

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 by Section 1403 of the New York City Charter and Section 24-149.4 of the New York City Administrative Code that the Department of Environmental Protection ("Department" or "DEP") is promulgating a rule to amend the Air Asbestos Penalty Schedule, codified in Chapter 53 of Title 15 of the Rules of the City of New York, to conform to changes made to the Asbestos Control Program Rules. A public hearing on the proposed rule was held on June 4, 2025. No comments were received.

Statement of Basis and Purpose

On February 15, 2025, 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:

- A new penalty is added to address situations where the contractor applies for a variance but then proceeds with the work without generating an approved variance in violation of section 1-03(a).
- A new penalty is added for failure to place a project in postponed status while a variance application is pending in violation of section 1-03(j).
- A new penalty is added for failure to store required records in a manner that minimizes the possibility of water damage in violation of section 1-29(e).
- A new penalty is added for contractors who proceed with asbestos abatement without an air monitoring technician present or without air monitoring in violation of section 1-32.
- A new penalty is added for collection of a sample by an unauthorized person or by a person not in the physical presence of the DEP-certified investigator in violation of section 1-38(d).

Pursuant to section 1043(d)(4)(ii), this rule is exempt from review under Charter section 1043(d).

New material is underlined.

Section 1. The table set forth in subdivision (a) of section 53-02 of Chapter 53 of Title 15 of the Rules of the City of New York is amended by adding five additional rows, to be placed in the table in alphanumeric order, to read as follows:

Section	Violation Description	1 st Offense Penalty	1 st Offense Stipulation	2 nd Offense Penalty	2 nd Offense Stipulation
15 RCNY § 1-03(a)	Failed to generate an <u>approved variance (v2 Form)</u> by entering start date in ARTS	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>
15 RCNY § 1-03(i)	Failed to place ACP-7 in postponed status in ARTS until variance application approved	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>
15 RCNY § 1-29(e)	Failed to store records to <u>minimize possibility of</u> <u>water damage</u>	<u>1200</u>	<u>1000</u>	<u>2400</u>	<u>1500</u>
15 RCNY § 1-32	Performed abatement activities without air monitoring	<u>4800</u>	<u>3000</u>	<u>9600</u>	<u>6000</u>
15 RCNY § 1-38(d)	Sample collected by unauthorized person or <u>outside physical presence of</u> <u>certified asbestos inspector</u>	<u>4800</u>	<u>3000</u>	<u>9600</u>	<u>6000</u>