

# Incinerator Free Brown County (IFBC)

www.incineratorfreebrowncty.com



Respond to:  
*incineratorfreebrowncounty@gmail.com*

February 4, 2013

Steven J. Michels  
Staff Counsel  
Wisconsin Economic Development Corporation  
201 W Washington Avenue  
Madison, WI 53703

RE: Rezoning Property and Conditional Use Permit Request  
N7329 Water Circle Place, Oneida WI 54155

WEDC Contracts: SEP FY10-20265 and LEG FY10-19812

Dear Mr. Michels:

IFBC writes to advise the Wisconsin Economic Development Corporation (WEDC) about our grave concern regarding possible misuse of the public funding made pursuant to the above two contracts (see attached Exhibits 1 and 2, containing the first pages of each) for a total of \$4 million. While we are aware WEDC has been plagued with well-publicized issues of accountability and accounting for disbursements, recent events pertaining to these contracts (the “contracts”) prompted IFBC to draft this letter to WEDC and request WEDC to rescind the public funding made pursuant to these contracts.

As you can see from the attached newspaper articles in Exhibits 3 and 4, the contract funding to construct energy recovery facilities appears to be diverted to other purposes than permitted under the contracts. SEP FY10-20265 only pertains to creation of jobs in Green Bay, Wisconsin, and the City of Green Bay's rescission of the building permit for this project for misrepresentation was upheld by the Brown County Circuit Court in January, 2013. LEG FY10-19812 pertains to establishing a “state-of-the-art energy recovery facility in Brown County...”. The January 30, 2013, Press-Gazette article contained in Exhibit 4 details plans to shift this WEDC funded project to Outagamie County. Both misrepresentation and out of area geographic siting fail to comply with the strict terms of both agreements.

It is not difficult to imagine there are other failures to comply with each agreement not contained in this letter. IFBC believes this situation presents a unique opportunity for WEDC to remedy past issues by recovering disbursed funding and redirecting it to other, more legitimate ventures to create viable economic development in Wisconsin.

For these reasons, IFBC requests WEDC to rescind the contracts and claw back disbursed funding. Thank you for your time and efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "John Filcher". The signature is fluid and cursive, with a long horizontal stroke at the end.

John Filcher  
Co-Chair, Incinerator Free Brown County

cc: Scott Williams, Green Bay Press-Gazette

# EXHIBIT 1

CONTRACT LEG FY10-19812

**LEGISLATIVE AWARD  
AGREEMENT  
BETWEEN THE  
WISCONSIN DEPARTMENT OF COMMERCE  
AND  
ONEIDA SEVEN GENERATIONS CORPORATION**

This Agreement is entered into by and between the Wisconsin Department of Commerce ("Department"), and Oneida Seven Generations Corporation ("Recipient").

## RECITALS

**WHEREAS**, 2009 Wisconsin Act 28 authorizes the Department to make an annual grant of \$1,000,000.00 in each year of the 2009- 11 biennium to Oneida Seven Generations Corporation from funds encumbered in the appropriation under section 20.143 (1) (kj) of the statutes in previous years but not disbursed for grants to Oneida Small Business Inc. and Project 2000 from the gaming economic diversification grant and loan program.

**WHEREAS**, the Department under the above authorization will grant funds to the Recipient up to the amount of Two Million and 00/100 Dollars (\$2,000,000.00) with One Million and 00/100 Dollars (\$1,000,000.00) to be made available for the period July 1, 2009 through June 30, 2010 and One Million and 00/100 Dollars (\$1,000,000.00) to be made available for the period July 1, 2010 through June 30, 2011, to be utilized in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants hereinafter set forth, the Department and the Recipient agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings:
  - a) "Agreement" means this Legislative Award agreement between the Department and the Recipient together with all exhibits and future amendments thereto.
  - b) "Application" means the Legislative Award application and all supporting documents submitted by the Recipient.
  - c) "Department" means the Wisconsin Department of Commerce, and its lawful successors and assigns.
  - d) "Effective Date" means the date this Agreement is executed and signed by the Secretary of the Department.

## EXHIBIT 2

CONTRACT #SEP FY10-20205

**STATE ENERGY PROGRAM  
LOAN AGREEMENT  
BETWEEN THE  
WISCONSIN ECONOMIC DEVELOPMENT CORPORATION  
AND  
ONEIDA ENERGY INC.**

This Agreement is entered into by and between the Wisconsin Economic Development Corporation ("WEDC") and Oneida Energy Inc. ("Borrower").

### WITNESSETH

**WHEREAS**, the WEDC is authorized to award loan funds, for the purpose of economic development pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5 and;

**WHEREAS**, the WEDC, relying upon representations in the Borrower's Application, agreed to lend up to Two Million and 00/100 Dollars (\$2,000,000.00) to the Borrower to be utilized in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, the WEDC and Borrower agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:
  - a) "Agreement" means this agreement and the attached Exhibits between the WEDC and the Borrower, together with any future amendments thereto.
  - b) "Application" means the prospect data sheet and other materials submitted by the Borrower for this award.
  - c) "Borrower" or "Sub-recipient" means Oneida Energy Inc., together with its lawful successors and assigns.
  - d) "Collateral" means the property described in Exhibit A.
  - e) "WEDC" means the Wisconsin Economic Development Corporation, together with its lawful successors and assigns.
  - f) "Effective Date" means the date this Agreement is executed by the WEDC.

## Exhibit 3

*"The tribe will continue to value its relationship with the city and people of Green Bay."*

ED DELGADO Oneida tribal chairman



LEFT: Brown County Circuit Court Judge Marc Hammer rules against the Oneida Seven Generations in their lawsuit against the city of Green Bay. RIGHT: Oneida tribal chairman Ed Delgado talks with reporters after the Wednesday ruling. PHOTOS BY H. MARC LARSON/PRESS-GAZETTE MEDIA

# Oneida developers lose in court battle

### Revocation of permit for energy plant in Green Bay was at center of legal issue

By Paul Srubas  
Press-Gazette Media

The city of Green Bay acted within its authority in October when it revoked a permit to build a trash-recycling alternative energy plant in the city, a judge ruled Wednesday.

Brown County Circuit Judge Marc Hammer rejected a request by Oneida Seven Generations Corp. to overturn a City

Council vote to revoke the conditional use permit it had granted for the project.

Hammer agreed with Green Bay's lawyers that Oneida Seven Generations, in initially applying for the permit, had misrepresented facts about the proposed plant, particularly concerning the amount and type of emissions and the need for smokestacks to vent those emis-

sions.

Claims by Oneida Seven Generations that it had already invested millions in development on the plan only to have "the rug pulled out from under it" were not an issue in the ruling, Hammer said.

The decision focused on whether the city had legal authority to revoke permission once granted, not whether the corporation may have been harmed, which is an issue that would have to be settled by a separate court action, Hammer said.

Eric Wilson, the corporation's lawyer, said it likely would pursue damages if the ruling went against it, and he also hinted at the likelihood of an appeal. The Oneida Tribe of Indians owns the Oneida Seven Generations Corporation.

Wilson and corporation representatives did not make themselves available for comment after Hammer's ruling. Ted Warpinski, who argued on the city's behalf in Wednesday's court hearing, said afterward

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## Court

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he was confident Hammer made the right decision.

Oneida Tribal Chairman Ed Delgado said he and the tribe were "obviously disappointed and will consider our options." However, regardless of the outcome, Delgado said, "the tribe will continue to value its relationship with the city and people of Green Bay."

Green Bay City Council President Tom De Wane, who sat

through Wednesday's hearing, said he hoped that Hammer's decision would end the issue, but that if the corporation decided to appeal or to sue, "that's up to them."

He defended the council's decision to re-

voke the permit and denied that it sent a negative message to other business developers, many of whom would perhaps be encouraged to do business with a city that shows concern over the health and welfare of its residents.

Dean Hoegger, president of the Clean Water Action Council, which helped neighbors of the proposed project to organize dissent at public meetings, also praised Hammer's ruling.

An adverse ruling would have greatly weakened a city's ability to protect itself against unwanted development, he said.

Early in the proceeding, Hammer granted a request by both sides to consolidate a separate action the corporation had filed seeking relief in the case and dismissing it.

— psrubas@  
greenbaypressgazette and  
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Twitter@PGpaulsrubas.



De Wane

# Recycling plant shifts to Oneida land

Tribal project stirs environmental concerns there, too

By Scott Cooper Williams  
Press-Gazette Media

Defeated in a court battle over a site in Green Bay, an Oneida Tribe of Indians company has shifted its attention to a new spot in Outagamie County for a waste-to-energy recycling

plant.

Oneida Seven Generations Corp. has unveiled plans for a plastic-recycling plant on tribal land in the town of Oneida, just west of the Brown County line.

As a facility for recycling plastic waste only, the project would differ somewhat from a controversial Green Bay development that would have processed all types of household trash, converting the energy into electricity.

But the new proposal is stir-

ring opposition, too, including from some Oneida tribal members concerned about its effect on tribal land.

Tribal Chairman Ed Delgado said he worries about the environmental effects that such an industrial operation would have on areas of the Oneida Indian Reservation that Delgado described as "pristine."

Referring to the recycling plant, Delgado added: "I'm not

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## Recycling

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saying I'm against it. I have questions about it."

Although Oneida Seven Generations is owned by the tribe, the company is governed by its own board of directors and operates somewhat independently of tribal leadership.

Oneida Seven Generations President Kevin Cornelius and other company officials could not be reached for comment on Wednesday.

The company previously tried to build a waste-to-energy plant at 1230 Hurlbut St. on Green Bay's west side. But after initially embracing the concept, the Green Bay City Council rescinded a permit, charging that the developer had misled city officials about the environmental impact.

Oneida Seven Generations challenged the city's



action in court, but a judge Jan. 9 ruled in the city's favor.

Earlier this week, the company presented its new plan to the Oneida Land Commission, a tribal body that must rezone land and approve a permit for the development. The site is a former grocery store, Tower Foods, once operated by the tribe at N7329 Water Circle Place.

Land Commission Chairman Amelia Cornelius — who is Kevin Cornelius' mother — said about 30 people spoke at the commission's meeting and all but one supported the development. The commission is accepting public comments on the proposal until Feb. 11.

Cornelius said the plas-

tic-recycling facility would use the same technology as the proposed Green Bay plant, but it would operate at lower temperatures and would not present a significant environmental hazard.

"It's a different project," she said.

Several opponents said the new Outagamie County project seems to be an attempt to resurrect the rejected Green Bay development.

"It's the same old stupid project," said John Filcher, spokesman for Incinerator Free Brown County, a group that has been fighting the Oneida Seven Generations concept for about two years.

Despite its location outside of Brown County, the emissions generated by burning plastic waste would pose a health hazard to residents throughout the area, Filcher said.

Some members of the Oneida tribe agreed.

Yvonne Metivier, a tribal elder who lives in nearby Hobart, said she worries about harming the environment and also about committing more tribal money to another business venture.

"This is another money pit," she said. "It's just unthinkable that this would be called progress."

— [swilliams@greenbaypressgazette.com](mailto:swilliams@greenbaypressgazette.com) and follow him on Twitter @pgscottwilliams.