

ANNUAL REPORT
OF THE
WESTCHESTER COUNTY
SOLID WASTE COMMISSION
FOR 2004

THOMAS A. McSHANE, CHAIR
JOHN A. LOMBARDI, SUPERVISOR, TOWN OF NORTH CASTLE
LAWRENCE S. SCHWARTZ, DEPUTY COUNTY EXECUTIVE
THOMAS BELFIORE, COMMISSIONER OF PUBLIC SAFETY
ANTHONY M. LANDI, COMMISSIONER OF ENVIRONMENTAL FACILITIES
PETER P. PUCILLO, COMMISSIONER OF FINANCE
ELAINE M. PRICE, DIRECTOR OF CONSUMER PROTECTION

BRUCE B. BERGER
EXECUTIVE DIRECTOR

PREPARED FOR HON. ANDREW J. SPANO,
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 Annual Report for 2004.

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 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 or brought into 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 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.

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.

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

During 2004, 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	Solid Waste Brokers	Total new applicants
Total New Applicants by Category	16	2	6	1	2	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, an Assistant County Attorney working with the Commission deposes 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 2004 an Assistant County Attorney continued to depose such individuals for the Commission.

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 market during the completion of their background investigation, thereby increasing the number of companies available to compete for Westchester carting business. The Commission’s staff reviewed the backgrounds of companies whose applications were received during 2004 and earlier. During 2004, the Commission issued Permits to Operate to 15 companies:

	Class A	Class B	Class C-2	Class D	Solid Waste Brokers	Total issued
Permits to Operate issued to new applicants	13	--	2	--	--	15

Once Commission staff deems a background investigation complete, it recommends to the Commission whether to issue an applicant a license. During 2004, the Commission issued 20 licenses to operate in the Westchester County solid waste and recyclables hauling industry. The Commission also began license-denial proceedings against one company; these proceedings are ongoing. The following constitutes a breakdown of the Commission’s licensing decisions during 2004 and prior years:

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	30		7		1	38
Licensed in 2003	12	2	5	1	1	21
Licensed in 2004	16	0	3	1	0	20
Companies denied licenses during 2002	5	1				6
Companies denied licenses during 2003	1					1
License denials affirmed during 2004	1	1				

The status of the 7 companies that have been denied licenses is as follows:

- after the conclusion of an administrative hearing the Hearing Officer issued an opinion ratifying the Commission’s initial license-denial recommendation. The owner of the company whose license was denied then sold his company to another licensed entity.

-- one company ceased operating in the midst of our administrative hearing so that its real property could be cleaned and sold. After the completion of the hearing, the Hearing Officer issued an opinion affirming the Commission's original license denial recommendation. The Commission accepted the Hearing Officer's recommendation, and an Order was issued in November 2004 directing the company to cease operating.

-- two companies were purchased; then --

-- one of the purchasing companies itself became the subject of license denial proceedings instituted during 2003. The company contested the Commission's initial license denial recommendation and submitted written arguments and made an oral presentation in opposition to the recommendation. The Commission rejected the company's arguments, and an Order was issued in April 2004 directing the company to cease operating. As a result of pending litigation and a court order, the company is currently authorized to operate in the County.

-- two hearings are pending.

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 2004, the Commission received and reviewed applications from 9 companies for Class C-1 licenses; as of the date of this report, each of these companies has been issued a Class C-1 license.

Chapter 826-a also requires that Class E licenses be issued to companies using only one truck to haul scrap materials, primarily scrap metals, to recyclables brokers. During 2004, the Commission received and reviewed 2 applications for Class E licenses; as of the date of this report, 1 of these companies has been issued a Class E license.

INSPECTIONS

In January 2004, the Commission hired a third Solid Waste Inspector, which enabled the Commission to conduct more inspections and investigations than in 2003. The effectiveness of the Commission's Inspectors is evident from the fact that during 2004, despite the increased number of inspections, fewer unlicensed haulers were found operating in Westchester, and fewer haulers were found to be using unregistered trucks.

During 2004, 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 registered their trucks with the Commission and paid the required registration fees, or ceased to use them in the County.

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)

	2004	2003
Transfer Station inspections	174	77
Trucks Inspected	1826 ¹	949
Unregistered Trucks found	35	41
Unlicensed Companies found	29	44
Unlicensed Companies that applied following discovery by the Commission	5	12
Unlicensed Companies under investigation or which decided to discontinue operating in Westchester County	24	32

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 inspectors review these records to identify companies that are not licensed by the Commission, then determine 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 bringing such cases during 2004, 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.

¹ In January 2004, the Commission hired a third Solid Waste Inspector, which enabled the Commission to conduct more transfer station and truck inspections than in 2003.

The following constitutes a summary of the complaints investigated by the Commission:

	2004	2003
Investigations of customer and carter complaints:	61 ²	43
Types of Disputes:		
Contract disputes:	33	19
Billing discrepancies:	4	12
Failure to provide service:	24	12

Contract Reviews:

During 2004 the Commission began to review the service contracts issued to customers by licensed and permitted haulers. On a random basis, haulers were required to provide us with copies of their contracts so that we could ensure that their contracts complied 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 asked to review copies of their service contracts.

COMPLIANCE AND HEARINGS; ENFORCEMENT; PENALTIES

Despite an increase in the number of inspections performed, as described above, fewer violations were authorized than in 2003, reflecting the effectiveness of the Commission's enforcement efforts. During 2004 the Commission authorized 38 hearings for the following violations:

Types of Violations

	2004	2003
Unlicensed Operation (carter)	32	37
Unlicensed Operation (solid waste broker)	1	0
Unlicensed Operation (transfer station)	0	2
Unregistered Truck / Improper or No Decal	1	4
Failure to Pay Required Fees	3	2
Operating a Transfer Station in Violation of State or Local Laws or Regulations	0	1
Subcontracting to an Unlicensed Hauler	1	0

² The increase in customer complaints was due in large part to the fact that during 2004, two licensed companies had financial problems which resulted in protracted periods during which they had difficulties honoring their service contracts. When possible, the Commission assisted customers in obtaining replacement carting services.

During 2004, the Commission completed thirty-two hearings. In twenty seven cases the respondent-carter pled guilty and accepted a fine, subject to the Commission's approval of the hearing officer's recommendation. One respondent-carter pled guilty without a hearing and paid the initial fine recommended by the Commission. The Commission voted to issue a warning letter to one carter and dismissed four cases following presentation of evidence to the hearing officer demonstrating that the waste materials the carters were hauling were personal in nature and thus not subject to regulation by the Commission, or that the carters hauled the waste for friends or relatives for no fee, and thus were not operating in a manner which required licensing.

In sum, during 2004 the Commission assessed fines totaling \$200,324³ following the completion of administrative hearings.

SOLID WASTE COMMISSION BUDGET

During 2004, 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 upon request and a showing of good cause may be granted a waiver for a longer contract period).

³ This total includes a fine of \$125,000 paid by Allied Waste Systems, Inc., for operating a transfer station in violation of a federal, state, or local law or regulation, and a fine of \$2,000 paid by a company which chose not to contest the Commission's charges at an administrative hearing. Without these assessments, the Commission imposed fines totaling \$73,324, over \$19,000 more than in 2003.

- 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 2004 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.

During 2004, we began to formally review whether carters are complying with the service contract requirements specified in Chapter 826-a, including incorporating 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.

One of our goals for 2005 is to establish a telephone Complaint Line which will enable customers and carters to file anonymous complaints with the Commission.

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. In 2004, we continued to receive applications from established companies throughout the region, as well as applications from several newly-founded Westchester-based companies.

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. During 2004, the City of Peekskill instituted a \$250 per-truck permit fee for trucks hauling trash, rubbish or recyclables through Peekskill. A number of carters operating in Westchester County passed along to their customers this increase in their operating costs.

In addition, economic fluctuations, such as increases in fuel costs and rates charged by landfills and transfer stations, both within and outside the County, have caused carters to increase the prices they charge their customers.

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 2004, the Commission continued to conduct 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.

After the Commission provided decal-enforcement training, several Westchester municipalities began to actively enforce the decal requirement. As a result of their efforts, the Commission learned about a number of unlicensed companies operating in Westchester County. When appropriate, administrative charges were brought against these companies. During 2005, we will continue our outreach to local law enforcement agencies.

B) Investigations

During 2004, 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
- the United States National Labor Relations Board
- the United States Attorney's Office for the Southern District of New York
- the New York State Office of the Attorney General
- the New York State Department of Environmental Conservation ("DEC")
- the New York State Department of Transportation ("DOT")
- the Westchester County District Attorney
- the Westchester County Department of Public Safety
- the New York County District Attorney
- the New York City School Construction Authority
- the New York City Business Integrity Commission
- the New York City Police Department
- the Smithtown (Long Island) Department of Public Safety
- the Stamford, Connecticut Police Department.
- the Connecticut Department of Environmental Protection

- the New Jersey State Commission on Investigation
- the New Jersey State Police
- the Bayonne, New Jersey Police Department

Some of the notable cases in which Commission staff was involved during 2004:

1) Allied Waste: During 2001, the Commission learned from Engelhard Corporation of Peekskill, New York, that Valley Carting, a company owned and operated by Allied Waste, had been taking its industrial waste to facilities not licensed to handle such materials. The Commission's Inspectors investigated Engelhard's allegation and confirmed that on at least one occasion, a Valley truck had delivered Engelhard's industrial waste to Allied's Mount Kisco transfer station, which was not licensed to handle such waste. The Commission referred the matter to Walter Mack, Esq., a federal monitor appointed to oversee Allied's operations throughout Westchester County. In 2003, Mr. Mack issued his report on the matter, disclosing that Allied had improperly accepted industrial waste at its transfer stations on at least 442 occasions. The Commission brought administrative charges against Allied for operating its transfer stations in violation of federal, state or local law or regulation. In 2004, Allied pled guilty and paid a fine of \$125,000 to the Commission. In addition, as a result of these activities, Allied was also charged with violations by, and paid fines to DEC (\$60,000) and the Village of Croton-on-Hudson (\$50,000).

2) Nacirema Industries: In April 2003, Nacirema pled guilty during a Commission administrative hearing to operating without a license in Westchester County. The company thereafter applied for a license, but never completed its application despite being notified on two separate occasions (in August and September, 2003, respectively) that its application was incomplete. Thereafter, in March 2004 Nacirema was found hauling construction debris from a renovation and expansion job at Bronxville High School. The general contractor hired Nacirema; in doing so, Nacirema replaced a hauling company licensed in Westchester County. As a result of a joint investigation into this activity by the Commission and the Westchester County Department of Public Safety, the Commission authorized administrative charges against Nacirema, while the Department of Public Safety brought criminal charges against the company. Both the criminal and administrative charges are pending.

Respectfully submitted

Bruce B. Berger
Executive Director