



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: January 5, 2022
AUDIT: Ojito Waste Systems, Inc. Roll-off Fee Revenues Audit
OIG No. 21-26
PERIOD: January 1, 2017 through December 31, 2020

This report is the result of an audit performed of the roll-off fees charged, collected, and remitted to the City by Ojito Waste Systems, Inc. (Ojito Waste) from January 1, 2017 through December 31, 2020 and the City's processing of these payments. In addition, the Office of the Inspector General (OIG) Sanitation Tax Auditor determined the contractor's compliance with selected provisions in the City Code, including the obtaining of annual Business Tax Receipts (BTRs), filing required reports, and maintaining sufficient insurance coverage.

INTRODUCTION

A roll-off is defined as a container with a minimum capacity of ten cubic yards designed to be transported by a motorized vehicle. These containers are used by contractors for the collection and disposal of construction and demolition debris and/or large quantities of trash and/or bulky waste, but not garbage or commercial refuse. Bulky waste represents large items of household refuse, such as appliances, furniture, accumulations from major tree cutbacks, large crates and like articles, while commercial refuse consists of all solid waste produced by commercial establishments.

The City's licensing and permitting system, EnerGov, listed twelve roll-off contractors on March 31, 2021 with their 2020/21 fiscal year BTRs in "active" status and another three contractors in "pending" status. "Pending" status means that the BTR is not yet valid or active, and is missing needed documentation and/or payment in full. The number of roll-off contractors frequently changes, either upward as new contractors abide by the City's guidelines and obtain their BTRs, or downward as contractors merge or stop conducting business in Miami Beach and do not renew their BTRs.

Roll-off contractors operating in Miami Beach are required to follow the terms outlined in the City Code, which include the monthly remittance of roll-off fees equal to the City Commission approved rate (18% from the beginning of the audit period through September 30, 2019, and 20% for the remainder of the audit period) multiplied by the total gross receipts for each contractor's City operations. City Code Section 90-221 defines gross receipts as the entire amount of fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the City, excluding any taxes, and gross receipts from servicing roll-off and

portable containers.

City Code Section 90-278(4) requires that monthly reports, accompanied by payment of any owed fees, are to be submitted to the City's Finance Department by all authorized contractors at the end of the month after the month in which the gross receipts were generated. For example, the monthly report and any associated roll-off permit fees owed for February 2021 are due by March 31, 2021. Any unpaid fees that are not timely received are subject to penalties of 10% per month up to a maximum of 50%, plus interest of 1% per month.

City Code Section 90-278(3) requires that each roll-off contractor provide the City Manager with a current list of the names and addresses of each account upon its initial application. Upon any application for renewal of its permit, each contractor must provide the frequency of service, the permit number and capacity of each roll-off container or dumpster for each account, and the address serviced by each roll-off container or dumpster. This list of accounts is typically furnished concurrently with the monthly report to the Finance Department and is essential in verifying the accuracy of the roll-off contractor's filings during the audit process.

When the roll-off contractor has annual gross receipts reported to the City over \$200,000.00, it shall deliver to the City's Finance Department a statement of annual gross receipts generated from accounts within the City for the preceding fiscal year, prepared by an independent Certified Public Accountant (C.P.A.). These statements of annual gross receipts are to be furnished within sixty days following the close of the roll-off contractor's fiscal year pursuant to City Code Section 90-278(4). Ojito Waste Systems Inc. did not exceed this annual threshold during the audit period, and, therefore, did not have to submit this statement.

Lastly, City Code Section 90-196 details the required insurance coverage that must be maintained to assure that Miami Beach citizens have safe, efficient, sanitary, and qualified licensed contractors.

OVERALL OPINION

The OIG Sanitation Tax Auditor became aware that Ojito Waste was performing roll-off services on Miami Beach despite not complying with the City Code regarding the submittal of required reports, remitting roll-off permit fees due, etc. Once contacted, Ojito Waste management fully cooperated and provided all the requested documentation needed to perform this audit. As a result, it was determined that the contractor owes the City a significant amount of money for roll-off permit fees, BTRs, and Code Compliance violations.

As all parties were waiting for the requested Legal Opinion and the amount of the final assessment, the contractor began taking the needed steps toward compliance with the City. It has remitted \$1,707.54 to receive its 2016/17, 2017/18 and 2018/19 fiscal year BTRs and another \$25,366.65 in roll-off permit fees for January 2021 through October 2021 (outside the stated audit period).

The following deficiencies were noted during the audit:

1. Gross receipts totaling \$220,929.77 were not reported to the City, which resulted in unpaid roll-off permit fees due to the City of \$59,706.13 (including penalties and interest). In addition, the contractor has remitted a total of \$25,366.65 in roll-off permit fees for the period of January 2021 through October 2021.

2. The roll-off contractor did not notify the Finance Department's Licensing Section that it started conducting roll-off services in Miami Beach in January 2017, which was approximately 2 ½ years prior to obtaining its 2018/19 BTR on May 8, 2019. Also, Ojito Waste incorrectly received its 2020/21 fiscal year BTR despite not paying a \$100.00 Code Compliance violation, issued in April 2020, that was timely recorded in the Munis system and in a second Finance Department issued contact number.
3. Ojito Waste did not timely submit its list of accounts required by City Code Section 90-278(3); however, the list was provided upon request, and was accurately reconciled with the positive confirmation letters returned by Miami Beach customers.

PURPOSE

The purpose of this audit was to determine whether tested roll-off contractor filings were complete and accurate; whether corresponding remittances were correctly calculated using the City Commission approved roll-off permit fee rate; whether these filings and monies were timely received and accurately recorded by the City; and whether the contractor was compliant with other designated City Code sections.

SCOPE

1. Confirm that the roll-off contractor maintained sufficient records to verify that its tested permit fee billings were correct; and that its corresponding Miami Beach gross receipts were correctly computed based on the monthly fees submitted to the City.
2. Confirm that the roll-off contractor timely submitted its tested monthly reports of gross receipts and remitted full payment of fees owed to the City.
3. Confirm that the roll-off contractor timely obtained its required annual BTRs during the audit period.
4. Confirm that the roll-off contractor complied with reporting requirements listed in City Code Section 90-278 during the audit period.
5. Confirm that the roll-off contractor maintained the required insurance coverage pursuant to City Code Section 90-196 during the audit period.
6. Confirm that tested monthly roll-off fee payments remitted were accurately recorded in the City's Financial System.

FINDINGS AND RESULTS/RECOMMENDATIONS

1. **Finding – Unreported Roll-off Permit Fees Totaling \$59,706.13 (Including Penalties and Interest) Are Due To The City**
City Code Section 90-221 defines gross receipts as "*the entire amount of the fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the city and including, without limitation, but excluding any taxes, and gross receipts from servicing roll-off and portable containers.*" The OIG Sanitation Tax

Auditor reviewed all contractor furnished documentation to determine the amount of monthly roll-off gross receipts occurring within the City during the January 1, 2017 through December 31, 2020 audit period. As Ojito Waste did not previously submit any monthly reports or remit any roll-off permit fees to the City during the audit period, all identified applicable transactions occurring within Miami Beach represent unreported gross receipts. The OIG initially calculated that a total of \$71,363.55 in roll-off permit fees is due to the City (including penalties and interest) related primarily to the delivery of containers, pick-up and disposal, overloaded yards, loaded yards and container removals.

As Ojito Waste continued performing roll-off services within Miami Beach after the audit period, the OIG Tax Auditor met with the contractor on May 6, 2021 to help calculate the amount of roll-off permit fees due for January 2021 through April 2021. As a result, Ojito Waste remitted the required monthly reports and payment totaling \$8,292.84.

Upon receipt of the draft audit report, Mr. Henry Ojito, Manager of Ojito Waste, met with OIG staff on June 30, 2021 to discuss the findings and to request a revision of the audit findings related the inclusion of Miami Beach recycling transactions in the assessment. He explained that vegetation debris, collected on Miami Beach, was taken to a designated recycling facility for disposal, at a greater distance and higher cost to his company, to create fertilizer and energy. Additional documentation was requested from Mr. Ojito to substantiate these claims, which was subsequently provided by the roll-off contractor.

In addition, the OIG requested a Legal Opinion from the Office of the City Attorney concerning the taxability of these recycling transactions. On December 12, 2021, the Office of the City Attorney responded that Ojito Waste's vegetation disposal satisfies the City Code stated definitions for recycling, recyclable materials, recycling container and recycling contractor, and are exempt from the City's roll-off permit fees.

The furnished Legal Opinion also stated that Ojito Waste needs to be licensed by the City and the State to collect recyclable materials and to transport these materials to State or County licensed recycling facilities for processing or be subject to BTR violations from the City's Code Compliance Department. Since a hold was previously placed on Ojito Waste's 2021/22 fiscal year BTR pending on the outcome of this audit, this item needs resolution before the current fiscal year's BTR is issued.

OIG staff subsequently revised the roll-off contractor's assessment, based on the Legal Opinion received, whereby it was calculated that \$59,706.13 in roll-off permit fees is due to the City (including penalties and interest), as shown in the following table.

<i>Period</i>	<i>Unreported Gross Receipts</i>	<i>Roll-Off Fee Rate *</i>	<i>Roll-Off Fees Due</i>	<i>Penalties **</i>	<i>Interest **</i>	<i>Total Amount Due</i>
<i>Jan. 2017 – Dec. 2017</i>	\$50,173.97	18%	\$9,031.32	\$4,515.72	\$3,150.27	\$16,697.31
<i>Jan. 2018 – Dec. 2018</i>	\$24,787.00	18%	\$4,461.66	\$2,230.86	\$1,022.29	\$7,714.81
<i>Jan. 2019 – Sept. 2019</i>	\$34,668.50	18%	\$6,240.33	\$3,120.21	\$632.66	\$9,993.20
<i>Oct. 2019 – Dec. 2019</i>	\$16,552.50	20%	\$3,310.50	\$1,655.25	\$199.96	\$5,165.71
<i>Jan. 2020 – Dec. 2020</i>	\$94,747.80	20%	\$18,949.56	\$1,074.83	\$110.71	\$20,135.10
<i>Totals</i>	\$220,929.77		\$41,993.37	\$12,596.87	\$5,115.89	\$59,706.13

* City Commission approved roll-off permit fees were equal to 18% from the beginning of the audit period, January 1, 2017, through September 2019 and 20% from October 1, 2019 through the end of the audit period, December 31, 2020.

** Penalties and interest were waived and not charged for late payments received during the period of March 1, 2020 through November 30, 2020 required by City Resolutions No. 2020-31237 and 2020-31390.

As all parties waited for the Legal Opinion and the issuance of the final audit report, Ojito Waste has remitted additional monthly roll-off fees totaling \$17,073.81 for the period of May 2021 through October 2021.

Recommendations:

The Chief Financial Officer should instruct staff to invoice Ojito Waste \$59,706.13 for unreported roll-off fees, including penalties and interest, from transactions occurring between January 1, 2017 and December 31, 2020. Once received, the roll-off contractor should timely remit full payment to avoid additional disciplinary actions pursuant to the City Code. In addition, the roll-off contractor's 2021/22 fiscal year BTR should not be issued until the audit assessment is paid in full or the desired payment agreement is finalized.

Finance Department Response:

The Finance – Revenue Division created invoice # 31747 on June 9, 2021 in the amount of \$71,363.55 based on the received draft report. Since the assessment has been revised, an invoice adjustment is being processed that will reduce the invoice amount from \$71,363.55 to \$59,706.13.

2. Finding – The Contractor Did Not Timely Obtain its 2016/17, 2017/18 And 2018/19 Fiscal Years BTRs, And It Incorrectly Received Its 2020/21 Fiscal Year BTR Despite Owning Monies Related to Code Compliance Violation Number SV2020-13319

City Code Section 102-356 defines business tax as the fees charged for which the City grants the privilege of engaging in or managing any business, profession, or occupation within the city's jurisdiction. Furthermore, Section 102-360 states, "Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year" and Section 102-370 explains "(a) The city shall endeavor to notify all business tax receipt holders that their business tax receipts are due for renewal. However, if the taxee does not receive a renewal notification, the taxee is responsible to renew the business tax prior to October 1 to avoid delinquent charges."

In addition, Section 90-192 states, "(a) No person shall engage in the business of disposal

and/or collection of any kind of solid waste, or recyclable material within the city without first having been approved by the city manager, and having secured a current business tax receipt for such activity.” Section 90-278(7) states, “In order to effectively provide for the collection of the permit fee by the contractor to the city, any person seeking to renew his/her annual business tax receipt pursuant to the provisions of chapter 102, article CV, in addition to the requirements contained therein, shall provide to the finance director evidence of payment of all outstanding permit fees, fines and other charges as a condition to reissuance or renewal of the business license.” Lastly, Section 102-377 states, “(a) Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the offense which shall have a civil fine of \$1,000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d) herein. (d) In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

Upon request, Ojito Waste provided accounting records to the OIG Sanitation Tax Auditor showing that it continuously performed roll-off services in Miami Beach from January 2017 through December 2020. Therefore, pursuant to the City Code, the contractor was required to obtain its 2016/17, 2017/18, 2018/19, 2019/20 and 2020/21 fiscal years’ BTRs from the Finance Department Licensing Section, pursuant to the City Code. OIG’s review of the EnerGov system, the City’s licensing and permitting system, determined the following concerning the contractor’s obtaining of BTRs:

Fiscal Year	License/BTR #	License/BTR Status	License/BTR Fee Status
2016/17		Not Billed	Unpaid
2017/18		Not Billed	Unpaid
2018/19	BTR006564-05-2019	Issued	50% Payment
2019/20	BTR006564-05-2019	Issued	Paid in Full
2020/21	BTR006564-05-2019	Active	Paid in Full

In sum, the Finance Department’s Licensing Section was unaware that the contractor was performing roll-off services within Miami Beach since January 2017, and did not obtain its BTRs for 2016/17 and 2017/18 fiscal years. In addition, Ojito Waste did not submit monthly reports of gross receipts or any roll-off permit fees due to the City during either of those fiscal years.

Although the roll-off was placed and was being serviced by Ojito Waste, its employees were not present at the job site when the City’s Code Compliance Department issued violation SV2019-08174 for \$100.00. Instead, the violation was hand delivered to Ultimate Contractors Inc. personnel on April 4, 2019, for using a roll-off container at 4600 Prairie Avenue without obtaining a permit.

Neither Ultimate Contractors Inc. nor Ojito Waste had a BTR for roll-off activities at that time. While violation SV 2019-08174 was paid in full on May 3, 2021, Ojito Waste was able to obtain its 2018/19 fiscal year BTR because the unpaid \$100.00 violation was issued to Ultimate Contractors Inc. Following the Code Compliance Officer’s issued violation, Ojito Waste initiated the BTR process with the City’s Licensing Section whereby it was invoiced a \$45.00 Business License Application Fee and a \$348.00 (50% of \$696.00) roll-

off permit fee (Occ. Code 95008400 Fee). The roll-off permit fee was pro-rated to 50%, because the fiscal year was approximately half-over and the contractor did not inform the City that it had been performing roll-off services since January 2017. Once all the licensing requirements were satisfied, the contractor was issued its 2018/19 fiscal year BTR on May 8, 2019.

In addition, the contractor complied with the City's licensing requirements and remitted a total of \$1,462.00 to the City on July 25, 2019 (\$731.00) and January 26, 2021 (\$731.00) respectively to obtain its 2019/20 and 2020/21 fiscal year BTRs.

Furthermore, the OIG Sanitation Tax Auditor reviewed the EnerGov system and found that Ojito Waste was incorrectly assigned two different contact numbers, 65012 and 82957. Finance Department personnel assign a unique contact number to identify a customer (roll-off contractor) as each customer should have one unique contact number. The creation of more than one contact number in the EnerGov system can create confusion, as roll-off permits, Code Compliance violations, etc. may be entered under either number. Consequently, the reviewer must be cognizant of all contact numbers in existence and review them in their totality to determine if there are any outstanding balances due.

Although customer number 65012 contained a \$0.00 outstanding balance and there were no additional monies due, contact number 82957 contained an unpaid \$100.00 balance from an April 13, 2020 violation (SV2020-13319) issued to Ojito Waste for placing a roll-off container at 4600 Prairie Avenue without a permit. In a telephone conversation with the Code Compliance Manager, he stated that the violation was hand-delivered to construction personnel on the job site, who should have notified their superiors and Ojito Waste. However, it was agreed that there is no way to establish when Ojito Waste was notified of this hand-delivered violation.

The Code Compliance Officer entered the issued violation in April 2020 in the EnerGov system. However, City Bill 256946 was not created and mailed to the contractor until October 15, 2020 by an Office Associate IV in the Code Compliance Department. The delay was apparently caused by the time allotted for the appeal process and the violation being reviewed/approved by departmental management. This \$100.00 violation remains unpaid as of the conclusion of this audit. Similar lengthy delays by the Code Compliance Department in preparing City Bills invoicing violators would predictably result in delayed payments to the City.

Furthermore, the Licensing Section incorrectly issued Ojito Waste its 2020/21 BTR as the outstanding \$100.00 violation should have been paid in full before the BTR was issued. It is uncertain whether this outstanding balance was not detected because it was recorded under a second contact number or because City personnel do not check the EnerGov system for outstanding balances before the renewal.

Once notified by the OIG of the contractor's missing BTRs, the Licensing Section billed Ojito Waste a total of \$1,707.00 (\$663.00 for its 2016/17 fiscal year BTR + \$696.00 for its 2017/18 BTR + .50(\$696.00) for the remaining portion of its 2018/19 BTR).

Results/Recommendations:

On May 6, 2021, Ojito Waste remitted \$1,707.00 and obtained its 2016/17, 2017/18, and 2018/19 BTRs from the Licensing Section. In addition, Ojito Waste should promptly remit the \$100.00 due related to Code Compliance violation SV2020-13319.

The Finance Department should only create one contact number per legal entity in the EnerGov system to avoid confusion regarding undetermined outstanding balances due. The Licensing Section should properly review all issued contact numbers and the EnerGov system's entries to determine whether any outstanding balances are due before issuing a BTR. Lastly, the Code Compliance Department should timelier process its future violations to facilitate compliance.

Sanitation Division Response:

The Sanitation Division of Public Works will request the roll-off contractor to provide a copy of their local Business Tax Receipt (BTR) at the outset of the contract before beginning operations. Thereafter, we will verify with the assistance of the Finance Department's Customer Service Center that the BTR is updated timely as part of the annual renewal process.

Finance Department Response:

As of May 6, 2021, Ojito Waste has remitted payment and obtained their Fiscal Year 2016/17, 2017/18, 2018/19 BTRs. When Ojito Waste applied for their BTR, the Finance Department Licensing Section created an account profile with contact number 65012 for the business. Code Compliance, instead of using contact number 65012, created an additional contact number for the business when they invoiced their Code Violation, thus resulting in the two contact numbers.

The Code Compliance Department together with the Information Technology Department, previously developed a report in the EnerGov Licensing Module called "Code BTR Report." This report is a powerful tool, listing all businesses by their category type, along with their current BTR status. The report lists real-time information on BTRs. The report was created by the Code Compliance Department to target non-compliant businesses.

Code Compliance Department Response:

In early March, 2020, the COVID-19 pandemic was declared which further exacerbated case review, processing and invoicing. This violation was issued on April 13, 2020. On April 27, 2020, the Code Compliance Department furloughed three administrative support staff, including the OA-IV responsible for issuing City Bills and Invoices. The Code Compliance Department's mission was realigned because of COVID Emergency Orders to effect business shutdowns and administrative support functions were realigned to work off-site from home. Invoicing was not an identified priority during this timeframe. Once job functions and responsibilities were redistributed amongst remaining administrative support staff, the invoicing function resumed.

Additional Information Received from Code Compliance Management 06/16/2021

"I am told by our invoicing subject matter experts in Code Compliance that the reason Code Compliance adds/creates additional contacts for invoicing is so that:

- A. It captures the legal business entity being cited, which many times is not found on the existing contact field as this information is provided by the applicant/business;
- B. It captures a managing entity, person, or in most cases the Registered Agent for the business/entity being cited and it will list it on the invoice generated; this field also populates our Notice of Violation so for legal service of process we capture the legal entity usually from Sunbiz and enter it here exactly how it reads;

- C. Code does not alter a contact already entered (customer number) because it changes that information in the global contacts;
- D. Although OIG Tax Auditor Juan Ospina found: Customer number 65012 contained a "\$0.00 outstanding balance"... and "82957 contained an unpaid \$100.00 balance from an April 13, 2020 violation... [I]t is uncertain whether this outstanding balance was not detected because it was recorded under a second contact number or because City personnel do not check the EnerGov system for outstanding balances before the renewal"...

I am told that outstanding code violations and fines can be queried by partial name searches and not just customer number alone. Namely, the outstanding fine would have come up under a partial search of just "Ojito." In fact, we tested the partial name search and the code violation / outstanding balance did, indeed, come up. (See attachment with a real time search as detailed above conducted 06-16-2021. Source Energov, SME Code Admn Svcs Mgr Silvia Escobar and EnerGov User Manual)."

3. **Finding – The Contractor’s Monthly Lists Of Accounts Were Not Timely Submitted to the City Pursuant To City Code Section 90-278(3)**

City Code Section 90-278(3) states, *“Each contractor shall provide the city manager with a current list of the names and addresses of each account, upon initial application, and upon any application for renewal, of its permit, the frequency of service, and the permit number and capacity of each roll-off container or dumpster as per account and the address serviced by each roll-off container or dumpster. No property owner may share an account with another property owner.”* Ojito Waste did not provide the City Manager with its monthly lists of accounts during the audit period; however, it was provided upon request to OIG Sanitation Tax Auditor. These listings are essential in verifying the accuracy of the roll-off contractor’s filings during the audit process, as its customer data is subsequently reconciled with the supporting documentation provided.

Furthermore, the list of accounts provided was used to prepare and mail positive confirmation letters to identified Ojito Waste customers, requesting a listing of all their Miami Beach roll-off transactions with the contractor during the specified period. OIG’s corresponding reconciliation of all completed and returned confirmation letters with the furnished list of accounts did not reveal any material differences.

Recommendation(s):

Ojito Waste should comply with the requirements of City Code Section 90-278(3) by timely submitting its future lists of accounts to the City Manager.

Finance Department Response:

The Finance – Revenue Division will verify that there is a list of accounts submitted with each monthly report and roll-off fee payment.

EXIT CONFERENCE

This audit report was e-mailed to the City’s Finance and Sanitation Departments, as well as to Ojito Waste’s management. All solicited management comments received were included in this final report.

Approved by:



Joseph Centorino, Inspector General

01/06/2022
Date

Reviewed by:


Mark Coolidge, Chief Auditor

01-06-2022
Date


Norman Blaiotta, Deputy Chief Auditor

1/6/2022 | 12:15 PM EST
Date

Completed by:


Juan Ospina, Sanitation Tax Auditor

1/6/2022 | 12:15 PM EST
Date

- cc: Alina T. Hudak, City Manager
 Eric Carpenter, Deputy City Manager
 Lester Sola, Assistant City Manager
 Joe Gomez, Public Works Director
 Bradford Kaine, Sanitation Director
 John Woodruff, Chief Financial Officer
 Hernan D. Cardeno, Esq., Code Compliance Department Director
 Henry Ojito, Manager, Ojito Waste Systems, Inc.

OFFICE OF THE INSPECTOR GENERAL, City of Miami Beach
 1130 Washington Avenue, 6th Floor, Miami Beach, FL 33139
 Tel: 305.673.7020 • Fax: 305.206.5509 • **Hotline: 786.897.1111**
 Email: CityofMiamiBeachOIG@miamibeachfl.gov
 Website: www.mbinspectorgeneral.com