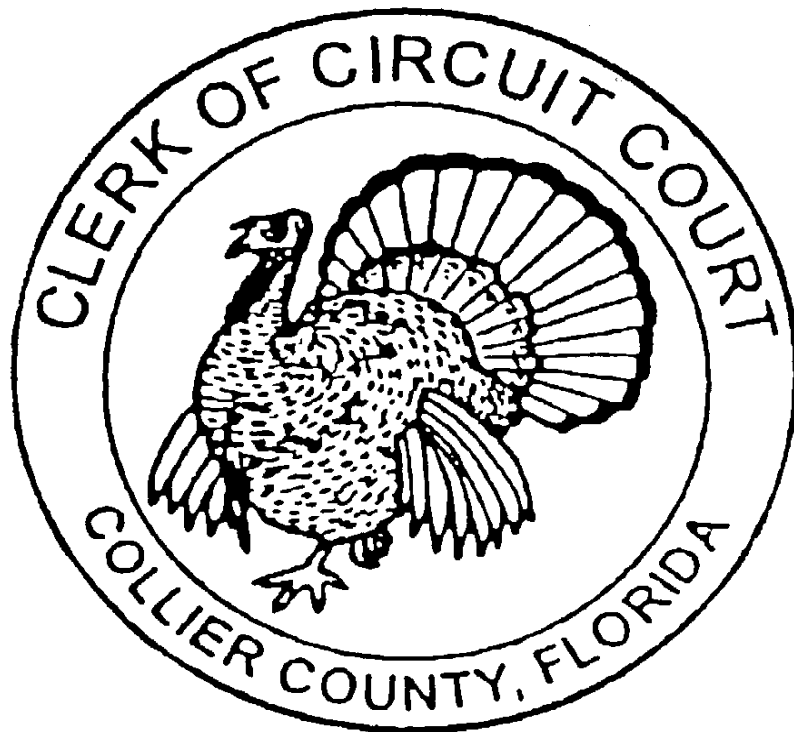


**Audit of
Waste Management
Petition for Additional Costs
Audit Report No. 2000-2**



Prepared by:

*Collier County Clerk of the Circuit Court
Internal Audit Department
June 2000*

June 7, 2000

Honorable Timothy J. Constantine, Chairman
And Members of the Board of County Commissioners
3301 Tamiami Trail East
Naples, Florida 34112

**Re: Waste Management Petition for Additional Costs
(Audit Report No. 2000-2)**

Chairman:

The Internal Audit Department has completed an audit of Waste Management's petition for additional costs under its operating agreement with the County. The objective of this audit was to assure that the petition was in compliance with the contract and that the costs were appropriate and sufficiently documented.

The enclosed report discusses the findings of this audit and includes recommendations to address these findings. County staff has reviewed a draft of the audit report and agrees with the findings and recommendations.

We thank the County staff for their cooperation in the performance of this audit. If you have any questions about this report, please feel free to telephone me at 732-2745 or Robert Byrne, Internal Audit Director, at 774-8075.

Sincerely,

Dwight E. Brock
Clerk of the Circuit Court

Enclosure

cc: Thomas W. Olliff, County Manager
Edward N. Finn, Interim Administrator, Public Works Division
G. George Yilmaz, P.E., Interim Director, Solid Waste Department

Executive Summary

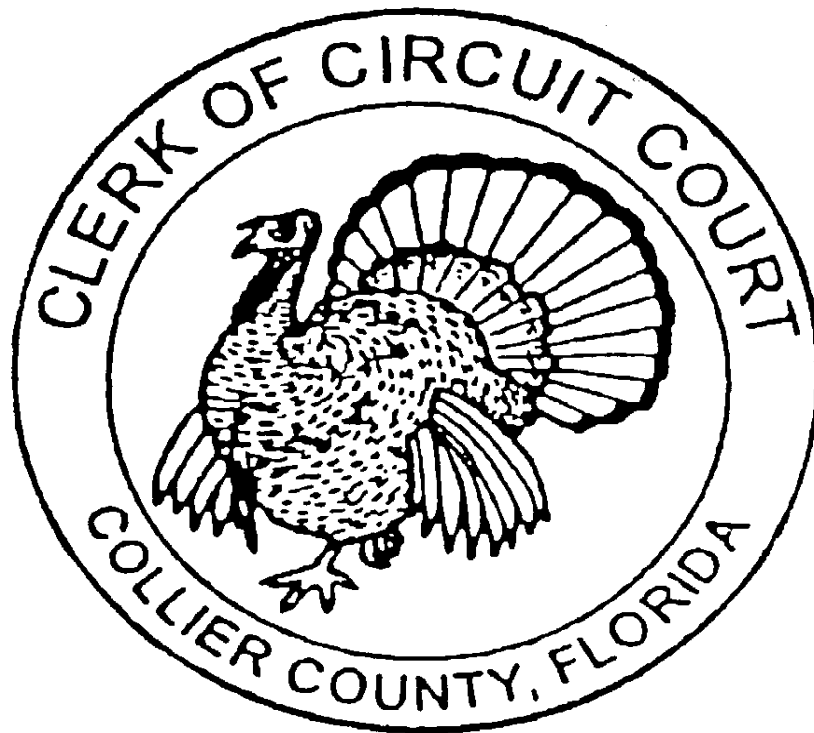
The purpose of this audit was to verify the accuracy and appropriateness of Waste Management's request for payment for additional costs. The scope of the audit was limited to those portions of the contract directly related to Waste Management's payment request.

This audit was performed in accordance with generally accepted government auditing standards. The Internal Audit Department met with County staff and representatives of Waste Management, reviewed the contract provisions, obtained supporting documentation to the payment request, and tested the methodology and the accuracy of the rate calculations. The following table summarizes the audit findings, recommendations and staff responses to the findings and recommendations:

	FINDINGS	RECOMMENDATIONS	STAFF RESPONSE
1	The background information and the legal interpretation provided to the Board of County Commissioners were inconsistent	Procedures should be established to ensure consistent information is presented to the Board of County Commissioners.	Concur.
2	The FDEP letter of December 24, 1998 did not constitute a "change in law," which would allow for a fee increase under Section 5.3 rather than Section 5.4 of the contract.	The Board of County Commissioners should reconsider Waste Management's petition based upon Section 5.4 of the agreement. (<u>Approval is solely at the discretion of the Board. There is no requirement to grant a fee increase.</u>)	Concur. Staff will proceed to bring this matter back before the board for reconsideration.
3	Full documentation did not accompany request as required under Section 5.4 of the agreement.	Procedures should be established to ensure that full documentation is provided in future requests.	Concur.
4	Waste Management's invoice included a request for retroactive payment, which is not permitted under Section 5.4 of the agreement.	A.) The Board of County Commissioners should reconsider Waste Management's petition based upon Section 5.4 of the agreement. B.) Establish a contract procedures manual and training program.	A.) Concur. Board also has discretion to authorize payments that it determines will serve a valid public purpose B.) Concur. Additionally, operating agreement should be amended to be more in line with current operating practices and to facilitate administration
5	Recycled Construction/Demolition (C&D) debris was paid incorrectly during 1999.	The County should seek reimbursement from Waste Management for the C&D debris recycling payments made in error, a total of \$6507.36 for 1999.	Concur.
S1	The request for a fee increase of \$5.08 per ton for yardwaste appears to be reasonable based upon the supporting documentation and underlying assumptions	The BCC should determine if an increase in fees for yardwaste processing is appropriate.	Concur.
S2	The methodology used by Waste Management to request an increase in the general waste rate did not account for avoided costs and included expenses that are already accounted for in the current rate structure	The BCC should determine if a general waste rate increase is appropriate (The Internal Audit Department calculated a rate increase of \$0.39 as opposed to the \$0.88 per ton increase Waste Management had requested.)	Concur.

**Audit of
Waste Management Petition for Additional Costs**

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Prepared by:

Collier County Clerk of the Circuit Court

Internal Audit Department

June 2000

**Audit of
Waste Management Petition for Additional Costs**

Audit Report No. 2000-2

TABLE OF CONTENTS

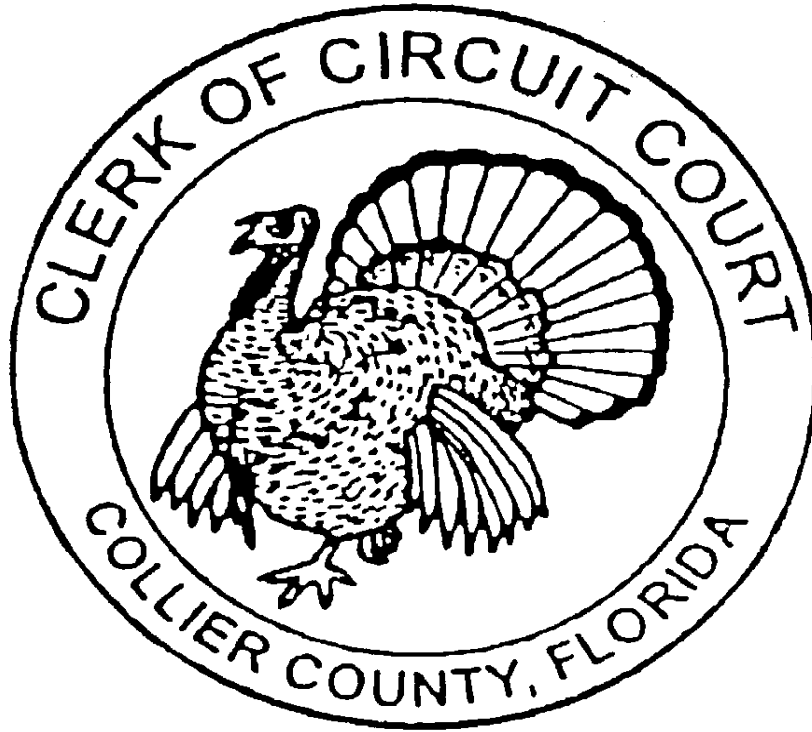
	Page
1. Executive Summary	i
2. Detailed Report	
Audit Purpose, Objectives, & Scope	1
Audit Methodology & Procedures.....	1
Background	1
Findings.....	2
Recommendations.....	4
Supplementary Findings & Recommendations	5

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	FINDINGS	RECOMMENDATIONS	STAFF RESPONSE
1	The background information and the legal interpretation provided to the Board of County Commissioners were inconsistent	Procedures should be established to ensure consistent information is presented to the Board of County Commissioners.	Concur.
2	The FDEP letter of December 24, 1998 did not constitute a "change in law," which would allow for a fee increase under Section 5.3 rather than Section 5.4 of the contract.	The Board of County Commissioners should reconsider Waste Management's petition based upon Section 5.4 of the agreement. (<u>Approval is solely at the discretion of the Board. There is no requirement to grant a fee increase.</u>)	Concur. Staff will proceed to bring this matter back before the board for reconsideration.
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Audit of Waste Management Petition for Additional Costs

Audit Report No. 2000-2

Audit Purpose, Objectives, & Scope

The purpose of this audit was to verify the accuracy and appropriateness of Waste Management's request for payment for additional costs. The Internal Audit Department's objectives were to determine whether the request was made within the provisions of the contract, whether the appropriate procedures to make the request were followed, and to verify the calculations on which the request for payment was made. The scope of the audit was limited to those portions of the contract directly related to Waste Management's payment request.

Audit Methodology & Procedures

The Internal Audit Department reviewed the contract provisions, obtained supporting documentation to the payment request, and tested the methodology and the accuracy of the rate calculations. The Internal Audit Department met with representatives of Waste Management, the County Solid Waste Department, County Revenue Services Department, and the County Attorney's office to ensure a complete understanding of the payment request and contract provisions. Additionally, external legal advice was sought from the Clerk of the Circuit Court's legal counsel.

Background

The County and Waste Management entered into an agreement dated February 7, 1995 wherein Waste Management contracted to operate the Naples Landfill. As part of this agreement, Waste Management was to continue the practice begun by the County of using pulverized construction & demolition debris (C&D) waste as cover material in the landfill. A major component of the C&D waste is gypsum wallboard that recently has been linked to the discharge of hydrogen sulfide gas (rotten egg smell) from the landfill. The use of C&D debris as a cover was started in 1990 in order to meet the County's goal of "recycling" 80% of construction & demolition debris.

The Florida Department of Environmental Protection (FDEP) conditionally approved the use of C&D as a cover material in a letter dated April 11, 1994. The conditions for the use of the C&D material included that "the material should control odors by preventing them from escaping from the waste." Furthermore, should inspections disclose problems with the use of this material, FDEP may require additional soil content be added or "approval of the mulch as an alternate cover may be discontinued."

After a series of odor complaints and a number of inspections that noted the landfill was not in compliance with regard to odor control, the FDEP, in a letter dated 12/24/98, ordered Waste Management to cease using C&D material as cover. Additionally, a foot of soil cover was to be added to Cell 6 of the landfill in areas not currently in use.

Included in the landfill operating agreement are provisions that allow for the recovery of additional costs for changes in law and for unusual increases in cost. The following is a summary of those provisions:

- **Section 5.3** allows additional costs due to a "change in law." Recovery of the additional costs can be applied retroactively. Furthermore, any disagreements are to be resolved, if necessary, by arbitration.
- **Section 5.4** allows additional costs for "unusual increases in costs." This provision does not allow retroactive recovery. The BCC's only obligation under this provision is to "reasonably consider the Contractor's petition...The County may grant the petition in whole or in part or may deny it in its entirety in its sole discretion and for any reason which it deems sufficient."

Waste Management, in a letter dated April 20, 1999, petitioned the County for payment of additional costs which they asserted were due to switching from C&D mulch to soil as cover. Construction/demolition

processing fees that had been withheld by the County were requested to be paid in Waste Management's letter of July 9, 1999. On September 3, 1999 Waste Management requested payment for additional costs which arose from a change in processing of horticultural waste. The total request made to the Board of County Commissioners on September 28, 1999 was \$634,981.85 and was approved subject to audit by the Clerk of the Circuit Court Internal Audit Department.

Findings:

1. The background information and the legal interpretation provided to the Board of County Commissioners were inconsistent. BCC approval was based upon the legal premise that the requested price adjustment was brought forth under Section 5.3 of the agreement when, in fact, all correspondence from Waste Management and all references to the contract within the executive summary presented to the BCC refer to Section 5.4.

Client Response: Concur.

"Unusual or unanticipated cost reimbursements requested by the Contractor are properly covered by section 5.4 of the contract and staff brought the item forward on that basis."

2. The FDEP letter of December 24, 1998 did not constitute a "change in law." A change in applicable law would allow for a fee increase subject to the provisions of Section 5.3 rather than Section 5.4 of the contract. A change in "applicable law" includes any rule, regulation, or interpretation thereof, which changes and affects landfill operations. While FDEP approved the use of C&D as cover in their letter of April 11, 1994, it was a conditional approval based upon continued compliance with the applicable rules. The FDEP letter of December 24, 1998 did not refer to any change in interpretation of FAC 62-701.500(9) by the FDEP, but rather stated that "it is a violation of ... FAC Rule 62-701.500(9) to fail to implement a gas monitoring program that does not meet the requirements of FAC Rule 62-701.400(10)(a) 1.c." Additionally, FDEP has confirmed the Internal Audit Department's position that this is an issue of compliance with existing law rather than a change in law in a letter dated February 18, 2000. FDEP states in that letter that: "Permission to use the C&D debris mulch was discontinued on December 24, 1998 because the material was not complying with item (condition) number 2 of the April 11, 1994 letter and FAC Rule 62-296."

Client Response: Concur.

3. Full documentation did not accompany request as required under Section 5.4 of the agreement. The original request for additional costs was received by the County Solid Waste Department in a letter from Waste Management dated April 20, 1999. No supporting documentation accompanied the original request and was not received until a request was made to Waste Management in mid-October 1999.

Client Response: Concur.

4. Waste Management's invoice included a request for retroactive payment, which is not permitted under Section 5.4 of the agreement. Waste Management petitioned the County under Section 5.4 of the agreement, which does not include a provision for retroactive payment. Under Section 5.4 of the agreement the only remedy to be sought is the adjustment of future fees to be paid to Waste Management. Furthermore, there is a statutory prohibition on retroactive payments. Section 215.425, F.S. states that: "No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made..." The Attorney General has summarized this prohibition as being "a basic and fundamental principle that public funds may be used only for a public purpose and it is contrary to this policy to use public funds to give extra compensation for work which has already been performed for an agreed upon wage" (AGO #97-21). While prohibited from making

a retroactive payment, the Board of County Commissioners does have the discretion to authorize a payment that it determines will serve a valid public purpose.

Client Response: Concur.

"Staff concurs. However, outside of the confines of the agreement the Board also has discretion to authorize payments that it determines will serve a valid public purpose. The audit points out that the agreement does not permit retroactive payments yet the Landfill Operating Agreement has conflicting language that requires Board approval of unusual cost increases to be made after the fact. Staff's recommendation is to amend the agreement to eliminate these conflicts."

5. Recycled Construction/Demolition (C&D) debris was paid incorrectly during 1999. Section 2.15.1 1 of the landfill operating agreement requires that the County pay Waste Management the C&D processing fee of \$17.93 per ton "for any materials recycled and removed from the landfill including screened fill material." The contract further states that all C&D debris that is not recycled be weighed, placed in the landfill, and is to be paid at the general rate of \$16.24. Additionally, Waste Management is entitled to a 5% management fee if the C&D sorting process is subcontracted.

Waste Management removed a total of 2104.14 tons of recyclable C&D material from the Naples Landfill during 1999. Waste Management was paid at the \$17.93 per ton rate for this material. However, they were previously paid \$16.24 per ton for C&D material entering the landfill to be sorted. This resulted in an overpayment to Waste Management of \$16.24 per ton for the C&D material that was recycled. Additionally, Waste Management did not have a subcontractor processing C&D material during 1999 and was therefore erroneously paid the 5% management fee on the recycled material. Table I summarizes the amounts due and paid during 1999 for C&D recycling. Based on this analysis, nothing is owed to Waste Management, but rather the County is owed \$6,507.36 from Waste Management.

Table I: Analysis of Construction/Demolition Recycling Payments in 1999

	Amount Due For Recycling (@ \$17.93/ton)	Amount Paid For Recycling (@ \$17.93/ton)	Amount Paid For C&D (@ \$16.24/ton)	Management Fee Paid (5% on Recycled)	Total
January	5,533.56	(5,533.56)	(5,011.99)	(276.68)	\$ (5,288.67)
February	2,370.35	(2,370.35)	(2,146.93)	(118.52)	\$ (2,265.45)
March	157.07	(157.07)	(142.26)	(7.85)	\$ (150.11)
April	-	-	-	-	\$ -
May	-	-	-	-	\$ -
June	282.04	(282.04)	(255.46)	(14.10)	\$ (269.56)
July	355.19	(355.19)	(321.71)	(17.76)	\$ (339.47)
August	383.34	637.23	(347.21)	31.86	\$ 705.22
September	7,317.59	-	(6,627.87)	-	\$ 689.72
October	6,287.15	-	(5,694.56)	-	\$ 592.59
November	7,583.85	(154.20)	(6,869.03)	(7.71)	\$ 552.91
December	7,457.09	(1,368.96)	(6,754.22)	(68.45)	\$ (734.54)
Total	\$ 37,727.23	\$ (9,584.14)	\$ (34,171.24)	\$ (479.21)	\$ (6,507.36)

Client Response: Concur.

"For 1999 the Contractor has been incorrectly paid for C/D tonnage. Specifically, Waste Management removed 2104.14 tons of recyclable C/D material from the Naples Landfill during 1999. Waste Management was paid at the \$17.93 per ton recyclable C/D rate for material removed from the landfill and the \$16.24 per ton general rate when the C/D material entered the landfill. The Contractor should have been paid only \$17.93 per ton for the C/D material removed from the landfill. In addition the Contractor was incorrectly paid the 5% subcontractor management fee."

Recommendations:

The Internal Audit Department makes the following recommendations that correspond to the above findings:

1. Procedures should be established to ensure consistent information is presented to the Board of County Commissioners.

The County Administrator and County Attorney should establish procedures to ensure that appropriate and consistent legal advice is obtained prior to the presentation of items to the Board of County Commissioners.

Client Response: Concur.

"Staff concurs that consistent information should be presented."

2. The Board of County Commissioners should reconsider Waste Management's petition based upon Section 5.4 of the agreement.

The BCC should properly consider Waste Management's petition based upon Section 5.4 of the agreement. (Please refer to Supplementary Findings & Recommendations section for additional information).

Client Response: Concur.

"Staff concurs and will proceed to bring this matter back before the board for reconsideration."

3. Procedures should be established to ensure that full documentation is provided in future requests.

Client Response: Concur.

4. A.) The Board of County Commissioners should reconsider Waste Management's petition based upon Section 5.4 of the agreement.

Under Section 5.4, the BCC's only obligation is to "reasonably consider the Contractor's petition...The County may grant the petition in whole or in part or may deny it in its entirety in its sole discretion and for any reason which it deems sufficient." (Please refer to Supplementary Findings & Recommendations section for additional information).

Client Response: Concur.

"Staff concurs and will proceed to bring this matter back before the Board for reconsideration."

- B.) Establish a contract procedures manual and training program.

Contract administration training should be required of all contract administrators and a contract administration procedures manual should be developed to ensure consistent interpretation and application of contract provisions.

Client Response: Concur.

"Staff concurs, in addition, the Landfill Operational agreement should be amended to be more in line with current operating practices and to facilitate administration."

5. The County should seek reimbursement from Waste Management for the C&D debris recycling payments made in error, a total of \$6507.36 for calendar year 1999.

As shown in Table I, Collier County overpaid for C&D recycling services in the amount of \$6507.36.

Client Response: Concur.

Supplementary Findings & Recommendations

In accordance with recommendations #2A and #3 above, the Board of County Commissioners should first determine if a fee increase is appropriate under Section 5.4 of the contract. The following supplementary findings and recommendations are included for informational purposes and are only applicable should the Board of County Commissioners determine that a fee increase under Section 5.4 of the agreement with Waste Management is appropriate. As mentioned previously, approval under Section 5.4 is solely at the discretion of the Board and there is no requirement to grant a fee increase.

1. The request for a fee increase of \$5.08 per ton for yardwaste appears to be reasonable based upon the supporting documentation and underlying assumptions.

The Internal Audit Department verified the yardwaste processing fee calculations and the resulting \$5.08 per ton fee increase.

RECOMMENDATION: The BCC should determine if an increase in fees for yardwaste processing is appropriate.

Client Response: Concur.

"Staff concurs that the \$5.08 is an appropriate fee and will proceed to bring this matter back before the board for reconsideration."

2. The methodology used by Waste Management to request an increase in the general waste rate did not account for avoided costs and included expenses that are already accounted for in the current rate structure.

The Internal Audit Department calculated a rate increase of \$0.39 per ton based upon an analysis of the documentation provided by Waste Management. This calculation is shown in Table II. Waste Management had requested a \$0.88 per ton increase.

RECOMMENDATION: The BCC should determine if a general waste rate increase is appropriate.

Client Response: Concur.

"Staff concurs and will proceed to bring this matter back before the board for reconsideration."

**TABLE II: Rate Calculation
Waste Management Cost Increase Due to Cover Material**

<u>Note</u>	<u>Description</u>	(Monthly Average) <u>Amount</u>
1	Hauling	8,409.94
2	Labor	13,938.68
3	Soil	95,219.00
4	Equipment Operator	8,014.80
	Total New Costs	125,582.42
5	Avoided Costs	(114,592.23)
6	Average Monthly Cost	10,990.19
7	Material To Hill - 1999 (Tons)	337009.62
8	Monthly Average (Tons)	28084.135
9	Additional Cost per Ton	\$0.39

NOTES:

- 1 Hauling costs (exclusive of subcontractor hauling which appeared to be nonrecurring costs) for new C&D processing method. Average is for March 99 - December 99 as January & February appeared to include nonrecurring costs
- 2 "Casual Labor" for new processing method of C&D (6-7 day laborers - non-WMI employees).
- 3 Cover Dirt purchases. Average from April 99 - December 99 as January through March appeared to include non-recurring costs.
- 4 Average monthly equipment operator salaries including benefits (from G/L analysis).
- 5 Subcontracted C&D Processing costs no longer incurred (Average monthly C&D tonnage multiplied by \$13).
- 6 Total New Costs less Avoided Costs.
- 7 Total tonnage buried at Naples Landfill less sludge, Category 1, and Category 2 wastes.
- 8 Total tonnage divided by 12 months.
- 9 Monthly Average Cost divided by Monthly Average Tons.

A comparison was done between 1998 and 1999 of similar costs from the Waste Management general ledger (G/L) to verify that the assumptions used in this analysis were reasonable.