Chapter 3
Rules of Practice Applicable to Proceedings Brought Before the Environmental Control Board Pursuant to §1049-a of the New York City Charter and Provisions of the New York City Administrative Code or New York State Law

Subchapter A: General Rules

§3-11 Definitions.
Definitions in section 6-01 of this title apply to terms used in this chapter. In addition, as used in this chapter:

"Board" means the Environmental Control Board of the City of New York.

"Executive Director" means the executive director of the Board.

§3-12 Scope of Rules.
This chapter applies to the adjudications of summonses conducted by the Tribunal as authorized by the Board and to other Board proceedings pursuant to §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, and special hearings conducted by the Board pursuant to Title 24 of the New York City Administrative Code.

All such adjudications, special hearings and enforcement proceedings will be conducted pursuant to the rules set forth in Chapter 6 of this Title. Where there is a conflict between this chapter and Chapter 6, this chapter takes precedence.

§3-13 Computation of Time for Emergency Action.
Any emergency action taken by the Board that requires action within a 24-hour period will be taken regardless of whether the 24-hour period includes a Saturday, Sunday or legal holiday.

§3-14 Claims of Prior Adjudication.
Whenever a party claims that a summons was previously adjudicated, the hearing officer must allow both parties to present all relevant evidence on all the issues in the case, including the claim of prior adjudication. If a party has raised a claim of prior adjudication, the hearing officer must not decide such claim, but must preserve the claim for the purposes of subsequent appeal to the Appeals Unit, a panel of Board members, or the Board pursuant to §3-15. If, on appeal, a party properly raises and preserves a claim of prior adjudication, the Appeals Unit will review the records of the first and any subsequent hearings in order to assist the panel or Board in determining the claim of prior adjudication. In deciding the claim, the panel or the Board will consider the interests of justice and public safety.

§3-15 Panel or Board Review of Appeals.
(a) The Board will establish panels from among its members to review recommended decisions prepared by the Appeals Unit pursuant to §6-19(e), and to issue appeals decisions. A panel may refer a case to the Board for review if the panel is unable to reach a decision. Such case will be considered by the Board and the Board will issue an appeals decision. Unless a party files a

request pursuant to subdivision (b) of this section, the appeals decision of the panel or the Board will be deemed to have been issued by, and become the final determination of the Board, which is also a final determination of the Tribunal. Judicial review of such determination may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

(b) Superseding appeal decisions. Within 10 days of the mailing of the Board's appeals decision, a party may apply to the Board for a superseding appeals decision to correct ministerial errors or errors due to mistake of fact or law. The request for a superseding appeals decision must be served upon the non-requesting party. A decision denying a request for a superseding appeal incorporates by reference the initial appeals decision. A decision granting a request for a superseding appeal vacates the initial appeals decision. This superseding appeals decision will become the final determination of the Board, which is also the final determination of the Tribunal. Judicial review of such determination may be sought pursuant to Article 78 of the CPLR.

§3-16 Judicial Review When Board Decision is Delayed.
(a) If the Board has not issued an appeals decision within 180 days from the filing of the appeal, or if the Board has not issued a superseding appeals decision within 180 days from the request for superseding appeal, the Respondent may at any time file a petition seeking judicial review of the Hearing Officer's recommended decision pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR). Such Respondent may rely on the recommended decision of the Hearing Officer as the final determination of the Board, provided that the following three conditions are met:

(1) at least forty-five days before the filing of such petition, the Respondent files with the Board written notice of the Respondent's intention to file the Article 78 petition;

(2) the Respondent serves and files the Article 78 petition on the Board pursuant to the CPLR; and

(3) the Board has still not issued an appeals decision or, if applicable, a superseding appeals decision at the time of filing the petition.

(b) The Board may issue a final determination after a Respondent files with the Board written notice of intention to file a petition for judicial review under subdivision (a) and before the Respondent has filed the petition.

§3-17 Admission After Default.
Where the Board issues a default decision, in accordance with §6-20 of this Title, permitting Respondent to admit the charge and pay by mail, Respondent may enter a late admission and payment by mail within thirty days of the mailing date of the default decision. OATH may impose a fee of $30 for the processing of such late admission.

§3-18 Stipulation in Lieu of Hearing.
(a) At any time before the Hearing Officer issues a recommended decision, the Petitioner may offer the Respondent a settlement of the summons by stipulation in lieu of further hearing.

The stipulation must contain an admission of the violation, the further facts stipulated to, if any, the amount of the penalty to be imposed, and the compliance ordered, if any.

(b) If entered into by Respondent and filed with the Tribunal prior to the first scheduled hearing date, the stipulation will be reviewed by the Executive Director or his or her designee. The Tribunal as authorized by the Board will, after receiving such stipulation, issue a final decision incorporating the terms of the stipulation. If the stipulation is not acceptable to the Tribunal, the matter will be rescheduled for further hearing.

(c) If entered into during the course of a hearing and approved by the Hearing Officer, the stipulation will be incorporated into the Hearing Officer's recommended decision.

(d) Decisions based upon stipulations may not be appealed.

§3-19 Post Judgment Amendment of Records.
(a) Upon the written motion of any party, the Board may amend any judgment to designate a judgment debtor by the correct legal name.

(b) The movant must file the written motion with the Executive Director. The movant must also file an affidavit setting forth the facts and evidence relied on and an affidavit of service, by certified or registered mail and regular mail, of the motion on the judgment debtor at the last known address and at the address or addresses at which the summons was or summonses were served. Such motion must be served on the judgment debtor and any other party. The motion must set forth the date and time of the hearing in accordance with the direction of the Executive Director, provided that such date and time will not be sooner than ten (10) days after the service of such motion on the judgment debtor. At such hearing, any party may appear, in person or otherwise, with or without an attorney, cross-examine witnesses, present evidence and testify. If the judgment debtor does not appear at the hearing, the Hearing Officer may proceed to determine the evidence presented by the movant in support of the motion.

(c) If the Hearing Officer finds that the movant has established, by a preponderance of evidence

> (i) the correct legal name of the judgment debtor,
>
> (ii) that such name is the same party designated on the summons or summonses as responsible for the alleged violation or violations and
>
> (iii) that service of the summons or summonses and of all other papers in the proceeding or proceedings was or were properly made upon such judgment debtor,

the Hearing Officer will grant such motion and issue a recommended decision directing the amendment of the judgment to reflect the correct legal name of the judgment debtor and of all records relating to the proceedings commenced by the service of the summons or summonses, including the records of judgments filed with the civil court and in the office of the county clerk.

(d) The Hearing Officer will file the recommended decision with the Board and OATH will serve the recommended decision on all parties. Any party who appeared at the hearing, in person or otherwise, may file an appeal of such recommended decision in the manner provided in § 6-19 and the Board will render a final decision on the appeal. Such final decision is the final decision of the Board for purposes of review pursuant to Article 78 of the CPLR.

(e) If an appeal is not filed within the time provided for in § 6-19, the Hearing Officer's recommended decision will become the final decision of the Board and is not subject to review pursuant to Article 78 of the CPLR.

(f) An order correcting a judgment does not affect the duration of a judgment. The judgment will remain in full force and effect for eight (8) years from the date that the judgment was originally entered.

Subchapter B
Special Hearings

§3-21 Cease and Desist Actions.
(a) Scope. This section governs cease and desist actions brought by the Board pursuant to Administrative Code §§ 24-178, 24-257, or 24-524, after Respondent has had notice and an opportunity for a hearing on the violations alleged pursuant to the provisions of §§ 24-184, 24-263, or 24-524 as appropriate, and has failed to comply with orders issued by the Board in such proceedings.

(b) Issuance of Order and Notice. Cease and desist actions are commenced by the Board issuing an order to cease and desist and a notice of special hearing. The order and notice will identify the particular compliance order, previously issued after an adjudicatory hearing or finding of default, which Respondent is alleged to have disregarded, and the activity, equipment, device and/or process involved. The order will direct Respondent to show cause at a special hearing why the equipment, device or process should not be sealed and additional penalties should not be imposed, and will notify Respondent that, if Respondent does not appear as directed, the Board’s order will be implemented.

(c) Service. The order to cease and desist and notice of special hearing will be served personally and by regular mail.

§3-22 Special Hearing.
(a) Pre-Sealing Hearing. The special hearing will be presided over by a Hearing Officer who has all of the powers and duties in subchapter C of Chapter 6 of these rules, except as specifically provided in this section. The Hearing Officer may receive evidence presented by the Petitioner who requested the Board to issue the cease and desist order, any intervenor, and the Respondent.

(b) Motions to Intervene.

(1) A person may intervene as of right in a special hearing if such person may be directly and adversely affected by a cease and desist order of the Board. An order imposing a

monetary penalty is not an order directly or adversely affecting any person other than a Respondent.

(2) Such person intervening as of right must file a written application with the Tribunal and serve it upon each party to the proceeding not less than five (5) days before the special hearing. Such written application must set forth in detail the reasons why the person seeks to intervene. When such written application is made by any person, the matter will be assigned to a Hearing Officer for disposition. Within three (3) days of being served with such written application, any party may file a response and any supporting documents with the Tribunal. Such response and documents, if any, must be served upon the applicant and all other parties.

(3) An intervenor as of right will have all the rights of an original party, except that the Hearing Officer may provide that the intervenor will be bound by orders previously entered or evidence previously received and that the intervenor will not raise issues or seek to add parties which might have been raised or added more properly at an earlier stage of the proceeding.

(c) Report. In lieu of a recommended hearing decision, the Hearing Officer will prepare a report summarizing the evidence and arguments and including the Hearing Officer's findings of fact and recommendation as to whether the sealing should proceed and additional penalties should be imposed. The Hearing Officer will promptly file the report with the Board.

(d) Board Order. Upon receipt of the Hearing Officer's report, the Board may adopt, reject or modify the findings and recommendation, and direct such further hearings or issue such further orders to Respondent as are appropriate under the circumstances to assure correction of the violations. In any case in which the Board issues an order requiring the Respondent to take affirmative action, such order may also require the Respondent to file with the Board a report or reports attesting under oath that the Respondent has complied with the order. Failure to file a required report within the time limit set forth in the order may, in the Board's discretion, constitute a violation of the order regardless of whether the Respondent has otherwise complied with the provisions of the order.

(e) Post-Sealing Hearing. At any time after a sealing has taken place, a Respondent may request a special hearing to present evidence as to why the seal should be removed or sealing order modified. The Respondent must make the request by letter addressed to the Board or the Executive Director or his or her designee. A special post-sealing hearing will then be scheduled and presided over by a Hearing Officer and conducted in accordance with the provisions of subparagraphs (a), (b) and (c) of this section.

§3-23 Application for a Temporary or Limited Unsealing or Stay.

If it appears that remediation undertaken by a Respondent cannot proceed or its effectiveness cannot be tested while a seal remains in place, the Respondent may, by written application addressed to the Executive Director or his or her designee, request that a seal be temporarily removed or stayed for a limited period. The Executive Director or his or her designee may authorize a temporary unsealing or stay of sealing for the above specified reasons for such

limited period and subject to such conditions as the Executive Director or his or her designee deems appropriate.

§3-24 Hearings after Emergency Cease and Desist Orders.
When the Board has issued an emergency cease and desist order, without hearing, due to an imminent peril to public health or safety, pursuant to Administrative Code §§ 24-178(f), 24-346(a) and (e) or 24-523(a) and (b), any person affected by such emergency order may, by written notice to the Board, request a hearing or an accelerated hearing in accordance with those provisions. The hearing held pursuant to the request will be held by the Board and not referred to a Hearing Officer. The hearing will otherwise be conducted in accordance with the relevant provisions of law and the applicable Board rules for adjudicatory hearings.