



Covanta Host Agreement Parking Contract Follow-up 2022 Elected Official Salaries

MFRAC Meeting
January 11, 2022

Overview

- Covanta Host Agreement Renewal
- Parking Contract Presentation Follow-up
- 2022 Elected Official Salary Issue





Covanta Host Agreement Renewal

Host Community Agreement



- The City of Chester has received Community Host Fees (“Host Fees”) since the construction and opening of the Waste-to-Energy Incinerator (“Incinerator”) in 1989.
 - In the 2022 Adopted Budget, Host Fees are estimated to be **\$4.9 million**, approximately **9 percent** of regularly recurring City General Fund revenues (excludes one-time ARPA funding, prior year carryforwards, and other one-time cash infusions).
- The City of Chester negotiates the amount of the Host Fees through Host Community Agreements (“HCA”), the first of which was executed on January 30, 1989, between Delaware County/Westinghouse Electric Corporation and the City of Chester.
- The most recent HCA was agreed to and signed on June 28, 2017, between the now owner/operator of the facility, Covanta Delaware Valley, L.P. (“Covanta”) and the City of Chester.
- The HCA expires on April 30, 2022. According to paragraph 18 of the HCA, Covanta has the option to extend the contract for a term of up to ten (10) years, either in one ten (10) year increment or successive increments of not less than one (1) year that do not exceed ten (10) years in total



Key Terms of Current HCA

- The current HCA runs from July 2017 through April 30, 2022.
 - Under the HCA, Covanta has the option to extend the HCA for a term of up to ten (10) years, either in one ten (10) year increment or successive increments of not less than one (1) year that do not exceed ten (10) years in total. [see paragraph 18 of HCA below]
 - This language would appear to allow Covanta to keep the same terms and conditions in the HCA forever since the language would extend the HCA “on the same terms and conditions” which would presumably include the option to extend for up to 10 years

18. This Agreement shall continue in effect until April 30, 2022. The Company shall have the option to extend this Agreement for an additional term of up to ten (10) years in one ten (10) year increment or in successive increments not shorter than one (1) year each which in total do not exceed ten (10) years on ninety (90) days written notice prior to the end of the initial term or any successive term and on the same terms and conditions stated in this Agreement.

Key Terms of Current HCA (continued)



- The 2017 (and current) HCA established a new fee structure with a minimum payment of \$2.5 million annually. The Host Fees received by the City are directly related to the tonnage of waste processed at the facility and the origin of such waste. The current Host Fees are calculated as follows:
 - \$2.00 per ton (un-escalated) for waste delivered by Delaware County Solid Waste Authority;
 - \$4.45 per ton (escalated annually) for waste delivered by all other customers;
 - \$0.25 per ton (un-escalated) for waste in excess of 1.275 million tons annually; and,
 - 7% of net revenue for the sale of renewable energy certificates.
- In addition, the HCA commits Covanta to preferential local hiring and financial sponsorship of Chester's Work Ready summer internship program. It also requires Covanta to make its employees available for advisory boards and to support community needs including facility tours, hotlines, and sponsorship of youth sports programs. The HCA, however, does not specify the dollar amounts for the sponsorships referenced.

Historical Overview of Host Fees



Document	Date	Description
Original Host Community Agreement ("HCA")	January 1989	\$2.50 per ton , with a minimum of \$2 million annually. <u>Annual rate increase tied to escalation factor.</u>
1st Amended HCA	June 1993	No change to host fee provision. City agrees to maintain Harwick Street Access road at no cost to the Company.
2nd Amended HCA	March 1997	No change to host fee provision. Added the following requirements: 1) internship program for local residents (2 interns); 2) \$125,000 for general industrial business development in the City; 3) \$150,000 grant to study impacts of waste transportation options; and, 4) commits Company employees to serve on advisory boards and support community needs including facility tours, hotlines, and sponsorship of youth sports programs.
3rd Amended HCA	March 2004	No change to host fee provision. Clarifies and establishes HCA termination date as December 31, 2016.
4th Amended HCA	December 2016	No change to host fee provision. Extends termination date to April 30, 2017.
New HCA	June 2017	Establishes new fee structure with \$2.5 million minimum payment: 1) \$2.00 per ton (un-escalated) for waste delivered by Delaware County Solid Waste Authority; 2) \$4.45 per ton (escalated annually) for waste delivered by all other customers; 3) \$0.25 per ton (un-escalated) for waste in excess of 1.275 million tons annually; and, 4) 7% of net revenue for the sale of renewable energy certificates.

- The original 1989 HCA had a Host Fee of \$2.50 per ton, regardless of the point of origin of waste, with an annual escalation tied to the growth in the cost of labor and materials.
- The most recent 2017 HCA set the Host Fee to \$2.00 per ton (un-escalated) for Delaware County waste and set a rate of \$4.45 per ton (with an annual escalation) for waste delivered by all other customers.
- The \$4.45 per ton rate memorialized in 2017 does not appear to reflect a “reset” from prior years; rather, it seems to capture the impact of previous rate escalation.



Escalation Factor

- The rate in any year depends on labor costs and material costs as measured by Dept. of Labor data with a 65% weight for labor and a 35% weight for material
- The escalation factor formula has remained the same since the 1989 agreement

APPENDIX "B"

The Escalation Factor in any year shall be determined by using the following formula to reflect an appropriate mix of labor and material costs:

$$EF = .65 L/L_b + 3.35M/M_b$$

65% weighing factor for Labor

35% weighing factor for Material

EF – Escalation Factor

L – Current period SIC-49 index

L_b – Base period SIC-49 index*

M – Current period PPI-114 index

M_b – Base period PPI-114 index*

LABOR – “Final average hourly earnings, Electric, Gas and Sanitary Services (SIC-49)” as published by the U.S. Department of Labor, Bureau of Labor Statistics.

MATERIAL – Producer Price Index – “General Purpose Machinery and Equipment (Commodity Code 114)” as published by the U.S. Department of Labor, Bureau of Labor Statistics.

*The date used for the base period shall be the Effective Date.



What Happened in 2017?

- Host fee amount for trash from the Delaware County Solid Waste Authority (DCSWA) was decreased
 - In 1989, Chester received \$2.50/ton (for all trash) and there was an escalation factor
 - In 2017, the host fee amount for trash from the Delaware County Solid Waste Authority was set at \$2.00, which is lower than when the agreement started in 1989 and does not factor in any escalation
- According to the Amended & Restated Service Agreement between Covanta and DCSWA, the Host Community Fees (i.e., the \$/ton fees) are passed through to the DCSWA, meaning that any reduction in the DCSWA host fee rates would be a savings to the DCSWA at the expense of Chester residents.

4.05 Pass Through Costs.

(a) The Authority shall pay to the Company, as an adjustment to the Service Fee, in the Billing Period following the Company invoicing, and providing Cost Substantiation to the Authority, for the following costs (collectively, the "Pass Through Costs"):

(1) Host community fees actually incurred and paid by the Company from time to time to the City of Chester on all Authority Acceptable Waste Tons delivered to and accepted by the Company at the Facility, pursuant to contract or statute (or both), including without limitation, pursuant to the Host Community Agreement dated January 30, 1989, as amended or extended, among the City of Chester, the County and the Company, and capped at \$2.00 per Ton (provided, if such fees are otherwise waived or reduced by the City of Chester to a level below \$2.00 per Ton, then the pass through costs payable by the Authority to the Company relative to the host community fees will be waived or reduced to that same level);

Amended & Restated Service Agreement between Covanta and DCSWA dated May 15, 2017 p. 25.

What Happened in 2017? (continued)



- The question is did the host fee decrease for DCSWA trash?
 - To answer that question, we need to know what the rate was in 2016 as, by the terms of the agreements, it should have been escalating from \$2.50/ton since 1989
 - Note that the escalation formula shown on slide 8 was the same as in 1989 and never changed
 - The Receiver is in the process of obtaining the rate in 2016. However, simply increasing the \$2.50 amount from 1989 by between 2.0% and 2.5% per year results in an amount close to \$4.45 in 2017 which was the negotiated host fee rate for non-DCSWA trash in 2017
 - Applying the non-DCSWA rate to DCSWA trash could have resulted in approximately \$1 million more in host fees to Chester in 2021



Recent Events

- Receiver had meeting with Covanta on January 6, 2022 to discuss the HCA
- At that meeting, the Receiver learned for the first time that Covanta had made an offer to the City to extend the contract with additional financial considerations
- Receiver learned that Covanta emailed a proposal to Mayor Kirkland and Councilman Morgan on December 10, 2021
 - Mayor Kirkland forwarded that proposal to the Receiver on January 6, 2022, after the Receiver requested it
- Despite the fact that the Receiver and City were negotiating the 2022 budget during this time, at no point was this offer shared with the Receiver

Recent Events (continued)



- On the afternoon of December 28, 2021, the Receiver received a draft agenda for the special City Council meeting on December 29, 2021 for budget passage, that for the first time included extending the HCA
 - Agenda item simply stated “Authorize approval of the First Amendment to the Host Agreement with Covanta”
 - No information on the Covanta offer was attached to the agenda
 - Item was never discussed with anyone on the Receiver’s team
- The Receiver immediately directed that this item be pulled from the agenda which it was. Mayor Kirkland emailed the Receiver to ask why he did so and characterized the item as a “simple contract that we had in place before”
- Again, at this point, Covanta’s offer to extend the HCA had not been shared with the Receiver and the Receiver had no knowledge of it



Recent Events

- In his January 6, 2022, email forwarding Covanta's offer, Mayor Kirkland requested the Receiver include the offer on City Council's January 10, 2022 deliberative agenda
 - The Receiver declined to do so
- The Receiver has informed the City of his intent to negotiate the HCA to increase revenues for the City and that he will be taking the appropriate steps to do so

Next Steps: Possible Modification of HCA



- As shown previously, under the terms of the agreement, if Covanta gives the City ninety (90) days written notice prior to April 30, 2022, it may extend the agreement under the same terms and conditions for up to 10 years.
- However, as noted on the next slide (and in the parking contract presentation) Section 706(a)(6) of Act 47 gives the Receiver the power to modify agreements with the City
- The Receiver has notified Covanta that he is considering using his powers under Act 47 to modify the HCA to eliminate the provision that gives Covanta the option to extend the agreement under the same terms and conditions for up to 10 years so that the HCA can be negotiated
 - He is bringing this matter before MFRAC to consult with it as required by Act 47
- The Receiver's desire is to increase the host fee amounts for the next host fee agreement beginning May 1, 2022, given the City's financial circumstances



Receiver's Powers Under Act 47

- Under Section 706(a)(6) of Act 47, the Receiver may “approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements with the distressed municipality or authority, except to the extent prohibited by the Constitutions of the United States and Pennsylvania.”
- The Receiver is seeking input from MFRAC as to whether, and if so how, he should exercise his powers under Section 706(a)(6) on HCA



Parking Contract Presentation Follow-up

Background



- At the December 28, 2021, MFRAC meeting the Receiver’s Chief of Staff and an expert retained by the Receiver’s team made separate presentations regarding the City’s parking contracts
 - Note: The recording may be viewed at www.chesterreceivership.com/documents. Scroll down to “You can find the MFRAC Zoom recordings on Youtube here.”
- Those presentations raised concerns about the parking contracts that the City entered into in 2018
- The Receiver has the power to modify or terminate city contracts
 - The parking manager has sued the Receiver in Commonwealth Court in order to restrict the Receiver from prospectively taking action to terminate or modify the contract. That case is pending. Additionally, the parking manager put the City on notice in July 2021 that it was seeking \$744,599.63 from the City for attorney fees, costs and expenses

Background (continued)



- Widener University has offered the City the following:
 - Guaranteed \$325,000 per year for 10 years that the City may put in its general fund (total of \$3,325,000 for the 10-year period)
 - Note that any amounts that the City would receive from the parking agreement's revenue share provision would have to be used exclusively for the parking program
 - City would need to agree to:
 - Remove parking equipment that is on Widener's campus
 - Not to install meters, impose parking restrictions or programs or permit regulations on Widener's campus (No restrictions outside of Widener's campus)
 - In order to accept the offer, the contract with PFS VII (the parking manager) must be terminated

Conclusions of Expert Report



CONCLUSION

The contracts are very one-sided in favor of the Manager, when compared with parking industry standards.

As set forth above and based on Walker's reading of the contracts:

- The contracts contain significant ambiguity in terms of each party's responsibilities;
- The buyout and default payments appear excessive, and;
- The contracts are lacking significant detail from a parking operations perspective.

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Receiver Position On Residential Parking Programs



- The Receiver is not opposed to residential parking permit programs. However, he does not believe that the City should have to enter into a contract such as this one to implement such a program
- The Receiver is opposed to having the parking manager receive all of the money from tickets from residential parking permit tickets
 - The current parking contract prohibits the City from implementing a residential parking plan without using the parking manager

Litigation in Delaware County Court of Common Pleas



- In 2019, Widener University obtained a preliminary injunction preventing the installation of meters in the Delaware County Court of Common Pleas
- That case is set to go to trial in February
 - Note: The Receiver initially attempted to intervene in that matter. However, after it became clear to the Receiver that the parking manager's continued filings attempting to prevent the Receiver from intervening would delay resolution of this case, the Receiver withdraw his request to intervene so that the case could proceed.
- The Receiver became aware of additional filings in the matter after the last MFRAC meeting which are described on the next slides

Litigation in Delaware County Court of Common Pleas (continued)



- The case is now in the discovery phase where each party requests information from other parties
- On or about November 16, 2021, Widener served a Notice of Intent to Serve Subpoenas on (see paragraph 23 of PFS Motion to Quash):

Ivan Lanier	Kenneth Schuster, Solicitor, City of Chester	Greenwill Consulting Group, LLC
Erwin Lanier	Joseph Oxman	Transportation Funding Consultants, LLC
Councilman William Morgan	Robert Scott	Public Finance Strategies

Litigation in Delaware County Court of Common Pleas (continued)



- On December 6, 2021, PFS filed a motion to quash the subpoenas arguing that “The subpoenas to be served by Widener on the above individuals and entities are overly broad, unreasonably burdensome, and wholly disproportionate to the needs of the case and the probative value, if any, of the information sought.” (Paragraph 24 of PFS Motion to Quash)

Litigation in Delaware County Court of Common Pleas (continued)



- Widener answered PFS’ motion to quash on December 27, 2021. Below and the following slides provide a section of that answer:
- “[F]rom the inception of this litigation, Widener has sought information concerning how the Contracts came to fruition: the person(s) who brought the Contracts to the City, the City officials involved in communications with PFS, the nature and substance of the communications, and the timing of all such communications.”
- “Widener previously sought such information from Defendants, including PFS, via requests for production of documents served on February 20, 2020, but PFS has refused to produce a single document.”

From Widener Answer to Motion to Quash, filed December 27, 2021.

Litigation in Delaware County Court of Common Pleas (continued)



- “Recently, however, Widener has learned of some of the figures and entities potentially involved.”
- “Upon information and belief, the Contracts were first brought to the City by Ivan Lanier, a lobbyist, through his firm, Greenwill Consulting Group, LLC.”
- “Ivan Lanier and his firm has represent Gatso USA, Inc., the same company that entered into the Contracts through its ‘project team,’ PFS.”
- “Ivan Lanier has also represented Gatso USA, Inc. in other municipalities seeking parking plans, including Upper Marlborough, Maryland, where William Morgan, the City of Chester’s Director of Purchasing and Councilmember, is the Director of Finance and Human Resources.”

From Widener Answer to Motion to Quash, filed December 27, 2021.

Litigation in Delaware County Court of Common Pleas (continued)



- “Further, after the adoption of the Contracts, the City of Chester re-incorporated the Chester Parking Authority.”
- “Its manager is Erwin Lanier, who, upon information and belief, is related to Ivan Lanier.”
- “The other entities subject to Widener’s subpoenas (Public Finance Strategies LLC and Transportation Funding Consultants LLC) are either owned or associated with the same individuals who own and/or manage PFS, and the other individuals subject to the subpoenas (Kenneth Schuster, Robert Scott, and Joseph Oxman) are current and former solicitors to the City or the Chester Parking Authority.”

From Widener Answer to Motion to Quash, filed December 27, 2021.

Next Steps



- Receiver will take input from MFRAC committee
- Receiver will review any further public comment on this matter which can be sent to: info+MFRAC@chesterreceivership.com
- Receiver will then make a decision on how to proceed



2022 Elected Official Salaries

Background



- In late 2018, prior to receivership, City Council acted to increase the salary of the Mayor by \$34,000 from \$41,000 to \$75,000 and the salaries of City Council members and the elected Controller by \$25,000 from \$35,000 to \$60,000. Those increases took effect in 2020
- During the 2021 budget process (took place in December 2020), the City agreed to lower the salary of the Mayor by \$10,000 to \$65,000 and the salaries of Council members and the elected Controller by \$10,000 to \$50,000
 - Council members who were due to earn \$35,000 in 2021 did not receive a salary reduction
 - These reductions still resulted in salaries of \$24,000 or 58.5% more than in 2020 for the Mayor and \$15,000 or 42.9% more than in 2020 for Council members and the elected Controller
- The reduced salaries were part of a budget agreement between the City and the Receiver negotiated in 2020 for the 2021 budget. As part of the agreement, the Receiver agreed to the City's request to keep certain individuals employed even though the Receiver had wanted to eliminate those positions. The Court at the time encouraged the City and the Receiver to reach an agreement.

Amended Recovery Plan



- Recovery Plan Initiative WF27: Mayor, City Council and Controller salaries
 - “Prior to 2020, each City Council member and the elected Controller earned \$35,000 and the Mayor earned \$41,000. In 2020, two Council members and the elected Controller received \$25,000 increases to \$60,000 and the Mayor received a \$34,000 increase to \$75,000.
 - During the 2021 budget process, the City agreed to lower the salary of the Mayor from \$75,000 to \$65,000, the Controller’s salary from \$60,000 to \$50,000 and City Council members set to earn \$60,000 to \$50,000. Council members who were due to earn \$35,000 in 2021 did not receive a salary reduction.
 - The City shall take action to change City ordinances to reflect that the new salary going forward for the Mayor is \$65,000, and the new salary for Council Members and the Controller is \$50,000. The new salary level for Council members currently earning \$35,000 will take effect at the beginning of the new term for those particular Council seats.”

Elected Official Salaries Amended Recovery Plan (continued)



- Initiative WF27 was included in the Amended Recovery Plan (the “Plan”) submitted to the Commonwealth Court on April 7, 2021
- The Court held hearings on May 5 and May 7, 2021 on the Amended Recovery Plan
- The City participated in those hearings and objected to one portion of the Plan which it subsequently withdrew, but it did not object to the WF 27 Initiative
- The Court approved the Plan on June 7, 2021

2022 Budget Process



- As part of the 2022 budget process which was negotiated with the Receiver, his Chief of Staff, his finance lead, Mayor Kirkland and Councilman Morgan, the Mayor and Councilman stated that City Council would restore the salary increases that were reduced in 2021 and by WF27 of the Plan
 - The Receiver’s team objected to restoring those increases
- On December 23, 2021, the Receiver directed the Mayor and City Council to introduce and approve a budget with elected official salaries that complied with the Plan
- On December 27, 2021, Councilman Morgan responded to the Receiver via email stating that City Council intended to restore the increases
- On December 29, 2021, City Council passed a budget that restored the salary increases in violation of the Amended Recovery Plan

Relevant Act 47 Law



- Section 704(a)(1) of Act 47 provides:
 - (a) Effect of confirmation – The confirmation of the recovery plan and any modification to the receiver’s plan under section 703 shall have the effect of:
 - (1) imposing on the elected and appointed officials of the distressed municipality or an authority a mandatory duty to undertake the acts set forth in the recovery plan
- Section 708(a)(1) of Act 47 provides:
 - (a) Orders. – The receiver may issue an order to an elected or appointed official of the distressed municipality or an authority to:
 - (1) implement any provision of the recovery plan

Relevant Act 47 Law (continued)



- Section 709(a) of Act 47 provides that:
 - (a) Action by receiver. – The receiver may petition Commonwealth Court to issue a writ of mandamus upon any elected or appointed official of the distressed municipality or authority to secure compliance with an order issued under section 708. The court shall grant or deny the relief with 14 days of the filing of the petition. The court shall grant the relief requested if it determines that the order was issued in compliance with this chapter



Why Is Receiver Insisting on This?

- It was agreed to as part of the 2021 budget and memorialized in the Amended Recovery Plan as WF27
- Reinstating these salary increases makes it even more difficult to achieve necessary changes in collective bargaining agreements, or with retiree pensions and health care, or with tax/fee increases as people will ask why are they being asked for give-backs when elected officials have had their salaries increased by over 71% in the last two years

Receiver Next Steps



- Receiver intends to file a mandamus action with Commonwealth Court to implement WF27 of the Amended Recovery Plan once a new judge is appointed to this matter