



NATURAL RESOURCES DEFENSE COUNCIL

STATEMENT OF THE NATURAL RESOURCES DEFENSE COUNCIL, INC.
("NRDC"), BEFORE THE CITY COUNCIL'S COMMITTEE ON SANITATION AND
SOLID WASTE MANAGEMENT, IN SUPPORT OF LEGISLATION INCREASING
FINES AND PENALTIES FOR RUSTLERS OF RECYCLABLES -- June 13, 2007

Good afternoon, Chairman McMahon and members of the Committee. My name is Eric A. Goldstein and I am an attorney with the Natural Resources Defense Council, Inc. ("NRDC"). As you know, NRDC is a national, non-profit legal and scientific organization active on a wide range of environmental issues. Since its founding in 1970, NRDC has focused significant attention on the urban environment in general and New York City in particular. One of our top regional priorities has been to transform New York's waste policy from primary reliance on incineration and landfilling to making recycling and waste prevention the cornerstones of the city's waste disposal arsenal.

I am pleased to be here today to testify concerning Intro. No. 582. This legislation would increase fines and penalties for those who interfere with the Sanitation Department in its collection of materials set out for recycling. NRDC strongly supports the proposed law.

Recycling in New York City has come a long way indeed. When the concept of requiring the Sanitation Department to separately collect recyclable materials was first introduced in the mid-1980's, many people both inside and outside of government argued that such an initiative would never succeed and that no markets existed for the recyclables that would be collected. In the mid-1990's, as former Mayor Giuliani defied numerous court rulings to implement the City Council's landmark 1989 recycling statute, iconoclastic commentators like John Tierney argued that "recycling is garbage."

Today, things are very different. The Visy paper mill on Staten Island is paying New York City for thousands of tons of recycled papers brought to its facility and employing hundreds of New Yorkers who are turning those old resources into new paper products. The Simms Hugo Neu Corporation is now constructing a major facility on the Brooklyn waterfront to sort metals, glass, plastic (and paper) for recycling, and will soon enter into a 20 year contract with the city -- providing a long-term market for city-collected recyclables. And across the country, the commodity markets are now paying over \$100 a ton for newspapers, nearly \$100 a ton for mixed papers, \$1,800 a ton for aluminum cans, and \$320 a ton for plastic PET bottles. See Waste News, "Commodity Pricing", April 16, 2007 and May 28, 2007.

In short, recyclable materials that New Yorkers are placing out for collection have become a valuable economic asset. Some of these materials have in fact become so valuable that commercial enterprises are now apparently sending trucks into New York

City to steal the materials placed out for recycling, before the Sanitation Department trucks come around to collect these commodities. Rustlers of recyclables are now riding down city streets, stealing materials placed out for collection and depriving taxpayers of their economic value. Unfortunately, existing laws provide low penalties for such offenses and are not serving as an effective deterrent to stop this illegal activity.

Chairman McMahon's Intro. 582 is well-designed to address this problem. It would increase the fines for any person who interferes with Sanitation Department collections of recyclables while using a truck or other motor vehicle to not less than \$1,000 dollars for a first offense and not less than \$3,000 for each subsequent offense. In addition, it would subject any truck or other motor vehicle used to commit such a violation to impoundment by the department until the violator has paid all fines and storage fees.

NRDC supports Intro. 582 for three reasons. First, it would serve as a strong economic deterrent to secure compliance with existing law, which prohibits interference with Sanitation Department collection of recyclables. Second, by confining the increased penalties and impoundment provisions only to those who interfere with recycling collections through the use of a truck or other motor vehicle, the legislation wisely excludes homeless and other lower-income individuals who scavenge to collect returnable bottles and cans. Instead, the legislation is targeted at commercial enterprises that are stealing recyclables on a high-volume basis and in a business context. Third, if this legislation is effective in its intended purpose it will prove to make the city's recycling program more cost-effective – by insuring that valuable recyclable commodities that are placed out by New Yorkers actually make it to the recycling handlers with whom the city has contracted to take recyclable materials.

In sum, NRDC believes that the proposed legislation, Intro. 582 is consistent with sound fiscal and environmental planning. It would help insure that the City Council's landmark mandatory recycling law --Local Law 19 of 1989 – is fully complied with. And it would advance the implementation of the latest Solid Waste Management Plan, which was advanced by Mayor Bloomberg and the City Council, under the leadership of Speaker Quinn and Chairman McMahon, last year. This legislation has our enthusiastic support, and we thank you, Mr. Chairman, for advancing it.

Committee on Sanitation and Solid Waste Management
Hearing on Seven Sanitation Bills
June 13, 2007

Hon. Michael E. McMahon, Chair, Sanitation and Solid Waste Management

OPENING STATEMENT

Good Afternoon, I am Michael McMahon Chairman of the Sanitation and Solid Waste Management Committee. Today the Committee will conduct a hearing on seven bills. The bills in general will help make our city cleaner and bring added fairness to the enforcement of our sanitation laws. I will give a brief summary of the content of the bills and an explanation as to their impact.

Int. No. 110 – Introduced by me, provides for increasing the fines for those businesses and individuals that deposit their bagged trash into street litter baskets. An ongoing problem in commercial areas is that businesses in particular and some individuals place their bagged trash in to street baskets, filling the baskets and thereby causing them to overflow with the normal trash that would be placed there is deposited and causing dirty street conditions. The higher fines proposed in this bill would help DOS enforcement stop this type of activity.

Int. No. 215 – Introduced by CM Gentile, this bill would mandate that before an owner of a one or two family dwelling receives a violation for improper disposal of household waste and recycling, an enforcement agent

must identify a minimum of five miss sorted items. This bill would prevent homeowners who attempt to recycle properly but missed one or two items or is subject to a passerby depositing trash in a recycling can unbeknownst to the homeowner from getting ticketed. DOS should be concentrating on enforcement against those homeowners that do not recycle at all rather than fining those that attempt to recycle but make small mistakes. This bill allows relief for those that commit small errors in recycling.

Int. No. 382 – Introduced by CM Yassky this bill would provide that an owner of a residential building would receive, in the first instance, a warning for a violation of a dirty sidewalk. If they receive a second violation within 30 days the regular penalties would apply. This bill gives homeowners a chance to correct a single mistake relating to cleaning sidewalks or gives them a break if wind or pedestrians have deposited litter in front of their building when they are away and they cannot clean it up. If the enforcement agent revisits within thirty days and corrective action has not been taken then they can be fined.

Int. No. 548 – Introduced by CM Felder, this bill sets the actual two one hour time periods during which enforcement agents can issue dirty sidewalk violations under our routing system. Those time periods would be 8AM-9AM and 6PM-7PM. In 2004 the council passed a law that extended the routing system developed for businesses to include residential buildings. That bill

allowed the DOS Commissioner to set the actual two one-hour time periods when enforcement agents could issue tickets for dirty sidewalk violations. The commissioner selected the hours of 8AM-9AM and 12 Noon -1PM. The 12noon –1PM does not give residents who are not home in the daytime time to clean their areas before a ticket can be issued. Changing the hours to 6PM-7Pm would give most homeowners the time to have someone in the household return home and clean their area if necessary before a ticket could be issued.

Int. No. 549 – Introduced by CM Felder, this bill would set a definite fine for a first violation for a dirty sidewalk and other Sanitation violations. In addition it would give a 50% reduction in any fine levied against a Senior Citizen or Disabled Individual who has been granted an exemption through the Department of Finance’s exemption programs. The current law provides for a range of fines of from fifty to two hundred fifty dollars. The intent of the Council was to give those adjudicating these violations the ability to determine the severity of the violations and base penalties on that severity. That is not being done. The adjudicating agency has selected \$100.00 as the fine for all such violations. This bill sets a single fine of \$50.00 for a first offense or more reasonable but effective amount. The bill also gives relief to seniors or disabled people, who are on fixed incomes and find paying the full fine a hardship.

Int. No. 582 – Introduced by me, this bill calls for heavy fines and the impoundment of vehicles for those individuals who take recycling material that has been set out for curbside collection by DOS before it can be collected. Recently in some areas of Manhattan more than 25% of the paper set out for DOS collection has been taken by individuals using trucks. In other parts of the City individuals have been taking all metal set out for DOS collection. This practice has adversely impacted on the City's recycling program. Currently only a \$25.00 fine can be issued to the violators. This bill would increase the fine and allow DOS to impound the trucks used to collect the material.

Int. No. 584 – Introduced by CM Nelson, this bill would require enforcement agents to be equipped with digital cameras to take pictures of the actual condition leading to the issuance of a violation. There have been many disagreements over what constitutes a dirty sidewalk - whether recently deposited litter or longstanding litter caused the situation leading to the violation –whether there is sufficient litter to constitute a dirty sidewalk, etc. An adjudicating official can decide these types of issues quickly if a picture of the situation was present at a hearing. The costs of digital cameras have dropped dramatically and the photos can be stored, displayed, transferred and printed on computers.

On another topic, we will also vote today on a resolution introduced by CM Reyna that calls upon the state legislature to pass the necessary

amendments to the Hudson River Park Act to allow the Recycling Marine Transfer Station and Education Center to be built at the end of the Gansevoort peninsular. This MTS is an intricate part of the 20-year Solid Waste Management Plan (SWMP) passed by the Council and approved by the NYS Department of Environmental Conservation last year. The construction of this MTS helps to ensure that every borough will manage its own waste and recycling. This MTS will eliminate trucks traveling to the Bronx and New Jersey to dispose of collected recycling material and will free up the 59th Street MTS now used for recycling for use as a commercial MTS which would help end Manhattan's dependency of shipping its commercial waste to neighborhoods overburden with truck traffic and land based transfer stations in the Bronx and Brooklyn.

Today we welcome as our first witness, DOS Commissioner John Doherty

**WRITTEN TESTIMONY OF NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION
Intro No. 582**

The National Solid Wastes Management Association (NSWMA) appreciates the opportunity to provide these written comments in connection with legislation being considered by the Sanitation and Solid Waste Committee. NSWMA is a non-profit association that represents the solid waste industry in New York City.

Many NSWMA members collect recyclables, including cardboard and other paper products, in New York City each night. Over the past few months, there has been a noticeable and dramatic increase in the amount of theft by rogue haulers stealing the cardboard left out by commercial establishments for NSWMA's members to collect and dispose at recycling facilities, similar to what has been happening to the Department of Sanitation. This is a particular problem in Brooklyn and Manhattan, where a number of vans work in the evening and collect the cardboard before the carter gets to it.

The theft of cardboard by these rogue haulers hurts both the carters and their commercial customers. When a customer's rate for waste and recycling services is established, one of the factors is the amount of revenue that a carter will receive for the recyclables generated by a customer. If a carter does not collect all of the recyclables, because it was stolen by someone, he may be forced to increase his rate to the customer to make up the difference. For some carters, the amount of reduced recyclables collected has been significant – one carter is consistently losing more than 100,000 pounds of cardboard each month, and several carters have complained they are losing thousands of dollars each month. This is revenue the carters can ill afford to lose – as the Committee knows, there has not been an increase to the rate cap imposed on the carters since 1997, despite substantial increases in the cost of providing waste collection service to the City's commercial establishments.

When NSWMA brought this issue to the attention of the Department of Sanitation earlier this year, we were told that the City's Code does not explicitly prohibit the removal of

recyclables from a commercial establishment, even when that establishment has an agreement with a carter for the removal of that material. Several members have contacted the Business Integrity Commission (BIC) about this problem, even providing the license plates of vehicles used to steal recyclables, but have not received a helpful response. While NSWMA hopes to persuade the BIC to investigate this issue, a change in the law is critical to make clear that the removal of recyclables set out by commercial establishments is an illegal and criminal activity.

While Intro. No. 582 proposes to amend the administrative code by increasing the penalties for interfering with the collection of recyclables by the Department of Sanitation and making it clear that “material set out for recycling collection” is covered under Section 16-118, it is silent on commercial recyclables set out by commercial establishments collected by licensed carters. NSWMA requests that the same rules and penalties apply to commercial recyclables – either through Intro. No. 582 or some other legislation. The same harm is happening to the licensed carters as is occurring to the Department of Sanitation.

NSWMA and its members look forward to working with the Council to address this serious issue. If you have any questions, please contact David Biderman at 202-364-3743 or davidb@envasns.org.

TESTIMONY BY
JOHN DOHERTY, COMMISSIONER
NEW YORK CITY DEPARTMENT OF SANITATION

HEARING BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON
SANITATION & SOLID WASTE MANAGEMENT
WEDNESDAY, JUNE 13, 2007
1:00 P.M. – 250 BROADWAY, 14TH FLOOR

RE: Intro. No. 110 - A Local Law to amend the administrative code of the city of New York, in relation to increasing fines for dumping household and commercial refuse into public litter baskets

Intro. No. 215 - A Local Law to amend the administrative code of the city of New York, in relation to improper disposal of recyclable material at one and two family dwellings

Intro. No. 382 - A Local Law to amend the administrative code of the city of New York, in relation to issuing warnings to homeowners for litter on their premises.

Intro. No. 548 - A Local Law to amend the administrative code of the city of New York, in relation to limiting the issuance of notices of violations during certain times

Intro. No. 549 - A Local Law to amend the administrative code of the city of New York, in relation to civil penalties for violations of the littering law

Intro. No. 582 - A Local Law to amend the administrative code of the city of New York, in relation to interfering with employees of the department of sanitation

Intro. No. 584 - A Local Law to amend the administrative code of the city of New York, in relation to civil penalties for violations of the littering law

Good Afternoon Chairman McMahon and members of the Committee on Sanitation and Solid Waste Management. I am John Doherty, Commissioner of the City's Department of Sanitation. I am here this afternoon with Michael Bimonte, First Deputy Commissioner, and Todd Kuznitz, Director of Enforcement for the Department, to testify on seven bills the Committee is considering today. I will take this opportunity to comment on each bill separately.

The first bill, **Intro No. 110**, creates a second, third and repeat offender status of any individual or business that unlawfully uses the corner litter basket for depositing their household or commercial refuse. It also establishes minimum fines that increase incrementally with each subsequent offense in a 12-month period. We support this bill as a means to improve and maintain street cleanliness.

Despite the Department's ongoing efforts to control street litter through cleaning and enforcement measures, Department enforcement personnel observe persons illegally depositing whole bags of household or trade refuse into public litter baskets. In residential areas, the corner

baskets are serviced a minimum of either two or three times per week, depending on the frequency of Department household collection and litter basket service in the area. When the corner baskets fill up quickly in less populated, residential areas, it is usually the result of individuals improperly using the public baskets to dispose of their household or commercial refuse. In many instances, their actions cause the baskets to overflow with spilled garbage.

In order to prevent individuals and businesses from violating this Code section, the Department believes raising the minimum fine under Intro No. 110 will serve to deter individuals and businesses from engaging in this unlawful conduct. To enhance enforcement of this violation, we recommend adding a rebuttable presumption to provide that whoever's name or other identifying information appears on any correspondence in the refuse is presumed to have deposited their household or commercial trash unlawfully into the public basket.

The second bill, **Intro No. 215**, would require Sanitation enforcement personnel to identify a minimum of five or more missorted recyclable or trash items improperly placed in a one or two family homeowner's receptacle before issuing a summons to the owner for improper disposal. In 2005, the Department testified before this Committee explaining that it is currently the Department's policy to issue summonses when more than five (5) recyclable items are mixed in with regular trash, or more than five (5) non-recyclable items are mixed with designated recyclables. After that hearing we sent this Committee a copy of our written enforcement policy.

Although the proposed law change is consistent with our current enforcement policy, we believe codifying into law minimum numbers to constitute a violation sets a bad legislative precedent. It may lead some residents to become less vigilant about sorting their recyclables, and could result in reduced recycling tonnage if residents do not embrace recycling seriously.

I must emphasize that relaxing the requirements of the City's recycling law is the wrong message to communicate to New Yorkers, especially when recycling is a critical component of our approved Solid Waste Management Plan that this Committee worked with us to pass last year. Intro No. 215 implicitly says to state and federal officials that New York City is not 100% committed to recycling. For these reasons, we oppose this bill.

The third bill, **Intro No. 548**, would establish the Department's two residential enforcement routing periods between the hours of 8AM to 9AM, and 6PM to 7PM. It would also broaden the scope of enforcement routing by limiting the Department's ability to enforce all sanitation violations under Sections 16-118 and 16-120 to only these pre-determined hours. We oppose this bill.

Many of the violations set forth in Sections 16-118 and 16-120 are not "premises-based", meaning the violation occurs at or on the owner's property. However, this bill would cover every subdivision under Section 16-118 and restrict the Department's ability to issue summonses only during the two hour routing periods to those persons who litter, sweep material into the street, improperly throw-out material, fail to clean their sidewalks and areas behind their fences, fail to clean eighteen inches into the street from the curb, place on the sidewalk any obstruction that blocks the flow of pedestrian traffic, release dust or other flying material into the air, spill liquids or material from a truck or receptacle, release noxious liquids onto the sidewalk or street,

interfere with a Department employee and improperly remove material placed out for Department collection.

Additionally, this bill would restrict, under Section 16-120, the Department's ability to issue summonses, only during the pre-determined routing hours, to persons who improperly dispose of materials, improperly use corner litter baskets, use an improper receptacle, mix material, have loose rubbish, and fail to properly store their receptacles. This bill is tantamount to repealing the most common, quality-of-life sanitation infractions enacted over the past fifty or so years by granting the public the right to disregard and disobey these laws twenty-two hours out of the day.

In recent years, we have achieved record levels of street cleanliness, thanks to the men and women of this agency who work diligently and competently each day to ensure that streets, sidewalks and public areas are clean, free of obstructions and safer for pedestrians and tourists. Different neighborhoods throughout the City require varying levels of monitoring and enforcement based on factors including population density and pedestrian traffic. Limiting the hours when the Department is able to enforce sanitation code violations will severely impact our ability to maintain the existing levels of street and sidewalk cleanliness.

Enactment of this legislation would send us back to the days when filth and litter marred our streetscapes. The determination of when enforcement will be conducted should rest within the discretion of the Sanitation Department and its Commissioner, whose knowledge and familiarity with street and sidewalk cleanliness in neighborhoods across the City allows the Department to appropriately and fairly address the needs of communities citywide in an operationally responsible manner.

The fourth bill, **Intro No. 549**, would reduce the fine to \$50.00 imposed for all first-time sanitation violations under Section 16-118, and \$75 imposed for all first-time sanitation violations under Section 16-120. Additionally, it would reduce the fine schedule for repeat violators that the City Council implemented pursuant to Local Law 1 of 2003. It also reduces the fines by one-half the amount for all Sections 16-118, 16-120 and 16-123 violations imposed against property owners having senior or disabled homeowner tax exemptions.

We oppose this bill. As it is, today's current penalties do not deter persons from violating the law. Lowering the civil fines imposed under Sections 16-118 and 16-120 will not ensure that people comply with their sanitation responsibilities under these laws. In addition, this legislation is inconsistent with the Department's policy of enforcing the sanitation code provisions equally against all property owners.

The fifth bill, **Intro No. 584**, would require Department personnel authorized to issue violations to use digital cameras for the purpose of taking photographs of the condition warranting the issuance of any sanitation code violation under Section 16-118. The Department opposes this bill. It would require the Department to purchase approximately 1,400 cameras and accompanying computer equipment to comply. Additionally, the Department and the Environmental Control Board currently do not have the technology that will allow the electronic

transmittal of such digital photographs as required in the bill. As a result, this bill is impractical, problematic and technically unfeasible.

The sixth bill, **Intro No. 382**, would require Department enforcement agents to issue warnings to residential property owners for first-time violations under subdivision 2 of Section 16-118 covering failure to clean 18 inches and dirty sidewalk infractions. We oppose this bill. The City's sidewalk cleanliness law is not a new law requiring a lead-in time to educate residents on new responsibilities and legal obligations. Rather, the requirement that building owners clean in front of their properties has existed over fifty years. Moreover, if a property owner has a legitimate reason for disputing the violation, he or she may do so through the adjudicatory process.

The last bill I will address, **Intro No. 582**, would increase the fines imposed against persons who remove, without the property owner's consent, recyclable materials placed at the curb for Department pick-up. The bill would also authorize the Department to impound the vehicles of persons who violate this section.

Department enforcement personnel are observing a growing trend in the number of vans and vehicles scouting residential blocks, and have issued summonses to scavengers from these vehicles who remove from the curb metal and paper recyclables that residents placed out for Department pick-up the next morning.

As you know, the Department is committed to maximizing the amount of recyclable materials it collects for processing and marketing in fulfillment of its goal under the City's long-term solid waste management plan. The Department believes that increasing the fines and authorizing the Department to impound vehicles from operators who violate this section of law will serve as a deterrent to individuals who would otherwise take materials intended for the Department's municipal recycling program. For these reasons, we support Intro No. 582 and urge its passage by the full Council.

I would now be happy to answer your questions.