

COMMISSION ADOPTED POLICY



Title: Employee Defense Policy

Date of Adoption: April 28, 2009

Date of Revision:

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1.0 Purpose and Need

This policy defines the terms and conditions under which HRSD shall undertake to defend its Employees in Claims brought or made against an Employee individually, including administrative claims and litigation, when such Claim arises out of and by virtue of any actions taken by the Employee in furtherance of his duties while serving a term of office for or employment with HRSD.

This policy is supplemental to the requirement of Chapter 66 of the Acts of Assembly of Virginia of 1960 as amended, the Enabling Act that Commissioners be covered by a public official's liability policy available through the Commonwealth in the amount of at least \$1,000,000 with a \$10,000 deductible.

2.0 Definitions

Employee: the term "Employee" shall include all Commissioners, officers, current full-time and part-time employees and any former employee, their estate or personal representative.

Claim: the term "Claim" shall mean any civil written demand, suit or legal action or administrative claim seeking monetary or injunctive relief. Claim shall not include any criminal claim or action or any claim in which HRSD is an adverse party to the Employee.

Commission: the term "Commission" shall mean the Hampton Roads Sanitation District Commission.

3.0 Guiding Principles

All judgments, claim settlements, costs and expenses of defense, including expert witness fees and legal fees, shall be paid by HRSD directly or through insurance purchased by HRSD to cover its potential liability hereunder, provided such claim settlements, costs and expenses are authorized by the General Manager or the Commission in the same manner as claims, litigation or legal proceedings involving HRSD. Such payments shall not be contingent upon the existence of insurance coverage for the Claim.

Payments shall only be made if the claim or claims resulted from acts or omissions which HRSD, after engaging in due diligence in its own internal investigation of the Claim, determines satisfy the following criteria:

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- (1) Occurred in good faith; and
- (2) Occurred in the reasonable belief that such actions were in furtherance of the official practices and policies of HRSD; and
- (3) Were within the scope of authority of the person so acting; and
- (4) Were within the course of employment of the person so acting; and
- (5) Were not in the determination of HRSD willful, malicious or wanton.

The duty to defend or pay costs and expenses of a Claim shall be conditioned upon:

- (1) The prompt reporting by the Employee of every accident and of every incident in which the Employee is involved which may result in the assertion of a claim or suit; the prompt transmission by the Employee of every Claim relating to any such accident or incident; and the full cooperation of the Employee in the investigation of every such accident and incident.
- (2) The truthful reporting by the Employee of all facts known to him or her about every such accident or incident.
- (3) Delivery by the Employee to the General Manager or Chairman of the Commission, in the event the General Manager is the subject of the claim, of a written request to provide for a defense of the Claim, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Employee is served with such document.
- (4) The good faith cooperation and assistance of the Employee in the defense of the Claim and in the prosecution of any appeal.
- (5) The good faith cooperation and assistance of the Employee in the defense of any action or proceeding against HRSD, based upon the same act or omission, and in the prosecution of any appeal.
- (6) The Employee's delivery to the General Manager or Chairman of the Commission, in the event the General Manager is the subject of the Claim, of a written request to provide for a defense as outlined in (3) above, the Employee's request for representation, and/or the Employee's acceptance of representation under the provisions of this policy, shall constitute consent by the Employee to HRSD's authority to resolve, by compromise settlement, any action or proceeding for which representation is accepted, without any further consent or authorization of the Employee.

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4.0 Procedures

(1) HRSD reserves the right to determine the particular legal counsel who will represent the Employee. In the event that HRSD and Employee are both named parties in the same Claim, HRSD and Employee may share the same legal counsel subject to the rules of professional conduct governing legal representation. When proceedings are instituted against a group or multiple groups of Employees, the same counsel may be retained to represent more than one Employee or group, subject to the rules of professional conduct governing legal representation.


(2) The Employee has the right to obtain his own counsel to defend against the Claim. The cost of such counsel, however, shall be borne solely by the Employee and will not be the responsibility of HRSD.

5.0 Responsibility and Authority

The HRSD General Manager shall be responsible for execution of this policy in accordance with the terms and conditions outlined herein.

This policy shall cover all future Claims and any existing at the time of its approval.

Approved:

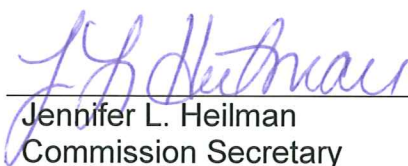


R. Tyler Bland, III
Commission Chairman



Date

Attest:



Jennifer L. Heilman
Commission Secretary



Date