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3   THE CITY OF NEW YORK

4   NEW YORK CITY DEPARTMENT OF SANITATION

5   PROPOSED RULES TO ESTABLISH REQUIREMENTS

6   FOR CARTERS OPERATING IN COMMERCIAL WASTE

7   ZONES RELATED TO COMMERCIAL WASTE GENERATION

8   AUDITS, ESTABLISH FEES, AND AMEND DEFINITIONS

9   PUBLIC HEARING

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12   WEBEX VIRTUAL HEARING

13   Wednesday, September 15, 2021

14   9:34 a.m.

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24   REPORTED BY:

25   Beneida Smith

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2   A P P E A R A N C E S:

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4   The New York City Department of Sanitation

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     Common Ground Compost
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     Thomas N. Toscano
7   Mr. T. Carters

8   Ron Bergamimi
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     Justin Wood
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2   MR. BLAND: Good morning and

3   welcome. My name is Justin Bland. I am

4   the Director of Commercial Waste for New

5   York City Department of Transportation.

6   Thank you for attending this public

7   hearing this morning.

8   DSNY is conducting this remote

9   hearing in accordance with requirements

10 of the City Administrative Procedure

11 Act. The purpose of this hearing is to

12 receive comments from the public on the

13 Department's proposed rules that would

14 establish requirements for carters

15 operating in commercial waste zones

16 related for commercial waste generation

17 audits, establish fees for the

18 commercial waste program and amend

19 definitions. This proposed rule was

20 published in the City Record on August

21 12, 2021. DSNY e-mailed copies of the

22 rule to all New York City local elected

23 officials, the City's fifty-nine

24 community boards, media and interested

25 parties and published proposed rules on

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2   our website.

3   The adoption of the forthcoming

4   commercial waste zones system will

5   dramatically reduce truck traffic

6   associated with the commercial waste

7   industry more than 50 percent. This

8   system will improve the quality of life

9   of New Yorkers, serve the needs of the

10   City's local businesses, and support the

11   City's goals for a cleaner, safer and

12   more sustainable City. More details

13   about the commercial waste zones program

14   can be found on the Department's website

15   and in the statement of basis of purpose

16   for this proposed rule. The Department

17   will use a competitive Request for

18   Proposals or RFP process to select up to

19   three private carters to service

20   businesses within each commercial waste

21   zone. The RFP process will be used to

22   select up to five carters to provide

23   containerized commercial waste

24   collection services citywide. The RFP

25   being issued in two parts. Part 1 was

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2   issued on November 19, 2020, with

3   response due on February 19th, 2021.

4   Part 2 will be issued soon.

5   Under these proposed rules, the

6   Department would establish requirements

7   for carters selected to operate under

8   the commercial waste zone program to

9   reimburse customers for the cost of a

10   commercial waste generation audit.

11   The commercial waste generation

12   audit provides a concrete picture of the

13   types and amounts of wastes that a

14   commercial establishment generates. The

15   commercial establishment can then use

16   the audit to initiate a fair price with

17   their commercial waste zone carter. The

18   audit will also provide the commercial

19   establishment with the information about

20   the level of contamination for each

21   waste stream, recommendations for waste

22   reduction, and recommendations for

23   diverting more waste from refuse to

24   designated recyclable material and

25   source-separated organic waste streams.

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2   This will assist the commercial

3   establishment in complying with the

4   City's requirement and to help further

5   the City's zero waste calls.

6   Under these proposed rules, each

7   commercial establishment would be

8   entitled to reimbursement by an awardee

9   for one commercial ways generation audit

10 assessing the amount, types, and

11 contamination levels of the commercial

12 establishment's commercial waste,

13 provided that the requirements detailed

14 in the proposed rules are met. The

15 proposed rules describe a procedure to

16 resolve disputes between carters and

17 customers regarding a waste generation

18 audit and provide the option of bringing

19 unresolved disputes to DSNY for review.

20   These proposed rules would also

21 establish a definition of "bicycle,"

22 which is relevant to the program

23 definition of micro hauler and to the

24 number of designated carters that an

25 awardee may subcontract with over the

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2   program. The definition of "bicycle"

3   amended here takes into account the

4   definition of "bicycle" and Local Law

5   199 as well as the recent changes in

6   state and local laws related to e-bikes.

7   Finally, these proposed rules will

8   establish an annual fee for awardees of

9      $107,148.73 per award.

10   A court reporter is present today,

11   and will record the hearing. You may

12   present an oral statement or submit

13   written comments concerning either or

14   both of the proposed rules. We have

15   been accepting written comments on the

16   proposed rules since their publication.

17   DSNY will carefully consider all the

18   comments received today at the hearing

19   and all written comments it has

20   received. I will begin calling those of

21   you who wish to speak this morning in

22   the order in which you signed up to

23   testify. While the notices requested

24   that persons wishing to testify sign up

25   in advance of this hearing, anyone

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2   wishing to testify at this time, may do

3   so by using the raised hand function or

4   indicating in the chat area that you

5   wish to testify. When you speak, please

6   state your name and affiliation, if any,

7   and speak slowly and clearly, so the

8   court reporter can understand and

9   accurately record your statement. If

10   you have not done so and are giving oral

11   testimony, we also ask that you send us

12   a written copy, if possible. We also

13   ask that you limit your statement to

14   three minutes. We will now begin with

15   our first speaker. That would be

16   Meredith Danberg-Ficarelli. Meredith,

17   when you are ready.

18   MS. DANBERG-FICARELLI: Good

19   morning, everyone. My name is Meredith

20   Danberg-Ficarelli. I am the Director of

21   Common Ground Compost LLC, a member of

22   the Save Our Compost Coalition, a member

23   of the Manhattan Solid Waste Advisory

24   Board, and a member of the U.S.

25   Composting Council. Through my work, I

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2   build zero waste programs and advocate

3   for the expansion of access to waste

4   production services. Our approach to

5   education focuses on material literacy.

6   The power of individual behavioral

7   change, and recognition that all people

8   must demand systemic change in order to

9   build a livable and just future for all.

10   The commercial waste zone plan creates

11   an opportunity to existing haulers to

12   operate in an ever-improving and

13   environmentally responsible way while

14   supporting the development of a growing

15   green economy, and specifically and

16   sustainable materials economy. The City

17   will benefit by creating a space for

18   transparent and efficient

19   infrastructure. We see that

20   infrastructure as both physical and

21   digital: Individual driving commercial

22   refuse collection vehicles and working

23   on microscale organics processing sites

24   alike contribute labor while clear

25   reporting standards and allows for more

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2   transparency of how waste works. What

3   stream wastes are collected? How much

4   material is there? When is it is my

5   pickup, where does the material go, and

6   how is it processed? What am I paying

7   for? Those are the questions the public

8   wants answered, and it is our

9   responsibility as innovators and actors

10   in the waste industry to participate in

11   that dialogue.

12   In this testimony, we recommend

13   detailed changes to the draft language,

14   with the goal of encouraging the City to

15   clearly outline best practices that must

16   be followed to assess waste, and

17   reporting procedures that must be

18   followed to submit the results of those

19   assessments. We also call for New York

20   City Business Integrity Commission to

21   dismantle the innovation-inhibiting

22   requirement that waste assessors have

23   the same license to operate as waste

24   brokers and brokerage services. As we

25   outline in our testimony, waste

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2   assessment services are unrelated to and

3   should be decoupled from brokering. We

4   also recommend the DSNY use the term

5   "survey" to refer to waste assessment on

6   taking weights and general information

7   about how a business sets out their

8   waste for collection, and use the term

9   "audit" to refer to waste assessment

10   that dives deeper in sorting waste and

11   gathering more detailed contamination

12   insights. Our recommendation is that

13   the assessment procedures detailed in

14   this rulemaking process focus on waste

15   surveys specifically.

16   A waste survey occurs after

17   business hours, once waste is at the

18   curb. The length and width of the piles

19   of refuse are captured, each waste

20   stream's bags are weighed and

21   observations are made by trained waste

22   assessors. These services are

23   coordinated and paid for by the City and

24   businesses receive reports that outline

25   their waste streams and the detail of

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2   waste generated on an average day.

3   Also, in the report, the businesses

4   would see aggregated averages for their

5   industry. So, a restaurant, for

6   example, would get a report that shows

7   the weight of black trash bags, clear

8   recycle bags and cardboard, as measured

9   on an average day for that restaurant.

10   The report would also show that for

11   restaurants of a similar size, this site

12   a diverting less from landfills, and

13   spending more money, because they are

14   not yet recycling organics.

15   The commercial waste zones plan

16   will call for recycling or/and organics

17   services to be cheaper than those for

18   trash. And these cost incentives create

19   the opportunity to shift businesses'

20   perspective of their waste: From bags

21   that smell and cost money, to containers

22   of materials that, if separated

23   correctly, can help to save money. In

24   order to effectively paint the picture

25   for businesses of cost saving they are

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2   leaving on the table, we needed metrics,

3   and properly executed waste surveys will

4   get us the metrics that we need.

5   With the example of restaurant used

6   earlier, that waste survey report would

7   demonstrate opportunities for saving.

8   The restaurant could would follow the

9   steps to start composting wastes, which

10   would include contacting their hauler

11   and getting more guidance from a zero

12   waste educator. They would start

13   separating food scraps and having them

14   collected as new waste stream, and next

15   year they would get another survey, they

16   would see a new color in their waste pie

17   chart for that compost. They see the

18   year-over-year shift in costs, where

19   landfill waste has lowered total waste

20   expenses. The reports could also show

21   carbon savings and the equivalencies of

22   trees planted or cars off the road, that

23   match the impact of new behaviors. The

24   City would be able to see and measure

25   these changes.

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2   The Department of Sanitation has an

3   opportunity to manage a system in which

4   haulers see the same information that

5   businesses do about waste generation and

6   diversion rates, and billing could be

7   fair and efficient. Haulers and

8   businesses could track waste behavior

9   over time, measure carbon savings and

10   immediately support the growth of local

11   materials management economies,

12   especially for materials like organics,

13   textiles, and reusable items like glass

14   and takeout containers. If businesses

15   can see the potential for cost savings

16   through shifting behavior, and they

17   respond with demands for environmentally

18   responsible services, growth in these

19   specialized materials economies can

20   follow.

21   We must do this fairly and in a way

22   that encourages participation and

23   growth. Rather than require haulers to

24   pay for waste surveys through a

25   reimbursement system with their

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2   customers, DSNY should be responsible

3   for the cost of waste surveys. CWZ

4   encourages haulers to develop innovative

5   partnerships with minority and

6   women-owned businesses. With a strong

7   push to assess the waste of hundreds of

8   thousands of businesses over the next

9   few years, DSNY can foster growth among

10   minority owned business, and women owned

11   business like our own, that offer these

12   services and technology solutions.

13   Existing and new members of the Micro

14   Haulers and Processors Trade

15   Association, of which I'm a co-founding

16   member, also want to participate in this

17   transition. There are many existing

18   service providers already able to jump

19   into action, and others that would want

20   to start to provide these services.

21   Waste assessors should be trained

22   through the City-supported certification

23   programs. Businesses should be able to

24   request an assessment from DSNY's

25   website, fill out a quick questionnaire,

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2   get their surveys scheduled and

3   executed, and view their report online.

4   They should be able to communicate with

5   their haulers and access additional

6   resources in the same way they can run

7   payroll or order inventory. Businesses

8   should be able to access guidance from

9   experts at the click of a button, and it

10   can all start if we begin to accurately,

11   efficiently, transparently measure what

12   we produce. We will submit the rest of

13   our written comments with all the

14   additional details. And thank you for

15   listening and thank you for your time.

16   MR. BLAND: Thank you, Meredith.

17   Our next speaker will be Thomas Toscano,

18   followed by Ron Bergamimi, Justin Wood

19   and then Steve Changaris. If anyone

20   else wishes to testify, please let us

21   know in the chat feature.

22   MR. TOSCANO: Morning everybody,

23   Good morning, Justin. My name is Thomas

24   Toscano. I'm proud to be the CEO of Mr.

25   T Carting Corp., a third-generation

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2   business for more than 74 years.

3   Based on my reading of the proposed

4   rules, I believe the City's goal is to

5   allow customers to get an independent

6   evaluation of their waste and recycling

7   flow that is accurate, and give

8   customers the information that will help

9   save the money and recycle more. The

10   proposed rules do not accomplish these

11   goals. I will start with an analogy.

12   Every property owner in New York City

13   pays property taxes. The system is

14   relatively simple, properties are

15   valued, there is property tax rate, you

16   multiply the two you get the tax due on

17   property. What would happen if the City

18   allowed anyone to get a license to

19   evaluate property values and those

20   evaluations were rebuttable presumptions

21   the City now has to disprove? Would the

22   City get independent and accurate

23   evaluations? No. The City would be

24   inundated with lowball assessments,

25   costing it millions to disprove. That

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2   situation is now being proposed for

3   waste audits.

4   The first and largest issue here is

5   the lack of independence by the trade

6   waste brokers, I am going to say what

7   Meredith said before, by decoupling them

8   from the trade waste brokers, but for

9   very similar reasons. There is nothing

10   in the rules that provide proposed

11   oversight of these brokers. You have

12   created every incentive to come up with

13   the lowest estimate, not the most

14   accurate one. What happens if the

15   broker gets it wrong? In addition to

16   getting paid by the carter, the carter

17   is the one that must clean up the mess

18   with no penalty to the broker. There

19   are no standards, qualifications, and

20   prior experience required of the

21   brokers. Further, with the broker being

22   paid by the customer, the customer

23   seeking reimbursement by the carter, a

24   broker could collect thousands of fees,

25   and be long gone when issues come up

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2   regarding the audits.

3   The second issue, which is closely

4   related to the first, is the set time

5   period in the rule for those audits.

6   The rules proposed measuring a 24-hour

7   period and then to extrapolate that to a

8   billing period. It was clear to me from

9   this section that whoever drafted these

10   rules has no understanding of waste and

11   recycle streams and how they differ over

12   a week. Waste is heaviest on Sunday

13   night. This is because most restaurants

14   are not picking up on Saturday night,

15   and they hold the garbage for the next

16   night. Many lighter accounts are closed

17   on Sunday or have reduced hours, so the

18   number of accounts picked up on Sunday

19   night is lower despite the weight being

20   heavier. Wednesday night is usually the

21   lightest night of the week, because the

22   few days prior to that are when the

23   restaurants are the least busy. All of

24   this varies by the type of account, but

25   I hope you are starting to see why

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2   measuring one day to determine an audit

3   amount is crazy. Holidays and weather

4   events further skew data and need to be

5   avoided. One week is required for most

6   accounts and many require two weeks.

7   Then you will have conversations with

8   the customers where they will disagree,

9   and sometimes you will do a third week,

10   especially if there is an anomaly in one

11   of the first two weeks. In short, one

12   day will not produce an accurate audit

13   for almost every account.

14   Third issue is the price cap.

15   Allowing the cap paid for by a third

16   party is going to become the price. $500

17   for one-day audit of a small store does

18   not make any sense. Most of these

19   locations produce a bag or two a day and

20   a small bundle of recycling. A small

21   store will be more labor-intensive

22   because they will produce much more

23   material, especially on busy day. The

24   type of establishment will be much more

25   of a driver of the amount of material

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2   that needs to be measured, not the

3   square footage. For that reason, the

4   cap should have some relationship to the

5   monthly bill. For example, how about

6   the lesser of $500 or the prior month's

7   waste and recycling bill? This will

8   ensure a $50 per month account is not

9   overcharged and the carter that must pay

10   it.

11   For the reasons stated, the proposed

12   rule, along with the dispute resolution

13   section is going to keep the Department

14   busy with the disputes, and I project

15   most of these audits will be disputed.

16   Wouldn't it be better to have a system

17   that gets most audits correct in the

18   first place? To get to that place, the

19   Department should issue RFPs in each of

20   the zones to two or three independent

21   auditors the same way they are doing so

22   with the carters. Evaluating the

23   brokers and giving them the franchise

24   allows the department to monitor, and

25   issue fines where brokers repeatedly get

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2   the audits wrong or engage in unethical

3   behavior.

4   Even if my suggestion is not taken

5   regarding RFPs for brokers, several

6   aspects of this need to be clarified.

7   Can brokers audit their own accounts or

8   will there be conflict rules? Can an

9   awardee also be a broker? Does it

10   matter if the awardee is a broker in a

11   zone where they are providing waste

12   services, or can they be a broker only

13   in zones where they are not an awardee?

14   How long are the audits good for? If a

15   brand-new restaurant gets an audit on

16   the second day of operation, does the

17   rebuttal presumption still hold three

18   months later when their business is

19   booming and there is a line to get in?

20   What about seasonal business? What

21   about restaurants in Manhattan that get

22   slower in the summer when many are in

23   the Hamptons?

24   Lastly, please clarify these aspects

25   when you finalize these rules before

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2   issuing the second part of the RFP. As

3   they stand now, these rules will create

4   greatly increased costs to the awardee.

5   Not just for the fees to the brokers a

6   carters must pay, but for the time that

7   will be required to correct most of

8   these issues created by a system that

9   bears no relation to the commercial

10   waste and recycling market in New York

11   City. Thank you.

12   MR. BLAND: Thank you, Tom.   Next up

13   we have Ron Bergamimi.   If anyone else

14   wants to testify, just put it in the

15   chat feature.

16   MR. BERGAMIMI: I am Ron Bergamimi.

17   I am testifying on behalf of Interstate

18   Waste Service which is the parent

19   company to the licensee Action Carting

20   Environmental Services. Well, going

21   after Thomas Toscano makes my job easy,

22   because essentially, I endorse and

23   repeat what he said, and all the

24   problems that he stated will occur. I

25   just want to point out or repeat just a

1

2   few things I want to repeat, but the

3   waste audits, I think are consistent

4   with the unreasonable expectation that

5   commercial customers should expect

6   service charges to decline. The DSNY,

7   the City keeps adding significant brands

8   of monitoring, compliance and capital

9   investment-related factors. As we stand

10   now, the commercial customers in New

11   York City are approximately 60 percent

12   per ton of the cost that DSNY incurs

13   with its residential taxpayers. The

14   other issue is, to reiterate with Tom,

15   as to when this comes out presumably.

16   This won't all start for a year or maybe

17   two. Now, is certainly not the time to

18   judge what customers' businesses are,

19   with the pandemic still going on. And

20   frankly, I think that this is, in part,

21   of a solution in search of a problem.

22   For decades working with the TIC, we

23   have done surveys on their customers,

24   very, very rarely is there any

25   disagreements. Customers know what they

1

2   are throwing out, and we verify it by

3   picking them up for a week, three days.

4   But, what's so troubling here is, I am

5   under the impression the whole idea of

6   having three haulers per zone is to help

7   the competition, at least, some

8   competition. So, if you have a

9   situation where a customer and a hauler,

10   either party should have the right to

11   terminate that agreement. These rules

12   coupled with the rules from a few months

13   ago says that hauler has to continue

14   servicing that customer for 120 days,

15   arguably out of the law, and we can talk

16   about what the extra costs are. We

17   right now have about 6,000 customers in

18   New York City where their monthly bill

19   is less than $500 a month. Now, if all

20   of them want to get an audit, that is

21   three million dollars of an additional

22   cost. Just think about that. A $250 a

23   month customer, for us to spend $500,

24   that is a loser. And, what the rules

25   also don't state is whether or not an

1

2   auditor can, in fact, charge more. What

3   we envision are new inferences in the

4   marketplace, going up and down 16th

5   Street and saying to every customer,

6   "Hey, let's do an audit. It won't cost

7   you a nickle. What we will do, we will

8   take 20 percent of any savings." And as

9   Tom mentioned, with regards to real

10   estate, you will always get that lowball

11   number. So, if we had all our

12   customers, and we receive audits, the

13   number would be closer to $10 million.

14   So, again, that indicates more money,

15   that doesn't include we'd probably have

16   to have a staff of people, two or three

17   four people to fight these. I don't

18   know if it's the DSNY, frankly, is

19   geared up for that. So, I don't -- by

20   the way, the woman who testified first

21   talked about the DSNY being the one who

22   should pay for this, and arbitrate it.

23   To me, that makes a lot more sense. In

24   fact, I could even see a system where if

25   all three haulers could come to an

1

2   agreement with the customer, the DSNY

3   needs to get involved. But again, what

4   would that tell you if all three haulers

5   couldn't do it?

6   So, the best solution here is the

7   competition. I thought while we were

8   having the three haulers -- and that

9   what this does to the present

10   relationship between a hauler and a

11   customer, it just screams distrust, and

12   it screams conflict. And to me, that is

13   the exact opposite of what we are

14   looking to do. So, as we emerge from

15   this, once-in-a-century, hopefully,

16   issue, I hope that the City can see

17   these factors are real. This is just a

18   bridge too far, and I don't think it is

19   necessary. We have enough uncertainty

20   happening with New York City's entire

21   incentive for all. I think this will

22   just complete evisceration of why it

23   should be a positive partnership between

24   customer and hauler. Thank you. I hope

25   everyone is doing well. Thank you, sir.

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2   MR. BLAND: Thank you, Ron. Next up

3   is Justin Wood.

4   MR. WOOD: Good morning, everyone.

5   Nice to see you. I'm just pull up my

6   testimony. Okay. My name is Justin

7   Wood. I am the Director of Policy at

8   New York Lawyers for the Public

9   Interest. We want to thank the

10   Department of Sanitation for the

11   opportunity to submit comments on these

12   proposed rules around fee structures and

13   procedures for the commercial waste

14   zones awardees and waste auditors. The

15   Transform Don't Trash NYC coalition, I

16   worked for years and even decades to

17   make the City's waste systems safer and

18   more equitable and more efficient. We

19   are happy to see this implementation of

20   commercial landmark waste zone system

21   advancing this year following a painful

22   year of pandemic delays. I want you to

23   echo on what Ron just said. I hope

24   everyone makes it through to this point,

25   okay, and are doing well. We generally

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2   support these proposed rules, which

3   would establish requirements and dispute

4   procedures for carters operating in the

5   CWZ related to waste audits, establish

6   fees for commercial waste zones system,

7   the administrative fees, and define

8   bicycles to be used in waste collection.

9   I want to suggest two key amendments to

10   the proposed rules to further promote

11   equity and inclusion of small business

12   and minority and women-owned business

13   enterprises in the new waste system.

14   So, the first of these is an

15   alternative licensure procedure for

16   waste auditors. As waste auditors and

17   other CWZ advocates have previously

18   testified requiring BIC, waste broker

19   licensure is inappropriate for auditors,

20   and creates a financial barrier to new

21   waste auditors attempting to enter a

22   sustainable waste management industry.

23   Trade waste brokers negotiate deals

24   between commercial customers and

25   collectors for a fee or commission,

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2   whereas auditors will play an entirely

3   different function vital to waste

4   reduction and sustainability. In the

5   new case management system, these

6   auditing businesses may not be able to

7   succeed if they are subject to the same

8   financial and procedural hurdles as well

9   as brokers and face prohibitively

10   expensive licensing fees and unnecessary

11   procedural hoops. This is preventing

12   and may continue to prevent local

13   sustainable women-and-minority led

14   businesses in playing a critical role in

15   the new waste management system. So, we

16   would suggest instead that DSNY create

17   its own process for waste auditor

18   licensure to ideally not include

19   criminal background checks. Would

20   require a licensing fee that is

21   affordable for small local waste

22   auditing businesses, and would include

23   either a one or two-year licensing fee

24   exemption for newly-formed businesses

25   with a pilot program to support such

1

2   newly-formed businesses. Creating a new

3   license structure under DSNY will allow

4   requirements to better reflect the

5   nature of waste auditing and empower new

6   local sustainable and NWBE-led

7   businesses to play a critical role in

8   the new waste management system.

9   The second amendment we would like

10   to suggest is around how the waste

11   audits are paid for. While it is

12   important that CWZ contract awardees

13   bear the cost of the independent waste

14   audits, the reimbursement structure

15   outlined in the proposed rules is

16   cumbersome and places an unnecessary

17   logistical burden with the haulers and

18   the commercial establishments they

19   serve. Requiring carters reimburse

20   their contracted commercial

21   establishments for waste audits may

22   create disputes, may discourage small

23   business owners from seeking or

24   obtaining audits and reimbursement. We

25   believe a simpler, more transparent

1

2   system is for DSNY to ensure the annual

3   administrative fee in Section 16-1013 is

4   to be charged to each contracted awardee

5   is increased sufficiently to cover the

6   anticipated cost of waste audits for the

7   customers in each zone, and that DSNY

8   contract with qualified independent

9   waste auditors to provide the service to

10   every customer in those zones. And

11   under this simplified structure, the

12   City would be able to streamline and

13   centralize commercial waste generation

14   data collected by the auditors. This

15   data will serve as a baseline commercial

16   waste characterization study and will

17   provide a detailed and evolving picture

18   of the types and quantities of waste

19   being generated by different types of

20   businesses, enabling the City and the

21   new CWZ system to effectively target

22   waste production, recycling and

23   collection programs to achieve the

24   broader environmental efficiency and

25   safety goals of the new system.

1

2   Thank you for your time and

3   consideration and hearing our comments.

4   We look forward to our continued work

5   with the Department of Sanitation to

6   implement the commercial waste zone

7   system in a way that honors these

8   transformative goals.

9   MR. BLAND: Thanks, Justin. We have

10   one more speaker, Steve Changaris. If

11   anyone wishes to speak, put it in our

12   chat feature. And if you haven't

13   already done so, e-mail us your written

14   testimony at NYC Rules at DSNY dot NYC

15   dot gov. That would be appreciated.

16   MR. CHANGARIS: Good morning,

17   Justin. Everybody, good to be with you

18   this morning. My name is Steve

19   Changaris. I am the New York City

20   Chapter Director for the National Waste

21   and Recycling Association. We are the

22   trade association for many private waste

23   and recycling companies that operate in

24   New York City and the State, and around

25   the country. I have been doing this

1

2   work for some 30 years and the Chapter

3   has empowered me to speak today a little

4   bit about these regulations -- these

5   proposed regulations. We will be

6   submitting formal written testimony by

7   the close of business today pursuant to

8   the notice. And as you noted, Justin,

9   in your opening comments, these rules

10   pertained to more than just waste

11   audits. First, I'm going to look at the

12   outline.

13   The New York City Chapter of DNWRA

14   has no comment regarding the proposed

15   bicycle definition. We don't have a lot

16   of bicycle haulers in our trade

17   association at this time. That may

18   change as the micro haulers advance.

19   The second part of this proposed

20   regulation, regarding the actual fees

21   per the zone awardees, whether it is for

22   one of the 20 zones, one the three

23   companies in the 20 zones, whether it is

24   for a containerized service, we are

25   encouraging this fee be eliminated from

1

2   the regulation proposal. We don't know

3   what the cost of the new services will

4   be to the customers in the new zones.

5   These fees represent millions of dollars

6   in costs that have not been identified

7   in previous trade waste rate cap audits

8   of our members in trade waste companies

9   until the system is in place, and mature

10   to save those costs from being paid by

11   the awardees. And again, the logic here

12   is, it is not coming out of the

13   awardees' pocket, it is coming out of

14   the rate-payers of the system, the

15   commercial waste companies in the City

16   that generates commercial trade wastes.

17   So, at this time, we don't think it is

18   prudent to advance fees for -- as

19   proposed in this regulation.

20   On the commercial waste audit

21   feature of this proposed regulation, we

22   review this as best, well intended, but

23   nevertheless call for it to be withdrawn

24   entirely for further consideration. It

25   is a non-solution in search of a

1

2   non-problem. Our companies today are

3   all licensed and vetted for honesty and

4   integrity with all the appropriate

5   knowledge, skills and ability to operate

6   a private trade waste in the City that

7   are regulated by BIC at this time, and

8   in addition to the current vetting of

9   the companies by BIC and the City, we

10   have to look forward into the new

11   commercial waste zone world, and by that

12   time, any one of the three companies

13   operating in a zone or providing

14   containerized service Citywide, are

15   going to have to pass through this

16   screening and performance criteria

17   incredibly intense screening and

18   performance criteria, set by the City

19   through the request for proposal

20   process. So, they are going to have

21   another level of review.

22   And further, with this process,

23   being you have to view the company as

24   being the best providing service, as the

25   best of the best services providers for

1

2   the City businesses in the trade waste

3   services.

4   In addition, since each zone is

5   going to be competitively big,

6   negotiated and contracted to, it is

7   really hard, to think any awardee would

8   perform in a manner of potentially

9   treating trade waste customers unfairly,

10   and it is never to a negative degree

11   that would require this kind of

12   Byzantine, costly and ineffective waste

13   audit process.

14   I have been doing this business, I

15   like said at the start, for up close to

16   30 years. It has already been noted

17   that the new commercial waste zone

18   system is based on customer choice, at

19   least three haulers per zone, and that

20   is going to ensure high customer service

21   level, as well as in any event when

22   there is any competitors, that drives

23   costs down. Currently, we work with all

24   of our customers in providing services,

25   and we work out the details of those

1

2   services in a way that is equitable and

3   fair to both the generator of the waste

4   as well as the trade waste company

5   providing the service. We want to be

6   clear at this time, we are not opposed

7   to waste generation audits. In this

8   case, we are just opposed to the City

9   has proposed the commercial wast

10   generation audit process, and how it is

11   designed in these proposed regulations.

12   We have never seen, in my 30 years, and

13   I have talked to peers, that this is a

14   regulation where the customer -- a

15   third-party conducted waste audit has

16   been paid by the service provider. It's

17   just not traditional, it is not

18   consistent, and it is not at all aligned

19   with even the historical precedence of

20   REKRA (ph), as the generators are

21   supposed to be the ones responsible for

22   their proper management, and they have

23   an integral role, at least, to be

24   responsible for the proper management of

25   waste. If they want a waste audit, and

1

2   if they are not satisfied with the

3   relationship they have with their

4   hauler, they are entirely free to go get

5   one, and we encourage that. And, we

6   know it helps to reduce waste it

7   generates to begin with, and reduces the

8   amount disposed, and it helps with the

9   diversion of more waste to go into

10   recycling and diversion and organics

11   programs.

12   There are so many other features of

13   the proposed rule. We have an issue

14   with the typical snapshot view of a

15   commercial account. We believe the BIC

16   process with the 14-day waste

17   characterization is much better, that

18   there is no operational standards for

19   third-party waste auditors, and there is

20   no credentials, and there is no language

21   in the proposal to prevent conflicts of

22   interest. These known awardees that

23   have longstanding legal contractual --

24   well, very well may have longstanding

25   legal contractual rights impaired by the

1

2   findings of these third-party auditors,

3   and we believe, without fair and

4   reasonable recourse.

5   Some of our legal advisors have let

6   us know that this is the design for an

7   irregulation (sic), and may very well be

8   its legal undoing upon challenged when

9   adopted, and put in to practice and

10   enforced will benefit we believe.

11   Again, it is noted that the third-party

12   auditor process creates an intensive

13   that it will undermine trust and viable

14   working relationships that have been

15   hammered out and mutually agreed to,

16   without providing real benefit, we

17   believe. The regulation proposes that

18   this rebuttable presumption of accuracy.

19   And again, this is one of those new

20   features that we believe is very legally

21   suspicious, and it is just not very

22   appropriate to infuse in this kind of

23   process.

24   Last, you know, based on what he

25   said so far, the audit process and the

1

2   service provider payment procedure is

3   structured improperly. It should only

4   be a tool of later or last resort of a

5   remedy dispute process after reasonable

6   due diligence is attempted to resolve

7   outstanding concerns. The third party,

8   audit procedure will be a cost driver

9   for commercial zone waste services, and

10   will be paid for by all trade waste

11   customers for the benefit of a few waste

12   generators, but mostly for the financial

13   benefit of third-party waste auditors.

14   It will be unfair and costly, as a

15   result, to many trade waste customers.

16   Again, on the last part of the

17   regulation involves the maintenance

18   condition. Those regulatory

19   requirements are supported by the

20   chapter as sound and reasonable

21   standards for all commercial trade waste

22   companies awarded zone bids.

23   The Chapter lastly, will go on the

24   record here and restate to either

25   withdraw or significantly rewrite the

1

2   proposed regulation. We urge the City

3   to finalize its decision here, well in

4   advance of the next-coming round of

5   commercial waste zone requests for the

6   proposal bidding process. The cost

7   associated with this third-party audit

8   proposal and fees are unknown, and if

9   not withdrawn and significantly

10   rewritten, will add unnecessary

11   procedures and uncertainty to the

12   bidding process and the operation of

13   trade waste businesses in the City's new

14   commercial waste zones, largely to the

15   benefit of no one. So, we thank you for

16   the opportunity to testify. We will get

17   these written record written comments on

18   record. Thank you.

19   MR. BLAND: Thank you, Steve. We

20   have Andy Moss from Waste Connections.

21   MR. MOSS: We have already submitted

22   our comment in writing, but I figured I

23   would climb in and highlight a few major

24   points. Our testimony today is going to

25   reiterate a lot of what has already been

1

2   said, but I want to say, so Waste

3   Connection, we are excited about the

4   process of the commercial zone waste

5   system, as we believe it will greatly

6   improve the manner in which the waste

7   and recycle industry will operate in our

8   unique City. We are confident that the

9   Waste Connections company that the City

10   wants as a service provider throughout

11   five boroughs. Our corporate culture

12   embraces the safety of customer service

13   and giving back to the communities in

14   which we serve. We pay our workers the

15   highest salaries in the industry and we

16   are a financially secure company. We

17   welcome post-regulatory enhancement

18   proposed thus far, and these comments

19   are offered in the spirit of improving

20   these rules. And while we operate in 44

21   states in the United States, and six

22   provinces in Canada, we have never

23   encountered a waste audit system such as

24   the one being proposed. We believe

25   these audit rules are flawed, and will

1

2   result in increased prices for

3   consumers. And based on our experience,

4   we fear the rules will greatly impact

5   our ability to directly and serve our

6   existing and future customers. We see

7   three fundamental problems, first of

8   which the proposed rules assume that

9   waste audits could be conducted in one

10   day. That is considered typical. This

11   one day will be the representative for

12   the many various types of commercial

13   establishments in the City as dynamic as

14   New York. In the current regulatory

15   scene between the customer and services

16   provider, we think it works quite well,

17   we don't see any reason to change it.

18   As Ron Bergamimi had mentioned, through

19   our work with the Business Integrity

20   Commission, this is just not an issue

21   that really ever comes up. I would note

22   that the Business Integrity Commission's

23   own survey form contemplates seven days

24   of data collection, not one day,

25   proposed under these rules. Almost

1

2   every restaurant has a busy day and a

3   quiet day, and is impacted by

4   temperatures, seasonality, and one day

5   is just not representative and will not

6   work.

7   Second, the proposed rules require

8   that a waste broker, who may be acting

9   as an awardee elsewhere in the City must

10   perform any waste generation audit.

11   This fundamentally disrupts the

12   relationship between carter and customer

13   by allowing the broker to use waste

14   surveys as a marketing tool to gain

15   customers at the carter's expense.

16   Under these proposed rules, brokers, I

17   am sure, will market their services to

18   commercial establishments by offering

19   free audits, promising to save them

20   money. The irony is that brokers will

21   be utilizing these under-represented,

22   flawed survey data subsidized by the

23   waste haulers with no incentive to

24   conduct the surveys properly, since they

25   will have the rebuttal presumption that

1

2   the data is accurate. These regulations

3   would arm brokers who are competitive,

4   with an incentive to capture our

5   customers, and to act as judge and jury

6   to the accuracy, using only one day of

7   survey data. These proposed rules

8   wrongly put brokers at the heart of the

9   waste audit process.

10   If the City must upend the how

11   surveys are conducted, auditors must be,

12   as you have heard from others, be

13   independent actors. We would propose

14   they be separately licensed by the

15   Business Integrity Commissions under new

16   classification. The new class of

17   auditors must not have any relationship

18   or subcontractor agreement with any

19   waste hauler or operator in the zone as

20   a primary hauler, they must be truly

21   independent.

22   Third, square footage is a poor

23   indicator of the amount of waste that a

24   company generates. A restaurant and a

25   nails salon, which both could be under

1

2   5,000 square feet typically produce

3   different amounts of wastes and

4   recycling. If the proposed regulations

5   would require the cost for both audits

6   to be same, we have hundreds but not

7   thousands of customers priced under $500

8   per month, some much lower than $500.

9   Requiring carters to reimburse customers

10         $500 or more for these audits would

11   represent multiples of

12   customer-generated revenue. So, if the

13   typical hauler in our industry is

14   operating on a 10 percent margin, it

15   would have to generate $5,000 in revenue

16   to pay for just one audit. And I'll

17   point out, as I think others have today,

18   that every truck, every paycheck, even

19   every paper clip is ultimately paid out

20   of customer-generated revenue, the City

21   can require the audits. The City can

22   require the carters pay for these

23   audits, but ultimately, the customer, is

24   the one who pays. These regulations

25   create a system where every customer

1

2   whether they needs it or not, would have

3   an incentive to have a survey that it

4   pays through, that pays for through

5   higher prices.

6   Finally I would say, there are a

7   couple of unaddressed questions, as were

8   mentioned by Tom Toscano, how the rules

9   will ultimately work. It's not clear to

10   us what happens if volume will increase

11   over time, from an initial audit. It's

12   also unclear if the petition of the

13   Department of Sanitation, how that

14   works, if the challenge is successful,

15   is the resulting increase in tonnage

16   retroactive to when the initial

17   submission was put into the sanitation.

18   This is not addressed by the regulations

19   or the proposed rules. We appreciate

20   the opportunity to comment on this. We

21   look forward to continue working with

22   Department of Sanitation on this. Thank

23   you.

24   MR. BLAND: That concludes the

25   speakers who signed up to testify.

1

2   We'll wrap this hearing up, and stay

3   well.

4   (Time Noted: 10:21 a.m.)

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1

2   C E R T I F I C A T E

3

4

5   STATE OF NEW YORK)
                        ss:
6   COUNTY OF NEW YORK)

7

8   I, BENEIDA SMITH, a shorthand reporter

9   within and for the State of New York, do hereby

10   certify that the within is a true and accurate

11   transcript of the statement taken on 09/15/2021.

12   I further certify that I am not related

13   to any of the parties to this action by blood or

14   by marriage, and that I am in no way interested

15   in the outcome of this matter.

16   IN WITNESS WHEREOF, I have hereunto set

17   my hand this 1st day of October 2021.

18

19

20

21

22   _____
                                    Beneida Smith

23

24

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$250 25:22

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