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New York City Business Integrity Commission
100 Church Street, 20th Floor
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To Whom It May Concern:

As a graduate student of City and Regional Planning at Pratt Institute, I would like to submit my comments of the proposed amend to sections of Title 17 of the Rules of the City of New York with regards to recycling and organic waste rules of certain commercial establishments. Although I celebrate most of the proposed amends to the current rules, as they make easier to identify and manage recyclable and organic waste, I don't believe these modifications are sufficient to solve the imperative problem of waste management in those commercial establishments referred in this process.

As part of a community that witnesses on a daily basis a large production and disposal of waste due to activities proper of an architecture school, cafeterias and other commercial establishments, I must say that there are much more elements that could be improved in the manage of organic and non-organic disposals. Subdivision (c) of section 5-11 of subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York reads: *Any container provided by a licensee to a designated covered establishment for the collection of organic waste shall be labeled to indicate that only organic waste may be placed in that container.* Despite I agree that proper labeling of waste containers and others help improving the process of waste management in commercial establishments, I believe this action does not fully address the problem of many establishments not separating their waste properly despite the rules that are currently in force. In many occasions this happens because the establishment (the source in this chain) relies on the idea that the private carter, which collects its waste, will source-separate the disposed waste after being collected. This action only sums up another challenge to the chain of events that compose waste management in the city.

In addition, subdivision (i) of section (1) on § 5-12. Recycling Requirements for Licensees, reads:

(1) Waste that has been source-separated for recycling by the customer.

(i) A licensee collecting materials that have been source-separated by the customer may not commingle in the same vehicle compartment any of the following: (1) designated recyclable paper, (2) designated recyclable metal, glass, and plastic, (3) yard waste, (4) textiles, (5) construction and demolition debris, (6) organic waste, (7) any other materials that have special collection requirements pursuant to applicable local, state or federal law, or (8) other solid waste. Each of these terms is defined in section 1-01 of title 16.

There are several programs and policies that could be reinforced and implemented to change this practice. I think commercial establishments (referred here as ‘the customer’) should be required to play a more active role in waste management process, specifically in the separation of recyclables. Likewise, private carters should be evaluated frequently to verify that they follow the City’s guidelines on waste management. In the long term the cost of exporting New York City’s garbage to landfills in other States does not compare to the cost of implementing an effective recycling program that reinforces policies and educates residents and business on how to reuse and separate their waste properly.

According to recent studies, the City’s commercial recycling rate has plummeted to as low as 19%. And it’s been reported that some businesses, including bars and restaurants, do not separate glass, bottles, and cans because haulers tell them not to bother in doing so, or they just toss everything in the same vehicle. Currently there are about 253 private waste hauling companies in NYC that are in charge of picking up all the waste from business across the City, many of them crossing routes and increasing pollution for all of us. This is another reason why businesses and private waste haulers should be made more accountable of waste management. When solving problems, we should start at the beginning of the process.

This finally takes me to another serious problem in this chain of events. It has been reported that about 80% of US products are used once and thrown away, 43% of waste, consists of packaging and containers, or disposable products such as paper

or plastic plates and cups, and 7.5% of the waste stream consists of plastic film such as supermarket bags. To truly address the problem of garbage and recycling, we need to change our policies to reduce our use of plastic products and containers, we need to educate consumers about the value of recycling, and we need to make businesses and primary sources of waste more accountable in the waste management process.

Thank you for your time, consideration, and service to our city.

Sincerely,

Luis Garcia

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5/12/16

New York City Business Integrity Commission
100 Church Street, 20th Floor
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To Whom it May Concern:

As a graduate student in city and regional planning and as resident of New York City, I would like to submit my thoughts and comments on the Commercial Recycling and Collection of Organic Waste, 2016 RG 036, proposed by the Business Integrity Commission (BIC). This rule along with other rules on the topic of furthering the collection of organic waste are all steps in the right direction, but need to have stricter requirements for recycling separation and commercial participation.

The “designated covered establishments” to be included in the enforcement of this rule are limited to the following: *(1) an arena or stadium having a seating capacity of at least fifteen thousand (15,000) persons; (2) a food service establishment that (i) is located within a hotel having at least one hundred and fifty (150) sleeping rooms; (ii) operates under common ownership or control of such hotel; and (iii) receives waste collection from the same private carter as such hotel; (3) a food manufacturer that has a floor area of at least twenty-five thousand (25,000) square feet; and (4) a food wholesaler that has a floor area of at least twenty thousand (20,000) square feet.*

I understand and support this initial focus on those businesses who produce the most amount of food waste and recyclable materials. These businesses should be required to pay for the true cost of the waste they create which includes mitigating environmental impacts of landfills by processing waste in alternative ways. However, while these are important, large scale facilities to consider, these alternative waste processing systems for organics and recyclable materials will do the most good when it is required that all commercial businesses in industries that create organic and recyclable waste participate. In each expansion of the residential organics waste pickup there should be mandatory participation of the businesses in that area. If it can be required of the largest facilities, it can be required of your neighborhood pizza shop.

Like my friend and colleague Luis Garcia highlighted, the system of collecting sorted goods also needs to be examined, especially in reference to any single stream collection as there is here : *Commingling of certain designated recyclable materials. A licensee may collect waste consisting of designated metal, glass, and plastic*

commingled with designated recyclable paper if: (i) it has furnished information to the Commission demonstrating its ability to use either (a) single stream collection and recycling, or (b) co-collection of recyclables; or (ii) it will transport its own designated recyclable materials to a central holding location under its control from which such designated recyclable materials will be delivered by the licensee directly to a recycler or collected by a licensee that has furnished information to the Commission demonstrating its ability to use either single stream collection and recycling or co-collection of recyclables.

The success of single-stream recycling practices, although convenient for the producer of the waste, is poor. Although they may encourage rates of participation, the quality of the goods actually received and then recycled is poor. It is more costly and more likely to fail, a lose-lose. Until it is proven to be an efficient system I do not think single stream recycling should be considered at any level.

Thank you for giving residents like myself the chance to comment on these rules. I hope my thoughts are read and considered as future decisions are made.

Sincerely,

Virginia R. Lynn

Comments Submitted to the Business Integrity Commissioner

by the New York City Chapter of the National Waste and Recycling Association

June 3, 2016

These comments are offered for consideration by the Business Integrity Commission (BIC) with respect to its proposed update to Title 17 of the Rules of the City of New York regarding the implementation of the City's new regulations for commercial recycling and diversion of organic waste from certain entities.

As always, the New York City Chapter of the National Waste and Recycling Association (NWRA/NYC) is pleased to support the city's environmental goals, and work with the BIC, the Department of Sanitation (DSNY) and other entities in implementing new regulations, systems and reporting requirements in line with those goals. We understand the critical role our industry plays in the overall success of these initiatives; in fact, several service providers have provided organics collection services for several years and developed best practices for doing so that addresses the issues in the BIC's proposed regulations.

Notwithstanding that support, we anticipate that it will take considerable effort from this point forward to understand all of the implications of the proposed rules, train both generators and service providers, and work out both known and unknown challenges to their effective implementation. As always, we welcome the opportunity for active engagement with BIC, DSNY and others to talk through issues as they are presently known, and as they arise.

To that point, we recommend that a monthly meeting of all concerned stakeholders be held during the pre-enforcement period for the DSNY and BIC regulations for the purposes of monitoring implementation, and identifying and resolving issues as they arise – including development of best practices guidance designed to avoid enforcement activity.

Overall, three matters are of primary importance for consideration by the BIC in considering final-stage revisions to these rules prior to adoption:

- **Initial/primary responsibility is on commercial businesses to comply with the new requirements in the first instance.** As a matter of public health and safety, licensed haulers are responsible for removing waste generated by businesses regardless of whether it is set out for collection in full compliance with DSNY's regulations. Appropriately, an extended period of non-enforcement is provided for under its regulations which will give all parties the opportunity to assess compliance-related issues, and make necessary adjustments, including how best to monitor and enforce compliance with its many new requirements.
- **Licensed haulers have distinct responsibilities under these regulations, but in limited, specific ways** – providing specialized containers with proper signage, arranging appropriate means of collection, and delivering recyclable and organic materials to facilities capable of receiving and processing them in compliance with the overall law.

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- At present, **the city has a limited number of facilities** capable of properly receiving and processing the materials in question, which will create logistical and other considerations as these regulations become implemented.

One of the consequences of the above considerations is the adjustment to collection services that will be required both from all businesses that generate recyclables, and from those designated for organics diversion. Current rules allowing for co-collection in certain circumstances were designed to improve efficiency and reduce costs; the new rules may result in additional collection services that will reduce efficiency and may increase collection truck activity.

While it is not specifically referenced in the BIC's regulations, it is increasingly well-known that glass containers designated as recyclable are highly problematic – decreasing presence in the non-food commercial waste stream; costly to process; difficult to market; etc. – which may justify reconsideration of their general inclusion, and refocus as with existing commercial recycling regulations on large-volume generators of those materials.

The specific comments below largely track the order of the proposed regulations

Aerobic digesters – as referenced on page 2: while a variety of new technologies are entering the organics diversion market and use – and misuse various nomenclature for marketing purposes – there is no such thing as an “aerobic digester” that produces energy. The dictionary definition of aerobic digesters is equivalent to composting. Until the Department of Environmental Protection (DEP) issues its regulations as to what types of systems are permitted, this reference should be deleted.

Confusion over the “registration” of such existing and pre-regulation on-site organics management systems should be eliminated in these regulations. While not explicitly referenced, DSNY has developed a “registration” form when such devices are installed. As with self-hauling entities, the responsibility of registering such systems with DEP shall be entirely on the generating entity, as they may be done without the knowledge of a licensed hauler.

Sign/decals for display by commercial businesses – it is unclear as to who will design and provide such signage/decals; DSNY has indicated that BIC will do so, but these regulations are unclear. If BIC will be providing, we would be pleased to provide industry input.

Containers w/signage and locking capability – the requirement for containers with a tamper-proof latch should be reconsidered, as it will interfere with automated collection; some service providers have been collecting source-separated organics for several years without latched containers without the issues noted as concerns. With new containers required, cost adjustments may be necessary.

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While issues related to containers, placement, return, etc. may not be a big concern for the initial set of generators targeted by DSNY regulations given that many of them currently operate with acceptable practices, consideration should be given to anticipated issues when expansion of organics separation by additional generators is contemplated.

Three-day reporting requirement for missing/non-labeled containers – this requirement should be extended to five business days to allow for on-site resolution of such situations without the need to report.

Metal components of bulk waste – this is a problematic component of the overall rules designating recyclable materials (no reference is made in BIC's draft to plastic components of mixed-material refuse). For the most part, these materials will not be collected with beverage containers and/or mixed paper; for the most part, processing capacity for such materials – as well as markets – are extremely limited. Consideration should be given to careful monitoring of these materials during the pre-enforcement period, and to excluding them from enforcement.

Commingling of yard waste with other organic waste – this practice appears to be prohibited (page 10); is that the intent? It should be allowed, given that the mixing of yard waste and other organic waste can improve the efficiency of collection without presenting problems for facilities receiving that material for further processing.

Reporting requirements for organic waste and recyclables (p.11) – “estimated volume or weight” will be challenging to provide in the context of service contracts.

Free dump privileges – will organizations that currently receive free dump privileges at DSNY facilities also receive free delivery privileges at DSNY-contracted recycling and/or organics processing facilities? If so, the ability of private haulers to deliver such materials to such facilities should be contemplated in these regulations.

On-site determinations regarding overly contaminated set-out of designated materials – this situation is highly likely to occur and should be contemplated. As noted, the service industry's first obligation – as is the case with DSNY – is to provide collection services focused on public health and safety. If generators improperly set out materials with significant levels of contamination, the service provider should not be cited for improper collection as trash, if warranted. This situation is an example of what should be discussed and resolved during the pre-enforcement period.

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Verification of processing contracts for source-separated organics – related to the prior concern, adding more layers of paperwork requiring notice to generators of how and where organics will be processed is unnecessary, unworkable and only serves to create an opportunity for enforcement. Properly source-separated organics – without extraordinary contamination – should be assumed to be received and processed as otherwise required. Contracts between service providers and processing facilities outside of the state may be difficult to enforce.

Overall, the matter of where compliance and enforcement that could result in fines should be carefully considered and clarified during the pre-enforcement period. Consideration also should be given to a revised fine schedule that would avoid overly punitive enforcement.

Thank you for your consideration of these comments. We especially encourage your consideration of the recommendation that ongoing consultation be arranged during the pre-enforcement period. We look forward to working with BIC, DSNY and others in this process.

Respectfully submitted,

Thomas Toscano
Chair, Steering Committee
National Waste & Recycling Association – New York City Chapter

For further information:

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**Testimony of Rachel Spector,
New York Lawyers for the Public Interest/Transform Don't Trash Coalition
BIC Public Hearing on Proposed Commercial Recycling & Organics Rules
June 2, 2016**

My name is Rachel Spector, I am the Director of the Environmental Justice Program with New York Lawyers for the Public Interest. I also represent Transform Don't Trash New York City, a coalition of labor, community and environmental groups advocating for better standards in the commercial waste industry. NYLPI and TDT strongly support the adoption of the proposed source-separation and organics rules as an important step toward improving our city's lagging commercial recycling rate, and particularly significant towards accomplishing the city's stated goal of reducing waste going to landfills by 90% by the year 2030.

Surveys and interviews with more than 400 small business owners conducted by the TDT coalition last summer found that current recycling rules are in need of reform, and that seventy-five percent of small business owners agree that the city should require haulers to recycle more materials than they currently do. We believe that the proposed rules, which create a uniform set of requirements designating metal, glass, plastic, and paper as recyclable materials, and further increase organics recycling, will provide much-needed clarity about source-separation requirements, and greater consistency between the residential and commercial waste systems.

However, these new rules will be ineffective if there is no way to enforce or hold haulers accountable for commingling all but the most profitable recyclables with putrescible waste (including organic waste). Private haulers' practice of disposing materials intended for recycling is already illegal, but appears to be widespread, based on interviews with sanitation

workers, business owners, and our analysis of data reported to the NYS Department of Environmental Conservation (DEC).

Currently, despite existing rules requiring separation of recyclable materials, many businesses are instructed by private haulers to source-separate only the most profitable materials (such as cardboard), and to dispose of other recyclable items in black bags along with putrescible solid waste. Cardboard continues to comprise the vast majority—or 79%—of the commercial waste that is recycled, while plastics, for example, only represent 2% of recycled material, despite comprising 14% of New York City’s waste stream. Several business owners we talked to also directly observed haulers throwing source-separated recyclables into the same truck as black-bag waste, causing them to question whether source separation is really worth the effort.

Many hauler-owned waste facilities report to DEC that they have not recycled any glass, despite the longstanding law designating glass as a mandatory recyclable material for food service establishments. Our recent review of DEC recycling data indicated that despite current recycling rules and enforcement provisions already in BIC and DSNY’s rules, the City’s recycling rates are abysmally low. Transform Don’t Trash NYC obtained data reported to DEC by more than 30 private waste transfer stations and recycling facilities located in New York City, and found that only 19%-22% of the 2.2 million tons of commercial waste handled by these facilities was reported as recovered for recycling in 2015. This recycling remains far lower than that achieved by major US cities including San Francisco, San Jose, and Seattle in recent years, all of which recycle over 60% of their commercial waste, and remains substantially worse than the 34% national average recycling rate reported by the EPA.

We commend the new rules’ specific focus on requiring haulers to transport source separated recyclables, organic waste, and non-recyclable waste in separate compartments, and look forward to the Commission’s active enforcement of such rules playing a significant role in increasing the city’s diversion rate and bringing us closer to zero waste goals. We look forward

to being included in any meeting of stakeholders convened to discuss how implementation and enforcement of these new rules is rolled out.

We believe that in addition to increased scrutiny of what happens to commercial recyclables after they leave the curb, the city will need to more closely monitor the recycling facilities that process commercial waste to ensure that recyclable materials are not being landfilled or incinerated post-collection.

We are, however, vigilantly watching to ensure that haulers do not use the new rules as an excuse to take advantage of small businesses by increasing prices, particularly for small business customers that lack market power. Surveys of NYC businesses conducted by both PriceWaterhouseCoopers and the TDT coalition have found that almost 70% of them did not have a written contract with their hauler, or weren't sure whether they did or not. Further, the vast majority of small businesses [83%-90%] pay a flat monthly fee to their hauler, regardless of how much waste they generate, and do not receive waste stream surveys. Functionally, this places them beyond the protections of the City's rate cap, as well as the protections attempted with the new rules, and leaves them open to substantial price hikes.

To address these potential abuses, low recycling rates, accountability issues and other problems with NYC's commercial waste system, we support the adoption of an exclusive collection zone system for commercial waste. Other cities such as San Francisco and Seattle have used similar approaches to ensure that businesses receive free or heavily discounted collection of source-separated materials and organic waste, which has helped them to boost commercial recycling rates to among the highest in the nation. Under such a system, the City can pool the collective purchasing power of small businesses to negotiate fair and stable collection prices with waste haulers. Further, the Commission's ability to hold haulers accountable and enforce its rules would become much more efficient and effective.

