

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed rule regarding amendments to the Department of Transportation (DOT) Penalty Schedule for offenses adjudicated by the Environmental Control Board (ECB).

Date / Time: May 15, 2012 / 3:30 p.m.

Location: ECB
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

Contact: James Macron
Counsel to the Board
ECB
66 John Street
10th Floor
New York, N.Y. 10038
(212) 361-1515

Proposed Rule Amendment

Pursuant to Sections 1043 and 1049-a of the New York City Charter, and in accordance with Sections 19-121(b)(7), 19-147, and 19-150 of the New York City Administrative Code, the Environmental Control Board proposes to amend Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (the DOT Penalty Schedule), creating penalties for offenses adjudicated by the Environmental Control Board. 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.

Instructions

- Written comments regarding the proposed rule may be sent to Mr. Macron at his contact address above on or before May 15, 2012. Members of the public may also submit comments on the rule electronically through NYC RULES at www.nyc.gov/nycrules.
- Individuals who want to testify at the hearing should notify Mr. Macron on or before May 15, 2012.
- Individuals who need a sign language interpreter or other accommodation for a disability should notify Mr. Macron on or before May 8, 2012.
- Individuals interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to Mr. Macron at his contact address above.

Statement of Basis and Purpose of Proposed Rule

The Environmental Control Board proposes to amend the DOT Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). These amendments will create penalties for violations of new and/or recently amended sections of DOT's Highway Rules, found in Chapter 2 of Title 34 of the RCNY.

Section 1 - The proposed amendment creates penalties for violations of Section 2-05(d)(8)(vi) of DOT's Highway Rules. This provision was amended in 2011 to prohibit storage of construction material or equipment on City streets at a height greater than five feet unless such material or equipment is a nondivisible load or unless otherwise authorized by the DOT Commissioner.

Sections 2 through 5 - The proposed amendments create penalties for violations of portions of Sections 2-11(e) and 2-11(f) of DOT's Highway Rules. These sections were amended in 2011 to enhance and clarify the rules related to street excavation and restoration, including rules designed to ensure that restorations result in a smooth and level roadway surface for motorists, pedestrians, and bicyclists so as to minimize trip hazards.

Section 6 - The proposed amendments create penalties for portions of Section 2-20 of DOT's Highway Rules. This section was added in 2010 to address the procedures and processes involved in working on or within a specific distance of City electrical equipment or electrical equipment attached to City property. It also provides that permits are required for certain activities relating to electrical equipment associated with the City's streets and sidewalks where pedestrian and vehicular traffic are present and over which DOT exercises direct responsibilities.

All proposed penalties are within the guidelines set out in section 19-150 of the New York City Administrative Code. New matter is underlined.

Section 1. The Environmental Control Board is amending its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an entry after the entry in that schedule for 34 RCNY 2-07(b)(3) ("Utility cover/street hardware not flush with surrounding area") to read as follows:

SECTION	DESCRIPTION	PENALTY	DEFAULT
<u>34 RCNY 2-05(d)(8)(vi)</u>	<u>Divisible construction materials or equipment stored at a height greater than 5 feet</u>	<u>\$500</u>	<u>\$1,500</u>

Section 2. The Environmental Control Board is amending its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an entry after the entry in that schedule for 34 RCNY 2-11(e)(11)(vi) ("Installing asphalt other than binder as a base course") to read as follows:

SECTION	DESCRIPTION	PENALTY	DEFAULT
<u>34 RCNY 2-11(e)(11)(vi)</u>	<u>Installation and compaction of binder in greater than four inch lifts</u>	<u>\$400</u>	<u>\$1,000</u>

Section 3. The Environmental Control Board is amending its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an entry after the entry in that schedule for 34 RCNY 2-11(e)(11)(vii) (“Installation of shallow conduit without department approval”) to read as follows:

SECTION	DESCRIPTION	PENALTY	DEFAULT
<u>34 RCNY 2-11(e)(11)(vii)</u>	<u>Binder based restoration not flush with surrounding pavement</u>	<u>\$750</u>	<u>\$1,000</u>

Section 4. The Environmental Control Board is amending its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an entry after the entry in that schedule for 34 RCNY 2-11(e)(12)(ix) (“Installing Construction Signs w/o a Permit”) to read as follows:

SECTION	DESCRIPTION	PENALTY	DEFAULT
<u>34 RCNY 2-11(e)(12)(ix)</u>	<u>Failure to conform with the latest version of DOT Standard Details 1042A, 1042B, or 1042C</u>	<u>\$750</u>	<u>\$1,000</u>

Section 5. The Environmental Control Board is amending its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add an entry after the entry in that schedule for 34 RCNY 2-11(e)(14)(iii) (“Failure to install a color coding marker at the end of the restoration”) to read as follows:

SECTION	DESCRIPTION	PENALTY	DEFAULT
<u>34 RCNY 2-11(e)(14)(iii)</u>	<u>Failure to conform with the latest version of DOT Standard Details 1042A, 1042B, or 1042C (protected street)</u>	<u>\$750</u>	<u>\$1,000</u>

Section 6. The Environmental Control Board is amending its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add 13 new entries after the entry in that schedule for 34 RCNY 2-15(c) (“Failure to remove an unlawful Sidewalk ATM (continuing violation)”) to read as follows:

SECTION	DESCRIPTION	PENALTY	DEFAULT
<u>34 RCNY 2-20(a)(1)</u>	<u>Unauthorized attachment of item to City electrical equipment</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(a)(2)</u>	<u>Unauthorized person working within 3 feet of City electrical equipment</u>	<u>\$250</u>	<u>\$500</u>

<u>34 RCNY 2-20(a)(6)</u>	<u>Failure to notify DOT's Electrical Inspections Unit at least 72 hours prior to the commencement of non-emergency work</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(a)(7)</u>	<u>Unauthorized breaking, defacing, removing, or interfering with lamp, gas, communication or electrical apparatus in street or public place</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(b)(2)</u>	<u>Installation of an overhead or wrap-around shunt without a DOT permit</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(b)(4)</u>	<u>Failure to replace shunt with permanent connection within 90 days</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(b)(9)</u>	<u>Failure to maintain overhead shunt or supports at minimum clearances</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(e)(7)</u>	<u>Failure to protect conductor against accidental contact or possible interference</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(n)(2)</u>	<u>Anchor guy attached to City property without DOT approval</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(n)(3)(i)</u>	<u>Anchor guy attached to City property within 25 feet of intersecting street</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(n)(3)(ii)</u>	<u>Anchor guy attached to City property where head guys or pole guys and cribbed poles sufficient</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(n)(3)(iii)</u>	<u>Anchor guy attached to City property interfering with the entrance to a building or garage</u>	<u>\$250</u>	<u>\$500</u>
<u>34 RCNY 2-20(n)(4)</u>	<u>Anchor guy attached to City property not protected by approved shield</u>	<u>\$250</u>	<u>\$500</u>

**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: Amendment of Transportation Penalty Schedule (Street Light and Power)

REFERENCE NUMBER: OATH/ECB-18

RULEMAKING AGENCY: Environmental Control Board

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) Provides a cure period for violations in section 4 and 5; does not provide cure period for violations in section 1, 2, 3, and 6, because those violations pose serious risks to public safety.

/s/ Ruby Choi
Mayor's Office of Operations

3/1/2012
Date