([11]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 operation and maintenance plan.</u>				<u>Yes</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)([i]ii)	Failure to submit annual certification to the department.				Yes
1st offense		1500		3000	1500
2nd offense		3000		6000	3000
3rd offense		4500		9000	4500

Rule	Description	Violation			
		Penalty	Mitigation	Default	Stipulation
15 RCNY 19.1-03.3(c)(3)([ii]iii)	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)([iv]v)	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	[1000] <u>1500</u>	6000	3000
2nd offense		[6000] <u>4000</u>		8000	[6000] <u>4000</u>
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>

