

John Murray

From: Stephen Anderson
Sent: Saturday, June 18, 2005 7:31 PM
To: Don Johnson; John Murray
Subject: Acton/PostNESWC: 9 Month WNA Contract

Steve had rec'd an earlier draft. Some comment do not apply to the current contract

Gentlemen:

I have taken a brief look at the "9 month" version of the WNA Service Agreement which you forwarded to me. I have several observations:

TERM:

Section 6 of the Agreement establishes a 9 month term:

6. Term. This Agreement shall be effective upon execution by the party that performance hereunder shall commence on September 26, 2005 (the "Date") and end on June 30, 2010.

However, Section 5(a) includes a Tipping Fee schedule covering Contract Years from 9/26/05 to 6/30/10. Is this simply an artifact of borrowing language from the 5 year contract, or is there an effort by WNA to hold the Town to a contract longer than 9 months? Do you have anything in writing from WNA explaining the fact that this is just a 9 month contract?

(a) The Town shall pay WNA a tipping fee (the "Tipping Fee") per Acceptable Waste accepted at the Facility during each Contract Year, or deli disposal site as provided in Section 3 hereof, as follows:

<u>Contract Year</u>	<u>Tipping Fee</u>
September 26, 2005 through June 30, 2006	\$64.00
July 1, 2006 through June 30, 2007	\$68.00
July 1, 2007 through June 30, 2008	\$69.50
July 1, 2008 through June 30, 2009	\$71.50
July 1, 2009 through June 30, 2010	\$73.00

HAND FROM THE GRAVE:

Section 14(e) extinguishes the Right of First Refusal in the original Service Agreement (assuming it was dated as of 4/8/81):

7/14/2005

(e) All prior agreements, understandings and negotiations pertaining to the matter hereof for the term hereof are merged herein and superseded hereby by this Agreement or understanding than those written or specified herein. The parties agree that on and after the execution and delivery of this Agreement by the parties, the parties shall have no obligation pursuant to the Article XI.2 of the Service Agreement dated April 8, 1981, between WNA and the Town and that such provision shall be null and void from the date of execution and delivery hereof by such parties.

LEGAL OPINION:

Section 11(g) requires the Town to provide a legal opinion from P&D as to the enforceability of the Agreement against the Town. I would like to see a draft of that opinion. Can you provide it?

(g) On the date of execution and delivery of this Agreement, the Town shall provide a

legal opinion to WNA from Palmer & Dodge LLP as to the enforceability of the Agreement against the Town and such other matters as WNA shall reasonably request.

AFTER-ENACTED ENVIRONMENTAL LAWS:

Section 2(a) provides that the

Town shall perform its obligations under this Agreement in material conformity with all applicable laws, including, without limitation, Environmental Laws.

Section 1(e) defines environmental laws to include after-enacted environmental laws.

(e) “Environmental Laws” means (i) all statutes, regulations, rules, orders, licenses, permits, orders, decrees, approvals, plans, authorizations, and similar instruments, whether previously existing, now existing or hereafter enacted, amended, promulgated, or issued, whether or not contemplated by the parties as of the date of this Agreement) by the Commonwealth or any political subdivision thereof or of any agency, department, commission, board, bureau or other instrumentality of any of them, (ii) all judicial and administrative decrees, judgments and orders (whether previously existing or hereafter enacted, amended, promulgated, or issued, and whether or not contemplated by the parties as of the date of this Agreement), and (iii) any common law tort, contract, or property law applicable to claims, demands, requirements, damages, costs or expenses, including, but not limited to, claims, demands, requirements, damages, costs or expenses, relating to or addressing the pollution, contamination, protection, or remediation of the environment or the protection or restoration of natural resources, including, but not limited to:

Section 8(b) requires the Town to indemnify WNA against liability under environmental laws (including after-enacted environmental laws) if the Town delivers to the facility non-acceptable waste under such laws. This may prove nerous depending on what laws are enacted during the term of the Agreement.

(b) The Town shall indemnify, defend, reimburse and hold harm officers, employees and representatives from any and all Claims and Dama result of (i) the delivery to WNA by the Town of any waste that does not cc Waste that gives rise to liability under any Environmental Laws (provided t given the Town notice of such delivery within two years of the date of such to or death of any person (including, without limitation, persons employed or destruction of property (including, without limitation, to the property of Parties), to the extent arising out of, resulting from or in any way connectec or willful misconduct of the Town or its officers, employees and representa any obligation, covenant or undertaking of the Town contained herein, and misrepresentation or breach of warranty by the Town contained herein.

Let me know if you would like anything further from me on this Agreement, and let me know when the Town plans to sign it.

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