

City of Miami

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INDEPENDENT AUDITOR GENERAL



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September 20, 2018

Honorable Members of the City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Audit of Waste Connections of Florida, Inc. f/k/a Progressive Waste Solutions of FL, Inc.
Report No. 18-08

Executive Summary

We have completed an audit of selected financial transactions and records of Waste Connections of Florida, Inc., formerly known as Progressive Waste Solutions of FL, Inc. (Progressive), primarily for the period March 1, 2013 through January 31, 2016. The audit was performed to determine whether Progressive complied with applicable sections of the City of Miami (City) Code and the Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement).

During the audit period, Progressive reported gross receipts of \$53,011,310 and monthly franchise fees of \$12,722,715 related to services provided within the City. As a result of our audit, we determined that Progressive underreported its gross receipts by \$2,424,347 and owed an **additional \$1,234,251 in franchise and permit fees, non-payment penalties, and the audit cost.**

In September 2016, we issued Report No. 16-09 under which Progressive paid \$73,666 for audit findings covering February 1, 2015 through January 31, 2016, with the exceptions of findings related to recovered materials from non-rolloff containers and the audit cost. Currently, Progressive owes the remaining \$1,160,585 in fees, penalties, and the audit cost. (See Exhibit 1, page 8). They are in agreement with findings of \$417,525 and have agreed to remit payment of this amount. However, we will continue to work with Progressive to resolve an ongoing disagreement concerning \$656,735 due on hauling of mixed recycling from non-rolloff containers which were misclassified as exempt from Gross Receipts.

It should be noted that on March 16, 2018, the Department of Solid Waste issued Progressive a "Notice of Violation and Possible Termination of Non-Exclusive Commercial Solid Waste Franchise Agreement" for their ongoing refusal to provide requested information which inhibited the City's ability to complete the audit. We subsequently received the information and provided the above findings to Progressive.

Details of our findings and recommendations are included on pages four through seven of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the City's Solid Waste and Finance Departments during the audit.

Sincerely,



Theodore P. Guba, CPA, CIA, CFE
Independent Auditor General
Office of the Independent Auditor General

C: The Honorable Mayor Francis Suarez
Emilio T. Gonzalez, City Manager
Victoria Mendez, City Attorney
Barnaby Min, Deputy City Attorney
Henry Hunnefeld, Senior Assistant City Attorney
Rachel Dooley, Assistant City Attorney
Todd Hannon, City Clerk
Joseph Napoli, Deputy City Manager
Sandra Bridgeman, Chief Financial Officer/Assistant City Manager
Fernando Casamayor, Assistant City Manager
Nzeribe Ihekwaba, Assistant City Manager
Mario Nunez, Director, Solid Waste Department
Erica Paschal, Director, Finance Department
Christopher Rose, Director, Office of Management and Budget
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Sophia Alvarez, Waste Connections of Florida, Inc.
Damian Ribar, Waste Connections of Florida, Inc.
Clifford Guthrie, Waste Connections of Florida, Inc.
Grant Smith, Strategy Smith
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Robyn Sachs, CPA, CIA, CISSP, CISA, MBA
Information Systems Audit Administrator

Work papers reviewed by: Mala Khilnani, CPA, CISA, Assistant to the Director

**AUDIT OF WASTE CONNECTIONS OF FLORIDA, INC. F/K/A
PROGRESSIVE WASTE SOLUTIONS OF FL, INC.**

**MARCH 1, 2013 THROUGH JANUARY 31, 2016
Report No. 18-08**

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SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit was to assess and report on whether Progressive complied with the terms of the Agreement and applicable sections Chapter 22 of the City Code governing the operation of commercial solid waste collection services in the City. The audit primarily covered the period March 1, 2013 through January 31, 2016. The primary objectives of the audit were:

- To determine whether Progressive properly identified and classified the accounts it serviced within the City.
- To ascertain whether all applicable franchise fees, as stipulated in the Agreement, were properly computed and remitted to the City.
- To determine whether “recovered materials” met the exemption standards described in the Agreement, City Code and Florida Statutes.
- To follow up on prior audit findings and determine the status of all unresolved and outstanding issues.
- To recommend corrective actions to address instances of noncompliance with the Agreement and City Code.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit methodology included the following:

- Interviews and inquiries of appropriate personnel.
- Review of applicable provisions within the City Code, Non-Exclusive Commercial Solid Waste Franchise Agreement, and State of Florida legislation.
- Review of the monthly reports submitted by Progressive to the City and Progressive’s billing records, in electronic format, for City recycling and solid waste hauling activity.
- Review of Progressive’s financial, routing, transfer and disposal records for “recovered materials” (non-roll-off) hauling activity within the City.
- Tests of applicable transactions and records.
- Other audit procedures as deemed necessary.

BACKGROUND

Pursuant to request for qualifications No. 222246, the City executed a Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement) with selected haulers, including Progressive, effective from October 1, 2010 through September 30, 2015, with three one-year renewal options through September 30, 2018. On March 14, 2016, the City executed an updated version of the Agreement with all haulers, including Progressive, pursuant to request for qualifications No. 495344; however, the 2010 Agreement was in effect during the audit period.

According to the Agreement, the City shall assess and collect the following fees and costs:

- **Gross Receipts Franchise Fees**: The greater of \$500 or 24% of the Gross Receipts, as defined in the Agreement, generated from accounts within the City, due monthly.
 - **Gross Receipts Definition**: all monies collected from customers resulting from all transactions and activities in the Franchisee's regular course of business and trade, including recycling with the exceptions of recovered materials at commercial establishments as defined in Florida Statute 403.
- **Annual Franchise Fee**: \$8,000 the first year under the Agreement, increased by \$500 each subsequent year.
- **Permit Per Account Fee**: \$75 for each solid waste hauling account and permanent roll-off container active as of October 1st of each fiscal year, of which the franchisee may pass on \$38 to the customer. Temporary roll-off containers placed in service after October 1st must obtain permits valid for 90-day intervals at the prevailing per-account rate, and new accounts acquired after October 1st are subject to the per-account fee.
- **Audit Cost**: If a City audit reveals that a Franchisee under reported gross receipts, and results in additional revenue due the City in the amount of \$20,000 or more, the Franchisee agrees to pay the cost of said audit.
- **Late Payment Penalty**: All late payments of the above-listed fees will cause the franchisee a one and one half percent (1.5%) penalty per month on the balance payable to the City.

During the fiscal year ended September 30, 2016, commercial haulers (11 franchisees) remitted approximately \$15.2 million in fees to the City. A separate audit report will be issued for each of the haulers audited; this report describes whether Progressive complied with the Agreement and applicable sections of the City Code.

Progressive reported gross receipts of \$53,011,310 and monthly franchise fees of \$12,722,715 related to services provided within the City during the audit period (March 1, 2013 through January 31, 2016). In order to determine whether the City received all franchise fees due from Progressive under the Agreement, we reviewed Progressive's monthly reports submitted to the City's Finance Department as well as Progressive's billing records and list of Miami-Dade County customers.

We also reviewed Progressive's countywide customer list to verify which accounts were serviced within the geographic boundaries of the City. To determine an account's service location, we utilized the Miami-Dade County Property Appraiser website and Google Maps.

To determine whether Progressive properly classified their recovered materials hauling, we reviewed relevant financial, routing, transfer and disposal records, and determined if the hauling was in compliance with the Agreement and City Code. We also requested the Office of the City Attorney (OCA) to opine on how to determine whether hauling activity is exempt from franchise fees for being recovered materials based on the Agreement, City Code and Florida Statutes. The OCA's opinion on this issue supports our recovered materials-related findings.

On March 16, 2018, the Department of Solid Waste issued Progressive a ***“Notice of Violation and Possible Termination of Non-Exclusive Commercial Solid Waste Franchise Agreement”*** for their ongoing refusal to provide requested information which inhibited the City's ability to complete the audit. We subsequently received the information and provided our findings to Progressive.

It should be noted that in September 2016, we issued Report No. 16-09 under which Progressive paid \$73,666 for audit findings covering February 1, 2015 through January 31, 2016, with the exceptions of findings related to recovered materials from non-rolloff containers and the audit cost. Currently, Progressive owes the remaining \$1,160,585 in fees, penalties, and the audit cost. (See Exhibit 1, page 8). They are in agreement with findings of \$417,525 and have agreed to remit payment of this amount. However, we will continue to work with Progressive to resolve an ongoing disagreement concerning \$656,735 due on hauling of mixed recycling from non-rolloff containers which were misclassified as exempt from Gross Receipts.

AUDIT FINDINGS AND OVERALL RECOMMENDATION

Overall, Progressive's controls and procedures require strengthening to ensure compliance with the Agreement and City Code. Improvement is needed to ensure that all franchise fees collected from City customers are remitted; all monies collected from City customers are included in gross receipts; remittances are made timely; all accounts located within the City are identified and reported; and recovered materials are handled in accordance with exemption standards.

As a result of these deficiencies, Progressive underreported its City gross receipts by \$2,424,347, and currently **owes the City \$1,160,585** in franchise fees, late payment penalties, and audit costs. (See Exhibit 1, page 8).

Details of our findings and recommendations follow:

FINDING 1: MONTHLY FRANCHISE FEES WERE COLLECTED FROM CITY CUSTOMERS BUT NOT REMITTED TO THE CITY

According to Section 5.2 of the Agreement, "Franchisee agrees to remit monthly to the City, twenty four percent (24%) of its Gross Receipts, generated from accounts within the City limits, or \$500, whichever is greater. [...] Failure to remit by the last day of the following month will cause the Franchisee a one and one half percent (1.5%) penalty per month on the balance due."

Detailed review and reconciliation of the individual transactions supporting Progressive's monthly franchise fee payment reports, we found that Progressive collected \$51,097 in 24% Franchise Fees for services provided to City customers but did not remit them to the City. As a result, these Franchise Fees are due to the City, as well as late payment penalties of \$44,055 (total **\$95,152**).

FINDING 2: ACCOUNTS LOCATED WITHIN THE CITY WERE UNREPORTED

According to Section 5.2 of the Agreement, Franchisees must remit Franchise Fees equal to 24% of their Gross Receipts collected from City customers, and late payments of these Fees will result in 1.5% late payment penalties per month.

We obtained Progressive's database of City accounts and compared it to the detailed support for their Monthly Franchise Payments. We found accounts with Gross Receipts of \$145,829 were included in the database of City accounts but were excluded from the Monthly Franchise Fee payments. As a result, Franchise Fees of \$34,999, plus late payment penalties of \$31,149 were due (total \$66,145). Under Report No. 16-09, Progressive remitted \$917 in Franchise fees and late payment penalties of \$198 concerning this finding; **\$65,030 remains due**.

Section 5.6 of the Agreement states, "for each new commercial account and new roll-off container acquired after October 1, the Franchisee agrees to remit \$75.00 for the new account including \$75.00 for each roll-off placed in the City. The remittance must be to the Finance Department by the end of the following month. [...] All late payments of this fee will cause the Franchisee a one and one half percent (1.5%) penalty per month on the balance due."

On the aforementioned unreported City accounts, permit fees of \$6,825 plus late payment penalties of \$5,622 were due (total \$12,447). Under Report No. 16-09, Progressive remitted \$975 in permit fees and late payment penalties of \$176 concerning this finding; **\$11,296 remains due.**

FINDING 3: ANNUAL AND MONTHLY FRANCHISE FEES AND PERMIT FEES WERE PAID LATE

Section 5.4 of the Agreement states, "Franchisee agrees to remit to the City annually (due October 1) the sum of \$8,000 for the right to be a franchisee for Commercial Solid Waste Services within the City; said fee shall increase annually by \$500. Failure to remit the required annual franchise fee by the due date will cause the franchisee a one and one half percent (1.5%) penalty per month on the balance due."

Progressive remitted the Annual Franchise Fees for fiscal years 2015 (\$10,000) and 2016 (\$10,500) late by three and two months, respectively. As a result, late fees of \$450 and \$315 were due. Under Report No. 16-09, Progressive remitted payment of the \$315 late fee related to fiscal year 2016, however, for late payment of the fiscal year 2015 fee, **\$450 remains due.**

Section 5.6 of the Agreement states, "Franchisee agrees to remit to the City annually a Permit Per Account Fee in the amount of seventy-five (\$75.00) (due October 1) for each account and each roll-off effective October 1st of every new fiscal year. All late payments of this fee will cause the Franchisee a one and one half percent (1.5%) penalty per month on the balance due."

Progressive remitted payment of the Annual Permit Per Account Fee for fiscal years 2015 (\$480,525) and 2016 (\$476,550) three and two months late, respectively. As a result, late fees of \$21,624 and \$14,297 were due. Under Report No. 16-09, Progressive remitted payment of the \$14,297 late fee related to fiscal year 2016, however, for late payment of the fiscal year 2015 fee, **\$21,624 remains due.**

Section 5.2 of the Agreement states, "Franchisee agrees to remit monthly to the City, twenty four percent (24%) of its Gross Receipts, generated from accounts within the City limits, or \$500, whichever is greater. [...] Failure to remit by the last day of the following month will cause the Franchisee a one and one half percent (1.5%) penalty per month on the balance due."

Progressive remitted the January 2015 Monthly Franchise Fee payment of \$380,133 one month late. As a result, late fees of **\$5,702 are due.**

The total of these late fees remaining due is $(\$450 + \$21,624 + \$5,702) = \mathbf{\$27,776}$.

FINDING 4: CITY OF MIAMI CUSTOMER ACCOUNTS WERE MISCODED AS EXISTING OUTSIDE THE BOUNDARIES OF THE CITY

According to Section 5.2 of the Agreement, "Franchisee agrees to remit monthly to the City, twenty four percent (24%) of its Gross Receipts, generated from accounts within the City limits, or \$500, whichever is greater. [...] Failure to remit by the last day of the following month will cause the Franchisee a one and one half percent (1.5%) penalty per month on the balance due."

Our review of Progressive's Miami-Dade County customer listing showed that Progressive miscoded customers located within the City as non-City. As a result, Progressive excluded revenue of \$196,825 from Gross Receipts and 24% monthly franchise fees of \$47,238 and non-payment penalties of \$24,408 were due (total \$71,646). Under Report No. 16-09, Progressive remitted payment of \$20,967 in 24% monthly franchise fees and \$3,774 in late fees, however, **\$46,905 remains due.**

FINDING 5: SOLID WASTE SERVICES WERE MISCLASSIFIED AS EXEMPT MATERIALS AND EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE PAYMENTS

The Agreement defines Gross Receipts in Article II Definitions, 2.2. as "all monies, whether paid by cash, check, debit or credit, collected from customers resulting from all transaction and activities in the Franchisee's regular course of business and trade including garbage, industrial, solid waste [...] construction and demolition debris, trash, litter, maintenance, compactors [...] recycling (excluding recovered materials at commercial establishments as defined by section 403.7046, Florida Statutes)."

Florida Statute 403.703 defines recovered materials as "metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste." The Statute also states that recovered materials are not considered source separated when they "contain more than 10 percent solid waste by volume or weight."

As previously stated, according to Section 5.2 of the Agreement, "Franchisee agrees to remit monthly to the City, twenty four percent (24%) of its Gross Receipts, generated from accounts within the City limits, or \$500, whichever is greater. [...] Failure to remit by the last day of the following month will cause the Franchisee a one and one half percent (1.5%) penalty per month on the balance due."

Through review of Progressive's billing records, we found that they excluded from Gross Receipts monies related to hauling of "recovered materials." To determine whether these monies were properly excluded from Gross Receipts (i.e., if the hauling was in compliance with the Agreement and Florida Statutes concerning recovered materials), we reviewed relevant financial, routing, transfer and disposal records. Also, we requested the Office of the City Attorney (OCA) to opine on how to determine whether hauling activity is exempt from franchise fees for being recovered materials based on the Agreement, City Code and Florida Statutes. The OCA's opinion on this issue supports our recovered materials-related findings.

For Progressive's hauling of roll-off containers (i.e., large containers that are not on a collection route) excluded from Gross Receipts, we found that revenue of \$500,435 should not have been excluded, and 24% monthly franchise fees of \$120,104 and late payment penalties of \$83,309 were due (total \$203,413). Under Report No. 16-09, Progressive remitted payment of \$26,821 in 24% monthly franchise fees and \$5,226 in late fees, however, **\$171,366 remains due.**

For hauling of recovered materials from containers on collection routes (i.e., smaller containers and 96-gallon totes), we reviewed Progressive's routing, transfer, and disposal records and found that this activity was 1) serviced by a solid waste route rather than a recycling hauling route, or 2) disposed of at a landfill or at a transfer station. We determined that revenues of \$1,581,259 should not have been excluded from Gross Receipts. As a result, 24% monthly franchise fees of \$379,502 and \$277,233 in non-payment penalties, totaling **\$656,735 remain due**.

FINDING 6: AUDIT COST

Article VI Audit and Inspection Rights, paragraph 6.2 of the Agreement states, "if a City audit reveals that Franchisee under reported gross receipts, and results in additional revenue due the City in the amount of \$20,000 (per fiscal year) or more, Franchisee agrees to pay the cost of said audit." The cost of auditing Progressive for the period March 1, 2013 through January 31, 2016 is \$86,325 and is due.

OVERALL RECOMMENDATION:

We recommend that the Finance Department bill, and Progressive immediately remit, the total additional fees and penalties due to the City as outlined on Exhibit I on page eight (**\$1,160,585**).

EXHIBIT I: SCHEDULE OF AMOUNTS DUE FROM PROGRESSIVE WASTE

AUDIT OF PROGRESSIVE WASTE SOLUTIONS OF FL, INC.

MARCH 1, 2013 THROUGH JANUARY 31, 2016

Report No. 18-08

Findings		Gross Receipts	Franchise Fees (FF) Due	Penalties on FF Due	Total Due	FF Paid in Report 16-09	Penalties Paid in Report 16-09	Balance Due
1	Unremitted Franchise Fees	-	51,097	44,055	95,152	-	-	95,152
2	Unreported Revenue	145,829	34,999	31,146	66,145	(917)	(198)	65,030
	Permits Fees Due	-	6,825	5,622	12,447	(975)	(176)	11,296
3	Late Fees Due	-	-	42,388	42,388	-	(14,612)	27,776
4	Miscoded Accounts	196,825	47,238	24,408	71,646	(20,967)	(3,774)	46,905
5.a	Misclassified Roll-Offs	\$ 500,435	\$ 120,104	\$ 83,309	\$ 203,413	\$ (26,821)	\$ (5,226)	\$ 171,366
	Subtotal Due:							\$ 417,525
5.b	Misclassified Non-Rolloffs	1,581,259	379,502	277,233	656,735	-	-	656,735
6	Cost of the Audit	-	-	-	86,325	-	-	86,325
	Grand Total:	\$ 2,424,347	\$ 639,764	\$ 508,161	\$ 1,234,251	\$ (49,680)	\$ (23,986)	\$ 1,160,585

Notes:

- 1) The total paid in Report #16-09 was \$73,666 (\$49,680 + \$23,986), issued on September 30, 2016.
- 2) Progressive has agreed with the **Subtotal Due** of \$417,525 however, we have not reached agreement with the amounts due of \$656,735 concerning recovered materials from non-rolloff containers. We will continue to work with Progressive to resolve this ongoing disagreement.
- 3) Penalties on Franchise Fees due are calculated as of September 2018 and continue to accrue at 1.5% per on unpaid balances pursuant to the Non-Exclusive Commercial Solid Waste Franchise Agreement.