

## **ENVIRONMENTAL CONTROL BOARD**

### **Notice of Promulgation of Rule**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED** in the Environmental Control Board by Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the New York City Charter and Chapter 2 of Title 28 of the New York City Administrative Code, the Environmental Control Board hereby promulgates the following rule. The rule creates penalties for offenses adjudicated by the Environmental Control Board related to concrete washout water and exterior wall safety. The rule was published in The City Record on May 11, 2012 and a public hearing was held on June 12, 2012.

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

The Environmental Control Board held a public hearing on June 12, 2012 regarding amendments to its Department of Buildings (DOB) Penalty Schedule. This schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). One member from the public and a representative from DOB attended the public hearing and testified on ECB's proposed rule regarding concrete washout water and unsafe facades. One written comment from DOB was received. The Board has considered the testimony from the member of the public as well as the testimony and the written comment from DOB and has revised the "Violation Description" in the entry for 28-302.5 within Section 3 of the Rule to read as follows: "Failure to take required measures to secure public safety-unsafe façade" instead of "Failure to timely correct unsafe condition."

These amendments will create penalties for certain sections of the New York City Building Code, Administrative Code, and RCNY to better enforce these provisions.

#### **Section 1. Concrete Washout Water**

Concrete washout water damages New York City's environment, sewer and drainage systems. The amendment creates penalties for violations of Section 3303.15 of the New York City Building Code as added by Local Law 70 of 2011. Local Law 70 of 2011 regulates concrete washout water, defined as wastewater from the rinsing of equipment used to mix, transport, convey and/or place concrete. Local Law 70 of 2011 will take effect July 1, 2012.

#### **Sections 2 through 4. Public Safety Measures for the Maintenance of Exterior Walls**

When the exterior walls and appurtenances (façades) of a building become unsafe, they pose a serious threat to public safety. The amendments create penalties for violations of the following provisions, which require certain procedures for the safe maintenance of building façades:

- Section 28-302.3 of the Administrative Code;
- Section 28-302.5 of the Administrative Code; and
- Section 103-04(b)(5)(iii) of Title 1 of the RCNY.

Article 302 of Title 28 of the Administrative Code sets forth maintenance requirements for the façades of buildings greater than 6 stories. Section 28-302.3 requires a registered design professional who learns of an unsafe condition upon examining a façade to immediately notify the DOB. When an unsafe condition is reported, Section 28-302.5 requires the building owner, the owner's agent, or the person in charge of the building to take immediate steps to remedy those conditions.

Section 103-04(b)(5)(iii) of Title 1 of the RCNY requires the building owner, the owner's agent, or the person in charge of the building to get approval from the DOB before removing a shed or protective measure from a building's exterior.

New matter is underlined.

**Section 1. The Environmental Control Board has amended its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following violation after the violation “BC 3303.8.1, Failure to properly conduct planned removal from service of standpipe system and/or standpipe pressurized alarm”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>BC 3303.15</u>	<u>2</u>	<u>Failure to perform proper concrete washout water procedures at construction site</u>	<u>No</u>	<u>No</u>	<u>1,200</u>	<u>No</u>	<u>6,000</u>	<u>3,000</u>	<u>10,000</u>	<u>6,000</u>	<u>10,000</u>

**Section 2. The Environmental Control Board has amended its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following violation after the violation “28-302.1, Failure to maintain building wall(s) or appurtenances”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-302.3</u>	<u>1</u>	<u>Failure of registered design professional to immediately notify Department of unsafe condition</u>	<u>No</u>	<u>No</u>	<u>1,200</u>	<u>No</u>	<u>6,000</u>	<u>3,000</u>	<u>12,000</u>	<u>6,000</u>	<u>25,000</u>

**Section 3. The Environmental Control Board has amended its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following violation after the violation “28-302.5, Failure to file an amended report acceptable to this Department indicating correction of unsafe conditions”:**

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-302.5</u>	<u>1</u>	<u>Failure to take required measures to secure public safety-unsafe facade</u>	<u>No</u>	<u>No</u>	<u>2,400</u>	<u>No</u>	<u>12,000</u>	<u>6,000</u>	<u>24,000</u>	<u>12,000</u>	<u>25,000</u>

Section 4. The Environmental Control Board has amended its DOB Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and has added the following violation after the violation “1 RCNY 101-07, Failure of Approved agency to comply with requirements of 1 RCNY 101-07”:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>1 RCNY §103-04(b)(5)(iii)</u>	<u>2</u>	<u>Removal of shed or protective measure without Department approval</u>	<u>No</u>	<u>No</u>	<u>800</u>	<u>Yes</u>	<u>4,000</u>	<u>2,000</u>	<u>8,000</u>	<u>4,000</u>	<u>10,000</u>