

NEW YORK CITY BUSINESS INTEGRITY COMMISSION

**NOTICE OF OPPORTUNITY TO COMMENT ON PROPOSED
RULEMAKING RELATING TO CONDUCT OF TRADE WASTE
REMOVAL BUSINESSES**

PURSUANT TO section 1043 of the New York City Charter and exercising the authority vested in the Business Integrity Commission by sections 1043(a) and 2101(b)(6) of the New York City Charter, notice is hereby given that the Business Integrity Commission intends to modify rules relating to the conduct of the trade waste industry.

Additions to the rules are underlined and proposed deletions are [bracketed].

Written comments regarding these proposed rules may be sent to Eric Dorsch, General Counsel of the New York City Business Integrity Commission, on or before October 21, 2008. Comments may be submitted by mail to Eric Dorsch at the New York City Business Integrity Commission, 100 Church Street, 20th Floor, New York, New York 10007 or electronically to edorsch@bic.nyc.gov.

A hearing for public comment will be held on October 28, 2008 in Spector Hall on the first floor of the Department of City Planning at 22 Reade Street, at 10:00 A.M. Persons seeking to testify are requested to notify Jewel Allison at (212) 676-6200 no fewer than five (5) business days prior to the hearing. Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to notify Jewel Allison at the above address no later than two weeks prior to the hearing.

Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt on week days between the hours of 9:30 A.M. and 4:30 P.M. at the New York City Business Integrity Commission, 100 Church Street, 20th Floor, New York, New York 10007.

This rule was not included in the 2007-2008 regulatory agenda of the Business Integrity Commission as the Commission was not aware of the need to make these amendments at the time of the formation of the regulatory agenda.

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The title of Title 17 of the Rules of the City of New York is amended to read as follows:

[New York City Trade Waste Commission] Business Integrity Commission

The definition of “Commission” in section 1-01 of the Title 17 of the Rules of the City of New York is amended to read as follows:

§1-01 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

* * *

Commission. "Commission" shall mean the [New York City Trade Waste Commission] Business Integrity Commission as established by section 16-502 of the Code. Except in regard to a determination to refuse to issue a license pursuant to section 16-509 of the Code, the term "Commission" shall also refer to an action of the Chair of the Commission, taken under delegation from the Commission pursuant to section 16-504 of the Code.

* * *

Section 2-01 of Title 17 of the Rules of the City of New York is amended to read as follows:

§2-01 License Application.

(a) Except as provided in [subdivisions] subdivision b [and c] of this section, an applicant business required by section 16-505 of the Code to obtain a license for the removal, collection or disposal of trade waste shall submit the information contained in the license application form provided by the Commission and the disclosure required by the forms provided by the Commission. In addition, each principal of the applicant business shall: (i) be fingerprinted by a person designated for such purpose by the Commission and pay the fee prescribed by the Division of Criminal Justice Services to be submitted by the Commission to such Division for the purpose of obtaining criminal history records; and (ii) be photographed by the Commission and submit the disclosure required by the forms provided by the Commission. Notwithstanding paragraphs (i) and (ii) of this subdivision, an applicant may submit, in lieu of such fingerprints and disclosure, copies of submissions to any Federal, State or local regulatory entity containing information comparable to that required by the Commission, provided that the Commission may require fingerprinting and disclosure pursuant to such paragraphs where it finds that it has not received sufficient information or information that is comparable to Commission requirements. The Commission may compel attendance, examine, take testimony and require the production of evidence pursuant to the provisions of subdivision c of section 16-504 of the Code as the Commission deems necessary to investigate the truth and accuracy of the information submitted. A fee of three hundred fifty dollars (\$350) per applicant business and three hundred fifty dollars (\$350) per principal thereof shall be paid by the applicant for such investigation. [An application for a license submitted by an applicant subject to the provisions of section 14

of Local Law 42 for the Year 1996 shall be submitted no later than fourteen (14) calendar days following the effective date of this sub- chapter.]

[(b)(1) An applicant business may, prior to the submission of an application by the date specified by the Commission pursuant to section 14 of Local Law Number 42 for the Year 1996, submit a written statement to the Commission setting forth any special facts with respect to a principal in the applicant's business that the applicant believes should allow for exemption of such principal from fingerprinting and disclosure. Such statement shall be submitted no later than ten days prior to the date for the submission of an application specified in subdivision a of this section.

(2) The Commission shall review any statement submitted pursuant to this subdivision and notify the applicant whether the person identified in such statement shall be subject to fingerprinting and disclosure. Where the Commission has notified an applicant subject to the provisions of section 14 of Local Law Number 42 for the Year 1996 that fingerprinting and disclosure shall be required of such person, the Commission shall specify the date by which such fingerprinting and disclosure must be submitted and may, in its discretion, extend the deadline set forth in subdivision a of this section with respect to the submission of such fingerprints and disclosure.

(3) No statement shall be accepted pursuant to this subdivision with respect to a principal who is a proprietor, partner, officer, director or person participating directly or indirectly in the control of the applicant's business.]

[(c)] (b)(1) An application submitted by an applicant business that is a regional subsidiary of or otherwise owned, managed by or affiliated with a business that has national or international operations shall identify and provide fingerprints and disclosure for those principals for whom such fingerprints and disclosure are required pursuant to subdivision b of section 16-508 of the Code. In addition, such application shall be accompanied by: (i) an organizational chart that clearly identifies relationships between the "parent" company and all affiliates and subsidiaries; and (ii) a list, in chart or other form, of all persons not employed by the applicant who have managerial responsibilities for the New York operations of the applicant and a description of the nature of such responsibilities.

(2) Upon review of the materials submitted pursuant to [paragraph] subparagraphs (i) and (ii) of paragraph (1) of this subdivision, the Commission shall require fingerprints and disclosure from additional persons whom it identifies as having "direct management supervisory responsibility for the operations or performance of the applicant" within the meaning of subdivision b of section 16-508 of the Code. Where the Commission requires fingerprints and disclosure with respect to such persons, it shall notify the applicant, identifying such person and specifying the date by which such information shall be submitted.

[(d)] (c) Following receipt of the license application and the disclosure required by the forms provided by the Commission, the Commission may require such additional information related to such application and disclosure, including without limitation documents and deposition testimony, as the Commission determines is necessary to make a licensing determination.

Subdivisions (a), (c) and (e) of section 5-02 of Title 17 of the Rules of the City of New York are amended to read as follows:

§5-02 Rates.

(a) A trade waste removal business shall not demand, charge, exact, or accept rates for the collection, removal, disposal, or recycling of trade waste greater than the following maximum rates:

(1) [~~\$12.20~~] \$15.89 per cubic yard.

(2) [~~\$8.00~~] \$10.42 per 100 pounds.

(3) *Exempt Waste.* This subdivision shall not apply to the removal of construction and demolition debris [and], infectious medical waste, covered electronic equipment as defined in section 421 of chapter 16 of the Code, waste from grease interceptors as defined in section 19-119(a) of title 15 of the Rules of the City of New York and paper that is collected for the purpose of shredding or destruction by the licensee.

* * *

(c)(1) *Surveys.* In the event that a written contract or other agreement between a licensee and a customer contemplates a "flat" billing method, whether based on weight or on volume, a customer shall have the right to have such fee [must be] determined by a survey provided at no charge by the licensee. The time period over which the survey is to be conducted shall be determined by mutual agreement between the customer and the licensee. The survey must reflect the average amount of waste collected, either in volume or by weight, over the survey period. The cost charged to the customer for waste removal service shall be established by multiplying the negotiated dollar rate per cubic yard or per 100 pounds of waste by the total number of cubic yards or 100-pound increments, generated in the billing the period. For purpose of a "flat" billing method, a licensee may round up the total volume or weight for the billing period to the next highest cubic yard or 100 pounds. Prior to conducting the survey, the licensee shall inform the customer in writing that the survey is to be conducted and of the customer's right to participate in the survey by independently monitoring the waste collected during the survey period and by attempting to reach an agreement with the licensee on the survey information. A copy of the waste survey, in a form prescribed by the commission, must be signed by the owner of the business to be served or the owner's authorized representative and the licensee. The licensee must provide a copy of the waste survey to the customer and a copy must be retained by the licensee as part of the records required pursuant to section 5-03 of this chapter. [A customer may waive its right to such a survey and instead reach an agreement with the licensee over the estimated amount of waste, in cubic yards or by weight, that the customer places out for collection by the licensee.] In the event the customer utilizes the services of a trade waste broker, the trade waste broker's survey can be used in lieu of a survey conducted by the licensee, provided the trade waste broker is registered with the commission. [Any waiver of the customer's right to a survey conducted by the licensee or of the customer's right to participate in the survey shall only be effective if it is in writing describing the rights waived and signed by the owner of the business or the owner's authorized representative. A copy of the survey waiver, in a form prescribed by the commission, must be signed by the owner of the business or the owner's authorized representative, and the licensee must provide a copy of the waiver to the customer and a

copy must be retained by the licensee as part of the records required to be maintained pursuant to section 5-03 of this chapter.] For customers who are charged on the basis of estimated weight, nothing in this section shall preclude such a customer's right to have its refuse accurately weighed during the survey period.

(2) [When a licensee or a customer has reason to believe that a change in circumstances or conditions renders a prior survey inaccurate, the] The licensee or customer may require a new survey of the customer's waste stream to be provided by the licensee in the manner described in paragraph (1) of this subdivision at no charge to the customer or to be conducted by a registered trade waste broker, provided that no more than two (2) surveys may be required within any twelve (12)-month period.

(3) A licensee shall not submit a false or misleading survey to a customer or prospective customer.

(e) [A licensee shall not charge] Charges by a licensee to a customer shall be based solely on volume or weight, and a licensee shall not charge an additional fee for services, materials or the use of a waste container or receptacle (except for compactors and roll-off boxes) provided by such licensee.

* * *

Subdivisions (g) and (l) of section 5-03 of Title 17 of the Rules of the City of New York is amended to read as follows:

§5-03 Record Keeping; Customer, Financial and Other Reporting Requirements.

* * *

(g) A licensee shall maintain a complete and accurate Customer Register on a form or in a computer format approved by the Commission, and file the Customer Register with the Commission.

(1) The Customer Register shall contain a list of all customers currently served by the licensee and shall include the customer's name and the name of an authorized representative of the customer, any trade name, the address or addresses of service, the billing address, the telephone number, the date on which services commenced, the total charge per month, and such other information as may be specified by Commission directives.

(2) The Customer Register shall state the name and address of each putrescible solid waste transfer station, non-putrescible solid waste transfer station, or other facility used during the period for which the report is submitted. Such report shall also state the total volume or weight and type of designated recyclable materials collected and transported from each customer pursuant to paragraphs (1) through (3) of subdivision (c) of section 5-12 of this Title; and/or the total combined volume or weight and type of designated recyclable materials and non-designated materials collected and transported from each customer pursuant to paragraph (5) of subdivision (c) of section 5-12 of this Title that were delivered to putrescible solid waste transfer stations, non-putrescible solid waste transfer stations, or other facilities during the period for which the report is submitted.

[(2)](3) A complete and up-to-date Customer Register shall be filed twice each year: on January 30 for the period from June 1 through December 31, and on July 31 for the period from January 1 through June 30, or as often as ordered by the Commission. In the event that the Commission grants a new license, the newly licensed company shall submit its first Customer Register to the Commission no later than 90 days after the granting of its license, unless otherwise directed by the Commission. This subdivision shall apply to companies operating with temporary permission of the Commission, pending decision on their license application.

* * *

[(1) In the event that, during the first year following the effective date of this subchapter, a licensee has not previously had its financial statements audited by an independent certified public accountant, the Commission may accept an income statement and a cash flow statement for that first year that has been "reviewed". However, the ending balance sheet for the period under submission shall be audited.]

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Pargagraph (1) of subdivision (a) of section 5-05 of Title 17 of the Rules of the City of New York is amended to read as follows:

§5-05 Agreements and Contracts with Customers; Service to Customers.

(a) *Term and form of contract; requirements; service and discontinuation of service; increase of rates.* (1) An oral agreement for the collection, removal or disposal of trade waste shall be terminable at will by the customer and upon fourteen (14) days written notice by the licensee. A contract for the collection, removal or disposal of trade waste shall not exceed two years in duration [and contracts entered into before the effective date of this chapter shall expire in accordance with the provisions of section 11 of Local Law 42]. A written contract for the removal, collection or disposal of trade waste that contains no provision regarding duration shall be terminable at will by the customer and upon fourteen (14) days written notice by the licensee. A written contract shall provide that the licensee shall remove the customer's waste from the location designated by the customer. A sample standard contract form shall be submitted to the Commission [no later, in the case of an applicant whose application is pending as of the effective date of this subchapter, than seven (7) days following such effective date and, for all other applicants] at the time an application for a license is submitted, and a licensee shall submit any subsequent changes in the standard form to the Commission thirty (30) days prior to implementing such change. Nothing in this provision shall be construed to prevent a licensee from negotiating terms at variance with the standard form contract, except that a licensee shall not vary such contract in any manner identified by the Commission as inconsistent with the purposes of Chapter 1 of Title 16-A of the Code by the Commission after review of such standard form. [All written contracts entered into by a licensee and all amendments thereto shall be filed with the Commission by the licensee no later than five (5) days after the signing of such contract or amendment.]

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Paragraphs 3 and 4 of subdivision (b) of section 5-05 of Title 17 of the Rules of the City of New York are amended to read as follows:

* * *

(3) *Investigation, inspection, and evaluation fee.* The fee for investigation and review of any proposed asset sale, assignment of contract, merger, acquisition, or similar transaction, shall be fifteen hundred dollars (\$1500) per principal and entity involved. After submission to the Commission of an appropriate request for review of such a transaction, the Commission shall notify the parties to the transaction of the total fee amount due and owing, which shall be paid in full within ten days after such notification. [For all transactions submitted to the Commission after June 3, 1996, but before the effective date of this rule, the fees shall become due and owing by the parties on the effective date of this rule upon written notice by the Commission.] The Commission, in its discretion, may waive or reduce fees upon written request in light of one or more of the following reason(s):

- (i) specified persons or entities have recently undergone completed background investigations by the Commission;
- (ii) the value of the transaction under review is minimal;
- (iii) specified persons or entities need not undergo background investigations because of their attenuated connection to the transaction;
- (iv) the transaction does not involve the sale, assignment, or other transfer of any accounts or customer contracts (e.g. trucks or other non-customer assets);
- (v) the transaction involves less than 5 customers;
- (vi) the transaction involves unique characteristics or other mitigating factors that would warrant a reduction or waiver of fees.

(4) *Requests for authorization of subcontracting, assignment, and other such arrangements.* All trade waste subcontracting, assignment, and similar arrangements must be submitted to the Commission for authorization[, regardless of whether the arrangement was previously submitted to, or approved by, another City agency (such as the Department of Consumer Affairs)]. Requests for approval of such an arrangement should be submitted in writing to the [Deputy Commissioner for Licensing] Commission; [in the case of arrangements not previously approved by another City agency,] and the arrangement shall not go forward unless and until it has been approved in advance by the Commission.. The request shall identify the customer(s) involved (including name, address, contact person, and contract terms), state the requested length of the arrangement, and describe the business justification for the arrangement. Copies of all affected contracts or proposed contracts must be submitted with the request.

* * * **Subdivisions (d), (e) and (g) of section 5-05 of Title 17 of the Rules of the City of New York are amended to read as follows:**

(d) *Written contract.* At the time service to a customer is commenced, the licensee shall take all steps necessary to attempt to reach an agreement with the customer on the terms and conditions of the service to be provided, and within forty (40) days of the

commencement of service shall prepare a written contract that clearly and legibly sets forth the terms and conditions of the agreement negotiated by the licensee and the customer, and deliver such contract to the customer. Such contract shall provide that it shall be effective only upon being dated and signed by the licensee and the customer's owner or authorized representative and that a change of any term or condition of such contract must be made in writing, dated, signed by both the licensee and the customer's owner or authorized representative before such term or condition takes effect. The proposed contract offered by the licensee shall be accompanied by a notice that shall state: "You are not required to sign this contract. If you have any questions or complaints, call the [Trade Waste] Business Integrity Commission at 212-676-6300." One copy of such signed and dated contract and a copy of any signed and dated amendments must be provided to the customer's owner or authorized representative by the licensee.

(e) *Customer's decision not to sign a contract.* A customer is not required to sign a contract. In the event a customer fails or refuses to sign a contract that has been tendered to the customer pursuant to subdivision c of this section a licensee will be deemed to have complied with such subdivision if the licensee complies with the requirements in paragraphs (1) through [(4)](3) of this subdivision, provided however that a licensee shall not discontinue service to such a customer, or raise the rates charged such a customer, unless at least fourteen (14) days written notice of such discontinuance or rate increase shall have been given such customer. Where a written contract with a customer has not been obtained by the licensee, the licensee shall:

(1) demonstrate that a contract has been tendered to the customer in accordance with subdivision c of this section, within 40 days of the commencement of service, by certified mail;

[(2)](2) notify the Commission in writing immediately following such 40 days of the customer's failure or refusal to sign a contract;]and

[(3)](2) keep a copy of the contract tendered on file along with the signed returned postal receipt for a period of one year after the eventual discontinuance of service to the customer; and

[(4)](3) make available to the Commission upon its request a copy of the contract and the return receipt.

* * *

(g) *Standard bills, statements, invoices.* A licensee shall provide a written bill, statement or invoice at least once every month to each and every customer to which such licensee provides services. Such bill, statement or invoice must conspicuously contain all of the following:

(1) The licensee's name, address, telephone number, license number;

(2) the customer's name and complete address;

(3) a notice to customers as follows:

NOTICE TO CUSTOMERS—The maximum rate that may be charged by your trade waste removal business is regulated by the New York City Business Integrity Commission. If you should have a question or a complaint concerning waste removal, contact the New York City Business Integrity Commission; and

- (4) the maximum rates in effect with a statement indicating that the rates so identified are maximum legal rates and that lower rates may be lawfully charged;
- (5) the negotiated rate per cubic yard or per 100 pounds on which the invoice is based;
- (6) an itemized list of charges detailing the cubic yards or weight of [trade waste] putrescible waste removed, recyclables removed, and any additional charges[, plus a separate statement of sales tax collected]; [and]
- (7) where [applicable, a statement that] the customer is being charged on a "flat" or "average" billing basis[.],
 - a. the total charges for waste removal for the billing period;
 - b. an itemized statement of the estimated volume or weight of the putrescible waste removed and the charge for the removal of such waste;
 - c. an itemized statement of the estimated volume or weight, if any, of the recyclable waste removed and the charge for the removal of such waste;
and
 - d. a statement as to the method by which the estimated volume or weight was determined; and
- (8) a separate statement of sales tax collected.

On or after January 1, 2009, such bill shall be on a form approved by the Commission.

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Subdivisions (d) and (e) of section 5-12 of Title 17 of the Rules of the City of New York are amended to read as follows:

§5-12 Recycling Requirements for Licensees.

* * *

(d) Contract and bill requirements.

(1) Contracts entered into with customers in accordance with §5-05 shall state the estimated volume or weight of designated recyclable materials to be collected and transported pursuant to subdivision (c) of this section. In the event the customer and licensee agree to commingle designated materials with non-designated materials pursuant to paragraph (5) of subdivision (c) of this section, the contract shall include such agreement and shall also provide for the recycling, reuse or sale for reuse of all materials commingled pursuant to such paragraph. Such contract shall also state the total combined volume or weight of commingled designated and non-designated materials to be collected and transported, and shall identify, by type, each non-designated material to be collected and transported. The types of non-designated materials are non-designated paper and wood materials, or non-designated glass, metal or plastic materials.

(2) [For customers billed on an actual volume or weight basis, the] The written bill, statement or invoice provided to customers pursuant to §5-05 shall include an itemized list of charges detailing the cost per cubic yard or per 100 pounds and the [actual or estimated] volume or weight of designated recyclable materials collected and transported

pursuant to paragraphs (1) and (2) of subdivision (c) of this section; or the cost per cubic yard or per 100 pounds and the volume or weight of designated recyclable materials and non-designated materials collected and transported pursuant to paragraph (5) of subdivision (c) of this section.

[(e) Reports.

(1) The Customer Register required to be kept pursuant to §5-03 of this subchapter in a form or in a computer format approved by the Commission, shall state the name and address of each putrescible solid waste transfer station, non-putrescible solid waste transfer station, or other facility used during the period for which the report is submitted. Such report shall also state the total volume or weight and type of designated recyclable materials collected and transported pursuant to paragraphs (1) through (3) of subdivision (c) of this section; and/or the total combined volume or weight and type of designated recyclable materials and non-designated materials collected and transported pursuant to paragraph (5) of subdivision (c) of this section that were delivered to putrescible solid waste transfer stations, non-putrescible solid waste transfer stations, or other facilities during the period for which the report is submitted.

(2) A complete and up-to-date Customer Register shall be filed twice each year: on January 30 for the period from June 1 through December 31, and on July 31 for the period from January 1 through June 30, or as often as ordered by the Commission.]