

**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

Notice of adoption of amendments to Chapter 31 of Title 24 of the Rules of the City of New York concerning drinking water tank inspection penalties and penalties relating to the chemical storage and treatment of building drinking water.

In accordance with section 389(b) of the New York City (“NYC”) Charter (“Charter”), which provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law,” and section 1043(a) of the Charter which similarly provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law,” a notice of public hearing and opportunity to comment on these proposed rules was published in the City Record on December 16, 2022, and a public hearing was held on January 17, 2023. No one testified at the public hearing and the Department received 2 written public comments. The comments from The Plumbing Foundation City of New York, Inc. were supportive of and commended the Department for these proposed amendments. The other comments received were from a water tank company, which made certain specific regulatory requests that are outside the scope of these proposed amendment updates to the Chapter 31 Appendix 31-A penalty schedule. The Department shall take these comment requests into consideration as it considers future regulatory updates to this chapter.

On its own initiative, the Department has now added the following 2 additional penalties to the Chapter 31 Appendix 31-A penalty schedule, relating to certain violations of NYC Health Code Article 141, which provides requirements for drinking water supply safety standards. These added violations to the penalty schedule concern failure to design, install or maintain a system to operate within manufacturer’s specifications and industry standards, and failure to meet appropriate chemical storage requirements, as required by Health Code sections 141.11(f) and 141.11(j), respectively.

The Department now adopts the following amendments as provided below.

Statement of Basis and Purpose

NYC Administrative Code section 17-194 governs drinking water tank inspections. The Department’s rules enacted pursuant to section 17-194 are located in Chapter 31 (§§ 31-01 to 31-03) of Title 24 of the Rules of the City of New York. Section 17-194 requires an owner of a building with a water tank that provides potable water to submit documentation of an annual drinking water tank inspection report to the Department. The inspection report must be submitted by the water tank inspector and must state whether all applicable regulations were met at the time of inspection and provide a description of any non-compliance with the requirements.

These amendments to the Chapter 31 Appendix 31-A penalty schedule reflect amendments to section 17-194 made by Local Laws 85, 86, 87 and 88 of 2019, which added the following requirements: electronic submission of documentation for water tank inspection and cleaning; specific qualifications for persons conducting inspections of drinking water tanks; the maintenance of water tanks and associated structures in safe condition and the reporting by the water tank inspector or owner of any unsafe conditions to the Department of Buildings in writing; and submission of a visual depiction of the interior and exterior of water tanks to the Department. An increase in the penalty fee for failure to submit the annual drinking water tank inspection report is also adopted in light of the importance of this requirement. The adopted rule also makes one technical amendment to section 31-03 that is not meant to change the scope of an owner’s or operator’s requirement to pay penalties whenever a violation is sustained. Certain ministerial

corrections are also adopted to accurately reflect the Administrative Code citations after Local Law revisions. The adopted penalties are all within the range established in section 17-194 of the NYC Administrative Code.

It should also be noted that NYC Health Code Article 141 provides water supply safety standards and operates in conjunction with Chapter 31 drinking water tank inspection requirements. Section 141.11 of Article 141 provides requirements as to drinking water storage tanks and chemical treatment of the drinking water supply system within a building. Violations of these sections are now reflected in this updated Chapter 31 Appendix 31-A penalty schedule. Accordingly, the title of Appendix 31-A is also being updated to reflect the adoption of penalties for certain Article 141 (section 141.11) violations. These amendments now provide fixed penalties for violations of section 141.11 of the New York City Health Code, relating to requirements for chemical storage and treatment of building drinking water. Finally, these amended penalties fall within the range set forth in section 3.11 of the Health Code.

Pursuant to Charter section 1043(d)(4)(ii), these amendments are exempt from the review required under Charter section 1043(d)(1).

The amendments are as follows:

Underlined text is new. Deleted text is in [brackets].

Section 1. Section 31-03 of Chapter 31 of Title 24 of the Rules of the City of New York is amended to read as follows:

§31-03 Penalties. Owners or operators of buildings with drinking water tanks or other persons found to be in violation of any of the following provisions of law by a hearing officer at the Office of Administrative Trials and Hearings or successor tribunal must pay the penalties set forth in Appendix 31- A of this Chapter for each such violation sustained [with respect to each building drinking water tank for each year to which such violation pertains].

Section 2. The title of Appendix 31-A of Chapter 31 of Title 24 of the Rules of the City of New York is amended to read as follows:

Appendix 31-A:
Building Drinking Water Tank and Water Supply Safety Standards Penalties

Section 3. Appendix 31-A of Chapter 31 of Title 24 of the Rules of the City of New York is amended to add and amend the following penalties for violations of section 31-02 of Chapter 31, section 17-194 of the Administrative Code and section 141.11 of the Health Code, to read as follows:

Appendix 31-A:
Building Drinking Water Tank and Water Supply Safety Standards Penalties

Citation	Violation Description	Penalty	Default
24 RCNY 31-02(a)	Failure to submit report of previous year’s inspection results by January 15	[\$250] <u>\$500</u>	[\$500] <u>\$1000</u>
<u>NYCHC 141.11(a)</u>	<u>Chemicals or other substances added by a person, corporation, or partnership without the required Department permit</u>	<u>\$1000</u>	<u>\$2000</u>

<u>NYCHC 141.11(d)</u>	<u>Failure to meet required product standards</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(e)</u>	<u>Failure to provide required cross connection control</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(f)</u>	<u>Failure to design, install or maintain a system in accordance with manufacturer's specifications and applicable industry standards to ensure proper chemical dosage and operation</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to take samples of the treated water prior to placing the system in operation and monthly thereafter to confirm that the drinking water supply complies with State Sanitary Code, Subpart 5-1</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to have the drinking water analyzed by a State certified laboratory</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to maintain for at least 5 years required records of water sampling and analysis</u>	<u>\$250</u>	<u>\$500</u>
<u>NYCHC 141.11(g)</u>	<u>Failure to provide records of water sampling and analysis within 5 business days after Department's request</u>	<u>\$250</u>	<u>\$500</u>
<u>NYCHC 141.11(h)</u>	<u>Failure to operate or maintain a system used to chemically treat the water that complies with State Sanitary Code, Subpart 5-1 requirements</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(i)</u>	<u>Failure to maintain required chemical addition device records for at least 5 years</u>	<u>\$250</u>	<u>\$500</u>
<u>NYCHC 141.11(j)</u>	<u>Failure to meet chemical storage requirements</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYCHC 141.11(l)</u>	<u>Failure to provide certain chemical treatment system data within 5 business days after Department's request</u>	<u>\$250</u>	<u>\$500</u>
<u>Admin. Code 17-194(b)</u>	<u>Failure to provide documentation that displays visual depiction of the water tank</u>	<u>\$250</u>	<u>\$500</u>
<u>Admin. Code 17-194(c)</u>	<u>Drinking water tank inspected by someone other than a water tank inspector</u>	<u>\$500</u>	<u>\$1000</u>
<u>Admin. Code 17-194[c](d)</u>	<u>Failure to post notice of availability of inspection reports</u>	<u>\$250</u>	<u>\$250</u>
<u>Admin. Code 17-194(g)</u>	<u>Failure to report a water tank's unsafe conditions to the Department of Buildings in writing</u>	<u>\$250</u>	<u>\$500</u>