

**MINUTES OF THE BOARD OF DIRECTORS
PUBLIC HEARING and REGULAR MEETING
SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA**

September 23, 2009

At the Regular Meeting of the Southeastern Public Service Authority of Virginia (SPSA) held at 9:30 a.m., in the Regional Board Room at the Regional Building, 723 Woodlake Drive, Chesapeake, Virginia, there were:

ROLL CALL

Members:

Don Williams, Chair	(NO)
Bryan L. Collins	(CH)
Barry W. Cheatham	(FR)
Stan D. Clark, Vice Chair	(IW)
Jeffrey A. Gardy	(SU)
G. Timothy Oksman	(PO)
Dallas O. Jones	(SH)
Michael J. Barrett	(VB)

Alternates:

William E. Harrell	(CH)
June Fleming	(FR)
W. Douglas Caskey	(IW)
Stanley A. Stein	(NO)
Stephen E. Heretick	(PO)
Mike Johnson	(SH)
Selena Cuffee-Glenn **	(SU)
John Barnes	(VB)

Others present at the meeting included SPSA staff Mr. Rowland (Bucky) Taylor, Executive Director, Ms. Liesl R. DeVary, Treasurer to the Board, Mrs. Lou Ann Ivory, Executive Assistant and Secretary to the Board and Anthony M. Thiel, SPSA General Counsel. Numerous legal and financial individuals from each of the member localities and several staff members from the Hampton Roads Planning District Commission were also in attendance.

(CH) Chesapeake; (FR) Franklin; (IW) Isle of Wight; (NO) Norfolk; (PO) Portsmouth;
(SH) Southampton County; (SU) Suffolk; (VB) Virginia Beach

* Indicates Late Arrival (after beginning of Closed Session)

** Indicates Early Departure

The meeting began with the invocation by Mr. Collins (CH), the Pledge of Allegiance and was followed by Roll Call. A quorum was present.

PUBLIC COMMENT PERIOD

Chairman Williams stated that there was one speaker signed up for the Public Comment period, Mr. Vince Mastracco with Kaufman and Canoles and he called him forward to speak.

Vince Mastracco, with Kaufman & Canoles (representing self), 150 W. Main Street, Norfolk, VA 23510

“I think we would all agree that realizing fair market valuation for its assets is a very important public policy consideration. ReEnergy's proposal, the financial packet that has been presented is a \$240 million package purchase price with an \$87.50 tipping fee at 2013 dollars. And acceptance of all the closure and post closure liabilities and risks of Suffolk landfill, all of this, we believe, gives a very attractive fair market valuation for the member communities for the sale of SPSA's assets. It is critically important and consistent as far as fiduciary responsibility to its stakeholders, particularly to the member communities, that they get fair value for their assets. And the opinions and terms and conditions of the proposal can only be confirmed by a thoughtful and thorough process. That means that is one in which your experts that you all have assembled will take a look at the proposal and evaluate it for its validity and for its both attractive and non-attractive financial benefits as they relate to the other proposals that are outstanding. The formal posting of the PPEA proposal which we are requesting is also in compliance with the PPEA guidelines, but in the provisions in particular the Cosgrove Bill that became effective on July 1, 2009. Posting that proposal will fulfill two very important obligations. First and foremost the fiduciary responsibility to identify and implement the most cost effective proposal solution to the member localities and their constituents. And secondly to discharge the Board's legal responsibility in accordance with the applicable law that I refer to, which is to accept and review any proposals submitted under the PPEA that would potentially reduce the costs of any of SPSA's programs. We believe that a transparent process, one that basically is open to the public for scrutiny and for good deliberation and conversation is really the only way for that process to proceed. And each of the member communities has also receive from us numerous communications which articulate more particulars with regard to the proposals as they relate to each of the member communities and the constituents. So we respectfully request that the Board vote affirmatively to post the ReEnergy proposal.”

ACTION AGENDA: (The Public Hearing was Item #1)

ITEM NO. 2: REQUEST FOR CLOSED SESSION

Mr. Tony Thiel, General Counsel, asked that a motion to approve the request for a Closed Session as set forth in the agenda paragraphs I and II under Agenda Item #2 and herein printed below. Mr. Clark (IW) made such a motion and the motion was seconded by Mr. Cheatham (FR). Chairman Williams then called for a vote. All present voting yes with the exception of Mr. Oksman (PO) who voted in opposition. Chairman Williams then announced that the Board will now go into closed session and asked everybody to leave other than the Board, stating that the city attorneys, city managers could stay.

I. Motion for Inclusion of Nonmembers in Closed Meeting.

That the following be permitted to attend the closed meeting described below because they are deemed necessary and because their presence will reasonably aid the Board in its consideration of the topics that are the subject of this meeting: CAOs, city/county attorneys, staff and financial consultants of the member communities; SPSA staff present at this Board meeting and SPSA's consultants and lawyers; and Hampton Roads Planning District Commission representatives and their consultant, SCS Engineers.

II. Motion to Approve Request for Closed Meeting.

A request is made for a closed meeting for the following purposes:

(A) To receive and review reports and advice regarding (i) the possible sale of the waste to energy system including the proposal from Wheelabrator Technologies, Inc., (ii) a possible sale of all of SPSA's assets including a proposal from ReEnergy Holdings LLC, and (iii) a PPEA proposal from Suffolk Energy Partners for the purchase of landfill gas and the development of gas facilities, pursuant to the following: (a) Virginia Code Section 2.2-3711(A)(3) for discussion or consideration of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, (b) Virginia Code Section 2.2-3711(A)(7) for the purpose of consulting with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel, and (c) Virginia Code Section 2.2-3711(A)(29) for the purpose of consulting with legal counsel and consultants regarding the negotiation of revisions to the terms of existing contracts and/or negotiation and award of new contracts where competition and bargaining are involved and where discussion in open session would adversely affect the bargaining position and negotiating strategy of the Authority.

(B) In connection with advice and discussions related to SPSA's financing and contracts, pursuant to Virginia Code Sections 2.2-3711(A)(7) and 2.2-3711(A)(29) for the purpose of consulting with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel and possible negotiation of revisions to the terms of existing contracts and negotiation and award of new contracts where competition and bargaining are involved and where discussion in open session would adversely affect the bargaining position and negotiating strategy of the Authority.

Upon conclusion of the Closed Session, Mr. Collins (CH) made a motion to approve paragraph III as noted herein and in Item #2 of the agenda note, Request for Closed Meeting. The motion was seconded by Mr. Jones (SH).

III. Motion to Approve Certification after Closed Meeting.

The Board of the Southeastern Public Service Authority of Virginia hereby certifies that, to the best of each member's knowledge: (a) only public business matters lawfully exempted from open meeting requirements by Virginia law under the Virginia Freedom of Information Act were discussed in the closed meeting to which this certification applies; and (b) only such public

business matters as were identified in the motion convening the closed meeting were heard, discussed or considered in the closed meeting just concluded.

All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

(Closed session held at 10:36 a.m. after which the following was held at 12:09 p.m.)

ITEM NO. 3: ACTIONS ARISING FROM CLOSED SESSION

Chairman Williams called on Mr. Taylor who stated that there was a Resolution for the Board's consideration as a result of the Closed Session. Mr. Thiel, General Counsel, then read the Resolution which is herein printed.

RESOLUTION ELECTING TO USE COMPETITIVE NEGOTIATION IN REVIEWING AND EVALUATING A PPEA PROPOSAL FOR THE PURCHASE OF LANDFILL GAS AND INSTALLATION AND OPERATION OF EQUIPMENT, FACILITIES AND SYSTEMS AT SPSA'S SUFFOLK LANDFILL AND MAKING FOIA DETERMINATION

WHEREAS, the Southeastern Public Service Authority of Virginia ("SPSA") has received an unsolicited proposal (the "SEP Proposal") pursuant to the Virginia Public Private Education Facilities and Infrastructure Act ("PPEA") from Suffolk Energy Partners, L.P. ("SEP") for (i) the purchase of landfill gas ("LFG") from the SPSA regional landfill (the "Landfill") in Suffolk, Virginia, and (ii) the installation and operation of equipment, facilities, and systems at the Landfill for the collection and processing of LFG in an environmentally compliant manner; and

WHEREAS, by Resolution dated February 25, 2009, SPSA's Board accepted the SEP Proposal for conceptual phase consideration and thereafter SPSA published notice of its interest in receiving other unsolicited PPEA proposals; and

WHEREAS, SPSA received no additional proposals within the prescribed time period; and

WHEREAS, Article IV, Section C.2 of the Guidelines provides that SPSA must determine whether to use the competitive sealed bidding or the competitive negotiation methods in reviewing and evaluating proposals and requires that SPSA make findings before proceeding with competitive negotiation; and

WHEREAS, based on the findings stated herein, the Board has determined that the use of competitive negotiation will likely be advantageous to SPSA and the public; and

WHEREAS, the Executive Director has made a determination regarding records that are excluded under the Virginia Freedom of Information Act ("FOIA") and the Board desires to ratify that determination.

NOW THEREFORE BE IT RESOLVED, by the Board of SPSA as follows:

1. The Board hereby determines that it will proceed with the SEP Proposal under the Guidelines by using procedures for competitive negotiation.
2. In determining to use procedures for competitive negotiation, the Board further determines and finds that doing so is likely to be advantageous to SPSA and the public based upon (i)

the probable scope, complexity or priority of the project that is the subject of the SEP Proposal, (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity making the SEP Proposal; and (iii) the economic benefit that would not otherwise be available.

3. The Board hereby ratifies the determination set forth in the attached statement dated September 22, 2009 that the records described therein are excluded from the provisions of FOIA under Va. Code § 2.2-3705.6(11)(a).

Adopted this ____ day of _____, 2009

Attest: _____
Donald L. Williams, Chairman

Mr. Gardy (SU) made a motion to approve the Resolution as read which was seconded by Mr. Cheatham (FR). Mr. Collins asked that before we move forward to vote on this, there are some obvious costs to everything we do, one of them that often rises as a significant one is consulting. Is this an item that we would be able to get some type of, I guess, charge back or negotiated cost; can you address that? Mr. Thiel responded that under the PPEA SPSA and skylines have the right to charge back the cost of the consultant within certain limitations and guidelines and we intend to make use of those guideline. Chairman Williams asked Mr. Taylor to share with the Board, when you make a proposal like this; you have to put some money up front, right? Mr. Taylor responded "\$10,000". And then once it's accepted, there's a \$20,000 fee and then after that there are consultant and attorney's fees added on top of that.

ITEM NO. 4: REENERGY HOLDINGS, LLC PROPOSAL

At this time, Mr. Warren Nowlin of Williams Mullen gave a brief overview of the ReEnergy Holdings unsolicited proposal which has been submitted under the PPEA proposal. He stated that it has been interesting working with the Board on the issues that this proposal has raised and noted that they have been considering it and reviewing it with the Board since July. Mr. Nowlin said the proposal is a nonbinding, unsolicited conceptual proposal, stating that ReEnergy, as they all know is not bound by the terms. He then took the Board through a PowerPoint presentation, a copy of which is attached as Appendix B, highlighting that the proposal is to acquire all of SPSA's assets including the RDF facility and the power plant which are subject currently to the waste energy sale. Also, the proposal would provide that the Suffolk landfill, the transportation and other SPSA assets, including the nine transfer stations which would be acquired and then transferred back to the member communities, who would then immediately lease them back to ReEnergy for a period of 20 years.

Mr. Nowlin stated that the purchase price is a target of \$243 million. That assumes a \$15 million SPSA debt service reserve which would actually be used -- they would take SPSA reserves and acquire those reserves so in effect the \$243 million might be adjusted by the \$15 million SPSA debt services. The member community tipping fees, all member communities would pay tipping fees. Through 2013 the tipping fees may step up or step down from current

levels and the triggers for those step ups and step downs are not presently known. After 2013 there is a target of \$87.50 per ton. And again, the actual fees would be subject to their due diligence and confirmation of the assumptions based into their proposal. The proposal is significantly leveraged. It has \$81 million in equity commitment that they propose and \$242 million in tax exempt bonds, roughly, a 75/25 debt-to-equity ratio. State action would be required for the private activity bond allocation. Mr. Nowlin also said he should point out for Board that volume cap allocation would also potentially compete with the value cap allocation that would be sought by SPSA to ensure that either it did not incur tax or penalties with regard to the extinguishment of its debt under this transaction. He added that he thinks the Board needs to look carefully at the private activity bond volume cap allocations to the Commonwealth of Virginia recently. Some of that information is in the proposal. The amount required by ReEnergy could potentially compete with the applications for volume cap by SPSA to make sure that it doesn't incur taxes. As I said it's fairly leveraged. Some might say highly leveraged at 75 to 25 and there are questions about obviously the debt marketability and placement risk. Several other points were highlighted in the presentation which are not detailed in this writing.

Mr. Harrell (CH) said he had just a few comments. "Certainly, we believe that it is in SPSA's fiduciary responsibility to conceptionally review and accept this proposal and evaluate it over the next 45 days. Certainly, we have Councilman Collins who briefed the Chesapeake City Council and they voted at their meeting of September 8th that SPSA post the proposal and solicit competing proposals during that 45-day period. There were, however, several significant questions that need to be clarified over the 45-day period. Certainly one is the market value of SPSA assets. While ReEnergy is proposing that market value just so happens to equal how much debt is on the books, when you consider the fact that the landfill has potential for expansion of Cell VII, I think we need to confirm the real market value for the assets.

Another key issue is the fact that under this proposal all eight communities would need to agree to a 20-year contractual arrangement. We've heard from several communities that may not be viable for them so how does that impact the deal. This proposal also requires that Virginia Beach and Suffolk agree to equalize tipping fees by 2013. At least in the preliminary discussions I think that would be a challenge. You may hear further about that. Again what impact does that have on the deal? As well as the fact that host agreements would be offered for those communities including the City of Portsmouth for the host facilities that they have. But again, what impact is that going to have on the tipping fee and how viable is that long-term rate. We need to be able to confirm those issues. I think that really addresses the big point. I think the key is that the City of Chesapeake wants to make it clear these were our preliminary comments. Because as addition information comes forward from ReEnergy and perhaps others there may even be further clarification on the volume cap and others. Thank you, Mr. Chairman."

Mr. Barrett (VB) commented as follows: "Thank you; I appreciate the opportunity to comment. I think you can look at the glass as half empty or half full in some respects. I, like every other member of the Board, have reviewed the information and of course we had some advance notice by ReEnergy's initial proposal by letter and then of course waited until July

7th to actually file under the PPEA, and I've tried to review the information that they've provided under the statute as well as the new Bill that passed that does require us to look at any proposal that could potentially reduce the costs of our program. I actually have come to a different conclusion although based essentially on the same set of facts that Mr. Harrell (CH) laid out. I would say parenthetically that the process we undertook to create this PPEA to look at the sale of our waste to energy facilities was to me, one of the proudest moments that this Board has ever had. We've come under awful intense criticism in the past for failing to plan ahead, but in this case, this has been as Warren has laid out, a very long extensive process. We followed the requirements of the PPEA. We've gotten great proposals from core firms. ReEnergy certainly had the opportunity to participate in that and chose not to and then finally filed under the new law. But when I look at their proposal, I worry about it jeopardizing the deal that we have with Wheelabrator, a deal that is not just a proposal. It's a set of facts enclosed by March 1 and backed up with assurity in the amount of \$5 million bucks, and to me that's a bird in the hand. It's a deal. And I know all of us agree that that deal has got to be continued to be viable. But I don't think that further consideration of the proposal that ReEnergy put on the page is -- potentially reduces costs. I frankly have read the statute as close as I can and look at the precedents that are included in their proposal and I have come to the conclusion that those precedents are impossible. The first one, clearly the Navy contract requiring the 20-year agreement from the United States Navy, I have to say it's my opinion that's just impossible.

Secondly, the requirement to have a 20-year agreement with each of us. I'm reminded of the gray hairs I used to see that Durwood Curling developed after he left being city manager and went to form SPSA and five years later, his hair was as gray as yours, Mr. Chairman. It's a tough process. To think this is going to be negotiated within the time we have to close on the Wheelabrator deal to me is a leap of faith. It took five years to negotiate our current agreements and every time one of us gets a concession the other seven have a problem with that and then that has to be negotiated. I'm sorry, the potential for 20-year agreements with each of us, not just one, but every one of us again is an impossibility. And the issue of the refinancing of the \$240 million of private activity bonds in amount that's I don't think has ever been done in the Commonwealth of Virginia, any one of those precedents I think are impossible. All three, I think are also impossible. That said I know that we have a responsibility to the tax payers to a degree that many of you have expressed that in this and other meetings and I'm aware of that. I think that if we accept it and post it and get alternate proposals, to the degree that does not jeopardize our deal and I'm afraid, if you pull a string it gets longer. If it starts to jeopardize the arrangement with Wheelabrator I'm not going to support continued negotiations of this thing. And I think it's incumbent on ReEnergy to either take away those precedents that in my view prevent it from being a potential cost savings. Unless they do that, I don't think it's a viable proposal. I think they're a good company; I've met the principals. They seem like good people to me but it can't save any costs for us unless it can be implemented. And the way it's proposed, I don't think it can be implemented. But I will support a recommendation to accept and review."

Mr. Gardy (SU) said they had met with the ReEnergy people. He knew Ms. Cuffee-Glenn (SU) had met with the ReEnergy people and what he relayed through monthly reports to Council was that he wanted them to know what SPSA has done, what struggles we're facing

and of course reported to my Council in closed session some of the activity here and what we needed and what was coming so they were aware of ReEnergy. And we've tried to keep everybody aware and I want to know on the record, this is not first blush we've had at ReEnergy; we've been discussing ReEnergy for over six months and will continue to do so and have our doors open to talk to them. But I also adopt Mike's [Barrett] theory of the three perils we have to get over and William's [Harrell] analysis also. It's a tough hurdle. And course, in Suffolk, you have to get over that other hurdle where you have to get us out of the zero tip fee; that is tough. Mr. Gardy said they would welcome all discussions and we'll listen to all discussions and he wanted the record to show that they had already done that. Thank you."

Mr. Collins said he wanted to touch again on the new code, Va. Code 15.2-5102.1[5] otherwise known as "the Cosgrove Bill"; the law states that SPSA shall accept and review any proposals under the PPEA that potentially reduces the costs of any of SPSA programs. Mr. Collins said, "That's the part, the last several words. 'Potentially reduce the cost of any of SPSA's programs.' Now, I didn't realize that the good delegate was still in the room but it's my understanding that given the challenges the SPSA was facing during the time frame that this bid was proposed, that it is to strongly encourage us to find ways to reduce costs in essence get a better return to the overall taxpayers in that case. And while we certainly have gone through the process of one set of negotiations, I don't know that I can reach and say that those negotiations covered every program to the point that there is not a potential for additional savings. And to that end, when we're also faced that with having the highest tip fees in the nation, here is a potential proposal that says we can give up that number one spot to someone else. I don't know who that other someone would be as long as not Southside Hampton Roads. And to that end, we also know that while we have hurdles to get over one phase that America is known for and Virginia specifically in our region that 'things change'. I noticed even recently in the newspaper about the way they're doing transportation on a regional basis. The way we were working it in the past, we're now looking at coming together and doing it a different way. One would have said just last year, and I probably would have agreed with them, that changing the methodology would be probably near impossible, but today that seems like that may not be the case. And I believe there could also be the opportunity that given the challenges that this proposal has, it may be able to go sharpen up their pencils and make the thing even better. Again during this initial proposal and what we wish to do here, at least what I would like to see us do is to review and see what impact that it would have on the actual rate payers. And until we actually give us it some serious consideration as we've had with the other proposals, I wouldn't be comfortable saying we've gotten the best deal for the long term. Thank you."

Chairman Williams stated that SPSA had just done something on the landfill gas and asked how that might affect what we're doing? Mr. Thiel, General Counsel, responded that it was not clear. The proposal from ReEnergy is to buy all the assets is the landfill and the rights to gas. Again, that's another unknown in the ReEnergy proposal but we actively, pursuant to the Cosgrove Bill, long before the Cosgrove Bill SPSA entertained and accepted for conceptual review a proposal to extend its relationship with its current landfill gas operator over a 20 year contract period is what the initial proposal is. So there is an actively negotiated deal in the

works for entering into a contract that impacts the landfill which is one of the assets that ReEnergy proposed to purchase.

Mr. Nowlin said to the extent that SPSA under its current procedures and procurement rules extends or modifies the existing landfill gas contract arrangements that would be a contract that would be subject to sale like any other asset. Mr. Thiel said “and it would presumably affect the value of any proposal by anyone buying that asset. Might be positive; might be negative; depends on the revenues generated.”

Chairman Williams said under the law the way it is, if someone came in tomorrow with another proposal on the gas and landfill, would we have to stop that process and process another one. Mr. Nowlin said if it is a PPEA proposal, the interesting thing one might say, the dilemma presented by the delegate's bill is that you have a statutory duty to ‘accept and review’ any proposal, any unsolicited proposal or bid that comes in under the PPEA if it could potentially reduce the costs of any programs. So the answer is if another unsolicited program comes in in the interim, even if it's the day before any closing on any deal occurs, if it's an unsolicited proposal, it has the potential of triggering a whole new review, and that is one of the dilemmas that is presented by this Bill without commenting on the Bill itself. It makes you wonder when you can get to closing on anything if somebody shows up at your door the day before closing with an unsolicited proposal subject to the PPEA.

Mr. Stein (NO) said the Board has focused a great deal about the price that we get, we get the lowest price. But there is also ‘service’ that any of these future companies, whichever one is selected would be a concern to us. He indicated that his city council has expressed in conversations with them their concern about a monopoly, and so he would think the Board would need to be able to fully understand the monopoly if it was to be accepted or any of the other groups that were affected would not only provide a better price but also provide equally improved services for those customers that we all represent.

Mr. Cheatham (FR) said he wanted to go on record as saying he does support the Wheelabrator deal at present, but clearly I do think we need to look at all the options that are on the table such as the ReEnergy. But he does have questions as to whether ReEnergy really is a cost savings to us. It's a 20-year versus us getting out in 2018, but they did offer us buyouts in a subsequent letter, but those are usually very costly to the entity doing the buying out. He further stated that he didn't know what their first year tipping fees will be based on: if it's based on the current fee that we have now or when it was supposed to be or the projected ones that they're going to hold for the first three years. Mr. Cheatham said he had problems that in April 10th is the basis of all this. They're projecting that the tipping fee will be ‘x’ amount starting in 2013, but there are a lot of variables, the 20-year Navy contract, if that doesn't go through, what difference would that make to the tipping fee. The financing, if they don't get the bonds and have to go elsewhere, what is that going to do. He has problems with the bond competition, they will be in with us on that and the collective pool as it's been seen in the last few years whether or not they can even get it. And he also has a problem with the monopoly on it. Even though we have a somewhat one now, when we get done, if we're with Wheelabrator, we still have the landfill that's a viable asset. He thinks when we get through

and start putting the numbers to it and get some real numbers and not projected we'll be able to sit down and say which deal is the best for us.

Chairman Williams asked Mr. Nowlin, "in your presentation, I didn't see -- we know that the landfill Cell VI will not last until 2018, so somewhere somebody's got to come up with \$52 million to expand the landfill. Was that in your numbers anywhere?"

Mr. Nowlin said it was not; my apologies. He then said currently projected is \$52 million in costs for expansion of Cell VII or the building a Cell VII if the landfill continues to be used at the current rate. For example, under the Wheelabrator proposal, it basically takes all your non-processable somewhere else. So the consumption of space in your landfill would drastically decline, such that we believe, at least based on your engineer's estimates, that the landfill, Cell VI, would last perhaps throughout the duration of the next eight years, through 2018. Under the ReEnergy proposal, it is simply subject to confirmation of sufficient capacity either current capacity or expansion capacity. That \$52 million presumably because they would not be diverting waste to other places but would be using your landfill should they acquire the assets, your current capacity at the current rate of usage would not last, and therefore, they or you, either before or after closing on that transaction, would have to spend that \$52 million or whatever the number is but it's projected at \$52 million to expand your capacity. I think, again, it's a conceptual proposal not a binding offer but the conceptual proposal is they would need to confirm that either the existing capacity or the capacity for expansion would satisfy their needs. The \$52 million, the unfortunate reality is that sooner or later you are going to have to start incurring that costs if you don't close some deal. And I don't know how long an alternative proposal like this would take to get to fruition but at some point those budgetary numbers are going to be present numbers and the ratepayer is going to have to start paying."

Chairman Williams said but whoever purchases, if they depend on our landfill, they have to come up with an additional \$52 in the next eight years? Mr. Nowlin said, "Well, yes. Presumably that would be built into their ultimate tipping fees and that's why their tipping fees they have proposed targets, I suppose, and not real numbers." Chairman Williams then said "Now we're pushing it up to \$300 million of debt." Mr. Nowlin said they have to figure out what the real number is based on their due diligence and his belief is they have a lot of due diligence to do to find out what those costs are and whether or not they can modify those costs.

Mr. Jones (SH) said he agreed with Mike [Barrett] and they [Southampton County] are not ready to sign a 20-year contract with anybody right now. Chairman Williams responded, "Not even us?" And Mr. Jones said "Not even". He continued "because your tipping fee is going to fluctuate. He is saying low now but what happens five years from now? We still might be the highest in the nation, and I just don't agree with this contract, because we don't see everything that we need to see. It's all not in there and we can't keep going that way."

Chairman Williams then asked Mr. Barrett (VB) if they were ready to sign a 20-year and pay equal amounts. Mr. Barrett said certainly not under the fees that they've proposed; no, we're

not. Chairman Williams then asked Mr. Gardy (SU) and he responded that he did not think he could sell it right at the moment.

Chairman Williams then asked if there were any other comments and there being none asked if there was a motion. Mr. Oksman (PO) said "Before the motion, I'd like to ask a question of executive director. Mr. Taylor, if SPSA does proceed with conceptual phase consideration of this proposal, would what be your intention concerning having our out-of-pocket review costs covered? Mr. Taylor responded that SPSA would seek for, in this case, ReEnergy to be covering the vast majority of those costs. Chairman Williams spoke up and said "ALL". Mr. Oksman they said, "So none of the review costs would be passed on to the ratepayers?" Mr. Taylor said this is our end goal.

Mr. Oksman then made the following motion, "Mr. Chairman, I move pursuant to the Cosgrove Bill, HB # 1872, PPEA and SPSA guidelines to accept and review for conceptual phase consideration and thereafter post and publish notice of this decision so that for a period of 45 days, public comments and competing bids may be received. Under this motion, SPSA retains its rights to discontinue consideration of this and any other proposals when SPSA deems it appropriate and justified by the facts. The motion will not be interpreted to cause any delay in good-faith efforts to satisfy all conditions of the Wheelabrator offer prior to execution by SPSA of that offer. Mr. Chair, I so move." Mr. Collins (CH) seconded the motion. Chairman Williams then asked if there was any further discussion and there being none called for a roll call vote. The results of the vote are as follows: Q: Mr. Collins, A: Yes; Q: Mr. Cheatham, A: Yes; Q: Mr. Wright, A: Yes; Q: Mr. Williams, A: Yes; Q: Mr. Oksman, A: Yes; Q: Mr. Jones, A: Yes; Q: Mr. Gardy, A: Yes; Q: Mr. Barrett, A: Yes. All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

ITEM NO. 5: APPROVAL OF RESOLUTION AUTHORIZING THE TERMINATION OF SPSA'S RECYCLING SERVICES

Mr. Taylor stated that each Board member had in their agenda packet information regarding the review of the recycling program and the basic termination of that program. We did have following last months meeting, three localities that indicated they felt that additional time would be necessary and they've requested until the end of March of 2010. The recommendation would be to continue with that and to accept that proposal and not have the recycling come to an end December 31st, but rather carry it to March 31, 2010. That's Part 1. The next part is basically the containers, the 18-gallon bins. He further stated that in the past when a SPSA community got out of the SPSA recycling program they were allowed to just keep their bins because it would be more expensive to pick them up than to just let the citizens have the bins. However, the other part is a 95-gallon carts. If those were purchased with funds that were borrowed at any particular time, it may well be necessary that some amount of money be paid by localities if they do have the 95-gallon carts. But that is a decision that would be up to Board, whether or not to have communities actually purchase the carts.

Mr. Thiel, General Counsel, stated that we are going to have to look at lender approvals on all the disposition of major assets. Mr. Taylor stated there is a letter that has already been written that needs to be sent to VRA to get their approval to begin the process for that. Also the equipment that would be remaining and the property that would be remaining, we propose to offer that to any of the communities that are members of SPSA first once we get a determination of what we feel like is a reasonable price to offer that equipment. We do understand that some communities or at least one may be interested in beginning to provide service themselves. If that is the case they may wish to purchase the trucks and containers. So we would like to first offer that equipment to the communities of SPSA and after that we would post it on site and selling it to the general public. The motions are set out on the back of the agenda sheet. There are several motions that are needed or you can indicate each one and adopt it as a particular motion. Mr. Thiel said we also have a resolution we are asking the Board to adopt that makes it clear that all of the action to terminate the actual disposal and recycling services is subject to approval by VRA in Paragraph One and there is a finding regarding the fact that this does not materially adverse that affect the operating efficiency of SPSA's disposal system which is required finding and a third paragraph regarding the disposition of the assets. Again, keeping in mind that the sale of assets as opposed to the termination, there is a two-step procedure. The first step is determining the services effective as Bucky suggested next March. No approvals are required except VRA. But the sale of assets, we will have to sit down with our lenders and make sure they approve the disposition of any of those assets and to the extent any of those assets were used were financed by bond proceeds to make sure we clear our skirts on that.

Mr. Harrell (CH) said he had two quick comments. The first is as you know the City of Chesapeake has the small bin program. Our citizens have consistently requested the big bins. And we went out to bid on that. SPSA elected not to bid and we are working on awarding a contract. Our desire is to exit the program sooner than March so I would hope that would not preclude us from doing that. Mr. Thiel said assuming we have VRA approval, there's nothing to stop us from terminating the service. Mr. Harrell said we could work through those details; he just wanted to make sure that's clear. Certainly by the end of the year we want to make sure we weren't still in a relationship. Mr. Taylor stated that Chesapeake no longer needing the service is not a VRA issue. Chairman Williams said is was a revenue issue, though. Mr. Harrell said the second issue was, as an organization that is \$240 million in debt he thought that before we give away any assets we need to make sure when were fully amortized and that if there is some value to it, we consider the appropriate issues of such.

Chairman Williams asked if there was any further comment and there being none called for a motion to adopt the resolution. Mr. Barrett (VB) made such a motion and the motion was seconded by Mr. Cheatham (FR). All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

ITEM NO. 6: FINANCIAL OVERVIEW

Chairman Williams called on Ms. DeVary to present her financial reports. Ms. DeVary said as of August 31, 2009 total revenue exceeded expenditures by approximately \$9.7 million of

which \$3.7 million was realized in August. The tonnages are down considerably as compared to last year, however; they are in line with what we projected and so our revenues are right in line with our budget. Total expenditures are under budget by approximately 8% and this is primarily in the areas of equipment management, fuel, utilities, and of course, our capital projects. Additionally, we did realize approximately \$1.1 million savings in the debt service transfers to the trustee this month as a result of the debt restructuring that was done earlier this year. I have prepared and included for your review and consideration a capital projects report. This is to enable you to see the status of where we stand, as well as to help you track the changes as we go through the year and you will see an example of that later in the agenda we have some changes to that. Cash balances remain healthy, and as of today, we have paid the revolving line of credit in full.

Ms. DeVary then asked if there were any questions and Mr. Collins (CH) said he did not want to rush through this and he just wanted to make sure he heard this correctly. We are actually in a positive cash flow? Ms. DeVary responded, "Yes." Mr. Collins said, "\$9.7 million?" Ms. DeVary said that was for the budget. Total cash as of August 31st was almost \$17 million. Mr. Collins said, "And the revenues exceeded cash expenses by how much? Ms. DeVary said year-to-date is \$9.7 million, but just for the month of August it was \$3.7 million. Mr. Collins asked if that was on all our lines of credit or just that one and Ms. DeVary stated that we only have one line of credit. It was the \$17.2 million. That is currently at zero but we are eligible or able to draw down on it as we need from now to the end of the fiscal year. Mr. Collins said, "But you're saying it's paid off...no balance?" Mr. Taylor said we have to pay an 'availability fee' because that \$17.2 is available to be used any time you want to use it during that period of time. Mr. Collins then said, "But for our day-to-day operation, we don't have to the use credit card and Mr. Taylor responded, "No sir." Ms. DeVary added, "We have not and additionally, we have over \$1 million in a separate reserve, the operating reserve that was created this year. We also have that available, too." Mr. Collins said this was a very positive financial report. Chairman Williams said we are not lowering the tip fee yet and Mr. Collins responded, Mr. Chairman, you're reading my mind.

Mr. Cheathan (FR) said, "This needs to be pointed out. The \$9.7 is still good. It also includes the \$3.6 that we counted for funds that are being deferred" and Ms. DeVary said that is correct. Chairman Williams said we have to keep building that reserve and hopefully come June, we'll have enough built up to maybe pay Virginia Beach back without having to go into payment plans.

Mr. Collins (CH) made a motion to accept the financial reports and the motion was seconded by Mr. Jones (SH). All present voting yes; opposed none; motion carried by a unanimous and recorded vote. Mr. Oksman (PO) asked the Chairman if he could make a brief comment and said he hoped the media and the public will take note of the quality of the management and leadership of SPSA and the effect it's having on our finances. Chairman Williams commended that this was not a bad story so he doubted if it would get to the paper, but we'll find out. Mr. Oksman added "This is not your father's SPSA."

CONSENT AGENDA

Chairman Williams said there was one thing on the Consent Agenda to mention before the vote on it, on Item #8, the minutes of July 29, 2009, there is a correction to the minutes as they appeared in the agenda. The minutes indicated that Mr. Harrell (CH) was absent, but he wasn't so we'll correct that and they did not reflect the fact that Mr. Collins arrived late. So we'll make sure on the record that both of these changes are made. Mr. Gardy (SU) made a motion to accept the Consent Agenda as amended and the motion was seconded by Mr. Barrett (VB). All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

ITEM NO. 7: CAPITAL PROJECTS

ITEM NO. 8: PRESENTATION OF THE MINUTES OF THE BOARD MEETINGS

INFORMATION ITEMS:

The below-listed items were presented as Informational Items. There were no questions on any of these items.

ITEM NO. 9: MINUTES OF THE EXECUTIVE COMMITTEE MEETINGS

ITEM NO. 10: MINUTES OF THE BUSINESS ADVISORY COUNCIL

ITEM NO. 11: PERFORMANCE INDICATORS

ITEM NO. 12: PUBLIC INFORMATION ACTIVITIES

ITEM NO. 13: MISCELLANEOUS ITEM(S)

- Update on Amendment 8 to the RSWMP
- Regional Landfill Operations Update

OLD/NEW BUSINESS

There was no Old Business. Under New Business, Mr. Oksman (PO) had a comment as follows, "Mr. Chairman, I'll be very brief. We've made a lot of very important decisions today. Portsmouth has previously raised the issue of disparate tipping fees and I would just like to say that it's very important for SPSA to have a dialogue on that subject. It's going to be a difficult one, because Suffolk and Virginia Beach have some rights and those rights need to be understood. It also needs to be understood that there are some decisions that have been made by the overall leadership of SPSA that really have nothing to do with Suffolk or Virginia Beach that got us into the fix we're in right now. So my comments certainly do not suggest any criticism of either of those two jurisdictions. But having said that, the disparate rate structure cannot continue, and SPSA will never be fixed, will never be equitable until we

can find some way to resolve that. And the only really acceptable way to resolve it is to continue a dialogue and ultimately through a process by which we can win the agreement of Suffolk and Virginia Beach. And so while I will not be making any motion today, I would simply like to keep that subject alive for discussion and I hope as time goes on and my fellow SPSA members will find a way to have a dialogue, a beginning dialogue on that subject. Perhaps it could even involve a long-term restructuring of SPSA that gives some long-term security to Suffolk and Virginia Beach. I don't know how we do it yet but I know we can't find a way to do it unless we start talking about it, and my hope is that sometime in the near future, we will start talk about it.”

Mr. Cheatham (FR) said he wanted to bring up that he believed the Board had said before that once we got the credit line paid off and the money we were saving on the bond issues about the payment of them, we were going to start putting it into a special account; has that taken place or..?” Ms. DeVary said we haven't actually transferred the cash because we're keeping it pooled all in one account. Mr. Cheatham then asked if it has been set up as a reserve. Ms. DeVary said it hasn't been designated as a reserve. Mr. Taylor added that we were hoping to bring this up next month after we talked with the Executive Board. Mr. Cheatham clarified by saying, “So that's going to be deferred now then to the Executive Board and we'll talk about it next month? I just don't want it to get away from us.” Ms. DeVary responded that it is certainly not going to get away but there are so many ‘unknowns’ as to what plan and what items and how to make a recommendation to this Board on how to use or utilize those funds, and that's why we need to make a presentation to you to give you some options.” Mr. Cheatham asked if we could expect that next month. Chairman Williams said, “Barry [Cheatham], let me say that – and Mr. Cheatham said, “We're going to keep going on and it's going to be over.” Chairman Williams responded and said we've got some things down the road we don't know. One is the prepayment penalties on these bonds. Mr. Cheatham said this was even more reason to put it in. Chairman Williams said we're not going to spend it. I'm not saying that, but I'm saying we're going to hold it in case we need it. It can be up to \$20 million. Mr. Cheatham replied that if Chairman Williams remembered what he had proposed was that it would release with a 75% vote of the Board. That it would be released at that point but to put in as a reserve so it wouldn't be available for day-to-day money and then it is there for when we have to pay things such as you just suggested. It had nothing to do with putting it in there for evermore. But it was to make sure it got locked up and was not being just spent. Ms. DeVary said it can't be spent because staff can't spend \$30,000 without Board approval anyway. Mr. Cheatham said he still thinks it needs to be in reserve fund. It needs to put on the record on that; it needs to be put away in a reserve fund and not be available for whatever. Chairman Williams asked if he would like to make it an agenda item next time and Mr. Cheatham responded, “Please.”

Mr. Harrell (CH) said just to follow up on that, what is important and I think some of the misinformation that has gotten out about the Wheelabrator deal and some of the advertisements and other pieces is that, you know, you sell an asset and then all of a sudden rates are going up. What's being missed is the rates aren't going up because of the sale of an asset. The result, the increase in rates is that we have to pay back Virginia Beach. That's the fact of the matter as you peel back the rate structure. So I'm hoping that this Board at some point and we're thankful for the Beach. If they had not deferred and Suffolk hadn't

participated -- I mean, those communities stepped up to the table as part of the CAO plan. There is no criticism there. But all of us would have to pay much more tipping fees to include the Beach as they deal with deferrals and what have you as well as the fact that after 2015 they come on. So I just think it's in Virginia Beach's financial interest and SPSA's financial interest if we explore the fact as to whether those payments, rather than having to be over the next three years could be smoothed out. If our cash position is such maybe something could be worked out where might be some prepayments in cash to help that situation. Mr. Harrell continued the problem is if we go into next year's budget process and the city managers around the table will agree with me on this. With the reduction of state revenues, with shrinking assessments and everything else, we are going to have a heck of a time meeting the requirements of the tipping fee. So I just hope that we as a Board in same spirit that Mr. Oksman spoke of, can address the situation for all of the communities, all of Hampton Roads can benefit from that. Again, we are thankful to Virginia Beach. We'd be paying a heck of a fee if hadn't agreed to defer. There is no complaint there. But we're seeing an improving cash position and I think we need to have our financial advisors looking at how can we address the requirements of the Beach through that agreement but maybe smooth it over in terms of that debt through the longer; the 2018 is part of that wielding away at it as opposed to having a spiking in rates.

Mr. Barrett (VB) said he certainly concurred with the recommendation and the Beach had indicated some time ago that we were willing to enter into negotiations on the SCS report and a long-term agreement. I think that's important for all of us. The irony that's really put that into prospective for all of us is the ReEnergy proposal, everybody is saying how can they have \$340 million invested in SPSA and have such a low tip fee. Well, when you spread debt over 20 years, it makes a big difference. First of all, I still don't believe those numbers work. But the point is you put that debt over a longer period of time and, yeah it does start to make a real impact on the tip fee. Well, we could do that if chose to do it. So far even though we've had fits and starts on these discussions we've never been able to get to that point. But I welcome the opportunity to make another try at it and I think it might be very helpful to all of us to rethink that. Chairman Williams said to remind us that the tipping fee right now is \$267. It's not \$170. And the proposal with Wheelabrator brings it down to \$198. And I'll tell you, some times trying to hedge our bets, but a big thing is how we can pay off these bonds and minimize the payoff penalties and we need those value caps to do it with. The same ones that they're bidding for to buy the place and we need them anyway also, but if we can get those value caps so we don't have the prepayment penalties, we'll probably have enough money -- I'm going out on a limb here -- to drop the tipping fee \$20 to \$25 from where it is projected at \$198. But we don't know; there are so many unknown things so I'd rather leave it like it is and when the good Lord gives us those value caps and if we don't have to pay the IRS the penalty to pay off those bonds, we'll have sufficient cash and we can start working the tipping fee down further from where it is now. But right now its \$267 and the press and public don't remember that it's \$267. Just because you are paying \$170 and borrowing \$170, doesn't mean its \$170. Mr. Collins (CH) said one thing before you move forward. One is that can we get out to the member localities the presentations that were given, electronically please. And secondly, Mr. Oksman certainly brought up the idea of equalizing the tip fees and I think everyone here are certainly aware that Chesapeake has long advocated that and the balancing of the equalizer on our rate schedule doesn't necessarily just only be limited to the member

localities. And we're certainly going to continue to support that type of idea and thought and for me, I believe that we should always continue to look to see what we can do in order to provide a better service, just following our goals and objectives of SPSA of being a quality organization, providing quality service at the best rate possible. And if we continue to work, at least as this Board for the life it has left, gives something for the next Board to come up, a jumping off point, that its not as challenging as we have seen in the past. Chairman Williams commented that the question about Virginia Beach and Suffolk has been debated I know ten years ago. It's not the first time it's been debated and I would say it's probably going to get resolved in about eight years.

Additionally under New Business, Mr. Taylor said we had some Capital Items that are over \$30,000 so we have to bring those to you. Several of them are at the Power Plant. We need to replace C-trammel line; that's about \$600,000. C-line has gotten to point where it is in worse shape than the one we were planning on trying to replace and that was A-line. B-line is currently being done. So we need the Board to approve us to authorize us to do the work that's necessary there, because if ends up breaking that particular line will be shut down. Filter bags. We had a fire in one of the lime pollution control areas and the fire and subsequent water causes a crust on the outside of bag and the bag is no longer usable. That happened to about 1,700 bags. They have to be replaced.

Also, two things that are not in the actual power plant. We'd like to be able to move the "Lose or Use" unused sick leave and annual leave from the beginning of calender year to the fiscal year calendar. This would make things work out better for us if we were able to do it through the fiscal year. This year it will give employees about six months to be able to use any of their leave if they are already at the maximum. There are only about 95 employees at the top that this would apply to and if they were to use it, every bit of it, it would be about a \$6,700 issue. But it would help tremendously to maintain it on a fiscal basis instead of a calender year.

Additionally, we met yesterday with our insurance broker and they have gone out and bid the insurance for us. Our policies end next Wednesday but since it is over a \$30,000 issue we felt like we needed to bring it to you. The insurance was about a \$1.9 million last year; it will be about \$1.8 this year. It's about \$150,000 cheaper than it was the year before. So we need authorization to go ahead and move forward with that, to sign and do these particular items.

Chairman Williams called for a motion to approve these four items. Mr. Collins (CH) said he had a couple of questions. One is to make sure that we're talking about the same replacement. We have a note, a memo here, on 'C' but I'm reading about 'B'. Mr. Taylor stated that 'B' is currently being done and had already been approved. Mr. Collins also said on the sick leave or the 'lose or use' to move the leave, I want to make sure we're not cutting the employee time. They'll actually have 18 months to use it and Mr. Taylor responded that would be the case just for this one time and then it would cycle back to the twelve months. Mr. Collins clarified that there would be no overall negative impact on the employee? Mr. Taylor responded that there was definitely no negative, it would be a positive impact. Mr. Collins then made a motion for the Executive Director to move forward on these items as presented.

The motion was seconded by Mr. Oksman (PO). All present voting yes; opposed none; motion carried by a unanimous and recorded vote.

ADJOURNMENT (Meeting adjourned at 1:33 p.m.)

There being no further business to come before this Board of Directors, Chairman Williams adjourned the meeting.

Rowland L. Taylor
Executive Director

Submitted by: Lou Ann Ivory
Secretary, SPSA Board of Director