

ANNUAL REPORT
OF THE
WESTCHESTER COUNTY
SOLID WASTE COMMISSION
FOR 2011

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WESTCHESTER COUNTY EXECUTIVE,**

AND

**THE WESTCHESTER COUNTY
BOARD OF LEGISLATORS**

INTRODUCTION

In August 1999, the Westchester County Board of Legislators enacted and County Executive Andrew J. Spano signed into law “The Westchester County Solid Waste and Recyclables Collection Licensing Law” (“Chapter 826-a”). Chapter 826-a was enacted following disclosures made during a series of legislative hearings that the solid waste and recyclables collection industries in Westchester County were permeated and dominated by organized crime. The hearings revealed that organized crime-controlled cartels produced anti-competitive effects in the industry including, but not limited to, price-fixing; the prevention of new entry into the industry; the existence of unconscionable customer contract terms; and the incidence of corruption. Chapter 826-a was enacted in an attempt to address these problems, with the goals of eliminating the influence of organized crime in the solid waste and recyclables collection industries; ensuring that only individuals of suitable good character, honesty and integrity are licensed to operate within the solid waste and recyclables collection industries; and increasing competition.

The Westchester County Solid Waste Commission hereby submits its Annual Report for 2011.

MISSION STATEMENT OF THE WESTCHESTER COUNTY SOLID WASTE COMMISSION

Our Mission is to promote the general health, welfare, and safety of the citizens of Westchester County by seeking to eliminate the influence of organized crime in the solid waste and recyclables hauling industries; ensuring that only individuals and companies of good character, honesty and integrity receive licenses to operate in the solid waste and recyclables hauling industries; increasing competition among haulers and enhancing consumer choice; and ensuring that solid waste generated within or brought into Westchester County is disposed of or recycled in an environmentally safe manner by assisting in the implementation of the County’s Solid Waste Management Plan.

DEPARTMENT RESPONSIBILITIES

- A. To perform background checks on all applicants and principals seeking a license or registration to operate in the solid waste and recyclables hauling industry in Westchester County so as to evaluate their good character, honesty and integrity.
- B. To issue licenses and registrations for the performance of activities for which a license or registration is required by Chapter 826-a.
- C. To ensure that only licensed carters haul solid waste and recyclables within Westchester County, and that licensed carters use only trucks registered with the Solid Waste Commission.
- D. To ensure that only entities licensed by the Solid Waste Commission dump solid waste and recyclables at transfer stations located in Westchester County.
- E. To investigate all complaints against haulers that occur within Westchester County.
- F. To encourage entry into the industry and encourage competition within the industry in Westchester County.
- G. To inform the public of its rights under the Westchester County Solid Waste and Recyclables Collection Licensing Law.
- H. To assist the Department of Environmental Facilities in the enforcement of the recycling requirements of the Westchester County Source Separation Law.
- I. To assist the Department of Public Safety as it investigates possible criminal activity related to the solid waste and recyclables hauling industries in Westchester County.

SOLID WASTE COMMISSION LICENSING CATEGORIES

The Solid Waste Commission issues licenses determined by the type of waste a carter expects to haul. These licenses are:

Class A: for a carter that hauls any type of waste, including municipal solid waste, construction and demolition debris, recyclables, garden and yard waste and scrap metals.

Class B: for a carter that handles recyclables.

Class C: for a carter that handles construction and demolition debris. There are two types of Class C licenses:

Class C-1: for a business that generates construction and demolition debris; and which, incidental to such business, hauls the construction and demolition debris itself.

Class C-2: for a carter that hauls construction and demolition debris generated by others.

Class D: for a carter that hauls garden and yard waste.

Class E: for a business that exclusively collects scrap materials for sale to a recyclables broker and which uses no more than one vehicle for collection and transportation of such materials.

Class L: for a hauler that exclusively handles seasonal organic waste, including leaves, solely on behalf of Westchester County and/or its local municipalities during the leaf season, which includes the months of October, November, December and January.

The Commission also registers Solid Waste Brokers, which are businesses that, for a fee, broker agreements between commercial establishments and carters, or evaluate the waste generated by commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices.

APPLICANTS FOR LICENSES TO HAUL SOLID WASTE AND RECYCLABLES IN WESTCHESTER COUNTY: BACKGROUND INVESTIGATIONS, LICENSING DECISIONS AND NEW APPLICANTS

During 2011, the Commission continued to receive and review applications from companies seeking licenses to haul solid waste and recyclables in Westchester County. The following constitutes a breakdown of the new applicants for Commission licenses (“new applicants”):

	Class A	Class B	Class C-2	Class D	Class L	Solid Waste Broker	Class C-1	Class E
Total New Applicants by Category	9		4			3	4	4

Chapter 826-a requires that the Commission investigate the backgrounds of applicants for Solid Waste Commission licenses, and their principals. As part of the background investigation process, individuals identified as the principals of new applicants may be deposed, and, when an investigation mandates, other individuals determined to be working in a managerial capacity.

Chapter 826-a authorizes the Commission to issue “Permits to Operate” to companies wishing to operate in Westchester County, but whose background investigations have not been completed. Permits to Operate enable such companies to operate in the Westchester County market during the completion of their background investigation, thereby increasing the number of companies available to compete for

Westchester County carting business. The Commission's staff reviewed the backgrounds of companies whose applications were received during 2011 and earlier. During 2011, the Commission issued Permits to Operate to twenty-three (23) companies:

	Class A	Class B	Class C-2	Class D	Class L	Solid Waste Brokers	Class C-1	Class E
Permits to Operate issued to new applicants	9		3			1	4	6

Once Commission staff deems a background investigation complete, it recommends to the Commission whether to issue an applicant a license. During 2011, the Commission issued twenty one (21) licenses to operate in the Westchester County solid waste and recyclables hauling industry. The following constitutes a breakdown of the Commission's licensing decisions during 2011:

Year	Class A	Class B	Class C-2	Class D	Class L	Solid Waste Brokers	Total
Licensed in 2011	18	1	6		2	2	29

In addition to requiring the licensing of companies that haul solid waste and recyclables generated by others, Chapter 826-a requires that Class C-1 licenses be issued to companies which generate construction and demolition debris, and which, incidental to such business, transport, store, process, transfer or dispose of the construction and demolition debris generated by the operations of such businesses. During 2011, the Commission issued ten companies Class C-1 licenses.

Chapter 826-a also requires companies using only one truck to haul scrap materials, primarily scrap metals, to apply for a Class E license. During 2011, the Commission issued seven companies Class E Licenses.

INSPECTIONS

During 2011, the Commission's inspectors conducted investigations throughout Westchester County and submitted their findings, including possible violations, to the Executive Director. As a result of their efforts, unlicensed haulers either applied for Commission licenses or chose to cease operating within Westchester County. Further, as a result of Commission inspections and related enforcement actions, companies that used unregistered trucks to haul solid waste registered their trucks with the Commission and paid the required registration fees, or ceased to use them in the County.

The Commission's inspectors also inspected loads of waste dumped by both private and municipally-owned trucks, at both private and County-owned transfer stations throughout the County, to ensure that recyclables were not being improperly discarded with garbage.

The following constitutes a summary of the inspectors' activities and findings:

Inspections (at transfer stations; at carting companies; while on road; or during truck stops performed with municipal police):

	2011	2010	2009
Transfer Station inspected	161	115	110
Private Trucks inspected	2857	2363	2437
Unregistered Trucks found, or registered trucks with no decals	14	19	14
Unlicensed Companies found	28	10	28
Unlicensed Companies that applied for a License following discovery by the Commission	5	5	5
Unlicensed Companies under investigation; which decided to discontinue operating in Westchester; or which hauled their own waste and thus did not need to be licensed	23	16	23

Transfer Station Records:

On a monthly basis, the Commission requires transfer station operators to supply us with lists of companies that dumped waste or recyclables at their facilities. The Commission's staff reviews these records to identify companies that are not licensed by the Commission, then determines whether they may be exempt from Commission licensing requirements (e.g., if they are licensed by the Department of Consumer Protection as Home Improvements Contractors). If such companies are not exempt, the inspectors obtain dumping histories for them from the transfer station operator, review the records, and if appropriate, organize the information so that administrative charges may be authorized by the Commission. By reviewing these records during 2011, the inspectors were able to oversee transfer stations and seek unlicensed haulers even when they were not able to be physically present at such facilities.

Customer Complaints:

The inspectors also investigated complaints by customers about billing discrepancies, contract disputes with their carters, and service problems. The inspectors interviewed the affected customers and carters, inspected the sites in question, and where appropriate tried to rectify problems through informal mediation with carters. Where serious issues were discovered, staff conducted long-term investigations into a customer's allegations. In some cases, investigative findings resulted in Commission enforcement actions or, where appropriate, referral to law enforcement authorities.

Contract Reviews:

The Commission reviews the service contracts issued to customers by licensed and permitted haulers. At times, haulers are directed to provide us with copies of their contracts so that we can ensure that their contracts comply with the requirements of Chapter 826-a, and confirm that their customers received copies of the Customer Bill of Rights. For the same reasons, when interviewing customers, the Inspectors ask to review copies of their service contracts.

COMPLIANCE AND HEARINGS; ENFORCEMENT; PENALTIES

During 2011 the Commission authorized 61 hearings for the following violations:

Types of Violations

	2011	2010	2009
Unlicensed Operation (carter or broker)	37	48	34
Unregistered Truck	2	9	11
Using a registered truck without Commission decal	1	1	6
Using a registered truck with an expired decal	1	1	--
Improperly labeled vehicle or container	10	5	7
Failure to Pay Required Fees	5	3	4
Operating an unregistered transfer station	1	2	1
Misrepresentations to customers by salesman	4	1	--
Subcontracting to an Unlicensed Hauler	--	1	1
Failure to comply w/ Customer Bill of Rights	--	--	1

During 2011 the Commission completed 48 hearings. In 36 cases the respondent-carter pled guilty and accepted a fine, subject to the Commission's approval of the hearing officer's recommendation, while in 7 case the Commission issued a warning letter. The Commission also rejected one recommendation by a hearing officer and reinstated its original finding that a licensed company was operating an unregistered transfer station. This case is currently in litigation in New York State Supreme Court.

The Commission approved a total of \$83,650 in fines, and restitution to a customer in the amount of \$1,149.01.

LAW ENFORCEMENT

A) Municipal Enforcement

Chapter 826-a requires that all licensed carters register their trucks with the Commission and display Commission-issued decals on such trucks. Chapter 826-a allows for municipal enforcement of the decal requirement. During 2011, the Commission continued to offer educational sessions for interested municipal police departments about the municipal enforcement provision of Chapter 826-a, and fielded questions from police officers throughout the year about municipal enforcement.

The Commission's inspectors accompanied municipal truck-enforcement officers as they conducted truck inspections within their jurisdictions. This enabled the inspectors to discover companies operating in the

County without licenses, and unregistered trucks operated by licensed companies. In addition, the inspectors were able to assist the truck-enforcement officers as they enforced the decal requirement of Chapter 826-a.

As a result of the efforts of a number of Westchester municipalities which actively enforced the decal requirement, the Commission learned about unlicensed companies operating in Westchester County, and licensed companies using unregistered trucks operated by licensed companies. When appropriate, administrative charges were brought against these companies. During 2012, we will continue our outreach to local law enforcement agencies.

B) Investigations

During 2011, the Commission worked with law enforcement and other government officials from throughout the region incident to Commission investigations, including

- the United States Federal Bureau of Investigation in New York State
- the New York State Attorney General
- the New York State Department of Environmental Conservation (“DEC”)
- the Westchester County District Attorney
- the Westchester County Department of Public Safety
- the Dutchess County Resource Recovery Agency
- the New York City Business Integrity Commission

SOLID WASTE COMMISSION BUDGET

The Solid Waste Commission complied with its mandate to operate as a tax-levy neutral agency in 2011. The Commission’s budget is based solely upon the application fees and yearly licensing fees charged applicants and licensees.

Fees:

For Class A, B, C-2 and D licensees: bi-annual application fees of \$350 per applicant and \$350 per principal; and annual licensing fees of \$1,000 per licensee; \$1,000 per vehicle used by licensee; \$20,000 per transfer station operated by a licensee; and \$50,000 per final waste disposal site located in Westchester operated by a licensee.

For Class L licensees: bi-annual application fees of \$100 per applicant and \$100 per principal; and annual licensing fees of \$400 per licensee and \$400 per vehicle used by licensee.

For Class C-1 and E licensees: bi-annual application fee of \$45 per applicant, and annual licensing fees of \$100 per licensee; \$100 per vehicle used by licensee; and \$20,000 per transfer station operated by a licensee.

For Solid Waste Brokers: bi-annual application fees of \$100 per applicant and \$100 per principal, and annual registration fee of \$250 per registrant.

Recycling credit:

Chapter 826-a includes an incentive for the industry to recycle and re-use materials in the form of a recycling credit for transfer stations, based upon the percentage of the materials they accept that they re-use or recycle. The credit reduces the annual \$20,000 transfer station fee, and ranges from a \$500 credit when a facility recycles or re-uses from 11% to 20% of materials, to a \$7,500 credit when a facility

recycles or re-uses from 76% to 100% of materials. A facility that recycles or re-uses between 0 to 10% of materials is not entitled to a credit.

EFFECTIVENESS OF CHAPTER 826-A

Chapter 826-a was enacted to prevent organized crime from again controlling Westchester County's carting industry. The goal of the County Executive and the Board of Legislators was to prevent the recurrence of anti-competitive effects in the industry including, but not limited to, price-fixing; the prevention of new entry into the industry; the existence of unconscionable customer contract terms; and the incidence of corruption. One method utilized in this effort was the inclusion of the "Customer Bill of Rights" ("the Bill of Rights") in Chapter 826-a.

The Bill of Rights, which must be incorporated into all customer contracts, provides consumers with certain protections that cannot be waived by any agreement between a carter and a customer. Among these protections:

- Service Contracts cannot be for longer than two years (although a municipality upon request and a showing of good cause may be granted a waiver for a longer contract period).
- The carter must give the customer at least 30 days advance written notice for any rate increase. If the customer does not agree to such increase, he or she may terminate the contract, before the rate increase takes effect, without penalty, by giving the carter 14 days notice.
- If a carter proposes to subcontract a customer's business or assign the customer's contract to another carter, the current carter must give the customer at least 60 days written notice. The customer may terminate the contract without penalty, by giving the carter 14 days notice.
- A customer can terminate a contract without penalty during the final 30 days of a contract.
- If, before the end of a contract, a customer's carter offers the customer a new contract that would begin before the current contract expires, the customer can terminate the current contract without penalty during the 30-day period following such proposal.
- A carter cannot discontinue service to a customer unless the customer is given at least 30 days advance written notice.
- If a contract provides that a carter can automatically renew a contract without getting the customer's approval, the customer can cancel the renewed contract by giving 30 days written notice to the carter.
- If the carter fails to comply with the provisions of the Bill of Rights or has added provisions to the contract which impair the customer's rights as identified in the Bill of Rights, the contract can be terminated immediately and without penalty.

The Bill of Rights specifically urges customers to contact the Commission if they believe that a carter has failed to comply with the Bill of Rights, or has failed to provide the services as agreed upon under their Service Contract.

As a result of this provision, the Commission fields questions and complaints from customers and carters. Generally, the complaints fall into four main categories: billing disputes between customers and carters; failure to provide service / service deficiency; misleading and/or coercive sales tactics; and questions about the existence or validity of contracts.

The Commission investigates allegations that sales representatives of licensees attempt to obtain new

customers by making factual misrepresentations about their competitors or about the County's carting law. .

The Commission formally reviews whether carters are complying with the service contract requirements specified in Chapter 826-a, including the incorporation of the Customer Bill of Rights into their service contracts. When the Commission's inspectors meet with or speak to customers, they confirm that the customers have received copies of the Bill of Rights. In addition, we require licensed companies, on a random basis, to supply the Commission with copies of their service contracts for internal review.

In addition, County residents turn to the Commission with questions about recycling and municipal collection. Whenever the Commission receives such inquiries, the residents are referred to the appropriate County or municipal agencies responsible for handling such issues.

The enactment of Chapter 826-a has attracted new carters to apply for County carting licenses. In 2011, we continued to receive applications from established companies throughout the region, as well as applications from several newly-founded Westchester-based companies.

Since Chapter 826-a was enacted in 1999, anecdotal evidence has shown that the Commission's actions have helped keep prices down. Prices are, of course, subject to the vicissitudes of the marketplace and economic fluctuations, such as increases in licensing fees by other jurisdictions; and increases in fuel costs and rates charged by landfills and transfer stations, both within and outside the County. At times, such external economic pressures have caused carters to increase the prices they charge their customers.

RECYCLING

Since 2007, personnel from the Solid Waste Commission, the Department of Environmental Facilities ("DEF") and the Department of Public Safety have worked together to enforce the County's recycling requirements with the goal of increasing recycling countywide. Commission and DEF inspectors conduct investigations at County and private transfer stations throughout the County to ensure that loads of solid waste being dumped at those facilities are not illegally commingled with recyclables which should have been separated by the generating business or homeowner, and collected apart from solid waste.

DEF Commissioner Thomas Lauro authorizes the issuance of Notices of Violations to municipalities, private haulers and waste generators based upon these findings. The violations are litigated before Westchester County Hearing Officers and have resulted in the assessment of fines or the issuance of warning letters, depending upon the nature of the inspectors' observations and in the cases of waste generators, the corrective measures, if any, that have been implemented.

In 2012, Commission Inspectors will continue to work cooperatively with DEF and the Department of Public Safety to ensure that both haulers and waste generators comply with the County's recycling requirements.

Respectfully submitted

Westchester County
Solid Waste Commission