

## **AGENDA NOTE - HRPDC EXECUTIVE COMMITTEE MEETING**

### **ITEM #11: REGIONAL SOLID WASTE PLAN FOR SOUTHEASTERN VIRGINIA**

#### **SUBJECT:**

The HRPDC with consultant assistance from SCS Engineers has completed the five year update to the *Regional Solid Waste Management Plan for Southeastern Virginia*, enclosed which covers the SPSA service area.

#### **BACKGROUND:**

The Virginia Solid Waste Planning and Recycling regulations require that designated solid waste management planning units develop and maintain the regional solid waste management plan and once every five years complete a plan update. These regulations also require annual reporting of recycling activities to serve as the basis for determining whether the region's localities are meeting the states 25% recycling rate requirement.

The Southeastern Public Service Authority of Virginia (SPSA) is the designated solid waste management planning unit for its eight member localities. SPSA requested that the HRPDC staff develop the plan update under contract with SPSA. At its Quarterly Commission Meeting in January 2010, the HRPDC authorized the staff to contract with SPSA for this effort and to also contract with SCS Engineers to assist in the effort.

In July 2010, the HRPDC and SCS Engineers completed a review of the 2005 Plan, as amended, which was submitted by SPSA to DEQ to meet the regulatory requirements. DEQ acknowledged receipt of the review documentation.

As required by DEQ regulations, the HRPDC held a public hearing on the Plan on August 24, 2011. The Plan has also been available for public review for thirty (30) days with the public comment period ending on September 6, 2011. Attached is a set of public comments received by the deadline. Also attached is the HRPDC staff response to these comments.

HRPDC Deputy Executive Director John Carlock will provide a brief overview of the Plan recommendations.

#### **RECOMMENDED ACTION:**

Approve the *Regional Solid Waste Management Plan for Southeastern Virginia* and recommend it to SPSA for adoption and submittal to DEQ for approval.

#### **STAFF COMMENTARY:**

In addition to HRPDC consideration, the Plan will be presented to the SPSA Board on September 28, 2011 for consideration. Upon completion of action by the SPSA Board, the HRPDC staff will begin the process of redesignating the HRPDC as the regional solid waste planning agency for Southeastern Virginia, as approved by the HRPDC and the SPSA Boards in March 2010.

SCS Engineers, on behalf of the HRPDC, is presently updating the 2018 Solid Waste Management Report, initially completed in 2008. That study serves as input to the localities and SPSA as they consider management of solid waste in Southeastern Virginia after 2018.

#### Attachments

Separate Enclosure - Regional Solid Waste Management Plan for Southeastern Virginia

September 5, 2011

John M. Carlock, AICP  
Deputy Executive Director  
Hampton Roads Planning District Commission  
723 Woodlake Drive  
Chesapeake, VA 23320

**Subject:** Written Comments

**Reference:** Draft Regional Solid Waste Management Plan for Southeastern Virginia, July 15, 2011

Dear Mr. Carlock:

I have prepared the comments, included herein, concerning the Referenced Draft Solid Waste Management Plan for Southeastern Virginia (Plan) on behalf of my client, John C. Holland Enterprises, Inc (JCHEI). JCHEI is a privately held company that owns and operates an Industrial landfill in Suffolk, Virginia. JCHEI is concerned that the Plan, as it currently written, will have an adverse impact to this family-owned business and ultimately the livelihood of the owners and their employees.

The comments are largely focused on the general direction the Plan's authors have taken for the handling of solid waste in Southeastern Virginia. JCHEI appreciates the opportunity to provide comments and questions concerning the draft Plan.

I have numbered our comments.

1. Section 9 of the Plan outlines the planned implementation, based on Virginia's hierarchical approach to waste treatment, and the alternatives considered by the Plan authors for future strategies. This section, while not directly addressing planning after 2018 does allude to it, does not consider allowing free enterprise to rule or even participate in the future of solid waste in the area. This is the primary focus of this comment.

The current plan in a nutshell is to allow Southeastern Public Service Authority (SPSA), a public utility, to continue managing solid waste through 2018 per their current charter and potentially beyond. However, their operation has changed and is proposed to continue to change from direct manager/operator to contract management. With the sale of major operating assets, outsourcing of some services, and cessation of certain operations SPSA's role is growing into one that seems to be an additional and potentially unnecessary layer of government.

Importantly, SPSA is working to reduce their long-term debt of roughly \$250 million in 2010 just prior to the sale of the RDF plant for \$150 million to Wheelabrator Technologies, Inc. in April of that year. In addition, The sale of the RDF plant to Wheelabrator, while reducing SPSA debt, effectively transferred the bulk of the municipal solid waste management in the area to a subsidiary of the largest solid waste management company in the US: Waste Management. It seems that, relative to the largest waste stream in the area, SPSA is working to fulfill the role of transferring monies from the member communities to Waste Management a \$12.5 billion/year company in 2010

While it is clearly understood that the member communities desire assurance for waste management capacities and Waste Management can readily fulfill this role, my client's concern is that this will result in a monopoly of solid waste management in the area by Waste

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Management. This is especially true since Waste Management can handle every aspect of waste management and every type waste stream.

There are so many issues with the establishment of a monopoly that are so well known that I feel it is unnecessary to elaborate much. Certainly, while government contractual language may result in some price control, that control would certainly not have the power of free enterprise at keeping pricing competitive for the member communities. Ultimately, the consumer will loose and government will probably end up unraveling the monopoly. In addition, the development of a government-sponsored monopoly would certainly be ripe for antitrust litigation. Finally, other than the potential assurance of future capacity, there is little in such a plan for the citizens and businesses that are located in the target areas.

Why did the Plan authors not consider approaching local private companies directly and assess if there is interest in joint planning and sufficient interest to allow for competition in waste management in the area? JCHEI believes that this would have been a good start to bring competition into the local waste market, especially for consideration of waste management after 2018.

2. In a few sections, like Sections 1.3.1 and 2.5.2.4, the use of rail for the transshipment of waste is mentioned. In addition, Figures 8 and 12 show SPSA transfer station locations and private landfill facilities in eastern Virginia on railroad maps. In reviewing Figure 8, one would believe that the transfer stations are strategically located on the railroad. This is of course an illusion resulting from the drawing's scale. For example, the Chesapeake transfer station is adjacent to the switching yard at Mitsubishi Chemical but does not have actual access to the railroad.

While it is odd to present location information on railroad maps instead of street maps, JCHEI finds this focus of the Plan interesting because, their facility is located on a short line with access to both Norfolk-Southern and CSX and had a switch and side rail design completed in 2009. In addition, a concept design for an expanded waste transshipment facility was completed in 2010 and discussed briefly with the Virginia Department of Environmental Quality (DEQ) and several local governments. Finally, a discrete event simulation of potential traffic impacts on Nansemond Parkway resulting from an increase in truck traffic at the facility was completed in 2009. The facility currently also has two commercial enterprises interested in the installation of a non-waste bulk materials rail transfer operation at their facility.

The Plan helps confirm JCHEI's interest in initiating rail transshipment of wastes from the area, a process that was conceived, developed, and designed by JCHEI independent of any participation or knowledge of the Plan or expense to the taxpayer. JCHEI's operating philosophy is pay-as-you-go so that you are not carrying any long-term debt. By diversifying the transshipment facility so that it can handle non-waste bulk materials, JCHEI speculated that they could raise sufficient capital to pay for the waste transshipment facility. Discussions are currently progressing with the interested parties.

Clearly, the actions taken by JCHEI provide direct evidence that market forces in a free enterprise system can and will respond to community needs. However, if the public utility is planning on issuing municipal bonds to cover their cost and construct waste transshipment facilities to compete with JCHEI's proposed facility, or to provide a dedicated waste stream for transshipment to a single company without competition, then JCHEI is concerned that the Plan will have a negative impact on their future plans and livelihood. This is obviously a financial concern to the facility.

Why didn't the plan authors reach out to the local private companies to discuss future plans, the status of these plans, and get these companies involved in the future of waste management in southeastern Virginia? Relative to this issue, JCHEI only received a questionnaire from the HRPDC concerning recycling and source reduction. The facility

believed that a response was not needed since waste quantities are already reported to the DEQ annually on DEQ Form 50-25 per Virginia law.

3. Section 2.3.2.2 includes a write-up that discusses the rationale for the financial crisis at SPSA. JCHEI has two comments concerning this section. The first is that when allowed to select the disposal site, commercial enterprises did not use the SPSA facilities. While the Plan offers an explanation (which has no supporting documentation referenced) that the private carriers used their own landfills for disposal, an equally plausible explanation is that private companies use the facility with the lowest price. Because private enterprises are primarily profit-margin decision makers they will almost always pick the price that supports the lowest price/highest profit. Importantly, as discussed in the Plan, when given the choice, the member communities made the same decision becoming low price decision makers. As described in the Plan, SPSA responded by reducing their tipping fee. This is free-enterprise control in action and the member communities should have a Plan that includes allowing communities to use the lowest cost disposal option.

The second comment is that there is no proof or documentation referenced that would indicate that the court decisions and decisions by the member communities lead to the financial crises at SPSA. It is just as likely that the financial problems at SPSA resulted from other factors or combinations of factors. As such, this discussion, not required by regulation, should be removed from the Plan.

4. Population growth is a primary driver for the discussions in the Plan and is critical to the decision process. As such, the source data was evaluated in an effort to determine the methodology used for estimating future populations. In reviewing Table 3 in Section 1, I was unable to generate the annualized growth rate for Suffolk and Chesapeake but was able to get fairly close for the other member areas. Probably the Plan authors used some type of adjustment or judgment. If so, the Plan authors should describe the methodology in the Plan. Overall, it would be very beneficial to include a discussion of the method used to estimate populations in the out years.
5. While not required by regulation, in addition to planning for future capacity, JCHEI believe that the planning effort should focus on the reduction of future risks for member communities. Environmental risk and price are irreversibly linked when long-term liability of facilities are considered. The Plan, as written, may be moving in the opposite direction. This is the primary focus of this comment which is only included here because of the documentation provided on the future plans for SPSA as determined by the Board of Directors.

Section 1.1.2 outlines SPSA's core goals as adopted by their Board of Directors. Goal 2: "Consider Outsourcing SPSA Functions" has as Objective 2.2 "Determine Feasibility of Operating Household Hazardous Waste, Used Oil, Tire Shredder, White Goods Disposal and Freon Extraction Services Programs." This Objective, was given the following Action: "Perform an Analysis of the Household Hazardous Waste, Used Oil and Freon Extractions Programs to Determine if the Programs Should Be Discontinued."

These core programs when coupled with municipal incinerator ash wastes represent the bulk of air and groundwater pollution risks to the member communities. In addition, portions of these programs are not sufficiently economically viable to be of major interest to commercial enterprises; especially in light of the focus on the six policy areas specified in the State law.

For example, there is currently little interest in used tires relative to recycling and many end up in landfills even though incentives exist for recycling/reuse. While the combustion of the used tire rubber does have a heating value higher than coal, the removal of the steel and nylon belting requires a substantial investment in equipment and energy. Household hazardous waste has little if any commercial viability other than destruction or disposal. Because the waste products included in this section can represent substantial environmental risks JCHEI

believes that these operations should be maintained by a government entity like SPSA or other entity where waste handling is not driven by lowest tipping fee but by lowest lifetime cost. Conversely, disposal options for the high quantity, low risk wastes, should be based on lowest price because the lifetime environmental risks are lower.

6. JCHEI has to provide some corrections to the values presented in Table 17. Capacity calculations completed in 2003, and propagated forward until 2010, were substantially in error. The current remaining capacity is 3,964,000 tons with 5,573,000 tons disposed of to date and 31 years of estimated life remaining.

JCHEI was permitted as an industrial landfill prior to the promulgation of the Subtitle D regulations and prior to the establishment of SPSA. The landfill receives industrial and C&D waste in accordance with their permit issued at that time. JCHEI receives and recycles steel, yard waste, creosote timber, concrete and brick, and used tires. The following recycling volumes were recorded 2010: metal 320 tons, yard waste 7,260 tons, creosote timber 7,790 tons, concrete and brick 7,792 tons, and used tires 751 tons.

JCHEI appreciates the opportunity to comment on the Plan.

A handwritten signature in black ink, appearing to be 'W. Niederhut', written in a cursive style.

Warren Niederhut, P.E., CIH

cc: File, A2

JCHEI

MEMBER  
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SUFFOLK

SURRY

VIRGINIA BEACH

WILLIAMSBURG

YORK

September 7, 2011

Mr. Warren Niederhut, P.E., CIH  
Crestline Consulting  
1049 Austin Drive  
Chesapeake, Virginia 23320

RE: Response to Public Comment  
(POL: Regional Solid Waste Plan Update 2010)

Dear Mr. Niederhut:

Thank you for your letter of September 5, 2011 providing comments on the draft Regional Solid Waste Management Plan for Southeastern Virginia, and for your comments at the August 24, 2011 Public Hearing on the Plan. The staff of the Hampton Roads Planning District Commission has reviewed your comments and provides the following response. The response is keyed to the numbers in your comment letter.

1. The Plan does not assume a specific role for the Southeastern Public Service Authority of Virginia (SPSA) in solid waste management after 2018. The member localities and SPSA are pursuing a separate process to determine the appropriate role of SPSA and the relationship between SPSA and the member localities after 2018. Once that process concludes and decisions are made, the Regional Solid Waste Management Plan for Southeastern Virginia will be amended as appropriate. Prior to adoption of any amendments to the Plan, additional opportunity for public review and comment will be afforded.

There has been no intent on the part of the HRPDC or of SPSA in preparing this Plan to establish a monopoly. The Plan recognizes other public and private sector waste management entities. The Plan proposes maintenance of the existing regional system for solid waste management plan consistent with existing contractual relationships among the various parties. As noted in the previous paragraph, decisions about the future post-2018 system are being considered and appropriate amendments will be made to the Plan once decisions have been made.

Attachment 11B

2. You point out several references, both direct and indirect, to potential use of rail for shipment of solid wastes. Section 1.3.1 notes that this alternative has been previously considered and rejected through previous regional solid waste planning efforts. Section 2.5.2.4 notes the reality that many of the "out-of-region" landfills are located near or adjacent to rail lines. Figures 8 and 12 depict the location of major solid waste management facilities and major transportation facilities, both rail and highway. The Plan makes no assumption about future use of rail for transportation of solid wastes. It points out that rail may be a future option for solid waste transportation. It does not include a proposal for public construction of rail facilities to support solid waste transportation.
3. Section 2.3.2.2 addresses the SPSA financial situation as it influenced decisions that have been made about regional solid waste management facilities. It reflects the fact that commercial waste quantities have declined, which has negatively impacted SPSA revenues. It points out that court decisions and other factors have also negatively impacted the regional system. While this discussion is not required by the DEQ regulations, it is believed to be appropriate background for the current status of regional solid waste management in Southeastern Virginia. The current status obviously influences the available options and Plan direction.
4. The population forecast used in the Plan (Section 1, Table 3) was developed by the HRPDC staff in cooperation with the sixteen member localities, initially for use in developing the Long-Range Transportation Plan. It is presently being used in a variety of regional planning programs, including water supply, wastewater management and solid waste management. Detailed documentation of the forecast methodology can be provided.
5. We agree that household hazardous waste (HHW) and others, such as used oil, white goods and tires are of higher long-term risk and/or lower value than traditional municipal solid waste. The region's Household Hazardous Waste program was established in the late 1980s based on recognition of those risks and the minimal or no profit associated with management of those wastes. As the region goes forward, both the risk and commercial viability, or lack thereof, of managing those wastes will be evaluated. Decisions about future management of these higher risk, lower profit wastes will reflect the inherent risks in managing or not managing the wastes, the cost of doing do and the potential interest of the private sector in participation in their management.
6. You point out the need to correct the capacity calculations for the JCHEI landfill, contained in Table 17. We appreciate the comment and will make the appropriate correction to this Table.

M. Warren Niederhut, P.E., CIH  
September 7, 2011  
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7. Your unnumbered final paragraph includes data on the volume of material recycled by JCHEI during Calendar Year 2010. We appreciate this data and look forward to your continued participation in the annual Recycling Rate reporting process.

Again, the staff of the Hampton Roads Planning District Commission appreciates your comments on the Regional Solid Waste Management Plan.

Sincerely,

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

John M. Carlock, AICP  
Deputy Executive Director

JMC/fh

Copy: Mr. Rowland L. Taylor, SPSA Executive Director