

**City of New York
Office of Administrative Trials and Hearings**

Notice of Adoption of Rule

Pursuant to the authority vested in the Office of Administrative Trials and Hearings (OATH) by sections 1043, 1049, and 1049-a of the New York City Charter, OATH has adopted amendments to chapter 3 of title 48 of the Rules of the City of New York.

The Environmental Control Board voted to approve a proposed version of these amendments on August 12, 2021. A proposed version of these amendments was published in The City Record on August 20, 2021. A public hearing was held on September 20, 2021. No testimony regarding the amendments was given at the public hearing, and OATH did not receive any written comments from the public. The Environmental Control Board voted to approve a final version of these amendments on October 5, 2021.

Statement of Basis and Purpose of Rule

Pursuant to the authority set forth in sections 1043, 1049, and 1049-a of the New York City Charter, the Office of Administrative Trials and Hearings (OATH) is repealing in their entirety the following penalty schedules: the Recycling – Sanitation Collection Rules Penalty Schedule, the Sanitation Asbestos Rules Penalty Schedule, the Sanitation Penalty Schedule, and the Vehicle and Traffic Law Penalty Schedule. These schedules are codified in sections 3-120, 3-121, 3-122, and 3-125 of title 48 of the Rules of the City of New York, and contain penalties for summonses issued by the New York City Department of Sanitation (DSNY). OATH also is repealing certain provisions of its Environmental Conservation Law Penalty Schedule, codified in section 3-105 of title 48 of the Rules of the City of New York, and its Public Safety Graffiti Penalty Schedule, codified in section 3-119 of title 48 of the Rules of the City of New York, which are also enforced by DSNY. DSNY has adopted its own penalty schedule by rule, a version of which was published on August 18, 2021 in the City Record. DSNY’s penalty schedule incorporates the violations from the above-referenced penalty schedules.

Sections 1 and 2. OATH is repealing from the Environmental Conservation Law Penalty Schedule, codified in section 3-105 of title 48 of the Rules of the City of New York, a violation of subdivision (3) of section 27-1701 of the New York State Environmental Conservation Law for the improper disposal of a lead acid battery. OATH also is repealing from the Public Safety Graffiti Penalty Schedule, codified in section 3-119 of title 48 of the Rules of the City of New York, a violation of subdivision (b) of section 10-117.3 of the City’s Administrative Code for the failure to remove graffiti.

Sections 3 through 6: OATH is repealing in their entirety the following penalty schedules:

- Recycling – Sanitation Collection Rules Penalty Schedule, codified in section 3-120 of title 48 of the Rules of the City of New York. This penalty schedule contains recycling violations of sections 1-08, 1-09, and 1-10 of title 16 of the

Rules of the City of New York applicable to residential premises, agencies and institutions, and private carter-collected waste. This penalty schedule also contains a violation of subdivision (a) of section 16-324 of the Administrative Code concerning repeat recycling violations.

- Sanitation Asbestos Rules Penalty Schedule, codified in section 3-121 of title 48 of the Rules of the City of New York. This penalty schedule contains violations of chapter 8 of title 16 of the Rules of the City of New York relating to the storage, transportation, disposal, and abandonment of waste containing asbestos.
- Sanitation Penalty Schedule, codified in section 3-122 of title 48 of the Rules of the City of New York. This penalty schedule contains violations of titles 10 and 16 of the Administrative Code; chapters 1, 3, 4, 5, 11, and 17 of title 16 of the Rules of the City of New York; and section 397-a of the New York State General Business Law.
- Vehicle and Traffic Law Penalty Schedule, codified in section 3-125 of title 48 of the Rules of the City of New York. This penalty schedule contains violations of New York State Vehicle and Traffic Law, relating to abandoning a vehicle and the illegal placement of handbills on windshields or under windshield wipers of motor vehicles.

This rule change is one step in a larger effort to repeal all penalty schedules in OATH's rules codified in subchapter G of chapter 3 of title 48 of the RCNY, so that these provisions can be incorporated into the rules of the agencies that have rulemaking and policymaking authority over the laws underlying the violations. Such repeals will also serve OATH's core function of adjudication and help alleviate the false public perception that OATH is an enforcement agency, rather than a neutral tribunal.

Although OATH is empowered to impose penalties under the New York City Charter and, until recent years, has promulgated penalty schedules, the regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violations of the rules and laws within their jurisdiction based on the severity of each violation and its effect on City residents. Moving the penalty schedules to the enforcement agencies' rules will also make it easier for the public to find the penalties, which will be located within the same chapter as the rules setting forth the violations alleged in many summonses. Finally, the rule repeals will speed up the rulemaking process by eliminating the need for the Environmental Control Board's approval of proposed or amended penalties for violations that have already been established by the legislature or through the City Administrative Procedure Act process by the enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Deleted material is in [brackets].

New material is underlined.

Section 1. The row beginning NYS Env. Cons. Law 27-1701(3) in the table in section 3-105 of title 48 of the Rules of the City of New York is amended to read as follows:

Section/Rule	Description	Penalty	Default
[NYS Env. Cons. Law 27-1701(3)]	[Improper disposal of lead acid battery]	[50]	[50]

§ 2. The row beginning A.C. 10-117.3(b) in the table in section 3-119 of title 48 of the Rules of the City of New York is amended to read as follows:

Section/Rule	Description	Penalty	Default
[A.C. 10-117.3(b)]	[Failure to remove graffiti]	[150]	[300]

§ 3. Section 3-120 of title 48 of the Rules of the City of New York, relating to a recycling - sanitation collection rules penalty schedule, is REPEALED.

§ 4. Section 3-121 title 48 of the Rules of the City of New York, relating to a sanitation asbestos rules penalty schedule, is REPEALED.

§ 5. Section 3-122 of title 48 of the Rules of the City of New York, relating to a sanitation penalty schedule, is REPEALED.

§ 6. Section 3-125 of title 48 of the Rules of the City of New York, relating to a vehicle and traffic law penalty schedule, is REPEALED.