



**Mid-Connecticut Project Special Committee
Regular Meeting
June 23, 2010, 2 p.m.
CRRA Trash Museum, 211 Murphy Road, Hartford
Agenda**

1. Call to order
2. Pledge of Allegiance
3. Review minutes of April 28, 2010, meeting
4. Discussion of draft report to CRRA Board of Directors as required by Sec. 22a-268f of the Connecticut General Statutes on “options for disposing of solid waste from (Mid-Connecticut Project) municipalities after the expiration of (the Mid-Connecticut Project) contract.”
5. Discussion of towns’ feedback on draft renewal municipal service agreement
6. Discussion of draft Tier II municipal service agreement
7. Discussion of future activities of Special Committee and announcement of next meeting date
8. Other business
9. Adjournment

Next scheduled meeting: Wednesday, July 28, 2 p.m., CRRA Trash Museum, 211 Murphy Road, Hartford



Mid-Connecticut Project Special Committee

April 28, 2010

DRAFT Minutes

A meeting of the Mid-Connecticut Project Special Committee was held April 28, 2010, at the CRRA Trash Museum, 211 Murphy Road, Hartford. The meeting was called to order at 2:11 p.m. In attendance:

Committee members: Melody A. Currey

Thomas D. Kirk

Peter W. Egan

David B. Damer,

Timothy C. Griswold

Steven N. Wawruck Jr.

Susan M. McMullen

Donald S. Stein (arrived at 2:21 p.m.)

CRRA staff:

Marianne Carcio

Paul Nonnenmacher

Ronald Gingerich

Public:

John Pizzimenti, USA Hauling & Recycling

Jonathan Bilmes, Bristol Resource Recovery Facility Operating Committee

Michael Harder, Town of Hebron

James Sandler, Sandler & Mara

Absent were Committee members Richard J. Barlow and Alan J. Desmarais.

After attendance was recorded, those in attendance stood and recited the Pledge of Allegiance.

DISCUSSION OF LEGISLATIVE PROGRAM REVIEW & INVESTIGATIONS COMMITTEE REPORT ON SOLID WASTE AND ITS FINDINGS WITH REGARD TO FUTURE OPTIONS FOR MID-CONNECTICUT PROJECT CITIES AND TOWNS

The Program Review & Investigations (PR&I) Committee staff assigned to this project, Scott Simoneau, Principal Analyst, and Eric Gray, Legislative Analyst, presented a summary of their report. (A copy of their key findings is attached. The full report is available on-line at http://www.cga.ct.gov/pri/2009_MSWMSC.asp).

Following the presentation, Ms. Currey asked how the PR&I report recommended expanding recycling. Mr. Gray said the report recommends adding to the list of mandated recyclables #1 and #2 plastic and white office paper. He said the Department of Environmental Protection (DEP) could do this by amending its own regulations, or it could be done through legislation, but there should be one standard list of items recycled in all

towns, rather than the current system in which towns can pick and choose which items will be collected for recycling.

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Mr. Griswold asked about DEP's role in solid waste issues. Mr. Gray said, for example, DEP did not create a beneficial-reuse program for combustor ash, but rather it is waiting for another entity to start a program, so the report called for a study of CRRA. Mr. Simoneau added there is no mechanism to fund CRRA's statewide activities.

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Mr. Damer asked whether the report looked at solid waste in the context of global climate change. Mr. Simoneau said it was clear that sending trash to local trash-to-energy plants is better for the environment than trucking trash to out-of-state landfills.

Mr. Griswold asked whether the report looked at price stability of out-of-state landfills. Mr. Gray said there will always be landfill space somewhere in the country, but as time goes on the space will be farther and farther away, and those increasing transportation costs will create sticker shock.

DISCUSSION OF FUTURE ACTIVITIES OF SPECIAL COMMITTEE AND ANNOUNCEMENT OF NEXT MEETING DATE

Mr. Stein asked when the Committee would have a substantive discussion on the future of the Mid-Connecticut Project. Mr. Kirk said CRRA's proposal for the future will be laid out in the draft renewal Municipal Service Agreement that will soon be sent to all 70 Mid-Connecticut Project cities and towns.

Mr. Stein said it was his impression that the Special Committee was to have input into how the Mid-Connecticut Project system would be operated and selection of contractors to operate the system beyond 2012. Mr. Kirk said he understood the Special Committee's responsibility to study such things as the need for a bale-and-rail system.

Mr. Stein requested that the Special Committee members review Connecticut General Statutes Section 22a-268f, which mandates the creation and activities of the Special Committee, before deciding on its future activities. (A copy of CRRA's projected timeline for selection of operating contractors and deadlines for towns to sign MSAs is attached.)

The Special Committee's next meeting is scheduled for Wednesday, May 26.

There being no further business, the Committee adjourned at 3:27 p.m.

Respectfully submitted,

Paul Nonnenmacher
Director of Public Affairs



RESPONSE TO COMMENTS ON THE DRAFT TIER 1 MSA RECEIVED FROM CONNECTICUT MUNICIPALITIES

By letter dated April 5, 2010, the Connecticut Resources Recovery Authority (“CRRA”) provided to municipalities that are currently members of the Mid-Connecticut Project for review and comment a documents entitled “Draft Tier 1 Municipal Solid Waste Management Services Agreement” (“Draft Tier 1 MSA”). The Draft Tier 1 MSA will be followed in the near future by a Draft Tier 2 MSA.

CRRA received comments on the Draft Tier 1 MSA from the following municipalities:

- Avon
- Bethlehem
- Canton
- East Hartford
- Granby
- Guilford
- Hebron
- Lyme
- Naugatuck
- West Hartford
- Wethersfield

CRRA also received a comment from Haddam related to the expiration of its current Municipal Services Agreement (“MSA”), which expires on a different date than most of the other MSAs. Because that comment is specific to one municipality, it is not included in this document.

In addition to the comments received from individual municipalities, CRRA also received extensive comments from the Capital Region Council of Governments (“CRCOG”) prepared by Mid Atlantic Solid Waste Consultants. CRRA has addressed those comments in a separate response document.

The following sections of this document present the comments as submitted by the municipalities and CRRA’s responses. In general, the comments are grouped by the section in the Draft Tier 1 MSA that they refer to and are presented in numerical order by section number. Each comment is identified as to the municipality that submitted it.

1. General

1.1	Comment:	It is really hard to recommend any input if we do not have adequate parameters upon which to make, what appears to be an expensive proposition. And this proposed contract seems to be leaning to the CRRA side vs. us poor little towns, that the previous one did. (Bethlehem)
	Response:	CRRA notes that the current MSA includes provisions such as minimum commitments (i.e., put-or-pays) for municipalities, the full-faith-and-credit pledge of municipalities and 20-year terms, none of which is included in the draft Tier 1 MSA. In addition, CRRA will be providing a Tier 2 MSA, which will provide municipalities a choice that was not available with the original MSAs.
1.2	Comment:	Please be advised that the Town is in the process of considering all of its options and will be in touch at a future date with respect to the same. If you have any questions, please do not hesitate to contact me. (Guilford)
	Response:	CRRA has consistently encouraged municipalities to consider all of their options for solid waste disposal. As opposed to when the original MSAs were offered, CRRA now has significant experience with the Mid-Connecticut Resource Recovery Facility and has determined an optimal amount of waste for the facility. CRRA does not intend to exceed that optimal amount of waste in commitments (contractual or otherwise) from municipalities or haulers.
1.3	Comment:	Bulk trash: what is CRRA's proposal relative to this item? Both transportation arrangements and cost are important to the Borough. (Naugatuck)
	Response:	

2. CRCOG Comments

2.1	Comment:	The Town of Canton at this time has not completed a final review of the Draft MSA. As has previously been noted the consultant for the CRCOG has developed comments on the draft MSA. I would suggest that your response to those comments would be a good next step. (Canton)
	Response:	CRRA has responded in a separate document to the comments it received from CRCOG that were prepared by Mid Atlantic Solid Waste Consultants.
2.2	Comment:	We are also incorporating the comments prepared on the draft MSA by Mid Atlantic Solid Waste Consultants prepared for the Capital Regional Council of Governments. (Wethersfield)
	Response:	Please see the response to comment 2.1.
2.3	Comment:	As you may know, an analysis has been developed by MID ATLANTIC SOLID WASTE CONSULTANTS (enclosed). The town respectfully requests that these comments be considered in revisions to your draft. (Granby)
	Response:	Please see the response to comment 2.1.
2.4	Comment:	After reviewing the MSA Review given to us by the Capitol Region Council of Governments, I am requesting that MSW Consultants' comments be reviewed by your staff and their report be considered when putting together your next draft contract. While putting together the draft contract, it would also be helpful to the member municipalities if you could respond to the comments outlined in MSA's report. (Hebron)
	Response:	Please see the response to comment 2.1.
2.5	Comment:	The Town of Avon will be working with the Capitol Region Council of Governments (CRCOG) regarding the substantive issues raised in the MSA and will respond as soon as feasible. (Avon)
	Response:	Please see the response to comment 2.1.
2.6	Comment:	The review of the MSA conducted for the Capitol Region Council of Governments by their consultant raises many of the issues we have. (West Hartford)
	Response:	Please see the response to comment 2.1.

3. Mid-Connecticut Project Permitting, Disposal and Billing Procedures

3.1	Comment:	Section 104: The Agreement incorporates Procedures (Exhibit x). Those procedures are not attached and should be reviewed since they will be an important part of the Agreement. (Wethersfield)
	Response:	Because the Mid-Connecticut Project Permitting, Disposal and Billing Procedures (“PDB Procedures”) are so readily available on CRRA’s web site, CRRA made a conscious decision in releasing the draft Tier 1 MSA not to attach the 33-page PDB Procedures to the draft Tier 1 MSAs for 70 municipalities. Unfortunately, CRRA did not include directions on how to access the PDB Procedures in the cover memo to the draft Tier 1 MSA. The PDB Procedures are attached to this document. The PDB Procedures can be found on-line at the following location: http://www.crra.org/documents/tipping_regs_midconnecticut_10_0501.pdf
3.2	Comment:	Are we to assume the “Mid-Connecticut Project Permitting, Disposal and Billing Procedures” (particularly the listing of “Acceptable Recyclables”) are generally the same as those effective March 1, 2007 - with the inclusion of plastics #3 through #7? This is important to know because of the requirements of flow control and requirements of Section 202 and particularly Section 401. We really should know the substance of the missing exhibit re procedures because of the draconian procedures noted in Article IV. (Bethlehem)
	Response:	

4. Municipality to Supply Acceptable Solid Waste and Acceptable Recyclables (Section 202)

4.1	Comment:	Regarding sections 201 and 202: Public schools in Bethlehem are under the control of Regional School District 14 and not the Town of Bethlehem. If Woodbury (the other member of RSD 14) does not become a member of the new CRRA and Bethlehem does, would Bethlehem be expected to be required to send “acceptable recyclables” from the public schools? We might not have any legal right to do so (but I am not a lawyer). (Bethlehem)
	Response:	

4.2	Comment:	Section 202(f). The Borough is concerned about additional costs it may incur in the event a designated facility (waste or recycling) is selected by CRRA; second, the Borough would require some options including, at a minimum, a reasonable amount of advance notice of the inability to utilize the designated site(s) as well as the ability to rescind the agreement. (Naugatuck)
	Response:	
4.3	Comment:	Can a town sign a Tier I renewal MSA without committing its recyclables? (Lyme)
	Response:	

5. Flow Control Obligations (Section 202)

5.1	Comment:	Section 202 and Section 401. The Town will be required to adopt a Flow Control Ordinance. This will be an ordinance that sets out the Town's requirements to deliver a certain amount of waste to the CRRA. The CRRA should give us a sample or suggested Ordinance to review. (East Hartford)
	Response:	
5.2	Comment:	Section 202: The Agreement requires the enactment of a "flow control ordinance". This is intended to enlist the enforcement powers of the Town to ensure that all businesses, contractors, and residences comply with the obligations to transmit all of the Town's waste to the CRRA facility. It does not appear that Wethersfield or other towns currently have such an ordinance. CRRA should provide a proposed sample ordinance that it would deem acceptable. (Wethersfield)
	Response:	

6. Compliance with Requirements (Section 204)

6.1	Comment:	Section 204: CRRA can use its “sole but reasonable discretion” in deciding whether the waste provided to it from the Town is acceptable and complies with the contract requirements. There is an opportunity for a town to object to such a decision, and to ultimately have a hearing before CRRA. Of course, an independent hearing officer process would be preferable. In the case of State agencies, it is common for the agency to decide an administrative appeal of its own decision. However, in that situation, there is usually an opportunity for a further appeal to the courts under the Uniform Administrative Procedures Act. The fact that there is no administrative appeal available in the situation suggests that there should perhaps be a provision for an impartial, third party hearing officer and an administrative appeal process. (Wethersfield)
	Response:	

7. Force Majeur (Section 206)

7.1	Comment:	Section 207. This provision indicates that if there is a Force Majeur event, and CRRA cannot process waste where it normally does, then the Town has to pay all additional costs. This makes sense for true force Majeure events (floods, hurricane, etc.). It does not make sense for strikes and labor problems. Also, there should be a time limit here. I am concerned that if there is such an event, and CRRA decides to re-build (or to take its time rebuilding) the Town would incur higher waste disposal costs for an extended period of time. (East Hartford)
	Response:	

8. Effective Date; Duration of Contract; Extension (Section 207)

8.1	Comment:	I would like a contract period in excess of the five years which you have proposed. A ten year contract with an automatic ten year extension that could be exercised by the Town would be more in line with my concept. I know you understand that one of the major factors that towns will be considering is the tip fee. When do you expect to be able to give a concrete proposal regarding the fees? I expect to have completed my review of the Draft MSA within the next several days at which time I will provide you with my comments. (Canton)
	Response:	
8.2	Comment:	Section 207 Term: The initial term is six years from the “commencement date” of 11/16/2012. (p. 3) The Agreement will expire (there is no automatic renewal) unless the town provides written notice of its intent to extend the Agreement 12 months prior to the expiration date (11/20/18). There is one 5 year extension (through 2023) available in the contract. Length of term is a concern. (Wethersfield)
	Response:	

9. Budget (Section 301)

9.1	Comment:	Section 301. This provision talks about how the budget will be set. To fully protect municipalities, CRRA should set up an advisory Board comprised of representatives of the various participating municipalities, which municipal representatives would play an active role in the CRRA management and budget process. As drafted, there does not appear to be any municipal participation in the budget process. (East Hartford)
	Response:	

10. Disposal Fees (Section 302)

10.1	Comment:	The entire fee schedule is based on a pre-determined yearly tonnage amount for “Acceptable Waste.” Acceptable Waste does not include recyclables. Under section 302 there is a minimum amount of “Acceptable Waste” tonnage that must be met each year by each Town. Go under that amount and a Town pays a penalty (the Town will pay a higher rate on the difference between the “Acceptable Waste” sent to CRRA and the Town’s annual tonnage commitment). So, there seems to be no financial incentive to substantially increase recycling efforts as a reduction in “Acceptable Waste” will cost the Town money. The only incentive for recycling is that it saves money if the Town is at risk of going over the annual contracted tonnage of Acceptable Waste. There is provision that charges the Towns a higher contractual rate if the Town goes over its tonnage by 5%.(East Hartford)
	Response:	
10.2	Comment:	Section 302(b). This provision highlights the cost issues for Towns. Once the budget is set, all Towns are on the hook to make certain that revenues meet expense. If the revenue from one year is not sufficient to meet expense, the shortfall is added to the next year’s budget. If the contract term has ended, a Town will be assessed for shortfalls. As indicated above, there appears to be no financial incentive for the Town to generate less Acceptable Waste. Towns should ask CRRA how they plan to work with Towns as they send less and less acceptable waste to CRRA. For instance, does CRRA have a plan in place to save costs by mothballing facilities, or reducing staff/subcontractors etc? This is why it is important to have an active group of Town executives acting in an advisory role to CRRA. (East Hartford)
	Response:	
10.3	Comment:	Section 302 Disposal Fees: The draft does not contain specifics on the pricing. This will be included in the final offer in October. The MSA provides that the Town has the right to terminate the Agreement if the Disposal Fee ultimately exceeds certain dollar amounts. (Wethersfield)
	Response:	

11. Sharing of Surplus (Section 303)

11.1	Comment:	Section 303. The question of whether a surplus exists should not be left to the sole discretion of CRRA. Also, there is a harsh penalty if a municipality is not in good standing (i.e., they do not get the surplus). This seems unfair if a Town complies with the contract for 4 years and in the 5 th year falls short. There should be some method to pro-rate the surplus based on the years that a Town is actually in good standing. (East Hartford)
	Response:	
11.2	Comment:	Section 303 Sharing of Surplus: Tier 1 towns will share in the surplus, if any. Tier 2 towns will not. This should be equalized. (Wethersfield)
	Response:	

12. Most Favored Nation (Section 304)

12.1	Comment:	Section 304 Most Favored Nation: The intent of this provision is that no other Towns will be offered lower rates by CRRA. This section must be reviewed and modified. (Wethersfield)
	Response:	

13. Rescission of Tier 1 Benefits (Sections 401 and 402)

13.1	Comment:	Section 401 Notice of Rescission of Tier 1 Benefits: Section 401 sets forth the circumstances whereby CRRA will rescind the Tier 1 benefits i.e.,: (1) where the town receives a Flow Control Notice and doesn't remedy it within 60 days or (2) receives two Flow Control Notices during any Contract year. This is not acceptable. (Wethersfield)
	Response:	
13.2	Comment:	Section 401. Flow Control: the Borough has no desire to be held responsible for Flow Control; certainly, the corresponding penalty provisions of Section 402 are not acceptable. (Naugatuck)
	Response:	

14. Liquidated Damages for Failure to Deliver the Annual Quantity (Section 403)

14.1	Comment:	It appears that CRRA is looking to obtain “an amount” of MSW and the towns will have a specific area which they must stay within--since they are to pay a penalty if they send to little or too much tonnage. Just how is the “annual quantity” (which will be an integral part of the contract) to be determined? (Bethlehem)
	Response:	
14.2	Comment:	Section 403 Liquidated Damages: Section 403 provides for liquidated damages of \$30 x the amount not delivered to CRRA by the Town if it does not meet the minimum amounts required by the Agreement. Also, if a town exceeds the maximum, then it must pay the costs and expenses for disposal of such excess amount (Section 404). However, both of these liquidated damages provisions only apply during a Contract year in which the town receives a rescission notice “or any subsequent contract year.” These provisions need further clarification. (Wethersfield)
	Response:	
14.3	Comment:	Section 403. this provision is not acceptable to the Borough.; the rationale for an “upper limit’ needs to be discussed further (why would CRRA limit the “upper” to 10%-we are currently in a “down” economy - a maximum of 10% increase seems quite small in the event of even a small recovery?). (Naugatuck)
	Response:	

15. Municipality Responsible for Additional Delivery Costs (Section 404)

15.1	Comment:	Section 404; this provision is likewise not acceptable to the Borough for the previous reasons set forth above (does not more waste = more \$ for CRRA?). (Naugatuck)
	Response:	More waste does equal more revenue to a point, but once the plant’s capacity is reached waste must be diverted to other facilities at a cost of up to \$90 per ton. In that scenario, if CRRA is charging \$59 per ton it would lose \$31 per ton of waste diverted.

16. Municipal Right to Object to Rescission Notice (Section 406)

16.1	Comment:	Right to Object to Rescission Notice: There is a right to a hearing before a CRRA hearing officer. The hearing officer should be an independent party. (Wethersfield)
	Response:	

17. Failure to Pay Invoice (Section 502)

17.1	Comment:	Section 502 contains a late payment charge that seems excessive. (Wethersfield)
	Response:	

18. Indemnification (Section 702)

18.1	Comment:	There should be fair and equitable indemnity provisions in the contract. (East Hartford)
	Response:	
18.2	Comment:	Section 702 Indemnification: The agreement contains a broad indemnification provision requiring that the Town hold CRRA harmless for all claims “arising out of, related to or with respect to this Agreement”. There is no indemnification for willful misconduct or negligence of another party where it is “adjudged” that such conduct caused the loss. The indemnification provisions should be modified so as to be mutual and reciprocal with each party indemnifying the other for its own negligence. (Wethersfield)
	Response:	

19. Default (Section 703 and 704)

19.1	Comment:	The default provisions do not seem equitable. See Section 703 and 704. For example, if the Town is in default, CRRA can stop taking the Town's waste and force the Town to continue to pay its contractual waste rates. If CRRA is in default, as long as they "act promptly" (not much of a standard) to remedy the default the Town must continue to send its waste to CRRA and pay. Both sides should have a specific period of time within which to remedy before any rights kick in. (East Hartford)
	Response:	

20. Disputes on Billing (Section 707)

20.1	Comment:	Section 707 Disputes on Billing: In the event of a billing dispute, the Agreement requires that the Town must nevertheless pay the full amount of the bill, provided CRRA written notice as well as a full statement of the grounds for the billing dispute within 30 days of the Due Date. Consideration should be given, in the event of a good faith billing dispute, to the provision that would allow a municipality to pay less than the full amount pending resolution of the dispute. See, e.g. C.G.S. 12-117a which allows payment of less than the full amount due pending resolution of a tax appeal. (Wethersfield)
	Response:	



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Respectfully submitted,

Paul Nonnenmacher
Director of Public Affairs

**SUMMARY OF MATERIAL PROVISIONS OF TIER 1 AND TIER 2
MUNICIPAL SERVICE AGREEMENTS (“MSAs”)**

PROVISION	TIER 1 MSA	TIER 2 MSA
Requires municipal flow control ordinance and municipal enforcement of ordinance	Yes ¹	No
Term	5 ½ years (11/16/12 – 6/30/18)	Municipality choice of 2 to 5 years
MSW & recyclables deliveries	All Acceptable MSW and residential and municipal Acceptable Recyclables generated within the corporate boundaries of the municipality inclusive of MSW and recyclables collected by commercial haulers through subscription services.	All Acceptable MSW. Municipality may opt to deliver Acceptable Recyclables provided that municipality delivers all Acceptable Recyclables under its control.
MSW delivery cap	No	Yes
Minimum annual delivery commitment (put-or-pay)	No	Yes
Liquidated Damages for MSW tons not delivered	No	Yes, \$30/ton
MSW tip fee/ton	<ol style="list-style-type: none"> Based on net cost of operation but always at least 5% less than tip fee established for Tier 2 MSA; Tip fee established by CRRA Board of Directors no later than January 31 of each Contract Year for the upcoming Contract Year; Agreement provides a ceiling price for each contract year; Municipality may opt out of Agreement if established tip fee exceeds ceiling price contained in the Agreement for the respective Contract Year 	<ol style="list-style-type: none"> Based on net cost of operation but always at least 5% more than tip fee established for Tier 1 MSA; Annual tip fee will be specified in the Agreement
Recyclables tip fee/ton	\$0.00	\$0.00 ²
Recyclables marketing revenue share	Yes	No
Sharing of CRRA Board of Directors declared surplus funds	Yes	No
Most favored nation status	Yes	No

¹ If a municipality executes a Tier 1 MSA but fails to implement and enforce flow control, such Tier 1 MSA will be reduced to a Tier 2 MSA and all Tier 2 MSA provisions shall apply including minimum annual delivery requirement, delivery cap, liquidated damages, loss of surplus funds sharing, loss of recyclables revenue share, etc.

² Tip fee for recyclables is \$0.00/ton only if municipality delivers all Acceptable Recyclables under its control. Tip fee will be a negotiated rate should municipality opt to deliver Acceptable Recyclables on a “spot” basis.