

Settlement sought amid \$5.3B buyout

Covanta wants LI toxic dumping lawsuit gone; whistleblower: plant operator's payout cheap

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Waste-to-energy plant operator Covanta has been working to settle a whistleblower lawsuit that alleged the company left a legacy of toxic ash from Hempstead to Brookhaven, lawyers for the plaintiff say.

The move comes as the New Jersey company prepares to sell itself to a Swedish investment conglomerate.

The suit, originally filed by a former employee on behalf of local governments and LIPA, questioned past practices at Covanta's Hempstead plant, including that the company allegedly dumped tons of potentially toxic ash at the Brookhaven Landfill by failing to properly mix two types of ash to minimize harm. The company has denied the claims.

LI operations and lawsuit

Covanta operates four waste-to-energy plants on Long Island,

processing 1.8 million tons annually of municipal waste while producing a combined 125 megawatts of energy. Each megawatt powers between 800 and 1,000 homes. The plants are in Hempstead, Babylon, Islip and Huntington. Covanta owns all but the Islip plant, which is owned by Islip Town.

As Newsday reported in 2019, a former employee of the Covanta Hempstead plant, Patrick Fahey, filed the whistleblower lawsuit in 2013, alleging that the company improperly mixed toxic ash at that facility and brought it to the Brookhaven landfill for up to a decade. Fahey filed the suit on behalf of the towns of Hempstead and Brookhaven, the Village of Garden City and LIPA, seeking to recover damages he said they faced as a result of the alleged improprieties. Covanta has denied the allegations. The towns, village and LIPA have declined to participate in the suit.

Now, says the plaintiffs' lawyer, Covanta is negotiating with the towns and village to settle the suit for a nominal amount, after they paid more than \$890 million to the company over the decade the practices allegedly took place.

"Covanta's own documents demonstrate that it engaged in fraudulent testing, misrepresented its procedures and dumped a multimillion-dollar dangerous mess of ash at the Brookhaven Landfill," said David Kovel, an attorney for Fahey. "By trying to settle the case on the cheap, the towns are putting Covanta's interests before their taxpayers. Hazardous waste dumping has financial consequences, and it is Covanta that should bear them, not the citizens of Long Island."

He declined to disclose proposed settlement offers. Jill Stueck, a spokeswoman for Covanta, said the company does "not comment with respect to litigation."

In previous statements to Newsday, Covanta noted the company had "thoroughly investigated all of the allegations" by Fahey and "found them to be meritless." The company labeled Fahey's complaint an "intimidation suit."

Takeover deal, state probe

Covanta in July announced it reached an agreement to be acquired by EQT Infrastructure, a Sweden-based investment conglomerate, for \$5.3 billion.

On Wednesday, Fahey's lawyers filed papers in state Supreme Court asking a judge for special sanctions in the case because Covanta "cannot account for" two-thirds of the crit-



Covanta operates four waste-to-energy plants on Long Island, including this Westbury facility. It owns three out of the four plants.

BARRY SLOAN

ical logs that detailed its practices at the time. The logs were required to be kept under state law and Covanta's own rules, the papers allege. Among allegations in reams of exhibits contained in the filing is that a former state Department of Environmental Conservation monitor at the plant "improperly leaked" to a plant official the existence of a state investigation into plant practices after the suit had been filed under seal.

In a response to Newsday, the DEC said it is "actively investigating" Covanta's operations. DEC noted the on-site monitor mentioned in the documents "retired and passed away several years ago." While the agency isn't a named party to the suit, the DEC said "additional information" about its

"ongoing investigation" of the matter "will be provided as it becomes available."

"DEC is continuing our aggressive oversight and monitoring of Covanta to ensure the ongoing protection of water quality and the environment," the agency said.

Court papers also point to potential contamination at an FAA facility adjacent to the Covanta plant, quoting a Covanta official in a 2010 email as observing a "giant hole in the roof" of an ash-loading building, making it "no longer a sealed structure."

As recently as the spring, Fahey's lawyers say, they attempted to meet with Hempstead and Garden City officials and lawyers to detail their findings and urge them to end their

collective opposition to the case, but only Brookhaven has met with them. None of the municipalities or LIPA have agreed to be active participants in the case, the lawyers said.

LIPA in a statement would only say there have been "continuing conversations with Covanta over time" related to a settlement. It declined to comment further.

Settlement allegations

In a presentation to Brookhaven attorneys, Fahey's lawyers alleged that as much as 240,000 tons of improperly mixed ash from the Hempstead plant was left at the landfill in just one year. They alleged in the original lawsuit that the practices occurred for nearly a decade, starting in 2006, with

potential damages given the town's contract with the plant totaling upward of \$175 million.

But Michael Cahill, a lawyer for Brookhaven, noted that the state Department of Environmental Conservation "issued no notices of violations to the Hempstead facility" or Brookhaven tied to ash-management practices. He said complying with discovery demands in the case has been "costly and burdensome," and now "the town is supportive of the parties' attempts to settle the case."

David Hoffner, another lawyer for Fahey, accused town officials of "abandoning the interests of their residents by seeking to settle this action with Covanta for basically nothing, ignoring the voluminous evidence in this case demonstrating that for

more than a decade Covanta shipped hazardous ash to the Brookhaven Landfill."

Hempstead Town spokesman Greg Blower declined to answer questions about a possible settlement but said in a written statement, "The Town of Hempstead continues to keep the health, safety and the environment as top priorities for our residents."

The suit alleges that Covanta altered required state Department of Environmental Conservation tests to make it appear the ash was mixed in compliance with requirements from the time the allegedly improper practices took place. The suit also alleges that particle-laced steam emitted from the giant stack in Hempstead also contained toxins — a charge Covanta has denied.

A May 2019 study conducted

as part of the case indicated that samples taken at a Federal Aviation Administration facility in Hempstead adjacent to the plant "show convincingly that soil samples taken from the surface were elevated in the elements that are elevated in fly ash," according to University of New Hampshire engineering professor Kevin Gardner, the study's conductor. The FAA building is a 1515 Stewart Ave. in Garden City.

Sen. Chuck Schumer said in a statement: "The health concerns of [FAA] workers near the Covanta incinerator are a legitimate matter that requires a thorough investigation" by federal health and environmental regulators. "If any further cause for concern is identified, prompt action must be taken to eliminate the risks."