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THERE IS LIGHT AT THE END OF THE TUNNEL! KEY INGREDIENTS TO A SUCCESSFUL END OF TERM ACTION PLAN

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ABSTRACT

These are critical times for customers, operators, and owners of waste-to energy technologies in the US. Many of the existing long term contracts entered into during the early to mid 80's are at or nearing their end. Communities are facing the need to decide what to do with that portion of their waste stream remaining after they reduce, reuse, and recycle. This presentation addresses the status of several waste-to-energy facilities (e.g. North East Solid Waste Committee (NESWC), Bridgeport, Pinellas, Hempstead) projects that have reached, or are nearing, the end of their initial terms, comparing and contrasting the issues between publicly and privately owned facilities. The presentation draws on the authors' direct involvement in these projects – in some cases from the project's inception to the present. Drawing on their collective seventy+ years of experience in the solid waste industry representing public sector clients, Dr. Cohen, Ms. Raila and Mr. Worster will present an overview of the factors affecting existing contracts reaching end of term, key elements to be considered by participants in identifying what their options are, typical terms and conditions and key ingredients of and how to put in place an effective action plan.

INTRODUCTION

Many of the service and operating agreements entered into by municipalities across the country during the 1980s with waste-to-energy (WTE) operators and owners are beginning to expire. Municipalities are faced with end-of-term decisions including ownership, renewal of existing contracts, maintaining regional relationships, disbanding regional affiliations and/or entering into agreements with alternative disposal facilities. The existing relationships between a municipality and the WTE facility, including ownership and contract terms, directly influence the end-of-term conversations and options. This

presentation will explore the experiences of four WTE projects: Pinellas County, Florida; North East Solid Waste Committee, Massachusetts; Greater Bridgeport Project, Connecticut; and the Town of Hempstead, New York. After describing the relationships, contract terms, and choices made at the end-of-term, the presentation will provide lessons learned from each process.

PINELLAS COUNTY, FLORIDA

Veolia Environmental was selected by Pinellas County (County) to operate the WTE facility through 2024. Selection of Veolia Environmental was the culmination of a planning process that began over five years earlier. The County made some decisions at the beginning of the end-of-term planning process which guided their actions throughout the process. The County decided that (1) it wanted to continue to own the WTE facility, (2) it did not want to operate the facility, and (3) it wanted to extend the life of the current facility, which would require a major capital investment, instead of developing a new facility or landfill. The County procured consultants to facilitate the end-of-term planning process. Through this process, the County developed their end-of-term plan in more detail to include a Request for Qualifications (RFQ) and a Request for Proposals (RFP) for an operator of the facility who would be responsible for the major capital improvements necessary to extend the life of the facility. The County entered into simultaneous negotiations with each of the three qualified firms. After each series of meetings, the RFP documents were revised and released to each firm for further revision. The final RFP was released in the summer of 2006 after over a year of negotiations. When proposals were received, the majority of the evaluation was conducted based on the price proposal, as most of the other conditions were already negotiated.

NORTH EAST SOLID WASTE COMMITTEE

The North East Solid Waste Committee (NESWC) was formed in the early 1980's to represent the interests of the 23 member municipalities who entered into contracts to deliver their MSW to the WTE facility owned by Wheelabrator North Andover, a subsidiary of Waste Management. NESWC was a quasi-state agency formed by special legislation with certain powers, including the ability to enter into contracts with various parties to provide support services related to managing the disposal contract. The NESWC communities committed to funding the operation and maintenance of the facility in exchange for 89.5 percent of the facility's annual energy revenues and 100% of the disposal revenues from private hauler tonnage. Unfortunately, revenues did not reach their expected levels. In 2000, the NESWC Board began the process of examining what options existed to address their solid waste management needs at the expiration of the existing 20-year agreements, September 2005. The Board held a series of strategic retreats which focused on whether they should continue the regional organization and/or develop new transfer, processing, or disposal facilities within the region. In 2002, the Strategic Planning Committee negotiated on NESWC's behalf with Wheelabrator to bring to the member municipalities a replacement agreement which included a straight tip fee deal of limited term with no exposure to change in law. The approval process took several months. Ultimately, 21 of 23 municipalities chose the five-year agreement. The only reference to NESWC in the new agreement relates to the favored nations provision offered to former NESWC communities. The former NESWC member municipalities are currently in the third year of a five-year contract which runs through 2010. Each of the municipalities will need to begin to address what their solid waste management system will look like post 2010.

BRIDGEPORT, CONNECTICUT

The Greater Bridgeport Regional Solid Waste Advisory Board (SWAB) is a regional advisory board that represents the interests of 18 municipalities in Fairfield and New Haven Counties (Bridgeport Project) in negotiating for MSW disposal and recycling processing services. SWAB and Connecticut Resource Recovery Authority (CRRRA) entered into an interlocal agreement in 1975 for CRRRA to build the RRF facility in Bridgeport. Each SWAB community contracts with the CRRRA for disposal. The facility is privately owned and operated. The CRRRA has been negotiating a new agreement with Wheelabrator with authorization from SWAB and its member communities, since 2006. A subset of the member municipalities recently issued a Request for Proposals (RFP) seeking transfer station, transport, and disposal services and are in the process of reviewing responses.

HEMPSTEAD, NEW YORK

The Town of Hempstead in 1986 executed a contract for the design, construction, and operation of a privately owned

waste-to-energy facility located in the Town and for the long-term disposal of municipal solid waste collected in the Town at the then new facility. This agreement, now with Covanta, will expire in 2009. The Town recently completed negotiations related to a follow-on 25-year Service Agreement with Covanta. A number of critical issues were addressed, including (a) security, (b) Town's waste delivery and the Covanta's waste acceptance obligations; (c) sharing of energy and recovered material price risks and rewards; (d) the price paid by the Town (market price vs. cost of service pricing) for solid waste disposal services received; (e) sharing of uncontrollable circumstances risks at facility and at residue landfill; (f) the host fees and/or taxes payable to the Town; (g) means for dealing with disputes; and (h) end-of-term issues for new agreement, including the disposition of the Facility. One of the threshold concerns of the Town related to the current status of the Facility and expectations regarding its continued availability. To address that concern, the Town had its consultant conduct a detailed condition inspection of the facility and review of the facility maintenance records.

CONCLUSION

While no two communities/regions are exactly the same, the experiences that one goes through at the end-of-term can provide lessons to other communities as they begin the process. Some of the lessons learned from these projects include: allow enough time up front for planning, consideration, and changes, particularly if you intend on building any new solid waste transfer/processing facilities; make significant policy decisions upfront; knowing your limitations- the contractual provisions related to extension/replacement of the existing agreements affect the process to be followed in addressing end of term (e.g. ownership of the asset can affect the degree of municipal control post-termination of the original contract); and knowing your best alternative to a negotiated agreement, since the negotiators on the other side of the table certainly will.