

Notice of Adoption of Final Rule

New York City Department of Environmental Protection

Notice is hereby given 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 section 24-105 of the Administrative Code that the Department promulgates and adopts a rule to update penalties for certain violations of Chapter 1 of Title 15 of the Rules of the City of New York (RCNY), also known as the Asbestos Control Program Rules.

Statement of Basis and Purpose of Final Rule

On May 27, 2022, amendments to DEP’s Asbestos Control Program Rules (15 RCNY Chapter 1) went into effect. Some of these amendments necessitate changes to the Air Asbestos Penalty Schedule (15 RCNY Chapter 53), which sets forth penalties for violations of the Asbestos Control Program Rules. These penalties may be imposed at hearings held at the Office of Administrative Trials & Hearings (OATH).

The rule makes the following changes to the Air Asbestos Penalty Schedule:

- The description of the penalty for section 1-01(e) of Chapter 1 of Title 15 of the Rules is amended to reflect that the false statement may be made to individuals or to city agencies.
- The description of the penalty for section 1-27(c) of Chapter 1 of Title 15 of the Rules is amended to reflect that the emergency project notification must be filed through the ARTS E-File system.
- Penalties are added for newly added sections 1-28(g), 1-92(c), 1-105(b)(16), and 1-106(p) of Chapter 1 of Title 15 of the Rules.
- The description of the penalty for section 1-37(e) of Chapter 1 of Title 15 of the Rules is amended to reflect that the air sampling equipment must be properly labeled, as well as inspected.
- Penalties are added for the newly added subdivisions (1), (2), and (3) of section 1-61(h) of Chapter 1 of Title 15 of the Rules, related to the use of ladders and scaffolds and the protection of walking and working surfaces to prevent tripping and falls.
- Separate penalties are added for each of the four subsections of section 1-92 of Chapter 1 of Title 15 of the Rules, related to violations of workplace entry and log requirements, as the four subsections have different requirements.
- The descriptions of the penalties for sections 1-107(n) and 1-108(i) of Chapter 1 of Title 15 of the Rules are amended to reflect the newly added requirement that the inspection be documented.
- The description of the penalty for section 1-110(b) of Chapter 1 of Title 15 of the Rules is amended to reflect the requirements added to the section regarding required submissions before controlled demolition takes place.
- A typo in the section number for section 24-136.1(h) is corrected. While this section is found in the Administrative Code, it is enforced by the Asbestos Control Program so it is found in the Asbestos Penalty Schedule.

A public hearing on the proposed rule was held on October 20, 2022. No comments were received.

Deleted material is in [brackets].

New material is underlined.

The text of the Rule follows.

Section 1. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the description of the penalty for section 1-01(e) of Chapter 1 of Title 15 of the Rules to read as follows:

Section	Violation Description	1 st Offense Penalty	1 st Offense Stipulation	2 nd Offense Penalty	2 nd Offense Stipulation
1-01(e)	Knowingly made a false statement or submitted a false document to DEP <u>or any individual or city agency</u>	2400	1500	4800	3000

§2. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the description of the penalty for section 1-27(c) of Chapter 1 of Title 15 of the Rules to read as follows:

1-27(c)	Failed to notify DEP [in writing] <u>by ARTS E-File</u> of emergency project within 48 hours	2400	1500	4800	3000
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§3. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by adding a new penalty for section 1-28(g) of Chapter 1 of Title 15 of the Rules to be inserted between the existing penalties for sections 1-28(f) and 1-29(a) of Chapter 1 of Title 15 of the Rules, to read as follows:

<u>1-28(g)</u>	<u>Failed to respond to DEP request for production of records</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
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§4. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the description of the penalty for section 1-37(e) of Chapter 1 of Title 15 of the Rules to read as follows:

1-37(e)	Failed to properly inspect <u>and label</u> air sampling equipment	1200	1000	2400	1500
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§5. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by adding new penalties for sections 1-61(h)(1), (2) and (3) of Chapter 1 of Title 15 of the Rules to be inserted between the existing penalties for sections 1-61(h) and 1-61(i) of Chapter 1 of Title 15 of the Rules, to read as follows:

<u>1-61(h)(1)</u>	<u>Failed to properly use ladders in the conduct of abatement activities</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
<u>1-61(h)(2)</u>	<u>Failed to properly seal scaffold joints/ends or failed to properly use scaffolds in the conduct of abatement activities</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
<u>1-61(h)(3)</u>	<u>Failed to protect walking/working surfaces from danger of tripping or stepping into holes/openings</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>

§6. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by repealing the existing penalty for section 1-92(a) of Chapter 1 of Title 15 of the Rules and adding new penalties for sections 1-92(a)(1), (2), (3) and (4) of Chapter 1 of Title 15 of the Rules to be inserted between the existing penalties for sections 1-91(o) and 1-92(b) of Chapter 1 of Title 15 of the Rules, to read as follows:

[1-92(a)]	[Failed to ensure proper work place entrance procedures are followed]	[2400]	[1500]	[4800]	[3000]
<u>1-92(a)(1)</u>	<u>Workers/visitors failed to enter work area through worker decontamination system</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
<u>1-92(a)(2)</u>	<u>Failed to submit/maintain log</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
<u>1-92(a)(3)</u>	<u>Failed to ensure all individuals are familiar with workplace entry requirements prior to entry</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
<u>1-92(a)(4)</u>	<u>Failed to follow workplace entry requirements</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>

§7. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by adding a penalty for section 1-92(c) of Chapter 1 of Title 15 of the Rules to be inserted between the existing penalties for sections 1-92(b) and 1-93(a) of Chapter 1 of Title 15 of the Rules, to read as follows:

<u>1-92(c)</u>	<u>Failed to follow procedures for entry into confined space</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
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§8. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by adding a penalty for section 1-105(b)(16) of Chapter 1 of Title 15 of the Rules to be inserted between the existing penalties for sections 1-105(b)(15) and 1-105(d) of Chapter 1 of Title 15 of the Rules, to read as follows:

<u>1-</u>	<u>Failed to conduct/document visual clearance</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
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<u>105(b)(16)</u>	<u>inspection</u>				
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§9. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by adding a penalty for section 1-106(p) of Chapter 1 of Title 15 of the Rules to be inserted between the existing penalties for sections 1-106(o) and 1-107(a) of Chapter 1 of Title 15 of the Rules, to read as follows:

<u>1-106(p)</u>	Failed to conduct/document visual clearance <u>inspection</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</u>
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§10. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the description of the penalty for section 1-107(n) of Chapter 1 of Title 15 of the Rules to read as follows:

1-107(n)	Failed to conduct/ <u>document</u> proper visual inspection	1200	1000	2400	1500
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§11. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the description of the penalty for section 1-108(i) of Chapter 1 of Title 15 of the Rules to read as follows:

1-108(i)	Failed to conduct <u>or document</u> proper visual inspection	1200	1000	2400	1500
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§12. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the description of the penalty for section 1-110(b) of Chapter 1 of Title 15 of the Rules to read as follows:

1-110(b)	Failed to [provide] <u>submit copy of</u> <u>condemnation letter, declaration, order, or</u> <u>scope of work to DEP</u>	1200	1000	2400	1500
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§13. Section 53-02(a) of Chapter 53 of Title 15 of the Rules of the City of New York is amended by modifying the section number for section 24-146.1 to read as follows:

][<u>24-</u> <u>146.1(h)]</u> <u>24-</u> <u>136.1(h)</u>	Resumed work in violation of stop work order	4400	2750	8800	5500
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