

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed amendment by the Business Integrity Commission of rules relating to trade waste broker regulations.

Date / Time: March 11, 2013 10am

**Location: New York City Business Integrity Commission
100 Church Street, 20th Floor, Conference Room 1
New York, NY 10007**

**Contact: Joanna Weiss
Chief Program Officer
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Proposed Rule Amendment

PURSUANT TO section 1043 of the New York City Charter and exercising the authority vested in the Business Integrity Commission by sections 1043(a) and 2101(b)(6) of the New York City Charter, the Business Integrity Commission intends to amend rules relating to trade waste brokers.

Instructions

- **Prior to the hearing, you may submit written comments about the proposed amendment to Ms. Weiss by mail or electronically through NYC RULES at www.nyc.gov/nycrules by March 8, 2013, 10am.**
- **To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Ms. Weiss no later than 5 business days prior to the hearing.**
- Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt on week days between the hours of 9:30 A.M. and 4:30 P.M. at the New York City Business Integrity Commission, 100 Church Street, 20th Floor, New York, New York 10007.

Statement of Basis and Purpose of Proposed Rule

Under section §2101 of the New York City Charter, the Business Integrity Commission (BIC) is authorized to regulate the trade waste industry. To ensure trade waste businesses operate free of organized crime and corruption, BIC regulates both the providers of trade waste collection services and the trade waste brokers. As provided in Administrative Code Title 16-A, § 16-504(a), BIC regulates the issuance, suspension and revocation of registrations for trade waste brokers. Under § 16-504(i), BIC is authorized to promulgate rules the Commission deems necessary and appropriate to effectively regulate the waste removal industry, including the regulation of trade waste brokers.

These proposed rule amendments are designed to improve BIC's capacity to properly regulate the trade waste broker community and to ensure trade waste brokers are operating fairly and free of corruption. The proposed amendments will also ensure BIC's rules are fair across the trade waste industry, by making rules and requirements for trade waste brokers more consistent with those of licensed providers of trade waste removal collection or disposal services, as enumerated in Title 17 Subchapter E of the Rules of the City of New York.

Specifically, the proposed amendments will require trade waste brokers to follow BIC rules whether they are working with licensees or registrants.

The amendments will also require trade waste brokers to follow record keeping and record reporting requirements comparable to the requirements of licensees, including:

- Maintenance and production of accounting records, including cash receivable and cash disbursement journals, payroll records, general ledgers, customer subsidiary ledgers, accounts payable ledgers and other accounting records;
- Maintenance and production of customer information;
- Maintenance and production of annual financial statements;
- Maintenance and production of an annual report;
- Maintenance and production of the broker's Customer Register; and
- Maintenance and production of complaints made against the broker.

The amendments also define the requirements for agreements and contracts with customers for broker services. The proposed amendments address the information that must be included in contracts between brokers and customers, as well as the duration of such contracts. Specifically, contracts entered into after the effective date of this rule may not exceed two years in duration. Contracts entered into prior to the effective date of the rule will be deemed to terminate no later than two years following the rule's effective date. Additionally, any written contracts without a termination date will be deemed terminable at will by either party upon fourteen days written notice. Oral agreements between customers and a trade waste brokers must be deemed terminable at will by either party upon fourteen days written notice to the other party. In no instance

may a broker terminate services or raise rates without at least fourteen days written notice to the customer.

Under the amendments, Commission approval will now be required before subcontracting or assigning broker services and before any sales, mergers or acquisitions of trade waste brokerages involving other businesses under BIC's jurisdiction.

In this proposed rulemaking, the Business Integrity Commission is also amending the fee for Commission review of any proposed asset sale, assignment of contract, merger, acquisition, or similar transaction by a licensee to reflect the most recent user cost analysis. The same fee structure will now be applied to transactions by registered trade waste brokers to ensure the marketplace is run fairly and free from criminal influence.

Nothing in these proposed amendments to subchapter F relating to trade waste brokers is intended to alter or affect the meaning or application of the requirements for licensees as provided in subchapter E of these rules as interpreted by the Commission.

“Shall” and “must” denote mandatory requirement and may be used interchangeably in the text below, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted text is in [] brackets.

Section 1. Paragraph (3) of subdivision (b) of section 5-05 of subchapter E of Chapter 1 of Title 17 of the Rules of the City of New York is amended to read as follows:

(3) Investigation, inspection, and evaluation fee. The fee for investigation and review [of any proposed asset sale, assignment of contract, merger, acquisition, or similar transaction, shall be fifteen hundred dollars (\$1500) per principal and entity involved] of any proposed transaction described in paragraphs (1) and (2) of this subdivision shall be four thousand and five hundred dollars (\$4500) per entity involved and twelve hundred (\$1200) per principal involved. After submission to the Commission of an appropriate request for review of such a transaction, the Commission shall notify the parties to the transaction of the total fee amount due and owing, which shall be paid in full within ten days after such notification. The Commission, in its discretion, may waive or reduce fees upon written request in light of one or more of the following reason(s):

- (i) specified persons or entities have recently undergone completed background investigations by the Commission;
- (ii) the value of the transaction under review is minimal;
- (iii) specified persons or entities need not undergo background investigations because of their attenuated connection to the transaction;
- (iv) the transaction does not involve the sale, assignment, or other transfer of any accounts or customer contracts (e.g. trucks or other non-customer assets);

- (v) the transaction involves less than 5 customers;
- (vi) the transaction involves unique characteristics or other mitigating factors that would warrant a reduction or waiver of fees.

§ 2. Subchapter F of Chapter 1 of Title 17 of the Rules of the City of New York is amended to read as follows:

§ 6-01. Presentation of Registration to Customer; Posting of Registration.

A trade waste broker “broker” shall not conduct an evaluation or analysis of a business' trade waste stream or broker a transaction between a commercial establishment and a trade waste business required to be licensed or registered pursuant to this chapter, unless such broker has first presented a copy of his or her registration to such customer or prospective customer. A trade waste broker shall conspicuously post the registration issued by the Commission at the broker's place of business.

§ 6-02. Acceptance of Payment.

(a) A trade waste broker who conducts an evaluation or analysis of a trade waste stream shall not request or accept any payment in regard to such evaluation or analysis from a party other than the customer or prospective customer for whom such services are performed unless such broker has first disclosed to such customer or prospective customer in writing that the broker proposes to request or accept such payment. A copy of such notice to the customer or prospective customer shall be submitted to the Commission within fifteen (15) days of such disclosure.

(b) A trade waste broker who brokers a transaction between a customer or prospective customer of trade waste removal, collection or disposal services and a trade waste business required to be licensed or registered pursuant to this chapter shall not request or accept payment from such trade waste business. A trade waste broker shall not broker a transaction between a customer or prospective customer and a trade waste business owned by, operated by, or affiliated with the trade waste broker or any principal thereof.

(c) A trade waste broker who brokers a transaction between a customer or prospective customer of trade waste removal, collection or disposal services and a trade waste business required to be licensed or registered pursuant to this chapter shall state in writing to such customer or prospective customer that such broker has examined the rate schedules made available by the Commission pursuant to section 5-02 of this chapter.

§ 6-03. Collection of Fees Prohibited; Contract Duration.

(a) A trade waste broker shall not engage in the collection of fees from commercial establishments for trade waste removal by a trade waste business required to be licensed or registered pursuant to this chapter except where: (i) the contract for such fee collection complies with standards set forth in subdivision (b) of this section; (ii) such fee collection is upon the request of the customer; and (iii) such fee collection is part of an agreement providing for other services such as periodic waste evaluation and consulting with respect to source separation, recycling or other business practices relating to trade waste.

(b) A contract that includes provision for the collection by a trade waste broker of fees for trade waste removal shall be submitted to the Commission and shall set forth the fee charged for such collection, the rates charged by the trade waste removal business, the method of billing employed by the trade waste removal business and shall provide that the trade waste broker provide the customer with a monthly statement detailing the volume of trade waste removed.

(c) A contract for the provision of brokering services to a commercial establishment shall not exceed two years in duration.

§ 6-04. Records and Reporting Requirements.

[A trade waste broker shall maintain a complete and accurate set of books of account reflecting operation of the broker's business and documents, receipts, bills and other written records that concern such business. Such records shall be maintained for five years unless the Commission directs otherwise. The period for which records must be retained may be reduced only where the Commission so directs in a specific case in writing. The Commission may, in specific instances at its discretion, require more or less exacting record keeping and reporting requirements and may require the retention of identified records for a period exceeding five years. Such records shall be made available for inspection and audit by the Commission. The Commission may conduct such an inspection or audit at the trade waste broker's place of business or, at the Commission's discretion, at the offices of the Commission. The trade waste broker shall cooperate with the representatives conducting any such inspection or audit.

(a) A trade waste broker shall keep a register of customers in a form or in a computer format approved by the Commission. This register shall contain a list of all businesses that have been served by the trade waste broker during the period covered by such register and shall describe the services performed for each business, the fees charged to such business by the trade waste broker for such services, any fee collected from any other source in relation to such services, and the name of the business to which such fees were charged.

(b) In addition to the requirements for the customer ledger set forth in subdivision a of this section, where, pursuant to section 6-03 of this chapter, a trade waste broker collects fees from a commercial establishment for trade waste removal by a trade waste

removal business required to be licensed pursuant to this chapter, such broker shall include in the customer register a

description of the other services provided for the customer as required by paragraph (iii) of such subdivision and shall retain for inspection by the Commission a copy of the customer's request for such collection service as required by paragraph (ii) of such subdivision and the contract governing the agreement to provide services.]

(a) Definitions. For the purposes of this subchapter, the following terms apply:

(1) The term “payor” shall mean any person who reimburses the broker for any purpose.

(2) The term “customer” means an entity who engages a trade waste broker to either represent the entity for the purpose of securing trade waste removal by a licensed or registered provider, or who analyzes the entity’s waste stream to recommend a cost efficient means of waste disposal or other changes in related business practices.

(b) A trade waste broker shall maintain any records concerning its business including but not limited to: bills and purchase invoices (with notations identifying whether the bill or invoice was paid and, if so, the check number and date), deposit slips, copies of checks received from payors, bank statements, cancelled checks, tax returns (copies of Federal, State, and local returns with all supporting schedules), copies of accountants' work papers, insurance policies, petty cash disbursement records, IRS W-2 forms, IRS W-4 forms, IRS 1099 forms, I-9 forms, internal memoranda concerning the trade waste broker’s finances or one or more customers or prospective customers of the broker, contracts, copies of cash receipts, documents reflecting electronic fund transfers, written correspondence, contract assignments, waste stream analyses, rate schedules, documents concerning route sales, discount rate lists, documents concerning mergers, acquisitions, subcontracts and asset sales, and all documents supporting, evidencing, or used to create the reports, books, journals, registers, and ledgers that the broker is required to maintain pursuant to this section.

(c) A trade waste broker must provide each payor with a written receipt for all cash payments. These receipts must include the name and address of the broker, the registration number of the broker, the date of the payment, the amount of the payment and the identity of the payor. The broker or the broker's authorized agent must sign the receipt. The broker must then keep a duplicate copy of the receipt as part of its books and records.

(d) A trade waste broker must not make any payment in excess of one thousand dollars (\$1,000) in cash or by check made payable to “Petty Cash”. A trade waste broker must not make any check payable to “Cash”.

(e) A trade waste broker must maintain a complete and accurate set of books of account reflecting the operation of the broker's business. Such books may be maintained on a computerized accounting system. The books must be in accordance with Generally Accepted Accounting Principles and be kept on either a cash or an accrual basis of accounting. The books should be kept on a quarterly or monthly basis

and be brought up to date no later than thirty days after the end of each preceding quarter or month. The books shall include the following journals and ledgers:

(1) Cash Receipts Journal showing for each payment received:

- (i) The date payment was received;
- (ii) The identity of the payor;
- (iii) The amount of the payment;
- (iv) The check number; and
- (v) A brief explanation of the purpose of the payment.

(2) Cash Disbursements Journal showing for each payment made:

- (i) The date payment was made;
- (ii) The identity of the payee;
- (iii) The amount of the payment;
- (iv) The check number; and
- (v) A brief explanation of the purpose of the payment.

(3) Payroll Journal showing:

- (i) The name of the employee;
- (ii) Job title and position of the employee;
- (iii) The home address of the employee;
- (iv) The social security number of the employee;
- (v) gross pay;
- (vi) deductions; and
- (vii) net pay.

(4) General Journal showing all non-cash transactions including adjusting entries, reversing entries, correcting entries, and reclassifying entries with explanations.

(5) General Ledger maintaining an account for each kind of asset, liability, capital, income and expense accounts. Each posting to an account must include date, folio page and amount. Balances of each account must be updated on a monthly basis.

(6) Customer Subsidiary Ledger including a separate account for each of the broker's customers, arranged alphabetically, showing:

- (i) The name of the customer;
- (ii) The customer's billing address;
- (iii) Telephone number;

- (iv) The name, billing address and phone number of any licensee or registrant who will be removing customer's waste;
- (v) A description of the services provided to the customer;
- (vi) Monthly charges to each customer;
- (vii) Monthly collections from each customer;
- (viii) The rate collected from customers (per cubic yard or ton where applicable);
- (ix) The date, check number and amount of payments received;
- (x) If the broker has arranged agreements between consumers and providers of trade waste removal, collection or disposal services, the name, billing address, and license or registration number of the provider of trade waste removal, collection or disposal who will serve the customer; and
- (xi) If the broker has arranged agreements between consumers and providers of trade waste removal, collection or disposal services, the rate the provider of trade waste removal, collection or disposal is paid to remove, collect or dispose of customer's trade waste.

(7) Accounts Payable Subsidiary Ledger showing for each account:

- (i) The date of purchase;
- (ii) The name of the vendor or supplier;
- (iii) The amount payable; and
- (iv) A brief explanation of the accounts payable item.

(8) Other Subsidiary Ledgers must be kept for accounts that are not maintained elsewhere. This includes subsidiary ledgers for Loans and Notes Payable and Loans and Notes Receivable (which must include details of each loan and note including the date of the payment, the identity of the debtor or creditor, the form of the payment, and the check number, if applicable).

(f) (1) A trade waste broker must maintain an annual financial statement in a form or computer format prescribed by the Commission. The financial statements must include a balance sheet, an income statement, a statement of cash flows and a statement of retained earnings or (if the broker is a sole proprietorship or partnership) capital.

(2) The broker must retain the following records:

- (i) The balance sheet, including the balance for each group or type of asset, liability, and capital amount at the end of the accounting period.
- (ii) The income statement including the balance of each group or type of income and expense for the accounting period.

(3) The following schedules must be included in the financial statement in support of the balance sheet and income statement:

- (i) A schedule of investments;
- (ii) Allowances for doubtful accounts;
- (iii) Prepaid expenses;
- (iv) Miscellaneous current and other assets;
- (v) Fixed assets, depreciation and accumulated depreciation;
- (vi) Notes payable and receivable;
- (vii) Taxes prepaid and accrued;
- (viii) Miscellaneous current and accrued liabilities;
- (ix) Capital stock;
- (x) Additional paid-in capital;
- (xi) Retained earnings;
- (xii) Intangible assets and accumulated amortization; and
- (xiii) Records related to any waste stream analysis performed

(4) Operating, administrative and general expenses must be summarized and shall include schedules as follows:

- (i) A payroll analysis with details of employee wages;
- (ii) A compensation schedule for officers, directors and owners;
- (iii) A revenue analysis;
- (iv) An analysis of interest paid and received; and
- (v) An amortization expense analysis.

(g) No later than six (6) months following the end of the trade waste broker's fiscal year, all brokers must file a report on a form or computer format prescribed by the Commission. The Commission requires that the annual report include the financial statement described in subdivision (f) of this section and other information and documents concerning the broker's operations, including but not limited to: financial information reported on a calendar year basis, the management letter issued by the broker's auditor to the broker, information concerning affiliations with other licensees and brokers; organization and control of the broker; corporate control over the broker; corporations controlled by the broker; officers and directors of the broker; security holders of and voting powers within the trade waste broker's business; management, engineering and other contracts of the broker. The trade waste broker must certify, and the principal responsible for the broker's financial affairs must swear under oath upon penalty of perjury, that the financial statement accurately reflects the broker's accounts and financial operations.

(h) In the event that a revision of the report is required by the Commission subsequent to review by an auditor on the Commission's staff, an amended report must be submitted to the Commission no later than the date specified by the Commission.

(i) The Commission may require that the financial statements be audited by an independent certified public accountant. The certified public accountant must not be employed by or related to the trade waste broker or any principal of the broker and must not have any financial interest in the broker or any principal of the broker. The auditor shall render an opinion regarding: (1) the results of the broker's operations and cash flows for the broker's fiscal year end and (2) whether the financial statements accurately reflect the financial position of the broker as of the balance sheet date. The auditor need not opine on paragraphs (3) and (4) of subdivision (f). The auditor must also issue a supplemental opinion on the broker's compliance with the financial record-keeping and reporting requirements of the Commission. The supplemental opinion must detail every variance or deviation from the Commission's requirements noted during the auditor's examination of the broker's financial books and records. The trade waste broker must certify, and the principal responsible for the broker's financial affairs must swear under oath upon penalty of perjury, that the financial statement accurately reflects the broker's accounts and financial operations. At the completion of the audit, the broker must obtain from the auditor copies of the accountant's work papers.

(j) A trade waste broker must maintain a complete and accurate Customer Register on a form or in a computer format approved by the Commission, and file the Customer Register with the Commission as provided in paragraph (3).

(1) The Customer Register must contain a list of all customers currently served by the broker. This list must include the customer's name and the name of an authorized representative of the customer, any trade name, the address or addresses of service, the billing address, the telephone number, the date on which services commenced, the total charge per month, and such other information as may be specified by Commission directives. Where, pursuant to section 6-03 of this chapter, a trade waste broker collects fees from a commercial establishment for trade waste removal by a trade waste removal business required to be licensed pursuant to this chapter, such broker shall include in the customer register a description of the other services provided for the customer as required by section 6-03(a)(iii) and shall retain for inspection by the Commission a copy of the customer's request for such collection service as required by section 6-03(a)(ii) and the contract governing the agreement to provide services.

(2) If the broker has secured a contract or agreement between a customer and a provider of trade waste removal, collection or disposal services, the Customer Register shall state the name, billing address and license or registration number of the provider. Additionally, the Customer Register must include the date on which services commenced, the total charge per month, and such other information as may be specified by Commission directives.

(3) A complete and up-to-date Customer Register must be filed twice each year: on January 30 for the period from June 1 through December 31, and on July 31 for the period from January 1 through June 30, or as often as ordered by the Commission. In the event that the Commission grants a new registration, the newly registered trade waste broker must submit its first Customer Register to the Commission no later than 90 days after the granting of its registration, unless otherwise directed by the Commission.

(k) A trade waste broker must maintain a register of all complaints that such broker receives from customers, licensees or registrants.

(l) All records, receipts, documents, journals, ledgers, registers, and books, required by this section, must be maintained for five years unless the Commission directs otherwise. This period for record keeping will only be reduced if the Commission so directs in a specific case in writing. The Commission may in specific instances, in its discretion, require more or less exacting record-keeping and reporting requirements and may require the retention of identified records for a period of time exceeding five years.

(m) All records, receipts, documents, journals, ledgers, registers, and books that must be maintained pursuant to this section, must be made available for inspection and audit by the Commission. The Commission may conduct an inspection or audit at the trade waste broker's place of business or at the offices of the Commission. The broker shall cooperate with the representatives of the Commission conducting any such inspection or audit.

(n) If any due date under this section falls on a weekend or City holiday, the due date shall be deemed to be the first business day following such weekend or holiday.

§ 6-05. Compliance with Applicable Law and Regulation.

All trade waste brokers shall at all times comply with all the laws, rules and regulations of Federal, State and local governmental authorities having jurisdiction over any of the brokers' activities. Failure to comply with these laws, rules or regulations shall be grounds for suspension and/or revocation of the registration and, in addition to any other penalty provided by law, the imposition of penalties pursuant to section 1-04 of this chapter.

§ 6-06. Agreements and Contracts with Customers; Service to Customers.

(a) Trade waste removal providers. A trade waste broker may only arrange for trade waste removal services to be provided by haulers licensed or registered by the Commission, in accordance with §16-505 of the Administrative Code.

(b) Term and form of contract; requirements; service and discontinuation of service; increase of rates.

(1) A contract for the services of a trade waste broker entered into after the effective date of this rule shall not exceed two years in duration.

(2) A contract to provide the services of a trade waste broker entered into prior to the effective date of this rule shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier.

(3) A written contract to provide the services of a trade waste broker that contains no provision regarding duration must be terminable at will by either party upon fourteen (14) days written notice to the other party.

(4) An oral agreement between a customer and a trade waste broker must be terminable at will by either party upon fourteen (14) days written notice to the other party.

(5) A trade waste broker must not discontinue service to any customer, or raise the rates charged to such customer, unless at least fourteen (14) days written notice is provided to the customer. No contract for trade waste broker services shall provide that the broker may discontinue service upon shorter notice.

(6) Where a broker is arranging for an agreement between a customer and provider of trade waste removal, collection or disposal services, a written contract shall provide that the broker will arrange for removal of the customer's waste from the location designated by the customer, and state the time the waste removal will begin and the rate the customer will pay the broker. Where the services to be provided by the broker include evaluation or analysis of the waste stream, the written contract shall provide a brief description of such evaluation or analysis the broker will perform and the rate the customer will pay to the broker. A sample standard contract form shall be submitted to the Commission at the time an application for a trade waste broker registration is submitted. Brokers registered prior to the effective date of this rule shall submit a sample standard contract form with their first renewal application submitted after such effective date. A broker must submit any subsequent changes in the standard form to the Commission thirty (30) days prior to implementing such change. Nothing in this provision should be construed to prevent a broker from negotiating terms at variance with the standard form contract, except that a broker shall not vary such contract in any manner inconsistent with Chapter 1 of Title 16-A of the Code or any provision of these rules.

(7) A trade waste broker must comply with the service and other terms set forth in the written contract or oral agreement with the customer. A contract agreed to in writing should not be altered without the written agreement of the customer or authorized representative. The broker must provide the customer with a copy of any contract or written agreement, and other additional informational notices required by the Commission throughout the term of service to the customer by the broker.

(c) Subcontracting, assignment of contracts, mergers and acquisitions.

(1) Subcontracting broker services.

(i) A trade waste broker shall apply for review by the Commission before subcontracting or assigning a contract and shall seek such review by the Commission thirty (30) days before such subcontract or assignment is proposed to take effect. A request for subcontracting or assignment of contract must be submitted on a form prescribed by the commission and must identify the customer(s) involved (including name, address, contact person, and contract terms), state the requested length of the arrangement, and describe the business justification for the arrangement. Copies of all affected contracts or proposed contracts must be submitted with the request.

The Commission will not approval such a transaction unless the Commission determines that the transaction is consistent with the purposes of Chapter 1 of Title 16-A of the Administrative Code. A trade waste broker may only subcontract or assign a contract to another trade waste broker registered by the Commission. A trade waste broker must not act as a subcontractee unless the subcontractor broker has received express written approval for the subcontracting arrangement from the Commission.

(ii) Upon approval by the Commission, an assignee or subcontractor of broker contracts shall notify, within fifteen (15) days of the effective date of such assignment or subcontract, each party to the contract of such assignment or subcontract and of the right of such party to terminate such contract upon thirty days notice during the three months subsequent to receiving notice of such assignment or subcontract. Such notification shall be by certified mail with the receipt of delivery retained by the assignee or subcontractor and shall be upon a form approved by the Commission. Where no written broker contract exists with a customer, a trade waste broker that assumes responsibility for the broker services from another broker must provide such customer with notification, within fifteen (15) days of such assignment or subcontract, on a form approved by the Commission by certified mail with the receipt for delivery retained by the assignee or subcontractor, that a new company will be providing broker services and that the customer has the right to terminate such service.

(2) Mergers and acquisitions. A trade waste broker must apply for review by the Commission before acquiring, merging with, consolidating with, or exchanging any interest of any business that is subject to the Commission's jurisdiction pursuant to Title 16-A of the Administrative Code. Such application for review shall be submitted on a form prescribed by Commission's review no later than thirty (30) days before such acquisition, sale or merger is to take effect. The Commission will not approve such a transaction unless the Commission determines that the transaction is consistent with the purposes of Chapter 1 of Title 16-A of the Administrative Code. The Commission may, in its discretion, require that either the purchaser or seller post a bond or place money in escrow with the Commission in an amount that the Commission believes, in its

discretion, is needed to cover any outstanding or potential fines or penalties owed or that may be owed to the Commission, any customer complaints that have been heard pursuant to section 1-03 of this chapter in regard to which a final determination has not been rendered, and any restitution ordered by the Commission which the selling or dissolving broker has failed to make to the customer. In the event that the seller fails to post such bond or place money in escrow as set forth in this paragraph, the Commission may seek from the purchaser any and all outstanding fines or penalties for violations of Chapter 1 of Title 16-A of the Code and this chapter, and any outstanding ordered customer restitution.

(3) Investigation, inspection, and evaluation fee. The fee for investigation and review of any proposed transaction described in paragraph 2 of this subdivision shall be four thousand and five hundred dollars (\$4500) per entity involved and twelve hundred (\$1200) per principal involved. After submission to the Commission of an appropriate request for review of such a transaction, the Commission shall notify the parties to the transaction of the total fee amount due and owing. This fee must be paid in full within ten days after such notification. The Commission, in its discretion, may waive or reduce fees upon written request in light of one or more of the following reason(s):

- (i) Specified persons or entities have recently undergone completed background investigations by the Commission;
- (ii) The value of the transaction under review is minimal;
- (iii) Specified persons or entities need not undergo background investigations because of their attenuated connection to the transaction;
- (iv) The transaction does not involve the sale, assignment, or other transfer of any accounts or customer contracts (e.g. trucks or other non-customer assets);
- (v) The transaction involves fewer than 5 customers;
- (vi) The transaction involves unique characteristics or other mitigating factors that would warrant a reduction or waiver of fees.

(4) Customer's thirty (30) day termination right during ninety (90) day post-assignment period. During the ninety (90) day period following a transaction for which Commission approval is required pursuant to this subdivision (c), , the customer has the right to terminate its contract with the broker on thirty (30) days notice. All contracts signed by affected customers during the ninety (90) day period subsequent to such transaction remain terminable on thirty (30) days notice throughout the ninety (90) day period and any such contract signed during that ninety (90) day period must contain prominent notice of this fact.

(d) Written contract. At the time service to a customer is commenced, the trade waste broker must take all steps necessary to attempt to reach an agreement with the customer on the terms and conditions of the service to be provided, and within forty

(40) days of the commencement of service shall prepare a written contract that clearly and legibly sets forth the terms and conditions of the agreement negotiated by the broker and the customer, and deliver such contract to the customer. This contract must provide that the contract is only effective upon being dated and signed by the broker and the customer or authorized representative. Additionally, the contract must specify that a change of any term or condition of such contract must be made in writing, dated, signed by both the broker and the customer or authorized representative before such term or condition takes effect. The proposed contract offered by the trade waste broker must be accompanied by a notice that states: "You are not required to sign this contract. If you have any questions or complaints, call the Business Integrity Commission at 212-676-6300." The broker must provide one copy of such signed and dated contract and a copy of any signed and dated amendments to the customer or authorized representative.

(e) Customer's decision not to sign a written contract. A customer is not required to sign a written contract. In the event a customer fails or refuses to sign a contract that has been tendered to the customer pursuant to subdivision d of this section a broker will be deemed to have complied with such subdivision if the broker complies with the requirements in paragraphs (1) through (3) of this subdivision. However the broker must not discontinue service to the customer, or raise the rates charged, unless at least fourteen (14) days written notice of such discontinuance or rate increase have been given to the customer. Where a written contract with a customer has not been obtained by the trade waste broker, the broker shall:

(1) Demonstrate that a written contract has been tendered to the customer in accordance with subdivision d of this section, within 40 days of the commencement of service;

(2) Keep a copy of the contract tendered on file along with the signed returned postal receipt for a period of one year after the eventual discontinuance of service to the customer; and

(3) Make available to the Commission upon its request a copy of the contract and the return receipt.

(f) Liability for negligence. No contract or contract amendment between a broker and a customer may provide that the broker is exempt from liability for damage caused by the broker's negligence or the negligence of any of its agents.

(g) Standard bills, statements, invoices.

(1) A broker must provide a written bill, statement or invoice at least once every month to each customer to which such broker provides services. Such bill, statement or invoice must clearly contain all of the following:

(i) The trade waste broker's name, address, telephone number, registration number;

(ii) The customer's name and complete address;

(iii) The maximum rates in effect with a statement indicating that the rates so identified are maximum legal rates and that lower rates may be lawfully charged;

(iv) The negotiated rate per cubic yard or per 100 pounds on which the invoice is based;

(v) An itemized list of charges detailing the cubic yards or weight of putrescible waste removed, recyclables removed, and any additional charges;

(vi) Where the customer is being charged on a “flat” or “average” billing basis,

a. The total charges for waste removal for the billing period;

b. An itemized statement of the estimated volume or weight of the putrescible waste removed and the charge for the removal of such waste;

c. An itemized statement of the estimated volume or weight, if any, of the recyclable waste removed and the charge for the removal of such waste;

d. A statement as to the method by which the estimated volume or weight was determined; and

(vii) A separate statement of sales tax collected.

(2) When the trade waste broker has brokered an agreement between a consumers and provider of trade waste removal, collection or disposal services, the broker shall provide a notice to customers as follows, on a form approved by the Commission:

NOTICE TO CUSTOMERS-- The New York City Business Integrity Commission regulates the maximum rate your licensed or registered trade waste hauler may charge. If you should have a question or a complaint concerning waste removal, contact the New York City Business Integrity Commission.

§ 6-07. Employee Information.

A trade waste broker shall provide to the Commission the names of any employees hired or to whom offers of employment are extended subsequent to the issuance of a registration and the information required in regard to employees and such prospective employees on the application for a trade waste broker registration.

§ 3. Effective Date: This rule shall take effect one hundred and eighty days after its final publication in the city record. A broker will be required to file its first financial statement

form as described in §6-04(g) no later than six months after the date of the broker's fiscal year end that occurs immediately following the effective date of this rule, and then on an annual basis thereafter. A broker will be required to file its first Customer Register as described in §6-04(j) on the first January 30 or July 31 that occurs after the effective date of this rule, and then every six months thereafter.