

**City of New York
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” or the “Department”) is proposing a rule that would update penalties for 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.

When and where is the Hearing? DEP will hold a public hearing on the proposed rule. The public hearing will take place on October 20, 2022 at 11 am. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 218 966 032 285

Passcode: TstHaa

Call in (audio only)

[+1 347-921-5612,,539356406#](#)

Phone Conference ID: 539 356 406#

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

- **Website.** You can submit comments to DEP through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the DEP Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing NY 11373.
- **Fax.** You can fax written comments to the DEP Bureau of Legal Affairs at 718-595-6543.
- **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 using the instructions above.

Is there a deadline to submit written comments? You may submit written comments until October 20, 2022.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may contact us by email at nycrules@dep.nyc.gov or by telephone at 718.595.6531 to request a reasonable accommodation. Please tell us by October 13, 2022.

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 written comments will be available at DEP's Bureau of Legal Affairs.

What authorizes DEP to make this rule? Section 1049-a of the New York City Charter authorizes DEP to make this proposed rule. This proposed rule is included in DEP's regulatory agenda for this Fiscal Year.

Where can I find DEP's rules? DEP's rules are located 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(b) of the New York City Charter when creating or changing rules. This notice is made according to the requirements of sections 1043(b) and 1049-a of the New York City Charter.

Statement of Basis and Purpose of Proposed 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 proposed rule would make 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 would be 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 would be amended to reflect that the emergency project notification must be filed through the ARTS E-File system.
- Penalties would be 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 would be amended to reflect that the air sampling equipment must be properly labeled, as well as inspected.
- Penalties would be 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 would be 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 would be 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 would be 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) would be 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.

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>1-105(b)(16)</u>	<u>Failed to conduct/document visual clearance inspection</u>	<u>2400</u>	<u>1500</u>	<u>4800</u>	<u>3000</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>	<u>Failed to conduct/document visual clearance 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:

<u>1-107(n)</u>	<u>Failed to conduct/document proper visual inspection</u>	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>
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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:

<u>1-108(i)</u>	<u>Failed to conduct <u>or document</u> proper visual inspection</u>	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>
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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:

<u>1-110(b)</u>	<u>Failed to [provide] <u>submit copy of condemnation letter, declaration, order, or scope of work</u> to DEP</u>	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>
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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:

][24- 146.1(h)] 24- 136.1(h)	Resumed work in violation of stop work order	4400	2750	8800	5500
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**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 Asbestos Control Penalty Schedule

REFERENCE NUMBER: DEP-90

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 proposed rule provides for reduced penalties for stipulations.

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

August 31, 2022
Date

**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 Asbestos Control Penalty Schedule

REFERENCE NUMBER: 2022 RG 046

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: August 31, 2022