December 20, 2010

To: Board Members, Eastern Shore of Virginia Public Service Authority

The Chairman of the Authority provided public comments concerning the application for financial assistance for the southern node of the proposed Northampton County regional wastewater system at the State Water Control Board (SWCB) meeting on December 9, 2010. The Chairman's comments included both analytic and procedural matters associated with the project, and concluded with a recommendation that funding be denied. I understand the SWCB proceedings will be discussed at the December 21st Authority Board meeting. As I will not be able to attend this meeting, I want to provide you my perspective.

The analytic matters certainly need to be addressed in a deliberate manner by the Authority, and it is not my intent to comment on them at this time. However, I would note that the Authority has had over four months to take this on since the application was submitted by the County in advance of restructuring the Authority. Some questions were posed to the consulting team by the Chairman and another board member, but no action has been proposed by the Chairman or been taken by the Authority to attempt to resolve these matters. The first step would have been to transfer responsibility for the financial assistance application from the County to the Authority. It would then have been appropriate for the Authority to conduct a review of the Preliminary Engineering Report and application and make changes if deemed necessary. This was not done and, instead, the Chairman has simply provided negative comments to the Department of Environmental Quality (11-16-2010) and SWCB (12-9-2010). **It is time for the Authority Board to remedy this procedural issue and accept this responsibility.**

I will address three matters raised in the Chairman's comments to the SWCB:

1. The Chairman states, "In another area, Hurt & Proffitt together with Mr. Robert Panek seem to be preparing to use the Cape Charles sewage system to subsidize the wealthier residents of Cape Charles by charges made to the low income families outside the town."

   Here are the facts:

   a. It is common knowledge that economies of scale accrue when additional customers are added to a system with sufficient capacity. This has been discussed numerous times at the Wastewater Summit and in T-CUP Project Management Team meetings.
   b. Cape Charles rates are about 50% higher than the state-wide average for small systems; low income families also reside within the town.

c. One of the objectives from the beginning has been to pursue rate efficiencies for existing systems. The following is contained in the Northampton County Resolution of July 13, 2010, Authorizing the Application for Funding for a Regional Wastewater System:

   "WHEREAS, the Preliminary Engineering Study and Report was recently begun for a project to serve the Towns of Cheriton and Cape Charles and the surrounding County area which will determine whether environmental, economic and **rate affordability benefits** can accrue;" (bolding added).

   Similar language appeared in the resolutions adopted by the Towns of Cheriton and Cape Charles.

d. The Preliminary Engineering Report determined that it would be less costly to use the Cape Charles treatment plant to process sewage from the new service area rather than build another plant.

2. The Chairman states, "In addition to being the Town's appointed PSA member, Mr. Panek is a paid consultant for the Town of Cape Charles. He presumably has both a professional and an employment/financial interest in this project."

   Here are the facts:

   a. I am an employee of the Town of Cape Charles with the title of Staff Consultant. This is no secret and is noted in numerous public documents.
   b. My duties are principally to manage the large capital projects for improvements to the Town's water and wastewater systems. I provide assistance to the Town Manager and staff in other areas as needed.
   c. I am not paid for attendance at meetings of the T-CUP Project Management Team or Authority Board.
   d. I certainly have a professional interest in the regional project, particularly since benefits may accrue to residents of Cape Charles and the County at large.
   e. I have no employment/financial interest in the regional project. My employment with the Town is not at all dependent on the success of the regional project.

3. The Chairman states, "He also indicated the Senator would not have given support if he had been made aware of the permanent burden the ever growing sewage costs would place on the backs of those who could least afford it."

Here are the facts:

a. The information provided to Senator Northam's aide consisted of the positions taken by the Chairman of the Board of Supervisors and the Mayors of Cheriton and Cape Charles. Additionally, I explained that the project development process would determine whether an affordable rate could be achieved or not.
b. No entity that I am aware of - not the Towns, not the County, not the Authority, not the T-CUP PMT – is advocating the imposition of an unaffordable rate.
c. The local governing bodies have the responsibility of making the determination of affordability if the necessary percentage of voluntary service agreements is not achieved.
d. The Senator was not asked to lend his support to the burden of an unaffordable rate.

The Chairman's comments, above, are laced with hyperbole, misleading statements and innuendo. **The Authority Board should modify the Bylaws to indicate that Officers of the Authority shall not sign correspondence using their title unless authorized by the Board.**

On December 9, I requested that the Chairman include both of the recommendations above on the December 21 meeting agenda. The agenda distributed by the Chairman on December 19 does not include these items. The Chairman and I have had an exchange of several emails today and, as of this afternoon, he refuses to include these items on the agenda. I urge the Authority Board to take up these two matters at the December 21 meeting. The Authority Board needs to consider and decide on their responsibility for financial assistance applications and guidelines for ensuring clear public expression of the Authority's positions. **I recommend that the revised bylaws not be adopted until the latter issue is decided.**

I request that this letter be entered into the record of the December 21, 2010 meeting.

Bob Panek