



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW CASE NUMBER: 2012-0019

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

Franchise Agreements¹ between the Solid Waste Authority (SWA) and Waste Management, Inc. of Florida (WMIF) state "...the Authority shall, at all times, hold title and ownership to all Commercial and Residential Solid Waste, Vegetative Waste, Trash, Recyclable Material and all other waste collected by the Contractor pursuant to this Agreement and the Contractor shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials without specific written authorization from the Contract Administrator..."

According to preliminary information referred to the Office of Inspector General (OIG) by SWA, during a routine visit by a SWA employee, it was discovered that a SWA container, normally a receptacle for municipal solid waste (MSW), located in unincorporated Boca Raton (also referred to as Service Area 6), had only been dumped sporadically by WMIF at a SWA facility, even though it had been expected to be dumped weekly. SWA contacted WMIF to determine where this container had been dumped, which led to a subsequent determination that this particular container, as well as others in Service Area 6, had been dumped at WMIF facilities and not SWA facilities, as required.

On March 4, 2011, SWA met with WMIF to reiterate their authority regarding MSW, at which time WMIF agreed to terminate the dumping of MSW at their own facilities. Additionally, WMIF, upon SWA's request, conducted their own review of Service Area 6 and made a determination that WMIF's Drivers made a total of 2,130 MSW dumps at WMIF facilities between October 1, 2008 and April 30, 2011. SWA, in turn, hired Michaelson & Company, P.A. (the Auditors)² to audit WMIF's findings during the aforementioned period (the audit period).

On February 8, 2012, during a SWA Board³ meeting, a discussion was held regarding a possible Settlement Agreement with WMIF, at which time SWA Board member Burt Aaronson stated that the proposed settlement was a good one but may be just the "tip of the iceberg." SWA Board member Aaronson requested that this matter be referred to

¹ WMIF has separate contracts for each Service Area with SWA; 09-205 for Service Area 5, 09-206 for Service Area 6, and 09-211 for Service Area 11 for the period October 1, 2008 through September 30, 2013. The contracts are identical with the exception of the description of the respective geographic areas.

² It is noted that on November 16, 2010 SWA entered into an interlocal agreement with the OIG for services, to include audit. In late March, 2011, SWA hired the Auditors to conduct the aforementioned audit. On February 8, 2012, SWA Director Mark Hammond, at the request of the SWA Board, contacted the OIG for the first time regarding this issue.

³ The SWA Board is comprised of the same members as the Palm Beach County Board of County Commissioners.

the OIG for review and on March 21, 2012, following the SWA Board's request, the OIG initiated a Management Review.⁴

The OIG's Review included all loads within WMIF's Franchise Agreements (Service Areas 5, 6, and 11) with SWA, excluding the 2,130 dumps previously admitted to by WMIF within the Settlement Agreement. The OIG's Review period not only encompassed October 1, 2008 through April 30, 2011 (the audit period), but was extended through April 30, 2012. The extension by the OIG was conducted to further ensure that WMIF was complying with the terms reiterated to them during their meeting with SWA on March 4, 2011, as well as in the subsequent Settlement Agreement.

The SWA Board approved a Settlement Agreement⁵ with WMIF on March 26, 2012. The Settlement Agreement provided that WMIF pay SWA \$719,340.27, and in exchange SWA waived the following:

"...all claims that were brought or could have been brought in connection with the Dispute, from the beginning of the world to the day of these presents."

According to the breakdown of the settlement amount, the \$719,340.27 paid to SWA represented the following:

- | | |
|--|---------------------------|
| • Tip Fee Value of MSW actually diverted during the audit period: | \$303,544.15 |
| • Tip Fee Value of MSW estimated ⁶ to have been diverted: | \$341,496.12 |
| • Cost of the forensic audit: | \$ 74,300.00 |
| | Total \$719,340.27 |

FINDINGS

The OIG's review of electronic records provided by SWA (371,480) and WMIF (329,412)⁷, as well as physical records and witness statements, disclosed the following:

1. The OIG conducted a statistical sampling⁸ of the aforementioned WMIF records, of which 43,494 were classified as rolloff⁹ that were dumped at a non-SWA

⁴ The OIG's review was delayed nearly 6.5 months (in total) due, in part, to delayed production of extensive records by WMIF and SWA. Subsequent reviews of those records by the OIG took approximately 2.5 months.

⁵ It is noted that the Settlement Agreement followed the initiation of the OIG's review.

⁶ Because some records were no longer available, the "estimated" value was based on a projected amount for dumps between October 1, 2005 and September 30, 2008.

⁷ SWA electronic records included all WMIF dumps, regardless of their origination, within Palm Beach County, while WMIF's electronic records were specifically related to pickups they made within their contractual obligations to SWA, regardless of their dump location. All of the records obtained were for the period October 1, 2008 through April 30, 2012.

⁸ The sample was drawn using a 98% confidence level, 1% tolerable error rate, and a 0.49% expected error rate.

⁹ The term "rolloff" refers to a specific type of container capable of holding numerous waste types (e.g., Class III, Construction & Demolition, MSW, Non-friable, and Tires). The waste type dictates where the hauler may dump the waste. Because these containers are capable of holding numerous waste types, each individual dump ticket had to be inspected by the OIG to make a determination.

facility during the period of our Review (October 1, 2008 through April 30, 2012). This sampling yielded a projected 859 MSW dumps and 277 Class III¹⁰ dumps that should have gone to SWA facilities but instead, were taken by WMIF to other dump facilities (including Wheelabrator, WMIF's own energy producing facility) not authorized by SWA for these types of waste. Those dumps resulted in projected losses of \$211,310.29 in tipping fees and \$67,114.80 in energy production,¹¹ a potential combined loss of **\$278,425.09** in revenue to SWA.

2. The OIG review identified 239 of the aforementioned WMIF records which, based on the type of collection equipment (Commercial Frontload, Residential Rearload, Residential Rearload Recycling), should have been dumped at a SWA facility but were taken by WMIF to other dump facilities not authorized by SWA for these types of waste. However, the WMIF dump tickets¹² associated with those records were not located. Those dumps¹³ resulted in estimated losses of \$69,311.48 in tipping fees and \$23,415.10 in energy production, a potential combined loss of **\$92,726.58** in revenue to SWA.
3. During interviews, WMIF Drivers stated their reasons for bringing their MSW dumps to non-SWA facilities:

- Drivers stated that they had been directed by staff at SWA's Delray Beach dump facility not to bring any loads from Rexall Sundown¹⁴ to their location because of the pill dust generated by their (Rexall Sundown's) waste.

SWA Chief Financial Officer Charles Maccarrone stated that SWA had never given WMIF oral or written authorization to take Rexall Sundown's MSW to a non-SWA facility. According to Mr. Maccarrone, it was not until July 2012 that SWA gave WMIF authorization to take Rexall Sundown's waste to another SWA facility.

- Drivers and the Route Manager stated that MSW retrieved from only Boca Raton was taken to non-SWA facilities because SWA facilities were not open until 7:00 a.m.

Contrary to the Drivers' and Route Manager's statements that MSW retrieved from only Boca Raton was taken to non-SWA facilities, the OIG Review found that MSW originating from Atlantis, Boynton Beach, and Manalapan were also taken to non-SWA facilities.

¹⁰ Refers to a combination of waste types acceptable at landfills because they do not pose a threat to public health or the environment.

¹¹ Florida Power and Light reimburses SWA for the energy created by the conversion of waste that it receives.

¹² A hardcopy receipt printed by the dump facility and given to the Driver which contains date, time, weight, and waste type.

¹³ Because those dump tickets were not located, the OIG utilized the tonnage data provided by WMIF.

¹⁴ Rexall Sundown is a nutritional supplement manufacturer located in Boca Raton, Florida.

4. During the course of the OIG Review, WMIF's electronic records indicated they made a total of 30,272 dumps at SWA facilities; however, those dumps were not found in SWA's electronic records. The OIG subsequently conducted a statistical sample of 3,042¹⁵ WMIF's physical records and located a SWA dump ticket for each WMIF record reviewed. The OIG further identified a numbering discrepancy between SWA's own dump tickets and SWA's electronic records. This led the OIG to locating a total of 28,216 SWA electronic records that corresponded to WMIF's electronic records. The remaining 2,033¹⁶ records, if not accounted for by SWA, could result in estimated losses of \$335,762.91 in tipping fees and \$96,400.93 in energy production, a potential combined loss of **\$432,163.84** in revenue to SWA.

ISSUE REVIEWED AND FINDINGS

Issue:

Waste Management, Inc. of Florida diverted trash, belonging to the Solid Waste Authority, to its own facilities, resulting in estimated financial losses of \$371,151.67 to the Solid Waste Authority.

Governing Directives:

§ 403.713, F.S.; and Section 33 of Agreements #09-205, #09-206, and #09-211, between the Solid Waste Authority and Waste Management, Inc. of Florida

Finding:

During the OIG's sampling of the rolloff records, dump tickets disclosed that WMIF Drivers made MSW dumps at WMIF's own facility, Wheelabrator (Pompano Beach, Florida), instead of SWA. During the OIG's interviews¹⁷ of WMIF Rolloff Drivers, who had been identified as making a high volume of MSW dumps at Wheelabrator, former Route Manager, and the Dispatchers associated with those dumps, the following justifications were provided:

- Driver 1 stated that he was paid by the load and by the distance that the load is hauled, but was paid the same whether it was taken to Wheelabrator or SWA. Driver 1 stated that WMIF recently went to an A-H pay scale.¹⁸ Driver 1 further stated that prior to the audit period, because Drivers started their routes at 4:30 a.m. and SWA did not open until 7:00 a.m., their first load was taken to Wheelabrator and all subsequent loads were taken to SWA. Driver 1 indicated

¹⁵ A sample of 3,042 was originally drawn, but the review was halted after the first 311 records located all had SWA dump tickets.

¹⁶ It is noted that there were 2,056 records remaining, of which 23 have been identified by SWA as non-SWA records, leaving 2,033. During the course of the OIG Review, SWA did not locate the remaining tickets.

¹⁷ All of the WMIF Drivers who still work for WMIF, their then Supervisor, the Dispatchers, and WMIF Management that were interviewed by the OIG were represented by Attorney Brennan Donnelly (Tallahassee, Florida). Each interviewee stated that Mr. Donnelly was their personally retained legal representative; however, when asked if they retained Mr. Donnelly with their own personal funds, Mr. Donnelly instructed the interviewees not to answer.

¹⁸ According to WMIF Drivers, the A-H pay scale is how rolloff Drivers are compensated, with "A" being the least amount of compensation and "H" being the greatest. The scale also takes into account the level of difficulty in picking up the rolloff and the distance in which it has to be hauled.

that this was done with permission from his supervisor. Driver 1 acknowledged that he would sometimes take a load after 7:00 a.m. to Wheelabrator because it was more convenient and it would sometimes be with or without his supervisor's permission. Driver 1 also stated that there are approximately five to six rolloff containers at Rexall Sundown (Boca Raton, Florida) that he takes to Wheelabrator instead of SWA because SWA instructed him not to bring it to their facility because of the pill dust generated by Rexall Sundown's waste.

- Driver 2 stated that he is paid by the load and that each load's dump location is dependent upon what is in it, where it can be dumped, and the category of container. Driver 2 stated that MSW from the County goes to SWA. Driver 2 confirmed that in the past, he has hauled MSW to Wheelabrator. Driver 2 further stated that previously, Drivers started at 3:45 a.m. and took their first load to Wheelabrator, but that has since changed (unknown date) and all MSW goes to SWA. Driver 2 stated that if SWA is open, he is required to go to SWA and that he would only take his first load to Wheelabrator if SWA was closed. Driver 2 stated that the only exception to this requirement is regarding any of his waste from Rexall Sundown. Driver 2 stated that he takes their waste to Wheelabrator because of the pill dust.
- Driver 3 stated that he is paid by the load and that the further he goes, the more he gets paid. According to Driver 3, a letter code, A-H, is associated with each dump location. Depending on where you pick up the load and where it is dumped, determines how much a Driver is paid. Driver 3 stated that all garbage goes to SWA and that a special waste load may occasionally be taken to WMIF's Central Disposal Landfill.¹⁹ Driver 3 indicated that he would get paid more to dump at Wheelabrator, but stated that he "might get in trouble as that is too far to drive."
- Driver 4 stated that he is paid by the load and each load has a different price. Driver 4 believed that the price was based on the distance the load is hauled. According to Driver 4, the dump ticket is pre-printed with a letter, A-H, used to represent the amount he is paid; however, Driver 4 stated that he has the option to change the dump location if it is a different type of waste than the ticket indicates, but that it still has to be taken to a SWA-approved facility. Driver 4 stated that he and other Drivers would take their first loads to Wheelabrator because their routes started at 4:30 a.m. and SWA was not yet open. Driver 4 further stated that WMIF paid him a "little more" for this first load to Wheelabrator, instead of SWA, because it was a "little further." After the first load of the day, all garbage went to SWA. Driver 4 stated a notice directing WMIF Drivers to take all their loads to the authorized SWA facility was posted in the Driver's room "a couple of years ago." Since then he had not taken any loads to Wheelabrator.

¹⁹ Any waste not classified as Class III, MSW, or Residential Recyclables may be taken to a non-SWA facility as long as it has been approved by SWA for such disposal.

- Driver 5 stated that he picks up and dumps loads according to the type of waste and that he is paid by the amount of dumps. He is further paid by the level of difficulty per load. Driver 5 stated that the classification, A-H, is predetermined. According to Driver 5, if SWA was backed-up, he called his supervisor for permission to go to Wheelabrator; however, he was paid the same whether he went to SWA or Wheelabrator.
- Driver 6 stated that Rolloff Drivers made better money depending on where you were dispatched and what kind of pickup you were given. Driver 6 stated that dumps were categorized A-H, with A being the lowest reimbursement to the Driver and H being the highest. Driver 6 explained that if he picked up a load of MSW in Delray Beach and dumped it at the SWA facility in Delray Beach, it would be an A. If he took that same load to Pompano, it would be classified as an F or G. Driver 6 indicated that he did not have to wait at the Wheelabrator facility, whereas sometimes he had to wait in line for over an hour at the SWA facilities.
- Dispatcher 1 explained that as a Dispatcher, they were responsible for printing the dump tickets for the Drivers; however, the information contained within the dump ticket was completed by the Setup Department.²⁰ Dispatcher 1 stated that she did not have the authority to make changes to the dump location. According to Dispatcher 1, the Route Manager would have to authorize this type of change following a call-in by phone or radio from the Driver.
- Dispatcher 2 confirmed Dispatcher 1's statement that Dispatchers were responsible for printing dump tickets for Drivers, but that the information contained within the dump ticket was completed by the Setup Department. Dispatcher 2 further confirmed that if a Driver wanted to take their load to a different dump site, the Driver would have to get permission from their Route Manager.
- The former Route Manager stated that as the Rolloff Route Manager, he was responsible for setting up the Driver's routes. Up until a couple of years ago, some of the dump tickets that were printed instructed Drivers to take their loads to Wheelabrator; however, that practice has stopped. According to the Route Manager, some of the Boca Raton Drivers complained that their early start times resulted in closed SWA facilities, so he allowed the Drivers to take their first loads to Wheelabrator. The Route Manager stated that if a dump involved MSW, the Driver would have to obtain his permission. The Route Manager further stated that there was never a time that a Driver could take a load to Wheelabrator without permission. According to the Route Manager, WMIF's pay scale (A-H) is arranged in a zone, the further a Driver drives, the more they are

²⁰ The Setup Department is a component of WMIF responsible for establishing account information, such as, the frequency and location of dumps into WMIF's computer system that produces the hardcopy tickets the Drivers pick up at the beginning of their day.

paid. The Route Manager stated that only Drivers with loads from Boca Raton went to Wheelabrator.

On January 22, 2013, WMIF, through their Authorized House Counsel-Florida, provided a copy of the A-H pay scale and advised that Drivers were not given a premium to take loads to Wheelabrator or to other non-SWA disposal sites.

Statement of Charles Maccarrone, Solid Waste Authority Chief Financial Officer

Mr. Maccarrone stated that SWA field service personnel routinely visit commercial customers for various reasons, to include verifying that the customer has been properly charged by their waste hauler for the services they receive. On one such visit (February 2011), a SWA staff member ran a report that showed irregular MSW dumps to SWA although the customer, located in Service Area 6, was paying WMIF for weekly services. SWA subsequently brought this to WMIF's attention, which set the course for the Settlement Agreement. Mr. Maccarrone advised that following this discovery he and SWA Director of Customer Relations John Archambo met with WMIF (March 14, 2011) to reiterate SWA's flow control. Mr. Maccarrone was informed that WMIF Drivers stated they hauled MSW to Wheelabrator because the SWA facilities were not open when they had their first load of the day. Mr. Maccarrone advised that if a waste hauler picks up waste whose designated dump facility is SWA and the SWA facilities are closed, the waste has to stay on the waste hauler's truck until the SWA facility opens.

Mr. Maccarrone stated that MSW, Class III, and Residential Recyclables must go to a SWA facility and SWA has not given WMIF authorization to dump these types of waste at any location other than SWA facilities. Mr. Maccarrone further addressed WMIF Driver's statements concerning Rexall Sundown. Mr. Maccarrone stated that prior to July 2012, SWA had never given WMIF verbal or written authorization to take Rexall Sundown's MSW to a non-SWA facility. According to Mr. Maccarrone, it was not until July 2012 that SWA gave WMIF authorization to take Rexall Sundown's waste to another facility; however, that authorization only directed Drivers to another SWA facility.

Statement of Mark Hammond, Solid Waste Authority Executive Director

Mr. Hammond confirmed Mr. Maccarrone's statement involving the initial discovery by a SWA staff member and that "flow control" was part of WMIF's subsequent contention with SWA. When asked if WMIF should be aware of "flow control," Mr. Hammond opined "I don't know how they wouldn't know it." Mr. Hammond stated that in response to these issues, the new contract that will be awarded²¹ includes stronger language reiterating SWA's "flow control."

Statement of Glenn Miller, Waste Management, Inc. of Florida District Operations Manager

Mr. Miller advised that he has worked for WMIF for 17 years, with the last 11 months as the District Operations Manager. Mr. Miller explained that all routes have a pre-

²¹ SWA is currently in the process of soliciting bid responses for all service areas for contracts that will begin October 1, 2013.

determined line of travel and Drivers may dump more than once per day, depending on their routes and the type of waste being picked up. Dump tickets, containing an assigned dump location, are produced on a daily basis and given to the Drivers. Mr. Miller stated that SWA has “flow control” of all waste collected within the borders of Palm Beach County; however, Mr. Miller was not aware of authorizations given to Drivers to dump their loads outside of Palm Beach County. Mr. Miller further stated that Drivers would not have to notify dispatch if they were deviating from the assigned dump location. Mr. Miller stated that currently, Drivers cannot change their dump locations and if the dump location is closed, the waste will remain on the truck until the site is open.

RECOMMENDED CORRECTIVE ACTIONS

Based on the OIG’s Review, it is recommended WMIF comply with the Franchise Agreements with SWA and:

1. Ensure that all Drivers are aware of the proper dump locations for all types of waste collected in Palm Beach County.

*WMIF notified the OIG that as a result of the SWA audit, WMIF has taken extensive steps to insure [sic] that the issues that were discovered will not occur again. All dispatch, operations specialists, and route managers were retrained regarding the contractual obligations with the SWA relating to the proper disposal sites and the company reviewed all accounts for accurate disposal locations. The Route Manager and District Manager have had meetings with the drivers to ensure they are reviewing their tickets daily for accurate disposal locations and if there is an error they bring it to management’s attention for either approval or to have the ticket changed to reflect the proper disposal location. There are periodic updates of this training at the driver’s safety meetings as well as through reinforcement from managers and supervisors. Finally all accounts have been reviewed to insure [sic] that the driver’s ticket reflects the appropriate disposal site. **No further action is necessary.***

2. Ensure that written authorizations are obtained from the SWA prior to deviating from any previously designated dump locations. Additionally, ensure that Drivers are aware that written authorizations must be in place prior to any such deviation.

Based on the OIG’s Review, it is further recommended SWA:

1. Review the estimated revenue losses identified in the OIG Review and recoup any and all losses allowable.
2. Review the 2,033 records identified by the OIG and ensure that SWA has been properly compensated by WMIF.

3. Develop and/or enhance a quality assurance process (e.g., exception reporting) that timely assists SWA in identifying abnormalities, such as the one in which initiated the audit and the OIG's subsequent Management Review.

IDENTIFIED, QUESTIONED, AND AVOIDABLE COSTS

Identified Costs: \$371,151.67

Questioned Costs: \$432,163.84

Avoidable Costs: \$317,589.85²²

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, Waste Management, Inc. of Florida and the Solid Waste Authority were provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Management Review within ten (10) calendar days. Their written responses are attached to this report.

On January 22, 2013, SWA provided the following quoted responses, in pertinent parts, to the OIG:

3. *The data reviewed by the OIG covered the period from October 1, 2008 to April 30, 2012. The Authority's settlement with WMI was based on findings for the period October 1, 2008 through April 30, 2011. The Authority is interested to know whether there were any additional diversions during the additional year.*

OIG Response: As part of the OIG's sample, nine instances were identified as being diverted to non-SWA facilities after the audit period (October 1, 2008 through April 30, 2011).

4. *The projected and potential losses are seriously overstated due to the following:*
 - a. *The inappropriate inclusion of lost energy revenues. The OIG should note that throughout the entirety in question the SWA's Renewable Energy Facility was operating at capacity and the Authority was bypassing garbage to the landfill. This waste, had it been delivered to the SWA, would have been landfilled or displaced other material from the plant, which would have been landfilled. As a result, there was no loss in energy revenue.*

OIG Response: According to Mr. Hammond, SWA processes 3,000 to 6,000 tons of waste per day.²³ The average daily WMIF tonnages identified and

²² Because the WMIF contract expires on September 30, 2013, the Avoidable Cost calculation takes into account the remaining 17 months of the contract, in lieu of the standard three year formula.

²³ Reference Mr. Hammond's statement to the SWA Board on February 8, 2012 regarding the proposed WMIF Settlement.

questioned in the OIG Review represent less than half of a percent (0.5%) of 3,000 tons, or less than 15 tons. Because it is impossible for the OIG to speculate as to whether or not garbage would have been bypassed on a particular date in time, OIG figures represent only an estimated potential loss.

- b. *The revenue figures quoted by the OIG reflect gross revenues. Had the SWA received the material, it would have incurred costs to transport and dispose of the material. This was a point raised by WM[F] during the settlement negotiations, but in the interest of reaching a timely settlement, WM[F] subsequently dropped. The SWA's \$719,340 settlement was based on gross revenues, however based on advice from legal counsel, had the matter been litigated, the SWA would likely have been limited to recovery of net revenues.*

OIG Response: Again, OIG figures represent only an estimated potential loss and does not account for SWA's operating expenses and/or potential litigation and is consistent with the previously agreed settlement.

5. *The findings regarding the comparison of records between the Authority and WM[F], particularly as they relate to the remaining unmatched 2,033 records, are based on an incomplete analysis. It is the Authority's belief based on its review that the principal [sic] reason that these records could not be matched is data entry errors on the part of Waste Management, and that with additional effort the vast majority of these records would ultimately be matched up. Nevertheless, the Authority does not believe that such a review should be conducted by the Authority as this would not satisfy the desire for independence.*

OIG Response: The SWA is correct in that the remaining unmatched 2,033 records are incomplete; however, it is noted that 28,216 of the 30,272 SWA electronic records were located by the OIG after identifying discrepancies in SWA's numbering conventions,²⁴ which made it almost impossible for the OIG to match.

The OIG made multiple unsuccessful attempts²⁵ to obtain these records from SWA; however, SWA subsequently advised the OIG that it was unable to account for the requested records. Because neither the OIG, nor SWA, were able to locate and/or identify the remaining records during the Management Review, it was returned to SWA for corrective action.

²⁴ The OIG conducted the physical sampling of the 30,272 WMIF records that did not appear in SWA's electronic records. For each WMIF hardcopy record located in the OIG's physical sample, a SWA hardcopy record was identified. It was at this time that the OIG went back to SWA to attempt to locate their records. SWA originally advised the OIG that their ticket numbers contained eight digits and that the OIG needed to include a leading "0" to force an eight digit number to match WMIF's electronic records to SWA's electronic records. Of the 371,480 electronic records provided by SWA, 266,453 (71.7%) were seven digits or fewer, contrary to SWA's statement.

²⁵ On four separate occasions (between October 24, 2012 and December 17, 2012), the OIG attempted to obtain assistance from SWA in identifying these records with no response. It was not until December 18, 2012, after the OIG notified SWA that the Draft Report was being prepared for release, that SWA responded to the OIG and advised that it could not locate these records.

It is not totally clear to us what the objectives of the OIG were in the review of this case. It was our understanding that the OIG would (1) review the settlement, and (2) determine if WMIF committed fraud.

OIG Response: (1) The OIG's Review included all loads within WMIF's Franchise Agreements (Service Areas 5, 6, and 11) with SWA, excluding the 2,130 dumps previously admitted to by WMIF within the Settlement Agreement. The OIG's Review period not only encompassed October 1, 2008 through April 30, 2011 (the audit period), but was extended through April 30, 2012. The extension by the OIG was conducted to further ensure that WMIF was complying with the terms reiterated to them during their meeting with SWA on March 4, 2011, as well as in the subsequent Settlement Agreement. (2) The OIG's Review did not disclose any fraudulent activities by WMIF.

On January 22, 2013, WMIF provided the following quoted responses, in pertinent parts, to the OIG:

1. *...all references in the draft to WMI or Waste Management, Inc. should be changed to Waste Management Inc. of Florida.*

OIG Response: The OIG report has been corrected accordingly.

2. *We note that your Management Review was for all purposes co-extensive with the audit done by the SWA and paid for by WMIF. WMIF reached an agreement with the SWA settling any amounts that the SWA claimed were owed due to loads that were taken to disposal sites other than SWA sites. It should be noted that WMIF paid the SWA substantially more than your audit cites as the potential combined loss. With regard to that potential amount, it should be clear that such number is contingent on the inability of SWA to account for the dump tickets in the SWA's records.*

OIG Response: The OIG's Review included all loads within WMIF's Franchise Agreements (Service Areas 5, 6, and 11) with SWA, excluding the 2,130 dumps previously admitted to by WMIF within the Settlement Agreement. The OIG's Review period not only encompassed October 1, 2008 through April 30, 2011 (the audit period), but was extended through April 30, 2012. The extension by the OIG was conducted to further ensure that WMIF was complying with the terms reiterated to them during their meeting with SWA on March 4, 2011, as well as in the subsequent Settlement Agreement.

3. *The draft takes substantial time in discussing how are [sic] drivers are paid. It is clear from talking to our employees that all of our drivers who were interviewed told you that they were unsure as to exactly how the pay system worked. Attached is the accurate description of the pay system that was in effect during the time of your audit...Drivers were not given a premium to take loads to Wheelabrator or to other non-SWA disposal sites.*

OIG Response: This information was requested from WMIF's representative (for documentation purposes only) on December 7, 2012, January 2, 2013, and January 7, 2013; however, it was not provided. Regardless of WMIF's actual payment methodology, the OIG's interviews of WMIF Drivers were to gauge their understanding of WMIF's pay scale and whether or not WMIF Drivers were incentivized by such. The OIG's Review has been updated to reflect that WMIF provided this information on January 22, 2013 [see page 7].

4. *The draft indicates that our drivers advised your investigator that SWA personnel told them not to bring Rexall Sundown to SWA facilities due to the dusty nature of the material. An official from SWA advised that formal authorization to take the material outside of the SWA system was not made until July 2012. We do not doubt that. However, the report fails to make clear that SWA personnel at the disposal facilities are the touch-point for our drivers. We believe that operational personnel at the SWA facilities made the statements to our drivers and that our people simply followed those instructions in not delivering the material to SWA facilities.*

OIG Response: SWA Delray Beach Facility (Linton Blvd.) Manager stated that neither he nor his predecessor, or staff members, directed WMIF Drivers to take Rexall Sundown's waste to non-SWA facilities. SWA Delray Beach Facility (State Road 7) Manager stated that he did not have any knowledge of his staff directing WMIF Drivers to take Rexall Sundown's waste to non-SWA facilities.

5. *As a result of the SWA audit, WMIF has taken extensive steps to insure [sic] that the issues that were discovered will not occur again. All dispatch, operations specialists, and route managers were retrained regarding the contractual obligations with the SWA relating to the proper disposal sites and the company reviewed all accounts for accurate disposal locations. The Route Manager and District Manager have had meetings with the drivers to ensure they are reviewing their tickets daily for accurate disposal locations and if there is an error they bring it to management's attention for either approval or to have the ticket changed to reflect the proper disposal location. There are periodic updates of this training at the driver's safety meetings as well as through reinforcement from managers and supervisors. Finally all accounts have been reviewed to insure [sic] that the driver's ticket reflects the appropriate disposal site.*

OIG Response: The OIG has updated the report to include this measure of corrective action.

This Management Review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.



January 22, 2013

Donald J. Balberchak
Director of Investigations – OIG
P.O. Box 16568
West Palm Beach, FL 33416-6568

Dear Mr. Balberchak:

The Authority has reviewed the draft "OIG Management Review: 2012-0019", dated January 11, 2013. The Authority's concerns with the report are summarized as follows, and with regard to Number 5, discussed in further detail below:

1. The report does not state a clear objective.
2. The Authority notes that while the Statement of Charles Maccarrone on Page 5 of 6 makes reference to the "Settlement Agreement", there is no mention of the forensic audit, the scope of said audit, its objectives methods or findings, or the compensation paid to the Authority by WMI totaling \$719,340.
3. The data reviewed by the OIG covered the period from October 1, 2008 to April 30, 2012. The Authority's settlement with WMI was based on findings for the period October 1, 2008 through April 30, 2011. The Authority is interested to know whether there were any additional diversions during the additional year.
4. The projected and potential losses are seriously overstated due to the following:
 - a. The inappropriate inclusion of lost energy revenues. The OIG should note that throughout the entirety of the period in question the SWA's Renewable Energy Facility was operating at capacity and the Authority was bypassing garbage to the landfill. This waste, had it been delivered to the SWA, would have been landfilled or displaced other material from the plant, which would have been landfilled. As a result, there was no loss in energy revenue.
 - b. The revenue figures quoted by the OIG reflect gross revenues. Had the SWA received the material, it would have incurred costs to transport and dispose of the material. This was a point raised by WMI during the settlement negotiations, but in the interest of reaching a timely settlement, WMI subsequently dropped.

The SWA's \$719,340 settlement was based on gross revenues, however based on advice from legal counsel, had the matter been litigated, the SWA would likely have been limited to recovery of net revenues.

5. The findings regarding the comparison of records between the Authority and WMI, particularly as they relate to the remaining unmatched 2,033 records, are based on an incomplete analysis. It is the Authority's belief based on its review that the principal reason that these records could not be matched is data entry errors on the part of Waste Management, and that with additional effort the vast majority of these records would ultimately be matched up. Nevertheless, the Authority does not believe that such a review should be conducted by the Authority, as this would not satisfy the desire for independence.

The following are more detailed comments related to Number 5 above:

The Authority takes exception to the findings reflected in Paragraph 4 on Page 2 of 6 as they relate to the remaining 2,033 records that "if not accounted for by SWA, could result in losses ...". There is no evidence that these records are not in the SWA system, only that the OIG was unable to match them to the SWA database due principally to data entry errors. The Authority strongly believes that had the OIG put forth the additional effort, on a test basis as was done with regard to the 3,042 records statistically sampled (the OIG ceased the analysis after finding 100% of the first 311 tested), or in the manner suggested by the SWA in correspondence on December 18, 2012¹, December 20, 2012² and January 4, 2013³, the vast majority if not all of the remaining 2,033 records would have been accounted for.

Upon the request of the OIG the SWA provided a database of WMI transactions. This database contained more than 371,000 transaction records. Subsequently, during the investigation, the OIG sent a list of more than 30,000 transaction records from the WMI database that it could not match to the SWA database. SWA staff reviewed the list provided by the OIG and determined that many of the transaction numbers in the WMI data lacked the leading zeros⁴. It was later

¹ Email from Charlie Maccarrone to Leo Allen, December 18, 2012, entitled "Unidentified Transactions". The SWA successfully matched the 14 of the first 15 transactions in the list of 2,056 transactions from the WMI database using the date and weight fields and notified the OIG that "the data provided by Waste Management in these cases included data entry errors". These transactions are not reflected as accounted for in the OIG Report.

² Email from Charlie Maccarrone to Leo Allen, December 20, 2012, entitled "FW: SWA dump tickets". The SWA referenced "WMI's flawed data" and the "poor state of accuracy with the data from WMI", and again referenced the successful matching of the transactions referenced in the email of December 18.

³ Email from Charlie Maccarrone to Leo Allen, January 4, 2013, entitled "Waste Management Tx Status P Matches", including the attached email of the same title from Dan Pellowitz to Charlie Maccarrone. The attached email included a list of 97 transactions from the list of 2056 transactions that were an apparent match to "deleted transactions" in the SWA database. These transactions are not reflected as accounted for in the OIG Report.

⁴ SWA transaction numbers consist of eight digits. The first two digits reflect the site, the third the terminal number, and the last five the transaction number. The site numbers for all sites with the exception of the North County Transfer Station and the West Central Transfer Station include a leading zero. The SWA transaction

determined that the SWA data provided to the OIG similarly lacked the leading zeros. The OIG successfully matched 28,216 additional records, leaving 2,056 transaction records.

The OIG subsequently provided the SWA a list of the remaining 2,056 transaction records that it was unable to locate in the SWA database, and requested that the Authority "locate" them. The Authority expressed concerns about doing so because it would compromise the independence of the investigation. Nevertheless, the Authority did make an effort to identify the source of the problem.

The Authority's review of that data uncovered significant data entry errors on the part of WMI, which was communicated verbally and in writing to the OIG on December 18, 2012, December 20, 2012 and January 4, 2012. Because the data entry errors consisted principally of improperly entered transaction numbers, the SWA's primary key, these transactions could not be directly located, but rather required considerable research based on the date and weight to identify a likely match. The SWA's efforts did accomplish the following:

- The January 4, 2013 email identified 97 transactions that match "deleted" transactions, indicating that the record was subsequently updated, yet the OIG Report does not reflect these records as accounted for.
- The January 4, 2013 email brought to the attention of the OIG the "more than 20 transactions" reflecting a disposal facility other than the SWA that were referenced in the OIG Report⁵.
- The January 4, 2013 email directed the OIG to 188 transactions in the WMI database that have N/C in the description, indicating that the loads were likely hauled for the SWA under the SWA's customer number and for which WMI was not charged (N/C). As these were charged to the SWA they would not appear in the database provided by the SWA, which included only transactions charged to WMI.

As stated, the WMI data contains numerous data entry errors that make it virtually impossible to electronically tie these records to the SWA records, making such an effort extremely time consuming, and we believe unnecessary. The following irregularities in the WMI data, along with the previously accounted for "deleted" transactions and "N/C" transactions, in the aggregate impair more than 1,000 of the 2,033 remaining transaction records:

- Transaction field is blank (201)
- Transaction number is 99999999 (31)

numbers are computer generated. The transaction records in the WMI database are hand entered, which is the source of the numerous data entry errors that prevented the OIG from finding a corresponding match in the SWA database.

⁵ Based on the "Disposal Site Nm" field.

- Transaction number has less than seven digits (167)⁶
- Transaction number has greater than eight digits (68)
- Transaction number has seven digits and the first digit is a 1 or 2 (190)⁷
- Transaction number has eight digits and the first is not a 0 or 1 (201)⁸

For the record, the SWA has attempted to match on a random basis using the date and weight fields and successfully found an apparent match in the SWA database in nearly every instance⁹. In nearly every case, the source of the error was a data entry error on the part of WMI or the load in question was charged to another customer's account (SWA or Costco). As the OIG ceased its investigation of the 3,042 transaction sample when it successfully found 100% of the first 311 transactions, the SWA does not believe that a further exercise to individually match more than 2,000 mostly flawed data records is productive or necessary.

As previously stated the SWA, in an effort to assist the OIG in its efforts, has suggested a more efficient methodology that we believe could match the vast majority of the remaining 2,033 transactions using data already in the OIG's possession¹⁰. To date, the OIG has been either unwilling or unable to do so, and the Authority cannot do so without the list of unmatched SWA records in the possession of the OIG.

The evidence clearly indicates that the inability to match the remaining 2,033 records is largely the result of data entry errors on the part of WMI in hand entering the transaction numbers and to a lesser degree the other factors presented. The SWA firmly believes that in not attempting to reconcile the final 2,033 transactions as suggested by the SWA the OIG's analysis is incomplete, and the OIG's speculation of "potential" revenue loss is unsubstantiated, inflammatory, and should be stricken from the OIG Report.

The Authority's objectives have been clear throughout this process. Our goal was to:

- Determine the amount of waste that WMI diverted out of Palm Beach County.
- Seek reimbursement for the lost revenues associated with the diverted waste.
- Implement procedures to prevent this problem from occurring again.

⁶ Transaction numbers in the WMI list of 2,056 records lack leading zeros where appropriate, and in those cases have seven digits.

⁷ Assuming the leading zero is omitted, the first digit in a seven digit transaction number from the WMI database must be a 3, 4, 5, 6, 7, 8 or 9.

⁸ A valid transaction number must begin with a 0, or a 1.

⁹ The SWA cannot state definitively that these are indeed the unmatched transactions without the corresponding list of unmatched SWA records possessed by the OIG.

¹⁰ Email from Charlie Maccarrone to Leo Allen, December 20, 2012, entitled "FW SWA dump tickets". "We believe a more reasonable approach would be to compare any unmatched transactions from the SWA database with the 2,056 unmatched WMI records We recommend that you sort both lists by date to compare numbers of transactions and total load weights for each date for likely matches."

We believe that the settlement agreement between the Authority and WMI achieved these goals.

It is not totally clear to us what the objectives of the OIG were in the review of this case. It was our understanding that the OIG would (1) review the settlement, and (2) determine if WMI committed fraud. The report does not contain any conclusions regarding either of the aforementioned issues.

Sincerely,



Mark Hammond
Executive Director

MH:sjb





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rkaplan@wm.com

January 18, 2013

Office of Inspector General
Investigations Section
PO Box 16568
West Palm Beach, Florida 33416

Re: OIG Management Review 2012-0019

Gentlemen:

This letter is in response to the draft findings in the above referenced Management Review that were forwarded to Glenn Miller at our Boynton Beach office. We have several comments to the document.

- Contracting entity: The draft refers to Agreements # 09-205, #09-206 and #09-211 as being agreements between the Palm Beach County Solid Waste Authority ("SWA") and Waste Management, Inc. This is factually incorrect. These agreements are between the SWA and Waste Management Inc. of Florida ("WMIF"). Waste Management, Inc. has no contract with the SWA and accordingly all references in the draft to WMI or Waste Management, Inc. should be changed to Waste Management Inc. of Florida. For example, on page 1 of the draft report you state that your office reviewed records of WMI. This is incorrect as the records you reviewed were furnished by and are the property of Waste Management Inc. of Florida. Likewise on page 2 the draft report states that your office interviewed "WMI drivers." This is also incorrect as all drivers interviewed are employees of Waste Management Inc. of Florida. There are other multiple instances of incorrectly identified personnel and records that should be corrected.

- Correlation to SWA settlement: We note that your Management Review was for all purposes co-extensive with the audit done by the SWA and paid for by WMIF. WMIF reached an agreement with the SWA settling any amounts that the SWA claimed were owed due to loads that were taken to disposal sites other than SWA sites. It should be noted that WMIF paid the SWA substantially more than your audit cites as the potential combined loss. With regard to that potential amount, it should be clear that such number is contingent on the inability of SWA to account for the dump tickets in the SWA's records.
- Drivers' pay scales: The draft takes substantial time in discussing how drivers are paid. It is clear from talking to our employees that all of our drivers who were interviewed told you that they were unsure as to exactly how the pay system worked. Attached is the accurate description of the pay system that was in effect during the time of your audit. The grids on the left refer to Dolph's Street Atlas of Palm Beach County. Drivers were not given a premium to take loads to Wheelabrator or to other non-SWA disposal sites. This should be corrected in your report.
- Rexall Sundown: The draft indicates that our drivers advised your investigator that SWA personnel told them not to bring Rexall Sundown to SWA facilities due to the dusty nature of the material. An official from SWA advised that formal authorization to take the material outside of the SWA system was not made until July 2012. We do not doubt that. However, the report fails to make clear that SWA personnel at the disposal facilities are the touch-point for our drivers. We believe that operational personnel at the SWA facilities made the statements to our drivers and that our people simply followed those instructions in not delivering the material to SWA facilities.
- Remedial activities: As a result of the SWA audit, WMIF has taken extensive steps to insure that the issues that were discovered will not occur again. All dispatch, operations specialists, and route managers were retrained regarding the contractual obligations with the SWA relating to the proper disposal sites and the company reviewed all accounts for accurate disposal locations. The Route Manager and District Manager have had meetings with the drivers to ensure they are reviewing their tickets daily for accurate disposal locations and if there is an error they bring it to management's attention for either approval or to have the ticket changed to reflect the proper disposal location. There are periodic updates of this training at the drivers' safety meetings as well as through reinforcement from managers and supervisors. Finally all accounts have been reviewed to insure that the driver's ticket reflects the appropriate disposal site.

WMIF takes these contractual obligations very seriously and while mistakes may have been made they occurred without any intent to enhance the revenues of WMIF at the expense of the SWA. The company took the steps outlined above and it believes that the errors will not be repeated in the future.

Sincerely,

A handwritten signature in blue ink, appearing to be 'R. Kaplan', written over a circular stamp or mark.

RONALD M. KAPLAN
Authorized House Counsel- Florida

cc: list

GRIDS	
From	To
3	8
9	12
13	14
15	16
17	23
24	25
26	
27	30
31	34
35	36
37	
38	41
42	47
48	
49	54
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61	68
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131	132
133	135
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137	141
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143	147
148	
149	152
153	156
157	180
161	164
165	170

Atlas-WM (C&D)	Pinas Sun Recycle (C&D)	Central Landfill (C&D)	West Delray	SWA Lantana	SWA 45th St	SWA West tra	SWA Jupiter
F	N/A	H**	N/A	N/A	N/A	N/A	B
D	N/A	H**	N/A	N/A	N/A	N/A	A
C	N/A	H**	N/A	N/A	N/A	N/A	A
D	N/A	H**	N/A	N/A	N/A	N/A	A
C	N/A	H**	N/A	N/A	N/A	N/A	A
C	N/A	H**	N/A	N/A	N/A	N/A	A
C	N/A	H**	N/A	N/A	N/A	N/A	A
C	N/A	H**	N/A	N/A	A	B	A
A	N/A	H**	N/A	N/A	A	N/A	A
B	N/A	H**	N/A	N/A	B	N/A	A
B	B	G**	N/A	B	B	B	N/A
B	C	H**	N/A	N/A	C	B	N/A
A	C	H**	N/A	N/A	A	N/A	A
B	N/A	H**	N/A	N/A	A	N/A	A
A	C	H**	N/A	N/A	C	B	N/A
A	C	G**	N/A	N/A	B	N/A	A
B	C	G**	E	D	C	N/A	D
C	C	G**	N/A	N/A	C	B	N/A
A	A	G**	N/A	C	A	A	C
C	C	G**	N/A	C	C	N/A	D
C	B	G**	N/A	N/A	C	A	N/A
C	A	G**	N/A	N/A	B	A	N/A
B	B	G**	N/A	C	D	A	N/A
B	B	G**	N/A	C	D	B	N/A
C	C	G**	N/A	C	C	C	N/A
C	B	G**	N/A	C	C	A	N/A
C	A	G**	N/A	C	C	A	N/A
A	A	G**	N/A	B	A	A	N/A
B	B	G**	N/A	B	B	B	N/A
C	B	G**	N/A	N/A	F	A	N/A
C	A	F**	N/A	B	C	A	N/A
C	C	F**	N/A	B	C	N/A	N/A
C	C	F**	N/A	B	F	N/A	N/A
C	B	F**	N/A	C	F	B	N/A
C	A	F**	N/A	C	C	N/A	N/A
C	B	F**	N/A	A	C	N/A	N/A
C	C	F**	N/A	A	C	N/A	N/A
C	B	C	B	B	F	A	N/A
C	B	C	B	B	F	A	N/A
C	C	F**	D	C	F	N/A	N/A
C	B	C	D	C	F	A	N/A
C	B	C	B	A	F	A	N/A
C	C	F	E	E	F	N/A	N/A
C	B	C	E	E	F	A	N/A
C	B	C	E	E	F	N/A	N/A
C	C	C	E	E	F	N/A	N/A
C	B	D	F	E	G	E	N/A
C	C	D	F	F	G	F	N/A
C	B	D	F	F	G	D	N/A
C	C	D	F	F	G	N/A	N/A
C	B	D	E	N/A	H	D	N/A
C	B	D	E	D	H	D	N/A
C	B	D	C	N/A	H	D	N/A
C	B	D	C	D	H	N/A	N/A
N/A	D	D	N/A	N/A	F	D	N/A

D* = Compactors that must be brought to Lantana/West Central as Cardboard - City Place and Downtown Palm Beach - D Pubs

** = These would be considered for 'Special Waste' Loads only C&D Loads should be directed to the closest Waste Management owned disposal facility and will not receive additional pay unless authorized and approved by management.

Additional Compensation may be considered for Compactors in areas of heavy congestion and/or considerable travel/work time (Example-Downtown WPB, Palm Beach Western Areas of District 5.)

Special Time is used when there are circumstances that arise that cannot be quantified by a "Grid" Pay System (Example: Excess Delays/Mechanical Failures in excess of 1 hour. Special Time freezes the hourly rate as earned through the productivity formulas to ensure that the employee is not adversely affected by circumstances beyond their control.

A = 18.35
B = 22.09
C = 24.49
D = 28.07

E = 31.68
F = 34.08
G = 43.69
H = 53.29

Delivery = 18.35
Dry Run = 7.20
DNR = 9.18