

New York City Business Integrity Commission

Public Hearing on Proposed Rate Cap Increase

Testimony of Thomas N. Toscano, Chairperson of the NYC Chapter of the National Waste and Recycling Association and CFO of Mr. T Carting Corp.

On behalf of NWRA, I thank the BIC and the Commissioner for moving on increasing the rate cap. As I previously testified, NYC is an extremely competitive market, and the rate cap is not necessary to prevent customers from being overcharged. In fact, the rate cap prevents customers from getting additional and enhanced services because carters are constrained by the cap. Despite this, we feel the rate increase is a move in the right direction and I look forward to working with the BIC to eliminate it in the future.

**Testimony**  
**of**  
**Thomas N. Toscano, Esq.**  
**before the**  
**Business Integrity Commission**  
**on**  
**Rate Cap for Commercial Trade Waste**

**Submitted to the**  
**New York City Business Integrity Commission**  
**Honorable Daniel D. Brownell**  
**Commissioner/Chairman**

**By**  
**Thomas N. Toscano, NYC Chapter Chair of NW&RA and CFO of Mr. T Carting Corp.**  
**Friday, October 30, 2015**

Good morning. Thank you all for scheduling this hearing and giving us an opportunity to give testimony on this most important issue. My name is Thomas N. Toscano, I am the Chapter Chair for the National Waste and Recycling Association (NWRA). I am also the CFO and a member of a third generation family business, Mr. T Carting Corp. that has served this City since 1947.

I want to start out with a brief history of the rate cap. In the late 1990s the rate in the City was actually lowered to \$12.20 from over \$14. There was no weight based cap then, and the rate sat unchanged until 2008. At that point a major business, the Fulton Fish Market got cancelled by Waste Management and scrambled to find another carter. Finding no takers they called the mayor's office and a rushed rate cap reform was put through that included a weight based cap. The yardage cap went up 30%, approximately 3% per year from the prior cap. As an interesting aside, there is only one company left in the City that is publically traded, and one other large company with private equity backing. The dozens of other companies in that strata, with the resources to invest in the marketplace have fled or just never entered, and I submit to you that the rate cap is the reason why.

In 2013 I attended a meeting with then Commissioner Shari Hyman. She shared data with us that showed that not only were carters losing money on the whole, but that there was virtually no entrance into the market place. Those conditions are redundant, because all economists will tell you that a marketplace where there is little or no entry is due to a poor forecast for profits. To Commissioner Hyman's credit, she pushed through a 15% increase to both caps, and the rate cap is where it is today.

In the past year I have been to more meetings and hearings on the state of this industry than my prior 19 years combined. I have heard many complaints that the industry, as a whole, does not

recycle enough, has low employment standards, and there are too many trucks on the street that pollute and cause traffic. Interestingly no one has asked me the reason for these alleged maladies. Today I will explain to you why.

Your predecessors in City government created the conditions that led to where we are today. All of the sanitation business are operating in an environment that they are reacting to, and not one that they created. The laws currently in effect asked for a robust marketplace where City businesses could negotiate and drive down prices. You got that. It was said that carters' profits were too high and needed to be cut. You got that. You asked for an industry that was free of organized crime and corruption. You got that. In short, all of the stated goals of the mid to late 1990s were accomplished, and here we sit.

Today there is a change in the focus of City policies when it comes to sanitation. The message I am hearing, and correct me if I am wrong, is that you now do not want the cheapest service out there. You want more recycling, even if it costs more. You want greener trucks, even if they cost more. You want higher labor standards, even if they cost more. As a representative of the sanitation industry I am here to tell you that you can have all of those things. However, you cannot have them in the current environment that was created to deal with the problems of a prior generation.

The rate cap is antithetical to all of the stated goals of those pushing change in our industry. Customers, as a whole, will not recycle if trash rates are very low. That is like trying to encourage people to save fuel when fuel is a dollar a gallon. The companies in this room will continue to pay good wages but will fight paying great wages if the rate cap only goes up 3% every year, on average, and those increases simply deal with past inflation. As a business owner, how can I agree to more than a 3% increase in wages and benefits if my revenue is not permitted to increase beyond

that? Companies will have great difficulty meeting the new emissions standards proposed for 2020 if they cannot pass on the cost of these \$250,000 plus assets to their customers.

There was a day in this industry where there were over 400 carters serving this City. Today, best estimates of the total operating puts that number at about 90. Worse for City businesses, the top 35 have over 90% of the market. As the larger companies in that mix purchase the smaller, that number will decline further. Customers will then have less choice in who they choose, and price will go up. At some point the market price will hit the rate cap, and customers will have difficulty getting carters. This will happen first for the customers that want specific time pickups and those that want premium days. Then it will hit the very heavy accounts, like restaurants. It will also hit the accounts that are small, but want to recycle more because they will require more service. The more regulations the City puts on the industry to address the changing goals, the faster this will happen. Let us end the day when rate cap reform is simply managing crises.

Commissioner Brownell, I thank you for reopening the dialogue with our industry. I know you want great things for this City and this industry. I am here to tell you that I, and the people I represent will do everything in our power to help you accomplish your goals. What we can do will depend on the health and success of our companies and that is directly anchored by this antiquated rate cap. I implore you to declare victory over corruption and the prior organized crime regime, and throw away this archaic policy as we move forward to tackle the future challenges.

If you decide not to take that step at this point, then I ask you to look at what you envision for this industry, and what those great changes will cost. 3% annually, which would be 6% at this point, is simply not enough to cover inflation, introduce new recycling streams, recycle organics, upgrade all the trucks to an environmentally friendly fleet, and greatly increase the wages and standards of this industry's workers. Thank you for your time today.

**Testimony**  
**of the**  
**NYC Chapter**  
**National Waste & Recycling Association**  
**on the**  
**First Biennial Review**  
**of the**  
**Business Integrity Commission**  
**Rate Cap for Commercial Trade Waste**

**Submitted to the**  
**New York City Business Integrity Commission**  
**Honorable Daniel D. Brownell**  
**Commissioner/Chairman**

**By**  
**Steve Changaris, NYC Chapter Manager**  
**Friday, October 30, 2015**

Good morning, my name is Steve Changaris and I am the NYC chapter manager for the National Waste and Recycling Association (NWRA). The chapter is part of the national trade association that represents America's private sector waste and recycling industry. We have an active chapter of member companies operating in the city. We believe the thousands of hard working men and women of our members collect and manage more than 75% of the commercial trade waste and recyclables produced by the city's 225,000 plus commercial entities. It is a herculean task done, day-in, day-out, year round - in good weather and bad. We work - as Business Integrity Commission (BIC) licensees - to provide excellent service to our customers; good paying jobs for our employees, characteristically union jobs; to collect and manage the city's waste as safely as possible; and to be as good corporate citizens in the neighborhoods and communities of the city where we serve and work as possible.

The first point we want on the record today is one we have consistently made over the years that we would prefer the BIC eliminate -- as opposed to adjust -- the rate cap. The rate cap is an obsolete component of the BIC oversight process and after 20+ years of effective work of the commission it is unnecessary given the fitness and integrity of BIC licensed carters working in the city's industry today. The city is the only locality in the country where a rate cap on commercial wastes and recyclables exist. This fitness and integrity, combined with the robust competition in the marketplace, has allowed many credible city authorities, including former leaders of this commission, over the years, to echo this same call.

The rate cap artificially restrains the ability of carters to do many things, including: providing specialized waste and recycling services needed by many customers; introducing new equipment and programs; and, attracting the capital investments necessary to fund the best recycling and waste service operations for the citizens and businesses of the city. We also note that the continued existence of the rate cap will make it only that more difficult for carters to implement separate collection and processing of organics; to expand the collection and processing of commercial recycling; and to bring the most environmentally friendly and safe trucks to the streets of the city as soon as practicable.

Now that we have re-iterated our longstanding call for the removal of the rate cap, in the alternative, we will now make the case for BIC to adjust the existing rate cap. Doing so will provide relief to carters and the commercial accounts we service for the real costs incurred since the last rate cap adjustment. This is the first 2 year rate review to happen since this review was created in BIC regulatory reforms passed just about 2 years ago now. This new biennial review was required so as to ensure that the BIC and city authorities routinely take a look at the ongoing impact of the increased costs licensed carters have to deal with every day. This new process is a welcome addition to the current rate cap regulatory structure. It is critical given the dynamic and on-going changes in costs experienced by carters.

We will encourage and call for the BIC -- due to the business conditions of the last two years -- and what we expect to happen in the immediate future before the next rate cap review -- to grant the private carting industry a rate cap increase no less than the one granted last time in November 2013. Based on an informal blind polling of chapter members, I am comfortable to suggest we believe equipment and labor costs alone-- two major primary features of a carter's cost of doing

business – have gone up in a range of 15% and 7% respectively over the last two years.

This alone – because these are the major costs of running a waste and recycling collection company

-- more than justifies the requested increase to the currently allowable trade waste rates. We learned

during our outreach that other costs of running our businesses like property and liability insurance;

workman's compensation; taxes; disposal fees; and the like have also increased well beyond or in

keeping with the 2013 rate cap relief granted BIC licensees. The only major cost item that has

moderated since is the price of fuel. The value, or loss of value, of the commodities we recover for

recycling and diversion from disposal over the last two years needs to be noted here too. It is well

known that commodity markets fluctuate between either strong or weak or normal in natural

economic cycles. We are in general weak market now and have experienced severe losses in the

value of many recyclables -- fiber (paper), metal, plastic and glass commodities -- during this

review period. And while no one has a crystal ball, there is no realistic view that their values will

return to strong position anytime soon. We urge the commission to pay special attention to this

cost in its review to establish new trade waste rates.

We understand the record for this rate cap review will be kept open for several weeks. The

chapter will work with our members and encourage them to provide BIC additional company

specific information about how their operating costs to run their businesses have increased over

the last two years. We hope the BIC will use that information and other resources it has and will

issue its findings about these costs in due time. In addition know the chapter intends to

supplement these comments, in support of additional rate cap relief, with more information too in

the next few weeks too. When BIC closes the record, we then trust it will move swiftly to finalize this rulemaking and allow the new rate adjustments we have requested to take effect immediately. Many carters and customers will be able to use this relief to improve services, to continue to take excellent care of their employees, run safe companies and to further the goals of zero waste and higher and best use of our after useful life discards and waste materials.

The chapter appreciates the opportunity to provide these comments and looks forward to working with the BIC on this and other issues affecting carters in city.

*The NYC chapter of the National Waste and Recycling Association is comprised of the city's private recycling and waste services companies. Chapter members are dedicated to the environmental and economically efficient handling of recyclables, discards and wastes.*



**Steven Changaris, Manager, Northeast Region**  
482 Southbridge Street Suite 373 | Auburn, MA 01501  
Office 508-839-4751 | Fax 508-839-4761  
[schangaris@wasterecycling.org](mailto:schangaris@wasterecycling.org)

Good morning commissioner Brownell my name is Mike Hellstrom Business Manager of Laborers Local Union 108,

As a labor representative of over 800 unionized private sanitation workers in NYC approx. 50% of the unionized workforce, we stand in support of a rate increase for the collection of Private Waste collection in NYC and urge the commission to abolish the cap in its entirety.

With the rising cost of living in NYC, the rate cap has put unfair pressures on our member's ability to earn incomes that create and maintain sustainable middle class employment in NYC and restricts the ability of our employers to make innovative changes that benefit the industry overall and puts escalating pressures on our employer's to meet required mandates such as emission standards as required by 2020 which left unchecked will affect our member's ability to continue earning, real middle class wages for themselves and their families.

High road employers such as Action, IESI and FILCO are consistently striving to ensure that their employees are paid good wages and receive quality benefits and are trained to operate safely but with these cost raising, especially the cost of medical benefits, which has risen by as much as 300% since the inception of Local law 42, our contractors need the ability now more than ever to get real sustainable relief now this is why we suggest removing the rate cap all together.

Continued capital investment is essential to our industry and members lives. Rate caps dilute capital investment, for improvements in our industry that is needed to achieve change that is beneficial to both the employees, employers and the communities we serve.

Laborers Local 108 is proud of the partnerships that it has with its employers and we stand in agreement that a rate increase is needed in our industry and the commission should be moving to abolish the cap in its entirety and firmly believe that regulation is a needed element of reform but rejecting a rate increase or not considering removal of the rate cap in its entirety will further exacerbate the complex issues that plague our industry.

Thank you for this time to speak this morning.



*Tradition.  
Innovation.  
Results.*

**TESTIMONY OF  
ACTION ENVIRONMENTAL GROUP  
RONALD S. BERGAMINI, CEO**

**NEW YORK CITY  
BUSINESS INTEGRITY COMMISSION  
DANIEL BROWNELL, COMMISSIONER / CHAIR  
OCTOBER 30, 2015**

Good morning. My name is Ron Bergamini. I am the CEO of The Action Environmental Group, the parent company of Action Carting Environmental Services, the largest waste hauler in NYC. While long an advocate for allowing the free markets to determine prices, I have come to realize that the path towards this goal will be evolutionary not revolutionary. As always, I am pleased that the BIC is holding this hearing on proposed changes to the existing rate cap and I thank the commission for the opportunity to offer these remarks.

I respectfully suggest eliminating the rate cap for a two year period with a sunset provision bringing the rate cap back at the end of two years if deemed necessary. To help me explain the relationship between rate caps, industry metrics and innovation, it is useful to review what has happened to operational costs in our industry over the last two years.

The following table shows the percentage change in key industry metrics since the last rate cap adjustment (11/28/2013) to 10/30/2015.

## **CHANGE IN INDUSTRY METRICS 2013-2015**

	<b>CHANGE 2013 - 2015</b>
<b>OPERATIONAL COSTS</b>	
AVERAGE TOLL FOR TRUCK OVER GWB (3 AXLE)	33.33%
DISPOSAL COST PER TON	1.17%
AVERAGE PRICE PER GALLON DIESEL FUEL	-22.87%
AVERAGE LABOR RATE PER HOUR - DRIVER (\$70,000 PLUS AVERAGE ANNUAL WAGE)	4.35%
AVERAGE LABOR RATE PER HOUR - HELPER	10.35%
AVERAGE ANNUAL SALARY - DRIVER	3.49%
AVERAGE ANNUAL SALARY - HELPER	11.39%
WORKERS COMPENSATION INSURANCE COST PER HEAD	4.53%
AUTO INSURANCE COST PER VEHICLE	0.18%
<b>RECYCLING MARKET</b>	
AVERAGE SELLING PRICE PER TON - OCC	-17.31%

The question becomes how can the industry strive for greater innovation, efficiency and safety without increasing revenue? Over the years, we have made substantial investments to increase recycling capabilities, to improve worker opportunities with a diverse and inclusive culture, and respond proudly to the needs of the city as we provide a valuable service. We are presently testing an on board computer system that essentially creates “smart trucks” to increase efficiency and greater density of routes, allow better communication with our labor force and customers.

Presently, we are in the process of replacing our fleet to meet the city’s 2020 emission standards. Today, a fully equipped solid waste or recycling truck costs over \$300,000. Trucks fit to haul organic material cost even more due to the moisture content of the material and the obvious need to prevent leakage.

For over a decade, Action has provided for collection of organic material. Today, as the law evolves and others begin providing this service, disposal options are limited. As such, the cost of providing this service is greater than ever and, in the near term, organic disposal costs will continue to increase substantially. This suggests a rationale to eliminate the rate cap at least with respect to the collection of organic material.

If there is any hope for the city to meet its ambitious organics collection goals— goals that we share – the market will respond; provided however that, the customers and the economics support it. We strongly believe that policy makers, regulators and industry create the greater good through collaboration. The constraint of the rate cap prevents a successful and robust organics collection program in the city.

Allow me to dispel a myth, the raising of the rate or complete elimination of the cap or perhaps a limited exception for organics does not mean that prices will automatically rise. In fact, if the rate cap were eliminated or raised tomorrow, I suspect there would be little to no discernable change. Why then are we advocating for its rise or elimination? It chills capital investment. It restricts innovation. It is simple, when this city – like no other -places an artificial constraint on price, capital will go elsewhere.

People often talk of the sustainability movement of the west coast. Indeed, they may do it better in many other cities, but that comes at a cost. As long as there are many players in any industry and competition is promoted, the consumer will have choices. No one is suggesting that the industry does not need regulation. Regulations help ensure the many things we all care about – safety, efficiency, fair wages for employees and the like. To alleviate any concern, as mentioned in the beginning of my remarks, I would suggest eliminating the rate cap for a two year term with a sunset provision requiring its return. This may give policy makers, customers, regulators, and the industry a chance to glimpse at what a free market would look like, and then create appropriate regulations, if necessary, based upon gathered data and facts.

Let’s not make this about a race to the bottom with outdated price controls. Let’s make this about creating value and allowing the professionals in this industry rise to the top by providing fair wages to our workforce, fair prices to our customers and a better environment for all.

Thank you.



### **RTS Testimony:**

Good morning. My name is Adam Pasquale with Recycle Track Systems, also known as RTS. We are a BIC licensed waste and recycling broker in New York City. Our business is focused on diverting recyclable materials from a landfill, analyzing data, & providing recycling reporting.

My family has been on the front lines of the New York City waste industry for over a century. As the fourth generation in this industry, I have a full understanding and genuine appreciation of the logistical obstacles and regulatory complexities that our New York City haulers are faced with on a daily basis. Those truly following the industry know, that progress has been painstakingly slow and it is now time for a change.

Today is an exciting and pivotal moment in our cities history with respect to how we handle, treat, and understand recycling and waste.

As you consider this legislation please keep the following in mind:

- 1. Expanding the playing field.**
- 2. The legislation, as currently drafted for organics recycling, will not work.**
- 3. There is a workable solution that already exists**

#### ***Expanding the playing field:***

Expand the Business Integrity Commission broker's license to allow hauling of organic waste material.

Reforming this regulation will allow new sustainable companies to enter the market, without the burden of traditional waste removal complexities.

Bottom line... expanding the free market for organic hauling will create new jobs, best practices, and spur innovation for an industry in much need of change.

#### ***The legislation, as currently drafted for organics recycling, will not work:***

While we are here to discuss this important piece of legislation, I would be amiss if I did not mention the struggles currently faced by haulers.

Through our research and daily interactions, we know the costs of hauling organics are significantly higher than hauling waste. This is due to transportation, education, validation, and risk of contamination.

Simply put... New York City hauler margins are being squeezed. Haulers are under tremendous pressure to reduce truck traffic, implement evolving standards and regulations, all while trying to service the most demanding city in the world. This creates a polarizing effect between the haulers and the city.

***There is a workable solution that already exists:***

Across the river, these exemptions we are proposing are already being practiced by New Jersey, a state which has some of the strictest regulations with regards to operating an organics recycling facility.

In NJ you can haul organics food waste recycling without an A901 license (which is the NJ equivalent to the NYC BIC license). If the highest regulated state supports this exemption for organics, then surely we can devise a workable option for our city as well.

So therefore; let's talk about a way forward for the City, our environment, and my young son's generation.

RTS publicly supports amending the New York City law to allow the hauling of source separated food waste to be a key to success for the new organics legislation. This allows for NYC haulers and BIC licensed brokers to be more versatile and thrive, as well as open the market for new business.

At the end of the day, we all want to make this a better city & better planet.

Thank you for your time and consideration.

**Testimony**  
**of**  
**IESI NY Corporation**  
**On the**  
**Biennial Review**  
**of the**  
**Business Integrity Commission**  
**Rate Cap for Commercial Trade Waste**

**Submitted to the**  
**New York City Business Integrity Commission**  
**Honorable Daniel D. Brownell**  
**Commissioner/Chairman**

**By**  
**Andrew Moss, Government Affairs Manager**  
**Friday, October 30, 2015**



Good morning and thank you for the opportunity to appear before you today. IESI NY Corporation, a subsidiary of Progressive Waste Solutions, respectfully submits the following testimony regarding a regulatory increase to the rate cap of \$18.27 per cubic yard or \$11.98 per 100 pounds currently in effect today.

IESI is the only New York Stock Exchange listed, publicly owned company that picks up garbage and recyclables in New York City. Progressive Waste Solutions, of which IESI is a subsidiary corporation, is the third largest non-hazardous solid waste management company in North America. We operate in ten states, the District of Columbia and throughout Canada. No other jurisdiction we operate in in North America; not in any state, province, county, city, town or village, is rate capped by a regulatory agency. In all these markets, vigorous competition between corporations creates the natural incentive to provide customers with high quality service at an economical rate.

But that is not why we are here today. Today, we are here to provide testimony that demonstrates how our costs have increased since November 1, 2013, to today. I will break our testimony into three parts: operating costs, capital or equipment costs and other intangible expenses. For context, we have approximately 11,820 customers we service of which 2,771 are now at the rate cap; a 17 percent figure which is a significant number.

#### Operating Costs:

**Union Wages:** We provide good paying jobs for our hard working union employees. Their wages, as per our collective bargaining agreements, have increased 5.25% in the past two years.

**Benefits:** Along with good wages we provide medical, dental, vision, life, and disability insurance. For our non-union employees, Medical insurance increased 5.70% in 2014 and

11.90% in 2015. Dental insurance increased 7.5% in 2015. For our union employees, our welfare fund contributions increased by 8.7% from March 2013 to February 2014 and an additional 8.1% for the period from March 2014 to September 2015. Our pension fund contribution increased by 3.8% from March 2013 to February 2014 and an additional 3.7% from March 2014 to September 2015. A smaller pension fund contribution increased 4.3% and 4.2% in the same respective time periods.

Tolls: The publically available multiyear toll schedule from the Port Authority of NY & NJ shows, Port Authority bridge and tunnel tolls for three axle vehicles rose from an average price of \$38.50 to an average price of \$50.83, a 32% increase.

Postage: Since 2013, the price of a first class postage stamp has increased from \$.46 to \$.49, a 6.5% increase. We communicate with thousands of customers each month through the Post Office.

#### Capital Costs:

Trucks: The cost of a 32 yard rear load packer rose from \$257,752 in 2013 to \$357,422 in 2015, an increase of 39%. Manufactures' equipment upgrades to meet federal emissions standards have directly led to these higher prices and are completely out of our control. Moreover, as a company, we have added additional safety features to our trucks including high intensity lighting packages, side guards, and Qwik-Tip automated loading systems. While we believe these safety investments are vital in what we all know is a very dangerous occupation, and on a side note should be required for all licensees, there is only one way to pay for these improvements and that is through the rates we charge our customers.

Intangibles:

Organics collection is an expensive service and should have either a separate rate or not be regulated. As the Commission is aware, we are not allowed to charge for containers that need to be provided for this service. Compost is collected in either 64 or 35 gallon totes which cost approximately one hundred dollars per unit and only has a two year life expectancy. At 200 pounds a tote, the maximum we can charge by weight is \$23.96. Because there is no route density for this specialty route, combined with the reduced speed limit due to the Mayor's Vision Zero plan, the disposal and operating cost may exceed what can be legally charged. We only offer this service as an "add on" for customers that demand it as part of their overall service. For us, it is not a market we are looking to grow.

As mentioned above, 17% of our customer base is at the rate cap. These customers frankly, have no incentive to produce less garbage since they can't be charged any additional fee. If their rate is allowed to increase, they may decide to become more diligent about recycling. Of course, they are always free to seek another carter to serve them at a lower cost. The result is a more efficient market place.

I am happy to provide the Commission with any and all documentation that I have discussed here today. Thank you for your time and your consideration.