

## **Burning Trash and Cash: Taxpayers Still on the Hook for Incinerators born in '80s Waste Crisis**

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HUDSON FALLS, N.Y.

At a time when local governments are struggling to pay for parks, schools and even police protection, Washington and Warren counties spent more than \$5.5 million last year to subsidize the largest waste corporation in North America.

Under a deal county supervisors approved two decades ago, local taxpayers are legally obligated to pay off the construction debt and cover the operating losses of a privately run trash incinerator in Hudson Falls. The waste-to-energy plant, now operated by a subsidiary of Waste Management Inc., burns about 170,000 tons of trash a year, and despite the rosy predictions of its proponents, it has required subsidies continuously since the day it opened in 1992.

In addition to the outright cash transfer to Waste Management, the two counties are also bound by long-term contracts to pay above-market disposal fees for the trash they bring to the incinerator. Steering that trash to other, cheaper disposal sites would simply drive up the operating losses the counties are bound to cover.

Meanwhile, the need to keep feeding the incinerator – which was built to handle more than three times as much garbage as the two counties produce annually -- provides a powerful disincentive to recycling and waste-reduction programs.

But the two counties aren't the only local governments in the region saddled with costly trash-burning plants once billed as the solution to the solid waste crisis of the 1980s.

More than 100 miles down the Hudson River, Dutchess County pays several million dollars a year to Covanta Energy Corp., which operates an incinerator in Poughkeepsie. Covanta, the largest operator of trash incinerators in the world, also owns an incinerator in Pittsfield, Mass.

Disposal fees at the Dutchess County incinerator are so high that local officials are talking about imposing a "flow control" law to capture all the trash of the county's nearly 300,000 residents – and adding more boilers to the plant to accommodate the extra trash. Currently much of this waste goes to distant, cheaper landfills, while the incinerator burns only about half of the county's output.

Meanwhile, the county's leaders have so far ignored the recommendations of their 2009 Green Ribbon commission, which called for a 70 percent recycling goal and an incinerator phase-out within two to four years. The county currently recycles only about 11 percent of its waste, and it doesn't expect to pay off its incinerator debt until 2027, when the plant is more than 40 years old.

In Massachusetts, Pittsfield's "put or pay" incinerator contract lasted 25 years before expiring in 2005. If the city had less trash than it had pledged to provide, it had to pay the corporate owner a steep penalty, and it rarely met the quota. The Pittsfield incinerator is half the size of those in Hudson Falls and Poughkeepsie.

And in Vermont, a trash incinerator in downtown Rutland operated for a mere eight months in 1988 before its owner went bankrupt. The plant experienced cost overruns, failed to secure lucrative electric rates for the power it generated, and had difficulty disposing of ash. When another firm tried to reopen the plant in the early 1990s, the state refused to issue an air permit, citing health concerns about dioxin emissions; the building has since been converted into a facility where recyclables are sorted.

More plants ahead?

As the number of municipal trash incinerators boomed in the 1980s and early 1990s, the projects became so controversial that more than 300 proposed plants were never built. Across the country, virtually no new incinerators have gone online since 1995.

In 1990, Massachusetts imposed a statewide moratorium on new incinerator construction; the state remains the only one with a ban on new incinerator capacity.

Economic concerns aside, environmentalists have strongly opposed the

plants, citing concerns about the concentration of toxic materials in incinerator ash and the plants' air emissions, which also contribute to global climate change.

But in the past few years, talk of a new wave of incinerator construction has grown.

In New York, the state's new Solid Waste Management Plan, released in draft form in March, endorses incineration as preferable to dumping trash in landfills.

A committee appointed by the city of Albany has suggested developing a new 1,500-ton-per-day incinerator that would burn trash from a regional solid waste management authority that would be comprised of Albany, Rensselaer, Saratoga and Schenectady counties.

In Vermont, now the only state in the region without an operating incinerator, executives from Casella Waste Systems and the Vermont Electric Cooperative have said they'd like to see small trash-to-energy plants scattered around the state.

And two years ago, Massachusetts began toying with the idea of lifting its ban on new incinerators.

That prospect sparked strong opposition from environmentalists and public interest groups who banded together to form Don't Waste Massachusetts, a coalition that generated hundreds of letters opposing new incinerator capacity. In December, the administration of Gov. Deval Patrick announced that it would extend the state's incinerator moratorium and instead focus more aggressively on waste reduction and recycling programs.

"The state's action represents a reversal of the administration's plan a year ago, when it seemed inevitable that the incinerator moratorium would be lifted," said Lynne Pledger, an early Don't Waste Massachusetts leader who lives in Hardwick. "It would not have happened without us pushing."

Green claims disputed

New York currently has 10 municipal trash incinerators that burn one ton

of waste for every two tons that go to landfills. Massachusetts has seven incinerators that burn nearly 50 percent more waste than its landfills accept. Nationally, incinerators handle 7 percent of waste disposal.

Critics say the use of incinerators encourages waste – and discourages recycling. That appears to be the case locally.

The city of Pittsfield, for example, reported recycling only 13 percent of its trash last year – far below the statewide average of 33 percent. The city estimates it will deliver 14,600 tons of trash to the local incinerator this year – nearly seven times more than 2,200 tons it recycled last year.

In Dutchess County, a consultant recently estimated that the county's solid waste agency, which is responsible for the Poughkeepsie incinerator, recycles only 4 percent of the waste it handles. When trash collected by private haulers is factored in, the county's recycling rate rises to 11 percent – still well below New York's statewide average of 20 percent.

Washington and Warren counties say they can't reliably estimate their recycling rate, because no data has been collected from the private haulers that handle most of the counties' trash. This year, however, a new law requiring reports from haulers went into effect in Washington County, which accepts recyclables at five county-run transfer stations.

Boosters claim incinerators are environmentally preferable to landfills, mainly because the plants produce either electric power for the grid or steam for industrial uses.

Industry officials, in fact, prefer to call today's incinerators "waste-to-energy" plants.

Summing up her industry's objections to the word incinerator, Covanta spokeswoman Meg Morris said the term "conjures up a belching smokestack."

"Incineration is an old-fashioned technology that just burned waste to reduce the volume," Morris explained. "We operate modern, technologically advanced waste-to-energy facilities with extensive air pollution control equipment."

But critics, like Lee Ketelsen, co-director of Clean Water Action New England, say the industry's claims of energy benefits are misleading.

Ketelsen says recycling saves three to five times the energy that can be captured by incineration -- and without the harmful impacts on public health and the environment.

To produce energy, incinerators need materials rich in carbon, such as plastic and paper, which are generally recyclable. Some incinerators, like the one in Hudson Falls, are allowed to burn tires – an especially welcome boost to combustion when garbage comes in wet.

Incineration's contribution to climate change represents another environmental downside.

"Waste incineration produces significantly more CO<sub>2</sub> per unit of electricity produced than coal power plants," said Neil Tangri of the Global Alliance for Incinerator Alternatives.

### Lessons from Hudson Falls

Back in the 1980s, incinerators were sold to local governments and the public as a safer, cheaper alternative to traditional garbage dumps.

At the time, the federal and state governments forced the closing of thousands of old, unlined landfills, many of which were found to be contaminating groundwater supplies. The result was a solid-waste revolution, with dumps in virtually every small town replaced by huge, centralized landfills and incinerators run by major corporations like Waste Management and Covanta.

But incinerators have proven far more costly to operate than modern landfills.

Washington County's adventure in trash burning started to take shape in the mid-1980s, when Browning Ferris Industries of Texas proposed to build a giant incinerator along the Hudson River in the tiny hamlet of Thompson. The company wanted to send garbage up the river by barge from metropolitan New York City. A small band of outraged citizens galvanized public opinion against the scheme, and the town of Greenwich, which includes Thompson, passed a local law preventing facilities of that size from being built within its borders.

But the Kingsbury town supervisor, William Nikas, and a private developer, Robert Barber, were already laying plans for a Washington County incinerator at another site, this time in Hudson Falls. Nikas, a lawyer, was chairman of the county supervisors' Solid Waste Committee at the time.

Proponents recruited Warren and Essex counties to join Washington County in a long-term service agreement to have a private company run the plant, although Essex County backed out before construction began. The Warren-Washington Counties Industrial Development Agency, a non-elected body, was made the owner of the plant, and Smith Barney wrote the bonds. The two remaining counties are still repaying this debt with a portion of their sales tax receipts; the payments total nearly \$700,000 a month between them.

The developers and most county supervisors at the time promised that the incinerator would make trash disposal very cheap and that no taxpayer money would be at risk. But after the plant went on line, these assurances proved false.

Within several months of accepting its first truckload of garbage, the incinerator began sending enormous bills to the two counties. The flow of trash to the plant wasn't nearly enough to keep it operating efficiently.

### Protests, lawsuits and a criminal trial

Even before it was built, the plant set off an unprecedented outcry around Washington County. Opponents protested, petitioned, wrote letters and jammed halls for lectures, rallies and government meetings. Several supervisors who'd supported the plant were voted out of office, but not before the project was a done deal.

Along the way, the incinerator gained a reputation for being the most heavily litigated in history.

After Essex County withdrew from the project in 1988, for example, citizens groups sued the Warren-Washington Counties Industrial Development Agency, demanding that it re-examine the environmental impact given this loss of garbage and revenues. In response, the IDA and the two remaining counties countersued 328 local residents for \$1.5 million individually and jointly, alleging the citizens' "malicious

interference" had harmed the project's bond rating.

By the time a state appeals court threw out the case, the incinerator had been built, and the citizens had spent \$60,000 defending themselves. They also fought back, charging their free speech rights had been violated, and they prevailed in 1993, when a federal jury found that Warren County and the IDA had violated constitutional rights of two citizens groups. The county and the IDA had to cover the citizens' legal costs and pay \$1 to each of the plaintiffs.

Robert Winn, the Washington County district attorney at the time, pursued criminal charges against Nikas and Barber, claiming the supervisor and the developer had illegally conspired to win county backing for the incinerator. Their 1994 trial, which was moved to Fulton County in an effort to guarantee a pool of unbiased jurors, revealed that Nikas had been secretly working for Barber while still in office, but both men were ultimately acquitted of all charges.

Prosecutors argued that Barber had effectively bribed Nikas by giving him a \$3 million stake in his development projects, but jurors backed defense lawyers' claims that the business ties between the two men did not amount to an illegal conspiracy.

(Years later, Barber pleaded guilty to federal bank fraud in an unrelated case in California; he was sentenced to 6 months in prison in 2008.)

'Subsidy to private industry'

In the years after the incinerator started running, the rating of its bonds continued to plummet, former Easton supervisor R. Harry Booth recalled.

In 1987, his first year in office, Booth was the lone vote against the incinerator contract among Washington County supervisors. He said he objected to the fact that the incinerator company got something like "a 12 percent profit coming right off the top before expenses were paid."

"It was a government subsidy to a private industry," he said.

Supervisors who backed the project have frequently claimed they were forced to do so by state environmental officials who wanted to establish a regional solid waste facility. But Booth said he thinks the counties "could

have just as easily put in a landfill.”

“There is a lot more room for negotiating, in dealing with a state agency, than we thought,” he said.

The disposal fees collected by the incinerator for waste and revenues from electricity it generates have never been adequate to cover its \$86 million construction debt (not including interest), plus its operation and maintenance costs.

So every month, the two counties are liable for the shortfall. When the counties signed the 20-year contract, they guaranteed a profit for the plant operator, which originally was Foster Wheeler, a boiler-making company. In 2003, that company sold the contract to Wheelabrator, now a wholly owned subsidiary of Waste Management.

The magnitude of subsidies has fluctuated over the years. In this year's budget, Washington County projects \$2.3 million in shortfall payments to Wheelabrator under the incinerator contract.

Although the county's 2010 budget exceeds \$112 million, “83 percent of our expenditures are mandated” by the state for social services and other programs, longtime county administrator Kevin Hayes explained.

That leaves the county with a discretionary budget of about \$19 million; payments for the incinerator represent more than 12 percent of that.

“We're counting the days [to] when we don't own the plant anymore,” Hayes said.

The incinerator service contract ends in November 2011. After that, county officials say the trash plant is expected to keep running, but as a privately owned concern without local taxpayer subsidies.

Wheelabrator, the current operator, has the option of buying the facility for about \$3 million. County Waste, a private hauler from Saratoga County that is the plant's biggest customer, has also expressed interest in acquiring it.

Oversized and overpaid

The Hudson Falls plant was built to burn up to 450 tons of garbage per day. On an annual basis, that's three times more trash than Warren and Washington counties produce.

In the initial years, desperate to feed the incinerator, the counties sought out industrial and pharmaceutical waste to keep the furnaces burning.

Apart from the actual cash subsidy taxpayers must make to cover the incinerator's operating losses and debt, the plant charges \$69 for every ton of waste it accepts from within the two counties -- a price that has always been at least \$15 greater than the fee for "out-of-county" waste.

Last year, 86,000 tons of trash burned at the incinerator came from Saratoga County, 43 percent more than from Warren and Washington counties combined. The plant's biggest customer is County Waste, a private hauler in Clifton Park, which has used its leverage to cut its average disposal fee to less than \$35 per ton, or half of what in-county waste sources are charged.

Steve Lynch, who advises the two counties on the finances of the Hudson Falls incinerator, points out that the current recession means people are producing less trash. But when you're required to cover an incinerator's shortfall, that's a problem.

"It's the worst garbage market in 20 years," Lynch said.

Nearly a year ago, Lynch warned that the Hudson Falls plant is coming close to running out of waste every weekend. Should that occur, the plant would need to burn natural gas to keep its boilers hot. Like similar plants, the facility is not engineered for frequent shutdowns and startups.

To avoid that possibility of running out of trash, Lynch's strategy calls for deeply cutting the disposal fee for out-of-county waste, especially for larger quantities of trash under contract.

### Pittsfield's path

The Covanta incinerator in Pittsfield has a capacity of 79,000 tons per year and relies on trash from the northern half of Berkshire County. It has waste contracts with the cities of Pittsfield and North Adams as well as Allied, a big area waste hauler.

In the 1970s, when the city landfill had only a couple years worth of space remaining, Pittsfield tapped Llewellen Clark to head a landfill study committee. He was then the research director for a papermaking machinery company.

"The concept," he recalled, was "to find a way to get rid of waste other than landfilling."

The city underwrote the public bonds to finance construction and subsequent pollution control upgrades. It also signed the customary contract requiring delivery of a certain amount of trash or paying a penalty. That legal obligation expired after 25 years, in 2005.

Because of the need to feed the incinerator, "the city got the reputation of taking anything you put on the curb," said Bruce Collingwood, who heads the city's public works department. Except for requiring a sticker for bulky waste like refrigerators, Pittsfield continues to provide unlimited trash collection for its residents, an arrangement that discourages recycling.

The city's 10-year incinerator contract pegs its 2010 disposal fee at \$75.35 a ton, about on par with what the plant's other contract customers pay, according to Morris, the Covanta spokeswoman.

Clark oversaw the construction and served as plant manager for the first 15 years. He was also involved in an unsuccessful bid to develop the Hudson Falls incinerator.

The Pittsfield incinerator was built next to its steam customer, Crane Paper Co., on Crane property leased by the city and now owned by Covanta. After Crane's need for steam declined, the incinerator vented -- and wasted -- the excess. About five years ago, it added a turbine to generate electricity, all of which is used internally for the incinerator operation.

Clark said any opposition to the Pittsfield incinerator resulted from fears that it wouldn't work, rather than environmental or health concerns. An earlier trash-burning plant, built by Pittsfield in the 1960s, hadn't functioned more than a few years, and the city was left to repay the bonds long after the facility shut down.

Clark recalled that what destroyed the earlier incinerator, which had no

air pollution controls, was the city's decision to shut it down on a nightly basis, even though the furnace was designed to be heated and cooled very gradually.

Jane Winn, executive director of the Berkshire Environmental Action Team, said that in Pittsfield, other issues, including a legacy of PCB pollution from the local General Electric Co. plant, overshadowed any environmental concerns about the trash incinerator.

"One of the reasons there was no outcry when the incinerator was built is that Pittsfield has been so dumped on," Winn said.