



The City of New York
BUSINESS INTEGRITY COMMISSION
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Michael J. Mansfield
Commissioner/Chair

TRADE WASTE ADVISORY BOARD
MEETING MINUTES

Date: December 16, 2010
Time: 10:10AM – 11:20 AM
Location: 100 Church Street 20th Floor, New York, NY 10007

NEXT MEETING: February 24, 2011, 10:00AM

Attendees:

Michael Mansfield	Chair – Business Integrity Commission
Russell Bixler	Assistant Commissioner for Intelligence - BIC
Ilene Chin	Deputy Commissioner for Operations - BIC
John Curry	Assistant Commissioner for Legal Affairs - BIC
Eric Dorsch	Deputy Commissioner for Legal Affairs / General Counsel - BIC
Hope Kennedy	Chief of Staff - BIC
Chris Mahon	Director of Investigations - BIC
Sarah Nasir	Director of Audits - BIC
Hector Serrano	Assistant Commissioner for Licensing - BIC
Ira Spaner	Director of MIS - BIC
Peter Willumsen	Paralegal - BIC
Damyon Filiberto	Filco Carting, Inc.
John Isabella	Isabella City Carting Corp.
Dennis Gaeta	Gaeta Interior Demolition, Inc.
Ronald Bergamini	Action Carting Environmental Services, Inc.
Ed Apuzzi	IESI NY Corporation
Charles Rotante	Chambers Paper Fibers Corp.

Agenda:

1. Licensees acting as Brokers
2. Decals for Commercial Entities
3. Cardboard Theft
4. Contracts
5. Customer Register

Attendees not present:

1. Josh Knobloch (CitiWaste, LLC)
2. Ken Richards (Great Forest)

Discussion

Damyon Filiberto of Filco Carting was introduced by Commissioner Mansfield as a new member of the board.

Customer Register

Commissioner Mansfield discussed the Commission's desire to ensure the continuing viability of the private trade waste hauling industry as well as to ensure a competitive and healthy market for hauling services. The Commissioner discussed a change in reporting requirements for audited financial statements as an example of reducing the burden on the industry. The Commissioner then discussed the link between accurate and complete Customer Register data and the possible re-evaluation of the rate cap. The importance for multiple City agencies of clean data from the grease hauler register was raised.

Brokers/Licensees

The issue of licensees acting as brokers and carters for the same customers was discussed. The Commission is considering allowing Licensees to provide consulting services to their customers for a fee (at the customer's choice). The Commission is also considering allowing Licensees to broker out the provision of hauling services while considering themselves for these services with the addition of a disclosure form explaining to the customer the possible conflict of interests that might occur.

Decals

The new decals are better than the previous version. The Board did not have any concerns about having carters provide different decals for different types of waste, a question posed to them on this issue.

Cardboard Theft

The Commissioner informed the Board that there is a City wide coordinated effort to crack down on theft of recyclables and that the Commission is working closely with the Department of Sanitation on this issue.

Contracts

The issue of the frequency of use and form of contracts for trade waste hauling was discussed. According to Board members, most customers prefer the flexibility of not having a contract. The issue of contract dissolution was raised and the Commission promised further information on this question. [Please see attached supplement for rules regarding contacts.] The Board requested that the Commission eliminate the requirement that Licenses send a proposed contract by certified mail to each customer. The Commissioner said the Commission would look into this issue.

Discussion of Meeting Time

The meeting of was adjourned by the Commissioner at 11:20 a.m. and the next meeting scheduled for February 24, 2011.

§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. 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 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.

(2) A licensee shall comply with the service and other terms set forth in the written contract or oral agreement with the customer, including the agreed-upon frequency and time schedule for the collection of waste. A schedule agreed to in writing shall not be altered without the written agreement of the customer's owner or authorized representative. When a licensee offers to provide a commercial establishment with trade waste services, the licensee shall provide such customer with a copy of the Commission's informational notice to customers. The licensee shall provide the customer with such additional informational notices as the Commission shall require throughout the term of service to the customer by the licensee.

(3) A licensee shall not discontinue service to any customer, or raise the rates charged to such customer, unless at least fourteen (14) days written notice to the customer shall have been given. No contract for the removal, collection or disposal of waste shall provide that a licensee may discontinue service upon shorter notice.

(b) *Subcontracting, assignment of contracts, mergers and acquisitions.* (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.

(2) A licensee shall apply for review by the Commission before acquiring, selling or merging with another trade waste removal, collection or disposal business and shall seek such review by the Commission no later than thirty (30) days before such acquisition, sale or merger is to take effect. The Commission may issue any order with respect to the transaction consistent with the purposes of Local Law 42. The Commission may, in its discretion, require that either the purchaser or seller post a bond or place money in escrow with the Commission in an amount that the Commission believes, in its discretion, is needed to cover any outstanding or potential fines or penalties owed or that may be owed to the Commission, any customer complaints that have been heard pursuant to section 1-03 of this chapter in regard to which a final determination has not been rendered, and any restitution ordered by the Commission which the selling or dissolving licensee has failed to make to the customer. In the event that the seller fails to post such bond or place money in escrow as set forth in this paragraph, the Commission may seek from the purchaser any and all outstanding fines or penalties for violations of Chapter 1 of Title 16-A of the Code and this chapter, and any outstanding ordered customer restitution.

(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 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 (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; and

(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

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

(f) *Liability for negligence.* No contract or contract amendment shall provide that the licensee is exempt from liability for damage caused by its negligence or the negligence of any of its agents.

(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 putrescible waste removed, recyclables removed, and any additional charges;

(7) where 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;

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 February 1, 2009, such bill shall be on a form approved by the Commission.