

NOTICE OF PUBLIC HEARING

Subject: Opportunity to Comment on the proposed amendment of Article 141 of the New York City Health Code.

Date / Time: July 27, 2011 / 2P.M. – 4P.M.

Location: New York City Department of Health and Mental Hygiene
42-09 28th Street
14th Floor, Room 14-45
Queens, NY 11101

Contact: Rena Bryant
(347) 396-6071

Proposed Rule

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 141 of the Health Code to clarify enforcement of the requirement for building owners to perform annual drinking water tank inspections.

Instructions

Prior to the hearing, you may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
42-09 28th Street, WS 14-55
Queens, NY 11101

or electronically through NYC RULES at <http://www.nyc.gov/html/nycrules/html/proposed/proposed.shtml> or by email to RESOLUTIONCOMMENTS@HEALTH.NYC.GOV or online (without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on July 27, 2011.

If you are interested in pre-registering to speak, please notify Rena Bryant by July 26, 2011. Please include a phone where, if necessary, you may be reached during normal business hours. You can speak for up to five minutes.

You can also register at the door until 4 PM; however, preference will be given to those who pre-register.

To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by July 13, 2011.

Copies of written comments and a summary of oral comments received at the hearing will be available for public inspection within a reasonable time after the hearing between the hours of 9:00 A.M. and 5:00 P.M. at the

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
42-09 28th Street, WS 14-55
Queens, NY 11101

The Department's general policy is to make written comments available for public viewing on the internet. All Comments received, including any personal information provided, will be posted without change to <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

This amendment to the New York City Health Code ("Health Code") is promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter ("Charter").

- Section 556 of the Charter provides the Department of Health and Mental Hygiene ("Department") with jurisdiction to regulate all matters affecting health in the City of New York.
 - Section 556(a)(1) states that the Department shall enforce all provisions of law relative to the necessary health supervision of the purity and wholesomeness of the water supply and the sources thereof;
 - Section 556(a)(3) says the Department shall exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto, and,
 - Section 556(c)(7) says that the Department shall supervise and regulate the public health aspects of the water supply and sewage disposal and water pollution.
- Section 558(b) and (c) of the Charter empower the Board of Health ("Board") to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends.
- Section 1043 of the Charter grants the Department rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule is to:

- Clarify that failing to submit inspection reports after the Department of Health asks for them will be understood as meaning that the inspections never occurred, and
- Indicate that a separate violation for failing to conduct an inspection shall be issued for each year that a required inspection report is not submitted to the Department when requested.

Article 141 of the Health Code concerns the maintenance of the purity and sanitary condition of the City’s potable water supply. Thousands of New York City buildings keep their water supplies in water storage tanks. Section 141.07 (“Building Drinking Water Storage Tanks”) requires that whoever is in control of a building with one or more water tanks used to store and use potable drinking water must inspect the tanks each year and maintain inspection records for the Department’s review upon request.

This amendment clarifies that failure to submit the required inspection records in response to a Department request will be considered sufficient evidence to prove that no inspection was conducted.

The amendment also revises the current rule to indicate that a separate violation shall be issued for each year that a required inspection report is not submitted to the Department when requested.

The proposal is as follows:

Matter in brackets [] is deleted.

Matter underlined is new.

RESOLVED, that Section 141.07 of Article 141 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on June 30, 2009, be and the same hereby is amended to add a new subdivision (f) to clarify enforcement of the requirement for building owners to perform annual drinking water tank inspections, to be printed together with explanatory notes to read as follows:

ARTICLE 141 WATER SUPPLY SAFETY STANDARDS

§141.07 Building Drinking Water Storage Tanks

(a) **Applicability.** The owner, agent or other person in control of a building which has one or more water tanks used to store potable water which is distributed as part of the building's drinking water supply system shall comply with the provisions of this section. This section does not apply to the domestic hot water system.

(b) **Inspection Requirements.** The owner, agent or other person in control of a building shall have the water tank inspected at least once annually. The inspection shall include the examination of the general condition of the tank, including but not limited to the condition of overflow pipes, access ladders, air vents, roof access hatches and screens. The interior and exterior of the water tank and its sealed edges and seams shall be inspected for evidence of pitting, scaling, blistering or chalking, rusting, corrosion and leakage. Inspection of sanitary conditions, including the presence of sediment, biological growth, floatable debris and insects in the tank and rodent or bird activity on and around the tank, shall be performed. The inspection shall include sampling of the water in the water tank to verify the bacteriological quality of the water supply in compliance with Subpart 5-1 of the State Sanitary Code. Sample results shall be reported by a State certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(c) **Reporting and Record Keeping.** A written report documenting the results of such inspection shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the inspection and such reports shall be made available to the Department upon request within 5 (five) business days. The inspection report shall state whether or not all applicable requirements were met at the time of inspection and provide a description of any non-compliance with those requirements.

(d) **Public Notice.** The owner, agent or other person in control of a building shall post in an easily accessible location to residents in each building served by a potable water tank a notice that inspection results are available upon request. The notice must be placed in a frame with a transparent cover. The public notice shall include the name, address, and phone number where inspection results can be requested. Upon receipt of a request, the owner or manager shall make a copy of the inspection results available within 5 (five) business days.

(e) **Corrective Actions.** When an inspection identifies any unsanitary condition, the owner, agent or other person in control of a building shall take the necessary steps to immediately correct the condition. If water sampling analysis of the water tank finds noncompliance with the bacteriological quality standards as outlined in Subpart 5-1 of the State Sanitary Code, this condition shall be reported to the Department within 24 hours. If it is found that the quality of such water is attributed to the sanitary condition of the water tank, the owner, agent or other person in control of a building shall clean the tank in accordance with section §141.09 of this Article. A water tank shall be cleaned whenever directed by the Department to correct an unsanitary condition.

(f) **Enforcement.** If an inspection report required by subdivision (b) of this section is not submitted to the Department when requested, such failure to submit shall be considered *prima facie* evidence that no inspection was conducted for the time period in question. A separate violation shall be issued for each year for which a required inspection report was not submitted to the Department when requested.

Notes: The Department proposes that the Board of Health amend §141.07 of Article 141 of the Health Code to add a new subdivision (f) to clarify enforcement of the requirements for building owners who fail to perform annual drinking water tank inspections.

**NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Water Storage Tank Rules (Health Code Article 141)

REFERENCE NUMBER: 2011 RG 052

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 7, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Water Storage Tank Rules (Health Code Article 141)
REFERENCE NUMBER: DOHMH-5
RULEMAKING AGENCY: DOHMH**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco Navarro
Mayor's Office of Operations

June 07, 2011
Date