ISSUED: May 6, 2005 **IR-02-WAPA-05**

THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL

INVESTIGATIVE REPORT

INVESTIGATION INTO THE PURCHASE OF THE DEVCON PROPERTY BY THE VIRGIN ISLANDS WATER AND POWER AUTHORITY

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May 6, 2005

Daryl Lynch
Chairman
Governing Board
Virgin Islands Water and Power Authority
P. O. Box 1450
Charlotte Amalie
St. Thomas, Virgin Islands 00804-1450

Dear Mr. Lynch:

Attached is the final report on our investigation into the acquisition of the Devcon Property by the Virgin Islands Water and Power Authority (WAPA).

The following summarizes the major findings and conclusions that resulted from the investigation.

✓ There was insufficient evidence to determine whether the former Executive Director was given the authority to purchase the Devcon Property.

✓ The former Board, either through the former Chairman, or as a group must have known that the Devcon purchase was progressing.

✓ If the former Board had concerns about the purchase, they failed to act to ensure that the former Executive Director, at a minimum, addressed their concerns.

✓ Once the former Board became aware that the purchase had been completed, they failed to timely investigate the circumstances of the transaction and to take steps to stop it if warranted.

✓ The former Board allowed the former Executive Director to do as he pleased without holding him accountable for his actions.

✓ Concerns relative to the terms and conditions of the purchase included: (i) the use of an old appraisal of the Devcon Property; (ii) the lack of evidence that the former Board declared a portion of the South Shore property as surplus; (iii) the $10 per year leaseback of Devcon Property for storage; and, (iv) the question of cleanup and demolition at the property.

✓ If the former Executive Director was not given the authority to purchase the Devcon Property, he violated WAPA By-Laws, which requires Board approval for purchases over $75, 000 and all land purchases.

✓ WAPA's management circumvented the check requisition and processing procedures when the required documentation was not included when the check was requested.

✓ Bond money was transferred to the construction account without the approval of the appropriate bonding authority.

✓ No cost/benefit analysis was done to show the supposed benefit over cost of the purchase.

Your response to the final report is included as an appendix, beginning on page 15.

Should you or your staff require additional information, please feel free to call me at 774-6426.

Sincerely,

Steven van Beverhoudt

Steven van Beverhoudt, CFE, CGFM
V. I. Inspector General

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INTRODUCTION

BACKGROUND

For more than a decade the Virgin Islands Water and Power Authority (WAPA) had known of its need for more electrical power on St. Croix. To this end, about ten years ago, WAPA secured 9.15 acres of land on the south-side of St. Croix, known as the South Shore property[1], and began constructing a new power plant. However, WAPA failed to obtain the required environmental permits before beginning the construction, and after the generating plant was purchased, WAPA found it could not comply with environmental requirements. Construction was terminated and the generating plant was sold.

Current and former WAPA officials interviewed during our investigation were consistent in their judgment that the South Shore property could never meet the environmental criteria necessary to build a power plant at that site. They were also certain that the 8.2 acres of land, known as the Devcon property[2], was purchased in January 2000 to meet this need.

In July 1997 WAPA identified the Devcon property, located contiguous to the St. Croix Richmond Plant, as the prime location for a new plant. With the land came a shipping dock that WAPA had leased from V. I. Cement for many years. It also provided for additional yard storage, warehousing, offices and other buildings as need.

The former Executive Director was authorized by the then WAPA Board of Governors (former Board) to negotiate for the property at its April 1999 Board meeting. He signed the Contract for Sale in January 2000. WAPA paid $2,275,000.

The contract provided that WAPA would lease back a portion of the Devcon property and V.I. Cement would have a 2-year option to purchase 1.5 acres of WAPA's South Shore property.

WAPA's Special Projects Department identified the Devcon property as a prime location for the new power plant. This land was contiguous to WAPA's Richmond Plant; it allowed for the needed expansion; it was properly zoned; it was environmentally acceptable; there was sufficient land to permit construction of warehouses and offices; and, the property came with a docking facility and storage yards that WAPA had been leasing from V.I. Cement.

Given the critical nature of this purchase, the amount of money involved, the negotiations that went into the purchase, the transfer of monies to cover the cost and the number of corporate executives involved over an eight month period, it tests the bounds of reasonableness to conclude that the former Board knew nothing of the Devcon purchase or its terms and conditions until after the Contract for Sale was executed.

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[1] #6 & 8 Penitentiary Ground

[2] #3 Anguilla

SCOPE

In April 2003, the Office of the Virgin Islands Inspector General (V. I. Inspector General's Office) entered into an agreement with WAPA, to make an inquiry into line losses of power and water services on St. Croix. We also agreed to review the facts and circumstances surrounding the acquisition from V.I. Cement of the Devcon property.

The water and power line losses were addressed in our Investigative Report, IR-01-WAPA-05, dated December 13, 2004. The details of this report deal only with the negotiation, purchase and subsequent activities associated with the purchase of the Devcon property.

Three areas of concern were raised by WAPA officials to us. They dealt with the former Executive Director, the terms of the contract negotiated by the former Executive Director and a number of derivative issues dealing with the internal operations of WAPA.

Concerns about the former Executive Director were that: (i) he failed to purchase title insurance on the Devcon property; and, (ii) he had no authority from the former Board to buy the Devcon property.

Concerns over the Contract for Sale of the Devcon property were that: (i) the land appraisal of the Devcon property was 10-years old; (ii) the 2-year option designated the price of $130,000 without identifying which of the South Shore acres the option was for; (iii) there was a $10/year lease back of the docking facilities; and, (iv) there was no requirement that V.I. Cement be responsible for demolition and cleanup of environmental contaminations of oil and PCBs.

Concerns over WAPA's internal operations were that: (i) the former Executive Director exceeded his spending authority; (ii) check requisition procedures were circumvented; (iii) bond money was improperly appropriated for the land purchase; and, (iv) there was a failure to obtain a cost accounting before the purchase price of the Devcon property was set.

INVESTIGATION

The investigation began with information that: (i) WAPA had a critical need for land to expand their power plant assets; (ii) the South Shore property was unusable for power plant expansion; (iii) the former Executive Director signed the Contract for Sale on January 5, 2000; (iv) the cost to WAPA was $2,275,000; and, (v) the terms and conditions of the Devcon purchase were not in WAPA's best interests.

THE FORMER EXECUTIVE DIRECTOR

The former Executive Director affirmatively declined to buy title insurance to protect title to a $2,275,000 land acquisition. The cost of the insurance was less than $7,600. WAPA's real estate attorney recommended the insurance and the former General Counsel questioned the matter at the time and was told by the former Executive Director that, "It's too expensive."

Purchasing title insurance is an ordinary and usual business practice. The former Executive Director's action in declining such insurance should have been questioned by the former Board when the land was purchased. There is no record as to whether or not the former Executive Director consulted the former Board on this decision. However, since this is one of the recent Board's complaints, it might be assumed that the former Board was not consulted. In light of other information, set-out below, this deduction may not be definitive when all of the former Executive Director's interplay with the former Board and its record keeping is examined.

Neither WAPA nor V.I. Cement provided documentation that the former Executive Director had authority to sign the Contract for Sale[3]. It was generally conceded that the former Board, at its regularly scheduled April 1999 and September 1999 meetings, gave the former Executive Director whatever authority he had. However, the only written documentation on the Director's authority to act in the Devcon matter consisted of two letters from the former Executive Director to the Chairman of the former Board and two Agenda relative to the Board meetings of September 24, 1999.

There were no inconsistencies about the April meeting in the recollection of those interviewed. But, the lack of documentation became a problem when those interviewed gave differing accounts of what did and did not occur in the September 1999 Board meeting.

This inquiry attempts to assess the ways and means of the Devcon purchase. It was clear from interviews with WAPA management and administrative personnel that the former Executive Director was seen to function almost autonomously, as an authority unto himself. It was reported that the former Board seemed to exercise little control over either his actions or his communications with it. Management personnel described the former Executive Director as a man who would direct and demand action and who would not accept "No" when he wanted something done.

[3] It should be noted that WAPA, in general, and its current Officers and the current Executive Director, cooperated with every request by us and provided all written documents requested.

WAPA employees familiar with the former Executive Director indicated that the former Board did not require communication from him beyond that which he chose to provide. It was generally reported that the former Executive Director "pretty much did things his own way." However, there is some documentary evidence that indicates this assessment may not be completely accurate.

The former Executive Director wrote to the former Chairman of the Board on April 12, 1999 requesting authority to negotiate with V.I. Cement for the purchase of the Devcon property. There was unanimous agreement among those interviewed that the former Executive Director had been given authority to negotiate for the property at the Board's April 24, 1999 meeting. However, there is no record of the former Board entertaining this request or providing the authority.

For some period of time, it had been the former Board's policy not to keep minutes of executive sessions. The former Board's failure to keep minutes in executive session is compounded by the fact that it did not always memorialize the subject matter of executive sessions in the regular minutes[4].

With no resolution from the former Board, no minutes from the executive session and no mention of the executive session's subject matter in the regular minutes, none of the usual corporate documents are available for reference.

On June 10, 1999 a formal offer to purchase was sent to V.I. Cement. The Assistant Executive Director signed this document in the absence of the former Executive Director. However, the record is silent on whether or not the former Board acted on this proposal before it was drafted.

The next document available for review is an August 17, 1999 letter from V.I. Cement to WAPA confirming the former Executive Director's meeting on the Devcon property and the details of the tentative agreement to be taken to their respective Boards.

Next is a letter dated September 23, 1999 from the former Executive Director to the former Chairman asking for authority to execute the contract for the Devcon property and listing five clauses of the contract: (i) a purchase price of $2,300,000; (ii) a 1-acre leaseback for $10/year; (iii) the use of the docking facility at no cost for 5 years; (iv) a 50% Maintenance on the dock; and, (v) a 2-year option to buy 1.5 unspecified acres of South Shore property.

The next documentation available deals with the September 24, 1999 Board meeting. As in April, the former Executive Director wrote to the former Chairman on September 23, 1999 requesting to present the Devcon matter to the former Board and indicated that it was a critical matter that required immediate attention. There is no record of the former Board giving the former Executive Director authority to negotiate for the property (although, as previously indicated, all

[4] It was reported that this was a long-term policy of the former Board implemented on advice from a former Attorney General (not the individual on the Board at the time) to avoid creating a document that could be subpoenaed by a court. Discussions with WAPA Officers indicated this policy has been rescinded.

former Board members and officials interviewed indicated that the authority was given) and there is no record of the former Board acting to give the former Executive Director the authority to purchase the property. However, there is an Agenda for the September meeting; in fact, two different Agenda exist. One of the Agenda lists the Devcon property to be discussed under "Old Business;" the other Agenda makes no reference to Devcon at all. Which of these Agenda was drafted first cannot be determined within the four corners of the documents. For reasons addressed below, *the Agenda including the Devcon property was probably written first*. Who directed the change and why are not known.

The former Board members and officers interviewed about the September Board meeting, with two exceptions, do not recall the former Executive Director being present, or presenting the Devcon matter, at the executive session. One former Board member and a former officer contradicted this general recollection. But, the issue is confounded by the lack of documentation; not only because there are differing recollections but also because there are questions raised over personal issues involving the two dissenting parties.

Contrary to the general recollection, one former Board member recalls that the Devcon property was addressed in executive session. This individual's reliability might be questioned because he is a brother of the former Executive Director. His recall was that the Devcon matter was discussed in executive session and that the former Board voted to authorize the purchase of the Devcon property. The former General Counsel[5] to WAPA also recalls the former Executive Director being present in executive session and the former Board voting to give the former Executive Director the authority to buy the land. A notation, the former General Counsel says, was made on her copy of the Board's Agenda at the time the Devcon discussion came up, was presented by her to support her recollection.

The former General Counsel said that she specifically recalled the former Executive Director appearing before the former Board in executive session and specifically recalled making the notation on her copy of the day's Agenda. She was certain about the time and place because she had just recently been employed at WAPA as General Counsel; and, this was the first Board meeting and the first executive session she attended as General Counsel.

The next document of interest is the transcript of the September 24, 1999 WAPA Board meeting. There was a difference in the recall of those interviewed about the September 24th executive session. The brother of the former Executive Director and the former General Counsel remembered Devcon being discussed; others remembered only Southern Energy being discussed. There was, however, no question among those interviewed that the former Board went into executive session at the September meeting. The former General Counsel's hand notes on her copy of the Board's Agenda tends to support this assertion. These facts allow for the conclusion that there was an executive session but with differing recollections about what was discussed.

[5] The former General Counsel has since resigned from her position with WAPA. She was also the only person interviewed with her attorney present.

Whether an executive session ever occurred on September 24th, is brought into doubt with the transcript of the day's proceedings because the transcript contains no reference to a motion or other action that would indicate the former Board adjourned into executive session.

There are at least five possible outcomes from this conundrum:

1. There was no executive session;

2. There was an executive session and Devcon was discussed;

3. There was an executive session and Southern Energy was discussed;

4. There was an executive session and both were discussed; or,

5. There was an executive session and neither was discussed.

Without further documentation, the best evidence would be the Court Reporter's sworn transcript and the obvious conclusion that there was no executive session. No executive session, no discussion of anything and this inquiry continues to be left without resolution.

The next references of note are two letters written a week after the Board's September meeting. They are both dated October 1, 1999. The former Executive Director wrote to V.I. Cement with "…our final offer…" and listed the terms and conditions. V.I. Cement also wrote a letter, with the same date, saying that it is "…*our formal acceptance of your final offer*…" What is confounding about this exchange of correspondence is that the price of the 1.5 acres of the South Shore property was listed at $120,000. The fact that the deed called for $130,000 would indicate that the final offer and its acceptance were not "final."

The next document of note is the October 25, 1999 letter from V.I. Cement to WAPA transmitting a number of draft documents including the deed that also listed $120,000 for the 1.5 acres. How and why the deed's $130,000 clause came to be are not known.

Finally, the Counsel for V.I. Cement was contacted by us and asked if the former Executive Director for WAPA made any representation to V.I. Cement indicating that he had authority to negotiate and close on the Devcon property. Specifically, he was asked if there was any Resolution or other documentation of his authority. He stated that he was not certain but believed that some documentation had been provided. He was asked to provide copies of whatever documents there were. He said he would have to check with his client before providing copies of whatever there may be. Nothing was ever received.

On November 8, 1999 WAPA's Chief Financial Officer directed a transfer of $2,275,000 from WAPA's bond money account to its construction account. On January 5, 2000 the former Executive Director signed the Contract for Sale of the Devcon property.

A Check Request form for $2,275,000 was created on January 3, 2000 and check # 107353 was written February 2, 2000. The Assistant Executive Director and the former General Counsel signed both documents.

The expanded sequence of events after interviews and review of the documents provides that:

1. WAPA had a critical need for land for power plant expansion;

2. The South Shore property was unusable for a power plant;

3. In July 1997 Special Projects Division identified the Devcon property as a prime location for WAPA's expansion;

4. On April 12, 1999 the former Executive Director requested authority to negotiate for the Devcon property;

5. On April 24, 1999 the former Board met and authorized the former Executive Director to negotiate for the land;

6. On June 10, 1999 WAPA made an offer to buy the Devcon land, there is no record whether or not the former Board approved this offer;

7. On September 23, 1999 the former Executive Director wrote to the Chairman of the former Board requesting authority to purchase the Devcon land;

8. On or before September 24, 1999 two Agenda were drafted for the September Board meeting;

9. On September 24, 1999 the former Board met; there are conflicting claims on whether the Devcon property was discussed;

10. On October 1, 1999 WAPA and V.I. Cement exchanged letters agreeing on terms and conditions of sale with $120,000 for the South Shore property;

11. On October 25, 1999 V.I. Cement transmited a draft deed listing $120,000 for the South Shore property;

12. On November 8, 1999, the Chief Financial Officer directed a $2.275 million transfer of funds from Bond money;

13. On January 5, 2000, the former Executive Director signed the Contract for Sale;

14. On February 1, 2000 a Check Request for $2.275 million was signed by the Assistant Executive Director and the former General Counsel;

15. On February 2, 2000 the Assistant Executive Director and the former General Counsel signed a $2.275 million WAPA check drafted in favor of V.I. Cement.

CONTRACT CONCERNS

Even if the former Executive Director acted with authority in purchasing the Devcon property, there are still issues of concern relative to the terms and conditions of the purchase.

10-Year Old Appraisal . When the Devcon matter was brought to our attention, there was an allegation that the appraisal for the property was 10-years old. In fact, the only Appraisal found by us was from July 1996, making it about 3-years old when the negotiations formally began. Three years may not be an inordinately long period of time. However, some of those interviewed believed that an appraisal prior to the purchase of land should be standard operating procedure.

Those who questioned the appraisal observed that the general economy on St. Croix had slowed during the time between mid-1996 and the latter part of 1999 and a more contemporaneous appraisal should have been obtained as a part of the negotiations. In any event, good business practices dictate that each side obtains appraisals for its own decision-making purposes or the parties might agree to use one appraiser. But, there are no records that indicate the parties agreed to the 1996 appraisal or that the 1996 appraisal was even considered in WAPA's cost analysis. However, the fact of the matter is the final purchase price was about 35% lower than the appraised value. In the ordinary course of business, one might expect that the former Board would have been consulted on the final price to be paid for the land.

The Internal Auditor's Report also observes that certain "back-charges" were not taken into account in establishing WAPA's ultimate purchase price. Whether or not these matters were considered is not known. This is another issue that might properly have been addressed with the former Board.

Again, it is inescapable that if the former Board was aware of the apparent neglect of details, it was under a duty to stop the transaction and satisfy itself of the terms and conditions before the contract was signed. In the alternative, if the former Board was not aware of the details of the former Executive Director's negotiations, then it failed to perform its duty of managing the former Executive Director.

2-Year Option on the South Shore Property. A 2-year option is not, in and of itself, problematic; but again there is no documentation regarding this decision. However, there is a V.I. Code requirement[6] that the Board must first declare any land sold to be surplus prior to its sale. There is no record that this took place.

[6] Title 30, Section 105(7)

Apparently, there was no appraisal on either the 9.15 acres of South Shore property or the 1.5 acres to be transferred to V.I. Cement. It may be that any 1.5 acre section of the South Shore property was worth $130,000. How this determination was made? Who made it? When was it made? There just is no documentation.

On September 23, 1999 and on October 1 and 25, 1999 the anticipated purchase price for the South Shore option was $120,000. No one with whom we spoke claimed any knowledge of these details. Without documentation there is no practical way to corroborate or contradict the proposition that the price paid by V.I. Cement was unreasonable and not set in WAPA's best interest.

The failure to establish the exact acreage covered under the option is even more difficult to support. There is no information to explain how leaving the "1.5 acres" to V.I. Cement was in WAPA's best interest.[7]

$10 Per Year Lease. WAPA had rented a warehouse for $1,300 per month and additional storage space for $800 per month from V.I. Cement. The Contract for Sale provided that WAPA would lease back approximately 1-acre of storage land for $10 per year. Again there is nothing to support the basis for this decision and on its face appears favorable to V.I. Cement and not in WAPA's best interests.

Were the lease terms addressed with the former Board? Did the former Executive Director take it on himself to agree to this clause in the contract? No one has any record of what was done, when it was done or why it was done.

The contract was entered into on January 5, 2000, nine months after the former Executive Director was given authority to negotiate the purchase and more than three months after the former Executive Director's September 23, 1999 letter to the former Chairman indicating the critical need to act with alacrity on the matter. Although the position of the former Board is that it knew nothing of the purchase agreement signed on January 5, 2000, realistically this cannot be so unless, the former Board did not want to know about the terms and conditions of the purchase. Still, no one recalls having any knowledge of the lease agreement that was executed on February 3, 2000.

Individual member(s) of the former Board, if not the whole former Board, knew that WAPA was in the process and had purchased the Devcon property. The former Executive Director had written a request to include the Devcon property in the September 24, 1999 Board meeting. If there were a concern that the former Executive Director had taken fraudulent action on behalf of WAPA, the former Board should have been anxious to address the matter as quickly as it learned about it. But, there is no indication the former Board took any action until it commissioned the internal audit of October 2000. And, then the action it took was to call for a three-month inquiry conducted by the sitting Chairwoman.

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[7] The current Executive Director declined to honor this Option clause in 2003 stating that the former Executive Director had no authority to enter into the contract dated January 5, 2000. It has been suggested to us that the South Shore property has been the subject of a land swap with the V.I. Port Authority. The status of WAPA's failure to honor the contract Option is not known.

By the time the Internal Auditor and then the Chairwoman conducted their investigation, the former Executive Director was no longer employed with WAPA; and, for whatever reason, refused to submit to questioning or provide any reasonable explanation about the Devcon transaction. It is probable that had the former Board acted to satisfy itself about the former Executive Director's actions at the first hint of concern, the former Board could have taken prompt action to ensure that WAPA's interests were protected; or at least they could have tried to mitigate the damage.

Ground Contamination, Demolition, and Cleanup. There was no reference in the Contract for Sale regarding demolition or cleanup. This was raised initially in the Internal Auditor's report. The contract WAPA entered into was to take the property "as is." This is one of the issues with which the Internal Auditor took exception in analyzing the true fair market value of the property to WAPA. Yet again, no one knew and, we could not find documentation on why this issue was not addressed in the contract.

The Internal Auditor did find a 1998 letter from V.I. Cement offering to clean the property. His report also stated that there was no response found in the files. This was before the former Executive Director sought authority to negotiate for the land.

What little existing documentation indicates is that the former Board knew or reasonably should have known efforts were on the way to purchase the Devcon property. From the evidence, it is unreasonable to conclude otherwise. The failure of the former Board to keep itself abreast of the former Executive Director's actions is one of the deadly defects of management by delay.

INTERNAL MISCONDUCT

Authorized Spending Limit. The former Executive Director was authorized to incur an expense up to $75,000 without Board approval; but the WAPA By Laws require the Board to approve all land purchases. The investigation as to whether or not the former Executive Director had former Board approval to execute the Devcon purchase was addressed above. If the former Executive Director did not have the proper Board authority, he exceeded his authority by signing the Contract for Sale. And, he violated the law and policy that requires the Board to declare the South Shore property surplus before selling it.

If, in fact, the former Board is correct that the former Executive Director never had the authority to sign the contract, it should have taken appropriate remedial action immediately when it learned he had exceeded his spending authority.

Check Requisition Procedure. A check was drafted by WAPA in the amount of $2,275,000 to close the Devcon property. WAPA's check requisition protocol called for at lease two signatures as one of the usual business checks and balances. The procedure anticipates that the person initiating the expenditure would sign the form (in this case the former Executive Director) along with another executive. It also anticipated that there would be some supporting documentation attached to the form. In the case of property, the expected documentation might be a copy of the Contract for Sale or the Board's resolution to buy the property.

However, there were occasions when the Accounts Payable personnel were not permitted to see specific documentation. In cases such as a court settlement, the Accounts Payable personnel would be told that the documentation was in the Legal Counsel's office. In this case the former General Counsel indicated that documentation was attached to the Check Request form when she signed it. She did not deliver the Request form to Accounts Payable personnel for action.

The Accounts Payable Supervisor typically would refuse to honor a Check Requisition without documentation. Even when the matter was confidential such as a court settlement, the former General Counsel would show the documentation to the Supervisor.

The fact that documentation was missing when the request arrived at Accounts Payable is supported by the Supervisor's request to her superior, the Comptroller, to authorize cutting the check for the Devcon property.

The Devcon property purchase was an extra-ordinary transaction involving land critically needed and a lot of money. For those reasons alone, it is unreasonable to conclude that the former Executive Director operated in a vacuum.

For the former Board to have functioned with no knowledge of the pending property purchase required the cooperative effort of a significant number of the executive staff and, at least, the Chairman of the former Board. Unless the former Executive Director's September 23, 1999 letter, requesting that the Devcon property be added to the Board Agenda, is a forgery, the Chairman, and by extension, the whole former Board were put on notice about the status of the Devcon property.

An Assistant Executive Director signed the Check Request Form and the Check made payable to V.I. Cement for $2,275,000. The former General Counsel was also active in the sale by signing the Check Request form and by negotiating the formal terms of the contract.

WAPA's Chief Financial Officer arranged for an improper transfer of bond money to buy the Devcon property. The Supervisor of Accounts Payable and the Comptroller participated in creating the check for $2,275,000.

It just defies logic to accept that the former Board did not know anything about the Devcon contract until after it was too late for the former Board to have caused a review of the former Executive Director's activities. And, to what end would the former Executive Director not be working for WAPA's best interests? Every person interviewed was asked if they had any hint of impropriety involving the former Executive Director. No one did.

Bond Money. On November 8, 1999 the Chief Financial Officer directed the transfer of $2,275,000 from the bond account to WAPA's construction account. Considering the nature of the pending transaction, it would seem likely that other personnel within WAPA's financial office were aware of the transfer. Even if the senior executives referenced above concealed their activities from the former Board, it is just as inconceivable that the former Board did not learn about a $2.275 million purchase from other office personnel.

Cost/Benefit Analysis. No one interviewed for this inquiry could offer any explanation as to why a cost analysis, such as provided by the Internal Auditor, was not part of any cost/benefit analysis. The fact that no such analysis was done as a part of the negotiation process is another indication that the former Executive Director, "pretty much did his own thing".

INVESTIGATIVE CONCLUSIONS

It is our conclusion and opinion that the responsibility for the failures associated with the Devcon property purchase rests primarily with the former Board.

In our first report we noted that WAPA's Board bore some responsibility for the mismanagement that resulted in line losses on St. Croix. In that report some of the Board's responsibility was a derivative of its general administrative responsibility. But, in this report, the liability of the former Board is more definitive.

The misfeasance and nonfeasance occurred only at the top managerial and administrative levels of the organization. To the extent that the former Executive Director was allowed to act on his own with this purchase, the former Board was directly responsible for allowing this to occur.

What exacerbates the matter in this case, in comparison with the first report, is assuming, that the former Board, in fact, was unaware of the actions of the former Executive Director and other officers, then the former Board collectively and individually failed to:

1. Keep itself informed of the substance and progress of the former Executive Director's negotiations with V.I. Cement over an inordinate amount of time;

2. Know the terms and conditions involved in a major contractual agreement;

3. Know that bond money was improperly transferred; and,

4. Take timely action to void or mitigate the former Executive Director's actions when it became aware of his actions.

There are only two mutually exclusive options: either the former Board was informed about the former Executive Director's actions or it was not. The fact that there is insufficient documentation to determine which it is, speaks directly to the former Board's oversight of the organization. If the former Board knew what the former Executive Director was doing and took no action, then the former Board is responsible for permitting a contract to be signed that it now wants to repudiate. In the alternative, if the former Board did not know the details of the former Executive Director's actions, then the former Board is responsible for failing to fulfill its oversight responsibilities.

Two operating procedures of the former Board exemplify its inherent failures to generally administer WAPA properly; and, more specifically its failure to meet its obligations in the Devcon matter. First is the former Board's penchant for management by delay; i.e.: the length of time the former Board took to address matters of substance.[8] This kind of delay belies a good faith effort to manage.

In the case of the Devcon property, the former Board knew WAPA needed land for expansion for at least a decade. It knew the Devcon property was a prime location at least since July 1997. In April 1999, the former Board voted to give the former Executive Director the authority to negotiate for the Devcon property. The contract was signed in January 2000.

The former Board's first defective operating procedure was a kind of benign neglect in nature. If the former Board's general disclaimer, that it knew nothing of the terms and conditions of the Devcon property purchase, is accurate, then for more than 8 months nothing raised the interest of any former Board member sufficiently to ask for a formal accounting from the former Executive Director. Such "laze fair neglect" of the organization's work generally and, the former Executive Director's work specifically, is a nonfeasance.

The second defective operating procedure was an intentional neglect. Long before the Devcon matter arose and as a part of its general operating procedures, the former Board established a policy not to record the minutes of its executive sessions nor did it pay scrupulous attention to recording the subject matter of executive sessions in its regular Board minutes.

This is an example of a disingenuous lack of knowledge. The only reason for this kind of intentional neglect was to allow the former Board, and its individual members, to insulate itself and themselves from the consequences of its own actions or failures to act, as the case may be. The fact that the former Board may have acted on advice of counsel does not change the nature of, or the reason for the policy. To intentionally create this "plausible deniability" is a malfeasance on the part of the former Board.

RECOMMENDATIONS

We recommend that the current Board:

1. Take that steps necessary to ensure that the Board performs its oversight responsibilities in the operations of WAPA in general and the Executive Director in particular.

[8] By example: This technique of management by delay was referenced in our report on St. Croix Line Loss. WAPA's administration knew for many years that the line losses on St. Croix were more than double what was usually experienced by most electric/water providers. Even after seeking assistance from us in identifying reasons for the line loss, it took WAPA more than a year to actually engage in the effort. Another example of this management by delay, apparent in the Devcon matter, is the length of time it took, measured from the first notice, to correct the improper draw on bond money.

2. Review and revise, if necessary, the Executive Director's job description to ensure that it accurately reflects the responsibilities, authority and obligations of this position; specifically, in keeping the Board completely and timely informed of all financial activities and other matters critical to the proper operation of WAPA.

3. Review and revise, if necessary, the Board's own operating policies and procedures to reflect necessary changes that will ensure that it exercises proper direction and control over the Executive Director.

4. Establish and enforce a policy of formal job review for the Executive Director at least once a year. The review should include both a written critique on a standard evaluation form and a verbal review with the person holding the position.

5. Refer this report to the Virgin Islands Department of Justice for a determination of whether there were violations of any laws of the Virgin Islands.

V. I. Water and Power Authority Governing Board's Response

The Chairman of the WAPA Governing Board, in his March 14, 2005 response, indicated agreement with the recommendations made. He stated that either policies and procedures had been revised to strengthen the oversight responsibilities of the Board or, that in consultation with legal counsel, reviews intended on improving oversight would be done.

V. I. Inspector General's Comments

We consider the responses to the recommendations sufficient for us to consider them resolved.

VI WATER AND POWER AUTHORITY GOVERNING BOARD'S RESPONSE

VIRGIN ISLANDS
WATER
AND POWER
AUTHORITY

OFFICE OF THE
GOVERNING BOARD

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March 14, 2005

Served via Hand Delivery
Steven van Beverhoudt, CFE, CGFM
Virgin Islands Inspector General
No. 75 Kronprindsens Gade
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802

Re: Investigation Report on Devcon Propery

Dear Attorney van Beverhoudt:

I acknowledge receipt of the final draft of the Inspector General's report detailing the results of your office's investigation into the purchase of the Devcon Property by the Virgin Islands Water and Power, and a copy has been provided to all members of the current Board of Directors. I can't say that I am pleased with your findings, particularly since it sheds light on the shortcomings of the Board's oversight responsibilities into the management and operations of the Authority prior to 2000. Since I was not on the Board at the time of the Devcon purchase, I am not in a position to comment directly on the factual allegations. Rest assured, however, that this Board does not take lightly your findings and responds to each of your recommendations as follows:

1. **Take the steps necessary to ensure that the Board performs its oversight responsibilities in the operations of WAPA in general and the Executive Director in particular.**

   Commencing in 2000, the Governing Board adopted certain policies to improve its oversight responsibilities over the operations of WAPA and the Executive Director. Detailed policies are in place covering such areas as expenditure limits by the Executive Director, reporting requirements by the Executive Director to the board, hiring and termination policies for executive management positions, evaluation of the Executive Director and executive managers, defining Executive Director/Board relations, etc.

   The Governing Board continues to review its policies with legal counsel for

(OVIIG's Note: VIIG is not an attorney.)

other areas of improvement in its oversight responsibilities. These matters will be regularly addressed at the Board meetings.

2. **Review and revise, if necessary, the Executive Director's job description to ensure that it accurately reflects the responsibilities, authority and obligations of this position; specifically in keeping the Board completely and timely informed of all financial activities and other matters critical to the property operation of WAPA.**

   The Governing Board will review the job description of the Executive Director, and as needed make revisions to comport with the policies of the Board. A review of the Executive Director's job description will be completed and discussed at our next Governing Board meeting. Ensuring that the job description comports with the ever evolving policies and procedures of the authority is an ongoing responsibility of the Board.

3. **Review and revise, if necessary, the Board's own operating policies and procedures to reflect necessary changes that will ensure that it exercises proper direction and control over the Executive Director.**

   The Governing Board continues to review its policies with legal counsel for other areas of improvement in its oversight responsibilities. These matters will be regularly addressed at the Board meetings. The Board will also be implementing a process by which the Board's effectiveness may be measured.

4. **Establish and enforce a policy of formal job review for the Executive Director at least once a year. The review should include both written critique on a standard evaluation form and a verbal review with the person holding the position.**

   The Governing Board of the Water and Power Authority has a current policy which provides for the annual review of the Executive Director's job performance. A committee of Board Members reviews and evaluates each aspect of the Executive Director's management of the Authority's operations based upon established written criteria. As part of the evaluation, the Executive Director is interviewed and his progress with meeting the goals of the Authority's strategic plans evaluated. A final report is presented to the Board of Directors, with recommendations. This policy will be reviewed for inclusion of feedback from management and WAPA employees.

The Governing Board continues to review its policies with legal counsel for other areas of improvement in its oversight responsibilities. This matter will be addressed at a Board meetings during 2005, and will be reviewed and updated annually as provided in the Board's Governance Policy G-2..

5. **Refer this report to the Virgin Islands Department of Justice for a determination of whether there were violations of any laws of the Virgin Islands.**

It is this Board's understanding from our January 2005 meeting that a copy of the final draft of this report will be forwarded by the Inspector General's Office to the Virgin Islands Department of Justice for a determination of whether there were any violations of the laws of the Virgin Islands.

Sincerely,

Darryl Lynch
Chairman

cc: Governing Board Members
Executive Director
Loreili Farrington, Esq.

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