

NOTICE OF PUBLIC HEARING

Subject:

Opportunity to comment the proposed rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

Date / Time:

April 14, 2011 at 5:00p.m.

Location:

Environmental Control Board
66 John Street, 10th Floor
New York, N.Y. 10038

Contact:

James Macron
Counsel to the Board
ECB
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Proposed Rule Amendment

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, the Environmental Control Board proposes to amend subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to set 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.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Mr. Macron by mail or electronically through NYC RULES at www.nyc.gov/nycrules by April 14, 2011.
- Persons seeking to testify are requested to notify Mr. Macron on or before April 14, 2011.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Mr. Macron by April 7, 2011.
- Written comments and a summary of oral comments received at the hearing will be available thirty days after the hearing at the ECB, 66 John Street, 10th Floor Conference Room, New York, N.Y. 10038 from 9:00a.m. to 5:00p.m..

Statement of Basis and Purpose

The following rule is proposed 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, the Environmental Control Board proposes to amend subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, to set forth penalties for offenses adjudicated by the Environmental Control Board.

The Environmental Control Board (ECB) proposes changing its Sanitation Penalty Schedule. This schedule is found in §3-122 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 Sanitation Department (DSNY).

- Section 1 re-drafts the head notes of the penalty schedule in plain language. This has been done to increase public understanding of the rule.
- Sections 2 and 3 remove seventeen charges from the penalty schedule. These charges involve electronic waste and plastic bags. The removal of these charges is necessary because the State of New York has passed laws giving the State sole authority to regulate these types of waste. Therefore, DSNY will not be issuing Notices of Violation under these sections of law.
- Section 4 amends one charge and gives more specific notice of the charges that may be brought under Administrative Section 16-120(a), a provision of law already contained in the existing penalty schedule. All the changes refer to one section of law, Administrative Code section 16-120(a). The purpose of this section of law is to make sure garbage is properly placed out for collection.
- There are many types of Notices of Violation that can be issued under this section of law. Currently, there is only one general description in the penalty schedule. This general description is being changed and five new charges with new descriptions for different types of Notices of Violation are being added. This will help members of the public better understand what they need to do under the law.
- The separate changes will also help the Department of Sanitation track enforcement and better report the number of Notices of Violation issued for a specific type of conduct.
- There are no changes to the penalties currently charged under this section of law.

Section 1. The 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 head notes to read as follows:

New matter in the following rule is underlined

[Deleted material is in brackets]

[*For sections 16-118(2) and 16-122(b), a repeat violation requires 12 prior violations by the same respondent of either of these two provisions of law that have a date of occurrence within the 12 months preceding the date of occurrence of the current violation, where the violations have the same place of occurrence.

**For sections 16-118(1),(3),(4),(6), and 16-120(a),(b),(c),(d),(e), and 16-123, a second or third violation is a violation by the same respondent of the same provision of law as the previous violation with a date of occurrence within 12 months of the date of occurrence of the previous violation.

*** For sections 10-119 and 10-120 and 16-308(g) and 16-308(h) 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.

Any person who violates Section 16-118(7)(b)(1) and/or Section 16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, is considered a repeat violator where the same respondent has violated *either* Section 16-118(7)(b)(1) *or* Section 16-118(7)(c) while using or operating a motor vehicle, or owning said motor vehicle, where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

Any person who violates Section 16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of Section 16-118(7) is considered a repeat violator where the same respondent has violated Section 16-118(7)(f)(1)(i) by virtue of owning a motor vehicle that was used in violation of subparagraph one of paragraph b or paragraph c of Section 16-118(7) where the present violation has a date of occurrence within twelve months of the date of occurrence of the previous violation.

****For section 16-119, 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 18 months of the date of occurrence of the previous violation.

*****For these transfer-station related sections, a repeat violation is a violation by the same respondent of the same subdivision of the same section of law or rule as the previous violation with a date of occurrence within 3 years of the date of occurrence of the previous violation.

*****For these medical-waste related sections, a repeat violation is a violation by the same respondent occurring within 18 months of the date of occurrence of the previous violation.

*****Per day penalties will begin to accrue from the date of the occurrence as set forth on the Notice of Violation. Such per day penalty will continue to accrue until the Respondent either can prove a date specific that the violation has been corrected or until the first scheduled hearing date, which will be set for sixty days from the date of occurrence. For each notice of violation issued, the per day penalty imposed shall not exceed sixty days."

With the exception of section 10-119 (posting on a tree), and section 16-119, and section 16-422, section 16-423, section 16-426(a), section 16-426(b), and section 16-428(a), pursuant to §3-81(b) a late admit fee of \$30.00 will be added to all the below listed penalties for a failure to submit a payment by mail, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

***** For sections 16-130 (b) and 16 RCNY 4-44, a repeat violation is a second or subsequent violation by the owner of a premises or of equipment, vehicles or other personal property, committed in a period of three years or by any person using or operating the same, in the business of such owner or otherwise, with permission, express or implied, of such owner. As used in this paragraph, "owner" means a person, other than a holder of a security interest, having the property in or title to premises or equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of premises or equipment, vehicles or other personal property subject to a security interest in another person and also includes any lessee or bailee having exclusive use thereof.]

Repeat Violations

***For sections 16-118(2) and 16-122(b), a repeat violation is:**

- a violation by the same respondent
- of either section 16-118(2) and/or section 16-122(b)
- with a date of occurrence within 12 months of the dates of occurrence of 12 violations issued before the violation being decided
- at the same place of occurrence as those 12 previous violations

****For sections:**

- 16-118(1), (3), (4), (6)
- 16-120(a), (b), (c), (d), (e)
- 16-123

a second or third violation is:

- a violation by the same respondent
- of the same section of law as the previous violation(s)
- with a date of occurrence within 12 months of the date of occurrence of the previous violations

***** For sections:**

- 10-119 and 10-120
- 16-308(g) and 16-308(h)
- 16-404
- 16-405(a) and 16-405(b)
- 16-118(7)(b)(2) and 16-118(7)(d)

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 violations

For violations of sections 16-118(7)(b)(1) and/or Section 16-118(7)(c), issued to a person using, operating or owning a motor vehicle, a repeat violation is:

- a violation by the same respondent
- of either section 16-118(7)(b)(1) and/or Section 16-118(7)(c)
- while using, operating or owning a motor vehicle
- with a date of occurrence within 12 months of the date of occurrence of the previous violation of either 16-118(7)(b)(1) or 16-118(7)(c).

For violations of section 16-118(7)(f)(1)(i) issued to owners of motor vehicles used to violate sections 16-118(7)(b)(1) and/or Section 16-118(7)(c), a repeat violation is:

- a violation by same respondent
- who owns the same or another motor vehicle
- that was used to violate either Section 16-118(7)(b)(1) and/or Section 16-118(7)(c)
- with a date of occurrence within 12 months of the date of occurrence of a previous violation of section 16-118(7)(f)(1)(i)

********For section 16-119, a repeat violation is:

- a violation by the same respondent
- of section 16-119
- with a date of occurrence within 18 months of the date of occurrence of the previous violation

********For these transfer-station related sections, a repeat violation is:

- a violation by the same respondent
- of the same subdivision of a section of law or rule as the previous violation
- with a date of occurrence within 3 years of the date of occurrence of the previous violation

*********For these medical-waste related sections, a repeat violation is:

- a violation by the same respondent
- with a date of occurrence within 18 months of the date of occurrence of the previous violation

********* Daily penalties start on the date of the occurrence stated on the Notice of Violation. Daily penalties continue to be added until:

- the respondent proves that the violation was corrected on a certain date before the first scheduled hearing date or
- the first scheduled hearing date.

The first scheduled hearing date will be sixty days from the date of occurrence. For each Notice of Violation, no more than sixty days of daily penalties will be charged.

For all charges except sections 10-119 and 16-119:

********* For sections 16-130 (b) and 16 RCNY 4-44, a repeat violation is:

- a violation by an owner or any person
- using or operating a premises, equipment, vehicle(s) or other personal property
- with a date of occurrence within 3 years of the date of occurrence of the previous violation
- in the business of such owner or otherwise
- with the express or implied permission of such owner

“Owner” defined

For sections 16-130(b) and 16 RCNY 4-44 repeat violations, “owner” means:

- a person who is entitled to use or keep
 - a premises
 - equipment
 - vehicle(s) or
 - other personal property or
- a person who leases property (called a lessee) or
- a person who is holding the property, equipment, vehicles or other personal property of another and is the only person allowed to use it (called a bailee)

A person is an “owner” even if another person has a security interest in the premises, equipment, vehicles or other personal property. A security interest is an interest in property. It allows the person with the security interest to take property if the owner does not meet an obligation such as payment on a debt. The term “owner” in this section does not include a person who holds a security interest.

Default

A respondent who does not appear or pay the Notice of Violation by mail before the scheduled hearing date is in default. The person or business charged on the Notice of Violation will have thirty days from the mailing date of the default order to pay the penalty plus a late admit fee. The late admit fee is \$30.00. At the end of thirty days, the full default penalty will be charged.

Section 2. The 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 delete the following charges:

New matter in the following rule is underlined

[Deleted material is in brackets]

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
[16-422	Failure of manufacturer to accept covered electronic equipment or orphan waste pursuant to manufacturer's electronic waste management plan.	\$2,000 per piece of covered electronic equipment or orphan waste	\$2,000 per piece of covered electronic equipment or orphan waste
16-423*****	Failure of manufacturer to submit initial electronic waste management plan to DSNY	1000/day	60000
16-423*****	Failure of manufacturer to submit a valid electronic waste management plan to DSNY after it has been disapproved by DSNY more than two times.	1000/day	60000
16-426(a)	Improper disposal by person of electronic equipment as solid waste.	100	100
16-426(b)	Improper disposal by manufacturer of electronic equipment as solid waste	1000	1000
16-428(a)*****	Failure of manufacturer to submit annual report by July 1 st or each calendar year.	1000/day	60000
16-428(a)	Submission of annual report by manufacturer that contains false or misleading information	10000	10000
16-453(a)(1)	Providing plastic bags without recycling message	300/day	9000
16-453(a)(2)	Failure to provide a bin for the collection of plastic	300/day	9000

16-453(a)(2)	Failure to clearly mark a bin for the collection of plastic	300/day	9000
16-453(a)(3)	Failure to recycle plastic bags and film plastic	300/day	9000
16-453(a)(5)	Failure to sell reusable bags	300/day	9000
16-453(b)***	Failure to maintain plastic bag and film recycling records	1st Violation 100 2nd Violation 700 3rd Violation 1000	100 700 1000
16-453(c)***	Failure to submit an annual report (Operator)	1st Violation 100 2nd Violation 700 3rd Violation 1000	100 700 1000
16-454(a)	Failure to make arrangements for the collection, transport and recycling	500/day	15000
16-454(b)***	Failure to submit an annual report	1st Violation 100 2nd Violation 700 3rd Violation 1000	100 700 1000
16-454(c)***	Failure to provide educational materials.	1st Violation 100 2nd Violation 700 3rd Violation 1000	100 700 1000]

Section 3. The 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 charge for section 16-120(a), "Maintaining receptacles," and to add five new charges immediately following that charge, to read as follows:

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

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
16-120(a)**	[Maintaining receptacles] <u>Improper Disposal</u>	1 st 100 2nd 100 3rd 200	300 300 300

<u>16-120(a)**</u>	<u>Broken Receptacles</u>	<u>1st</u> <u>100</u>	<u>300</u>
		<u>2nd</u> <u>100</u>	<u>300</u>
		<u>3rd</u> <u>200</u>	<u>300</u>
<u>16-120(a)**</u>	<u>Uncovered Receptacles</u>	<u>1st</u> <u>100</u>	<u>300</u>
		<u>2nd</u> <u>100</u>	<u>300</u>
		<u>3rd</u> <u>200</u>	<u>300</u>
<u>16-120(a)**</u>	<u>Insufficient Receptacles</u>	<u>1st</u> <u>100</u>	<u>300</u>
		<u>2nd</u> <u>100</u>	<u>300</u>
		<u>3rd</u> <u>200</u>	<u>300</u>
<u>16-120(a)**</u>	<u>Improper Disposal--Bedding</u>	<u>1st</u> <u>100</u>	<u>300</u>
		<u>2nd</u> <u>100</u>	<u>300</u>
		<u>3rd</u> <u>200</u>	<u>300</u>
<u>16-120(a)**</u>	<u>Improper Receptacles</u>	<u>1st</u> <u>100</u>	<u>300</u>
		<u>2nd</u> <u>100</u>	<u>300</u>
		<u>3rd</u> <u>200</u>	<u>300</u>

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Sanitation Penalty Schedule

REFERENCE NUMBER: 2011 RG 04

RULEMAKING AGENCY: Environmental Control Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: February 10, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Sanitation Penalty Schedule
REFERENCE NUMBER: OATH/ECB- 2**

RULEMAKING AGENCY: OATH/ECB

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) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation. This rule only adds additional descriptions of possible charges under the law to give the public better notice as to how trash should be placed out for collection.

/s/ Francisco Navarro
Mayor's Office of Operations

2/10/11
Date