

## **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 Section 1049-a of the New York City Charter and sections 16-118 and 16-464 of the Administrative Code, ECB hereby promulgates the following rule that amends Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (ECB's Department of Sanitation Penalty Schedule), amending penalties for offenses adjudicated by the ECB. This penalty schedule contains penalties for notices of violation issued by the New York City Department of Sanitation (DSNY). The rule was published in The City Record on November 15, 2013 and a public hearing was held on December 18, 2013.

### **Statement of Basis and Purpose of Final Rule**

The Environmental Control Board held a public hearing on December 18, 2013 regarding amendments to its Sanitation Penalty Schedule. This 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 (RCNY). A representative from the Department of Buildings and one member of the public attended the public hearing. The member of the public testified on the proposed rule. No written comments were received. The Board has considered the testimony from the member of the public.

On August 12, 2013, Mayor Bloomberg signed Local Law No. 56 for the year 2013. This law repealed the prior theft of recycling laws and added new provisions that enhance the City's enforcement of the scavenging law by punishing those who unlawfully take City property or recyclables for their own financial gain.

Specifically, Local Law No. 56 amended the City's recycling law by requiring a written agreement between a building owner and a private recyclables collector prior to the removal of recyclables. As amended, the law now also requires any building with four or more residential units or occupied by a City agency that receives DSNY collection and is in need of supplemental collection to first request supplemental collection from DSNY before entering into any additional agreements.

Additionally, there has been an increase in the theft of recyclable material containing refrigerants, which often results in harmful CFCs being released into the air. Local Law No. 56 makes it unlawful to remove a refrigerant-containing item or Department-marked item that has been placed out by the owner for DSNY collection, and allows the City to issue penalties against those who remove, transport, and receive unlawfully taken materials. Finally, Local Law No. 56 creates a citizen reward program for persons who report unlawful scavenging activities that lead to a conviction. Notices of Violation issued as a result of a citizen complaint will be based on an affidavit filed by the citizen.

This rule has added new definitions and new penalty amounts in ECB's DSNY penalty schedule to comply with Local Law No. 56. For tracking purposes, the rule contains different categories for actions commenced based on the observation of a DSNY employee and those commenced based on a citizen affidavit (marked "Affidavit" in the penalty schedule).

The penalty provisions in Local Law No. 56 are codified in Sections 16-118 and 16-464 of the Administrative Code of the City of New York. The new penalties added by Local Law No. 56 in section 16-464 are flat penalties, and the statute does not provide a range for each charge. Solely for the convenience of the public, ECB is including these charges and accompanying head notes in its penalty schedule to ensure that ECB's Penalty Schedules are as comprehensive as possible.

ECB's authority for these rules is also found in section 1049-a of the New York City Charter.

New material is underlined.

[Deleted material is in brackets.]

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**Section 1. The Environmental Control Board has amended its Department of Sanitation Penalty Schedule found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by revising the head notes appearing after the words "Repeat Violations" and before the words "'Owner' defined" to read as follows:**

\*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(e) and 16-308(f)
- 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 violated 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

\*\*\*\*\*Except as otherwise provided in this head note, for violations of sections 16-461(a)(1), 16-461(b), and 16-461(c), a second or subsequent offense is:

- a violation by the same respondent
- of the same paragraph or subdivision, as applicable, of a section of law
- with a different date of occurrence within 18 months of the date of occurrence of the previous violation

For violations issued to owners of motor vehicles used to violate subdivision a or b of section 16-461, a second or subsequent offense is:

- a violation by same respondent
- of either subdivision a or b of section 16-461
- with a date of occurrence within 18 months of the date of occurrence of a previous violation of either subdivision a or b of section 16-461
- regardless of whether the same vehicle was used in the subsequent offense

For violations issued to owners of motor vehicles used to violate section 16-461(c), a subsequent offense is:

- a violation by same respondent
- of section 16-461(c)
- with a date of occurrence within 18 months of the date of occurrence of a previous violation of section 16-461(c)
- regardless of whether the same vehicle was used in the subsequent offense

For violations of sections 16-463(b), 16-463(c), and 16-463(d), a subsequent offense is:

- a violation by the same respondent
- of the same subdivision of a section of law
- within 18 months of the date of occurrence of the previous violation

**§ 2. The Environmental Control Board has amended its Department of Sanitation Penalty Schedule found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by revising one charge to read as follows:**

<b>SECTION/RULE</b>	<b>DESCRIPTION</b>	<b>OFFENSE</b>	<b>PENALTY</b>	<b>DEFAULT</b>
16-118(7)(a)]	[Interfering] <u>Preventing or otherwise interfering with [DOS] work of DSNY employee</u>		\$100	\$300

**§ 3. The Environmental Control Board has amended its Department of Sanitation Penalty Schedule found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by deleting nine charges as follows:**

<b>SECTION/RULE</b>	<b>DESCRIPTION</b>	<b>OFFENSE</b>	<b>PENALTY</b>	<b>DEFAULT</b>
[16-118(7)(b)(1)]	[Unauthorized disturbance or removal of recyclable materials (no motor vehicle used)]		[\$100]	[\$300]
[16-118(7)(f)(1)(i)***]	[Unauthorized removal of recyclable materials from residential premises or vacant lots using a motor vehicle (Owner)]	[1st]	[\$2000]	[\$2000]
		[2nd]	[\$5000]	[\$5000]
[16-118(7)(b)(1)***]	[Unauthorized removal of recyclable materials from residential premises or vacant lots using a motor vehicle (Operator)]	[1st]	[\$2000]	[\$2000]
		[2nd]	[\$5000]	[\$5000]
[16-118(7)(b)(2)***]	[Failure to submit to DSNY a report indicating the amount, by weight, of recyclable materials removed from residential premises or vacant lots by February 1st or August 1st of every year]	[1st]	[\$2000]	[\$2000]
		[2nd]	[\$5000]	[\$5000]
[16-118(7)(b)(2)***]	[Submission of report to DSNY stating the amount of recyclable materials removed from residential premises or vacant lots containing false or deceptive information]	[1st]	[\$2000]	[\$2000]

		[2nd]	[\$5000]	[\$5000]
[16-118(7)(b)(3)]	[Unauthorized disturbance or removal of solid waste]		[\$100]	[\$300]
[16-118(7)(f)(1)(i)***]	[Unauthorized removal of recyclable materials from commercial premises by using a motor vehicle. (Owner)]	[1st]	[\$2000]	[\$2000]
		[2nd]	[\$5000]	[\$5000]
[16-118(7)(c)***]	[Unauthorized removal of recyclable materials from commercial premises by using a motor vehicle (Operator)]	[1st]	[\$2000]	[\$2000]
		[2nd]	[\$5000]	[\$5000]
[16-118(7)(d)***]	[Receipt of recyclable materials for storage, collection or processing that is collected by unauthorized personnel]	[1st]	[\$2000]	[\$2000]
		[2nd]	[\$5000]	[\$5000]

**Section 4. The Environmental Control Board has amended its Department of Sanitation Penalty Schedule found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding twenty new penalty codes, after the entry in such schedule for Section 16-405(b)\*\*\* “Failure to Comply with Rechargeable Battery Recycling Program Requirements (Battery Manufacturer),” to read as follows:**

<b>SECTION/RULE</b>	<b>DESCRIPTION</b>	<b>OFFENSE</b>	<b>PENALTY</b>	<b>DEFAULT</b>
<u>16-461(a)(1)*****</u>	<u>Unlawful removal and transport of recyclable material from residential building, city-occupied building, vacant lot (vehicle owner)</u>	<u>1st</u>	<u>\$500</u>	<u>\$500</u>
		<u>2nd</u>	<u>\$750</u>	<u>\$750</u>
		<u>3rd</u>	<u>\$1000</u>	<u>\$1000</u>

<u>16-461(a)(1)*****</u>	<u>Unlawful removal and transport of recyclable material from residential building, city-occupied building, vacant lot (vehicle owner)—Affidavit</u>	<u>1st</u>	<u>\$500</u>	<u>\$500</u>
		<u>2nd</u>	<u>\$750</u>	<u>\$750</u>
		<u>3rd</u>	<u>\$1000</u>	<u>\$1000</u>

<u>16-461(a)(1)*****</u>	<u>Unlawful removal and transport of recyclable material from residential building, city-occupied building, vacant lot (vehicle operator)</u>	<u>1st</u>	<u>\$500</u>	<u>\$500</u>
		<u>2nd</u>	<u>\$750</u>	<u>\$750</u>
		<u>3rd</u>	<u>\$1000</u>	<u>\$1000</u>
<u>16-461(a)(2)(i)</u>	<u>Entering into agreement for supplemental collection of recyclable material without requesting supplemental collection from DSNY or otherwise meeting requirements of §16-461(2)(i)</u>		<u>\$1000</u>	<u>\$1000</u>
<u>16-461(a)(2)(iii)</u>	<u>Failure to contain all necessary elements within collection agreement</u>		<u>\$100</u>	<u>\$100</u>
<u>16-461(a)(2)(iv)</u>	<u>Agreement in place exceeds two year limit</u>		<u>\$100</u>	<u>\$100</u>
<u>16-461(a)(2)(v)</u>	<u>Failure to have valid proof of agreement</u>		<u>\$100</u>	<u>\$100</u>
<u>16-461(a)(3)</u>	<u>Failure to submit report</u>		<u>\$500</u>	<u>\$500</u>
<u>16-461(b)*****</u>	<u>Unlawful removal and transport of Department-marked item from residential building, city-occupied building, vacant lot (vehicle operator)</u>	<u>1st</u>	<u>\$750</u>	<u>\$750</u>
		<u>2nd</u>	<u>\$1000</u>	<u>\$1000</u>
		<u>3rd</u>	<u>\$1500</u>	<u>\$1500</u>
<u>16-461(b)*****</u>	<u>Unlawful removal and transport of Department-marked item from residential building, city-occupied building, vacant lot (vehicle owner)</u>	<u>1st</u>	<u>\$500</u>	<u>\$500</u>
		<u>2nd</u>	<u>\$750</u>	<u>\$750</u>

		<u>3rd</u>	<u>\$1000</u>	<u>\$1000</u>
<u>16-461(b)*****</u>	<u>Unlawful removal and transport of refrigerant-containing item from residential building, city-occupied building, vacant lot (vehicle operator)</u>	<u>1st</u>	<u>\$750</u>	<u>\$750</u>
		<u>2nd</u>	<u>\$1000</u>	<u>\$1000</u>
		<u>3rd</u>	<u>\$1500</u>	<u>\$1500</u>
<u>16-461(b)*****</u>	<u>Unlawful removal and transport of refrigerant-containing item from residential building, city-occupied building, vacant lot (vehicle owner)</u>	<u>1st</u>	<u>\$500</u>	<u>\$500</u>
		<u>2nd</u>	<u>\$750</u>	<u>\$750</u>
		<u>3rd</u>	<u>\$1000</u>	<u>\$1000</u>
<u>16-461(c)*****</u>	<u>Unlawful removal and transport of recyclable material from commercial building (vehicle operator)</u>	<u>1st</u>	<u>\$1000</u>	<u>\$1000</u>
		<u>2nd</u>	<u>\$2000</u>	<u>\$2000</u>
<u>16-461(c)*****</u>	<u>Unlawful removal and transport of recyclable material from commercial building (vehicle owner)</u>	<u>1st</u>	<u>\$1000</u>	<u>\$1000</u>
		<u>2nd</u>	<u>\$2000</u>	<u>\$2000</u>
<u>16-461(c)*****</u>	<u>Unlawful removal and transport of recyclable material from commercial building (vehicle owner)— Affidavit</u>	<u>1st</u>	<u>\$1000</u>	<u>\$1000</u>
		<u>2nd</u>	<u>\$2000</u>	<u>\$2000</u>
<u>16-463(b)*****</u>	<u>Unlawful receipt of recyclable material</u>	<u>1st</u>	<u>\$1000</u>	<u>\$1000</u>
		<u>2nd</u>	<u>\$2000</u>	<u>\$2000</u>
<u>16-463(c)*****</u>	<u>Unlawful receipt of Department-marked item</u>	<u>1st</u>	<u>\$1500</u>	<u>\$1500</u>
		<u>2nd</u>	<u>\$3000</u>	<u>\$3000</u>

<u>16-463(d)*****</u>	<u>Unlawful receipt of refrigerant-containing item</u>	<u>1st</u>	<u>\$1500</u>	<u>\$1500</u>
		<u>2nd</u>	<u>\$3000</u>	<u>\$3000</u>