

No. 03-10-00826-CV

**IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT
AT AUSTIN, TEXAS**

**WASTE MANAGEMENT OF TEXAS, INC.,
Appellant/Cross-Appellee,
v.
TEXAS DISPOSAL SYSTEMS LANDFILL, INC.,
Appellee/Cross-Appellant.**

On Remand from the Supreme Court of Texas
Cause No. 12-0522
On Appeal from the 126th District Court, Travis County, Texas
Hon. Stephen Yelenosky, Presiding
Trial Court Cause No. D-1-GN-97-012163

**BRIEF ON REMAND OF
TEXAS DISPOSAL SYSTEMS LANDFILL, INC.**

John J. McKetta, III
State Bar No. 13711500
James A. Hemphill
State Bar No. 00787674
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5600 phone
(512) 536-9907 fax
jhemphill@gdhm.com

**ATTORNEYS FOR TEXAS DISPOSAL
SYSTEMS LANDFILL, INC.**

July 30, 2014

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STATEMENT OF FACTS AND SUMMARY OF ARGUMENT

The Texas Supreme Court has upheld the award of remediation damages and exemplary damages in favor of Texas Disposal Systems Landfill, Inc. (“Texas Disposal” or “TDSL”) and against Waste Management of Texas, Inc. (“Waste Management”). The Supreme Court reversed the award of reputational damages in Texas Disposal’s favor, and has remanded the case to this Court for further proceedings in light of its ruling. *Waste Management of Texas, Inc. v. Texas Disposal Systems Landfill, Inc.*, --- S.W.3d ---, 2014 WL 1875637 (Tex. May 9, 2014).

The question now before this Court is what judgment in Texas Disposal’s favor should include. The parties have conferred and agree on several elements, but disagree on two points.

Undisputed issues: After conferring with counsel for Waste Management, counsel for Texas Disposal believes that the following elements of judgment are undisputed:

Remediation damages:	\$450,592.03
Reputation damages:	\$1.00
Exemplary damages:	\$901,184.06
Prejudgment interest:	\$295,663.08

Disputed issues: Texas Disposal believes the following issues remain in dispute:

1. **Amount of recoverable court costs:** Texas Disposal contends that recoverable court costs amount to \$76,981.72. Waste Management apparently contends that recoverable costs are only \$158.00, in this case that was filed in 1997, had extensive discovery, and had two jury trials. This issue is discussed in Section I of the Argument, below.

2. **Calculation of post-judgment interest:** As the Supreme Court pointed out, post-judgment interest does not accumulate during periods for which the party seeking relief received an extension of time for briefing in an appellate court. *Waste Management v. Texas Disposal*, 2014 WL 1875637 at *12; TEX. FIN. CODE § 304.005(b). Here, Waste Management and Texas Disposal both filed appeals, and both sought various extensions. However, the great bulk of Texas Disposal's extensions did not actually extend the time in which a court would render a decision, because those extensions were sought after Waste Management sought and received extensions, and were sought so that both parties' briefing deadlines would match. Under these circumstances, interest should not be suspended. This issue is discussed in Section II of the Argument, below.

ARGUMENT AND AUTHORITIES

I. Recoverable Costs Include Discovery Expenses, Transcripts, Subpoena Fees, and a Variety of Other Expenses in Addition to Costs Paid to a Court.

The trial court's judgment awards Texas Disposal "have and recover its costs of Court from and against Defendant Waste Management of Texas, Inc, against whom all costs of Court are taxed."¹ This is consistent with Rule 131, Texas Rules of Civil Procedure, which provides that "[t]he successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided."

Statutes and case law provide that the following categories of costs are included within the scope of recoverable costs under Rule 131:

- fees of the clerk and service fees due to the county, TEX. CIV. PRAC. & REM. CODE § 31.007(b)(1);
- fees of the court reporter for the original of stenographic transcripts necessarily obtained for use in the suit, *id.* § 31.007(b)(2);
- the expense of taking depositions, *Wallace v. Briggs*, 162 Tex. 485, 491, 248 S.W.2d 523, 527 (Tex. 1961);
- deposition, trial, and hearing transcripts obtained for use in the case, *Crescendo Investments, Inc. v. Brice*, 61 S.W.3d 465, 480-81 (Tex.

¹ Clerk's Record (filed May 4, 2011) at 6560.

App. – San Antonio 2001, pet. denied); *Fasken Land & Minerals, Ltd. v. Occidental Permian Ltd.*, 225 S.W.3d 577, 595-96 (Tex. App. – El Paso 2005, pet. denied);

- filing, court reporter, transcript, and subpoena and citation fees, *Allen v. Crabtree*, 936 S.W.2d 6, 8 (Tex. App. – Texarkana 1996, no writ).

A prevailing party seeking an award of costs under a court order is not required to make “a formal presentation of evidence of a party’s costs,” but rather may submit “an itemized list of costs and fees incurred during the lawsuit.” *Nolte v. Flournoy*, 348 S.W.3d 262, 271 (Tex. App. – Texarkana 2011, pet. denied) (citing *Varner v. Howe*, 860 S.W.2d 458, 466 (Tex. App. – El Paso 1993, no writ) and *Labor v. Warren*, 268 S.W.3d 273, 279 (Tex. App. – Amarillo 2008, no pet.)).

Attached hereto as Appendix A² is a list of costs for which Texas Disposal seeks recovery.³ The costs total \$76,981.72. The listed costs are among those held recoverable in the above-cited statutes, rules, and cases.⁴

² Appendix A does not include costs for video and deposition transcripts of three depositions: Robert Kier (5/7/2002), Scott Bayley (5/10/2002), and Jimmy Gregory (2/11/2002). As of the filing deadline, Texas Disposal has not located invoices or other documents setting forth its costs for those depositions. If the determination of costs is remanded to the trial court, Texas Disposal reserves its right to supplement its accounting of costs to encompass those depositions.

³ Costs for the first appeal to this Court are apportioned 50 percent to each party, per this Court’s judgment. A copy of the mandate, setting forth the apportionment of costs, is at Appendix Tab C.

⁴ The costs on the attached appendices do not include non-recoverable costs such as photocopying charges; the amounts shown for deposition transcript copies are sums paid to a court reporter for an official transcript.

(Courts of appeals are split on the recoverability of expenses for obtaining copies of video, and transcripts of depositions from a court reporter when the party seeking recovery of costs was not the party who noticed the deposition. *See, e.g., Crescendo Investments, Inc. v. Brice, supra* (allowing recovery); *Gumpert v. ABF Freight System, Inc.*, 312 S.W.3d 237, 240-41 (Tex. App. – Dallas 2010, no pet.) (disallowing recovery). This Court does not appear to have addressed the issue. Such costs should be recoverable, because regardless of the party noticing the deposition, a party for all practical purposes must obtain a transcript and video for potential use at trial, so there is no meaningful distinction between categories of depositions. Should this Court disagree, Texas Disposal has included, at Appendix B, a list of costs that excludes the expenses that would be disallowed. These listed costs total \$49,844.79.)

Costs are typically assessed by the trial court, which has discretion in making such awards. *Right to Life Advocates, Inc. v. Aaron Women's Clinic*, 737 S.W.2d 564, 572 (Tex. App. – Houston [14th Dist.] 1987, writ denied), *cert. denied*, 488 U.S. 824 (1988). While this Court could simply remand the case to the trial court for assessment of costs, remand would not be necessary here if the only disagreement between the parties is over whether certain costs are recoverable. If the parties dispute whether certain costs were actually incurred, then a remand to District Court for assessment of costs would be appropriate.

Texas Disposal incurred significant costs in this lawsuit, through extensive discovery, two jury trials, and two appeals over the course of more than 13 years. Texas Disposal was ultimately found to be the prevailing party and is entitled to recover all the costs allowed by law.

II. Post-Judgment Interest Should Not Be Suspended for Periods During Which Waste Management First Obtained Extensions for Briefing.

Section 304.005 of the Finance Code provides:

If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a claimant at trial, [post-judgment] interest does not accrue for the period of extension.

The rationale behind this statute is clear and consistent with common sense: but for extensions granted to the claimant, the appellate court would render its decision at an earlier date, and it would be contrary to public policy to allow a claimant to extend the date of decision by seeking an extension.

Here, both Waste Management and Texas Disposal filed appeals. Waste Management sought, and received, several extensions of time to file its briefs. Nearly all of the extensions sought by Texas Disposal were not for further extensions of the time to file briefs, but rather motions for the same extensions *already granted to Waste Management* to align the deadlines for the appeal and cross-appeal briefing. These extensions did not lead to any delay in the rendition of appellate court decisions, so post-judgment interest should run during those periods.

Specifically, Texas Disposal's motions for extension of time, in the context of Waste Management's motions, were as follows:

<u>TDSL Motion for Extension</u>	<u>Previous extension for Waste Management</u>
Response/Reply in Court of Appeals (30 days as appellee, 40 days as cross-appellant)	None. Interest should not run during the period of this extension.
Filing of Petition for Review, first extension (30 days, to August 6, 2012)	Waste Management sought and received extension of filing until August 1, 2012. Texas Disposal's extension was five days longer, so interest should be suspended for only these five days.
Filing of Petition for Review, second extension (25 days, to August 31, 2012)	Waste Management sought second extension to September 17, 2012 (45 days) but was only granted an extension to August 31. Texas Disposal's motion, which was made after the Court granted Waste Management's motion, simply made its petition due the same day as Waste Management's. Interest should run during this period.
Merits briefing in Supreme Court (30 days, to May 8, 2012)	Waste Management previously sought, and was granted, an extension of its merits brief to May 8, 2012. Texas Disposal's motion simply made its merits brief due the same day as Waste Management's. Interest should run during this period.
Merits response brief (30 days, to June 27, 2012)	Waste Management previously sought, and was granted, an extension of its merits response brief to June 27, 2012. Texas Disposal's motion simply made its merits response brief due the same day as Waste Management's. Interest should run during this period.

Thus, Texas Disposal only received 35 days of extension beyond those extensions *already granted* to Waste Management. There is no sound policy reason to suspend the running of post-judgment interest for periods of extension sought by Texas Disposal to match the briefing schedule with extensions already granted to Waste Management; such extension requests by Texas Disposal did nothing to extend the cumulative briefing period. Suspending post-judgment interest for the entirety of all Texas Disposal's extensions would be contrary to the purpose of the Finance Code provision, and would have the effect of rewarding Waste Management for its extensions and penalizing Texas Disposal simply for moving to make the briefing schedule symmetrical.

CONCLUSION AND PRAYER

Wherefore, premises considered, Texas Disposal Systems Landfill, Inc. prays that the Court grant the following relief:

1. Enter judgment in Texas Disposal's favor in the total amount of \$2,050,378.97 as of July 30, 2014, including costs set forth in Appendix A, with post-judgment accruing at \$273.46/day for each day afterward through December 8, 2014, calculated as follows:

Remediation damages:	\$450,592.03
Reputation damages:	\$1.00
Exemplary damages:	\$901,184.06
Prejudgment interest:	\$295,663.08
Costs:	\$76,981.72
Post-judgment interest:	\$325,957.08

(through 7/30/14)

2. In the alternative, should the Court hold that recoverable costs do not include costs of video of depositions or transcripts for depositions not noticed by Texas Disposal, that judgment be entered in Texas Disposal's favor in the total amount of \$2,018,111.20 as of July 30, 2014, including costs set forth in Appendix B, with post-judgment interest accruing at \$269.15/day for each day afterward through December 8, 2014, calculated as follows:

Remediation damages:	\$450,592.03
Reputation damages:	\$1.00
Exemplary damages:	\$901,184.06
Prejudgment interest:	\$295,663.08
Costs:	\$49,844.79
Post-judgment interest:	\$320,826.24

(through 7/30/14)

3. In the further alternative, that the Court remand this case to the trial court for the entry of costs, in that court's discretion, and entry of judgment in a manner consistent with this Court's ruling on the issues presented herein;

And that this Court grant all further relief to which Texas Disposal Systems Landfill, Inc. may show itself justly entitled.

[signature block on following page]

Respectfully submitted,
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5600 phone

/s/ James A. Hemphill

John J. "Mike" McKetta III

State Bar No. 13711500

mmcketta@gdhm.com

James A. Hemphill

State Bar No. 00787674

jhemphill@gdhm.com

Direct Phone: (512) 480-5762

Direct Fax: (512) 536-9907

jhemphill@gdhm.com

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4(i)(3), I certify that the foregoing document complies with the word count limitations set out in TEX. R. APP. P. 9.4(i). It contains 1,939 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1). In making this Certificate of Compliance, I am relying on the word count provided by the software used to prepare the document. This is a computer-generated document created in Microsoft Word, using 14-point Times New Roman typeface for body text and 12-point Times New Roman typeface for footnotes.

/s/ James A. Hemphill

James A. Hemphill

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel for Defendants *via* electronic service, with courtesy copies *via* email, on the 30th day of July, 2014:

William W. Ogden
bogden@ogblh.com
OGDEN, GIBSON, BROOCKS, LONGORIA
& HALL, L.L.P.
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002

Robert M. (Randy) Roach, Jr.
rroach@roachnewton.com
Daniel W. Davis
Roach & Newton, LLP
Heritage Plaza
1111 Bagby, Suite 2650
Houston, Texas 77002

/s/ James A. Hemphill

James A. Hemphill

APPENDIX A: TDSL COURT COSTS, ALL INCLUSIVE

Date	Description	Amount
10/24/1997	Filing fees	\$ 189.00
10/31/1997	Citation service fee – Don Martin	\$ 50.00
10/31/1997	Citation service fee – WM, Inc.	\$ 40.00
11/6/1997	Citation service fee – WM of Texas	\$ 40.00
1/10/2001	Deposition of Don Martin	\$ 1,743.40
2/2/2002	Video Deposition of Dr. Lauren Ross	\$ 53.00
3/6/2002	Copy - Deposition of Bobby Gregory Vol 1	\$ 781.05
3/6/2002	Video Deposition of Bobby Gregory Vol 1	\$ 175.00
3/8/2002	Copy - Deposition of Dennis Hobbs	\$ 192.00
3/8/2002	Video Deposition of Dennis Hobbs	\$ 120.00
3/12/2002	Video Deposition of Bobby Gregory Vol 2	\$ 175.00
3/12/2002	Copy - Deposition of Bobby Gregory Vol 2	\$ 589.30
3/14/2002	Jury fee	\$ 30.00
3/21/2002	Deposition of Jesse Oviedo	\$ 1,230.46
3/21/2002	Video Deposition of Jesse Oviedo	\$ 497.75
4/8/2002	Reporter's record, Motion to Compel	\$ 419.00
4/17/2002	Deposition of Bill Kaufman	\$ 1,076.20
4/17/2002	Video Deposition of Bill Kaufman	\$ 522.50
4/23/2002	Subpoena fee - John German	\$ 110.00
4/24/2002	Subpoena preparation and appearance fee for John German deposition in San Antonio	\$ 221.00
4/24/2002	Copy - Deposition of John German Vol. 1	\$ 397.00
4/24/2002	Video Deposition of John German Vol 1	\$ 115.00
4/25/2002	Copy - Deposition of David Armbrust	\$ 405.60
4/25/2002	Video Deposition of David Armbrust	\$ 120.00
5/1/2002	Copy - Deposition of John German Vol. 2	\$ 653.00
5/1/2002	Video Deposition of John German Vol 2	\$ 215.00
5/9/2002	Copy - Deposition of Gerald "Jerry" Arredondo	\$ 539.50
5/9/2002	Video Deposition of Gerald "Jerry" Arredondo	\$ 175.00
5/24/2002	Copy - Deposition of Mary Brigid Shea	\$ 582.00
5/24/2002	Video Deposition of Mary Brigid Shea	\$ 120.00
5/29/2002	Copy - Deposition of Richard Cabrera	\$ 150.00
5/29/2002	Video Deposition of Richard Cabrera	\$ 53.00
5/31/2002	Deposition of Patricia Tilton	\$ 844.20
5/31/2002	Service of subpoena on Patricia Tilton	\$ 160.00
5/31/2002	Video Deposition of Patricia Tilton	\$ 465.00
6/5/2002	Deposition of Jane Witheridge	\$ 1,089.10
6/5/2002	Video Deposition of Jane Witheridge	\$ 550.00
6/6/2002	Copy - Deposition of Sally Farris	\$ 434.00
6/6/2002	Video Deposition of Sally Farris	\$ 215.00
6/10/2002	Copy - Deposition of Daniel Cardenas	\$ 555.00
6/10/2002	Video Deposition of Daniel Cardenas	\$ 215.00
6/11/2002	Reporter's Record	\$ 399.25
6/12/2002	Deposition of Bob Ross	\$ 601.20

APPENDIX A: TDSL COURT COSTS, ALL INCLUSIVE

Date	Description	Amount
6/12/2002	Video Deposition of Bob Ross	\$ 400.25
6/13/2002	Copy - Deposition of George Cofer	\$ 221.15
6/13/2002	Video Deposition of George Cofer	\$ 120.00
6/14/2002	Deposition of Richard Vasquez	\$ 532.80
6/14/2002	Video Deposition of Richard Vasquez	\$ 280.00
6/16/2002	Attempted service of subpoena on Rick Vasquez and Bob Ross	\$ 370.00
6/17/2002	Service and attempted service of subpoena on Richard Bost and Jim Hackfield	\$ 210.00
6/17/2002	Deposition of Richard Bost	\$ 1,088.25
6/17/2002	Video Deposition of Richard Bost	\$ 671.25
6/19/2002	Attempted service of subpoena on Larry Cohn and John Hall	\$ 20.00
6/19/2002	Service of subpoena on Dwight Pittman, Susan Janek, Loren AlexaNDER AND Al Erwin	\$ 515.00
6/19/2002	Deposition of Dwight Pittman	\$ 996.75
6/19/2002	Deposition of Johnny Williams	\$ 655.75
6/19/2002	Video Deposition of Dwight Pittman and Johnny Williams	\$ 735.00
6/20/2002	Copy - Deposition of David Armbrust Vol 2	\$ 394.90
6/20/2002	Copy - Deposition of Bobby Gregory Vol 3	\$ 320.80
6/20/2002	Copy - Deposition of Joyce Eileen Best	\$ 427.75
6/20/2002	Video Deposition of David Armbrust, Joyce Eileen Best and Bobby Gregory	\$ 230.00
6/21/2002	Subpoena fee -John Hall	\$ 95.00
6/21/2002	Subpoena fee -Henry Avila	\$ 95.00
6/21/2002	Service of subpoena on Jim Hackfield	\$ 120.00
6/21/2002	Deposition of Susan Janek	\$ 1,976.00
6/21/2002	Video Deposition of Susan Janek	\$ 920.00
6/24/2002	Deposition of Alan Erwin	\$ 1,194.00
6/24/2002	Video Deposition of Alan Erwin	\$ 650.00
6/25/2002	Deposition of W. Fusilier	\$ 1,717.60
6/25/2002	Deposition of John Hall	\$ 535.60
6/25/2002	Video Deposition of W. Fusilier	\$ 835.00
6/25/2002	Video Deposition of John Hall	\$ 365.00
6/27/2002	Deposition of Loren Alexander	\$ 1,115.50
6/27/2002	Deposition of Nick D'Andrea	\$ 1,077.00
6/27/2002	Video Deposition of Loren Alexander	\$ 565.00
6/27/2002	Video Deposition of Nick D'Andrea	\$ 550.00
6/28/2002	Subpoena fee -Jim Hackfield	\$ 120.00
6/28/2002	Deposition of James Hackfeld	\$ 718.00
6/28/2002	Deposition of Henry Avila	\$ 1,638.20
6/28/2002	Video Deposition of James Hackfeld	\$ 365.00
6/28/2002	Video Deposition of Henry Avila	\$ 692.50
7/1/2002	Reporter's record	\$ 399.25
7/1/2002	Certificate of Nonappearance for Deposition of Juan Solis, III	\$ 75.00

APPENDIX A: TDSL COURT COSTS, ALL INCLUSIVE

Date	Description	Amount
7/1/2002	Video services Nonappearance fee for Deposition of Juan Solis, III	\$ 100.00
7/2/2002	Deposition of Kevin Yard	\$ 713.80
7/2/2002	Video Deposition of Kevin Yard	\$ 507.50
7/2/2002	Copy - Deposition of Robert Herrera	\$ 372.10
7/2/2002	Video Deposition of Robert Herrera	\$ 120.00
7/3/2002	Deposition of Juan Solis	\$ 802.00
7/3/2002	Video Deposition of Juan Solis III	\$ 401.25
7/9/2002	Deposition of Larry Cohn	\$ 1,689.75
7/9/2002	Video Deposition of Larry Cohn	\$ 771.25
7/16/2002	Non appearance of Juan Solis	\$ 75.00
9/27/2002	Reporter's Record	\$ 95.00
11/21/2002	Reporter's Record	\$ 138.00
1/17/2003	Copy - Deposition of Gerald Arredondo	\$ 124.50
1/17/2003	Copy -deposition of Cynthia Turner	\$ 64.50
1/22/2003	Deposition of Linda Smith	\$ 608.35
1/22/2003	Video Deposition of Linda Smith	\$ 362.50
3/4/2003	Deposition of John Slocum, Volume 1	\$ 842.25
3/4/2003	Video Deposition of John Slocum, Volume 1	\$ 460.00
3/5/2003	Reporter's Record	\$ 480.00
4/7/2003	Reporter's Record	\$ 354.00
4/21/2003	Trial transcript, 4/15 - 18	\$ 2,334.00
4/27/2003	Deposition of Richard Bost	\$ 1,012.50
4/28/2003	Trial transcript, 4/21 - 25	\$ 3,913.00
5/5/2003	Trial transcript, 4/28 - 5/2	\$ 4,518.50
5/6/2003	Trial transcript, 5/5	\$ 910.00
9/4/2003	Motion for New Trial	\$ 30.00
11/5/2003	Clerk's Record - for appeal, estimated cost (50% of \$500)	\$ 250.00
11/13/2003	Court of Appeals filing fee (50% of \$125)	\$ 62.50
12/11/2003	Clerk's Record - payment (50% of \$5,000)	\$ 2,500.00
12/15/2003	Clerk's Record- final cost (50% of \$1,014)	\$ 507.00
3/11/2004	Court of Appeals filing fee (50% of \$10)	\$ 5.00
5/13/2004	Court of Appeals filing fee (50% of \$10)	\$ 5.00
7/7/2005	Court of Appeals filing fee (50% of \$10)	\$ 5.00
7/5/2006	Court of Appeals filing fee (50% of \$10)	\$ 5.00
2/12/2007	Court of Appeals filing fee (50% of \$10)	\$ 5.00
2/22/2007	Court of Appeals filing fee (50% of \$10)	\$ 5.00
2/26/2007	Court of Appeals filing fee (50% of \$10)	\$ 5.00
1/30/2009	District Court filing fees	\$ 4.36
7/26/2010	Copy - Deposition of William Aleshire	\$ 318.12
7/26/2010	Copy - Deposition of Byron Johnson	\$ 378.93
7/27/2010	Copy - Deposition of Bobby Gregory	\$ 663.77
7/27/2010	Copy - Deposition of Wade Wheatley	\$ 229.34
9/15/2010	Reporter's Record	\$ 636.00

APPENDIX A: TDSL COURT COSTS, ALL INCLUSIVE

Date	Description	Amount
9/21/2010	Deposition of Rudolph Bonaparte	\$ 1,143.10
9/21/2010	Video Deposition of Rudolph Bonaparte	\$ 956.25
9/27/2010	Copy - Deposition of Pierce Chandler	\$ 685.90
9/30/2010	Deposition of Lawrence Ranallo	\$ 1,673.08
9/30/2010	Video Deposition of Lawrence Ranallo	\$ 765.75
10/4/2010	Subpoena and witness fee - Jacob's Engineering Group	\$ 106.00
10/6/2010	Copy and Video Deposition of Robert Kier	\$ 719.04
10/8/2010	Copy and Video Deposition of Mark Dollins	\$ 1,427.93
10/13/2010	Subpoena service and witness fee - Alan Erwin	\$ 80.00
10/14/2010	Subpoena service and witness fee - Don Martin	\$ 80.00
10/14/2010	Subpoena service attempt - William Rhodes	\$ 75.00
10/21/2010	Deposition On Written Questions of Jacobs Engineering Group	\$ 461.45
8/25/10 -	District Court filing fees	\$ 107.64
	TOTAL:	\$ 76,981.72

**APPENDIX B: TDSL COURT COSTS NOT INCLUDING VIDEO COSTS
OR TRANSCRIPT FEES FOR WASTE MANAGEMENT-NOTICED DEPOSITIONS**

Date	Description	Amount
10/24/1997	Filing fees	\$ 189.00
10/31/1997	Citation service fee – Don Martin	\$ 50.00
10/31/1997	Citation service fee – WM, Inc.	\$ 40.00
11/6/1997	Citation service fee – WM of Texas	\$ 40.00
1/10/2001	Deposition of Don Martin	\$ 1,743.40
3/14/2002	Jury fee	\$ 30.00
3/21/2002	Deposition of Jesse Oviedo	\$ 1,230.46
4/8/2002	Reporter's record, Motion to Compel	\$ 419.00
4/17/2002	Deposition of Bill Kaufman	\$ 1,076.20
4/23/2002	Subpoena fee - John German	\$ 110.00
4/24/2002	Subpoena preparation and appearance fee for John German deposition in San Antonio	\$ 221.00
5/31/2002	Deposition of Patricia Tilton	\$ 844.20
5/31/2002	Service of subpoena on Patricia Tilton	\$ 160.00
6/5/2002	Deposition of Jane Witheridge	\$ 1,089.10
6/11/2002	Reporter's Record	\$ 399.25
6/12/2002	Deposition of Bob Ross	\$ 601.20
6/14/2002	Deposition of Richard Vasquez	\$ 532.80
6/16/2002	Attempted service of subpoena on Rick Vasquez and Bob Ross	\$ 370.00
6/17/2002	Service and attempted service of subpoena on Richard Bost and Jim Hackfield	\$ 210.00
6/17/2002	Deposition of Richard Bost	\$ 1,088.25
6/19/2002	Attempted service of subpoena on Larry Cohn and John Hall	\$ 20.00
6/19/2002	Service of subpoena on Dwight Pittman, Susan Janek, Loren AlexaNDER AND Al Erwin	\$ 515.00
6/19/2002	Deposition of Dwight Pittman	\$ 996.75
6/19/2002	Deposition of Johnny Williams	\$ 655.75
6/21/2002	Subpoena fee -John Hall	\$ 95.00
6/21/2002	Subpoena fee -Henry Avila	\$ 95.00
6/21/2002	Service of subpoena on Jim Hackfield	\$ 120.00
6/21/2002	Deposition of Susan Janek	\$ 1,976.00
6/24/2002	Deposition of Alan Erwin	\$ 1,194.00
6/25/2002	Deposition of W. Fusilier	\$ 1,717.60
6/25/2002	Deposition of John Hall	\$ 535.60
6/27/2002	Deposition of Loren Alexander	\$ 1,115.50

**APPENDIX B: TDSL COURT COSTS NOT INCLUDING VIDEO COSTS
OR TRANSCRIPT FEES FOR WASTE MANAGEMENT-NOTICED DEPOSITIONS**

Date	Description	Amount
6/27/2002	Deposition of Nick D'Andrea	\$ 1,077.00
6/28/2002	Subpoena fee -Jim Hackfield	\$ 120.00
6/28/2002	Deposition of James Hackfeld	\$ 718.00
6/28/2002	Deposition of Henry Avila	\$ 1,638.20
7/1/2002	Reporter's record	\$ 399.25
7/1/2002	Certificate of Nonappearance for Deposition of Juan Solis, III	\$ 75.00
7/1/2002	Video services Nonappearance fee for Deposition of Juan Solis, III	\$ 100.00
7/2/2002	Deposition of Kevin Yard	\$ 713.80
7/3/2002	Deposition of Juan Solis	\$ 802.00
7/9/2002	Deposition of Larry Cohn	\$ 1,689.75
7/16/2002	Non appearance of Juan Solis	\$ 75.00
9/27/2002	Reporter's Record	\$ 95.00
11/21/2002	Reporter's Record	\$ 138.00
1/22/2003	Deposition of Linda Smith	\$ 608.35
3/4/2003	Deposition of John Slocum, Volume 1	\$ 842.25
3/5/2003	Reporter's Record	\$ 480.00
4/7/2003	Reporter's Record	\$ 354.00
4/21/2003	Trial transcript, 4/15 - 18	\$ 2,334.00
4/27/2003	Deposition of Richard Bost	\$ 1,012.50
4/28/2003	Trial transcript, 4/21 - 25	\$ 3,913.00
5/5/2003	Trial transcript, 4/28 - 5/2	\$ 4,518.50
5/6/2003	Trial transcript, 5/5	\$ 910.00
9/4/2003	Motion for New Trial	\$ 30.00
11/5/2003	Clerk's Record - for appeal, estimated cost (50% of \$500)	\$ 250.00
11/13/2003	Court of Appeals filing fee (50% of \$125)	\$ 62.50
12/11/2003	Clerk's Record - payment (50% of \$5,000)	\$ 2,500.00
12/15/2003	Clerk's Record- final cost (50% of 1,014)	\$ 507.00
3/11/2004	Court of Appeals filing fee (50% of \$10)	\$ 5.00
5/13/2004	Court of Appeals filing fee (50% of \$10)	\$ 5.00
7/7/2005	Court of Appeals filing fee (50% of \$10)	\$ 5.00
7/5/2006	Court of Appeals filing fee (50% of \$10)	\$ 5.00

**APPENDIX B: TDSL COURT COSTS NOT INCLUDING VIDEO COSTS
OR TRANSCRIPT FEES FOR WASTE MANAGEMENT-NOTICED DEPOSITIONS**

Date	Description	Amount
2/12/2007	Court of Appeals filing fee (50% of \$10)	\$ 5.00
2/22/2007	Court of Appeals filing fee (50% of \$10)	\$ 5.00
2/26/2007	Court of Appeals filing fee (50% of \$10)	\$ 5.00
1/30/2009	District Court filing fees	\$ 4.36
9/15/2010	Reporter's Record	\$ 636.00
9/21/2010	Deposition of Rudolph Bonaparte	\$ 1,143.10
9/30/2010	Deposition of Lawrence Ranallo	\$ 1,673.08
10/4/2010	Subpoena and witness fee - Jacob's Engineering Group	\$ 106.00
10/13/2010	Subpoena service and witness fee - Alan Erwin	\$ 80.00
10/14/2010	Subpoena service and witness fee - Don Martin	\$ 80.00
10/14/2010	Subpoena service attempt - William Rhodes	\$ 75.00
10/21/2010	Deposition On Written Questions of Jacobs Engineering Group	\$ 461.45
8/25/10 - 12/15/10	District Court filing fees	\$ 107.64
	TOTAL	\$ 49,844.79

MANDATE

THE STATE OF TEXAS

TO THE 126TH DISTRICT COURT OF TRAVIS COUNTY, GREETINGS:

Trial Court Cause No. 97-12163

Before our Court of Appeals for the Third District of Texas on April 3, 2007, the cause on appeal to revise or reverse your judgment between

Texas Disposal Systems Landfill, Inc.

No. 03-03-00631-CV v.

Waste Management Holdings, Inc. (f/k/a Waste Management, Inc.) and Waste Management of Texas, Inc.

Was determined, and therein our Court of Appeals made its order in these words

THIS DAY came on to be submitted to the Court appellant's further motion for rehearing and appellees' further motion for rehearing, and the Court having fully considered same; and being of the opinion that appellant's motion should be granted and appellees' motion should be overruled and that there was no error in the trial court's judgment **EXCEPT** the portion of the take-nothing judgment related to the appellant's claim for defamation arising from the Action Alert memo: **IT IS THEREFORE** considered, adjudged and ordered that appellant's motion for rehearing is granted; that the opinion and judgment of this Court, dated December 29, 2006, are withdrawn; and that the part of the trial court's take-nothing judgment relating to the defamation claim arising from the Action Alert memo is reversed, and that portion of the cause is remanded for further proceedings. The remainder of the judgment is affirmed. It is **FURTHER** ordered that the appellant pay one-half of the costs of this appeal; that the appellees pay the remaining one-half of such costs, and that this decision be certified below for observance.

Wherefore, we command you to observe the order of our Court of Appeals in this behalf and in all things have the order duly recognized, obeyed, and executed.

Witness the Honorable W. Kenneth Law, Chief
Justice of the Court of Appeals for the Third District
of Texas, with the seal of the Court affixed in the
City of Austin on May 22, 2008.

JEFFREY D. KYLE, CLERK

By: 