



Department of Sanitation | Waste Assessments in CWZ

September 15, 2021

Good morning, my name is Meredith Danberg-Ficarelli. I am the Director of Common Ground Compost LLC, a member of the Save Our Compost Coalition, a member of the Manhattan Solid Waste Advisory Board, and a Board Member of the US Composting Council. Through my work, I build zero waste programs and advocate for the expansion of access to waste reduction services. Our approach to education focuses on materials literacy, the power of individual behavioral change, and the recognition that all people must demand systemic change in order to build a livable and just future for all.

The Commercial Waste Zones plan creates an opportunity for existing haulers to operate in an ever-improving and environmentally responsible way, while supporting the development of a growing green economy, and specifically a sustainable materials economy. The City will benefit by creating space for transparent and efficient infrastructure.

We see that infrastructure as both physical and digital: individuals driving commercial refuse collection vehicles and working on micro-scale organics processing sites alike contribute labor, while clear reporting standards and incentive-based participation allow for more transparency into how waste works. What waste streams are collected? How much material is there? When is my pickup, where does the material go, and how is it processed? What am I paying for? These are the questions the public want answered, and it is our responsibility as innovators and actors in the waste industry to participate in the dialogue.

In this testimony we recommend detailed changes to the draft language, with the goal of encouraging the city to clearly outline the best practices that must be followed to assess waste, and the reporting procedures that must be followed to submit the results of the assessments. We also call for the NYC Business Integrity Commission to dismantle the innovation-inhibiting requirement that waste assessors have the same license to operate as waste brokers and brokerage services. As we outline in our testimony, waste assessment services are unrelated to and should be decoupled from brokering. We also recommend that DSNY use the term 'survey' to refer to waste assessments focused on taking weights and general information about how a business sets out their waste for collection, and use the term 'audit' to refer to waste assessments that dive deeper, sorting waste and gathering more detailed contamination insights. Our recommendation is that the assessment procedures detailed in this rulemaking process focus on waste surveys.

We support and encourage the creation of rules and regulation around waste assessments in NYC. In our decade of working on behalf of business, we have seen resistance from haulers and brokers to provide timely waste surveys. Even when completed, the results of surveys are hard to compare between vendors and between businesses. The lack of consistent practices and standards must change.

A waste survey occurs after business hours, once waste is at the curb. The length and width of piles of refuse are captured, each waste stream's bags are weighed, and observations are made by trained waste assessors. These surveys are coordinated and paid for by the City, and the businesses receive reports that outline their waste streams and detail the weight of waste generated on an average day. Also in the report, the business sees aggregated averages for their industry. For example, a restaurant would get a report that shows the weights of black trash bags, clear recycling bags, and cardboard, as measured on an average day for that restaurant. The report would also show that for restaurants of a similar size, this site is diverting less from landfills, and spending more money, because they are not yet recycling organics.

The CWZ plan will call for recycling and organics collection services to be cheaper than those for trash. These cost incentives create the opportunity to shift businesses' perspective of their waste: from bags that smell and cost money, to containers of materials that, if separated correctly, can help to save money.

In order to effectively paint the picture for businesses of the cost savings they are leaving on the table, we need metrics, and properly executed waste surveys will get us the metrics we need.

With the example of the restaurant used earlier, the waste survey report would demonstrate opportunities for savings. The restaurant could follow the steps to start composting, which would include contacting their hauler and maybe getting some guidance from a zero waste educator. They would start separating food scraps and having them collected as a new waste stream, and with another survey the following year they could see a new color in their waste pie chart for compost. They would see the year over year shift in costs, where less landfill waste lowered total waste expenses. These reports could also show carbon savings, and the equivalencies of trees planted, or cars off the road, that match the impact of new behaviors. The City can see and measure these changes.

DSNY has the opportunity to manage a system in which haulers see the same information that businesses do about waste generation and diversion rates, and billing could be fair and efficient. Haulers and businesses could track waste behavior over time, measure carbon savings, and immediately support the growth of local materials management economies, especially for materials like organics, textiles, and reusable items like glass and takeout containers. If businesses can see the potential for cost savings through shifting behavior, and they respond with demand for environmentally responsible services, growth in these specialized materials economies can follow.

We must do this fairly and in a way that encourages participation and growth. Rather than requiring haulers to pay for waste surveys through a reimbursement system with their customers, DSNY should be responsible for the cost of waste surveys. CWZ encourages haulers to develop innovative partnerships with MWBEs. With a strong push to assess the waste of hundreds of thousands of businesses in the next few years, DSNY can foster growth among minority owned businesses and woman owned businesses like our own, that offer these services and technology

solutions. Existing and new members of the Microhaulers and Processors Trade Association, of which I am a co-founding member, want to participate in a just transition. Waste assessment services are not a huge part of the work these businesses do, but they could be, if the demand for the services exists. There are many existing service providers already able to jump into action.

Waste assessors should be trained through a city-supported certification program. Businesses should be able to request an assessment from DSNY's website, fill out a quick informational questionnaire, get their survey scheduled and executed, and view their report online. They should be able to communicate with their haulers and access additional resources in the same way that they can run payroll or order inventory. Businesses should be able to access guidance from experts at the click of a button, and it can all start if we begin to accurately, efficiently, and transparently measure what we produce.

We support the goal of making it easier for businesses to understand how much waste they generate, in order to facilitate waste reduction, and to ensure that businesses understand the monthly bills they receive for waste collection services. Benchmarking behavior through waste surveys is an essential building block to the circular economy: until individuals and businesses understand their waste behavior, they may not recognize the opportunities that exist to save money by reducing waste, and to share and donate valuable materials, repair items, and divert as much as possible from landfills and incinerators through recycling, composting, and other value recovery mechanisms.

We recommend that DSNY use more clear terminology to define the work that will be done to gather data about business waste. We continue to urge the City's Business Integrity Commission to create a separate license tier for waste assessors, so the essential work of waste surveys can be conducted by a broader array of individuals and businesses without the unnecessary financial and documentation burdens currently associated with becoming licensed to broker waste.

Below, we offer a detailed list of suggested edits to the methodology and procedures that should be followed during waste surveys, to ensure consistency during the data collection process, and to result in standardized metrics. We strongly encourage DSNY to create a waste assessor training and certification program.

- 1. We encourage DSNY to update terminology in the rules to clearly define the process to collect information about waste.**

We're offering our opinion, based on years of experience working in the commercial waste industry in NYC, that DSNY should update the language used in the rules, by using the term SURVEY instead of the term AUDIT, to refer to the work that will be conducted to gather information about the amount of waste that a business generates with in the CWZ system. Generally a "survey" is a visual assessment of waste, which should also include weighing, while

an “audit” is a more in-depth assessment that involves weighing all bags, sorting material, and detailing contamination in different waste streams.

**2. The Business Integrity Commission should create a new license tier for the services that include the collection of waste metrics. We recommend this tier be referred to as a Waste Assessors License.**

Similar to the new Microhauling License that was created to formalize the micro-scale collection of organics in NYC, we encourage the Business Integrity Commission to decouple waste assessments from waste contract brokering, by creating a new license tier.

Waste brokering can involve the management of waste infrastructure, contracts, and bidding processes, while a waste assessment is the physical process of weighing bags of waste to demonstrate waste generation, and identifying contamination to snapshot recycling behavior. Currently, in order to assess commercial waste, an individual or company must obtain a Trade Waste Brokers License through a process that requires extensive paperwork, including personal financial information, and a \$5,000 application fee. We understand why this information should be required for a company that wants to broker waste, but it is overkill for a waste assessor conducting curbside surveys.

This new license should hold waste assessors to the same best practice standards outlined in the final DSNY rules, and should require businesses to sign a disclosure that they will only submit accurate metrics.

**3. DSNY should create a standard questionnaire available online to all businesses, as the required first step for the business to request a waste survey. The questionnaire will serve the purpose of gathering general information about the business, including the type of business, and to identify the best day of the week to conduct the waste survey. This will allow the metrics collected to be more accurate for use in projecting weekly, monthly, and annual waste generation.**

Businesses have widely varying operating schedules, and it is essential that waste surveys are conducted on a day that can be considered “normal”, as opposed to a day when business is slow (which would result in a lower than normal amount of waste generated), or a day that is unusually busy or that accounts for waste generated over a period greater than 24 hours (which would result in a greater than normal amount of waste generated). The waste survey will offer unbiased information about the average amount of waste generated by a business in order to inform waste collection pricing, and the metrics must therefore be collected on a day that most closely represents the average operations of that business, so as not to skew the results.

Additionally, different types of businesses generate different types of waste. Especially in the case of businesses that produce organic waste and textile waste, a questionnaire that identifies the

business type will allow the waste survey to anticipate that there might be textile or organic waste in the bags on the curb. Information gathered in a questionnaire can improve the efficiency and accuracy of the waste metrics collection process.

Other information can also be available online, such as a list of licensed Assessors and their contact information, and businesses should be given the option to select vendors that are small businesses and MWBEs.

If executed effectively, a system of waste surveys that aggregates metrics based on the size and industry of a business will create a growing database of industry averages, which can then be used to benchmark future assessments. A database of industry averages could help brand new businesses understand what to expect, budget for waste, and identify opportunities for waste diversion before they even begin operating.

See Appendix A for a sample questionnaire.

**4. DSNY should clearly detail the procedures that should be followed during a waste survey, and should require that specific data entry and submission formats are followed to ensure that the metrics that are submitted are standardized. We offer the following suggestions and recommend that DSNY update sections 20-29 of Subchapter B of Chapter 20 of title 16 of the rules of NYC to reflect additional details:**

- Sections 20-19 (a): Edit language, use the term “survey” instead of “audit”, to refer to the type of waste assessment that involves the weighing and counting of bags to gather general information about the amount of waste that a business generates.
- Sections 20-19 (b)(1): Work with BIC to create a tier of license for waste metrics collection, separate from waste brokering, like a Waste Assessors License
- Sections 20-19 (b)(2)(ii): Add “cardboard” as a “designated recyclable material”, separate from paper
- Sections 20-19 (b)(2)(iv): With the creation of a pre- waste survey business questionnaire, the waste survey can anticipate whether textiles or organics will be a significant portion of the waste stream, and the resulting survey report can offer detailed recommendations to the business regarding waste diversion options
- Sections 20-19 (b)(3)(i): Reconsider the structuring of survey tiers: rather than using square footage to determine the scale of the survey, use a combination of the business’ industry, square footage, and other results from the pre- waste survey business questionnaire. We recommend using the same approach as was used for the 2016 DSNY study of private carting that assigned 8 types of generators, based on the BIC customer register. Businesses of all sizes must be included. The percentage of bags that are opened

during a waste survey should be defined and standardized in the best practices section of these rules. The questionnaire will give the assessor an idea of what to expect (and roughly which pricing tier the survey falls into). For example:

- Small survey (estimate < 20 bags total (including all black, clear, bundles, containers, and tote(s))
  - Weigh 100%
  - Open 100% and make observations
  - *A survey outside of a bodega could take just a few minutes - the assessor would take photos, measure the set out, weigh the bags/piles/bins by each material type, and open (and re-tie, or re-bag) black bags if needed to identify contamination.*
- Medium survey (estimate between 20-50 bags)
  - Weigh 100%
  - Open and observe 50% of bags/containers/etc per stream
- Large survey (estimate > 50 bags)
  - Weigh 100%
  - Open and observe 25% of bags (etc) per stream
- Containerized business survey (greater than 50 bags and businesses that containerize waste)
  - Standard procedures and requirements must be developed for larger businesses
- Sections 20-19 (b)(3)(ii): The reference to “standard weight to volume conversions” should be followed by those conversions, for each waste stream.
- Sections 20-19 (b)(3)(iii): Update the prohibition language on “fish scales (hand-held scales with hooks)” to more clearly define the prohibition. There are excellent hand-held, compact scales that have accurate weight readings and would be very useful to waste assessors in the field. There are less accurate “spring” scales that we consider less accurate.
- Sections 20-19 (b)(3)(iv): The term “best practices” is used in this section, but it is not clear which practices this term is referring to. Which practices? Where are they detailed?
- Sections 20-19 (b)(4): This section states that “contamination” must be documented. If the survey procedure is to weigh and count bags, it will be challenging to have the Assessors identify contamination without a much more clear set of best practices. The ability to identify contaminants is not innate - it is something that comes with training and experience. Our recommendation is that bags be opened and contents observed to confirm and characterize contamination. This will allow assessors to use images to support the metrics in the report. DSNY must create a certification and training course, see #5 in this testimony for more information.
  - Can contaminants be seen through a clear bag? If yes, take photos. If bags are black, the Assessor should take note, and should open the bags to observe.

Assessors must have extra bags with them, in order to be sure that no messes are made during the survey: not all bags are tied in a way that can be easily or efficiently opened, and the waste Assessors might need to tear open a bag in order to document contamination.

- If a bag must be opened to document contamination (for example recyclable materials in the trash), the individual should place the bag inside of a second bag, so that the new bag can be tied off and set back to the curb for collection once the assessment is complete.
- Sections 20-19 (b)(5)(i): This section refers to “actual weight measurements and quantity counts of all waste streams”. We recommend that these two metrics be separated into different sections, so that actual weight measurements are entered as a data point separately from quantity counts. We also recommend that “quantity counts of all waste streams” be more clearly defined, as, for example, “quantify counts of all bags of all waste streams, broken down by the color and/or type of each bag, tote, bin, container, and/or bundle and the number of each” or with language that is equally as detailed, descriptive, and clear
- Sections 20-19 (b)(5)(ii): This section refers to using the waste survey results to estimate monthly waste generation for that business. This section of the report should integrate information from the business questionnaire, including the day of the survey and why that day was selected, the calculation used to estimate weekly and monthly generation, including the number of days a week the business is open and any assumptions made, including but not limited to the number of weeks estimated in a month (for example 4.33), and any % formulas applied to the metrics from the waste survey
- Sections 20-19 (b)(5)(iii): This section references “contamination” - see notes above about the challenge of identifying contaminants in a way that is efficient and does not cause a nuisance for the business or the general public. This section must more clearly define how contamination should be assessed and reported on
- Sections 20-19 (b)(5)(v): We recommend that in addition to photos of the waste setout, that measurements be taken of the pile as well, including the approximate length, width, and height of the pile or piles, clearly marked by the waste stream (i.e. black bags = trash)
- Sections 20-19 (c)(4): see comments below regarding reimbursements

Additionally:

- Using the initial questionnaire as a starting point, the Assessor should mark whether the waste streams being separated are those required by law, or additional opt-in streams that the business has chosen to use.

**5. A certification course for auditors must be created, data should be reported to a central database, and businesses guided to reduce waste and recycle more.**

To support a new and transparent commercial waste landscape, a waste Assessor certification course must be created that will train independent contractors and businesses to become certified third party waste Assessors. With the standardized metrics that come from an organized waste survey effort, DSNY can develop standard assumptions about waste streams across different business types and sizes, and can even better oversee and enforce fair pricing.

In addition to learning best practice waste survey procedures and reporting requirements, this certification course can educate about zero waste, and offer these Assessors a framework through which they can provide a wide array of waste reduction and behavioral change recommendations to businesses. DSNY has an opportunity to create an onramp to the circular economy for New Yorkers through this certification program.

To meet our citywide Zero Waste goals we need all hands on deck. The more certified waste Assessors in our communities, the more opportunities there will be for businesses to understand their waste services and what steps they must take to reduce waste. Developing a Waste Assessor Certification would increase equity and accessibility in the waste sector, give us a clearer picture of the state of waste in our city, and offer an innovative opportunity to enter our city's waste sector.

## **6. Reimbursements**

Buildings larger than 15,000 sq ft are not referenced in this rulemaking process, and no reimbursement tier exists for buildings of this scale. Commercial office buildings and large commercial facilities are an essential piece of NYC's waste puzzle and must be included in this rulemaking process. A reimbursement ceiling could be applied to buildings over a certain size. The surveys would look different, focused more on site visits during or after hours, and an analysis of existing hauling procedures, because most facilities of this size do not set waste out to the curb in the same way that smaller operations do. They should still be included, and DSNY should offer the framework that assessors would follow to conduct these assessments.

Additionally, if reimbursements are included in the final rule, there must be language that accounts for inflation as time passes.

Because of the benefits of standardized third party waste surveys as outlined above, it is in the City's best interest to encourage as many businesses to participate as possible. If haulers are required to reimburse for waste surveys, they will likely not strongly encourage their business customers to request a survey. If the City is instead responsible for these reimbursements, haulers will not feel that burden.

Once: (1) DSNY has more clearly detailed the reporting and metrics submission requirements that will underline the waste surveys; (2) BIC has agreed to remove the barrier to entry for small businesses to participate in this waste assessment industry by decoupling waste assessments from

waste brokering through the creation of a Waste Assessor License; (3) clear procedures are detailed for the surveying of all types of businesses; and (4) a training and certification program has been built for waste assessors, DSNY should host existing waste assessment service providers to do a final review of the reporting requirements and to identify the appropriate pricing tiers for these services.

Thank you for taking the time to review our comments.

Meredith Danberg-Ficarelli

Director, Common Ground Compost LLC

## Appendix A: Business Questionnaire | Waste Survey Request Sample

### General Info:

1. Name of business?
2. Square footage?
3. Generator type? [based on DSNY 2016 CWZ]
  - a. Retail (Non-Food)
  - b. Retail (Food)
  - c. Office/Professional
  - d. Restaurant
  - e. Manufacturing
  - f. Wholesale
  - g. Hotel
  - h. Other
4. Days of operation?
5. Time Business opens?
6. Time Business closes?
7. What time does the last employee leave at night?
8. What time does most of the daily waste generated get set out at the curb?
9. Is there a last round of waste put out right at closing?
10. What time does your hauler usually come?

### Waste Info

11. What streams do you currently separate into?
12. What night are those streams collected? [Will get info on each stream - trash, recycling, cardboard, compost, (this info and some from above could be verified by BIC data or directly with a hauler before an audit).]
  - a. Sample answers for each stream (checkbox- this might be better in a table format)
    - i. 7 nights/week
    - ii. Weekdays only (Mon-Fri)
    - iii. Monday
    - iv. Tuesday
    - v. Weds
    - vi. Thurs
    - vii. Fri
    - viii. Sat
    - ix. Sun

13. Approximately how much material per stream? [This question will need to be formatted for different setout types for each waste stream, including bags, bundles, totes, containers, and other setout types.]
14. Where do you set out waste? (ie. directly in front of the entrance, to the left of the entrance, could use google street view to specificity)
15. Are there days on which you generate more waste, (ie what are your prep days or delivery days)?
16. What day of the week is an average day of operation?



**Committee on Sanitation and Solid Waste Management  
September 15th 2021**

Thank you for the opportunity to provide testimony this morning. My name is Lynda Nguyen, and I am the Senior Policy and Research Analyst at ALIGN: The Alliance for a Greater New York. ALIGN is a longstanding alliance of community, labor, and environmental justice organizations dedicated to creating good jobs, vibrant communities, and an accountable democracy for all New Yorkers.

For the past 6 years, ALIGN has been coordinating the NY Transform Don't Trash coalition to push for a more equitable and safe private waste management system. We commend the city on its commitment to implementing the Commercial Waste Zones program (CWZ). CWZ implementation is essential to reducing New York's GHG emissions and reaching the city's zero waste goals. The program will reduce truck miles, increase recycling and organics collection, create good green jobs, and will make our city's streets safer and cleaner.

We are concerned that the latest rules proposing waste auditors to be "licensed trade brokers" with the city's Business Integrity Commission (BIC) will have a detrimental impact on the many women and minority-led businesses that make up the waste auditor market. As stated in previous testimony regarding this requirement, small sustainability-minded auditing businesses - which are predominantly women and minority-led - will have to pay prohibitively expensive licensing fees in addition to undergoing unnecessary procedural hoops. This has prevented, and will continue to prevent, local, sustainable businesses from playing a critical role in commercial waste management. Hindering the growth of this waste auditor start-up sector undermines the sustainability and equity goals that are fundamental to the CWZ law.

We support the goal of making it easier for businesses to understand how much waste they generate in order to facilitate waste reduction, and to ensure that businesses understand the monthly bills they receive for waste collection services. We urge the BIC to create a separate license tier specifically for waste auditors. We recommend this tier be referred to as a Waste Metrics Collection License, and to: not include criminal background checks; require a licensing fee that is affordable for small, local waste auditing businesses; and include either a 1–2-year licensing fee exemption for newly formed businesses, or a pilot program that supports newly formed businesses. This will allow the essential work of waste generation assessments to be conducted by a broader array of individuals and businesses without the unnecessary burden of becoming licensed to also broker waste.

The current rules regarding reimbursement requirements are complicated and place an unnecessary logistical burden on both the carters and the commercial establishments they serve. Requiring carters to reimburse their contracted commercial establishments for waste audits may create disputes, and might discourage small business owners in particular from seeking or obtaining audits and reimbursement. We support the proposal for the Department of Sanitation to create a simpler reimbursement system that would increase the annual administrative fee of each contract awardee to cover the anticipated costs of waste audits. This program would also require DSNY to contract qualified independent waste auditors to provide their auditing service to businesses.

This streamlined approach aligns with the city's zero waste goals, and will alleviate businesses and haulers from the undue burden of negotiating reimbursements. The city will be able to centralize critical commercial waste generation data collected by auditors, which can also be used to inform city climate metrics.

To meet citywide zero waste goals, we need all hands on deck. The more certified waste auditors in our communities, the more opportunities there will be for businesses to understand their waste services and what steps they must take to reduce waste. It is critical that rules regarding waste auditors are informed by the needs of the many small businesses led by women and people of color to increase equity and accessibility in the waste sector.

**Fw: [EXTERNAL] question for submission hearing**

NYC Rules (DSNY) &lt;nycrules@dsny.nyc.gov&gt;

Tue 9/14/2021 09:04

**To:** Billy, Christine (DSNY) <CBilly@dsny.nyc.gov>; Bland, Justin (DSNY) <jbland2@dsny.nyc.gov>

Comments

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**From:** Billy Huang <flashrecycling@gmail.com>**Sent:** Thursday, September 9, 2021 11:29**To:** NYC Rules (DSNY) <nycrules@dsny.nyc.gov>**Subject:** [EXTERNAL] question for submission hearing

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- 1.. Will the calculation of the proposed annual fee take into account the differences between the localized zones as the business revenues/waste generation differ drastically across different regions?
2. The proposed annual fee puts 100% of the financial responsibility on commercial carriers rather than customers. Will the city's rulemaking authorities propose any limitations as to fee increases in service agreements in areas other than waste disposal per volume? If so, what will these proposals be & how soon can they be released?
3. Section 3(c) of the proposed rule allows customers to essentially only seek one audit per commercial carrier. Please elaborate on this rule, and reimbursement requirements.
4. For customers of commercial carriers that opt-out of service agreements, will commercial carriers still be responsible if compelled to an audit demand by those customers or for any form of arbitration?

Regards;

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## Testimony of Thomas N. Toscano, CEO of Mr. T Carting Corp., on the Proposed Rules on Waste Audits

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 the New York City waste and recycling market for more than seventy-four (74) years.

Based on my reading of the proposed rules, I believe the City's goal is to allow customers to get an independent evaluation of their waste and recycling flow that is accurate and give the customers information that will help them save money and recycle more. The proposed rules do not accomplish these goals.

I will start with an analogy. Every property owner in NYC pays property taxes. The system is relatively simple, properties are valued, there is a property tax rate, you multiply the two and you get the tax due on the property. What would happen if the City allowed anyone to get a license to evaluate the property values and those evaluations were rebuttable presumptions the City now had to disprove? Would the City get independent and accurate valuations? No. The city would be inundated with low ball assessments costing it millions to disprove. That situation is what is now being proposed for waste audits.

The first and largest issue here is the lack of independence by the trade waste brokers. There is nothing in the rules that proposes oversight of the brokers. You have created every incentive to come up with the lowest estimate, not the most accurate one. What happens if the broker repeatedly gets it wrong? In addition to getting paid by the carter, the carter is the one that must clean up the mess with no penalty to the broker. There are no standards, qualifications, and prior experience required of the brokers. Further, with the broker being paid by the customer and the customer seeking reimbursement by the carter, a broker could collect thousands of fees and be long gone when issues come up regarding the audits.

The second issue, which is closely related to the first, is the set time period in the rules for these audits. The rules propose measuring a 24-hour period and then extrapolating that to a billing period. It was clear to me from this section that whoever drafted these rules has no understanding of waste and recycling streams and how they differ over a week. Waste is the heaviest on Sunday night. This is because most restaurants are not picked up on Saturday night and they hold the garbage for the next night. Many lighter accounts are closed Sunday or have reduced hours, so the number of accounts picked up on Sunday night is lower despite the weight being heavier. Wednesday night is usually the lightest night of the week because

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the few days prior to that are when restaurants are the least busy. All of this varies by the type of account, but I hope you are starting to see why measuring one day to determine an audit amount is crazy. Holidays and weather events further skew the data and need to be avoided. One week is required for most accounts and many will require two weeks. Then you will have conversations with customers where they will disagree and sometimes you will do a third week, especially if there was an anomaly in one of the first two weeks. In short, one day will not produce an accurate audit for almost every account.

The third issue here is the price cap. Allowing a cap paid for by a third party is going to become the price. \$500 for a one-day audit of a small store does not make any sense. Most of these locations produce a bag or two a day and a small bundle of recycling. A small restaurant would be more labor intensive because they would produce much more material, especially on a busy day. The type of establishment will be much more of a driver of the amount of material that needs to be measured, not the square footage. For that reason, the cap should have some relationship to the monthly bill. For example, how about the lesser of \$500 or the prior months waste and recycling bill? This will ensure a \$50 per month account is not overcharged (and the carter that must pay it).

For the reasons stated, the proposed rules, along with the dispute resolution section, is going to keep the Department busy with disputes and I project most of these audits will be disputed. Wouldn't it be better to have a system that gets most audits correct in the first place? To get to that place, the Department should issue RFPs in each the zones to 2 or 3 independent auditors the same way they are doing so with the carters. Evaluating the brokers and then giving them a franchise will allow the Department to monitor and issue fines when brokers repeatedly get the audits wrong or engage in unethical behavior.

Even if my suggestion is not taken regarding RFPs for the brokers, several aspects of this need to be clarified. Can brokers audit their own accounts or will there be conflict rules? Can an awardee also be a broker? Does it matter if the awardee is a broker in a zone where they are providing waste services or can they be a broker only in zones they are not an awardee? How long are these audits good for? If a brand-new restaurant gets an audit on its second day in operation, does the rebuttable presumption still hold three

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months later when their business is booming and there is a line to get in? What about seasonal businesses? What about restaurants in Manhattan that get slower in the summer when many are in the Hamptons?

Lastly, please clarify these aspects of this and finalize these rules before issuing the second part of the RFP. As they stand now, these rules will create greatly increased costs to the awardees, not just for the fees to the brokers the carters must pay, but for the time that will be required to correct most of the issues created by a system that bears no relation to the reality of the commercial waste and recycling market in NYC.

## **Comments from Stephen Leone, President, Industrial Carting on DSNY Proposed Rule Relating to Waste Generation Audits in Commercial Waste Zones**

Industrial Carting is a Brooklyn-based, third generation waste and recycling removal company, serving New Yorkers for over 90 years. Along with its sister company which owns a recycling facility, Emerson Recycling Corp., Industrial Carting is located in Clinton Hill, Brooklyn and operates primarily in the proposed Brooklyn West Commercial Waste Zone.

The company has been consistently committed to providing the best customer service possible, while minimizing our impact on the environment and quality of life. We have been ahead of the curve, evident through our environmentally friendly fleet of cab-over trucks, equipped with onboard 360 camera systems and side guards, and our work to reduce emissions and miles travelled, improve pedestrian and cyclist safety, reduce noise pollution, and more.

Ultimately, we are pleased to see City leadership and the Department of Sanitation (DSNY) working to improve the commercial waste hauling system and advance public health, safety, and the general welfare of all New Yorkers.

In order to ensure the City meets its goals through this program, and businesses are best served, we advocate for a scoring advantage for locally owned and operated carting companies. We believe that local companies will be more accountable and responsive in customer dealings, and that operating in their local areas will add an extra incentive to operate safely and sustainably. Additionally, rules promulgated through this process must be accommodating to awardees. Considering that there is no guaranteed market share within a zone, it should be taken into account the potential burden the fee structure and waste audits have on both customers and smaller carters.

It is also necessary to note that there need to be more guard rails against predatory pricing. The Department must also promulgate rules that acknowledge and address downward fluctuations in the value of recyclables, and provide awardees protections against a recycling market unable to fully accept all volumes of materials collected.

### **Specific Responses to Proposed Rules**

#### **§ 20-03 Fees**

##### **§ 20-03 a: Regarding Annual Fee**

§ 20-03 Section a outlines that fees will be “\$107,148.73 per zone award”

This fee structure can be unfair and burdensome on particular carters because the market share within each geographic area will be determined via competition amongst the three awardees and is unlikely to be evenly distributed. The burden on an awardee that achieves a 10% market share will be five times greater than that of its competitor with a 50% market

share. Perhaps the annual fee in each geographic area should be based upon market share, either by revenue or number of customers.

### **§ 20-29 Commercial Waste Generation Audits**

The proposed rules and guidelines around waste generation audits lack clarity in regards to audit oversight and integrity. The proposed rules do not explicitly govern the relationships between awardees or customers with trade waste brokers allowing for potential conflicts of interest among the parties. Furthermore, there is no outline for continuous oversight of the audit process until there is a dispute to be resolved by the Department of Sanitation.

#### **§ 20-29 b: Regarding Audit Waste Requirements**

**§ 20-29** Section b.1 outlines that “the commercial waste generation audit must be performed by a person registered by the business integrity commission as a trade waste broker.”

A potential conflict could arise if a trade waste broker is also an awardee.

**§ 20-29** Section b.3 outlines that “containerized waste weights may be estimated using standard volume to weight conversions.”

The method of weight measurement for audits proposed by the rules is the standard volume to weight conversion. This method is challenging for purposes of establishing a business’ weight usage because waste density varies greatly based upon industry and loading practices. The volume to weight conversion is inapplicable and will not allow for an accurate measurement of discarded waste.

**§ 20-29** Section c.1 outlines that “The commercial establishment does not need to have been a customer of the awardee at the time of the audit in order to seek reimbursement.”

The proposed rules do not outline the method by which audit reimbursements will be tracked, potentially allowing for customers to receive multiple reimbursements from more than one awardee.

Wednesday, September 15, 2021

Via Email: [rulecomments@dny.nyc.gov](mailto:rulecomments@dny.nyc.gov)

Dear DSNY CAPA Process Administrator:

The NYC Chapter of NWRA (hereafter the chapter), submits these written comments, in addition to our oral comments made earlier today, on proposed DSNY regulations for the city's coming commercial waste zone system regarding: 1) commercial waste generation audits; and 2) commercial waste zone awardee fees to be paid to the city; and 3) bicycles; and 4) vehicle maintenance and condition requirements.

As we have said before generally when commenting in CAPA proceedings, we hope our thoughts and perspectives reveal well for city officials the kinds of issues we -- as trade waste licensees and future commercial waste zone awardees -- will encounter when all manner of proposed rules under consideration are eventually adopted and implemented.

We believe in high standards and performance. That said, we do not believe that the sections of these proposed regulations regarding commercial waste fees and audits will contribute significantly to improve trade waste operations in NYC under in its coming commercial waste zone system. Accordingly, we urge the city to not move forward and adopt these sections of this proposal.

### **DSNY Proposed Rules**

#### **Section 1, Subdivision b of section 20-01 of title 16 of the rules of New York City**

*No comment (regarding proposed bicycle definition).*

#### **2, Subchapter A of chapter A title 16 of the rules of New York City**

**20-03 Fees** – The proposed new \$107,148.73 per zone award fee will be charged all commercial waste zone awardees whether they are awarded the right to work in one (or more) of the 20 commercial waste zones or as one of companies awarded the right to collect containerized trade waste citywide. The creation of this new fee is linked directly to the changeover from an open market, competitive commercial trade waste system to a city government managed, request-for-proposal, competitively bid commercial waste zone system. The millions of dollars of these new fees to be paid by awardees are costs never before factored into Business and Integrity Commission approved commercial trade waste rates for service. These new fees will ultimately be paid for by our customers, the city businesses and their customers that buy and need trade waste services from our companies. Since these fees have never been assessed before and since actual cost of service in the commercial waste zone system is unknown at this time, we urge the city to not move forward with these new fees and to save trade waste businesses and their customers from paying these millions of dollars in new city administrative fees.

**20-29 Commercial Waste Generation Audits** – We view this section - at best - as well intended but never-the-less call for it to be withdrawn entirely from further consideration. To our way of thinking this section of the proposed regulations is as a non-solution in search of a non-problem. The companies in the city that provide trade waste services today are all licensed and vetted for honesty and integrity and for the skills, knowledge and abilities to operate a fully regulated private trade waste business by the city's Business and Integrity Commission (BIC). In addition, before any one of these currently vetted BIC trade waste companies has access to any city business in need of trade waste services in the city's new

commercial waste zone system, they will have each passed all the screening and performance criteria set by the city in the request for proposal process to win the right to operate in a commercial waste zone. Further this process can only be viewed as producing the best of the best service providers for city businesses needing trade waste services. This is so since each zone award will be competitively bid, negotiated, and eventually contractually agreed to. After all of this, and after all of the city's best and professional efforts in these regards, it is very difficult to make a "reasonable person's case" that any awardee would perform in a manner and treat potential and existing trade waste customers unfairly and never to a negative degree that would require this kind of byzantine, costly and ineffective waste audit process.

As professional trade waste service providers we are tasked to know and to operate within the rules and regulations of the city's integrated materials management system. We know there is a role for us as service providers and there is a role for our customers too. While no one knows exactly how these roles will look in the city's new commercial waste zone system, it is abundantly clear that the new system has retained customer choice as a key principle in its design. Customer choice is a good thing for moderating cost of service in any venue, as well as to help ensure high customer service levels and satisfaction. Currently we routinely work with our customers to address all manner of their concerns with our providing them trade waste services. City trade waste customers are free to have waste audits and to retain and to pay for the services of others to conduct them with the laudable goal to fully understand their waste generation\waste generator profiles. We applaud this and know it helps eliminate waste from being generated in the first place; it helps reduce waste volumes needing disposal; and it promotes diversion and recycling of vast amounts of other materials too.

To be clear we are not opposed to waste generation audits; rather, in this case we are opposed to the way in which this proposed city commercial waste generation audit process is contemplated and designed by this section of the proposed regulations. In my professional 30 years of work in this industry I know of no such practice where the waste services provider, by system design and regulation, is required to pay for its customer's third party conducted waste generation audit. The requirement to do so, as proposed, undercuts the consistent, clear and historical customer responsibility, as the generator of trade wastes, to be integrally responsible for the proper management of the wastes and materials it generates. As such, by its design, the 3<sup>rd</sup> party audit procedure in this proposed regulation should simply be passed over by the city and not enacted.

There are many other features of this proposed, overly prescriptive waste generation audit regulatory process that cause us, as potential commercial waste zone awardees, great concern as well. Such issues include: the proposed typical day snapshot view of a commercial account's waste generation (the snapshot time standard is simply never going to be representative of a generator's trade waste volume; current BIC practice requires a longer period for such trade waste volume characterizations); that 3<sup>rd</sup> party waste auditors have no operational standards or credentials and there is no language in the proposal to prevent conflicts of interests or to adequately address them when they arise; that zone awardees will have historical, longstanding legal contractual rights impaired by findings of such 3<sup>rd</sup> party auditors, without fair and reasonable recourse (legal observers have let the chapter know this design flaw in the regulation may well be its undoing upon legal challenge when adopted, put in practice and enforced); that requiring trade waste service providers to pay the cost of a 3<sup>rd</sup> party auditor creates a new incentive that will undermine trust and viable working arrangements, hammered out and mutually agreed to, between service providers and customers -- without providing any benefit but will impose new sunk kinds of administrative, transactional, non-productive expenses for all; that the proposed regulation creates a rebuttal presumption of accuracy for the findings of the 3<sup>rd</sup> party audit, against the

trade waste service provider, which again will be disruptive to sound relationships between service providers and customers (this is part of the flawed legal underpinning argument we went on record with regarding this proposed regulation noted above); that the creation of this audit process and service provider payment procedure is structured improperly as it should be only a tool of “later resort” used to remedy a dispute only after reasonable due diligence attempts to resolve outstanding concerns are made by trade waste service providers and customers – not as a first, or without cause, arbitrary fishing for a problem exercise; that this 3<sup>rd</sup> party audit procedure will be a new cost driver for commercial waste zone trade waste services and it will be paid for by all trade waste customers for the benefit of few waste generators but certainly, mostly for the financial benefit of the 3<sup>rd</sup> party waste auditors; the 3<sup>rd</sup> party audit fee schedule as proposed is unfair and too costly.

#### **20-24 Vehicle maintenance and condition**

The regulatory requirements for vehicle maintenance and condition are supported by the chapter and are sound and reasonable operational standards for all commercial trade waste companies awarded commercial waste zone bids.

The chapter last will go on record here restate its call to withdraw, or significantly re-write this proposed regulation. We urge the city to signal or finalize its decision here well in advance of when the next, coming round of the commercial waste zone request for proposals bidding process is released for potential bidder review, processing and response submittal to the city. The costs associated with just this 3<sup>rd</sup> party audit proposal are significant and unknown; and if not withdrawn, or significantly re-written, will add unnecessary procedures and uncertainty to the bidding process and operation of trade waste businesses in the city’s new commercial waste zones, to the benefit of no one.

Thank-you for your review and consideration of our comments.

Respectfully submitted,  
/electronically signed/ with hard copy in USPS 1<sup>st</sup> class mail  
Steve Changaris  
NYC NWRA Chapter Director

**Comments Submitted by Justin Wood, New York Lawyers for the Public Interest  
(NYLPI) Regarding Proposed Rules to Amend Department of Sanitation Rules  
Dated September 15, 2021**

Good morning, my name is Justin Wood, and I am the Director of Policy at New York Lawyers for the Public Interest (NYLPI). We would like to thank the New York Sanitation Department (DSNY) for the opportunity to submit comments on proposed rules to create fee structures and procedures for Commercial Waste Zones (CWZ) awardees and waste auditors. NYLPI and the Transform Don't Trash NYC coalition have worked for years and even decades to make the city's waste system safer, more equitable, and more efficient. We are happy to see implementation of the landmark CWZ system advancing this year following a year of pandemic-related delays.

NYPLI generally supports these proposed Rules, which would establish requirements and dispute procedures for carters operating in CWZ related to commercial waste generation audits, establish fees for CWZ, and define bicycles to be used in waste collection.

We suggest two key amendments to the proposed rules to promote equity and inclusion of small businesses and minority- and women-owned business enterprises in the new waste system: (i) DSNY should establish a separate waste audit licensure system with an equitable licensing fee scheme instead of requiring waste auditors to be registered as waste brokers with the Business Integrity Commission (BIC); and (ii) instead of requiring CWZ contract awardees to reimburse customers for the costs of waste audits, DSNY should directly contract with waste auditors and provide the waste audits as a public service financed by the annual administrative fee on awardees, which should be adjusted to cover these costs.

**Alternative Licensure for Waste Auditors**

As waste auditors and other CWZ advocates have previously testified, requiring BIC waste broker licensure is inappropriate for waste auditors and creates a financial barrier to new waste auditors attempting to enter the sustainable waste management industry. Trade waste brokers negotiate deals between commercial customers and waste collectors for a fee or commission, whereas waste auditors play an entirely different function vital to waste reduction and sustainability in the waste management system. These auditing businesses may not succeed if they are subject to the same financial and procedural hurdles as waste brokers, and face prohibitively expensive licensing fees and unnecessary procedural hoops. This has prevented – and will continue to prevent – local, sustainable, and women and minority-led businesses from playing a critical role in commercial waste management.

DSNY should instead create its own process for waste *auditor* licensure, which ideally would not include criminal background checks; would require a licensing fee that is affordable for small, local waste auditing businesses; and would include either a one –two-year licensing fee exemption for newly formed businesses, or a pilot program that supports newly formed businesses. Creating a new licensure structure under DSNY will allow requirements to better reflect the nature of waste auditing, and empower new, local, sustainable, and women and minority-led businesses to play a critical role in commercial waste management.



**New York Lawyers  
for the Public Interest, Inc.**

151 West 30<sup>th</sup> Street, 11<sup>th</sup> Floor  
New York, NY 10001-4017

## **Waste Audits as a Public Service**

While it is important that CWZ contract awardees bear the costs of independent waste audits, the reimbursement structure outlined in the proposed rules is cumbersome and places an unnecessary logistical burden on both the haulers and the commercial establishments they serve. Requiring carters to reimburse their contracted commercial establishments for waste audits may create disputes, and might discourage small business owners in particular from seeking or obtaining audits and reimbursement. We believe a simpler and more transparent system is for DSNY to ensure that the annual administrative fee to be charged to each contract awardee (set in section 16-1013 by these proposed rules) be increased to cover the anticipated costs of waste audits for each customer, and that DSNY contract with qualified independent waste auditors to provide this service to businesses.

Under this simplified structure, the City would be able to streamline and centralize commercial waste generation data collected by auditors. This data could serve as a baseline commercial waste characterization study, and provide a detailed and evolving picture of the types and quantities of waste being generated by different business types, enabling the City and the new CWZ system to effectively target on reduction, recycling, and collection programs to achieve the broader environmental, efficiency, and safety goals of the CWZ system.

Thank you for your time and consideration in hearing our comments on these proposed rules. We look forward to our continued work with DSNY to implement the CWZ in a way that honors its transformative goals.

**Justin Wood, Director of Policy**  
**New York Lawyers for the Public Interest**  
**151 West 30<sup>th</sup> Street, 11<sup>th</sup> floor**  
**New York, NY 10001**  
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*New York Lawyers for the Public Interest has fought for more than 40 years to protect civil rights and achieve lived equality for communities in need. NYLPI combines the power of law, organizing, and the private bar to make lasting change where it's needed most.*

Robert Phinney

While it is a good idea to require baseline audits, the scaled approach simply is not realistic. Grouping a 15000 SF commercial property with a 2.5M SF commercial property in a one-size-fits-all fee structure does not account for the fact that audits for buildings larger than 75k-100k SF cost more than the \$2000 cap proposed, let alone buildings in the multiple hundreds of thousands or millions of SF so common across the city. Consult with current audit service providers to develop a more practical scaled approach or we'll all suffer from the "you get what you pay for" results – which will be nothing.

## [EXTERNAL] NYDOS Notice of Public Hearing and Opportunity to Comment to Comment on Proposed Rules Sept 15 -2021

Stephen Bellino <sb@libertyashes.com>

Mon 9/13/2021 16:14

To: NYC Rules (DSNY) <nycrules@dsny.nyc.gov>

Cc: Francesco Bellino <cheskobellino@libertyashes.com>; libertyashes@aol.com <libertyashes@aol.com>

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Forward suspect email to [phish@cyber.nyc.gov](mailto:phish@cyber.nyc.gov) as an attachment (Click the More button, then forward as attachment).

### NYCDOS Proposed Rules Comments

1. Waste audits that benefit customers should not be reimbursed by the Carter if the Carter received no benefit or a loss from the review. Current rules by the BIC make sure the carters do not overcharge customers. If a customer does not cooperate and follow BIC recycling laws/rules and does not efficiently source-separate their trash and recyclables then the customer should be responsible for their own audit. Carter should not have to pay for irresponsible customers' waste audits.
2. Any fees that a Carter would have to pay will be added into the general cost of doing business, increasing charges to customers.
3. Having a BIC registered broker conduct an audit leaves grounds for corruption, if these brokers will have the ability to suggest or steer a customer to their preferred Carter.
4. All disputes are currently being handled by the BIC. Two agencies handling disputes create both confusion and additional costs to Carters and their customers.
5. Zone fees once again will be passed along and added to the cost of doing business which ultimately will cost businesses more money for trash and recycling. At a time when New York State and New York City are in an economic recovery it does not make any sense to impose these new costs on the backbone of this city's businesses. Most businesses are struggling to stay open under the COVID-19 and the new variant and new restrictions set upon them. This is not the right time to institute these new costly policies while New York City struggles to maintain and make an economic recovery. Based on the proposed fee, if a Carter had 2,000 customers in a zone, the annual fee applied to each customer would be over \$50; if a Carter had 1,000 customers, the annual fee per customer would be over \$100.

### Scales and weights:

1. In regard to weight scales the industry uses onboard truck scales. Floor scales are not defined enough in the proposed rules. Please give details on floor scales.

### Measuring/ pricing:

1. Pricing customers by a square footage formula is confusing and expensive to determine when most customers do not know how much space they occupy and differences of opinion about how to measure already challenge the real estate industry. This approach should be reconsidered.

### Resolving disputes:

1. Very unclear how this new dispute resolution system would work, whether it would fully replace the existing system, and whether alternative approaches might be possible.



September 15, 2021

**What are we proposing?** The New York City Department of Sanitation (“DSNY”) is proposing rules that would establish requirements for carters operating in commercial waste zones related to commercial waste generation audits, establish fees for the commercial waste zones program, and amend definitions.

Submitting Comments to DSNY about this proposal:

1. Make sure you clearly define an “audit” versus a “survey”. We suggest that a “waste audit” is defined as a visit to a waste generator’s site which includes a multi-hour, multi-staff operation where bags or bins are weighed (or weight is estimated), and opened, waste is hand sorted into different material streams, and the client is later provided with a detailed report. We suggest that a “waste survey” is defined as a visit to a waste generator’s site where waste bags or bins are surveyed but not sorted, and the client is later provided with some kind of feedback in the form of a call, email or basic report about the waste.
2. There should be a higher reimbursement rate for waste audits than for waste surveys (according to our two definitions in #1), since waste audits are more time consuming and more staff are required to perform them.
3. For waste consultants who are not brokers, and receive no percentage or cut of revenue from materials sold to recycle markets nor from waste hauling contracts, and who only receive a straight hourly rate or fee from clients, they should either:
  - a. Not be subject to a license with the City of New York, or
  - b. Should be subject to a lesser, more affordable license than a trade waste license.

Thank you for your consideration.

Think Zero LLC  
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New York, NY 10013  
[info@thinkzero.com](mailto:info@thinkzero.com)



WASTE CONNECTIONS  
*Connect with the Future*

WASTE CONNECTIONS OF NEW YORK, INC.

120 WOOD AVENUE SOUTH, SUITE 302  
ISELIN, NEW JERSEY 08830  
T: 212 268-1322

September 14, 2021

Via electronic submission: [nycrules@dny.nyc.gov](mailto:nycrules@dny.nyc.gov)

New York City Department of Sanitation  
Bureau of Legal Affairs  
125 Worth Street, Room 710  
New York, NY 10013

Re: Proposed Rules for Commercial Waste Generation Audits

Dear Department of Sanitation and Staff:

Waste Connections of New York, Inc. (“Waste Connections”) appreciates the opportunity to provide comments on the proposed rules that would establish requirements for carters operating in commercial waste zones. These comments are specifically related to commercial waste generation audits for the commercial waste zones program.

We are excited about the prospect of a commercial waste zone system as we believe it will greatly improve the manner in which the waste and recycling industry operates in our unique city. We are confident that Waste Connections is the type of company that the City wants as a service provider throughout the five boroughs. Our corporate culture embraces safety, customer service, and giving back to the communities in which we serve. In addition, we pay our workers the highest salaries in the industry and we are a financially secure company. We welcome most of the regulatory enhancements proposed thus far and offer these comments in the spirit of improving the regulations.

While Waste Connections and its affiliates serve more than seven million residential, commercial and industrial customers in markets across 44 states in the U.S. and six provinces in Canada, we have never encountered a waste audit system such as the one being proposed by these regulations. We believe these proposed waste generation audit rules are deeply flawed, will result in increased prices for consumers, and, based on our experience, we fear the proposed rules will greatly impact our ability to directly service our existing and future customers. There are three fundamental problems:

First, Section 20-29 (b)(3) of the proposed regulations assumes that a waste audit can be conducted in one day that is considered “typical” and that this one day will be representative for the many varied types of commercial establishments in a city as dynamic as New York. As far as we are aware, customer concerns involving waste audits have never been raised by the Business Integrity Commission. In fact, the current regulatory scheme between customer and service provider works

quite well and we see no reason to change it. The surveys are performed by the carter with the customer present and are conducted at no cost. Notably, the Business Integrity Commission's own survey form contemplates seven days of data collection, not the one day proposed under these rules. Almost every restaurant has a "busy" day and a "quiet" day and is impacted by temperature and seasonality. One day is not representative and will not work.

Second, the proposed rules require that a waste broker, who may be acting as an awardee elsewhere in the City, must perform any waste generation audit. This fundamentally disrupts the relationship between carter and customer by allowing the broker to use waste surveys as a marketing tool to gain customers at the carters' expense. Under the proposed rules, brokers will market their services to commercial establishments by offering the businesses a "free audit" promising to save them money. The irony is the brokers will be utilizing unrepresentative, flawed survey data, subsidized by the waste haulers, with no incentive to conduct the surveys properly since they will have the rebuttable presumption that the data is accurate. These regulations would arm brokers—who compete with carters—with the incentive to capture carters' customers and also act as judge and jury as to accuracy using one day of survey data. This proposed regulation wrongly puts brokers at the heart of the waste audit process. If the City must upend how surveys are currently conducted, then auditors must be independent actors, separately licensed by the Business Integrity Commission under a new classification. This new class of auditors must not have any relationship or subcontractor agreement with any waste hauler or operate in a zone as a primary hauler. Moreover, the audit expense should be the customer's responsibility as they have the most to benefit from the surveys. On the rare chance that an audit would increase the customer's price, presumably it will not be shared with the waste hauler as there is no obligation to do so. Only the audits lowering their price will be shared and will be the ones that may ultimately be appealed to New York City Department of Sanitation to arbitrate.

Third, the proposed rules establish a fee structure for audits based on square footage rather than either the actual amount or a percentage of the monthly service fee. Square footage is a poor indication for the amount of waste that a company generates. A restaurant and nail salon, both less than 5,000 square feet, typically produces vastly different amounts of waste and recycling. Yet the proposed regulations would require the cost for both audits to be the same. We have hundreds if not thousands of customers priced under \$500 per month, some much lower than \$500. Requiring carters to reimburse customers \$500 or more for these audits would represent multiples of customer generated revenue. If a waste hauler operates at a ten percent margin, it will have to generate \$5,000 in revenue to pay for just one such audit. Notably, every truck, pay check and paper clip carter's purchase is ultimately paid for out of customer generated revenue. The City can require that carters pay for these audits but ultimately the customer is the one who pays. In the end, these regulations would create a system where every customer, whether it needs it or not, will end up with a survey that it pays for through higher prices.

Finally, a number of unaddressed questions exist as to how the proposed rules will ultimately work. There is no regulatory mechanism if a commercial account's volume increases over time for a carter to request a new audit. It is unclear if a carter must petition the Department of Sanitation to conduct a new audit and how that would work. Also, if a challenge is successful, is the resulting increase in tonnage retroactive to when the petition was submitted for billing purposes? This is also not addressed in the draft regulations.

Waste Connections appreciates the opportunity to comment on these proposed rules and we look forward to continuing to work with the Department on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew Moss". The signature is stylized and cursive.

Andrew Moss  
Northeast Government Affairs Manager