

**City of New York
Office of Administrative Trials and Hearings
Environmental Control Board**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) in accordance with Sections 1049-a and 1043 of the New York City Charter. OATH ECB amends 48 RCNY §3-100 of its rules of procedure and repeals its Air Code Penalty Schedule in Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The proposed rule amendments and repeal were published in *The City Record* on April 15, 2016, and a public hearing was held on May 16, 2016.

Five members of the public attended the public hearing. No one testified at the public hearing concerning this rule amendment and repeal and OATH did not receive any written comments.

Statement of Basis and Purpose

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) is centralizing and streamlining its hearings to make it more efficient for the public to have their cases heard. As part of this process, OATH ECB is amending 48 RCNY §3-100, which instructs Hearing Officers to impose penalties set forth in OATH ECB's rules, to instruct Hearing Officers to impose penalties set forth in the current or future rules of enforcement agencies.

In addition, OATH ECB is repealing its Air Code Penalty Schedule. This schedule is found in 48 RCNY §3-102, and contains penalties for summonses issued by the New York City Department of Environmental Protection (DEP) for violations of the Air Code. At the same time, DEP will also enact a penalty schedule within its own rules at 15 RCNY Chapter 43. In the future, OATH ECB will repeal all penalty schedules in its rules at Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) so that they, like the Air Code Penalty Schedule, can be relocated to the rules of the agencies with primary rulemaking and policymaking jurisdiction over the laws underlying the violations.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has until now promulgated penalty schedules, the enforcement agencies have the expertise to recommend appropriate penalties based on the severity of each violation and its effect on City residents. Moving the penalty schedule will also make it easier for the public to find the penalties, which will be located within the same chapter as the rules supporting the violations alleged in the summonses. Finally, the rule repeal will speed up the rulemaking process by eliminating the need for OATH ECB approval of proposed or amended penalties for agency rules that have already gone through the City

Administrative Procedure Act (“CAPA”) rulemaking process. The public will still have the opportunity to comment on proposed penalties during this 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 3-100 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to read as follows:

Whenever a respondent is found in violation of any [of the following provisions] provision of the New York City Administrative Code, Rules of the City of New York, New York City Health Code, New York State Public Health Law, New York Codes, Rules and Regulations, New York City Zoning Resolution, New York State Vehicle and Traffic Law, or New York State Environmental Conservation Law, and the summons (as defined in §6-01 of this Title) for such violation is returnable to the Environmental Control Board, any civil [penalties] penalty recommended by a Hearing Officer pursuant to §3-57(a) [and/or], any default [penalties] penalty imposed pursuant to §3-81(a) and in accordance with §1049-a(d)(1)(d) of the Charter, and[/or] any civil [penalties] penalty imposed for admissions of violation(s) pursuant to §3-32 or late admissions pursuant to §3-81(b) will be imposed pursuant to the [penalty schedules] Penalty Schedules set forth below. If no Penalty Schedule is contained in these rules, any such civil penalty and default penalty will be imposed pursuant to the Penalty Schedule contained in the rules of the agency with primary jurisdiction to enforce the provisions of law related to the violation alleged in the summons.

Please note that some of the penalties in the Penalty Schedules set forth below are established by law as flat penalties. Thus, for some of the penalties set forth below, no range of dollar amounts is set forth in the Administrative Code or other applicable law. However, solely for the convenience of the public, these flat penalties are included in the Penalty Schedules set forth below, to ensure, to the extent possible, that these Penalty Schedules are comprehensive.

§ 2. The Air Code Penalty Schedule, found in Section 3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED, effective May 6, 2016.



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Environmental Control Board Hearings

ECB Manhattan
66 John St., 10th Floor
New York, NY 10038
Telephone: 1-844-OATH-NYC (1-844-628-4692)

FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

I hereby find, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in The City Record, of the repeal of the Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) Air Code Penalty Schedule and of the amendment of 48 RCNY §3-100.

This declaration is made pursuant to Section 1043(f)(1)(c) of the City Charter. OATH ECB is in the process of repealing the penalty schedules contained in its rules so that they can be relocated to the rules of the enforcement agencies with primary rulemaking and policymaking jurisdiction over the laws underlying the violations. As part of this effort, OATH ECB proposed the repeal of the Air Code Penalty Schedule contained within its rules and proposed amendments to 48 RCNY §3-100, instructing Hearing Officers to impose penalties set forth in the current or future rules of enforcement agencies. In conjunction with this proposed repeal and amendment, DEP enacted an Air Code Penalty Schedule within its own rules at 15 RCNY Chapter 43, which became effective May 6, 2016.

Because DEP's Air Code Penalty Schedule is now in effect, there is substantial need for the earlier implementation of the repeal of OATH ECB's Air Code Penalty Schedule and amendment to 48 RCNY §3-100. Immediate implementation of the repeal and rule amendment will minimize confusion for the public by having only one penalty schedule in effect applicable to violations of the Air Code.

Without this finding, the repeal of the OATH ECB Air Code Penalty Schedule and amendment to 48 RCNY §3-100 will not take effect until the end of June 2016. In order to avoid public confusion as to which penalty schedule applies to violations of the Air Code, there is a substantial need for bringing these rules into effect immediately upon publication in The City Record.

Fidel F. Del Valle, Commissioner
Chief Administrative Law Judge, OATH
Chairperson and Executive Director, ECB

APPROVED: _____

Bill de Blasio
Mayor

DATE: _____

June 23, 2016