

ANNUAL REPORT
OF THE
WESTCHESTER COUNTY
SOLID WASTE COMMISSION
FOR 2005

THOMAS A. McSHANE, CHAIR
JOHN A. LOMBARDI, PUBLIC MEMBER
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 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 2005.

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 seeking 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 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.

In 2005, amendments to Chapter 826-a created a new Class L License category.

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 2005, 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	20	1	3		1		4	2

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 2005 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 2005 and earlier. During 2005, the Commission issued Permits to Operate to eighteen 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	11	1	2		1	1	2	

Once Commission staff deems a background investigation complete, it recommends to the Commission whether to issue an applicant a license. During 2005, the Commission issued 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 2005 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		3	1		20
Licensed in 2005	19		2			21

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 2005, the Commission received and reviewed applications from four companies for Class C-1 licenses; as of the date of this report, two of these companies have been issued Class C-1 licenses, and 1 company was issued a Class C-1 Permit to Operate.

Chapter 826-a also requires companies using only one truck to haul scrap materials, primarily scrap metals, to recyclables brokers, apply for a Class E license. During 2005, the Commission received and reviewed two applications for Class E licenses; as of the date of this report, one of these companies has been issued a Class E license.

INSPECTIONS

During 2005, 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 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 performed with municipal police)

	2005	2004	2003
Transfer Station inspections	206	174	77
Trucks Inspected	2611	1826	949
Unregistered Trucks found or registered trucks with no decals	9	35	41
Unlicensed Companies found	35	29	44
Unlicensed Companies that applied for a License following discovery by the Commission	8	5	12
Unlicensed Companies under investigation or which decided to discontinue operating in Westchester County	27	24	32

One of the amendments to Chapter 826-a enacted in 2005 required licensees to label the vehicles and containers they use to transport and store solid waste and recyclables; the vehicles and containers must prominently display a licensee's company name and telephone number. A goal of this amendment is to make it easier for Commission inspectors and municipal law enforcement officials to identify the companies operating in the County, and to more easily locate unlicensed haulers. In addition, the amendments make it easier for Westchester County residents to lodge complaints with the Commission against haulers operating in the County.

Carters were notified that they would be required to have their containers and vehicles properly labeled as of the beginning of September 2005. After that date, based on observations made by Commission inspectors, the Commission issued violations against six companies for using a total of ten containers and one vehicle that failed to prominently identify the name and telephone number of the licensee-owner.

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 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 reviewing these records during 2005, 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.

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

	2005	2004	2003
Investigations of customer and carter complaints:	53	61	43
Types of Disputes:			
Contract disputes:	11	33	19
Billing discrepancies:	6	4	12
Failure to provide service:	17	24	12

Contract Reviews:

The Commission reviews the service contracts issued to customers by licensed and permitted haulers. Haulers are randomly 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 2005 the Commission authorized 43 hearings for the following violations:

Types of Violations

	2005	2004	2003
Unlicensed Operation (carter)	25	32	37
Unregistered Truck / Improper or No Decal	8	1	4
Improperly labeled vehicle or container	6	---	---
Misrepresentations to customers in contract	1	0	0
Misrepresentations to customers by salesman	2	0	0
Failure to Pay Required Fees	0	3	2
Subcontracting to an Unlicensed Hauler	0	1	0
Commingling commercial and municipal waste	1	0	0

During 2005, the Commission completed 38 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. The Commission dismissed two cases following presentation of evidence to the hearing officer concerning the presence of decals and labels on a truck and container, respectively. Additionally, rather than issue charges, the Commission decided to issue a warning letter to one carter. Finally, six respondent-carters pled guilty without a hearing and paid the fine recommended by the Commission.

In sum, during 2005 the Commission collected a total of \$116,300 in fines; \$68,300 was collected following the completion of administrative hearings, while a total of \$48,000 was collected from carters who paid the initial fines recommended by the Commission.

SOLID WASTE COMMISSION BUDGET

During 2005, amendments to Chapter 826-a were approved which affected the Commission's budget. The amendments created a new "Class L" license category with a license fee of \$400 and a per-truck fee of \$400; amended the fees charged Class C-1 and Class E licensees by instituting a license fee of \$100 and increasing the per-truck fee for these categories from \$50 to \$100; and reduced the fees paid by some licensed transfer station operators by providing for a credit against the transfer station fees they paid based upon the percentage of materials they accept that are ultimately re-used or recycled.

The Solid Waste Commission complied with its mandate to operate as a tax-levy neutral agency in 2005. 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 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:

An amendment to Chapter 826-a adopted in 2005 helped create an incentive for the industry to recycle and re-use materials. The amendment created 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. In 2005, the Commission brought two cases against companies based upon misrepresentations made by their sales representatives. Accordingly, in 2006, the Commission will hold seminars for sales representatives during which Commission staff will update them on the County's statute and the types of sales practices that will be considered violations of the statute.

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 2005 the Commission established a telephone Complaint Line which enables customers and carters to file anonymous complaints with the Commission. The telephone number for the Complaint Line is posted prominently on the Commission's website and was disseminated to commercial and residential carting customers throughout the County by a letter sent by the Commission in September 2005.

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 2005, 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.

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 2005, 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 2006, we will continue our outreach to local law enforcement agencies.

B) Investigations

During 2005, 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 Attorney's Office for the Southern District of New York
- the United States Environmental Protection Agency ("EPA")
- 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
- the Westchester County District Attorney
- the Westchester County Department of Public Safety
- the New York City School Construction Authority
- the New York City Business Integrity Commission
- the New York City Police Department
- the Stamford, Connecticut Police Department.
- the Connecticut Department of Environmental Protection
- the Massachusetts Department of Environmental Protection
- the Ohio Department of Environmental Protection
- the New Jersey State Commission on Investigation
- the New Jersey State Attorney General

Some of the notable cases in which Commission staff was involved during 2005:

Contract Reviews – During 2005, the Commission required a number of carting companies to submit copies of their service contracts for review. As a result, Commission inspectors determined that Waste Management of New York, LLC had used service contracts which violated Chapter 826-a by stating that contracts could be executed for periods of up to three years rather than two years, as specified in the Customer Bill of Rights. The inspectors found, though, that the sales representatives who used these contracts had written-in expiration dates no more than two years from the date of execution. Regardless, because the boilerplate language violated the requirements of the Customer Bill of Rights, the Commission authorized the issuance of administrative charges against Waste Management and a proposed fine of \$10,000. Waste Management declined to contest the charges and paid the fine.

Sales Misrepresentations – During 2005, the Commission fielded complaints from customers and competing carters concerning representations made by sales representatives as they attempted to induce customers to execute hauling contracts. Commission inspectors interviewed customers and confirmed that representations had been made that conflicted with the Customer Bill of Rights. As a result, the Commission authorized the issuance of administrative charges against United Waste Services and Tri-County Disposal, each of which ultimately settled the cases and paid fines.

Allied Waste: Walter Mack, Esq., a federal monitor appointed to oversee Allied's operations throughout Westchester County, issued a report containing findings that Allied had commingled waste collected from some of its commercial and municipal customers, dumped the commingled waste at a County facility, and billed the entire load to the municipalities. Allied settled the matter with the municipalities in question. The Commission thereafter brought its own charges against Allied for engaging in a deceptive trade practice, and recommended a fine of \$30,000. Allied declined to contest the charges and paid the fine.

SAFETY INITIATIVE

On July 20, 2005, John Rodrigues, a sanitation worker for the Village of Ossining, fell off the rear platform of a Village garbage truck and died from the injuries he sustained.

As a result of Mr. Rodrigues' death and his mother's request that Westchester County help ensure that such tragedies do not recur, County Executive Andrew J. Spano asked his staff to investigate the issue of safety measures that can be implemented in garbage trucks. As a result of this research, the County learned that five to six deaths per week are associated with garbage truck operations throughout the United States. Injuries and deaths are caused by: swinging dumpsters; workers being trapped between containers and the truck while the truck is backing up; side-swipes by other vehicles while workers are riding on rear steps; and workers thrown off as a result of an accident. The majority of reported deaths involved a worker being thrown off the back of a truck.

Based on Ms. Rodrigues' appeal and the results of our investigation, Westchester County's Department of Public Works amended the bid specifications for three new garbage trucks it purchased to require the installation of rear cameras to enable the driver to see what is happening behind the truck. This policy will also apply to all future purchases of County-owned garbage trucks. The County will also supply helmets to its employees who operate garbage trucks to prevent falls and minimize injuries.

County Executive Spano sent letters to all municipal officials and all companies licensed to operate in Westchester County, urging them to similarly improve their fleets of garbage trucks and update their safety

practices. He also notified the licensees that carters submitting bids for future County carting contracts will be required to implement similar safety measures before they are awarded a County carting contract.

Respectfully submitted

Westchester County
Solid Waste Commission