sanitation
Edward Grayson Commissioner

Testimony of Gregory Anderson
Deputy Commissioner for Policy and External Affairs
New York City Department of Sanitation

Hearing on Intro. 2349 and a Pre-considered Intro. T2021-7669

New York City Council Committee on Sanitation and Solid Waste Management

Thursday, June 24, 2021
10:00 A.M.

Good morning Chair Reynoso, and members of the City Council Committee on Sanitation and Solid Waste Management. I am Gregory Anderson, Deputy Commissioner for Policy and External Affairs at the NYC Department of Sanitation. Thank you for the opportunity to testify today on these two bills related to commercial waste in New York City.

While DSNY collects trash and recycling from residential buildings, more than 90 different private carters crisscross the city each night to service the city's 100,000 commercial businesses, driving long, overlapping and unsafe routes. The private carters dispose of waste at a network of private transfer stations and recycling facilities in New York City and around the metropolitan region.

This Administration, in close partnership with the City Council, advocates, and a wide range of stakeholders, has supported comprehensive reforms to the City's commercial waste sector that seek to reign in unsafe practices, improve sustainability, and promote equity and fairness in the impacts and benefits of waste infrastructure and operations. I will briefly provide updates on those efforts before discussing the two bills that are the subject of today's hearing.

New York City's Solid Waste Management Plan

In 2006, the New York City Council adopted the City's Solid Waste Management Plan. The SWMP is a fair, five-borough plan to sustainably manage New York City's waste and offer flexibility and resiliency in the case of a natural disaster or other emergency. The SWMP mandates a shift from waste export by long-haul trucking to a system of marine and rail transfer stations spread throughout the five boroughs, and the SWMP's implementation has provided NYC with new world class infrastructure. In total, the SWMP has reduced truck traffic associated with waste export by more than 60 million miles per year, including more than 5 million miles in and around New York City. It has slashed greenhouse gas emissions by 34,000 tons annually.

After the closure of the Fresh Kills landfill, almost all of New York City's waste was exported by long-haul truck from privately-operated transfer stations. Because of zoning and siting restrictions, these stations were, and still are today, predominately located in three neighborhoods in North Brooklyn, Southeast Queens, and the South Bronx. The SWMP is based on the concept of borough equity – that no borough should be responsible for managing another's garbage – and it has steeply reduced truck traffic associated with waste collection and

hauling in these historically-overburdened minority communities.

The SWMP called for the creation of eight rail or barge-based transfer stations along with the use of an existing energy-from-waste facility in New Jersey. Together, these nine facilities make up a resilient and reliable network for the export of waste. They also create new waste transfer capacity that has allowed the City to permanently reduce permitted capacity at transfer stations in historically overburdened communities.

New York City's Waste Equity Law

In August 2018, City Council passed and Mayor de Blasio signed Local Law 152 ("LL152"), also known as the Waste Equity Law. LL152 requires the Department of Sanitation ("the Department" or "DSNY") to reduce the permitted capacity of putrescible and non-putrescible transfer stations in four designated community districts.

LL152 requires DSNY to reduce permitted capacity at transfer stations in Brooklyn Community District 1 by 50 percent and in Queens Community District 12 and Bronx Community Districts 1 and 2 by 33 percent. The law also allows for certain limited exemptions to the reductions in permitted capacity for activities consistent with the City's goals. It allows these limited exemptions for processing recyclables and organic waste and for diverting construction and demolition debris to beneficial use. The law also fully exempts facilities that export waste by rail and have on-site rail infrastructure. LL152 allows facilities to request a one-time permit increase of up to 20 percent to accommodate future growth in capacity for processing recyclables or organic waste.

Beginning in October 2019 through September 2020, the Department implemented reductions in permitted capacity at 22 facilities that hold a total of 24 transfer station permits. In total, the reductions implemented pursuant to LL152 cut permitted capacity in the four designated districts by 10,137 tons per day.

In addition, four putrescible transfer stations located in the designated districts opted to reserve a portion of their capacity exclusively to process source-separated organic waste for beneficial use. In total, these facilities reserved 377 tons per day of capacity to process source-separated organic waste, and this reserved capacity was excluded for the purposes of determining reductions in permitted capacity pursuant to LL152.

Commercial Waste Zones

In 2019, Mayor de Blasio signed Local Law 199, requiring the establishment of Commercial Waste Zones throughout New York City. The result of years of planning, analysis, and stakeholder engagement by DSNY, the Commercial Waste Zones (CWZ) program will create a safe and efficient commercial waste collection system that advances the City's Green New Deal and zero waste goals while providing high-quality, low-cost service to NYC businesses. The new system is expected to nearly double the commercial diversion rate for recyclables and organic waste.

The Department began the competitive procurement process by issuing Part 1 of a Request for Proposals (RFP) in November 2020. Part 1 of the RFP requested information from potential awardees to determine their ability to perform in accordance with specific business, character, financial and licensing requirements. The Department has completed its review of those Part 1 responses and earlier this week released a list of 48 responsive proposers eligible to respond to Part 2.

The Department is also promulgating several rules to implement the program, including rules governing customer service, operations, health and safety, recycling and organics collection and other administrative requirements. In the next several weeks, the Department will publish final rules covering these areas and will issue Part 2 of the RFP to select the zone awardees. We expect the transition period to the new zone system to begin in 2022 and last up to two years.

The FY 2022 Executive Budget provides $4.0 million in funding to support the implementation of Commercial Waste Zones. This includes funding for 28 new civilian staff in the coming year, as well as OTPS funds for implementation support, communications, outreach, and IT systems. We look forward to working with the City Council and all stakeholders as we advance this important program to bring much-needed reform to the City's commercial waste sector.

Intro 2349

Intro 2349 would amend the City's Waste Equity Law to create an exemption from permit capacity reductions for transfer stations that construct and utilize rail infrastructure on or near their property for the export transport of all or the majority of waste they receive. The exemption applies only to structures that are enclosed – having at least three walls and a roof – and provides up to four years for the construction of the rail infrastructure.

The export of waste by rail instead of long-haul truck reduces truck traffic on local streets and regional highways, reduces greenhouse gas emissions and other air pollutant emissions (particularly when using modern freight rail locomotives with advanced emissions control technology), improves roadway safety, and limits quality of life impacts of truck parking and transport. DSNY supports the intent of this bill to incentivize additional rail export of waste in New York City.

However, we acknowledge that the Waste Equity Law was a hard-won victory for environmental justice, and we understand that many stakeholders and advocates urge caution and express skepticism about potential changes that could roll back this important policy. We look forward to hearing from various stakeholders today, and we look forward to working with the Council, the industry, and advocates to balance our goal of reducing truck traffic with important protections for these historically overburdened communities.

Preconsidered Intro. T2021-7669

The Department of Sanitation echoes the concerns of the Business Integrity Commission regarding removing regulatory authority over providers of waste audit services. In particular, Local Law 199 of 2019 requires that awardees selected to provide services within a zone provide for third-party waste audits for their customers. These audits provide a neutral and objective measure of the amount of each waste stream that a customer generates, and they can provide important resources and information about waste reduction, reuse, recycling and composting strategies.

Because these audits can be used as the basis for billing under the CWZ system, we believe it is important for the City to retain some level of regulatory authority over the individuals and organizations that conduct these audits. DSNY plans to publish draft rules in the coming weeks related to third-party waste audits, and we look forward to receiving additional feedback through the rulemaking process.

Thank you for this opportunity to testify this morning, and I am now happy to answer your questions.

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Noah D. Genel
Commissioner and Chair

Testimony of Commissioner and Chair Noah D. Genel of the New York City Business Integrity Commission before the Committee on Sanitation and Solid Waste Management of the New York City Council on Preconsidered Bill T2021-7669

June 24, 2021

Good morning, Chair Reynoso and members of the City Council's Sanitation and Solid Waste Management Committee. My name is Noah Genel, and I am the Commissioner and Chair of the New York City Business Integrity Commission, or BIC. Joining me today is BIC Executive Agency Counsel Emily Anderson. And, as you know, we are also joined by members of the Department of Sanitation. Thank you for inviting us to testify today regarding Preconsidered Bill T2021-7669, regarding waste audits, also known as waste stream surveys.

Background on the Business Integrity Commission

BIC is a law enforcement and regulatory agency, created by Local Law 42 of 1996 to regulate the commercial waste hauling – or trade waste – industry after decades of control by organized crime and rampant abuse of customers. Soon after the agency's creation (when it was named the Trade Waste Commission), BIC's jurisdiction expanded to include oversight of the City's public wholesale food markets and shipboard gambling. And in November 2019, Local Law 198 added safety in the trade waste industry to our jurisdiction.

While BIC's responsibilities have grown, our original mission to remove and keep organized crime and other forms of corruption out of the trade waste industry has not changed.

Corruption and bad actors still exist in the industry. In the last five years alone, the Commission has denied 36 trade waste licenses or registrations. At least 14 of those denials were for issues relating to corruption and other integrity issues, such as involvement with organized crime groups, serious criminal convictions of companies or principals, failing to disclose a principal of a trade waste company and providing false or misleading information to the Commission. Most recently, in April 2021, BIC denied the license renewal of a company after its principal pled guilty in federal court to a bribery scheme directly related to the trade waste industry.

BIC is open to discussions with this committee about the goals of the preconsidered bill and how to achieve them. However, given the history of the trade waste industry and BIC's ongoing efforts to fight corruption in it, BIC has serious concerns about the unintended consequences of removing waste stream surveys from BIC regulation.

Waste Stream Surveys

Under the Administrative Code, trade waste brokers must register with BIC. The definition of "trade waste broker" includes anyone who, for a fee, conducts evaluations or analyses of the waste generated by commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices. These analyses are commonly known as waste stream surveys. The preconsidered bill would remove performing such surveys from the definition of trade waste broker. As a result, entities that conduct these waste audits would be free from BIC regulation – and would not be required to pass a BIC background check. This would open the door to corruption in the industry through individuals BIC has barred or who have never applied because they knew they would not pass muster. Trade waste customers – local businesses, big and small – would be most at risk.

To appreciate why, it is important to understand how waste stream surveys work. Most trade waste customers in New York City are billed using a "flat" or "average" rate, meaning that their waste is not actually measured each time the truck picks it up. Under BIC's rules, a customer has a right to demand a waste stream survey to measure the amount of waste that the customer leaves out for collection over a set period of time.

Both trade waste brokers and licensees (the carters) perform waste stream surveys. Those conducting the surveys have direct customer contact and base the customer's fee on the results of the surveys. If left to unscrupulous parties, waste stream surveys can be a major point of corruption through manipulation resulting in the customer paying a higher rate than it should. For this reason, any employee or agent who performs a waste stream survey on behalf of a licensee must be fingerprinted and provide BIC with additional disclosure, including, but not limited to, the name and address of any business in which the person holds an equity or debt interest and a listing of all criminal convictions and all pending civil or criminal actions to which the person is a party.

Brokers are permitted to perform waste stream surveys on behalf of trade waste customers in lieu of one conducted by a licensee and are required to represent the customer's interests in doing so. If a broker conducts a waste stream survey, the broker cannot request or accept money from anyone other than the customer unless the broker first discloses that to the customer. But, there is always the risk that a particular broker will not act in the customers' best interests, instead establishing illegal side arrangements with carters to falsely inflate the amount of waste being collected.

Given the sensitive nature of waste audits, BIC's ability to vet and regulate those performing such audits is crucial to BIC's mission of protecting customers. For example, after a recent BIC investigation, one trade waste broker paid a $70,000 fine for violations of BIC rules,

including those regarding waste stream surveys. The violations included failing to maintain required records, improperly collecting fees from customers, and engaging in illegal practices involving contracts with customers.

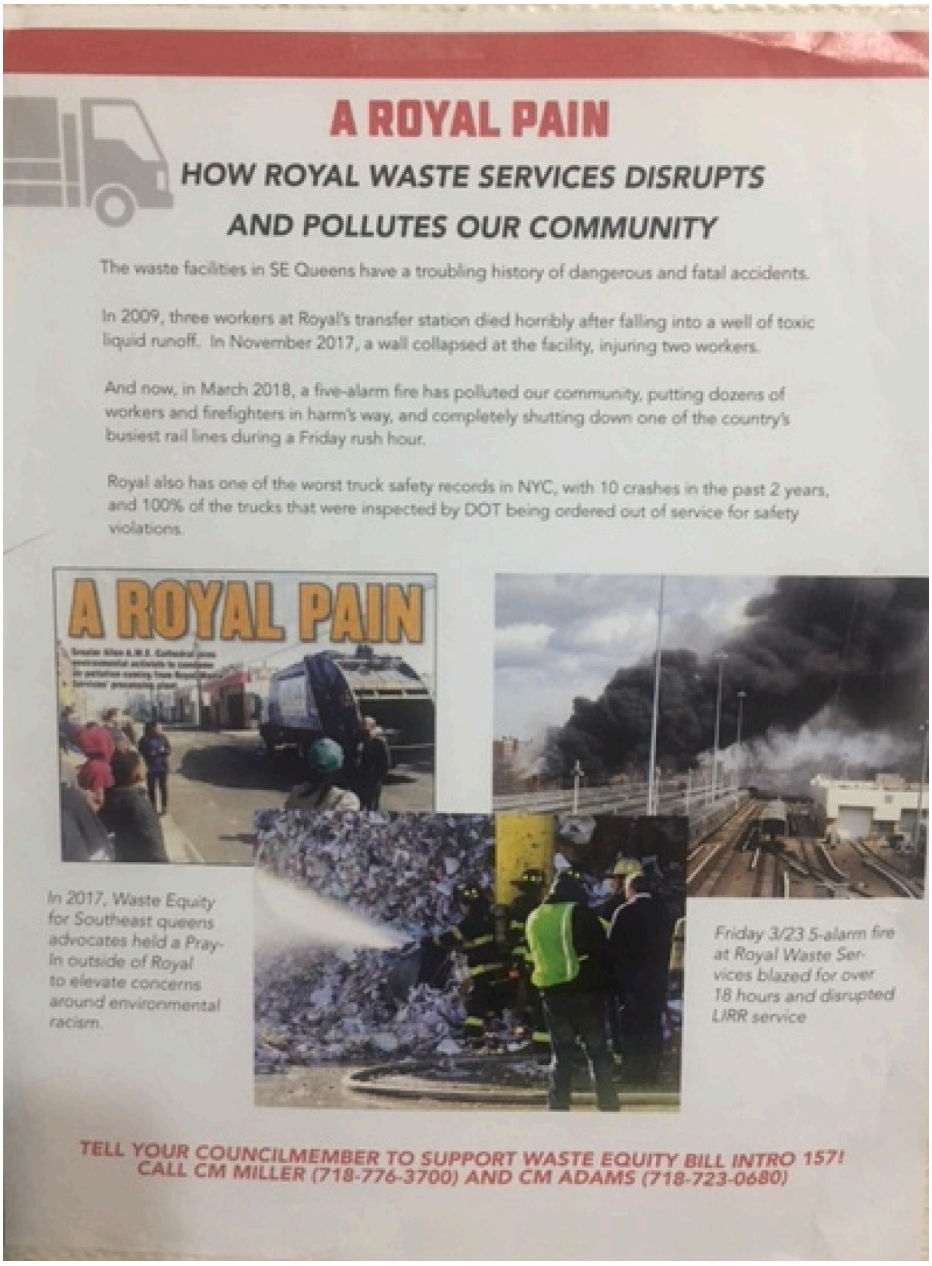
Permitting unregistered entities to perform waste stream surveys for trade waste customers potentially opens the door to the trade waste industry for organized crime figures and others who lack the good character, honesty and integrity required to operate in the industry. Unvetted and unchecked, they would have direct customer contact and set waste collection fees; BIC would have no direct recourse in the event they engage in corrupt business practices.

Conclusion

BIC supports finding new ways to meet the city's changing waste collection needs and appreciates that the Council seeks to expand the number of entities able to conduct waste stream surveys. BIC is ready to work with this committee to find an appropriate solution that balances the trade waste industry's need for close regulation while lowering the barriers to entry in this area of customer service. We are now happy to answer your questions.

Civics United for Railroad Environmental Solutions CUREs

The Waste Equity Law was supposed to give tonnage relief to Environmental Justice communities that are overburdened with transfer stations, trucks, air pollution, and foul odors. Below are community flyers from the long struggle for Waste Equity, which transfer stations in CD12 asked you to forget about at the 6-24-21 hearing.



Councilman Miller is telling his constituents that to end the terrible problems shown in the flyers above that they have to accept tonnage increases and vague plans from these same bad actors, and assent to bringing waste-by-rail into their M1 zone. He's not telling them that waste-by-rail still requires lots of trucks and will bring new environmental, health, and quality of life problems into their community. What problems?

Every year, New York City and Long Island route their waste-by-rail -- thousands and thousands of polluting open rail cars of C&D and the high-polluting 1970's locomotives that haul them – through the same neighborhoods. This March 2021 map shows the routes and how C&D waste-by-rail is expanding in Suffolk County -- driven by private companies supported by NYS

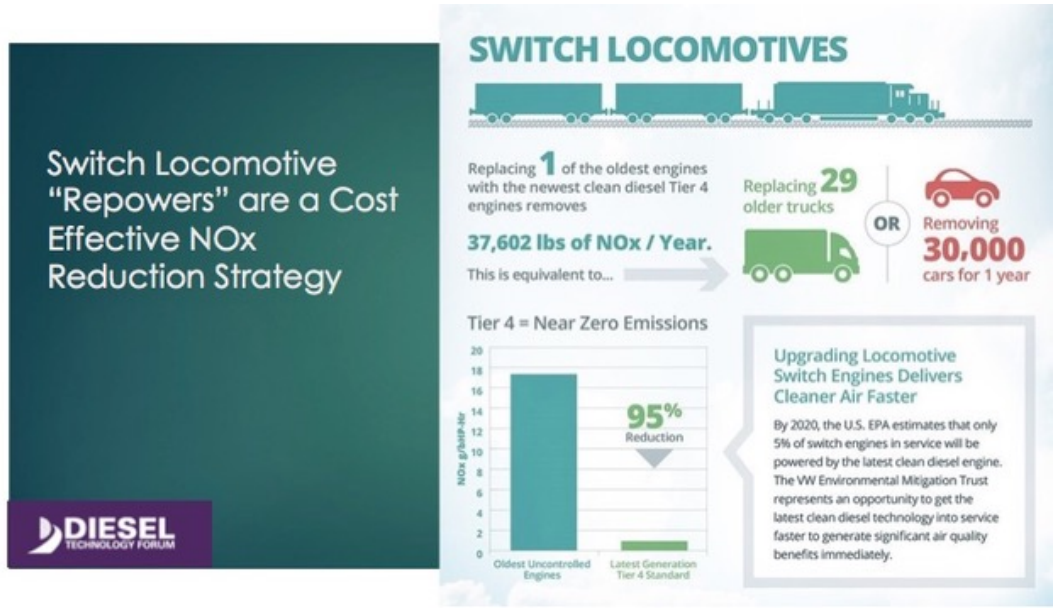
Department of Environmental Conservation permitting. The Yellow Zone represent the area within 1 km of rail facilities where pollution is worst. The table below the map shows the number of people who live with the worst pollution.

A rough total population count would be 1,744,153 using ACS 2014-2018 data. This uses census tracts so it over selects.

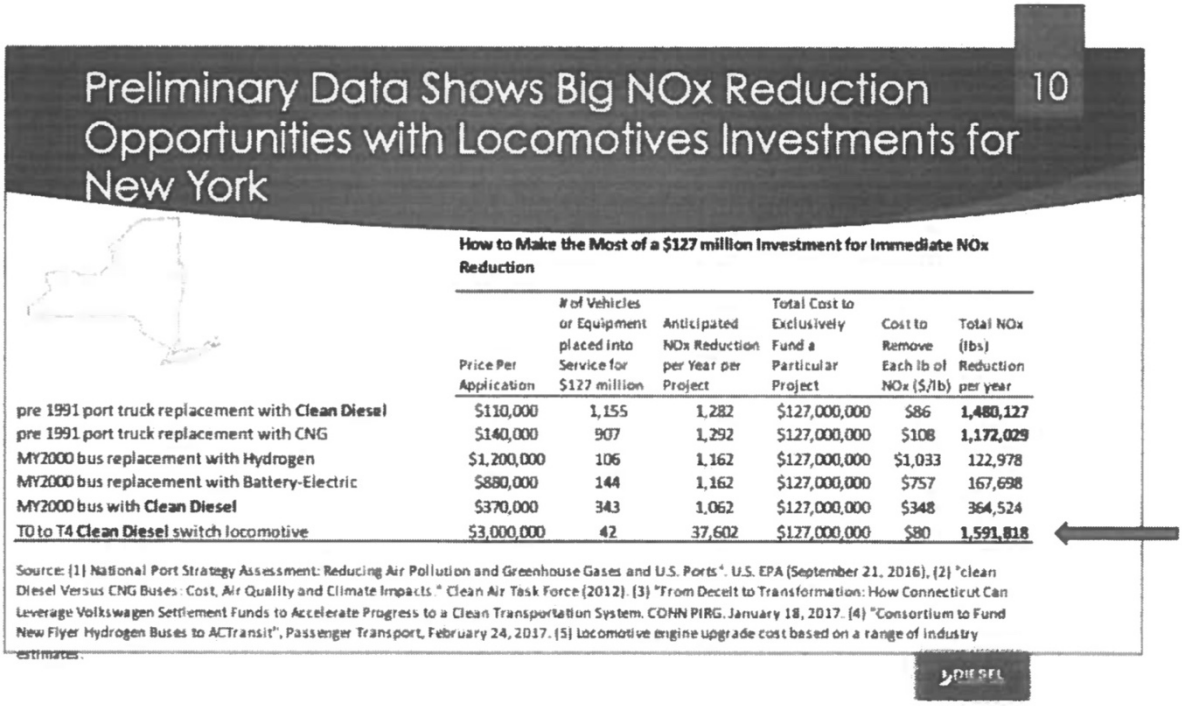
Row Labels	Sum of acsEstimate!!RACE!!Total population
Bronx County	420091
Nassau County	264344
Queens County	765115
Suffolk County	294603
Grand Total	**1744153**

NYC DOH's Community Air studies have proven that it's important to measure local pollution at street level because that's where the people live. DOH found that that air pollution is usually higher at street level than it is on roofs, which is where NYS DEC monitoring equipment gathers data required by the federal government. The Deputy Commissioner of Sanitation made this point about harms from local pollution sources at the hearing. The statistics cited by Dominic Susino at the hearing encompass a much larger geographic area (he mentioned a 50 mile radius for his air quality improvement statistics at one meeting). So they're benefits at a scale that doesn't help people breathe easier in the neighborhood where the facility is located. Local people would breathe pollution emissions from diesel trucks, trains, and the facility with three

walls and roof. This is a slide from the Diesel Technology Forum that shows how much excess pollution the old locomotives that are hauling waste now emit at street level, compared to the Waste Management Locomotive: like replacing 29 older trucks or removing 30,000 cars for a year.



The Diesel Technology Forum also found that repowering all the old freight locomotives within the MTA-LIRR system to the standard of Waste Management's locomotive removed more NOx per dollar spent than any of these other projects.



Councilman Miller has characterized people speaking up about problems this new waste-by-rail facility in CD12 would cause in CD-5 as being from “outside the community.” However, as the map and slides show, building any new waste-by-rail transfer station, extending freight rail in CD12 or anywhere else on Long Island the way this industry is operating today will increase health and quality of life problems up and down the rail line, including where my family lives by Fresh Pond Yard in CD5. My three grandchildren have grown up breathing air polluted by old diesel locomotives and waste blowoff. Since 2009, CURES has been advocating for the use of modern locomotives, containment technologies, and a plan for waste-by-rail, with successes that include a changeover to sealed containers for MSW and funding for Tier 4 locomotives. Our families are stakeholders in Int 2349. Please withdraw this legislation.

Mary Arnold, Co-Founder Civics United for Railroad Environmental Solutions,
civicsunited@gmail.com

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ROYAL WASTE SERVICES, INC.

Case Nos. 29-CA-217244
29-CA-219866
29-CA-220426

and

GRACIANO CAMARENA, an Individual

and

TARQUINO DE JESUS RIVERA, an Individual

and **Case No. 29-CA-225646**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 15-15A, 15B, 15C, 15D and 15H, AFL-CIO

ORDER DENYING RESPONDENT ROYAL WASTE SERVICES, INC.'S PETITION TO REVOKE GENERAL COUNSEL'S SUBPOENA *DUCES TECUM*

The Consolidated Complaint and Notice of Hearing in this matter, issued on December 19, 2018, alleges that Royal Waste Services, Inc. (Royal or Respondent) violated Sections 8(a)(1), (3), and (4) of the Act. Specifically, the Consolidated Complaint alleges that Royal suspended Jose Toribio on March 26, 2018, and discharged him on April 2, 2018, in retaliation for his support for and activities on behalf of International Union of Operating Engineers, Local 15-15A, 15B, 15C, 15D, and 15H, AFL-CIO (the Union), in violation of Sections 8(a)(1) and (3). The Consolidated Complaint also alleges that Royal discharged Graciano Camarena on May 14, 2018, in retaliation for filing unfair labor practices charges against it, in violation of Sections 8(a)(1) and (4). Finally, the Consolidated Complaint alleges that Royal violated Section 8(a)(1) by interrogating employees regarding their Union support and activities, threatening employees with discharge in retaliation for their Union support and activities, and making statements to employees indicating that support for the Union was futile. Royal filed an Answer denying the Consolidated Complaint's material allegations.

On or about January 15, 2019, Counsel for the General Counsel (General Counsel) served Royal with a Subpoena *Duces Tecum*, which Royal received on January 18, 2019. On January 22, 2019, Royal filed a Petition to Revoke, and on January 29, 2019, General Counsel filed an Opposition.

The standard for evaluating a petition to revoke a subpoena is well-established. Under Section 102.31(b) of the Board's Rules and Regulations, documents sought via subpoena should be produced so long as they relate to any matter in question, or can provide background information or lead to other potentially relevant evidence. See also *Perdue Farms*, 323 NLRB 345, 348 (1997), aff'd. in relevant part, 144 F.3d 830, 833-834 (D.C. Cir. 1998) (information need only be "reasonably relevant"). Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, referred to by the Board in deciding such issues, information sought in a subpoena must only be "reasonably calculated to lead to the discovery of relevant evidence." See *Brinks, Inc.*, 281 NLRB 468 (1986).

I. General Objections

Royal contends that twelve Paragraphs contained in the Attachment to the Subpoena are overbroad because they require the production of "all" of documents, referring to Section 11776 of the Board's Casehandling Manual. Petition to Revoke at p. 2. However, each such Paragraph specifically limits the documents to be produced to a distinct topic. As a result, these Paragraphs of the Subpoena will not be revoked on this basis.

Royal also argues that Paragraph 1 of the Subpoena's Definitions and Instructions is overbroad in that it requires the production of "all documents that are in your possession, custody or control, as well as your present or former agents, attorneys, accountants, advisors, investigators..." Petition to Revoke at p. 2. Pursuant to Section 102.31(a) of the Board's Rules and Regulations, Subpoenas issued at a party's request may require the production of any evidence in the served entity's "possession or under their control." This encompasses not only information in the entity's possession, but information which it has the right to obtain. See *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 702, n. 10 (2006). Thus, to the extent that the Subpoena requires the production of information in the possession of "present or former agents, attorneys, accountants, advisors, investigators" which Royal is legally entitled to obtain, it is not overbroad or unduly burdensome. Information which Royal has no legal right to obtain and does not possess, by contrast, is necessarily beyond the Subpoena's scope and need not be produced.

Royal further contends that the Subpoena is overbroad because it seeks the production of documents for the period August 1, 2016 to the present. In particular, Royal asserts that "information pertaining to a period of time more than six months after the instant charge was filed" – on May 4, 2018 – "is time barred and clearly irrelevant." Petition to Revoke at p. 2. However, it is well-settled that information regarding events occurring outside the six-month period for filing unfair labor practice charges set forth in Section 10(b) of the Act is not irrelevant on that basis alone. *International Ass'n of Machinists v. NLRB*, 362 U.S. 411, 416 (1960). General Counsel also states that the Subpoena seeks information beginning as of August 1, 2016 because that date is six months before Royal's employees filed a petition for a representation election, on February 7, 2017. Opposition at p. 6-7, Ex. 3. Finally, General Counsel notes, and the

Tally of Ballots attached to the Opposition as Exhibit 3 indicates, that the bargaining unit at issue here consists of approximately 15 employees; much of the information to be produced is limited to that restricted group. For all of the foregoing reasons, Respondent's argument that the Subpoena should be revoked as overbroad on this basis is rejected.

Royal also contends that the Subpoena is unduly burdensome and requests information that is unreasonably cumulative or duplicative. Petition to Revoke at p. 3. It is well-settled that a subpoena is not unduly burdensome merely because it requires the production of a large number of documents. Instead, the party seeking to revoke a subpoena on this basis must establish that production of the subpoenaed information "would seriously disrupt its normal business operations." *NLRB v. Carolina Food Processors*, 81 F.3d 507, 513-514 (4th Cir. 1996); see also *McAllister Towing & Transportation Co.*, 341 NLRB 394, 397 (2004), enf'd. 156 Fed.Appx. 386 (2d Cir. 2005). Bald assertions that compliance with the subpoena would substantially interfere with normal business operations are insufficient to warrant revocation. *NLRB v. AJD, Inc.*, 2015 WL 7018351 (S.D.N.Y. 2015). Here, Royal merely asserts that compliance with the Subpoena would be unduly burdensome, without alleging or providing any information to support an argument that compliance would substantially impede its normal business operations. As a result, Royal's unsubstantiated contention that the Subpoena should be revoked on this basis is rejected. However, Royal will not be required to produce again information already provided to the Region during its investigation of the instant unfair labor practice charges.

Finally, Royal asserts that the definition of the word "document" as used in the Subpoena is "ill-defined, vague, and calling for a legal definition, overbroad and calling for speculation." Petition to Revoke at p. 3-4. However, the definition of "document" set forth in Paragraph a of the Attachment's Definitions and Instructions section contains a comprehensive list of specific materials and media sought via the Subpoena. Furthermore, contrary to Royal's contention, both the Subpoena and General Counsel's Opposition make clear that the Subpoena does not require the production of documents subject to attorney client, attorney work-product, or other privileges. Attachment, Definitions and Instructions, Paragraphs m, n; Opposition at p. 12-14. If there are specific documents responsive to the Subpoena which Royal contends are subject to privilege, Royal is ordered to prepare a privilege log as described in Paragraph n of the Definitions and Instructions. See also Federal Rules of Civil Procedure 26(b)(5)(A), 45(e)(2)(A); *CNN America, Inc.*, 353 NLRB 891, 899 (2009); *Nestle Dreyers Ice Cream Co.*, 2018 WL 549553 and *Meadowlands Hospital Center*, 2015 WL 6164938 (unpublished Board Orders).

II. Specific Objections

Royal objects to Paragraphs 3, 4, 5, 6, and 7 of the Attachment to the Subpoena, which require the production of information pertaining to the terms and conditions of employment, job duties, and authority of five specific individuals. Petition to Revoke at p. 2. Royal argues that these persons are "not parties to this matter," and claims that

Paragraphs 3 through 7 seek irrelevant material as a result. Id. The Consolidated Complaint alleges that these individuals – Angelo Realli (Owner), David Griffin (Owner's Assistant), Lazaro Lopez and Eladio Cabrera (Mechanics Supervisors), and Henry Enesti (Parts Manager) – are supervisors within the meaning of Section 2(11) of the Act and agents of Royal within the meaning of Section 2(13). The Consolidated Complaint further alleges that Realli interrogated employees regarding their Union support and activities, and that Cabrera threatened employees with discharge and informed employees that support for the Union would be futile, in violation of Section 8(a)(1). General Counsel further states that Griffin, Lopez, and Ernesti were involved in Toribio and Camarena's terminations. Opposition at p. 5. In its Answer, Royal denied that Realli, Griffin, Lopez, Cabrera, and Enesti were statutory supervisors or agents, and denied all allegations regarding statements violating Section 8(a)(1). As a result, information regarding Realli, Griffin, Lopez, Cabrera, and Enesti's terms and conditions of employment, job duties, and authority is relevant to the Consolidated Complaint's allegations, and Royal's Petition to Revoke these Paragraphs is denied.

Royal objects to Paragraph 18 of the Attachment to the Subpoena, which seeks documents pertaining to disciplinary action imposed upon employees at Royal's facility for insubordination, failure to perform duties and follow instructions, safety violations, failed inspections, and work assignment protocol. Royal contends that this Paragraph seeks irrelevant information, arguing that because the drivers and helpers it employs are represented by International Brotherhood of Teamsters Local 813, more favorable treatment of such employees would not establish anti-union animus. However, the Attachment to the Subpoena defines "employees" as "all full-time and regular part-time welders, mechanics, electricians, mechanic's helpers, and partsmen," and not the drivers and helpers referred to by Royal in its Petition to Revoke. Petition to Revoke at p. 3; Subpoena Attachment, Definitions and Instructions, at Paragraph e. General Counsel reiterates this position at page 9 of her Opposition. Furthermore, it is well-settled that evidence tending to establish that employees committing offenses similar to or more serious than those purportedly committed by the alleged discriminatees is relevant to determining whether a Respondent's purportedly legitimate reasons for disciplinary action are in fact pretextual. See, e.g., *Lucky Cab Co.*, 360 NLRB 271, 274 (2014), citing *Windsor Convalescent Center*, 351 NLRB 975, 983 (2007), enf'd. in relevant part 570 F.3d 354 (D.C. Cir. 2009). Royal's Petition to Revoke Paragraph 18 is therefore denied.

For all of the foregoing reasons, Royal's Petition to Revoke General Counsel's Subpoena *Duces Tecum* is denied.

Dated: New York, New York
January 30, 2019

Lauren Esposito
Administrative Law Judge

MILANA KONONENKO, P.E.
7 EAST 20TH STREET, NEW YORK, NY 10003
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Via E-Mail

June 14, 2021

Chris Hein
American Recycling Mgmt. LLC
172-33 Douglas Ave
Jamaica, NY 11433

and

Michael Reali
Regal Recycling Co, Inc.
172-06 Douglas Ave.
Jamaica, NY 11433

Re: Mileage Reduction Study for
American & Regal Rail Project
at 172-06 & 172-33 Douglas Ave.
Jamaica, NY 11433

Gentlemen:

Please find this a summary of the Mileage Reduction Study ("Study") conducted for American and Regal Rail project, as part of a newly formed agreement between American Recycling Mgmt. LLC ("American") and Regal Recycling Corp. ("Regal") located at 172-06 and 172-33 Douglas Ave, Jamaica, NY. This Study was performed to determine environmental benefits associated with the actions proposed by American and Regal in order to restore the initial daily throughput at the subject facilities, which would result in substantial reduction of miles traveled by heavy-duty diesel-fueled trucks on the New York City (NYC) and New York State (NYS) roadways, and therefore, in reduction of fugitive emissions, including NOx and CO_2, consequently decreasing carbon footprint.

Introduction:

American, located at 172-33 Douglas Ave, Jamaica, is a transfer station authorized to receive and process municipal solid waste (MSW) and construction and demolition (C&D) waste. The property is adjacent to the Long Island Rail Road (LIRR) main line between Jamaica and Hollis Stations. Likewise, Regal is an MSW and C&D transfer station located at 172-06 Douglas Ave., across the street from American. Both facilities are fully permitted by the NYC Department of Sanitation (DSNY) and by the NYS Department of Environmental Conservation (NYSDEC). Both, American and Regal are interested in utilizing rail transportation for the purposes of moving processed outbound MSW by rail.

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The project involves demolition of several existing on-site structures to allow for construction of a new state of the art transfer facility, including erection of functional retaining walls, grading, and building of approximately 1,600 feet of railroad tracks. The new structures will be furnished with solar panels for power generation to be utilized for the facility operations and will be provided with green houses supplementing the air quality and odor controls. The retaining walls will be complemented with living green plants that will improve aesthetics and will provide a natural air-filtration system. Management will promote utilizing of materials that lower the facilities' carbon footprint both, as part of enhanced recycling protocols and as means of transporting processed MSW to end use facilities.

Mileage Reduction Study Objectives and Environmental Benefits:

During this Study, the current conditions of operations at reduced capacities and the proposed operations at restored capacities at American and Regal were evaluated. It was determined that an approval of this project by the community board and other pertinent agencies would result in substantial environmental benefits for the local community, the City of New York and the NYS.

At this time, predominantly two (2) types of trucks are being used at the facilities: packer trucks of approximately 18-ton capacity for the inbound waste and tractor trailers of about 22-ton capacity for the dispatch of outbound processed waste. The average daily distribution of truck-traveled mileage is provided in Table 1 below:

Table 1: Average Daily Mileage

Type of Truck	Truck Capacity (Tons)	Destination	Average Mileage (Per Trip)
Packer Truck	18	Daily Collection Route	55
Packer Truck	18	Waste Mngt. Varick Ave. Transfer Station	13
Tractor Trailer	22	Upstate NYS & Out-of-State Landfills	719

The Study revealed that a daily collection route is on average fifty-five (55) miles per trip. All local customers of American and Regal packer trucks provide services to the local communities, promptly and efficiently removing MSW, trash, and C&D from the City streets and other community areas in all types of zoning districts, including residential, commercial, industrial, etc. The collected refuse is taken to the American and Regal facilities for the volume reduction during processing and dispatch to the final destinations, until daily limits for waste acceptance are reached at the Facilities. Currently, both American and Regal have a reduced daily throughput for the waste received and processed at their facilities compared to the initially authorized amounts, as summarized in Table 2 below.

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Table 2: Summary of Daily Throughput and Inbound Truck Trips

Daily Throughput (tons)			Inbound	
American			**Current**	**Initial**
Waste Type	**Current**	**Initial**	**Trips**	**Trips**
MSW	570	850	32	47
C&D	100	150	6	8
Total:	**670**	**1000**	**38**	**55**
Regal				
MSW	462	600	26	33
C&D	178	266	10	15
Total:	**640**	**866**	**36**	**48**

As presented in Table 2, the daily throughput reduction affects both, municipal solid waste (MSW) and construction and demolition (C&D) waste. Therefore, the balance of the waste, which was previously received at the two facilities shall be re-routed to another MSW & C&D processing facility, such as Waste Management Varick Ave. transfer station, located thirteen (13) miles away from the subject facilities. Such re-routing creates additional twenty-six (26) miles per roundtrip of the collection truck leaving American and/or Regal for the collection route, delivering the load to Waste Management, and returning back to the truck parking locations (at the subject facilities). Currently, a total of seventeen (17) packer trucks of American customers and twelve (12) packer trucks of Regal need to be re-routed, instead of bringing the collected waste from the local communities to their transfer stations. ***This creates a total of 9,048 additional truck trips per year, resulting in 235,248 additional truck miles per year.***

Hence, both facilities are seeking to eliminate the necessity for waste re-routing resulting in additional truck mileage, air emissions, noise, roadway congestions, etc. by restoring their initial daily throughput capacities with use of the rail transportation.

As stated in Table 1 above, the majority of the outbound shipments of processed waste are dispatched to the Upstate New York and out-of-state landfills, which creates 719 miles per one-way trip, on average. Each outbound tractor trailer can carry up to 22 tons of processed waste. Table 3 below represents the capacity of a rail car and anticipated daily tonnage of outbound waste that can be shipped by rail.

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Table 3: Rail Capacity Summary

Type of Waste	Rail Cars Per Day	Tons Per Rail Car	Tons Per Container	Containers Per Railcar	Rail Tons Per Day	Eliminated Truck Trips
MSW	10	100	25	4	1,000	46

As above, transfer of up to 1,000 tons of processed waste from on-road transportation to rail would result in removing forty-six (46) heavy-duty truck trips from the roadways. ***This would effectively eliminate 14,352 truck trips per year, totaling in reduction of 10,319,088 truck miles per year.***

Table 4 below summarizes the daily capacities, both current (reduced) and sought restored (equal to the initial throughput of each facility) and associated truck traffic for both facilities.

Table 4: Summary of Daily Throughput and Outbound Truck Trips

Daily Throughput (tons)			Outbound	
American			Current	Restored
Waste Type	**Current**	**Restored**	**Trips**	**Trips**
MSW	570	850	26	39
C&D	100	150	5	7
Total:	**670**	**1000**	**31**	**46**
Regal				
MSW	462	600	21	27
C&D	178	266	8	12
Total:	**640**	**866**	**29**	**39**

Both facilities are willing to drastically reduce the number of truck-travelled miles, noise, emissions, and road congestions and ware by restoring their previous throughputs shifting more than 50 percent of the processed waste to the rail system. Out of the total number of outbound truck trips, the facilities propose to move up to forty-six (46) truck trips to the rail system at the American's proposed railroad access point, which would eliminate the necessity for the 46 tractor trailers to transport waste from the American and Regal facilities to the landfills by road. Currently, a total of sixty (60) heavy-duty tractor trailers leave both facilities on a daily basis for the Upstate New York and out-of-state landfills. They create a total of 43,140 miles per day or 13,459,680 miles per year. With the restored throughput capacities at both facilities, a total of eighty-five trucks would be needed to transport the outbound waste. However, as discussed above, the proposed railroad project would eliminate 46 of these tractor trailers. It leaves thirty-nine (39) trucks remaining on the roadways, removing twenty-one (21) trucks as a net reduction.

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Thus, the proposed project would remove 6,552 heavy-duty outbound tractor trailers per year from the local, City, and State roadways and would eliminate 4,710,888 truck miles per year.

Conclusion:

The Mileage Reduction Study confirmed that the proposed project would result in significant community and environmental benefits as outlined in Table 5 below.

Table 5: Summary of Truck Mileage Reduction Benefits

Description	Qty./Day	Qty./Yr	Units
Inbound Waste			
Elimination of Re-Routed Truck Trips	29	9,048	trucks
Total Mileage Reduction	754	235,248	miles
Average Freight Weight	18		tons/truck
Total Reduction of Ton-Miles	13,572	4,234,464	ton-miles
Outbound Waste			
Net Elimination of Outbound Truck Trips	21	6,552	trucks
Total Mileage Reduction	15,099	4,710,888	miles
Average Freight Weight	22		tons/truck
Total Reduction of Ton-Miles	332,178	103,639,536	ton-miles
Combined			
Total Reduction of Ton-Miles Due To Project	**345,750**	**107,874,000**	ton-miles

Table 5 demonstrates that a total of 4,946,136 truck miles and almost 107.9 million ton-miles would be eliminated from the roadways due to the proposed project of the throughput restoration and outbound waste transporting by rail. Table 6 below presents the emission factors for the most prevalent greenhouse gas (GHG), which, on average represents more than 95 percent of the impact on climate change that comes from burning transportation fuels. Table 6 outlines the anticipated carbon emission reduction associated with the elimination of the 107,874,000 ton-miles due to the proposed project.

Table 6: Summary Carbon Emissions Reduction

Environmental Benefits		
Grams of CO_2 Per Ton-Mile*	161.8	grams
Pounds of CO_2 Per Ton-Mile	0.357	lbs
Carbon Emissions Reduction Per Day	123,433	lbs/day
Carbon Emissions Reduction Per Year	38,511,018	lbs/yr
Tons of CO_2 Emissions Reduction Per Year	19,255.5	tons/yr

* Derived from Environmental Defense Fund (EDF) The Green Freight Handbook

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Therefore, it was determined that up to 19,255.5 tons of CO_2 would be eliminated as a result of the project. In addition, the Study revealed that the project would result in the following environmental benefits:

- Reduction of diesel fuel consumed annually: 2,089,898.5 gallons
- Reduction of NOx emissions annually: 61.3 tons
- Reduction of PM2.5 emissions annually: 1.54 tons

Therefore, this Study shows that the proposed reduction of miles traveled by heavy-duty trucks associated with restoration of the initial daily throughput at American and Regal and switching some truck traffic to the railroad transportation would result in enhanced public safety and significant environmental benefits for the City and State. Removing trucks from the roadways would substantially reduce the air emissions, noise, as well as road- and bridges congestions and ware. It would also promote and support the US and global goals in reduction of the carbon footprint and other greenhouse gases.

If you have any questions or require any additional information, please contact us at (646) 436-6322.

Respectfully,

Milana Kononenko, P.E.

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Sean P Brady	38 Student Lane Bethpage
Marvel Carrasco	9-39. College Point Blvd.
	47 Croyden St Malverne NY
Leeroy	134-29-232 ST Jamaic NY 11413
	182 Ghow Ave Irvington
Abd Ortega.	87.52. 114. St.
JUAN R.	136 crystal st
Ramirez	132-09 115th ave
Jenny Aldrich	126-11 Farmers Blvd
EKRON BACCHUS	115-21-125 ST 11420
Donald Morca	122 east 5th Street
FRANCISCO GONZALEZ	109-20 111th STreet
Mike Bellino	94-02 150th St
Hector Rodriguez	173.33 Liberty Ave
Raul RUIZ DIAZ	101-60 124. St.

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Nick Gerdl	189-08-101 Ave
Frankie Santana	89-99 181st
Derek Freeman	139-09 111 Ave
Ramon Segals	~~37~~ 160-21 119 Rd
FRAN Olivo	8845 78 ST NY 11421
Jose O. Rodriguez I.F.A.P INC	347-421-1566
RAFAEL QUEJADA	132-21 114th St.
JORGE FLORES	92-MADDOX AVE
Sandra	169-Lenox Rd
MANSOUR-MAHGREFTEH	11 FLOYD NY
VINCENT WILDECK	150 Liberty
CARLOS MATEO	211 MOTT AVE INWOOD NY 11096
Geoffrey Lauerde	105-10 104 Ave
PEARL	111-12 JAMAICA Ave

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Douglas Cephas	168-44 113 AVE.
David Backaran	182-38 90th AVE
[illegible]	168-17 Liberty Ave.
Michael Prescott	146-09 Sutter Ave Jamaica
[illegible]	94-38 Merrick Jamaica
Cindy Boyce	168-20 Jamaica Ave
JEROME WILSON	162 50 96th ST HOWARD BEACH NY 11414
Angela Abdool	109-43 113th St. S. Ozone Pk

6-16-21

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Amy Melo	173-12 103rd
Angella Jackson	170-06 Liberty Avenue
HAFEEZ KHAN	171-24 103RD ROAD 11433
Rip Persaud	168-40 89 Ave
Ramiro alcantara	146-27-105 AV
Judy Dias	171-21 103rd RD 11433
Nilmo Shorkur	173-23 103R. 11433
Juana Rgoez	169 15 Jamaica
Elizabeth Sierra	164 Jamaica
Cristhian Torres	17002 93rd Ave. Jamaica
Jonathan Gittens	106. 42 171pl Jamaica
Darwin Welcome Jr	10912-176st
	171-16-107 AVE
Shanalisa Tracey	347-444-8766
Sebastian Guamán	173-11-103rd

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Jennifer Lee	147-19 85 DR, Bria 11435
Jason Bai	88-20 Parsons Blvd, 11432
Ruma	162-19-108 Ave - 11433
Justin Duebrah	11 Drew Street, Valley Stream
Rosalie Polanco	323 E. Mosholu Pkwy N.
Theresa Watson	157-12 108 ave 11433
Rita Boodhoo	106-32 Guy R. Brewer Jamaica
Gina Cruz	104-20 164 PL.
Pollyanna Stewart	25747-14 Ave 11422
Daniel Marks	143-40-41st FL A. Flushing
Aletricia Anderson	10483-165 STREET
[illegible]	105-04 Jamaica
Ronnie Kirk	27-15 Regent St BC
Marcus Greenidge	6911 Kissena blvd
Maurice [illegible]	31-26 137 street Flushing

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
José Sandoval	90-05 161 St Jamaica 11432
[illegible]	175-04 94TH ave Jamaica 11433
Rogelio Marroquin	218-30 110TH ave Q Village 11429
GILBERTO CABRERA PAEZ	910 Dinsmore ave Far Roc 11691
MARTIN VILLANUEVA	188-25 Jamaica ave Hollis 11423
Rogers Avila	168-67 93 RD ave Jamaica 11433
SAUL LOPEZ	168-71-93 ave Jamaica 11433
Eduardo chay	92-15 173RD ST Jamaica 11433
Alberto Soto	193-14 99TH ave Hollis 11423
MIGUEL ORTIZ	189-03 Jamaica ave Jamaica 11423
Rodolfo Cardona	90-19 JAMAICA 11432
Hilario Rojas	139-19 87TH Drive Jamaica 11435
José Gámez	109-17 Farmers Blv-Saint A-11412
Oscar Avila	189-26 Jamaica ave Jamaica 11423
[illegible]	94-39 214TH Place Q V 11428

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Jose israel sanchos	126-36 inwood street
Marlon Martines	9235 175TH street
Abraham Lopez	169-20 Jamaica Ave
christian Flores	92-11 190TH street
Jose Bonilla	999 jackson street
Selso Aguilera	918-30 110TH street
Yerferson Aguilera	175-04 93RD Ave
Jairon Aguilera	175-04 93RD Ave
Damian serrano	195-14 sagamore Ave
Alejandro Martines	188-16 woodhull Ave
Jose campos	88-33 161ST street
Mario cristian	89-19 171st street
Jose A Gomez	169-04 88TH Ave
Moises A Flores	126-36 inwood street
Jose Herrera	188-26 Jamaica Ave

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Marvin Yovany Grau	104-23 Springfield BLV Hollis N.Y. 11428
Jelin Ruiz	188-26 Jamaica ave Jamaica N.Y 11423
YAFET VILLANUEVA	188-24 Jamaica ave Jamaica N.Y 11423
francisco Rosas	189-09 Jamaica ave Jamaica N.Y. 11423
ANGEL Andrade	108-20 Jamaica ave. Jamaica N.Y 11423
Marina Angelina L.	90-27 176th St. Jamaica N.Y 11432
Sabino Angulo	89-22 170 th St. Jamaica N.Y. 11432
Helen Gutierrez	190-05 Jamaica ave, Jamaica N.Y. 11423
Jose Bautista	188-26 Jamaica ave. Jamaica N.Y. 11
FRANCISCO RAMIEZ	170-34 Jamaica ave Jamaica N.Y. 11432
Pantaleon Cruz	162-11 89th ave Jamaica N.Y. 11432
Yasser Ruiz	188-25 Jamaica Ave Jamaica N.Y 11423
Vidal Diaz G.	190-05 Jamaica ave. Jamaica N.Y. 11423
Obdulio Gonzalez	89-15 144st. Jamaica N.Y 1143

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We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Alicia Martinez	8865-162
Juana Belkis R.	162 8835
Sandra Adams	147-36 ~~117~~ 230st Springfield Garden
CHOI KEN	
Duncan Wellington	114-06 Beedell St
Jay Brown	161-30 129 Ave
Maria Jean	162-29 75 Rd.
Monica Montano	89-28-162 ST APT 2C
Rikta Begum	106-56-5th
Tony Brown	150-91 116 DR 11434
[illegible]	71-11 175
Liang [illegible]	50-27 103
[illegible]	88-39 188 street
Violet Ramkissoon	107-15 Liverpool St
Wendy Rapp	108-13 Union hall St

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Thelia Miller	146-85-174ST JA. 11434
Kenny Foster	376 9 & St BK.
Ruby Charles	139-36 231st St. 11413
Billy Nobles	296 Stuyvesant Ave Brklyn N.Y.
LASSANE PITROIPA	10633 UNION HALL ST 11433
Richard Greene	114-75 202nd ST
Shamika Baptista	451 Kuyle
Wanda Manley	189-11 Tioga Dr. 11412
Jackie Morgan	1028 Bushwick ave
michael Fyffe	205-70 and conduit parkway
Patsy Lowe	2337 Oceancrest Blvd
Vernette Haynes-Lowe	2337 Oceancrest Blvd
Rhea Chea	155-19 116 Ave
Kim Diane	153-15 41 Ave Flushing NY 11354
Peter Kim	153-15 41 Ave

4 of 8

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We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
GEORGE Lolis	108-11 160 St JAMAICA N.Y. 11433
Antoinette Joseph	214-07 208 Street Queens Village
QUEENS CAULE	109-31 Guy R Brewer Blvd.
Yun Jie	90-20 170-85
Maylene Ram	88-25 148 St Jamaica
Kamla Ramdeo	92-35-173 st 11435
Jyoti Upadhyay	106-56-160 st 11433
Jim Lee	106-56 160 St
Carol Stephenson	241-35-138 St.
Richard Thom	89-21-146 ST 11435
Deanna Berry	106-23 Union Hall St JA NY 11433
Nayeli Loayza	10442-164th st 11433
Anu	109-32-169-Jamaica
Brenda Sargeant	106-18 Union Hall St. " 11433
Marufa Sharmin	148-28, 88 Ave, Jamaica - NY - 11435

54 58

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
THOMA DEV	172 - 90 16 - 11432
Rusa Nassam	172.
BILKIS Jahan	108 - 163 - 18 - 11432
Rohini Ram	160-60 - Jamaica 11432
Linza Arfin	89-19 171st 11432
	107-37-166ST APT 1J
YAING SOON SHIM	" "
Rosita Burke	86-32 Palo Alto St. 11432
MOLY PASZVIN	145-08 Lakewood
NASIMA	0.7-
Sjead Rasem	168-36-88 Hpa
Ferdousi Alin	NY - 11432
	146 11 hillside Ave
	Jamaica
Queeny	

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
Salma Akter	88-25, 148 street
Jessica Joachim	160-19 108 Ave
Rosa Nuñez	107-42 Union Hall St
Florence Lee	144-20 38 Ave 4H Flushing N.Y 11354
Bertrand Magdala	11432 163 89th A Hillside
Nwuzor Emeka	11418 156-15, 89th Ave
Marie Yve	193-30 - 11432
Linda Sealy	115-66 Marsden St 11434
Lloyd Kenc	115-64 Marsden St 11434
[illegible]	99-14 211th Qns Village 11429
James U. Ferguson-Hogan	27-15 Kearney St 1R 11369 E. Elmhurst NY 11369
Frank Hopkins	106-35 159th St. Jamaica, NY. 11433
M HOSSAIN	108-150-50 [illegible]
Janice Johnson	104-20 176 Ja 11433
Mony B[illegible]	161 [illegible] Ave

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
JUAN VILLADA	21 Sewanee Ave Elmont N.Y 11003
Oscar Berbooda	127 Dupont st. Brooklyn N.Y 11222
René Arévalo	299 Jackson St Hempstead N.Y 11550
Aldo A Perez P	90-60 179 St, Jamaica N.Y 11432
NASARIO	93-20 170th St. Jamaica N.Y. 11433
Williams RUIZ	188-26 Jamaica ave. Jamaica N.Y 11423
MINOR CHAY	92-15 173rd St. Jamaica N.Y 11433
Fredy Orlando Gutiérrez	190-05 Jamaica ave Hollis N.Y 11423
Santos RUBEN Bonilla	107-64 Spa. Place Jamaica N.Y 11435
Jorge Cruz	193-14 Jamaica ave, Jamaica N.Y 11423
Darwin Reyes	107-64 Spa. Place Jamaica N.Y 11435
Merino Misael	90-27 175 St. Jamaica N.Y 11432
Isidro Rd...	168-00 93rd Ave Jamaica N.Y 11432
Steven Barrientos	175-04 93rd Ave Jamaica N.Y. 11433
Edi Avila	188-26 Jamaica, N.Y 11423.

6-16-21
TIME. 7.02 AM.

We the undersigned live and/or work within the immediate vicinity of the proposed American Regal Rail Project. We support the proposed $50 million dollar investment in our community by American Recycling and Regal Recycling. We understand the proposed project will help take trucks off the road, improve and enclose the waste facilities, create jobs, transport garbage from our community by rail, beautify Liberty Avenue and create an education classroom so that our children can learn the benefits of recycling and protecting our environment by reducing waste. We the undersigned asked that you take our voices into consideration and not those of outside interests that don't have OUR interests at heart. We live here, we work here, and we want what is best for community. We asked that whatever steps need to be taken to bring this project to fruition that they are done expeditiously. We want transformational progress in our southeast Queens community and we urge you to support the wishes of this community.

Name	Address
SUNNY	140-15-115 AVE JAMAICA
Karla	105-34-171 ST Jamaica
Santos Ordonez	170-26 Jamaica Avan
Lillian NICKAY	170-02 93rd Jamaica Ave
Frank Loja	173 9444 Jamaica A
Saeen sk.	168-51 93rd Ave.
Tricia Bwell	170-02 93rd Jamaica Ave
Karla	173-05-106 Jamaica Av.
Victor Ramos	171 05 106 Jamaira Ave.
Tonia Yadira Amaya	167 38
Gladys Baez	107-15-171st
Yael Roth	146 Raleigh St
Steve Bennett.	107-13 Street Jamaica Ave
Diana Guerrero	173 48 103 Road
Yaceli Melo	173-12 103 RD

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Name	Address
Salvador C. Sánchez.	1812 Hovinson av. #43.
Wilso - Cabrera	74 SAINT ANDREWS PL
Luis Daniel Pimentel	108-60-37DR
ELADIO CABRERA	1545 NELSON AV BRONX
CAROL Simmonds	54-30 Beach Channel APT4D
Juan Carlos Rodriguez	164-20 - Highland Ave
Miguel Angel Jaramillo.	40-47. gleane.
Sonia goH	173-25
Luis Minaya	539W/162ST APT35
German Morales	68-70-93-1V
Ramon Cabrera	15-45 NELSON-AV BRONX
Mario A Zotino	107-28-156th Jamaica NY

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Name	Address
Pollyanna Stewart	85747-145 Ave 11402
Raywattie Tawahal	172-23 Jamaica AVE Queen
Deomarine Tawahal	173-23 Jamaica AVE Queen
[illegible]	487 - 87 779[illegible]
Ill Shin	[illegible]
[illegible]	175-82 176 St JAMAICA NY 11434
MST BEGUM	10645 11433
Yvette Greene-Dennis	9909 198th St. Hollis N.Y. 11423
[illegible]	9911 198th St Hollis NY 11423
Floranna C. Dadson	9909 198th St Hollis N.Y. 11423
Sofiria Squig	917 325-0076 NY 11436
Janice Rollins	718-526-7414
Liang na	347-291-4502
Monica Montano	89 28 163 St APT 2
Joann Leonard	172-05 144th Rd.

6-22-21

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Name	Address
Victor R Melara	165-38 105 AVE
Rosendar Bangoli	150-04 Van Wyck.
	170-07 105th Ave Jamaica
[redacted] Sanjay Black	107-37 Watson Place
MDALEY	89.16-175
Cristhian Torres	17002 93rd Ave.
Michael Thorne	173-21 105th 11433
	105-19 171 St 11433
M. L. Cole	105-22, 172nd St. 11433
Oscar Ramos	12'75 LAFAYETTE AVE
Oscar Flores	188-ARTHUR - -
Gavin Alexander	171-02 Liberty Ave
Carlos Martinez	212-09 JAMAICA AVE

[redacted] *

11

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Name	Address
NARINDRA RAMLOGAN	87-50-167TH ST APT 2 E JAMAICA
OSCAR PERALTA	741-LOSTER ST APT 6E BRONX NY 10474
ABOUBACAR SIDKI KOULIBALY	1412 BRONX RIVER APT 2F BRONX
KELVIN T. CARTER	17604-145 DRIVE JAMAICA
Brandon Charlerie	215-25 110th ave Queens village
Carmelo Calderon	215 30 110th ave queens village
David Calderon	" " " " " "
Samuel Lopez	" " " "
DARIO GARCIA	8835-164 ST 1KN JAMAICA
Jose Maldonado	115-15-143 ST Jamaica NY.
Julia Padilla.	144-06 88 Av. Jamaica N.Y.
Francisca Cerona	87-77 169th street.
RONALDO SARCENO	142-15 116 RD Jamaica.

8/18

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Name	Address
Ar dar	45TK 160th, Flushing NY 11358
Nazama	168-63-88 NY 11432
Akter	169-65-88 11432
Sam	168-64 11432
Lady Bu	16691 UNION HALL ST
Janet White	168-15 108 ave 11433 Jamaica
Shanara Ba	166-12 110 ave 11434
M ST Begum	106.45. 11433 Jamaica NY
Al-Hassan Kamal	212-37 113 Ave
La	
Adrian Thom	109-26 152st 11433

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Name	Address
Vanessa Daiscoyde	159-10 109 Ave Jamaica 11433
P Gulnara	159-02 109 Ave Jamaica 11433
Luisa Plasencia	191 01 60 ST APT 3G
Melissa Hall	109-44 160 ST APT 3B
Lorraine Hill	109-30 160 ST APT 3B
Melita Davis	109-44 160 APT 3B
Celeta Curry	171-14-109 AVE 11433
Mary Milligans	109-38 172 ST 11433

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Name	Address
[illegible]	[illegible]
Daniel Johnson	108-41 159th St
David Ferguson	
Donna Barrett	10635 159th St
Dale	108-41 159th St
Sonia Ross	112-42 159th St
Sheila Goddard	113-10 130th Ave
[illegible]	
[illegible]	109-10 160 St [illegible]
[illegible]	[illegible]
Loretta Culver	108-41 159 St
Sheila Baskerville	159-06 109 Ave 2B
Lisa McBride	108-41 159th
[illegible]	108-41 159 St #2C

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Name	Address
E-Whitick	109-30 160
[illegible]	109 10 160 St
Wanda Richardson	108-41 159th St.
Tonya Fleming	130 51 South Ozone pk 11420
David Gantt	109 36 160 St Jam NY
Lisa Mayo	129-08 154th
Gladys	129-08 154th St
William	108-41-159 ST
[illegible]	17210 133 [illegible] Hlg.
[illegible]	
[illegible]	917-600 5782
[illegible]	111-20 118th Jam J.
Paulette Cleckley	107 E 126th St NY 10035
Lonnie Bailey	108-26 159 St.
SHENG [illegible]	109 80 U

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Name	Address
Manny Mistretta	7608 164th St, Fresh Meadows, NY 11366
John Colón	33-57 165th St Flushing, NY 11358
Gerhard Klaa	8736 81st Ave Glendale NY 11385
Javier Caraballo	367 Van Siclen Ave
Cheryl Jones	53 Hammell St. Valley Stream NY 11580
Miguel [illegible]	257 South 4th St. Brooklyn N.Y.

(11)

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Name	Address
EDDINGTON CHARLES	10809 - 160 St Jamaica NY 11433
Olga Almonte	160-08 107 Av Jamaica NY 11433
Rita Boodhoo	106-32 Guy R. Brewer Jamaica
Sylvia Singh	131-10 109 Ave S. Ozone 11419
Violet Ramkissoon	107-45 Liverpool St 11435
Dipika Halder	137-114-44 - St
Jennifer Abraham	2240-15-157 St Jamaica 11434
Kevin Ellen Cathy Parker	1361 Tanwood Dr Baldwin NY 11510

8 & 8

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Name	Address
SOMIRUDDIN	
9261165BC	
Daniel Adja	163-20 [illegible]
ROBERT CASKEY	90-04 161ST ST 11432
Marie Jean	163-17 13th Ave Apt 3D Jamaica NY 11434
Jerome Louis	140-21 171 Street 11434

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Name	Address
S. Sewdat	106-19 Union Hall St. 11433

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Name	Address
Benjamin Paiz	170-32-Jamaica 11432
José Paiz	170-32-Jamaica 11432
Elmer Zuniga	127-05 97 ave. Jamaica 11419

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Name	Address
Carlos Ruiz	188-26 Jamaica Ave
Raul cajamarca	167-34st Street
Luis Alvarenga	190-05 Jamaica Ave Hollis NY
Joseph Morru	224-25 64th Ave

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Name	Address
Nathaniel Wiggins	99-16 193rd St. Hollis NY 11423
[signature]	218-30 110 Ave Queens Village NY 11429
Bolfano Morain	98-32 - 212 St Queen

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Name	Address
Adil Ghulam Ahmed	144-12-116 Ave
Terrance Faison	104-50-212 St
Jhonny Alexander Alvarado	3122 103rd St E. Elmhurst NY
Tooka Ram Lilia H	105-11 Sutphin Queens Blvd
Servelio-Hernandez	178-05 Jamaica
Jorge Luis Gomez	168-42-88 Jamaica
Salvador M.	100 Hendrix St
Joe Pinto Rodriguez	72-10K St Elmhurst NY.
Massimo Jordan	87-34 81st Ave
Safaraz Ali	107-55-118 South Ozone P.
Bijan Kees	12207 180 Street NY 114-24
Marlon Barahona	92-08-175 Jamaica
Jose Lopez	168-12-88 Jamaica
Joan Baur..	172-12-98. Jamaica. NY.
Ronald Davis	572 New Jersey Brklyn NY

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Name	Address
JAGANAND BUDHU	107-23-128 Street Queens 11419
Derick Lynch	95-38th Street
Kevin Klaus	87-36 81st avenue

6-16-21
TIME. 7.02 AM.

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LENIN NICKAY	170-02 93rd Jamaica Ave
Frank Loza	173 9444 Jamaica A
Saeen SK.	168-51 93rd Ave.
Tricia Bwell	170-02 93rd Jamaica Ave
Karla	173-05-106 Jamaica Av.
Victor Ramos	171 05 106 Jamaica Ave.
Tonia Yadira Amaya	167 38
Gladys Baez	107-15-171st
Yael Roth	146 Roelego se
Steve Bennett.	107-13 Street Jamaica Ave
Diana Guerrero	173 48 103 Road
Yaceli Melo	173-12 103 RD

American Recycling Mgmt. LLC
172-33 Douglas Ave
Jamaica, NY, 11433

American Recycling Mgmt. LLC is a waste transfer station located 172-33 Douglas Ave, Jamaica, NY. It is our mission to reduce the carbon foot print of our community, provide economic stability for our neighborhood, and service the New York City area for generations to come. The property sits adjacent to the Long Island Rail Road main line between Jamaica Station and the Hillside Shops. American is interested in utilizing rail transportation for the purposes of moving outbound municipal solid waste, as well as construction and demolition material by rail.

American Recycling anticipates that this project would transfer 1,000 tons of waste products per day from Trucks (using the local, and regional, street and highway system) to a Waste by Rail application. The transfer of product from truck to rail would remove 46 round-trip truck trips from the area and the highways and bridges connecting Long Island to the remainder of the tri-state region. This would effectively eliminate 14,352 truck trips per year, totaling 10,319,088 million miles per year.
The project involves demolition of several existing structures on site to allow for a new state of the art transfer facility, construction of that state of the art facility, grading and construction of appropriate retaining walls and construction of approximately 1,600 feet of railroad track. The new structures will be fitted with solar power as part of our community solar project. Certain walls will be faced with living green walls that will provide a natural air-filtration system. The entire facility will utilize materials that lower the facility's carbon footprint. There are three key components to the transformation of this facility:

- Enhanced recycling protocols.
- Use of rail to transport the waste streams to end use facilities.
- Education, cooperation and coordination with the local community.

The containerized process will allow more densely packed material to be loaded, increasing the efficiency of the entire logistics chain. The more robust recycling component will allow more of the sorted material to be segregated and directed to recycling streams rather than being comingled in the waste stream and use of rail as opposed to truck for outbound transportation will significantly reduce truck traffic on area, regional and statewide roadways.

The resulting rail traffic would be incorporated into existing trains on both NYA and the connecting Class 1 railroads (CSX, NS or CPR). There would be significant public and environmental benefits realized in several critical areas:

- Reduction of 2,579,772 gallons of diesel fuel consumed annually.
- Reduced Emissions
    - 23,769 tons less of Carbon produced annually.
    - 75.7 tons less of NOx produced annually.
    - 1.9 tons less of Particulate Matter produced annually.
- Reduced Highway Congestion
    - 10,319,088 truck miles removed from New York State roadways annually.
    - An increase in Public Safety.
    - Reduced wear and tear on roadways and bridges.

Additionally, this project would allow American Recycling to institute procedures that will increase recycling on the ongoing waste stream while making the facility more efficient and protecting well-paying jobs. This includes 35 direct jobs and 400 well-paying indirect jobs related to the facility. The 35 direct jobs only contemplate the men and women directly employed by American. The four hundred indirect jobs include such skilled labor positions as truck drivers, maintenance personnel, environmental service specialists, engineering personnel and other technicians, and is exclusive of other indirect jobs such as restaurants, retail and other service providers. American Recycling and Regal Recycling have focused on hiring from the local community. The company's intent on partnering with the council member's office and the local community board to further staff the facility.

At this location there are multiple Long Island Rail Road (LIRR) main tracks as well as switching leads to the shops within the adjacent LIRR property. The right-of way is owned by the LIRR and the freight operation is managed by New York and Atlantic Railway (NYA). American Recycling has met with representatives from LIRR and NYA to discuss the feasibility of the rail movement of waste from this location, and all parties have endorsed this plan. As a result of discussions with the LIRR and NYA, American Recycling has developed conceptual plans to build approximately 1,600 feet of track on American Recycling's property (and connecting tracks on LIRR/NYA property) to support the movement of waste products by rail.

Representatives from CupriDyne Clean are working with the projects architects and engineers to integrate a ground-breaking misting system that is 100% safe, gentle and scientifically-proven Transfer Station Odor Eliminator. The companies are also

integrating state-of-the-art misting systems and air handling systems designed to reduce dust and increase air quality.

The project is expected to be completed in under 48 months and have cost of $30 million including all needed equipment. The companies anticipate a strong push forward once initial approvals are given from the bank, DEC, DOS, and building departments. American Recycling Mgmt. is looking for the restoration of its previously permitted capacity to help secure the loans needed to fund such an operation. Even with the restored capacity the company has secured certain public grants to assist in the development of this rail served facility and has already submitted a Consolidated Funding Application (CFA) to the State of New York. The DOT recognizes the vast benefits of moving waste-by-rail and has listed several grants to help accelerate the transport of MSW to rail instead of on our roadways.

ADDISLEIGH PARK CIVIC ORGANIZATION

Addisleigh Park Civic Organization P.O. Box 120023 St. Albans, NY 11412
Tel. (516) 939-8717 or email: info@AddisleighParkCivic.org

Dear Members of the Committee on Sanitation and Solid Waste Management,

My name is Michael Scotland and I'm the President of Addisleigh Park Civic Organization, which serves its members and neighbors within Addisleigh Park a historic district within St. Albans. I'd like to thank this committee for the opportunity to testify on this proposed legislation today.

As a Southeast Queens resident that lives near these waste facilities, I urge this committee to oppose the proposed amendment that would allow these facilities to increase their permitted waste capacity for export by rail for the following reasons:

Appropriateness:
It should be top of mind that this waste transfer station, which is intended to operate only in M-3 zones, is operating in an M-1 zone. The faculties are directly across the street from residents and an active park with a running track, a field, handball and basketball courts. The intent of the M-1 zoning is to allow light manufacturing in and around residential homes. This is not the case here and Southeast Queens residents continue to be taken advantage of even when the correct zoning is in place. Allowing these facilities to move forward with waste by rail undermines the Waste Equity Law's environmental justice mandate and assists these waste transfer stations in their expansion process. District 12 is one of the four overburdened communities of color that the Waste Equity Law is meant to protect from additional waste handling burdens. I believe this committee is charged with protecting and doing the right thing in serving the tax payers and residents of this fair community and city. I believe your approval of the proposed expansion of this waste transfer station will be in direct opposition of this charge.

Impact to Health and Quality of Life:
Just to level set everyone, the two facilities have been operating without being totally enclosed for many years now. As a result, the smell from these facilities naturally escapes with the odor travelling for blocks in all directions. I personally pass this facility in my travels during the week and can say it is a very unpleasant and an extremely disturbing. This experience, along with complaints from members of my civic, has driven me to take the time to speak to the neighbors and park goers across from the facility to get their thoughts. Many of them, if not all, say that the smell is horrible, as well as the noise coming from the facility. They also say it's impossible to keep their window open because of the smell. This is not the quality of life we want for Southeast Queens, for New Yorkers nor for anyone. An increase in waste continues to disregard, ignore and minimize the rights of these neighbors and areas partners have to decent quality of life. Which begs the ultimate question: why do you feel an increase in pollution is acceptable in neighborhoods of color?

Community Engagement and Partnership:
To date is there has been inadequate community outreach and engagement around this proposal. The only time there has been a public meeting to solicit feedback from the community was on April 15, 2021 where residents were only made aware of this public meeting the day before the meeting took place. Public outreach and engagement mean community members should have been made aware of this days in advance with materials made available to review beforehand. It's interesting that none of the best practices mentioned in EPA guidelines (Waste Transfer Stations: Involved Citizens Make the Difference, January 2001 ; Waste Transfer Stations: A Manual for Decision-Making) around community engagement and oversight are being used by these operators. During the "public meeting" on April 15, 2021, questions could only be submitted through the Zoom Q&A function and there were no opportunities to share feedback or follow up with questions. Many of the questions submitted in the Zoom were not answered leaving community members in limbo.

Thank you for your consideration and we hope you do not vote to allow this expansion to take place.

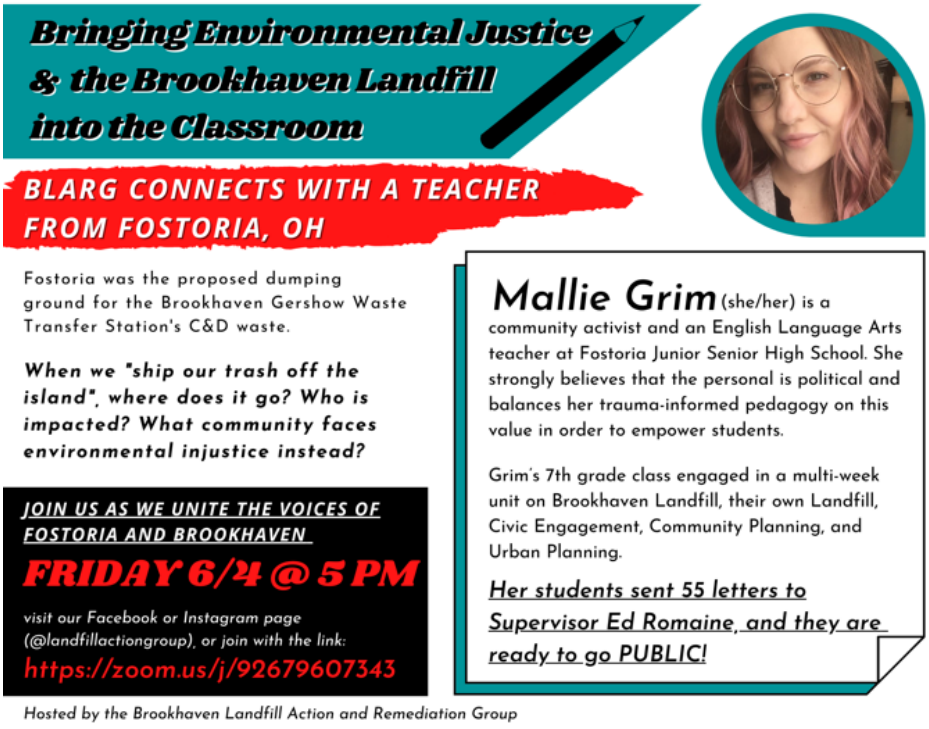
Sincerely,

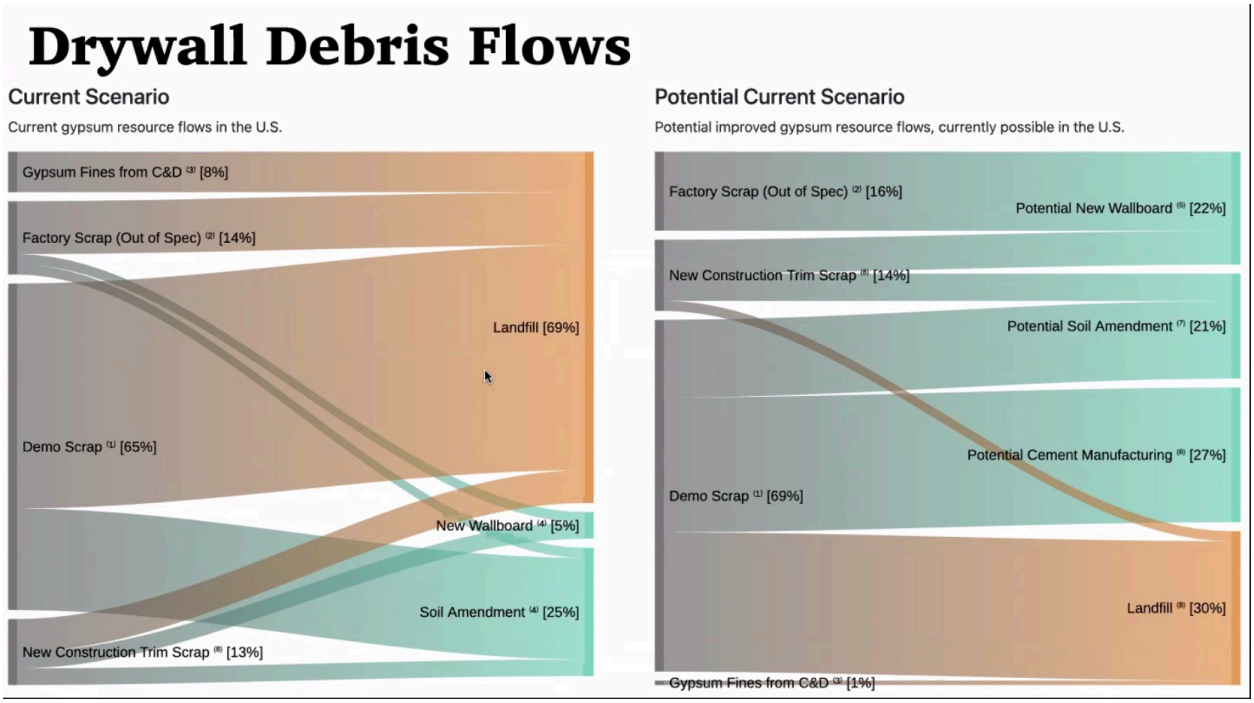
Michael Scotland
President
Addisleigh Park Civic Organization

Civics United for Railroad Environmental Solutions CURES

Int 2349 is being driven by private companies who don't want to give up tonnage through the Waste Equity Law -- as promised to Environmental Justice Communities -- and don't qualify for hard-fought exceptions. As the Sanitation Committee grapples with this special interest pleading, I ask you to give weight to Eric Goldstein's remarks about holding more hearings focused on getting to Zero Waste. Recently the Queens Solid Waste Advisory Board (QSWAB) was reconstituted by Queens Borough President Donovan Richards. *The State of Waste in Queens* report was published recently by the QSWAB Organizing Committee. https://queensswab.nyc/wp-content/uploads/2021/05/State-of-Waste-in-Queens-Report_42921.pdf Ongoing work to engage Queens in diverting waste from landfills at scale, and problems and recommendations about waste transfer stations in CD12 and waste-by-rail problems are in the report. Please read it.

The Environmental Justice organization Brookhaven Landfill Action and Remediation Group has turned a spotlight on the human consequences of environmental racism, lack of regional waste planning, failure to divert waste from landfills at scale, and expansion of waste-by-rail export driven by private companies, as Int 2349 is. The Environmental Justice organization by the Brookhaven landfill has made connections with residents in a distant Ohio community by a Tunnel Hill Partners/WIN Waste Innovations landfill where NYS C&D waste is dumped, with more tonnage planned.





Credit: Amanda Kaminsky, Building Product Ecosystems LLC

Residents by landfills suffer health and quality of life problems, including from toxic hydrogen sulfide gas due to decomposing gypsum in construction debris that NYS should be recycling into new drywall. The photo below shows NYC regional C&D spilled out of NYAR-Coastal's open rail cars in Ohio. This happened when a CSX train hauling 109 loaded waste cars to the landfill -- by where Mallie Grim teaches – derailed. The DEC and the industry say the public should accept this waste export because waste-by-rail gets trucks off the road.

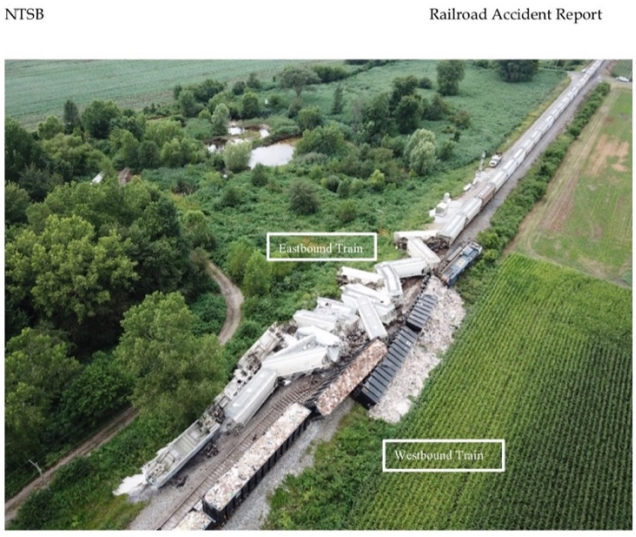


Figure 1. Aerial view of collision location. (Photograph courtesy of CSX.)

NYAR-Coastal's annual tonnage reports to DEC feature the MTA as the owner of this filthy business.

PERMITTED C&D DEBRIS HANDLING AND RECOVERY FACILITY ANNUAL REPORT

(If you need assistance filling out this form please email swmfannualreport@dec.ny.gov or call 518-402-8678.)

Complete and submit this form by March 1, 2021.

This annual report is for the year of operation from January 01, 2020 to December 31, 2020

SECTION 1 – GENERAL INFORMATION

FACILITY INFORMATION			
FACILITY NAME: NYAR Coastal Distribution Rail Transfer			
FACILITY LOCATION ADDRESS: 1633 New Highway	FACILITY CITY: Farmingdale	STATE: NY	ZIP CODE: 11735
FACILITY TOWN: Babylon	FACILITY COUNTY: Suffolk	FACILITY PHONE NUMBER: (631)756-2000	
FACILITY NYS PLANNING UNIT: (A list of NYS Planning Units can be found at the end of this report).		NYSDEC REGION #: One	

360 PERMIT #: (Refer to DEC Permit)	DATE ISSUED:	DATE EXPIRES:	NYS DEC ACTIVITY CODE OR REGISTRATION NUMBER: (Refer to DEC Registration)
1-472-06337/00001	6/19/15	6/18/20	

FACILITY CONTACT:	☐ public ☒ private	CONTACT PHONE NUMBER:	CONTACT FAX NUMBER:
Don Kerik		201-741-5958	
CONTACT EMAIL ADDRESS: dkerik@thplp.com			

OWNER INFORMATION			
OWNER NAME: Metropolitan Transit Authority	OWNER PHONE NUMBER: 212-877-2000	OWNER FAX NUMBER:	
OWNER ADDRESS: 37 Madison Ave	OWNER CITY: New York	STATE: NY	ZIP CODE: 10017
OWNER CONTACT:	OWNER CONTACT EMAIL ADDRESS:		

OPERATOR INFORMATION		
OPERATOR NAME: ☐ same as owner	Coastal Distribution, LLC	☐ public ☒ private

The waste export industry likes to talk about how every rail car gets four trucks off the road without mentioning needless community burdens from waste-by-rail pollution in communities all along the rail line, or that all waste is still delivered to waste-by-rail transfer stations and transload facilities by truck. Int 2349 waters even that down, by only requiring 51% rail.

Please withdraw Int 2349. Thank you.

Mary Arnold, Co-Founder Civics United for Railroad Environmental Solutions, civicsunited@gmail.com

Testimony of Rebecca Bratspies on behalf of The Center for Urban Environmental Reform before the NYC Council Committee on Sanitation and Solid Waste Management

June 24, 2021

Submitted via email to testimony@council.nyc.gov

Good morning. My name is Rebecca Bratspies, I am a professor at CUNY School of Law where I run the Center for Urban Environmental Reform (CUER) and I am offering testimony in that capacity. I am also an appointed member of the NYC Environmental Justice Advisory Committee, and I sit on EPA's Children's Health Protection Advisory Committee. My testimony today is based on CUER's work with the Jamaica residents who recruited our assistance to combat the odor, noise, and dust nuisances created by the waste transfer stations in their neighborhood. We are therefore stunned that this Committee is entertaining Int. 2349 which would gut Local Law 152—the Waste Equity Bill—vis-à-vis this community. In the process it would inflict new, additional noise, odor, and dust burdens on this already overburdened community. I urge this committee to make sure that all the City's waste handling laws promote rather than undermine waste equity.

I want to take the opportunity to remind the committee that, pursuant to Local Laws 60 and 64 of 2017—the Environmental Justice Laws—New York City recently released its map of environmental justice neighborhoods. CUER urges this committee to explicitly prioritize reducing environmental burdens on the City's newly delineated environmental justice communities, including the part of Jamaica, Queens that the waste transfer stations benefitted by this bill are located.

I also want to remind this committee that environmental justice requires not only a fair distribution of environmental burdens and benefits across the City, but also that affected communities have the opportunity to participate meaningfully in the public decision-making processes by which environmental choices are made. This legislation achieves neither goal. Instead, this bill adds significant new environmental burdens to an overburdened community and does so with nothing resembling meaningful notice and consultation.

New York City has long recognized that "meaningful," participation must occur at a time that allows community concerns to be considered in environmental decision-making and must involve the opportunity for affected community members to contribute information, ask questions, and share their perspective with decision-makers. Communication that flows only one-way—from

decision-makers to communities, informing them about decisions already made elsewhere, based on uncommunicated priorities—does not amount to "meaningful participation."

Processes that give the veneer of public participation without actually allowing any opportunity for affected individuals to share their concerns or influence decisions undermine public trust in government and impoverish public discourse.

With that critical sense of the role that meaningful public participation plays in legitimating public decision-making, I would like to tell you a story.

CUER has spent the past year collaborating with community groups in Jamaica, Queens—a designated environmental justice community under both state and local law. At the request of community members, CUER has been assisting them gather information with regard to the laws and regulations governing the waste transfer stations in their neighborhood. These waste transfer stations are inappropriately located in an M-1 zone, directly adjacent to a public park and a residential neighborhood. This neighborhood was one of the four overburdened communities of color that the 2018 Waste Equity Law was specifically intended to protect from the excessive environmental burdens associated with waste handling. And I just want to respond to Deputy Commissioner Anderson—this is not a fully enclosed facility. It has three walls and a roof—the fourth wall is missing, allowing dust, noise, runoff and odor to overwhelm the community. Subsection b of this Introduction would legitimize an operation that creates an unreasonable nuisance for the community.

Worse, this introduction is the culmination of an ongoing process that was conducted with no community involvement whatsoever. Although elected officials were apparently writing letters of support for this expansion proposal as soon as the waste equity law passed in 2018, the affected community learned about it for the first time on April 14, 2021—exactly one day before a "so-called public meeting" on the proposal on April 15, 2021. The meeting is a "so-called public meeting" because although there was a poster announcing this meeting, it was not actually posted anywhere in the community—either physically or virtually. The meeting was not included in any newsletter, including CM Miller's weekly email that came out on April 9th, nor was it posted to on the community board website. The poster announcing this meeting made its way to Facebook only the afternoon before the meeting. The community owes its knowledge of that April 14, 2021 so-called meeting to this committee, which seems to have been the only recipient of the poster and promptly shared it with NYC-EJA.

During the period between Fall 2018 to the present, there was no public outreach, no stakeholder consultation, no opportunity for "meaningful involvement" in this momentous decision that will impose significant negative impacts on one of the communities the Waste Equity Law was designed to benefit. It will do so by reversing the protections that law crafted to protect this overburdened and vulnerable community.

The April 15, 2021 meeting similarly offered no such opportunities. This meeting was a Zoom webinar, which merely informed those present about the project, solicited no suggestions, feedback, or ideas.

There was no opportunity for any form of direct public participation. The presenters were identified by first name only, and provided no contact information, and no opportunity for follow-up. Questions could be submitted only through the Zoom Q&A function, and the few questions that were posed to the presenters were paraphrased, rather than read aloud.

To my certain knowledge multiple substantive questions were neither posed nor answered. Requests for the video of this recorded meeting, the attendee list, and the questions submitted by attendees remain unanswered. I received a response that the video and other relevant data was wholly in the custody of the waste transfer station, not Councilmember Miller, who called the meeting. The waste transfer station has not responded to emails or phone calls requesting this information. This kind of disregard of the community is not only a breach of the Open Meetings Laws, it is also yet another environmental injustice inflicted on this community by those who claim to be protecting the community's interests!

This is not public participation. This is not environmental justice.

I urge you to keep environmental justice at the center of your work. That means keeping meaningful community participation at the center of your work. This kind of a change needs robust public process. This community deserves to be consulted, to be listened to, to have a genuine opportunity to participate in this momentous decision. We urge you to not take any actions on Intro. 2349 until that consultation occurs.

Environmental justice is social justice, is economic justice, is racial justice. It only exists when affected communities have genuine opportunities for meaningful participation that brings those most affected into the decision-making process and takes their concerns and priorities seriously.

Thank you for your time and attention. Please direct any questions or follow-up to Prof. Rebecca Bratspies at bratspies@law.cuny.edu.

Sincerely,

Rebecca Bratspies

Rebecca Bratspies
Director, CUNY Center for Urban Environmental Reform
CUNY School of Law
2 Court Square
Long Island City, NY 11101
718-340-4505

About the CUNY Center for Urban Environmental Reform (CUER)

CUER is a justice initiative at CUNY School of Law dedicated to developing new avenues of participation and new opportunities for citizen empowerment in environmental decision-making. Drawing from the emerging human rights norms of participation, access to information, transparency and intergenerational equity, CUER seeks to revitalize participatory environmental

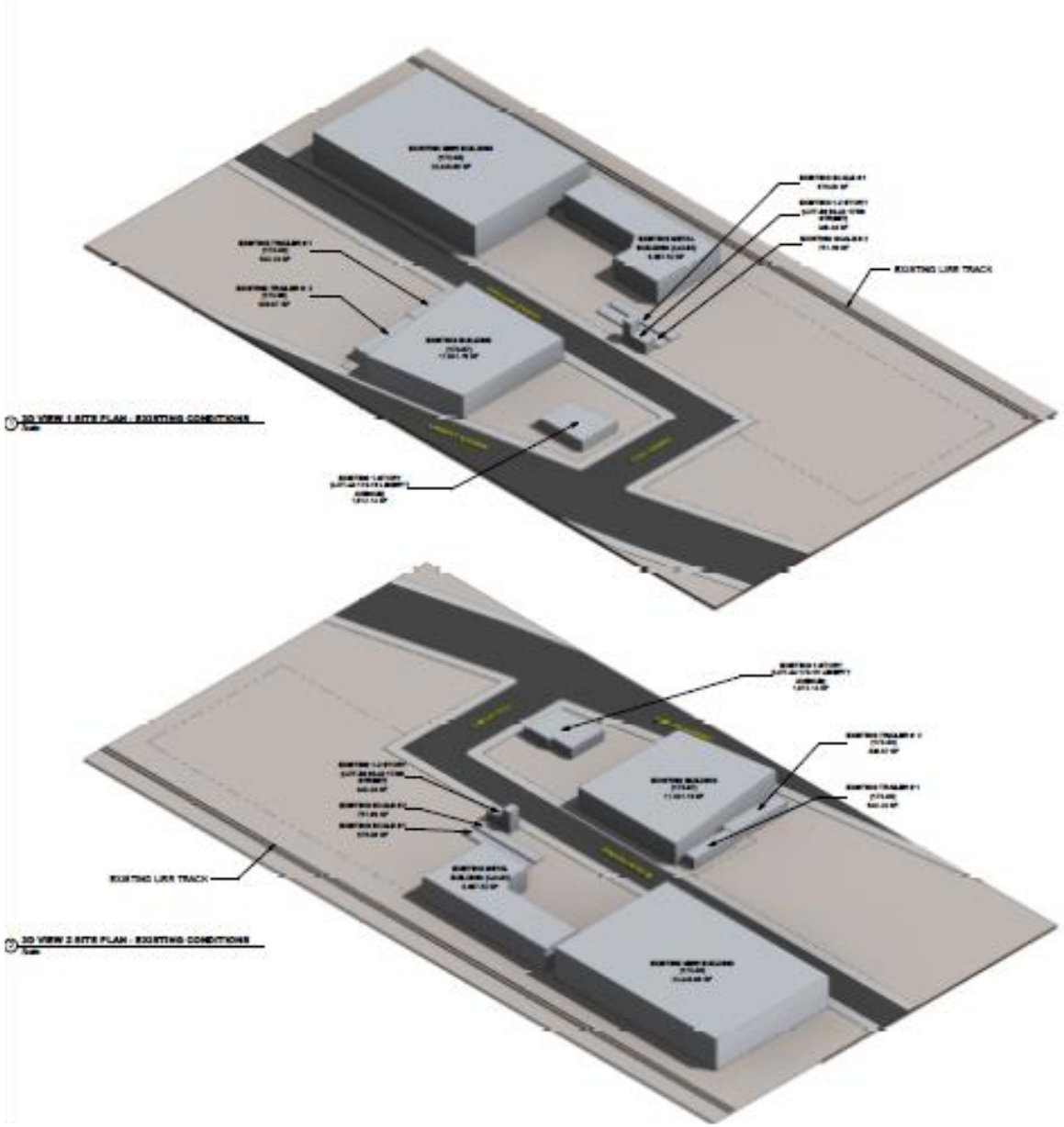
decision-making to help community members, scholars and policymakers communicate in a way that leads to better, more sustainable decision-making. In doing so, the Center facilitates important social conversations about the acceptability of environmental risks and the need for their equitable distribution.

Many of the standard techniques of environmental decision-making reduce society's ability to include issues of distributive justice and overall fairness in the decision. As a result, environmental policies have been repeatedly accused of perpetuating environmental injustice — with poor and minority communities consistently allocated a larger share of environmental bads while having access to fewer environmental goods. CUER's emphasis on environmental citizenship is an attempt to surface these justice dynamics that are too often ignored. Framing environmental choices as questions of fundamental equality in a political community, rather than as private choices about property, helps emphasize the role that power, access to information, and inequality play in shaping environmental outcomes.

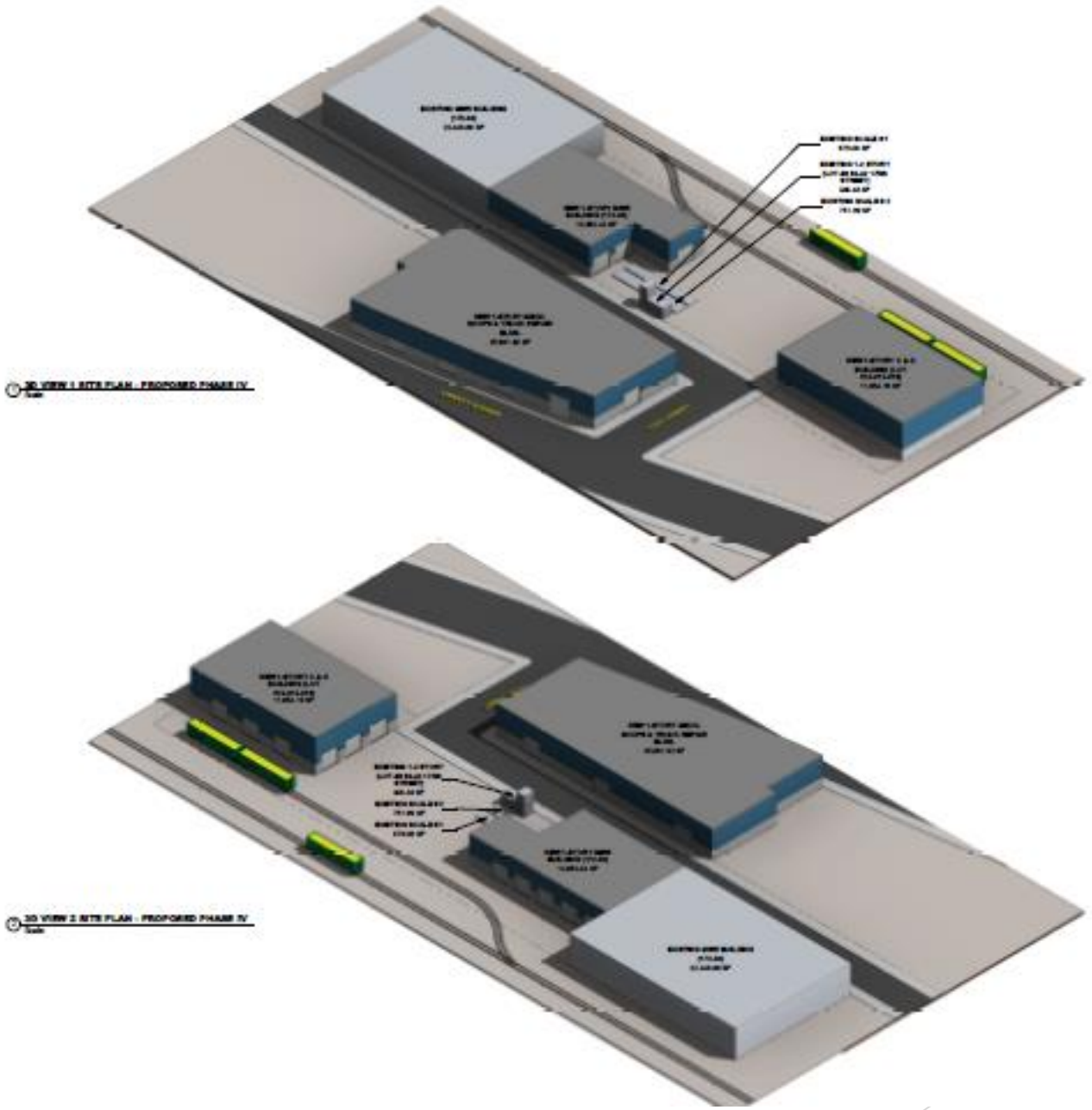
American Recycling Mgmt. & Regal Recycling Waste-to-Rail Project

Chris Hein & Mike Reali

Current Facility



New Facility



Community Solar Project
American Recycling

Location	175-173 Liberty Ave, Jamaica, NY
Roof Area	~77,000 sf

Solar System Summary	
System Size	750 kWdc
Production (Yr. 1)	~921,500 kWh
Carbon Offset (Yr. 1)	~385,800 lbs CO2

Annual Environmental Benefits of Solar System

Estimated Y1 CO_2e Abatement

CO_2e 385,822 lbs

175 metric tons

Estimated Y1 GHG Abatement

CO_2	384,351 lbs
CH_4	27 lbs
N_2O	4 lbs

What is CO2e?

CO_2e, or "Carbon Dioxide Equivalent," is a standardized measure of greenhouse gas ("GHG") emissions

CO_2e normalizes the local emission mix into a single unit, based on the relative intensities of present pollutants

Year 1 Commodity Generation

921,513 solar kWh generated

921 RECs produced

1 MWh = 1 REC

What are RECs?

Renewable Energy Credits, or "RECs," are a marketable commodity generated by renewable energy assets

By "retiring" RECs generated by a solar system, an offtaker can legally claim the system's carbon offsets

Regal Recycling

Client Site		
Location	Regal Recycling	
Roof Area	40,000	sqft

Solar System Summary		
System Size	390	kWdc
Production (Yr. 1)	478,701	kWh
Carbon Offset (Yr. 1)	200,416	lbs CO2

Annual Environmental Benefits of Solar System

Estimated Y1 CO_2e Abatement

CO_2e 200,416 lbs CO2

100 Metric Tons

Estimated Y1 GHG Abatement

CO_2	200,399 lbs
CH_4	14 lbs
N_2O	2 lbs

What is CO2e?

CO_2e, or "Carbon Dioxide Equivalent," is a standardized measure of greenhouse gas ("GHG") emissions

CO_2e normalizes the local emission mix into a single unit, based on the relative intensities of present pollutants

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921,513 solar kWh generated

921 RECs produced

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entersolar

EDF Renewables

Community Solar Project

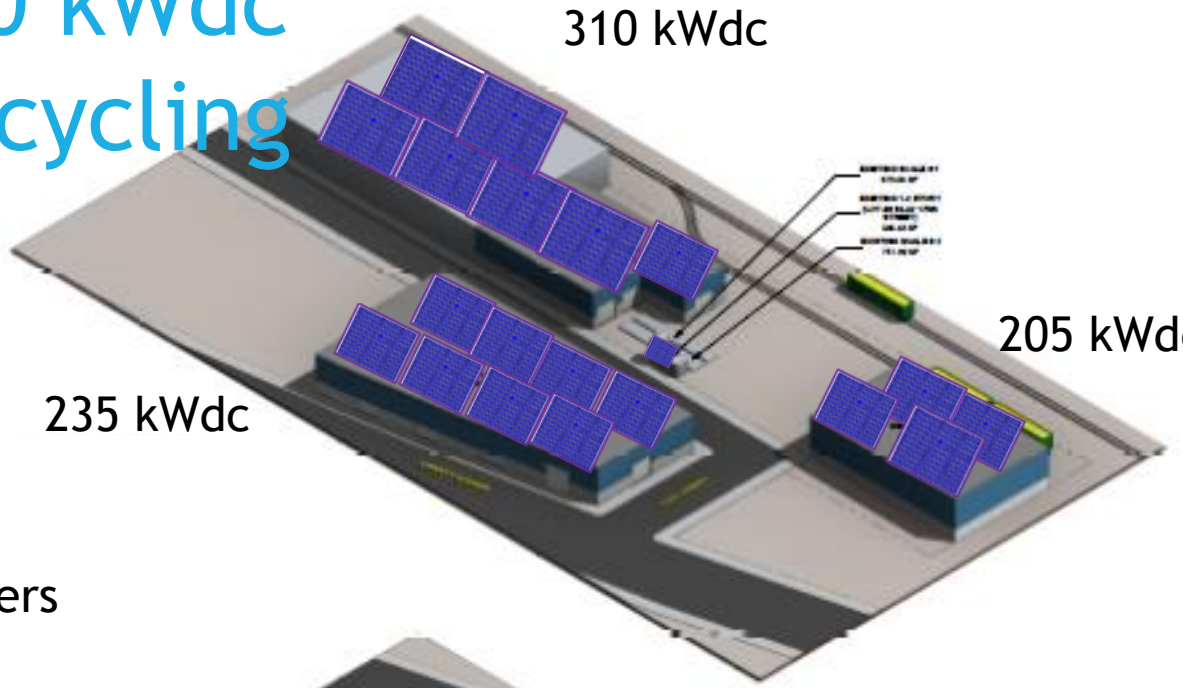
- Annually the combined community solar projects will produce 1.4 Million kWhs of clean renewable energy.
- The combined CO2 offset if greater than 585,000 lbs. annually.
- The projects will be capable of servicing both facilities and one additional commercial subscriber and 190 households in Queens every year for the next 25 years.

Community Solar allows multiple members of the community to participate in solar, even if they cannot or prefer not to install solar systems on their own sites.

- Expands access to solar (e.g. low to moderate income households, renters)

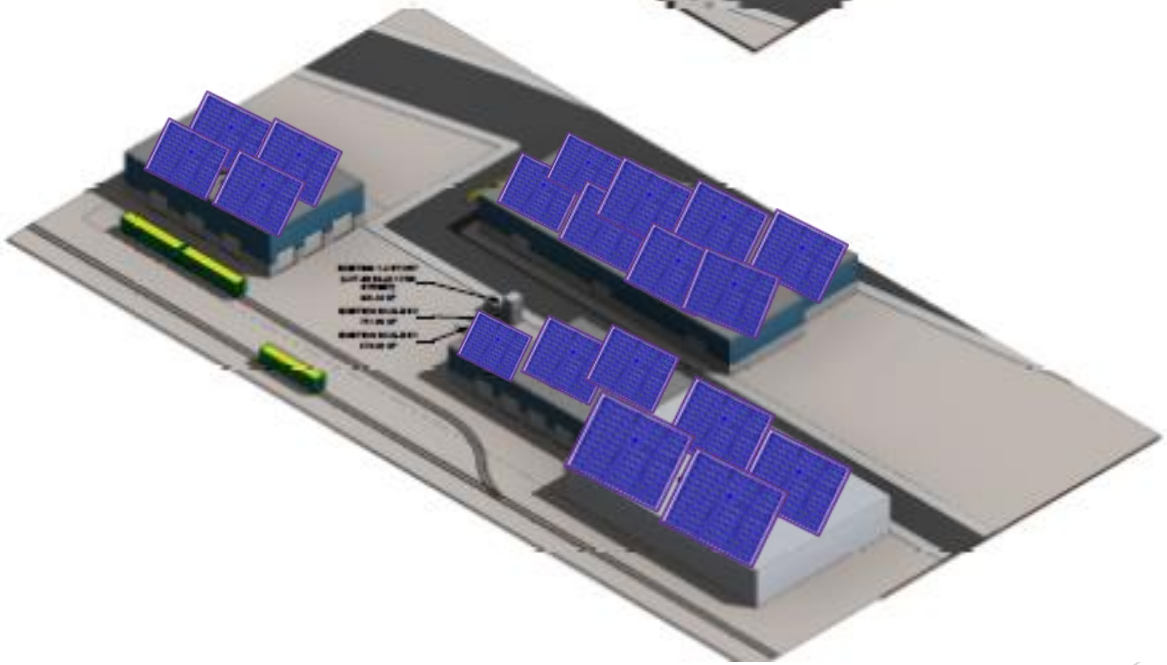
entersolar
EDF Renewables

Phase V – 750 kWdc American Recycling



1-2 Commercial Subscribers

125 Homes Annually



Community Solar Project

Regal Recycling - 390 kWdc

1 Commercial Subscribers

65 Homes Annually

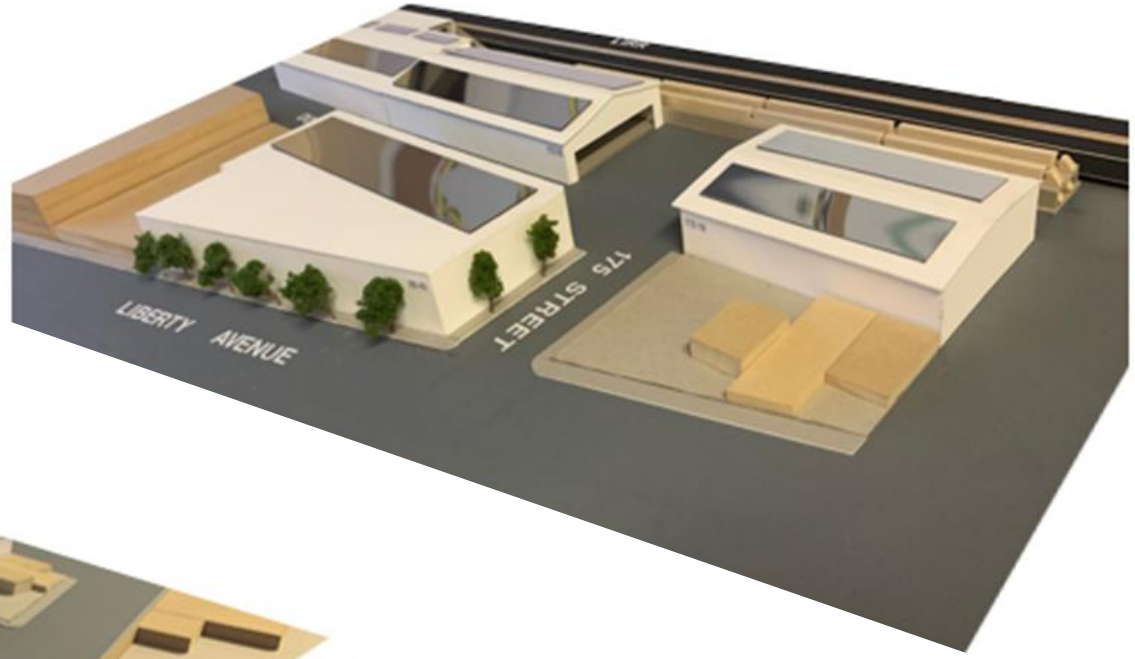
Community Solar Project

Regal Recycling – Live Green Wall

Classroom & Community Education

KIDS GUIDE to RECYCLING

3-D View of Completed Project



Cost Benefit Analysis

Current Activity

- 46 Trucks per day Round Trip from Jamaica, NY – Waterloo, NY
- 719 Highway Miles per day / Truck
- 10,319,088 Annual Highway Miles
- 1,984,440 Gallons of Diesel / Year
- 21,829 Tons of CO_2 (Carbon Dioxide)
- 200.1 Tons of NOx (Nitric Oxide)
- 4.8 Tons of PM (Particulate Matter)

Proposed Activity

- 10 Rail Cars per Day
- 650 Rail Miles per Round Trip
- 202,800 Annual Rail Miles
- 418,985 Gallons of Diesel / Year
- 4,609 Tons of CO_2 (Carbon Dioxide)
  - Additional 193 Ton Reduction w/ solar project
- 124.4 Tons of NOx (Nitric Oxide)
- 2.9 Tons of PM (Particulate Matter)

Continued Commitment to Going Green: RECs – Wind, Solar & Fuel Cell Power

American Recycling has Contracted with EDF Energy to Purchase Renewable Energy for 2021

EDF renewables

Community Programming and Sponsorship (G.R.A.C.E.)

Greater Royal and American Alliance for Community Empowerment

- Sole Patron of the Jamaica Bulldogs (20 years)
- Patron of KOSS – Keeping our Streets Safe (10 Years)
- Sponsor of the 103rd and 113th Precinct Community Council (15 Years)
- Sponsor of Community Board #12 Events – (20 Years)
- Sponsor of Holiday Giveaways including food, clothing, school supplies and toys (5 Years)
- Sponsor of Det. Keith Williams Park Cleanups (20 Years)
- York College Scholarship, Internships, and Environmental Initiatives (5 Years)
- Greater Bethel LDC Sponsorship (10 Years)
- Thanksgiving Turkey Giveaways (20 Years)
- Covid-19 Food Relief, transportation and distribution to churches, senior housing and NYCHA residents – Started April 2020 and currently ongoing

Letters of Support

LEROY G. COMRIE
14TH SENATE DISTRICT

ALBANY OFFICE
ROOM 617
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
PHONE: (518) 455-2701
FAX: (518) 455-2810

DISTRICT OFFICE
173-45 FARMERS BLVD.
ST. ALBANS, NEW YORK 11412
PHONE: (718) 705-6399
FAX: (718) 454-0186

E-MAIL: COMRIE@NYSENATE.GOV
WEBSITE: COMRIE.NYSENATE.GOV

THE SENATE
STATE OF NEW YORK
ALBANY

RANKING MINORITY MEMBER
CORPORATIONS, AUTHORITIES AND COMMISSIONS
COMMITTEES:
AGRICULTURE
CONSUMER PROTECTION
ENERGY AND TELECOMMUNICATIONS
FINANCE
INFRASTRUCTURE AND CAPITAL INVESTMENT
RACING, GAMING AND WAGERING
VETERANS, HOMELAND SECURITY AND MILITARY AFFAIRS

Mr. Patrick Foye
President, NY Metropolitan Transit Authority
2 Broadway
New York, NY 10004

Mr. Phillip Eng
President, Long Island Railroad
2 Broadway
New York, NY 10004

Dear Mr. Foye and Mr. Eng,

I write in support of a rail spur project proposed by American Recycling LLC, a transfer station and recycling facility, located of 172-33 Douglas Avenue in the Jamaica section of Queens.

American Recycling is situated adjacent to the Long Island Railroad (LIRR) main line between Jamaica Station and the LIRR's Hillside maintenance facility and, as such, they are uniquely positioned to utilize rail transportation for the purpose of moving outbound municipal solid waste as well as construction and demolition materials.

The rail spur project would effectively remove over 25,000 truck trips per year, totaling some 8 million miles per year by transferring product from truck to rail. Additionally, there would be significant public and environmental benefits realized with the completion of the rail spur, including reduced emissions, highway congestion, wear and tear on roadways and bridges, and a significant reduction in diesel fuel consumption. The new facility will also include an educational center for the City's school children to visit, providing education about recycling and the latest waste rail technology

In addition, the rail spur would allow for increased efficiency throughout the entire logistical process, resulting in a more robust recycling component,

Finally, the rail spur project would protect the well-paying jobs of the many men and women employed by American Recycling, both directly and indirectly.

I ask that you give this project your full support.

Best,

Senator Leroy Comrie
New York State Senate

PLEASE RESPOND TO:

WASHINGTON OFFICE:
2234 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3205
(202) 225-3461
FAX: (202) 226-4169
www.house.gov/meeks

DISTRICT OFFICES:
153-01 JAMAICA AVENUE
JAMAICA, NY 11432
(718) 725-6000
FAX: (718) 725-9868

67-12 ROCKAWAY BEACH BOULEVARD
ARVERNE, NY 11692
(347) 239-4032
FAX: (347) 238-4045

Congress of the United States
House of Representatives
GREGORY W. MEEKS
5TH DISTRICT, NEW YORK

COMMITTEES:
FOREIGN AFFAIRS
SUBCOMMITTEES:
RANKING MEMBER,
EUROPE, EURASIA, AND EMERGING THREATS
WESTERN HEMISPHERE

FINANCIAL SERVICES
SUBCOMMITTEE:
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
CAPITAL MARKETS AND GOVERNMENT SPONSORED ENTERPRISES

October 19, 2018

Mr. Patrick Foye
President, NY Metropolitan Transit Authority
2 Broadway
New York, NY 10004

Mr. Phillip Eng
President, Long Island Railroad
93-02 Sutphin Blvd., 3rd Floor
Jamaica, NY 11435

Dear Mr. Foye and Mr. Eng,

I write this letter in support of the proposed rail spur project by American Recycling LLC, a transfer station and recycling facility. Located at 172-33 Douglas Avenue in Jamaica, Queens; American Recycling is uniquely positioned adjacent to the Long Island Railroad (LIRR) main line between Jamaica Station and the LIRR's Hillside maintenance facility. As such, they are uniquely situated to utilize rail transportation for the purpose of moving outbound municipal solid waste, construction and demolition materials.

It is estimated that the rail spur project would remove over 25,000 truck trips per year, totaling about 8 million miles per year by transferring product from truck to rail. Additionally, there would be public and environmental benefits realized with the completion of the rail spur, including reduced emissions, highway/street congestion, wear and tear on roadways and bridges, and a reduction in diesel fuel consumption. As part of the plans, the renovated facility will include an educational center for school children to visit. This would provide an education opportunity for students to learn about recycling and the latest waste rail technology.

Finally, the rail spur project would secure jobs of those employed by American Recycling, both directly and indirectly.

I ask that you give your full consideration to this project.

Sincerely,

Gregory W. Meeks
Member of Congress

Letters of Support

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

ALICIA HYNDMAN
Assemblywoman 29th District

CHAIR
Subcommittee on
Tuition Assistance Programs

COMMITTEES
Education
Economic Development, Job Creation, Commerce and Industry
Governmental Operations
Higher Education
Small Business
Transportation

October 18, 2018

Mr. Phillip Eng
President, Long Island Railroad
93-02 Sutphin Blvd., 3rd Floor
Jamaica, NY 11435

Dear Mr. Eng,

I write in support of a rail spur project proposed by American Recycling LLC, a transfer station and recycling facility, located of 172-33 Douglas Avenue in the Jamaica section of Queens.

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In addition, the rail spur would allow for increased efficiency throughout the entire logistical process, resulting in a more robust recycling component.

Finally, the rail spur project would protect the well-paying jobs of the many men and women employed by American Recycling, both directly and indirectly.

I ask that you give this project your full support.

Respectfully,

Assembly Member Alicia Hyndman
New York State Assembly

DISTRICT OFFICE: 232-08A Merrick Boulevard, Springfield Gardens, New York 11413 • 718-723-5412, FAX: 718-723-5485
ALBANY O[redacted]

DISTRICT OFFICE
172-12 LINDEN BLVD.
ST. ALBANS, NY 11434
(718) 776-3700
FAX: (718) 487-3580

CITY HALL OFFICE
250 BROADWAY, SUITE 1810
NEW YORK, NY 10007
(212) 788-7084
FAX: (212) 788-7095
idmiller@council.nyc.gov

THE COUNCIL
OF
THE CITY OF NEW YORK

I. DANEEK MILLER
COUNCIL MEMBER, 27th DISTRICT, QUEENS

CHAIR
CIVIL SERVICE AND LABOR

COMMITTEES
IMMIGRATION
LAND USE
PUBLIC SAFETY
TRANSPORTATION

SUB-COMMITTEE
LANDMARKS, PUBLIC SITING AND MARITIME USES

November 26, 2018

Mr. Patrick Foye
President, NY Metropolitan Transit Authority
2 Broadway
New York, NY 10004

Mr. Philip Eng
President, Long Island Railroad
2 Broadway
New York, NY 10004

Dear Mr. Foye and Mr. Eng,

I write in support of a rail spur project proposed by waste transfer facility and recycling company American Recycling LLC (American), located at 172-33 Douglas Avenue in the Queens neighborhood of Jamaica, that would facilitate the efficient transport of municipal solid waste and construction and demolition materials from its site.

American is situated adjacent to the Long Island Railroad's main line between Jamaica Station and the Hillside maintenance facility, and, as such, is uniquely positioned to utilize rail transportation for the purpose of moving such outbound products.

Installation of the rail spur would effectively serve to remove an estimated 25,000 annual trips by truck, totaling some 8 million miles per year, by transferring waste directly from truck to rail. Moreover, significant environmental and public benefits would be realized upon its completion, including reduced emissions, highway congestion, roadway and bridge erosion, and diesel fuel consumption.

As a compliment to this robust recycling component, American will construct a visitors' information center where young scholars and other members of the public can learn more about the mechanics involved in the processing and transport of recycled materials.

Lastly, this modernization project would enable American's efforts to comply with both recent and anticipated changes to the City's regulation of solid waste management, thus preserving the well-paying jobs of its laborers.

I encourage you to support its implementation, and thank you for your consideration.

Sincerely,

I. Daneek Miller
Council Member
District 27, Queens

Idm/bc

Letters of Support

Mr. Patrick Foye
President, NY Metropolitan Transit Authority
2 Broadway
New York, NY 10004

Mr. Phillip Eng
President, Long Island Railroad
2 Broadway
New York, NY 10004

Dear Mr. Foye and Mr. Eng,

I write in support of a rail spur project proposed by American Recycling LLC, a transfer station and recycling facility, located of 172-33 Douglas Avenue in the Jamaica section of Queens.

American Recycling is situated adjacent to the Long Island Railroad (LIRR) main line between Jamaica Station and the LIRR's Hillside maintenance facility and, as such, they are uniquely positioned to utilize rail transportation for the purpose of moving outbound municipal solid waste as well as construction and demolition materials.

The rail spur project would effectively remove over 25,000 truck trips per year, totaling some 8 million miles per year by transferring product from truck to rail. Additionally, there would be significant public and environmental benefits realized with the completion of the rail spur, including reduced emissions, highway congestion, wear and tear on roadways and bridges, and a significant reduction in diesel fuel consumption. The new facility will also include an educational center for the City's school children to visit, providing education about recycling and the latest waste rail technology

In addition, the rail spur would allow for increased efficiency throughout the entire logistical process, resulting in a more robust recycling component.

Finally, the rail spur project would protect the well-paying jobs of the many men and women employed by American Recycling, both directly and indirectly.

I ask that you give this project your full support.

Best,

Council Member Adrienne Adams
New York City Council

Jamaica Station
Jamaica, NY 11435-4380
718-217-5477

Phillip Eng
President

Long Island Rail Road

September 16, 2019

Mr. Mac Thayer
Assistant Vice President
New York City Economic Development Corporation
One Liberty Plaza
New York, NY 10006

RE: American Recycling

Dear Mr. Thayer:

The Long Island Rail Road (LIRR) is supportive of efforts to safely and efficiently increase freight movement via rail to reduce roadway congestion and improve air quality. To this end, LIRR, its freight operator New York & Atlantic Railway (NYA), and American Recycling have been collaborating to develop a viable service plan and freight siding alignment to serve American Recycling's facility in Jamaica, Queens.

Following the procedures for the installation of a new freight switch in the LIRR's Transfer Agreement with NYA, LIRR will review plans to connect the proposed rail transfer facility to LIRR trackage. Over the years, we have worked closely with NYA to support prospective shippers and will continue to do so in an effort to address waste disposal needs in the New York City region.

Sincerely,

Glenn M. Greenberg, P.E.
Acting Chief Engineer
Long Island Rail Road

Letters of Support

ALICIA HYNDMAN
Assemblywoman 29th District

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHAIR
Subcommittee on
Tuition Assistance Programs

COMMITTEES
Education
Economic Development, Job Creation,
Commerce and Industry
Governmental Operations
Higher Education
Small Business
Transportation

June 10th, 2020

Noah Schumer
Project Manager, Strategic Investments Group
NYC Economic Development Corporation
One Liberty Plaza,
New York, NY 10006

Dear Mr. Schumer,

This is a letter of support for American Recycling Management's waste to rail project connecting the Jamaica Queens facility to the Long Island Rail Railroad. I have nominated the project to receive $1 million through State and Municipal Facilities Program (SAM) funding appropriations made in the 2019 State budget for FY 2019-2020.

Kindly reach out to my office with any questions or concerns.

Sincerely,

Hon. Alicia L. Hyndman
Member of Assembly
29th Assembly District

DISTRICT OFFICE: 232-06A Merrick Boulevard, Springfield Gardens, New York 11413 • 718-723-5412, FAX: 718-723-5465
ALBANY OFFICE: Room 820, Legislative Office Building, Albany, New York 12248 • 518-455-4451, FAX: 518-455-5522
EMAIL: hyndmana@nyassembly.gov

Wells Fargo Community Lending and Investment New Market Tax Credit Group 1750 H Street NW, Suite 200 Washington, DC 20006

This expression of proposed terms is for discussion purposes only and should not be construed as a lending or investment commitment. A commitment can only be made after completion of our underwriting process, review and approval of all third party reports and completion of documentation acceptable to Wells Fargo.

American Recycling

Queens, NY

Summary of Proposed New Market Tax Credit Investment

December 9, 2019

Wells Fargo is pleased to provide the following Letter of Interest to participate in the New Market Tax Credit financing of the proposed American Recycling project.

Project Description: The proposed New Market Tax Credit (NMTC) investment will provide funding to American Recycling for the upgrade and expansion of a waste transfer facility in the Jamaica section of Queens, NY. Specifically, the facility will add green features, including a rail line connection that will reduce truck traffic in the surrounding neighborhood by as much as 40%. Reducing both traffic congestion and the accompanying smell and air pollution.

The project will add or retain over 100 jobs in a designated Opportunity Zone and will offer job opportunities to convicts on parole through a prison work release program.

Investor: Wells Fargo Community Investment Holdings, LLC ("Investor")

Price Per Credit: Contemplated pricing per New Markets Tax Credit ("NMTC") of $0.83 per $1.00 using a partnership structure for the proposed Sub-CDE(s).

CDE NYC Neighborhood Capital Corp. (CDE owned by New York City Economic Development Corp.) or another TBD CDE.

Third Party

CDE Fees: TBD

Allocation Size: Contemplated NMTC allocation of up to $15 million.

CDE Terms: CDE and Investor will coordinate on loan and financial servicing.

To: Chairman Reynoso, Council Member Daneek Miller and the panel:

I am submitting this testimony as a concerned citizen and lifelong community member of Queens. I do not agree with the Local law in question that would increase waste capacity. First and foremost, CB 12 is already overburdened with environmental hazards due to the proximity of the transfer stations to homes. This legislation is two parts - increase waste capacity to a facility promising the greenwashed idea of waste by rail- which is not a perfectly safe system even by today's standards. Also- the construction it proposes to create a waste by rail facility is not the environmentally friendly solution it promises- it would actually permanently create a future of more environmental hazards as such continuation of a waste facility would obviously promote greater waste input to the neighborhood for future generations. Particularly in CB 12, the community board didnt have a say or be able to vote. The waste transfer stations are in inappropriate locations in an M1 zone- across from a park and homes. An M1 zone is supposed to be for light manufacturing- Intro 2439 would create more environmental hazards with the construction of the waste by rail mode. By law, the community should rally behind removing this transfer station altogether as it doesn't belong in the M1 zone. More trucks bringing the waste introduces increased pollution and Particulate matter into the air- this is a neighborhood which was ravaged by the coronavirus pandemic. As evident in the patients I cared for as an ICU nurse- mainly people of color were affected by the virus- with chronic histories such as Asthma, Diabetes, Hypertension, Chronic Kidney disease they were at higher risk. And now a year later there is legislation looking to introduce more environmental toxins on the same frontline community? Where is the justice? As the legislation stands, I don't believe it is in the best interest of the frontline community and only serves to benefit the pockets of the carting companies & transfer station owners-all of whom I see who had given testimony are people of privelege. Please don't make it easy for them. NYC has a goal of zero waste this is the only path moving forward to justice.
Thank you.
Ruth Esa, BSN, RN, HNB-BC, CCRN
Resident of Community Board 13

Committee on Sanitation

June 24, 2021

Improve Access to Employment Opportunities in the

Sustainable Materials Management Sector

Good morning, my name is Meredith Danberg-Ficarelli. I am the Director of Common Ground Compost LLC, a member of the Save Our Compost Coalition, a member of the Manhattan Solid Waste Advisory Board, and a Board Member of the US Composting Council. Through my work, I build zero waste programs, advocate for the expansion of access to waste reduction services, and center education on materials literacy, the power of individual behavioral change, and the recognition that all people must demand structural change in order to build a livable and just future for all.

I am here today to urge you to improve access to employment opportunities in the waste sector, allowing more New Yorkers to play an active role in mitigating climate catastrophe. New Yorkers need green jobs that help us curb emissions, reduce waste exports, produce essential soil amendments, and provide new sources of non-toxic renewable energy. One immediate way to support job creation of this kind is to pass legislation that decouples waste auditing from waste brokering. A certification course for auditors must be created, data reported to a central database, pricing mechanisms should be standardized, and businesses guided to reduce waste and recycle more. Waste work is hard work, and with greater transparency lots can be streamlined.

Waste brokering can involve the management of waste infrastructure, contracts, and bidding processes, while waste auditing is the physical process of weighing bags of waste to demonstrate waste generation, and identifying contamination to snapshot recycling behavior. Generally a "survey" is a visual assessment of waste, which can also include weighing, while an "audit" is a more in-depth assessment that involves weighing all bags, sorting material, and detailing contamination in different waste streams. *(If you can see my zoom photo, that's me at a waste audit in a Manhattan office building last night.)* Currently, in order to audit the waste generated by a business, an individual or company must be registered by the Business Integrity Commission as a Trade Waste Broker, a process that requires extensive paperwork and a $5,000 application fee.

Today, NYC businesses pay for waste to be collected, but the system lacks transparency and businesses are frequently confused about what exactly they are paying for. Waste bills can be based on frequency of collection of different streams, estimated weight of waste, volume or size of waste containers, real estate square footage, number of bags of waste, and other variables.

Many business owners have no idea how much waste they generate or if they are paying a fair price for service.

Under the current system is it normal for haulers and waste brokers to estimate or survey waste and then set a monthly hauling price, leaving the business at the whim of those results which are gathered in a non-standard manner, not always shared with the business, and no centralized database exists. We are missing a major opportunity to benchmark, to bring transparency to this sector, and to empower businesses to better understand their waste.

Commercial Waste Zoning will encourage more businesses to assess their waste streams through the services of third party auditors, who would impartially measure waste, share data with the City, the hauler, and the business, and then the hauler and the business would directly set the pricing for waste collection services. The auditors would not need to be involved in price setting at all. NYC can begin to standardize both the metrics that are used to bill businesses for waste collection services, and the procedures that are followed to collect and report this data.

Benchmarking behavior through waste surveys and auditing is an essential building block to the circular economy: until individuals and businesses understand their waste behavior, they may not recognize the opportunities that exist to save money by reducing waste, and to share and donate valuable materials, repair items, and divert as much as possible from landfills and incinerators through recycling, composting, and other value recovery mechanisms.

To support a new and transparent commercial waste landscape, a waste auditing certification course must be created that will train independent contractors and businesses to become certified third party waste auditors, while taking all necessary precautions to keep organized crime out of the waste industry. Best practices in waste surveys and auditing should include measuring piles of waste (length, width, and height), photographing waste as it is set at the curb and/or in containers, counting bags of all streams wherever possible, weighing bags, and identifying contamination, among other metrics. With these standardized metrics, DSNY can develop standard assumptions about waste streams across different business types and sizes, and can even better oversee and enforce fair pricing.

In addition to learning best practice waste survey and audit procedures and reporting requirements, this certification course can educate about zero waste, and offer these auditors a framework through which they can provide a wide array of waste reduction and behavioral change recommendations to businesses. DSNY has an opportunity to create an onramp to the circular economy for New Yorkers through this certification program.

To meet our citywide Zero Waste goals we need all hands on deck. The more certified waste auditors in our communities, the more opportunities there will be for businesses to understand their waste services and what steps they must take to reduce waste. Developing a Waste Auditor Certification Program would not only facilitate green jobs creation and foster a new era of inter-agency collaboration for climate justice, it would increase equity and accessibility in the

waste sector, give us a clearer picture of the state of waste in our city, and offer an innovative opportunity to enter our city's waste sector.

Thank you

Meredith Danberg-Ficarelli

Common Ground Compost LLC

GARBAGE ONLY

OASIS GARBAGE ONLY

CITIBANK GARBAGE ONLY

EQUINOX GARBAGE ONLY

COMMON GROUND COMPOST.COM

Dear Members of the Committee on Sanitation and Solid Waste Management,

My name is Danielle Hammer and I would like to thank this committee for the opportunity to testify on this proposed legislation today. I am a public school teacher within the New York City Department of Education at a school in District 13. Many of my students reside in close proximity to the two waste transfer facilities in District 12, American/Regal Recycling, to whom the proposed legislation is seeking to grant an increase in putrescible waste based on their intent to move to a waste by rail system. I write to advocate for the withdrawal of this legislation.

The Waste Equity Law (Local Law 152) states that if a waste transfer station exports their waste by rail then they are exempt from reducing their waste tonnage capacity. However, Local Law 152 does not grant a waiver based on intent but rather on the facility's existing mode of operation. **As a teacher and advocate for children who live and play near these waste facilities, I urge this committee to oppose the proposed amendment that would allow these facilities to increase their permitted waste capacity for export by rail.**

My students reside within Environmental Justice Communities that were supposed to see tonnage reductions from the Waste Equity Law, not heavier industrialization and more tonnage. These waste transfer stations are meant to operate in M3 zoned heavy industrial use areas yet they are inappropriately located in an M-1 zone, directly adjacent to a public park where many children - including some of my students - play sports, and a residential neighborhood where many live. M1 zones are designed to accommodate light manufacturing that can easily coexist with residential homes. Residents who live near the two unenclosed waste transfer stations experience foul odors, diesel exhaust, waste blowoff, leachate, constant noise, and disruption from these facilities and the trucks that traverse them on a daily basis. During the summer, many residents in the neighborhood can’t open their windows due to the odors coming from the facilities. Some of my students have reported an inability to play outdoors on warm days due to the intolerable stench. Others have been able to move out of the neighborhood for this reason.

As a teacher with over 15 years experience, I can attest that I have never worked with a population of children that have exhibited higher rates of asthma than this one. In our school, it is the norm for students to carry inhalers with them and “Code Blue” emergencies in response to asthma attacks are regular, weekly occurrences. Sadly, many of my students are not aware of the inequities that created these realities for them as these conditions have become a normalized part of their daily life. They deserve better. These waste transfer stations are legally obligated to comply with permit restrictions crafted to prevent them from negatively impacting the health and welfare of those living adjacent to the facility.

Between Fall 2018 to the present, there has been no meaningful attempt to directly involve community members in the decision making process of the proposed expansion. The only time

there has been a public meeting to solicit feedback from the community was on April 15, 2021 - residents were made aware of this public meeting only a day prior to the meeting taking place. Public participation means that community members should have been made aware of this event far longer in advance. There was no effort to distribute the meeting information to the neighboring community physically and virtually. During the so-called public meeting, questions could only be submitted through the Zoom Q&A function and there were no opportunities to share feedback or follow up with questions. This is not how we achieve environmental justice.

Environmental justice means those most affected by environmental issues are at the forefront of the decision-making process. Allowing these facilities to move forward with waste by rail undermines the Waste Equity Law's environmental justice mandate and assists these waste transfer stations in their expansion process. District 12 is one of the four overburdened communities of color that the Waste Equity Law is meant to protect from additional waste handling burdens. Allowing more waste into an environmental justice neighborhood will not advance the city's goal of Zero Waste. It is unjust to allow these facilities to bring in more waste into a neighborhood that is already facing environmental racism. The health and wellbeing of community members, and especially our children, should be prioritized over the interests of polluting waste facilities.

My students and I dream of communities that have achieved Zero Waste by developing systems that allow for composting at scale and significant increases in all types of recycling. We are asking this committee to not approve this level of heavy industrialization in an M1 zone or any other neighborhood of NYC that doesn't already have freight rail. Neighborhoods that were deemed as "Environmental Justice Communities" have not received the relief from the Waste Equity Law and this proposed amendment will allow these facilities to continue to disproportionately affect the health and safety of Southeast Queens residents. The issue of waste-by-rail export urgently requires serious assessment, study, planning, and public input, not this legislation. This legislation should be withdrawn.

Thank you,

Danielle Hammer

Icahn School of Medicine at Mount Sinai
Children's Environmental Health Center

Children's Environmental Health Center
Department of Environmental Medicine and Public Health
Icahn School of Medicine at Mount Sinai
One Gustave L. Levy Place, Box 1217
New York, NY 10029-6574

June 24, 2021

TESTIMONY IN OPPOSITION TO INTRO 2349:

Dear Members of the Committee on Sanitation and Solid Waste Management,

We would like to thank this committee for the opportunity to provide expert testimony on this proposed legislation. The Waste Equity (Local Law 152) states that if a waste transfer station exports their waste by rail then they are exempt from reducing their waste tonnage capacity. However, Local Law 152 does not grant a waiver based on intent but rather on the facility's existing mode of operation. The proposed legislation is seeking to grant the two waste transfer facilities in District 12, American/Regal Recycling, an increase in putrescible waste based on their intent to move to a waste by rail system. We urge you to oppose the proposed amendment Intro 2349 to the Waste Equity Local Law 152 that would allow these facilities to increase their permitted waste capacity for export by rail.

We are a team of physicians, industrial hygienists, epidemiologists, scientists and community-engaged researchers from the Icahn School of Medicine at Mount Sinai with expertise in environmental, and public health. Mount Sinai is host to one of 10 nationally funded Pediatric Environmental Health Specialty Units, and we are the data coordinating center to the New York State Children's Environmental Health Centers, a state funded network of academic medical centers and community organizations dedicated to preventing and treating the adverse health impact of toxic environmental exposures. We are convinced that the proposed amendment will have long lasting, toxic impacts on children living near the site as well as their families. Our team has extensive experience and expertise in counseling communities and families on evidence-based strategies to create safer environments. Our work incorporates community-based participatory research methods, which emphasize partnerships with local residents, rigorous community and academic science, and anti-racist approaches that promote environmental justice. We have analyzed the amendment and evaluated its impact on the local community.

As health professionals with expertise in the impacts of environment on health, we oppose this amendment for the following reasons:

- ***Environmental Health Inequities*** - Allowing these waste transfer stations to increase their permitted waste capacity could disproportionately expose the neighboring community to increased environmental hazards, such as air quality, odor, leachate, noise, and storm water runoff.
- ***Environmental Justice -*** 1) These waste transfer stations are meant to operate in M3 zoned heavy industrial use areas. They are inappropriately located in an M-1 zone, directly adjacent to a public park and a residential neighborhood 2) There has been no meaningful attempt to directly involve community members in the decision making process of the proposed waste expansion 3) Allowing these facilities to expand will set precedent for other environmental justice communities across NYC to become industrialized.

Environmental Health Inequities:

Environmental health inequalities are far too prevalent in New York. Too often, health hazards are unjustly distributed and placed in low-income communities of color and contribute to health effect burdens that are also disproportionate. As public health researchers, we see the long term impact of environmental injustices and the role they play in affecting the health of frontline communities which are too often low-income communities of color. For the past year, our environmental health research team has been collaborating on an air quality study with residents and community groups in Southeast Queens. Residents who live near the two waste transfer stations have reported a high frequency of foul odors, diesel exhaust, waste blow off, leachate, constant noise, and disruption from these facilities and the trucks that traverse

them on a daily basis. These exposure have substantial impacts on chronic stress, headaches and will have long term effects, particularly in children living in this community. Allowing these facilities to expand their waste tonnage will worsen ***air quality, increase odor exposures, and add to existing environmental health inequities***:

- ***Odor*:** In summer, the stench emanating from these waste transfer stations is so unbearable that residents are unable to use their backyards or open their windows. Odor from municipal waste is primarily caused by volatile organic compounds (VOCs), and many of these compounds are known to negatively impact health[1]. Excessive exposure to certain VOCs has been linked to cancer, as well as damage to the kidneys, liver, central nervous system, and respiratory system [2,3].
- ***Air Quality*:** Along with VOCs, residents near the waste transfer stations likely experience diminished air quality due to increased diesel exhaust. Over 90% of the solid matter in diesel emissions is less than 1 micron in diameter and is therefore classified as PM2.5, or a type of particulate matter less than 2.5 microns in diameter [4]. The health effects of elevated PM 2.5 levels are well researched and are associated with increased risk of cardiovascular and respiratory disease [5,6].
- ***Existing Environmental Inequities*:** These waste facilities are cited in communities already overburdened by asthma and other chronic health problems. Data from the New York City Environment and Health Data Portal shows that estimated asthma emergency department visits attributed to PM2.5 for children under 18 years of age, from 2015-2017, were at a rate of 69.6 per 100,000 residents in Jamaica, Queens compared to the rest of Queens with a rate of 47.3 per 100,000 residents. Overall asthma emergency department visits among children ages 5 to 17 years old in Jamaica, Queens were at a rate of 186.4 per 10,000 residents, while the rate for the rest of Queens was 126.6 per 10,000 residents. The Data Portal also shows that adult asthma hospitalizations were higher than average in Jamaica in 2016, with a rate of 11.5 per 10,000 residents compared to an average rate of 6.8 per 10,000 residents in Queens [7].

Environmental Justice

This community is already exposed to disproportionate levels of environmental pollutants compared with high-income and white neighborhoods and the impact is undeniable as chronic stress and the associated economic impact of nearby toxic waste affects all aspects of a healthy community[8]. According to the Data Portal, Jamaica has among the lowest high school graduation rates in New York City at 70.5%. In addition, the percentage of rent burdened households, which is the percentage of households whose gross rent equals at least 30 percent of their income, is among the highest in the city at 62.5%. Jamaica is also an overwhelmingly minority community with 96.4% of residents identifying as non-white. The New York City Department of Health and Mental Hygiene classifies Jamaica as an Environmental Justice Area, which is most broadly defined as, "low-income or minority communities located in the City of New York [that] … have been and continue to be more vulnerable to potential environmental injustices due to factors including history of systemic racism and inequitable resource distribution." [9] In New York City, waste transfer stations are almost exclusively located in Environmental Justice Areas[10,11]. Expanding these waste transfer stations only deepens the environmental injustices faced by Jamaica residents and widens existing inequities.

Environmental justice means those most affected by environmental issues should be at the forefront of the decision-making process. Allowing these facilities to move forward with waste by rail undermines the Waste Equity Law's environmental justice mandate and assists these waste transfer stations in their expansion process. These waste transfer stations are meant to operate in M3 zoned heavy industrial use areas yet they are inappropriately located in an M-1 zone, directly adjacent to a public park and a residential neighborhood. M1 zones are designed to accommodate light manufacturing that can easily coexist with residential homes.

We also ask that the committee consider that between Fall 2018 to the present, there has been no meaningful attempt to directly involve community members in the decision making process of the proposed expansion. The only time there has been a public meeting to solicit feedback from the community was on April 15, 2021 - residents were made aware of this public meeting only a day prior to the meeting taking place. Public participation means that community members should have been made aware of this event far longer in advance. There was no effort to distribute the meeting information to the neighboring community physically and virtually. During the public meeting, questions could only be submitted through the Zoom Q&A function and there were no opportunities to share feedback or follow up with questions. This is not how we achieve environmental justice.

Additionally, District 12 is one of the four overburdened communities of color that the Waste Equity Law is meant to protect from additional waste handling burdens. Allowing more waste into an environmental justice neighborhood would set a precedent for other environmental justice communities across NYC to further industrialize and increase waste export, which goes against the City's Zero Waste and environmental justice goals. It is unjust to allow these facilities to bring in

more waste into a neighborhood that is already facing environmental racism. The health and wellbeing of community members should be prioritized over the interests of polluting waste facilities.

Private waste transfer systems in environmental justice communities are a city-wide health and safety issue. A report published in 2016 by Cleanup North Brooklyn details how the Bushwick community, about 50 residential buildings, are affected by the Brooklyn Transfer LLC waste transfer station. In this report, the researchers describe the high levels of noise, strong odors and diesel fuel emissions the community was burdened with due to this waste transfer facility and include recommendations that could be followed to lessen the health risks, such as having the waste transfer station adopt better housekeeping measures for odor control, depressurizing the tipping floor so air moves into the facility and not out into the neighborhood, educating the staff on waste transfer rules and limiting the tonnage of trash that is brought into the station.

Our recommendations to the committee:

We are asking this committee to not approve this level of heavy industrialization in an M1 zone or any other neighborhood of NYC that doesn't already have freight rail. Neighborhoods that were deemed as "environmental justice " communities have not received relief from the Waste Equity Law, and this proposed amendment will allow these facilities to continue to disproportionately affect the health and safety of Southeast Queens residents. As the city moves towards the goal of Zero Waste, we urge the committee to listen to direct community experiences and to keep environmental justice at the core of policy changes.

Thank you,

Luz Guel
Community Engagement Coordinator
Department of Environmental Medicine & Public Health
Icahn School of Medicine at Mount Sinai

Caitlin Harris
Environmental Justice Researcher
Department of Environmental Medicine and Public Health
Icahn School of Medicine at Mount Sinai

Sarah Evans, PhD, MPH
Assistant Professor
Department of Environmental Medicine and Public Health
Children's Environmental Health Center
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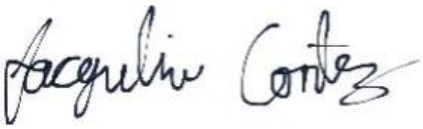

Jacqueline Cortez
Environmental Justice Researcher
Department of Environmental Medicine and Public Health
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Maida P. Galvez, MD, MPH, FAAP
Professor, Departments of Environmental Medicine and Public Health & Pediatrics
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Andrea Ndoka
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Department of Environmental Medicine and Public Health
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Robert O Wright, MD, MPH
Ethel H Wise Professor and Chair
Department of Environmental Medicine & Public Health
Director, Institute for Exposomics
Icahn School of Medicine at Mount Sinai

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STATEMENT OF THE NATURAL RESOURCES DEFENSE COUNCIL

REGARDING INTRO 2349: A BILL THAT WOULD

UNDERMINE THE COUNCIL'S LANDMARK 2019 WASTE EQUITY LAW AND

ERODE PUBLIC TRUST IN THE COUNCIL'S LAW-MAKING PROCESS

June 24, 2021

Good morning, Chair Reynoso and members of the Committee. My name is Eric A. Goldstein and I am New York City Environment Director at the Natural Resources Defense Council. As you know, NRDC is a national, non-profit legal and scientific organization active on a wide range of public health, natural resource protection and quality of life issues across the country, around the globe and right here in New York City where our principal offices have been located since our founding in 1970. NRDC has long focused on solid waste issues as one of our top regional priorities. Our overall goal is to transform the current waste disposal system from primary reliance on landfilling and incineration to one that places waste prevention, composting, recycling and equity as cornerstones of a more sustainable, 21st century waste policy in New York.

NRDC strongly opposes Intro 2349. It would add more trucks and more waste to an already overburdened environmental justice neighborhood. It would reverse promises made to environmental justice communities and undermine public confidence in the City Council's negotiating and law-making processes. It would conflict with the goals, objectives and actual language of the historic Waste Equity Local Law 152 of 2019. And it would represent a capitulation to a small number of industrial waste haulers.

In 2018, the City Council enacted what became Local Law 152 of 2019 -- New York City's Waste Equity Law. It was designed to address longstanding issues of environmental racism in the siting and operation of land-based waste transfer stations in New York City. Specifically, it required the Department of Sanitation to reduce permitted capacity of putrescible and non-putrescible waste in four of the city's most overburdened districts. A 33% reduction in permitted capacity was mandated for three districts – Bronx 1 and 2, and Queens 12. A 50% reduction in permitted capacity was required for waste transfer operations in Brooklyn district 1. The law provided a narrow exemption to the permitted capacity reductions if a facility was already exporting waste by rail and if it had on-site rail infrastructure. Implementation of that new law began in October 2019.

The provisions of that landmark law were not lightly agreed to. They were adopted after years of negotiations going all the way back to the Solid Waste Management Plan of 2006. They were agreed to after many stops and starts and following continuing engagement with environmental justice advocates and the four most affected communities, which have long hosted most of the privately-operated transfer stations serving the entire city's waste stream.

City officials hailed the new statute. "For far too long, a few communities have been saturated by waste-transfer stations and resulting truck traffic. We are creating a more equitable city by shifting the burden away from those communities…", Mayor Bill de Blasio said at the time. Council Speaker Corey Johnson proclaimed: "North Brooklyn, the South Bronx and Southeastern Queens have for generations been dumping grounds for the city's waste. This law will place a limit on the amount of trash moving in and out of neighborhoods that for years have taken an unfair burden."

But now, Intro 2349 is being advanced as if none of this history existed. The new bill reverses a key provision of Local Law 152. It would require the Commissioner of the Sanitation Department to restore reductions mandated by Local Law 152 if a transfer station operator expresses the intent to export by rail in the future and completes rail link construction years down the line. Meanwhile, during at least the first four years, the operator would be permitted to increase truck traffic and waste hauling at the facility. And even if the rail link is created, the proposed law would mean additional waste-hauling trucks coming into the transfer station on a permanent basis.

This attempt to gut a cornerstone requirement of Local Law 152 should be rejected by this Committee. Indeed, it is hard to believe that this bill is even receiving a hearing when much more essential waste legislation, such as proposals to require citywide, universal food waste collections for composting have not moved forward or even had a committee hearing.

What passage of this bill would allow -- even if rail links were ultimately constructed at some point in the future -- is more truck traffic and more waste going into Queens district 12 (and potentially other overburdened neighborhoods as well). That would be a grave environmental injustice. And it would reverse -- for this neighborhood at least -- much of the promise of Local Law 152.

Such exceptions and exemptions to Local Law 152 were specifically considered and rejected little more than two years ago when the details of the legislation were negotiated between Council leadership, the affected communities and other stakeholders. The rail transport exception that was incorporated into the law was painstakingly drafted and specifically written to allow only existing rail operations and not permit future construction -- changes that would in fact boost permitted capacity at these facilities. Waste facility operators should not now come back to the Council for another bite at the apple and seek to re-open negotiations and undermine this landmark environmental justice statute. That is especially true where, as here, the operating track record of the waste stations seeking to expand operations have been the subject of waste violations on numerous occasions over the years. For the Council to entertain this renegotiation would reflect poorly on its law-making process and cause a loss in public confidence when it comes to future negotiations between environmental stakeholders and City Council representatives.

We strongly urge the Committee to reject this anti-environmental justice bill.

Thank you for your attention.

NATURAL RESOURCES DEFENSE COUNCIL

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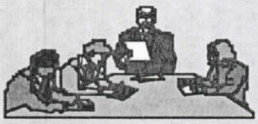

EQA

Eastern Queens Alliance, Inc.

A Federation of Civic Associations in Southeast Queens

June 26, 2021

To: Members of the Committee on Sanitation and Solid Waste Management, NYC Council

The Eastern Queens Alliance opposes the waste capacity expansion legislation Intro 2349 that is currently under consideration by the New York City Council.

In August 2018, the City Council passed Waste Equity Bill, LL152, prohibiting the increase of waste capacity in communities in North Brooklyn, the South Bronx and Southeast Queens. This law was intended to bring much-needed relief to overburdened environmental justice communities and specified a 33% reduction in the waste capacity within Southeast Queens facilities. Community-based organizations and residents strongly advocated for this legislation. The truth is that environmental justice communities have not yet fully received the relief that the 2018 Waste Equity Law has promised, and yet the basic benefits promised by the legislation are now at risk of being reversed.

Intro 2349 will, in effect, revoke the benefits that Waste Equity Bill, LL 152 made possible for Southeast Queens which is burdened by the environmental injustice of waste transfer stations poorly sited near residential communities. It serves to give private, for-profit corporations permission to increase their waste transfer capacity to at least original levels so that they can increase profits to allow them to construct a system that will enable them, in supposedly four years, to export waste by rail. In effect, it would be granting a permanent increase in capacity to the companies in question, under the guise of going to an improved export system. While LL 152 provided exemptions for companies that were currently exporting waste by rail, Intro 2349 is making it possible for those not currently exporting waste by rail to benefit from the exemption without first complying with the stipulations of the exemption clause in LL152. It sets a bad precedent. In addition, it should be noted that an increase in capacity for export by rail increases the import of waste which comes to the waste transfer station by truck. This law, will, in effect, increase the number of trucks bringing waste into the community in perpetuity, not just for the next four years. The only reduction, will be on the back end, if and when the incoming waste is exported by rail.

The companies in question have provided no written details to the community about their plans. Although evidently multiple levels of government--city, state, Federal--are involved in various phases of the project, no Environmental Assessment Statement (EAS), Environmental Impact Statement (EIS), nor environmental review has been completed and made available to the public. What are the harms and risks of the project, especially the environmental harms and risks to the surrounding environmental justice communities? To date, the specifics of the proposal have not been published. The community has not been truly involved nor informed in the planning process of a project that will directly impact its quality of life and health in the immediate and the long term. Residents must be fully informed about legislation that will affect their lives. They should have an opportunity to fully understand that which is being proposed. They must be meaningfully involved in the information-sharing and decision-making process. It is our understanding that large segments of the affected community have not been. The Eastern Queens Alliance is concerned that Intro 2349 is reversing gains made by LL 152 without true community involvement. We request that City Council thoroughly review the components of the expansion effort proposed in Int. 2349, its impacts upon the community and the will of the people who will be directly impacted.

In summary, this legislation would, in effect, reverse the benefits of LL152 by increasing the waste transfer capacity of the companies in question, reverting to pre-LL152 levels. Intro 2349 flies in the face of promises made to communities and will enable the waste management facilities to continue to disproportionately affect the health and quality of life of Southeast Queens residents.

The Eastern Queens Alliance very much advocates for change in our communities that will make life more livable, more sustainable. Offering the usual few carrots to the community in exchange for its approval would seem to miss the mark. In light of the above, EQA cannot support this legislation at this time. We ask this committee ***not to approve*** the increase in waste transfer capacity in an M1 zone that doesn't already have freight rail.

Respectfully submitted,

Barbara E. Brown, Chairperson

P.O. Box 300818, Jamaica, New York 11430, 347-824-2301

Good morning Chairman Reynoso, Councilmember Miller and the rest of the members of the committee. Thank you for allowing me the opportunity to speak before you. Good morning my name is Bilal Karriem and I am a community advocate in southeast Queens where i live and work.

I had the opportunity to visit the potential project site on Douglas Ave and southeast Queens. I was able to tour the facilities to understand what type of upgrades would happen and also discussed the potential impacts on our community. In weighing all that I have heard I have determined that there is a net benefit to the community in terms of moving waste by rail creating good paying employment opportunities in our community and finally having an environmental resource in Jamaica Queens that our children could benefit. I understand that this bill would allow for waste capacity to be increased in southeast Queens within Community Board 12. It is also my understanding that the increase would just be to the levels it was previously, which would still keep our community from being overburdened and under the 10% which was the goal of the waste capacity bill. I understand the need for the increase to help raise the revenues necessary to secure the funding to undertake this multibillion dollar capital project. Because I live here and I work here I don't want our community to continue to stay the same. I want to see progress. I want to see jobs created in our community and most importantly I want to make sure that it is done in an environmentally friendly way. I urge you to support intro 2349.

Good day, my name is Mary Parisen Lavelle. I am speaking out against Councilman Miller's legislation. I lived in Glendale for 34 years within 100 ft of the NY & Atlantic railyard. The operations are noisy and polluting. Waste by rail is a big business. It is profitable for private industries at the expense of the quality of life for the communities they travel through.

Constituents of Councilman Miller's district are being bamboozled! They have asked me to testify today .They are being told that a new state of the art waste transfer station will be built and waste will be transported with a new rail siding so that they can get trucks off their roads. Oh really, how do you think that the waste will get to the transfer station , of course trucks. Those same trucks that have been going there. Presently, that waste transfer station has horrendous odors emitting from it and Councilman Miller's legislation legitimizes unenclosed transfer stations with three walls and a roof. So how will this community's burdens be alleviated?

Regional planning is needed to consider the unintended consequences of waste by rail.
First, the locomotives leased by the MTA/LIRR to their freight concessionaire NY & Atlantic are antiquated from the 1970's Tier 0 when in this 21 st Century the state of the art USEPA are Tier 4 locomotives with near zero emissions. Old locomotives not only are not clean for the environment and the air we breathe but the noise they produce. Freight operations have narrow opportunities to move because of the shared tracks of passenger rail. Hence, they travel predominantly during night hours.
Next, are the odors emitted from the open rail cars of waste. This problem is a reality since leechate, vectors and odors are a daily occurrence. Containerization legislation on the State Level is imperative. NYC should be demanding that this is a mandate before these railcars of waste travel through our city.

So Councilman Miller this legislation of yours needs to be redacted! Protect those you serve and do the right thing.

There can't be any expansion of this waste by rail industry without mitigations for the communities that they travel through.

Thank you.

Civics United for Railroad Environmental Solutions CURES

Across Long Island Environmental Justice leaders have been dealing with waste-by-rail. At the hearing on 6-24-21, CD12 civic leaders who were on the front lines in the fight for the Waste Equity Law asked that Int 2349 be withdrawn. In December 2020, the Brentwood Environmental Justice Community protested the Omni Brentwood waste-by-rail transfer station, asking DEC to deny the permit (DEC granted it). Now the NYS NAACP is leading the opposition to Winters Brothers proposed waste-by-rail facility in an Environmental Justice community in Brookhaven. Following is their press release, which is a window into the complexities of extending and controlling waste-by-rail that the DSNY Deputy Commissioner and CURES touched on at the 6-24-21 hearing.

NAACP New York State Conference
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

PRESS RELEASE

NAACP NYS President Hazel N. Dukes joins forces with Brookhaven Chapter To Stop Secret Plan for a Massive Garbage Dump

New York State NAACP President Hazel Dukes today announced she is joining forces with Town of Brookhaven NAACP President Dr. Georgette Grier-Key, NAACP Long Island Regional Director Tracey Edwards, NAACP chapters across the region and other local organizations to expose and oppose a secret plan to build a garbage dump in Brookhaven without any local approvals or local controls - with the active support of the Town of Brookhaven government that is currently trying to sell the town's rights over the project to a developer behind closed doors.

"While the rest of New York state moves towards environmental justice, Brookhaven is moving in the opposite direction - selling off town rights to a developer with no regard for the local community or the local environment,' President Dukes said, "We stand with the Brookhaven chapter to call on Governor Cuomo, Senator Schumer, County Executive Bellone and all elected officials from Long Island and Queens to join this fight. It's outrageous the town is giving away its power over this project, yet at the same time looking to cash in on the developer's attempt to bypass the local community. There was a time when this town earned a reputation as Crookhaven. We will not allow Supervisor Romaine to turn back the clock and sell out the people. It's not too late for him to do the right thing and join us in opposing this plan."

Winters Bros., a giant carting company with deep pockets and political connections, is attempting to build a massive garbage transfer station in Brookhaven and move the garbage by train through communities along Long Island and Queens until it heads to an out of state destination. The company is attempting to use the obscure United States Surface Transportation Board to pervert federal laws designed to bolster railroads to silence the people of Brookhaven and avoid local zoning and control.
The town is currently in closed-door negotiations with Winters Bros. to support its efforts to subvert local zoning and pervert federal laws in exchange for a fee tied to the amount of garbage that comes through the facility- estimated at 6,000 tons a day. As part of those talks, the town is secretly weighing breaking an existing conservation covenant meant to protect 60 acres of local land from development - again for a price - and had Republicans in the State Senate and Assembly introduce legislation to permit the sellout.

"Winters Bros. has been selling this idea for months to privileged groups while ignoring communities of color and the organizations that fight for them. We asked them months ago to make its case publicly for this plan but instead they have refused and gone into hiding," Dr. Grier-Key said. "It's time for the town to make clear it will

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not cede local control to the federal government, stop the secret negotiations to get paid off for giving away local control, and withdraw its legislation in Albany to break its covenants.

"It's time for Winters Bros. to come clean and tell the world about their plans, and exactly why they want the federal government to make the decisions and not the local government. If it's a good idea, they should stop hiding and start working to win local support. We suspect they know the community will reject this plan, so they want to take shortcuts and cut us out of the process. We call on all elected officials to join us to stop this perversion of the process. If you stand for environmental justice, you will stand with us in this fight."
If Winters Bros. can use federal rail laws to do this, it could open the door for all kinds of damaging projects like incineration plants to get built anywhere there is a rail connection despite local opposition. The NAACP led coalition also called for the federal STB to take meaningful steps to protect the local community, specifically by:

- Rejecting Winters Bros. attempts to short circuit the federal process by as much as six months, simply to avoid public scrutiny. Winters Bros. has asked for a waiver to accelerate its application and avoid the six-month notification requirements that are designed to ensure full public participation in the process.

- Rejecting Winters Bros. attempts to have some 200 acres placed under STB control so it can avoid local zoning or community participation in the decision-making process. The STB oversees requests for railroad uses but can supersede local laws that allow for relevant infrastructure needed to support the railroad. Taking control of some 200 acres for construction of a garbage dump represents a massive perversion of those laws and traditions.

Dr. Grier-Key said, "The town has failed at every turn to address the garbage situation in our town, and now they want to use that failure to claim an emergency need to subvert local control. It's a joke and should be rejected out of hand. Likewise, the STB needs to make clear its oversight will be limited to the railroad issue and not the lands proposed for the massive dump. And they should reject this waiver request out of hand."

Dr. Abena Asare, a Community Organizer working in concert with the NAACP effort, said, "We are adamantly opposed to the Winters Rail Terminal project previously, now, and in the future as it will disenfranchise communities of color within our district and further marginalize our district within Brookhaven Town and Suffolk County. The diverse communities within our district must be a part of any decisions about waste infrastructure in our area. Moreover, vulnerable and marginalized groups within our district, including the residents of Suffolk County Yaphank Jail and the residents of HELP Suffolk, the largest homeless shelter in Long Island, must particularly be taken into account and consulted."

President Dukes said, "We need Senator Schumer and Senator Gillibrand, and our congressional leaders from Long Island and Queens to stand up loud and clear on this issue with us. We cannot allow a tiny, obscure board to make decisions that will have tremendous impacts on Brookhaven and set a precedent that could hurt communities of color across the region, the state, and the nation. We will not be silenced, we will not back down, and we will hold those who sit silently on the sidelines of this fight to account."

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The exemption the STB is offering Winters is an STB-created rule allowing the STB, in some circumstances, to retake jurisdiction over transfer stations on railroad property even though jurisdiction over transfer stations on railroad property was explicitly taken from the STB by Congress through the Clean Railroads Act of 2008. Congress did this because transfer stations on railroad property were not meeting state environmental standards, and that bad actor said they didn't have to comply because it was railroad property.

DEC has been unresponsive to the Brookhaven Environmental Justice community, including their concerns about groundwater pollution. Winters' waste-by-rail expansion plans are proceeding in the absence of a Local Solid Waste Management Plan and with an expired landfill

permit. After becoming aware of the community's plight, NYS Assembly Environmental Conservation Committee Chair Steve Englebright demonstrated responsibility by securing $250,000 in the NYS budget for DEC to study regional impacts from the Brookhaven landfill and waste-by-rail, specifically including impacts on Environmental Justice communities. Chairman Englebright recently said that DEC is operating without a plan and NYS lacks recycling capacity. Will the Sanitation Committee and DSNY be participating in this planning? Why? All the waste-by-rail DEC Region 1 processes winds up in NYC. There is one 10-acre rail yard in Queens that is the only place on Long Island where all freight rail lines meet, trains switch, and freight is classified. It's already a bottleneck (rail cars stored in neighborhoods and trains blocking grade crossings because there's no room in the yard). What's the plan?

Except for Waste Management, others in the waste-by-rail industry have been willing to cut corners for private gain and ignore adverse impacts on communities. Because of the lack of state and federal regulation of waste containment in a rail car, the 13-year history of waste-by-rail has been a series of waste containment experiments neighborhoods have had to endure. NYC's Waste Equity Law already has exceptions for waste-by-rail. Please don't weaken waste-by-rail standards or expand freight rail into new areas of the city, which will weaken the city's control over making New York City sustainable. Please withdraw Int 2349. Thank you.

Mary Arnold, Co-Founder Civics United for Railroad Environmental Solutions, civicsunited@gmail.com

Regal Recycling, Inc. *and* Local 813, International Brotherhood of Teamsters, AFL–CIO.[1] Cases 29–CA–16739, 29–CA–16870, 29–CA–16951, 29–CA–17056, 29–CA–17131, and 29–RC–8020

September 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On May 17, 1994, Administrative Law Judge Steven Davis issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

1. The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging seven employees because of their activities on behalf of Local 813. The Respondent contends that it did not discharge the employees, but lawfully laid them off until they could produce documentation demonstrating their eligibility under the immigration laws to work in the United States.[4] We agree with the judge that the Respondent unlawfully discharged the employees.

The relevant facts follow. Employee Edgar Pineda contacted Teamsters Local 813 in late June 1992.[5] On July 13, Local 813 representatives met with 13 of the Respondent's employees, and the employees signed authorization cards. Four days later, representatives of Local 813 informed the Respondent that they had obtained authorization cards from a majority of the Respondent's employees and requested that the Respondent sign a recognition agreement. Angelo Reali (Angelo), one of the Respondent's owners, refused to sign the agreement, asserting that the Company already had a collective-bargaining agreement with Laborers Local 445.

After this discussion with the Local 813 representatives, Angelo and Supervisor David Rios interrogated several employees about whether they had signed authorization cards. Rios told some employees that he already knew who had signed cards. He further told Pineda that Angelo and Michael Reali (Michael), who was also an owner and the vice president of the Respondent, wanted to know who had contacted Local 813 and that they were angry.

About July 20, Rios held a meeting of all employees at which he presented Raphael Griffin, a representative of Local 445. Griffin informed the employees that they did not need to join Local 813 because Local 445 already represented them. The employees responded that they had never signed authorization cards for Local 445 or seen Griffin before that day.[6] When employee Norman Ortega outspokenly criticized Local 445, he was called to the side of the room, where Angelo told him that he could lose his job for criticizing that Union. In the meeting, Griffin told the employees that Local 445 could secure raises and medical benefits for them, and that they could not sign cards for another union.

The following day, the employees went to the Respondent's office and informed Michael that they desired representation by Local 813 rather than Local 445. At a subsequent meeting called by the Respondent, Michael asked the employees why they had signed cards for Local 813, stated that he would close the facility if they selected that Union, and informed the employees that they would be required to show him proof the next day that they were entitled to reside and work in the United States.[7]

[1] Local 445, Laborers International Union of North America, AFL–CIO intervened in Case 29–RC–8020. We correct the case caption to accurately identify the Charging Party.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We modify the Order to conform to the violations found and to our decisions in *A.P.R.A. Fuel Oil Buyers Group*, 320 NLRB 408 (1995), enfd. 134 F.3d 50 (1997), discussed below, and *Indian Hills Care Center*, 321 NLRB 144 (1996). We have substituted a new notice to conform to the changes in the Order.

[4] The Immigration Reform and Control Act (IRCA), 8 U.S.C. §1324 et seq., requires employers to complete INS Form I-9 for each employee after reviewing documents produced by the employee showing identity and eligibility to work in the United States.

[5] All dates are in 1992 unless otherwise indicated.

[6] The judge found that the employees did not know that they were represented by Local 445 or entitled to benefits under a collective-bargaining agreement, the Respondent never complied with the terms of the agreement, and Local 445 never administered it. In addition, in response to union-security provisions of the agreement, the Respondent paid dues from its own funds directly to Local 445 on behalf of its employees, who of course had not authorized payroll deduction of dues. The judge found, based on the record, that Local 445 was not concerned with the working conditions of the employees, which were set unilaterally by the Respondent, and failed to otherwise enforce or service its contract with the Respondent. Thus, this case is factually distinguishable from *Henry Bierce Co.,* 328 NLRB No. 85 (1999), in which the union had no actual or constructive notice that the employer was not complying with the contract. In this case, on the other hand, Local 445 has never asserted that it lacked knowledge of the Respondent's noncompliance with the contract.

[7] We adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by, inter alia, interrogating employees concerning their union activities, threatening to close the facility if the employees continued their union activities, and threatening to require its employees to produce documents to establish that they were legally in the United States. The judge stated that only employee Mario Ortiz testified that Michael threatened to close the facility. We note, however, that Pineda corroborated Ortiz' testimony regarding this threat. Pineda's testimony pertained to the meeting initiated by the employees, but the judge found it

On July 28, the Respondent, in individual meetings, gave each of the seven discriminatees a letter stating in part:

> [Y]ou have not produced the proper proof of residence that is required by the federal government which makes you eligible to work in the United States. . . . [W]e have no choice but to ask you to hold off from your employment until such time that the documents are brought into the office.

The discriminatees were unable to produce the required documents and the Respondent did not permit them to return to work.

The record shows, and the judge found, that the Respondent previously had not uniformly required employees to furnish proof of their authorization to work. Indeed, Michael testified that the Respondent would permit employees to begin work if they said that they had documents showing work authorization, and that the employees sometimes failed to produce the documents. The Respondent had not even requested documents from discriminatees Hugo Carillo, Edgar Pineda, or Julio Del Cid before July. Upon his hire, Nery Perez provided a marriage certificate, which is not among the documents listed by the Immigration and Naturalization Service (INS) Form I-9 as an acceptable demonstration of identity or work eligibility. The record shows that the Respondent requested documents from Mario Ortiz, who furnished a work permit. Joel Chinchilla was asked for identification, and he produced a green card. Neither Ortiz nor Chinchilla completed a Form I-9 as required by the INS.

As the judge found, the Respondent also did not consistently apply a policy of verifying eligibility even at the time when it discharged the discriminatees, purportedly for lacking proper authorization. Four employees who did not sign authorization cards for Local 813 remained at work after July 28, despite their failure to produce documents demonstrating their eligibility to work. Moreover, after the discharges new employees were hired without providing appropriate documents.

Two of the discharged employees were rehired in November, after Local 813 failed to receive a majority of votes in the October 30 election. Carillo returned to work after seeking assistance from Local 445 to obtain a work permit, although his application for the permit was still pending even at the time of the hearing in this proceeding. Ortiz, whose discharge the Respondent attributed to the expiration of his work permit, returned to the Respondent's facility initially with a document stating that his permit would be renewed and later with the renewed permit, but the Respondent failed to reinstate him. Like Carillo, Ortiz was ultimately rehired following the intervention of Local 445.

Under the test set out in *Wright Line*,[8] in order to establish that the Respondent unlawfully discharged the seven employees based on their union activity, the General Counsel must show by a preponderance of the evidence that the protected activity was a motivating factor in the Respondent's decision to discharge. Thus, the General Counsel must show that the employees engaged in union activity, that the Respondent had knowledge of that activity, and that the Respondent demonstrated antiunion animus.[9] Once the General Counsel has made the required showing, the burden shifts to the Respondent to demonstrate that it would have taken the same action even in the absence of the protected union activity.

Based on the above facts, we adopt the judge's conclusion that the Respondent unlawfully discriminated against the seven discharged employees based on their union activities. The General Counsel demonstrated that the seven employees were among those who signed authorization cards for Local 813 and informed Michael that they wished to be represented by that Union rather than Local 445. Thus, the Respondent was well aware of their support for Local 813. The Respondent reacted to the employees' union activity with a clear demonstration of antiunion animus, by threatening to close the facility and, in an unprecedented manner, demanding a mass production of work authorization documents.

In agreement with the judge, we further find that the Respondent has failed to show that it would have discharged the employees even in the absence of their union activity. The record does not support the Respondent's assertion that its enforcement of eligibility requirements under IRCA predated the employees' support for Local 813. Therefore, we reject the Respondent's contentions that it had already instructed the employees to produce their documents before the advent of their union activity and had distributed an undated letter in June requiring the documents.

We also reject the Respondent's argument that the employees were not discharged, but merely laid off until they could be employed in compliance with Federal immigration laws. Significantly, the Respondent's attempt at strict compliance with eligibility requirements as to these employees, though arguably proper under immigration law, was contrary to its practice both before and after these discharges, as well as to its contemporaneous treatment of employees who did not support Local 813. To undocumented employees, hired and allowed to continue to work without having to produce authorization papers, an employer's sudden demand for such papers, accompanied by a "layoff" until they are provided,

consistent with testimony about the later meeting called by the Respondent.

[8] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir.1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 393–403 (1983).

[9] *Wright Line*, supra at 1090.

clearly means a permanent, or at least long and indefinite, loss of employment. Moreover, the Respondent's failure to reinstate Ortiz upon presentation of his renewed work permit, until Local 445 intervened at his request, belies the Respondent's contention that its only concern was ensuring proper work authorization.[10]

For the above reasons, we conclude that the Respondent's discharge of the seven employees violated Section 8(a)(3) and (1).[11]

2. The judge ordered the Respondent to offer the seven discriminatees immediate reinstatement with backpay. In *A.P.R.A. Fuel Oil Buyers Group*, supra, 320 NLRB 408, the Board considered the remedies appropriate for discriminatory discharges of employees on the asserted basis of their undocumented status, including whether an employee's ineligibility for employment affects the propriety of reinstatement and backpay. Recognizing that the Board may not order a remedy that would require an employer to violate IRCA, it found in *A.P.R.A.* that an employer's obligation to reinstate allegedly undocumented workers should be conditioned on their satisfaction of IRCA's normal verification requirements. In accord with the decision in *A.P.R.A.*, we shall modify the judge's recommended Order to condition the Respondent's reinstatement obligation on the discriminatees' production, within a reasonable time, of documents enabling the Respondent to meet its obligations under IRCA. We shall further modify the judge's recommended Order to provide that the Respondent pay the discriminatees backpay from the dates of their discharges to the earliest of the following events: their reinstatement by the Respondent, subject to compliance with the Respondent's normal obligations under IRCA, or their failure after a reasonable time to produce such documents.

3. The Respondent excepts to the judge's recommendation that the Board issue a *Gissel*[12] bargaining order to remedy the unfair labor practices. As an initial matter, we find no merit in the Respondent's arguments as to the violations themselves, or its contention that a bargaining order is not appropriate because 3 months passed between the alleged unfair labor practices and the election. In normal circumstances, the violations in this proceeding would prompt the Board to consider a *Gissel* remedy. However, as the Board recently recognized in *Wallace International de Puerto Rico*,[13] excessively long delay at the Board may render such a remedy unenforceable. Here, the delay at the Board exceeded even that in *Wallace*. As in *Wallace*, rather than engender further litigation and delay over the propriety of such an order, we find that the interests of the employees are better served by proceeding to a second election (in the event the tally of ballots from the first election shows that Local 813 has not received a majority of votes).

Although a *Gissel* remedy is not imposed, we find that, in the event that Local 813 has lost the first election, an additional remedy is necessary to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices and to ensure that a fair second election, if needed, can be held.[14] Therefore, we shall in that event order the Respondent to provide Local 813, on request made within 1 year of the date of this Decision, the names and addresses of all current unit employees.[15] The delay in this case, although unfortunate, was no more the fault of Local 813 or of the employees who were denied a fair opportunity to choose whether they desire union representation than it was of the Respondent. Our Order will afford Local 813 "an opportunity to participate in [the] restoration of employee rights by engaging in further organizational efforts, if it so chooses, in an atmosphere free of further restraint and coercion." *United Dairy Farmers Cooperative Assn*., 242 NLRB 1026, 1029 (1979), enfd. in relevant part 633 F.2d 1054 (3d Cir. 1980).[16]

[10] See *Victor's Café 52*, 321 NLRB 504, 514–515 (1996) (employer's hasty demand, after learning of employee support for union, that employees produce documents demonstrating work authorization, and discharge of employees who failed to provide documents, violated Sec. 8(a)(3) and (1)). Like the Board in *Victor's Café*, we find that this case does not involve an employer's good-faith effort to come into compliance with its statutory obligations under IRCA without regard to its employees' union activities.

[11] We find it unnecessary to rely on *Future Ambulette*, 293 NLRB 884 (1989), and *Midwestern Mining*, 277 NLRB 221 (1985), cited by the judge.

[12] *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

[13] 328 NLRB No. 3 (1999). In that case, the Board declined to issue a *Gissel* bargaining order and instead directed a second election given that the unjustified delay of the case at the Board for almost 4 years had likely rendered such an order unenforceable. Cf. *Garvey Marine, Inc.,* 328 NLRB No.147 (1999) (Board found *Gissel* remedy appropriate, distinguishing *Wallace* based on the length of delay and extent and severity of the unfair labor practices involved).

[14] See *Maramount Corp*., 317 NLRB 1035, 1037 (1995) (Board has broad discretion to fashion a just remedy).

[15] If Local 813 loses the pending election, Member Liebman believes that additional remedial measures are necessary to dissipate, as much as possible, the lingering atmosphere of fear created by the Respondent's unlawful conduct and ensure that employees will be able to exercise a free choice in a second election. Specifically, she would order the Respondent to grant Local 813 and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted. Member Liebman also would order the Respondent to grant Local 813 reasonable access to its facility in nonwork areas during employees' nonworktime. In her view, these two access remedies would provide employees with reassurance that they can learn the benefits of representation by Local 813 free from the unlawful threats and reprisals they have experienced in the past. Given the judge's finding, adopted by the Board, that the Respondent violated Sec. 8(a)(2) by denying Local 813 access to its employees and facility, while providing such access to Local 445, these additional remedies are carefully tailored to the situation which calls for redress.

[16] The Board has previously ordered this remedy in cases where it found that remedial measures in addition to the traditional remedies for unfair labor practices were appropriate. See, e.g., *Montfort of Colorado*, 298 NLRB 73, 86 (1990), enfd. in relevant part 965 F.2d 1538 (10th Cir. 1992); *United Dairy Farmers Cooperative Assn*., 242 NLRB at 1030; *Haddon House Food Products*, 242 NLRB 1057, 1059 (1979),

ORDER

The National Labor Relations Board orders that the Respondent, Regal Recycling, Inc., Jamaica, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their activities on behalf of Local 813, International Brotherhood of Teamsters, AFL–CIO.

(b) Threatening employees with discharge for criticizing Laborers' International Union, Local No. 445, AFL–CIO.

(c) Threatening to require its employees to produce documentation to establish that they are legally in the United States in retaliation for union activities.

(d) Threatening to close the facility if the employees choose to be represented by Teamsters Local 813.

(f) Hiring additional employees in order to influence the outcome of the election.

(g) Denying Teamsters Local 813 access to its employees and facility, while providing access to Laborers' Local 445.

(h) Issuing a discriminatory warning to employee Edgar Pineda because of his activities on behalf of Teamsters Local 813.

(i) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, make a conditional offer of reinstatement to Maynor Lima Bobadillo, Hugh Carillo, Mario Carillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez, offering them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, provided that they complete, within a reasonable time, INS Form I-9, including the presentation of the appropriate documents, in order to allow the Respondent to meet its obligations under the Immigration Reform and Control Act of 1986.

(b) Make Maynor Lima Bobadillo, Hugh Carillo, Mario Carillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days of the date of this Order, remove from its files any reference to the unlawful discharges and warnings, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges and warnings will not be used against them in any way.

(d) In the event that Local 813 loses the pending election, supply Local 813, on its request made within one year of the date of this Decision and Order, the full names and addresses of current unit employees.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Jamaica, New York facility copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 23, 1992.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 29–RC–8020 is severed and remanded to the Regional Director of the purpose of opening and counting the challenged ballots of Hasan Abdool, David Baksh, David Gustman, Joel Macilla Chinchilla, Julio Del Cid, Nery Perez, and Edgar Pineda. Thereafter, the Regional Director shall prepare a revised tally of ballots. If the tally shows that Local 813, International Brotherhood of Teamsters, AFL–CIO has received a majority of ballots cast, the Regional Director shall issue a certification of representative; if the revised tally shows that Local 813 has not received a majority of the ballots, the Regional Director shall set aside the election and conduct a second election.

MEMBER BRAME, concurring in part and dissenting in part.

I agree with my colleagues that the Respondent unlawfully interrogated its employees in violation of Section

enfd. in relevant part sub nom. *Teamsters Local 115 v. NLRB*, 640 F.2d 392 (D.C. Cir. 1981); and *Loray Corp.*, 184 NLRB 557, 559 (1970).

This remedy is in addition to Local 813's right to have access to a list of voters and their addresses under *Excelsior Underwear*, 156 NLRB 1236 (1966), after issuance of a notice of second election.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

8(a)(1). I reach this conclusion, however, by analyzing the interrogations based on the factors set out by the Second Circuit Court of Appeals in *Bourne v. NLRB*, 332 F.2d 47 (1964). I also agree with my colleagues that the Respondent violated Section 8(a)(3) and (1) by discharging seven of its employees because of their support for Local 813. In addition, I agree with my colleagues' adoption of the judge's decision in all other respects, except for his recommendation to issue a bargaining order, which I join my colleagues in denying.[1] I dissent, however, with respect to the backpay remedy that my colleagues grant to the discriminatees, in view of their undocumented alien status at the time of their discharges. I also dissent concerning the majority's award of special remedies, which I find unwarranted.

1. The interrogations arose out of an organizing drive by Teamsters Local 813 at the Respondent's recycling facility.[2] Representatives of Local 813 met with the Respondent's employees on July 13, 1992,[3] and the employees signed authorization cards for that Local. The Respondent claimed that the employees were covered by a collective-bargaining agreement with Laborers Local 445. The judge found that within days after the employees signed authorization cards for Local 813, these officials began extensive interrogations of employees as to who had contacted Local 813 and if the employees had signed cards. Employee Joel Chinchilla testified that shortly after he signed an authorization card, Rios told him that Angelo wanted to know which employee had called Local 813. Employee Julio Del Cid stated that 4 or 5 days after the July 13 card signing, Angelo, with Rios serving as translator, asked him if he had signed a card. Del Cid did not answer, and Angelo proceeded to speak with all of the other employees. The next day, Rios approached some employees, including Del Cid and Nery Perez, while they were eating, and stated that he knew that they had signed cards. The employees did not reply. Despite his assertion that he knew they had signed cards, Rios went on to ask the employees who had contacted Local 813 and who had signed cards. The employees said that they did not know.

Shortly after employee Hugo Carrillo signed his authorization card for Local 813, Rios began interrogating him about whether he had done so. Carrillo denied signing a card. After repeated questioning by Rios during the next 8 days, however, Carrillo finally admitted signing a card, because he believed that the Respondent would find out anyway.

Beginning about July 20, Rios told employee Edgar Pineda that Angelo and his fellow owner Michael Reali (Michael) wanted to know who had contacted Local 813 and that they were angry. Pineda said that he did not know. Rios repeated his question to Del Cid, Chinchilla, and Carmello Calderon, who also asserted that they did not know. Rios continued his questioning of Pineda one or twice per week through August, and Pineda continued to claim not to have an answer.

On July 20, while these interrogations were ongoing, the Respondent called a meeting of its employees to inform them that they were already represented by a union, Local 445, and to introduce Local 445 representative Raphael Griffin. The employees had not previously known of this representation, a collective-bargaining agreement between the Respondent and Local 445, or the benefits to which the agreement entitled them. When employee Norman Ortega openly criticized Local 445 at the meeting, Angelo warned him that he could lose his job for such criticism. After the employees informed Michael that they preferred to be represented by Local 813, the Respondent convened another meeting with employees, at which Michael notified them that, if they continued to pay attention to Local 813, they would be required to bring in proof that they were eligible to live and work in the United States. The Respondent had previously been lax about requiring such documentation from its employees, many of whom were recent immigrants to this country. Ultimately, as the judge found, the Respondent discharged some of the employees who were unable to provide the requested proof.

In *Bourne*, supra, the Second Circuit recognized that interrogations of employees are not per se threatening, and identified five factors to be considered in determining whether an interrogation violated Section 8(a)(1). These factors are:

> (1) The background, i.e., is there a history of employer hostility and discrimination?
>
> (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
>
> (3) The identity of the questioner, i.e., how high was he in the company hierarchy?
>
> (4) Place and method of interrogation, e.g., was employee called from work to the boss's office? Was there an atmosphere of 'unnatural formality'?
>
> (5) Truthfulness of the reply.[4]

[1] I agree with my colleagues that this case is factually distinguishable from *Henry Bierce Co*. 328 NLRB No. 85 (1999), in which I dissented as to the appropriateness of the bargaining order. I note, moreover, that in the present case the employees have the opportunity to express their desires concerning representation through an election.

[2] The facts regarding the interrogations of employees by supervisor David Rios and owner Angelo Reali (Angelo) are uncontested, because neither Rios nor Angelo testified.

[3] All dates are 1992 unless otherwise indicated.

[4] Id. at 48. The Board cited the *Bourne* test with approval in *Rossmore House*, 269 NLRB 1176, 1177 (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), in which the Board declared:

> Our duty is to determine in each case whether, under the dictates of Sec[tion] 8(a)(1), such interrogations violate the Act. Some factors which may be considered in analyzing alleged interrogations are: (1)

Applying these factors to the interrogations by Rios and Angelo, I conclude that the interrogations violated Section 8(a)(1). Regarding the background, here the Respondent maintained a sham collective-bargaining relationship with Local 445, and did not provide employees benefits included in its alleged collective-bargaining agreement with that Union. Moreover, the Respondent committed serious unfair labor practices, including threats of job loss and closing, and mass discriminatory discharges, when the employees demonstrated support for Local 813.

The information sought in the interrogations clearly tended to convey to employees that the Respondent intended to retaliate against individual employees. Angelo and Rios asked employees specifically whether they signed authorization cards, which could indicate their support for Local 813, and who had contacted that Union. Although such an inquiry, standing alone, might not tend to be coercive, Rios additionally told some employees that Angelo, or Angelo and Michael, wanted to know, and further informed Pineda that Angelo and Michael were angry. In addition, during the same period when the interrogations were taking place, Angelo warned Ortega that he could lose his job for criticizing Local 445, and Michael, in a meeting of employees, also threatened that if they continued their support of Local 813 they would have to produce documents showing that they were legally in this country. Thus, the employees would reasonably conclude that they risked discharge or other adverse action if they supported that local.

The interrogations were conducted by supervisor Rios and by owner Angelo, who represented the highest echelon of the company hierarchy. Although the questioning took place at the employees' work stations and in their break area, the questions were asked pointedly and repeatedly over the course of a number of weeks. The employees consistently denied knowing who had called Local 813 as well as signing authorization cards. Only Carrillo, after several interrogations, admitted signing a card because he believed that the Respondent would find out anyway. The Respondent's continual return to the subject of whether the employees had signed cards would tend to make reasonable employees think that the Respondent intended to retaliate against them for doing so. The employees' uniform reaction of concealing their own union activity and denying knowledge as to who had called Local 813 illustrates their fear that the Respondent would retaliate if it learned the truth. Based on all of these factors, I conclude that the interrogations by Rios and Angelo were coercive and therefore unlawful.

the background; (2) the nature of the information sought; (3) the identity of the questioner; and (4) the place and method of interrogation.

Rossmore House, supra at 1178 fn. 20. See also *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985) (*Rossmore House* standards apply to questioning of employees who are not open union supporters).

2. Although, like my colleagues, I find that the Respondent acted unlawfully by discharging seven employees after they failed to present proof of their authorization to work legally in the United States, I do not agree with the backpay remedy ordered by the Board in *A.P.R.A. Fuel Oil Buyers Group*[5] and by my colleagues in this case. In my view, and in agreement with Member Cohen's dissent on this point in *A.P.R.A.*, the discriminatees are not entitled to backpay except for periods for which they can establish their eligibility to work legally in the United States.

At the time of their discharges, the seven employees in this proceeding were unable to comply with the Respondent's requirement that they furnish documents demonstrating their legal authorization to work. The General Counsel acknowledges in his brief that the discriminatees were undocumented aliens when they were discharged, and that it is unknown whether they remain undocumented. The record shows only that the Respondent permitted two of the employees to return to work, at the urging of Local 445 and after they produced documents accepted by the Respondent.[6]

The Supreme Court held in *Sure-Tan v. NLRB*[7] that "in computing backpay, the employees must be deemed 'unavailable' for work (and the accrual of backpay therefore tolled) during any period when they were not lawfully entitled to be present and employed in the United States." In *Del Rey Tortilleria v. NLRB*,[8] the Seventh Circuit, relying on *Sure-Tan*, determined that in such cases the burden is on the employee "to present evidence that he [was] lawfully present and eligible for employment" during the backpay period. The court found that this rule followed logically from the elementary principle that "an alien who had no right to be present in this country at all, and consequently had no right to employment, has not been harmed in a legal sense by the deprivation of employment to which he has no entitlement."[9]

This principle, that undocumented workers suffer no legal injury by losing employment for which they are not eligible, provides, in my view, the proper benchmark for the Board's backpay remedies for alleged or admitted undocumented alien discriminatees, because it remedies violations of the Act without disregarding Federal immigration statutes and the important policies underlying them. Not only does an award of backpay to an undocumented worker bestow upon him the rewards of a job for which he is ineligible, but it also clearly operates

[5] 320 NLRB 408 (1995), enfd. 134 F.3d 50 (2d Cir. 1997).

[6] I agree with my colleagues, for the reasons they articulate, that the reinstatement of these employees, with the assistance of Local 445, does not demonstrate that the discharges were based on a bona fide desire on the part of the Respondent to verify work eligibility, rather than on the employees' support for Local 813.

[7] 467 U.S. 883, 903 (1984).

[8] 976 F.2d 1115 (7th Cir. 1992).

[9] Id. at 1119, quoting *Office Workers Local 512 v. NLRB*, 795 F.2d 705, 725 (9th Cir. 1986) (Beezer, J., dissenting in part).

against the Congressional purpose of controlling unauthorized immigration by firmly closing the workplace door. In one stroke, the remedy given by the majority provides a windfall to the individual who has entered the country and worked illegally, as well as an incentive to others to follow the same path. A more appropriate balance between remedying unfair labor practices and promoting compliance with immigration law and policy would be achieved, in my view, by ordering backpay to discharged discriminatees only for periods for which they can demonstrate that they were legally authorized to work in the United States. I would issue such an order in this proceeding.

3. Contrary to my colleagues, I do not find that special remedies are warranted in this case, either to eliminate the effects of the Respondent's violations or to ensure a fair second election. I do not find that requiring the Respondent to provide employee names and addresses to Local 813 is necessary as an alternative to a *Gissel* bargaining order where, as here, excessive delay at the Board may render a bargaining order unenforceable.[10] In fact, the circumstances that militate against the *Gissel* order typically also disfavor the award of other special remedies. In the present case, the passage of 7 years since the violations renders unrealistic and speculative any conclusion by the Board as to whether there remain any "lingering effects" that require a special remedy.

Moreover, with respect to the objective of ensuring a fair second election, the special remedy of providing employee names and addresses to Local 813 is not well tailored to the circumstances of this case. The bargaining unit involved is small, consisting of fewer than 20 employees. In addition, the record clearly demonstrates that, despite the Respondent's unlawful denial of access to employees on its premises, Local 813 had ample opportunity for personal contact with employees. The Respondent's facility is a garage-like structure directly abutting the public sidewalk, and its offices are located in a separate building on the same street. Thus, employees are easily accessible to union organizers in the public area outside the Respondent's premises. In fact, Local 813 representatives met with employees frequently on an impromptu basis prior to the first election. Therefore, employee names and addresses are not necessary in order to provide Local 813 a method of identifying and establishing contact with unit employees.

[10] The Board has granted this remedy in other recent decisions in which it declined to issue a *Gissel* bargaining order. See *Wallace International de Puerto Rico*, 328 NLRB No. 3 (1999); *Cooper Hand Tools*, 328 NLRB No. 21 (1999); *Comcast Cablevision of Philadelphia*, 328 NLRB No. 74 (1999). Participating in *Comcast*, I found the special remedy unjustified in the circumstances of that case.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate employees concerning their activities on behalf of Local 813, International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT threaten employees with discharge for criticizing Laborers' International Union, Local No. 445, AFL–CIO.

WE WILL NOT threaten to require employees to produce documentation to establish that they are legally in the United States in retaliation for union activities.

WE WILL NOT threaten to close the facility if our employees choose to be represented by Teamsters Local 813.

WE WILL NOT hire additional employees in order to influence the outcome of the election.

WE WILL NOT deny Teamsters Local 813 access to our employees and facility, while providing access to Laborers Local 445.

WE WILL NOT issue a discriminatory warning to employee Edgar Pineda because of his activities on behalf of Teamsters Local 813.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, make a conditional offer of reinstatement to Maynor Lima Bobadillo, Hugh Carillo, Mario Carillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez, offering them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, provided that they complete, within a reasonable time, INS Form I-9, including the presentation of the appropriate documents, in order to allow us to meet our obligations under the Immigration Reform and Control Act of 1986.

WE WILL make Maynor Lima Bobadillo, Hugh Carillo, Mario Carillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez whole for any loss of earnings and

other benefits suffered as a result of their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges and warnings of Maynor Lima Bobadillo, Hugh Carillo, Mario Carillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges and warnings will not be used against them in any way.

WE WILL, in the event that Local 813 loses the pending election, supply Local 813, on its request made within 1 year of the date of this Decision and Order, the full names and addresses of current unit employees.

REGAL RECYCLING, INC.

James Kearns and *Laura Kriteman, Esqs.,* for the General Counsel.

Gary Cooke, Esq. (*Horowitz & Pollack, P.C.*), of South Orange, New Jersey, for Regal.

Joseph Scantlebury, Esq. (*Eisner, Levy, Pollack & Ratner, P.C.*), of New York, New York, for Local 813.

Larry Cole, Esq. (*Cole & Cole, Esqs*), of South Orange, New Jersey, for Local 445.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on charges and amended charges filed by Local 813, International Brotherhood of Teamsters, AFL–CIO (Local 813), an amended consolidated complaint was issued against Regal Recycling Company, Inc. (Regal or Respondent) on March 31, 1993.[1]

The complaint alleges essentially that Respondent interrogated its employees concerning their activities in behalf of Local 813, and concerning whether they had appropriate immigration papers, because of their activities in behalf of Local 813; created the impression that its employees' activities were being kept under surveillance; offered and promised employees money as an inducement to abandon their support for Local 813; threatened its employees with discharge if they could not produce valid immigration papers, and threatened an employee with discharge for having made a disparaging remark concerning Local 445; informed its employees that they must produce immigration papers, thereby impliedly threatening them with unspecified reprisals; informed its employees that they already had a union, and that they should not join Local 813; threatened its employees with the close of the business and cessation of operations; offered and promised its employees benefits if they accepted Local 445, and voted for it in the Board election; granted Local 445 unrestricted access to its facility and employees, for the purpose of campaigning and discussing issues related to a Board election, while denying agents of Local 813 such access for such purposes; used its car to attempt to run over an agent of Local 813; hired about 15 employees to artificially increase and pack the size of the voting unit for the purpose of influencing the results of the election; threatened its employees with discharge if they did not vote for Local 445; prevented an employee from voting in the election by directing him to leave the voting area prior to casting a ballot; and physically assaulting an employee, and imposed more arduous and less desirable conditions of employment on him.

The complaint also alleges that Respondent discharged seven named employees on July 28, 1992, and issued warnings to another employee, Edgar Pineda, and thereafter discharged him on December 10, 1992.

The complaint further alleges that Respondent unlawfully refused to recognize and bargain with Local 813, pursuant to its demand for recognition, and alternatively requests a bargaining order remedy based on Respondent's serious and substantial unfair labor practices which preclude the holding of a fair election.

On March 12, 1993, the Regional Director issued a report on objections and challenges, consolidating for hearing the unfair labor practice cases, discussed above, with objections, filed by Local 813, which essentially parallel the alleged unfair labor practices. At an election conducted on October 30, 1992, of the 32 eligible voters, 4 votes were cast for Local 813, 2 votes were cast for Local 445, 1 vote was void, and 24 ballots were challenged. Those 24 determinative challenged ballots were also consolidated for hearing.

Respondent's answer denied the material allegations of the complaint, and on May 5, 6, 7, 10, 20, and 21, and on June 14, 1993, a hearing was held before me in Brooklyn, New York.

Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by the General Counsel, Local 813, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, having its office and place of business at 172–06 Douglas Avenue, Jamaica, New York, has been engaged in the operation of a recycling transfer station at which it sorts various recyclable materials and then transports them to various facilities to be recycled. During the past year, Respondent has purchased and received at its Jamaica facility fuel, machinery, recyclable materials, and other products valued in excess of $50,000, directly from points outside New York State.

Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I also find that Local 813 and Local 445 are labor organizations within the meaning of Section 2(5) of the Act.

[1] The docket entries are as follows: The charge in Case 29–CA–16739 was filed on July 23, 1992. The charge in Case 29–CA–16870 was filed on September 28, 1992. The charge and first amended charge and second amended charge in Case 29–CA–16951 were filed on October 26 and November 16, 1992, and January 28, 1993, respectively. The charge and first amended charge and second amended charge in Case 29–CA–17056 were filed on December 18, 1992, and January 8 and 28, 1993, respectively. The charge in Case 29–CA–17131 was filed on January 28, 1993. Respondent's answer denied knowledge or information as to the filing and service of the charges. The charges bear proper filing stamps. Original return receipts received in evidence show proper service on Respondent. A consolidated complaint was issued on September 30, 1992, and an order further consolidating cases, consolidated complaint and notice of hearing was issued on February 26, 1993.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Organizational Campaign of Local 813

Respondent operates a garbage transfer station at which garbage trucks dump garbage, which is then spread by Respondent's heavy machinery. Employees then pick up recyclable materials and sort them into appropriate containers.

In about late June 1992,[2] employee Edgar Pineda contacted Local 813, and expressed interest in joining that union. A meeting took place on July 13 at a park nearby Respondent's shop. Present were Local 813 Vice President and Delegate James Murray, and Jerome Jackson, business agent, and employees Maynor Lima Bobadillo, Carmelo Calderon, Hugo Carrillo, Luis Carrillo, Mario Carrillo, Helbert Chinchilla, Joel Mancilla Chinchilla, Julio Del Cid, Dario Garcia, Norman Ortega, Mario Ortiz, Nery Perez, and Edgar Pineda.

The union agents distributed authorization cards to the employees. The cards designated Local 813 as their collective-bargaining representative. The 13 employees read and signed the cards, and returned them to Agent Jackson.

On July 17, Local 813 Agents Jackson and Murray went to the office of Royal Carting, a company owned by the principals of Respondent, and located on the same block as Respondent. Jackson was familiar with Royal as Local 813 has a collective-bargaining agreement with that company. Respondent does not have an office on its premises, and the principals of Respondent use Royal's office as their office. The owners of Respondent are Angelo Reali, Michael Reali II, Paul Reali Jr., and Theresa Reali.

The union agents met Angelo, Paul, and Pete Reali, presented them with a recognition agreement, and told them that they had signed authorizations from a majority of Regal's employees. Angelo refused to sign the recognition agreement, saying that the Employer already had an agreement with Local 445. Murray began to show photocopies of the cards to Angelo Reali, and he believes that Reali saw the first two—Ortega and Pineda. Reali then told the two agents to get off his property.

B. Respondent's Response to the Organizing Drive

1. The alleged interference

a. Respondent's contacts with employees

Employee Joel Chinchilla testified that shortly after he signed a card for Local 813 on July 13, a supervisor named Ronald asked him if he signed a card for Local 813, and asked other workers who called the Union and why they did so. Chinchilla denied knowing anything about the Union, and the other employees denied knowing who called the Union.[3] Chinchilla also stated that admitted Supervisor David Rios told them that Angelo wanted to know who called the Union.

Employee Julio Del Cid testified that about 4 to 5 days after the workers signed cards for Local 813 he was asked by Angelo, through translator and Supervisor Rios, if he signed a card. Del Cid did not reply. Del Cid stated that Angelo then spoke with all the other employees.

Del Cid further stated that the following day Rios approached certain employees while they were eating and told them that he knew that they had signed cards. The employees did not respond. Employee Nery Perez stated that Rios told them that he already knew who had signed cards, but then asked those present who called the Union and who had signed cards for it. The workers replied that they did not know.

Employee Pineda testified that on about July 20, 1 week after the workers signed cards for Local 813, Rios began telling him that Angelo and Michael Reali wanted to know who called Local 813, and that they were angry.[4] Pineda replied that he did not know who called the Union. Pineda heard Rios ask the same question of employees Carmello Calderon, Julio Del Cid, and Joel Chinchilla. They also professed ignorance. Pineda further testified that Rios asked him that question once or twice a week, from that time through August. Pineda continued to deny knowing who called Local 813.

Employee Joel Chinchilla testified that Rios asked him who called the Union, saying that he was inquiring because Angelo wanted to know. He did not testify that Rios said that the bosses were angry.

Employee Hugo Carrillo first testified that he did not speak to any managers regarding his signing a card for Local 813. Then he testified that after he signed a card for Local 813, Rios continuously asked him whether he signed such a card and he denied doing so. Finally, about 8 days after he signed the card, Rios again asked if he signed the card, and Carrillo admitted doing so. Rios did not say anything in answer.

The Meeting with Local 445

At about that time, on about July 20, Rios gathered all the employees for a meeting with Raphael Griffin, a Local 445 representative. Pineda testified that Griffin told the workers that they did not have to join Local 813 because they were already members of Local 445. Pineda answered that Griffin was wrong because he had never signed a card for Local 445, and that there was never a union in the shop. The other workers said the same thing.

Employee Joel Chinchilla testified that at that meeting, Angelo, Michael, and Peter Reali were present. He essentially corroborated Pineda's version of the meeting, but added that employee Norman Ortega was outspoken thereat, telling those assembled, in Spanish, that he once worked at a Local 445 shop, and that that union was not helpful, adding that when he was discharged Griffin avoided him. Chinchilla observed Angelo asking Rios what Ortega was saying. Shortly thereafter, Ortega was called to the side, and Angelo said something to Rios. During the rest of the meeting Ortega remained silent.

Employee Mario Ortiz essentially corroborated Ortega's comment at that meeting, and stated that he overheard Angelo telling Ortega that Ortega could lose his job for criticizing Local 445.[5]

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[2] All dates hereafter are in 1992 unless otherwise stated.

[3] I make no findings concerning this conversation with Ronald. There was only vague testimony concerning Ronald's supervisory status.

[4] Respondent argues that Pineda's testimony must be discredited because he first testified that following the July 13 meeting, he did not speak to any manager concerning Local 813, nor did he speak with Rios about the Union. I reject this contention. Pineda testified through a Spanish interpreter, and there apparently was some confusion due to that. I credit Pineda's testimony in this regard. He gave testimony which was consistent with other employees' testimony concerning material subjects. In addition, his quote, infra, of Michael Reali that employees should think with their "hearts and minds" was admitted by Reali.

[5] I do not agree with Respondent's argument in brief that Ortiz' affidavit statement, that Angelo Reali told Ortega that "he could even fire

Employee Nery Perez testified that Griffin told them that Local 813 would not keep the promises it was making to the workers, and that the employees should not think of joining Local 813 because Local 445 represented them. When asked why the workers did not see Griffin before this, Griffin blamed Respondent.

Employee Del Cid testified that at that meeting, at which only Angelo was present, Griffin told the men that he could obtain raises and health benefits for them. Employee Hugo Carrillo asked Griffin where he was when Carrillo was sick, and needed the Union's help. Angelo asked Rios what Carrillo was saying, and upon being told, told Carrillo that he could have asked Angelo for the money for a doctor's visit. Del Cid further stated that he saw employee Ortega speak but he could not recall what he said.

Employee Del Cid further testified that Griffin told the employees that Local 445 had a contract with the Employer, and that Local 445 could obtain medical benefits for the men. He told them that they could not sign a card for another union. Del Cid asked Griffin why he was at the shop then and not before. Griffin answered that it was the owner's fault for not advising the union earlier that these workers had been hired.

The Meeting with Michael Reali

Local 813 Agent Jackson testified that on July 21 he was outside Regal's premises and was asked by the workers to accompany them as they had decided to meet with the owners. He walked with all the card signers to Regal's office.

Joel Chinchilla testified that the workers requested the meeting because they no longer wanted to lie to the Realis about their interest in Local 813. Chinchilla testified that the men told Rios to tell Michael Reali that they wanted to become members of Local 813, and that they did not want Local 445. Michael shrugged his shoulders, told the men that that was not a party, and that they must return to work.

Jackson testified that Pineda and Luis Carrillo told Paul and Peter Reali that the men wanted nothing to do with Local 445, and that they wanted the owners to deal with Local 813. According to Jackson, Paul said that he would take it into consideration. The men then returned to work.

Pineda testified that only Michael Reali was present at the meeting, and that Paul and Peter were not present. According to Pineda, Michael told the men that they already had Local 445, and reminded them that he helped many of them by lending them money, and told them that Regal could not pay Local 813's benefits if that Union was selected. Michael added that if Local 813 was selected, he would close the shop because he couldn't afford to pay the Union's benefits. Michael also told them to think hard with their "hearts and minds" as to what action they intended to take. All the assembled workers told Michael that they wanted to become members of Local 813.

One or 2 days later, Jackson visited Regal's office, and told Paul Reali not to let this matter "get out of hand." Jackson suggested that Reali call Martin Adelstein, the secretary-treasurer of Local 813, and perhaps they could work something out with Local 1034, a sister union to Local 813, resolving the matter by perhaps having the employees be represented by Local 1034.[6]

The Meeting Called by Respondent

Employee Joel Chinchilla testified that Rios gathered the employees for a meeting. Angelo and Michael Reali were present. Michael told them that "we are like family to you." He asked the workers to remember all the favors the Company did for them, such as lending money to them. He told them to think carefully with their hearts and minds, and not to do anything that would be contrary to the employees and the Company. He asked them why they wanted Local 813, and also told them that they would have to bring in proof that they were in the United States legally.

Employee Hugo Carrillo testified that at that meeting, Michael told them to think with their heads and hearts because they were a family. He reminded them that Respondent had lent money to the employees, and gave them turkeys. He told them that they already had a union, Local 445, and that they would have benefits. Michael added that they would need a green card to continue working. He asked why they signed cards for Local 813, and no one responded. Carrillo stated that Michael said nothing negative about Local 813. It should be noted that Carrillo first testified that he did not speak with any managers regarding Local 813.

Employee Mario Ortiz testified that at that meeting, Michael Reali told the workers that they are a family. He asked them to think with their heads and hearts about what they were doing, adding that if they continue, he could close down the shop. Michael did not speak about their signing cards. He said that he needed to see work permits or green cards by the following day. It should be noted that Ortiz stated that no managers spoke to him regarding Local 813, specifically stating that neither Michael nor Angelo Reali spoke to him about that union.

Del Cid also testified that about 1 week after the employees signed the cards for Local 813, they were summoned by Rios to a meeting with Angelo and Michael Reali at the office. Michael told them that what they were doing is wrong. He asked them to think what they are doing and whether they want to "be with us or 813." He then told them that they would have problems, and that if they "pay attention" to Local 813, he would ask for their "papers," and "green card." He further advised them not to pay attention to Local 813, which he called "bad," and predicted that Local 813 would only make promises to them without helping them. Michael Reali reminded them that Respondent had helped them in the past by giving them turkeys on Thanksgiving Day. Del Cid recalled that employees spoke at that meeting, but he could not recall what they said.

Employee Nery Perez testified that at that meeting, Michael told them to think what they are doing—think with your mind and heart. He reminded the workers they Respondent had been good to them, by giving turkeys at Thanksgiving, and making loans when needed. Michael said that the Company is their friends and that what they were doing was wrong, like taking their food from them. The employees did not respond.

Respondent's vice president, Michael Reali, testified that only one group meeting was held with employees. He stated that in July it came to his attention that the men were not working conscientiously as they had in the past, but were sitting and talking, and not paying attention to their work, which was dangerous with such heavy machinery. He asked Rios to call all the workers to his office.

him for having said such a thing," is inconsistent with his hearing testimony.

[6] I reject Respondent's argument that this statement indicated that Local 813 had no interest in representing the employees, and was therefore not entitled to a bargaining order. Nothing came of the conversation, and Local 813 continued to represent the workers.

Reali stated that at the meeting he told the men that whatever was going on was disrupting his business. He told them that he had always treated each employee as a family member. He told them that if they think with their minds and hearts, they would make the right decision concerning "whatever is going on as far as activity and whatever causing them to deter them from work." He told them to do whatever they wanted, but that whatever their decision was, they should just get back to work. Reali denied mentioning either Local 813 or 445. He further denied that anyone asked any questions at the meeting, and there was no mention of Thanksgiving turkeys.[7] Reali also denied threatening anyone with discharge, or promising any benefits.

b. The alleged attempt to run down a Local 813 agent

The complaint, as amended at the hearing, alleges that in October 1992, a member of the Reali family, first name unknown, in the presence of employees, used his car to attempt to run over an agent of Local 813.[8] Business Agent Jackson testified that he was at Respondent's premises frequently since he represented employees at other companies, located on the same block, who were represented by Local 813. He stated that each time he walked on the sidewalk in front of Regal, he was followed closely by one of the owners, and told by them to get off their property.

Jackson stated that one day he stood on the sidewalk in front of Regal's premises with his back to the street. As he spoke to a contractor who was repairing the sidewalk, suddenly the contractor grabbed him and pulled him out of the driveway. At that moment a Jeep pulled into the driveway, nearly hitting Jackson. The driver told Jackson that he was standing in an active driveway. Jackson threatened him with violence, and the incident ended. Jackson stated that he saw Regal's employees standing at the door. He could not identify them, and no employee testified that they saw this incident. The contractor was not identified and was not called to testify.

Jackson stated that he did not know the driver's identity, but he believes that he is one of the Reali "boys," who he saw many times at the Reali's office, but with whom he transacted no business. Jackson stated that he recognized the Jeep, which was always parked in front of the office.

Analysis and Discussion

Alleged Interference with Employees

Based on the uncontradicted testimony of Local 813 agents Jackson and Murray, I find that on July 17, Respondent possessed knowledge of its employees' activities in behalf of Local 813. On that date, the two union agents told Respondent's officials that a majority of their employees had signed cards for that union.

The Interrogations of Employees

The evidence also supports a finding that within a few days of Respondent's becoming aware that its employees had engaged in union activities, Supervisor Rios engaged in extensive interrogation of the workers. Thus, employees Joel Chinchilla, Perez, Pineda, and Hugo Carrillo testified, and I find, that Rios asked them if they called the Union or if they signed a card for Local 813. Further, Perez and Pineda testified that they heard Rios ask other employees those questions.

I also credit the uncontradicted testimony of Del Cid that Angelo Reali, through Rios, asked him if he signed a card for Local 813. I further credit the uncontradicted testimony of the employees concerning Rios' questioning. Neither Angelo Reali nor Rios testified. The employees testified in a consistent manner concerning Rios' pattern of interrogation and inquiries, in which he sought to learn the identity of the person who called Local 813, and who had signed cards. The fact that he was quoted as saying that the Realis wanted to learn this information supports a finding that Angelo Reali individually participated in the interrogation of Del Cid.

In addition, the fact that they later decided to admit that they had signed cards for Local 813 because they no longer wanted to maintain their denials that they signed cards, lends support to a finding that they were asked these questions.

I find that the questioning of the employees by Rios and Angelo Reali reasonably tended to restrain, coerce, or interfere with their rights to engage in union activities. *Rossmore House*, 269 NLRB 1176 (1964). No reason for the questioning was given to the employees, and no assurances against reprisals was made. The responses to the questions, either denials or no response, supports a finding that, from the employees' perspective, the questioning was coercive.

The Creation of the Impression of Surveillance

I also credit the testimony of Del Cid and Perez that Rios told them that he knew who had signed cards for Local 813. However, I do not find, as alleged in the complaint, that this constitutes the creation of the impression of surveillance of the employees' union activities.

In order to find such a violation, I would have to find that the employees "would reasonably assume from the statement in question that their union activities have been placed under surveillance." *United Charter Service*, 306 NLRB 150 (1992).

The signing of the cards took place off the company premises. The location was specifically changed from a restaurant to a park so that Respondent would not observe their activity. The comment is also at odds with the statements made immediately thereafter. Thus, it must have been obvious to the employees that Respondent could not know who signed cards if Supervisor Rios immediately asked the employees whether they signed such cards. Their continued denials of having signed the cards lends support to a finding that they could not reasonably have believed that Respondent knew who had signed.

In addition, no information was given to the employees as to who, specifically, had signed cards for Local 813. I will accordingly recommend that this allegation be dismissed. *LRM Packaging*, 308 NLRB 829, 832 (1992).

The Meetings with Employees

The complaint also alleges that Angelo Reali threatened Norman Ortega with discharge for criticizing Local 445 at a meeting at Respondent's premises. I credit the testimony of Joel Chinchilla and Ortiz that Ortega excoriated Griffin and Local 445 at the meeting. I further credit Ortiz' quote of Angelo Reali that Ortega could lose his job for criticizing Local 445. That constitutes an unlawful threat of discharge for failing to support favored Local 445. *Colonie Hill Ltd.*, 212 NLRB 747, 752 (1974), in which an employee was discharged because he was a "troublesome threat to [a favored union's] continued representation of" the employees.

[7] Reali conceded that Respondent distributes turkeys at Thanksgiving.

[8] The complaint originally stated that Paul Reali was the driver.

The complaint alleges that on about July 20, Angelo Reali, offered money to employees to induce their abandonment of support for Local 813. This apparently refers to the meeting at which Griffin told the men that Local 445 would provide health benefits, and Carrillo mentioned that he did not know of that Union's existence when he was sick and needed help. Angelo thereupon remarked that Carrillo could have asked him (Angelo) for the money for a doctor's visit. I cannot find that that statement violated the Act. It had no reference to Local 813, was not an inducement to employees to abandon that union, and was simply an innocuous remark that if Local 445 was not available to assist, Respondent would have helped the employee financially. There was evidence that Respondent did help its employees through loans. Such loans have not been alleged as unfair labor practices. Accordingly, I find no violation in Angelo Reali's statement.

There was some confusion among the General Counsel's witnesses concerning who was present at the meetings they attended with Respondent's officials. Regarding the meeting initiated by the men, Local 813 Agent Jackson testified that Paul and Peter Reali were present. However, Joel Chinchilla and Pineda testified that only Michael Reali was present.

Regarding the content of the meeting, I find that the version offered by Jackson and Chinchilla, and part of the version of Pineda is what actually occurred. According to that version, the sole purpose of the meeting was to tell Respondent's officials that the men were interested in Local 813 and not Local 445, and they did so at that meeting.

Pineda's version of the meeting with Michael Reali was consistent with the meeting which was conducted later, at Respondent's direction. I credit the testimony of employees Joel Chinchilla and Hugo Carrillo that at that meeting, Michael Reali asked them why they signed cards for Local 813, and told them that they would have to show proof that they were in the United States legally. I also credit the testimony of Del Cid, who also testified that Michael Reali told them if they "paid attention" to Local 813, they would have problems, and would be asked for their green [immigration] cards. Del Cid also stated that Reali said that Local 813 was "bad." I further credit Ortiz' testimony that Michael Reali told the men that he would close the shop if they continue, apparently with their union activities, and that he also asked to see their green cards the following day.

Employees Joel Chinchilla, Hugo Carrillo, Del Cid, Ortiz, and Perez testified similarly about that meeting. I credit the employees' testimony essentially because their versions were essentially similar, and mutually consistent. While it is true that only Ortiz mentioned that Reali threatened to close the shop, that does not mean that he did not make that statement. They heard and remembered different parts of the same conversation.

The employees testified similarly that Reali told the workers that they are a family, reminding them that he did favors for them, such as lending them money, and giving them Thanksgiving turkeys, and urged them to think with their "hearts and minds" about what they were doing.

Their testimony is supported by the fact that Michael Reali conceded that he held one meeting with employees, at which he told them that he always treated them as family members, and urged them to think with their minds and hearts concerning their activities, and they would make the right decision.

In this respect, I reject Reali's testimony that the meeting was related solely to his concern that employees were not being productive. That may have been true, and he attributed their lack of productivity to their preoccupation with Local 813, but nevertheless used the opportunity to unlawfully interrogate and threaten them concerning their union activities.

I accordingly find that at this meeting Michael Reali interrogated employees by asking them why they signed cards for Local 813, and threatened to close the shop if they selected Local 813.

I further find that Respondent unlawfully threatened to demand to see their immigration papers. Although employers have a right to see such documentation, this request was made in a threatening manner in the context of a meeting at which Respondent sought to unlawfully coerce them into not supporting Local 813, the union of their choice. Reali specifically told them that if they paid attention to Local 813, he would ask for their papers.

The Attempt to Run Down an Agent of Local 813

The complaint alleges that Respondent attempted to run down Local 813 Agent Jackson. As set forth above, Jackson stated that a Jeep nearly hit him as he stood in front of Respondent's facility.

I cannot find a violation based on the evidence received. Jackson testified that he saw the Jeep parked in front of the office. Assuming that this establishes a connection between the Jeep and Respondent, which itself is highly speculative since no specific identification of the Jeep, through license plates or other description was made, and Jackson testified that employees park their cars in the same area, nevertheless no definite link between Respondent and the driver has been proven.

No identification of the driver was made. It should be noted that the complaint originally stated that Paul Reali was the driver, but the complaint was amended during Jackson's testimony to state that a member of the Reali family, first name unknown, committed the violation. While it is true that Jackson stated that he believed that the driver was one of the Reali "boys" who he saw regularly at the office, he conceded having no business with him.

The names of the owners and officers of Respondent, Angelo, Michael, Peter, and Paul Reali, were set forth in the complaint, and their relationship to Respondent was admitted. Jackson named none of those persons as the driver.

Assuming I find that a relative of Respondent's owner committed the violation, I would also have to find that that person acted as an agent of Respondent.

> Family relationship is one of the facts to be considered in determining apparent authority and, when viewed in the context of other factors, may be sufficient for a finding of agency based on apparent authority. However, it would be an error to hold that nonemployee relatives of an agent are per se agents of an employer. [*Laborers Local 270*, 285 NLRB 1026, 1028 (1987).]

There is no evidence that this individual acted in any respect in behalf of Respondent. Jackson testified that he has seen him many times in Respondent's dispatcher's office, located at Royal, but notwithstanding that Local 813 has a collective-bargaining relationship with Royal, Jackson has conducted no business with this man.

There is no evidence that this unnamed person had actual authority to act for Respondent. Nor is there any evidence that Respondent held him out to the employees or to the public as one of Respondent's representatives. The only possible argument that the General Counsel could make is that, this individ-

ual was continuing Respondent's policy of keeping Jackson away from its property. As set forth above, Jackson testified that whenever he walked on the street in front of Respondent's property, one of Respondent's owners closely followed him, and told him to get off its property.

However, one cannot assume from Respondent's direction of Jackson to get off its property that the driver of the Jeep was thereby authorized to hit him with his car.

Based on the lack of identification of the driver and the vehicle, the absence of any showing of agency on the part of the driver, and the fact that other witnesses to the incident, the contractor and the employees, were not called to testify, I find that no violation of the Act has been established.

The Alleged Assistance to Local 445

The complaint alleges, and the answer admits, that from mid-July until October 30, 1992, Respondent granted Local 445 unrestricted access to its facility and employees for the purpose of campaigning and discussing issues related to the October 30 election, while during such period denied access to agents of Local 813.[9]

Such denial of access to a campaigning union has been found to be in violation of Section 8(a)(2) of the Act, and I so find. *Ella Industries*, 295 NLRB 976, 979 (1989); *Castaways Management*, 285 NLRB 954, 970 (1987).

c. The alleged packing of the unit

The complaint alleges that on various dates in August, September, and October, Respondent hired about 15 employees to artificially increase and pack the size of the voting unit for the purpose of influencing the results of the election, in an effort to assure that a majority of employees did not vote for Local 813 in the election.

Respondent denies the allegation, and asserts that the employees were properly hired due to business considerations.

The petition was filed by Local 813 on July 15. Thereafter, a Stipulated Election Agreement was executed by all parties and approved by the Regional Director on October 9. The Agreement provided that those eligible to vote included employees who were employed during the payroll period ending October 7. The election was conducted on October 30.

Respondent's payroll records reveal the following:

On July 15, the date the petition was filed, and which was also the date the payroll period ended, Respondent employed 19 unit employees.[10] The unit status of three other employees is in question. Thus, there was testimony that Antonio Costa was a supervisor. David Baksh and David Gustman are pickers, but are salaried, unlike the other unit employees who are hourly paid.

Week Ending Date[12]	Number of Hourly Employees	Hours worked by Hourly Employees	Avg. Hours per hourly Employee	Employees[11] Working Less than 32 hours per week
9/19/91	17	675-205[13]	40/12	0
10/16	16	639/78	40/5	0
11/13	15	600/133	40/9	0
12/11	14	551/107	39//8	1
2/12/92	15	600/134	40/9	0
3/11	17	653/137	38/8	2[14]
5/15	18	658/136	37/8	1
5/13	21	733/119	35/6	1
6/10	22	820/164	37/7	3
7/1	20	713/98	36/5	3
7/8	19	764/14	40/.7	1
7/15	19	751/103	40/5	0
7/22	19	774/77	41/4	1
7/29	19	605/26	32/1	8
8/5	10	398/36	40/4	0
8/12	12	400/52	33/4	0
8/19	13	480/64	37/5	2
8/26	13	506/39	39/3	0
9/2	16	609/59	38/4	1
9/9	24	763/58	32/2	8[15]
9/16	27	780/31	29/1	12[16]
9/23	28	867/96	31/3	8
9/30	28	885/50	32/2	10
10/14	27	850/42	32/2	11
10/21	27	878/51	33/2	10
10/28	29	918/20	32/.7	12
11/4	29	945/28	33/1	10
11/11	29	971/75	34/3	9

Michael Reali testified that Respondent's busy season is the summer, from June through October or November, when most construction takes place. During those months, contractors utilize containers to dump construction debris, which is deposited at Regal's facility.

Reali explained that during the busy period in 1992, Respondent had more business than in the comparable period in 1991, because the price for dumping raw garbage to its customers dropped from an average of $71 per ton in 1991 to about $57 per ton in 1992. Accordingly, Respondent had to remain open longer hours due to the greater demand, in order to make the same amount of money it did in 1991. Employee Pineda testified that in late July 1992 the amount of work at Respondent's facility increased, but that there was about the same amount of work in the summer of 1992 as there was in prior years. Pineda further stated that in past years, Respondent did not hire additional employees for the busy, summer season.

[9] Respondent's answer did not respond to those allegations of the complaint, and they accordingly were deemed to be admitted to be true. Sec. 102.20 of the Board's Rules and Regulations.

[10] They are Abdool, Awan, Calderon, H. Carrillo, L. Carrillo, M. Carrillo, Helbert Chinchilla, Joel Mancilla Chinchilla, Del Cid, Garcia, M. Lima, Moran, Nunez, Ortega, Ortiz, Perez, Pineda, Veluppil, and Woolard. I have not included Balkissoon, Brown, Kawala, Mahadeo, Minas, Munoz, Carlos Sanchez, or Cesar Sanchez because, although they are listed on the payroll, they worked no hours in that or succeeding weeks.

[11] Employees Baksh and Gustman have not been included in this analysis. There is some dispute about their status. Although they were identified as pickers, they were salaried employees until September 16, 1992, when they became hourly workers.

[12] These payroll records are all the records received in evidence.

[13] The two numbers represent regular hours/overtime hours. The total hours have been rounded off to the nearest hour.

[14] Five employees worked 32 hours.

[15] Six of the eight were hired that week.

[16] Two of the twelve were hired that week.

Most of the new employees hired were employed as pickers. Reali stated that the picker selects items from the garbage which can be recycled, and places them in separate containers. The pickers also sweep and clean the area, and surrounding streets, plant trees, paint the facility, run errands for the mechanics, act as welder's assistants, and operate the scale.

Local 813 Agent Jackson testified that beginning in early August, he stood outside the facility and counted the employees daily. He conceded that he could not see the rear loading dock, but could see virtually all the employees. He counted from 14 to 18 each day, including many he had not seen before that time, and there were times that employees were present one day but absent the next. He observed them performing picking jobs, but in August and September, he saw other employees just sweeping. He stated that regular pickers had swept in the past, but those he observed sweeping did no picking. Jackson conceded, however, that after watching them sweep for 1 hour, he did not know what other jobs they performed.

Pineda testified that the new pickers swept the street. He stated that prior to their hire, no one was ever assigned to sweeping, and no one swept outside the facility before these new hires. Pineda conceded, however, that in 1991, pickers swept the facility when a garbage truck picks up garbage, and when a truck is loaded. He further stated that these new pickers swept the office, the inside shop, the diesel-fill area, and the yard, street, and sidewalk.

Pineda testified that the new sweepers began work as he left work at 1 p.m. Employee Del Cid stated that he saw pickers who began work before the regular 6 a.m. start for the regular employees. Del Cid also testified that he and other pickers washed trucks among their other duties. Employee Hugo Carrillo stated that pickers paint containers, but swept only the area where they worked. Employee Joel Chinchilla also painted containers. Chinchilla also stated that from November 1991 through late July 1992, he saw pickers sweeping every day, when the trucks were loaded. Employee Ortiz stated that he observed pickers who began work before 6 a.m., and those who began work after 2 p.m. He further stated that he has seen pickers wash trucks, paint containers, and sweep the building he works in.

Employees who testified for General Counsel testified that they knew some of the challenged voters, but did not know or remember others. Pineda testified that in the week before the election about 18 pickers were employed, but following the election only about 5 employees were working, including 1 machine operator and 4 pickers. Nevertheless, Respondent's payroll records show substantial numbers of employees on the payroll following the election.

Analysis

The Board has held that an employer's hire of a substantial number of employees in order to "pack the unit" and dilute the union's strength in a Board-conducted election violates the Act. *Einhorn Enterprises*, 279 NLRB 576, 596 (1986). The question, which frequently turns upon circumstantial evidence, is why were the disputed individuals were added. *Golden Fan Inn*, 281 NLRB 226, 228, 229 (1986).

Here, 20 employees were challenged by Local 813: Hasan Abdool, David Baksh, Roy Dortch, Richard Ferraro, Julio Flores, Jose Gomez, David Gustman, Carlos Hernandez, Alex Martinez, Damon Mason, Derrick Mason, Alejandro Montalvo, Roberto Montalvo, Dimas Nunez, Roberto Peraza, Jose Pina, Ahmed Sagheer, Nelson Toledo, Jose Toribio, and Giro Valentin. All were identified by Michael Reali as being unit employees, mostly pickers. All except Abdool, Baksh, and Gustman were hired from August 14 to September 10, 1992.[17]

An analysis of the above payroll records demonstrates a change in Respondent's employment practices. We are concerned with Respondent's employment history during August and September 1992 through the election on October 30.

In a comparable period in 1991, Respondent employed 17 and 16 employees, respectively, on September 19 and October 16, 1991. Significantly, they were all full-timers working 40 hours per week, and worked a total of 880 and 717 hours, respectively, with substantial overtime in both weeks.

In contrast, from September 9 through the pay period ending November 4, 1992, Respondent employed a steadily increasing number of employees, from 24 to 29, who worked an average of about 32 hours per week, proportionately less overtime, and during which, from 8 to 12 employees worked less than 32 hours per week.

Thus, in 1991, Respondent employed fewer employees, all of whom worked full time, with greater overtime. In 1992, its complement consisted of 12 more employees, who individually worked fewer hours and less overtime. Thus, in 1992, Respondent employed more employees, many of whom were part-timers, who worked fewer hours.

Respondent explains this change in practice by asserting that it was required to stay open later due to a greater demand for its services, and therefore had to employ more employees to work longer hours. According to Reali, the demand for its services occurred in its busy season in 1992, which began in June.

However, the hires of these additional employees did not begin until mid-August, with the vast majority being hired in early September. From June through August 26, 1992, Respondent employed about 10 fewer employees than it employed beginning on September 9, 1992. Accordingly, if in fact Respondent had a need for more employees during the busy season in 1992, it would have begun hiring them in June. However, the number of its employees remained steady, from 19 to 22 in that period, and would have remained at that level had the 7 employees not been discharged in late July. Instead, the new employees were hired later, in mid-August and September, well into the busy season, which runs only to October or November. I find that the additional hires were clearly made in order to influence the outcome of the election.

In addition, there was evidence that a substantial number of the pickers were performing more sweeping work than had been done in the past.

In this regard, it is noted that had Respondent needed the services of so many workers in June, July, or even August, it would not have chosen late July to review the immigration documentation of its employees, and discharge seven of them in late July. This further adds support to my finding that Respondent would not have discharged the seven in the absence of their union activities, to be discussed infra.

Under these circumstances, I cannot view Respondent's "sudden, substantial, unprecedented, and unsatisfactorily explained augmentation" of its employee force, in any light other than an attempt to dissipate Local 813's strength, and to thwart the efforts of that union's supporters to secure representation by that union in the October 30 election. *Suburban Ford*, 248

[17] Abdool and Baksh were hired before the petition was filed.

NLRB 364, 368 (1980); *Trend Construction Corp*., 263 NLRB 295, 300 (1982).

Specifically, I find that all those employees set forth above, who were challenged, with the exception of Abdool, Baksh, and Gustman, were hired for the purpose of influencing the election in violation of Section 8(a)(1) of the Act.

As to Abdool, Baksh, and Gustman, I find that they were not hired in order to pack the unit or to influence the election. Baksh and Gustman were regular employees of Respondent in 1991. Gustman was hired in February 1992, before Local 813 began to organize the employees. Their status will be further discussed in the representation case section of this decision.

2. The alleged discrimination

a. Alleged actions against Hugo Carrillo

The complaint alleges that in late July 1992, Angelo Reali physically assaulted employee Hugo Carrillo, and imposed more arduous and less desirable conditions of employment on him.

Carrillo is a picker whose job is to pick the recyclable materials from other garbage, and sort those items by type of matter. He testified that some time after he told Supervisor Rios that he signed a card for Local 813, Angelo Reali called him into the office and complained that he mistakenly threw recyclable aluminum into the area for iron and garbage, and not into the aluminum container. Angelo yelled at him, insulted him, called him stupid, and made comments about his mother. Carrillo conceded that he put the aluminum in the wrong container.

Angelo's brother, Paul, was present during this tirade and interceded, telling Angelo not to insult him. Paul escorted Carrillo out of the office. Later, Carrillo was told by Peter Reali to eat lunch alone, and not to go downstairs, where he usually eats with his coworkers.

Carrillo, who denied that he had been touched by Angelo during this incident, stated that this was the first time he had been criticized for not sorting the aluminum properly. Carrillo also denied that he was given harder or less desirable work to do in July 1992.

Analysis and Discussion

The evidence failed to establish a violation concerning Carrillo. There was no evidence that Angelo Reali physically assaulted Carrillo, as alleged in the complaint. Carrillo signed a card for Local 813 on July 13. At some unknown time thereafter, Carrillo was yelled at, insulted and called stupid by Angelo Reali after he admittedly threw aluminum into the wrong container. Carrillo denied being touched by Reali.

The complaint also alleged that Respondent imposed more arduous and less desirable conditions of employment on him. Carrillo denied that he was given harder or less desirable work to do that day. The only evidence which goes to this allegation is that Paul told him not to eat lunch with his fellow employees that day. That does not constitute the imposition of harder or less desirable work.

First, I cannot find that the General Counsel has established a prima facie showing that Carrillo's union activities was a motivating factor in Respondent's decision to ask him to eat alone. Carrillo admittedly told Rios that he signed a card for Local 813, and was subject to unlawful interrogation by him. During the criticism, no mention was made of Local 813, or the fact that he signed a card for it. I do not believe that the General Counsel has established a prima facie case of discrimination against Carrillo for his union activities.

Assuming that a prima facie case has been made, I find that Respondent has met its burden of demonstrating that it would have taken such action even in the absence of his union activities. *Wright Line*, 251 NLRB 1083 (1980). Thus, although Carrillo testified that he was never yelled at before, there was no evidence that he engaged in any conduct which warranted criticism before. Respondent's conduct in criticizing him for putting aluminum in the wrong container was not unjustified. The harsh criticism levied by Angelo Reali was immediately softened by Paul's advice to Angelo not to insult Carrillo.

I accordingly find that no violation has been established in Respondent's treatment of Carrillo, as alleged in the complaint.

b. The mass discharge

The complaint alleges that on July 28 Respondent unlawfully discharged Maynor Lima Bobadillo, Hugo Carrillo, Mario Carrillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez because of their activities in behalf of Local 813.

Respondent denies that it acted in violation of the Act. Its defense is that it laid off the employees until such time as they could produce proper immigration documentation permitting them to lawfully work in the United States.

The Employees' Testimony

Hugo Carrillo became employed for Respondent in 1991. He testified that in July 1992, each employee was asked to come to the office. Present were Michael and Paul Reali, and Rios, who translated. Michael asked him to produce a green card. Carrillo did not have one. Michael said that he was discharged, but that he could return to work when he had a work permit.

Carrillo testified that that was the first time he was asked to produce a green card. However, he also testified that he did not recall whether, when he began work, he was asked by management to produce documentation establishing his lawful ability to work in the United States.

Carrillo, as well as the six other employees set forth above, received the following letter, dated July 28, at their individual meetings held on that day:

> In the large amount of time that we have extended to you we are regretful that you have not produced the proper proof of residence that is required by the federal government which makes you eligible to work in the United States of America. Since you have failed to submit the documents we have no choice but to ask you to hold off from your employment until such time that the documents are brought into the office.

Thereafter, Carrillo contacted Local 445 Agent Griffin, who referred him to an attorney who is working on obtaining a work permit. Carrillo showed some paper to Respondent, and in November 1992, Carrillo was permitted to return to work.

Joel Chinchilla began work at Regal on November 29, 1991. He testified that on his hire, he was asked by Angelo for identification. Chinchilla showed him a green card, which Angelo made a copy of. He was not asked to complete an immigration form.

At his meeting in late July, Chinchilla was asked for his green card by the Realis. He refused, saying that they were not the immigration authorities. He told them that they had made a copy of the green card upon his hire, but they said that they did not have it. He was given the above letter, and told that if he did not have proper papers he could not return to work. He then

left the shop and did not return. Chinchilla admitted that the green card he initially showed Reali was a forgery, which probably accounts for his refusal to again display it.

Thereafter, Respondent contacted Chinchilla and asked if he wanted to return to work. Chinchilla refused because he did not yet have the proper immigration papers. Chinchilla testified that he has not applied for legal status.

Julio Del Cid began work on November 28, 1990. Upon his hire he completed a tax form, but not an immigration form. He was not asked to produce papers which showed that he was a lawful resident of the United States.

On July 28, his last day of work, Del Cid was shown the above letter and was asked if he had his papers. He said that he did not, and was told that he could return to work when he had a document from the Immigration Service. Del Cid stated that prior to July 1992, no one spoke to him regarding having the proper documentation in order to work. Del Cid testified that he never obtained the proper papers to work legally in the United States.

Mario Ortiz began work in November 1991, at which time he was asked for documentation, and showed Angelo a work permit. Angelo made a copy of the permit, and said it was fine, and that he could work. He did not complete an immigration form at that time.

In July, Michael Reali asked to see his work permit. Ortiz presented it, and was told by Reali that it was expired. Reali then showed him the above letter, and told him that when he renewed his employment permit he could return to work. He then left. Three days later, he produced a document which stated that he was awaiting the renewal of his permit. At that time, Michael Reali asked him if he saw or contacted any Local 813 agent, or signed any document. Ortiz replied that he had not.

Ortiz produced a letter, 2-1/2 months later, which Michael Reali said was not valid. He was asked to produce an employment authorization. Thereafter, he returned with valid documentation, and returned to work in November 1992.

Nery Perez began work for Respondent in November 1991. He did not fill out an immigration form when he was hired, and no one asked whether he was lawfully able to work in the United States. However, he did produce a marriage certificate which showed that he was married to a United States citizen. He testified that he was first asked for immigration papers about 1 week before his discharge. At that time, Michael Reali asked if he had a green card. He replied that he did not have one. That was the first time he was asked to produce a green card.

Thereafter, Michael Reali told him that he had until July 27 to produce the papers. On July 28, Michael Reali asked for his papers. He said that he did not have them, and was given the above letter. Perez testified that he has done nothing to obtain proper authorization to work in the United States.

Edgar Pineda began work for Respondent in April 1988. He testified that in July 1992, Rios told each of the workers that Michael Reali wanted to see their papers, such as green cards or work permits. Pineda went to the office and showed Michael his papers. Michael said that they were in order and he could continue to work.

Pineda stated that he was never asked for his papers before that time.

Thus, the following employees were discharged on July 28, allegedly for failing to produce proper immigration documents: Hugo Carrillo, Mario Carrillo, Joel Chinchilla, Julio Del Cid, Maynor Lima Bobadillo, Mario Ortiz, and Nery Perez.

Respondent's Evidence

Michael Reali testified that in the past, upon an employee's hire, Respondent's officials asked him for his "papers," including Social Security identification, and other documentation. If they said that they had no documentation, they were not permitted to work. If they said that they had proper papers, they were permitted to work.

Respondent experiences a large turnover of employees, and in the past 2 years, nearly 90 employees have worked for it. Reali stated that Respondent always asks for documentation, but sometimes it was not forthcoming. Occasionally when employees were asked for proof that they were lawfully in the United States, they would leave Respondent's employ.

Reali testified that he asked the seven employees during their employment to produce proof of lawful ability to work. They agreed to, but never produced it, but were nevertheless permitted to remain at work.

Reali testified that in May 1992, he consulted with a law firm, and thereafter began to document Respondent's request for proof of lawful residence. Prior to that time, all requests of employees had been verbal. According to Reali, in late June 1992, he distributed the following undated letter to all employees. This was the first time that he made such a request in writing:

> In order to update our employee files we must request that you submit all documents to show proof of residence in the United States of America. Please submit this information to the office to make copies no later than July 27, 1992. Thank you for your cooperation.

Reali testified that most employees complied with that letter, by producing proper documentation, and they were permitted to work, but the seven did not have such proof. Accordingly, he laid them off, on July 28, in order to comply with the law which prohibits employment of workers who do not have proof of lawful residence in the United States. He told them that they could return to work when they received proper documentation.

Although Respondent does not keep individual personnel files for each employee, certain documents were produced pursuant to subpoena. The following documents were produced for the following employees who were employed during the payroll period ending July 15, 1992: Shoaib Moham Awan: W-4 IRS payroll deduction form; David Baksh: I-9 Immigration form, but with no boxes checked which would show that specific items of proof of residence were submitted and examined, W-4, copy of driver's license; David Gustman: W-4; Dagoberto Moran: W-4, and a social security card, both of which say Dagoberto Vasquez, and an employment identification card.

It should be noted that Awon, Baksh, Gustman, and Moran were not discharged, but continued in Respondent's employ after July 28.

The following documents were produced for employees who were hired after the July 28 mass terminations: Robert Monk: W-4; Richard Ferraro: W-4; New York State driver's license; Julio Flores: I-9 resident alien card, W-4, social security card, and employment application; and, Roberto Montalvo: I-9, W-4, employment application.

Michael Reali testified that following July 28, no one was discharged for not having the proper immigration documentation.

Certain employees disputed Reali's testimony that they received the undated letter which allegedly was given to all employees in June. Thus, Del Cid testified that he never saw the letter.[18] Joel Chinchilla testified that he could not recall when he saw the letter, but he perhaps received it the day he was discharged. Hugo Carrillo did not remember if he saw the letter. Mario Ortiz stated that he saw the letter, but does not remember when, adding that he saw it about 3 weeks before his layoff. Nery Perez testified that he saw the letter, but did not testify as to when he saw it.

It should be noted that employees Calderon, Hugo Carrillo, Maynor Lima Bobadillo, and Ortiz returned to work upon presentation of immigration documents satisfactory to Respondent. They had signed cards for Local 813.

Analysis and Discussion

The complaint alleges that on July 28, Respondent unlawfully discharged Maynor Lima Bobadillo, Hugo Carrillo, Mario Carrillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez because of their activities on behalf of Local 813.

All those employees signed cards for Local 813 on July 13. On July 17, Respondent was told by Local 813 agents that a majority of its employees had signed cards for that union. One employee, Hugo Carrillo, told Supervisor Rios on about July 21 that he signed a card for that union. All of the seven employees were present, when on about July 21, they went to Respondent's office with Local 813 agent Jackson, at which time Michael Reali was informed that they wanted Local 813 and not Local 445.

I accordingly find that Respondent possessed knowledge that all seven employees sought representation by Local 813.

Shortly after Respondent learned that its employees wanted to be represented by Local 813, Respondent requested immigration papers from all its employees. Perez testified that he was asked for such papers about 1 week before his discharge, and was given until July 27 to produce them. The other six employees all testified that they received the July 28 letter on that date, which notified them that they had not produced proper proof of residence, and were discharged that day.

Based on the close timing between the employees' interest in Local 813 and Respondent's knowledge thereof, the findings of animus I have made above, including the findings of coercive interrogation, threat of plant closure, threat of discharge to employee Ortega because he criticized Local 445, and significantly, the threat that immigration documents would be required if they continued to support Local 813, I find that the General Counsel has made a prima facie showing that the union activity of the seven employees named above was a motivating factor in Respondents' decision to discharge them. Wright Line, supra.

Respondent first argues that the employees were not discharged, but rather were laid off until such time that they were able to produce proper eligibility to work in the United States. Its June 28 letter stated, in part, that "since you have failed to submit the documents we have no choice but to ask you to hold off from your employment until such time that the documents are brought into the office:"

> The test for determining whether [an employer's] statements constitute an unlawful discharge depends on whether they would reasonably lead the employees to believe that they had been discharged and the fact of discharge does not depend on the use of formal words of firing. . . . It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure has been terminated. *Ridgeway Trucking Co*., 243 NLRB 1048 (1979).

By asking its employees to "hold off from their employment" Respondent in effect told them that they no longer worked for it. The fact that they could return to work at some later time does not change the fact of their discharge upon receipt of the letter. *Future Ambulette*, 293 NLRB 884, 893 (1989), where a discharge was found when an employee was terminated due to an injury but told that he could reapply when he was able to work; *Midwestern Mining*, 277 NLRB 221, 228, 244 (1985), where discharges were found where the employees were told that they might be rehired if additional equipment was obtained.

When given the letter on July 28, the only conclusion the employees could have reached was that they were discharged. A possibility of reinstatement was given them in the letter. The letter did not guarantee reinstatement upon their production of the documents. It only asked them to stop work until the documents were brought to the office. It is true that those employees who did obtain proper documentation were employed immediately. Nevertheless, looking at the situation on July 28, the employee would conclude that he had been discharged until he presented satisfactory documentation of proper proof of residence. I accordingly find that the seven employees were discharged on July 28.

Respondent argues that the workers were properly terminated because they were undocumented aliens prohibited from being employed by the Immigration Reform and Control Act of 1986 (IRCA).

It first argues that it had no anti union animus in discharging the employees because it had asked them, in its undated letter allegedly given them in June, to provide documents showing proof of residence by July 27. If this letter was given to employees, it would provide some proof that their discharge was not motivated by union considerations since the letter was allegedly distributed before the union campaign began.

However, the evidence does not support a finding that the June letter was distributed to employees. Michael Reali testified that following the distribution of that letter, most employees produced such documentation and were permitted to work.

I credit the testimony of employees Del Cid and Joel Chinchilla that they either did not see the undated June letter or saw it for the first time on the day they were discharged, July 28. Ortiz' testimony that he saw the letter about 3 weeks before his discharge lacks certainty, in view of his earlier testimony that he did not recall when he saw the letter. In addition, in contrast to other letters sent by Respondent, this letter was undated.

I accordingly find that the undated June letter was not distributed to employees.

The documents sought were apparently those required in the I-9 INS Form, which include a U.S. passport; certificate of U.S. citizenship; certificate of naturalization; unexpired foreign passport; alien registration card; or driver's license, U.S. military card, and social security card, birth certificate, and unexpired INS employment authorization. According to the I-9 form, those documents are to be examined by the employer, and the appropriate boxes checked indicating that this has been done.

[18] Del Cid first testified that he saw the letter on the day he was fired.

At the hearing, Respondent produced certain documents in its possession, set forth above, for various employees who were employed at the time of the seven discharges, but who continued to work after the July 28 discharges. Those employees must have been among those who, according to Michael Reali, showed proper documentation and were permitted to work. However, none of the documents produced for employees Awan, Baksh, Gustman, and Moran satisfied the I-9 requirements. The completed I-9 form for Awan and Gustman, at least, were required to be retained by Respondent at the time of the hearing.[19] Accordingly, Respondent did not enforce equally its policy of terminating employees who did not produce the required documents. Those employees were not among the employees who signed cards for Local 813.

In addition, even after the July 28 terminations, Respondent did not adhere to its strict policy of employing only those with proper documentation. Thus the documents, set forth above, produced at hearing for Monk and Ferraro, hired on August 14 and September 7, respectively, do not satisfy the I-9 requirements.

Respondent argues that documentation was required of the employees upon their hire, and that the seven employees were asked for documentation, but never produced it. However, the evidence does not substantiate this. Hugo Carrillo was not asked for a green card until the date of his discharge. Significantly, he was permitted to return to work upon the presentation of some "paper," while he was in the process of obtaining a work permit. Joel Chinchilla was only asked for identification upon his hire, not proof of residence, and he produced a green card. Del Cid was not asked for proof of residence upon his hire. Perez produced a marriage certificate upon his hire. Pineda was not asked for documentation until July. Only Ortiz testified that upon his hire he was asked for documentation, and he showed Angelo Reali a work permit. Indeed, the fact that Respondent has not retained copies of the I-9 forms for certain employees, or copies of the documents allegedly submitted, supports an inference that such documents were not requested.

Thus, based on my findings that (a) the June letter was not distributed to employees, (b) disparate treatment was accorded the card signers who were discharged while the noncard signers were permitted to work although they too did not have proper documentation to work, (c) employees who did not have proper documentation were hired shortly after the discharges, and (d) these discharges occurred during Respondent's admittedly busy season, I conclude that Respondent has not demonstrated that it would have discharged the seven employees in the absence of their union activities. *Wright Line*, supra.

I accordingly find and conclude that Respondent's discharge of Maynor Lima Bobadillo, Hugo Carrillo, Mario Carrillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez violated Section 8(a)(3) and (1) of the Act.

[19] The completed I-9 form was required to be retained for 3 years after the date of hire or 1 year after termination, whichever is later. Awan was hired on April 23, 1992, and last appears on the August 26, 1992 payroll. Gustman was hired on February 17, 1992, and appears on the last payroll submitted, December 30, 1992. The dates of hire of Baksh and Moran are not known.

c. The warning to and discharge of Pineda

Pineda's Testimony

The complaint alleges that on November 19 Respondent issued a written and verbal warning to Edgar Pineda, and on December 10 discharged him because of his activities in behalf of Local 813.[20]

Pineda became employed by Respondent in 1988. He was promoted from picker, to payloader operator, and then bulldozer operator. As set forth above, he contacted Local 813, and arranged a meeting with its representatives and the employees. He also participated in the October 30 election as an observer for Local 813

Pineda testified that he worked without incident until November 17, when, as he was operating the bulldozer, its right metal track became separated from the wheel, causing severe damage. Pineda stated that this occurred because the bolts holding the track to the wheel were subject to hard wear and broke. He told his manager, who called the mechanic. Pineda helped the mechanic fix the track, and Pineda was instructed to work on a different bulldozer.

On November 19, he was given a letter by Michael Reali which set forth as follows:

> Please be advised that this is the second notice of negligent equipment abuse and will serve as the final warning before termination of your employment. On November 10, 1992 while operating the Caterpillar 963 bulldozer it ran out of fuel, causing extensive engine damage. On November 17, 1992 while operating the same bulldozer, the right track separated from the wheel causing severe damage. In the future, please be alert and operate the equipment with proper care, its [sic] part of your job. This type of negligent abuse and destruction of equipment will not be tolerated.

Pineda stated that prior to November 19 he was not informed that his bulldozer had run out of fuel on November 10. He stated that while he was operating it, it worked fine. The machine had run out of fuel before, in about September, and at that time Pineda told his manager, who told him to put more fuel in, pump the fuel through the engine, and continue working. These steps were taken, the bulldozer's engine started, and continued to run without incident. He was not warned for that incident.

On November 19 when he was given the above letter, Michael Reali blamed him for letting his machine run out of fuel. Pineda denied that it was his fault, saying that it was working well when he operated it, and suggested that it was the fault of the person who continued to work on the machine when Pineda left at 1 p.m.

Pineda testified that on December 7, as he was operating his machine, he noticed that water was leaking from its radiator. He stopped the machine and notified Manager Ronald who called the mechanic. The mechanic worked on the machine and informed Pineda that it was fixed, and that he could operate it. He was then instructed by Ronald to grind some wood. About 5 minutes later the machine stopped, and the engine began to smoke. The mechanic was called and instructed Pineda to move the machine to a different place. Pineda started the engine and moved the bulldozer. Shortly thereafter, Pineda went home at the end of his shift.

[20] See the charge in Case 29–CA–17056.

The following day, Pineda was given other work to do as the machine was still being repaired. At the end of the day, Angelo Reali told Pineda to take the following day, December 9, off, as the machine was still being fixed. When Pineda returned to work on December 10, Angelo Reali told him that there was no more work for him because the machines were being damaged too much. Pineda protested that that was not his fault because he told the mechanic many times that the machine was not working properly, but was told to continue working on it.

Pineda left Respondent's premises, and 1 hour later, he was given the following letter at his home by Michael Reali and Rios:

> On December 7, 1992 while you were operating the Caterpillar bulldozer the engine seized causing extensive damage. This was caused by operating the bulldozer with improper oil and diesel. Since this is your third notice, you will be terminated immediately. In the future if there is any way that I can assist you please do not hesitate to call me.

Pineda protested to Michael Reali that the machine broke, and that he told the mechanic that the machine was no good. Michael insisted that the damage was his fault.

Pineda testified that it is the operator's job to put fuel in the tank and check and install oil in the engine each day, and that he performed these procedures. He recalled that on December 7 he checked the oil and fuel and found nothing amiss.

Respondent's Evidence

Michael Reali testified that on June 24 Pineda's bulldozer ran out of fuel while he was operating it. The repair logs indicated that the fuel lines were removed, and the system cleaned of residue from the fuel tank; air was pumped through the fuel lines, two fuel filters were replaced, the tank was filled, allowed to settle, and the fuel system was primed and pumped to remove air trapped in the fuel lines. Reali stated that on June 26 Pineda was given the following letter:

> Please be aware that this is a notice of negligent abuse of equipment and will serve as your first warning. On June 24, 1992 while operating the Caterpillar bulldozer it ran out of fuel, causing severe engine damage. In the future, please be alert and operate the equipment with proper care, its [sic] part of your job.

Pineda denied that his bulldozer ran out of fuel that day, and did not recall receiving this letter.

Reali testified that the same repair work had to be performed on November 10 due to Pineda's machine running out of fuel, as set forth above. Pineda denied that his machine ran out of fuel while he was operating it that day.

Reali stated that the track separated because it fit loosely on its sprocket. Reali testified that the track should always be tight, and Pineda should have noticed that it was loose. Accordingly, Reali blamed the separation of the bulldozer track on Pineda in that he apparently failed to notice that it was loose. Reali stated that a track will not separate if it is attached in a taut manner on its sprocket. Reali stated that the repair job was $12,000 to $15,000, and the bulldozer was out of service for 5 or 6 days.

Regarding the December 7 incident, Reali testified that the bulldozer's engine had seized because of low oil pressure, no oil, and no water. He stated that the oil pressure and temperature gauges and a warning light were all operating at the time of the problem. A new engine was obtained at a cost of $15,000 to $18,000. He denied Pineda's testimony that he moved the bulldozer after experiencing a problem with it. Reali stated that it is the operator's responsibility to check the gauges to make certain that there are sufficient fluids in the engine.

Accordingly, Respondent's position is that it discharged Pineda on December 10, as set forth in the letter of discharge, because of the engine seizure, which constituted his third notice of misconduct.

Analysis and Discussion

Pineda was employed by Respondent for 4 years. He was promoted from picker to payloader operator to bulldozer operator. Pineda was the prime mover in the organizational campaign of Local 813. He made the first contact with that union, arranged the meeting with Local 813's representatives, signed a card in behalf of the union, and spoke to his fellow employees in the shop about the union. He also acted as the election observer for Local 813.

I have found above that Respondent possessed animus toward Local 813 as demonstrated by its violations of Section 8(a)(1) of the Act, and by its discharge of the seven employees.

I accordingly find that the General Counsel has made a prima facie showing that the union activity of Pineda was a motivating factor in Respondent's issuance of the warning letter of November 19, and in its decision to discharge him. *Wright Line*, supra.

Respondent asserts that its discharge of Pineda was justified because of his negligence in the operation of the bulldozers. As set forth above, the alleged misconduct consists of the bulldozer running out of fuel twice, the separation of a track, and the seizure of an engine.

Pineda admits that his bulldozer ran out of fuel once. This may have occurred on June 26. The maintenance log for bulldozer 973 shows that it ran out of fuel on that date. Respondent attributes that incident to him. The log indicates that a routine procedure was utilized to get the machine running: the fuel lines were removed; residue from the fuel tank was cleaned; air was pumped through the lines; two fuel filters were replaced; the tank was filled; the fuel system was primed and pumped to remove air in the lines, and the machine was started.

Pineda did not recall receiving a warning letter due to that incident, which took place 3 weeks before Respondent was visited by Local 813 agents. Even if he did receive the June 26 letter allegedly given to him, that letter stated that "severe engine damage" resulted from this incident. However, the maintenance log does not indicate that any damage was caused.

The same incident occurred on November 10. Pineda denies that this was due to any fault of his. Even if it was, the same routine was used to get the machine running. The warning notice regarding this, given to Pineda on November 19, stated that "extensive engine damage" resulted. The maintenance log does not support that statement. The log only states that rust was in the fuel lines due to the lack of fuel, and that the rust was cleaned from the lines.

On November 17, the right track of bulldozer 963 separated from its wheel. The maintenance log states that the right side was jacked up, the old track was removed, and a new track and sprocket were installed.

Respondent claimed that Pineda should have been aware that the track was loose from the sprocket, and therefore held him responsible for the separation of the track, terming it "negligent abuse and destruction of equipment" in its November 19 warning letter. As set forth above, Pineda claimed that the bolts,

which are subject to hard wear, broke, causing the track to separate.

It must be recognized that these bulldozers perform very heavy work in moving and pulverizing demolition materials. As a result, they receive regular maintenance work according to the logs. They are checked and greased every 2 days, and receive full service every 6 weeks. The full service includes checking the machine and changing the oil and filters.

The maintenance logs establish the hard wear these machines experienced, and the fact that the tracks were subject to especially severe operating conditions.

Thus, Caterpillar 963, which experienced the track separation, had extensive work performed on the tracks prior to the November 17 incident. The machine was acquired by Respondent on March 15, 1989. On March 22, both tracks were tightened. On July 30, the track segments were tightened. On August 13, the tracks were tightened. On September 23 a broken track segment was replaced. On February 10, 1990, the tracks were tightened, as they were again on August 11. On February 13, 1991, both tracks, but especially the left side track was tightened. On March 19 the sprocket segments were replaced. On July 6 an 18-inch steel rod stuck in the left track was removed. On March 28, 1992, the tracks were tightened. On April 25 one track segment was replaced. On August 15 the tracks were tightened, as they were on September 29.

Then on November 17 the right track separated, which was blamed on Pineda. Following his discharge, on March 16, 1993, both tracks were adjusted, and broken bolts were replaced on the left track. On March 23 broken bolts from sprocket segments were replaced, and the tracks were adjusted. On April 1 the track bolts were replaced. On April 2 both tracks were removed, the machine removed from service, the left sprocket and final drive were disassembled, both sides of the sprocket segments were removed, the tilt cylinder bracket was welded, and the idler rollers were replaced. Then both tracks were assembled, and both track frames were welded. On April 28 the left track motor hydraulic line was replaced.

Caterpillar 973 experienced similar service maintenance and repair work. Thus, between July 1989, when the machine was purchased, to December 1992, the tracks were adjusted six times, the segment bolts were tightened twice, the tracks were tightened once, and track segments were replaced once.

Based on the above, I do not believe that Respondent has met its burden of proving that it would have issued a warning letter to Pineda in the absence of his union activities. *Wright Line*, supra. The tracks were subject to severe service conditions. They were adjusted and serviced constantly which is some indication of the hard wear they were subjected to. They experienced more problems after Pineda's discharge. Under these circumstances, it was improper for Respondent to attribute the track separation to Pineda.

Regarding the seizure of the engine on December 7 Pineda denied that it was his fault. He stopped the machine immediately upon noticing that the engine's radiator was leaking water. Michael Reali testified that the engine repair company stated that the seizure was due to low oil pressure, and no oil or water. Respondent claims that Pineda negligently failed to check the engine's fluids. The log states that a rebuilt engine had to be installed.

Michael Reali stated that he was told that the cause of the seizure was low oil pressure and no oil or water. He thus had a reasonable belief that Pineda had caused that severe damage through his negligence in not checking the machine's oil and water. Pineda admitted that it was his responsibility to make those fluid checks on a daily basis. I do not credit him that he made them. In view of the damage to the engine, I credit Reali's testimony that the engine would not start. I do not credit Pineda's testimony that he moved the bulldozer after the problem arose. His pretrial affidavit did not mention that important fact. Respondent gave unrebutted testimony that the cause of the seizure and the very costly engine replacement was lack of oil and water in the engine. The General Counsel has not shown how such damage to the engine could have occurred in any other way.

Pineda admitted that it was his duty to ensure that the machine had sufficient oil and water. Respondent could thus properly believe that the engine's seizure was due to his negligent failure to ensure that it had proper amounts of such fluids.

The General Counsel argues that the logs produced at hearing are unreliable because they were not the original logs prepared at the time of the repair by the mechanic. Rather, because of the poor penmanship of the mechanic, the original logs were rewritten later. The General Counsel further questions the weight to be given Reali's testimony concerning the breakdown because neither the mechanic nor the supervisor who witnessed the incident testified. However, I believe that Reali's testimony properly established the nature of the damage to the engine. No objection was made to his hearsay testimony that he was told the reason for the seizure was no oil or water in the engine.

On the other hand, the logs also show that the engine of the other bulldozer, the Caterpillar 963, seized on January 4, 1993, only 1 month after Pineda's discharge. The same remedial action was taken—the engine was removed, rebuilt, and installed in the bulldozer. There was no testimony concerning this breakdown, but Michael Reali stated that since July 1992, no one other than Pineda has been disciplined for misusing equipment.

The question must therefore be asked why the operator of the 963 was not disciplined for that engine's seizure, and does the failure to so discipline him demonstrate disparate treatment toward Pineda. One possible explanation is that that engine's seizure was not caused by a lack of oil or water, and was therefore not caused through any fault of the operator. Since I cannot answer that question upon the state of this record, I cannot find that Pineda was treated in a disparate manner.

Despite my findings above that Respondent demonstrated strong union animus, it cannot be said that it took any specific action against Pineda upon learning that he was actively supporting Local 813. Specifically, when he appeared as that union's observer at the election on October 30, it did not discharge him 2 weeks later upon his alleged misconduct in the track separation incident.

Although I find that the warning letter of November 19 violated the Act, I cannot find that that carried over to the reasons for the discharge 3 weeks later. The evidence establishes that Pineda was obligated to check the Caterpillar's fluids. Respondent reasonably believed that the machine broke down as a result of that failure, resulting in a very expensive repair to a machine which was purchased new in 1989. There is no evidence of disparate treatment of Pineda in his discharge. *Roadway Package System*, 302 NLRB 961, 976–977 (1991); *T.N.T. Red Star Express*, 299 NLRB 894, 899 (1990).

The Act does not protect employees from discipline because they engage in union activity. The Act protects them from discriminatory discipline because of their union activity.

Accordingly, I find and conclude that Respondent has met its burden of proving that it would have discharged Pineda in the absence of his union activities. *Wright Line*, supra.

3. The alleged refusal to bargain

The appropriate collective-bargaining unit, as alleged in the complaint, and as agreed by the parties pursuant to a Stipulated Election Agreement, consists of:

> All full time and regular part time pickers, sorters and machine operators, mechanic and welder employed by the Employer at its 172-06 Douglas Avenue, Jamaica, New York location, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

As set forth above, on July 17, Local 813 Agents Jackson and Murray made a demand for recognition, and presented Respondent with a recognition agreement, which was rejected.

As discussed above, on July 13, 13 employees of Respondent signed authorization cards authorizing Local 813 to represent them. Respondent's payroll records for the period ending July 15 demonstrate that 22 employees were employed, including Baksh, Costa, and Gustman, whose inclusion may be at issue.[21]

Accordingly, Local 813 represented a majority of the unit employees on July 13.

The General Counsel argues that the unfair labor practices committed by Respondent are so serious and substantial in character as to warrant the issuance of a bargaining order pursuant to *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

Respondent asserts that it has a valid collective-bargaining agreement with Local 445, which precludes the issuance of a bargaining order herein.

The Validity of the Collective-Bargaining Agreement

On December 13, 1988, Local 445 was certified by the Board as the exclusive collective-bargaining representative of the employees of Regal in essentially the same unit found appropriate herein. The certification was based upon an election held pursuant to a Stipulated Election Agreement. Michael Reali testified that he engaged in negotiations with Local 445, and entered into a collective-bargaining agreement in December 1988, which expired in December 1991. A renewal agreement was executed in December 1991 which runs to December 1994. The contract appears regular in form, containing provisions for union security, wage raises, and hours of work. The contract also provided for, and employees received, paid holidays and vacations. Employees received wages in excess of the minimum set forth in the contract.

The contract requires the payment of health and welfare moneys to the Local 445 Health and Welfare fund, the deduction of dues from wages of employees, and the remission of such dues amounts to Local 445. Dues remittance reports were received in evidence which indicated that reports were sent by Local 445 to Respondent each month from January 1991 through April 1993, listing the names of employees, and setting forth the amount of welfare and dues payable. Canceled checks were also received which showed payments for those months.[22]

Respondent conceded that it did not deduct dues from employees' pay, but rather paid the dues directly to Local 445. Reali stated that that was the procedure followed in a company he had been employed by, and he considered it as a benefit to be given to the employees. Although the contract requires that dues deduction authorizations be signed by employees, Respondent did not produce any at hearing.

The employees testified that they were not aware of the existence of Local 445, or that that union represented them. Pineda, who was employed at the time of the Board election, denied knowing about the election or voting therein. Other employees testified that they never saw a representative from Local 445 until Griffin appeared at the shop after they had signed cards for Local 813.

Other employees stated that they were not informed that they were entitled to medical benefits, as provided in the contract. Respondent counters this by arguing that there was no showing that any employee was in need of medical benefits. That does not answer the question. The evidence supports a finding that the employees were not aware that Local 445 represented them, or that a collective-bargaining agreement regulated their wages, hours, or working conditions.

In sum, the record is devoid of any evidence that Local 445 concerned itself with the employees' hours or working conditions in any respect. *Don Mendenhall, Inc*., 194 NLRB 1109 (1972). The employees did not even know that they were "represented" by a union or covered by a collective-bargaining agreement. *Weber's Bakery*, 211 NLRB 1, 12 (1974).

The employees who were allegedly covered by the agreement received no representation from Local 445, and were subject to working conditions unilaterally imposed by Respondent without any input from that union. *McDonald's Drive-In Restaurant*, 204 NLRB 299, 309 (1973). It further appears that Local 445 was not concerned with contract enforcement or with contract servicing, but was content to receive the dues and welfare payments for a few employees from Respondent. *McDonald's*, supra; *Bender Ship Repair Co*., 188 NLRB 615, 616 (1971).

Thus, in the union reporting form covering the period June 1992, for the first time the following employees were added by Respondent to the form, and moneys paid in their behalf, notwithstanding that some of them were employed by Respondent for at least 9 months prior to June 1992: Hasan Abdool, Carmelo Calderon, Hugo Carrillo, David Baksh, who were on the payroll in September 1991, and Mario Ortiz and David Gustman who were hired in December 1991 and February, 1992, respectively. Obviously, Local 445 did not police its contract. Respondent was accordingly delinquent in its payment for these employees, and under these circumstances according to the contract, Local 445 was entitled to examine the books.

The contract also provides that notices of the discharge of employees must be sent to Local 445, but there was no evidence that this had been done with respect to Pineda.[23] Although the contract provides for the appointment of a shop steward, this provision has not been implemented.

[21] There was testimony that Costa was a supervisor. Baksh and Gustman were pickers, but were salaried, unlike the other pickers. Aside from the 13 card signers, and Baksh, Costa, and Gutman, the other employees employed at that time were Abdool, Awan, Moran, Nunez, Veluppil, and Woolard.

[22] Uncanceled checks dated April 1993 purported to show that sums due from December 1992 through April 1993 were being paid in April 1993.

[23] Respondent claims that the seven employees separated for failure to produce immigration documents were laid off.

The payment by Respondent of dues for its employees has long been held to constitute unlawful assistance in violation of Section 8(a)(1) and (2) of the Act. *Allied Erecting Co*., 270 NLRB 277 (1984); *Sweater Bee by Banff, Ltd*., 197 NLRB 805 (1972).

Accordingly, I find that the contract between Respondent and Local 445 was not an effective or real collective-bargaining relationship between the parties, nor was it meant to be, nor did they believe that it was such. *Ace-Doran Hauling Co*., 171 NLRB 645, 646 (1968). It was treated by them as a convenient arrangement to be utilized when another union indicated an interest in representing Respondent's employees.

Therefore, I find that the collective-bargaining agreement between Respondent and Local 445 does not preclude the issuance of a *Gissel* bargaining order.

The Propriety of a Bargaining Order

In *Gissel*, supra, the Supreme Court held that bargaining orders are appropriate in "less extraordinary" cases marked by "less pervasive" unfair labor practices where the employer's unlawful conduct has a "tendency to undermine [the union's] majority strength and impede the election processes," and the union at one time had majority support among the unit employees. 395 U.S. at 614 (1969).

The Supreme Court held in *Gissel*, supra, that where

> The possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and . . . employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.

In determining whether a bargaining order is appropriate, the Board examines the severity of the violations and the effects that the unfair labor practices would have on the holding of a rerun election. *Sheraton Hotel Waterbury*, 312 NLRB 304 (1993).

Here, I have found that Respondent interrogated employees, threatened its employees with discharge, warned them that they could not join Local 813, and hired additional employees in order to pack the unit and deprive the employees of representation by Local 813.

It must be observed that Respondent began a campaign of interrogation, threats and discharges as soon as it became aware of its employees' interest in Local 813. Its campaign was designed to undermine that union's strength. *Q-1 Motor Express*, 308 NLRB 1267, 1268 (1992).

It is very significant that many of the violations were serious in nature. Threats of job loss through plant closure and discharge because of union activity is among the most flagrant kind of interference with Section 7 rights and is more likely to destroy election conditions, and to do so for a longer period of time than other unfair labor practices. *Sheraton*, supra.

In addition, the unlawful discharges of the seven employees, which comprised half the bargaining unit, and which threatened the livelihood of the employees, are likely to have a lasting impact which is not easily erased by the mere passage of time or the Board's usual remedies, especially given the small size of the bargaining unit. *Q-1*, supra.

Thus, the possibility of erasing the effect of the Respondent's actions and ensuring a fair election by the use of traditional remedies is slight. Employee sentiment, once expressed through cards, is better protected by a bargaining order. *Interstate Truck Parts*, 312 NLRB 661 (1993).

Because I have recommended that a bargaining order issue, it also follows that I will recommend that the election be set aside, that Case 29–RC–8020 be dismissed, and that all proceedings in connection therewith be vacated. *Yerger Trucking*, 307 NLRB 567, 578 (1992). However, in the event that it is ultimately determined that a bargaining order is not warranted, I will discuss the objections and challenges.

4. The representation case

The tally of ballots following the election conducted on October 30, showed that 4 votes were cast for Local 813, 2 votes were cast for Local 445, no votes were cast against representation, and there were 24 challenged ballots.

In light of my findings, above, that employees who were hired beginning in August 1992, were hired in an effort to pack the unit in violation of Section 8(a)(1) of the Act, I will recommend that the challenges to the ballots of the following employees be sustained: Roy Dortch, Richard Ferraro, Julio Flores, Jose Gomez, Carlos Hernandez, Alex Martinez, Damon Mason, Derrick Mason, Alejandro Montalvo, Roberto Montalvo, Dimas Nunez, Roberto Peraza, Jose Pina, Ahmed Sagheer, Nelson Toledo, Jose Toribio, and Giro Valentin.

I will recommend that the challenges to Hasan Abdool, David Baksh, and David Gustman be overruled because they were hired before Local 813 began its organizational campaign, and thus were not hired in an attempt to influence the election. Moreover, there was uncontradicted testimony that they were unit employees.

Inasmuch as I have found that Joel Mancilla Chinchilla, Julio Del Cid, and Nery Perez were discharged unlawfully in violation of the Act, I will recommend that the challenges to their ballots be overruled, and that those ballots be opened and counted. The challenge to the ballot of Edgar Pineda was withdrawn with the approval of the Regional Director. His ballot should be opened and counted.

The objections to conduct affecting the results of the election, filed by Local 813, generally track the complaint allegations with respect to conduct occurring between the time the petition was filed, and the time of the election.[24]

In light of my above findings that Respondent (a) discharged seven employees in violation of the Act, (b) denied Local 813 access to its facility and employees to campaign while allowing Local 445 such access, (c) by hired additional employees in order to influence the outcome of the election, and (d) threatened and interrogated employees, I conclude that the objections should be sustained and the election set aside.

CONCLUSIONS OF LAW

1. The Respondent, Regal Recycling Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 813, International Brotherhood of Teamsters, AFL–CIO, and Local 445, Laborers International Union of North America, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union activities, Respondent violated Section 8(a)(1) of the Act.

[24] No evidence was presented as to the complaint allegation that Rios prevented an employee from voting in the election, and I therefore recommend that it be dismissed.

4. By threatening employees with discharge for criticizing Local 445, Respondent violated Section 8(a)(1) of the Act.

5. By threatening to demand to see the immigration papers of its employees in the context of a meeting at which it sought to discourage membership in Local 813, Respondent violated Section 8(a)(1) of the Act.

6. By threatening to close its shop if its employees selected Local 813, Respondent violated Section 8(a)(1) of the Act.

7. By informing its employees that they already had a union, and that they should not join Local 813, Respondent violated Section 8(a)(1) of the Act.

8. By hiring additional employees to influence the outcome of the election, Respondent violated Section 8(a)(1) of the Act.

9. By denying access to its employees and facility to Local 813, while at the same time providing such access to Local 445, Respondent violated Section 8(a)(1) and (2) of the Act.

10. By issuing a warning to its employee Edgar Pineda on November 19, 1992, Respondent violated Section 8(a)(1) and (3) of the Act.

11. By discharging employees Maynor Lima Bobadillo, Hugo Carrillo, Mario Carrillo, Joel Chinchilla, Julio Del Cid, Mario Ortiz, and Nery Perez because of their activities in behalf of Local 813, Respondent violated Section 8(a)(1) and (3) of the Act.

12. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time pickers, sorters and machine operators, mechanic and welder employed by the Employer at its 172-06 Douglas Avenue, Jamaica, New York location, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

13. Since July 17, 1992, Local 813 has been the exclusive collective-bargaining representative of the employees set forth in the appropriate collective-bargaining unit, above.

14. By the conduct set forth in paragraphs 3–11, above, Respondent has undermined the majority status of Local 813, and has precluded any likelihood that a fair election could be held.

15. Respondent has violated Section 8(a)(5) and (1) of the Act since July 17, 1992, by refusing to recognize and bargain with Local 813 in the above-defined collective-bargaining unit.

16. The unfair labor practices found above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

17. Respondent has not violated the Act in any other respect as alleged in the complaint as to which no violations have been found.

THE REMEDY

Having found that Respondent has engaged in unlawful conduct under the Act, I will recommend that it cease and desist therefrom, and take certain affirmative action which is necessary to effectuate the policies of the Act.

Having found that Local 813 represented an uncoerced majority of Respondent's employees in a unit found appropriate for purposes of collective bargaining on July 17, 1992, the day the Respondent received the union's request for recognition, and continued to enjoy majority support when Respondent began committing unfair labor practices, it is recommended that a bargaining order issue effective July 17, 1992, and that Respondent be ordered to post an appropriate notice to employees.

In the event that it is ultimately determined that a bargaining order is not warranted, having sustained certain objections to the election held on October 30, 1992, it is recommended in that circumstance that the results of the election be overturned and a second election directed.

Regarding the seven unlawfully discharged employees, Respondent argues that no reinstatement or backpay remedy may be ordered because they have not proven that they are entitled to lawful residence in the United States. In fact, Joel Chinchilla, Julio Del Cid, and Nery Perez testified that they had done nothing to apply for legal status.

The Board's normal remedy in cases involving discharges includes requiring the offer of immediate reinstatement and back pay. The Board has held that such undocumented aliens are entitled to an offer of reinstatement and back pay unless Respondent could prove their illegal presence by means of a final deportation order of the Immigration and Naturalization Service. *Del Rey Tortilleria*, 302 NLRB 216 (1991), revd. 787 F.2d 1118 (7th Cir. 1992). Since Respondent has not met that burden, I will recommend that the Board's normal remedies apply.

The amounts to be paid to the unlawfully discharged employees shall be computed in the manner prescribed in *Florida Steel Corp*., 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 1987).

[Recommended Order omitted from publication.]

NYCIDA PROJECT COST/BENEFIT ANALYSIS
March 26, 2020

APPLICANT
American Recycling Management, LLC
172-33 and 172-25 Douglas Avenue
Jamaica, NY 11433

173-05, 173-07, and 173-19 Liberty Avenue
Jamaica, NY 11433

A. Project Description:

American Recycling Management, LLC, a New York limited liability company and its affiliates (the "Company") are seeking financial assistance in connection with the demolition of three existing buildings totaling approximately 24,600 square feet, the construction, renovation, equipping and furnishing of three new buildings totaling 63,519 square feet, and the construction of 1,600 feet of railroad track, all located on an 110,147 square foot parcel of land located at 172-33 and 172-25 Douglas Avenue and 173-05, 173-07, and 173-19 Liberty Avenue, all in Jamaica, New York (the "Facility"). The Facility will be used for waste management, recycling and waste transport, and will connect directly to the adjacent Long Island Railroad train tracks (the "Project"). The Project cost is approximately $30,000,000. It is anticipated that the Project financing and acquisition of the Facility will close in Fall 2020 and that operations will commence at the Facility by December 2021.

B. Costs to City (New York City taxes to be exempted):	
Mortgage Recording Tax Benefit:	$203,125
Land Tax Abatement (NPV, 25 years):	$1,437,412
Building Tax Exemption (NPV, 25 years):	$15,590,954
Sales Tax Exemption:	$825,596
Total Cost to NYC	**$18,057,087**

C. Benefit to City from Operations and Renovation (Estimated NYC direct and indirect taxes to be generated by Company) (estimated NPV 25 years @ 6.25%):	**$25,306,365**

D. Benefit to City from Jobs to be Created (Estimated NYC direct and indirect taxes to be generated by Company) (estimated NPV 25 years @ 6.25%):	**$2,019,715**

NYCIDA
New York City Industrial Development Agency

NYCIDA CORE APPLICATION

Submit your electronically completed Core Application via email to your assigned Project Manager as a Word Document file or a Word Document saved as a PDF.

A. APPLICANT OVERVIEW

Applicant Name (the "Applicant"): American Recycling Management LLC	Name of operating company (if different from Applicant):
Operating company address: 172-33 Douglas Ave, Jamaica NY, 11433	Website address: https://american-recycling-mgmt-llc.business.site/
EIN #: [redacted]	NAICS Code: 562000
State and date of incorporation or formation: New York 07/15/2002	Qualified to conduct business in NY? ☒ Yes ☐ No
Applicant is (check one of the following, as applicable): ☐ General Partnership ☐ Limited Partnership ☐ Business Corporation ☐ Other: ☒ Limited Liability Company ☐ Sole Proprietorship ☐ S Corporation	
Is Applicant publicly traded? ☐ Yes ☒ No Is Applicant affiliated with a publicly traded company? ☐ Yes ☒ No If yes, name the affiliated company:	

B. APPLICANT CONTACT INFORMATION

	Name/Title	Company	Address	Email	Phone	Primary[1]
Applicant Contact Person	Dominic Susino	American Recycling	172-33 Douglas Ave, Jamaica, NY	[redacted]		☒
Attorney	**Sean E. Crowley, Esq**	Davidoff Hutcher & Citron LLP	605 Third Avenue New York, New York 10158			☐
Accountant	Benedict Di Venti	Diventi & Lee CPA's P.C.	67 Grand Ave, Massapequa, NY 11758			☐
Consultant/Other	Demond Wilkerson	Modern Commercial Capital	2501 Grand Concourse 3rd Fl Bronx NY 10465			☒

C. APPLICABLE FINANCIAL ASSISTANCE

Provide the estimated value of each of the following types of Project Financial Assistance being requested. Discuss the estimation of the Requested Financial Assistance with your assigned Project Manager, if needed.

Requested Financial Assistance	Estimated Value of Requested Financial Assistance
Real Estate Tax Benefits	$
Sales Tax Waiver	$
Mortgage Recording Tax Benefit	$

D. APPLICANT BACKGROUND

Provide a brief description of Applicant's history and the nature of its business. Feel free to include information from Applicant's website or other official documentation describing Applicant. Include information such as when Applicant was founded, who founded the Applicant, a brief history of the Applicant, the Applicant's primary services and market, and the number of Applicant's employees in NYC and elsewhere. **Limit the description to 250 words.**

[1] Select the individual to whom questions should be directed and who may speak on behalf of Applicant.

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American Recycling is a comprehensive waste management and recycling company located in federal opportunity Zone in Jamaica Queens. The primary items handled at this facility include municipal solid waste, construction and demolition, yard waste and food waste. The core services are Transfer Station, Recycling Center, Organic Recycling, Roll-Off Dumpster Service, Material Transportation, and Cardboard Recycling.

E. Proposed Project Activities

Describe the proposed Project, including its purpose and Project Location, in the text box below. Refer to the example below.

This is a $26 million construction and railroad conversion project that entails demolishing existing buildings and building 3 new state of the art waste management and recycling facilities that connects directly to the adjacent Long Island Railroad train tracks. This multi-phase project will allow American to transfer over 51% of the current capacity to travel via the rail system and eliminating the need for a significant amount of the current trucking transportation being used. The location is in a federal opportunity Zone low income neighborhood in Queens.

Example: [Applicant Name] ("Applicant") is a [describe general business activity, such as food processor, real estate developer, plastics manufacturer, etc.]. Applicant is seeking financial assistance in connection with the [list Project activities, such as construction, furnishing, equipping, etc.] of a [__] square foot building on a [__] square foot parcel of land located at [address] (the "Facility"). The Facility will be owned by [Applicant or holding company] and used as a [describe specific business activities associated with the Project such as warehouse, commercial office space, manufacturing facility, , etc.]. The total cost is approximately [Project cost]. **The anticipated closing date is [ ]. The project is anticipated to be completed in ___ [months or years].**

F. Project Location Detail

Complete this table for *each* Project Location with a distinct Block/Lot. For Projects with more than one Block/Lot, copy the Project Location table below and paste it directly underneath to complete it.

Project Location Information		
Project Address: 172-33 Douglas Ave, Queens, NY 11433 There are currently 14 lots that will be merged into 5 lots listed below; 172-33 Douglas Avenue, 173-05 Liberty Avenue, 172-25 Douglas Avenue, 173-19 Liberty Avenue, 173-07 Liberty Avenue	Location # of	
Borough/Block/Lot: Queens, Block/Lot 10219/56, 10219/58, 10219/59, 10219/60, 10219/62 10219/75, 10219/76, 10219/314, 10219/315 10219/316, 10220/36 10220/42, 10220/43 10220,44	Community Board #: 12	Neighborhood: Jamaica, Queens
Square footage of land: 110,147 sq ft	Square footage of existing building: 86,019 sf	Number of Floors:
How is the anticipated Project Location currently used and what percentage is currently occupied? Waste management facility, 100% Occupied		
In the case of relocation, what will happen with Applicant's current facility? ☐ N/A		
Does the Project Location have access to rail and/or maritime infrastructure? The project will formally connect the facility to the LIRR		
Is there any space at the Project Location that is currently being/will be occupied and/or used by any entity other than the Applicant or operating company, whether Affiliates or otherwise? ☒ Yes ☐ No If yes, attach a separate page and provide details about tenants such as (1) name of tenant business(es) (whether Affiliates or otherwise), (2) square footage of tenant operations, (3) tenant occupancy commencement and termination dates, and (4) copies of leases, licenses, or other documents evidencing a right to possession or occupancy. For the purposes of this question, any license or other right of possession or occupancy granted by the Applicant or operating company with respect to the Project Location shall be deemed a tenancy.		

Construction Information
Construction Start Date (as defined in the Policies and Instructions): The construction start date is Q3 2020. The current operations will continue throughout construction.
Facility Operations Start Date (as defined in the Policies and Instructions):
Does the Project involve the construction of a new building or an expansion/renovation of an existing building? ☒ Yes ☐ No
If yes, complete the following questions and attach a separate page and provide drawings, plans, or a description of the proposed work.
Does the Project involve subsurface disturbance or excavation? ☒ Yes ☐ No
Anticipated square footage of Facility after construction and/or renovation:
Anticipated square footage of *non-building improvements* after construction and/or renovation (e.g. parking lot construction):
Please describe any non-building improvements on a separate page.
Square feet of wet lab space created: Square feet of wet lab space preserved:
Percentage of total building size dedicated to wet lab space:
Are energy efficiency improvements or the installation of a renewable energy system anticipated as part of the Project?[2]
Which of the below statements best reflects your current stage in the contractor procurement process?
☒ A contractor has been selected and the procurement process is complete.
☐ The procurement process has begun but a contractor has not been selected. Selection is anticipated by:
☐ The procurement process has not begun. Procurement is anticipated to begin by:
☐ Other:
☐ Not applicable
Percentage of tenancy expected at Facility Operations Start Date: 100
Percentage of tenancy expected six months after Facility Operations Start Date:
Percentage of tenancy expected 12 months after Facility Operations Start Date:
Percentage of tenancy expected 18 months after Facility Operations Start Date
Zoning Information
Current zoning of Project Location:
Is a zoning variance or special permit required for the Project to proceed at this Project Location? ☒ Yes ☐ No
If yes, attach a separate page and describe the zoning variance or special permit required, which agencies are involved, and the anticipated schedule for zoning approval.
Is the Project subject to any other city, state or federal approvals? ☒ Yes ☐ No
If yes, attach a separate page and describe the approval required, and if applicable, list any other environmental review that may be required.
Is the Project Location a designated historic landmark or located in a designated historic district? ☐ Yes ☒ No
Is the Project Location within the NYC Coastal Zone Boundary? ☐ Yes ☐ No
Intended use(s) site (check all that apply): ☐ Retail % ☐ Manufacturing/Industrial % ☐ Office %

G. ANTICIPATED OWNERSHIP

1. Check the accurate description of the Project Location's anticipated ownership.

☒ Applicant or an Affiliate is/expects to be the Project Location's fee simple owner.	(Projected) Acquisition date:
☐ Applicant or an Affiliate leases/expects to lease the Project Location. ☐ Lease is for an entire building and property. ☐ Lease is for a portion of the building and/or property.	(Projected) Lease signing date:
☐ Neither of the above categories fully describes Applicant's interest or intended interest in the Project Location. Describe the anticipated ownership of the Project Location premises:	

2. Does/will an Affiliate own/control the Project Location? ☒ Yes ☐ No
   If yes, complete the table below:

Name of Affiliate: TBD		Address of Affiliate:	
Affiliate is a (check one of the following, as applicable):			
☐ General Partnership	☐ Limited Partnership	☒ Business Corporation	☐ Other:
☐ Limited Liability Company	☐ Sole Proprietorship	☐ S Corporation	

[2] More information on free energy efficiency advisory services can be found here.

H. PROJECT FINANCING

1. **Sources of Financing**. Provide amounts as aggregates for all Project Locations. Add table rows, if needed.

Sources	Total Amount	Percent of Total Financing
Equity	$2,277,238	%
Commercial Loan (Bank Name:)	$12,500,000	%
New York City Public Funds	$	%
Source: Assembly (Alecia Hyndman)	$2,000,000	%
Source: DOT Grants	$8,000,000	%
New York State Public Funds	$	%
Other: NMTC O	$5,000,000	%
Total	$29,777,238	100%

2. Mortgage amount on which tax is levied (exclude SBA 504 financing[1]):

3. Anticipated closing date between the [lender(s)]/[financing party(s)]/[financial institution(s) and/or funder(s)] and Applicant:

4. **Uses of Financing.** Provide amounts as aggregates for all Project Locations.

Uses	Total Amount	Percent of Total Financing
Land and Building Acquisition		0%
Construction Hard Costs (i.e. site excavation, building materials, labor, landscaping, construction materials, etc.)	$18,491,547.00	%
Construction Soft Costs (i.e. pre-planning, legal, financing, design, etc.)	$883,200.00	%
Furnishings, Fixtures, & Equipment (FF&E) and Machinery & Equipment (M&E) (i.e. generators, desks, chairs, electronic equipment, specialized manufacturing equipment, assembly equipment, etc.)	$ $5,402,491.00	%
FF&E purchased in NYC		60%
M&E purchased in NYC (recyling and railroad machinery & equipment)		60%
Closing Fees (costs associated the execution of deal, i.e. debt service reserve fund, financing fees, loan origination fees, attorney fees, pre-payment penalties, etc.)	$1,000,000	%
Other (describe): Solar panels Other (describe) Payoff Existing Mortgage	$1,00,0000 $3,000,000	%
Total	$29,777,238	%

4a. Indicate anticipated budgeting of Hard Costs: Electrical: % Carpentry: % Painting: % Plumbing: %
Excavation or Demolition: % Other: %

4b. Indicate anticipated budgeting of Soft Costs: Architecture: %Engineering: %Design: % Other: %

I. EMPLOYMENT INFORMATION

The following information will be used as part of the Agency's calculation of the Project's benefit to the City, and as a basis for comparison with the employment information that Applicant will be required to report on an annual basis for the term of the Project Agreement (as defined in the Policies and Instructions).

1. **Job Creation Schedule for the Applicant**
For all responses in the table below, part-time ("PT") employees are defined as those working between 17.5 and 35 hours per week on average, and full-time ("FT") employees are defined as those working 35 hours or more per week. Hourly wages in Columns E & F should represent the pay rate and are exclusive of overtime. For salaried employees, divide the annual salary by 1,820 working hours per year to calculate an hourly wage.

[1] The SBA 504 Loan Program, administered by the Small Business Administration, is designed to provide small businesses with long-term financing to acquire and improve major fixed assets, such as owner-occupied commercial real estate and heavy machinery.

Information included in Column C below will be used to determine eligibility for participation in the HireNYC Program. For program information, see Additional Obligations document. If eligible for the HireNYC Program participation, NYCEDC will provide additional details.

A Job Category	B # of NYC jobs retained by Project	C # of jobs to be added in each year at Project Location in first 3 years of operation *to be employed by Applicant*			D Total # of Jobs at Project Location in first 3 years of operation (Sum of all Columns B and C)	E Average hourly wage for Year 1	F Lowest hourly wage for Year 1	G Average Fringe Benefit for retained jobs Per Month	H Average Fringe Benefit for created jobs
		Year 1: 20	Year 2: 20	Year 3: 20					
FT Executive level	4					$58.60		$472	$
FT Manager level	4	1			5	$35		$472	$472
FT Staff level	26	9		8	43	$15		$472	$472
Total FT Employees	34	18		8	52	$	$	$472	$472
Total PT Employees	0	4				$	$	$	$

2. **Job Creation Schedule for tenants at the Facility not affiliated with the Applicant**

A Job Category	B # of NYC jobs retained by Project	C # of jobs to be added in each year at Project Location in first 3 years of operation			D Total # of Jobs at Project Location in first 3 years of operation (Sum of all Columns B and C)	E Average hourly wage for Year 1	F Lowest Hourly Wage for Year 1	G Average Fringe Benefit for retained jobs	H Average Fringe Benefit for created jobs
		Year 1: 20	Year 2: 20	Year 3: 20					
FT Employees						$	$	$	$
PT Employees						$	$	$	$

3. Of the Total Jobs at Project Location in Column D in Table 1, how many employees are/will be NYC residents? 75%

4. How many employees at the Project Location will be paid below living wage[2] at Project Start Date (as defined in the Policies and Instructions)? 0

5. Does the Project currently have, or anticipate having, contract or vendor employees[3] at the Project Location? ☒ Yes ☐ No

6. Generally describe all other forms of compensation and benefits that permanent employees will receive (i.e. healthcare, employer contributions for retirement plans, on-the-job training, reimbursement for educational expenses, etc.).

7. Will Applicant or any of its Affiliates be required to provide health coverage to its employees pursuant to the federal Patient Protection and Affordable Care Act (the "Act")? ☐ Yes ☐ No
If yes, provide an overview of the applicable requirements under the Act and an explanation of how Applicant plans to comply with such requirements. If no, explain why and provide a FT employee count using the Act "FTE Employee Calculator".

8. Is Applicant currently providing paid sick time to employees in accordance with the Earned Sick Time Act (Chapter 8 of Title 20 of the NYC Administrative Code) and otherwise in compliance with such law? ☒ Yes ☐ No
If yes, provide an explanation of your company's paid and unpaid sick time policy. If No, explain why and provide a table which outlines the number of anticipated employees and hours worked per calendar year.[4]

9. Will the Project use an apprenticeship program approved by the New York State Department of Labor? ☐ Yes ☐ No

[2] For information regarding living wage, see Additional Obligations document.
[3] Contract or vendor employees are independent contractors (i.e. persons who are not "employees") or are employed by an independent contractor, who provide services at a Project Location.
[4] Information on the Paid Sick Leave Law can be found here.

J. LABOR

Applicant and its Affiliates hereinafter will be referred to collectively as the "Companies" or individually as a "Company." If none of the following questions applies to any of these Companies, answer *No*. For any question that does apply, be sure to specify to which of the Companies the answer is relevant.

1. Has any of the Companies during the current calendar year or any of the five preceding calendar years experienced labor unrest situations, including actual or threatened labor strikes, hand billing, consumer boycotts, mass demonstrations or other similar incidents?

   ☐ Yes ☒ No If Yes, explain on an attached sheet.

2. Has any of the Companies received any federal and/or state unfair labor practices complaints asserted during the current calendar year or any the five calendar years preceding the current calendar year?

   ☐ Yes ☒ No If Yes, describe and explain current status of complaints on an attached sheet.

3. Do any of the Companies have pending or threatened requests for arbitration, grievance proceedings or other labor disputes during the current calendar year or any of the five calendar years preceding the current calendar year?

   ☐ Yes ☒ No If Yes, explain on an attached sheet.

4. Are any of the Companies' employees *not* permitted to work in the United States?

   ☐ Yes ☒ No If Yes, provide details on an attached sheet.

5. Is there any period for which the Companies did not complete and retain, or do not anticipate completing and retaining, all required documentation related to this inquiry, such as Employment Eligibility Verification (I-9) forms?

   ☐ Yes ☒ No If "Yes," explain on an attached sheet.

6. Has the United States Department of Labor, the New York State Department of Labor, the New York City Office of the Comptroller or any other local, state or federal department, agency or commission having regulatory or oversight responsibility with respect to workers and/or their working conditions and/or their wages, inspected the premises of any Company or audited the payroll records of any Company during the current or preceding three year calendar years?

   ☐ Yes ☒ No If "Yes," use an attached sheet to briefly describe the nature and date of the inspection and the inspecting governmental entity. Briefly describe the outcome of the inspection, including any reports that may have been issued and any fines or remedial or other requirements imposed upon any of the Companies as a consequence.

7. Has any of the Companies incurred, or potentially incurred, any liability (including withdrawal liability) with respect to an employee benefit plan, including a pension plan?

   ☐ Yes ☒ No If "Yes," use an attached sheet to quantify the liability and briefly describe its nature. Refer to any governmental entities that have had regulatory contact with the Company in connection with the liability.

8. Are the practices of any of the Companies now, or have they been at any time during the current or preceding five calendar years, the subject of any complaints, claims, proceedings or litigation arising from alleged discrimination in the hiring, firing, promoting, compensating or general treatment of employees?

   ☐ Yes ☒ No If "Yes," provide details on an attached sheet. Note "discrimination" includes sexual harassment.

K. FINANCIALS

1. Has Applicant, Affiliate(s), Principal(s), or any close relative of any Principal(s), ever received, or is any such person or entity currently receiving, financial assistance or any other kind of non-discretionary benefit from any Public Entities?

   ☐ Yes ☒ No If Yes, provide details on an attached sheet.

2. Has Applicant, or any Affiliate or Principal, or any existing or proposed occupant at the Project Location(s), obtained, or is any such person or entity in the process of obtaining, or contemplating obtaining, other assistance from the NYCIDA/Build NYC and/or other Public Entities?

   ☒ Yes ☐ No If Yes, provide details on an attached sheet.

3. Has Applicant, or any Affiliate or Principal, ever defaulted on a loan or other obligation to a Public Entity?

   ☐ Yes ☒ No If Yes, provide details on an attached sheet.

4. Has real property in which Applicant, or Affiliate or Principal, holds or has ever held an ownership interest and/or controlling interest of 25 percent or more, now or ever been (i) the subject of foreclosure (including a deed in lieu of foreclosure), or (ii) in arrears with respect to any type of tax, assessment or other imposition?

   ☐ Yes ☒ No If Yes, provide details on an attached sheet.

5. Does Applicant, or any Affiliate or Principal, have any contingent liabilities not already covered above (e.g., judgment liens, lis pendens, other liens, etc.)? Include mortgage loans and other loans taken in the ordinary course of business only if in default.

   ☐ Yes ☒ No If Yes, provide details on an attached sheet.

6. Has Applicant, or any Affiliate or Principal, failed to file any required tax returns as and when required with appropriate governmental authorities?

☐ Yes ☒ No If Yes, provide details on an attached sheet.

7. In the table below, provide contact information for Applicant's references. If the space provided below is insufficient, provide complete information on an attached sheet. List any "Major Customers" (those that compose more than 10% of annual revenues) and any "Major Suppliers" (those that compose more than 10% of goods, services, and materials).

Reference Type	Company Name	Address	Contact Person	Phone	Fax	Email	% of Revenues
Major Customers	City Waste Services	529 Coster St. Bronx NY 10474	Joseph Tessi	[redacted]			%
							%
Major Suppliers	Waste Connections – Seneca Meadows Landfill	1786 Salcman Road Waterloo, NY 13165	Rocky LaRocca				%
							%
Unions	United Workers of America	50 CHARLES LINDBERGH BLVD. SUITE 207 UNIONDALE, NY 11553	Steve Sumbrotto				
Banks	TD Bank	324 South Service Rd. Melville, NY, 11747	William D'Allesandro				

L. ANTI-RAIDING

1. Will the completion of the Project result in the relocation of any plant or facility located within New York State, but outside of New York City, to New York City? ☐ Yes ☒ No

If "Yes," provide the names of the owners and addresses of the to-be-removed plant(s) or facility(ies):

2. Will the completion of the Project result in the abandonment of any plants or facilities located in an area of New York State other than New York City?
☐ Yes ☒ No

If "Yes," provide the names of the owners/operators and the addresses of the to-be-abandoned plant(s) or facility(ies):

If the answer to question 1 or 2 is "Yes," answer questions 3 and 4.

3. Is the Project reasonably necessary to preserve the competitive position of this Applicant, or of any proposed occupants of the Project, in its industry?
☒ Yes ☒ No

4. Is the Project reasonably necessary to discourage Applicant, or any proposed occupant of the Project, from removing such plant or facility to a location outside New York State?
☒ Yes ☐ No

If the answer to question 3 or 4 is "Yes," provide a detailed explanation on a separate sheet of paper.

M. COMPLIANCE WITH LAW

1. The Applicant and any owner or occupant of the proposed project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. ☒ Yes ☐ No

2. The proposed project, as of the date of this application, is in compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to the provisions of Section 859-a and Section 862(1) thereof. ☒ Yes ☐ No

N. ADDITIONAL QUESTIONS

1. Is the Applicant considering alternative Project Locations outside of New York City? ☒ Yes ☐ No

a. If “Yes,” where? Upstate NY

2. What uses are being considered for the Project Location other than those described in the Proposed Project Activities? Observation are for local school field trips to learn about recylcing.

3. How does the Applicant intend to utilize the tax savings provided through the NYCIDA? Railroad conversion to green energy facility.

4. What are the primary sources of revenue supporting Applicant’s operations? Recycling and waste transfer.

5. If the Applicant’s income statement categorizes any revenues as “*Other* operating revenues,” describe what revenues are captured in that category: ☐ N/A

6. If the Applicant’s income statement categorizes any revenues as “*Other* general and administrative,” describe what revenues are captured in that category: ☐ N/A

CERTIFICATION

I, the undersigned officer/member/partner of Applicant, on behalf of Applicant and its Affiliates, hereby request, represent, certify, understand, acknowledge and agree as follows:

I request that this Application, together with all materials and data submitted in support of this Application (collectively, these "Application Materials"), be submitted for review to the Agency's Board of Directors (the "Board"), in order to obtain from the Board an expression of intent to provide the benefits requested herein for the Project.

I certify that I have the authority to sign these Application Materials on behalf of, and to bind, Applicant and its Affiliates.

I certify under penalty of perjury to the best of my knowledge and belief, after due investigation, that the information contained in these Application Materials is accurate, true and complete and does not contain a misstatement of a material fact or omit to state a material fact necessary to make the statements contained herein not misleading. I understand that an intentional misstatement of fact, or, whether intentional or not, a material misstatement of fact, or the providing of materially misleading information, or the omission of a material fact, may cause the Board to reject the request made in the Application Materials. I understand that the Agency will rely on the information contained within these Application Materials in producing and publishing a public notice and convening a public hearing. If any information in these Application Materials is found to be incorrect, Applicant may have to provide new information and a new public notice and public hearing may be required. If a new public notice and public hearing is required, they will be at Applicant's expense.

I acknowledge that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of Agency involvement in the project.

I understand the following: that Applicant and Principals will be subject to a background check and actual or proposed subtenants may be subject to a background check, and if such background check performed by the Agency with respect to Applicant or any Affiliates reveals negative information, Applicant consents to any actions that the Agency or NYCEDC may take to investigate and verify such information; that the Agency may be required under SEQRA to make a determination as to the Project's environmental impact and that in the event the Agency determines that the Project will have an environmental impact, Applicant will be required to prepare, at its own expense, an environmental impact statement; that the decision of the Board to approve or to reject the request made in the Application Materials is a discretionary decision; that no Bonds may be issued (if Bonds are being requested) unless such Bonds are approved by the Mayor of the City; that under the New York State Freedom of Information Law ("FOIL"), the Agency may be required to disclose the Application Materials and the information contained therein (see the Disclosure Policy section of the Polices and Instructions document provided to Applicant and signed by Applicant on or about the date hereof (the "Policies and Instructions")); and that Applicant shall be entirely responsible and liable for the fees referred to in these Application Materials.

I further understand and agree as follows:

That notwithstanding submission of this Application, the Agency shall be under no obligation to present Applicant's proposed Project to the Board for approval. If the Agency presents Applicant's proposed Project to the Board for approval, the Agency does not guaranty that such approval will be obtained. If upon presenting Applicant's proposed Project to the Board for approval the Agency obtains such approval, such approval shall not constitute a guaranty from the Agency to Applicant that the Project transaction will close.

That preparation of this Application and any other actions taken in connection with the proposed Project shall be entirely at Applicant's sole cost and expense. Under all circumstances, the Application Fee is non-refundable, including but not limited to the circumstance where the Agency decides, in its sole discretion, to not present Applicant's proposed project to the Board for Approval.

That each of Applicant and each of its Affiliates (collectively, the "Indemnitors") hereby releases the Agency and NYCEDC and their respective directors, officers, employees and agents (collectively, the "Indemnitees") from and against any and all claims that any Indemnitor has or could assert and which arise out of, or are related to, any Application Materials, any actions taken in connection therewith or any other actions taken in connection with the proposed Project (collectively, the "Actions"). Each Indemnitor hereby indemnifies and holds harmless each of the Indemnitees from and against any and all claims and damages brought or asserted by third parties, including reasonable attorneys' fees, arising from or in connection with the Actions. As referred to herein, "third parties" shall include, but shall not be limited to, Affiliates.

That in the event the Agency discloses the Application Materials in response to a request made pursuant to FOIL, Applicant hereby authorizes the Agency to make such disclosure and hereby releases the Agency from any claim or action that Applicant may have or might bring against the Agency, their directors, officers, agents, employees and attorneys, by reason of such disclosure; and that Applicant agrees to defend, indemnify and hold the Agency and the NYCEDC and their respective directors, officers, agents, employees and attorneys harmless (including without limitation for the cost of reasonable attorneys' fees) against claims arising out of such disclosure as such claims may be made by any party including Applicant, Affiliate, Owner or Principal, or by the officers, directors, employees and agents thereof.

That capitalized terms used but not defined in this Application have the respective meanings specified in the Policies and Instructions.

I acknowledge and agree that the Agency reserves its right in its sole and absolute discretion to request additional information, waive any requirements set forth herein, and/or amend the form of this Application, to the full extent permitted by applicable law.

Requested, Represented, Certified, Acknowledged, Understood and Agreed by Applicant,

This day of , 20 . _____

Name of Applicant: _____

Signatory: _____

Title of Signatory: _____

Signature: _____

I certify that, using due care, I know of no misstatement of material fact in the Application Materials, and know of no material fact required to be stated in the Application Materials to make the statements made therein not misleading. **Certified by Preparer,**

This day of , 20 .

Name of Preparer: _____

Signatory: _____

Title of Signatory: _____

Signature: _____

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information

Name of Action or Project:
American Recycling

Project Location (describe, and attach a location map):
172-33 Douglas Ave. Jamaica, NY 11433

Brief Description of Proposed Action:
Connect Recycling Center to LIRR via through a rail road spur so outbound material can be transported via the rail.

Name of Applicant or Sponsor:	Telep[redacted]
American Recycling Mgmt. LLC.	E-Ma[redacted]

Address:
172-33 Douglas Ave.

City/PO:	State:	Zip Code:
Jamaica	NY	11433

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☒	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: DEC, DOS, DOB	☐	☒

3.a. Total acreage of the site of the proposed action? 2.3 acres
b. Total acreage to be physically disturbed? 2.3 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.3 acres

4. Check all land uses that occur on, adjoining and near the proposed action.
☐Urban ☐Rural (non-agriculture) ☒Industrial ☒Commercial ☐Residential (suburban)
☐Forest ☐Agriculture ☐Aquatic ☐Other (specify): _____
☐Parkland

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?	☐	☒	☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	☐	☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	☒	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☒	☐	
b. Are public transportation service(s) available at or near the site of the proposed action?	☐	☒	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☐	☒	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: Proposed Solar, Proposed Dark Sky Compliant, Proposed Leed	☐	☒	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	☐	☒	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	☐	☒	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	☒	☐	
b. Is the proposed action located in an archeological sensitive area?	☒	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☒	☐	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	☒	☐	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:
☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional
☐ Wetland ☒ Urban ☐ Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☒	☐
16. Is the project site located in the 100 year flood plain?	☒	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☐ NO ☐ YES	☒	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: ☐ NO ☐ YES		

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	X	
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: Municipal Solid Waste		X
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	X	

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Christopher Hein Date: 11/25/19

Signature: _____

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	X	
2. Will the proposed action result in a change in the use or intensity of use of land?	X	
3. Will the proposed action impair the character or quality of the existing community?	X	
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	X	
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	X	
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	X	
7. Will the proposed action impact existing: a. public / private water supplies?	X	
b. public / private wastewater treatment utilities?	X	
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	X	
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	X	

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	[X]	[ ]
11. Will the proposed action create a hazard to environmental resources or human health?	[X]	[ ]

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

[ ] Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

[X] Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

NYCIDA	3/13/20
Name of Lead Agency	Date
SHARON TEPPER	AVP
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Sharon Tepper	
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT

New York Lawyers

for the Public Interest, Inc.

151 West 30th Street, 11th Floor

New York, NY 10001-4017

Testimony of New York Lawyers for the Public Interest
Hearing Before the Committee on Sanitation and Solid Waste Management
Regarding Preconsidered Bill T2021-7669
June 24, 2021

Good morning, my name is Natasha Bynum, and I am a legal intern in the Environmental Justice Program at New York Lawyers for the Public Interest. Along with many of our community partners who are testifying here today, our organization has advocated for waste equity for decades – including our long-time advocacy for the Commercial Waste Zone law – the amending of which is the subject of this hearing. Thank you to the Sanitation Committee, and Chair Reynoso for your continued leadership on this issue and the opportunity to testify today.

I am testifying on behalf of NYLPI to express our support for preconsidered bill T2021-7669, which would remove waste auditors from the definition of "trade waste broker" in section 501 of chapter 1 of title 16-A of the administrative code. In doing so, we hope to underscore the importance of ensuring that the City's laws will allow emerging sustainability auditing businesses – which are largely women owned and led – to play critical and growing roles in the Commercial Waste Zone system without having to pay a prohibitive licensing fee.

While trade waste brokers negotiate deals between commercial customers and waste collectors for a fee or commission, waste auditors serve an entirely different, environmentally responsible, function in the materials management economy. The services and data produced by waste auditors can be used by their generators of commercial waste to seek transparent and fair price estimates from haulers, identify opportunities for waste reduction, overall improving transparency in what the customers are paying for and resulting in increasing diversion rates for the commercial waste sector—a major goal of the Commercial Waste Zone system. As the City works toward its goals of zero waste, waste auditors can and should play an integral role.

However, these auditing businesses cannot flourish so long as they are mistakenly classified as waste brokers under the law. Because every business considered a waste broker must be licensed by BIC under the administrative code, small sustainability-minded auditing businesses are required to pay prohibitively expensive licensing fees, and jump through unnecessary procedural hoops. This has prevented--and will continue to prevent--local, sustainable, and women and minority-led businesses from playing a critical role in commercial waste management. Hindering the growth of this waste auditor start-up sector undermines the sustainability and equity goals that are fundamental to the Commercial Waste Zone law.

NYLPI supports removing waste auditing from the definition of waste broker, and further suggests that this bill amend Title 16 Section B of the administrative code as well to explicitly define waste auditing such that DSNY alone has the right to certify and regulate waste auditors.

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As the City continues to implement the Commercial Waste Zone system, we want to thank our partners in DSNY for their diligent work to ensure that the transformative system is implemented in a way that ensures that sustainability, equity, and transparency are at the heart of the new commercial waste system.

We'd like to again thank Chair Reynoso for continuing to work with us on waste equity issues in this City, and thank you all for your time and consideration today.

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Testimony of New York Lawyers for the Public Interest Regarding Int. 2349-2021

Before the Committee on Sanitation and Solid Waste Management

June 24, 2021

Good morning, my name is Caroline Soussloff, and I am a Legal Fellow in the Environmental Justice Program at New York Lawyers for the Public Interest (NYLPI). NYLPI works with communities across the New York City area, providing support and services to combat inequalities, injustices, and infringements on civil rights. Our Environmental Justice program has advocated and litigated on the subject of the inequities of the distribution of environmental burdens and benefits in our City for almost three decades. Thank you to the Council, the Sanitation Committee, and Chair Reynoso for the opportunity to speak up in regards to this troubling bill, Intro 2349, which purports to amend the Waste Equity Law.

For decades, we have partnered with residents of Environmental Justice communities to fight for a more equitable solid waste management system. Our City's waste infrastructure, such as waste transfer stations and truck depots, has historically been concentrated in just three low-income communities of color, which have, for too long, borne the brunt of the resulting poor air quality, unsafe traffic, noise, odors, and vermin, with measurable repercussions for public health. Fortunately, in 2018, this Council passed a landmark Environmental Justice law—the Waste Equity Law—to begin to remediate this injustice.

I am appearing here today because the Waste Equity Law is in danger of being diluted and rolled back based on mere promises of upgrades and more sustainable practices—and even these promises do not go far enough to mitigate the harmful impacts these truck-intensive waste transfer stations have had on their surrounding community.

Waste facilities had almost ten years to get into compliance with waste equity legislation, as various versions of the Waste Equity Law were introduced in the Council at least three times over eight years before finally passing into law three years ago. There were three separate hearings for these individual bills, and during each hearing the larger goal of shifting from truck-based waste export to rail and barge export was highlighted, and companies were put on notice that they would be rewarded if they transitioned to export by rail in advance of the law being passed.

The owners of these facilities chose to wait until AFTER the law passed—after fighting this relatively modest reform for years—and now want to appear to "get with the program".

At their current capacity, these facilities have failed to comply with regulations, which raises serious concerns about their ability to safely manage additional capacity. The Department of Environmental Conservation has fined Regal and placed the company under two consent orders

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for failing to minimize leachate and its effects and leaving unprocessed food waste on the ground as recently as 2019.

Moreover, these facilities are not taking advantage of existing exemptions in the Waste Equity Law. In their 2020 annual report, Regal Recycling reported that they sent only 6,400 tons of organic waste to a compost facility—that is about 18 tons per day, far less than the 120 tons per day of permit capacity that Regal reserved with DSNY during the implementation of the Waste Equity Law. American Recycling reported even less organics recycling, sending only about 12 tons per day to a compost facility. This minimal commitment to recycling the huge quantities of food waste and other organic material in our waste stream is a missed opportunity for the companies to expand under the existing law, so it is difficult to understand why they are asking for more and more permit capacity at this time.

NYLPI shares the goal of transporting waste by rail… *If* the companies had (i) community support, with ample opportunity for meaningful engagement; (ii) a commitment to fully enclose all the facilities' operations, rather than simply "three sides"; (iii) a concrete technical plan for construction and rail export, with agreements in place to utilize the railroad, and engineering plans to demonstrate the upgrades they will accomplish to the facility in less than two years of construction; and (iv) an enforceable agreement of a sunset provision so that the added/restored capacity would again be slashed to the current post-Waste Equity levels once all the construction was completed—*then* a waiver or exemption might actually be acceptable.

But what they are proposing now is simply a four-year waiver from the Waste Equity Law to allow them to have hundreds of tons of capacity restored, bringing more waste and trucks into their community, based upon mere lip service that they intend to improve operations. Rather than implementing the benefits of transporting waste by rail, this Bill risks undoing the progress of the past couple of years.

This Bill would create a slippery slope: once we start amending our Environmental Justice laws to allow for one or two private industry actors to belatedly try to improve, we completely gut the force and reliability of our laws in the first place. To say nothing of the fact that our City Council should not be legislating to benefit single private actors or companies. We therefore oppose this bill and urge the Council to reject it and protect the Waste Equity Law.

Thank you all for your time and consideration today.

TESTIMONY
REGARDING COUNCIL MEMBER MILLER LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE
IN RELATION TO INCREASING PERMITTED CAPACITY FOR EXPORT RAIL

Good morning Chairman Reynoso, Council Member Daneek Miller and all of the panel.

My name is Andrea Scarborough, I am the former President of Addisleigh Park Civic Organization (APCO) a civic organization in Southeast Queens (SEQ), I was most recently voted in as the Vice Chair of the Queens Solid Waste Advisory Board.

I am speaking here today however as a concerned resident of Southeast Queens, District 12, a community that is among one of the most overburdened districts with waste facilities and the related diesel truck pollution it creates. I oppose Intro 2349 the local law to amend the administrative code of the city of New York, in relation to increasing permitted capacity for export by rail for the following reasons:

Currently LL152 states that if a transfer station exports their waste through the rail system then the reduction in their waste capacity is waived and no longer applies. However LL152 does not grant a waiver based on intent but rather on the facilities existing mode of operation. **The proposed legislation is seeking to grant the facilities American Recycling/Regal Recycling an increase in their putrescible waste based on their intent to move to a rail system and not their current operational practices.** Although these facilities are not named in the legislation, the civic/community leaders of district 12 attended a presentation by Council Member Miller and the two waste transfer stations where this project was presented. Why would a "city law" give permission to waste facilities to infringe upon a community's quality of life by removing an existing cap and allowing more tonnage of waste for four years based on their word/intent to move to exporting waste by rail.

History has shown that Regal/Royal Recycling cannot be depended upon to honor their commitments. In 2002/2003 a stipulation of settlement between the waste facility and several advocacy groups, allowed the company to increase its' capacity for processing putrescible solid waste from 177.5 tons/day to 600 tons per day. In return they agreed to several conditions including preparing quarterly compliance reports to be sent to the Federation of Civic Associations and Community Board 12. Regal was also to designate an in-house point person to receive and respond to complaints from the community, whose name and telephone number was to be provided to the community and to the Exec Board of the Federation of Civic Associations and Community Board 12.

These conditions were never met.

The difference between district 12 and most other districts that manage waste is the zoning. District 12 has only M1 zones which are designed to accommodate light manufacturing that can coexist easily with residential homes. **With the exception of one other waste transfer station Southeast Queens, District 12 is the only area in all of NYC where a waste station has been allowed to operate in an M1 zoned area due to being grandfathered.** New York State and New York City laws state that this type of business is not allowed in an M1 but rather belong in an M3 zoned area for heavy industrial use type activity. In addition these facilities are poorly run and they need to improve their management of leachate generation, dust control and elimination of noxious fumes that emanate from the facility which is not fully enclosed. As a result we have homeowners that are subject to two waste facilities that

pollute the air, possibly poison the sewer system with leachate and create an unhealthy condition for the residents that live there. In the summer I have personally experienced the stench coming from these waste transfer stations. It is unbearable, and residents have told me they are unable to open their windows to get fresh air. The waste facilities are not good neighbors and clearly infringe upon the residents' quality of life.
Intro 2349 fails to make the case for allowing more waste into a community where by law, it does not belong. Understanding that increased waste means increased trucks coming in creating the very environmental condition that you're trying to rectify.

Finally at the zoom presentations by American Recycling/Regal Recycling, it was stated that their intent was to (1) build a new facility at their site, (2) export their waste by the rail system and (3) request a removal of their existing cap and increase their waste capacity. The facilities attempted to justify this waste increase by citing expenses associated with the building of a new facility and the costs associated with the needed rail spur to allow an export of its waste. Intro 2349 legislation that is before the sanitation committee however excludes the building of a new facility. **Something very important to the community.** Should this legislation pass, the waste transfer station potentially would be allowed to increase their waste without ever being held accountable to build a new facility or address the inefficiencies that exist at their site. Without ever being held accountable to improve the quality of life for the residents that live by these two transfer stations.

As a concerned resident of Southeast Queens I urge that Intro 2349 be rejected.

Date: June 24, 2021

To: New York City Council / Sanitation Committee

From: Christina Grace, CEO, Foodprint Group Inc.

Subj: A local law to amend the administrative code of the city of New York, in relation to the definition of trade waste broker

My name is Christina Grace and I am the CEO of Foodprint Group, a zero waste design, training and technology company based in Brooklyn. We work with food, hospitality, cultural, real estate and other organizations in NYC and around the world to achieve zero waste, 90% or better diversion from landfill. We are co-authors of the NYC Zero Waste Design Guidelines.

We have decided to stop conducting multi-stream waste audits in New York City and let our costly Business Integrity Commission (BIC) Trade Waste Broker registration lapse. The annual registration fee for what has been a small component of our work, particularly in light of Covid-19, no longer makes financial sense. We still provide audits to clients in other cities. That we had to have a BIC registration in order to help companies understand the make-up of their waste, often to provide data to validate that a client's actual trade waste broker or hauler was poorly estimating waste and thus improperly charging them, is very frustrating and counter-intuitive.

The City of New York defines a "trade waste broker" as "1) a person or entity who for a fee brokers agreements between consumers and providers of trade waste removal, collection or disposal services or 2) who conducts evaluations or analyses of the waste stream of such consumers in order to recommend cost efficient means of waste disposal or other changes in related business practices". Part one of this definition defines a true waste broker. Part two is a function that is, in every other part of the country, and even here in New York City, conducted by:

1. Sustainability, often LEED, Consultants,
2. Zero Waste Services Companies,
3. Building Management/Janitorial Firms,
4. Not-for-Profits providing community greening programming, and
5. Trade Waste Brokers

Many companies that fit into 1-4 above don't even realize they need to be a Trade Waste Broker to conduct a waste audit in New York City. LEED audits happen all the time by companies not currently registered with the Business Integrity Commission. But, for those of us who are in the know, we have to make a choice to either pay to be classified as a broker when we are not brokers, but instead

designers, sustainability consultants, or trained zero waste professional, OR to not provide audit services. In deciding not to be a "broker" we lose business to non-registered companies from outside of New York and brokers, and clients miss out on truly rigorous audit services.

We are not in the business of brokering the hauling and disposal of waste. We are in the business of eliminating waste. We are truly unbiased auditors, because in order for us to eliminate waste, we need to know the exact makeup of what is landing in the trash, organics and recycling whereas companies in the business of moving waste can be biased towards waste audit results that will support the movement of more waste - which is their primary business.

The way the BIC rules have been written put brokers, companies that stand to gain from more waste, in the position of auditing waste. A law that currently makes brokers their own watch dogs does not move the city closer to achieving zero waste (90% or better diversion from landfill or incineration). We strongly suggest limiting the definition of a trade waste broker to the true broker function. Companies should not have to have a costly registration to complete a waste audit. We do believe the City should provide 1) a set of requirements for waste audits being conducted for city buildings that are shared as a best practice for all buildings and 2) very clear requirements for the waste audits that will be required under the new Commercial Waste Zones.

We are happy to provide additional information about our experience and thank you for the opportunity to testify on behalf of sustainability businesses, in many cases, very small companies and independent consultants, who provide quality services to reduce waste and ultimately reverse climate change. Changing the definition of a trade waste broker will enable these businesses to have greater impact here in New York City. Please reach out to me at christina@foodprintgroup.com or 718.207.4967 with any questions.

Sincerely,

Christina Grace
CEO
Foodprint Group
35 2nd Street, #2
Brooklyn, NY 11231

Civics United for Railroad Environmental Solutions CURES

The New York & Atlantic Railway and companies like Tunnel Hill Partners/WIN Waste Innovations (THP/WIN) that operate waste-by-rail transfer and transload stations and landfills are in this business together. The MTA is a silent partner in all NYC area waste-by-rail export because this business would not even exist without the waste-by-rail industry's use of MTA's publicly owned and subsidized facilities. These include LIRR's Farmingdale Yard where THP/WIN's NYAR Coastal is located, and LIRR's freight rail assets licensed for use by the New York & Atlantic Railway. LIRR also pays capital costs for freight rail, among other subsidies.

While Zero Waste may be the city's goal, the more tonnage companies export, the more money they make. Waste-by-rail is seen as such a growth industry and good investment that Tunnel Hill Partners was acquired first by an Australian private equity firm and now waste giant Wheelabrator Technologies' WIN Waste Innovations owns it.

Yet these profitable companies haven't bothered to spend money enclosing the THP/WIN NYAR (New York & Atlantic Railway) Coastal Distribution facility, equipping it with modern pollution controls, or even covering their garbage gondolas. So waste blowoff, leachate, and odors from uncovered Tunnel Hill Partners' rail cars and their outmoded 3-sided building on MTA property continue to harm public and environmental health and quality of life, and their overloaded "muffintop" rail cars cause derailments that disrupt commuter lines, as the photos below show.


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The MTA-LIRR and NYS DEC haven't stopped these abuses and harms, which have helped private owners get rich, even though this is all happening in a public right of way. MTA had to bring in a crane from Pennsylvania to handle the derailment above, by Jamaica. An article about Macquarie's acquisition of Tunnel Hill Partners included Moody's glowing description of Tunnel Hill Partners' "unique, difficult to replicate network of collection and transfer assets." To restate that from the community perspective, NYS subsidizes this business to the detriment of their residents' health and quality of life, and turns a blind eye to public harms:[1]

Founded in 2008 by principals at American Infrastructure MLP Funds, Tunnel Hill has a major behind-the-scenes presence in the Northeast. The company has grown through multiple acquisitions, including the 2014 purchase of WCA Waste's Northeast assets. For the 12-month period ending in June 30, 2018, revenues were reportedly $280 million.

With a footprint spanning from Ohio to Massachusetts, Moody's described Tunnel Hill as benefiting from "a unique, difficult to replicate network of collection and transfer assets in a region that is experiencing sharply declining disposal/landfill capacity." The Connecticut-based company now owns two Subtitle D landfills, 14 transfer stations (including many with rail capability), two recycling facilities, one beneficial use burial site and the collection company City Carting.

Recently Omni Brentwood waste-by-rail transfer station that will ship waste to a THP/WIN landfill in Ohio received a permit from the NYS Department of Environmental Conservation. Public officials and residents from Queens to Brentwood, NY strenuously objected to permitting the new facility, which is located in a state-identified Environmental Justice Community already overburdened with polluting facilities. New York State lacks a law like New Jersey's that takes into account existing environmental and health burdens on Environmental Justice Communities before siting another polluting facility there, such as a waste transfer station. Instead, New York State provided the required "enhanced participation" to this Environmental Justice Community and then permitted the facility. This was DEC's summary of one comment:

Constituents bear the burden of a legacy of environmental racism by approval of harmful projects in the community. Community is already overburdened by superfund sites, brownfield sites, three power plants, industrial and commercial facilities. Siting a solid waste facility in a low-income, predominately minority neighborhood goes against the principles of environmental justice and directly injures the residents of the Brentwood neighborhood. Study by the Health Department found Brentwood Gardens suffered high rates of colorectal cancer and asthma, which can be attributed to ongoing exposure to toxic substances. Deny the permit.

[1]Macquarie acquires Northeast disposal company Tunnel Hill Partners, Rosengren, Cole, Feb. 13, 2019, https://www.wastedive.com/news/macquarie-acquires-tunnel-hill-partners-northeast-disposal/548191/

There is an imbalance of private profits and public costs because NYS has failed to plan and regulate waste-by-rail to protect communities and the environment, and left it up to private companies to provide public benefits. The industry has failed to invest in mitigations that would protect public health and quality of life. Please don't make this worse by lowering NYC's current standards and writing a bad actor a blank check with a new city law. Please withdraw Int 2349.

Mary Arnold, Co-Founder Civics United for Railroad Environmental Solutions,
civicsunited@gmail.com

TO: The Committee on Sanitation and Solid Waste

The local law being proposed should be rejected for the below reasons:

1. Southeast Queens District 12 has been identified as an Environmental Justice community.
2. The goal is to get to zero waste
3. Any consideration of an increase in waste defeats this purpose.
4. The locations of these proposals are in an already overburdened M1 zone with buildings that were grandfathered in.
5. The area would suffer an increase in pollution, because it would require an increase in the number of trucks coming into and going out of the neighborhood.
6. This law offers blanket tonnage increases in Environmental Justice communities for up to four years based on a hauler's intention to only use some rail and the rest trucks. This waters down the promises and exceptions in the Waste Equity bill, and privileges competitors who aren't meeting the Department of Sanitation standards for a waste-by-rail facility that Waste Management had to meet.
7. The residents of the community are suffering and will continue to suffer more, because they are unable to enjoy the comforts of their homes year round.
8. The Council should not be providing loopholes to increase more tonnage of waste coming into a community. It is inappropriate when Zero Waste is the goal. This was not the intent of the Waste Equity Law.
9. There have been no plans shared, nor answers provided for the questions posed by the community about this project. The residents that live in the area has not been considered in a meaningful way.
10. Councilman Miller's law proposes legitimizing unenclosed transfer stations with three walls and a roof.
11. Please consider our families who have suffered and will continue to suffer from this legislation.
12. Please withdraw this legislation

Brinkerhoff Action Association

Walter Dogan