

ANNUAL REPORT
OF THE
WESTCHESTER COUNTY
SOLID WASTE COMMISSION
FOR 2002

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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 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 2002 Annual Report.

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 operating in Westchester County; ensuring that only individuals and companies of suitable good character, honesty and integrity receive licenses to operate in the Westchester County solid waste and recyclables hauling industries; increasing competition within the solid waste and recyclables hauling market; enhancing consumer choice when a customer selects a carting company; facilitating a customer’s ability to change carters when appropriate; ensuring that solid waste generated within Westchester County is disposed of or recycled in an environmentally safe manner; and implementing and evaluating the effectiveness of the County’s Solid Waste Management Plan.

DEPARTMENT RESPONSIBILITIES

- A. To perform background checks on all applicants and principals requesting a license or registration so as to evaluate the good character, honesty and integrity of licensees and registrants in Westchester County.
- 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 only use 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 new 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.

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 exclusively handles recyclables.

Class C: for a carter that exclusively 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 exclusively 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.

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.

**STATUS OF APPLICANTS UNDER CHAPTER 826-A:
BACKGROUND INVESTIGATIONS, LICENSING DECISIONS
AND NEW APPLICANTS**

During 2001, the Board of Legislators amended Chapter 826-a to extend to March 31, 2002, the deadline by which the Commission was required to complete its background investigations of the original applicants for carting licenses. The Commission complied with this mandate. Of the 109 original applicants for Class A, B, C-2 and D licenses and Solid Waste Broker registrations, 86 were approved and issued licenses; 17 withdrew their applications; and 6 were denied licenses.

The following constitutes a breakdown of Commission licensing decisions for the original applicants:

Year	Class A	Class B	Class C-2	Class D	Solid Waste Brokers	Total
Licensed in 2000	16		1			17
Licensed in 2001	21	4	8		2	35
Licensed in 2002	26		7		1	34
Companies denied licenses	5	1				6

The status of the 6 companies that were denied licenses is as follows: one was purchased by a new applicant; one ceased operating in the midst of our administrative hearing so that its real property can be cleaned and sold; our administrative hearing for a third has been completed and the Commission is awaiting the Hearing Officer's opinion; two hearings are pending; and one hearing has been adjourned pending the outcome of an indictment against the company issued by the Office of the Manhattan District Attorney.

Since the original deadline for applications, the Commission has continued to receive and review applications for licenses to haul solid waste and recyclables in the Westchester market. Some of these applicants are companies that are new to our market, while others were discovered by the Commission's inspectors operating in the County without a license, and then submitted applications after being put on notice concerning the licensing requirements of Chapter 826-a.

The following constitutes a breakdown of the new applicants for Commission licenses ("new applicants"), and the number of the new applicants discovered by the Commission's inspectors and compelled to apply for licenses:

	Class A	Class B	Class C-2	Class D	Solid Waste Brokers	Total new applicants
Total New Applicants by Category	35	2	10	3	1	51
Applicants Discovered by the Commission's Inspectors	18	1	8	0	0	27

Chapter 826-a requires that the Commission investigate the backgrounds of applicants for Solid Waste Commission licenses, and their principals. The Commission is investigating the backgrounds of the new applicants. As part of the background investigation process, Assistant County Attorneys working with the Commission depose the individuals identified as the principals of the new applicants, and when an investigation mandates, other individuals determined to be working in a managerial capacity for these applicants. During 2002 Assistant County Attorneys deposed such individuals for the Commission.

During 2001, the Board of Legislators authorized 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 market during the completion of their background investigation, thereby increasing the number of companies available to compete for Westchester carting business. Following preliminary investigations, the Commission issued Permits to Operate to 24 of the 51 new applicants. In addition, the background investigations of four of the new applicants have been completed. The Commission has issued licenses to these companies.

	Class A	Class B	Class C-2	Class D	Solid Waste Brokers	Total issued
Permits to Operate issued to new applicants	16	2	3	2	1	24
Licenses issued to new applicants	4					4
Total:	20	2	3	2	1	28

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 that 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. After a period of review, and with the recommendation of this Commission, the Board of Legislators voted to exclude from this licensing category the following types of companies, which are licensed by other Westchester County agencies, when such licenses are determined to be in good standing: (1) electricians; (2) plumbers; and (3) home improvement contractors, including landscapers. As a result of this amendment, 98 of the 169 original applicants for Class C-1 licenses were excluded from Solid Waste licensing requirements. The Commission refunded their application and background investigation fees.

As with the applicants for licenses in the major carting categories, the Commission complied with the Legislature’s March 31st deadline and completed its investigations of the remaining C-1 applicants. Of the 71 remaining C-1 applicants, 70 were approved for licensing by the Commission, while one company was denied a license. As of January 31, 2003, we have not received new applications for Class C-1 licenses.

INSPECTIONS

During 2002, the Commission's inspectors conducted investigations daily 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 chose to register their trucks with the Commission and pay the required registration fees.

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

Truck Inspections (at transfer stations; at carting companies; while on road; or during truck stops by municipal police)

Trucks Inspected: 114

Unregistered Trucks found: 36

Note: Depending upon the size of a transfer station, the inspectors see as many as 20-25 trucks per visit, each visit lasting 2-3 hours, on average. Most of the trucks the inspectors see display Commission decals, indicating that the company is licensed and the truck registered with the Commission. The inspectors question drivers of trucks that do not display Commission decals, or of trucks which displayed decals but which have unfamiliar corporate names.

Unlicensed Companies found: 32

Unlicensed Companies that applied following discovery by the Commission: 21

Unlicensed Companies under investigation: 11

Unlicensed Transfer Stations:

As a result of information gathered from a variety of sources during 2002, the Commission discovered a number of construction and demolition debris transfer stations which never applied for licenses from the Commission. The inspectors have visited these sites and informed the owners of the County's licensing requirements.

Unlicensed Transfer Stations discovered by the Commission: 4

Unlicensed Transfer Stations that applied for licenses following discovery: 2

Unlicensed Transfer Stations that are the subject of continuing investigation: 2

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, they conducted long-term investigations into a customer's allegations. The inspectors' findings may

result in Commission enforcement actions or, where appropriate, referral to law enforcement authorities.

Investigations of customer and carter complaints: 53

Types of Disputes:

Contract disputes: 27

Billing discrepancies: 15

Failure to provide service: 11

COMPLIANCE AND HEARINGS; ENFORCEMENT; PENALTIES

During 2001, the Commission began to conduct administrative hearings to provide carters an opportunity to be heard concerning charged violations of Chapter 826-a and concerning the Commission's license denial decisions. The Commission's first hearings were conducted during Fall 2001.

During 2002 the Commission authorized 28 hearings for the following violations:

Types of Violations

Unregistered Truck / Improper or No Decal.....7

Unlicensed Operation (carter).....14

Unlicensed Operation (transfer station).....1

License Denial (including one C-1 applicant).....7

Twenty hearings were completed during 2002. In all but one case, the respondent-carter pled guilty and accepted a fine, subject to the Commission's approval of the hearing officer's recommendation. A full hearing was conducted in the remaining case (unlicensed operation in the County by a Connecticut-based carter), after which the hearing officer issued a decision finding that the carter had operated without a license in the County, and recommending that the carter be assessed the initial recommended fine, \$5,000. The Commission adopted the hearing officer's recommendation. Because the carter has not paid the fine, the case has been referred to the County Attorney for collection.

In sum, fines totaling \$82,650 were assessed by the Commission during 2002 following the completion of administrative hearings.

SOLID WASTE COMMISSION BUDGET

During 2002, the Solid Waste Commission complied with its mandate to operate as a tax-levy neutral agency. The Commission's budget is based solely upon the application fees and yearly licensing fees charged applicants and licensees. These fees are:

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 C-1 and E licensees: bi-annual application fee of \$45 per applicant, and annual licensing fee of \$50 per vehicle used by 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.

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 can get a waiver for a longer contract upon a showing of good cause).
- 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, throughout 2002 the Commission fielded questions and complaints from customers and carters. Generally, the complaints fell 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.

In addition, County residents have turned to the Commission with questions about recycling and municipal collection. Whenever the Commission received such inquiries, the residents were 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, as reflected above. Most of the new applicants are established companies that have operated outside the County in Connecticut, New York City and Nassau County.

The Commission has also learned anecdotally that since the enactment of Chapter 826-a, carting prices have generally decreased throughout the County. These decreases are, of course, subject to the vicissitudes of the marketplace. For instance, during 2002 Pennsylvania (a major, final waste disposal site for solid waste generated in Westchester County) instituted a surcharge on trucks bringing waste into that state. Many of the carters operating in Westchester County have passed along to their customers this increase in their operating costs. In addition, economic fluctuation, such as increases in rates charged by landfills as well as transfer stations, both within and outside the County, could cause carters to increase the prices they charge their customers.

LAW ENFORCEMENT INITIATIVES

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 2002, the Commission conducted 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.

As a result of our meetings with local law enforcement authorities, the Commission's inspectors were invited to accompany 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 learned how to enforce the decal requirement of Chapter 826-a.

In 2003, we plan to continue our outreach to local law enforcement agencies.

Incident to investigations conducted during 2002 the Commission consulted with a number of law enforcement agencies outside Westchester County, including the New York State Attorney General; the New York State Department of Environmental Conservation (“DEC”); the New York County District Attorney; the New York City Trade Waste Commission (now known as the New York City Business Integrity Commission); the New York City Police Department; the Smithtown (Long Island) Department of Public Safety; and the Greenwich, Connecticut Police Department.

As a result of the Commission’s investigative activities, during 2002 DEC was able to bring charges against two transfer stations that were operating illegally in Westchester County.

Respectfully submitted

Bruce B. Berger
Executive Director