

October 3, 2008

Mayor Devine & Members of the Common Council
7525 W. Greenfield Ave.
West Allis, WI 53214

Honorable Mayor & Council Members:

In May of 1984, the City of West Allis entered into a contract with Browning-Ferris Industries (BFI) for the disposal of solid waste collected by the City. In addition to the actual disposal of the solid waste, the contract provided for the Contractor to take title to all solid waste delivered to the transfer station (the former incinerator building at 52 & Rogers), load the waste at the station and haul it to the landfill.

The City has had a very good working relationship with BFI, now called Veolia Environmental Services, over the past twenty-four years. That good working relationship has resulted in a number of contract extensions throughout the years, the most recent of which, dated September 17, 2007 was for another five-year extension of the contract. In fact, throughout the twenty-four year period, there were five different amendments made to the original contract. While the extension of the contract was the most common issue dealt with, certain language changes were also incorporated into a number of these amendments.

Perhaps, one of the most significant language changes occurred in the contract amendment dated April 1, 1993. In that amendment, the City negotiated new language which basically negated the ability of the Contractor (BFI) to pass on to the City any increased costs for disposal as a result of "changes to Federal, State, County and/or Municipal laws governing the landfill disposal of solid waste". At the time, we were starting to hear rumors that the WDNR was considering placing additional fees on landfill disposal to cover the cost of groundwater monitoring at these sites. In addition, as you may recall, mandatory statewide recycling was on the horizon and it seemed that the landfill tipping fees was a likely target for the WDNR to secure revenue to help fund this program. Given these two issues, it seemed imperative that we insulate ourselves from these potential costs.

Our suspicions proved correct. As I recall, two or three years later the WDNR did assess some form of environmental surcharge on the tipping fee for solid waste at landfills. BFI attempted to pass this cost onto us, however, it was pointed out that the existing contract language prohibited this without a prior negotiated written approval. The issue was dropped. In November 2007, the WDNR imposed a new \$2.65 per ton "Environmental Repair Fee" on solid waste being disposed

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of at landfills. The additional revenue was supposed to be earmarked for funding local recycling programs.

Veolia (BFI), since the imposition of this fee by the state, has attempted to pass this fee through to the City of West Allis with its monthly disposal billings. Every month we correct the billing and notify Veolia that we are exempt from paying such fees based on the existing contract language. I have gone so far as to provide copies of the entire April 1993 Amendment, highlighting the language that exempts us. (By way of reference, in a typical year we dispose of approximately 19,000 tons of solid waste. If we did not have the contract language exemption, the WDNR's latest surcharge would cost us slightly more than \$50,000 per year.)

I have informed Chuck Ott, Veolia's Director of Municipal Services, that West Allis has no intention of voluntarily paying this "Environmental Repair Fee" surcharge. I also stated that for us to even consider discussing this issue, he would have to have a letter introduced to the Common Council requesting that some form of payment be made. To that end, Mr. Ott has submitted a letter to me (attached) dated October 1, 2008 requesting payment in full for all costs incurred relative to this latest fee.

I continue to be opposed to making any type of out-right payment of the fee. However, there may be room for negotiating some other language that would offset the cost of absorbing this fee should we agree to pay it. Admittedly, in my mind, this would, at a minimum, necessitate Veolia foregoing any CPI increase to the tipping fee for some period of time into the future. I don't think that they would be willing to do this, but it would provide a talking point if the Council so directs, rather than a simple rejection of Mr. Ott's request.

At your convenience, I will be available to discuss this issue in greater detail and receive your direction.

Respectfully submitted,

Michael F. Pertmer
Director of Public Works

Attachment

cc: Scott Post, Bruce Danowski, Cindy Radtke