

**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Notice of public hearing and opportunity to comment
on proposed rules concerning drinking water tank inspection penalties and penalties relating to the
chemical treatment of building drinking water.**

What are we proposing? The New York City Department of Health and Mental Hygiene (Department) is proposing to amend its rules concerning drinking water tank inspection penalties, which are found in Chapter 31 of Title 24 of the Rules of the City of New York (RCNY). The proposed amendments would create new penalties for failure to comply with requirements in §17-194 of the New York City Administrative Code (Administrative Code) and update current penalties. In addition, these proposed rules add specific penalties for violations of section 141.11 of Article 141 (*Water Supply Safety Standards*) of the New York City Health Code (Health Code) relating to chemical treatment of building drinking water.

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on **Tuesday, January 17, 2023**.

The hearing will be conducted by video conference accessible via internet or telephone.

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m8b0a3a3b5e4996d2ee36e6bf47a142b6>

If prompted to provide an event number or password, please enter the following:

Event number: **2342 702 9433**

Password: **Health** (432584 from phones)

- **Phone:** For access, dial: (408) 418-9388; (646) 992-2010 (New York City) then please enter the following: Access code: **234 270 29433**, Password: **432584**.

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

- **Website.** You can submit comments to the Department through the NYC rules website, at <http://rules.cityofnewyork.us>
- **Email.** You can email comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to DOHMH at:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to DOHMH at (347) 396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing should sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10AM on **January 17, 2023**. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by January 17, 2023.

What if I need assistance to participate in the hearing? You must tell the Department's Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including whether you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time

to arrange the accommodation. Please tell us by January 3, 2023.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the following website: <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the office of the Secretary.

What authorizes the Department to make these rules? Sections 555(b)(2), 556 and 1043 of the New York City Charter (Charter) and §§ 17-194 and 17-133 of the Administrative Code authorize the Department to make these proposed rules. The proposal relating to drinking water tank inspection penalties was included in the Department's FY2023 regulatory agenda.

Where can I find the Department's rules? The rules of the Department are in Title 24 of the RCNY.

What laws govern the rulemaking process? The Department must meet the requirements of §1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Charter §1043.

Statement of Basis and Purpose

NYC Administrative Code section 17-194 governs drinking water tank inspections. The Department's rules enacted pursuant to section 17-194 are located in Chapter 31 (§§ 31-01 to 31-03) of Title 24 of the Rules of the City of New York. Section 17-194 requires an owner of a building with a water tank that provides potable water to submit documentation of an annual drinking water tank inspection report to the Department. The inspection report must be submitted by the water tank inspector and must state whether all applicable regulations were met at the time of inspection and provide a description of any non-compliance with the requirements.

These proposed amendments to the Chapter 31 section 31-03 penalty schedule reflect amendments to Administrative Code section 17-194 made by Local Laws 85, 86, 87 and 88 of 2019, which added the following requirements: electronic submission of documentation for water tank inspection and cleaning; specific qualifications for persons conducting inspections of drinking water tanks; the maintenance of water tanks and associated structures in safe condition and the reporting by the water tank inspector or owner of any unsafe conditions to the Department of Buildings in writing; and submission of a visual depiction of the interior and exterior of water tanks to the Department. An increase in the penalty fee for failure to submit the annual drinking water tank inspection report is also proposed in light of the importance of this requirement. The proposed rule also makes one technical amendment to section 31-03 that is not meant to change the scope of an owner's or operator's requirement to pay penalties whenever a violation is sustained. Ministerial corrections are also made to accurately reflect the Administrative Code citations after Local Law revisions. The proposed penalties are within the range established in section 17-194 of the Administrative Code.

It should also be noted that Health Code Article 141 provides water supply safety standards and operates in conjunction with Chapter 31 water tank inspection requirements. Sections 141.07 and 141.11 of Article 141 provide requirements as to building drinking water storage tanks and chemical treatment of the drinking water supply system within a building, respectively, and violations of these sections are reflected in the Chapter 31 section 31-03 penalty schedule. These proposed amendments provide fixed penalties for violations of section 141.11 of the New York City Health Code, relating to requirements for chemical treatment of building drinking water. Finally, these penalties fall within the range set forth in section 3.11 of the Health Code.

Pursuant to Charter section 1043(d)(4)(ii), these rule changes are exempt from the review required under Charter section 1043(d)(1).

The proposed rule changes are as follows:

Underlined text is new.

Deleted text is in [brackets].

Section 1. Section 31-03 of Chapter 31 of Title 24 of the Rules of the City of New York is amended to read as follows:

§31-03 Penalties. Owners or operators of buildings with drinking water tanks or other persons found to be in violation of any of the following provisions of law by a hearing officer at the Office of Administrative Trials and Hearings or successor tribunal must pay the penalties set forth in Appendix 31- A of this Chapter for each such violation sustained [with respect to each building drinking water tank for each year to which such violation pertains].

Section 2. The title of Appendix 31-A of Chapter 31 of Title 24 of the Rules of the City of New York is amended to read as follows:

Appendix 31-A: Building Drinking Water Tank and Water Supply Safety Standards Penalties

Section 3. Appendix 31-A of Chapter 31 of Title 24 of the Rules of the City of New York is amended to add and amend the following penalties for violations of section 31-02 of Chapter 31, section 17-194 of the Administrative Code and section 141.11 of the Health Code, to read as follows:

Citation	Violation Description	Penalty	Default
24 RCNY 31-02(a)	Failure to submit report of previous year’s inspection results by January 15	[\$250] <u>\$500</u>	[\$500] <u>\$1000</u>
<u>NYCHC 141.11(a)</u>	<u>Chemicals or other substances added by a person, corporation, or partnership without the required Department permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYCHC 141.11(d)</u>	<u>Failure to meet required product standards</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(e)</u>	<u>Failure to provide required cross connection control</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to take samples of the treated water prior to placing the system in operation and monthly thereafter to confirm that the drinking water supply complies with State Sanitary Code, Subpart 5-1</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to have the drinking water analyzed by a State certified laboratory</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to maintain for at least 5 years required records of water sampling and analysis</u>	<u>\$250</u>	<u>\$500</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to provide records of water sampling and analysis within 5 business days after Department’s request</u>	<u>\$250</u>	<u>\$500</u>

<u>NYCHC 141.11(h)</u>	<u>Failure to operate or maintain a system used to chemically treat the water that complies with State Sanitary Code, Subpart 5-1 requirements</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(i)</u>	<u>Failure to maintain required chemical addition device records for at least 5 years</u>	<u>\$250</u>	<u>\$500</u>
<u>NYCHC 141.11(l)</u>	<u>Failure to provide certain chemical treatment system data within 5 business days after Department's request</u>	<u>\$250</u>	<u>\$500</u>
<u>Admin. Code 17-194(b)</u>	<u>Failure to provide documentation that displays visual depiction of the water tank</u>	<u>\$250</u>	<u>\$500</u>
<u>Admin. Code 17-194(c)</u>	<u>Drinking water tank inspected by someone other than a water tank inspector</u>	<u>\$500</u>	<u>\$1000</u>
<u>Admin. Code 17-194[c](d)</u>	<u>Failure to post notice of availability of inspection reports</u>	<u>\$250</u>	<u>\$250</u>
<u>Admin. Code 17-194(g)</u>	<u>Failure to report a water tank's unsafe conditions to the Department of Buildings in writing</u>	<u>\$250</u>	<u>\$500</u>