

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

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) proposes to repeal its Hazardous Substances Emergency Response Law (Hazardous Materials) Penalty Schedule. This rule is found in Section 3-111 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The Hazardous Materials Penalty Schedule contains penalties for summonses issued by the Department of Environmental Protection (DEP) for violations of Chapter 6 of Title 24 of the Administrative Code. DEP is proposing to adopt substantially all of OATH's Hazardous Material Penalty Schedule into its own rules, by adding a new Chapter 59 to Title 15 of the RCNY.

When and where is the Hearing? OATH ECB will hold a public hearing on the proposed rule. The public hearing will take place from **11:00 a.m. through 12:00 p.m. on September 10, 2019**. The hearing will be held in the OATH 10th Floor Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to OATH ECB through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Nicholas Dietz, Assistant General Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Nicholas Dietz, Assistant General Counsel, at (212) 361-1900.
- **Hearing.** You can speak at the public hearing. Anyone who wishes to comment on the proposed rule at the public hearing must sign up prior to the hearing, which will be held on **September 10, 2019**. You can sign up by calling OATH at (212) 436-0708, or in the hearing room itself before the hearing begins. You may speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments by **5:00 p.m. on September 10, 2019**.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign

language interpreter. You may contact us by mail at 100 Church Street, 12th Floor, New York, NY 10007 or by telephone at (212) 436-0708 to request a reasonable accommodation. Please tell us by **September 9**.

This location has the following accessibility option(s) available: Wheelchair Accessible.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>. Shortly after the public hearing, a transcript of the hearing and copies of the written comments will be available to the public at OATH, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH ECB to make this rule? Section 1049-a of the New York City Charter authorizes OATH ECB to make this proposed rule. This proposed rule is included in OATH's regulatory agenda for this Fiscal Year.

Where can I find OATH ECB's rules? OATH ECB's rules are in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? OATH ECB must meet the requirements of Section 1043(b) of the New York City Charter when creating or changing rules. This notice is made according to the requirements of sections 1043(b) and 1049-a of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) is proposing to repeal its Hazardous Substances Emergency Response Law (Hazardous Materials) Penalty Schedule. This rule is currently found in Section 3-111 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). It contains penalties for violations of Chapter 6 of Title 24 of the Administrative Code. DEP is proposing the adoption of substantially all of OATH's Hazardous Materials Penalty Schedule into a new Chapter 59 of Title 15 of the RCNY.

OATH ECB is currently in the process of repealing all penalty schedules in its rules, codified in Subchapter G of Chapter 3 of Title 48 of the RCNY, with the intent that the penalty schedules be incorporated into the rules of the applicable agencies. This is being done because it is the agencies, not OATH ECB, that possess the rule- and policy-making authority over the laws which underlie the violations detailed in the penalty schedules. In addition, such repeals will serve OATH's core function as an adjudicatory body, as well as help to alleviate any false public perceptions that OATH is an enforcement agency, rather than a neutral arbiter.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has, until now, promulgated penalty schedules, the City's regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violations of their own rules and laws, based on the severity of each violation and its effect on City residents. The shifting

of penalty schedules from OATH ECB to the rules of the enforcement agency will also make it easier for the public to find these penalties, as they will be located within the same chapter as the agency rules that support the violations alleged in their summonses. Finally, the proposed rule repeal will speed up the rulemaking process by eliminating the need for OATH ECB to approve proposed or amended penalties for agency rules that have already been adopted by the City legislature and/or completed the steps required by the City Administrative Procedure Act (CAPA), during which the public still has the opportunity to comment on proposed penalties.

Working with the City's rulemaking agencies, the NYC Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective 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 increase public understanding and compliance. OATH's proposed rule repeal was identified as meeting the criteria for this initiative.

Section 1. Section 3-111 of subchapter G of chapter 3 of title 48 of the rules of the city of New York is REPEALED.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Repeal of OATH/ECB Hazardous Materials Schedule

REFERENCE NUMBER: 2019 RG 0961

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: 7/26/2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

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

RULE TITLE: Repeal of OATH/ECB Hazardous Materials Schedule

REFERENCE NUMBER: OATH-ECB-95

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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 X. Navarro
Mayor's Office of Operations

July 31, 2019
Date