
From: [REDACTED]
Sent: Thursday, June 07, 2012 10:48 AM
To: robert johnson
Cc: Senator James Timilty; Elizabeth A. Poirier; Jay Barrows; steven.howitt@mahouse.gov; Garth Patterson; Garry Waldeck; John D'Agostino; Acone, Scott E NAE; Wayne A. Graf; Jennifer Carlino; Leon Dumont; Ron O'Reilly
Subject: Fwd: ALI
Attachments: KP-#451848-v1-NORT_End_Cap_Agreement.DOCX

Re: EndCap Proposal To Cap Attleboro Landfill Inc. (ALI) Phase B

Rob,

Thank you for taking the time to speak with me yesterday afternoon.

As stated, I am concerned that Norton's new Town Manager (Mike Yunits) is being pressured to sign an 'Agreement' with EndCap prematurely.

The 'Agreement' drafted by Richard Nylén, attorney for EndCap is attached.

Norton's new Town Manager has already sent the Agreement to Norton Town Counsel. You can see Attorney Mark Reich's red line mark ups on the attachment.

This 'Agreement' spells out the Norton roads which would be used to truck in the materials, a 'Community Host Fee' of 25 cents per ton, the duration of the project (3 to 5 years), but little else.

And Norton Town Counsel's reply is that he hopes his red line mark ups address all of Norton's concerns. (Excuse Me!)

In a January 23, 2012 letter to Norton's new Town Manager, Attorney Nylén said:

"This office (Lynch, DeSimone & Nylén, LLP of Boston) represents EndCap Technology, LLC, the entity that WILL BE (my emphasis) closing the Attleboro Landfill in cooperation with Attleboro Landfill, Inc. (ALI)."

"EndCap and the Town of Norton, acting through its Town Manager (Jim Purcell), reached an agreement on a mitigation payment after long discussions and public meetings. Mitigation is proposed to Norton because the inbound traffic will be using Norton roads during the closure of the Landfill."

"As other landfills come to successful closures in 2012, the Department (Mass.DEPT) has agreed that the ALI Landfill closure can go forward this year."

I am attaching two copies of the Letter Agreement for your execution. Please sign both copies, return one to this office and retain one for your records."

Rob: The assumption that EndCap will be closing ALI is premature. We have not even begun the process.

Attached to Attorney Nylén's letter is the EndCap proposal from 2008, which is no longer relevant.

Where is the 2012 Plan? How can one enter into an 'Agreement' on a proposal, without even seeing it?

Further, as you and I know: the reason this project did not go forward in 2008 was because the Town Of Norton rejected it. There was no 'Community Buy-In'.

Yes, there were meetings and discussions relative to the proposal back in 2008, including: the donation of Al Dumont's Union Rd. Property (no longer an issue), the roads that would be used, and perhaps even discussion of a tipping fee.

But contrary to Attorney Nysten's assertion: There was no agreement reached with the Town of Norton.

I am concerned that the Norton's new Town Manager has been misled.

Also, the statement about the 'Department' agreeing the closure of ALI can go forward this year" - As you and I know - Mass. DEP has been attempting to bring final closure to ALI since 2002.

In January of 2007, DEP issued a 'Unilateral Administrative Order' and 'Penalty Notice' to ALI for non-compliance. ALI appealed the two 'enforcement actions'. And it is my understanding, that at this time the matter remains in 'Law Mode'. Mass. DEP is expected to issue another ACO (Administrative Consent Order) with penalty for ALI.

I have advised the new Town Manager that Mass. DEP has very strict regulations regarding the closure of unlined sanitary landfills (even copying relevant points from your website for his information).

I also told Mr. Yunits that there is a process mandated by the Department that must be followed.

This includes public information meetings. And a critical element for the project to go forward is 'Community Acceptance'. I do not believe a Town Manager, even with approval from the Board of Selectmen, can simply sign off on an agreement and have a 'done deal' for the capping of a landfill.

I expect the new Town Manager's intentions are honorable, but the rush to sign this 'Agreement' with EndCap seems ill-advised.

If EndCap expects Norton to consider a proposal, they need to present it in detail with all of the information that is relevant in 2012.

The new proposal to include but not be limited to:

Specifically, What materials are they proposing to truck in?

Where are the materials coming from?

Why is someone (ALI) being paid handsomely to take this stuff away?

How many cubic yards of material? Is the volume still 650,000?

What is the minimum amount of material that could adequately cap Phase B of ALI? 50,000 cubic yards?

What is the condition of the Phase B Site now? Is it not a benign level parcel, whose greatest problem is that it was designated as part of ALI?

How many loaded trucks (18 wheelers?) per day can Norton expect on its residential roads. Is it still 35? Six days a week (including Saturday)? Hours: 7 AM to 4:30 PM?

The purpose for taking such a huge amount of undesirable material is to provide funds for Dumont/ALI. That much is not in question.

But why should the Town of Norton bear the burden/hardship for the failings of a private for-profit enterprise? (The jury is still out on whether or not ALI/Dumont are as financially strapped as portrayed).

And why if ALI/Dumont really cannot cleanup their own mess, doesn't the Department go after one or more of the parties who dumped there? We would not want to place the burden on our neighbor - the City of Attleboro. But Waste Management has deep pockets, and they are supposed to be very 'environmentally friendly'.

If EndCap is serious about a new proposal to cap Phase B of ALI - Bring it on.

Only then can we (The Town of Norton, City of Attleboro and Mass. DEP) BEGIN the process of consideration.

SHPACK:

I am also very concerned about the potential impacts of the ALI project on the Shpack Superfund Site. An enormous amount of time, energy and money has been spent for remediation at Shpack.

Norton accepted a lower level of cleanup because of the uncontrolled flow of contaminants from ALI Phase A into groundwater at the Shpack Site.

If excessive levels of material are brought into the Phase B Parcel, might this create another 'mound' with possible leaching into the abutting Shpack Site on the other side?

The second phase of cleanup (EPA/PRP Group for removal of chemical contaminants and heavy metals) is expected to commence in the Spring of 2013.

Empty trucks entering the Shpack Site, and loaded ones exiting will be using the same roads as EndCap has proposed for its project. Union Road is not wide enough to handle two-way dump truck traffic.

Any activity that could interfere with the successful remediation of the Shpack Superfund Site, or compromise the integrity of the cleanup would be unacceptable.

I have chosen not to send this lengthy e-mail to the new Bureau Chief (Martin Suuberg), but hope Rob that you will bring this matter to his attention as soon as possible.

Thank you for your assistance. Mass. DEP's involvement with the project is at least reassuring.

Regards,
Heather Graf, Coordinator
'Citizens Advisory Shpack Team' (CAST)

From: "Michael Yunits" <MYunits@nortonmaus.com>
To: [REDACTED], tgiblin@gallerygroup.com, "Selectman Bob Kimball" <[REDACTED]>, "Mary Steele" <[REDACTED]>, "Bob Salvo" <[REDACTED]>, [REDACTED]
Cc: [REDACTED], "mbrown@nortonmaus.com" <MBrown@nortonmaus.com>
Sent: Friday, June 1, 2012 3:27:38 PM
Subject: FW: ALI

From: Mark R. Reich [mailto:MReich@k-plaw.com]
Sent: Thursday, May 31, 2012 5:08 PM
To: Michael Yunits
Cc: Lauren F. Goldberg
Subject: RE: ALI

Mike –

Attached is a redline of the End Cap agreement. Take a look at my revisions and contact me so we can discuss them and be sure all of the Town's concerns are addressed.

Thanks.

Mark

Mark R. Reich, Esq.
Kopelman and Paige, P.C.
101 Arch Street
12th Floor

Boston, MA 02110
(617) 556-0007 (voice)
(617) 654-1735 (fax)
mreich@k-plaw.com <mailto:mreich@k-plaw.com>

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AGREEMENT

This Agreement made this ____ day of _____, 2012 by and between End Cap Technology, LLC ("End Cap") of 555 A South Street, Quincy, Massachusetts 02169 and the Town of Norton (the "Town") 70 East Main Street, Taunton, Massachusetts 02766.

WHEREAS, End Cap has an agreement with Attleboro Landfill, Inc. ("ALI") to assist ALI in capping and closing the former Attleboro Landfill (the "Project") with suitable materials which will be used to cap and shape the Landfill in accordance with DEP regulations; and

WHEREAS, End Cap will bring in said material by truck through a specified route in Norton, Massachusetts and have empty trucks leave the Project through a specified route in Attleboro, Massachusetts; and

WHEREAS, the Town and End Cap have agreed to a designated truck route through Norton, Massachusetts and End Cap will provide the Town with a Host Community Fee.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, End Cap and the Town agree as follows:

1. End Cap shall have loaded trucks operated by or used on behalf of End Cap enter the Project Site only via the following designated truck route:

Trucks will enter the Project Site through the Industrial Park Road, continue on Myles Standish Boulevard, continue on Harvey Street, continue onto Norton Ave, turn right at MA-140/Short Street, turn left at Eddy Street, continue on John Street, continue onto South Worcester Street, and turn left onto Union Road onto Peckham Street to the Project Site.

No trucks operated by or used on behalf of End Cap shall idle or park in the Town while seeking access to the Project Site.

End Cap shall be responsible for the repair of any damage caused to the roads within the Town by trucks operated by or used on behalf of End Cap, whether such trucks are owned by End Cap or a contractor or agent of End Cap. Such repair shall restore the roads to their condition prior to the effective date of this agreement, normal wear and tear excluded. The condition of the road shall be documented by the Town using videographic and photographic means, such evidence to be accepted by End Cap prior to commencement of truck operation in the Town by End Cap.

2. In consideration of this Agreement, End Cap will pay the Town a Community Host Fee of to \$0.25 per ton of any and all material brought to

the Project Site by or on behalf of End Cap. Said payments will be calculated each month commencing with the execution of this Agreement and the start of the Project by both parties, and paid within thirty (30) days of the end of each one (1) month cycle, payable to the Town of Norton via first class mail to the Town of Norton, Attention: Town Manager, 70 East Main Street, Norton, Massachusetts 02766. The Town may request, and End Cap shall provide in a timely manner, such documents that will verify the tonnage brought to the Project Site and the truck route utilized by said trucks for the duration of this Agreement.

Deleted: to bring the landfill to final grade. The Community Host Fee does not include payment for the final cap materials including loam and sand

3. This Agreement shall commence upon execution by both parties and shall expire on July 1, 2016 unless terminated earlier as provided herein. The parties hereto shall have the option of extending this Agreement for four (4) additional periods of six (6) months by mutual agreement upon End Cap giving written notice to the Town fifteen (15) days prior to the expiration of the original term or any extension period. All terms shall remain in place during said extension(s).

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Deleted: each

Deleted: by

4. End Cap shall be responsible for compliance with all environmental permits, laws, rules and regulations regarding transporting said materials to the Project Site, disposing the materials on-site and properly mixing or covering said materials, and shall be responsible for, and indemnify and hold harmless the Town against, any and all fines, penalties, and costs, including reasonable attorney's fees, arising from its failure with respect to such compliance.

5. At all times while this Agreement and any extension or renewal thereof is in effect, End Cap shall, at End Cap's sole expense, procure and maintain, or cause to be procured and maintained, the following insurance with A and/or A-rated companies that are authorized to issue insurance policies in the Commonwealth of Massachusetts for the coverages and limits so required:

- a. Workers Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability.
- b. Commercial General Liability, \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate limit.
- c. Automobile Liability, \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate limit.

The Town and its officers, employees, boards, commissions, departments and committees shall be named as an additional insured on all said insurance policies. End Cap shall provide

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Certificates of Insurance to the Town evidencing coverage, which shall provide for thirty (30) days' notice to the Town of cancellation or reduction of coverage. End Cap shall submit to the Town copies of the policies or renewals or replacements thereof at the request of the Town. All copies of the actual insurance policies, if any, and Certificates of Insurance submitted to the Town shall be in a form and content acceptable to the Town. Failure to promptly provide and continue in force such insurance shall constitute a material breach of the contract.

6. End Cap shall indemnify, defend (with counsel acceptable to the Town) and hold harmless the Town and its officers, employees, boards, commissions, departments, committees, agents and representatives from and against any and all loss, liability, damages, claims, cause of action, suits, and costs, including reasonable attorneys' and expert witness fees, caused in whole or in part by End Cap's breach of this Agreement and for the willful misconduct or negligent acts or omissions of End Cap or its officers, employees, or agents in connection with this Agreement, regardless whether such loss, liability, damages, claims, causes of action, suits or costs are caused in part by a party indemnified under this provision.

Deleted: To the fullest extent permitted by law,

Deleted: failure to provide services as required under

Deleted: the services to be performed under

7. This Agreement shall terminate when End Cap completes or terminates its participation in the Project, upon which occurrence End Cap shall notify the Town in writing and render a final accounting of any monies due to the Town from End Cap, to the date of termination, pursuant to Article #2 of this Agreement, and shall pay said amount to the Town within thirty (30) days of said date of termination.

If at any time during the term of this Agreement the Town determines that End Cap has breached the terms of this Agreement, the Town shall notify End Cap in writing stating therein the nature of the alleged breach and directing End Cap to cure such breach within ten (10) days. If End Cap fails to cure said breach within ten (10) days, the Town may, at its election at any time after the expiration of said ten (10) days, terminate this Agreement by giving written notice thereof to End Cap specifying the effective date of the termination. Upon the date specified in said notice, this Agreement shall terminate.

The Town may terminate this Agreement at any time for convenience by providing End Cap written notice specifying therein the termination date which shall not be sooner than ten days from the issuance of said notice.

8. All notices or communications required or permitted to be given under or by reason of the Agreement shall be in writing and shall be deemed to have been duly given on the date of personal delivery to or on the date of receipt at the addresses set forth below. If mailed by first-class, postage prepaid, certified mail, return receipt requested, such written notices shall be deemed to have been received as of the date set forth on the return receipt. Notices, demands and communication shall, unless another address is specified in writing, be sent to the person and at the address indicated below:

On behalf of the Town: Michael D. Yunits
Town Manager
Norton Town Hall
70 East Main Street
Norton, MA 02766

With a copy to: Mark R. Reich, Esq.
Kopelman and Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110-1109

On behalf of End Cap: Kurt Schulte
Manager
End Cap Technology, LLC
555 South Street
Quincy, MA 02169

With a copy to:

Richard A. Nylén, Jr., Esq.
Lynch, DeSimone & Nylén, LLP
10 Post Office Square
Suite 970N
Boston, MA 02109

9. This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Massachusetts. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and all of their respective successors and assigns. This Agreement may be assigned to another party by End Cap only with the written assent of the Town. No amendment or waiver of any provision of the Agreement nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing and signed by each party hereto. Any waiver of any term or condition of the Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition hereof. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement. Any of the parties hereto may execute the Agreement by signing any such counterpart. This Agreement is the entire Agreement between the parties and replaces and supersedes all prior oral or written agreements, representation or promises, including any prior representation, statement, condition or warranty. Upon the mutual execution of the Agreement by the parties, any prior agreements, written or oral, between or among the parties shall be deemed null and void, without any further recourse or effect or any continuing liability or obligations to or from the parties, except as expressly provided otherwise herein.

IN WITNESS HEREOF, the parties hereto, for themselves and their successors, executors, administrators and assigns have executed the Agreement the day and year first above written.

Town of Norton
By:

End Cap Technology, LLC
By:

Michael D. Yunits
Town Manager

Kurt Schulte
Manager

