

4/23 (8)

ANDERSON & KREIGER LLP

STEPHEN D. ANDERSON  
sanderson@andersonkreiger.com  
Direct phone: 617-621-6510  
Direct fax: 617-621-6610

September 30, 2011

**BY CERTIFIED MAIL**  
**Return Receipt Requested**

Nancy E. Harper, Esq.  
Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

**BY CERTIFIED MAIL**  
**Return Receipt Requested**

Roy P. Giarusso, Esq.  
Giarusso Norton Cooley and McGlone, PC  
Marina Bay  
308 Victory Road  
Quincy, MA 02171

Re: *Commonwealth of Massachusetts v. Wheelabrator Saugus, Inc. et al.*  
Essex Superior Court Civil Action No. 2011-8471A (the "Litigation")

Dear Nancy and Roy:

I write on behalf of the Town of Acton, joined by the undersigned counsel for municipalities that are beneficiaries of the Municipal Relief Fund created by the Consent Judgment entered into between the Commonwealth and Wheelabrator Saugus, Inc., Wheelabrator North Andover, Inc., and Wheelabrator Millbury, Inc. (collectively "Wheelabrator") in the above-referenced Litigation. To receive a portion of the Municipal Relief Fund, a municipality must sign a release in the form attached to the Consent Judgment (the "Release). I am writing to request that the Attorney General and Wheelabrator's counsel confirm the municipalities' understanding as to the limited intended scope of the Release so that municipalities accepting the settlement are not later prejudiced by doing so.

The Release states in relevant part that the municipality "releases and forever discharges" Wheelabrator "from any and all claims and liabilities of every kind, nature and description whatsoever...from the period to and through [May 2, 2011], arising out of or related to both (i) Covered Matters as that term is defined in the Consent Judgment and (ii) any and all contracts between the Municipality and [Wheelabrator] or payments by the Municipality to [Wheelabrator] under any contract, including without limitation all claims and liabilities under the Massachusetts False Claims Act, G.L. c. 12, §§5A *et seq.*, the Massachusetts Regulation of Business Practices for Consumer Protection Act, G.L. c. 93A, and breach of contract."

To avoid any future misunderstandings regarding the scope of the Release, we ask that you countersign this letter confirming the Attorney General's Office's and Wheelabrator's understanding that a municipality's signature of the Release and acceptance of proceeds from the Municipal Relief Fund:

(1) Releases the relevant Wheelabrator entities named in the Release only from the specific environmental matters that were the subject of the Litigation and contract claims specifically relating to those environmental matters; and

(2) Does not release the relevant Wheelabrator entities named in the Release from any other rights a Municipality may have against those entities, including, without limitation, any contractual rights or indemnities for any matters (environmental or otherwise) that were not the subject of the Litigation.

Please return the countersigned letter to me at Anderson & Kreiger LLP, 1 Canal Park, Suite 200, Cambridge, MA 02141. I will assemble a fully executed version of the letter and send a copy to you and all signatories on the list attached as Exhibit A. If you have any questions, please contact me at 617-621-6510 or sanderson@andersonkreiger.com.

Very truly yours,



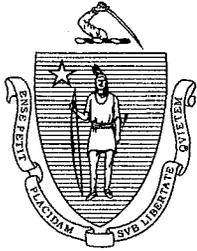
Stephen D. Anderson  
Acton Town Counsel

So acknowledged, stipulated and agreed:

<p>Commonwealth of Massachusetts By its attorneys,</p> <hr/> <p>Nancy E. Harper, Esq. Assistant Attorney General Office of the Attorney General One Ashburton Place Boston, MA 02108</p> <p>Dated: _____, 2011</p>	<p>Wheelabrator, By its attorneys,</p> <hr/> <p>Roy P. Giarusso, Esq. Giarusso Norton Cooley and McGlone, PC Marina Bay 308 Victory Road Quincy, MA 02171</p> <p>Dated: _____, 2011</p>
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Enclosures

cc: City Solicitors and Town Counsel on attached list (w/Exhibits)  
Steve Ledoux, Town Manager, Town of Acton (w/ Exhibits)



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

March 8, 2012

*By Electronic Mail and First Class Mail*

Mina S. Makarious, Esq.  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge MA 02141

**Re: *Commonwealth of Massachusetts v. Wheelabrator Saugus, Inc., et al.,***  
**Essex Superior Court Civil Action No. 2011-847-A**

Dear Attorney Makarious:

I write further to our recent discussions concerning the release that is required to be executed by municipalities in order to obtain payments from the Municipal Relief Fund established pursuant to paragraphs 4(a) and 8 of the Consent Judgment entered in the above-referenced Civil Action on or about May 2, 2012.

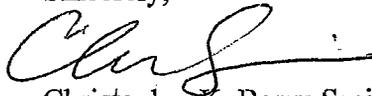
As we have discussed, I handled the negotiations concerning the municipal relief and am familiar with the negotiation history. As reflected in the text of the release and supported by the negotiation history between the parties, a municipality signing the release releases claims only if they arise out of or relate to *both* the environmental matters that were the subject of the Commonwealth's complaint ("Covered Matters" as defined in the Consent Judgment) *and* the contractual relationship between the municipality and Wheelabrator. Therefore, for example, the release does not affect any contract disputes between a municipality and Wheelabrator that do not arise out of the environmental matters that comprise the "Covered Matters." The text of the release as well as the negotiation history comports with attorney Anderson's letter of September 30, 2011. Further, were any municipality to encounter a situation where Wheelabrator contended that the release somehow impacted contractual disputes that did not arise out of Covered Matters—I have no expectation this will occur—they should contact me, as this office would take steps to enforce the limited scope of the municipal release.



March 8, 2012  
Page Two

We are hopeful that the municipalities which stand to benefit from the Municipal Relief Fund established by the Consent Judgment will do so by executing and returning the release document. Should you or any of your municipal clients have further questions, feel free to call me at (617) 963-2539 or Assistant Attorney General Betsy Harper at (617) 963-2426.

Sincerely,



Christopher K. Barry-Smith  
Deputy Attorney General

cc: Roy Giarrusso, Esq.  
Betsy Harper, Esq.

## Christine Joyce

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**From:** Steve Ledoux  
**Sent:** Tuesday, March 27, 2012 12:38 PM  
**To:** Christine Joyce  
**Subject:** Fwd: Acton: Distribution of Wheelabrator Settlement Fund  
**Attachments:** Scan from a Xerox WorkCentre001.pdf; ATT00001.htm; Acton\_Post NESWC - Attorney General's Letter Regarding Scope of Wheelabrator Settlement.eml; ATT00002.htm

Agenda for 4/23

Sent from my iPhone. Please pardon brevity or typos.

Begin forwarded message:

**From:** "Stephen D. Anderson" <[Sanderson@AndersonKreiger.com](mailto:Sanderson@AndersonKreiger.com)>  
**To:** "Steve Ledoux" <[sledoux@acton-ma.gov](mailto:sledoux@acton-ma.gov)>  
**Cc:** "Mina Makarious" <[mmakarious@AndersonKreiger.com](mailto:mmakarious@AndersonKreiger.com)>  
**Subject:** Acton: Distribution of Wheelabrator Settlement Fund

Steve:

Christine forwarded to me the AG's letter reminding the Town that the AG's office may redistribute any Wheelabrator settlement funds not claimed by municipalities by May 2. You and I have discussed that Acton's settlement amount (\$26,176.19) may not be sufficient motivation to induce Acton to sign the required release, even with the attached clarification from the AG's office which I previously circulated. In the end, however, it's the Selectmen's call, so you should probably put this on the BOS agenda for a determination before 5/2/12.

Steve

-----Original Message-----

**From:** Christine Joyce [<mailto:cjoyce@acton-ma.gov>]  
**Sent:** Tuesday, March 27, 2012 11:40 AM  
**To:** Stephen D. Anderson  
**Cc:** Steve Ledoux  
**Subject:** Wheelabrator distribution of Municipal Fund in Commonwealth

Steve asked that I forward this to you

-----Original Message-----

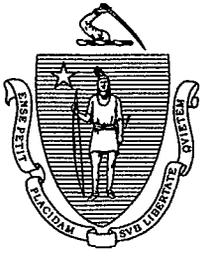
**From:** [ATH-MGR-COPIER@acton-ma.gov](mailto:ATH-MGR-COPIER@acton-ma.gov) [<mailto:ATH-MGR-COPIER@acton-ma.gov>]  
**Sent:** Tuesday, March 27, 2012 11:38 AM  
**To:** Christine Joyce  
**Subject:** Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: pdf

multifunction device Location: Town Hall, First Floor (Manager)  
Device Name: ATH-MGR-COPIER

For more information on Xerox products and solutions, please visit <http://www.xerox.com>



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

March 26, 2012

Steven Ledoux  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

**Re: Distribution of Municipal Fund in *Commonwealth v. Wheelabrator Saugus, Inc., et al.*, C.A. No. 2011-847-A (Essex Superior Court)**

Dear Mr. Ledoux:

On June 10, 2011, Attorney General Martha Coakley provided you with notice of a payment due to the Town of Acton pursuant to the settlement of environmental claims in the above-captioned matter. I have attached a copy of that letter for your reference. As a result of that settlement, the Town of Acton is entitled to receive \$26,176.19. In order to receive the funds referenced in Attorney General Coakley's letter, the Town of Acton must sign the release, attached to that letter, and return it to my attention.

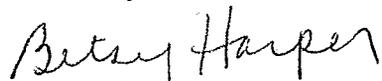
Pursuant to Paragraph 8 of the Consent Judgment entered by the Essex Superior Court on May 2, 2011:

"In the event that, one year following execution of this Consent Judgment, the Attorney General has not distributed the full amount of the Net Municipal Fund, the OAG [Office of the Attorney General] in its discretion may distribute the remainder of the Net Municipal Fund to those Municipalities from which Wheelabrator has received a release as of that date."

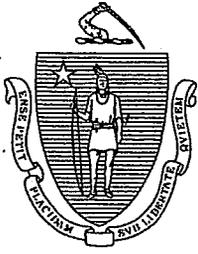
This letter serves as a reminder and as a notification that we have not yet received Acton's release. Pursuant to the Consent Judgment and as of May 2, 2012, the Attorney General may distribute those funds due to municipalities who have not signed a release to those municipalities that have submitted signed releases under the Consent Judgment. If you intend to submit the attached release and claim the funds due to the Town of Acton under the settlement, please do so on or before May 2, 2012.

Thank you for your attention to this matter. Please contact me at 617-963-2426 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Betsy Harper".

Betsy Harper  
Assistant Attorney General



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

June 10, 2011

Steven Ledoux  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

**Re: Distribution of Municipal Fund in *Commonwealth v. Wheelabrator Saugus, Inc. et al.*, Civil Action No. 2011-348-A (Essex Superior Court)**

Dear Mr. Ledoux:

I am pleased to provide this notice of payment pursuant to my office's recent settlement of environmental claims. Your municipality will receive \$26,176.19 following the process described in this letter.

*The Settlement.* On May 2, 2011, the Essex Superior Court entered a Consent Judgment between the Commonwealth of Massachusetts and Wheelabrator, the operator of trash incineration facilities in Saugus and North Andover. The Consent Judgment settled the Commonwealth's allegations that Wheelabrator violated environmental laws at those facilities and required Wheelabrator to pay \$2 million in civil penalties, pay \$500,000 to the Natural Resource Damages Trust, fund \$500,000 in environmental projects near the facilities, and submit its ongoing operations to rigorous oversight by an independent monitor that will answer to the Commonwealth. In addition, Wheelabrator paid money to a Municipal Relief Fund to be distributed by the Attorney General to those communities that paid Wheelabrator for trash incineration services. We have now received Wheelabrator's payments under the settlement and are prepared to distribute \$3.5 million to those cities and towns.

*The Distribution.* The Consent Judgment authorized my office to distribute the Municipal Fund in its discretion, and on May 17<sup>th</sup>, the Superior Court approved the payments reflected on the attached Schedule. As you can see, the Municipal Fund was split evenly between the Saugus and North Andover facilities (\$1.75 million each). We then paid 10%, or \$175,000 to each of the host communities—Saugus and North Andover. The net fund for each facility (\$1.575 million) was then distributed to all communities that paid Wheelabrator, *pro rata* based on each community's percentage of the total payments to the Wheelabrator facility during calendar year 2009. See attached Distribution Schedule for detail.

June 10, 2011

Page Two

How to receive your payment. In order to receive your municipality's payment, the Consent Judgment requires that each municipality sign the release attached to this letter. This release covers any claims your municipality may have that (i) arise out of the environmental violations at issue in the Commonwealth's case, and (ii) relate to your municipality's contract with Wheelabrator or your payments under that contract. The release does *not* cover all contract disputes that have arisen or may arise between the municipality and Wheelabrator—only those connected to environmental compliance. So that you or your counsel can review the scope of environmental allegations covered by the release, a copy of the Consent Judgment is enclosed for your reference. *See* Consent Judgment, at pp. 13-16.

Should you or your counsel have any questions about the settlement, the distribution or the release, please feel free to contact Assistant Attorney General Betsy Harper by phone at 617-963-2426 or by e-mail at [betsy.harper@state.ma.us](mailto:betsy.harper@state.ma.us).

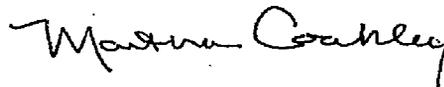
Kindly have the release signed on behalf of your municipality and return it by mail to:

Betsy Harper, Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place, Room 1814  
Boston, Massachusetts 02108.

Once we have received the release, we expect to send a check within three weeks. We will send it to your attention, or feel free to provide alternative instructions when you return the release. The funds are not restricted. Each city or town may choose how it will use the money received from the settlement.

Thank you for your attention to this matter. Please contact my office if we can assist.

Cordially,



Martha Coakley

Attachments: Distribution Schedule  
Municipal Release  
Copy of Consent Judgment (May 2, 201

**North Andover Facility and Saugus Facility  
Distribution of Municipal Allotment**

Town	2009 Payments	% of Total for Facility	Host Community Payment (10%)	Municipal Allotment
<b>North Andover Facility:</b>				
Acton	\$ 285,331.11	1.66%		\$ 26,176.19
Amesbury	\$ 356,923.37	2.08%		\$ 32,744.05
Andover	\$ 711,594.67	4.14%		\$ 65,281.49
Arlington	\$ 1,018,279.80	5.93%		\$ 93,416.69
Bedford	\$ 312,940.19	1.82%		\$ 28,709.04
Belmont	\$ 566,740.78	3.30%		\$ 51,992.64
Billerica	\$ 996,123.10	5.80%		\$ 91,384.05
Boxborough	\$ 70,573.42	0.41%		\$ 6,474.39
Burlington	\$ 522,024.25	3.04%		\$ 47,890.35
Carlisle	\$ 122,636.78	0.71%		\$ 11,250.66
Chelmsford	\$ 932,114.43	5.43%		\$ 85,511.91
Dracut	\$ 858,362.92	5.00%		\$ 78,745.97
Hamilton	\$ 126,302.55	0.74%		\$ 11,586.96
Lexington	\$ 580,381.34	3.38%		\$ 53,244.02
Lincoln	\$ 75,820.51	0.44%		\$ 6,955.75
Lowell	\$ 2,063,321.28	12.02%		\$ 189,288.50
Manchester	\$ 130,887.48	0.76%		\$ 12,007.58
Methuen	\$ 1,138,652.97	6.63%		\$ 104,459.69
Newburyport	\$ 403,720.74	2.35%		\$ 37,037.22
North Andover	\$ 577,222.79	3.36%	\$ 175,000.00	\$ 227,954.25
North Reading	\$ 374,539.03	2.18%		\$ 34,360.10
Peabody	\$ 1,246,427.87	7.26%		\$ 114,346.93
Pepperell	\$ 73,439.77	0.43%		\$ 6,737.34
Tewksbury	\$ 734,105.06	4.28%		\$ 67,346.59
Watertown	\$ 816,895.35	4.76%		\$ 74,941.74
Wenham	\$ 71,051.14	0.41%		\$ 6,518.21
West Newbury	\$ 110,463.59	0.64%		\$ 10,133.90
Westford	\$ 602,618.63	3.51%		\$ 55,284.06
Wilmington	\$ 620,794.68	3.62%		\$ 56,951.52
Winchester	\$ 667,848.15	3.89%		\$ 61,268.20
<b>Total</b>	<b>\$ 17,168,137.75</b>	<b>100.00%</b>	<b>\$ 175,000.00</b>	<b>\$ 1,750,000.00</b>

**Saugus Facility:**

Beverly	\$ 1,024,801.71	9.33%		\$ 146,905.05
Boston	\$ 1,134,029.75	10.32%		\$ 162,562.86
Chelsea	\$ 916,622.51	8.34%		\$ 131,397.59
Everett	\$ 1,304,789.63	11.88%		\$ 187,041.25
Lynn	\$ 2,424,410.19	22.07%		\$ 347,538.55
Malden	\$ 806,569.81	7.34%		\$ 115,621.57
Milton	\$ 376,634.37	3.43%		\$ 53,990.44
Newton	\$ 16,359.74	0.15%		\$ 2,345.16
Newton Curbside	\$ 776,867.54	7.07%		\$ 111,363.75
Revere	\$ 1,394,867.76	12.70%		\$ 199,953.92
Rockport	\$ 206,373.55	1.88%		\$ 29,583.59
Saugus	\$ 604,788.42	5.50%	\$ 175,000.00	\$ 261,696.26
<b>Total</b>	<b>\$ 10,987,114.98</b>	<b>100.00%</b>	<b>\$ 175,000.00</b>	<b>\$ 1,750,000.00</b>

**Note:** Column E, titled "Municipal Allotment," reflects each municipality's percentage times the \$1,575,000 payment with the exception of North Andover and Saugus where it reflects their percentage in addition to the host community payment.

Release Prior to Payment of Municipal Relief under Consent Judgment in  
Comm. v. Wheelabrator Saugus, Inc. et al., Civ. A. No. 2011-348-A (Essex Sup. Ct.)

In consideration of the payment identified by the Office of the Attorney General as municipal relief to be paid to the Town of Acton (“the Municipality”) pursuant to a consent judgment entered between the Commonwealth and certain Wheelabrator entities in Civil Action No. 2011-348-A (Essex Super. Ct.) (“Consent Judgment”), and effective upon receipt of that payment, the Municipality hereby expressly remises, releases and forever discharges Wheelabrator North Andover, Inc. (“the Facility”) together with its predecessors, current and former parent companies, direct and indirect affiliates, divisions and subsidiaries and their current and former employees, agents, representatives, officers, directors, successors, and assigns, individually and collectively, from any and all claims and liabilities of every kind, nature and description whatsoever, both in law and in equity, from the period prior to and through May 2, 2011 arising out of or related to both (i) Covered Matters as that term is defined in the Consent Judgment and (ii) any and all contracts between the Municipality and the Facility or payments by the Municipality to the Facility under any contract, including without limitation all claims and liabilities under the Massachusetts False Claims Act, G.L. c. 12, §§5A *et seq.*, the Massachusetts Regulation of Business Practices for Consumer Protection Act, G.L. c. 93A, and breach of contract. It is expressly understood and agreed that the payment described herein is not an admission by the Facility of any liability to the Municipality.

Name (municipal official): \_\_\_\_\_

Title:

FOR THE Municipality of: