

Environmental Control Board

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) in accordance with Sections Section 1049-a and 1043 of the New York City Charter and Chapter 3 of Title 28 of the Administrative Code. The ECB has amended 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. It contains penalties for notices of violation issued by the New York City DOB. The proposed rule was published in the City Record on August 21, 2015 and a public hearing was held on September 21, 2015.

Statement of Basis and Purpose of Final Rule

The New York City Environmental Control Board (ECB) has modified the ECB Buildings 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 to enforce Local Law 77 of 2015.

The ECB held a public hearing on September 21, 2015 regarding amendments to its Department of Buildings (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. One representative from DOB attended the public hearing. No written comments or oral testimony concerning this Proposed Rule were received at the September 21, 2015 public hearing.

In response to a recent outbreak of Legionnaires' disease in the South Bronx, the City Council enacted and the Mayor signed into law Local Law 77 of 2015, effective August 18, 2015. Section one of Local Law 77 of 2015 added a new Article 317, entitled "Cooling Towers" to chapter 3 of title 28 of the New York City Administrative Code (the Code).

Section 28-317.3, entitled "Registration," requires all cooling towers to be registered with the DOB before initial operation as required by the DOB Commissioner. Owners of existing cooling towers must register their towers within 30 days of the law's effective date. Thus, owners of existing cooling towers were required to register their towers by September 17, 2015.

Section 28-317.3.1, entitled "Discontinued use," requires owners or operators of cooling towers to notify DOB within 30 days of removing or permanently discontinuing use of a cooling tower and to include in their notice a statement that the tower was drained and sanitized in compliance with Department of Mental Health and Hygiene (DOHMH) rules for discontinuance of a cooling tower.

Section 28-317.5, entitled "Annual certification," requires owners or operators of cooling towers to certify that the cooling tower was inspected, tested, cleaned and disinfected in compliance

with section 17-194.1 of the Code and the rules of DOHMH , and that a maintenance program and plan has been developed and implemented as required by such section. The owner or operator must submit the certification by November 1, 2016 and every November 1 of each year thereafter, or as otherwise specified in DOB’s rules.

Section 28-317.7, entitled “Enforcement,” makes failure to register a cooling tower or submit a certification or statement required by new article 317 a major (also called Class 2) violation. The statutory maximum for a major violation is \$10,000.

To support enforcement of this law, the Board has added three new charges to the Buildings Penalty Schedule.

[Deleted material is in brackets.]
 New material 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 to add three new charges after the entry in that schedule for NYC Admin. Code 28-305.4.7.3, Failure to file an amended condition assessment acceptable to Department indicating correction of unsafe conditions, to read as follows:

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>28-317.3</u>	<u>Class 2</u>	<u>Failure to register cooling tower prior to operation</u>	<u>No</u>	<u>No</u>	<u>2,000</u>	<u>Yes</u>	<u>10,000</u>	<u>5,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
<u>28-317.3.1</u>	<u>Class 2</u>	<u>Failure to notify of discontinued use or removal of cooling tower</u>	<u>Yes</u>	<u>Yes</u>	<u>800</u>	<u>Yes</u>	<u>4,000</u>	<u>2,000</u>	<u>10,000</u>	<u>4,000</u>	<u>10,000</u>
<u>28-317.5</u>	<u>Class 2</u>	<u>Failure to file an annual certification of cooling tower inspection/testing/cleaning/disinfecting/maintenance plan per Adm. Code 17-194.1</u>	<u>No</u>	<u>No</u>	<u>2,000</u>	<u>Yes</u>	<u>10,000</u>	<u>5,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>