Covanta defends its position

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Second in a NUVO series: The Covanta contract: money to burn

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The Covanta plant sits on a stretch of Harding Street that’s just north of the soon-to-be-gas-fed coal plant, just south of the Lily Tech campus. It’s a typically bleak, urban/industrial location where you’ll find freight companies stacked with shipping containers, truck stops and the occasional strip joint.

The Covanta facility itself — a blue and gray affair with a cement stack and giant bays that allow dumpsters to unload on the “tipping floor” — smells, as you’d expect, like garbage. The front office, a raised, semicircular structure, is clean and quiet – and free of the aroma you’ll find near the guts of the plant.

NUVO raised a lot of questions after diving into the contract the facility reached with the city of Indianapolis to build an “Advanced Recycling Center,” what amounts to an addition to the present facility; a second building, in fact. Naturally, Covanta felt the need to address some of the issues brought forth by our initial story. Business manager Paige Bernacchi was more than willing to talk — in her office, at the plant, with a PR rep for Covanta at the table.
Bernacchi first noted that calling the “ARC” an “advanced materials recovery center” isn’t quite accurate, the acronym actually stands for “advanced recycling center” — fair enough, noted. But it’s worth further noting that “ARC” is a term that Covanta themselves have come up with as a sub for the common vernacular: “dirty MRF.”

Bernacchi takes issue with comments from those opposed to their plan that Covanta is merely trying to take in more trash for the sake of gathering more burnable material and has no intention of truly gathering recyclable goods. She says again (as she tells us she has said many times before — and as every Covanta spokesperson has as well) that it doesn’t make any business sense to spend $45 million dollars on a facility and not use it. “It’s frustrating for us,” reiterates Bernacchi.

**RELATED: The first part of our “Money to burn” series**

OK, some background here: It’s important to remember is that Covanta is a business. It might be counter-intuitive to think of it as a for-profit, publicly traded institution because of the “utility-like” service it provides the city in the disposal of municipal solid waste. Like the plant currently burning coal down the road, the incinerator that burns our trash creates steam energy that is then used for power. It’s just a different fuel. But Covanta is a for-profit, publicly traded concern — designed to provide a service to its clients for a fee. Our city, like every city, has solid waste that has to go somewhere. When the choices are to pile it up in a heaping landfill or incinerate it to ash, Covanta offers the burn option for a price. It’s capitalism, in a nutshell: modern society creates a lot of garbage. How can we make money off of it?

But it’s also true that Covanta’s contract with Indianapolis was about to expire as a new deal was struck, and the proposed investment of $45 million for the MRF could have conceivably been a pretty strong selling point for the city to extend the deal. That’s smart business sense, too — if the new contract that runs through 2028 brings in the current price of approximately $33 per ton, that 260,000 ton minimum that the city hands Covanta is worth $8.58 million, or nearly $103 million over the next twelve years.

It’s further worth noting that the city of Indianapolis isn’t Covanta’s only customer. The company has other clients — from trash-hauling businesses (i.e. Ray’s, Republic, etc.) to profiled customers with a lot of solid waste that can’t or shouldn't go to a landfill. (Ever wonder what happens to those grocery products recalled by a company and returned to the store? Exactly – Covanta burns ‘em.)

**All the perks, none of the oversight**

Thinking of Covanta as a service-providing business and not a utility like Duke Energy or Citizens Energy goes a long way in understanding the “skin” they have in this game with Indy. Like any business — from a small operation to a Fortune 500 company — growing the business model and diversifying the product or service is key to survival. For Covanta, a company with a published mission of providing “sustainable waste and energy solutions to ensure no waste is ever wasted,” the world of recycling seems to make sound business sense if a company's trying to diversify — the stuff's already coming through the front door.

According to Bernacchi, the Covanta facility on Harding Street is at capacity. There is only so much solid waste the facility can hold at any given time and the facility can only burn so much tonnage on any given day. When a business hits that type of plateau, diversification is a natural “next-step” conversation.

During a recent national recycling conference held in Indianapolis, Scott Holkeboer, Covanta's vice-president of business management, stated that Indianapolis was not looking to expand its recycling options. Holkeboer said it was an “unopened door” that Covanta pushed through to open the city's administration to the possibilities. Covanta, as a business, is looking to diversify its service offerings and their research told them Indianapolis was a great place to start. (Odds are pretty good that if the Circle City thinks that Covanta's plan is sexy, though, other cities may follow suit — a single-bin recycling plan in a city the size of Indy would be a lovely marketing tool for a firm like Covanta.)

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And why not? With the current facility running at capacity and customers looking for more disposal options having the ability to separate out the recyclables creates more space for the “burnables,” Covanta increases its revenue by selling the collected recycled material and taking in more waste to burn from customers looking to increase their business.

But a central issue remains: none of Covanta's other clients are likely on the hook for a shortage penalty. Indy's signed a utility-style contract without the kind of ongoing oversight usually included in utility
agreements. It’s not so much a waste stream that won’t dry up as it is a revenue stream for Covanta’s shareholders guaranteed by Marion County taxpayers. Since Covanta Indy can process 2,175 tons of waste per day, the city of Indianapolis must contribute roughly one-third of the total when the shop’s operating at full volume or pay the penalty. (See the clarification at the bottom of the article for boiler runs and capacities.)

And since the language in the contract is specific regarding city’s tonnage minimums and vague on what targets Covanta’s required to hit, the fundamental concept behind the ongoing litigation that’s been brought against Covanta as outlined in the first story in our series seems reasonable: The contract benefits Covanta and is disadvantageous to homeowners with an Indy zip code.

Getting into the MRF biz

Another cause of Covanta’s growing need for diversification dates back to 2008 and can be laid at the feet of Indy’s city fathers. Prior to that date, the incinerator “plant” was owned by the city and operated by Covanta. The facility, which went online in the ‘80s, was a 20th century alternative to landfills at a time when concerns for Mother Earth were just beginning to take seed and flourish. The city was the landlord and Covanta was the tenant. In 2008, Covanta become owner and operator, responsible for the whole kit and kaboodle. And more responsibility incurs more costs and overhead.

So how does the education of recycling and the importance of separating the good recyclables from the trash play into Covanta’s business model? According to the company, very well. Bernacchi says Covanta’s ARC and its material consumers would still benefit from a family’s “best practice” of separating out their material, even if it is going into the same stream as the trash. If a family takes the time to wash out a plastic bottle or aluminum can and put it in a separate bag before disposal, Bernacchi said that preserves the quality of the product and earns Covanta a better return at market.

But the questions remained, the ones we’ve outlined, regarding murky language in the contract — notably, the clause that seems to lock Indy down into 2015’s MRF technology through 2028, and disallows the promotion of any other kind of curbside recycling.

One example: suppose a company from, say, Ohio, decided it wanted to mount a textile drive in Indiana that asked citizens to drop old rugs and clothes by the curb?

Simple Recycling is an Ohio-based company that offers curbside recycling of textiles and household appliances to municipalities and their residents free of charge. Residents are encouraged to separate a variety of household items — everything from clothing, shoes, hats and coats to toys, small appliances, kitchenware and small furniture— and drop the stuff curbside. The public-private partnership allows Simple Recycling collection vehicles to follow municipal trash trucks on their routes for all-in-one-day pickup. The municipality even gets compensated per pound for the amount Simple Recycling takes.

Would that trigger the $4 million annual penalty for “promotion” of “separation of any Recyclables from Acceptable Waste prior to delivery”?

(Note: Simple Recycling has expressed an interest in reaching into Indiana markets, including Indianapolis, and has even made a pitch for their services to the city of Danville.)

“That percentage is so small,” says Bernacchi, “… look, as we all know, contracts are about intent.” The implication: unless the city mounts an aggressive curbside-bin campaign, Marion County taxpayers are in the clear.

But — it’s probably prudent to remember that no lawyers were in fact present during this particular conversation.

“We’re looking at the best possible technology available,” Bernacchi continues. “Take the laptop you’re using right now. Do you buy a new one every year? Is [that one] the very latest model?” Hre point: at some moment in time, you’ve got to go with “best available,” and additionally, when the “best available” carries a price tag of 45 million bucks, a publicly-traded, for-profit waste facility has to protect the cash they’re shelling out.

RELATED: NUVO’s initial coverage of the deal

“Put-or-pay” — and what’s next

Bernacchi says the terms and conditions of the contract — which, Bernacchi claims, were hammered out over a long back-and-forth between the city and Covanta’s legal reps — are not uncommon in this industry. “Put-or-pay” contracts are typical — they’re a stopgap against risk for one party. One party — in this case, the city —
guarantees to give another party a certain amount of stuff at a fixed price over a specified period (the "put") or cover the shortfall (the "pay").

With $45 million going to a new facility, Bernacchi said there would have to be some sort of incentive for their company needs to be met as insurance on that investment.

When the meeting finally turns to what seems to be a beef between Covanta and the IRC over the latter's input into the process — and the apparent lack of light regarding the construction of the amended contract — Bernacchi's fairly adamant regarding several points.

"We met with over 20 stakeholders, including the HEC (Hoosier Environmental Council) and the IRC." Bernacchi says the IRC had six months to offer alternatives and none were forthcoming.

That statement seems to contradict what Covanta veep Scott Holkeboer said (as we noted earlier) at the Indy recycling conference: that Indianapolis was not looking to expand its recycling options. The city claims they've been looking for recycling options since 2009. (See our first addendum below.)

Carey Hamilton of the IRC has a different read than Bernacchi on the process, as she told NUVO in a recent phone conversation: “In January of 2014, I saw the mayor at an event, and I expressed concerns about this agreement. He said ‘Get with my people right away — we’re about to sign this deal.’ Then we started to get letters of opposition before them, get resources before them … our intent was to slow things down and get a public, competitive process.” (As they themselves will tell you, the IRC is not a recycling service provider. Only a competitive bidding process could prompt a full proposal to compete with Covanta’s deal.)

Hamilton's of the opinion that the way Covanta's describing the process isn't accurate. “We were in dialogue,” explains Hamilton further in a followup email, “but we felt we were providing more than enough for the mayor's office to stop and say ‘Hey, wait a minute, we've got to slow down and provide a public, competitive process.” Doing so will show us what these new recycling grants and new local recycling companies can offer so that we know we are providing the best possible service for taxpayers.”

If anything's obvious, it's this: there's some animosity here; bad blood between the Ballard Administration and the City-County Council and more than a few disagreements between Covanta and the IRC. Again, let's not be naïve: Covanta agreed to what looked to be a good deal for Covanta — and its shareholders. If anyone at Covanta believed in their hearts that Indy was paying too much for their services with this new agreement, expressing said sentiment makes zero business sense.

The Montgomery example

When NUVO's Rene Sweaney started looking into Covanta's plans to build a dirty MRF in Indy, Covanta directed her to a MRF in Montgomery, Alabama. Infinitus Energy had opened a facility in that city that may have helped sell Indy on the concept — reps from the Ballard administration had toured the facility in 2014.

Unfortunately, the Montgomery plant is currently closed.
On Friday, October 2, 2015, about 100 workers were told the plant would be ceasing operations until at least October 22, according to a report by Brad Harper for the Montgomery Advertiser. In short, the commodities market has hit bottom, and the plant doesn't appear to be very cost-effective at this time.

The company said Monday in a statement that it plans to “review a detailed plan that would allow us to resume operations.”

“One key element of a successful materials recycling program is the ability to sell recovered material at a price that will support the recycling process,” said Kyle Mowitz, Infinitus CEO. “While our customers have been satisfied with the material we have reclaimed unfortunately the market price for these materials have dropped dramatically.”

The company said it appreciates the public’s understanding and would provide more updates as it works in “a cooperative effort on all fronts” to re-open the plant.

In the meantime, Montgomery, Alabama’s trash is headed into a landfill.

**RELATED: Renee talks to Infinitus**

The key differences between Indy and Montgomery? Covanta has built a contract that protects Covanta’s financial interests first and foremost. The Indianapolis MRF isn’t reliant on the success of the recycling program to cover its costs. It’s secure because of the financial guarantees in the contract that are still based on the waste energy business — it doesn’t matter if the commodities market for recyclables tanks or skyrocket.

Another problem: according to industry sources, the contract that Infinitus has with the city of Montgomery has pretty strict guidelines on just what constitutes “recoverable materials.” In Indy, Covanta gets to determine what is and what isn’t recoverable.

Since Covanta’s not beholden to any set of standards — and determines what’s recoverable — there’s no penalty for Covanta to simply burn more if the commodities market plunges through their tipping floor.

**Back to the burners and the single bin**

Think about how residential trash gets mixed — let’s use an empty cardboard box as an example. When it comes to market realities, paper that’s been contaminated in a single bin — whether it’s contacted chicken bones or dirty diapers — isn’t in demand. A few overseas buyers may be available to purchase the stuff, but even China’s been rejecting that old six-pack beer-carrier that wound up getting dredged through wet coffee grounds (or worse). Single-bin recycling that’s processed through a dirty MRF is, quite simply put, one of the least efficient ways to recycle.

What frustrates environmental advocates most are the implications here in Indy regarding the lack of any incentive in the stream to actually improve recycling rates. Moreover, the IRC as well as other green minds contend that investment in a better process than a dirty MRF opens up the potential for creating more jobs than the 60 or 70 that’ll be hired to run Covanta’s “ARC.”

There are other beefs from the folks who’d like to see Indy model its recycling program after Lawrence or Beech Grove: again, we’re training citizens to toss everything in a single can with the selling point that we’re still, as a community, recycling — when it’s been proven that dirty MRFs are obviously less efficient than curbside recycling. Environmental advocates also express frustration over the claim that the program will guarantee “100 percent participation” — that seems disingenuous, since everyone who’s simply throwing stuff away is “participating.”

In fact, that’s the underlying suspicion here from some opponents: is building a dirty MRF a kind of pricey greenwashing, maybe a marketing tool for Covanta to look like responsible corporate citizens, and, using Indy as a model, pitch similar programs to other municipalities?

Ultimately, we’re left with two questions for those who lead the city — and those who hope to:

If the deal’s really a dog for Indy and her taxpayers, as the lawsuit alleges, why was the Ballard administration...
so eager to sign the contract?

And maybe more importantly: What are the Indy's other options — and can the new man in the Mayor's office cut and run?

**Addendum number one: The city responds**

As the first installment of this series was being written, we asked the city of Indianapolis (specifically, Mayor Ballard's office) for comment on the following questions, directed to the Mayor's communications office:

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I've been reading the City's most recent agreement with Covanta, and I'm especially curious about this particular graph:

**Section 9.06 City Responsibilities**

(c). If, during the Term, and except for Existing Programs … the City implements, proposes or provides for a program or official action through an ordinance, resolution, contract, franchise, or official press announcement or publication, which requires, incentivizes or promotes separation of any Recyclables from Acceptable Waste prior to delivery ... the parties acknowledge that the company will suffer material damages the full scope of which are difficult to determine and accurately specify … The liquidated damages will be calculated as of the City Program Commencement Date and will be equal to $333,333.33 per month, multiplied by the number of months remaining in the then-current term of the service agreement.

I'd like Mayor Ballard's office to comment on the following, please:

1. What's the legal definition of 'City' here? If a City-County Councillor decides to "promote" expanded recycling programs, say, for example, by encouraging more people to sign up on hi/her Facebook page, could that be interpreted as a fineable offense?

2. Why are we locking ourselves into Covanta's technology alone without allowing ourselves the option to expand into any other processes that might complement Covanta's plan? Why did we agree to such limits and such a large fine should we decide that the technology Covanta's using isn't keeping up with industry advances?

Here's the city's response:

Throughout this agreement, "City" refers to municipal government agencies, and the agreement was created in a way that allows municipal agencies to support and promote existing recycling programs — including the subscription-based curbside program and the 25 drop-off recycling bins operated by DPW.

Currently, we estimate that 10% of households participate in some type of voluntary recycling program. Through the contract, Covanta will have access to residential waste for the purpose of capturing recyclable materials from 100% of Indianapolis households, but residents may still opt to participate in additional recycling and sustainability programs.

The decision to partner with Covanta to add additional recycling options evolved over several years of discussions with multiple service providers. The City began
engaging recycling and waste services providers in 2009 and issued an RFP in 2010 aimed at improving the City's recycling program. Responses to the City's 2010 RFP were limited, and the only viable proposal was contingent on an increase in the City's solid waste fee assessed to homeowners - something the City-County Council has shown little willingness to discuss.

In the interest of increasing recycling participation and diverting as much recyclable material as possible from incineration or landfill, the City continued to seek a solution that could increase recycling, while not resulting in a fee or tax increase for property owners. Covanta's ARC accomplishes those objectives.

We'll be digging into those statements further as the series progresses.

Addendum two: Info from Covanta on capacity

(Note: the following information has been taken directly from an email sent by Covanta's Paige Bernacchi.)

The Energy from Waste plant (EfW), under normal operations, runs 7 days week, 24 hours/day. We process approximately 2175 tons/day. The boilers run all year long with the exception of planned and unplanned down time.

* The "approximate" tonnage calculation is an average. Moisture content in the waste stream, temperature, etc can affect boiler throughput. That tonnage can increase or decrease slightly throughout the month or year. Cold, wet weather causes us to process more and hot, dry summers cause us to process slightly less.
* We have 2 planned outages/year for each boiler—one in the spring and one in the fall.
* Each boiler is scheduled for approximately 1 week of downtime ( +/- depending on which repairs are necessary) in the spring and the fall. This allows us to maintain the equipment and keep it operational throughout the rest of the year.
* There are other times throughout the year that we have unplanned downtime. Usually those are quick repairs and may cause the boiler to be down for 24-48 hours.

Keep in mind that the boiler down-time and operations at the EfW are totally separate from the operation of the ARC.
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