

***ANNUAL REPORT OF THE
WESTCHESTER COUNTY SOLID WASTE COMMISSION
FOR 2023***

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INTRODUCTION

In August 1999, the Westchester County Board of Legislators enacted and County Executive Andrew J. Spano signed into law “The Westchester County Solid Waste and Recyclables Collection Licensing Law” (“Chapter 826-a”). Chapter 826-a was enacted following disclosures made during a series of legislative hearings that the solid Waste and Recyclables collection industries in Westchester County were permeated and dominated by organized crime. The hearings revealed that organized crime-controlled cartels produced anti-competitive effects in the industry including, but not limited to, price-fixing; the prevention of new entry into the industry; the existence of unconscionable customer contract terms; and the incidence of corruption. Chapter 826-a was enacted in an attempt to address these problems, with the goals of eliminating the influence of organized crime in the Solid Waste and Recyclables collection industries; ensuring that only individuals of suitable good character, honesty and integrity are licensed to operate within the Solid Waste and Recyclables collection industries; and increasing competition. The Westchester County Solid Waste Commission hereby submits its Annual Report for 2023.

MISSION STATEMENT OF THE WESTCHESTER COUNTY SOLID WASTE COMMISSION

The mission of the Westchester County Solid Waste Commission is to promote the general health, welfare and safety of the citizens of Westchester County by regulating the industry and ensuring that only individuals and companies of good character, honesty and integrity receive and retain licenses to operate in the Solid Waste and Recyclables hauling and disposal industries; increasing competition among haulers and enhancing consumer choice; seeking to eliminate fraud and the influence of Organized Crime and other organized criminal activity and bad actors in the Solid Waste and Recyclables hauling and disposal industries; and ensuring that any and all haulers and transfer stations that are either collecting, storing, transporting and or dumping Solid Waste and Recyclables within Westchester County are in full compliance with the Laws of Westchester County.

DEPARTMENT RESPONSIBILITIES

- To perform background checks on all Applicants and principals seeking a license to operate in the Solid Waste and Recyclables hauling industry in Westchester County so as to evaluate their good character, honesty and integrity.
- To issue licenses for the performance of activities for which a license is required by Chapter 826-a.
- To ensure that only Solid Waste Commission licensees and permittees collect, haul, store and/or dispose of Solid Waste and Recyclables at transfer stations within Westchester County, and that licensees use only trucks registered with the Solid Waste Commission.
- To investigate all complaints by and against haulers that occur within Westchester County.
- To encourage entry into the industry and encourage competition within the industry in Westchester County.
- To partner with the Department of Public Safety and other Law Enforcement agencies on investigations of possible criminal activity related to the Solid Waste and Recyclables hauling industries in Westchester County.

SOLID WASTE COMMISSION LICENSING CATEGORIES

The Solid Waste Commission issues licenses by the type of waste expected to be hauled, collected, stored and/or disposed of in Westchester County.

These licenses are:

Class A: for a hauler that hauls any type of waste, including Municipal Solid Waste, Construction and Demolition Debris, Recyclables, garden and yard waste and Scrap. Class A licensees may also conduct Class B, Class C, Class D, Class E and Class F activities.

Class B: for a hauler that hauls recyclables.

Class C: for a hauler that exclusively handles construction and demolition debris. There are two types of Class C licenses:

Class C-1: for a business that generates construction and demolition debris; and which, incidental to such business, hauls the construction and demolition debris itself.

Class C-2: for a hauler that hauls construction and demolition debris generated by others.

Class D: for haulers who collect, store, transport, transfer, process or disposes of garden or yard waste.

Class E: for a hauler who exclusively conducts a scrap peddler business.

Class F: for a hauler who exclusively collects, stores, transports, transfers, processes or disposes of food waste.

The Commission issues licenses for Solid Waste Brokers, which are persons or business entities that, for a fee, broker agreements between commercial establishments and haulers, or evaluate the waste generated by commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices.

APPLICANTS FOR LICENSES TO HAUL SOLID WASTE AND RECYCLABLES IN WESTCHESTER COUNTY: BACKGROUND INVESTIGATIONS, LICENSING DECISIONS

Chapter 826-a requires that the Commission investigate the backgrounds of Applicants for Solid Waste Commission licenses, and their principals. As part of the background investigation process, individuals identified by the Commission as the principals of New Applicants as well as other individuals determined to be working in a decision making or managerial capacity may be deposed, when an investigation mandates.

Chapter 826-a authorizes the Commission to issue "Permits to Operate" to companies wishing to operate in Westchester County, on a probationary basis for one year, while the investigation continues. Permits to

Operate enable such companies to operate in the Westchester County market during the completion of their background investigations, thereby increasing the number of companies available to work in Westchester County.

During 2023, the Commission continued to receive and review applications from companies seeking licenses to haul Solid Waste and Recyclables in Westchester County. The following constitutes a breakdown of the approved new Applicants for Commission licenses (“New Applicants”) for a total of one-hundred (100) new Permit holders:

NEW PERMITS ISSUED BY CLASS

	Class A	Class B	Class C1	Class C2	Class D	Class E	Class F	Brokers	Total
New applicants	20	2	29	41	5	1	2	0	100

Once the Commission staff deems the company issued a “Permit to Operate” to have completed the term without any outstanding issues regarding their background nor any problematic issues arising during the time period, the Commission converts the Permits to Operate to Licenses.

INSPECTIONS, INVESTIGATIONS & ENFORCEMENT

During 2023, the Solid Waste Commission conducted numerous inspections and investigations throughout Westchester County, at transfer stations and at active construction sites. As a result of these efforts, in addition to paying fines, unlicensed haulers either applied for Commission licenses, or chose to cease operating with Westchester County. Further, as a result of Commission inspections, investigations and related enforcement actions, licensed companies that used unregistered trucks to haul solid waste also paid fines and either registered their trucks with the Commission and paid the required registration fees, or ceased to use them in the County. The goal of these enforcement actions is to obtain full compliance with Chapter 826-a of the Laws of Westchester County by those persons or entities collecting, storing, transporting, transferring, processing or disposing of solid waste and/or recyclables within Westchester County.

Transfer Stations Records:

The Commission staff required transfer station operators to supply lists of companies that dumped waste or recyclables at their facilities. The Commission’s staff utilized these records to identify companies that are not licensed by the Commission and corroborate observations made during inspections at the transfer stations and if appropriate, organized the information so that administrative charges could be authorized by the Commission.

Construction Site Inspections:

Commission staff reviewed the Construction Journal and other relevant periodicals to determine upcoming construction projects in Westchester County. Those construction sites are regularly inspected to ensure that only licensed haulers are being utilized to haul the construction and demolition material off-site for disposal. When unlicensed haulers were identified on a site, contact was made with developers and general contractors to advise them of the Laws of Westchester County so that they hire only haulers licensed by the Westchester County Solid Waste Commission.

Customer Complaints:

The Solid Waste Commission investigated complaints by customers about billing discrepancies, contract disputes with their haulers and service problems and other issues. Customers and haulers were interviewed, the sites in question inspected, and where appropriate, the Commission intervened to help rectify problems in a myriad of ways. Where serious issues were discovered, we conducted long-term investigations into a customer’s allegations. In some cases, investigative findings resulted in Commission enforcement actions or, where appropriate, referral to law enforcement authorities.

Contract Reviews:

Under certain circumstances, the Commission staff reviewed the service contracts issued to customers by licensed and permitted haulers. At times, haulers were directed to provide us with copies of their contracts so that we can ensure that their contracts comply with the requirements of Chapter 826-a, and confirm that their customers received copies of the Customer Bill of Rights. For the same reasons, when interviewing customers, the Inspectors asked to review copies of their service contracts.

Ownership Changes:

The Commission reviewed proposed purchase, sale, asset sale, merger and acquisition transactions, which licensees are required to submit before the sale, purchase or acquisition of their company, or a portion of their company, to determine whether such transaction may have an impact on Westchester County operations of the company and ensure that the Solid Waste and Recyclables industry in the County maintains a competitive balance.

COMPLIANCE AND HEARINGS

During 2023, the Commission issued Notice of Hearings for violations to persons or entities for the following violations:

<u>Types of Violations Issued</u>	<u>Number of Violations Issued</u>
Unlicensed operation	132
Failure to label a vehicle/container	1
Unregistered vehicle	28
Prohibited practice	2
Failure to pay Commission fees	1
Failure to properly display decals	7
Revocation	1
Suspension	1
TOTAL	173

LAW ENFORCEMENT

Municipal Enforcement

The Solid Waste Commission has had a Detective from Westchester County Department of Public Safety assigned on a full-time permanent basis, since July 1, 2015. The assigned Detective conducted background investigations of some of the new applicants as well as some of the renewal applicants. The Detective has the authority to issue summonses and Notices to Appear for Chapter 826-a violations.

Investigations

During 2023, the Commission continued to work with Law Enforcement and other government officials throughout the region incident to Commission investigations, including:

- The New York State Business Integrity Commission
- NJ Department of Environmental Protection Division of Sustainable Waste Management
- The United States Federal Bureau of Investigation in New York State
- The New York State Department of Environmental Conservation (“DEC”)
- The Westchester County District Attorney
- The United States Attorney’s Office for the Southern District of New York

SOLID WASTE COMMISSION BUDGET

The Solid Waste Commission complied with its mandate to operate as a tax-levy neutral agency in 2023. The Commission’s budget is based upon the Application, Background Investigation, Licensing, Registration, and Transfer Station fees charged to Applicants and Licensees, in addition to the collection of fines imposed for violations.

Fees:

For Class A, B and C2 Licensees: Bi-annual application fees of \$350 per Applicant and \$350 per Principal; and annual licensing fees of \$1,000 per Licensee (which includes decals for one vehicle); \$1,000 per vehicle (\$500 for Class B) used by licensee beyond the first vehicle. Initial backgrounds cost \$1400 for the company and \$765 per principal, and every four years a renewal background costs \$1000 for the company and \$550 per principal.

For Class C1: Bi-annual application fee of \$45 per applicant, and annual licensing fees of \$100 per licensee (which includes decals for one vehicle) and \$100 per vehicle used by licensee beyond the first vehicle. Initial backgrounds cost \$1200 for the company and \$650 per principal, and every four years a renewal background costs \$975 for the company and \$550 per principal.

For Class D, E and F Licensees: Bi-annual application fee of \$45 per applicant, and annual licensing fees of \$100 per licensee (which includes decals for one vehicle) and \$100 per vehicle used by licensee beyond the first vehicle. Applicants in this class receive a background with no additional cost to the applicant.

For Solid Waste Brokers: bi-annual application fees of \$100 per applicant and \$100 per principal, and annual registration fee of \$250 per registrant. Initial backgrounds cost \$1400 for the company and \$765

per principal, and every four years a renewal background costs \$1000 for the company and \$550 per principal.

Transfer Station Fee - \$20,000 per year

Transfer Station Fee and Recycling Credit:

Chapter 826-a includes an incentive for the industry to recycle and re-use materials in the form of a recycling credit for transfer stations, based upon the percentage of the materials they accept that they re-use or recycle. The credit reduces the annual \$20,000 transfer station fee, and ranges from a \$500 credit when a facility recycles or re-uses from 76% to 100% of materials. A facility that recycles or re-uses between 0 to 10% of materials is not entitled to a credit.

Final Disposal Site Fee - \$50,000 per year

GENERAL PROTECTION FOR THE PUBLIC BY CHAPTER 826-A

Chapter 826-a was originally enacted to prevent Organized Crime from controlling Westchester County hauling industry. That goal now includes ensuring that only those with integrity and good character participate in the hauling industry in Westchester County, and also the prevention of organized criminal activity in the industry. The goal of the County Executive and the Board of Legislators remains to prevent the recurrence of anti-competitive effects in the industry including, but not limited to, price-fixing; the prevention of new entry into the industry; the existence of unconscionable customer contract terms; and the incidence of corruption. One method utilized in this effort was the inclusion of the “Customer Bill of Rights” (“the Bill of Rights”) in Chapter 826-a.

The Bill of Rights, which must be incorporated into all customer contracts, provides consumers with certain protections that cannot be waived by any agreement between a hauler and a customer. The provisions are the following:

Pursuant to Chapter 826.402(3)(c) of the Laws of Westchester County, the Customer shall be entitled to the following rights which cannot be waived:

- 1. This Service Contract shall not exceed (2) years in duration unless the Customer is a Municipality which, after establishing good cause for such waiver, has received a formal waiver of the contract term limit from the Commission.*
- 2. A Service Contract which provides for automatic renewal shall be terminable by the Customer, without penalty, on thirty (30) days written notice to the Service Provider at any time during any renewal term of the Service Contract.*
- 3. The Customer shall not be required to give the Service Provider more than (30) days notice of its intent to exercise its option to terminate or its option to renew an existing Service Contract prior to the expiration of such existing Service Contract.*
- 4. All Service Contracts shall be terminable by the Customer, without penalty, during the final thirty (30) days of any regular Service Contract term or for the thirty (30) day period following any and all proposals made to a Customer by the Service Provider with whom the Customer currently contracts, where such proposal includes a proposal for a new Service Contract which will commence prior to the end of the regular term of the existing Service Contract.*

5. Any notice of Service Contract termination from the Service Provider to the Customer shall be in writing, unless otherwise specifically requested by the Customer.
6. Any notice of Service Contract termination from the Customer to the Service Provider may be made by the Customer or the Customer's Agent either: (i.) in writing by facsimile or regular mail; or (ii.) orally by a telephone call to the Service Provider's office.
7. In the event that the Service Provider's license or registration to provide solid waste services is suspended or revoked by the Westchester County Solid Waste Commission, the Service Provider shall notify the Customer, in writing, within (5) business days of the suspension or revocation.
8. A Customer who is notified, by the Service Provider or otherwise, of the suspension or revocation of its Service Provider's license or registration may, immediately and without penalty, terminate this Service Contract.
9. In the event of Service Contract termination prior to the end of any regular contract term, the Service Provider shall not require the Customer to pay liquidated damages.
10. The Customer shall not be required to inform the Service Provider of competitive offers which it may receive for the removal, collection or disposal of refuse and recyclable materials.
11. The Customer shall not be required to give the Service Provider an opportunity to match the terms of any competitive offer which may be made to a Customer by any potential competitor.
12. The Customer shall not be required to contract exclusively with the Service Provider named herein for the removal of the Customer's refuse and recyclable materials. However, a municipal Customer may request such an exclusivity provision in its Service Contracts pursuant to its procurement policy.
13. The Service Provider herein shall not discontinue service to the Customer unless at least thirty (30) days advance written notice has been given to such Customer.
14. The Service Provider shall give the Customer no less than (i.) thirty (30) days advance written notice of proposed rate increases or (ii.) sixty (60) days notice of subcontracting or contract assignment. Upon receipt of such written notice, a Customer may terminate its Service Contract, without penalty, by giving fourteen (14) days notice to the Service Provider. Such notice may be given by the Customer at any time prior to the commencement of the rate increase or the implementation of the assignment or subcontracting.
15. The Service Provider shall promptly provide the Customer with any and all informational notices which the Westchester County Solid Waste Commission may develop or prescribe.
16. In the event that the Service Provider herein shall fail to comply with any of the requirements provided in Paragraphs 1-15, above, in connection with this Contract for Solid Waste Services, or shall integrate provisions into this Service Contract which impairs the Customer's rights as outlined in Paragraphs 1-15, above, the Customer shall be entitled to, immediately and without penalty, terminate this Service Contract. In the event that the Customer believes that such a failure to comply has occurred, the Customer is urged to consult with the Westchester County Solid Waste Commission in order to clarify the Customer's rights and obligations pursuant thereto.
17. All Customers have the right and are encouraged to contact the Westchester County Solid Waste Commission to register a complaint against a Service Provider in the event that the Service Provider
 - (a.) fails to provide the services as agreed under the Service Contract,
 - (b.) fails to comply with the requirements outlined in this Customer Bill of Rights or
 - (c.) engages in any of the following prohibited practices:
 - (i.) Makes a false or misleading statement to the Customer or a prospective Customer;
 - (ii.) Threatens or attempts to intimidate a Customer or a prospective Customer;

(iii.) Imposes or attempts to impose liquidated damages upon a Customer for termination of a Service Contract;

(iv.) Retaliates against a Customer or prospective Customer that has made a complaint to the Westchester County Solid Waste Commission or has exercised or attempted to exercise a right under Chapter 826-a of the Laws of Westchester County; or

(v.) Discourages a Customer or prospective Customer, who has a question or inquiry concerning the Customer's or the prospective Customer's rights or obligations concerning solid waste, from contacting the Westchester County Solid Waste Commission."

The Bill of Rights specifically urges customers to contact the Commission if they believe that a hauler has failed to comply with the Bill of Rights, or has failed to provide the services as agreed upon under their Service Contract.

As a result of this provision, the Commission fielded questions and complaints from customers and haulers. Generally, the complaints fell into four main categories: billing disputes between customers and haulers; failure to provide service/service deficiency; misleading and/or coercive sales tactics; and questions about the existence or validity of contracts.

The Commission investigated allegations that sales representatives of Licensees attempted to obtain new customers by making factual misrepresentations about their competitors or about the County's Solid Waste Commission law.

The Commission formally reviewed whether haulers are complying with the service contract requirements specified in Chapter 826-a, including the incorporation of the Customer Bill of Rights into their service contracts. When the Commission's Inspectors met with or spoke to customers, they confirmed that the customers had received copies of the Bill of Rights, among other things. In addition, as a check and balance, we required licensed companies, on a random basis, to supply the Commission with copies of their service contracts for internal review.

In addition, County residents often turn to the Commission with questions about recycling and municipal collection. Whenever the Commission receives such inquiries, the residents are referred to the appropriate County or municipal agencies responsible for handling such issues.

Since Chapter 826-a was enacted in 1999, anecdotal evidence has shown that the Commission's actions have helped keep prices down. Prices are, of course, subject to the vicissitudes of the marketplace and economic fluctuations, such as increases in licensing fees by other jurisdictions; and increases in fuel costs and rates charged by landfills and transfer stations, both within and outside the County. At times, such external economic pressures have caused haulers to increase the prices they charge their customers.

Respectfully submitted:

Westchester County
Solid Waste Commission