

## 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 Sections 1049-(c)(3) and 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, N.Y. 10038, on or before December 7, 2010. A public hearing regarding the proposed rule will be held on December 7, 2010, at 66 John Street, 10<sup>th</sup> Floor, from 5:00 p.m. to 6:30 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, N.Y. 10038, (212) 361-1515 on or before December 7, 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, N.Y. 10038, (212) 361-1515 by November 30, 2010. Member of the public may also submit comments on the rule electronically through NYC RULES at [www.nyc.gov.nycrules](http://www.nyc.gov.nycrules). 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, N.Y. 10038.

New matter in the following rule is underlined  
[Deleted material is in brackets]

Section 1. Recycling-Sanitation Collection Rules Penalty Schedule, found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended to revise the definition of "Persistent Violator" contained in the headnote of the penalty schedule, to read as follows:

Persistent violator: As is set forth in section 16-324 of the Administrative Code, a person committing a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator. [and] Such person shall be liable for a civil penalty of [five] four hundred dollars for each violation. [For a] A persistent violation may only, [except] be found where such violation occurs at a building of [less than] nine or more dwelling units[,]. [each] Each container or bag containing solid waste that has not been source separated or placed out for collection in [accordance] a manner consistent with the regulations promulgated by the commissioner pursuant to this chapter shall [constitute] be deemed a separate violation[,]. [provided that] However, no more than twenty separate violations [are] may be issued on a per bag or per container basis during any twenty-four hour period.

Section 2. Recycling-Sanitation Collection Rules Penalty Schedule, found in §3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended to add and revise the following charges as set forth below:

SECTION/RULE	DESCRIPTION	PENALTY
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### RESIDENTIAL PREMISES

<u>16 RCNY 1-08(e)(1).(2)</u>	<u>Improper/misused curbside recycling container (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(e)(3)</u>	<u>Improper/misused mechanized recycling container (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(f)(1)</u>	<u>Failure to post notices/inform about recycling (Four to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(f)(2)(i)</u>	<u>No accessible recycling storage area (Four to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(f)(2)(iii)</u>	<u>Inadequate recycling containers in storage area (Four to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(g)(1)</u>	<u>Improper disposal of recyclables/misuse of container (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(g)(3)</u>	<u>Failure to clean recyclables (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>

<u>16 RCNY 1-08(g)(3)</u>	<u>Failure to bundle newspapers/magazines/cardboard (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(h)(1),(2)</u>	<u>Failure to properly put recyclables out for collection (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(h)(4)</u>	<u>Non-recyclables left in recycling container for Collection (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(h)(5)</u>	<u>Recyclables placed for collection with non-recyclables (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
<u>16 RCNY 1-08(i)</u>	<u>Failure to comply with Comm.Order mandating use of clear plastic bags for disposal of refuse &amp; recycling (Four to eight dwelling units)</u>	<u>1<sup>st</sup> violation</u>	<u>25</u>
		<u>2<sup>nd</sup> violation</u>	<u>50</u>
		<u>3<sup>rd</sup> violation</u>	<u>100</u>
<u>16 RCNY 1-08(e)(1),(2)</u>	<u>Improper/misused curbside recycling container (Nine or more dwelling units)</u>	<u>1st Violation</u>	[25] <u>100</u>
		<u>2nd Violation</u>	[50] <u>200</u>
		<u>3rd Violation</u>	[100] <u>400</u>
		<u>Persistent Violator (fourth or subsequent violation within six months)</u>	[500] <u>400</u>
<u>16 RCNY 1-08(e)(3)</u>	<u>Improper/misused mechanized recycling container (Nine or more dwelling units)</u>	<u>1st Violation</u>	[25] <u>100</u>
		<u>2nd Violation</u>	[50] <u>200</u>
		<u>3rd Violation</u>	[100] <u>400</u>

		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(f)(1)	Failure to post notices/inform about recycling ( <u>Nine or more dwelling units</u> )	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(f)(2)(i)	No accessible recycling storage area ( <u>Nine or more dwelling units</u> )	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(f)(2)(iii)	Inadequate recycling containers in storage area ( <u>Nine or more dwelling units</u> )	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(g)(1)	Improper disposal of recyclables/misuse of container ( <u>Nine or more dwelling units</u> )	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(g)[(2)] (3)	Failure to clean recyclables ( <u>Nine or more dwelling units</u> )	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>

16 RCNY 1-08(g)(3)	Failure to bundle newspapers/magazines/cardboard <u>(Nine or more dwelling units)</u>	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(h)(1),(2)	Failure to properly put recyclables out for collection <u>(Nine or more dwelling units)</u>	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(h)(4)	Non-recyclables left in recycling container for Collection <u>(Nine or more dwelling units)</u>	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(h)(5)	Recyclables placed for collection with non-recyclables <u>(Nine or more dwelling units)</u>	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-08(i)	Failure to comply with Comm.Order mandating use of clear plastic bags for disposal of refuse & recycling <u>(Nine or more dwelling units)</u>	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>

**INSTITUTIONS/AGENCIES**

16 RCNY 1-09(d)	Failure to establish recycling program	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-09(g)(1)(i)	Failure to notify employees about recycling program	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-09(g)(1)(iii)	Recycling containers not provided/not labeled	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-09(h),(i),(j)	Failure to source separate designated recyclables	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>

**PRIVATE CARTER-COLLECTED WASTE**

16 RCNY 1-10(c)(1)	Failure to source separate non-food/beverage recyclables	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>

16 RCNY 1-10(c)(2)	Failure to source separate food/beverage recyclables	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
<u>16 RCNY 1-10(c)(3)</u>	<u>Failure to source separate residential recyclables (One to eight dwelling units)</u>	<u>1st Violation</u>	<u>25</u>
		<u>2nd Violation</u>	<u>50</u>
		<u>3rd Violation</u>	<u>100</u>
16 RCNY 1-10(c)(3)	Failure to source separate residential recyclables ( <u>Nine or more dwelling units</u> )	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(d)(2)	No agreement with carter for mixed materials	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(d)(3)	Failure to post commingling notice	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(e)	Failure to maintain source separation	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>

		months)	
16 RCNY 1-10(f)(1)(i)	No written recycling agreement	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(f)(1)(ii)	No written recycling notice to tenants/employees	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(f)(1)(iii)	Recycling notices not posted in maintenance area	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(f)(1)(iv)	Recycling containers missing	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(f)(2)(i)	Failure to source separate recyclables	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(f)(2)(ii),(iv)	Failure to notify employees/post notices/label Containers	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>

		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(g)(1)	Failure by Transfer Station to recycle	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(g)(2)	Failure to maintain separation of paper(transfer stations)	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(g)(3)	Failure to separate commingled metal, glass plastic(transfer stations)	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(g)(5)	Failure to separate components of construction waste(transfer station)	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>
16 RCNY 1-10(g)(6),(7)	Improper disposal of recyclables or commingled materials(transfer station)	1st Violation	[25] <u>100</u>
		2nd Violation	[50] <u>200</u>
		3rd Violation	[100] <u>400</u>
		Persistent Violator (fourth or subsequent violation within six months)	[500] <u>400</u>

Section 3. Sanitation Penalty Schedule, found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended to revise the headnote labeled “\*\*\*” to read as follows:

\*\*\* For sections 10-119 and 10-120 and 16-308[(g)] (e) and 16-308[(h)] (f) and 16-404 and 16-405(a) and 16-405(b), and 16-118(7)(b)(2), and 16-118(7)(d), and 16-453(b), 16-453(c), 16-454(b), and 16-454(c), a repeat violation is a violation by the same respondent of the same section of law as the previous violation with a date of occurrence within 12 months of the date of occurrence of the previous violation. A Persistent Violator, as is set forth in section 16-324 of the Administrative Code, is a person committing a fourth and any subsequent violation within a period of six months. Such person shall be liable for a civil penalty of four hundred dollars for each violation. A persistent violation may only be found where such violation occurs at a building of nine or more dwelling units. Each container or bag containing solid waste that has not been source separated or placed out for collection in a manner consistent with the regulations promulgated by the commissioner pursuant to this chapter shall be deemed a separate violation. However, no more than twenty separate violations may be issued on a per bag or per container basis during any twenty-four hour period.

Section 4. Sanitation Penalty Schedule, found in §3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended to add one charge after the entry in that penalty scheduled for NYS General Business Law §397-a, “Placement of unsolicited advertisements on private property in a manner contrary to sign authorized by General Business Law §397-a.” and to revise the three charges following thereafter to read as follows:

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
<u>16-308(e)</u>	<u>Improper receptacle for yard waste (Resident—One to eight dwelling units)</u>	<u>1st Violation : 25</u>	<u>1st Violation : 25</u>
		<u>2<sup>nd</sup>: Violation: 50</u>	<u>2<sup>nd</sup>: Violation: 50</u>
		<u>3<sup>rd</sup> Violation: 100</u>	<u>3<sup>rd</sup> Violation: 100</u>
<u>16-308[(g)] (e) ***</u>	<u>Improper receptacle for yard waste (Resident-Nine or more dwelling units)</u>	<u>1<sup>st</sup> Violation: [25] 100</u>	<u>1<sup>st</sup> Violation: [25] 100</u>
		<u>2<sup>nd</sup> Violation: [50] 200</u>	<u>2<sup>nd</sup> Violation: [50] 200</u>
		<u>3<sup>rd</sup> Violation: [100] 400</u>	<u>3<sup>rd</sup> Violation: [100] 400</u>
		<u>Persistent Violator (fourth and any subsequent violation within a period of six</u>	<u>Persistent Violator (fourth and any subsequent violation within a period of six</u>

months): [500]  
400                      months): [500]  
400

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
16-308[(h)] (f) ***	Improper dispersal of yard waste (Business Generating Yard Waste)	1 <sup>st</sup> Violation: 250 2 <sup>nd</sup> Violation:1,000 3 <sup>rd</sup> Violation:2,500	1 <sup>st</sup> Violation: 250 2 <sup>nd</sup> Violation:1,000 3 <sup>rd</sup> Violation:2,500
16-308[(h)] (f) ***	Improper disposal of yard waste (Business Generating Yard Waste)	1 <sup>st</sup> Violation: 250 2 <sup>nd</sup> Violation:1,000 3 <sup>rd</sup> Violation:2,500	1 <sup>st</sup> Violation: 250 2 <sup>nd</sup> Violation:1,000 3 <sup>rd</sup> Violation:2,500

### Statement of Basis and Purpose of Proposed Rule

The Environmental Control Board (ECB) proposes changing its Recycling-Sanitation Collection Rules and Sanitation Penalty Schedules. These schedules contain penalties for violations issued by the New York City Sanitation Department (DSNY). The Recycling-Sanitation Collection Rules Penalty Schedule is found in section 3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. The Sanitation Penalty Schedule is found in section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York

On August 16, 2010, Mayor Bloomberg signed into law eleven (11) pieces of legislation aimed at changing the City’s 21-year-old recycling law. Two of the new laws, Local Laws No. 34 and No. 37 take effect on December 16, 2010. Local Law No. 34 deals with recycling outreach, education and enforcement. Local Law No. 37 deals with yard waste.

#### Local Law No. 34

- establishes two different levels of penalties based on the number of dwelling units in a building
- increases the fines for commercial and industrial buildings
- states that people may not be ticketed if they incorrectly place a rigid plastic container that is not recyclable into the recycling stream
- creates a presumption that the number of dwelling units written on a ticket is the correct number of dwelling units in the building.
  - The person or business receiving the violation may challenge this fact.
  - If the amount of dwelling units listed on the ticket is incorrect, the ticket will be changed to show the correct number of dwelling units.
  - It will not be dismissed for that reason.

Section 1 of the proposed rule changes the definition of “Persistent Violator” found in the head note of the Recycling-Sanitation Collection Rules Penalty Schedule. Only persons in charge of buildings with nine or more dwelling units may be charged as persistent violators.

Section 2 of the proposed rule:

- Adds charges for owners of residential buildings with 1 to 8 dwelling units.
- Changes the descriptions and penalties of the remaining charges for residential buildings. These charges and penalties now apply to residential buildings with nine or more dwelling units.
- Changes the penalties for all charges relating to “Institutions/Agencies” and “Private Carter-Collected Waste.” These charges reflect the higher penalties required under the new law.

Both Local Law 34 and Local Law 37 make changes in relation to leaf and yard waste composting. Local Law 34 establishes two different levels of penalties for section 16-308(f). Like the recycling rules, the amount of the penalty is now based on the number of dwelling units in a building. Only a person in charge of a building with nine or more dwelling units may be charged as a persistent violator. Local Law 37 amends the sections numbers for Administrative Code 16-308. Section 16-308 (g) is being changed to section 16-308(e). Section 16-308(h) is being changed to section 16-308(f).

Sections 3 and 4 of the proposed rule reflect these changes by amending the Sanitation Penalty Schedule. Section 3 amends the head note labeled “\*\*\*\*” by changing the section numbers and adding the definition of “Persistent Violator.”

Section 4 of the proposed rule:

- Adds a charge for owners of residential buildings with 1 to 8 dwelling units
- Changes the charging section, description and penalties for owners of residential buildings with nine or more dwelling units
- Changes the section numbers for improper dispersal and disposal of yard waste.