

City of Alexandria, Virginia

MEMORANDUM

DATE: October 9, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: CITY COUNCIL COMMITTEE OF INQUIRY (COMPOSED OF VICE MAYOR REDELLA S. "DEL" PEPPER AND COUNCILMAN LUDWIG GAINES)

SUBJECT: RECOMMENDATION REGARDING REVIEWER SCOPE OF INQUIRY AND QUALIFICATIONS AND PROPOSED SCHEDULE

ISSUE: City Council consideration of proposed qualifications and scope of review for independent reviewer of City staff actions related to the opening of the Norfolk Southern Railway Company Van Dorn Yard Ethanol Transloading Facility.

RECOMMENDATION: That City Council adopt the Committee of Inquiry's recommendation regarding qualifications and scope of review for the inclusion in the solicitation of bids for the independent reviewer of City staff actions related to the opening of the Norfolk Southern Railway Company Van Dorn Yard Ethanol Transloading Facility.

BACKGROUND AND DISCUSSION:

On September 23, 2008, the City Council appointed Vice Mayor Pepper and Councilman Gaines to serve as Council's Committee of Inquiry ("C of I") looking into staff actions related to the opening of the Norfolk Southern Railway Company Van Dorn Yard Ethanol Transloading Facility. The Committee was tasked to work with the Norfolk Southern Community Monitoring Group ("NSCMG") to among other things, develop a proposed scope of review and qualifications for the reviewer. This memorandum sets forth that recommendation.

The NSCMG met in properly noticed open session on Thursday, October 2, 2008 to provide its input to the C of I regarding the scope of the review and the reviewer's qualifications. Prior to this meeting, City staff, including the City Attorney's Office and the Purchasing Division, provided input to the C of I related to the process and timing necessary for the City to retain the independent reviewer. Based on that information and the direction given by Council to the C of I when it was formed on September 23, 2008, the C of I developed the proposed schedule for

developing scope and qualifications, soliciting bids from qualified candidates, interviewing and retaining a reviewer, undertaking the review and making a final report to Council. That schedule is attached hereto as Exhibit 1. Thereafter, on Monday, October 6, 2008 the C of I met in properly noticed executive session to discuss what was proposed by the NSCMG and develop its recommendation to Council.

Based on the foregoing process, the C of I recommends the following as the qualifications of the independent reviewer.

CANDIDATE QUALIFICATIONS:

- 1) Substantial experience in conducting inquiries, reviews or investigations of staff functions in a governmental organization.
- 2) Demonstrated ability to:
 - a. formulate a plan of inquiry;
 - b. read, understand and organize large amounts of information; and
 - c. determine important questions to be resolved to adequately address the scope of inquiry.
- 3) Demonstrated ability to:
 - a. Determine and obtain information necessary to prepare for interviews with relevant individuals;
 - b. Explain issues related to cooperation and confidentiality with interviewees; and
 - c. Conduct and prepare summaries of interviews while maintaining the requisite confidentiality.
- 4) Demonstrated ability to make findings after completion of inquiry and preparing written reports to senior government officials.
- 5) Demonstrated knowledge and understanding of how large governmental organizations function and arrive at decisions.
- 6) Provide recent references from prior governmental inquiries or investigations.

In addition, the C of I recommends the following scope of inquiry:

SCOPE OF INQUIRY:

- 1) *Period to be reviewed* - The period of time when City officials first made contact with Norfolk Southern Railway Company ("NSRC") regarding the potential use of the Van

Dorn Yard site as an ethanol transloading facility in June of 2006 through May 15, 2008, the date the City Manager informed City Council and the community that NSRC had commenced ethanol transloading operations at the Van Dorn Yard.

- 2) *Purpose of review* – Make findings regarding the City staff's actions and inactions regarding notification of City Council and the public regarding NSRC's proposed and actual use of the Van Dorn Yard as an ethanol transloading facility, including what transpired during the period to be reviewed, the people involved and the decisions that were made.
- 3) *Material to be reviewed* – All City documents in the City's possession related to the Van Dorn Yard from the period to be reviewed, including, without limitation, e-mails, letters, memos and timelines, as well as the letters from the community requesting the independent review.
- 4) *Interviews to be conducted* – All individuals the reviewer deems to be relevant based on the review of the relevant materials, including without limitation, City staff, the Mayor and members of City Council, as well as any relevant non-City parties who are willing to participate. Reviewer will provide assurances of confidentiality and freedom from retaliation and describe steps for protection of privacy for City staff, as well as informing City staff of their obligation as employees to cooperate with the investigation.
- 5) *Report* - Prepare a report to the C of I, to include an executive summary, setting forth the reviewer's findings.
- 6) *Additional Availability* – Reviewer should be available to appear before City Council on December 13, 2008 to provide a presentation about the review and present the report to Council.

In addition to the foregoing, the C of I recommends that the solicitation for bids include:

- a) the requirement that the candidate be available on October 28, 2008 to be interviewed by the C of I;
- b) the requirement that the review and report be completed within the defined review period set forth in the schedule, including that the review be complete by November 30, 2008 and the report be delivered to the C of I on December 10, 2008; and
- c) proposed staffing and an estimate of total cost for the review, based upon a review of approximately 1000 pages of documents, conducting approximately 25 hours of interviews and generating a report setting forth findings pursuant to the scope set forth above. The foregoing quantities are provided to assure that candidates are providing cost estimates from a uniform set of assumed facts. The actual quantity of documents and number of interviews may be different.

Exhibit 1 - Proposed Schedule for selection, review and report

October 2, 2008 – The NSCMG met to provide input to the C of I regarding the qualifications of the independent reviewer and the scope of the review, as well as discuss possible cost.

October 6, 2008 – The C of I met in properly noticed executive session to discuss the NSCMG's recommendations of 10/2 and prepared a memorandum and docket item for the October 14, 2008 City Council legislative session setting forth its recommended scope and qualifications.

October 14, 2008 - City Council will receive the C of I's recommendation for discussion and final approval of the qualifications of the independent reviewer, the scope of the review and the other information to be included in the solicitation of candidates.

October 15, 2008 - The City's Purchasing Division will electronically post and release the solicitation for candidates as approved the prior evening by City Council, and will also cause the solicitation to be posted in a newspaper of general circulation. Notices will be sent to all candidates who have already expressed an interest in the position, as well as a list of other potential candidates developed by the Purchasing Division. The solicitation for candidates will specify a 10 day response time, which should be sufficient time for qualified candidates to respond and will comply with the 10 day response time requirement under the City's procurement law. Responsive bids must be received by 5:00 p.m. on Monday, October 27.

October 27, 2008 – The NSCMG will meet at 6:30 p.m. in properly noticed executive session to review the responses to the solicitation for candidates and provide its input to the C of I regarding the potential candidates. At the conclusion of this meeting, the C of I will meet in properly noticed executive session to determine the top candidate(s).

October 28, 2008 – The C of I will meet in properly noticed executive session to interview the top candidate(s) and based on those interviews and the responses to the solicitation, make their decision. During City Council's legislative session that evening, the C of I will present their final recommendation to City Council. City Council will vote regarding approval of the recommendation and if approved, will set other applicable terms and conditions, including the budget.

October 29, 2008 – Purchasing Division will formally notify the successful candidate.

October 29 through November 30, 2008 – Review period of approximately 5 weeks for the reviewer to complete the review process.

December 10, 2008 - Reviewer's final report is due to C of I.

December 13, 2008 - City Council receives the reviewer's presentation and report at the December 13, 2008 public hearing. (Note that this is not a public hearing item.)

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10-14-08

Subj: **combined Norfolk Southern Memo**
Date: 9/30/2008 9:12:40 A.M. Eastern Daylight Time
From: Jackie.Henderson@alexandriava.gov
To: delpepper@aol.com
CC: Ignacio.Pessoa@alexandriava.gov

Del--

Attached, as requested by you, is the "combined" memo from the September 23 City Council meeting. I have taken yours/Councilman Gaines original memo and included all of Councilman Smedberg's changes that were read and accepted by Council at the meeting.

Please note that under "Fiscal Impact," City Council did not adopt this section, but instead, as part of the motion, said that it agreed to exclude the fiscal impact until a third party reviewer has been decided upon by Vice Mayor Pepper, Councilman Gaines and the NSCMG and a budgetary statement will come before Council for consideration and final approval. I have struck out the old language and have noted that new language in [blue](#).

Also, please note under "background and discussion," the second paragraph, the word "meeting" should probably have been "meet" so I noted that in red/bold. Also, under "recommendations," the first recommendation, the word "personal" should have been "personnel." I have also noted that in red/bold.

Please let me know if you need anything else.

Jackie M. Henderson
City Clerk and Clerk of Council
City of Alexandria, Virginia

DATE: SEPTEMBER 30, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: VICE MAYOR REDELLA S. "DEL PEPPER"
COUNCILMAN LUDWIG P. GAINES

SUBJECT: CONSIDERATION OF A REQUEST FOR AN INDEPENDENT
INQUIRY OF ACTIONS RELATED TO THE NORFOLK SOUTHERN
ETHANOL TRANSLOADING FACILITY

ISSUE: City Council consideration of a request for an independent inquiry of City staff actions related to the site location, all aspects of the construction process, and the eventual opening and operation of the Norfolk Southern Ethanol Transloading Facility. This inquiry should include all City departmental input related to the site and the facility.

RECOMMENDATION: That City Council authorizes an independent inquiry into City staff actions related to the Norfolk Southern Ethanol Transloading Facility as described above. The independent inquiry will be lead by Vice-Mayor Del Pepper and Councilman Ludwig Gaines who currently serve as co-chairs of the (Alexandria) Norfolk Southern Community Monitoring Group (NSCMG.) To help bring focus to the independent inquiry, Vice-Mayor Pepper and Councilman Gaines will serve as the principal liaisons to the independent third party reviewer and will seek guidance from the NSCMG in the initial stage of the inquiry as they select specific issues for review, develop a series of questions and frame a report format.

BACKGROUND & DISCUSSION: In April 2008, the Norfolk Southern Corporation began an ethanol transloading operation at its intermodal facility located in the City's West End. Although City staff had knowledge of the impending operation, months in advance, neither City Council nor potentially affected communities near the facility received notification. On May 15, 2008, City Manager James Hartmann sent a memo to Council advising of the ethanol transloading operation. After notification about the ethanol operation, Council received numerous inquiries from the community, including requests for the release of information associated with the ethanol operation. Subsequently, the staff made public hundreds of emails dating between June 20, 2006 and June 23, 2008, and, on June 16, 2008, launched an ethanol information page on the City's website. In addition to these steps, City Manager Jim Hartmann appointed Steve Mason, Special Assistant to the City Manager, to serve as the primary contact to the community on the transloading issue. The City Council established the Norfolk Southern Community Monitoring Group ("NSCMG") to support the City's actions to shutdown the ethanol transloading facility, to track the progress of ongoing regulatory, legal, and permit activities; and to keep the wider stakeholder community informed about its work.

The management of the ethanol transloading facility opening makes it clear the City did not **meeting meet** acceptable standards for transparency and accountability. In order to address community concerns and ensure our government is ready to meet the challenges

ahead, it is critical that we conduct an independent third party review of this situation to ascertain whether or not the Council and community have all the necessary information to understand what happened.

We recommend the following for Council's consideration:

- Authorize Vice-Mayor Pepper and Councilman Gaines, to direct the activities of the independent reviewer in consultation with the NSCMG. Due to **personal personnel** confidentiality reasons, Vice-Mayor Pepper, Councilman Gaines, and the independent reviewer will protect employee confidentiality.
- Authorize Vice-Mayor Pepper and Councilman Gaines, in consultation with the NSCMG, to develop for Council's consideration, the necessary qualifications for a candidate that would be best suited to conduct such an inquiry, as well as recommend the scope of the work that is to be covered.
- Authorize Vice-Mayor Pepper and Councilman Gaines, in consultation with the NSCMG to review the candidates' applications and make a recommendation for Council's final approval.
- The City staff shall provide the independent reviewer access to all relevant information, including information produced because of FOIA requests and make available for interview City employees and Council members. He/She should have access to other applicable documents, such as results of the City Manager's consultant efforts.
- Due to personnel confidentiality reasons, some information may need to be summarized. All identifiable employee information will remain confidential.
- Set November 30, 2008, as the report completion date.

~~**FISCAL IMPACT: The fiscal impact of undertaking this inquiry would be funding for an independent reviewer. We recommend that an initial sum of up to \$10,000 be designated in contingent reserves. Any additional funding for the inquiry shall be docketed for consideration by Council. Council places a \$20,000 limit on this expenditure.**~~ (THIS DID NOT GET ADOPTED) Council said: City Council agreed to exclude the fiscal impact until a third party reviewer has been decided upon by Vice Mayor Pepper, Councilman Gaines and the NSCMG and a budgetary statement will come before Council for consideration and final approval.

ATTACHMENTS:

Attachment I: Letter from Ingrid Sanden, President, Cameron Station Civic Association

Attachment II: Letter from John Sullivan, President, Cameron Station Community Association

Attachment III: Letter from Geoffrey M. Goodale, President, Brookville-Seminary Valley Civic Association, Inc.