

## ENVIRONMENTAL CONTROL BOARD

**NOTICE OF OPPORTUNITY TO COMMENT** on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED** in the Environmental Control Board (ECB) by section 1049-a of the New York City Charter, and in accordance with section 1043(b) of the Charter, that the Environmental Control Board proposes to amend subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, setting forth penalties for offenses adjudicated by the Environmental Control Board. New matter in the following rule is underlined, and deleted material is in brackets. This rule was not included in the Environmental Control Board's regulatory agenda because it was not anticipated at the time the agenda was created.

Written comments regarding the proposed rule may be sent to James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038, on or before August 10, 2010. Members of the public may also submit comments on the rule electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules). A public hearing regarding the proposed rule will be held on August 10, 2010, in ECB's 10th Floor Conference Room, at 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038, at 5:00 p.m. Persons seeking to testify are requested to notify James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038, (212) 361-1515, on or before August 10, 2010. Persons who need a sign language interpreter or other accommodation for a disability are asked to notify James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038, (212) 361-1515 by August 3, 2010. Persons interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to: James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038.

New matter is underlined.  
Deleted matter is in [brackets]

Section 1. The Air Asbestos Code Penalty Schedule found in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by deleting the existing penalties for sections 1-126 (a), (b), (d), (e) and (f), listed under ACM Procedures: Order of Work, and replacing them as follows:

SECTION	DESCRIPTION	1ST VIOLATION		2ND VIOLATION	
		Penalty	STIP.	Penalty	STIP.
[1-126(a)	Failed to prevent demolition from compromising abatement on lower floors	4800	3000	9600	6000
1-126(b)	Improperly routed demolition debris through removal project work area	1200	1000	2400	1500
1-126(d)	Failed to maintain proper separation between abatement and demolition areas	1200	1000	2400	1500
1-126(e)	Failed to remove ACM from underground floors in proper sequence	1200	1000	2400	1500
1-126(f)	Failed to remove ACM from street level floor last	1200	1000	2400	1500]
<u>1-126</u>	<u>Performed concurrent abatement &amp; demolition or story removal</u>	<u>4800</u>	<u>3000</u>	<u>9600</u>	<u>6000</u>

### **Statement of Basis and Purpose of Proposed Rule**

ECB is proposing to amend its Air Asbestos Penalty Schedule in accordance with recent changes in the law. On December 7, 2009, section 24-146.1(o) of the Air Pollution Control Code became effective. This section prohibits the concurrent conduct of asbestos abatement activities with the demolition of a building, or the removal of one or more stories from a building. Previously, the rules of the Department of Environmental Protection permitted such concurrent activity as long as a two-floor buffer was maintained between the abatement and the demolition.

The enactment of section 24-146.1(o) required DEP to amend its Asbestos Rules. These amendments, which took effect on June 6, 2010, eliminate all of the existing provisions of section 1-126 and replace them with a prohibition on concurrent demolition and abatement, except pursuant to a variance issued under section 15 RCNY 1-03. Any such variance may only be approved after consultation with the Fire Department and the Department of Buildings.