

**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. Effective June 1, 2019, OATH ECB repeals its Sewer Control Penalty Schedule rule, found in Section 3-123 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The proposed rule repeal was published in *The City Record* on August 31, 2018, and a public hearing was held on October 3, 2018.

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

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) repeals its Sewer Control Penalty Schedule rule. This schedule is found in Section 3-123 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The Sewer Control Penalty Schedule contains penalties for summonses issued by the Department of Environmental Protection (DEP) for violations of Chapter 5 of Title 24 of the Administrative Code of the City of New York and Chapter 19 of Title 15 of the RCNY. This penalty schedule provides penalties for violations relating to the construction and regulation of public sewers, including unauthorized discharge into public sewers. DEP is promulgating a related rule adding a similar Sewer Control Penalty Schedule to its rules with an effective date of June 1, 2019.

The context for this repeal is that OATH ECB is in the process of repealing all penalty schedules in its rules codified at Subchapter G of Chapter 3 of Title 48 of the RCNY so that they can be incorporated into the rules of the agencies having rulemaking and policymaking authority over the laws underlying the violations. Such repeals will also serve OATH's core function of adjudication and help alleviate the false public perception that OATH is an enforcement agency, rather than a neutral tribunal.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has until now promulgated penalty schedules, the regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violation of the rules and of the laws within their jurisdiction based on the severity of each violation and its effect on City residents. Moving the penalty schedule to the enforcement agency's rules 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 been established by the legislature and/or that have already undergone the City Administrative Procedure Act (CAPA) process by the

enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Working with the City's rulemaking agencies, the Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that could be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. This rule repeal was identified as meeting the criteria for this initiative.

Section 1. The Sewer Control Penalty Schedule rule, found in Section 3-123 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED effective June 1, 2019.