



2021

**ULSTER COUNTY
COMPTROLLER'S AUDIT
ON UCRRA COMPOSTING
OPERATIONS**

**Office of the
Ulster County Comptroller
March S. Gallagher**



ULSTER COUNTY OFFICE OF THE COMPTROLLER

March S. Gallagher, Esq.
Comptroller



Alicia DeMarco, CPA
Deputy Comptroller

September 20, 2022

Dear Acting County Executive Contreras, Legislative Chair Bartels, and Acting Executive Director DeGraff,

I am pleased to be able to share with you our audit of the composting operations of the Ulster County Resource Recovery Agency. It has been an honor for our Office to conduct this vital work for Ulster County taxpayers. As you may know we faced significant challenges during this audit including litigation contesting our audit authority. While we were able to prevail in this challenge to authority, it unfortunately came at additional and unnecessary cost to Ulster County taxpayers and Ulster County Resource Recovery Agency customers.

The completion of the audit was delayed nearly a year by this litigation, however once we were provided the requested documentation, we were able to complete our work. We stand by each of our findings and want to call the Agency's attention particularly to sales tax for which we recommend certain documentation be maintained to reduce the risk to the Agency.

While our findings and the Agency's efforts to address them can be read in more detail within the body of the audit, I wanted to highlight some of the positive changes we have seen at the Agency over the course of the audit:

- Changes to the composition of the Board of Directors
- Adoption of a conflicts of interest policy
- Adoption of a compost sales limit policy
- Implementation of compost inventory management practices
- Separation of financial and executive functions

We appreciate the hard work of the Agency and are happy to report that the audit process has resulted in significant changes at the Agency which will better prepare it for the important decision-making and leadership needed to determine our solid waste future.

Respectfully submitted,

A handwritten signature in blue ink that reads "March Gallagher".

March Gallagher



ULSTER COUNTY OFFICE OF THE COMPTROLLER

ULSTER COUNTY COMPTROLLER'S 2021 AUDIT ON COMPOSTING OPERATIONS

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Released September 2022

Foreword

We would like to preface our audit report by acknowledging Ulster County Resource Recovery Agency ("UCRRA" or the Agency) staff and the present Board of Directors who have made efforts to address many of the concerns identified in the Comptroller's Audit. Since our audit began, the Legislature has appointed two new board members and the Board has prioritized strengthening policies and controls over agency operations.

The Comptroller's Office recommends increasing legislative oversight of this Agency, the two contracts between the Agency and the County, and strengthening the Agency policies that govern internal controls.

We recognize the efforts made since the initiation of our audit and look forward to continuing to work cooperatively with the Agency to ensure that UCRRA is operating effectively, efficiently, and in the best interest of the taxpayers they serve to meet the solid waste management goals of the County in recognition of the significant \$37 million Net Service Fees paid by county taxpayers.

Objectives

In 2020 the Office of the Ulster County Comptroller received numerous complaints regarding the operations of the Agency. Complaints ranged from concerns related to odor at and around the facility, to concerns related to the management of composting operations, including the availability of compost and allegations of self-dealing and conflict of interest in the sales and recycling of materials received at the facility. In May 2021, this Office requested a meeting with key members of the UCRRA administration to discuss our concerns and our intentions to perform a review of the compost program and its operations.

As a result of our initial inquiry and in response to the concerns raised by the public, our audit sought:

- To determine whether appropriate controls exist over the financial operations of the UCRRA Composting Program including the handling of receipts and disbursements
- To determine whether appropriate controls exist over the inventory of organic materials and that related records are complete and accurate
- To determine if the UCRRA provided, and Ulster County received, all elements of the contracted services as provided in contract number 2017-512
- To conduct a cost benefit analysis of the Composting Program

Executive Summary: Why this review is important

The UCRRA is an essential part of the local municipal function, as it is responsible for developing, funding, and executing a comprehensive county-wide solid waste management program. The Agency's operations are primarily funded by tipping fees, with modest additional revenues from sales of recyclable materials, dumpster rentals, pulling fees, and fuel surcharges. Based on the Agency's 1992 Solid Waste Management Contract with the County of Ulster still in force today, any deficits incurred by the Agency will be covered by a Net Service Fee paid by the County. Therefore, the programs and its financial outlook have direct financial impacts on residents by impacting both the tipping fees charged to residents using the facility, and in the form of a Net Service Fee paid by the County if operating revenues fail to cover operating costs.¹ To date, Ulster County has paid UCRRA over \$37 million in net service fees. The Ulster County Legislature must decide what should be done with those funds to best serve the taxpayers some of which might be required to address our solid waste management future.

Our audit identified several issues related to the organization's operations that relate to both effective internal controls and policies, and enforcement of existing policies and regulations. While our audit initially sought to review the composting operations conducted at the facility, our review uncovered several issues that should be addressed by the Board and by County officials to ensure that the Agency is operating in the best interest of County residents that have an impact agency-wide.

[1] Pursuant to the 1992 Solid Waste Management Contract between the County and the Agency section 4.01 "In consideration for providing the service of accepting and processing and/or disposing of Solid Waste and accepting, processing and marketing materials Regulated Recyclable Materials by or on behalf of the County...shall have the right to charge the County and the County shall have the obligation to pay to the Agency New Service Fees when due..." The Net Service fee essentially makes the Agency whole on an annual basis, as needed.

What the Comptroller's Office found

The Agency is not maximizing revenues and a significant amount of the benefits of the composting program are going to one customer, the UCRRA Director of Maintenance and brother of Operations Manager to whom he reports. Based on our review of the Agency's operations and following our discussion with board members and Agency staff, we found that the Agency was operating absent essential controls to mitigate financial and operational risks and was operating outside of established policies and state regulations that govern the Agency's operations.

Furthermore, the Agency was not meeting multiple obligations outlined in the 1992 solid waste management contract with the County (see Appendix A) which runs through 2025. The Agency has not operated the facility in the best interest of the public, by failing to maximize revenues as previously identified by the Office of State Comptroller in a 2012 audit.² The presence of conflicts of interest and self-dealing resulted in adverse financial impacts to the Agency, and therefore the public they serve. Our audit scope was limited to the composting operation, but the findings speak to larger internal controls issues that affect all of the Agency's operations and as management seeks to improve internal controls those larger potential improvements should be considered.

The Comptroller's Office was unable to complete a cost benefit analysis. The Agency lacked inventory controls making it impossible to determine how much was produced or retained as inventory during the audit period.

Comptroller's Office Recommendations

The Agency should implement pricing and inventory control policies and procedures to mitigate the risk of further financial loss to the Agency. The Agency must also work to operate in compliance with its own policies and within applicable State regulations. The Agency needs to work toward maximizing revenues, while limiting costs to operate in the best interest of the public they serve. Lastly, UCRRA must evaluate its long-range financial and operational outlook to ensure that they are able to serve the needs of the County into the future and avoid the need for future additional Net Service Fees.

Findings & Recommendations

Finding 1 - The Agency did not appropriately price compost sold.

Condition:

The Agency did not price the tipping fees and the sale of compost at the market rate in the best financial interest of the Agency and in compliance with State regulation. Compost is sold (per the Agency's website) at \$30/ton, which is a fraction of the market rate when compared to local and national competitors offering compost. Additionally, tipping fees for the intake of organic materials that will be processed into compost are \$20/ton, while competitors charge \$40/ton approximately 50% of the market rate. These rates give the Agency competitive advantage over other businesses.

ENTITY	Price of Compost	Organic Tipping Fee Collected
Ulster County RRA	\$30/ton	\$20/ton
Onondaga County RRA	\$40/ton	\$42/ton
Custom Compost	\$60/ton	N/A
Greenway	\$100/ton	\$40/ton

*Competitor pricing was obtained from vendor webpages or by direct calls to vendors and reflects pricing as of June 2021.

In prior meetings, the Agency stated reasons for pricing below market value, such as building the market for product and diverting food waste from landfills, but those decisions should be documented and reviewed periodically. Such a review might disclose that a majority of the food waste being diverted originated outside of the county and that building demand for the product to create a market is no longer needed when the product routinely sells out.

[2] New York State, Office of State Comptroller, Ulster County Resource Recovery Agency, Selected Financial Operations, 2012M-65 accessed at <https://ucrra.org/wp-content/uploads/2020/01/nyscomptroller.pdf>

The Agency did not utilize equipment purchased in February of 2019 for the purpose of bagging compost to improve both the availability and profitability of finished compost. Although the equipment and bagging materials were available, the Agency elected not to bag compost during the audit period likely because of the COVID-19 pandemic. Bagged compost will create an alternative method to sell the product to a larger base of customers, and at even higher margins as bagged compost sales would equate to \$270 /per ton based on current prices (less applicable tax). Bagged compost is slated for \$5 per 1.2 cubic foot bag as approved in Resolution 2564 at the March 2022 Board Meeting. According to discussion this price was selected after comparisons with other organizations. Although the sale of bagged compost did not take place during the scope of our audit, the pricing of this product must also be set to maximize revenues and reviewed periodically.

Effect:

Compost sale revenues and tipping fee revenues are below market rates and the program did not achieve its full revenue potential. Increased revenues could allow the agency to reduce service costs and/or further other agency/community missions. Underpricing the compost sales and related tipping fees reduces profitability of the Agency and its ability to repay Net Service Fees.

Cause:

The Interim Executive Director and CFO stated in our May 2022 meeting that the Agency was “not supposed to make money,” and that the Agency’s goal is to break even. This flawed interpretation of the organization’s goals and objectives under the state law was used as justification for pricing below market rate. Furthermore, the former Board, and legal counsel appeared to agree with the Executive Director’s assertion that the Agency’s goal is to break even with the pricing of intake and sales of materials.

Criteria:

Public Authorities Law §2897(7) stipulates that products should be sold at market value and as a public benefit corporation, the Agency should work to maximize profits and run the agency in a fiscally responsible manner.

Under the 1992 Solid Waste Management Contract Section 4.01 (B) the Agency is required to “exercise its best efforts in consultation with the County to reimburse the County amounts paid by the County for Net Service Fees...” and breaking even would not allow for any repayment and therefore not constitute a best effort.

account. If the Agency fails to receive sufficient revenues in any calculation period to pay (BDS + BRF + AE) for such calculation period, or fails to maintain a sufficient operating reserve account, and Net Service Fees are paid by the County pursuant to this Article IV, the Agency shall thereafter exercise its best efforts in consultation with the County to reimburse the County amounts paid by the County for Net Service Fees as a result of such failure. The obligation to reimburse the County for Net Service Fees paid by the County shall be continuing.

The Comptroller’s Office noted the repayment requirement in a 2011 report (Appendix B). In summary, the Agency did not meet this repayment requirement of the 1992 Solid Waste Management Contract with the County (as well as several others identified in Appendix A). The Net Service Fees paid by the County to the Agency have never been repaid to date. This obligation, still outstanding, speaks to the requirements that the Agency maximize revenues and respond to the Legislature’s solid waste policy direction.

Recommendation 1:

Price the compost for sale and organics tipping fees competitively at the local market rate to maximize revenues in accordance with state law and the 1992 contract. Additionally, implement the use of the bagging equipment along with marketing to increase revenues and profitability while bringing public awareness to the program and to reaching a broader customer base.

Recommendation 2:

Implement and enforce a pricing policy that complies with State Regulation and works to maximize revenues and the profitability of the Agency in the best interest of the taxpayer. Maximizing revenues would enable the Agency to invest more in the long-term planning and implementation of the County’s solid waste management plans and goals.

Finding 2- The Agency made sales of compost in excess of customer policy limits.

Condition:

Compost sales were made in excess of established transaction limits, outside of regular business hours, and not on a first-come-first serve basis per agency policy. From October 15th to December 31st, 2020, all compost sales were made to a single individual, who is an employee of the agency and is responsible for the compost operations oversight. Several individuals attempting to purchase compost from the facility were denied sales during the third quarter of 2020. Customers were told there was no compost available. During the audit period said employee purchased at least one third of all compost sold.

Effect:

Other customers were denied the ability to purchase compost, and the benefits of the composting program were concentrated to a single individual. The denial of customers caused the program and Agency to suffer from negative public feedback.

Cause:

When the audit was initiated, the Agency did not have effective policies and enforcement to ensure that customer limits are appropriate and being adequately enforced. Prior to the adoption of Resolution #2545 in August 2021, and the establishment of the compost policy, there was no formally documented policy to govern volume or related party transaction for compost sales. Even after the Board adopted a new policy, the Agency repeatedly operated outside of compliance with its own policies by giving preferential treatment to an employee of the Agency and by immediately overriding the policy to allow another customer to purchase 300 tons of compost. Moreover, the Agency did not utilize available controls to ensure that transactional limits were adhered to, and that accurate customer-specific transaction detail was documented and available. The Comptroller's Office looks forward to seeing the full implementation of these policies and internal controls.

Criteria:

In August 2021 the Agency adopted a formal Compost Policy (see Appendix C). Prior to August 2021 there was no formally documented customer limit to compost sales, however, Agency staff stated at the June 14, 2021, Governance Committee meeting that the operating policy was a 10-yard per day customer limit with a 500-ton annual limit. This translates to a 5-ton customer limit. Numerous sales of compost were made in violation of the Agency's 5-ton per customer limit, as established by the Agency's Board. Additionally, the Agency's website reports that compost sales are made on a first come first serve basis.

General Municipal Law bars employees from using their position to obtain special benefits and using one's position to being first in line for first come first serve product.

"No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated nongovernmental purposes." Public Officers Law § 74(3)(d).

Finally, the ABO's Code of Ethics Policy (see Appendix D), and the Agency's Conflict of Interest Policy adopted on December 27, 2021, have similar standards.

Recommendation 1:

All compost sales should be made in accordance with the Agency's Compost Policy, the Conflict-of-Interest Policy, and the Ethics Policy, which were established to ensure effective internal controls exist. Please refer to the Appendices for copies of currently adopted policies. Now that the Agency is accounting for compost as inventory, it should consider the adoption of a policy to address surplus inventory to address the potential situation of compost volume exceeding the capacity of the bays and methods for selling larger volumes of compost.

Recommendation 2:

The Agency should utilize the current software or obtain software to track sales made by customer to ensure that sales are made in accordance with adopted policies. A monthly or daily review of the sale activity log would allow the Agency to enforce the limits of the policy. The policy should be updated to implement a penalty or repercussion for those who obtain more than the allowable sale during the specified period.

Finding 3- Internal controls over inventory and sale of compost should be strengthened.

Condition:

Internal controls over inventory and sale of compost were nonexistent until after the commencement of this audit. Until January 2022, there was no inventory record-keeping of compost as it is being processed including when it enters the mixing bay, when it is placed in an aeration zone, how long it remains there, and how much product is moved from the zones to the 60-day curation process. All maintained records are kept in paper form and could be easily modified or changed. This weakness in controls was also identified by Sickler, Torchia's audit of compost.³ Without inventory tracking ability, the Agency is unable to measure whether it meets industry standards of 2 tons of input for 1 ton of output.

Sales of underpriced compost are being sold to a related party (Director of Maintenance). At our audit entrance meeting the Interim Executive Director noted that they were aware that compost was being resold at 400% markup.

The Agency's compost policy says the pricing model will "be sold, and at a minimum to cover the costs of its operations.". Based on the information gathered, it does not appear that the Agency has conducted a break-even analysis on the Compost Operations and in their own statements, the cost of the Composting program exceeds its revenues. The price of compost and the tipping fee for organic waste have never been adjusted by the agency to accommodate for the costs of operating the program, or to respond to market conditions.

Effect:

Other customers were denied the ability to purchase compost, and the benefits of the composting program were concentrated to a single individual. The denial of customers caused the program and Agency to suffer from negative public feedback.

Cause:

At the time of our audit, the Agency had not implemented adequate controls over the compost inventory. The absence of an effective system to maintain and analyze organic compost material received, processed, and sold prevents effective oversight of compost materials, or analysis of the programs operations.

Criteria:

According to the [State Comptroller's Guidance on Internal Controls](#), all consumable items should be safeguarded and tracked electronically where possible.

Recommendation 1:

The Agency should implement an inventory tracking system to improve controls over the physical compost inventory. Inventory should be tracked in all phases of curation to determine the steps in the process and the time required for each on average. Inventory should be analyzed as it relates to the intake of materials, tipping fees collected, and as to the sale of processed materials. Conducting this analysis could provide the ability to recognize potential efficiencies in the steps of the curation process and to gather information to establish a ratio of an expected quantity of material intake versus inventory production. Site access should be limited to operating hours to ensure no one leaves the property with any material of value. Established policies should be enforced.

Recommendation 2:

The Agency should assess internal controls over the inventory of all Agency assets, including compost inventory to ensure that proper controls exist to safeguard taxpayer funded assets, including review of non-operating hour camera activity by the Board of Directors.

[3] Sickler, Torchia, Allen & Churchill CPAs, Audit of Composting Operations (January 2022), accessed at <https://ucrra.org/wp-content/uploads/2022/02/compost-and-ABO-report.pdf>

Finding 4 - The Agency did not collect or remit sales tax

Condition:

The Agency is not registered for sales tax purposes, has not collected sales tax on any compost sales, nor remitted sales tax to New York State.

Effect:

New York State and Ulster County are not receiving the appropriate sales tax from retail sales of compost at the Agency. For the five-year period ended December 31, 2020, the Agency had sold a total of \$483,557. It is unknown how much of these sales should have been exempt, but if none of the sales were exempt, New York State would have received 8% or \$38,865 in sales tax, of which 4% or \$19,342 would have been remitted to Ulster County for sales tax sharing with the City of Kingston and towns. As compost sales grow, sales tax revenues will grow as well. Moreover, without resale certificates, compost customers may not be aware that they are required to collect and remit sales tax on compost sales to their customers.

Cause:

The Agency mistakenly believes that it is exempt from sales tax collection or remittance because it is selling "bulk" compost. To the extent that the Agency is making wholesale sales of compost, they should be collecting resale certificates for each wholesale customer. To provide exemption certificates, the Agency must be registered for sales tax purposes, which it is not.

Criteria:

The Agency is exempt from paying sales tax on its purchases as per [Publication 843](#) and sales of trash removal on behalf of or by municipalities are specifically exempt; however, sales by governmental entities of tangible personal property that are ordinarily sold by private persons are subject to sales tax. As per [Sales Tax Bulletin ST-175](#) sales of tangible personal property are subject to New York sales tax unless they are specifically exempt. Sellers must register as a sales tax vendor if they sell tangible personal property that are subject to sales tax and maintain a place of business in the state, such as a store, office, or warehouse, and sell taxable tangible personal property to persons within the state. Tangible personal property includes raw materials such as wood, cloth, or metal.

Recommendation 1:

The Agency should register for sales tax purposes to both collect tax on retail sales and accept New York State sales tax exemption certificates for wholesalers.

Recommendation 2:

The Agency should develop a system to track customers as either retail or wholesale, collect and remit sales tax for retail customers and maintain appropriate documentation for exempt customers.

Scope

Our audit sought to review the operations of the Composting Program for the period of January 1, 2019, to April 30, 2021, and included the review of paper documentation directly provided by the Agency, the review of publicly available documents from the Agency's website, and the interview of Agency officials, current and former employees, and Agency board members.

The items reviewed during our audit included:

- A risk assessment interview and questionnaire
- Interviews of agency staff and board members
- Interviews of former agency staff
- Interviews of agency customers and members of the public
- Review of agency provided Materials Recovery Facility (MRF) scale documentation
- Review of compost transaction reports
- Review of annual financial reports and policies from the agency's website
- Review of audits and reports prepared by external accountants, State Comptroller, and County Legislative Staff
- Review of contracts and supporting documentation provided to the County
- A site visit to the property

[4] This interpretation was confirmed with the Tax Service of New York State Tax & Finance Department by employee 65668 on May 18, 2022.

Constraints

Since the introduction of new board members, UCRRA responsiveness to the Comptroller's Office has greatly improved. At the beginning of the audit, our office faced a lack of cooperation and ample protest to our information requests from UCRRA officials throughout the audit. The Comptroller was eventually forced to issue a subpoena May 28, 2021, to obtain requested documents. UCRRA sued to quash the subpoena June 18, 2021 and contest the Comptroller's audit authority. Judge Lisa Fisher issued judgment in October 2021 that UCRRA must comply with the audit. The new Board decided at their February 2022 meeting to cease litigation and not appeal the judgment. On March 18, 2022, UCRRA complied with our subpoena for audit documentation, ten months after our initial request made on May 17, 2021.

Background

UCRRA was created in 1986 when the Ulster County Legislature was authorized by the State of New York to establish the agency with the intention of being a public benefit corporation for "developing, financing, and implementing a comprehensive countywide solid waste management program." New environmental requirements for municipal solid waste management facilities made it financially and managerially beneficial to close all the municipal landfills, shift long-term maintenance and management of the closed facilities to the County, and consolidate solid waste management moving forward to the County level.

In 1992, the County and the UCRRA entered a contract to authorize the Agency to handle disposal of county solid waste and regulated recyclable material activities. The contract includes several provisions to govern the management and flow of waste and recyclable materials within county limits. The contract also states that the County will be subject to an annual Net Service Fee, to cover any deficits experienced because of the Agency's operations. Since 1998, the County has paid more than \$37 million in Net Service Fees to subsidize the operations of the Agency. No Net Service Fee was required after the County adopted flow control legislation in 2012 which gave the UCRRA 100% of the solid waste management market for waste generated within the county.

Year	Net Service Fee Paid by County
1998	\$ 1,608,400.00
1999	\$ 3,788,896.00
2000	\$ 3,385,470.00
2001	\$ 3,604,171.00
2002	\$ 3,998,416.00
2003	\$ 2,775,392.00
2004	\$ 3,412,893.00
2005	\$ 2,397,819.00
2006	\$ 2,392,335.00
2007	\$ 1,887,678.00
2008	\$ 1,249,383.00
2009	\$ 1,398,254.00
2010	\$ 1,382,984.00
2011	\$ 1,366,153.00
2012	\$ 2,474,330.00
2013-2021	\$ -
Total	\$ 37,122,574.00

While the County has not had to pay any service fees to the Agency in the last nine years, the contract, which does not expire until 2025, leaves the County financially vulnerable if the Agency were unable to cover the costs of operations.

The 1992 contract stipulates that the Agency should repay the County for any net service fee payments made to fund operations. To date, no monies have been repaid to the County for Net Service Fees attributable to the Agency's operations. When the County negotiates with the Agency in the future, they should consider addressing Net Service Fees owed so the Ulster County Legislature can decide what should be done with those funds to best serve the taxpayers in order to address our solid waste management future.

The UCRRA currently exports all municipal solid waste received to Seneca Meadows, a large landfill located in Western New York which is slated to close in 2025. Tipping fees at Seneca Meadows were \$25.36 per ton in 2021 in addition to transportation related costs of \$37.91 per ton to Gottado Contracting LLC and \$36.45 per ton to MBI Inc. for the transport of solid waste to the Seneca Meadows facility. While Seneca Meadows has hopes it will be approved to remain open after 2025 pending regulatory approvals, Ulster County and UCRRA will need to find another disposal solution to replace Seneca Meadows as soon as possible and should consider this operational and financial risk in long-term planning discussions.

There has been debate between UCRRA and the Ulster County Legislature over who is responsible for planning for the next solid waste disposal solution for Ulster County. The County Legislature sets solid waste management policy for Ulster County through legislative action such as the 2012 Ulster County Solid Waste Management Law (flow control), the 2020 Food Waste Law and the 2020 adoption of the Local Solid Waste Management Plan. Responsibility for implementation of policy is delegated to the Agency through contract.

The Agency is governed by a 5-member Board, appointed by the Ulster County Legislature to serve a term of 3 years. The Agency's Executive Director is appointed by and serves at the pleasure of the Agency's Board. The Agency employs approximately 30 employees and contracts with several independent vendors to perform long-haul trucking of solid waste to landfills. The Agency receives waste and recyclable materials at its primary location in the Town of Ulster and maintains a smaller transfer Station that provides limited services in the Town of New Paltz. The Agency collects solid waste from town transfer stations, independent trash collectors, general contractors, and the public, charging a "tipping fee," for collected waste. Generally, the Board sets the standard rate for tipping fees on an annual basis as recommended by the CFO.

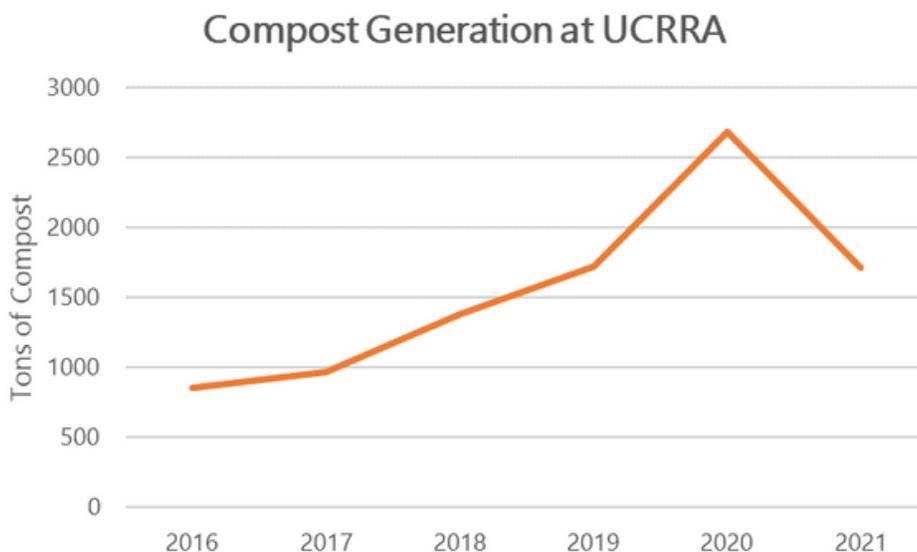
The solid waste collected by the agency is sorted and transported, primarily to landfills located in western New York. Regulated recyclable materials are sorted and sold as commodities, resulting in additional revenues to the Agency. In 2020, the sales of recyclable materials were \$678k, per the Agency's Annual Financial Report, and solid waste service fees totaled \$15.9 million.

In 2012, the UCRRA constructed the Organics Recovery Facility to process source-separated organics, or food scraps into compost. The small pilot program that has since been expanded seeks to collect organic food waste from commercial community partners. The food waste is then blended with woodchips and processed into STA certified compost that the Agency offers for sale at its Ulster facility. In 2020, the Agency reported over \$80k in compost sales, and collected \$123k in tipping fees for the collection of food scraps.⁵

In 2017, the County entered a contract with the Agency for the purchase of a bagging machine and required the expansion of the program both on the receipt of food waste and on availability of completed product. The county agreed to pay a portion of the cost of the bagger in conjunction with a DEC funded grant that had the following objectives:

1. to improve and expand composting capacity at UCRRA
2. to expand the user base at UCRRA
3. demonstrate compost recovery at a county facility
4. install an Environmental Protection Fund sign
5. monitor and Report on Project- Appropriate Metrics

Since 2016, the composting capacity was expanded significantly. The facility went from producing 857.50 tons per year to 2,676.70 tons.



[1] The Agency collects a \$20/ton tipping fee on organic food waste brought to the facility. Compost is sold in bulk for \$30/ton with a minimum purchase price of at least one ton.

The program also diverted a significant amount of food waste and other brush from landfilling as tipping fees grew from \$25,725 to \$80,585 between 2016 and 2020. But much of this growth was from out of county disposal customers with Ulster County providing only 20% of the food waste received according to Interim Executive Director as reported in the July 2021 Town of Ulster Board Meeting. This is to say, 80% of the organic food waste tipped at the Agency in 2020 was from sources outside the County. That large customer stopped tipping organics in 2020, dropping the overall volume of organics. With appropriate pricing, the receipt of food waste from out of county may be financially sound, yet we must recognize that only a fraction of the benefits of diversion of food waste from landfilling is attributable to Ulster County food waste generators when so much waste is received from out-of-county users. Furthermore, receipt of waste from those out-of-county haulers of organics was never approved by the Ulster County Legislature as required by the 1992 solid waste management contract §5.06 (See Appendix A).

Although the cost/ton does not include food waste tipping fees, those fees have increased annually over the five-year period.



Conclusion

The Agency's composting operation could have operated at a better return for taxpayers. The Agency implemented changes including the adoption of policies to limit conflicts of interest and sales of compost as well as inventory procedures after the initiation of this audit that will improve returns for taxpayers. The Agency has a responsibility to maximize revenues and should continue to evaluate pricing and investments in program expansion with that in mind. The Ulster County Legislature must decide what should be done with Net Service Fees owed to best serve the taxpayers, some of which might be invested to address our solid waste management future.

Management has had an opportunity to review this report in draft form and Management response is attached.

Management Comment

Appendices

- Comptroller's Memo on the SWM Contract
- Net Service Fees: What are they? Why have they cost Ulster County \$32 million?
- Compost Policy
- Code of Ethics

Conflicts of Interest Policy

ULSTER COUNTY RESOURCE RECOVERY AGENCY

Board of Directors

Katherine Beinkafner, Chair
Tom Kacandes, Vice Chair
Charles Landi, Treasurer
James Gordon, Member
Margot Becker, Member



P.O. Box 6219, 999 Flatbush Road
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Email: UCRRA@UCRRA.org
Website: www.UCRRRA.org
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Administrative Staff

Timothy DeGraff, CPA, Acting Executive Director
Charles Whittaker, Director of Operations and Compliance
Angelina Peone, Director of Sustainability
Tanesia White, Recycling Educator
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Legal Staff

Kenneth Gilligan, Esq.

August 19, 2022

March Gallagher
Ulster County Comptroller
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Re: Response to Draft Audit Findings and Recommendations

Dear Comptroller Gallagher:

The purpose of this letter is to respond to the draft findings and recommendations submitted to the Ulster County Resource Recovery Agency (the "Agency") by the Office of the Ulster County Comptroller ("OUCC") by email on July 11, 2022. According to the OUCC audit letter dated May 17, 2021, the draft audit findings concern the examination of Agency composting operations. Please note that this response has been reviewed by members of the Agency Board, and the Board agrees with the contents of this response.

The Agency appreciates the work conducted by the OUCC and acknowledges the benefits to all. In coordination with this audit, the Agency reviewed its internal controls, policies, organizational structure, and procedures both related and unrelated to composting. In addition, we engaged with an independent auditing firm for further insight and recommendations. All of these procedures have been valuable in improving our operations.

The OUCC lists its intended audit objectives in bullet form on page one of its draft report. The Agency remains unclear as to the OUCC's conclusions to these audit objectives, and thus can't respond directly to the OUCC on these objectives. In this reply, the Agency is responding only to information detailed within the audit report. The Agency agrees with most of the findings and recommendations and addresses each item specifically; we do not agree with some of the related context that pertains to the net service fee and the solid waste agreement between the County of Ulster and the Agency, and we have noted that in this response.

The draft audit findings and recommendations are divided into four sections: Compost Pricing, Policy Limits, Internal Controls, and Sales Tax. This response will address each section in the order presented.

Compost Pricing

As stated on page three, the OUCC contends that “the Agency did not appropriately price compost sold.”

The Agency began its composting operation as a pilot project in 2012 with full support from the New York State Department of Environmental Conservation (“DEC”). This proactive approach to solid waste diversion has now been lawfully supported by New York State and Ulster County, as both have approved food waste diversion laws in recent years. Diversion from landfills is at the core of these laws, and financial incentives can be used to further these goals, working hand in hand.

The Agency’s original pricing in 2013 for compost sold was \$40/ton as we intended to have correlation with the profit margin for solid waste (see attached original calculation and operating expense analysis). This pricing was continually reviewed by the Executive Director and the Board. The time periods and corresponding prices per ton for compost sold and food waste tipping fees were as follows:

<u>Compost Sold</u>		<u>Food Waste Tipping Fees</u>	
Time Period	Price	Time Period	Price
5/20/13-12/31/13	\$40/ton	1/1/13-5/31/13	\$50/ton
1/1/14-10/26/14	\$43/ton	6/1/13-12/31/13	\$30/ton
10/27/14-12/31/14	\$23/ton	1/1/14-12/31/14	\$33/ton
1/1/15-12/31/15	\$30/ton	1/1/15-present	\$20/ton
1/1/16-12/31/16	\$30/ton		
1/1/17-12/31/17	\$30/ton		
1/1/18-3/31/18	\$30/ton		
4/1/18-5/31/18	\$15/ton		
6/1/18-12/31/18	\$30/ton		
1/1/19-present	\$30/ton		

Related resolutions and board minutes to the above price changes are attached.

The OUCC listed competitor pricing in a table on page four of its draft audit report. Additional information from other comparative entities but not included in the OUCC’s list includes pricing from Oneida-Herkimer Solid Waste Authority and Oswego County, both of which charge \$30/ton for screened compost, the same as the Agency. Noted in the same table on page four is Onondaga County Resource Recovery Agency’s (“OCRRA”) price of \$40/ton. Please be advised that OCRRA’s price is for one-quarter inch screened “premium” compost. The Agency only screens to three-eighths of an inch, which puts its product at a lower level of quality and thus at a somewhat lower price to purchasers. Onondaga County also has a longer established program and markets, which of course also affect pricing; any business that is established initially may price lower to build markets and then raise prices once a reliable constituency of customers has been established.

As noted in the middle of page four of the OUCC’s draft audit report, the Agency did not utilize the compost bagging equipment that was purchased in February of 2019 because it did not have space at its facility to bag compost at that time. The bagging operation needs to be done out of the elements. The original plan to operate inside of our Materials Recovery Facility (“MRF”) could not be carried out due to an ongoing need for space until the City of Kingston could stop its single stream recycling practice. The area of our MRF that was to be used for compost bagging was being occupied by single stream recycling.

The City of Kingston made efforts to transition away from single stream recycling, but this took time as it was a major change for them and their residents. Until such time as Kingston could make the transition, the Agency decided on a different approach and put a plan in place to construct a new building for compost bagging and recycling education. This building was to be built within the footprint of the Agency's DEC permitted facility thereby requiring DEC approval. DEC Approvals have been slow because DEC has been short staffed since the beginning of the COVID-19 pandemic.

The goal of the Agency to break even rather than earn maximum income is an Agency management and Board of Director's decision, based on its mission statement and duty to benefit the public. Providing affordable compost benefits Ulster County residents and businesses, improves the County's soil, increases the productivity of County farms and backyard gardens, and is provided as a benefit to people who have provided the food scraps in the first place. Per its enabling statute section 2050-c(6) – "It is hereby determined and declared, that the Agency and the carrying out of its powers and duties are in all respects for the benefit of the people of the County and the State for the improvement of their health, welfare and prosperity and that such purposes are public purposes and that the Agency is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title." There is no reference here to financial requirements. However, if the Agency chose to budget for additional income, it should weigh the option of reinvesting those extra funds back into the operations against other considerations noted by the OUCC on page five of its draft report.

Also, on page five of the OUCC's draft report, it is stated that "Public Authorities Law Section 2897(7) stipulates products should be sold at market value and as a public benefit corporation, the Agency should work to maximize profits and run the Agency in a fiscally responsible manner." This interpretation does not consider Public Authorities Law Section 2897(7) in its entirety as it goes on to indicate (1) exceptions to the requirement to not dispose of property at less than fair market value (2) items may be sold at less than fair market value as long as it is properly documented and is fully reviewed by the board of directors. Specifically, Public Authorities Law Section 2897(7)(a)(ii) states "No asset owned, leased or otherwise in the control of a public authority may be sold, leased, or otherwise alienated for less than its fair market value **EXCEPT IF:** the purpose of the transfer is within the purpose, mission or governing statute of the public authority." The exception noted is applicable to the Agency with regards to its composting products, providing non-monetary benefits to Ulster County and its residents as stated in the previous paragraph.

On pages five and six of the OUCC's draft report, there are references to the correlation between the Agency maximizing revenues and the repayment of the net service fee. The Agency's primary revenue source is tipping fees from solid waste received. Compost revenues represent less than half a percent of total revenues. At current levels, compost revenues will not have an effect on the Agency's bottom line or the potential for a net service fee. If the Agency did not charge for compost at all, there still would not have been a need for a net service fee. The Agency's enabling statute Section 2050-c(5) states, "In addition to any powers granted to it by law, the County Legislature from time to time may appropriate by resolution sums of money to defray project costs or any other costs and expenses of the Agency. **Subject to the rights of bond holders,** the County Legislature may determine if the moneys so appropriated shall be subject to repayment by the Agency to the County and, in such event, the manner and time or times for such repayments." The net service fee was essentially born from this and was done with investors best interests in mind as the calculation periods were coordinated around biannual debt service payments (as noted above with regards to bond holders) and budgeting timelines. The calculation that is referenced in the draft audit essentially became not relevant back in 2001 when the County Legislature instructed the Agency to lower the net service and to calculate as a budgeted breakeven number. A simple review of

previous budgets and net service fees will confirm this, as well as net service fee letters sent from the Agency to the County. Requirements that the net service fee be paid back also does not consider full funding of Agency Reserves, which the Agency has agreed to not require the County to fully fund.

Since the inception of flow control, the Agency has not requested, nor received, any appropriated funding in the form of the net service fee from the County, ten years and counting. Prior to flow control, the Agency was never formally instructed by County officials to pay back the County in coordination with the Agency's enabling statute as noted above. Enough time has passed without any instructions about this from the County that the Agency believed (and continues to believe) that no repayment was expected. Repayment of net service fees would also seem to place an undue burden on Towns and its taxpayers that the Agency services via contract. This burden is completely unnecessary at a time when the County has a fund balance in excess of its policy limits. Per the press release dated July 7, 2022, from the OUCC, "Ulster County is \$54 million over fund balance policy limits." It is mentioned multiple times in this press release that the excess fund balance provides tax relief to taxpayers; requiring the Agency to repay old net service fees will indirectly increase taxes for Town residents, which contradicts a separate audit report by the OUCC. The Agency requests that discussions with the County begin on a contract amendment and extension that explicitly addresses recent issues with the old 1992 agreement, as it is antiquated and does not consider the current charter form of government. Amending the contract would help to resolve any points of contention like the net service fee.

The Agency is in agreement with both of the recommendations related to compost pricing on pages five and six of OUCC's draft report; in fact, both were in effect prior to the commencement of this audit and continue to be in effect.

Policy Limits

The following section addresses pages six and seven of the OUCC's draft report. Within this section it is stated that "compost sales were made to a single individual, who is an employee of the Agency and is responsible for the compost oversight" and "other customers were denied the ability to purchase compost". As part of the context for later parts of this section, please note that in Spring 2021, the Agency experienced a supply shortage of finished compost because incoming food waste decreased by 60% and over piles (which are previously screened and curated piles that can be screened again) were not accessible due to ongoing concrete site work.

"Condition" (page six):

- The single individual referenced purchased most but not all (the word used in the report) of the Agency's compost. Another individual purchased 3.33 tons of compost on 11/13/20.
- For internal control purposes, the referenced employee that worked at the compost site always had a fellow employee working with them; compost was loaded by another employee and was weighed out by another employee.
- The single individual referenced purchased 29.5% of the compost during the third quarter of 2020.
- The only instance of denial of compost that Agency staff is aware of was a request for 900 to 1,000 tons. As a small scale compost manufacturer, we do not produce enough compost in short periods of time to satisfy this type of request.
- The Agency is unclear as to when the stated "audit period" is, making it difficult to review any determinations made by OUCC.

“Effect” (page six):

- As previously stated, the only instance of denial of compost that Agency staff is aware of was a request for 900 to 1,000 tons.
- As stated in OUCC’s draft report, an “employee purchased at least one third of compost sold”. It is then further stated that “the benefits of the composting program were concentrated to a single individual”. The Agency is requesting that the OUCC recommend an appropriate policy limit or percentage of sales to a single individual. The Agency is also requesting that the OUCC please explain the basis for how any recommended amounts are determined, so that the Agency can better understand and adapt as necessary.
- In July 2021, through its attorney, the Agency sent a FOIL request to the OUCC. One of the items requested was “copies of all written complaints received by the Comptroller concerning the UCRRA from January 1, 2020, to present.” We received no written complaints regarding customers being denied compost.

“Cause” (page six):

- The draft report states that “the Agency repeatedly operated outside of compliance with its own policies by giving preferential treatment to an employee of the Agency”. The Agency is requesting that the OUCC provide the specific documentation for this conclusion so we may strengthen our current policies and procedures.
- The draft report references a sale of 300 tons of compost to one customer, “overriding the policy”. The board can supersede any of its own policies and did so at an open public meeting (meeting minutes are attached). The Agency had extra supply and decided to support the youth soccer program in its host community. The youth soccer program used the compost it purchased on its soccer fields, which are used by the community’s children and others in search of good recreational opportunities. That decision was in line with the Agency’s mission of providing a public benefit.

“Criteria” (page seven):

- The OUCC’s draft report says “numerous sales of compost were made in violation of the Agency’s 5-ton per customer limit, as established by the Agency’s Board.” The policy during the spring of 2021 was reactive to the supply shortage and was believed to be in management’s purview at that time. The intent of a lower limit was to ensure that some got less, so more could get some. Between April 1, 2021, and October 31, 2021, only 18 transactions out of 478 were over 5 ton and was mainly due to additional moisture content. This is less than 4% of the transactions and should not be considered numerous. The Agency’s recently implemented compost sales policy needs time to be properly developed and will be reviewed at the end of this season.

The Agency agrees with both recommendations related to compost policy limits on page seven of OUCC’s draft report. The Agency has established new policies and procedures in the past year and plans to review these policies on an ongoing basis, since best policy responds to changing conditions, changing supply, and changing demand. The Agency also notes that the period of supply shortages in the spring of 2021 was an outlier for our ten-year-old composting operation. It would be difficult to have policies in place to cover every potential hypothetical situation.

Internal Controls

Tracking of compost related inventory, a concept that is basic in nature, may not be entirely reliable because weight of compost is related to moisture content from rainfall, drought, and other reasons, causing it to be ineffective and inefficient. This discrepancy was discussed with internal auditors, and we agreed to revisit the effectiveness of these procedures throughout the engagement. In addition, we wish to state that internal controls can not eradicate risk, but rather can effectively mitigate it.

Internal control assessment is always an ongoing process and should be reviewed perpetually for effectiveness. The Agency is required by Public Authority Law Section 2800 to report annually on an assessment of the effectiveness of its internal control structure and procedures. These reports can be found on the Agency's website at <https://ucrra.org/about-us/authorities-budget-office/> under the ABO reports section. A copy of its most recent assessment is attached herein.

Site access is limited to operating hours via locked gates. In July 2021, the Agency installed a secondary entrance gate that was closer to the main road. This additional entrance gate was installed to protect Agency assets, deter illegal dumping, and to prepare for the installation of license plate readers. License plate readers will allow the Agency to track every single vehicle that comes onsite and properly investigate any situations that may further arise.

With respect to product being sold at a 400% markup, as noted on page eight of OUCC's draft report, the Executive Director received a complaint in spring 2021 about our compost operation from a local business that was marking it up and tried to buy all our product in a single day. When we would not allow that, they complained to an elected official, who in turn put undue pressure on Agency management, which is a potential conflict of interest. At its meeting on May 28, 2021, Agency management requested this be investigated further by the OUCC.

Please be advised that the Agency's composting related operating revenues have exceeded its operating expenses since the program's expansion in 2016. A review of page 75 (attached) of our most recent Annual Comprehensive Financial Report illustrates overall revenues and expenses on a cash basis. These figures include capital expenses but do not include future grant revenues that have been applied for from New York State. It would not be appropriate to charge high prices to cover a current year capital expense, therefore we have the concept of depreciation expense.

On page 8, in the section labeled "Effect", OUCC references the "underpricing" of compost. Please refer to our earlier response that addresses compost pricing, as the Agency does not agree that we underpriced our compost.

The Agency agrees with the OUCC that controls needed to be strengthened, specifically that a tracking process was needed, which at a minimum would inherently deter individuals from misappropriation. As stated above, the Agency agrees with OUCC's recommendation to improve inventory tracking procedures and initiated them for the year ended December 31, 2021. This is effective for financial reporting purposes, but the Agency does not yet agree that this will help identify or improve efficiencies, mainly due to weight deviations related to moisture content of the product. The Agency believes that its internal controls related to operations and the sale of compost is very strong and aligns with its transfer station operations.

It's important to note that the Agency composting program has been wildly successful. Its product is STA certified and in 2021 the Agency won the US Composting Council's National Small Scale Composting Manufacturer of year award. This was a tremendous achievement that proves how successful the program has been. Completion of site improvements has allowed the Agency to request a permit modification from the DEC to increase food waste intake. As part of this modification, a new site plan had to be developed and will need to be approved by the DEC. As of today, we are still awaiting approvals. Once we have approvals, we will then further improve controls by adding additional cameras at the site and installing new signage for easy pile identification.

Sales Tax

The Agency does not agree with the recommendations stated on page ten of the draft report. The Agency's decision to not collect sales tax for bulk sales was determined through conversation with another solid waste authority that sells bulk and bagged compost. The Agency was informed by the Manager of their composting operation that they received a confidential legal determination from their counsel on the matter, as well as a secondary confidential legal determination from a separate authority.

As stated in the OUCC's draft report on page ten, "the Agency is exempt from paying sales tax on its purchases as per Publication 843 and sales of trash removal on behalf of or by municipalities are specifically exempt; however, sales by governmental entities of tangible personal property that are ordinarily sold by private persons are subject to sales tax." The Agency believes that the compost that is sold is solid waste that contains no value at the time of disposal at its facility, just like recyclables. The material is then turned into something of value and is sold off. There is no distinction between the two processes. Tangible personal property is classified in accounting as an asset. Compost is not an asset but rather is classified as a deferred inflow. This distinction is important, as the sale of tangible personal property can be subject to sales tax, which the compost, as deferred inflow, is not. Furthermore, compost is a form of recycling, and recycling is not property. When recyclable material/food waste is disposed by the end user at curbside or in designated collection receptacles, it is in a condition that renders it worthless. The Agency doesn't purchase these materials, it receives them at no cost, or, in the case of some materials, the Agency is paid to take them. Recyclable material/food waste is then, at the point of receipt, essentially solid waste, which is not purchased, but rather the Agency is paid to receive and dispose of it. Recyclables/food waste are raw materials that are made into product which has value in markets only after processing by the Agency, which cleans, sorts, and appropriately stores the materials. In other words, the Agency takes in a worthless raw material, which it processes into a product for sale.

It is submitted that the Public Authorities Law sections and the Agency's purchase and sale of property policy applies to items that have value and are purchased by the Agency at procurement, or gifted to the Agency, and may be subsequently sold by the Agency as items that retain value (albeit decreased or increased value). Recyclable material/compost are not subject to the policy because they are not purchased, and they have no value unless processed by the Agency. They are a product produced by the Agency from otherwise worthless materials. Thus, neither the provisions of the Public Authorities Law nor the Agency's policy apply.

Furthermore, recyclable material/food waste received by the Agency as solid waste, in most cases has already had sales tax charged upon it. Sales tax can't be collected a second time.

The Agency's STA certified compost is also not ordinarily sold by private persons. The US Composting Council lists only four private entities that process and sell bulk STA certified compost in New York

State. The Agency is one of a couple of permitted composting facilities in New York State. Diversion of organics from landfills is a part of New York State's Beyond Waste goals, disincentivizing its production and sale would be contradictory to such goals and against the public's benefit that the Agency is responsible for.

Conclusion

The Agency could not determine through OUCC's draft audit report whether any of the stated audit objectives were met but will reply to said audit objectives herein. The Agency believes appropriate controls exist over financial operations of its composting program, especially the handling of receipts and disbursements. The Agency believes appropriate controls exist over the inventory of organic materials and that related records are complete and accurate. The Agency believes we provided, and Ulster County received, all elements of the contracted services as provided in contract number 2017-512. The Agency believes the benefits of its composting program far exceed its cost, both fiscally and environmentally.

The Agency appreciates the work conducted by the OUCC and acknowledges the benefit to all. If no theft or misappropriations were found in the process of the audit, then the Agency would like to request that the OUCC acknowledges this fact publicly.

Sincerely,

A handwritten signature in black ink that reads "Timothy DeGraff, CPA". The signature is written in a cursive style with a large, stylized "T" and "D".

Timothy DeGraff, CPA
Acting Executive Director/Director of Finance & Administration