

**Montgomery County, Maryland**  
**Office of the County Executive**  
**Office of Internal Audit**



**Audit of Wage Requirements Law Compliance**  
**Unity Disposal & Recycling, LLC**

**July 14, 2015**

# Highlights

## Why MCIA Did this Audit

Contractors who provide services to the County are subject to the Montgomery County Code provisions regarding compliance with certain wage requirements payable to the contractor's employees under the County's Wage Requirements Law ("Wage Law"). The Montgomery County Office of Procurement's (Procurement)<sup>1</sup> Office of Business Relations and Compliance (OBRC) is responsible for monitoring compliance with the Wage Law. The County's Department of Environmental Protection (DEP) has contracts with Unity Disposal & Recycling, LLC ("Unity Disposal"), to provide residential refuse and recycling collection services.

In May 2014, Procurement requested that the Office of Internal Audit (MCIA) perform a Wage Law audit of Unity Disposal covering all of its employees who perform work in Montgomery County, for a sample of 25% of all pay periods from May 1, 2010 through the start of the audit on May 28, 2014. The audit was conducted by the accounting firm SC&H, under a contract with MCIA.

## What MCIA Recommends

MCIA is making two recommendations to Procurement dealing with the determination of the remedy or remedies to seek against Unity Disposal for statutory or contract violations arising from noncompliance with the Wage Law. MCIA is making one recommendation to Procurement to take action to assure that Unity Disposal complies with all Wage Law requirements.

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<sup>1</sup> Prior to March 26, 2015, OBRC was part of the County's Department of General Services. Effective March 26, 2015, OBRC was reorganized to be part of a newly created Office of Procurement, which is a principal Office of the County's Executive Branch.

## July 2015

## Audit of Wage Requirements Law Compliance – Unity Disposal & Recycling, LLC

### What MCIA Found

Unity Disposal & Recycling, LLC did not comply with the Wage Law. Based on the information that was provided to us by Unity Disposal, and the testing criteria provided to us by the Office of Procurement (Procurement), Unity Disposal underpaid its employees in 763 of 2,415 instances that we were able to test. This resulted in a total underpayment of \$44,904.19. We were unable to test additional instances because Unity Disposal did not provide payroll records or other evidence of wages paid to employees for 21 of the 53 payroll periods (approximately 40%) that were selected for testing. Unity's failure to maintain or provide payroll records is, itself, a violation of County Wage Law requirements. Further, Unity Disposal did not provide evidence verifying the completeness and accuracy of its employee timekeeping records. We also identified instances in which no hours were reported, and where the number of hours reported was incorrect.

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## Objectives

This report summarizes an audit performed by SC&H Group under contract with the Montgomery County (“County”) Office of Internal Audit (MCIA) to review and determine compliance with the Wage Requirements Law (“Wage Law”), under Montgomery County Code § 11B-33A. The primary objective of the audit was to review and determine compliance by Unity Disposal & Recycling, LLC (Unity or Unity Disposal), a County contractor, with the Wage Law.

There are four separate contracts between the County and Unity Disposal:

**Table 1 – Unity Disposal Contracts**

Contract Number	Service Area	Execution Date	Expiration Date
9808000141AA	Area 2	11/03/2009	04/08/2017
9808000140AA	Area 5	11/03/2009	04/22/2017
0808000125AA	Area 7	02/18/2011	08/11/2018
1005672	Area 3	12/21/2011	06/08/2019

This internal audit was performed in accordance with consulting standards established by the American Institute of Certified Public Accountants (AICPA) and generally accepted government auditing standards (GAGAS) established by the Government Accountability Office, as appropriate. SC&H Group’s proposed procedures were developed to meet the objectives stated above, and were reviewed and approved in advance by MCIA. The interviews, documentation review, and field work were conducted from June 2014 to February 2015.

## Background

### Wage Requirements Law

The County Council passed, on June 11, 2002, and the County Executive signed on June 20, 2002, Bill 5-02<sup>2</sup>, relating to Wage Requirements pertaining to service contracts. Under this law, a contractor who provides services to the County is subject to the Montgomery County Code regarding compliance with certain wage requirements payable to the contractor’s employees. If the resultant contract will be subject to the Wage Law, there also are mandatory submission requirements applicable to the corresponding solicitation. The Chief Administrative Officer adjusts the wage rate annually, effective July 1<sup>st</sup> of each year. The following table details the respective Wage Law amount effective for the time period under review.

**Table 2 –Wage Law Rate**

Wage Law Rate					
July 1, 2009 – June 30, 2010	July 1, 2010 – June 30, 2011	July 1, 2011 – June 30, 2012	July 1, 2012 – June 30, 2013	July 1, 2013 – June 30, 2014	July 1, 2014 – June 30, 2015
\$12.95	\$13.00	\$13.20	\$13.65	\$13.95	\$14.15

### Contractor Certification of Wage Law Compliance

The County Office of Procurement’s (Procurement) Office of Business Relations and Compliance (OBRC), is responsible for monitoring compliance with the Wage Law. In accordance with County Procurement requirements, a bidder on a contract that is subject to the

<sup>2</sup> <http://www6.montgomerycountymd.gov/content/council/pdf/bill/2002/05-02e.pdf>

Wage Law must submit a signed Wage Requirement Certification Form with its bid or proposal submission. On the form, the contractor must indicate its intent to comply with the Wage Law or indicate which exemptions or reductions from the Wage Law apply. In addition, not-for-profit organizations that are exempt from the Wage Law can decide to opt-in to comply with the law.

Unity Disposal did not qualify for general exemption status because, at the time of contract execution, it was estimated that the payments received under the contract would exceed \$50,000. Payments made to Unity Disposal in 2012, 2013, and 2014 were approximately \$5.6 million, \$8.8 million and \$7.4 million, respectively. Also, since Unity Disposal is not recognized as a not-for-profit organization, neither the nonprofit organization exemption, nor the accompanying opt-in election to comply with the Wage Law, are applicable. In addition, Unity Disposal was not eligible to reduce the required wage amount below Wage Law requirements by deducting the employer’s share of the employees’ health insurance premium it was paying, because Unity Disposal failed to: (a) seek to avail itself of this reduction in wage amount at the time of the solicitation; (b) submit required documentation to demonstrate that it would provide healthcare insurance to its employees; and (c) demonstrate that it would pay a share of the health insurance premium, to justify a reduction in the wage amount paid to those employees based on the “per-employee hourly cost of the employer’s share of the premium”. See Montg. Co. Code, § 11B-33A (d) & (e).<sup>3</sup>

The following table details the exemptions or reductions, and optional compliance, for which a contractor may be eligible under the Wage Law.

**Table 3 – Allowable Wage Law Exemptions, Reductions, and Optional Compliance**

Type	Name	Description	Applies to Unity
<b>Exemption</b>	Exemption Status	A contractor, who, at the time a contract is signed, has received less than \$50,000 from the County in the most recent 12-month period and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Montg. Co. Code, §11B-33A (b) (1) (A) & (B).	<b>No</b>
<b>Exemption</b>	Non-profit Wage and Health Information	A contractor that is a non-profit organization is exempt from coverage. Montg. Co. Code, § 11B-33A (b) (3).	<b>No</b>

<sup>3</sup>[http://www.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/chapter11bcontractsandprocurementnote?f=templates\\$fn=altmain-nf.htm\\$3.0#JD\\_11B-33A](http://www.amlegal.com/nxt/gateway.dll/Maryland/montgom/partiilocallawsordinancesresolutionsetc/chapter11bcontractsandprocurementnote?f=templates$fn=altmain-nf.htm$3.0#JD_11B-33A)

Type	Name	Description	Applies to Unity
<b>Reduction</b>	Wage Requirements Reduction	A contractor that is a “covered employer,” may reduce its hourly rate paid under the Wage Law by an amount equal to, or less than, the per employee hourly cost of the employer’s share of the health insurance premium. Montg. Co. Code, § 11B-33A (d) (1) & (2); see also 11B-33A (c).	<b>No</b>
<b>Opt-In</b>	Non-profit’s Comparison Price	A contractor that is a non-profit may opt to pay its covered employees the hourly rate specified in the Wage Law and not be penalized in a solicitation due to the additional amount in its price that results from paying the Wage Law amount. See Montg. Co. Code, § 11B-33A (b) (3) & (c) (2).	<b>No</b>

### Qualifications for Allowable Reduction to the Required Wage Law Amount

In order to qualify for the allowable health insurance reduction to bring the required wage to an amount below the Wage Law, a contractor must indicate at the time of, and in, its bid or proposal (on the Wage Requirement Certification Form, or otherwise), its intent to take the health insurance reduction (including how it and its subcontractors will comply with the wage requirements, and that it has sufficient funds to meet the wage requirements<sup>4</sup>). In addition, a contractor must certify within its bid or proposal submission the per-employee hourly cost of the employer’s share of the premium for health insurance. The contractor also must indicate the amount of any reduction it will take from the Wage Law rate amount paid to employees<sup>5</sup>. Per the Wage Law, a contractor is allowed to reduce the effective wage amount paid to an employee who is covered by the health insurance only by all or part of the per-employee hourly cost of the employer’s share of the health insurance premium<sup>6</sup>.

### Wage Law Compliance – Contractor

Each contractor that is subject to the Wage Law must perform tasks to show compliance with the Wage Law. First, the contractor must certify that it, and each of its subcontractors with whom it works, is aware of, and will comply with, the applicable wage requirements. Second, the contractor must keep and submit any records necessary to show compliance with the law. Third, the contractor must conspicuously post notices informing employees of the wage requirements.

<sup>4</sup> Montg. Co. Code, § 11B-33A (c)(1).

<sup>5</sup> Montg. Co. Code, § 11B-33A (d)(1) & (2); § 11B-33A (c)(1) & (2).

<sup>6</sup> “If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may certify in its bid or proposal the per-employee hourly cost of the employer’s share of the premium for that insurance, and reduce the wage paid under subsection (e) to any employee covered by the insurance by all or part of the per-employee hourly cost of the employer’s share of the premium.” Montg. Co. Code, § 11B-33A (d).

Further, the contractor must submit quarterly certified payroll reports to the Office of Procurement's (Procurement) Office of Business Relations and Compliance (OBRC)<sup>7</sup>.

### Contractor Selected for Audit

Procurement requested the MCIA to perform a Wage Law audit of Unity Disposal covering all of its employees who perform work in Montgomery County, for 25% of the pay periods from the most recent contract extensions (2009) through the start of the audit. In response, MCIA directed its audit contractor, SC&H, to audit Unity Disposal's compliance with the Wage Law. Unity Disposal holds four (4) contracts with Montgomery County, namely: (1) Service Area 2 (contract number 9808000141AA), (2) Service Area 5 (contract number 9808000140AA), (3) Service Area 7 (contract number 0808000125AA), and (4) Service Area 3 (1005672). The "Service Area" is that portion of the unincorporated area of the County defined by the map within each of the respective contracts.

In March 2014, Unity Disposal employees voted to join the Laborers' International Union of North America (Union). Unity Disposal and the Union reached a collective bargaining agreement on January 15, 2015, that is effective through June 30, 2019. The Wage Law, Montg. Co. Code § 11B-33A (f)(4), does not apply to any employee "for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement." Therefore, the collective bargaining agreement effective from January 15, 2015, through June 30, 2019, governs the parties regarding the required wage amount during that period.

## **Scope and Methodology**

### Wage Compliance Scope and Methodology

We reviewed Unity Disposal's compliance with the Wage Law for the time period of November 2009 through July 2014, during which Unity has been providing services to the County. To arrive at a testable population of payroll periods, we used the most recent unilateral renewal dates for the four contracts that the County has with Unity Disposal as the starting point for our testable population. As such, we used May 1, 2010 as the beginning date for our population, as this was a date after which the last of the four contracts was renewed. We then judgmentally selected a sample of payroll periods that represent 25% of the payroll periods from the start of these contracts through the last pay period that occurred prior to the start of this audit on May 28, 2014. The basis for selection was to assure that sample pay periods were selected from each month within the test period, but also to select a distribution of different weeks across the months.

### **Payroll Sample**

To evaluate Unity Disposal's practices, and its alignment with the Wage Law requirements, we first conducted interviews with Unity's Chief Operating Officer, to gain an understanding of time keeping practices, payroll procedures, and fees deducted from employee pay. We also selected a sample of 25% of the payroll periods that occurred during the audit period previously stated. For each payroll period that we selected, we requested the Paychex Payroll Register showing all employees that performed work under the Montgomery County contracts during that pay period, as well as evidence of the hours that each included-employee worked during the period, and each employer deduction from the employee wages. Unity Disposal stated that it has maintained separate Payroll Registers for employees that perform work under Montgomery

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<sup>7</sup> Montg. Co. Code, § 11B-33A (h)(1) (A) - (C).

County contracts since early 2013. Prior to that, it did not differentiate between employees that performed work under Montgomery County contracts, and employees that worked in other areas not associated with County contracts.

Our sample size included a total of 53 pay periods (25% of the pay periods). Unity Disposal provided us with the payroll registers for a total of only 32 pay periods (60% of the request). Unity Disposal did not provide us with payroll records for any pay period prior to 2012 (21; 40% of the request), as the contact stated that they no longer had access to these payroll records. In addition, we received four pay period records for 2013 and six pay period records for 2014 that did not completely correspond to the requested period dates. To corroborate that the population of employees included on each payroll report represented the complete population of employees that performed work under Montgomery County contracts during that period, we requested that Unity provide us with the corresponding “Dispatch Logs” for each period selected for testing. The Dispatch Logs provided by Unity Disposal were incomplete (consisting only of a selection of Dispatch Logs for 2014) and did not include each employee listed on the payroll reports for each period provided. No Dispatch Logs were provided for any pay period prior to the 2014 payroll dates that were selected as part of the sample. As such, the Dispatch Logs could not be relied upon to validate the completeness of the payroll data that we received.

**Table 4 – Documents and Information Requested**

Documentation and/or Information Requested	Document and/or Information Received	Comments
<b>Timekeeping records for payroll periods selected for testing</b>	Partial	<p>Unity Disposal employees record time through the Paychex payroll system, rather than on separate timecards or timesheets. As such, the timekeeping records that were provided to us were part of the documentation that Unity Disposal provided (32 of 53 periods selected for testing).</p> <p>Further, in 10 of the instances in which payroll information was provided, Unity provided documentation that did not directly correspond to the sample dates that were selected. Rather than excluding those pay dates from our sample, we included them so that we had as much testable information as possible, and noted the discrepancy.</p>
<b>Wages paid to employees for payroll periods selected for testing</b>	Partial	Unity Disposal provided employee wage support documentation for 32 of 53 payroll periods selected for testing.

Documentation and/or Information Requested	Document and/or Information Received	Comments
Detail of deductions taken from employee gross pay by type of deductions and amounts for each employee for payroll periods selected for testing	Partial	Unity Disposal provided the detail of deductions taken from employee gross pay by type of deductions and amounts for each employee for 32 of the 53 payroll periods selected for testing.

Based on the payroll information provided by Unity Disposal, we had payroll data for a total number of 2,415 testable instances (total available employee instances from the selected periods).

### Employee Wages

Unity Disposal pays its employees a daily rate that could vary based on employee level, experience, route, etc. The daily rate is calculated based on the amount of time in which employees should be able to complete the routes that are assigned to Unity Disposal by the County. The amount of time for the expected completion of the route is then multiplied by the employee’s pay rate. Per discussion with Unity management, this rate should be at or above the County’s required wage amount in each instance. This daily rate is what is paid to employees for each day that they work, and does not vary in instances where routes are completed faster than anticipated, or if the work takes longer to complete than projected.

### Employee Timekeeping

Employees record the time at which they begin work each day, as well as the time at which they conclude work each day, by using a thumbprint scan. The scan records the identity of the employee and the time at which the scan occurred, each time that an employee swipes their thumb across the scanner. This timekeeping system is part of the Paychex payroll package used by Unity Disposal. Unity Disposal management acknowledged: 1) that management or administrative personnel with access to the Paychex system have the ability to log into the timekeeping system and manually enter or change employee time, potentially without the affected employee knowing; and, 2) that employees are not required to evidence their approval of hours worked in writing each period. Additionally, employees do not receive a summary of the time that they work each week, unless they request it. Note: Prior to 2013, Unity Disposal employees utilized “swipe cards” with magnetic strips for recording the time that they worked each day.

### Hourly Wage Calculation

In each instance that we tested, our methodology for computing employee hourly rates by which to determine Unity Disposal’s compliance with the County’s Wage Law was based on guidance that was provided to us by Procurement. Based on that guidance, our Wage Law compliance

testing was to perform a calculation in each instance that uses the employee's "Regular Earnings,"<sup>8</sup> and dividing by the employee's "Regular Hours"<sup>9</sup> reported for that period.

## Testing

In order to determine whether Unity Disposal paid its employees in accordance with the County's wage requirement, we compared the Hourly Wage Rate that was calculated in each instance of our testing, to the Wage Law Rate that was in effect at the time of the pay period tested.

We considered it an exception each instance in which the Hourly Wage rate that an employee was paid by Unity Disposal was less than the County's required Wage rate.

In order to calculate the amount of underpayment for each exception, we multiplied the Wage Law rate that was in effect at the time of the pay period tested by the Regular Hours that were reported for that instance to determine the Calculated Regular Earnings (rounded to the nearest cent). We then subtracted the amount of Regular Earnings that were paid to the employee in that pay period. The resulting amount represented the underpayment for that employee, for that pay period. The sum of each of these instances provided us with the total amount of underpayment that we could determine based on the information that was provided by Unity Disposal for our testing.

### Example (1 Employee):

Wage Rate		13.95
Regular Hours	X	<u>36.05</u>
Calculated Regular Earnings	=	502.90
Reported Regular Earnings	-	<u>500.00</u>
<b>Over/(Under)</b>	=	<b><u><u>\$ (2.90)</u></u></b>

## Findings

### Wage Law Compliance

Based on the information that was available to us for testing, our review found that Unity Disposal did not comply with the County's Wage Requirements Law in 763 of the 2,415 instances tested (31.6%). These instances of non-compliance resulted in a total underpayment in the amount of \$44,904.19. See Appendix A for the total amount of underpayment, per employee.

Based on our findings that 109 employees (within the 763 instances) were underpaid by Unity Disposal, the average amount of underpayment was calculated as \$411.97 for each employee who was underpaid.

$$\$44,904.19 / 109 = \$411.97$$

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<sup>8</sup> "Regular Earnings" is defined as wages paid for hours worked, up to 40 hours per week. Regular Earnings do not include wages earned for Overtime, Vacation Time, Holiday Time, Sick Time, Paid Time Off, etc.

<sup>9</sup> "Regular Hours" are hours actually worked by an employee, up to 40 hours per week. Regular Hours do not include hours logged for Overtime, Vacation Time, Holiday Time, Sick Time, Paid Time Off, etc.

### Payroll Documentation

We found that Unity Disposal did not comply with the County's requirement to "keep and submit any records necessary to show compliance." Our testing was limited by Unity Disposal's inability/failure to maintain wage information and provide us with the payroll records or other evidence of wages paid to employees for 21 of the 53 payroll periods that were selected for testing.

As part of each contract executed with the County, Unity Disposal signed a Wage Requirements Certification that requires them to submit certified payroll records on a quarterly basis. Per discussion with Procurement, Unity Disposal has not submitted the required quarterly certified payroll report on a consistent basis. The Wage Requirements Law states that Unity Disposal is required to maintain wage information and submit the documents to the County on a quarterly basis.

### Payroll Support Documentation

Unity Disposal did not provide time cards or other evidence of hours worked by employees for 21 of the 53 payroll periods selected for testing. Additionally, our testing identified 82 instances (of the 2,415 available instances) in which there were no Regular Hours reported on the payroll registers that Unity Disposal provided for our testing; however, the employee earned Regular Earnings. As a result of this omission, we were unable to complete our assessment of Unity Disposal's compliance with the County's Wage Requirement Law amount in these instances, as there was no basis for a calculation.

Also, the hours that were reported on the payroll register are unreliable because management or administrative personnel with access to the Paychex system have the ability to log into the timekeeping system and manually enter or change employee time, potentially without the affected employee knowing. Further, there is no process in place whereby each employee verifies in writing the accuracy of the number of hours worked in a period that is reported on the payroll register, which may have helped to verify that the hours the employer reported were accurate.

Finally, Unity Disposal was unable to provide evidence that the population of employees contained in each payroll register provided for testing was complete. Unity provided a sample of Dispatch Logs, meant to show the names of the employees assigned to each County route. These logs were incomplete, and did not cover any payroll periods prior to 2014. Per Unity Disposal, since early 2013, its payroll registers include a code that identifies each employee performing work for Montgomery County. Unity Disposal was unable to validate that this method of tracking was complete and accurate.

### Employee Authorization of Payroll Deductions

In an effort to determine whether Unity had obtained and retained proper evidence that its employees properly authorized the medical deduction from their paychecks, we identified a population of 28 employees whose paychecks included the "Medical" deduction. From that group, we selected a sample of 15 employees and requested that Unity provide us with the Benefits Election Forms that were completed and signed by each employee. Unity Disposal was unable to provide us with the signed benefit election forms that would provide evidence that 15 of 15 employees selected for testing properly elected the medical insurance benefit and authorized the corresponding payroll deduction.

**Table 5 –Underpayment Computations Based on 32 Payroll Periods Provided by Unity**

<b>Unity Wage Law Rate Review</b>	
<b>Total Number of Payroll Periods Requested:</b>	<b>53</b>
<b>Total Number of Payroll Periods Received:</b>	<b>32</b>
<b>Total Number of Testable Employee Payroll Records Received:</b>	<b>2,415</b>

<b>Using The Regular Earnings and Regular Hours Provided by Unity</b>	
<b>Number of Records <u>At or Above</u> the Required Wage Law Rate:</b>	<b>1,570</b>
<b>Number of Records <u>Below</u> the Required Wage Law Rate:</b>	<b>763</b>
<b>No Hours Reported on Payroll Register:</b>	<b>82</b>

<b><u>Total Dollar Value of Underpayment:</u></b>	<b>\$44,904.19</b>
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<b>Average Amount of Underpayment, by Employee</b>	
<b>Dollar Value of Underpayment Based on Information Provided:</b>	<b>\$44,904.19</b>
<b>Average Amount of Underpayment, by Employee based on 109 Employees:</b>	<b>\$411.97</b>

<b>Average Amount of Underpayment, per Instance</b>	
<b>Average Amount of Underpayment, by Employee</b>	<b>\$411.97</b>
<b>Average Amount of Underpayment, per Instance based on the 32 Pay Periods for Which we Received Records</b>	<b>\$12.87</b>

## **Recommendations to the Director of Procurement**

1. Determine what remedy or remedies to seek against the contractor for statutory or contract violations arising from noncompliance with the Wage Law. (See Appendix B listing provisions in County law and the Contracts that provide remedy options.)
2. In determining an appropriate remedy, including the assessment of liquidated or other damages, consider this audit report and any related calculations needed to quantify the individual and aggregate amounts by which Unity Disposal underpaid the required wage amount to covered employees, as a result of its violation of the Wage Law. (See Appendix C for remedy details.)
3. Take action to assure that Unity Disposal complies with all Wage Law requirements including:
  - a) assuring that all Unity Disposal employees who perform work on Montgomery County contracts are paid at least the required Wage Law Rate in accordance with Montgomery County Code § 11B-33A;
  - b) assuring that all Unity Disposal payroll records are appropriately retained, in accordance with Montgomery County Code § 11B-33A(h)(1)(B);

- c) assuring that the required quarterly certified payroll report is submitted to the County on a consistent basis; and,
- d) assuring that Unity Disposal designs and implements a process to identify and validate all of the employees who perform work on Montgomery County contracts each period.

## **Comments and MCIA Evaluation**

We provided the Office of Procurement and Unity Disposal with a draft of this report for review and comment on June 10, 2015. We received a response from the Office of Procurement on June 19, 2015. The Office of Procurement indicated that it will take action to require Unity Disposal to compensate its employees for underpayments as identified in the report within 15 days after receiving the final report. The Office of Procurement said it will request documentation of these employee payments including, but not limited to, copies of checks to validate these back payments. Further, the Office of Procurement indicated that it will work with the County Attorney's Office to determine appropriate remedies for violations arising from the contractor's noncompliance with the Wage Requirements Law (see memo included in Appendix D). Unity Disposal replied in a letter dated June 29, 2015 that reiterated its cooperation during the review, and stated that it planned to conduct a review of the findings (see memo included in Appendix D).

## Appendix A – Total Underpayment Amount per Employee

Employee Number	Total Underpayment
1	\$399.29
2	\$41.20
3	\$28.00
4	\$355.71
5	\$88.40
6	\$317.96
7	\$195.68
8	\$109.73
9	\$30.40
10	\$22.25
11	\$763.82
12	\$104.36
13	\$77.20
14	\$26.40
15	\$1,583.58
16	\$124.75
17	\$588.84
18	\$6.56
19	\$1,116.04
20	\$175.14
21	\$1,118.81
22	\$6.90
23	\$27.46
24	\$17.20
25	\$233.16
26	\$151.42
27	\$549.96
28	\$1,512.74
29	\$497.50
30	\$465.52
31	\$127.68
32	\$309.90
33	\$534.65
34	\$658.91
35	\$1,454.85
36	\$171.74
37	\$512.64

<b>Employee Number</b>	<b>Total Underpayment</b>
38	\$1,123.12
39	\$548.10
40	\$2.00
41	\$904.53
42	\$25.20
43	\$256.20
44	\$7.20
45	\$12.80
46	\$14.40
47	\$707.10
48	\$97.08
49	\$21.20
50	\$13.31
51	\$252.00
52	\$270.31
53	\$84.00
54	\$95.04
55	\$394.00
56	\$126.28
57	\$18.40
58	\$554.15
59	\$105.53
60	\$56.00
61	\$829.75
62	\$1,386.21
63	\$18.60
64	\$44.05
65	\$1,495.85
66	\$793.49
67	\$129.60
68	\$904.75
69	\$19.20
70	\$1,849.84
71	\$125.31
72	\$1,426.78
73	\$155.37
74	\$76.84
75	\$259.35
76	\$7.20

<b>Employee Number</b>	<b>Total Underpayment</b>
77	\$291.42
78	\$92.00
79	\$571.85
80	\$491.24
81	\$379.79
82	\$27.60
83	\$9.20
84	\$334.80
85	\$885.21
86	\$4.80
87	\$249.12
88	\$75.60
89	\$2.62
90	\$634.34
91	\$588.19
92	\$3,752.71
93	\$1,033.53
94	\$744.40
95	\$640.98
96	\$105.66
97	\$662.80
98	\$693.46
99	\$336.81
100	\$6.80
101	\$60.00
102	\$32.35
103	\$428.71
104	\$26.62
105	\$681.57
106	\$476.12
107	\$250.80
108	\$571.04
109	\$45.60
<b>Grand Total:</b>	<b>\$44,904.19</b>

## Appendix B – Excerpts from Wage Requirements Law and Contracts

(c) Solicitation requirements

*(1) Each bid or proposal to provide services to the County must specify how the contractor and each subcontractor will comply with these wage requirements, and must include sufficient funds to meet these requirements.*

(d) County Code, Sec. 11B-33A (d) “Health insurance.”

*If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may:*

- 1. certify in its bid or proposal the per-employee hourly cost of the employer’s share of the premium for that insurance, and*
- 2. reduce the wage paid under subsection (e) to any employee covered by the insurance by all or part of the per-employee hourly cost of the employer’s share of the premium.*

(h) County Code, Sec. 11B-33A (h) “Enforcement” :

- 1. The Chief Administrative Officer must require each covered employer to:*
  - a. certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;*
  - b. keep and submit any records necessary to show compliance; and*
  - c. conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer’s designee.*
- (2) The Chief Administrative Officer must enforce this Section, perform random audits and any other audits necessary to do so, and investigate any complaint of a violation.*

(5) *Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section.*

(i) General Conditions of Contract Between County & Contractor:

a. Paragraph 3, Applicable Laws

*This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.*

*The prevailing Wage Law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").*

*Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and*

*procurement laws and regulations, pursuant to the Maryland State Finance and Procurement Article, Section 13-101, et. seq.*

*Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).*

*Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).*

b. Paragraph 28, Termination for Default

*The Director, Department of General Services, may terminate the contract in whole or in part, and from time to time, whenever the Director, Department of General Services, determines that the contractor is:*

- (a) defaulting in performance or is not complying with any provision of this contract;*
- (b) failing to make satisfactory progress in the prosecution of the contract; or*
- (c) endangering the performance of this contract.*

*The Director, Department of General Services, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.*

- (j) Montg. Co. Code § 1-18 "Enforcement" and §1-19, "Fines and Penalties".-*

These County Code provisions address the issuance of notices of violation and civil citations, and provides for fines and penalties, in the event of a violation of the County Code, including the Wage Law. Included in these County Code provisions is the following language:

*“If no penalty is specified for taking any action prohibited by County law or failing to take any action required by County law, that action or failure to act is a Class A violation.”*

## Appendix C – Available Remedies for the County

Remedies are available related to a contractor's statutory violation or contract breach, resulting from a contractor's non-compliance with the Wage Law.

- The General Conditions, at paragraph 3, expressly require a contractor to comply with all applicable federal, State, and local laws, in general, and the Procurement law and regulations, in particular. Accordingly, any Wage Law violation by Unity Disposal also would constitute a contract breach, and permit the County to seek legal and equitable remedies for that breach against Unity Disposal, including seeking damages, seeking injunctive relief, or terminating the contract for default (General Conditions, para. 27).
- In accordance with the authority provided specifically in the Wage Law, at Montg. Co. Code, § 11B-33A (h) (5), the subject Contract, at General Conditions Attachment C, paragraph I., specifies that the County may assess liquidated damages of 1% of the contract value, per day, for each violation of the Wage Law and resulting breach of the contract by Unity Disposal. These liquidated damages include the amount of any unpaid wages, with interest that results from the noncompliance.
- As required by the Wage Law, the Contract specifies that “an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under [the Wage Law] and recover any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation for asserting a right under [the Wage Law]”. (See Appendix B for excerpts from the law and contracts applicable to statutory or contractual violations that may result from Unity Disposal’s non-compliance with the Wage Law.)
- The County has the option, in the exercise of its prosecutorial discretion, to seek a notice of violation or a civil citation, and a resulting fine as a Class A violation (\$500 initial offense; \$750 repeat offense) for a contractor's violation of the Wage Law. See Montg. Co. Code, §§ 1-18 & 1-19.

# Appendix D – Office of Procurement and Unity Disposal Responses

## Office of Procurement Response



### OFFICE OF PROCUREMENT

Isiah Leggett  
County Executive

Cherri Branson  
Director

### MEMORANDUM

June 19, 2015

TO: William Broglie, Manager  
Office of Internal Audit (MCIA)

FROM: Cherri Branson, Director   
Office of Procurement (PRO)

SUBJECT: Audit Report on Wage Requirements Law Compliance – Unity Disposal & Recycling, LLC – Office of Procurement Comments

I am in receipt Montgomery County's Internal Audit (MCIA) draft report of Unity Disposal & Recycling, LLC (Unity) and its compliance with wage requirements under the County's Wage Requirements Law. The SC&H Group (SC&H), under contract with MCIA, performed an audit to determine compliance with the aforementioned law. In the draft report for official comment dated June 2015, SC&H found Unity in violation of the County's Wage Requirements Law. Additionally, SC&H identified underpayments to Unity's employees of \$44,904.19 for 53 pay periods in 2013 and 2014. The pay periods examined by SC&H represent 25% of all pay periods from May 1, 2010 through May 28, 2014.

The following Recommendations are included in the draft audit report:

**Recommendation #1:** *Determine what remedy or remedies to seek against the contractor for statutory or contract violations arising from noncompliance with the Wage Law. (See Appendix B listing provisions in County law and the Contracts that provide remedy options.)*

**Recommendation #2:** *In determining an appropriate remedy, including the assessment of liquidated or other damages, consider this audit report and any related calculations needed to quantify the individual and aggregate amounts by which Unity underpaid the required wage amount to covered employees, as a result of its violation of the Wage Law. (See Appendix C for remedy details.)*

#### Division of Business Relations and Compliance

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OFFICE OF PROCUREMENT

Isiah Leggett  
County Executive

Cheri Branson  
Director

**Recommendation #3:** Take action to assure that Unity Disposal complies with all Wage Law requirements including:

- a) assuring that all Unity Disposal employees who perform work on Montgomery County contracts are paid at least the required Wage Law Rate in accordance with Montgomery County Code § 11B-33A;
- b) assuring that all Unity Disposal payroll records are appropriately retained, in accordance with Montgomery County Code § 11B-33A(h)(1)(B);
- c) assuring that the required quarterly certified payroll report is submitted to the County on a consistent basis; and,
- d) assuring that Unity Disposal designs and implements a process to identify and validate all of the employees who perform work on Montgomery County contracts each period

**PRO Comments:**

As provided under the County's Wage Requirements Law, this office will require Unity Disposal & Recycling, LLC to compensate its employees for underpayments as identified in the report within 15 days after this office receives the final report. To validate Unity's issuance and employee receipt of compensation for prior underpayments, this office will request documentation of these payments including, but not limited to, copies of checks.

This office will also work with the County Attorney's Office to determine appropriate remedies for violations arising from the contractor's noncompliance with the Wage Requirements Law.

I appreciate the time taken and analysis performed by you and the Auditors from SC&H.

cc: Grace Denno, PRO  
Jack Gibala, PRO  
Pam Jones, PRO  
Karen Federman-Henry, OCA  
Rich Melnick, OCA  
Fariba Kassiri, ACAO

Division of Business Relations and Compliance

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## Unity Disposal Response



June 29, 2015

Mr. Bill Broglie  
Internal Audit Manager  
Office of the County Executive  
Montgomery County Government  
6<sup>th</sup> Floor, EOB  
Rockville, Maryland 20850

Dear Mr. Broglie:

Thank you for the opportunity to respond to the Audit of Wage Requirements Law Compliance report recently shared with us. We have and continue to examine the reported data; and appropriately begin by responding with the following...

Unity Disposal and Recycling (Unity) wished to first make clear that we were engaged, cooperative and fully supportive of processes and data request made by the two (2) firms used in this review process. Pursuant to our knowledge and records, every request for meetings, facility and personnel access and data were met and fulfilled to the extent information was available through archives, systems or in-house records.

While we are challenged by certain references and written tone in the now current auditors (SC&H) report, we stand firm in the fact that we are upstanding business and partner of Montgomery County and ***maintain highest ethical code and standards regarding our business, industry, partners and those in our employ***. While deemed unnecessary, the attached emails have been provided as evidence of the same.

As referenced in the auditors report, Unity Disposal converted over to the Paychex Thermal Imaging System (Time clock) in 2013 in an effort to enhance employee reporting, accuracy and security. A secured system used by Unity and other like businesses, at ***no time*** were records, systems or codes edited; rather, report writers were requested through Paychex or facilitated by our Office Manager to ensure the data provided was *in the format* requested by auditors. Therefore, the auditors pronouncement & question of a change in records is merely innuendo and clearly inaccurate. What is important to note is the fact that our payroll records are on retained by our Paychex provider for a period of up to three years; therefore records were not available post '2012.

This posed an inherent issue even as Unity worked tirelessly to compile all available data

from existing records and communicated these facts to the auditors. This also presented challenges in that prior time records were identified only by Driver or Helper and were not coded by County. However, in support of confirming employed personnel and routes, requested records such as driver log sheets were given to the auditors for validation purposes to which no concerns were noted or additional information requested.

Additionally, while the auditors report mentions data tied to certain contract periods, it is important to note contracts for areas 2 and 5 were "executed" in November of 2009; however, there were no crews hired to fill these positions until April of 2010, as the contracts began on 4/12/10 and 4/26/10, respectively.

To this point, and as also referenced by the auditors report, Unity has spent the past several years in the thralls of union campaign; and yet, without fail, Unity communicated and worked effortlessly to ensure the auditors request were met, especially during the onset engagement period. It is also important to note that absent our request, Unity was not extended an opportunity to review or respond to the initial auditors (Rocha and Company) report, for which unspeakable time and effort were given. Had we done so, we believe a different course and possible outcomes may have resulted.

In response to this current report and the fact that Unity came into a Collective Bargaining Agreement on January 15, 2015, we wish to clarify that the initial premise of this campaign was not regarding wages. As you are aware, the local waste industry has been a union targeted over the past several years. Likewise, the County has been targeted for reasons that include healthcare of which Unity has been and remains a leader in this benefit area; far exceeding our competitors in plan options contributions and matches. This was fact at the time of our contract agreement; however, as also noted by the auditor, is now and unfortunate oversight which we believe would also have made a difference in the outcome of the report.

In addition to the above, and most importantly, we are **absolute** that Unity has never intentionally underpaid employees. Unity, along with others in the local waste collections industry, established a competitive "day rate" for our drivers and helpers. Unity's rate established a fixed wage per day for the employees, whether they completed their routes in the allotted 8 hour work window or less (excluding a company mandated 30 minute lunch break). In the event a worker's route was altered to increase the normal routing, bonus pay was paid. From our perspective, our total compensation package included the following components:

1. Base day rate
2. Bonus route pay, if applicable
3. Bonus safety pay, if applicable
4. Other Bonus pay, if applicable
5. Employer portion of healthcare benefits
6. Paid vacation, sick, personal time, etc.

Based on the above findings, we have commenced an internal review of available payroll

records from 1/1/2012 through 1/14/15 (start of Union Labor Agreement) to determine, if, and to the extent, any deficiencies in drivers or helpers wages. Upon completion, we would welcome the opportunity to review our findings and determine any further actions at that time. Our internal evaluation is scheduled to be completed on or before 7/31/15.

Unity takes seriously the auditors report and is committed to further reviewing the findings with the intentions of reconciling any potential deficiencies validated by our internal review panel that includes our Chief Financial Officer and Counsel.

For the above reasons, we believe strongly that fines, penalties nor termination of contract is applicable in this matter and seek your continuing support and trust in this response and our commitment in reconciling this matter adjoined with our partnership and proven ability in providing quality service to the County and its Citizens whom we highly regard.

Sincerely,

*Jerald Boyd*

Jerald Boyd  
Manager of Business Relations