

**Comments**  
**of**  
**Waste Connections (BIC #1059)**  
**On the**  
**Proposed Amendment**  
**to Title 17 of the**  
**Rules of the City of New York**

**Submitted to the**  
**New York City Business Integrity Commission**  
**Honorable Daniel D. Brownell**  
**Commissioner/Chairman**

**By**  
**Andrew Moss, Northeast Region Government Affairs Manager**  
**June 7, 2017**



**WASTE CONNECTIONS, INC.**  
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Waste Connections respectfully submits the following comments on the New York City Business Integrity Commission's proposed amendments to Title 17 of the Rules of the City of New York.

A new Section 5-05(a)(4) consisting of three provisions is proposed that defines when a written customer contract will be voidable. Waste Connections believes that this provision is unnecessary and will cause undue confusion. Sections 5-05(a)(4)(i) and 5-05(a)(4)(ii) both restate well established common law contract provisions and are as such unnecessary. Proposed Section 5-05(a)(4)(iii) contains a provision that any breach of any law, including BIC's regulations, would make a contract voidable by either party. As literally written, a collection vehicle leaking leachate during its collection route (a BIC violation) would deem every customer's contract voidable. Conversely, any customer who has not timely submitted their payroll taxes could find their contract deemed voidable. This provision is confusing and does not provide any additional consumer protections.

Should the BIC proceed to promulgate this rule, a fourth provision should be added that would make a contract voidable if a Customer has not paid their bill in over 30 days. Current regulation 5-05(a)(3) allows no discontinuance of service of for at least 14 days. Under the current regulations, service cannot be stopped for two additional weeks, even if a customer has never paid its bills, allowing a large accounts receivable balance to build up before service can be discontinued. This proposed change, while not altering the 14 day rule, would help a large account receivable balance from accumulating.

Section 5-07 is rewritten to clarify that all new employees must be disclosed to the Commission within 10 business days. Waste Connections believes that a provision that would

allow for a monthly submission, within 5 business days after the end of a month, of new hires and terminations be sufficient to meet the requirements of this section.

**Comments**  
**of the**  
**NYC Chapter**  
**National Waste & Recycling Association**  
**on the**  
**Omnibus Rule Amendment**  
**Reference Number: 2016 RG 113**  
**of the**  
**Business Integrity Commission**

**Submitted to the**  
**New York City Business Integrity Commission**  
**Honorable Daniel D. Brownell**  
**Commissioner/Chairman**

**By**  
**Steve Changaris, NYC Chapter Manager**  
**Friday, June 16, 2017**



The New York City Chapter of the National Waste and Recycling Association (hereafter the Chapter) is making this submission as its formal comments to the proposed amendments to Title 17 of the Rules of the City of New York. The Chapter is part of the national trade association that represents the private sector waste and recycling industry in the United States. We have an active chapter of member companies operating waste management companies in the City of New York. The hard working men and women of our members collect and manage more than 75% of the commercial trade waste and recyclables produced by the City's 225,000 plus commercial entities. It is a herculean task, performed, day-in, day-out, year round - in good weather and bad. We work - as Business Integrity Commission (BIC) licensees - to provide excellent service to our customers; good paying, typically union jobs, for our employees to collect and manage the City's waste as safely as possible; and to be as good corporate citizens in the neighborhoods and communities of the City where we serve and work as possible.

While we generally agree with the majority of the improved language set forth in the proposed amendment, including bringing current the submission dates for the quarterly customer registers, our first comment is one we have made consistently over the past several years, including during BIC hearings, where we urge the BIC to eliminate the rate cap in its entirety. The rate cap is an obsolete component of the BIC oversight process, and after 20 years of effective work of the commission, it continues to be unnecessary given the fitness and integrity of licensed carters working in the City's industry today. New York City is the only municipality in the country where a rate cap exists for the collection of commercial wastes and

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recyclables. This fitness and integrity, combined with the robust competition in the marketplace, has allowed many credible city authorities, including former leaders of this commission, over the years, to confirm this point. The rate cap artificially restrains the ability of carters to do many things, including: providing specialized waste and recycling services needed by many customers; introducing new equipment; and, attracting the new capital investments necessary to fund the best recycling and waste service operations for the citizens and businesses of the city. We also note that the continued existence of the rate cap makes it only that more difficult for carters to implement separate collection and processing of organics; to expand the collection and processing of commercial recycling; and to bring the most environmentally friendly and safe trucks to the streets of the city as soon as practicable.

Now that we have re-iterated the reasons for our longstanding comments regarding the removal of the rate cap, we provide comments specifically on the pending proposed Omnibus Rules Amendment Regulations.

The proposed rules amendment attempts to restate and include three common law principles with respect to when a written contract between a BIC trade waste licensed company and customer may be terminated. The member companies of the Chapter would like to see this revised language removed from the amendment because it will cause unanticipated problems and confusion for the Commission, our customers, and our companies. We think the restatement of common law contract provisions in Section 5-

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05(a)(4)(i) is not necessary. The regulations have historically addressed general contract issues such as duration of contract, scope of services, and termination rights and notice. Now, for the first time, this section attempts to prescribe provision as to when a contract can be voidable, especially when these proposed provisions conflict with common law. We believe this will create confusion in the marketplace and likely result in disputes and litigation between carters and commercial customers. Specifically, the industry has been using standard form contracts, approved by the BIC, for years, and these agreements contain all material provisions prescribed by the BIC. To indicate that a contract is voidable if it is missing material information, begs the question as to what information can be missing that is not already included on the approved form agreements. More importantly, if two commercial parties are bound by a written contract that they negotiated at arms-length, and one party then wants to challenge the effectiveness of such contract, then that party is able to avail itself of a court of law regarding such provisions. Also, the provision regarding a contract being voidable if it does not meet the requirements of federal, state or local law is too expansive and poses concern to the members of the Chapter. One could arguably have a minor infraction related to the service under the customer contract, which could result in the customer using this as an excuse to terminate the contract. Contract law does not provide that one party can simply terminate a contract, usually unless there is a material breach by one party, and such party has not cured the breach in a reasonable or negotiated period of time.

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Should the BIC proceed to promulgate this section of the rule, the Chapter believes a fourth provision should be added about when such a written contract may be terminated. The new condition, we propose, would involve those circumstances when a customer does not pay its bill for trade waste service for thirty days, after simple notice to pay it has been made. We therefore encourage the BIC to amend the new Section 5-05(a) of these proposed regulations to include a fourth instance that a contract for trade waste service may be terminated by the trade waste licensee for non-payment after 30 days, so long as simple notice to make payment for the service provided has occurred.

The amendment also revises language regarding notice to the BIC when a trade waste licensed company hires employees. The proposed amendment streamlines language that requests that all new employees of trade waste licensed companies must be disclosed to BIC within ten business days of hire. The member companies of the Chapter would like to file such notice more periodically, rather than sporadically. Perhaps an initial step would be to require this new hire reporting monthly; and in the future less frequently like maybe quarterly or semi-annually and eventually maybe just once a year, annually.

The Chapter appreciates the opportunity to provide these comments and looks forward to working with the BIC on this and other issues affecting carters in city.

*The NYC chapter of the National Waste and Recycling Association is comprised of the city's private recycling and waste services companies. Chapter members are dedicated to the environmental and economically efficient handling of recyclables, discards and wastes.*