

Effective 9/8/2009

NEW YORK CITY BUSINESS INTEGRITY COMMISSION

**NOTICE OF ADOPTION OF RULES RELATING TO THE CONDUCT OF
TRADE WASTE REMOVAL BUSINESSES**

NOTICE IS HEREBY GIVEN pursuant to the authority vested in the New York City Business Integrity Commission by Section 2101(b)(6) of the New York City Charter and Section 16-504 of Chapter 1, Title 16-A of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Commission promulgates and adopts amendments to the rules relating to the conduct of trade waste removal businesses in the City of New York. Material that is added is underlined, and material that is deleted is shown below in brackets.

The rules were proposed and published in The City Record on June 29, 2009. The required public hearing was held on July 31, 2009.

Section 1. The chapter heading of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

CHAPTER 1

[LICENSING AND REGULATION] TRADE WASTE

§ 2. The definition of COMMISSION contained in section 1-01 of title 17 of the Rules of the City of New York is amended to read as follows:

Commission. “Commission” shall mean the Business Integrity Commission as established by section 16-502 of the Code and section 2100 of the New York City Charter. Except in regard to a determination to refuse to issue a license or registration 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.

§ 3. Subdivision (a) of section 1-03 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

(a) A hearing conducted pursuant to subdivision b of section 2-08, subdivision (c) of section 3-01 or subdivision (b) or (c) of section 3-02 of this chapter may be conducted by the Commission or, in the discretion of the Commission, by an administrative law judge employed or designated by the Commission, by the Office of Administrative Trials and Hearings (OATH) or by other administrative tribunal of competent jurisdiction; provided, however that hearings related to the violation of the provisions of section 16-505 of the Code and the rules of conduct set forth in subchapters [5, 6, and 7] E, F and G of this chapter shall, except where the Commission is seeking revocation or suspension of a license or registration on the basis of such violations, be conducted by the Department of Consumer Affairs. All such hearings shall be conducted following the procedures set forth in the rules of OATH (48 RCNY §1-01 et seq.); except in the case of hearings conducted by the Department of Consumer Affairs, which shall be held pursuant to the procedures for adjudication set forth in the rules of such Department. In the event that a hearing is conducted by an administrative law judge employed or designated by the Commission, by OATH or by other administrative tribunal, such administrative law judge shall make recommended findings of fact and a recommended decision to the Commission, which shall make the final determination. In the event that a hearing is held by the Department of Consumer Affairs, the Commissioner of such Department shall make the final determination.

§ 4. Section 1-09 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

§ 1-09 General Prohibitions.

In addition to any other prohibition contained in Chapter 1 of Title 16-A of the Code or this chapter, an applicant, a licensee, a registrant, a principal of a licensee or a registrant, or an employee required to make disclosure pursuant to [§] section 16-510 of the Code as listed in Appendix A of Subchapter C of this chapter shall not: violate or fail to comply with an applicable provision of this chapter; associate with a person whom such person knows or should know is a member or associate of an organized crime group

(a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group shall be presumed to be a member or associate of an organized crime group); refuse to answer an inquiry from the Commission; violate or fail to comply with any order or directive of the Commission; make a false or misleading statement to the Commission; make a false or misleading statement to a customer or prospective customer; threaten or attempt to intimidate a customer or prospective customer; retaliate against a customer or prospective customer that has made a complaint to the Commission or has exercised or attempted to exercise a right under the Code or this chapter; engage in a deceptive trade practice; discourage a customer or prospective customer who has a question or inquiry concerning the customer or prospective customer's rights or obligations concerning trade waste from contacting the Commission; request, participate in, or comply with, a resolution, consideration, hearing, mediation or adjudication by a trade association or any person holding a position in a trade association concerning a dispute between two or more licensees or trade waste removal businesses relating to a customer, route or stop; pay any money to a trade association or any person holding a position in a trade association for any activity relating to a sale, purchase, acquisition, or loss of a customer, route, or stop; falsify any business record; make, file, or submit a false statement or claim to a government agency or employee; violate any law concerning payments to labor unions or labor representatives; give or offer any money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in an unethical or illegal business practice; give or offer any money or other benefit to any public employee whose duties relate to the trade waste industry with the exception of funds that must be paid in accordance with a statute, rule, agency order, or court order; solicit business from a customer for any person who, or entity that, provides goods or services related to the removal, collection or disposal of trade waste and is not licensed by, or registered with, the Commission; agree with another trade waste business to divide or allocate customers or respect an existing division or allocation of customers by geography, territory or otherwise, except that this provision shall not apply to a covenant not to compete agreed to in connection with the sale of a licensee's business where the Commission has expressly approved such covenant; discuss with, or agree upon, with another private

carter the prices to be submitted on a bid for a trade waste contract; fail to timely pay taxes related to a trade waste business; operate a transfer station in violation of any federal, state, or local law or regulation; remove, collect or dispose of trade waste from a commercial establishment with which the applicant, licensee or registrant does not have a contract or agreement or other permission from the Commission to remove, collect or dispose of such commercial establishment's trade waste; or attempt to or conspire to engage in any act proscribed by this section.

§ 5. Subdivision (a) of section 2-01 of chapter 1 of title 17 of the rules of the City of New York is amended to read as follows:

(a) Except as provided in subdivision b 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] six hundred [fifty] dollars [(\$350)] (\$600) per applicant business and [three] six hundred [fifty] dollars [(\$350)] (\$600) per principal thereof shall be paid by the applicant for such investigation.

§ 6. The section heading and subdivisions (a) and (c) of section 2-03 of chapter 1 of title 17 of the Rules of the City of New York are amended to read as follows:

§ 2-03 Application for Exemption from Licensing Requirements for Removal of Demolition Debris and a Class 2 Registration.

(a) Class 2 Registration for Business Exempt from Licensing Requirements under Section 16-505(a). A business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation, including waste materials resulting from building demolition, construction, alteration or excavation generated by such business, may, pursuant to subdivision a of section 16-505 of the Code, apply to the Commission for exemption from the licensing requirements of section 16-505 where no principal (except for a principal of a business solely in either or both of the class seven or the class three category of licensees as defined in rules previously promulgated by the Commissioner of Consumer Affairs pursuant to subchapter 18 of Chapter 2 of Title 20 of the Code) of such applicant is a principal of a business or a former business required to be licensed during the past ten years pursuant to this chapter or such former subchapter 18.

(c) Such application shall, in addition, contain the following information:

(1) If applicant transports asbestos or other hazardous materials for which a New York State Department of Environmental Conservation Waste Transporter permit is required, a copy of such permit must be submitted with the application.

(2) If such applicant is doing business under an assumed name, a Certificate of Assumed Name, certified by the County Clerk if a sole proprietorship or partnership or by the Secretary of State if a corporation, and in addition: if a sole proprietorship, a business certificate certified by the County Clerk, if a corporation, a copy of the certificate of incorporation; if a partnership, a copy of partnership papers, certified by the County Clerk.

(3) A business telephone number and a business address within the City of New York where notices may be delivered and legal process may be served, and where records required by these rules shall be maintained.

(4) A Federal or state, tax identification number.

(5) [Where the applicant holds, or has held at any time in the past ten years, a

license for trade waste removal issued by the Department of Consumer Affairs pursuant to former subchapter 18 of Chapter 2 of Title 20 of the Code, a listing of such license number or numbers.

(6)] A listing of any criminal convictions of the applicant.

[(7)] (6) A listing of any pending civil or criminal actions in any jurisdiction.

[(8)] (7) A listing of any judgments finding liability of the applicant in a civil or administrative action related to the conduct of a business bearing a relationship to the removal of trade waste.

[(9)] (8) A listing of each vehicle that will be operated pursuant to the license, and the vehicle identification number and registration number of such vehicle.

[(10)] (9) A listing of the employees who will drive vehicles operated pursuant to this license, and the driver's license numbers of such employees.

[(11)] (10) Evidence of business automobile liability insurance covering every vehicle operated by the applicant in his or her business, whether or not owned by the applicant, and every vehicle hired by the applicant, with liability limits of no less than one hundred thousand dollars (\$100,000) for personal injury to any one person and three hundred thousand dollars (\$300,000) for personal injury to two or more persons and twenty-five thousand dollars (\$25,000) for damage to property. Such insurance policy shall name the Commission as Certificate Holder.

§ 7. Subdivision (b) of section 2-04 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

(b) Class 2 Trade Waste Broker Registration. An application for registration required by subdivision b of section 16-505 of the Code to register as a trade waste broker shall be signed by all persons participating directly or indirectly in the control of the applicant business and by: the proprietor of an applicant if the applicant is a sole proprietorship; every officer and director and stockholder holding ten percent or more of the outstanding shares of a corporation, if the applicant is a corporation; all the partners, if the applicant is a partnership; the chief operating officer or chief executive officer, irrespective of organizational title and all persons or entities having an ownership interest of ten percent or more if the applicant is any other type of business entity. The

application shall be certified under penalty of criminal prosecution. The principal of such applicant shall be photographed by the Commission and such application shall contain the following information:

(1) The names and addresses of all principals of the applicant and a description of the position occupied or ownership interest held by each such principal;

(2) If such applicant is doing business under an assumed name, a Certificate of Assumed Name, certified by the County Clerk if a sole proprietorship or partnership or by the Secretary of State if a corporation; if a sole proprietorship, a notarized Certificate of Business, certified by the County Clerk; if a corporation, a copy of the certificate of incorporation and a list of the names and addresses of all the principals; if such applicant is a partnership, a copy of partnership papers, certified by the County Clerk.

(3) A business telephone number and a business address within the City of New York where notices may be delivered and legal process may be served, and where records required by these rules shall be maintained, and the name of a person of suitable age and discretion who shall be designated as agent for the service of legal process;

(4) A Federal or state tax identification number;

(5) [Where any principal of the applicant business holds, or has held at any time in the past ten years, a license for trade waste removal issued by the Department of Consumer Affairs pursuant to former subchapter 18 of Chapter 2 of Title 20 of the Code or a license issued by the Trade Waste Commission, a listing of such license number or numbers;

(6)] Where any principal of the applicant business is, or has been at any time during the past ten years, a principal of a trade waste removal business required to be licensed pursuant to Title 16-A of the Code or former subchapter 18 of chapter 2 of Title 20 of the Code, a listing of such trade waste removal business and the nature of the involvement of such principal in such business;

[(7)] (6) A listing of any contractual or other business relationship, at any time during the past ten years, between the applicant business and a trade waste removal business required to be licensed pursuant to Title 16-A of the Code or former subchapter 18 of chapter 2 of Title 20 of the Code;

[(8)] (7) A listing of any criminal convictions of the applicant;

[(9)] (8) A listing of any pending civil or criminal actions with respect to the applicant business in any jurisdiction; and

[(10)] (9) A listing of any suspensions or revocations of licenses or permits held by the applicant for the removal or recycling of trade waste in any jurisdiction or any judgments or orders finding liability of the applicant in a civil or administrative action related to the conduct of a business that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill or transfer station.

§ 8. Subdivisions (a) and (b) of section 2-07 of chapter 1 of title 17 of the Rules of the City of New York are amended to read as follows:

(a) The term of a license or registration shall be two years. The fee for a license shall be [one] five thousand dollars [(\$1,000)] (\$5,000) and the fee for each vehicle in excess of one operated pursuant to a license shall be five hundred dollars (\$500). The fee for Class 2 registration pursuant to section [2-04] 2-03 of this subchapter shall be [six] three thousand five hundred dollars [(\$600)] (\$3,500) and the fee for each vehicle operated pursuant to a Class 2 registration shall be five hundred dollars (\$500). The fee for Class 1 registration shall be one thousand dollars (\$1,000) and the fee for each vehicle operated pursuant to a Class 1 registration shall be [three] four hundred [and twenty] dollars [(\$320)] (\$400). The fee for trade waste broker registration shall be five thousand dollars (\$5000).

(b) The fee for a license or registration shall be submitted upon [issuance of] submission of an application for the license or registration.

§ 9. Section 2-08 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

§ 2-08 Refusal to Issue License or [to Register Trade Waste Broker,] Registration; Revocation and Suspension of License[,], or [Class 2] Registration.

(a) Where the Staff of the Commission proposes that the Commission refuse, pursuant to [§] section 16-509 or 16-507 of the Code, as the case may be, to issue a license to remove, collect, or dispose of trade waste or a registration as a trade waste

broker or a Class 1 registration or Class 2 registration for a business exempt from licensing requirements, the applicant shall be notified in writing of the reasons for the proposed refusal of such license or registration and that the applicant may, within ten (10) business days of the date of such notification, respond in writing to the Commission setting forth the reasons such applicant believes that it should not be denied such license or registration. In the exercise of its discretion, the Commission, considering the reasons for the proposed refusal to issue the license or registration, the nature of the issues raised in connection therewith, and the response submitted by the applicant, may make a final determination regarding the issuance of such license or registration or through the Chair or his or her designee, afford the applicant such further opportunity to be heard in such proceeding as is deemed appropriate. A final determination to refuse to issue a license or registration pursuant to this section shall be by majority vote of the Commission. Such determination and the reasons therefor shall be communicated to the applicant in writing.

(b) [Reserved.

(c) The Commission may, after notice to a licensee [or class], Class 2 registrant under section 16-505(a), Class 1 registrant or trade waste broker registrant, and the opportunity for a hearing conducted pursuant to section 1-03 of subchapter [1] A of this chapter, revoke or suspend a license or a [Class 2] registration issued pursuant to this subchapter for the reasons set forth in section 16-513 of the Code. The Commission may suspend a license [or], Class 2 registration under section 16-505(a), Class 1 registration or trade waste broker registration pursuant to section 16-514 of the Code without a prior hearing. Upon notification of an emergency suspension pursuant to such section, a licensee or registrant may apply to the Chair of the Commission for immediate review of such suspension. The Chair shall determine such appeal forthwith. In the event that such appeal is denied, an opportunity for a hearing pursuant to section 1-03 of subchapter A of this chapter shall be provided on an expedited basis, within a period not to exceed four business days, and the Commission shall issue a final determination no later than four days following the conclusion of such hearing.

§ 10. Subdivision (e) of section 5-03 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

(e) A licensee shall maintain annual financial statements in a form or computer format prescribed by the Commission [and]. The Commission may require that such financial statements be audited by an independent certified public accountant who is not employed by or related to the licensee or any principal of the licensee and has no financial interest in the licensee or any principal of the licensee. The financial statements shall include a balance sheet, an income statement, a statement of cash flows and a statement of retained earnings or (if the licensee is a sole proprietorship or partnership) capital. The auditor shall render an opinion as to whether the financial statements accurately reflect the financial position of the licensee as of the balance sheet date and the results of its operations and cash flows for the year ended, except that the auditor need not opine on paragraphs (3) and (4) of this subdivision. The auditor shall also issue a supplemental opinion on the licensee's compliance with the financial record-keeping and reporting requirements of the Commission. Such supplemental opinion shall detail each and every variance or deviation from the Commission's requirements noted during the auditor's examination of the licensee's financial books and records. The licensee shall certify, and the principal responsible for the licensee's financial affairs shall swear under oath upon penalty of perjury, that the financial statement accurately reflects the licensee's accounts and financial operations. At the completion of the audit, the licensee shall obtain from the auditor copies of the accountant's work papers, and shall retain such papers with the licensee's records.

§ 11. Paragraph (1) of subdivision (b) and paragraph (1) of subdivision (e) of section 5-05 of chapter 1 of title 17 of the Rules of the City of New York are amended to read as follows:

(1) A licensee shall apply for review by the Commission before subcontracting or assigning a contract and shall seek such review by the Commission thirty (30) days before such subcontract or assignment is proposed to take effect. The Commission may issue any order with respect to the transaction consistent with the purposes of Local Law 42. An assignee or subcontractor of contracts for the removal, collection or disposal of trade waste shall notify, within fifteen (15) days of the effective date of such assignment or subcontract, each party to a contract so assigned of such assignment or subcontract and

of the right of such party to terminate such contract upon thirty days notice during the three months subsequent to receiving notice of such assignment or subcontract. Such notification shall be by certified mail with the receipt of delivery retained by the assignee or subcontractor and shall be upon a form approved by the Commission. Where no written contract exists with a customer for the removal, collection or disposal of trade waste, a company that assumes such trade waste removal from another company shall provide such customer with notification, within fifteen (15) days of such assignment or subcontract, on a form approved by the Commission by certified mail with the receipt for delivery retained by the assignee or subcontractor, that a new company will be providing such trade waste removal and that the customer has the right to terminate such service. A licensee shall not act as a subcontractee unless the subcontractor licensee has received express approval for the subcontracting arrangement from the Commission.

(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]; and

§ 12. Subdivision (a) of section 5-10 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

(a) Upon issuance of a license, the Commission shall issue to the licensee two license plates for each vehicle that will transport trade waste pursuant to such license and for which a fee has been paid pursuant to section 2-07 of this chapter. Such plates shall at all times be affixed in the manner prescribed by the Commission to a visible and conspicuous part of each such vehicle. A licensee shall not permit a vehicle to be used in the course of collecting, removing or disposing of waste that has not been identified and covered by the license and for which a fee has not been paid. A license plate issued by the Commission for such a covered and identified vehicle shall not be transferred to any other vehicle. Upon the sale, dissolution, suspension or discontinuance, whether voluntary or due to the revocation of a license, of the business of a licensee, such plates shall be forthwith surrendered to the Commission. All license plates issued by the Commission are the property of the Commission, and the Commission reserves the right to reclaim such plates at any time.

§ 13. Subdivision (b) of section 6-02 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

(b) A trade waste broker who brokers a transaction between a customer or prospective customer of trade waste removal, collection or disposal services and a trade waste business required to be licensed pursuant to this chapter shall not request or accept payment from such trade waste business. A trade waste broker shall not broker a transaction between a customer or prospective customer and a trade waste business owned by, operated by, or affiliated with the trade waste broker or any principal thereof.

§ 14. Subdivision (a) of section 7-03 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

(a) Upon issuance of a registration, the Commission shall issue to a registrant who removes trade waste generated in the course of operation of his or her business and to a registrant exempt from the licensing requirements of this chapter two license plates for each vehicle that will transport trade waste pursuant to such registration and for which a fee has been paid to the Commission pursuant to section 2-07 of this chapter. A registrant shall not permit a vehicle to be used in the course of collecting, removing or disposing of waste that has not been identified and covered by the registration and for which a fee has not been paid. A license plate issued by the Commission for such a covered and identified vehicle shall not be transferred to any other vehicle. Upon the sale, dissolution, suspension or discontinuance, whether voluntary or due to the revocation of such registration, of the business of the registrant, such plates shall be forthwith surrendered to the Commission. All license plates issued by the Commission are the property of the Commission, and the Commission reserves the right to reclaim such plates at any time. Notwithstanding any other provision of this chapter, the penalty for violation of this section shall not exceed [one] five thousand dollars [(\$1,000)] (\$5,000) for each such violation.

§ 15. Section 7-05 of chapter 1 of title 17 of the Rules of the City of New York is amended to read as follows:

§ 7-05 Operations. [(a)] A registrant who removes, collects or disposes of trade waste shall keep the sidewalk, flagging, curbstone and roadway abutting any area from which waste is removed free from obstruction, garbage, litter, debris and other offensive material resulting from the removal by the registrant of trade waste and shall comply with the requirements for operation contained in subdivisions (a) through (p) of section 5-08 and section 5-11 of this chapter.

Statement of Basis and Purpose of Rule

The NYC Business Integrity Commission is amending its trade waste regulations. The rule raises the fees associated with licensing and registering trade waste removal companies in New York City. The licensing and registration fees have not been changed since the Commission's inception in 1997. The amended fees satisfy the Commission's statutory mandate to recoup all costs associated with licensing and registering through imposed fees. The rule addresses an industry-wide problem of cardboard theft by making it a violation of the Commission's rules to steal trade waste from another licensee. The rule also makes changes and additions relating to the operations of trade waste brokers, Class 2 registrations for businesses exempt from the licensing requirements under Administrative Code § 16-505(a), the subcontracting of contracts to licensees, the use and possession of trade waste license plates issued by the Commission, the certified financial statements required to be submitted by licensees, and the revocation, suspension and denial of licenses and registrations. These changes and additions clarify the existing rules.