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# MEMO

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**DATE: May 5, 2011**

**TO: Members of the Program Review Committee**

**FROM: Carrie Vibert  
Director**

**RE: Transfer of Ownership of Mid-Connecticut Resources Recovery Facility from  
CRRA to the State of Connecticut**

At the March 11, 2011 meeting of the Legislative Program Review and Investigations Committee, the committee voted unanimously to direct staff to develop information on the charge set out in the box below. This memo presents the staff report.

## **Charge**

*Identify process that would be used to transfer ownership of the Mid-Connecticut Resources Recovery Facility (Mid-CT plant) from the Connecticut Resources Recovery Authority (CRRA) to the State of Connecticut, as well as any impediments to such a transfer.<sup>1</sup>*

## **Response in Brief**

Legislation is likely needed to transfer the ownership of CRRA's Mid-CT plant to state ownership. Implementation of such a transfer would be complicated but not insurmountable. Key actions would include: 1) providing state management capacity to operate or contract for the operation and oversight of the plant; 2) handling certain legal obligations currently tied to the Mid-CT plant; and 3) mitigating any impacts on the Hartford region's municipal solid waste (MSW) system and transfer station operations.

Any impediments to such a transfer were asked to be identified. For the purpose of this report, an impediment is defined as a *possible* obstacle for policymakers to consider. These include: 1) disruption to current municipal efforts to competitively procure disposal services; 2) possible perceptions of unfairness among municipalities; 3) loss of flexibility in how the Mid-CT plant would operate under state ownership; 4) state financial implications; and 5) impact on CRRA viability as a self-sufficient entity.

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<sup>1</sup> Substitute SB 1167 (File 431) (quoted below) is currently before the 2011 legislature and has similarities to the PRI committee charge. However, the PRI memo is in specific response to the PRI committee charge.

sSB 1167 (File 431):

“On or before July 1, 2011, the Office of Policy and Management, after consultation with the CRRA member towns, shall assign the custody, control and operation of the Mid-Connecticut Project Trash to Energy Facility, including any property and equipment associated therein, to a public entity for purposes of providing long-term and reliable solid waste disposal and energy generation services at the least cost to participating municipalities and determine whether to amend the state-wide solid waste management plan adopted pursuant to section 22a-228 of the general statutes.”

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## DISCUSSION

The transfer of the Mid-Connecticut RRF from CRRA to state ownership would be a complex but not impossible process to implement. Certain steps would need to be taken to implement such a transfer, and some impediments may exist, meaning possible obstacles of which policymakers should be aware. The discussion that follows provides an overview of these steps and possible obstacles; more detailed and specific legal and financial analysis would need to be performed. The discussion is based on:

- 1) knowledge gained by PRI staff in assisting the committee with its recent study entitled [Municipal Solid Waste Management Services in Connecticut \(January 2010\)](#);
- 2) subsequent information obtained by PRI staff regarding the relatively new regional waste authority, Central Connecticut Solid Waste Authority (CCSWA), which is made up of a number of current Mid-Connecticut project towns; and
- 3) information provided by CRRA officials.

### Facility Under Discussion

The Mid-Connecticut Resources Recovery Facility, also referred to as the Mid-CT plant is the largest of the six resource recovery facilities in Connecticut, with the Bridgeport plant a very close second (Table 1). The Mid-CT RRF, operational since 1988, is owned by the Connecticut Resources Recovery Authority. CRRA is a quasi-public entity created to encourage certain solid waste disposal activities promoted by statute and set out in the statewide solid waste management plan.

	<b>Facility</b>	<b>Approx. Capacity (tons/day)</b>	<b>Owner</b>
<b>1</b>	<b>Mid-Connecticut Resource Recovery Facility (Hartford)</b>	<b>2,850</b>	<b>CRRA (Public)</b>
2	Wheelabrator Bridgeport Resource Recovery Facility	2,250	<i>Wheelabrator (Private)</i>
3	Southeast Regional Resources Recovery Facility (Preston)	690	Covanta (Private)
4	Bristol Resource Recovery Facility	650	<i>Covanta* (Private)</i>
5	Lisbon Resource Recovery Facility (Eastern Connecticut Resource Recovery Authority (ECRRA))	535	ECRRA (Public)
6	Wallingford Resources Recovery Facility	420	<i>Covanta (Private)</i>

\* Bristol Authority has option to purchase when bonds paid off in 2014, which would result in public ownership.

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The Mid-Connecticut RRF is made up of a Waste Processing Facility and a Power Block Facility.<sup>2</sup> Currently, the Mid-CT plant is part of CRRA's Mid-Connecticut Project, which also consists of four transfer stations; a regional single-stream recycling center; the Hartford Landfill (currently undergoing closure construction activities, to be completed by the end of CY 2011); and the Ellington Landfill (closed).<sup>3</sup> Currently, 70 towns are members of the Mid-Connecticut Project.

## Facility Transfer Via Legislation

A quasi-public entity such as CRRA operates within a certain legal framework that places the organization outside the structure of state government. This framework is statutorily created, though, and thus may be statutorily altered if desired. While CRRA's enabling statutes do not speak specifically to the transfer of individual CRRA assets to state control, the statutes do provide for the passing of all "rights and properties" of the authority if its existence is terminated. C.G.S. Sec. 22a-261(m) states:

*The authority shall continue as long as it has bonds or other obligations outstanding and until its existence is terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state of Connecticut.*

Simply put, if the legislature has the authority to terminate CRRA's existence, with the accompanying passing of all assets to the state of Connecticut, it follows that the legislature also has the authority to transfer ownership of one of CRRA's assets, the Mid-CT plant, to the state, with all necessary appropriate bondholder protections. PRI staff is not aware of any research to the contrary. Such a transfer would provide direct state control over a portion of in-state RRF capacity, something that does not exist now. (It may be noted that CRRA has always had the statutory authority to sell or lease part of a waste management project to "any person,"<sup>4</sup> but the definition of "any person" in the CRRA statutes does not include the state of Connecticut.<sup>5</sup> Thus, those statutes do not appear to apply to this transfer.)

## Steps Needed for Facility Transfer

Certain steps would need to be taken to implement such a transfer.

1. *State management capacity.* The function of the Mid-CT plant—converting trash to energy (and significantly reducing the volume of the trash)—is not a function that Connecticut state government is or has been directly or indirectly responsible for performing through any of its agencies. The transfer of ownership to the state would appear to require a designation of supervision, care, and control to a specific agency.

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<sup>2</sup> The Mid-CT plant uses refuse derived fuel technology (RDF), unlike the other five RRFs that use a mass burn technique. RDF technology involves more upfront sorting and shredding of "feed stock", which mass burn does not.

<sup>3</sup> CRRA Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010

<sup>4</sup> C.G.S. Sec. 22a-266 (4)

<sup>5</sup> C.G.S. Sec. 22a-260 (5)

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This agency, then, would need to either contract out the operations of the plant, hire personnel to operate the plant, or do some combination of the two.

2. *Outstanding legal obligations.* Depending on the timing of the transfer, certain legal obligations of CRRA would require some reworking at a minimum and possibly renegotiation.
  - a. Long-term bonds. The long-term bonds that financed the Mid-CT plant will be paid off on November 15, 2012. If the transfer occurred before then, some action would need to be taken to ensure the bondholders were protected from the change in ownership, based on the terms of the bond agreement and state statute (C.G.S. Sec. 22a-274.)
  - b. Municipal service agreements. The majority of the long-term municipal service agreements (MSAs) between the Mid-CT plant and the 70 member towns will conclude November 15, 2012, as well. If the transfer occurred before then, some action would need to be taken to ensure that the towns do not face any unforeseen problems in disposing their trash (e.g., capacity or increased costs problems.)
  - c. Other vendor contracts. Other contracts between CRRA and vendors related to the operations of the Mid-CT plant would likely need attending such as commercial haulers, energy sale, ash and residue landfill operators, and transportation services.
  - d. Environmental permits. Typically, regulatory permits are not transferable from one permit holder to another. The state would need to obtain environmental permits as the new facility owner.
3. *Transfer station operations.* In addition to the Mid-CT plant, CRRA also owns or has an interest in four transfer stations across the state that currently feed MSW to the Mid-CT plant. Because of the logistics and costs of trash pick up over certain distances, these transfer stations are an important part of the Greater Hartford MSW system, and it is assumed that the state or its contracted operator would need to contract with CRRA (directly or indirectly through haulers) to use the transfer stations.

### **Impediments or Possible Obstacles for Policymaker Consideration**

In addition to the process question, any impediments to the Mid-CT plant ownership transfer from CRRA to the state were asked to be identified. For the purpose of this report, an impediment is defined as a possible obstacle for policymakers to consider related to the transfer.

1. *Disruption to current municipal efforts to competitively procure disposal services.* Some municipalities currently contracting with CRRA in Greater Hartford as member towns are now in the process of competitively procuring MSW disposal services. This is because the 70 current Mid-CT member towns will be free from their long-term MSW disposal contracts on November 15, 2011. For the first time in 20 years, municipalities in

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the Greater Hartford region are exploring MSW disposal options in the open market. CRRA is one, but not the only, option available. In addition to the benefits of price competition, the open market process will likely allow municipalities to choose between various service options, such as length of contract. It is unclear what impact a change in Mid-CT plant could have on the municipalities.

2. *Perceived unfairness.* The Mid-CT plant is one of six RRFs in the state, each with limited capacity. The transfer of the Mid-CT plant to the state of Connecticut would mean that certain towns, but not all, would have their MSW disposal obligations handled by a state-owned plant. The relative advantages or disadvantages to towns in either case are unknown, but at least perceptions of unfairness between these towns might arise.
3. *Loss of flexibility.* One of the reasons CRRA was created as a quasi-public agency in 1973 was the theory that the resources recovery field required more flexibility to respond to problems and opportunities faster than a state agency could, being subject to numerous state rules. The transfer of the Mid-CT plant from CRRA to a state agency would mean, absent any other change, that the operation of the Mid-CT plant would now be subject to standard agency rules about personnel, contracting, and perhaps funding.
4. *State financial implications.* The acquisition of the Mid-CT plant by a state agency is likely to change the financing and operation of the facility. Further, the assumption of plant ownership could expose the state to different types of financial risk, largely based on the market-based complexities and interconnectedness of the waste disposal industry.
  - a. Stranded liabilities. The ownership transfer could bring with it landfill obligations connected to the Mid-CT plant (e.g., for the Hartford landfill closure and monitoring). Environmental liabilities connected to the Mid-CT plant site or related landfills might also follow the transfer. CRRA does maintain reserves for these obligations, but the adequacy of such funds is unclear.
  - b. Adequacy of feed stock for plant. The new owner/operator would need to ensure the necessary amount of MSW is provided to the Mid-CT plant, especially if any towns currently under Mid-CT plant contract determined to dispose of their MSW elsewhere. Inadequate feed stock may lead to inefficiencies that could trigger higher tip fees (potentially causing the loss of additional customers) or other funding issues.
  - c. Electricity revenue. CRRA is beginning a process to obtain bids for the sale of electricity generated by the plant for the next several years. To the extent that uncertainty over the ownership and operation of the plant leads to uncertainty over the actual or perceived reliability of supply of electricity (a significant issue for brokers according to CRRA), reduced revenues to the plant owner may result.
  - d. Price uncertainty. It is unclear whether a state-owned RRF would offer a price to municipalities that is lower or higher than the current situation.

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5. CRRA viability as a self-sufficient entity. CRRA is required to be self-sustaining. Its major revenue source is the Mid-CT plant. This revenue helps to support a consistent tip fee structure at both the transfer stations and at the plant. It also, at times, helped to support certain recycling efforts. The impact of the loss of this revenue source on other CRRA activities might be significant. In addition, current CRRA employees primarily supporting the Mid-CT plant operations would no longer be needed by CRRA, and so would no longer be available to work on other CRRA functions.