city of CINCINNATI

Date: October 21, 2024

To: Sheryl M.M. Long, City Manager

From: Lauren Sundararajan, CFE, Internal Audit Manager *LS*

Copies to: Internal Audit Committee
William Weber, Assistant City Manager
Oliver Kroner, Office of Environment & Sustainability Director

Subject: **Commercial Waste Hauler Program Audit**

Attached is the Commercial Waste Hauler Program audit report. The primary objectives of this performance audit were to assess the extent to which legislative, regulatory, and organizational goals and objectives are being achieved, and ensure an adequate internal control structure is in place. This audit was conducted in accordance with the current audit agenda.

We would like to thank the management and staff of the Office of Environment & Sustainability for their assistance and cooperation during this audit.

If you need any further information, please contact me.

Attachment

Commercial Waste Hauler Program Audit

October 2024

city of CINCINNATI
INTERNAL AUDIT

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Executive Summary

Internal Audit (IA) conducted a performance audit of the Office of Environment & Sustainability's (OES) Commercial Waste Hauler Program (CWHP). The primary objectives of this audit were to assess the extent to which legislative, regulatory, and organizational goals and objectives are being achieved, and ensure an adequate internal control structure is in place.

The City of Cincinnati's (City) CWHP has its roots in efforts to better manage the City's commercial waste system, reduce environmental impact, and improve service efficiency. The audit revealed several opportunities for strengthening internal controls over CWHP's process. For instance, IA found that CWHP is not enforcing the Cincinnati Municipal Code (CMC) or the Administrative Rules and Regulations: CWHP has allowed franchisees to forgo submitting CMC-mandated CPA reports, information about total tonnage of waste recycled and landfilled, and timely quarterly payments. Additionally, CWHP does not enforce CMC regulations including, but not limited to, vehicle weight requirements, equipment maintenance, or delivery to solid waste management facilities. When regulations are not enforced, franchise holders may not comply with their contractual obligations.

Furthermore, IA determined that management oversight of CWHP files should be strengthened. Currently, the program's file folders are disorganized and cluttered, and key franchisee information is missing from the files. Proper management oversight of CWHP's files is critical to ensure that all franchise files are current, complete, and easily accessible for third-party review. Therefore, CWHP must develop a plan to organize and centralize all program files and ensure that all franchisee documents, especially current certificates of insurance, are present in each franchisee file.

IA determined that waste hauler enforcement inspectors are reactive, not proactive; consequently, franchise holders are policing each other. CWHP works closely with the Department of Buildings and Inspections (B&I), which is primarily responsible for enforcing waste hauler policies, but only responds to citizen complaints about unauthorized waste haulers. Franchisees in competition with each other may not be impartial when policing each other; as such, it is essential that B&I and CWHP improve interdepartmental communication to ensure the enforcement of CWHP policies.

Finally, IA determined that CWHP has not exercised its right to inspect and review franchisee records. Regular audits of commercial waste hauler franchises are critical to ensuring that all franchises are adhering to their contractual obligations. As such, it is crucial that CWHP exercises its right to access and audit franchisees' business records.

Overall, IA found that to strengthen internal controls over CWHP, the following recommendations should be incorporated: enforce franchisee compliance as written in the CMC and Administrative Rules and Regulations; develop a plan to organize and centralize all program files and ensure that all franchisee documents, especially current certificates of insurance, are present in each franchisee file; improve interdepartmental communication with B&I to ensure enforcement of CWHP policies; and exercise the right to access and audit franchisees' business records. Implementing these recommendations will ensure that proper internal controls have been established to increase efficiency, accountability, and safety in CWHP.

I. Introduction

Background

The City's Commercial Waste Hauler Program has its roots in efforts to better manage the City's commercial waste system, reduce environmental impact, and improve service efficiency. Since January 2013, CMC Section 730-5 has made it unlawful for any person to provide services related to the collection and disposal of commercial waste within the City without first obtaining a franchise and entering a franchise agreement. CWHP was expanded on October 1, 2020, to include commercial construction and demolition debris.[1]It is unlawful to collect and dispose of commercial construction and demolition debris within the City without first obtaining a franchise and entering a franchise agreement. This includes construction and demolition contractors that service commercial waste.[2] B&I is responsible for the enforcement piece of the CWHP with the intent of enforcing the City's ordinance that unfranchised haulers cannot collect waste.

CWHP is administered by OES. According to their website, the City currently has twenty (20) active franchise holders. Each franchise holder is governed by established administrative rules and regulations and must comply with specific requirements. These requirements are methods of waste collection, curbside collection services, private collection services, construction collection services, franchise fees (20% of the franchisee's gross revenue), quarterly submissions, annual environmental reports, and annual audits performed by a certified public accountant.[3]

Additionally, each franchise holder must always procure and maintain in effect workers compensation, comprehensive general liability insurance, automotive liability insurance, and employer's liability insurance. As a condition of receiving a franchise, each franchisee must also provide the City with a surety bond in the amount of fifty thousand dollars ($50,000).

From 2022 through the first half of 2024, CWHP has collected approximately $17,304,278 in franchise fees.[4]

Year	No. of Active Franchisees[5]	Franchise Fees Collected
2022	13	$6,407,843.05
2023	17	$7,171,169.30
2024(1st & 2nd qtrs.)	20	$3,725,266.01
Total Collected		$17,304,278.36

1 Commercial Waste Hauler Program - Environment & Sustainability (cincinnati-oh.gov).
2 Town Hall Commercial Waste Franchise Program PowerPoint presentation, March 14, 2024.
3 Administrative Rules and Regulations, Commercial Waste Hauling Program, City of Cincinnati.
4 Information provided by Office of Environment and Sustainability. Email dated August 19, 2024.
5 Ibid.

Audit Selection
IA conducted this audit in accordance with the Audit Work Plan.

Audit Objectives
The primary objectives of this audit were to assess the extent to which legislative, regulatory, and organizational goals and objectives are being achieved, and ensure an adequate internal control structure is in place.

Audit Scope and Methodology
To accomplish the audit objectives, Internal Audit reviewed pertinent policies and procedures, sought verification of procedures through documented reports, interviewed appropriate staff, and analyzed relevant data. Records reviewed included data generated between Calendar Years (CY) 2021-2024.

Statement of Auditing Standards
As required by the Cincinnati Administrative Code Article II §15, this audit was conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS), except for standard 5.60 pertaining to external peer review requirements. This exception did not have a material effect on the audit.

IA continues to conduct internal quality reviews to assure conformance with applicable GAGAS. IA performed the fieldwork between August and September of 2024.

Commendations
IA commends the staff of the Office of Environment & Sustainability for their cooperation throughout the audit.

II. Audit Findings and Recommendations

CWHP is not enforcing the terms of the CMC or the Administrative Rules and Regulations.

Throughout the audit, IA determined several areas where CWHP is not enforcing the terms of the CMC. For instance, IA was informed, and verified through review of CWHP franchise records, that CWHP does not receive adequate financial records from franchises. The CMC outlines that franchisees must have a CPA review their total gross revenue reports, then file the auditor's report with the City Manager's Office within 120 days of the fiscal year's end.[6] However, upon review of CWHP's file folders from CY 2021-2024, IA was only able to locate 8 out of 31 (26%) CPA reports for all active franchises. IA was also informed that although the Administrative Rules and Regulations state that all CPA reports must include total tonnage of all commercial waste landfilled and recycled[7], there is no confirmation of tonnage reported. As such, CWHP is unable to analyze tonnage trends and determine the accuracy of the franchisees' gross revenue.

Similarly, IA was informed that franchisees often do not pay quarterly fees on time, do not obtain open street permits, place unauthorized containers in the right-of-way, and fail to submit their quarterly reports on time as required by the CMC[8]. As such, CWHP is not ensuring franchisee compliance with the CMC.

Finally, IA determined that CWHP does not enforce proper disposal of waste. Section 730-25 of the CMC sets several requirements that franchisees must comply with, including properly maintaining all equipment, preventing prohibited material from being collected, and ensuring that vehicles follow weight requirements[9]. CWHP management informed IA that CWHP only enforces noise complaints and unlicensed waste removal based on incoming citizen complaints.

Failing to be in compliance with administrative and regulatory requirements can pose several problems to CWHP's efficiency and effectiveness. When regulations are not enforced, franchise holders may not comply with their contractual obligations, thus posing potential health and safety risks to the environment and community. Additionally, a lack of enforcement may lead to adverse effects for the program such as financial losses, decreased operational efficiency, and inaccurate recordkeeping.

Recommendation 1: Enforce franchisee compliance as written in the CMC and Administrative Rules and Regulations.

Department Response 1: Partially Agree. Franchise compliance has improved significantly in the last three years. Through outreach and education, warning letters, and continual communications, OES has increased the number of franchise holders nearly 400%, reduced non-franchise work being conducted in the City, reduced the number of delinquent franchise payments, and has built relationships with other departments to enhance cross program compliance. In doing so OES has increased the revenue of the program by about forty percent.

[6] "Each franchisee shall file an annual report concerning the franchisee's total gross revenues for the year. This annual report shall be examined by an independent certified public accountant, who shall confirm that the franchisee's computations concerning gross revenues and franchise fees were performed in accordance with the requirements of this chapter... Each franchisee shall file the auditor's report with the City Manager's office within one hundred twenty (120) days after the end of the franchisee's fiscal year." Cincinnati Municipal Code Sec. 730-17e

[7] "Each franchisee shall include in their annual report total tonnage of commercial waste from within the City that was landfilled and total tonnage of material from within the City that was recycled.

[8] "The franchisee shall submit its quarterly franchise fee payments to the city no later than thirty (30) days after the three-month periods ending March 31, June 30, September 30, and December 31." Cincinnati Municipal Code, Sec. 730.17c

[9] See Cincinnati Municipal Code Sec. 730-25- Methods of Solid Waste Collection.

OES agrees 100% compliance is optimal and that is our goal for the program. This goal can be reached with proposed changes in rules and regulations to provide for more effective program management as described below.

As discussed in the audit process, OES has encountered significant enforcement issues with the program but primarily with the construction and demolition debris aspect of the program. OES is open to continuing that discussion and elaborating further on issue specifics. These issues have also been communicated with City Administration, B&I, DOTE, DEI and Law staff. OES has been working with internal and external stakeholders for over two years to co-create revised rules and regulations that decrease administrative burden, improve fairness, improve certainty, and improve confidence in the program. These changes are intended to establish rules and regulations more enforceable with available resources.

Legislative and procedural changes to improve enforcement are anticipated within 12 months.

Management oversight of CWHP files is needed.

Proper management oversight of CWHP's files is critical to ensure that all franchise files are current, complete, and easily accessible for third-party review. Additionally, making sure that all files are organized prevents the program from inefficiencies in tracking franchise fees and enforcing franchise terms.

IA reviewed a total of fifty active franchisee electronic file folders from CY 2021-2024 to ensure that the program is maintaining adequate records. IA found that required documentation such as annual CPA reports, application fee receipts, proof of insurance, and total recycled tonnage reports was missing from franchisee files; in fact, none of the franchisee files contained all relevant franchisee information. Additionally, the franchisee files were filled with blank forms, which can cause confusion and clutter.

The disorganization and disarray of these files was especially apparent when IA reviewed nineteen franchise folders from CY 2024 to determine whether CWHP maintained all franchisees' current certificates of insurance and found that 5 franchisees (26%) were missing the required certificates[10]. Maintaining copies of liability insurance certificates in each franchisee folder is crucial in managing contract renewals and ensuring that all administrative requirements are met.

Recommendation 2: Develop a plan to organize and centralize all program files and ensure that all franchisee documents, especially current certificates of insurance, are present in each franchisee file.

Department Response 2: Agree. Since taking leadership of the program, OES has been working to improve processes and record keeping. Staff continue to work toward a well-organized documentation system that is more intuitive for use by third parties. This organization will also enhance recommendations below pertaining to succession planning, standard operating procedures, document checklists, and tracking delinquent fee payments. OES will continue to make these organizational process improvements.

[10]"When an applicant submits an application for a franchise, and when a franchisee submits an application for the renewal of its franchise, the franchisee shall furnish the city a certificate evidencing this insurance coverage is in effect for the same term as the franchise agreement, and naming the city as an additional insured (except with regard to the workers compensation and employers liability insurances)." CMC Sec. 730-21

Completing this recommendation is anticipated within 3 months.

Waste hauler enforcement inspectors are reactive, not proactive; consequently, franchise holders are policing each other.

As stated in the CMC, it is the City's responsibility to administer and enforce all policies governing commercial waste disposal.[11] CWHP works with B&I, which is primarily responsible for ensuring that non-franchised waste haulers are not operating within City limits. However, these inspectors only go into the field when they are notified via citizen complaint of unauthorized waste haulers. As such, franchisees are currently policing each other by either submitting citizen service requests or contacting OES directly.

This self-policing creates a conflict of interest, as waste haulers are competitors in the same market and franchisees may not be impartial when policing each other, and this reduced trust could compromise the integrity of the program. As such, it is essential that B&I and CWHP improve their interdepartmental communication to ensure that the CMC is enforced.

Recommendation 3: Improve interdepartmental communication with B&I to ensure the enforcement of CWHP policies.

Department Response 3: Disagree. Improved enforcement is critical to fair and effective program, but difficulties with enforcement are not the result of communication challenges with B&I. OES staff have been in consistent and routine communications with B&I staff since taking over the program. Interdepartmental conversations have identified enforcement options to improve efficiency and reduce administrative burden.

OES staff do not have authority from City Administration to inspect and to write orders in enforcement of non-compliant commercial waste activity. B&I has the authority to inspect and write orders, but it has communicated to City Administration and OES that they do not have the capacity currently to proactively inspect commercial waste haulers at the depth and frequency necessary. Their inspections have been limited to reactively responding to customer service requests.

OES has proposed that the building and wrecking permitting system identify the franchise holder prior to permit issuance as a front-end enforcement mechanism, which B&I supports as a proactive way to reduce franchise self-policing. OES and B&I have refined the customer service request system to efficiently communicate complaints to B&I to trigger inspection as a back-end enforcement mechanism. Additional inspection resources and authority and broader order writing authority would bolster proactive enforcement.

Completing this recommendation is anticipated within 12 months.

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[11] "The city manager or his or her designee shall be authorized to prepare and publish rules for the effective administration and enforcement of the provisions of this chapter, including without limitation, rules governing the collection and disposal of waste by private or commercial waste collectors." Sec. 729-81, Cincinnati Municipal Code.

CWHP has not exercised its right to inspect and review franchisee records.

Regular audits of commercial waste hauler franchises are critical to ensuring that no discrepancies exist in billing and payments, and that all franchises are adhering to their contractual obligations. IA determined that despite having the right to audit franchisees as delineated in the CMC[12], CWHP does not do so. As such, it is essential that CWHP exercises its right to access and audit franchisees' business records at the City's expense and ensure that records are readily accessible for review by the City.

Recommendation 4: Exercise the right to access and audit franchisees' business records.

Department Response 4: Partially agree. OES agrees that auditing business records is an appropriate step to ensure compliance in some cases. To this point, the City Administration has not determined a need to audit franchise records. OES has been working with the City Administration to improve program inclusion, certainty, and efficiencies to reduce the administrative burden for staff and regulated franchise holders. With support and direction from Administration, OES will engage in franchise record audits.

Completing this recommendation is anticipated within 12 months.

Standard operating procedures (SOP) do not exist for CWHP.

Policies and procedures are key components of an internal control structure. Policies are designed to provide direction to staff on how to properly manage a particular function. Procedures provide employees with instructions on how to carry out the day-to-day activities.

IA found there is not a specific SOP for CWHP. The failure to create a program SOP makes it difficult to hold staff accountable and ensure program objectives are met. As such, it is essential for CWHP to develop a live SOP document that can be edited as the program develops and regulations change, and this document should be frequently updated to reflect current operations.

Recommendation 5: Develop a live SOP document that can be edited as program operations change.

Department Response 5: Agree. OES staff has been developing SOP documents for the program. Staff will continue to develop SOPs that can be edited as the program operations evolve and change.

Completing this recommendation is anticipated within 3 months.

There is no formal succession plan for CWHP.

Succession planning is important for several reasons, such as continuity of operations, retention of institutional knowledge, mitigation of risk, and leadership development. IA determined that no

[12] "The city shall have the right to inspect and review a franchisee's records concerning its franchise… The city may also copy and audit the franchisee's records, at the city's expense. The records shall readily be accessible for review by the city." Cincinnati Municipal Code, Sec 730-23(b)

formal succession plan exists for CWHP's administrative technician role, a vital position in maintaining day-to-day program operations. A lack of succession planning can manifest as a disruption in workflow, which may hinder the program in operating efficiently. As such, establishing a succession plan can improve smooth transitions of leadership within CWHP and ensure that daily operations continue as planned.

Recommendation 6: Establish a succession plan.

Department Response 6: Agree. OES staff will develop a succession plan for the program.

Completing this recommendation is anticipated within 3 months.

No checklist exists to delineate what documents should appear in program files.

When creating a filing and organization system for a program that must keep track of many franchisees, developing a checklist is essential for ensuring that all necessary documentation is included, and appropriate records are maintained. IA was informed that while program files are maintained electronically, CWHP does not maintain a checklist as to what documents should be in each file. In the absence of a checklist, determining the accuracy of franchisee records may be compromised, as well as the assurance of meeting organizational and regulatory standards. Additionally, developing a checklist is helpful in allowing third party reviewers to determine whether essential program information is included in each file.

Recommendation 7: Develop a checklist of all documents that should appear in program files.

Department Response 7: Agree. OES staff will develop a checklist to record and track franchisee documentation required to appear in program files.

Completing this recommendation is anticipated within 3 months.

Late fee payments are not recorded properly.

When managing several waste hauling franchisees, keeping track of late fee payments prevents loss of revenue, discourages delinquent payments, and promotes accurate financial recordkeeping. IA was informed that CWHP only maintains a spreadsheet of which franchisees have paid their quarterly fees; rather than maintaining a record of delinquent payments, CWHP staff deduce which franchisees have not paid when their names are absent from the quarterly payment's spreadsheet. This method of tracking delinquent payments lends itself to several potential deficiencies, one being a third-party reviewer cannot easily determine delinquent accounts.

Recommendation 8: Track delinquent franchisee payments.

Department Response 8: Agree. OES staff have started to centralize payment information in a tracking system to record and track delinquent franchisee fee payments. OES will continue to enhance this tracking system to be more user friendly for third-party reviewers.

Completing this recommendation is anticipated within 3 months.

III. Conclusion

CWHP is responsible for a variety of services to ensure proper management of the City's commercial waste system and reduce environmental impact. The audit revealed several opportunities for improvement of CWHP processes.

To strengthen internal controls over CWHP, the following recommendations should be incorporated: enforce franchisee compliance as written in the CMC and Administrative Rules and Regulations; develop a plan to organize and centralize all program files and ensure that all franchisee documents, especially current certificates of insurance, are present in each franchisee file; improve interdepartmental communication with B&I to ensure enforcement of CWHP policies; and exercise the right to access and audit franchisees' business records. Implementing these recommendations will ensure that proper internal controls have been established to increase efficiency, accountability, and safety in CWHP.

IV. Office of Environment & Sustainability Response

The Office of Environment & Sustainability would like to thank Internal Audit for the careful review of the Commercial Waste Hauling Program, and sharing the time, expertise, and recommendations to improve the program's compliance and administrative effectiveness. The CWHP program was moved under OES administration in 2021. In the last three years, OES has instituted numerous improvements that have resulted in the following:

- An increase in program revenue from $4.8 million dollars in 2020 to $7 million dollars in 2023 (46 percent increase).
- An increase in program franchise holders from 4 in 2020 to 20 in 2023 (400 percent increase).
- Ongoing improvements to program process efficiency and documentation

OES believes that the recommended IA enhancements will continue to strengthen these ongoing program efforts.

Recommendation 1: Enforce franchisee compliance as written in the CMC and Administrative Rules and Regulations.

Department Response 1: Partially Agree. Franchise compliance has improved significantly in the last three years. Through outreach and education, warning letters, and continual communications, OES has increased the number of franchise holders nearly 400%, reduced non-franchise work being conducted in the City, reduced the number of delinquent franchise payments, and has built relationships with other departments to enhance cross program compliance. In doing so OES has increased the revenue of the program by about forty percent. OES agrees 100% compliance is optimal and that is our goal for the program. This goal can be reached with proposed changes in rules and regulations to provide for more effective program management as described below.

As discussed in the audit process, OES has encountered significant enforcement issues with the program but primarily with the construction and demolition debris aspect of the program. OES is open to continuing that discussion and elaborating further on issue specifics. These issues have also been communicated with City Administration, B&I, DOTE, DEI and Law staff. OES has been working with internal and external stakeholders for over two years to co-create revised rules and regulations that decrease administrative burden, improve fairness, improve certainty, and improve confidence in the program. These changes are intended to establish rules and regulations more enforceable with available resources.

Legislative and procedural changes to improve enforcement are anticipated within 12 months.

Recommendation 2: Develop a plan to organize and centralize all program files and ensure that all franchisee documents, especially current certificates of insurance, are present in each franchisee file.

Department Response 2: Agree. Since taking leadership of the program, OES has been working to improve processes and record keeping. Staff continue to work toward a well-organized documentation system that is more intuitive for use by third parties. This organization

will also enhance recommendations below pertaining to succession planning, standard operating procedures, document checklists, and tracking delinquent fee payments. OES will continue to make these organizational process improvements.
Completing this recommendation is anticipated within 3 months.

Recommendation 3: Improve interdepartmental communication with B&I to ensure the enforcement of CWHP policies.

Department Response 3: Disagree. Improved enforcement is critical to fair and effective program, but difficulties with enforcement are not the result of communication challenges with B&I. OES staff have been in consistent and routine communications with B&I staff since taking over the program. Interdepartmental conversations have identified enforcement options to improve efficiency and reduce administrative burden.

OES staff do not have authority from City Administration to inspect and to write orders in enforcement of non-compliant commercial waste activity. B&I has the authority to inspect and write orders, but it has communicated to City Administration and OES that they do not have the capacity currently to proactively inspect commercial waste haulers at the depth and frequency necessary. Their inspections have been limited to reactively responding to customer service requests.

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Completing this recommendation is anticipated within 12 months.

Recommendation 4: Exercise the right to access and audit franchisees' business records.

Department Response 4: Partially agree. OES agrees that auditing business records is an appropriate step to ensure compliance in some cases. To this point, the City Administration has not determined a need to audit franchise records. OES has been working with the City Administration to improve program inclusion, certainty, and efficiencies to reduce the administrative burden for staff and regulated franchise holders. With support and direction from Administration, OES will engage in franchise record audits.

Completing this recommendation is anticipated within 12 months.

Recommendation 5: Develop a live SOP document that can be edited as program operations change.

Department Response 5: Agree. OES staff has been developing SOP documents for the program. Staff will continue to develop SOPs that can be edited as the program operations evolve and change.

Completing this recommendation is anticipated within 3 months.

Recommendation 6: Establish a succession plan.

Department Response 6: Agree. OES staff will develop a succession plan for the program.

Completing this recommendation is anticipated within 3 months.

Recommendation 7: Develop a checklist of all documents that should appear in program files.

Department Response 7: Agree. OES staff will develop a checklist to record and track franchisee documentation required to appear in program files.

Completing this recommendation is anticipated within 3 months.

Recommendation 8: Track delinquent franchisee payments.

Department Response 8: Agree. OES staff have started to centralize payment information in a tracking system to record and track delinquent franchisee fee payments. OES will continue to enhance this tracking system to be more user friendly for third-party reviewers.

Completing this recommendation is anticipated within 3 months.