

New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?

The Department of Sanitation (DSNY) is proposing a rule establishing registration requirements for recycling processing facilities in New York City that receive and process recyclable materials. The rule also provides for the inspection of a facility's operations and activities relating to the purchase, sale, acceptance, and storage of recyclable material and establishes reporting requirements.

When and where is the hearing? DSNY will hold a public hearing on the proposed rule. The public hearing will take place between 10:00 A.M. – 12:00 P.M. on June 16, 2016. The hearing will be in the 2nd Floor Auditorium at 125 Worth Street, New York, NY 10013.

How do I comment on the proposed rules? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the DSNY through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dsny.nyc.gov.
- **Mail.** You can mail written comments to DSNY, 125 Worth Street, Room 710, New York, NY 10013.
- **Fax.** You can fax written comments to DSNY at 212-788-3876.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing can sign up in the hearing room before the hearing begins on June 16, 2016.

Is there a deadline to submit written comments? The deadline for submitting written comments shall be June 16, 2016.

Do you need assistance to participate in the hearing? You must contact the Department of Sanitation's Bureau of Legal Affairs if you need a reasonable accommodation at the hearing because of a disability. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 646-885-5006. You must tell us by June 9, 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at 125 Worth Street, Room 710, New York, NY 10013.

What authorizes DSNY to make this rule?

Sections 753 and 1043(a) of the New York City Charter and Sections 16-130 and 16-463 of the Administrative Code of the City of New York.

Where can I find DSNY's rules? DSNY's rules are in Title 16 of the Rules of the City of New York.

What rules govern the rulemaking process? DSNY must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 16-130(b) of the Administrative Code of the City of New York authorizes the Sanitation Commissioner to establish one or more classes of permits for solid waste facilities that receive, process, and store materials consisting of solid waste and recyclable materials. In addition, section 16-463 authorizes broad oversight over recycling processing facilities that handle paper and cardboard, metal, glass and plastic, as well as scrap metal, including refrigerant containing items. Some facilities operating in New York City limit their operations to the receipt, process and storage of recyclable materials.

Currently, recycling processing facilities are either registered or permitted by the New York State Department of Environmental Conservation as source-separated non-putrescible solid waste recycling recovery facilities or licensed by the New York City Department of Consumer Affairs as scrap metal processors. A recycling processing facility is defined as a facility where recyclable materials, other than organic waste, are delivered separately from solid waste or where source-separated recyclable materials, other than organic waste, are processed for the purpose of reuse or sale. Section 16-463 authorizes the Department to provide broad oversight of facilities that handle such materials and to promulgate rules that regulate such facilities.

This rule requires recycling processing facilities to register with the Department and allow for the inspection of site operations to ensure that recyclable materials are effectively processed and accurate records are maintained to capture the flow of recyclable materials handled and processed within the facility. To further this goal, recycling processing facilities will be required to submit quarterly reports to the Department summarizing the handling of such materials within the target period. This will allow the Department to more accurately determine the recycling diversion rate within New York City.

DSNY's authority for these rules is found in sections 753 and 1043(a) of the New York City Charter and sections 16-130 and 16-463 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1: Title 16 of the Rules of the City of New York is amended by adding a new Subchapter E to Chapter 4 to read as follows:

SUBCHAPTER E

RECYCLING PROCESSING FACILITIES

§4-51 Definitions. As used in this subchapter, the following terms have the following meanings:

Commissioner. The term “Commissioner” means the commissioner of sanitation.

Department. The term “Department” means the department of sanitation.

Department-marked item. The term "Department-marked item" means any refrigerant-containing item that: (i) has written upon it a Department service identification number that has been provided to the property owner by a 311 or Department representative, or (ii) has affixed upon it an official decal or sticker indicating that such item is designated for future servicing of refrigerant removal by the Department, or (iii) has affixed upon it an official decal or sticker indicating that such item has already been serviced for refrigerant removal by the Department.

ECB. The term “ECB” means the environmental control board.

Ferrous. The term “ferrous” means metals and alloys that contain iron, such as mild steel, carbon steel, stainless steel, cast iron, and wrought iron.

Non-ferrous. The term “non-ferrous” means metals and alloys that do not contain iron, such as aluminum, brass, copper, nickel, tin, lead, zinc, and precious metals including gold and silver.

Not-for-profit corporation. The term "not-for-profit corporation" means a not-for-profit corporation as defined in subparagraph five or subparagraph seven of subdivision a of section 102 of the New York state not-for-profit corporation law.

Organic Waste. The term “organic waste” shall have the same meaning as set forth in section 16-303 of the administrative code of the city of New York, except that organic waste shall not include food that is donated to a third party, food that is sold to farmers for feedstock, and meat by-products that are sold to a rendering company.

Person. The term “person” means any individual, corporation, partnership, association, firm, trust, estate or any other legal entity whatsoever.

Recyclable material. The term “recyclable material” means solid waste that may be separated, collected, processed, marketed and returned to the economy in the form of raw materials or products, including but not limited to, ferrous or non-ferrous metal, glass, paper, cardboard, rigid plastic, food waste, tires and yard waste.

Recycling processing facility. The term “recycling processing facility” means a facility that is registered or permitted by the New York state department of environmental conservation and/or the Department where recyclable materials, other than organic waste, are delivered separately from solid waste or where source-separated recyclable materials, other than organic waste, are processed for the purpose of reuse or sale. This term also includes scrap metal processors licensed by the department of consumer affairs.

Refrigerant. The term "refrigerant" means any substance consisting in whole or in part of a class I or class II ozone-depleting substance, which is used for heat transfer purposes and provides a cooling effect, including, but not limited to, chlorofluorocarbons, hydro-chlorofluorocarbons, or any other substitute substance as may be defined by the United States environmental protection agency. A class I or class II ozone-depleting substance shall be those substances as defined by the United States environmental protection agency in section 602 of the United States clean air act. A substitute substance shall be any environmental protection agency approved replacement for a class I or II ozone-depleting substance in a refrigeration or air-conditioning end-use.

Refrigerant-containing item. The term "refrigerant-containing item" means any recyclable material that uses a refrigerant that must be removed prior to disposal, including, but not limited to, any air conditioner, refrigerator, water cooler, or freezer.

Scrap metal. The term “scrap metal” means ferrous or non-ferrous metal that is used for the production of raw material for remelting purposes for steel mills, foundries, smelters, refiners, and similar users.

Scrap metal processor. The term “scrap metal processor” means an establishment that purchases, sells, accepts, stores or processes scrap metal destined for recycling, but shall not include a redemption center, dealer or distributor as defined in section 27-1003 of the New York state environmental conservation law, or an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility as defined in section 27-2601 of the New York state environmental conservation law.

§4-52 Registration of Recycling Processing Facilities.

(a) No person shall operate a recycling processing facility within the city of New York, unless, in addition to any other permit or authorization required by law, such person obtains a registration from the Commissioner as required by this subchapter.

(b) Within 90 days of the effective date of this rule, any recycling processing facility that is currently in operation must register with the Department using a form prescribed by the Department.

(c) Any recycling processing facility that commences operations after the effective date of this rule must register with the Department using a form prescribed by the Department no less than 30 days prior to operating such recycling processing facility.

(d) Registration forms may be obtained from the Department’s website or by written request to:

New York City Department of Sanitation
125 Worth Street, Room 723
New York, New York 10013
Attn: Recycling Processing Facility Registration

(e) A registration must include, at a minimum:

(1) The business name, business address and telephone number of the recycling processing facility. A post office box is not an acceptable address;

(2) The names of the principals and/or officers, on-site managers, and a contact person to whom all official Department correspondence may be sent regarding the recycling processing facility;

(3) A copy of the certificate of incorporation together with filing receipt from the New York State department of state if operating as a corporation or a not-for-profit corporation, or a copy of the articles of organization if operating as a limited liability company or partnership, where applicable;

(4) The federal tax identification or employer identification number;

(5) Copies of all registrations, permits, licenses or other authorizations to operate required under federal, state, or local laws, rules or regulations; and

(6) The days and hours of operation of such recycling processing facility.

(f) (1) A registration issued to a recycling processing facility shall not be transferrable or assignable to any other party. In the event there is a change in ownership or a sale of the recycling processing facility, the new owner of the facility must register the recycling processing facility within 30 days of such purchase.

(2) A recycling processing facility that closes its business must notify the Department immediately of the date of cessation of its operations.

(3) A recycling processing facility must advise the Department within 30 days of any changes to the information submitted pursuant to subdivision (e) of this section.

(g) Registration of a recycling processing facility is an official act of a ministerial nature, involving no exercise of discretion for purposes of the state environmental quality review act, codified as article 8 of the environmental conservation law and part 617 of title 6 of the New York codes, rules, and regulations and the rules of procedure for city environmental quality review codified as chapter 5 of title 62 of the rules of the city of New York.

§4-53 Posting of Registration

Any recycling processing facility must conspicuously post the registration issued by the Commissioner at the place of business.

§4-54 Receipt and Handling of Recyclable Material

(a) External storage of paper and other recyclables whose marketability may be adversely affected by exposure to the sun or weather conditions is prohibited unless stored in covered containers or in a manner otherwise acceptable to the Department.

(b) No recycling processing facility shall store recyclable materials in such a manner that they become a nuisance or a sanitary or environmental problem.

§4-55 Receipt of Recyclable Material Generated within the City of New York

(a) No recycling processing facility shall receive any recyclable material generated within the City of New York from any person other than:

(1) an authorized employee or agent of the Department,

(2) an authorized employee of an entity licensed by or registered with the business integrity commission pursuant to subdivision a or b of section 16-505 of the administrative code of the city of New York,

(3) a not-for-profit corporation,

(4) an owner, tenant or occupant of a building returning his or her own recyclable material generated by such owner, tenant or occupant and his or her household members, or

(5) a person that has lawfully entered into a written agreement pursuant to subdivision a of section 16-461 of title 16 of the administrative code of the city of New York.

(b) There will be a rebuttable presumption that all recyclable material received at a recycling processing facility for storage, collection or processing was generated within the city of New York. This section will not apply to a redemption center, dealer or distributor as defined in section 27-1003 of the environmental conservation law, or to any person that, using a motor vehicle, collects recyclable containers in bulk and is required to be registered pursuant to chapter 4-D of title 16 of the administrative code of the city of New York.

§4-56 Receipt of a Department-marked Item

No recycling processing facility shall receive for storage, collection or processing any Department-marked item from any person other than an authorized employee or agent of the Department. A written agreement between the owner of a residential building or an authorized agent of such owner, and anyone delivering a Department-marked item to a recycling processing facility shall not be a defense in any proceeding before the environmental control board to the improper receipt of such item.

§4-57 Receipt of Refrigerant-Containing Item

(a) No recycling processing facility shall receive for storage, collection or processing any refrigerant-containing item that has not had such refrigerant lawfully removed by a person authorized to remove refrigerants, unless such facility either (i) possesses a refrigerant recovery equipment certification from the United States environmental protection agency, (ii) has a valid agreement to remove such refrigerant with a person certified by the United States environmental protection agency to remove refrigerant, or (iii) receives such item for reuse for its original purpose.

(b) Any person that removes refrigerants or contracts with a third party for the removal of refrigerant from refrigerant-containing items must submit proof that refrigerant removal was conducted in accordance with rules and guidelines established by the United States environmental protection agency.

§4-58 Quarterly reporting requirements.

(a) Every registered recycling processing facility must submit to the Department a copy of any report required to be filed with the New York state department of environmental conservation pursuant to part 360 of title 6 of the New York codes, rules, and regulations, if applicable. Any such report must be submitted to the Department at the same time it is submitted to the New York state department of environmental conservation.

(b) (1) Every registered recycling processing facility must submit to the Department quarterly reports that contain the following information, calculated by weight or volume on a monthly basis:

(i) the total amount of recyclable material received;

(ii) the origin of the recyclable material received;

(iii) and the destination of the recyclable material removed, including a listing, by type, of recyclable material.

(2) Quarterly reports must be submitted on forms prescribed by or acceptable to the Department. Such report must include a description of any changes in operation that occurred in the previous quarter, if applicable.

(3) The report for the quarter ending on March 31 shall be due on April 30; the report for the quarter ending on June 30 shall be due on July 30; the report for the quarter ending September 30 shall be due on October 30; and the report for the quarter ending December 31 shall be due on January 30.

§4-59 Compliance with Federal, State and Local Laws.

Every person who owns, operates, maintains or otherwise controls a recycling processing facility regulated by this subchapter shall comply fully with all applicable federal, state and local laws, rules and regulations of any governmental authorities having jurisdiction over any of the registrant's activities. Failure to comply with these laws, rules or regulations shall be grounds for suspension and/or revocation of the registration, in addition to any other penalty provided by law.

§4-60 Enforcement and Compliance.

(a) The Department reserves the right to conduct lawful inspections during business hours to ensure compliance with this subchapter.

(b) Where a notice of violation is issued for a violation of any of the provisions of this subchapter, such notice shall be returnable to the ECB or court of appropriate jurisdiction, which shall have the power to impose the civil penalties provided.

(c) The Department shall issue a warning letter to a recycling processing facility that fails to comply with sections 4-52, 4-53 or 4-58 of this subchapter. Such warning letter shall give the recycling processing facility 30 days to submit proof of having cured the violating condition. Any recycling processing facility that does not submit proof of having cured such violating condition within the 30 day time period shall be issued a notice of violation by the Department and shall be liable for a civil penalty of \$2,500.00 for the first offense, \$5,000.00 for the second offense and \$10,000.00 for each subsequent offense committed within any three year period.

(d) Any recycling processing facility that violates section 4-54 of this subchapter shall be liable for a civil penalty of \$2,500.00 for the first offense, \$5,000.00 for the second offense and \$10,000.00 for each subsequent offense committed within any three year period.

(e) Any recycling processing facility that violates section 4-55 of this subchapter shall be liable for (1) a criminal fine of \$1,000.00 or imprisonment not to exceed 48 hours, or both, or (2) a civil penalty of \$1,000.00 for the first offense and \$2,000.00 for each subsequent offense within any 18-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this subdivision, each receipt from a separate motor vehicle of recyclable material shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

(f) Any recycling processing facility that violates sections 4-56 or 4-57 of this subchapter shall be liable for (1) a criminal fine of \$1,500.00 or imprisonment not to exceed 48 hours, or both, or (2) a civil penalty of \$1,500.00 for the first offense and \$3,000.00 for each subsequent offense within an 18-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this paragraph, each receipt from a separate motor vehicle of Department-marked material shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Registering of Recycling Processing Facilities

REFERENCE NUMBER: 2016 RG 017

RULEMAKING AGENCY: Department of Sanitation

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: April 26, 2016

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

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

RULE TITLE: Registering of Recycling Processing Facilities

REFERENCE NUMBER: DSNY-12

RULEMAKING AGENCY: Department of Sanitation

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) Provides a cure period for violations related to failure to comply with registration requirements and reporting requirements but does not provide a cure period for other violations which arise from completed events, the consequences of which are immediate, making a cure period impracticable.

/s/ Norma Ponce
Mayor's Office of Operations

April 26, 2016
Date