

14.



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2008-0189	Claim	Claim Report
Notice of Claim and Request for Lien submitted by William R Cummings, Reinhart, Boerner, Van Duren, S.C. on behalf of Advanced Waste Services, Inc., in the amount of \$96,107.50 relative to Champion Environmental Services, Inc. Introduced: 3/31/2008 <span style="float: right;">Controlling Body: Administration &amp; Finance Committee</span>		

### COMMITTEE RECOMMENDATION

*POF*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
MAR 17 2009			Barczak				
			Czaplewski				
			Kopplin				
	X		Lajsic	✓			
		X	Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock				
			Vitale	✓			
			Weigel				
			TOTAL	5			

### SIGNATURE OF COMMITTEE MEMBER

*Kurt Kopplin*  
 Chair \_\_\_\_\_ Vice-Chair \_\_\_\_\_ Member \_\_\_\_\_

### COMMON COUNCIL ACTION **PLACE ON FILE**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
MAR 17 2009	✓		Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt	✓			
		✓	Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	10			



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Jenna R. Merten  
Assistant City Attorneys

March 4, 2009

Common Council  
City of West Allis

RE: City Attorney's Report of Claim

Dear Council Members:

The enclosed claim has been referred to this office in accordance with Section 3.05 (8) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. Our Opinion regarding liability is as follows:

**This claim has been paid and it is the recommendation of this office that it be placed on file:**

**Advanced Waste Services, Inc. - Amount Allowed: \$68,444.59**

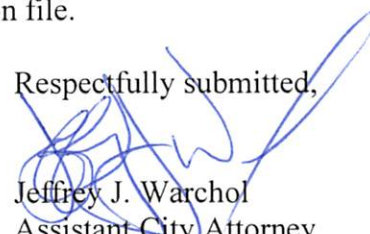
This is a claim for public improvement lien pursuant to Wisconsin State Statutes filed against the City on March 19<sup>th</sup>, 2008, by Advanced Waste Services, Inc. ("Advanced"), a subcontractor retained by Champion Environmental Services, Inc. ("Champion"), for work performed by Advanced on 2006 Project No. 15, which involved the decommissioning, decontamination and demolition of on-site buildings located at 1445 South 66<sup>th</sup> Street, West Allis, WI, f/k/a the Pressed Steel Tank Company facility.

Due to the nature of the work and the fact that Advanced never got paid by Champion for the majority of its work performed at the Pressed Steel Tank Company site, the City Attorney's Office entered into negotiations directly with Advanced in an effort to get Advanced fairly compensated. The result of said negotiations was the attached Agreement, which was approved by the Community Development Authority of the City of West Allis by Resolution on February 10<sup>th</sup>, 2009, and subsequently signed by the respective parties.

Pursuant to the terms of the Agreement, the CDA paid Advanced the amount of \$68,444.59 to close out this matter.

Based upon the same, this claim should be placed on file.

Respectfully submitted,

  
Jeffrey J. Warchol  
Assistant City Attorney

JJW:da

## **AGREEMENT FOR PAYMENT OF SERVICES TO SUBCONTRACTOR**

This AGREEMENT is entered into between ADVANCED WASTE SERVICES, INC., a Wisconsin corporation (hereinafter "Advanced") and the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a public body, corporate and politic, created and existing under the laws of the State of Wisconsin (hereinafter "CDA").

**WHEREAS**, on or about August 31<sup>st</sup>, 2006, Champion Environmental Services, Inc. (hereinafter "Champion") was awarded, through bid process, 2006 Project No. 15, which involved the decommissioning, decontamination and demolition of on-site buildings located at 1445 South 66<sup>th</sup> Street, West Allis, WI, formally known as the Pressed Steel Tank Company facility (hereinafter "PST"); and,

**WHEREAS**, Arcadis US Inc. was retained by the CDA to act as the project manager for proper completion of the project at the PST site in accordance with the terms of the contract between Champion and the CDA; and,

**WHEREAS**, Advanced was retained by Champion to act as a subcontractor and perform removal of various demolition and other waste materials from the PST site; and,

**WHEREAS**, to date, Advanced has satisfactorily completed all work it was required to do as a subcontractor for Champion but has not been paid in full for said work by Champion; and,

**WHEREAS**, the CDA has authorized and paid Champion on several invoices for work specifically performed by Advanced that Champion in turn has not paid Advanced on; and,

**WHEREAS**, the CDA has not paid Champion or Advanced on several other invoices for work performed by Advanced due to the fact that despite repeated requests, Champion has refused to submit Work Change Orders in accordance with the terms of the contract, which would authorize the CDA to pay said invoices along with the concern that per past practices as stated herein, Champion would continue to not pay Advanced even had the CDA paid Champion for said additional invoices; and,

**WHEREAS**, on or about March 19<sup>th</sup>, 2008, Advanced filed a claim for Public Improvement Lien for its work completed at the PST site with the CDA pursuant to Wisconsin State Statutes in the amount of \$96,107.50 and that to date, the CDA has not acted on said lien claim due to a formal written objection/Prime Contractor Dispute received by Champion on May 19<sup>th</sup>, 2008; and,

**WHEREAS**, on or about May 19<sup>th</sup>, 2008, Champion filed a formal Notice of Claim against the CDA pursuant to Wisconsin Statute §893.80 for its work in the decommissioning, decontamination and demolition of the PST facility pursuant to the contract in the amount of \$2,223,750.00 plus costs and attorney fees, which included a portion of the money claimed by Advanced for its work at the site; that to date, despite several discussions regarding the merits of Champion's claim, Champion and the CDA have been unable to resolve.



**NOW, THEREFORE**, based upon the above, Advanced and the CDA wish to resolve any and all claims and disputes between them regarding work performed at the PST site by Advanced and agree to the following terms and conditions:

1.     A.     That the spreadsheet attached to this Agreement and incorporated herein as Exhibit "A" is an accurate depiction of the total work performed by Advanced at the PST site as a subcontractor of Champion.
  - B.     That the total amount due Advanced for its work at the site is \$122,808.50.
  - C.     That the column marked "Paid to Champion" in the total amount of \$54,363.91 has been paid by the CDA to Champion, however, but for Invoice No. 85312 in the amount of \$18,037.50, no other amounts have been paid by Champion to Advanced.
  - D.     That the column marked "Direct Pay to Advanced by CWA" in the total amount of \$68,444.59 has not been paid to Champion by the CDA due to a failure by Champion to submit Work Change Orders pursuant to the terms of the contract between Champion and the CDA and said amount, when added to the "Paid to Champion" column equals the total amount owed Advanced for its work on the PST project in the amount of \$122,808.50.
2.     A.     That upon approval of the Community Development Authority of the City of West Allis and within ten (10) days of the signing of this Agreement by both parties, the CDA will pay directly to Advanced the amount of \$68,444.59 for its work done at the PST site but not previously paid by the CDA to Champion for the reasons stated herein.
  - B.     That said payment shall be the total amount due Advanced in full by the CDA for Advanced's work as a sub-contractor at the PST site.
  - C.     That any work performed by Advanced at the PST site under the terms of a separate contract between Arcadis and Advanced has been paid in full by Arcadis previously to the signing of this Agreement.
3.     That in exchange for said payment described herein, Advanced agrees to release the CDA, its departments, commissions, officials, agents and employees, his, her, its or their successors and assigns from any and all claims by Advanced of whatever kind or nature specifically relating to the work performed by Advanced on the PST project. Additionally, should Champion prevail in a legal action against the CDA, its departments, commissions, officials, agents and employees, his, her, its or their successors or assigns specifically seeking the \$68,444.59 directly paid to Advanced by CWA, Advanced shall indemnify CWA for the \$68,444.59 awarded, or any partial award, to Champion, not to exceed \$68,444.59.

4. That the parties are represented by legal counsel in this matter, have had the opportunity to review the terms and conditions of this Agreement with legal counsel and are satisfied with counsels' recommendation to enter into this Agreement under the terms and conditions as stated herein.

Dated: 2/18/09

Dated: 2-23-09

**ADVANCED WASTE SERVICES INC.**

**COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF WEST ALLIS**

By: Karen L. Bleach  
Karen L. Bleach

By: John F. Stibal  
John F. Stibal

Its: Chief Financial Officer

Its: Executive Director

L:Jeff/Claims/Agreement for Payment of Services-Advanced

**Advanced Waste Services, Inc.  
Total Invoices West Allis Project  
As of September 5, 2008**

Customer:Job	Date	No.	Date	Invoice Amt	Status	Paid to Champion	Direct Pay To Advanced by CWA
<b>CHAMPION ENVIRONMENTAL SERVICE</b>							
Payment Document	4/30/2007	85312	4/30/2007	\$18,037.50	Paid in Full	\$18,037.50	
Payment Document	6/19/2007	91733	6/19/2007	\$3,309.00	Open	\$3,309.00	
Payment Document	6/22/2007	91948	6/22/2007	\$2,757.00	Open	\$2,757.00	
Payment Document	7/9/2007	92956	7/9/2007	\$9,731.50	Open	\$9,731.50	
Payment Document	7/13/2007	93160	7/13/2007	\$1,512.25	Open	\$1,512.25	
Payment Document	8/9/2007	94386	8/9/2007	\$6,189.00	Open	\$6,189.00	
Payment Document	9/4/2007	95820	9/4/2007	\$2,176.75	Open	\$2,176.75	
Payment Document	10/1/2007	97006	10/1/2007	\$1,807.00	Open	\$1,807.00	
Payment Document	10/12/2007	97639	10/12/2007	\$1,775.75	Open		\$1,775.75
Payment Document	10/15/2007	97556	10/15/2007	\$6,887.75	Open		\$6,887.75
Payment Document	10/18/2007	97690	10/18/2007	\$3,717.75	Open		\$3,717.75
Payment Document	10/23/2007	97830	10/23/2007	\$6,527.75	Open		\$6,527.75
Payment Document	10/23/2007	98015	10/23/2007	\$16,428.00	Open	Note 1	Note 2
Payment Document	10/25/2007	98089	10/25/2007	\$8,214.00	Open	Note 1	Note 2
Payment Document	10/26/2007	98136	10/26/2007	\$3,909.00	Open		\$3,909.00
Payment Document	10/29/2007	98277	10/29/2007	\$9,293.50	Open	Note 1	Note 2
Payment Document	10/31/2007	98432	10/31/2007	\$20,535.00	Open	Note 1	Note 2
Total - CHAMPION ENVIRONMENTAL SERVICE				\$122,808.50			
Total Unpaid to Advanced Waste				\$104,771.00			
Total Paid to Champion:						\$54,363.91	
Total due to Advanced Waste by the city of West Allis:							\$68,444.59

**Comments:**

Note 1: \$8,843.91 has been paid to Champion and is associated with these four invoices.

Note 2: The total for these four invoices is \$54,470.50. \$8,843.91 has been paid to Champion, therefore \$45,626.59 is remaining to be paid.

The above dollar values represent direct charges by Advanced Waste (i.e., unburdened costs).

\$54,470.50  
\$ (8,843.91)  
\$45,626.59

**EXHIBIT**  
  
" A "

RECEIVED

MAR 20 2008

CITY OF WEST ALLIS  
CLERK/TREASURER

reinhardt.com



March 19, 2008

William R. Cummings, Esq.  
Direct Dial: 414-298-8330  
wcumming@reinhardt.com

CERTIFIED MAIL –  
RETURN RECEIPT REQUESTED

Paul Ziehler, City Clerk/Treasurer  
West Allis City Hall  
7525 W. Greenfield Avenue  
West Allis, WI 53214

Dear Mr. Ziehler:

Re: Notice of Claim and Request  
for Lien

I represent Advanced Waste Services, Inc. ("AWS"), which performed certain waste disposal services at 7525 West Greenfield Avenue, in the City of West Allis, Wisconsin as a subcontractor of Champion Environmental Services, Inc. ("Champion"). AWS has not been paid by Champion for the waste disposal services that AWS has performed at the property. The total amount owed to AWS by Champion is \$96,107.50. AWS has made repeated requests to Champion for payment, but Champion has ignored said requests.

The purpose of this letter is to provide the City of West Allis with written notice, pursuant to Wisconsin Statutes Section 779.15(2), of AWS's claim against Champion. Additionally, I enclose a Claim for Public Improvement Lien which perfects AWS's lien on any money or bonds or warrants due Champion from the City of West Allis. Pursuant to Wisconsin Statutes Section 779.15(2), a copy of this notice and claim has been served concurrently upon Champion.

P.O. Box 2965, Milwaukee, WI 53201-2965 • 1000 North Water Street, Suite 2100, Milwaukee, WI 53202  
Telephone: 414-298-1000 • Facsimile: 414-298-8097 • Toll Free: 800-553-6215

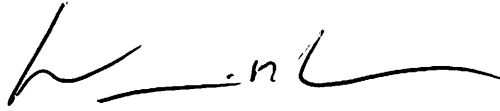
Madison, WI • Telephone: 608-229-2200 • Toll Free: 800-728-6239  
Waukesha, WI • Telephone: 262-951-4500 • Toll Free: 800-928-5529  
Rockford, IL • Telephone: 815-633-5300 • Toll Free: 800-840-5420

cc: Atty  
Dev.

Paul Ziehler, City Clerk/Treasurer  
March 19, 2008  
Page 2

Please feel free to contact me at (414) 298-8330 should you have any questions. I appreciate your prompt attention to this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'W. R. Cummings', with a long horizontal flourish extending to the right.

William R. Cummings

MWI505875WRC:LMC

Encs.

cc Champion Environmental Services, Inc.  
Advanced Waste Services, Inc.



### CLAIM FOR PUBLIC IMPROVEMENT LIEN

This Claim for Public Improvement Lien must be served to the state department, board, or commission having jurisdiction, or the clerk or treasurer of the municipality, with a copy served on the Prime Contractor. See Wis. Stat. § 779.15(2). Service may be made by personal delivery, registered mail, certified mail or by other method of delivery where recipient makes written confirmation of receipt for all government entities EXCEPT the State of Wisconsin and its departments and agencies, which must receive this Claim via Registered Mail or Certified Mail, Return Receipt Requested. Wis. Stat. § 779.01(2)(e).

Date: March 19, 2008

1. CLAIMANT:

Name: Advanced Waste Services, Inc.  
Address: 1126 South 70th Street, Suite N408B, West Allis, WI 53214

2. PRIME CONTRACTOR:

Name: Champion Environmental Services, Inc.  
Address: 38 West End Drive, Gilberts, IL 60136

3. PUBLIC ENTITY: City of West Allis  
(State / County / Town / Municipality / Other)

4. PROJECT NUMBER (if any): Project 2006 No. 15

5. LOCATION OF PUBLIC IMPROVEMENT PROJECT: 7525 West Greenfield Avenue, West Allis, WI 53214

6. DESCRIPTION OF LABOR, SERVICES, MATERIALS, PLANS AND/OR SPECIFICATIONS PERFORMED, FURNISHED OR PROCURED BY CLAIMANT: Waste disposal services

7. AMOUNT CLAIMED: \$ 96,107.50

INSTRUCTIONS TO THE PUBLIC ENTITY: Pursuant to §779.15(1), Wis. Stats., to the extent money, bonds or warrants are due or will be due the Prime Contractor upon receipt of this notice, and this claim is admitted by the Prime Contractor OR the Prime Contractor does not dispute the claim within thirty (30) days after service, (a) payment shall be made to the Claimant in the amount claimed on demand and charged to the Prime Contractor, or (b) if amounts claimed exceed the amounts due to the Prime Contractor, notify the Claimant and the Prime Contractor in writing of who is entitled to the available money and payment of that amount shall be made unless an action is commenced within twenty (20) days of the mailing of the determination of entitlement.

CLAIMANT'S NAME: Advanced Waste Services, Inc.

By: Karen L. Bleach (signature of authorized agent) Address: 1126 South 70th Street, Suite N408B  
Karen L. Bleach (print name of person signing above) West Allis, WI 53214  
Title: CFO Telephone Number: (414) 475-3100

State of Wisconsin, }  
MILWAUKEE County. } ss.

The above-named KARON L BLEACH, known by me to be the person who executed the foregoing Claim for Public Improvement, came personally before me on March 19, 20 08, and acknowledged its execution and, if the Claimant is a corporation, acknowledged further that this document was executed for this corporation by its authority.

Notary Public Robin A. Heiden  
My Commission:

**Robin A. Heiden, Notary Public**  
State of Wisconsin  
Resident of Milwaukee County

**My Commission Expires February 8, 2009**

\* A Claimant is anyone who performs, furnishes, procures, manages, supervises or administers any labor, services, materials, plans and/or specifications used or consumed in public improvements or public works and who contracts with a Prime Contractor who has contracted with the Owner as further described in §779.15(1), Wis. Stats.



CITY CLERK/TREASURER'S OFFICE  
414/302-8200 or 414/302-8207 (Fax)

[www.ci.west-allis.wi.us](http://www.ci.west-allis.wi.us)

**Paul M. Ziehler**  
*City Admin. Officer, Clerk/Treasurer*  
**Monica Schultz**  
*Assistant City Clerk*  
**Rosemary West**  
*Treasurer's Office Supervisor*

March 25, 2008

William R. Cummings  
Reinhart, Boerner, Van Duren, S.C.  
1000 N. Water St.  
PO Box 2965  
Milwaukee, WI 53201-2965

Dear Mr. Cummings:

This letter acknowledges receipt of your Claim for Public Improvement Lien on behalf of Advanced Waste Services, Inc., in the amount of \$96,107.50 relative to Champion Environmental Services, Inc.

The original document will be submitted to the Common Council at its meeting of March 31, 2008.

**It is not anticipated that a decision regarding this matter will be made on this date. Generally, all communications are directed to the City Attorney's office for investigation. Common Council action regarding your communication will not be taken until the City Attorney's investigation is completed. Any questions you may have regarding this matter should be directed to their attention.**

Sincerely,

Monica Schultz  
Assistant City Clerk

/amn

cc: City Attorney  
Development  
Engineering



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Jenna R. Merten  
Assistant City Attorneys

March 9, 2009

Common Council  
City of West Allis

RE: City Attorney's Report of Claims/Lawsuits

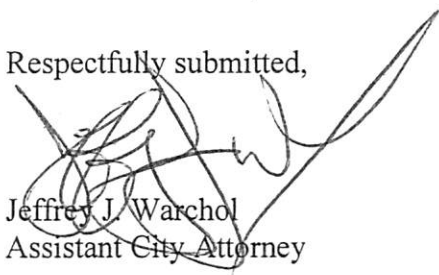
Dear Council Members:

The enclosed claims/lawsuits have been referred to this office in accordance with Section 3.05 (8) of the Revised Municipal Code. This office has examined the facts of each claim/lawsuit and the applicable law. Our Opinion regarding liability is attached to each claim/lawsuit.

**The following claims/lawsuits have been paid and placed on file:**

Advanced Waste Services, Inc. (\$68,444.59)  
Lana Bainer (\$645.81)  
We Energies/S. 70<sup>th</sup> & 71<sup>st</sup> Streets & W. Natl. Ave. (\$13,875.00)  
Nicholas Yets (\$1,024.21)

Respectfully submitted,



Jeffrey J. Warchol  
Assistant City Attorney

JJW:da  
Enclosures

cc: Thomas E. Mann, CVMIC