



INVESTIGATIVE REPORT OF THE ATTORNEY GENERAL

**REGARDING THE INVESTIGATION OF TRANSACTIONS
BETWEEN CONNECTICUT RESOURCES RECOVERY AUTHORITY
AND CWPM INC.**

MAY , 2005

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I. EXECUTIVE SUMMARY

In June 2001 the former management of CRRA terminated its contract with the Metropolitan District Commission to operate CRRA's Watertown and Torrington transfer stations. A new contract to operate those transfer stations was executed with CWPM, a company formed by the 2001 merger of Manafort Brothers-CWP and PM Services, Inc. CRRA's payments to CWPM under the contract were to be more than \$1.5 million per year, with additional payments on a per ton basis for the transportation of waste from the transfer stations to disposal facilities – a savings projected by the CRRA to be approximately \$1.6 million per year compared to the contract it previously had with the Metropolitan District Commission.

A key provision in the new CWPM contract illegally transferred ownership and title on almost \$1 million of trucks and equipment to CWPM, giving CWPM the unrestricted use of the transferred equipment for non-CRRA projects, a valuable business opportunity for CWPM. CWPM's cost for this transferred equipment was minimal, because CRRA's former management agreed to reimburse CWPM for ninety percent of the ownership costs of the equipment, including insurance, property taxes and registration fees. In return, during the two years this contract was in effect, CRRA received little or no compensation and suffered an economic loss on that aspect of the contract transferring the trucks and equipment to CWPM.

No documentation or analysis was ever developed by CRRA's former management to support either the legal or the financial basis for this transfer. No documentation existed authorizing CWPM to use the transferred equipment for non-CRRA purposes. No documentation was available to identify the amount of time the CRRA equipment was used by CWPM for non-CRRA projects. To the extent CRRA's equipment was used on non-CRRA projects, CWPM received an economic bonus and CRRA suffered an economic penalty, as the non-CRRA work reduced the useful life of CRRA's equipment due to the additional wear and tear on the equipment and trucks.

Moreover, this arrangement contradicted the facts stated in the RFP, misleading other potential bidders and depriving the CRRA of possibly more favorable offers and greater overall contract savings. The RFP issued in 1999 for this contract specifically stated that ownership of the trucks and equipment would remain with the CRRA. Other companies that responded or could have responded to the RFP were thereby denied the opportunity to evaluate and incorporate into their bids the economic worth of the transfer of equipment CRRA eventually made to CWPM, the reimbursement of ownership costs by the CRRA, and the unrestricted ability to use that equipment on non-CRRA projects.

CRRA's 2001 additions to the provisions of the 1999 RFP denied those companies and the CRRA the opportunity to present and consider proposals that may have been more advantageous to the CRRA than the contract with CWPM.

Incredibly, CRRA's former Board of Directors never approved the transfer of CRRA equipment to CWPM.

In June 2003, a new CRRA Board – appointed pursuant to legislation enacted in 2002 -- aggressively sought to rectify this situation and renegotiated its contract with CWPM, regaining title to the equipment. While a good first step, others are appropriate:

- CRRA should determine the continued validity of its contract with CWPM, considering that the transfer of trucks and equipment was not approved by CRRA's Board of Directors and other bidders were denied the opportunity to consider this vital information in making their bid proposals;
- CRRA should attempt to fully recoup the value of the equipment it is now leasing to CWPM;
- CRRA should issue RFP's for all future contracts to operate CRRA's transfer stations.

Based on our investigation, we reach the following conclusions:

- The former CRRA management did not have legal authority to transfer title to its equipment to CWPM, LLC, because CRRA obtained essentially no consideration for the transfer.
- The total financial benefit to CRRA obtained in return for its transfer of approximately one million dollars in equipment to CWPM, appears to have been only \$7,000 over a two year period from July 2001 to June 2003. CRRA therefore received essentially no compensation or consideration for either the transfer of the vehicles or for the granting of two years of unrestricted use of the vehicles to CWPM.
- The transfer of the CRRA equipment to CWPM was never approved by the full Board and was in contravention of the Board's policies and procedures.

- The former CRRA management agreed to reimburse CWPM for ninety percent of the ownership costs of the transferred trucks and equipment, the remaining ten percent being paid by CWPM, “saving” CRRA approximately \$30,865 from July 2001 to June 2003. However, since title was transferred, CWPM should have been responsible for 100% of the ownership costs.
- Moreover, although CRRA is exempt from property taxes, CRRA’s former management agreed to reimburse CWPM for ninety percent of CWPM’s property taxes on the transferred trucks and equipment. Thus, any potential “savings” on CRRA’s ownership costs were offset by the \$23,979 CRRA paid in property tax reimbursements to CWPM between July 2001-June 2003 that CRRA would not have incurred without the improper transfer of ownership.
- With the transfer of title, Manafort received unrestricted use of the equipment on non-CRRA projects, a clear benefit to CWPM. Both the 1999 RFP and the 2001 contract prohibited the use of the equipment for non-CRRA purposes without the specific written authorization from CRRA. Neither CRRA nor CWPM produced any written authorization for the non-CRRA use of trucks and equipment, nor any documentation of the percentage of time the CRRA vehicles were used for CRRA purposes compared to non-CRRA purposes.
- Although CRRA’s former management indicated that one of the driving forces for the transfer was to avoid increased costs involving accident claims on trucks owned by CRRA, but operated by its contractors, no contemporaneous documentation or analysis substantiating any savings that would accrue to CRRA has been located or provided to support the actions of the prior management. In fact, no documentation developed at the time of the transfer has ever been provided which would even substantiate the actual value of the transferred equipment.

- CRRA's equipment was used by CWPM for non-CRRA work. This was a substantial benefit to CWPM even though it claims it did not take depreciation on the vehicles and equipment or receive depreciation related tax benefits. In exchange for title and the unrestricted use of approximately one million dollars worth of CRRA equipment, CWPM paid only 10%, about \$30,865.00, of the ownership costs of the vehicles (insurance, property taxes and registration fees) during the two year period CWPM owned the equipment.
- Other potential bidders to the 1999 RFP did not have the benefit of considering the transfer of ownership of CRRA equipment to them, reimbursement for ownership costs, or the unrestricted ability to use CRRA's vehicles and equipment for non-CRRA projects. The bidding process, therefore, was flawed as other potential bidders lacked the opportunity to incorporate the benefits of ownership and unrestricted use of CRRA equipment in their bids.
- CRRA's new management has entered into a contract to take back title to the vehicles, with CWPM leasing the equipment for \$4,138.89 per month. The lease also provides CWPM with an option to purchase the tractors and trailers for a lump sum payment of \$149,000 dollars at the end of the lease in 2006. While the current lease is substantially better than the terms of the 2001 contract, the amended contract does not recover the full current estimated value of the trucks at the end of the contract period.
- CRRA reimbursed CWPM approximately \$270,321.00 in ownership costs during the period July 2001 through June 2003. Because title to the equipment was returned to CRRA on July 1, 2003, CRRA has now ceased reimbursing CWPM for property taxes and registration costs.
- As the 2001 transfer of title of CRRA equipment raises serious questions with respect to the accounting treatment of the equipment transferred from CRRA to CWPM, we are referring this aspect of our investigation to the Connecticut Department

of Revenue Services and the U.S. Internal Revenue Service for further review.

We recommend that CRRA should (1) consult with its General Counsel on the current validity of its contract with CWPM, considering that the CRRA Board of Directors did not approve the transfer of trucks and equipment to CWPM and other bidders lacked relevant information in developing their bid proposals; (2) seek to reopen negotiations with CWPM to fully recover from CWPM the value of the CRRA trucks and equipment CWPM is now leasing and (3) issue RFP's to invite competitive bids on all future contracts for the operation of its transfer stations.

II. BACKGROUND

In 1984, MDC and CRRA entered into a twenty-seven year contract in which MDC agreed to operate certain Authority-owned facilities, including the Watertown and Torrington Transfer Stations. In 1999 a dispute arose between the parties. CRRA issued a Request for Proposals ("RFP's") soliciting proposals from third parties to perform all of the services performed by MDC under the 1984 contract. Manafort Brothers was one of those parties who responded to the RFP. The RFP was published on March 1, 1999. The RFP contained three component activities: (1) transfer stations and transportation; (2) landfill operations; and (3) waste processing operations. Though Waste Management initially appeared to have been the low bidder in response to the March 1999 RFP, Manafort Brothers was awarded the operation of the Torrington and Watertown transfer stations and the transportation component after a second round of bidding between Manafort Brothers and Waste Management. Neither the 1999 RFP nor the contract award approved by the CRRA Board included the transfer of CRRA assets, such as tractors, trucks and trailers. MDC was given an opportunity to respond to the RFP, but indicated to CRRA that it believed CRRA's actions were in violation of the 1984 contract, not due to expire until 2011. CRRA responded that it was exercising its right under the contract to utilize "replacement workers" based upon concerns for the overall cost effectiveness of MDC's performance under the contract. MDC objected, asserting that the contract did not permit CRRA to totally replace MDC. Pursuant to the contract, the parties submitted the dispute to arbitration.

On May 19, 2000, the Arbitration Panel held that the contract did not allow the replacement of whole functions currently provided by MDC. Rather, the Panel found that Article V § 3 of the contract was designed to address potential union issues and performance problems in smaller units of work, rather than pertaining to whole functions performed by MDC. On June 11, 2001, Robert Wright, as President of CRRA, and Jason Manafort, as owner of CWPM, signed a contract that mirrored the terms of the

1999 RFP awarded to Manafort Brothers, but added dramatically new language not contained in the RFP. The new contract language transferred ownership of certain equipment (trucks and trailers) to CWPM upon the issuance of an Activities Election Notice authorizing work to be commenced at the Torrington and Watertown Transfer stations. On July 10, 2001, CRRA gave MDC written notice that it intended to replace MDC's workers at the Torrington Transfer station at 12:01 am on July 11, 2001. MDC immediately sought intervention by the Panel. Two of the three members of the Panel issued an interim order enjoining CRRA from replacing MDC's workers at the Torrington station pending a hearing before the Panel. CRRA ignored the Panel's interim order and had MDC's workers removed. MDC filed an Application for Order to Proceed with Arbitration pursuant to Conn. Gen. Stat. § 52-410. The Application further sought a superior court injunction or an order enforcing an arbitration award directing CRRA to cease interfering with MDC's operation and transportation of material to and from the Torrington Transfer Station. The court held that CRRA had made out a prima facie claim of both cost and responsiveness factors warranting a replacement of MDC workers. The court held that CRRA also established that it could negotiate a much more favorable contract in the present marketplace. The court ruled in favor of CRRA and denied MDC's motion for injunctive relief.

This office received information from a whistleblower regarding alleged improprieties by CRRA concerning a 2001 contract between CRRA and Connecticut Waste Processing, a division of Manafort Brothers, Inc. ("Manafort"). In our meeting with the whistleblower, it was asserted that the agreement reached between CRRA and Manafort in 1999 did not allow for the transfer of CRRA-owned tractors and trailers to the successful bidder, which allegedly was a new component inserted in a later agreement reached between CRRA and the newly formed CWPM. Conn. Gen. Stat. § 22a-265, which delineates the general powers of the Authority, does not expressly authorize CRRA to transfer or otherwise dispose of state property. Subsection (3) states that the Authority shall have the power to "make and enter into any contract or agreement necessary or incidental to the performance of its duties and execution of its powers". Further, subsection (10) states that CRRA has the power to "purchase, lease or rent such real or personal property as it deems necessary, convenient or desirable." Although it may be argued that CRRA had the implicit authority to dispose of CRRA property, including by sale, such disposition of property would also implicitly require receipt of adequate compensation for said transfer. A review of the stated rationale for the transfer, however, casts grave doubt on the existence of any valid consideration received by CRRA in exchange for transferring title ownership of the rolling stock to CWPM.

III. ANALYSIS OF THE REQUEST FOR PROPOSALS AND SUBSEQUENT ADDENDUMS

The RFP was issued on March 1, 1999. Thirty (30) contractors expressed interest in submitting proposals, however, only four contractors actually submitted proposals in response to the RFP: Allied Waste Industries, Inc. (dba McCauley Enterprises); Connecticut Waste Processing (now known as "CWPM"); Somers Sanitation; and USA Waste of Connecticut/North East Waste Systems, Inc (now known as "Waste Management"). The RFP called for one contractor to provide services at all four transfer stations, utilizing tractors, trailers and other equipment supplied by CRRA, although title to the vehicles would remain with CRRA. The Contractor was to be responsible for repair and maintenance of the vehicles, and would bear the cost of such repairs and maintenance. The RFP also stated that the Contractor was only allowed to use the vehicles and other equipment for activities authorized and approved by CRRA in writing. In Addendum #1 to the RFP, CRRA stated that it intended to select a single contractor to perform the activities described in the RFP. In Addendum #2, CRRA stated that the agreement with the successful bidder will not confer ownership or proprietary rights on the contractor regarding the vehicles or other equipment. Further, the addendum stated that the Contractor was not authorized to depreciate any vehicles or equipment for any purposes whatsoever. Addendum #2 also stated that the equipment was to be used for RFP work and not for any other business activity. Addendum #3 stated that CRRA was the registered owner of the equipment. Neither the RFP nor any subsequent addendums to the RFP ever stated that title to the vehicles would be transferred to the successful bidder.

IV. ANALYSIS OF THE CONTRACT AND AMENDMENTS

Based on our own review of the CRRA Board minutes and transcripts provided to us by CRRA, it appears that the Board authorized a contract between CRRA and a "successful bidder" on March 15, 2001 insofar as the operation of the transfer stations and the transportation of waste, based upon the terms of the 1999 RFP. However, it appears that the March 15, 2001 Board authorization did not contain any language approving the transfer of trucks and other equipment from CRRA to CWPM based on the contract signed in June of 2001. It is our opinion, for the reasons stated below, that such an action, if legal at all, required Board approval.

Pursuant to the contract signed in June of 2001, CWPM agreed to provide services at the Watertown and Torrington transfer stations, including the hauling and disposal of waste at these stations. As was stated previously, the 1999 RFP upon which the Board awarded the contract to CWPM did not contain a provision transferring title of CRRA's

rolling stock (tractors and trailers) to CWPM. This transfer of title and ownership language was added to the contract after the Board voted to approve the contract in 1999, and after the Board approved entering into a contract for operation of the transfer stations and transportation of waste with a successful bidder on March 15, 2001. The value of the CRRA equipment transferred has been estimated to be more than one million dollars. Additionally, CRRA agreed to reimburse CWPM for much of the operation and maintenance expenses associated with the transferred equipment. While CRRA was entitled to a return of the equipment at the end of the contract period, the equipment's value at that time would be minimal.

In Section 2.10.1 of the CRRA-Manafort contract, entitled "Equipment Purchase – Torrington Transfer Station Operations Activity", the contract states in pertinent part:

"Upon receipt of an Additional Election Notice containing a Notice of Additional Activities Requirement for Activity B.3. – Transportation Services from the Torrington Transfer Station, Authority (CRRA) and Contractor (Manafort) shall cooperate in the prompt transfer of ownership of the equipment identified in Exhibit 5 for this Activity, from the CRRA to Contractor. In the event Authority does not elect to extend this Agreement for a fourth (4th) operating year, in accordance with Article 4, then Contractor agrees to pay Authority a lump sum of \$95,000.00 upon the expiration of the initial term for such equipment, which amount may be set-off from any amounts then due to Contractor by Authority. In the event Authority does not elect to extend this Agreement for a fifth (5th) operating year, in accordance with Article 4, then Contractor agrees to pay Authority a lump-sum of \$47,500.00 upon the expiration of the first option extension year for such equipment, which amount may be set-off from any amounts then due to Contractor by CRRA. Contractor agrees that such equipment and title thereto shall be returned to Authority in the event the Agreement or such Activity are terminated prior to June 30, 2004 for any reason and (a) shall be returned in the case of any termination other than by reason of a default by the Contractor, in as good a condition as existed when delivered by the Authority to the Contractor pursuant to this Section 2.10.1, ordinary wear and tear excepted, or (b) shall be returned in the case of a termination because of a default by the Contractor, in as good a condition as existed when delivered by the Authority to the Contractor...without regard to ordinary wear and tear. In lieu of returning equipment to the Authority pursuant to clause (b) in the immediately preceding sentence, the Contractor may deliver equipment having a value equivalent to the value of such equipment on the date delivered by the Authority to the Contractor pursuant to this Section 2.10.1. This paragraph shall survive termination of this Agreement".

Despite adding this transfer language to the contract, Section 9.2 of the contract

retains the RFP language which states that the agreement does not confer ownership or proprietary rights on the contractor regarding the vehicles or other equipment, as well as prohibiting the contractor from depreciating the vehicles or equipment or any part thereof for any purpose whatsoever. The contract also contains language at Exhibit I, section I which states that the contractor shall use the vehicles and equipment only for activities authorized and approved by CRRA in writing. The contract also added a new provision not contained in the RFP. In Exhibit #2 to the contract, it states that CRRA will provide compensation to the contractor for the cost of taxes, insurance and registration associated with the vehicles.

There were two amendments to the contract as well. On September 20, 2001, CRRA and CWPM agreed to amend the lump-sum prices in Section 2.10.1: \$95,000.00 was deleted and \$100,000.00 was substituted therefore; and \$47,500.00 was deleted and \$50,300.00 was substituted. On December 9, 2001, CRRA and CWPM amended the Agreement for a second time, including a provision for an Activities Election Notice to commence work at the Watertown transfer station as well as Torrington. The transfer of the vehicles for the Watertown station was also effective December 9, 2001. The contract specified that, if the Agreement was not extended for a fourth year, CWPM agreed to pay CRRA \$99,000.00 for the Torrington equipment and \$125,000.00 for the Watertown equipment; and if not extended for a fifth year, CWPM agreed to pay CRRA \$49,500.00 for the Torrington equipment, and \$62,500.00 for the Watertown equipment.

The new Chairman of CRRA, Michael Pace, decided to take action and regain ownership of the illegally transferred rolling stock for the Watertown and Torrington transfer stations. On May 15th, 2003, the new CRRA Board approved an unwinding of the previous amendment to the 2001 contract, which contained said truck title transfer language. Under this proposed new amendment, CRRA would recover title ownership of the rolling stock in question, and in return, allow CWPM to lease the same equipment under a two year extension to the original contract with the option to purchase the rolling stock at the end of the lease. Under the terms of the new amendment, CWPM would pay CRRA \$4,138.89 per month for the life of the extension and a lump sum payment of \$149,000 at the end of the contract in 2006. CRRA staff created the document labeled "CRRA/ CWPM Transferred Vehicles"; a valuation sheet which lists valuations assigned to the Torrington and Watertown tractors and trailers according to their blue book values in 2001, 2004, and 2006.

Based on the numbers provided by CRRA, the rolling stock now being returned to CRRA, as per the new amendment to unwind the original 2001 title transfer, will possess a blue book value of \$ 405,891 dollars in 2006. Per the language of the amendment, CRRA will allow CWPM the option to purchase the same rolling stock fleet at a price of

\$ 298,000 dollars, an amount significantly above the 2001 purchase provision. Half of this amount will be paid by CWPM to CRRA in monthly lease payments over the course of the two-year extension until the end of the contract in 2006 and CWPM will pay the remaining lump sum of \$ 149,000 dollars at the end of the contract in 2006. The terms of the new contract are a significant improvement over the 2001 contract, even though the new contract does not enable CRRA to recover the full amount of the vehicles' expected worth in 2006, according to CRRA's own May 2004 evaluation numbers.

V. WITNESS INTERVIEWS

a. JOHN CLARK

John Clark, formerly Director of Operations for CRRA, was interviewed by the Office of the Attorney General. He stated that as early as 1999, CRRA had serious concerns with respect to costs associated with a perceived increased risk in property liability claims given the fact that CRRA owned equipment was being driven by MDC drivers. In a memo Clark prepared for the Policies and Procurement Committee in August of 2002, he stated that, as an example of these increased risks, MDC's drivers had at least nine accidents in calendar year 2000 alone, and that additional accidents occurred in 2001. Clark offered no figures in the report to substantiate the alleged increased liability risk. In the memo, he further stated:

"CRRA's operations, risk management, and legal staff were concerned about continuing the practice of having a contractor [MDC] operate a CRRA owned and insured vehicle fleet. CRRA's operations staff had the further concern that, since the Contractor was receiving a fleet that had aged further in the 2 years since the original procurement (further reducing its value), much of the then-existing CRRA fleet would remain on the road for less than the full term of the contract. It was expected that the vendor would rapidly begin returning unrepaired vehicles to CRRA. In a further effort to insulate the participating municipalities from this risk a contractual mechanism was negotiated to further remove CRRA from liability associated with the operations."

According to Clark, as a part of the 2001 deal with CWPM, to avoid having CWPM employees operate CRRA vehicles, and to reduce CRRA's exposure to liability from such operation, CRRA agreed to turn over title to the vehicles associated with the Torrington & Watertown transfer stations. Clark confirmed during his testimony under oath, and documents provided by CRRA corroborate, that CRRA also agreed to reimburse CWPM for approximately 90% of the costs CWPM would have to assume as owners of the equipment: approximately \$6,115.00 per tractor per year, and \$1,579.00 per trailer per year.

Clark replaced Dave Brown as the Director of Operations in January 2001. Previous to that Clark had served CRRA as Director of Development-Jet Turbines and previous to that began his career at CRRA as a facilities engineer in the Operations department. Clark stated he had a minor role in the early dealings between CRRA and Manafort Brothers in 1999 when the RFP was published with respect to the waste processing component. Clark testified that he became the point person for CRRA after the arbitration ruling had been released in late 2000. Despite a 1999 CRRA press release announcing Waste Management as the then low bidder by \$ 300,000 dollars, Clark stated CRRA requested a second round of bidding. In the second round of bidding, Manafort Brothers' bid came in lower than that of Waste Management. Clark confirmed that the arbitration between CRRA and the MDC interrupted the July 1st, 1999 draft contract from being completed. Clark testified that the arbitration decision came out in late 2000, allowing CRRA to replace MDC on a piecemeal basis.

Clark stated the liability concerns started with him and also CRRA's risk manager, Lynn Martin, based on a discussion in 2000, and not CRRA's in-house counsel. Clark stated that Martin was always nervous with outside contractors utilizing CRRA-owned equipment. Clark stated the concerns were two-fold in that CRRA wanted to rid itself of potential liability posed by outside contractors driving CRRA-owned equipment, and operational concerns with CWPM not having an incentive to properly maintain equipment near the end of a contract in which CRRA still owned the rolling stock. Clark testified that the "potential liability" concerns arose out of several incidents involving CRRA equipment being driven by MDC drivers.

In a document obtained from CRRA, Clark stated that, as an unsolicited alternate, Manafort's 1999 submittal included a proposal to purchase all of the then-existing truck fleet for a lump sum of \$3,250,000.00. For the Watertown and Torrington fleets, the price would have been approximately \$1,106,500.00. Further, CWPM would have charged an additional \$2.77 per ton increase of the tipping fee. Clark stated that CRRA analyzed the unsolicited alternate and concluded there was no economic advantage at that time to sell Manafort the fleet, particularly considering the additional per ton cost associated with the deal. During his testimony, Clark stated that he in fact first approached Jason Manafort with the proposal to transfer title ownership of CRRA's rolling stock to CWPM, despite CRRA having rejected the above-referenced unsolicited alternative. Clark stated CRRA rejected the unsolicited alternate because it would have "been a loser of around two million [dollars]." Clark stated the negotiations leading up to the signing of the June 11, 2001 contract between CRRA and CWPM were deliberate and not rushed as had been indicated by Jason Manafort's testimony. Clark indicated that CRRA staff took their time and actually took longer than the then CRRA Board had

wanted. Clark testified that he had not felt undue pressure from either Peter Ellef, then Chairman of CRRA's Board, or Robert Wright, former CRRA President, to complete the contract, but that he did feel pressure to achieve two million dollars in projected cost savings desired by Ellef and the Board in moving five million dollars in programs away from MDC. Further, Clark stated he did not initially obtain approval from Wright prior to approaching Jason Manafort with the idea of transferring the rolling stock titles. Ultimately, Clark did get Wright to sign off on the title transfer after "walking him through" the reasons as to why he felt it was a good business decision. Clark believed Wright really did not look at the deal as closely as he should have or could have but that Wright was putting his faith in Clark.

Clark repeatedly stated he believed the truck transfer to be a "revenue neutral" deal and that CRRA was getting value, in return for transferring CRRA-owned equipment estimated to be worth over a million dollars, since the trucks were near the end of life in valuation to the point of being insignificant compared to the overall contract savings. Clark stated CWPM requested that CRRA reimburse CWPM for the ownership costs around the time CRRA approached Jason Manafort with the title transfer idea. Clark testified he was not involved in the new lease amendment except that he took the first step in asking Manafort to consider a lease option to get the titles back.

In conclusion, Clark believed his decision to transfer the titles was the right business decision at the time but that in hindsight he would probably do some things differently if done today.

b. JASON MANAFORT

Jason Manafort testified under oath that his first contact with CRRA, with respect to obtaining business from CRRA, was in 1996 or 1997 when he requested MDC pricing from CRRA under the Freedom Of Information ("FOI") Act. Subsequently, Manafort sent a letter to the then CRRA Board informing them that CRRA, in his opinion, was being overcharged by MDC for waste services and operations being performed by MDC at that time. Despite the fact he had never filed an FOI request from a state entity to obtain competitor pricing, Manafort stated no one prompted him to submit the FOI request, but that he thought of the idea himself to obtain new business.

Manafort stated he first became aware of CRRA's desire to move business away from MDC to an outside vendor when CRRA published the March 1, 1999 RFP. Manafort stated neither he, nor any other Manafort representative, had any prior contact with then CRRA Chairman Peter Ellef or CRRA President Robert Wright prior to the

March 1, 1999 RFP, though he did have some contact with Wright after the contract had been awarded on June 11, 2001.

Manafort testified that his primary contact with CRRA during the 1999 RFP process, early negotiations, and arbitration, was Dave Brown, CRRA's then Operations Division Head, and Clark's predecessor. In response to a March 31, 1999 "Request for Final Clarifications" letter, Manafort testified that Brown presided over a "Final Clarifications Meeting" at CRRA, presumably sometime between April 1999 and June 1999 to review the final details with the two remaining low bidders, Manafort Brothers and Waste Management. In attendance were Brown, two CRRA Board members, Jason Manafort, Angelo Manafort, and representatives from Waste Management. Jason Manafort, though not entirely sure, did not believe Wright was in attendance at this meeting.

Manafort testified that it was his belief at the time of the July 11, 1999 draft contract between Manafort Brothers and CRRA that Manafort Brothers was only going to be using CRRA's equipment and not own them. Additionally, Manafort stated he included the unsolicited Option 2 offer to purchase CRRA's entire rolling stock for \$ 3.25 million dollars in response to CRRA's 1999 RFP, as part of an aggressive sales pitch, which also included recovering the cost of the purchase of the trucks through an increase in the per ton hauling fee. Manafort stated the July 1, 1999 draft contract, signed only by Jason Manafort and not CRRA, was awarded to Manafort Brothers pending the final outcome of the arbitration between CRRA and MDC which had prevented the completion of the contract. It was Manafort's understanding the July 1, 1999 draft contract had been approved by CRRA's Board.

Manafort testified that in February 2001, Manafort Brothers-CWP division separated from Manafort Brothers and merged with PM Services, Inc., a company owned by Mr. Paul Matteo. The new legal entity was named CWPM, Inc.

Manafort testified that sometime in mid-April 2001, Clark called him and first proposed the idea of transferring title ownership of the CRRA rolling stock to CWPM to address certain liability concerns, raised by CRRA's in-house counsel Ann Stravelle-Schmidt, with having outside contractors driving CRRA-owned equipment. Manafort stated his understanding of the title transfer was that CRRA was assigning risk to CWPM and that Clark had mentioned some accidents involving MDC drivers and that a title transfer would eliminate CRRA's risk relating to contractors utilizing CRRA-owned equipment. Manafort also stated that Clark had operational concerns in having MDC continue to operate CRRA-owned equipment. Although the arbitration ruling in favor of CRRA was released in May 2000, Manafort testified he first became aware of the end of the arbitration when Clark

notified him via phone a couple weeks before the June 11, 2001 contract was signed between CRRA and the newly formed CWPM. Clark had replaced Brown as CRRA Operations Division Head.

Manafort stated that he signed the June 11, 2001 contract as President of CWPM and Robert Wright signed on behalf of CRRA. Manafort stated that while CWPM did receive title ownership of the CRRA rolling stock for Torrington and Watertown, and that the title transfer was not part of the 1999 RFP, he did not believe the June 11, 2001 contract was materially different from the July 1, 1999 draft contract between CRRA and Manafort Brothers. Manafort further testified that CWPM did not pay monies upfront for the rolling stock because the original intent of the July 1, 1999 draft contract was to use the trucks and CWPM only took possession of the titles to the trucks after CRRA's Clark requested CWPM do so due to the expressed liability and operational concerns raised by CRRA. Manafort stated that Clark did not indicate whether the incidents involving MDC drivers resulted in increased insurance premiums or an increase in liability exposure.

Of critical importance is the fact that Manafort acknowledged that the title transfer component would have affected his overall 1999 bid amount, but only because the rolling stock would have had three years less mileage and thus would have been worth more. Manafort stated that the overall effect of the title transfer was minimal, but acknowledged it may have been possible for the other bidders to have come in lower had they been able to include the ownership transfer component as part of their original 1999 bids. Manafort testified he did not believe CWPM actually owned the rolling stock despite the transfer of ownership title from CRRA to CWPM due to certain contract provisions that allowed for CRRA to regain title ownership at any time. Such provisions allowing for CRRA to regain title included breach of contract or a reversed arbitration ruling. Manafort further testified he did not believe CWPM was receiving any real value for the title transfer.

Manafort stated sometime in April 2001, CWPM through informal phone discussions with CRRA's John Clark and Robert Constable, drafted an equipment valuation sheet for the Torrington rolling stock to be used as a template for both Torrington and Watertown to be able to create an estimated buyout price for those stations' rolling stock at the end of the contract. Manafort stated that no outside sources were consulted and that no extensive analysis or research was conducted; except perhaps a used truck magazine. The reason for this was due to the frenzied atmosphere of completing the deal at that time. Manafort testified that the valuation assigned to the rolling stock was \$ 25,000 dollars per truck and \$ 25,000 dollars per trailer, for an agreed upon total value of \$1,050,000 for both stations' 42 pieces of rolling stock. When asked if any CRRA representatives expressed any concerns with respect to the June 11, 2001

contract possessing materially different terms from the 1999 RFP, Manafort stated no one from CRRA expressed any concerns to him as a result of the likelihood of a price increase if CRRA put the contract back out to bid.

Manafort also acknowledged that CRRA was reimbursing CWPM for 90% of the ownership costs of the rolling stock transferred from CRRA to CWPM. Such ownership costs included insurance, property taxes and registration fees. He testified that this was a 10% "discount" off of CWPM's actual ownership costs. Manafort further testified that such a discount was given because CWPM acknowledged, and CRRA agreed, that CWPM would be using the CRRA trucks and trailers for non-CRRA work. This understanding was oral and was not part of the written 2001 contract. Manafort also stated that ownership of the trucks and trailers was not part of the 1999 RFP and thus his previous bid did not reflect these costs. Manafort stated the per tractor reimbursement was \$ 6,115.00 dollars per year, and the per trailer reimbursement was \$1, 579.00 dollars per year. He stated that CRRA initially planned to compensate CWPM for 100% of the ownership costs, but once Manafort stated that he would be using the vehicles for non-CRRA work as well, the rate of compensation was negotiated down to 90%. The documents obtained from Manafort revealed that CWPM was reimbursed approximately \$270,321.00 by CRRA between July 2001 and June 2003.

Manafort originally testified that CWPM was not depreciating the rolling stock. However, he subsequently changed his testimony to state that a depreciation schedule had been prepared in which CWPM depreciated the rolling stock \$ 10,555 dollars per month for a total of \$ 450,000 as of April 30, 2003, for a total value of \$650,000 dollars. Manafort stated CWPM's accounting firm, Blum Shapiro, determined that, due to the various contractual clauses allowing CRRA to regain title ownership of the rolling stock, CWPM did not in fact own the equipment and thus could not benefit from any tax breaks. Manafort claimed CWPM effectuated this interpretation by adding a "revenue line" to net out the depreciation figure resulting in a net zero effect. While no documentation was produced to support this assertion, Manafort stressed that CWPM did not take any depreciation tax benefits nor record or "book" the rolling stock as assets. Manafort testified that as part of the new amendment in which title ownership to the rolling stock would revert to CRRA, CWPM would lease CRRA's equipment for \$ 4,138.18 dollars per month starting July 2003 and ending June of 2006 (approximately \$149,000.00). CWPM was then given an option to purchase the fleet for a lump sum of \$ 149,000 dollars at the end of the lease. The total of the lease payments and the lump sum payment equal \$ 298,000 dollars. In exchange for returning the titles to CRRA, CWPM received an additional two years on their contract by CRRA agreeing in advance to exercising the two one year options in the contract.

c. THOMAS KIRK AND JOHN ROMANO

We interviewed Thomas Kirk, the new President of CRRA, along with John Romano, Project Manager in Operations for CRRA. Kirk was asked why the Board decided to extend CWPM's contract for two additional years, and how CRRA calculated the monthly lease payment and option to purchase price of \$149,000. He stated that the new board and management sought to regain title to the trucks and equipment and this was the only way CRRA could achieve that result without interrupting the operation of the transfer stations. He also stated that his staff had compiled data regarding the depreciation and useful life of the vehicles and determined that, by 2006, the Blue Book value of the vehicles would be \$405,891. However, CRRA decided to lease the vehicles to CWPM for the next three years for the monthly lease amount of \$4,138.89, which over 36 months would equal \$149,000.00. The total of the lease payments and the option to purchase totalled \$298,000, which is approximately \$108,000.00 less than CRRA's estimated value for the vehicles in 2006, but, according to the CRRA, was the best deal they could get in renegotiations considering that the previous contract was in effect. Kirk indicated that CRRA viewed the new agreement, overall, as a good business decision in that it returned title to the trucks and equipment and continued to be significantly less expensive than the previous contract with the MDC but the CRRA was in a difficult negotiating position because of the existing contract. Regarding the transfer of title in 2001, Kirk stated that the CRRA should have conducted a thorough and comprehensive valuation of the trucks in 2001.

According to the new amended contract, CRRA continues to be obligated to pay insurance costs on the leased trucks and equipment. However, it has ceased paying property taxes and has ceased reimbursing CWPM for registration costs because CRRA now owns the equipment.

d. STEPHEN GUEST

We interviewed Stephen Guest, a certified public accountant employed by the accounting firm Blum Shapiro, in December 2003. Blum Shapiro has had a longstanding professional relationship with Manafort Brothers. Blum Shapiro was hired by CWPM to prepare its corporate tax filings and prepare other financial data after the creation of CWPM in 2001. According to Guest, various representatives of Blum Shapiro advised CWPM as to whether it could treat the equipment, transferred to CWPM from CRRA as per the June 2001 contract, as assets of the corporation, and whether CWPM could claim a depreciation benefit on the equipment for tax purposes. Guest testified that Blum Shapiro appropriately treated the transaction for accounting purposes.

Blum Shapiro treated differently the two parallel but independent accounting treatments for financial statement purposes and tax purposes which are governed by separate accounting rules. While Guest works strictly on the tax statement side, he stated he believed he possessed a general understanding of how Blum Shapiro accounted for the transaction between CWPM and CRRA.

For financial statement purposes, Blum Shapiro determined that CWPM, upon receiving title to CRRA's equipment as per the June 2001 contract, did in fact receive an asset with a fair market value of \$1,050,000. Blum Shapiro depreciated the equipment for financial "book" statement purposes, but offset the depreciation amounts with roughly equal deferred revenue amounts, amortized over the useful life of the contract. Blum Shapiro determined the revenue to offset the depreciation amounts was deferred since performance by CWPM under the June 2001 contract was not complete at the time of the receipt of the equipment from CRRA, and significant future obligations remained to ensure future economic benefit.

For tax statement purposes, Blum Shapiro determined that CWPM could not obtain any depreciation tax benefit as there was no cost basis for the equipment since CWPM did not pay anything for the equipment. Guest stated that no tax depreciation benefit can be realized if nothing was paid for that asset. Furthermore, Blum Shapiro determined that CWPM did not owe any income taxes on the transaction. Blum Shapiro, based upon their interpretation of tax regulations, reached the determination that CWPM did not in effect own the equipment. Because the June 2001 contract contained provisions that could trigger the termination of the contract "for any reason", Blum Shapiro concluded that this contractual language qualified as a "significant contingency" under tax regulations, which might prevent the rights to the asset from ultimately accruing to the taxpayer. Thus, according to Blum Shapiro, even though an asset had been received by CWPM, the chance that the contract might terminate prematurely, before the end of the natural life of the contract as stated in the contract, qualified as a "significant contingency" which prevented the full realization of ownership rights by CWPM until the contractual obligations owed were fully completed.

As this transaction raises a number of questions with respect to the accounting treatment of the equipment transferred from CRRA to CWPM, and given that Guest testified that despite his many years of accounting experience as a certified public accountant, he had never confronted a situation similar to this transaction, we are referring this aspect of our investigation to the Connecticut Department of Revenue Services and the U.S. Internal Revenue Service for further review.

VI. FINDINGS AND CONCLUSIONS

Based upon certain documents obtained from CRRA, the former CRRA management assigned a total blue book value of \$ 747,150 dollars to the rolling stock (tractors and trailers) in 2001. An April 30, 2003 CWPM document, created to account for the depreciation of the rolling stock, placed a value of \$ 1,050,000 dollars on the same CRRA equipment at the time of the original transfer in 2001. It remains unclear as to why the CRRA rolling stock appears to have been significantly under-valued during the 2001 transfer. Even if we assume CRRA's figure of \$ 747,150 dollars is correct, CRRA still would not have received a value even remotely close to that figure in exchange for the rolling stock title transfer.

This is the case despite the assertions of former CRRA management that it saved money by reducing its potential liability for accidents that may have occurred if CRRA still possessed title to the rolling stock, the stated explanation of the former CRRA management for transferring the titles to CWPM in the first place. However, no documents were produced to support such a claim. In fact, Clark stated CRRA did not have a dollar figure in mind for what value CRRA believed they were getting in return for transferring the rolling stock to CWPM. He merely repeated CRRA was obtaining a "revenue-neutral" deal and that CRRA was getting value in not having to worry about contractors operating and having accidents in CRRA-owned equipment. To date, we have been unable to verify the "potential risk" savings explanation proffered by both former CRRA management and CWPM to justify the title transfer to CWPM. CRRA failed to provide any evidence substantiating the claimed costs of "potential liability" posed by MDC drivers and similarly what if any savings were garnered via the title transfer to CWPM. Though CRRA staff claimed MDC drivers were involved in several accidents while operating CRRA-owned rolling stock, no evidence was shown to support any claim that CRRA's insurance costs increased as a direct result of accidents involving MDC drivers. No evidence, documentary or testimonial, has ever been produced by CRRA which would support a finding that CRRA's insurance premiums would be or were reduced or that any cost analysis was ever attempted to determine whether CRRA would realize any insurance savings as a result of transferring title to CWPM.

This alleged "savings" justification is further undercut by the fact that CRRA reimbursed CWPM for taxes – which CRRA never would have owed - and registration fees, forgoing any "savings" from the transfer of ownership.

According to the information supplied to us by the CRRA and Clark, CRRA was reimbursing CWPM approximately \$135,000.00 per year, totaling approximately \$270,000.00 in reimbursements between July 2001 and June of 2003. Since this

represented 90% of CWPM's costs of insurance taxes and registration fees, the resulting "savings" to CRRA for the same two year period was approximately \$30,865.00. However, these "savings" do not account for the \$23,979 in reimbursed property taxes, which CRRA would not have paid without the transfer of ownership. We have subpoenaed documents from CRRA that placed the value of the tractors and trailers at a cost of approximately between \$750,000.00 to \$1,075,000.00. Accordingly, the net result of transferring approximately one million dollars of equipment to CWPM was a "savings" to CRRA of approximately \$7,000 in operation costs over a two year period. Even these savings are questionable considering the lost value to the transferred equipment due to the additional wear and tear from their use on non-CRRA projects. Although former CRRA employees made claims that this transfer deal would save CRRA hundreds of thousands of dollars, no documentation substantiating these cost savings was ever produced.

Again, the RFP did not contain a provision for the compensation of costs associated with ownership, presumably because under the RFP title remained with CRRA, which bore the costs of ownership. In addition, the 2001 contract contained a provision expressly prohibiting the use of CRRA vehicles and equipment for non-CRRA business without the express written authorization and approval of CRRA. Despite the explicit language of the contract, later, oral conversations between CRRA and CWPM relating to that agreement gave CWPM unrestricted use of the equipment for non-CRRA purposes.

In addition to the lack of any adequate consideration for the transferred equipment, there is a further issue concerning whether the former CRRA Board authorized the transfer, based on a review of CRRA Board minutes and transcripts. In May of 1999, the former Board authorized CRRA to award the operation of the transfer stations to Manafort Brothers, consistent with the RFP issued by CRRA in March of 1999. In July of 1999, the Board authorized the President to enter into a contract with Manafort for the operation of the transfer stations and the transportation of waste, based upon the terms of the 1999 RFP. The March 1999 RFP did not contain a provision regarding the transfer of ownership of CRRA trucks and other equipment to the successful bidder. In fact, a copy of a contract dated July 1, 1999 between CRRA and Manafort does not contain any provisions whatsoever regarding the transfer of trucks and other equipment to Manafort. The July 1999 contract was signed by the Manafort-CWP division head, Jason Manafort, but there is no signature by the then President of CRRA, Robert Wright. Further, as was previously stated, there was no reference to a transfer of equipment when the Board awarded the contract to Manafort at its July 15, 1999 meeting.

It is our opinion that such an action required Board approval. Conn. Gen. Stat. § 22a-268 states in pertinent part:

The authority shall utilize private industry, by contract, to carry out the business, design, operating, management, marketing, planning and research and development functions of the authority, unless the authority determines that it is in the public interest to adopt another course of action. The authority is hereby empowered to enter into long-term contracts with private persons for the performance of any functions of the authority which, in the opinion of the authority, can desirably and conveniently be carried out by a private person under contract provided any such contract shall contain such terms and conditions as will enable the authority to retain overall supervision and control of the business, design, operating, management, transportation, marketing, planning and research and development functions to be carried out or to be performed by such private persons pursuant to such contract. Such contracts may be entered into on either a negotiated or an open-bid basis, and the authority in its discretion may select the type of contract it deems most prudent to utilize, considering the scope of work, the management complexities associated therewith, the extent of current and future technological development requirements and the best interests of the state. Whenever a long-term contract is entered into on other than an open-bid basis, the criteria and procedures therefore shall conform to applicable provisions of subdivision (16) of subsection (a) and subsections (b) and (c) of section 22a-266, provided however, that any contract for a period of over five years in duration, or any contract for which the annual consideration is greater than fifty thousand dollars shall be approved by a two-thirds vote of the authority's full board of directors (Emphasis supplied).

Article 3 of the contract, Compensation and Payment, states that the total amount of compensation to be paid to Manafort for each activity (i.e., each transfer station) shall not exceed the amounts set forth in Exhibit 2. Exhibit 2 of the contract states the Annual Operations Fee for the four transfer stations (Ellington, Essex, Torrington and Watertown) was \$1,591,348 for the first contract year (June 1, 2001-June 30, 2002); \$1,639,089 for the second contract year (2003), and \$1,688,261 for the third contract year (2004). In addition, Manafort was to be compensated on a per ton basis for the transportation of waste from each transfer station to the designated processing and/or disposal facility. Depending on the actual amounts of waste hauled, the annual compensation for such waste transportation easily exceeded \$50,000.

Finally, we are left with the actual transfer of the trucks and other equipment by

the former CRRA management to CWPM, which far exceeded \$50,000.00. Even taking the lower of the two estimates of the value of the rolling stock provided to us, the value at the time of the transfer was at least \$747,000.00. Based on the above, it is clear that an affirmative vote of two-thirds of the Board was necessary to approve this contract.

In March of 2001, the former Board passed the following resolution: "RESOLVED: [t]hat the FY02 operating budget for the Mid-Connecticut project be adopted, however, that staff shall place MDC programs with a minimum budget of \$5,000,000.00 with successful bidders to achieve budget operational and other managerial improvements." There is no specific mention of the 1999 CRRA-Manafort contract, nor is there any reference to the equipment transfer.

The first mention of the truck transfer language occurs within the June 11, 2001 contract, three months after the former Board's vote approving the shifting of programs away from MDC to successful bidders, totaling \$5,000,000.00. Therefore, neither the March 2001 CRRA Board resolution, nor any prior Board resolution, authorized the contract signed on June 11, 2001, which contained the title transfer language.

Certain members of CRRA's staff have acknowledged there likely was no CRRA Board approval for the CRRA-Manafort truck transfer deal. Instead, it was their belief that former CRRA Chairman Ellef was "driving the train" with regard to the CRRA-Manafort deal, and that Wright probably believed that this direction from Ellef was all Wright needed to authorize the transfer of the trucks and other equipment. Based upon the foregoing, it does not appear that the Board ever approved the transfer of trucks and other equipment to Manafort.

Based on the unauthorized trucks transfer, the costs of ownership reimbursements, and the unrestricted use of the equipment for non-CRRA purposes, the June 2001 contract cannot be considered consistent with the 1999 RFP and the RFP bidding process.

After a review of the records provided by CRRA in response to Attorney General's Office subpoenas, as well as interviews conducted with certain CRRA staff, it is the opinion of this office that:

(1) Although CRRA's former Board appears to have approved a contract with CWPM in 1999 and 2001, the former Board never authorized the transfer of valuable CRRA equipment to CWPM.

(2) CRRA's former staff failed to provide any coherent or valid support or

analysis to justify the transfer of CRRA equipment from CRRA to CWPM.

(3) Former CRRA management transferred valuable equipment to CWPM which CWPM was able to use in non-CRRA projects for little or no compensation or consideration.

(4) The 2001 contract between CRRA and CWPM did not comport with the 1999 RFP's issued by CRRA and gave CWPM an unfair advantage over other bidders on the project.

(5) The new CRRA Board, under the leadership of Chairmen Pace and President Kirk, and its staff are to be commended for their efforts in regaining title to the vehicles. All future contracts for the operation of transfer stations should be put out for competitive bids.

VII. RECOMMENDATIONS

- 1. CRRA should consult with its General Counsel on the current validity of its contract with CWPM, considering that the Board of Directors did not approve the transfer of trucks and equipment to CWPM and other bidders did not have the opportunity to evaluate this information in developing their bid proposals.**
- 2. CRRA should seek to fully recover from CWPM the full value of the trucks and equipment CRRA is now leasing to CWPM.**
- 3. CRRA should issue RFP's to invite competitive bids on all future contracts for the operation of its transfer stations.**