Dear Senator \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

I am a member of the Pennsylvania Independent Waste Haulers Association (“PIWHA”). PIWHA is an incorporated trade association comprised of over 100 independently owned waste haulers and other companies operating in the solid waste industry throughout the Commonwealth. Together, our membership employs well over 7,500 Pennsylvania residents. PIWHA was formed for the express purpose of promoting the interests and survival of these smaller, privately owned businesses in the increasingly concentrated and regulated solid waste industry.

Gary Roberts, the Executive Director of PIWHA, recently met with Senator Tommy Tomlinson of Pennsylvania’s 6th Senatorial District regarding several significant issues adversely affecting our membership. Senator Tomlinson has agreed to investigate these concerns and his office has encouraged all PIWHA members to reach out to their local State Representatives and Senators to summarize the issues. Senator Tomlinson may be contacting your office regarding establishing a framework to address these issues. If called upon, I sincerely hope that you are willing to participate in this initiative.

Here is a summary of the issues that PIWHA discussed with Senator Tomlinson.

1.         Municipalities, counties, county authorities, etc. directly competing with waste haulers and other small businesses; specifically, we discussed the actions of the Northern Tier Solid Waste Authority (“NTSWA”). NTSWA is a joint authority consisting of Bradford, Tioga and Sullivan counties. NTSWA is a market participant in all aspects of waste/recycling collection and disposal. NTSWA regularly bids against private haulers for commercial work and obviously is in a much better position to offer significantly lower pricing (tax exempt status, no registration fees for vehicles, cooperative purchasing program, etc.). NTSWA has received millions of dollars in grant funds and has used this grant money to gain significant market share in the waste removal business.

Our haulers advise that NTSWA facilities have significantly raised disposal rates for private haulers but have kept their rates for their own hauling the same, and in some cases have actually lowered the rate. They provide no justification for the rate increase. The landfill rate increases directly affects the private hauler which must adjust its rates to its customers to offset the increase; this gives NTSWA the opportunity to take the private haulers’ customers with much more favorable pricing. The NTSWA advises private haulers that it must raise rates to meet operating expenses, yet it still regularly gives away significant funds – general donations, scholarships, etc. NTSWA maintains a policy that provides that a customer that does not use NTSWA for trash service may not receive NTSWA’s recycling service. The private haulers continue to lose customers to NTSWA because of this policy because NTSWA is able to provide recycling equipment and service at no charge.

PIWHA does not believe that the NTSWA was created to openly compete with private business. If this practice continues, it will be impossible for private haulers to compete. Further, we are concerned this disturbing trend towards market participation may be spreading throughout the Commonwealth.

2.         The Pennsylvania Department of Environmental Protection (“DEP”) is providing incentives to municipalities who elect to contract waste hauling services with a single hauler rather than permitting and encouraging open competition. It is PIWHA’s position that these incentives are not permissible under the Pennsylvania Municipal WastePlanning Recycling and Waste Reduction Act (“Act 101”). Act 101 does not in any way provide that municipalities that have open competition should be treated in a different manner than municipalities that have single hauler schemes.

The issue of DEP favoring municipalities that have single hauler systems has arisen most often in the context of available grant monies. Attached is a sheet that was handed out at a recent Upper Nazareth Township meeting. As you can see, municipalities are utilizing DEP’s positon as a factor in explaining to their residents that single hauler systems are more favorable. PIWHA is generally not in favor of municipal bids, our membership favors open competition and strengthening small businesses.

3.         Municipalities in the Commonwealth continue to charge haulers a licensing fee despite the fact that the Pennsylvania Commonwealth Court has determined that these fees are not permissible. In 2002, the Pennsylvania Legislature enacted the *Waste Transportation Safety Act* (“Act 90”) at 27 Pa. C.S. §§ 6201-6306. Subsequent to enactment, the Commonwealth Court, in *Pennsylvania Waste Industries Association, et al. v. County of Lehigh*, 887 A.2d 1289 (Pa. Cmmw. Ct. 2005), interpreted Act 90 and clearly determined that municipal waste hauling licensing schemes, which mandate payment of a licensing fee by the waste hauler, are expressly not permitted in the Commonwealth of Pennsylvania.

Please feel free to contact my office if you require any further information regarding these important issues.

Thank you for your attention to these concerns,

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