

# 1 RCNY §103-05

## CHAPTER 100

### Subchapter C Maintenance of Buildings

#### §103-05 High-pressure boiler inspection and filing requirements, penalties and waivers.

- (a) **Scope.** This rule implements Article 303 of Title 28 of the New York City Administrative Code (“Administrative Code”) by specifying the high-pressure boiler annual inspection requirements, the processes through which the department shall regulate the filings of high-pressure boiler annual inspection reports and shall issue penalties and waivers for failure to file and/or late filing, and the penalties for failure to file and/or untimely filing of a written notice of removal or disconnection of a high-pressure boiler.
- (b) **References.** See Sections 28-201.2.2, 28-202.1 and Article 303 of Title 28 of the Administrative Code.
- (c) **Definitions.** For the purposes of this section, the following terms shall have the following meanings:
- (1) Department. The department of buildings.
  - (2) External high-pressure boiler annual inspection. An inspection made while the boiler is in operation.
  - (3) Filing deadline. For the high-pressure boiler annual inspection report or any part thereof, fourteen (14) days from the date of the inspection.
  - (4) First test. An inspection of a newly installed or replaced boiler required for the department to approve its use and operation.
  - (5) Inspection cycle. January 1<sup>st</sup> through December 31<sup>st</sup> of the calendar year for which an owner submits the report.
  - (6) Inspection type. An external high-pressure boiler annual inspection or an internal high-pressure boiler annual inspection.
  - (7) Internal high-pressure boiler annual inspection. An inspection made when the boiler is shut down and handholes and manholes or other inspection openings are opened or removed for inspection of the interior.
  - (8) Late filing. An inspection report or any part of that report filed after the fourteen (14) day filing deadline but in no event later than January 14<sup>th</sup> of the calendar year immediately following the inspection cycle.
  - (9) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, the premises and/or boiler.
  - (10) Qualified boiler inspector. A qualified boiler inspector as defined in Section 101-07 of these rules.
  - (11) Removal or disconnection. Removal or disconnection shall have the same meaning as the term “removal or discontinuance” as used in Section 28-303.9 of the Administrative Code.
  - (12) Small business. A business that employs fewer than one hundred persons.
  - (13) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the violation.
- (d) **Fees.** Fees for filings related to high-pressure boilers shall be as set forth in Section 101-03 of these rules.
- (e) **Inspections, tests and filing requirements.** The owner shall be responsible for hiring a qualified boiler inspector to conduct inspections and tests and file high pressure boiler annual inspection reports pursuant to Article 303 of Title 28 of the Administrative Code. Such inspections shall comply with Article 303, applicable provisions of the New York State Labor Law and the following:
- (1) Internal and external high-pressure boiler annual inspection reports along with the appropriate filing fee(s) shall be submitted for each inspection cycle on such forms and in such manner as required by the department. The reports shall include:
    - (i) An inspection report for each boiler identifying the qualified boiler inspector;
    - (ii) An affirmation of correction along with the filing fee stating that identified defects have been corrected, if applicable; and
    - (iii) The filing fee as provided in subdivision (d).
  - (2) The reports shall be filed by the filing deadline. Any required part of the report not filed by the filing deadline shall be deemed late and shall subject the owner to penalties as set forth in subdivision (i) of this section.
  - (3) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivision (i).
  - (4) High-pressure boiler annual inspections shall be conducted twelve (12) months from the preceding annual inspection of the same inspection type.

- (5) Internal and external high-pressure boiler annual inspections shall be performed approximately six (6) months from each other during the inspection cycle.
  - (6) The inspector must verify that a valid department-issued boiler number is affixed to the boiler, and this number must be used in all correspondence between the inspector and the department.
  - (7) If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shutdown of the boiler, the inspector must immediately notify the department's boiler division of the condition via email at the address provided on the department's website, <http://www.nyc.gov/buildings>. Notification of an unregistered boiler must be made by filing a report electronically in a form and manner required by the department.
- (f) **Acceptance of filings.** Inspection reports filed after the fourteen (14) day filing deadline but on or before January 14th of the calendar year immediately following the inspection cycle will be considered late filings and will be subject to the appropriate civil penalties as set forth in subdivision (i) of this section. Reports filed after such late filing period will be considered expired. In such cases, owners will be subject to the appropriate civil penalties for failure to file a report as set forth in subdivision (i) of this section, and the department will require a new inspection to be performed for the current inspection cycle and a new report filed in accordance with this section.
- (g) **Ten-(10) day notifications.** The inspector shall notify the department at least ten (10) days prior to the performance of an internal high-pressure boiler annual inspection.
- (h) **Tenant notification.** An owner of a building containing a high-pressure boiler(s) shall notify any affected tenants of the planned shutdown of the boiler for inspection at least forty-eight (48) hours prior to such shutdown by (i) distributing a notice regarding such plan to each occupied dwelling unit and (ii) posting a notice regarding such plan in a conspicuous manner in the building lobby.
- (i) **Civil penalties, high-pressure boiler annual inspection report and affirmation of correction.**
- (1) **Late filing.** An owner who submits a late filing, but who provides proof that the inspection took place within the inspection cycle for which the report was due, shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler, per inspection type, commencing on the day following the filing deadline and ending on the date of submission of a complete report, including a late filing of the affirmation of correction. The total penalty shall not exceed six hundred dollars (\$600.00) per boiler, per inspection type. For the purposes of this paragraph, "proof" shall mean a copy of the filed inspection report from the qualified boiler inspector who conducted the inspection indicating that the inspection was completed within the inspection cycle for which the report was due.
  - (2) **Failure to file.** An owner who fails to file the high-pressure boiler annual inspection report or any part thereof for each boiler and inspection type, pursuant to Article 303 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of not less than one thousand dollars (\$1000.00) per boiler, per inspection type. A high- pressure boiler annual inspection report not filed within the late filing period shall be deemed expired and shall not be accepted by the department.
  - (3) **Failure to file the affirmation of correction.** An owner who fails to correct the defects within the applicable time after the inspection and to file the affirmation of correction by the date the affirmation was due, stating that all defects found during the inspection have been corrected pursuant to Section 28-303.5 of the Administrative Code shall be liable for a civil penalty of one thousand dollars (\$1000.00) per boiler.
  - (4) **Challenge of civil penalty.** An owner may challenge the imposition of any civil penalty authorized pursuant to this subdivision by providing written proof of a timely and complete inspection and filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. Examples of such proof shall include, but are not limited to, the following:
    - (i) A copy of the high-pressure boiler annual inspection report for the inspection performed during the applicable inspection cycle and a copy of the front and back of the canceled check or money order to the department for the high-pressure boiler annual inspection report fee or proof of electronic payment of such fee; or
    - (ii) The department-assigned transmittal number for the electronic disk filing report or DOB NOW tracking number.
  - (5) **Extension of the filing deadline.** An owner may request an extension of the filing deadline in order to correct high-pressure boiler defects and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 303 of Title 28 of the Administrative Code by submitting proof that the request is based on extraordinary circumstances and/or that the delay in correction is beyond the owner's control, not including financial or administrative hardship. The request shall be made prior to the expiration

of the filing deadline, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

- (6) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Article 303 of Title 28 of the Administrative Code and/or related rules enforced by the department. Requests shall be made in writing and submitted with the filing fee.
  - (i) Owner status.
    - (A) New owner. A new owner may be granted a waiver of penalties contingent upon the department's acceptance of the owner's proof that transfer of ownership to the new owner occurred after penalties were incurred. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department.
    - (B) Government ownership. An owner may be granted a waiver of penalties upon submission of official documentation from a government entity affirming that the premises was owned in its entirety by the entity during the period for which a waiver is requested.
    - (C) Bankruptcy. An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition and a decision from the bankruptcy court.
    - (D) Small business. An owner of a small business may be granted a first time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.
  - (ii) Device status. An owner may be granted a waiver of penalties contingent upon the department's acceptance of proof of the following:
    - (A) Removed or disconnected. That the high-pressure boiler was removed from the building or disconnected prior to the inspection cycle for which the report was due. In the event that proof of removal or disconnection has not yet been entered into the department's database at the time of the request for a waiver, the owner shall submit to the department a copy of the submission for removal or disconnection of the boiler.
    - (B) New or replaced. That the first test was performed during the inspection cycle for which the report was due.
    - (C) Work in progress. That there is work in progress for the replacement or installation of a new boiler or burner or a major renovation requiring that the boiler or burner be deactivated during the work. For the purposes of this clause, "proof" shall mean the filing of a boiler application including a projected date of completion of work. Upon completion of such work, a new inspection and test report shall be filed in accordance with this section.
  - (iii) Building status. An owner may be granted a waiver of penalties contingent upon the department's confirmation of the following:
    - (A) Demolished. That the full demolition of the building occurred prior to the inspection cycle for which the report was due and that such demolition was signed off by the department and/or that a new building permit has been issued for the property.
    - (B) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (e.g. Department of Buildings, Department of Housing Preservation and Development, Fire Department of New York or Office of Emergency Management) or by court order prior to the expiration of the inspection cycle for which the report was due.
- (j) **Civil penalties, written notice of removal or disconnection of a high-pressure boiler.** Failure to file a written notice of removal or disconnection with the filing fee in accordance with Section 28-303.9 of the Administrative Code, or filing such notice more than thirty (30) days after the date of the removal or disconnection of a high-pressure boiler shall be deemed a lesser violation and shall subject the owner to penalties as set forth in this subdivision.
  - (1) Untimely filing. An owner who files such notice more than thirty (30) days after the date of removal or disconnection, but by thirty (30) days after the end of the inspection cycle, may submit an untimely filing and shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler commencing on the thirty-first (31) day after the date of removal or disconnection and ending on the date of submission of the notice. The total penalty shall not exceed five hundred dollars (\$500.00) per boiler.
  - (2) Failure to file. An owner who fails to file such notice by thirty (30) days after the end of the inspection cycle, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per boiler.
  - (3) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of a timely filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department

and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. An example of such proof shall include, but is not limited to, the following: a stamped and dated copy of the submission for removal or disconnection of the boiler filed with the department, which may be supported by a copy of the front and back of a canceled check(s) to the department for the filing fee or proof of electronic payment of such fee.