

SPECIAL TOWN COUNCIL MEETING

TUESDAY, OCTOBER 3, 1989

7:00 p.m.

Discussion of the Municipal Solid Waste Delivery and Disposal Contract between the Town and CRRA and Possible Council Recommendations Regarding Changes to Said Contract.

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A special meeting of the Wallingford Town Council was held in Council Chambers and called to order at 7:15 p.m. by Chairman Albert Killen. Answering present to the roll called by Town Clerk Kathryn J. Wall were Council Members Adams, Bradley, Doherty, Papale, Parisi, Zandri and Killen. Also present were Adam Mantzaris, Town Attorney and Tom Myers, Comptroller. Council Member Holmes was absent.

The Pledge of Allegiance was given to the flag.

Motion was made by Mrs. Papale to discuss the Municipal Solid Waste Delivery and Disposal Contract between the Town and CRRA and possible Council recommendations regarding changes to said contract. Seconded by Mr. Parisi.

Mr. Myers stated based on a request from Mr. Bradley regarding the effect of this agreement on the community credit rating and financial position, present tonight is Attorney Fasi our Bond Counsel, and George Post and Roger Whitham of Connecticut Bank & Trust who are our financial investment bankers.

Mr. Bradley stated some of the things I was concerned about was the short and long term effect, from a financial standpoint, that these commitments of the Town would have on the overall bond rating of the Town and how they may be perceived on Wall Street and also the overall financial risks that this contract could have.

Roger Whitham, CBT, replied we'll start with the financial risks because they deal with both the long term and short term implications to the Town. We've identified four areas where we see some risks. One has to do with the increased system costs, which are just inherent in a project of this nature, such as replacing capital equipment and inflation costs. The other financial risks come to the Town in the event of default and what the Town would then be disposed to. There are two areas where there could be a default. The first one would be if there was an act of God or change of federal law. The other area would be in the event that the credit enhancement facility could not be renewed. These defaults would increase the system costs and you would not only be covering the debt service but additional disposal costs. The last form of financial risk we saw was in the operational area in terms of the haulers and the day to day activity that might impact the plant going down and therefore affect the commitment of delivering appropriate trash. So that is the area where we see financial risks and they all relate to increased system costs. Again the first one is an increase from the ongoing operations such as replacing capital equipment or inflation, then we have a default on the bond issue and the last one is failing to meet the commitment of delivering acceptable waste.

Mr. Whitham stated in terms of the impact on the credit rating that these risks would have, it goes back to how the credit agencies would be assessing the risk. When I look at the impacts on the credit rating, what I'm looking at here is how is the debt going to be treated. I think the current practice is to treat it as

a contingent liability and recognize it as a liability on a prorated basis for each of the communities. Then you need to address how one handles the contingent liability. The contingent liability is assessed in two ways. The first is on an ongoing basis. Is the Town in a position and is it capable of addressing the ongoing projected service fees? That will be analyzed from the perspective of the entire community's economic, demographic, financial and administrative capabilities as with any other piece of debt. The other aspect would be in the event that something major was going to happen at the plant and that the plant or the facility would then cause a reviewing of the whole situation. As we understand it today, these plants in Connecticut have not had an adverse effect on the credit rating of any of the communities involved in plants like this. As a matter of fact, if you look at some of the criteria for analyzing the credit capability or capacity of the community, one of the areas that the credit rating agencies tend to look at is going to be in the area of planning, such as planning for the disposal of waste. At this point we feel this is a very positive step that the communities are taking because it recognizes an important problem and is an affirmative action to deal with it. So currently it certainly goes in the community's favor to be taking such a proactive approach to such a problem.

Mr. Whitham stated beyond this in terms of where the community might want to go to continue to enhance or protect their financial credit rating, we would suggest ways of being very proactive and working with the Authority and the Company to maintain a close cooperation. Essentially if you're taking the proactive step it's something you would want to protect. The way to do this would be to review the different forms of exposure such as the credit of the haulers. Part of the procedure with CRRA is that the haulers need to post some kind of security to cover a certain period of operation. Another area would be to develop a designated fund and set aside funds in the event you might have to come up with some cash or funds for the project. I think the credit agencies would look favorably upon something like that because again it speaks to the issue of your ability to plan and take the right action. Potential recommendations would be to develop a review process with the Authority. What we mean by this is looking over the project both with the Company and the Authority because they are going to have various expenditures that may impact the service fee. If the towns are kept advised of the various things that are going on, you'll know about the increases in the service fees in advance of when they occur so that you can do the appropriate planning at the community level to protect that credit rating.

Mr. Whitham stated the next thing I'd like to speak to is the idea of perceiving that risk and making sure you understand it and then assuming the responsibility for it and taking the appropriate planning actions. The importance of all this is that it's viewed very importantly by the credit agencies that communities act in that way when it concerns their financial situations.

Mr. Bradley stated I understand that as far as working closely with the agency on this, but my reading of certain letters here is that if a Force Majeure or Federal Change of Law should occur in the future, the Town of Wallingford, as far as a credit analysis performed at that time, could be subject to some risk there on the revaluation.

Mr. Post stated we were not a part of the original underwriting group, we are one of the managers of the underwriting group. We are not the trustee on those bonds either.

Mr. Gregory asked did the bank make any money on the bond issue?

Mr. Post stated I don't know, you'd have to ask our Bond Department.

Mr. Gregory stated I suggest the Council get a definitive answer as to the actual role of CBT in this project. They may have a conflict of interest here.

Robert Wright stated there might be some confusion from the fact that the bond trustee is CNB, but I don't remember CBT having a significant role. However, we currently have a working capital note with them on which CRRA is liable. It's a million dollar note on which we borrowed approximately \$500,000, but that was very recent. And I think it's pretty plain that CBT isn't making a great deal of money on that. The primary Connecticut bank involved in this issuance was Connecticut National Bank not Connecticut Bank and Trust.

Mr. Gregory stated Mr. Wright is fairly new to this project and we go back four years. I suggest you get the information from an independent source. I just want everyone to realize that these gentlemen are looking at the risks from one standpoint or angle and it's not the Town's angle.

(Mr. Solinsky arrived at 8:00 p.m.)

Mr. Killen thanked Attorney Fasi and the gentlemen from CBT for coming tonight. Mr. Zandri has submitted a list of possible changes which we will go over at this time.

Page 2-6

Motion was made by Mr. Zandri to restore Change of Law definition to the original wording. Seconded by Mr. Doherty.

Mr. Killen asked why was the wording changed?

Mr. Wright replied that goes back to the provisions respecting who bears the Federal Change of Law after the first 7 years. This is one of the ones that CRRA will not change. If you vote yes on this, you've voted you don't wish to be in this project.

Mr. Zandri stated there are four items that are all similar to this item and they all deal with the additional risk and liability to the Town. My argument on this is we're dealing with a service here. If you have a lawn service or janitorial service and something happens to that individual's business equipment or the facility he is working out of, you as a person who is buying that service are now responsible for those losses. The State is the one initiating these facilities and the State should be responsible for some of the liabilities associated with these projects. The burdens should not be put on the towns involved in these projects. This is my argument on Change of Law, Federal Change of Law, State Change of Law and Force Majeure.

Mr. Wright replied I can understand some of the concern. What happens when you contract for a service and the company cannot afford to give it, is that the company goes out of business. That is what happened. The protection to this Town in the original deal was that if something like that happened you could get out of the deal with no obligation. You have the ability to do that. You can walk away from this contract and have a trash to energy facility in your Town which is reliably and economically serving all the surrounding towns while your citizens ship their garbage have way across the world and pay twice as much. That's your option. We're offering you what we thought was the best we could do on this contract and we think it's a very good contract. When Northeast Utilities finally completed Millstone 3 the cost was 1000% over budget. Those costs were passed along to the customers and the customers had no option in that. In this case you've had a substantial increase and you have an option. You don't have to sign up. If you do sign up, this is the deal. The Federal Change of Law Risk is better in this contract than it is in any other contract in this State and any other contract that CRRA or Ogden is aware of anywhere in the country. You're getting a better deal not a worse deal. This is one of the points we can't give on.

Shelia Tralins, Ogden, stated I support Bob's response here. We have assumed a great deal of the risk in this transaction by agreeing to take over a company with the technology that we generally do not market and by assuming great potential liabilities by guaranteeing the levels of energy and the environmental guarantees, as well as the through-put capacity that we can deliver here. I read over Mr. Zandri's list of suggestions and I noticed that a lot of them would anticipate the Company taking on greater burdens with regard to the levels of risk. We cannot increase our level of risk in these areas. We feel we have given a fair deal here and we hope you'll join on with the project.

Mr. Zandri stated I'm under the assumption that if we get out of this project we'll get our landfill back.

Mr. Wright replied that's been stated to me as a fact that that's the way the contract would work. I heard that representation made several times over the last 10 months. But when I asked my lawyer if that was true, they gave me the opinion that that was not true. That landfill is under lease. My next question was can we settle this. The response was that is a security on the bonds at this point. If there is a facility operating, that landfill will be used to service the facility. I've spoken to your Mayor and the Town Attorney and they both say there are very good arguments that the Town would get the landfill back. So there's a debate on that. My understanding is CRRA wouldn't have the authority to make that decision one way or another, but there looks like there is a substantial legal debate on that issue. One thing I have taken a close look at and asked for opinions on is the life of your landfill--and it's not long. You'd only be buying yourself several years.

Mr. Zandri stated I think this is an issue that definitely has to be settled. If it's not settled, there's no sense in even continuing discussion on this contract because this is a contract that's being negotiated with a gun to our head. You have a facility that's already built in our Town and you're saying if you're not involved in this project it's here anyway. Now you're saying if you get out of the project you're not getting your landfill back. We're negotiating

under completely different guidelines than when this original contract was negotiated a few years back. We should definitely have a ruling on the landfill before we proceed with this.

Mr. Wright stated my opinion is you'll have a real difficult road in front of you whether you get the landfill back or not.

Mr. Zandri stated I don't see how we can honestly continue to work with this contract under these terms without knowing if we have the potential for getting our landfill back. It will make a big difference on the way I vote.

Mayor Dickinson stated it's not surprising that CRRA would take the view that we wouldn't get the landfill back. It's my opinion that we would get it back. We're involved in negotiations that they're impacted with on host community benefits. It shouldn't surprise you at all that they would take a view that would weaken our position regarding settling the whole issue. So don't get too excited. There are other issues at stake in another forum at the Policy Board. In my opinion we would get the landfill back.

Mr. Wright stated I'm not threatening you or positioning here. What I'm doing is telling you what my counsel told me.

Mr. Zandri stated I looked at this contract and approached it with an attitude that there was no question we would get our landfill back. As far as I'm concerned, until that issue is resolved I'm not going to proceed with voting on any more issues on this contract.

Mr. Killen stated I understand where you're coming from but this could end up in a lawsuit and we wouldn't be voting on this until who knows when.

Mr. Bradley stated I appreciate Ogden stepping in and taking over Vicon technology, but I think in doing so the Change of Law protects you because of that unknown technology or risk that you're assuming.

Mr. Wright replied the primary obligations under this contract are to process waste, produce steam, produce electricity and meet certain environmental requirements. Ogden guarantees each of those obligations. If a Federal Change of Law inhibits their ability to do so, then yes they're protected. But if for some reason the Vicon technology just doesn't work, that's Ogden's tough nut.

Mr. Bradley asked if EPA comes out and states the ash is hazardous waste, does that fall under Change of Law?

Mr. Wright replied yes, but that wouldn't necessarily close the plant down. We would have to find a hazardous waste landfill in which to dispose of this ash.

Mr. Bradley stated I'm looking at this from a financial standpoint.

Mr. Wright stated if Ogden did something that caused this ash to be hazardous, then that would be Ogden's risk. On the other hand, they aren't responsible for the landfill. They don't come to this project and say we're going to run the project and get rid of your ash. They say we'll run the project and the project itself has to provide the landfill which will serve as the disposal site for the ash. It's just not within their frame of responsibilities.

Mr. Bradley asked as far as the landfill and whether the ash is deemed hazardous, does that also pertain to this section of Change of Law in this contract or would that be outside this contract?

Mr. Wright replied that would be within the projects unless it was an Ogden cause, then it would be outside the scope of this.

Mr. Bradley asked does anyone know where the federal government stands on classification of ash?

Mr. Wright replied the contract between CRRA and the towns would require that CRRA get rid of the ash. That isn't an Ogden responsibility. The project itself has to come up with the landfill and the cost is a system cost.

Drew Lehman, Manager for Environmental Compliance-Ogden, stated as far as the federal government's classification of ash, it is an emerging regulatory environment. At this point it is my understanding that EPA is leaning towards treating ash from municipal waste landfills as a special category of waste. They are leaning towards setting forth performance based standards which address what characteristics need to be set forth for a disposal site for ash. As far as I know, EPA is leaning away from categorizing municipal solid waste as a hazardous waste. It's a special type of material and it would be an industry wide problem. It's receiving scrutiny at all levels--technical, political, and municipal levels, but it's not being considered a hazardous waste at this point.

Mr. Bradley stated I spoke with EPA today and I concur with those comments. But also under the non-hazardous category I think they're looking at implementing proper ash management such as monofills, collection systems, etc. If we have to get into things like that, will that cost come back to the municipalities falling under Change of Law?

Mr. Wright replied the major cost increase for this project in the future is, and you're going to face it regardless of how the ash is treated, we have to find a new landfill for this project. There really isn't very much space left in the Wallingford landfill. The State has provided for the siting of replacement landfills and one of the primary sites being considered is North Haven. The landfill would have to be constructed and a proportionate share of the cost of construction of that landfill and the shipping of the ash down there would be born by the towns. I expect you will see some increase, but it's hard to gauge just how significant that's going to be.

Mr. Bradley asked what other risks are involved, other than the financial, on something like this if somewhere down the road this ash becomes hazardous in nature, or if there is a failure down there and it contaminates ground or water? What are the liabilities and risks coming back at the towns?

Mr. Wright replied the first recourse would be through insurance. If ultimately the insurance runs out, I think the towns would then bear the responsibility. Just like if they discovered the garbage in the landfill is declared hazardous, similarly you would bear that liability. Anything you do with garbage has the potential of liabilities.

Mr. Doherty asked could you prepare a simple chart that would show the responsibilities of each of the parties in this contract?

Mr. Wright replied yes we can do that.

Mr. Zandri asked has Ogden signed on as an interim or temporary operator?

Mr. Wright replied that is correct.

Mr. Zandri stated I also understand that they will not sign on until the plant has been accepted environmentally.

Mr. Wright replied plant acceptance is a determination that will probably be made by the consulting engineers to CRRRA before the final report card is issued by DEP. They will be relying on the same test results that the DEP will be relying on. We're paying the consulting engineer a lot of money to evaluate those results in a quicker fashion than the State can usually turn it around.

Mr. Zandri asked is it true that some of the tests done by Fluor were not completed?

Mr. Wright replied there were a variety of tests taken by Fluor and I expect that we will be involved in a lawsuit with Fluor. Back in the first week of February they took a series of tests. We didn't think the tests were adequate and we didn't think they met their obligations. Fluor however says they did and submitted to us and certified that the tests were complete. Our consulting engineer has said no. They subsequently performed a variety of tests in May which we believe did pass the DEP requirements.

Mr. Zandri stated the only reason I'm bringing this up right now is I'm trying to find out how critical the October 18 deadline is. I'm not ready to proceed on negotiating this contract under the terms I've just been informed of this evening. Is this contract going to be signed on the 18th by all parties? How critical is the 18th?

Mr. Wright replied we have in place an Escrow Agreement that requires signature by the 18th. It doesn't require that pen be put to paper, but it requires that the towns have approved it by the 18th. If that condition of the Escrow Agreement is not met, no one is bound by it and the contract is a nullity at that point. What I suspect would happen is that you would have at least several of the towns approving it. If someone didn't approve it, the other towns would have to make a decision as to whether they wanted to keep the door open for that particular town who didn't sign. I don't know what the determination on that would be.

Mr. Zandri stated I want to know if we reject this contract, will the Mayor physically take over the operation of our landfill again. And I mean physically take it over and then fight it out in court. I don't know where the Mayor is, but if the Mayor says yes, then I'll proceed.

Mr. Killen stated I don't know how we could take it over physically and not be charged with trespassing.

Adam Mantzaris asked you mean with force of arms? You can appreciate the risks without my having to comment on it.

Bob Avery, 70 Masonic Avenue, does Mr. Wright remember coming before this same group and explaining to them that all these contracts were tied together and if one went down they all went down and we would get our landfill back?

Mr. Wright replied I remember someone saying if the lease were not valid you'd get your landfill back. I always operated under that assumption until I actually had someone closely read that document and give me an opinion on it. I was told primarily by Town representatives that you would get your landfill back and I took that on faith. Your Town representatives still believe that and they may be right and my lawyers may be wrong.

Mr. Adams asked if we vote that the Change of Law definition is restored to the original wording, does that show we would not want to be in the project?

Attorney Mantzaris replied what I can say is I don't think the Service Agreement will be changed to comply with your vote if you should vote to restore the old definitions.

Mr. Wright stated this board can vote whatever they want and then it's up to CRRA and Ogden to sign. I can't comply with that request. If you vote that way and you feel this is something you absolutely can't live with out, you're saying that you can't live with what is a better deal than anybody else in Connecticut has. CRRA can't give you that. You're already getting a better deal on this issue than anybody else. I don't have any latitude to give you more.

Mr. Adams stated there is no way I can vote on something that would allow another town to take our place to burn in this Town. That's a very important factor to me.

VOTE: Adams, Doherty, Papale, Parisi, Solinsky and Killen voted no; Bradley voted yes; Zandri passed; motion did not pass.

Mr. Killen stated Geno I know where you're coming from. Do you want to continue with your list or drop out because of your position?

Mr. Zandri stated I'm dropping out.

Mrs. Papale asked if Wallingford doesn't sign onto this project and we do get the landfill back, I want to know what Wallingford is going to do after the landfill has reached it's capacity?

Mr. Zandri replied there's options. First of all the landfill life was projected on the present way the trash has been disposed of over there for years. With recycling, compacting, and shredding, the life of the landfill can be expanded. There is also land available adjacent to our landfill for purchase that could also be used.

Mrs. Papale stated for a lot of money I hear.

Mr. Zandri stated but at \$45 a ton you're going to have a lot of money left over in operating the landfill. So there are other alternatives.

Mrs. Papale stated it's very difficult for me to think of getting the landfill back and not knowing exactly what the alternatives are.

Mr. Wright stated my understanding is you don't have a great deal of life in the landfill you have now. You'd also have to act very quickly to implement recycling. One of the best or clearest suggestions I heard was that maybe you can condemn the land next door and turn that into a landfill. I'm not DEP and you'd have to check with DEP, but I can't remember the last time the DEP permitted a landfill in this State for a town that had not committed to a resource recovery facility. They have expressed an extreme reluctance to do so. So you may wish to call DEP and ask them what their position would be if you opted out of this project and sought to take care of your needs by a big landfill. I think we can confidently state that the environmental effects of a big landfill are worse than a resource recovery facility.

Page 2-11

Motion was made by Mr. Doherty to add "which shall not be later than January 1, 1990" at the end of Effective Date. Seconded by Mr. Parisi.

Mr. Wright stated I'm not certain what the effect of this is or is intended to be. Could we get some explanation as to why you want this included?

Mr. Zandri stated this is so you have a definite date and the thing will not be prolonged.

Mr. Wright asked what happens if it's not met? Is it that we have to come back to this Council for reauthorization?

Mr. Killen stated I think one of the problems is in putting that particular aspect into a definition. Maybe it might be better off in the contract and not necessarily in definitions.

Phil Hamel stated if you put it in here, what are the consequences? Does it mean this contract goes away and the old contract that the Town had signed is still in effect? It's not very clear what would happen if this date were not met.

Mr. Parisi stated you said before that if we don't agree to this by October 18 we're considered out. I think this is dealing as fairly with you as you are with us.

Mr. Wright stated I'm not afraid to give you a specific response. What I'm telling you is that this is a change in a definition and in order to fully appreciate what the effect of this change would be, I'd have to go back through the contract and find every place where the term "effective date" is used and see how this change in definition would affect the contract. I'm not saying we cannot do that, I'm saying I can't come up with that answer for you in a minute or two. I'd be happy to take a look at it and find out what the effect of this change would be, I just don't know off the top of my head.

Motion was made by Mr. Parisi to table this item, seconded by Mr. Adams.

VOTE: Zandri passed; all other ayes; motion duly carried.

Page 2-12

Motion was made by Mr. Parisi to delete Federal Change of Law definition from the contract and also delete reference to it throughout the contract. Seconded by Mr. Bradley.

Mr. Parisi stated what does the sentence in parenthesis mean at the bottom? First it's a guarantee of performance and then it appears not to be.

Mr. Wright stated I think what it meant to say was essentially that Ogden gets out if there is a Federal Change of Law, but their out doesn't apply if the real reason they couldn't comply with the contract was due to the fact that they had failed to live up to some of their obligations or were negligent somehow. Say Ogden has to process 125,000 tons per year. Ogden says well the federal government has changed the law and now they require widgets so we can't process 125,000 tons per year. We claim it wasn't because they required widgets but it's because the Ogden guys were sleeping on the job. If that's the real reason, they wouldn't get out of their obligations.

Ms. Tralins stated the language is very confusing here. What you're looking at is really what is the protection to you that you are only made to bear the risk for Federal Change of Law in a situation where it is not demonstrated that Ogden acted in a negligent fashion. If the language is unclear here, we have no problem in clarifying it because it is our intention to make it clear. We are not willing to take a Federal Change of Law risk, but if it is due to our negligence and not a Federal Change of Law, then indeed it should not come under this definition.

Mr. Wright stated we'll try to clarify the language and get back to you.

Motion was made by Mr. Parisi to table this item, seconded by Mr. Bradley.

VOTE: Zandri passed; all other ayes; motion duly carried.

Mr. Solinsky asked if something major should happen to the plant to make it inoperable, are the towns liable to get that plant running again?

Mr. Wright replied only under certain limited circumstances. Usually insurance will cover it and if it was Ogden's fault then Ogden will have to take the liability. Also, if it was a result of a Federal Change of Law during the first 7 year's, you're responsible up to a point and then beyond that you're not responsible and it starts getting cloudy. After a certain point the towns are responsible.

Mr. Solinsky asked if something happens to the plant, will Wallingford continue to get so much per ton?

Mr. Wright replied it will depend on how it's structured. The deal the Town is currently attempting to negotiate is that the project will pay a certain sum to the Town each year of the contract so that as long as the contract was in effect the towns would pay. But the final negotiations on that are not completed. Under the current pilot I believe it's based on the number of tons processed at the plant. If the plant were down, under the current agreement, that would not be the case. If the plant wasn't processing garbage, you wouldn't be getting so much per ton. But that is certainly one of the issues that has been on the table to make it such that the Town would get their host community benefit.

Mr. Solinsky asked with the new contract do you see a minimum pilot being paid to the Town?

Mr. Wright replied my crystal ball is no better than anyone else's. I think I said the first day that you guys really do have a major issue in this process. This is a pretty good contract particularly relative to other contracts that you could be in. In fact I think it's a very good one. But you do have an issue and one that bears very close scrutiny and that is your host community benefits. The latest proposals on the table would give you what you're seeking which is your host community benefit even if the plant doesn't run. But that's an agreement you want to look at very carefully. CRRA has stated and will state again that we think the current pilot doesn't give you as much as you should get and you should take a very close look at the offer that gives you more. It may or may not protect you and I'll try to explain it to the best of my ability, but you ought to read it very closely--if we ever come to an agreement.

Mr. Solinsky stated Wallingford is required to provide a minimum amount of trash and to accept a certain amount of risk. On the other hand, I think Wallingford should be assured of a certain amount of benefits such that if a catastrophe should happen out of our control we should still get that.

Mr. Wright stated I think that's a fair thing to negotiate for. Again if I were you I'd take a very close look to make sure you get it.

Mr. Parisi asked would CRRA agree to a best efforts clause to control costs?

Mr. Wright replied I've instructed my attorneys to write a clause that would accomplish that and be in compliance with our by-laws. They have said they think they can do so. We intend to agree to something like that unless, for some reason that I don't know about, there is some legal prohibition to us doing that.

Mr. Solinsky asked if the plant were to take trash from a non-member town, what would determine the costs that they would pay?

Mr. Hamel replied it's set up in the contract right now that it would be determined by the Policy Board and CRRA. If they could not reach agreement, then it would be \$5 above the current tip fee.

Page 2-14

Motion was made by Mr. Bradley to return definition of Force Majeure to original definition. Seconded by Mr. Parisi.

Mr. Bradley asked why was this changed?

Mr. Killen stated the original definition is covered in almost any insurance policy, but it's expanded 1000% and it's not understandable.

Ms. Tralins stated the main change as we see it is the addition of, other than restating it more broadly in legalese, is the change that adds private utility as another example. On Page 2-15 (ii) it changes the failure of any private utility. I think we've discussed this point with you before. This wasn't a company requested change, it is standard language that is in these contracts. Ogden's position is that as long as the facility is operating properly and we are producing energy capable of being sold to the utility which you have a contract with, the failure of that private utility to take the energy which we have made available should not be our risk. The communities are in a better position to shoulder that risk. That's why that was added.

Mr. Bradley stated I refer you to Page 2-12 (1) which states "demonstrably is the cause of a delay in or prevents performance or the meeting of an obligation under the Service Contract". The redefinition of Force Majeure now includes the Service Contract.

Mr. Wright stated you have a very simple definition in the first one. The longer one actually gives you a bunch more protections and gives Ogden the additional protection which Ogden just pointed out. In the first part we're saying that a Force Majeure just isn't any landslide or earthquake. It actually has to affect the performance of the entity which is trying to get out of their obligations. If there was a flood in Town that really shouldn't have affected Ogden's operations, Ogden has to demonstrate that they couldn't go forward with their obligations because of the flood. They just can't claim a flood. Part (2) says is beyond their reasonable control. This language was also in the original definition in Part (iii). This expands it to all sorts of things. That may or may not provide you additional protection. I think it's doubtful that anyone is going to claim that a war for instance was within CRRA's or Ogden's control.

Mr. Killen stated if there is a flood in the Town that doesn't affect the plant, you're telling us lacking this particular thing they could claim that flood. Anyone in their right mind would say no the flood didn't affect you. Why do you have to have that clause in there? If they went to court and said the flood prohibited us from performing, you think any court would accept that?

Mr. Wright replied what the old definition said was that Force Majeure means any flood. For everyone's protection we made it explicit that you just can't claim anything. It has to affect your ability to perform. It doesn't hurt you to have that in, in fact I think it makes it a little more clear.

Mr. Killen stated we have a whole page and a half which is supposed to clear it up but muddies it instead.

Mr. Wright stated you have to actually show that it affected your ability to perform. It puts a higher burden of proof on the claiming party. When you get into court you would much rather be in the position of having the other guy try and prove it than having you try to prove it. Additionally in Part (2) it's

saying it's beyond the reasonable control of a party. Formerly that language only modified the potential Force Majeure's in Part (iii) which were fires and explosions. More importantly, if you got an off-site strike which is somehow their responsibility or which they caused, they couldn't claim that as a defense whereas under the old agreement they could. Part (i) is essentially what it was before. Part (ii) is the new section which Ogden required and which Sheila just explained.

Mr. Parisi stated say there is a power failure. We're the public utility.

Mr. Wright replied our position was the electrical service to this plant comes from Wallingford Municipal Electric which is not a private utility. Ogden said we know that but who knows what will happen in the future. Who knows if for instance the electrical service is cut off because a private utility refuses to serve Wallingford Municipal Electric or something, we don't want to bear that responsibility. We didn't see it as a terribly big deal. Apparently it's a standard clause which Ogden has in it's contracts and in this case we didn't think it made a significant difference to us.

Mr. Parisi asked who bears the responsibility then?

Mr. Wright replied I would think this would primarily benefit Ogden in that Ogden would say 10 years from now Wallingford Electric went out of business and was taken over by Joe's Corner Garage and Electric Company. Joe failed to provide electricity to the plant so all the lights went out and people couldn't work there for a week. Ogden would say for that week it wasn't our responsibility because Joe's Electric failed to serve us. It would affect the Town because the garbage wouldn't get burned that week and we would have to take it someplace else. That cost would eventually find it's way into the tip fees. It doesn't become a cost to the Town of Wallingford exclusively. It becomes a system cost born by all 5 towns.

Mr. Parisi asked is there any insurance that would kick in and cover the cost of any downtime?

Mr. Wright replied it would depend on the kind of downtime. In this case I'm doubtful an insurance company would cover you. If the power goes out for a week at your home and all your food goes bad, your insurance wouldn't cover that. We do have business interruption service which covers a wide range of things, but not this.

Mr. Hamel stated the Town's Risk Manager is going to be sitting down with CRRA's Risk Manager later this week to go over that coverage and perhaps make some recommendations on it.

Attorney Mantzaris stated maybe we should add "private and or public" to that section.

Mr. Wright replied that would hurt you.

Attorney Mantzaris stated the failure of our Electric Division to supply electricity which caused the plant to shut down would not be a Force Majeure, but it could, depending on the reason for the failure to supply, result in a

claim against our utility solely rather than a shared liability. This is just for consideration.

Mr. Wright replied I hear what you're saying and I don't know who else might have a problem with that. I think you probably want to take a look at your Electric Division's charter to see if you would in fact have liability under that. I don't think CL&P would have liability under those circumstances. If you don't, then you probably would want to leave it the way it is. Take a look at your charter and see if that's a real possibility and we'll talk about it. If not though let's leave it alone.

Attorney Mantzaris replied I agree with you.

Mr. Solinsky stated the electricity is sold to CL&P and those are CL&P's lines from the plant to their plant. Do we have anything to do with those lines?

Mr. Hamel replied I believe the lines are CL&P's from the substation to the transmission lines.

Mr. Solinsky asked so Wallingford does not buy any electricity from this plant?

Mr. Hamel replied correct. CL&P cannot sell electricity in Wallingford.

Mr. Solinsky asked does Wallingford sell electricity to this plant?

Mr. Wright replied we buy your electricity but we don't make you buy ours.

Mr. Solinsky asked what happens if CL&P cannot accept the electricity from the plant? Would that be a Force Majeure?

Mr. Hamel replied I don't think that would be covered under Force Majeure. That would be covered under their out under the electric contract. CL&P has the right under certain circumstances to refuse to accept power and under those circumstances Ogden is covered under a different provision.

Mr. Solinsky asked if CL&P did not accept the electricity, how would that affect Ogden according to their living up to the contract?

Mr. Hamel replied Ogden's responsibility is to produce the energy. They did not negotiate the energy contracts and they are not liable if CL&P refuses to take the energy.

Mr. Wright replied that's between CRRA and CL&P.

Mr. Solinsky asked so if CL&P did not accept the electricity, Ogden wouldn't have any claim under this paragraph?

Mr. Hamel replied not to my knowledge.

Mr. Wright replied the contract isn't between Ogden and CL&P. I'm not sure that the earlier interpretation was . . .

Ms. Tralins stated in my quick review of this I thought we were getting at that issue. But this one really just refers to the private utility operating in the jurisdiction of providing us electricity for our daily operations. I apologize.

Mr. Bradley stated I have a question on Page 2-15, Part (2) in the last paragraph. What are we saying here? Are we responsible for items that we could have prevented or that the operator could have prevented? Can you give me an example?

Mr. Hamel replied in the contracts the party claiming Force Majeure, either the Authority or Ogden, has a responsibility to mitigate or to reduce the effects of that Force Majeure. It was felt to be in the best interest of CRRA and the towns. If Ogden was aware of something that would be a Force Majeure and it hasn't happened yet, they could take mitigating action before it happened. Say we're all watching the weather channel and there's a hurricane coming up the coast and Ogden has a chance to do some things that will prevent damage to the plant. Because this is in here they would have an obligation to do that. So I think it's to our benefit to have that in there.

Mr. Zandri stated at this point I'd like to ask the Mayor the question I had previously. The Mayor is under the assumption that we would get our landfill back. If this Council so chooses to get out of this project, would you be prepared to physically take over our landfill until the issue was settled in court.

Mayor Dickinson replied I'm prepared to take any and all actions necessary to protect the interests of Wallingford. If at some time it proved it was necessary to physically take the landfill, then that would be accomplished. But I'm not going to say that under one specific set of facts I would or would not take that action. Certainly it's within the range of actions that I would be prepared to take.

Mr. Zandri stated that would be a situation that we would be in if this contract was rejected. It's my understanding that CRRA has now taken a position that we would not get our landfill back and if we were not in the project, we would have no place to put our waste in this Town. I don't see any other option but to take over our landfill at that point.

Mayor Dickinson replied it has a good emotional appeal to focus on that. But I think the larger issue is how long the landfill would last and what kind of money we would have to invest in order to allow it to last longer. In my opinion, we would be faced with a multi-million dollar expenditure in order to prepare and allow any kind of expansion that would be necessary. We just don't have that large an area to last us very long. I think that is the more critical issue. It's easy to focus on will we take it back or not, but that's a very short range solution. The longer range is much more difficult and carries some major price tags with it.

Mr. Zandri stated I understand your position on the landfill. My position is I have to approach reviewing this contract and voting on this contract based on certain assumptions. One of the assumptions I had was that we would be getting our landfill back. Until I can be assured of that I'm going to have to take my original stance.

Mr. Avallone asked is the 1985 contract that was signed unenforceable now? Where does Wallingford stand? Do they have a contract right now?

Mr. Hamel replied my understanding is that they do. They've signed a contract and it's a binding contract and right now we're living with it.

Mr. Avallone asked so if this Council doesn't vote on this contract, they have a valid contract in effect?

Mr. Wright replied I would have to have the contract before me. My understanding is that you have a valid contract and CRRA would have a valid out. Just as you have a valid out at this time.

Mr. Avallone asked what would your valid out be?

Mr. Wright replied cannot be performed. I don't think anybody who's taken a look at it, and at least 5 law firms have, that we would be in solvency of the primary contractor Vicon. Either Wallingford can get out of the deal or CRRA can.

Mr. Avallone stated I haven't heard that discussed once that there's a contract. I haven't heard CRRA say to you that it's unenforceable or anything. I hear now that there's a valid contract. I also hear it put to you that you have a contract that has to be signed by October 18 or you're out of the project. Has this been discussed as to what the obligations are? I hear an opinion by Mr. Wright that he's got to check with his lawyers and that it's his position, etc. I may be misinterpreting what you just said Mr. Wright. Maybe you can clarify that.

Mr. Wright replied what I just said was that at least 5 law firms have taken a look at it and all have concluded that either you or we can get out of it.

Mr. Avallone asked has that research or the verbal opinion of these 5 firms been conveyed to the Town of Wallingford?

Mr. Wright replied it's been a topic of discussion, at least since last October, before the Policy Board at which the CEO's of all five towns were present. No one has ever disputed that interpretation of the agreements. If the Council so directs, we can give an additional presentation of why that is so.

Mr. Avallone stated I would like to know if the Mayor or the Town Attorney has pressed this issue, the fact that we had a contract in 1985. While it's been discussed how bad it was, it's certainly better than what's been proposed now. Has there been any indication or any effort on the Town to see to it that the current contract is put into effect?

Mayor Dickinson asked in it's totality? How do we enforce a contract when the operator is bankrupt?

Mr. Avallone replied I don't know that.

Mayor Dickinson stated you're asking a legal question as to why the contract is somehow impacted by events. You have a party to that contract who is bankrupt and is no longer able to perform. How would that not impact the rights of all parties?

Mr. Avallone replied I don't know, maybe CRRA is partially responsible for Vicon going bankrupt. Maybe there's some culpability on the part of CRRA.

Mayor Dickinson stated I'm now aware of that culpability. I am aware of the fact that the company went bankrupt and the company was a party to the contract.

Mr. Avallone replied then the answer is there is no contract right now.

Mayor Dickinson stated there is a period of time during which the parties can deal with the change due to the inability to perform of one of the parties and that is what we're dealing with right now, this period of time.

Mr. Avallone stated you're dealing with the inability of them to perform because Vicon is bankrupt by letting them come before this Council, and not as changes were proposed. Rough drafts were not submitted to this Council, as many people have asked during the past year when Vicon went bankrupt, to see what was going on. We've been told it's part of a lawsuit and that we didn't have a right to get involved in negotiations because too many cooks spoil the soup. Yet you and our Town Attorney allow CRRA to come here at the 12th hour and present a contract when all of these changes should have been made aware to you as they were being made. This wasn't drafted in one day. There's a multitude of changes in this contract that weren't done and accomplished in one day. Why weren't these changes, and some of them very major changes, presented to this Council on a rough draft after one article was drafted. Why wasn't it presented and why is it being done with an October 18 deadline?

Mayor Dickinson replied we did not have a draft until the end of August and in fact it may have been September before we had a draft of the changes that were finally agreed to with Ogden. That was the first we had seen any of the changes as a result of negotiations between CRRA and Ogden.

Mr. Wright stated let me clarify what happened. We closed the Escrow and finally agreed to all the terms of the Service Contract with Ogden on July 31. Once we had that contract in place the changes to the Service Contract necessitated changes to the Municipal Contract. For example, when the definitions changed in the Service Contract they had to change in the Municipal Contract. As soon as we had a final contract with Ogden, we had our attorneys quickly draft the changes we thought were appropriate and we got it out before the month was up. Within a couple of weeks thereafter we met with all the town attorneys and got their input. There were some significant changes to which we acceded. Once those changes were implemented we immediately forwarded the draft to you and we are receiving your comments now.

Mr. Avallone asked were the town attorneys involved in negotiating the Service Contract?

Mr. Wright replied the town attorneys were not present during negotiations, but the Policy Board and town attorneys were kept abreast during the negotiations.

Mr. Killen stated we're talking about Page 2-14 and 2-15 and I'd like to hold to that if we could.

Mr. Avallone stated what I'm talking about can cover any particular part of this contract. This Service Contract is mentioned on Page 2-14.

Mr. Killen stated we have to do this in a certain order. When we finish the public will be allowed to raise any question they want. Right now we'd like to get some of these things in order.

VOTE: Adams, Doherty, Papale, Parisi, Solinsky and Killen voted no; Zandri passed; Bradley voted yes; motion did not pass.

Motion was made by Mr. Bradley to adjourn the meeting at 11:00 p.m., seconded by Mr. Adams.

VOTE: Zandri voted no; all other ayes; motion duly carried.

Page 2-25

Motion was made by Mr. Doherty to delete the sentence on Page 2-25, starting on the 6th line from the bottom, "The failure of any State or local utility. . ." Seconded by Mrs. Papale.

Mr. Doherty asked could you clarify that section?

Mr. Hamel replied originally a State Change of Law was defined in the Service Contract to include municipal actions as well as State actions. This was put in here, I believe, in terms of carrying over that intent. In the past the definition of State Change of Law was not in the municipal contract but was only in the Service Contract. Because of the need to define Federal Change of Law for this contract, State Change of Law had to be defined as well. The definitions were taken pretty much verbatim from the Service Contract and moved into the Municipal Contract. I believe that's why it's here.

Mr. Killen stated the problem is that State Change of Law should be State Change of Law. If you can make it with local change of law, almost any other word could be coterminous with something else. That's not good in a contract. Contracts are hard enough to understand without making it mean anything anyone wants them to mean.

Mr. Wright replied the municipalities are actually instrumentalities of the State and they only operate under the State's aegis, so actually that would be the most direct way of covering that.

Mr. Killen stated that would be if we were trying to take some particular action. The courts have ruled that and I'm very familiar with that. But that doesn't mean it would hold in this particular case in this contract between ourselves and a private operator, namely Ogden.

Mr. Wright replied I suppose we can change the name of the definition to State and Local Changes of Law.

Mr. Killen stated that would be more effective.

Mr. Wright stated but I think that would give them more than they ought to get. This is referring to state and local utilities.

Mr. Parisi replied but it's a change of law. Right now the way it reads it's any interruption of service.

Mr. Wright stated I don't have any problem with changing it to State and Local Changes of Law.

Mr. Parisi asked isn't change of law a change in a legal requirement?

Mr. Wright replied what you're doing is saying there are some circumstances under which the failure to provide this service would not be a State Change of Law. It wouldn't be, because the law somewhat changed. It would be because Wallingford Electric said we're not going to serve them. I'd want to run it down. When you have a service territory for the public utility you have to give service to customers within that territory. If for some reason that service was refused, I suppose you can say this doesn't sound like a change of law, but it gets pretty close. We would have to say State and Local Changes of Law and then we'd have to have a whole separate definition for something else. This is sort of a shorthand rather than having a million different definitions.

Mr. Parisi stated this is almost covering anything that isn't covered by an act of God.

Mayor Dickinson asked if this is a State Change of Law, who picks up this risk?

Mr. Hamel replied basically we pick up the risk for this definition. If you look further into the contract, Section 8-05 gives a new definition called Change of State Law which deals out the municipalities. It says that when there's a Change of State Law that is something that the State does, then the State picks up that bonding responsibility.

Mr. Parisi stated but this still applies to the local utility then.

Mr. Hamel replied yes this does, and if Ogden is forgiven performance because they can't perform because they can't have water and therefore cannot make steam, then the same costs would happen as in a Force Majeure. If the plant were shutdown for a week because they couldn't do it, the waste would have to be diverted and there would have to be additional costs that would become part of the tip fee.

Mr. Parisi asked what could happen to make this apply?

Mr. Hamel replied I don't see this as being a high risk. The plant usually generates it's only electricity; they're not buying electricity every day. The water main that serves the plant is a loop. It comes in from two directions. If you had an earthquake and it broke both water mains and there was no water serving the plant, then the plant could not function.

Mr. Parisi asked could we delete this then if it's not of any serious consequence to anyone?

Mr. Hamel replied I'm saying the risk of it happening is fairly slight. If it did happen then there is a risk and Ogden's position is that they won't be responsible for that risk because they didn't cause the problem.

Mr. Parisi stated well we didn't either.

Ms. Tralins stated we had the same discussion a little earlier under Force Majeure with regard to private utility failure to give us power at some time in the future if there was a private utility. At that time the Town Attorney suggested that perhaps we should address what would happen in this same situation where a public utility ceased to give us such utilities. Ogden's position again is that we have a plant ready to operate for you in perfectly excellent condition and because of something outside our purview we are unable to operate, and it's very specific here as to the only things that can be deemed State Change of Law with regard to utilities, we're not willing to take that risk because we are not in the best position to shoulder it. You can call it what you want but we have to look at what the effects are here under State Change of Law. I believe what Bob and Phil are trying to tell you is that the end result is the same.

Mr. Parisi asked why do we have to have the local?

Ms. Tralins replied it's particularly the local that gives us concern because it's the local utility that's giving us some power.

Mr. Wright stated something is going to go wrong with the plant and the plant is not going to work for a week. The local utility couldn't serve them for a week and that's why the plant shut down. It's not Ogden's fault or CRRA's fault or the other five towns fault. Who bear's the risk of that? The five towns would bear the risk for that. This is the point Adam Mantzaris was driving at earlier. He wanted the local utilities' responsibilities included and that would bring in the other towns' liability. If you left this out then you leave the project and Ogden to it's remedies of maybe suing the local utility, and that's something we don't want. This way the five towns bear the risk. I have to believe that that's a fairly good deal for you. What I'm hearing is that you're not completely unhappy with what this says but the way it says it. But if the effect doesn't change and the meaning of it doesn't offend you, I don't really see that it's that big an issue.

Mr. Bradley asked who would be responsible for a drought?

Mr. Wright replied a drought would be a Force Majeure. It would depend on who's asserting it. You'd have to ask what happened as a result of the drought. If there wasn't enough water to make steam, Ogden would say there wasn't enough water and as a result we couldn't live up to our guarantee to make X amount of steam. If they were right, then we couldn't collect damages for their failure to sell the steam that they couldn't make because of the drought. On the other hand if there was a drought and the trash haulers couldn't collect the trash and the towns couldn't deliver the trash to Ogden, Ogden couldn't go after the towns

and say we could have made a lot more money under our contract if you guys had delivered the waste you were supposed to. In that case the town would be asserting the Force Majeure. So it would depend on who was asserting what.

Mr. Bradley asked what would happen if the public utility decided the trash plant was the next guy out from a priority standpoint of water? Who's liable?

Mr. Wright replied the effect of that would be number one you couldn't make steam and Ogden wouldn't make their guarantee. We could not sue them and hold them to that guarantee because it was an act of God. The second effect would be because there was no water at the plant, the people at the plant wouldn't be able to work, and as a result the trash wouldn't be processed. We couldn't then sue them because they didn't process the trash.

Motion was withdrawn by Mr. Doherty.

Mr. Parisi asked what did we decide to do on Page 2-25?

Mr. Wright replied after about 5 minutes of whining I ended up begging you not to make me go change all the contract if I could make it clear to you. I tried to make it clear and hope I did.

Page 4-6

Motion was made by Mr. Parisi to delete the 3rd line from the bottom starting with "then fifty percent (50%) of the costs . . ." Seconded by Mr. Bradley.

Mr. Hamel stated these provisions are meant to explain who will pay the cost if unacceptable waste comes into the system. If they can show that it's from one municipalities, then that municipality pays, or the hauler, or the generator. If they can't show that then it's a system cost. But if Ogden brought waste in within the last 15 days from outside of the five towns, then Ogden has to pick up 50% of the cost.

Mr. Parisi asked why shouldn't the Company be responsible for that trash getting into the system? That's certainly within their control.

Mr. Hamel replied well it's not. The reason it's not is that the towns and their designees deliver the trash. Until that trash is dumped onto the tipping floor, in which case it's already there, they have no way of even knowing it's in the load.

Mr. Parisi stated neither does the town.

Mr. Hamel replied I agree, but the towns are still responsible for the collection of waste and the regulation of the collection of waste. The basic concept here is that they must screen the waste and then they will make an appropriate entry in their log and all that. If they don't do that, then they are liable. For example, the enforcement officer down at the plant saw three drums of material come in. He put them aside and called DEP. DEP came down and looked at them and they were properly disposed of. It does happen. Nobody can really control that that stuff is going to get into the waste stream. It's Ogden's position that it's our responsibility to keep it out.

Mr. Parisi stated we have no more control over it than anybody else does.

Mr. Hamel replied we control the haulers.

Mr. Parisi stated well we control them but we don't control them. And they don't control everything either, in fairness to the haulers. You're not going to have them looking through every single bag.

Mr. Hamel replied all I can tell you is that was a lengthy piece of the negotiations.

Ms. Tralins stated I think this is the same analysis that we've discussed together before and again here we did take some of the risk. We take the risk that nothing in the process, once the garbage comes into the plant, will cause a problem with the plant. If it does we assume the cost of disposal as a result of that. However, it is your waste stream in your community and we are servicing your community by incinerating that waste. It is our position that you are in the best position to determine or to patrol your waste by licensing and training your haulers. We help you to assure that things don't get into the waste stream by having a very stringent waste screening process. This was heavily negotiated and it's one of the strongest screening processes that we have in any of our plants with signatures on the log books as to the screening having taken place. But again, it is our position that you are in the best position to take the risk of what is in your waste stream. Once it comes into the plant, if it's something that we do to the waste through the incineration of that waste, then that's a different story.

Mr. Parisi replied that's all well and good, but what you said is not realistic. We are not in any better position than you are to control that waste.

Mr. Wright stated we don't call up the Town of Wallingford and say you've got to come up with some additional cash because we've got something delivered to the plant that we have to get rid of specially. What happens is it comes out of the tip fee. This stuff gets into the plant because somebody put something bad into his dumpster. We've had this situation a couple of times up in Hartford where somebody put in this huge block of sheet metal. If you've ever been to one of these plants, you've got garbage piled 15 to 20 feet high. The guys at the frontend loaders pick it up and put it in the plant. In Hartford it went along the conveyer and into these choppers and the choppers broke. The question is who's responsible for that. We say well the towns are, but what really is is the tip fees. The people who use the plant pay a tip fee and that's where it comes out of. There was one bad apple, but it's not Ogden's fault. One of the people who was using the system threw something bad in there. The same person who threw that piece of metal in there came from Glastonbury. Our inspectors are generally former cops and we had a detective on the thing. We tracked these guys down and they're paying for it and they're paying for the repair to our facility. We try to figure out who the bad apple is. But when you can't figure out who was the bad apple, you have to figure out what batch of apples they were from. The batch of apples they were from are all the people who use the facility. It wasn't Ogden. It sounds unfortunate that when one creep does something like this that everybody has to pay a little bit, but that's the barrel that the bad apple came out of and under this contract that's where the responsibility lies.

Mr. Parisi stated maybe if that cost were shared by the Town and the Company, it might provide an incentive for the Company to be more observant of things going down your feeder line or whatever you want to call it.

Mr. Wright stated they have actual and detailed screening procedures that they have to go through and if they don't follow them we have additional contract penalties. Moreover, if you read what this particular section is saying, this says that if within the last two weeks Ogden brought in one bag of garbage on it's own, say they went out to the spot market because we weren't sending enough garbage in there, that they pay 50%. We thought what happens if they were bringing in 80%, but that has never happened. We've never brought in any spot waste into this facility so far. But if Ogden has brought in any within the last 14 days they have to pay half this cost. That's a pretty significant penalty for them. Additionally they have specific screening responsibilities and there are penalties if they don't follow them.

Mr. Hamel stated if CRRRA can demonstrate that they didn't follow the screening procedures, they have to pay all of the cost.

Mr. Bradley asked where is that stated?

Mr. Hamel replied that is stated on Page 4-9.

Mr. Bradley stated the problem I have is why should I be responsible for something coming in from Cheshire and vice versa. Is there anything we do other than visual screening? It says the pit crane operator shall have 180 degree view of both the storage bin and tipping floor. Is that realistic, as part of the screening procedure, for someone up there to be able to screen something effectively?

Ms. Tralins replied as part of the whole screening process I would say that it is. The engineers and both sides looked carefully at the technology to be sure that the tipping crane operator would have a view of the tipping floor that would enable him to see what was going on.

Mr. Bradley asked what about the bucket operator?

Ms. Tralins replied as it reads in there, we've reviewed it and are assured that the people that are said to be viewing the waste stream will be able to do that.

Mr. Bradley stated I've been done there at night and as far as the bucket loader I don't know how he can actually pick out hazardous waste or anything that may be damaging to the plant. I don't know what else you can do, but I'm not comfortable with the guarantee here as far as the enforcement end of the visual inspection.

Ms. Tralins replied you make a good point, but a lot of that really becomes our risk. Your concern is reflected in the risk we take in the environmental guarantees because what would happen after it got through that screening process, if we did not detect it, and it was burned. If there was a problem with it which caused us to violate our environmental guarantees, we would have to pay the price. We would have to pay significant damages which would result from that. We do believe that the screening process is an effective one. We operate 15 plants and we are able to meet our environmental guarantees.

Mr. Bradley asked where is the fine line definition of when it becomes your responsibility versus a 50/50 responsibility--after it's dumped on the floor or after the bucket operator picks it up and dumps it into the furnace?

Mr. Wright replied I think the 50/50 is when we discover something and then we have to go get rid of it. I suppose you could take it out at any point in the system, but the only practical place you're going to see that happen is on the floor. Once it's into your boiler it will be much more difficult.

Mr. Lehman replied part of my responsibility as Manager for Environmental Compliance has been working at our facilities nationwide to develop a screen program targeted towards those materials which we feel would be likely to cause us to exceed our air emission limits or cause a problem. There's a particular exclusion in the federal regulations (40 CFR Part 261.4.b.ii) for facilities to accept household quantities of hazardous waste. These facilities process a lot of material. Small cans like Raid and Drano and other materials that could exhibit a characteristic of hazardous waste are in the waste normally in small quantities. These machines are capable of safely destroying that material due to the combustion process and the air pollution control devices. We rely very heavily on a visual screening process and common sense. While I was at the Wallingford facility I observed a reject container in which I saw a lot of wallboard, tires, and materials that are high in sulphur and could cause us to have problems with our sulphur dioxide emissions. We also have sulphur dioxide continuous emission monitors there and that provides a system of checks and balances. So it is largely a visual system. We do look for larger quantities and the federal law recognizes this and provides a number of criteria by which we're exempt as waste to energy facilities, among which we have notification, contractual responsibilities, and a waste screen program.

Mr. Bradley stated that's fine, but I don't believe it answered my question.

Mr. Wright replied if it's pulled out from the boiler and it's found to be unacceptable waste or if it's pulled out on the floor or some other place, that's pretty positive that they're screening. If it doesn't get pulled out, then it's Ogden's problem. Theoretically, Ogden can open up their boiler which is burning at 1,800 degrees and say that thing isn't destroyed completely and yank that out. Realistically what's going to happen is it's going to get found on the floor.

Walt Sawallich, Jr., 100 Jobs Road, stated the visual screen down there is pretty damn effective. The inspector does stand right there. Obviously he can't inspect every single truck that's dumping, but if an engine block falls out of the truck it usually won't sneak by him. It's going to be pretty obvious that you'll see it or hear it. The crane operator can pretty much oversee much of the building most of the time and he can see the stuff sliding out of the trucks. So he gets a general idea as to what is in that load. The load operators will take our loads right out of the truck and spread them out on the floor and two men will walk alongside and poke through it and look around. It's pretty hard to sneak something in there. The inspector down there has said that the Wallingford haulers, and this is a pat on the back, are the only ones that really follow the rules to the tee. They're very happy with us. Sometimes we'll dump and the loads will almost go right into the furnace with very little checking because he knows we load primarily by hand and don't do a lot of

commercial stuff. The problem I have with this is that a lot of the burden of this falls on the hauler. This is not right or fair. We can't open and check every single bag. We've gotten a list of unacceptables from CRRA and we sent that list out to all of our customers. Unless the towns are going to take a firm stand and back up the haulers on that list of unacceptables and pass an ordinance that any person caught putting that material out will be fined, you're not going to stop it 100%. You have dumpsters in town and people are putting the stuff in the dumpsters. Now the poor guy who picks up the dumpster gets blamed. He doesn't know what's in there. He picks it up with a machine and it goes over his head. He doesn't even see it until it's on the floor at the plant. Another issue is the free dumping. If people don't want to follow the rules, they'll go down and throw it away for free. Nobody's going to monitor that. It's not monitored as closely as we're being monitored. The towns have to back up this unacceptable list in order to keep themselves from being liable for some of this stuff. If you don't pick up everything people put out, they holler at us and threaten to cancel. So where does that leave me.

Mr. Bradley stated one of the screening procedures in here says that the scale operator shall notify the pit crane operator or the frontend loader operator to conduct an inspection of the waste prior to the waste delivery vehicle's departure from the site. Does that occur?

Mr. Sawallich replied on my trucks I haven't had a problem so I can't say.

Mr. Wright replied yes we have done that on many occasions and we've fined haulers in the past. Another thing you don't see in here, which is probably one of our best screening procedures, is that our full time inspector, Greg Smith, is down there doing it as well. So you have the Ogden screening procedures plus a full time guy from CRRA also assisting in that process.

Mr. Gregory stated how would other waste get in there if it wasn't the towns?

Mr. Wright replied if these towns don't meet their minimum commitments, Ogden might assist by bringing in waste from somewhere else.

Mr. Gregory asked where does it say that Ogden can bring in trash?

Mr. Hamel replied I believe it's in the Service Contract. Ogden has an obligation in the Service Contract to first accept all of the waste of the municipalities, then accept all the waste of CRRA and then if there's room left they are able to go out and get spot waste.

Mr. Gregory stated so it's very important to know what that Service Contract says. If you read this contract you would never really know that Ogden can bring in trash. It seems that something as important as Ogden can bring in trash should be in here. I support deleting this risk here. It's totally unacceptable and shouldn't be here. The whole complexity of these contracts is such that I think some independent authority should be hired by the Town to analyze and review these contracts.

VOTE: Doherty, Papale, Parisi, Solinsky and Killen voted no; Zandri passed; Adams and Bradley voted yes; motion did not pass.

NEXT MEETING

Mr. Killen stated the next meeting will be held on Friday, October 6, 1989, at 7:00 p.m.

Motion to adjourn was made by Mr. Bradley, seconded by Mr. Doherty.

VOTE: Unanimous ayes; motion duly carried.

Meeting adjourned at 11:10 p.m.

Meeting recorded and transcribed by:
Katrina M. Manley, Council Secretary

Approved:

Albert E. Killen, Chairman

Date

Kathryn J. Wall, Town Clerk

Date



Town of Wallingford, Connecticut

THOMAS A. MYERS
COMPTROLLER

DEPARTMENT OF FINANCE
P.O. BOX 67
WALLINGFORD, CONNECTICUT 06492
TELEPHONE (203) 294-2040

October 3, 1989

Honorable William W. Dickinson, Mayor
Town Council Members
Town of Wallingford
Wallingford, Connecticut

Dear Mayor Dickinson and Town Council Members:

The Town of Wallingford has been awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association of the United States and Canada (GFOA) for its Comprehensive Annual Financial Report (CAFR).

The Certificate of Achievement is the highest form of professional recognition in the area of governmental accounting and financial reporting. To qualify for the certificate the Comprehensive Annual Financial Report is evaluated over a range of seventeen (17) categories by an impartial panel of financial professionals. The report must meet the high standards of the program including demonstrating a constructive "spirit of full disclosure" effort to clearly communicate the municipality's financial position and motivate potential individuals and user groups to read the report. Nationwide approximately 710 municipalities hold this award.

Attainment of the Certificate of Achievement represents a significant accomplishment. Together with the town's excellent financial position and credit rating, it will serve to further enhance Wallingford's attractiveness in the financial marketplace. The certificate will be included in future annual financial reports and bond offering statements.

The preparation of Wallingford's report in compliance with the strict national standards could not have been accomplished without the efficient and dedicated services of management and staff of the Department of Finance and the Electric, Water and Sewer divisions, to which I hereby express my appreciation. I also extend this appreciation to you and the Town Council for dedicated interest and support in planning and conducting the financial operations of the Town in a most responsible and progressive manner.

Very truly yours,

Thomas A. Myers
Comptroller

TAM/mgn
Enclosure

CERTIFIED RESOLUTION THE TOWN OF WALLINGFORD

Certified a true copy of a resolution duly adopted by the Town of .
Wallingford at a meeting of its Town Council on _____, and
(Date)
which has not been recinded or modified in any way whatsoever.

(Date)

(Clerk)

(Secretary)

(SEAL)

WHEREAS, pursuant to Public Act 89-390, An Act Concerning Prevention and Treatment of Substance Abuse and Enforcement of Drug Laws, the Office of Policy and Management is authorized to extend financial assistance to municipalities; and

WHEREAS, it is desirable and in the public interest that the Town of Wallingford make application to the State in such amounts as may be available for undertaking a Prevention and Enforcement Program and, to execute a Grant Action Request therefore.

NOW, THEREFORE, BE IT RESOLVED BY THE WALLINGFORD TOWN COUNCIL

1. That is is cognizant of the conditions and prerequisites for State assistance imposed by Public Act 89-390.
2. That it recognizes the responsibility for the provision of local grant-in-aids to the extent that they are necessary and required for said program.
3. That the filing of an application by the Town is hereby approved and that the Mayor is hereby authorized and directed to execute and file such application with the Office of Policy and Management, to provide such additional information as may be requested, to execute a Grant Action Request with the State of Connecticut for state financial assistance if such an agreement is offered, to execute any amendments, recisions, and revisions thereto, and to act as the authorized representative of the Town.

TOWN COUNCIL CONTINGENCY FUND TRANSFERS
 LOCAL 1282 FISCAL YEAR 1987-88

FROM:		
001-8050-3230	GENERAL GOVERNMENT	\$41,894
TO:		
001-1300-100-1200	MAYOR	280
001-1302-100-1200	PROGRAM PLANNING	341
001-1400-100-1200	COMPTROLLERS	4,177
001-1420-100-1200	TAX DEPARTMENT	2,126
001-1430-100-1200	ASSESSOR	1,314
001-1450-100-1200	PURCHASING	1,314
001-1590-100-1200	PERSONNEL	702
001-1600-100-1200	RISK MANAGEMENT	1,001
001-2011-100-1200	POLICE ADMINISTRATION	668
001-2018-100-1200	POLICE YOUTH SERVICES	1,961
001-2032-100-1200	FIRE DEPARTMENT	1,187
001-2035-100-1200	FIRE MARSHAL	376
001-2050-100-1200	BUILDING	3,102
001-3010-100-1200	HEALTH DEPT.	1,813
001-3060-100-1200	WELFARE	1,030
001-3090-100-1200	VETERANS CENTER	1,030
001-4000-100-1200	RECREATION	2,121
001-5010-100-1200	ENGINEERING	2,497
001-5020-100-1200	PUBLIC WORKS ADMIN	1,731
001-5030-100-1200	PUBLIC WORKS GEN.	2,117
001-5050-100-1200	PUBLIC WORKS GARAGE	1,192
001-7010-100-1200	PLANNING & ZONING	2,037
001-8020-800-8080	CONS. PENSION PLAN	7,502
001-8041-800-8360	RET.. SICK LEAVE	275

TOWN COUNCIL CONTINGENCY FUND TRANSFERS
 LOCAL 1282 FISCAL YEAR 1988-89

FROM:		
001-8050-3230	GENERAL GOVERNMENT	\$131,081
TO:		
001-1300-100-1200	MAYOR	738
001-1302-100-1200	PROGRAM PLANNING	939
001-1400-100-1200	COMPTROLLERS	10,457
001-1420-100-1200	TAX DEPARTMENT	6,610
001-1430-100-1200	ASSESSOR	7,133
001-1450-100-1200	PURCHASING	4,084
001-1590-100-1200	PERSONNEL	1,874
001-1600-100-1200	RISK MANAGEMENT	3,244
001-2011-100-1200	POLICE ADMINISTRATION	2,020
001-2018-100-1200	POLICE YOUTH SERVICES	6,183
001-2032-100-1200	FIRE DEPT.	3,123
001-2035-100-1200	FIRE MARSHAL	989
001-2050-100-1200	BUILDING	9,752
001-3010-100-1200	HEALTH DEPT.	5,636
001-3060-100-1200	WELFARE	3,202
001-3090-100-1200	VETERANS CENTER	3,202
001-4000-100-1200	RECREATION DEPT.	8,504
001-5010-100-1200	ENGINEERING	4,819
001-5020-100-1200	PUBLIC WORKS ADMIN.	3,447
001-5030-100-1200	PUBLIC WORKS GEN.	11,235
001-5050-100-1200	PUBLIC WORKS GARAGE	3,706
001-7010-100-1200	PLANNING & ZONING	6,546
	CONC. PENSION PLAN	22,528

TOWN COUNCIL CONTINGENCY FUND TRANSFERS
 LOCAL 1282 FISCAL YEAR 1989-90

FROM:		
001-8050-3230	GENERAL GOVERNMENT	\$225,838
TO:		
001-1300-100-1200	MAYOR	921
001-1302-100-1200	PROGRAM PLANNING	1,175
001-1400-100-1200	COMPTROLLERS	22,095
001-1420-100-1200	TAX DEPARTMENT	10,890
001-1430-100-1200	ASSESSOR	12,004
001-1450-100-1200	PURCHASING	6,730
001-1590-100-1200	PERSONNEL	2,379
001-1600-100-1200	RISK MANAGEMENT	5,537
001-2011-100-1200	POLICE ADMINISTRATION	2,569
001-2018-100-1200	POLICE YOUTH SERVICES	10,240
001-2018-100-1760	LONGEVITY	50
001-2032-100-1200	FIRE	3,896
001-2035-100-1200	FIRE MARSHAL	1,234
001-2050-100-1200	BUILDING	16,217
001-3010-100-1200	HEALTH DEPT.	9,285
001-3060-100-1200	WELFARE	5,274
001-3090-100-1200	VETERANS CENTER	5,274
001-4000-100-1200	RECREATION DEPT.	15,175
001-5010-100-1200	ENGINEERING	11,006
001-5010-100-1760	LONGEVITY	100
001-5020-100-1200	PUBLIC WORKS ADMIN	5,882
001-5020-100-1760	LONGEVITY	50
001-5030-100-1200	PUBLIC WORKS GEN.	18,660
001-5030-100-1750	LONGEVITY	150
001-5050-100-1200	PUBLIC WORKS GARAGE	6,106

001-7010-100-1200	PLANNING & ZONING	11,289
001-8020-800-8080	CONS. PENSION PLAN	40,725
001-8041-800-8350	LONGEVITY	875



Town of Wallingford, Connecticut

1989 OCT -3 P 4:17

RECEIVED
MAYOR'S OFFICE

5
THOMAS A. MYERS
COMPTROLLER

DEPARTMENT OF FINANCE
P.O. BOX 67
WALLINGFORD, CONNECTICUT 06492
TELEPHONE (203) 294-2040

October 3, 1989

Honorable William W. Dickinson
Mayor, Town of Wallingford
Wallingford, Connecticut

Dear Mayor:

The finance department incorrectly recommended an adjusting fiscal year 1988-89 transfer of \$10,200 from police patrol wages. The transfer was approved by the town council on September 12, 1989.

Police patrol wages had been used to fund the professional outside legal services account in the town attorney department as well as the attached transfer. Expenses attributable to workers compensation for police patrol were not taken into account. The patrol wage account exceeds the budget. A correction is necessary.

The town council at its next meeting should:

- 1) rescind the 1988-89 adjusting transfer in the amount of \$112,038 (copy attached)
- 2) approve the correct 1988-89 adjusting transfer in the amount of \$121,863

I will be present at the town council meeting to answer any questions.

Very truly yours,

Thomas A. Myers
Comptroller

TAM/mgn
Attachment

Fiscal Year 1988-89 Transfers:

FROM:

001-2011-100-1301	\$16,500
001-2014-100-1310	38,075
001-2015-100-1310	10,200
001-2015-100-1800	18,600
001-5010-100-1200	18,300
001-5050-100-1300	<u>10,363</u>
	\$112,038

TO:

001-8020-800-8000	Social Security	\$ 4,104
001-8020-800-8080	Co. Pension Plan	77,435
001-8050-800-3230	Contingency	<u>30,499</u>
		\$112,038

Fiscal Year 1988-89 Transfers:

From:

001-2011-100-1301	Police Admin Lt & Sgt Wages	\$16,500
001-2014-100-1310	Det & Narcotic Wages	38,075
001-2015-100-1500	Patrol Vacation Repl	10,200
001-2015-100-1600	Patrol Sick Repl	9,825
001-2015-100-1800	Patrol Outside Work	18,600
001- ⁵⁰¹⁰ 5020 -100-1200	Eng: Proj Eng Salary	18,300
001-5050-100-1300	Central Garage Wages	<u>10,363</u>
		\$121,863

To:

001-2015-100-1310	Patrol Wages	\$ 9,825
001-8020-800-8000	Social Security	4,104
001-8020-800-8080	Co. Pension Plan	77,435
001-8050-800-3230	Contingency	<u>30,499</u>
		\$121,863

Certified as to the availability of funds:

Evam. Lamotte, Deputy
Comptroller

Approved -- subject to vote of the Town Council:

W Dickison
Mayor

"Garbage Plant Monitoring Commission"
(Advisory)

The Council shall at its first meeting appoint an (Advisory) Garbage Plant Monitoring Commission consisting of 5 resident electors of the Town of Wallingford, no more than three of whom shall be members of the same political party, for terms of two years each. Said commission shall have all powers and duties conferred on it by the Council. The commission shall adopt such rules and regulations as are necessary to the performance of its duties. It shall, at its first meeting, choose a chairman and secretary. The commission shall assist the Council in monitoring the following areas connected with the garbage plant located in Wallingford, Connecticut:

1. All contracts signed by the Town with Connecticut Resources Recovery Authority and with Wallingford Resource Recovery Associates, L.P..
2. Compliance with all environmental laws of the State of Connecticut. (i.e.-air emissions, noise pollution, water pollution, etc.)
3. All fire codes of the Town of Wallingford and State of Connecticut.
4. Examine all test results required the Dept. of Environmental Protection
5. Handle and give complete follow-up to all complaints from town residents and local garbage haulers. (i.e.-noise, smell, traffic, spillage by trucks on route to plant)
6. Make recommendations to improve plant acceptance in the town.
7. Arrange educational programs to acquaint town residents with plant operation and procedures. (i.e.-plant tours-in cooperation with W.R.R.A)
8. All financial reports on the condition of the plant. Plan for future costs by careful watch-dogging of all costs that affect an increase in the tipping fee.
 - a. May with the approval of the Council hire a financial consultant when necessary.
9. Make periodic reports to the Council on problems that need immediate attention.
10. Suggest appropriate ordinances to the Council. (i.e.-noise levels)

The Town Sanitarian shall serve as the town official responsible for coordinating the work of this advisory commission. The C.R.R.A. liason presentative shall serve as a consultant to the commission.

correspondence

I wrote two letters to Council Chair requesting a simple yes or no to:
Does the Assistant Assessor have the authority to raise taxes and to countermand decisions of the Board of Tax Review, and have a letter of denial mailed out to a taxpayer after the Board of Tax Review has voted a relief not denial? In writing the Mayor has no such authority. In writing the Mayor and Assessor advised going before the Board of Tax Review who voted in taxpayers favor and assistant assessor denied. After last previous evaluation and following Board of Tax Review's decision, Assistant raised both figures and again after most recent Board of Tax Review. In addition assistant used \$2000. permit for siding only, no trim, which cost \$1800.00 due to left over case and put \$5000.00 which Tax Review lowered to permit \$2000.00. We received a letter of denial, a falsehood. Notation on card file reads siding and trim and remodeling. We have only siding, neither trim or remodeling, come and see.

Why appoint a Board if Assistant is supreme over Mayor, Council and Assessor.

Please note; Council has three copies of our house and it's twin that show many extras over ours with a lower tax assessment.

Sincerely,

Robert Holmes

Please read To Council

528 North Main Street
Wallingford, Conn. 06492

A.N.