

Testimony Regarding the Construct and Implementation of Hardship Waivers for Compliance with Local Law 145 of 2013

Submitted by New Yorkers for Responsible waste Management

June 20, 2018

New Yorkers for Responsible Waste Management, an organization of locally-owned companies that provide a comprehensive range of services related to the collection, processing, marketing and disposal of waste, recyclables and organics generated by businesses in the city of New York – as well as to the Department of Sanitation, offers these comments in relation to the Business Integrity Commission’s proposal to define a “hardship waiver” for its implementation of Local Law 145 of 2013. Our comments address only the licensees of the Business Integrity Commission that provide “trade waste” services, e.g., the collection of putrescible waste, recyclables and organics.

NYRWM generally endorses the testimony submitted by the National Waste and Recycling Association’s New York City Chapter, to the end that any hardship waivers considered and issued by the Business Integrity Commission (BIC) should be few, very short-term, and only for the most extraordinary of circumstances. BIC should avoid creating perverse incentives for a company to delay compliance and then plead financial hardship.

Specifically, we suggest deleting the definition of financial hardship, replacing it with the requirement that as a “threshold requirement” for applying for a waiver that a company provide evidence that as of June 30, 2019 at least 50% of its fleet meets the LL145 requirement, and that it is prepared for its fleet to be substantially in compliance by the target date of January 1, 2020.

To the extent consideration should be given of financial hardship, the information already available to the BIC should suffice, and focus on assessing a company’s debt-to-equity ratio as an indication of its capacity to finance the purchase of new trucks, or retrofit of existing ones.

Finally, a potential situation may arise in 2019 whereby a company with compliant trucks might acquire a company without compliant trucks. Some accommodation should be made for the acquiring company to bring the additional trucks into compliance as soon as is possible.

NYRWM remains willing to work with the BIC to develop a revised proposal that addresses and incorporates the above concerns.



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June 19, 2018

P & P Oil Waste Services LLC

Title: Statement of proposing to amend Title 17 of the Rules of City of NY.

In terms of the financial hardship waiver from the vehicle Emissions Compliance, I believe if the company is doing what is right and following the rules of administrative Code, they should get Some kind of help if it I need it to get the license, because in some circumstance it could be expense to many companies. The period of time that is giving to finish paying sounds valid, and the renew time for the waiver is necessary.

It could take time for a company to accomplish all they need or want, but we all know that things in life get more expenses as year goes by, the amount in terms of increasing up to a 15 percent is might be too much more money, maybe if it is a 7 percent is sound like a more reasonable number to pay. If the engine will be a requirement is 2020 because is technology I know it will definitely be expensive to buy all those engines, and install it, it will take time as well.

Sincerely,

Henry Polanco

President

Marvely Nunez

Manager

Testimony of Thomas N. Toscano, CEO of Mr. T Carting Corp., on the Proposed Rules on
Waivers to Local Law 145

My name is Thomas N. Toscano, and I am proud to be the CEO of Mr. T Carting Corp., a third generation family business that has served New York City for nearly seventy-one (71) years.

I start by stating what the desired outcome for this waiver process is. I believe the City wants compliance with Local Law 145, but does not want to have a harsh punishment to companies that are diligently trying to comply with this law, yet are having extraordinary financial hardship in doing so. That word extraordinary is key here, because replacing an entire fleet of trucks will create financial hardship in just about any company. I submit to you that the proposed rule you offer does not achieve that objective, and I give you three examples as to why.

The first is my own company. In 2011 it went through a bankruptcy that was based on a liability that it had no hand in creating. While the origins of the bankruptcy are not relevant, its consequences are to this proposed rule. As you can imagine, it is extremely difficult for companies with recent bankruptcies to obtain financing, and our case was not officially closed until very late 2013. Yet, in 2014 my company started a plan to comply with Local Law 145. That year we bought four trucks, and it was extremely difficult to obtain the financing for them. Still, every year after that we bought several more trucks with a plan to be fully compliant by 2020 and standing here I tell you that I expect to be fully compliant by early next year, well in advance of the deadline for this law. Trust me when I tell you, my company had financial hardship in complying with this law, yet we are going to comply.

As a 2nd example, if you take an identical situation to mine and move the bankruptcy filing forward a few years, you could have a case where you have a company diligently trying to comply with the law, but falls short by a small number of trucks. There you have a company that does not meet the first requirement for a waiver since the company does not have to spend fifteen percent (15%) of the company's average gross revenues for the past three years. Yet, a comparison is a

Testimony of Thomas N. Toscano, CEO of Mr. T Carting Corp., on the Proposed Rules on
Waivers to Local Law 145

company that has done nothing to work towards compliance and needs every one of their trucks replaced. This third example company has the right to apply for the waiver because there they would clearly surpass the 15% of average gross revenues required to comply.

I trust you see the reversed incentive to the rule you propose. There will be companies actually putting off replacing trucks to ensure they meet the fifteen percent (15%) threshold under this rule. I know that is not what this City wants, but it is what this proposed rule encourages.

Instead, consider the following alternative. Why not have a threshold of trucks already compliant? We have all known about this law for the past five years, and there is another year and a half before compliance is due. It is hard to see a case where a company would not have done at least half of their fleet by now if they were planning to comply. There is your first requirement for a waiver. Second, instead of a percentage of revenues, look at a leverage ratio, like debt to equity, to demonstrate inability to obtain financing. I can throw out numbers of what a distressed company's ratio would be, but the BIC has the financials of all the carters and can make a specific industry determination based on the financial conditions it sees. That gives two strict objective measures, number of trucks replaced, and a debt to equity ratio. The last criteria should be subjective and based on good faith compliance. There the BIC could look at things like when the company started working towards compliance, salaries and dividends of officers and shareholders in the past several years, and other factors showing whether the company was truly working towards compliance or just resting on its laurels with the plan of filing a waiver. In other words, was the financial hardship ordinary or extraordinary?

I believe I have demonstrated to you why the rules you propose do not get you to your desired outcome, and I hope my alternative at least gives you food for thought for rules that will. Thank you for your consideration.

Testimony
of the
NYC Chapter
National Waste and Recycling Association
on the
Proposed Amendment of Title 17 of the Rules of the City of New York
For a Financial Hardship Waiver Pursuant to Section 24-163.11
of the
Administrative Code
Proposed by the
New York City
Business Integrity Commission

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

By
Steve Changaris, NYC Chapter Director
800 679 6263
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Wednesday, June 20, 2018

This written testimony is submitted in response to the Business Integrity Commission (hereafter BIC) proposal to amend Title 17 of the Rules of the City of New York City in order to allow trade waste licensees and registrants to apply to the Commission for a financial hardship waiver as described in 24-163.11 of the Administrative Code. This proposal may be found at:

http://rules.cityofnewyork.us/sites/default/files/proposed_rules_pdf/bic_proposed_rule_for_a_financial_hardship_waiver.5.15.18_with_certs.pdf

My name is Steve Changaris and I am the NYC chapter director for the National Waste and Recycling Association (hereafter the NYC chapter). The NYC 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. The hard working men and women of our chapter collect and manage the waste, recyclables and organics produced by the city's 200,000 plus commercial entities. It is a herculean task done, day-in, day-out, year round - in good weather and bad. We work - as BIC licensees -- to provide excellent service to our customers; and good paying, characteristically union jobs for our employees; and to collect and manage the City's waste, recyclables and organics as safely as possible;

and, to be as good corporate citizens as possible in the neighborhoods and communities of the City we serve.

The NYC chapter supported the enactment of the Local Law 145 of 2013 (hereafter LL 145) that is the cause of this revision to the BIC code. We did so even though it imposed new mandates and related costs on us as permitted and regulated companies doing business in the City. In the case of LL 145, the Council and Mayor agreed to an extended 7 year lead time for us, as BIC licensees, to phase-in the full scale operation of new truck emission requirements. This 7 year phase-in period is acknowledgement of the extensive capital investment that the trade waste industry has in the truck inventory it uses to service the needs of the City's commercial trade waste generators. And, it is also recognition that the upgrade demanded in the local law represented quite a new and additional significant investment in that trucking inventory. Last, in addition to the lead time, the local law also created a process for the BIC to grant a financial hardship waiver from compliance with the new standards to any licensee under specific circumstances. The proposal under consideration here today seeks to enumerate and specify those circumstances.

The NYC chapter is proud of the accomplishment made by the companies in NYC's trade waste industry, to date, seeking to come into full compliance with the new trade waste truck emission requirement of LL 145. So proud in fact that we believe the BIC should only very rarely -- and under very limited circumstances -- be inclined issue any financial hardship waivers for trade waste licensees seeking to be exempt from this new truck emission standard.

Specifically we believe Section 2-09 (b) (1) of this proposal should be deleted in its entirety. We are not persuaded that an expense greater than a 15% average gross revenue for three years is a bona fide financial hardship threshold. Further adopting it would send the wrong signal -- one that rewards delay; and one that works against all the other licensees who have stepped-up and already made investments in new trucks and better emissions control equipment to further the aims of LL 145.

We believe the good faith standard in Section 2-09 (b) (2) about efforts to secure financing should also be deleted. Financing for trucks and emissions retrofit equipment is widely available and lending markets into the waste services industry have been strong since 2013 and look to remain strong for the foreseeable future. Any viable BIC licensee

company, in business in the City today, can get the financing needed to purchase emissions compliant trucks or install the air emissions retrofit technology.

Section 2-09 (c) of the proposed regulation allows for the BIC to issue a financial hardship waiver for a period of no more than 2 years and allows waivers to be granted with expiration dates to expire no later than January 1, 2025. Given the long lead time given in LL 145 to comply with the emissions standards established in the statute, the NYC chapter believes a two year period for such a waiver is too long. Waivers should be granted rarely and only for the shortest 30-60-90 day time periods; while having BIC retain the discretion to extend those periods under exigent circumstances. One such exigent circumstance may be that new trucks or equipment is purchased but on back order from the factory. Six month or longer supply chain kinds of delays in the truck manufacturing industry are often not uncommon. Also, the NYC chapter believes no BIC truck emission financial hardship waiver should be in force after January 2021 – one full year after the date of truck emissions compliance called for in LL 145 back in 2013 when it was adopted.

The NYC chapter believes that the BIC should not issue a truck emissions standard financial hardship waiver to any licensee whose company's trade waste truck fleet is not already 50% in compliance with LL 145 of 2013 as of July 1, 2019.

The NYC chapter also believes the BIC should have this revision to the code, implementing the financial hardship waiver for compliance with new truck emission standards, speak to how it will accommodate the anticipated sale and purchase – over the next year and a half period -- of those licensee companies that decide to leave the NYC trade waste market instead of upgrading to the new truck emission standards of LL 145.

No one can predict with certainty what this sale and purchase process will look like; but anticipating it and planning for it to help the transition work seamlessly seems reasonable to the chapter under these circumstances. The BIC should consider including a provision in this code revision for a short term financial hardship waiver from truck emission compliance – for the inventory or number of trucks subject to the sale (or sales) -- should the acquiring company's existing emissions compliant inventory not be sufficient to maintain the BIC expected level of trade waste collection services to the customers of both its existing

and then for its newly acquired customers. Without such an accommodation by the BIC, the transition to fewer truck emissions envisioned and underpinning the policy cause of LL 145 will only be further delayed.

The NYC chapter appreciates this opportunity to provide this testimony and looks forward to continuing its work with the BIC on this and other trade waste issues in the 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.

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**Comments of Justin Wood, Director of Organizing and Strategic Research
New York Lawyers for the Public Interest**

Good morning. Thank you to Commissioner Brownell and to the Business Integrity Commission for the opportunity to comment on this proposed rule.

New York Lawyers for the Public Interest (NYLPI) has several concerns about the proposed hardship waiver for Local Law 145 compliance in the waste industry.

The purposes of Local Law 145 have been well-documented, and have been echoed in every sustainability plan released by two mayoral administrations since the law passed. In the years since the law was first proposed, the need for serious upgrades to the standards of the fleets in private sanitation have been made even more clear; the impacts of climate change and on our city's communities have been well documented; and the grave safety implications of outdated garbage trucks traversing the city each day and night have become all too familiar.

The bar should be set high for any waivers, because the law sets the environmental bar so low for haulers. Since this law passed, the private waste industry has already had a full five years to bring their trucks up to the minimal 2007 EPA standards-- and by the 2020 deadline for compliance, the waste industry will have had a full seven years to meet this minimal standard.

We believe that any waivers for genuine financial hardship should be non-renewable. NYLPI has reviewed diesel emissions waivers from 14 different states and cities, and none of them grant renewable waivers for heavy diesel vehicles, much less five year or permanent waivers for financial hardship.

Furthermore, we are concerned that by narrowly defining the requirements to receive a hardship waiver, the Commission is missing an opportunity to look at each applicant's track record and commitment to improvement more holistically. As you know, this industry has a troubling record of injuries to workers, crashes, fatalities, and violations of basic labor laws. A recent review of federal data showed that more than half of private sanitation trucks inspected by the DOT were ordered out of service due to safety violations and maintenance problems -- more than twice the national average for such serious violations.

Unfortunately, a failure to make basic upgrades to truck fleets often goes hand in hand with cutting corners on labor, safety, and recycling standards. We applaud BIC's work on developing basic safety protocols for the industry. At a minimum, a hauler's track record and compliance with safety standards should be weighed heavily in the decision of whether to grant a waiver.

Finally, we note that while the millions of New Yorkers affected by diesel emissions are still waiting for haulers to adopt 2007 model diesel engines, private waste fleets in other cities are rapidly switching to near-zero emissions fleets, such as CNG engines, as part of their transition to a franchised waste system. We urge BIC, DSNY, and other relevant agencies to incentivize a similar transition to low- or zero-emissions trucks as we move toward the implementation of our own zoned commercial waste system, and to look at each hauler's fleet holistically – including trucks used for C&D collection, roll-on roll-off collection, and trade waste collection – in evaluating their compliance with low emissions standards.

The time has come to hold our waste industry to higher standards in all aspects of their business, and insisting on cleaner trucks and cleaner air is one of the long-overdue, minimal standards we should insist on as a community.

From: [Arrona, Salvador \(BIC\)](#)
To: [Arrona, Salvador \(BIC\)](#)
Subject: FW: financial hrdship letterfrom emissions compliance
Date: Wednesday, June 20, 2018 11:56:59 AM

From: garbagemanjoel@aol.com <garbagemanjoel@aol.com>

Sent: Tuesday, May 29, 2018 3:17 PM

To: sarrona@bic.nyc.gov.

Subject: financial hrdship letterfrom emissions compliance

i am writing in regards to local law 145,i am a small 3 truck operation doin truck hire and rental's my equipment allthough in good condition are no way capable of adding retrofit emmissions systems the motors and computers will not function and will add to more down time and beak downs.my small profit margin will not allow for this nor is it financialy feasible to purchase a new \$190,000 new triaxle dump truck.In no way can i afford to do so if i cannot comply with the 2020 mandate on equipment/emissions i will simply have to go out of buisness unless there will fanacial support from the bic and dec just cant be done.sincerly joseph spataro.aj carting inc/DBA j&s haulers.lic# 4472. PS there is other alternative for a buisness like mine in this position.631-617-7720.

PS .Also the cost to retrofit the trucks definitely would cost more than 15% of my gross income of the business. That can be proven upon your request.

New Creation Landscapes, Inc.

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June 20, 2018

NEW YORK CITY LAW DEPT.

Division of legal counsel

100 Church Street

New York, NY 10007

ATT: Business Integrity Commission

RE #: 2018 RG 040

To whom it may concern:

I would like to file a financial hardship plea, for the vehicle emissions ruling for the following Reasons.

I am a small landscape contracting firm, I am owner operated and I employ one helper. My truck that is in question is a 2002 Peterbilt , I purchased this truck new 16 years ago. Since purchasing this truck I have put a total of 165,000 miles which would be an average Of 10,000 miles per year however, in the last 5 to 6 years I have put an average of 5 to 6 thousand miles per year which can be verified by NYS inspection.

For me to retro-fit this truck at this point makes no financial sense whatsoever. The cost for this ruling is an absorbent amount or money. My truck has been meticulously Taken care of for the past 16 years it poses absolutely **no danger** to the environment whatsoever. This ruling will cause a serious unnessacery financial strain on my business and my truck. Although, I am trying to understand why the city would pass such a law, it is also my strong Opinion each case should be individually evaluated.

As I have stated I always taken care of my truck before putting on the road and NEVER FAILED A NYS immiton test proving my truck is maintained safe for the environment. I have further researched by talking to numerous mechanics familiar with my truck, and it is their professional advice to leave the truck as is. The change that the city of New York is trying to enforce will bring me mechanical problems since my truck is not designed to accept this new emission system. I would not only be facing a huge expense to make this change but also would be now open to new problems occurring to my truck because my truck is not designed to accept this change. Again, my business cannot afford this financial strain.

Sincerely,

Joseph Pizzirusso, President

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From: [Brian Gaudreault](#)
To: [Arrona, Salvador \(BIC\)](#)
Subject: Financial hardship waiver rule
Date: Tuesday, June 19, 2018 4:23:14 PM

To whom it may concern,

I was hoping to speak and voice my opinion at the upcoming hearing but the notice was only emailed to me two days before the hearing and I have a previous commitment. Adequate time to schedule this hearing would have been fair and appreciated.

I'm writing to express my concern that the proposed rule lacks basic understanding that financial hardship cannot be proven or expressed through the use of examining a company's gross revenue over an average of three years. Gross revenue would not show if a company had the funds after expenses to afford replacing a truck that often costs \$100,000 to over \$200,000, plus tax and interest. A company's financial well-being and ability to take on such a large purchase should be made after examining revenue, expenses, gross profit and a corporate balance sheet.

Regarding proving that a company was unable to secure financing. Securing a loan does not prove that a business can afford the loan it is applying for. As we all know, banks have in the past loaned money to individuals and businesses that cannot afford to pay them back. Therefore, obtaining credit or financing should not be used to prove that a large purchase does or does not put undue financial hardship on a company.

Lastly, this rule seems to lack an understanding of the difficulty of owning a small business and the implications of such a large expense. The desire to decrease pollution should not be unfairly put on owners of trucks that haul waste in NYC. It should be noted that we have four trucks with BIC licenses and one of them is a 2004 truck with very low miles in excellent shape. The replacement of this truck should be done when we are ready, need to and can afford to replace it as it would certainly cost us over \$175,000.00! It should not be forced on us. Given 75% of our fleet currently meets the emissions requirements, shouldn't that be a taken into consideration?

I hope you will reconsider the requirements to prove financial hardship and will take into account the needs and challenges of owning a small business in NYC so that the upgrade and replacement of trucks can take a more gradual and affordable schedule. Being in the Environmental business we understand and want to limit diesel emissions, it just should be done fairly, overtime, responsibly so that businesses [do](#) not suffer unnecessarily as a result.

Thank you in advance for your understanding.

Brian Gaudreault – Vice President



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From: pedutoconstruct@aol.com
To: [Arrona, Salvador \(BIC\)](#)
Subject: Comments on proposed rules
Date: Wednesday, June 20, 2018 10:10:54 AM

NYC Business Integrity Commission,

We have members of this organization for a long time.

As a small business, we have spent a lot of money in renewals and it's not justified.

1. We are a Corporation and we work based off yearly contracts. We do not transport refuse. We don't pursue multiple clients as a refuse company would. We bid on public and private work to do concrete restoration and excavation to install utilities. This work has nothing to do with the original intent of this commission to mitigate the mafia problem in the refuse business. We are a qualified bidder for Con Edison who is our biggest client and our prices are set as per the signed contract. We work in a extremely competitive business where every dollar is important to stay alive. Paying close to \$5000.00 just to have a truck on the road is an exaggerated and unjustified amount. We understand the importance of abiding by the law but we feel this commission has surpassed their purpose. Our background has been checked, we have been cleared, we should not have to incur these annual fees. It's absurd.

2. Small business are suffering to make it and commissions like this one are making even harder. It's overreaching into parts of the industry that it has no business in. Why is a landscaper forced to pay these ridiculous fees? They carry mulch, dirt, plants. How are they supposed to make up all that money? Do you know the cost of insurance, labor, fuel, workers comp, law suits? On top of this, we have a "non for profit" commission squeezing thousands out of everyone it can possibility get. To be honest, this commission has done nothing to help us.

3. This commission at most, should be a one time deal. Not constant financial burden.

4. Renewal fees are outrageous. This comes straight from our profit if we have profits.

5. We dump concrete and fill in approved recycling centers. Not sure why we need to pay a commission to do this. And if we don't, we are fined at some astronomical degree. Abuse! Then we have to spend time and money to try to fight this and hopefully not pay the entire fine. This is a racket! It feels like we have a new type of mafia in town.

6. Once again, we work based on public contract bids. We don't seek multiple clients to pick up garbage and set our own prices. This commission has served it's purpose and it needs to go.

7. Every year we get calls like if we are criminals. Directing us to send in documents and proof of this and that. We do all we can to comply but this is absolutely ridiculous. For the type of business we do, it's not justified.

8. WE ARE BEING TAKEN ADVANTAGE OF.

JOE BODDEN
PEDUTO CONSTRUCTION CORP.
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Testimony
of
Waste Connections
On the
Proposed Rule
of the
Business Integrity Commission
Related to the
Financial Hardship Waiver

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

By
Andrew Moss, Government Affairs Manager
Wednesday, June 20th 2018



Waste Connections, respectfully submits the following testimony regarding the New York City Business Integrity Commission's (the "Commission") proposed amendment to Title 17 of the Rules of the City of New York in order to allow trade waste licensees and registrants to apply for a financial hardship waiver as described in Section 24-163.11 of the Administrative Code.

About Waste Connections:

Waste Connections is the only publicly owned and publicly listed company picking up waste and recyclables in New York City. Waste Connections serves more than six million residential, commercial, industrial, and exploration and production customers in 39 states in the U.S., and six provinces in Canada. In New York City, we proudly service thousands of commercial customers with excellent customer service. We employ over 300 hardworking men and women, 230 of whom are well paid union employees. The majority of our workers live and work in New York City. We operate multiple facilities in both Brooklyn and the Bronx.

What sets Waste Connections apart from others in the industry, and something we are very proud of, is our published list of corporate values that we endeavor to meet every day.

The first and foremost value is safety. We strive to assure complete safety of our employees, our customers and the public in all of our operations. Protection from accident or injury is paramount in all we do. We are the safest waste and recycling company operating in New York City.

Second is integrity. We define integrity as "saying what you will do and then doing it." We keep our promises to our customers, our employees and our stockholders. We do the right thing, at the right time, for the right reason.

Third is customer service. We provide our customers the best possible service in a courteous, effective manner, showing respect for those we are fortunate to serve.

Proposed Rule on a Financial Hardship Waiver:

As stated in the Administrative Code, Section 24-163.11(b)(1)(c), “[t]he chairperson of the business integrity commission may issue a waiver of the requirements ... if the chairperson finds that the applicant of such waiver has demonstrated that compliance with such requirements would create an undue financial hardship on the applicant.” As written, this provision provides that even if the chairperson determines that a financial hardship is applicable, it is within his or her discretion whether a waiver should be issued. Given this broad discretionary empowerment, we urge the Commission to only grant a waiver where it can be shown that the applicant has begun the compliance process, is substantially completed, and cannot complete the fleet upgrade only because a purchase order has been made but actual delivery cannot be made within the statutory time period.

The proposed Section 2-09(b)(1), as currently written, that compliance costs of greater than a 15 percent of average gross revenue over the prior three years, provides companies with an incentive not to upgrade their fleet. If the compliance cost grows, as it will the longer a company waits to order trucks, it will overwhelm the proposed 15 percent revenue threshold and allow dirty trucks to operate for years. The Chairperson should strike this provision and replace it with a “good faith standard” as contained in Section 2-09(b)(2).

The only waiver that Waste Connections would support would be a short term waiver, for fleets already in compliance, that need to add a truck to pick up work acquired through an acquisition of a company that will not be compliant with the current laws time periods.

Finally, we urge that any financial information submitted to the Commission for a waiver be audited financial statements in compliance with generally accepted accounting principles.