

ANNUAL REPORT
OF THE
WESTCHESTER COUNTY
SOLID WASTE COMMISSION
FOR 2006

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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 2006.

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.

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 2006, 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	33	1	5			1	7	2

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, 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.

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 2006 and earlier. During 2006, the Commission issued Permits to Operate to twenty-five 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	19	1	2				1	2

Once Commission staff deems a background investigation complete, it recommends to the Commission whether to issue an applicant a license. During 2006, the Commission issued twenty-two 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 2006 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
Licensed in 2006	15	1	4		2	22

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 2006, the Commission received and reviewed applications from seven companies for Class C-1 licenses. The Commission issued three companies Class C-1 licenses, and one company 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 apply for a Class E license. During 2006, the Commission received and reviewed two applications for Class E licenses. Both companies have been issued Class E Permits to Operate.

INSPECTIONS

During 2006, 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):

	2006	2005	2004
Transfer Station inspections	188	206	174
Trucks Inspected	2038	2611	1826
Unregistered Trucks found or registered trucks with no decals	11	9	35
Unlicensed Companies found	30	35	29
Unlicensed Companies that applied for a License following discovery by the Commission	10	8	5
Unlicensed Companies under investigation or which decided to discontinue operating in Westchester County	20	27	24

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 2006, 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:

	2006	2005	2004
Investigations of customer and carter complaints:	50	53	61
Types of Disputes:			
Contract disputes:	12	11	33
Billing discrepancies:	7	6	4
Failure to provide service:	10	17	24

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.

During 2006, Commission staff reviewed service contracts in the offices of several license haulers. During one such review, Commission staff discovered that a number of unlicensed solid waste brokers have been referring carting business in Westchester County to licensed haulers. As a result, the Commission brought administrative charges for unlicensed operation against five unlicensed brokers. Commission staff continues to investigate other unlicensed brokers discovered during this inspection. During 2007 and beyond, Commission staff will visit the offices of randomly selected carters to review their service contracts and related documentation. In addition, Commission staff will continue to review service contracts submitted by licensed haulers at the Commission’s direction.

Sales Seminar:

During 2006, the Commission conducted seminars for sales personnel operating in the Westchester County solid waste and recyclables hauling market. Commission staff reviewed the Customer Bill of Rights and other provisions of Chapter 826-a relevant to the activities of sales personnel. In addition, Commission staff discussed hypothetical sales activities, describing how sales personnel could solicit customers without committing violations which could result in their companies being cited for violations of Chapter 826-a.

COMPLIANCE AND HEARINGS; ENFORCEMENT; PENALTIES

During 2006 the Commission authorized 43 hearings for the following violations:

Types of Violations

	2006	2005	2004
Unlicensed Operation (carter or broker)	29	25	32
Unregistered Truck / Improper or No Decal	4	8	1
Failure to Pay Required Fees	2	--	3
Subcontracting to an Unlicensed Hauler	3	--	1
Operating an unregistered transfer station	2	--	--
Using a registered truck without Commission decal	2	--	--
Failure to provide information reasonably requested by the Commission	1	--	--
Improperly labeled vehicle or container	--	6	--
Misrepresentations to customers in contract	--	1	--
Misrepresentations to customers by salesman	--	2	--
Commingling commercial and municipal waste	--	1	--

The Commission initiated license revocation proceedings against 3 haulers during 2006. Instead of litigating the denial recommendations, the 3 haulers agreed to surrender their licenses.

During 2006, the Commission completed 33 hearings. In 32 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 1 case following presentation of evidence to the hearing officer supporting an unlicensed carter's contention that he had hauled waste for a friend for no fee. Additionally, 3 respondent-carters pled guilty without a hearing and paid the fine recommended by the Commission.

In sum, during 2006 the Commission approved a total of \$90,900 in fines; \$84,700 was assessed following the completion of administrative hearings, while a total of \$6,200 was collected from carters who paid the initial fines recommended by the Commission.

SOLID WASTE COMMISSION BUDGET

The Solid Waste Commission complied with its mandate to operate as a tax-levy neutral agency in 2006. 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. During 2006, the Commission conducted seminars for sales personnel operating in the Westchester County solid waste and recyclables hauling market, during which Commission staff updated 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. During 2006, Commission staff reviewed service contracts in the offices of several license haulers. During one such review, Commission staff discovered that a number of unlicensed solid waste brokers have been referring carting business in Westchester County to licensed haulers. As a result, during 2007 and beyond, Commission staff will visit the offices of randomly selected carters to review their service contracts and related documentation.

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 2006, 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 2006, 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.

As a result of the efforts of a number of Westchester municipalities which actively enforced the decal requirement, the Commission learned about a number of unlicensed companies operating in Westchester County. When appropriate, administrative charges were brought against these companies. During 2007, we will continue our outreach to local law enforcement agencies.

B) Investigations

During 2006, 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 and Connecticut
- the United States Attorney's Office for the Eastern 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
- the Westchester County District Attorney
- the Westchester County Department of Public Safety
- the Dutchess County Resource Recovery Agency
- the New York City School Construction Authority, Office of the Inspector General
- the New York City Business Integrity Commission

- the New York City Police Department
- the Connecticut Department of Environmental Protection
- the New Jersey State Commission on Investigation
- the New Jersey State Attorney General

The Commission assisted the staff of the Office of the New York City School Construction Authority Inspector General as it updated “Mobnet,” the Inspector General’s database of Organized Crime information. The Commission contributed information to be used on the database, which the Inspector General makes available to law enforcement and administrative enforcement agencies throughout the New York metropolitan area.

Some of the notable cases in which Commission staff was involved during 2006:

Contract Reviews: – The Commission requires carting companies, on a random basis, to submit copies of their service contracts for review. During 2006, Commission staff also reviewed service contracts in the offices of licensed haulers. During one such review, Commission staff discovered that a number of unlicensed solid waste brokers have been referring carting business in Westchester County to licensed haulers. As a result, the Commission brought administrative charges for unlicensed operation against five unlicensed brokers. Commission staff continues to investigate other unlicensed brokers discovered during this inspection. During 2007 and beyond, Commission staff will visit the offices of randomly selected carters to review their service contracts and related documentation.

Persico Contracting: In 2006, the Commission brought charges against Persico Contracting & Trucking, Inc., of Mount Vernon, New York (“Persico Contracting”), for operating in the Westchester County solid waste and recyclables hauling market without having a Commission license. Persico Contracting had been issued a license by the Commission in 2004 but surrendered its license in 2005 instead of agreeing to have a monitor oversee the company’s operations following the indictment of the company’s Vice President, Robert Persico. In 2006, Commission staff discovered Persico Contracting hauling solid waste in Westchester County despite having surrendered its license. A review of transfer station records revealed that Persico Contracting hauled solid waste a total of 88 times after it surrendered its license. As a result, the Commission brought administrative charges against Persico Contracting and recommended a sanction of \$440,000. As of the date of this report, these charges are still pending.

Respectfully submitted

Westchester County
Solid Waste Commission