

**City of New York
Office of Administrative Trials and Hearings**

Notice of Adoption of Rule

Pursuant to the authority vested in the Office of Administrative Trials and Hearings (OATH) by sections 1043, 1049, and 1049-a of the New York City Charter, OATH has amended 48 RCNY § 3-126 to repeal its water penalty schedule and delegate to the Commissioner of the Department of Environmental Protection (DEP) its authority to establish a schedule of civil penalties in accordance with Section 24-346(b) of the Administrative Code of the City of New York (“Administrative Code”).

The Environmental Control Board voted to approve a version of this amendment on December 5, 2024. A version of this amendment was published in The City Record on February 12, 2025. A public hearing was held on March 20, 2025. No testimony regarding the amendment was given at the public hearing, and OATH did not receive any written comments from the public. The Environmental Control Board voted to approve a final version of this amendment on April 3, 2025.

Statement of Basis and Purpose of Rule

The Office of Administrative Trials and Hearings Environmental Control Board (OATH ECB) will amend 48 RCNY § 3-126, the Water Penalty Schedule, to delegate to the Commissioner of the Department of Environmental Protection (DEP) its authority to establish a schedule of civil penalties in accordance with Section 24-346(b) of the Administrative Code of the City of New York (“Administrative Code”). Pursuant to this amendment, OATH ECB will repeal its Water Penalty Schedule, currently found at 48 RCNY § 3-126. At the same time, DEP will enact a penalty schedule within its own rules at Title 15 of the Rules of the City of New York, so that the penalty schedule is relocated to the rules of the agency with primary rulemaking and policymaking jurisdiction over the laws underlying the violations.

The amendment of 48 RCNY § 3-126 continues the effort to repeal penalty schedules from the rules of OATH ECB. Although OATH ECB is empowered to impose penalties under Section 1049-a of the New York City Charter (“City Charter”) and Section 24-346 of the Administrative Code, the regulatory and enforcement agencies have the expertise to determine appropriate penalties based on the severity of each violation and its effect on City residents. Moving the Water Penalty Schedule will also make it easier for the public to find the penalties, which will be located within the same title of the RCNY as the rules establishing the violations alleged in the summonses. Finally, the amendment will speed up the rulemaking process by eliminating the need for approval by OATH ECB of proposed or amended penalties for violations of agency rules that have already gone through the City Administrative Procedure Act rulemaking process. The delegation of authority will not affect the right of the public to comment during the rulemaking process.

Deleted material is in [brackets].

New material is underlined.

“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.

Section 1. Section 3-126 of Title 48 of the Rules of the City of New York, containing the Water Penalty Schedule, is REPEALED, and a new section 3-126 is added, to read as follows:

§ 3-126 Water Penalty Schedule.

The powers granted to the Board under Section 1049-a of the New York City Charter (“City Charter”) and Section 24-346 of the Administrative Code of the City of New York (“Administrative Code”) to establish a Water Penalty Schedule are hereby delegated to the Commissioner of the Department of Environmental Protection. Such authority to establish a Water Penalty Schedule shall be exercised by the Commissioner after consideration of the degree of danger of the violation to the water supply or the water supply system or to public health or to the life or safety of persons, or significance of the violation to the protection or monitoring of the water supply or water supply system. The Water Penalty Schedule shall be consistent with the limitations established by the City Charter, the Administrative Code, and rules and regulations promulgated by the Board.

Section 2. Effective Date.

This rule takes effect on the same date as a rule entitled Penalties for Violations of Water Supply Code and Corresponding Rules, as published by the Department of Environmental Protection in the City Record, takes effect.