THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATIONS OF CANAL CARTING INC. AND CANAL SANITATION INC. FOR RENEWAL OF THEIR LICENSES TO OPERATE AS TRADE WASTE BUSINESSES

Canal Carting Inc. ("Carting") and Canal Sanitation Inc. ("Sanitation")(collectively "Canal," "the Canal Companies" or "Applicants") have applied to the New York City Business Integrity Commission (formerly known as the Trade Waste Commission)("Commission") for renewal of their licenses to operate trade waste businesses pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §§16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant, who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record of Canal, the Commission should deny its license renewal application on the ground that these applicants lack good character, honesty, and integrity for the following independent reasons:

(1) The Applicants Knowingly Failed to Provide Information and Documentation Required by the Commission

(2) The Applicants Have Failed to Demonstrate Eligibility For a Trade Waste License

(3) The Applicants Were Found in Violation for Illegal Dumping and for Operating an Illegal Transfer Station

I. BACKGROUND

A. The New York City Carting Industry[1]

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

> Like those dense stars found in the firmament, the cartel can not be seen and its existence can only be shown by its effect on the conduct of those falling within its ambit. Because of its strong gravitational field, no light escapes very far from a "black hole" before it is dragged back . . . [T]he record before us reveals that from the cartel's domination of the carting industry, no carter escapes.

Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI") (citation omitted).

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

(1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";

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[1] The Applicant objects to the staff's inclusion of this background history in its denial recommendation as irrelevant since there is no mention of Canal being part of the illegal cartel activities. See Response at 1. The Commission disagrees. New York City's waste hauling industry was systematically corrupted by organized crime for decades. In response, Local Law 42 mandated that all applicants meet a fitness standard of good character, honesty and integrity. See Admin. Code §16-509. As numerous courts have recognized, the history of entrenched corruption that led to the passage of Local Law 42 and the creation of the Trade Waste Commission sheds light on how this agency should exercise its regulatory authority. See Matter of DeCostole Carting, Inc. v. Business Integrity Commission, 2 A.D.3d 225 (1st Dept. 2003); Matter of John J. Sindone v. City of New York, 2 A.D.3d 125 (1st Dept. 2003); Matter of Hollywood Carting Corp. v. City of New York, 288 A.D.2d 71 (1st Dept. 2001).

(2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";

(3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";

(4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";

(5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";

(6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";

(7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";

(8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and

(9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "operate[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major indictments of New York metropolitan area carters. The state indictments, against thirteen individuals and eight companies, were (like their 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen companies associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, two carting companies

and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the City's carting industry.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from $250,000 to $750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful

payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a $1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996);

Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

As the United States Court of Appeals has definitively ruled, an applicant for a carting license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

(i) failure by such applicant to provide truthful information in connection with the application;

(ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

(iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

(iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

(v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one

of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

(vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

(vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

(viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

(ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

(x) failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

The principals of the Canal Companies are Frank Campo ("Campo") and Nicholas Infantino ("Infantino"). See Second License Renewal Application of Carting at 10; Second License Renewal Application of Sanitation at 6.

Carting and Sanitation were issued trade waste licenses on February 25, 2002, with an effective date of February 1, 2002. The licenses were due to expire on January 31, 2004. See Admin. Code §16-506(a)(licenses are valid for a period of two years). The licenses were granted under the condition that the Canal Companies retain a monitor

"with the mission of monitoring [their] good character, honesty, and integrity." See Carting License Order at 6; Sanitation License Order at 6; Admin. Code §16-511. Based on the license orders, Forensic Investigative Associates (USA) Inc. ("FIA") was appointed to review the operations of the Canal Companies and file periodic reports with the Commission. The monitorship was not renewed after two years.

On January 26, 2004, the Canal Companies filed with the Commission applications for renewal of their trade waste licenses for the period from February 1, 2004 to January 31, 2006. See First License Renewal Application of Carting; First License Renewal Application of Sanitation. On December 21, 2005, the Canal Companies filed with the Commission applications for renewal of their trade waste licenses for the period from February 1, 2006 to January 31, 2008. See Second License Renewal Application of Carting; Second License Renewal Application of Sanitation. The two renewal applications for each company are pending.

On February 13, 2007, the staff issued a 21-page recommendation (plus a 6-page Appendix) that Canal's renewal applications be denied. See Executive Staff's Recommendation to the Business Integrity Commission to Deny the Applications of Canal Carting Inc. and Canal Sanitation Inc. for Renewal of Their Licenses to Operate as Trade Waste Businesses ("Recommendation").

The Recommendation was served on the Applicants on February 16, 2007, and the Applicant was granted ten business days to respond (March 5, 2007). See 66 RCNY §§1-14(f); 1-17(d). On February 20, 2007, the Commission's staff provided the Applicant with copies of the documents relied upon in the Recommendation. See List of Non-Public Documents Relied Upon in the Denial Recommendation. On February 21, 2006, the Applicant requested a two and one-half week extension to respond. See Letter from Vincent Dotoli, Esq. ("Counsel" or "Dotoli"), dated February 21, 2007. On February 22, 2007, the staff granted Counsel an extension until March 14, 2007. See Letter from BIC to Counsel, dated February 22, 2007. On March 9, 2007, Counsel requested an additional 20 days to respond. See Letter from Counsel, dated March 9, 2007. On March 13, 2007, the staff granted Counsel an extension until March 30, 2007. See Letter from BIC, dated March 13, 2007. On March 28, 2007, Counsel requested an additional 20 days to respond. See Letter from Counsel, dated March 28, 2007. The staff granted Counsel an extension until April 9, 2007. See Letter from BIC, dated March 28, 2007. On April 9, 2007, the Applicant submitted a 42-page response and 9 exhibits. See Letter from Dotoli, dated April 9, 2007 ("Response").[2]

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[2] Counsel has requested an opportunity to hold a hearing before the Commission and to submit a supplemental response. See Response at 40, 42. These requests are denied. It is well established that Commission licensing and registration decisions need not be based on full-fledged, adversarial hearings with witnesses subjected to cross-examination and documents introduced into evidence. See Sanitation and Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2nd Cir. 1997). Instead, the staff of the Commission prepares a written report summarizing the evidence against the applicant (known as the "recommendation"). The Applicant is then given the opportunity to respond to the written report and may submit written opposition papers, in which the Applicant can submit documents or other evidence and can raise whatever factual questions or policy issues the Applicant deems appropriate. The final decision of

The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the following independently sufficient reasons, the Commission denies Canal's license renewal applications:

A. The Applicants Knowingly Failed to Provide Information and Documentation Required by the Commission

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b). For almost one and one-half years, the Commission's staff made repeated requests for information and documentation concerning what ultimately turned out to be millions of dollars of unpaid judgments against the Canal Companies. To date, Canal has failed to comply with most of those requests. Canal's repeated requests for extensions and adjournments has effectively stalled and obstructed the Commission's investigation into the true extent of Canal's financial liabilities as well as the financial responsibility of the Canal Companies to hold trade waste licenses.

During its investigation, Commission staff discovered that Canal had numerous outstanding state and local judgments and liens and an invalid certificate of incorporation from New York State. Commission staff asked Canal for relevant information and documentation concerning these two issues. Practically every inquiry was met with a request for an extension and a promise to research the subject issue, even if some information and/or documentation was provided. Relying on Counsel's apparent good faith effort to provide what was requested, the staff granted Dotoli's requests for extensions. However, during this time, Commission staff not only learned that the number and amount of judgments and liens were far greater than originally thought, but also discovered that Canal had a significant Federal tax liability. In his many communications with Commission staff, both verbal and in writing, Dotoli never disclosed this debt of the Canal Companies. He now claims that Canal was never specifically asked about a federal debt and that there has been no failure to provide information. Counsel treats the relationship between Canal and the Commission as adversaries in civil litigation where questions are answered in a very limited fashion, narrowly tailored only to provide the specific information requested. In contrast, Canal functions in a heavily regulated industry where it is obligated both to provide a significant amount of detailed information to the Commission without a request and to respond fully to Commission inquiries.[3] In this context, it is disingenuous to suggest, as

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Commission is based on the Commission staff's recommendation and the Applicant's response. See 17 RCNY §2-08(a).

Counsel has requested to submit a supplemental response since he has not yet received all documents from his request pursuant to the Freedom of Information Law (FOIL). See Response at 42. This request is denied. Counsel has failed to state how the requested information – Commission decisions denying the license applications of other companies - is relevant to the instant case.

[3] Applicants for licenses are required to provide the Commission with a "certification that the applicant has paid all federal, state, and local income taxes related to the applicant's business for which the applicant is

Dotoli does, that although Commission staff asked about debts in general and provided information about Canal's federal tax liability, Canal had no duty or obligation to provide that information. It is certain that had the federal debt been disclosed earlier, it would have been clear that Canal could not satisfy its many financial obligations and Commission staff would not have granted numerous extensions. As this decision recounts, Canal responded to the Staff's requests by attempting to string the Commission along and failing to disclose the crucial issue: the federal tax debt.

On April 29, 2005, a Commission staff member wrote to Canal inquiring about approximately fifty (50) outstanding judgments, totaling over one million dollars, filed against the Canal Companies and the invalid certificate of incorporation of Sanitation. The staff member specifically requested that Canal provide documentation by May 27, 2005, that the judgments had been either satisfied or reduced to written payment schedules and that Sanitation's certificate of incorporation had been restored to active status. See BIC Letter to Canal dated April 29, 2005. On May 17, 2005, the Commission received a letter from Canal's attorney, Vincent Dotoli ("Dotoli"), confirming that the Commission had granted Dotoli's request for an extension until June 28, 2005. See Dotoli letter dated May 17, 2005.

On May 27, 2005, the Commission received a letter from Dotoli containing a copy of a judgment satisfaction ($56,499.09) for one of the NYS Tax Commission judgments. See Dotoli letter dated May 27, 2005.

On June 28, 2005, the Commission received another letter from Dotoli. While the letter contained a copy of a judgment satisfaction ($61,727.09) for one of the NYS Tax Commission judgments, it did not provide most of the information requested in the April 25 BIC letter. The letter did not provide any information about the remaining judgments, except to claim that the majority of the judgments were being "researched," that negotiations were being conducted with the NYS Department of Taxation, and that some payments were being made to the NYS tax authorities towards the outstanding balance. See Dotoli letter dated June 28, 2005. No information was provided about the reinstatement of corporate authority for Sanitation, except to state that it was being "pursue[d]." Dotoli requested an additional 30 days to comply. Id.

On July 21, 2005, a Commission staff member granted Canal a new deadline of August 26, 2005 to comply with the information request and added two new requests: (1) to provide documentation that approximately 50 judgments, totaling over $25,000, owed to the NYC Environmental Control Board ("ECB") had been satisfied or otherwise resolved; and (2) to provide proof that outstanding invoices from Lemcor, Inc.

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responsible for the three tax years preceding the date of the application or documentation that the applicant is contesting such taxes in a pending judicial or administrative proceeding." See Admin. Code §16-508(b)(ii)(k). Licensees are obligated to provide the Commission with, among other items, notification of ownership changes, the addition or deletion of principals, arrests or convictions of principals and "any other material change[s] in the information submitted on the application for a license." See Admin. Code §16-508(c). In addition, licensees are also required to provide the Commission with audited annual financial statements and updated customer registers. See 17 RCNY §§5-03(e), (g). Moreover, licensees are prohibited from making false or misleading statements to the Commission. See 17 RCNY §1-09.

("Lemcor"), a New Jersey transfer station, totaling over $80,000 and for which several of Canal's checks had been returned for insufficient funds, had been resolved. See BIC letter dated July 21, 2005.

On August 26, 2005, the Commission received another letter from Dotoli. While the letter contained a copy of a judgment satisfaction ($69,429.75) for one of the NYS Tax Commission judgments, it did not provide most of the information requested in the April 25 and July 21 BIC letters. The letter did not provide any information about the remaining judgments, except to repeat its previous claims that the majority of the judgments were being "researched," that negotiations were being conducted with the NYS Department of Taxation and the NYS Department of Labor, and that a $330,000 payment was being made to the NYS tax authorities towards the overall outstanding balance. See Dotoli letter dated August 26, 2005. No information was provided about the reinstatement of corporate authority for Sanitation, except to repeat the earlier statement that it was being "pursue[d]." Dotoli also claimed that proof of satisfaction of 25 of the ECB judgments "should be forthcoming," that some of the ECBs would be paid and the rest were being "research[ed]." As far as the Lemcor transfer station debt was concerned, Canal was "negotiating" to work out a "payment schedule." Dotoli requested an additional 60 days to comply. Id. On October 14, 2005, a staff member granted Canal a new deadline of November 10, 2005, to comply with the information requests. See BIC letter dated October 14, 2005.

On November 9, 2005, the Commission received another letter from Dotoli. The letter did not provide most of the information requested in the April 25 and July 21 BIC letters and failed to provide any further judgment satisfactions. Dotoli continued to claim that the reinstatement of corporate authority for Sanitation was being sought, that negotiations were continuing with the NYS Department of Taxation, and that a $150,000 payment had been made to the NYS tax authorities towards the outstanding balance. Dotoli also asserted that proof of satisfaction of 25 of the ECB judgments would be obtained "shortly" and that he still needed to do additional research on the remainder. With regard to the Lemcor transfer station debt, Dotoli indicated that Canal had reached a tentative agreement with regard to a payment schedule. Dotoli requested an additional two to three months to comply. See Dotoli letter dated November 9, 2005.

On December 5, 2005, a Commission staff member wrote Canal that the Commission had postponed making a decision on Canal's renewal applications for more than seven (7) months while awaiting the information requested on the outstanding judgments and granted the Canal Companies a final opportunity to submit whatever information they wanted the Commission to consider by January 6, 2006. The letter advised Canal and Dotoli that the Commission planned to render a decision on their applications. See BIC letter dated December 5, 2005.

On January 6, 2006, the Commission received another letter from Dotoli. While the letter did not provide the information requested in the April 25 and July 21 BIC letters and did not provide any additional judgment satisfactions, Dotoli continued to make similar claims as his earlier letters: 1) that the reinstatement of corporate authority for

Sanitation was being sought; 2) that negotiations were continuing with the NYS Department of Taxation and a written payment plan was anticipated later that month; 3) that a $350,000 payment was made to the NYS tax authorities towards the outstanding balance; 4) that he had requested that Canal provide him with ECB documents; and 5) that a payment agreement for the Lemcor transfer station debt had been agreed to and was being circulated for signature. Dotoli requested an additional month to comply; his request was granted and a new due date was set for February 15, 2006. See Dotoli letter dated January 6, 2006.

In a February 10, 2006 phone conversation with Dotoli, a BIC staff member raised additional problems concerning Canal which had recently come to the Commission's attention: another large debt (including bounced checks) to Covanta Union, a New Jersey waste energy facility, and new administrative violations against Canal for illegal dumping and for operating an illegal transfer station.

On February 14, 2006, the Commission received another letter from Dotoli. While the letter provided two judgment satisfactions for two of the NYS Tax Commission judgments ($309,613.51 and $8,557.03), it did not provide most of the information requested in the April 25 and July 21 BIC letters. The letter repeated the claims that the reinstatement of corporate authority for Sanitation was being sought and that negotiations were continuing with the NYS Department of Taxation, and also asserted that a $60,000 payment had been made to the NYS tax authorities towards the outstanding balance. Dotoli also represented that a payment plan had been negotiated with ECB and that a payment plan for the Lemcor transfer station debt had been signed. Despite the repeated requests by the Commission over the previous several months for proof of satisfaction or payment plans, Dotoli failed to attach copies of any payment plans to his letter. Dotoli further claimed that the new Covanta Union waste energy facility debt was being negotiated. Dotoli explained that Canal was disputing the new administrative charges and provided Canal's purported defenses.[4] Dotoli requested additional time to comply until March 31, 2006. See Dotoli letter dated February 14, 2006.

On March 24, 2006, a Commission staff member wrote Canal that the Commission had postponed its decision on Canal's renewal applications for almost one (1) year while it awaited information from Canal about resolution on the outstanding matters. During that time, Canal had claimed it was resolving the outstanding matters and that it had agreements with several creditors; however, the Commission had not received any documentation in response to its numerous requests. Furthermore, the Commission noted that 10 new judgments (totaling over one million *additional* dollars) had been filed by the NYS tax and labor authorities since the staff began investigating Canal's renewal applications, putting Dotoli's previous representations that a payment schedule would be forthcoming shortly into question. The Commission repeated its request for proof of payment schedules or judgment satisfactions for the previously-

[4] Dotoli claimed that Canal's defense to the illegal dumping charge was necessity to conduct repairs and that the defense to the illegal transfer station charge was a lack of intent. See Dotoli letter dated February 14, 2006.

noticed judgments as well as the new judgments by April 24, 2006.[5] See BIC letter dated March 24, 2006.

On April 24, 2006, the Commission received another letter from Dotoli. It contained the following: a copy of a payment plan negotiated with ECB[6] and copies of judgment satisfactions for three of the NYS tax judgments ($4,640.68, $9,335.50 and $11,875.21). Dotoli claimed that Canal was still negotiating a payment plan with the NYS tax authorities and that Canal had paid $275,000 towards the outstanding balance since the last update. Dotoli also attached a copy of a consent order containing a payment schedule for Lemcor and claimed that a payment schedule with Covanta was still being negotiated. With regard to the ECB administrative charges of operating an unlicensed transfer station, Dotoli indicated that Canal would deny the charges, yet pay the $2,500 penalty. Canal did not provide any explanation for the significant increase in outstanding judgments or for Dotoli's seemingly misleading statements to the Commission concerning the forthcoming payment plan with the NYS tax authorities. See Dotoli letter dated April 24, 2006 (including attached ECB and Lemcor payment plans).[7]

The staff investigated Canal's compliance with the ECB and Lemcor payment plans submitted by Dotoli. The staff learned that since the entry of the Lemcor consent order, Canal's payments initially ran "typically two to three weeks late" and, later, "six weeks behind." See Letter from Lemcor attorney, Susan Markenstein, dated July 19, 2006. Furthermore, the staff learned from the ECB database that Canal's payments to ECB were either late or nonexistent: the first group of 25 ECB judgments that were due to be paid the week following February 8, 2006 had been paid on March 2, 2006; that the payment due in March 2006 was not received by ECB until April 25, 2006; that the payment due in April 2006 was not received by ECB until June 2, 2006; and that the payments due in May, June, and July 2006 had not been paid at all.

In a July 17, 2006 phone conversation with Dotoli, a Commission staff member indicated that the Commission's investigation revealed that Canal was not in compliance with the Lemcor or the ECB payment plans. Dotoli conceded that Canal was behind in its payments, but stated that since "cash flow ebbs and flows, it can't be helped."[8] See BIC Memo to File, dated July 17, 2006.

On August 2, 2006, a Commission staff member had another phone conversation with Dotoli about other, previously unknown, judgments filed against the Canal

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[5] The BIC letter also requested information about a recent traffic fatality caused by a Canal vehicle whose driver had an outstanding felony bench warrant. See BIC letter dated March 24, 2006.

[6] The ECB payment plan dated February 8, 2006, identified 25 of the ECB judgments that would be paid (at a negotiated reduced amount) within the next week and set a monthly payment schedule for the remaining 25 ECB judgments from March 2006 through July 2007.

[7] Canal complied with the request for a statement concerning the traffic fatality. See Dotoli letter dated April 24, 2006.

[8] Counsel denies making the quoted statement. See Response at 10. Instead, Counsel claims he stated that "there were times when Canals [sic] receivables fall short and when this occurs it results in situations where Canal falls behind on their payments." Id. The Commission does not need to resolve this factual dispute since Counsel admits to the substance of the statement.

Companies, including tax liens filed by the State of New Jersey and by the Federal Government. Without providing any substantive responses to the Commission's repeated requests for information and documentation, Dotoli continued to claim that the amount of the judgments was incorrect and that the total amount owed to judgment creditors by the Canal Companies was "only" $2.2 million. He also repeated his earlier statements that Canal was paying the NYS tax authorities $50,000 per month towards its obligations. The staff member asked Dotoli for the total amount Canal owed to the Federal Government. Dotoli could not provide an approximation and stated that he would have to investigate the matter. He also said that he would obtain information about the New Jersey and Federal outstanding judgments to the Commission as soon as possible. The Commission staff member reminded Dotoli that he had had over a year to comply with the Commission's numerous requests for information and documentation, but had failed to do so. The staff member expressed skepticism that Canal would ever be able to resolve all the outstanding matters, given the ever-increasing number and amount of outstanding judgments against them. The staff member further indicated that since Canal's repeated requests for extensions and adjournments obstructed the Commission's investigation into this matter, there was no choice but to refer Canal's applications to the Commission for denial.[9] In lieu of denial, the Commission would give Canal an opportunity to sell the companies. See BIC Memo to File, dated August 2, 2006.[10]

On August 4, 2006, a Commission staff member wrote to Dotoli memorializing the August 2, 2006 conversation and granting the Canal Companies until September 29, 2006 to inform the Commission if they wished to file sale applications. An updated judgment and lien search against Canal (including New Jersey tax and environmental liens, Federal tax liens and a substantial judgment in favor of the New York State Insurance Fund) was enclosed. See BIC letter dated August 4, 2006. Canal did not respond.[11]

On September 15, 2006, the Commission received a letter from Dotoli containing financial statements and a letter from a "new" accountant in an effort to convince the Commission that Canal had a viable financial plan to stay in business. Dotoli claimed

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[9] In response, Counsel claims that the staff stated that BIC was "not going to take any action on Canal until Canal gets a payment plan or payment schedule from the State." See Response at 10, 13. This statement is false. The staff informed Counsel (on several occasions) that the Commission had several options: to deny, to grant with conditions or to grant with no conditions. While a decision was premature while the investigation was still pending, Counsel was informed the only realistic options were either denial or a grant with conditions (including the condition of compliance with written payment plans - which would necessarily require payment plans to be in place). At no time the staff ever represent that Canal's applications were going to be granted.

[10] Counsel denies making any statements about the New Jersey or Federal judgments during the August 2, 2007 conversation and claims that this subject was not discussed until August 14, 2007. See Response at 11. The Commission need not resolve this factual dispute. Regardless of the date of the conversation of the IRS and New Jersey debt, Counsel misled the Commission by stating that Canal could pay off its $2.2 million debt to New York State at $50,000/month in three years, despite its extensive Federal debt.

[11] Counsel claims this his response consisted of a phone call on August 14, 2006 that he was working on a presentation. See Response at 13. However, Counsel's communication with the Staff did not constitute a substantive response. The letter discussed two items – a possible sale application and a list of new judgments; Counsel did not address either item.

that Canal's "new" accountant, Stuart Doloboff, was a "competent and professional individual," that he would be able to provide financial information to the Commission on a "timely basis,"[12] and that the accountant would help the Canal Companies managing their cash flow "which is something they never had before."[13] See Dotoli letter dated September 15, 2006.

The September 15, 2006 letter did not respond to the staff's request about the amount of the debt owed to the Federal Government or even provide an approximate figure, but merely stated that the Canal Companies were "awaiting confirmation of the outstanding [IRS] balance as well as a formal response to request for Installment Agreement." Instead, the financial information submitted contained information disclosing Canal's choice to purchase 11 new trucks (costing at least $165,000 each) over the past few years in lieu of paying its obligations to the government. See Dotoli letter dated September 15, 2006, Attachment at 2.

In a September 25, 2006 telephone conversation with Dotoli, a Commission staff member inquired about information the Commission recently received that the IRS had sent letters to Canal's customers ordering them to send their payments directly to the IRS. Dotoli informed the staff member that the IRS had seized $140,000 from Canal's bank accounts and levied $400,000 of Canal's customer accounts.[14] When the staff member expressed surprise at the amount levied given that the judgment and lien search indicated less than $200,000 in outstanding judgments against Canal, Dotoli informed the staff member that the balance that Canal owed the IRS was approximately $2.4 million dollars (a representation he was unable, or unwilling, to make in his letter merely ten days earlier).[15] At no time during the seventeen-month correspondence regarding Canal's

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[12] Canal had failed to submit its required 2005 audited financial statements in a timely manner. In June 2006, Canal was granted a 60-day extension, and, in August 2006, Canal was granted another 60-day extension until October 15, 2006. See Email from BIC Director of Audit Cecilia Chien dated October 19, 2006. Their request for a third extension was granted until December 15, 2006. On December 14, 2006, Canal's accountant informed the Commission that his computer hard drive crashed and that he had failed to back up his files, thereby preventing him from complying with the Commission's deadline. Canal's request for a fourth adjournment was not granted. See Dotoli letter dated December 14, 2006; Doloboff letter dated December 14, 2006. Canal eventually submitted its audited financial statements on January 12, 2007. See Email from BIC Director of Audit Cecilia Chien dated January 16, 2007. In response, Counsel merely claims that the excuse was valid and that the extension should have been granted. See Response at 29.

[13] *See infra* Section C at 19-20.

[14] Dotoli's failure to come forward and volunteer this information to the Commission is puzzling, to say the least. In response, Counsel claims this statement is false because the purpose of his phone call was to inform the staff that Canal had worked out an oral agreement with New York State to pay $50,000 per month and that Canal was trying to work out a federal payment plan. See Response at 16. Dotoli's stated purpose is not relevant and does not excuse his failure to inform the Commission before being specifically asked. See, e.g., Footnote 3.

[15] Counsel claims this statement is false because the $2.4 million figure was only a guess offered in response to the staff's question, that staff was already aware of the amount of federal debt and that the $3,771,000 figure stated in the bankruptcy petitions was only a guess since Canal was required to put some kind of number on the form. See Response at 16, 18. However, Counsel does not provide any documents in response demonstrating that the figures were inaccurate and indicating the actual amount of federal debt. Despite Counsel's claim, the staff was unaware of the extent of the federal debt beyond the amount reduced to judgment and was relying on Counsel to provide truthful and non-misleading information to the Commission. The Commission finds Counsel's statement that he was unaware of the amount of federal

outstanding debts did Dotoli indicate that Canal also owed over two million dollars to the Federal Government. The existence of this significant federal debt clearly undermined Canal's prior promises to pay, and the exclusion of this debt from the discussion renders Dotoli's insistence that the total amount of Canal's obligations was decreasing false and misleading.[16] Dotoli indicated that since the IRS levy would prevent Canal from making payments to the NYS tax authorities, Canal would be filing for bankruptcy protection. See BIC Memo to File dated September 25, 2006.

On September 27, 2006, the Commission received a letter from Dotoli indicating that Canal filed a petition for Chapter 11 reorganization on September 25, 2006. See Dotoli letter dated September 27, 2006 (including bankruptcy petitions).[17] Notably, a review of the bankruptcy petitions lists numerous additional non-government debts of which the Commission was unaware, as well as significant debts to the IRS in amounts far greater than disclosed in the Lexis/Nexis judgment and lien search (and which Dotoli never disclosed to the Commission).[18] Id. On January 8, 2007, the Commission received a letter from Dotoli containing interim income statements for September, October and November 2006 in an attempt to show Canal's efforts to reduce its expenses and become a viable company. See Dotoli letter dated January 8, 2007.

During almost one and one-half years of Commission requests for information and documentation, Canal repeatedly failed to provide the following:

- a valid certificate of incorporation for Sanitation.[19]
- any information concerning 14 outstanding judgments totaling $7,294 filed by the NYC Department of Finance.[20]

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debt lacks credibility given his willingness to represent to the Commission that Canal was capable of satisfying its creditors.

[16] Counsel claims the existence of the federal debt did not undermine the promises to pay New York State because "Canal had planned to pay the federal (IRS) debt in monthly installments." See Response at 17. It is necessarily apparent that the federal debt undermined its promises to pay simply because there was a finite amount of money available to pay debts. Canal could not pay New York State, much less another creditor. Moreover, the Commission finds it surprising that Counsel claims that Canal intended to pay the Federal Government during the same time that he claimed that he had no idea the extent of Canal's federal debt.

[17] Counsel claims that New York State and the IRS have both expressed a willingness to help Canal reorganize. See Response at 17. However, Counsel fails to provide any proof or documentation from the tax authorities concerning this claim. Similarly, despite a lengthy correspondence with the Commission, Counsel never provided any documentation from the NYS Tax authorities regarding his claim that a payment plan was forthcoming or even being negotiated.

[18] Counsel repeatedly claims that he was never asked about the IRS debt. See Response at 17. The Commission disagrees. The staff's letter dated August 4, 2006 contained a list of new judgments and liens, including federal tax liens. While the letter did not specifically state that an update was required, it is fair to infer that after fifteen months of correspondence concerning the resolution of Canal's unpaid judgments, the staff wanted information about their status. Regardless, Counsel's obligation to provide the Commission with accurate, truthful and non-misleading information required him to come forward with the information. See 17 RCNY §1-09.

[19] Canal's response was limited to claims that reinstatement was being pursued and that reinstatement was linked to the resolution of the outstanding tax judgments. The fact that Canal has yet to provide this document is undisputed by the Applicant. See Response at 18. As of the date of this decision, Sanitation's certificate of incorporation is still inactive.

- any information concerning 11 judgments totaling $112,174 filed by the NYS Labor Commission (including 3 which were filed since the beginning of the Commission's inquiry).[21]
- any information concerning a judgment in the amount of $1,200 filed by the Criminal Court of the City of NY.[22]
- any information concerning judgments totaling $12,000 filed by the Worker's Compensation Board of NY.[23]
- any information concerning judgments totaling $32,419 filed by the State of New Jersey[24]
- any information concerning judgments totaling $40,300 filed by the New Jersey Hudson County Improvement Authority[25]
- any information concerning judgments totaling $170,941 filed by IRS.[26]

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[20] Canal's response was limited to a statement in the Dotoli June 28, 2005 letter: "Researching – may be paid." No other information was ever provided. This is undisputed by the Applicant. See Response at 18. However, Dotoli now claims that the staff's letter dated October 14, 2005 requesting updates regarding other judgments led him to think that no further response was necessary regarding this item. Id. Counsel's belief that the staff abandoned its earlier request is not credible, since the Commission staff was awaiting the results of Dotoli's research.

[21] Canal's response was limited to a statement in the Dotoli June 28, 2005 letter: "Researching and negotiating payment schedule" and the Dotoli August 26, 2005 letter: "[W]orking with the Department of Labor to negotiate an agreed upon payment schedule." No other information was ever provided. This is undisputed by the Applicant. See Response at 18. However, Dotoli now claims that the staff's letter dated October 14, 2005 requesting updates regarding other judgments led him to think that no further response was necessary regarding this item. Id. Counsel's belief that the staff abandoned its earlier request is not credible, since the Commission staff was awaiting the results of Dotoli's research.

[22] Canal's response was limited to a statement in the Dotoli June 28, 2005 letter: "Probably truck overweight in dispute." No other information ever provided. This is undisputed by the Applicant. See Response at 18. However, Dotoli now claims that the staff's letter dated October 14, 2005 requesting updates regarding other judgments led him to think that no further response was necessary regarding this item. Id. Counsel's belief that the staff abandoned its earlier request is not credible, since the Commission staff was awaiting the results of Dotoli's research.

[23] Canal's response was limited to a statement in the Dotoli June 28, 2005 letter: "Researching." No other information was ever provided. This is undisputed by the Applicant. See Response at 18. However, Dotoli now claims that the staff's letter dated October 14, 2005 requesting updates regarding other judgments led him to think that no further response was necessary regarding this item. Id. Counsel's belief that the staff abandoned its earlier request is not credible, since the Commission staff was awaiting the results of Dotoli's research.

[24] In response, Counsel claims the staff never asked about the State of New Jersey debt. See Response at 19. However, the staff's letter dated August 4, 2006 contained a list of new judgments and liens, including New Jersey tax liens. While the letter did not specifically state that an update was required, it is fair to infer, after fifteen months of correspondence concerning the resolution of Canal's unpaid judgments, that the staff wanted information about their status.

[25] In response, Counsel claims the staff never asked about the State of New Jersey debt. See Response at 19. However, the staff's letter dated August 4, 2006 contained a list of new judgments and liens, including New Jersey tax liens. While the letter did not specifically state that an update was required, it is fair to infer, after fifteen months of correspondence concerning the resolution of Canal's unpaid judgments, that the staff wanted information about their status.

[26] Canal's only reference to debt owed to the IRS was contained in the Dotoli September 15, 2006 letter and the only reference to the IRS levy was in Dotoli's September 25, 2006 phone conversation. In response, Counsel claims the staff never asked about the IRS debt. See Response at 19. However, the staff's letter dated August 4, 2006 contained a list of new judgments and liens, including federal tax liens. While the letter did not specifically state that an update was required, it is fair to infer that after fifteen months of

- the majority of the information regarding the outstanding judgments (42 of 50) totaling $3,014,097 filed by the New York State Tax Commission.[27]

For almost two years, Canal repeatedly failed to comply with the Commission's numerous requests for information and documentation. Canal's repeated requests for extensions and adjournments have obstructed the Commission's investigation regarding their financial responsibility.[28]

In response, Counsel claims that Canal did not "knowingly" fail to provide the required information and cites case law from outside jurisdictions that have interpreted a "knowing failure" as "plain indifference or intentional disregard." See Response at 2-4. However, there is no need to resort to case law from foreign jurisdictions when New York law provides a definition of this mental state. See NYS Penal Law §15.05 (a person acts knowingly when he is aware that his conduct is of such nature or that such circumstance exists).[29] The Commission finds that the Canal Companies "knowingly" failed to provide the required information since they were aware both of the information sought and the fact that the information was not in fact provided.

Counsel also insists that Canal never failed to provide information because "[e]ach and every Commission Staff request ... was responded to." See Response at 4. However, Counsel fails to appreciate the difference between a response and the specific information contained in the response. Despite the fact that Counsel always timely submitted a letter to Commission inquiries, the letters mostly included claims that items were being "pursued" or "investigated" and did not include the substantive information and/or documentation required. Counsel claims that Canal provided substantive responses. See Response at 11. However, to state repeatedly that negotiations were merely ongoing in response to a request for documentation that the judgments had been satisfied does not constitute a substantive response.[30]

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correspondence concerning the resolution of Canal's unpaid judgments, the staff wanted information about their status.

[27] Canal's responses provided copies of eight satisfactions of judgment in Dotoli's letters dated May 27, 2005, June 28, 2005, August 26, 2005, February 14, 2006 and April 24, 2006. The remainder of the letters made claims that various payments were being made towards the general outstanding balance and that a payment plan was being negotiated. This is not disputed by the Applicant. See Response at 19. However, Counsel claims that the numerous and frequent letters discussing the progress of negotiations are an adequate response. Id. The Commission finds that mere correspondence is not a substitute for the requested information and that the cumulative effect of the Applicant's repeated delays effectively constituted a failure to provide the requested information.

[28] In response, Counsel claims that the staff never informed him that its investigation was being obstructed. See Response at 19. Notification to the Applicant is not a required element of obstruction. In any event, it should have been obvious given the staff's repeated demands for the same information and the staff's insistence on at least two occasions that Canal submit its final response so that a decision could be made on its applications.

[29] It is well settled that the interpretation of a provision of law by the agency that administers and enforces that provision of law, if not unreasonable, irrational or inconsistent with the statute as a whole, is entitled to deference. Matter of Warder v. Board of Regents, 53 N.Y.2d 186, 194 (1981); Appelbaum v. Deutsch, et al., 66 N.Y.2d 975, 977 (1985); and Salvati v. Eimicke, 72 N.Y.2d 784, 791 (1988).

[30] In the few rare instances when a substantive response was provided (namely, copies of satisfactions), Canal failed to provide the information in a timely manner, passively awaiting for information to come into

For the information that was not otherwise being "pursued" or "available to it," Canal claims in the alternative that it was simply "never asked" about the IRS debt. See Response at 15, 17, 19.[31] Canal claims "[a]t no time during this 17 month correspondence did [the staff] ask about the amount of all outstanding debt or specifically about the amount of any IRS debt until September 25, 2006." See Response at 17. This claim is incorrect. The staff's letter dated August 4, 2006 contained a list of new judgments and liens, including federal tax liens. While the letter did not specifically state that an update was required, it is fair to infer that after fifteen months of correspondence concerning the resolution of Canal's unpaid judgments, the staff wanted information about their status. Regardless, Canal has not yet responded to the September 25, 2006 request (which Counsel concedes was made) and continues to maintain that they are still unaware of the extent of their federal debt and that Counsel's prior statements to the contrary ($2.4 million to the Commission and $3.77 million in the bankruptcy petitions) were only guesses. See Response at 15, 16, 18. Not only have the Canal Companies not provided any documents (in response or at any other time) demonstrating that Counsel's purported guesses were inaccurate, but their claims that they have been unaware of millions of dollars in debt for several years demonstrate a lack of financial responsibility.

Counsel strenuously asserts in response that he repeatedly requested to meet with Commission staff and that his requests were denied. See Response at 13, 15, 19, 37. Counsel has not offered any legal authority to support his claim that he was entitled to a meeting, nor has he stated the significance of the staff's refusal. Notably, he has also not explained how such a meeting would be productive to resolve the issues. The Commission does not find that a meeting was or is necessary, especially when the information being sought by the staff could have been provided in writing.[32] Counsel's claim that the Applicants' willingness to meet and answer questions defeats the charge of obstructing the Commission's investigation is without merit. The burden is on the Applicants to comply with requests for information from the Commission in writing (unless stated otherwise); their so-called offer to cooperate on their own terms does not relieve them of that burden. See 17 RCNY §2-01(d). In any event, it is hard to imagine that the information provided at such a meeting would have been any more substantive than the incomplete responses provided during the eighteen months of correspondence.

Nor does the Commission find persuasive Counsel's claim that the Applicants cannot be accused of failing to provide information and obstructing the Commission's investigation since they were granted extensions of the time to respond. See Response at 19. Under that theory, the staff should not have granted any extensions of time to Canal and should have recommended denial after the first response did not fully comply with

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its possession rather than actively responding to the staff's requests. See Response at 11 (providing copies of satisfactions "as they were received"); Response at 38 (responding to Commission requests with the information that "it had available to it at the time").

[31] Counsel asserts that if such a request had been made, "Canal's attorney would have sought information and responded just as he did with all of the other matter [the staff] inquired about." See Response at 17. The record of Canal's response to Commission inquiries speaks for itself.

[32] In addition, given that the Applicant had not complied with the staff's requests, a meeting would have been premature prior to submission of the documents requested.

the staff's request. If anything, the staff granted Canal numerous extensions in good faith based on the representations of Counsel that the requests would be ultimately complied with, although they never were. The cumulative effect of the Applicant's repeated delays over eighteen months effectively constituted a failure to provide the requested information.

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b). Based on this independently sufficient ground, the Commission denies Canal's renewal applications.

B. The Applicants Have Failed to Demonstrate Eligibility For a Trade Waste License

Despite Canal's ongoing claim that they are financially viable companies, the staff finds that the Canal Companies have not satisfied their burden of demonstrating their eligibility for a trade waste license. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter". See Admin. Code §16-509(b). The Canal Companies have failed to demonstrate that they have the ability to manage their financial matters in a responsible manner and have failed to demonstrate that they can provide truthful, accurate, and timely information to the Commission regarding their finances.

The ability of a trade waste licensee to manage its financial matters is directly related to its fitness to hold a trade waste license. Local Law 42 cites several factors that reflect adversely on an applicant's integrity, including "the failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction." See NYC Admin. Code §16-509(a)(x). Licensees are required to maintain audited financial statements, records, ledgers, receipts, bills and other business records as required by the Commission. See Admin. Code §16-520(c); 17 RCNY §5-03. It is a violation of the Commission's rules to "fail to timely pay taxes related to a trade waste business." See 17 RCNY §1-09.

The ability to provide truthful, accurate, and timely information to the Commission is also directly related to its fitness to hold a trade waste license. Local Law 42 cites several factors that reflect adversely on an applicant's integrity, including the "failure by such applicant to provide truthful information in connection with the application" and "knowingly fail[ing] to provide the information and/or documentation required by the commission." See NYC Admin. Code §§16-509(a)(i), 16-509(b).

The Commission is aware that Canal filed for Chapter 11 bankruptcy protection on September 25, 2006. Under bankruptcy law, a government agency may not refuse to grant a license solely because the applicant has filed for bankruptcy or has failed to discharge a debt subject to the bankruptcy proceeding. See 11 U.S.C. §525. However,

the Commission is not denying Canal's applications solely because Canal has failed to discharge its debts. The statute was not intended to shield debtors from reasonable inquiries about their ability to manage financial matters when the ability to do so is related to their fitness for the license sought. See *In the Matter of Anonymous*, 74 N.Y.2d 938 (1989). A determination of unfitness must rest not on the fact of bankruptcy but on conduct reasonably viewed as incompatible with the licensee's duties and responsibilities under its regulatory scheme. Id. (attorney denied admission to the bar for lacking "the character to discipline himself to control his standard of living and the amount of his indebtedness, thus showing a lack of financial responsibility necessary for an attorney.") Despite Counsel's claim that the denial is based upon Canal's failure to pay the outstanding judgments (see Response at 24), the grounds set forth below demonstrate otherwise.

In response, Counsel recites the legislative history of 11 U.S.C. §525. See Response at 23. However, this language supports the staff's actions: "the purpose of this section is to prevent an automatic reaction against an individual for availing himself of the protection of the bankruptcy laws." The staff has been investigating Canal's problems for several years; there was no automatic reaction by the staff in this case. If anything, the staff indulged Counsel for almost two years and bent over backwards to allow Canal every opportunity to comply with its requests – to no avail.

In response, Counsel takes to time to explain that Canal filed for bankruptcy in an effort to prove "future financial responsibility." See Response at 24 (acknowledging denial is permissible for lack of future financial responsibility). The explanations offered lack credibility and do not satisfy Canal's burden to demonstrate eligibility to hold a trade waste license. Counsel claims circumstances beyond Canal's control – dump fees, maximum rates, and price of fuel – contributed to the bankruptcy filing. Id. However, these factors will not be changing in the near future; the maximum rate issue is being studied and the possibility that it will be increased in the future is purely speculative at this time. Counsel insists that the bankruptcy was not the result of wasteful expenditures, yet proceeds to list Canal's purchase of eleven (11) brand new trucks. Id. The only justification provided for these purchases was Campo's statement that it was "necessary for Canal to continue to upgrade its fleet of trucks." See Response, Appendix B at 2. Canal also claims that servicing its non-profitable customers contributed to the bankruptcy, but fails to explain why it began servicing such customers and continued to do so for two years despite the expense. See Response, Appendix B at 3.

1. Observations By Canal's Monitor[33]

During the course of the two-year monitorship of the Canal Companies, FIA found many instances of sloppy record keeping and contradictory financial records. After visiting the Canal Companies on nine separate occasions, FIA's investigator found that Canal's "petty cash procedures and record keeping was inadequate," "that the Companies could not produce on request, and had difficulty in putting together, route lists," that "the bank accounts of [Carting and Sanitation] are commingled," and that several employee social security numbers were invalid. See FIA report dated June 12, 2002 at 2.

FIA's forensic accountant found that "(1) in the first half of 2001 the company had more receipts for petty cash expenditures than checks to petty cash, raising the possibility that [Canal] had an unreported cash source; and (2) in the second half of 2001 [Canal] had more checks to petty cash than petty cash receipts, raising the possibility that [Canal was] diverting cash." See FIA report dated September 27, 2002 at 4. The accountant concluded that Canal had "unknown and undocumented sources of cash." Id. at 5. The accountant reaffirmed its conclusion after an in-depth analysis of the companies' records. See FIA report dated January 29, 2003 at 3 (finding that 2001 cash expenditures significantly exceeded cash receipts suggesting that unreported income – denied by the principals – was being used). Furthermore, a review of the 2002 payroll report demonstrated that the paychecks of the principals were not disbursed through the ADP payroll system and that the bookkeeper explained that "because of cash flow problems she would only report a portion of the salaries they received to ADP during the first three-quarters of the year and 'catch up' in the fourth quarter." Id. at 6. The accountant also found periodic checks made to the wife of principal Infantino, ostensibly to repay a mortgage made on Infantino's house for the benefit of the business, despite the absence of any loan documents, any loans indicated on Canal's tax returns, and any loans recorded on the books of the Canal Companies. See FIA report dated January 29, 2003 at 5.[34] In addition, the monitor had significant trouble obtaining copies of Canal's route lists. After repeated requests, Canal provided copies of only 6 of its 14 truck routes. As FIA concluded, "the failure to provide all fourteen route lists illustrates the disordered condition of the business of the Companies." See FIA report dated January 29, 2003.[35]

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[33] Canal blames the expense of the monitor and the staff resources used to comply with the monitor's requests as part of the reason it filed for bankruptcy. See Response at 25. Canal ignores the fact that the imposition of a monitor was due to its own bad conduct. See Admin. Code §16-511(a)(authorizing the imposition of an independent auditor if the background investigation produces adverse information). Notably, Canal does not acknowledge the possibility that implementing the monitor's advice could have improved Canal's financial position and allowed the companies to avoid bankruptcy.

[34] Counsel claims that Infantino's explanation is a valid one. See Response at 26. While that may be a defense to a criminal case, it does not excuse the fact that Canal engaged in irresponsible and sloppy bookkeeping.

[35] In response, the Applicant claims that they purchased a Global Positioning System (GPS) in order to generate route lists, but there were technical problems, which prevented them from providing them to the monitor. See Response at 26. The Commission fails to see the need for a GPS to generate route lists. Canal necessarily knew who their customers were (certainly for billing purposes at least) and must have

FIA's accountant found that many of the accounting problems could be attributable to a "totally inadequate bookkeeping system employed by the Companies." Id. FIA's accountant also questioned whether the Canal Companies possessed the "level of financial competence and sophistication necessary for companies, which together are grossing approximately $6,000,000 per year." Id. FIA's accountant repeatedly recommended that Canal implement a Quickbooks or similar accounting system and found that while the principals repeatedly promised to do so, they never did. See FIA reports dated September 27, 2002, January 29, 2003, May 12, 2003 and August 12, 2003. The long-term refusal of the principals of Canal to implement an accounting system to fix significant business receipt and petty cash anomalies led the monitor to suggest that Canal sees "confusion as their ally and that there is a method to their madness." See FIA report dated August 12, 2003. While the monitor in its last report dated April 19, 2004 observed some improvement in its petty cash controls and its financial sophistication,[36] this is belied by its significant accumulated debts[37] (described above) and the failure to comply with Commission requests.

In response, Counsel claims that the monitor report "has been proven wrong" about Canal's failure to implement a bookkeeping system. See Response at 27. While the Canal Companies may have subsequently started using a bookkeeping system after the monitorship ended, it does not prove that the monitor's statements were "wrong." If anything, the Canal Companies failure to implement an accounting system until the summer of 2006 – four years after Canal refused the monitor's first request to do so – fully supports the monitor's statements that Canal sees "confusion as their ally and that there is a method to their madness." See Response at 27; Exhibit B at 4. Canal's refusal to organize its operations during the monitorship (2002-2004) despite its promises to do so, its failure to do so during the two years subsequent to the monitorship (2004-2006) and its implementation of an accounting system shortly before filing for bankruptcy do not give the Commission confidence in its financial responsibility and its eligibility for a trade waste license.

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informed their drivers where to go in the first instance. The claim that a satellite system is needed to track the trucks makes no sense and raises additional questions about their operations.

[36] In response, Counsel cites the final monitor report that the accounting systems significantly improved and reached appropriate financial sophistication. See Response at 26. The fact that the Applicants reluctantly improved after two years of scrutiny does not give the Commission confidence in their operations, especially since they were still unable to accomplish the task of putting together route lists. The fact that the Canal Companies were cooperative with the monitor is not relevant, given that they never provided the substantive information the monitor needed (similar to Counsel's responses to the staff). See Response at 37.

[37] Counsel makes the unsupported claim that "[m]any companies with financial competence and sophistication accumulate significant debt through circumstances beyond their control." See Response at 28.

2. Administrative Violations Issued by the Commission

Over the four years since the Canal Companies were issued trade waste licenses, they have been issued nine Notices of Violations for administrative violations of Commission rules and have paid $30,000 in fines. The majority of the violations were issued for the failure of each of the Canal Companies to submit audited annual financial statements and to maintain required business records. See Notices of Violation TW1164, TW692, TW691, TW616, TW707, TW614, TW1292, TW1293, TW1394 and TW1483. One of Carting's checks to the Commission for the settlement for TW1394 was returned for insufficient funds.[38] See Letters from BIC Director of Enforcement Ellen Ryan to Carting dated September 18, 2006, and November 27, 2006. By failing to submit their most recent audited financial statement in a timely manner, the Canal Companies each potentially face another Notice of Violation.[39]

Counsel notes that Canal took steps to comply with the regulations "as problems were brought to their attention." See Response at 22. The Commission is troubled by this indifference to agency regulation. Canal should follow the rules in the first instance, not simply upon getting caught.

Similarly, Counsel claims that all of the reports that were the basis of the violations were eventually submitted as part of the settlements. See Response at 28. The Commission expects licensees to demonstrate responsibility and to submit the required reports in a timely fashion. The fact that Canal submitted their reports only after repeated violations does not reflect well on their business integrity, nor does their attempt to shift to blame to their accountant for their problems.

3. Illegal Dumping and Operating an Illegal Transfer Station

As discussed in greater detail below, Sanitation and its owner, Nicholas Infantino, were each found in violation of administrative charges of illegal dumping and Carting was found in violation of operating an illegal transfer station. See Section C *infra*.

4. Failure to Comply With Payment Plans

Canal failed to comply with the payment plans negotiated with Lemcor and ECB. The staff learned that since the entry of the Lemcor consent order, Canal's payments initially ran "typically two to three weeks late" and, later, "six weeks behind." See Letter

[38] In addition, two of Sanitation's payments to the Lemcor transfer station were returned for insufficient funds. See Letter from Lemcor Inc. dated June 17, 2005 (including Newark Police Department incident report).

[39] See Footnote 9. Counsel claims the excuse was valid and the extension should have been granted. See Response at 29. The Commission is not required to accept all of Canal's excuses for its frequent failures to comply with its requests.

from Lemcor attorney, Susan Markenstein, dated July 19, 2006.[40] Furthermore, the staff learned from the ECB database that Canal's payments to ECB were either late or nonexistent: the first group of 25 ECB judgments that were due to be paid the week following February 8, 2006 had been paid on March 2, 2006; that the payment due in March 2006 was not received by ECB until April 25, 2006; that the payment due in April 2006 was not received by ECB until June 2, 2006; and that the payments due in May, June, and July 2006 had not been paid at all.

Notably, Counsel now claims, "Canal intends to pay the ECB under the Chapter 11 Reorganization." See Response at 30. The Commission questions whether Canal intended to pay ECB when it agreed to the payment plan in the first instance. Canal's failure to keep its promise to pay ECB pursuant to the payment does not reflect well on its business integrity, nor does Counsel's attitude that Canal's financial difficulties "can't be helped." *See supra* at 14.

In addition, the Canal Companies have failed to comply with their payment plans with the Commission. In the Stipulation of Settlement executed on May 17, 2006, in the case of BIC v. Canal Carting Inc., #TW-1394, Carting agreed to pay the Commission a fine of $4,000 in seven installments (an initial payment of $1,000 on May 30, 2006 followed by six monthly payments of $500). One of Carting's $500 checks (dated July 31, 2006) was returned for insufficient funds.[41] See Letter from BIC Director of Regulatory Enforcement Ellen Ryan dated September 18, 2006. In addition, Carting failed to submit several payments by the agreed-upon due dates. See Letter from BIC Director of Regulatory Enforcement Ellen Ryan dated November 27, 2006 (demanding payments due September 29, 2006, and October 30, 2006).[42]

Furthermore, in the Stipulation of Settlement executed on October 16, 2006, in the case of BIC v. Canal Sanitation Inc., #TW-1483, Sanitation agreed to pay the Commission a fine of $7,000 in seven monthly installments of $1,000, but failed to make timely payments. Sanitation submitted the payment due December 15, 2006 on December 19, 2006, the payment due January 15, 2007 on February 15, 2007, the payment due February 15, 2007 on February 16, 2007, the payment due March 15, 2007 on March 19, 2007, and the payment due April 13, 2007 on April 16, 2007.

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[40] Counsel concedes that Sanitation "did fall behind in its payments" to Lemcor, but claims that it eventually reduced the balance. See Response at 29. The fact that it belatedly paid Lemcor a portion of the debt does not change the fact that Sanitation promised to take care of the situation in a responsible manner and did not live up to its promise. Judgment creditors should not have to endure false promises by Canal in addition to the underlying debt. The fact that Canal still has a business relationship with Lemcor merely reflects the reality that Lemcor it trying to get paid in any way possible.

[41] Counsel attempts to avoid responsibility the bounced check by blaming the IRS levy. See Response at 30 ("This check was returned unfortunately because of the IRS levy which was unanticipated by Canal.").

[42] On December 1, 2006, Carting submitted the missed payments and the balance due under the settlement terms for Violation #TW-1394.

5. Failure to Provide Truthful and Accurate Information to the Commission

Not surprisingly, as stated above, hundreds of outstanding judgments have been docketed against Canal, totaling over three million dollars in outstanding debt. See Lexis/Nexis Judgment and Lien Filing Search Results; Appendix A. Canal failed to respond to the majority of the Commission's requests over the past two years, thereby obstructing the Commission's investigation into Canal's financial health. *See supra* Section A.

Furthermore, Canal has been less than forthright with the Commission about its debts. Dotoli failed to mention Canal's significant IRS debt during numerous phone conversations and correspondence and, even after being specifically asked, delayed providing information about the scope of Canal's IRS problem until its assets were seized, its customer accounts levied and it was on the verge of filing for bankruptcy. The existence of this significant federal debt clearly undermined all of Canal's prior promises to pay, and the exclusion of this debt from the discussion rendered Dotoli's insistence that the total amount of Canal's obligations was decreasing false and misleading. *See supra* at 15-16.

In response, Counsel claims that he did not provide information about the federal debt because it was not specifically requested. See Response at 21 ("The only reason the IRS was not discussed with Levine was because she did not ask about it and thus, there was no reason for Dotoli to inquire about it from Canal."). He also asserts that Canal was unaware of the IRS problem until shortly before August 14, 2006. Id. at 31. However, Counsel was willing to make specific representations to the Commission about Canal's ability to rehabilitate itself; as a result, either he was aware of the federal debt and made affirmative misrepresentations to the Commission or he was wearing blinders and acted in grossly negligent fashion before the Commission. Either way, it does not reflect well on Canal's fitness. Counsel's claims of ignorance (which necessarily entails that Canal was not even honest with its own lawyer) directly contradict his statement that "[i]t was always the intention of Canal to pay the IRS as well as the State of New York." See Response at 31.

Furthermore, Dotoli's repeated and emphatic representations in his September 15, 2006 letter about the "new" accountant retained by Canal were also false and misleading. See Dotoli letter dated September 15, 2006 at 1 ("Stuart Doloboff, CPA, Canal's new accountant"); 2 ("their new accountant"); 3 ("Stuart Doloboff, CPA, Canal's new accountant"). While Canal's most recent accountant was Milton Shaiman, Doloboff was Canal's accountant for at least five years from 1995 to 2000 and cannot fairly be described as a "new" accountant as Dotoli does in his letter.[44] See Affidavit of Frank

[44] Counsel claims that the use of the term "new" was not misleading because Doloboff had not worked for Canal for over five years and it merely served to distinguish him from the accountant he replaced. See Response at 32. However, Counsel emphasized the fact that this so-called "new" accountant was going to cure Canal's previous problems. Clearly, he wanted the Commission to believe that the accountant was

Campo submitted to the Commission on April 14, 2000 at 1 (identifying Canal's accountant as "Stuart Doloboff"); BIC Audit Summary of Canal's Disbursements from 1995 – 1999 (listing 43 checks payable to "Silverstein & Doloboff" for "Accounting Fees"). Doloboff's own letter to the Commission claiming to be the "successor accountant" and blaming Canal's faulty books and records on other parties is also false and misleading.[45] See Doloboff letter dated September 14, 2006.[46]

Canal now claims that it has been analyzing and reviewing its operations to make adjustments and will start saving $40,000 per month in April 2007. See Response at 21. Notably, Canal fails to explain why these actions were not taken much earlier. Canal's long-standing failure to take steps to improve its operations over the past several years, despite their awareness of the problem, undermines their claims that they have cut their expenses (actions which began only one week prior to their Response) in an effort to improve their future financially viability. Canal has not sustained its burden of proof to show that it meets the eligibility standard for a trade waste license. Accordingly, the Commission denies Canal's license renewal applications on this independently sufficient ground.

C. The Applicants Were Found in Violation for Illegal Dumping and for Operating an Illegal Transfer Station

The Commission may deny a trade waste license based upon "a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought." See Admin. Code §16-509(a)(iv). The illegal disposal of trade waste and the operation a transfer station without authorization reflect poorly on the fitness of an applicant for a trade waste license.

On June 6, 2005, police officers from the NYC Department of Sanitation responded to Canal's property at 39 Ferris Street, Brooklyn, NY in response to community complaints about odors emanating from Canal's lot. The officers observed piles of putrescible waste on the ground next to a Canal Sanitation dump truck and spoke to the owner of Canal, Nicholas Infantino, who admitted to the officers that he had just dumped the material. Summonses were issued to Nicholas Infantino and to Canal Sanitation for violating Administrative Code §16-119 (Illegal Dumping). See ECB Notices of Violation #E130024566 and #E130024557. After a hearing before an administrative law judge, both respondents were found in violation of illegal dumping and were each ordered to pay a civil penalty of $1,500. See Decision and Order for #E130024566; Decision and Order for #E130024557. The judge specifically found Infantino's claims that the truck had broken down and that it was impossible to dump the load at the transfer station were not credible. Id. Furthermore, the judge noted that a

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"brand new," as opposed to one of Canal's previous accountants who was in place when many of the problems arose.

[45] Many of the unpaid judgments against Canal were docketed during Doloboff's tenure. See Appendix A.

[46] Counsel claims that "successor accountant" is an industry term. See Response at 32.

videotape introduced into evidence at the hearing showed several other piles of putrescible waste that had been previously dumped at the site. See Videotape dated June 6, 2005 (showing a yard filled with piles of putrescible waste, rats running across the yard, flies hovering above the piles, leachate flowing towards the street). To date, these penalties remain open and unpaid.[47]

In response, Counsel claims that the ECB decision did not find Nicholas Infantino incredible since he was not present and did not testify. See Response at 33. This is incorrect. The decision was issued against both respondents – Canal Sanitation and Infantino – and found respondents (via the authorized agent who testified on their behalf) not credible. The Commission is troubled that Infantino could have appeared and could have testified, but chose to send somebody else. Infantino failed to offer a reasonable explanation as to his absence. See Response, Exhibit C at 3. Counsel's claim that that the video does not show evidence of putrescible waste previously dumped at the location is directly contradicted by the judge's decision.

On January 23, 2006, police officers from the NYC Department of Sanitation observed approximately 370 cubic yards of construction and demolition debris piled on the ground at 39 Ferris Street, Canal's place of business, and issued a summons to Canal Carting for illegal operation of a transfer station. See ECB Notice of Violation #E145865610. Canal was found in violation and paid a fine of $2,500. See ECB Violation Inquiry Printout for #E145865610. While Dotoli claims that Canal continues to deny the merits of the violation,[48] Canal was found in violation of this offense.

In response, Counsel claims that there can be no adjudication since Canal denied the charges and did not offer a defense. See Response at 34. Canal did deny the charges and chose not to offer any defense; the Administrative Law Judge accepted the sworn summons as a prima facie case and found the respondent in violation. See Decision and Order for #E145865610; ECB database entry for E145865610. The issue is concluded against Canal because it was found in violation, not simply because it paid the fine. In any event, even if there were no finding by ECB, the Commission is entitled to make a finding based on the facts and accepts the sworn statement of the observing officer that he observed an unpermitted transfer station.

Counsel repeatedly claims that Canal had no intent to operate a transfer station or to engage in illegal dumping. See Response at 34, 38. However, intent is not a requirement in the statute. There is no mens rea requirement; liability is strictly imposed for engaging in the appropriate conduct without a permit.[49] In any event, Canal is

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[47] In response, Canal does not dispute that the debt remains outstanding but notes that this payment was due to be paid in July 2007 as part of the ECB payment plan. See Response at 34. Given Canal's spotty compliance with the payment plan, this statement is far from persuasive.

[48] See Dotoli letter dated April 24, 2006.

[49] According to the Administrative Code provision regarding operating an illegal transfer station: "It shall be unlawful for any person or public agency other than the department [of Sanitation] to conduct, operate or use ... any piece or parcel of land ... as a dump or as a non-putrescible solid waste transfer station or putrescible solid waste transfer station, or for a fill material operation without having first obtained ... for each piece or parcel of land ... a permit from the commissioner." See Admin. Code §16-130(b).

collaterally estopped from relitigating the charges, having already been found in violation.

Canal Carting, Canal Sanitation and its owner, Infantino, have each been found liable for violations directly related to the trade waste industry. Based on each of these independent grounds, the Commission denies Canal's renewal applications.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. The cumulative evidence recounted above demonstrates convincingly that Canal falls far short of that standard.

It is of grave concern to the Commission that the Applicants have failed to provide information to the Commission for such an extended period of time and have provided misleading information to the Commission, thereby obstructing the Commission's investigation of Canal's financial stability. For the independently sufficient reasons discussed above, the Commission denies Canal's license renewal applications.

This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of their customers of such by first-class U.S. mail.

According to the Administrative Code provision regarding illegal dumping: "It shall be unlawful for any person, his or her agent, employee or any person under his or her control to suffer or permit any dirt, sand, gravel, clay, loam, stone, rocks, rubble, building rubbish, sawdust, shavings or trade or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort or any other organic or inorganic material or thing or other offensive matter being transported in a dump truck or other vehicle to be dumped, deposited, or otherwise disposed of in or upon any street, lot, park, public place or other area whether publicly or privately owned." See Admin. Code §16-119.

Canal Carting Inc. and Canal Sanitation Inc. shall not service any customers, or otherwise operate as trade waste removal businesses in the City of New York, after the expiration of the fourteen-day period.

Dated: New York, New York
May 8, 2007

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Jonathan Mintz, Commissioner
Department of Consumer Affairs

Anthony Dell'Olio, General Counsel (designee)
Department of Small Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department

APPENDIX A

The following list includes all judgments and liens filed against the Canal Companies as of January 8, 2007. See Lexis/Nexis Judgment and Lien Search. Each entry includes the judgment date, the docket or index number and the amount of the judgment. Entries that are followed by the notation, "SAT," and the date of satisfaction have been satisfied. The satisfied judgments are crossed out, while the entries without a line through them remain open and unpaid. The total amount of unpaid judgments is $3,683,003 ($1,370,967 - Carting; $2,312,036 - Sanitation).

NYC Department of Finance (Total: $7,294 - Carting)

1. ~~4/18/83, #131936000, $991 SAT 8/18/89~~
2. ~~4/2/87, #131936000, $1218 SAT 2/2/90~~
3. ~~8/3/89, #2281, $27,898 SAT 10/3/91~~
4. ~~10/31/94, #000392826, $2,788 SAT 6/16/99~~
5. ~~8/26/96, #001387053, $3,274 SAT 10/7/99~~
6. ~~8/25/97, #001432222, $1,695 SAT 6/16/99~~
7. 8/23/00, #001641038, $515 - Carting
8. 8/23/00, #001641046, $515 - Carting
9. 8/23/00, #001641049, $515 - Carting
10. 8/23/00, #001641051, $515 - Carting
11. 8/23/00, #001641076, $515 - Carting
12. 8/23/00, #001641082, $515 - Carting
13. 8/23/00, #001641085, $515 - Carting
14. ~~11/6/00, #001659920, $7,254 SAT 3/1/02~~
15. 4/5/02, #001814210, $527 - Carting
16. 4/5/02, #001814217, $527 - Carting
17. 4/5/02, #001814218, $527 - Carting
18. 4/5/02, #001814234, $527 - Carting
19. 4/5/02, #001814250, $527 - Carting
20. 4/5/02, #001814252, $527 - Carting
21. 4/5/02, #001814285, $527 – Carting

NYS Tax Commission (Total: $3,014,097)($970,941 - Carting; $2,043,156 - Sanitation)

1. ~~5/24/85, $52,189 SAT 12/4/87~~
2. ~~7/14/86, $23,775 SAT 12/4/87~~
3. ~~8/21/86, $5,375 SAT 3/22/88~~
4. ~~10/21/86, $22,522 SAT 3/22/88~~
5. ~~6/25/87, #K0024166, $21,199 SAT 11/13/90~~
6. 2/3/88, $10,687 - Carting
7. ~~8/3/89, #K0042280, $5,965 SAT 11/9/90~~
8. ~~8/3/89, #K0042281, $27,898 SAT 11/9/90~~
9. ~~10/25/89, #K0044237, $46,262 SAT 7/28/92~~
10. ~~2/11/98, #001454278, $6,450 SAT 6/11/98~~
11. ~~6/8/98, #W9811414, $5,804 SAT 1/31/00~~
12. ~~12/22/98, #001519637, $150 SAT 4/13/99~~

13. ~~12/22/98, #001519638, $383 SAT 4/13/99~~
14. ~~12/22/98, #001519639, $7,721 SAT4/13/99~~
15. ~~3/22/99, #001539032, $8,815 SAT 10/5/99~~
16. ~~3/29/99, #001539035, $1,385 SAT 10/5/99~~
17. ~~3/29/99, #001539038, $314 SAT 9/14/99~~
18. ~~3/29/99, #001539034, $30,405 SAT11/30/00~~
19. 6/17/99, #L0016599, $6,578 - Sanitation
20. 6/17/99, #L0016699, $5,972 - Sanitation
21. ~~11/19/99, #001589889, $56,499 SAT 10/23/01~~
22. ~~3/13/00, #001608674, $24,032 SAT 7/17/03~~
23. 9/27/00, #001649995, $87,631 – Carting
24. ~~11/15/00, #001663813, $11,151 SAT 11/13/01~~
25. ~~2/2/01, #001687386, $61,727 SAT 8/5/03~~
26. ~~2/2/01, #001687387, $39,741 SAT 7/17/03~~
27. ~~2/22/01, #001694603, $11,703 SAT 11/13/01~~
28. 2/23/01, #x015873, $61,115 - Carting
29. ~~8/14/01, #001746957, $115,803 SAT 7/17/03~~
30. 8/14/01, #001747001, $27,654 - Carting
31. 8/17/01, #X0118417, $18,697 - Carting
32. ~~7/29/02, #X0217720, $350 SAT 9/9/04~~
33. ~~7/29/02, #X0217721, $9,335 SAT 2/21/06~~
34. 9/17/02, #X0221594, $165,988 - Sanitation
35. ~~9/17/02, #X0221595, $100 SAT 8/11/05~~
36. ~~11/19/02, #001882169, $1,621 SAT 2/27/03~~
37. 11/19/02, #001882174, $19,880 - Carting
38. 11/29/02, #001884893, $111,132 - Carting
39. ~~11/29/02, #001884969, $783 SAT 1/9/04~~
40. 12/27/02, #X0233518, $1,053 - Sanitation
41. 2/25/03, #X0302906, $104,569 - Sanitation
42. 3/28/03, #001919113, $30,383 - Carting
43. ~~3/28/03, #001919115, $69,429 SAT 7/26/05~~
44. 4/23/03, #X039382, $1,384 - Sanitation
45. ~~8/22/03, #001959377, $156,687 SAT 5/18/04~~
46. 8/22/03, #001959376, $524 - Carting
47. ~~3/24/04, #002020403, $1,236 SAT 6/8/04~~
48. ~~3/24/04, #002020074, $300 SAT 6/8/04~~
49. ~~5/18/04, #002036541, $309,613 SAT 1/17/06~~
50. 5/18/04, #002036567, $64,560 - Carting
51. ~~5/25/04, #X0416752, $624 SAT 9/9/04~~
52. 6/23/04, #X0426221, $2,258 - Sanitation
53. ~~9/27/04, #002066786, $8,577 SAT 1/17/06~~
54. 10/25/04, #002072700, $4,477 - Carting
55. 10/27/04, #002073417, $50 - Sanitation
56. 1/5/05, #X0501014, $240,039 - Carting
57. ~~1/5/05, #X0501013, $4,640 SAT 2/21/06~~
58. 1/6/05, #X0501119, $3,340 - Sanitation

59. ~~5/3/05, #X0521085, $11,875 – SAT 2/21/06~~
60. ~~5/13/05, #2125043, $15,510 SAT 1/3/06~~
61. 5/13/05, #2125045, $24,925 - Carting
62. ~~5/13/05, #2125047, $2,041 SAT 2/9/06~~
63. ~~10/13/05, #2162164, $3,216 SAT 1/3/06~~
64. 10/13/05, #2162165, $5,604 - Carting
65. ~~10/13/05, #2162167, $29,583 SAT 2/27/06~~
66. ~~10/13/05, #2162169, $156 SAT 2/27/06~~
67. 12/8/05, #X0544361, $40,828 - Sanitation
68. 12/13/05, #X0544946, $83,804 - Carting
69. 12/19/05, #2182163, $36,188 - Carting
70. 12/19/05, #2182165, $724,250 - Sanitation
71. ~~12/19/05, #2182168, $1,671 SAT 2/27/06~~
72. 1/30/06, #X0604100, $4,244 - Sanitation
73. 2/3/06, #2193138, $244,402 - Sanitation
74. 3/20/06, #2203674, $169,112 - Sanitation
75. 6/8/06, #2227408, $129,546 - Carting
76. 6/8/06, #2227409, $12,573 - Carting
77. 6/8/06, #2227410, $562,824 - Sanitation
78. 8/16/06, #2249064, $648 – Carting
79. 8/16/06, #2249065, $824 – Carting
80. 8/16/06, #2249066, $50 – Carting
81. 8/16/06, #2249069, $6,304 – Sanitation

NYS Labor Commission (Total: $112,174)($6,740 – Carting; $105,434 – Sanitation)

1. ~~7/14/86, $23,775 SAT 2/17/88~~
2. ~~11/12/86, $529 SAT 8/6/87~~
3. ~~12/15/98, #001518614, $5,567 SA 11/5/99~~
4. 3/26/99, #W995328, $5,826 - Sanitation
5. ~~7/21/99, #001563722, $309 SAT 2/1/00~~
6. ~~9/2/99, #001573460, $2,820 SAT 2/1/00~~
7. 10/1/01, #X0121259, $9,896 - Sanitation
8. 1/27/03, #X0301497, $453 - Sanitation
9. 3/1/04, X0407276, $2,275 - Sanitation
10. ~~6/1/04, #002040194, $2,096 SAT 4/4/05~~
11. 5/25/04, #X0416794, $2,259 - Sanitation
12. 5/27/04, #X0417560, $1,435 - Sanitation
13. 9/27/04, #002066517, $338 - Carting
14. 4/15/05, #X0519488, $81,946 - Sanitation
15. 11/21/05, #2172741, $5,840 - Carting
16. 4/11/06, #X0610681, $1,344 – Sanitation
17. 7/18/06, #2242142, $562 – Carting

Criminal Court of the City of NY (Total: $1,200 – Carting)

1. 3/25/05, #1972168, $1,200 – Carting

New York State Insurance Fund (Total: $266,690 – Carting)

1. ~~8/18/88, #5859, $42,089 SAT 4/20/89~~
2. ~~10/3/05, #2049372, $274,176 VACATED 1/4/06~~
3. 9/26/06, #2177724, $266,690 – Carting

Federal Internal Revenue Service (Total: $170,941)($95,814 – Carting; $75,127 – Sanitation)

1. ~~12/29/88, #3274, $2,505 SAT 7/26/89~~
2. 6/12/96, #FL01330939, $48,700 – Sanitation
3. ~~6/13/97, #FL01360188, $26,427 SAT 5/2/98~~
4. 5/2/98, #BK69PG118, $26,427 – Sanitation
5. 3/10/06, #2006000135457, $95,814 – Carting

Worker's Compensation Board of NY (Total: $12,000 – Sanitation)

1. 11/29/04, #747304, $8,750 – Sanitation
2. 8/31/06, #577906, $3,250 – Sanitation

New York City Environmental Control Board (Total: $25,888)($22,288 – Carting; $3,600 – Sanitation)

1. #097320888, docketed 7/31/00, $500 - Carting
2. ~~#133749743, $400 PAID 4/25/06~~
3. ~~#10543109P, $1,000 PAID 6/2/06~~
4. #122987307, docketed 10/31/02, $750 - Carting
5. #113650718,docketed 10/31/02, $250 - Carting
6. #114028723, docketed 10/31/02, $400 - Carting
7. #118410243, docketed 10/31/02, $500 - Carting
8. ~~#124723500, $400 PAID 3/2/06~~
9. #119179675, docketed 7/31/02, $1218 - Carting
10. #129519648, docketed 4/30/03, $750 - Carting
11. #129519657, docketed 4/30/03, $300 - Carting
12. #124284930, docketed 10/31/03, $400 - Carting
13. #124707579, docketed 7/31/03, $1500 - Carting
14. ~~#124307031, $250 PAID 3/2/06~~
15. ~~#124311249, $250 PAID 3/2/06~~
16. ~~#124313687, $250 PAID 3/2/06~~
17. ~~#124318509, $250 PAID 3/2/06~~
18. ~~#124318619, $250 PAID 3/2/06~~
19. #124708834, docketed 7/31/03, $1200 - Carting
20. ~~#124737920, $400 PAID 3/2/06~~
21. ~~#124739295, $400 PAID 3/2/06~~
22. ~~#124739369, $400 PAID 3/2/06~~
23. ~~#124739396, $400 PAID 3/2/06~~
24. ~~#124742961, $400 PAID 3/2/06~~
25. #124297544, docketed 7/31/05, $250 - Carting
26. ~~#124708770, $250 PAID 3/2/06~~
27. ~~#124725343, $250 PAID 3/2/06~~

28. ~~#124747361, $400 PAID 3/2/06~~
29. ~~#124747563, $400 PAID 3/2/06~~
30. #133742070, docketed 10/31/03, $750 - Carting
31. ~~#133742896, $400 PAID 3/2/06~~
32. ~~#133749532, $400 PAID 3/2/06~~
33. ~~#133750679, $400 PAID 3/2/06~~
34. ~~#133755160, $400 PAID 3/2/06~~
35. ~~#133763190, $400 PAID 3/2/06~~
36. ~~#133754830, $400 PAID 3/2/06~~
37. ~~#133742400, $400 PAID 3/2/06~~
38. #134159401, docketed 7/31/04, $750 - Carting
39. #134159558, docketed 1/31/07, $1200 - Carting
40. ~~#134164021, $400 PAID 3/2/06~~
41. #134359006, docketed 10/31/03, $1500 - Carting
42. #140097028, docketed 1/31/05, $1200 - Carting
43. ~~#133743290, $400 PAID 3/2/06~~
44. #143401720, docketed 1/31/07, $100 - Carting
45. #144030022, docketed 1/31/07, $100 - Carting
46. #148147066, docketed 1/31/07, $100 - Carting
47. #148147185, docketed 1/31/07, $100 - Carting
48. #134796128, docketed 1/31/07, $220 - Carting
49. #136784881, docketed 1/31/07, $100 - Carting
50. #145860377, docketed 10/31/06, $750 - Carting
51. #127187657, docketed 7/24/06, $50 - Carting
52. #136782737, docketed 10/31/06, $350 - Carting
53. #0150170552, docketed 10/31/06, $50 - Carting
54. #134322807, docketed 4/30/04, $1200 - Carting
55. ~~#145865610, $2500 PAID 6/2/06~~
56. ~~#124712244, $400 PAID 3/2/06~~
57. #137034325, docketed 7/31/04, $300 - Sanitation
58. #127228229, docketed 1/31/04, $400 - Sanitation
59. #126557806, docketed 7/31/02, $250 - Sanitation
60. #126557797, docketed 7/31/02, $250 - Sanitation
61. #145888390, docketed 1/31/07, $100 - Sanitation
62. #130024566, docketed 1/31/06, $1500 - Sanitation
63. #145876381, docketed 1/31/07, $100 - Sanitation
64. #148147084, docketed 1/31/07, $100 - Sanitation
65. #144009324, docketed 1/31/07, $100 - Sanitation
66. #149243876, docketed 1/31/07, $100 - Sanitation
67. #147290670, docketed 1/31/07, $100 - Sanitation
68. #148053960, docketed 1/31/07, $100 - Sanitation
69. #145876419, docketed 1/31/07, $100 - Sanitation
70. #136788219, docketed 1/31/07, $100 - Sanitation
71. #140874636, docketed 1/31/07, $750 - Carting
72. #140874645, docketed 1/31/07, $5000 – Carting

State of New Jersey Tax Liens (Total: $32,419 – Sanitation)

1. ~~2/17/00, #DJ-027112-2000, $ 19,460.28 – SAT 8/29/02~~
2. ~~2/17/00, #DJ-027111-2000, $ 20,460.28 – SAT 8/29/02~~
3. ~~2/17/00, #DJ-027113-2000, $19,460.28 SAT 8/29/02~~
4. 11/20/03, #DJ-00273333-2003, $32,419.55 – Sanitation

Hudson County Improvement Authority (Total: $40,300 – Sanitation)

1. 2/5/98, #DC-004495-1998, $1,030 – Sanitation
2. 1/25/03, #DC-015002-2002, $3,054 – Sanitation
3. 9/4/03, #DC-011520-2003, $3,054 - Sanitation
4. 9/16/03, #DC-014530-2003, $3,054 – Sanitation
5. 6/10/04, #DC-003567-2004, $27,054 – Sanitation
6. 2/25/05, #DC-000245-2005, $3,054 – Sanitation