

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
SUBURBAN COUNCIL OF GOVERNMENTS
NOVEMBER 23, 2010

I. Call to Order and Welcome

The Meeting of the Suburban Council of Governments (hereinafter "SCOG") was called to order at 10:09 a.m. by Mayor Leiken.

II. Roll Call

<u>COMMUNITY</u>	<u>REPRESENTATIVE & TITLE</u>
Bath Township	<i>Absent</i>
Beachwood	<i>Absent</i>
Bedford	<i>Absent</i>
Bedford Heights	<i>Absent</i>
Berea	<i>Absent</i>
Boston Heights	Bill Goncy, Mayor
Bratenahl	<i>Absent</i>
Brecksville	<i>Absent</i>
Broadview Heights	<i>Absent</i>
Brook Park	Mark Elliot, Mayor
Brooklyn	<i>Absent</i>
Brooklyn Heights	Tom Lahiff, Council President
Cleveland Heights	<i>Absent</i>
Columbia Township	<i>Absent</i>
Cuyahoga Heights	Jack Bacci, Mayor
East Cleveland	<i>Absent</i>
Euclid	<i>Absent</i>
Garfield Heights	<i>Absent</i>
Gates Mills	Connie White, Mayor
Glenwillow	<i>Absent</i>
Highland Heights	<i>Absent</i>
Highland Hills	<i>Absent</i>
Hudson	William A. Currin, Mayor
Independence	<i>Absent</i>
Lakewood	<i>Absent</i>
Linndale	<i>Absent</i>
Lyndhurst	<i>Absent</i>

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<u>COMMUNITY</u>	<u>REPRESENTATIVE & TITLE</u>
Macedonia	<i>Absent</i>
Maple Heights	<i>Absent</i>
Mayfield Heights	<i>Absent</i>
Mayfield Village	<i>Absent</i>
Middleburg Heights	Gary Starr, Mayor
Moreland Hills	<i>Absent</i>
Newburgh Heights	<i>Absent</i>
North Randall	<i>Absent</i>
North Royalton	Robert A. Stefanik, Mayor
Northfield Village	<i>Absent</i>
Northfield Center Township	<i>Absent</i>
Oakwood	<i>Absent</i>
Olmsted Falls	<i>Absent</i>
Olmsted Township	Jim Carr, Trustee Chair
Orange Village	Kathy Mulcahy, Mayor
Parma	<i>Absent</i>
Parma Heights	<i>Absent</i>
Pepper Pike	<i>Absent</i>
Richfield Village	Michael K. Lyons, Mayor
Richfield Township	<i>Absent</i>
Richmond Heights	<i>Absent</i>
Sagamore Hills Township	Paul Schweikert, Alternate
Seven Hills	<i>Absent</i>
Shaker Heights	Earl M. Leiken, Mayor
Solon	<i>Absent</i>
South Euclid	<i>Absent</i>
Strongsville	<i>Absent</i>
Twinsburg	<i>Absent</i>
Twinsburg Township	Robert Kagler, Township Administrator
University Heights	<i>Absent</i>
Valley View	<i>Absent</i>
Walton Hills	<i>Absent</i>
Warrensville Heights	<i>Absent</i>
Willoughby Hills	<i>Absent</i>

A quorum was not present.

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Mayor Leiken stated that attendance is insufficient to achieve a quorum; however, the meeting will proceed with discussion only.

Mayor Leiken distributed a letter from Mayor Kuchta of Macedonia (attached hereto and incorporated herein as Exhibit "A") stating his position on the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP") consent decree.

II. Report on District Operations

Mayor Leiken stated that he has been in contact with both the Northeast Ohio Regional Sewer District (hereinafter the "District") and Mayor Starr, who has presented his position on the matter of the CSO LTCP. He requested that District staff conclude its discussion after 20 to 30 minutes at which time Mayor Starr may speak regarding his opinion. He stated that at that point SCOG attendees may ask questions and make comments.

Mayor Leiken stated that two questions have been posed regarding the District's proposed consent decree with the federal government and the Ohio Environmental Protection Agency (hereinafter "OEPA"): (1) what is the actual cost of the consent decree on taxpayers in the District on a year-by-year basis; and (2) how much of the total projected cost is actually based on the consent decree. He believed those issues should be clarified. Additionally, he requested District staff to comment as to why proceeding with the consent decree now rather than delaying it is the best approach.

Executive Director Ciaccia clarified that the Board of Trustees (hereinafter "Board") may or may not vote on the consent decree during its December 2nd meeting. The issue will be on the agenda for the Board's consideration, but he could not predict when the actual vote would take place.

Additionally, Executive Director Ciaccia stated that the resolution authorizing the District to enter into the consent decree, which will ultimately be voted on, is not a resolution to adopt rate increases for 2012 through 2016. It is rather a resolution amending the CSO LTCP that was passed in 2005. In 2005 a resolution was passed which adopted a CSO LTCP. At that time it was estimated to be a \$1.6 billion program, using 2002 dollars. The District was negotiating a 30-year program term with the federal government. Adopting this resolution would amend the agreement to today's negotiated terms. The amendment will also authorize the District to enter into a consent order with the federal government and OEPA to carry out the CSO LTCP.

Executive Director Ciaccia stated that rate increases associated with the program and overall operating expenses will be voted on in 2011 following a series of public hearings. Executive Director Ciaccia indicated that he wanted to clarify those points since some

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“misinformation” has been given. He stated that the CSO LTCP will certainly impact rates for the next 25 years.

Executive Director Ciaccia explained that the Clean Water Act (hereinafter “CWA”) was passed in 1972 and is a federal law. The rules and regulations promulgated under the CWA in 1994 pertain to Combined Sewer Overflows (hereinafter “CSOs”). Other sewer districts are being regulated and other communities are entering into their own consent decrees throughout the country. Executive Director Ciaccia advised that the federal government will not “let us out of it any more than they are going to let anyone else out of it” for the reason that it would set a precedent and allow other communities to justify non-compliance with the CWA.

Executive Director Ciaccia stated that the availability of federal money for this program is scarce and this reality must be dealt with.

Before turning discussion over to Director of Watershed Programs, Frank Greenland, and Director of Engineering and Construction, Kellie Rotunno, Executive Director Ciaccia provided the SCOG members with the presentations that were given to the Board in 2008, September 2009 and 2010. Executive Director Ciaccia advised that today’s presentation was reviewed by the Board during executive sessions while the District was in the midst of consent order negotiations, on the basis that litigation was imminent. Today’s presentation will cover the documents and explain the steps as to how we got to where we are.

Mr. Greenland stated that he will discuss the District’s responsibility to reduce CSOs, the regulatory context and the history of negotiations. He will then defer to Ms. Rotunno, who will discuss the details of the consent decree.

Mr. Greenland displayed a PowerPoint presentation during his remarks. He referred to an image which depicted a “picturesque waterfall” but which was actually a CSO. Mr. Greenland explained that this overflow is no longer an issue given the District’s investments in the Mill Creek watershed.

Mr. Greenland referred to an image depicting oils and grease on the water at Kingsbury Run.

Mr. Greenland explained that items flushed down toilets, washed down sinks and debris from roadways can exit sewers via overflows and that those floatables are plaguing our service area.

Mr. Greenland stated that public health risks cannot be seen. Bacteria are present because wastewater is mixed with stormwater. One to three days following wet-weather

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events, beach postings indicate that high levels of bacteria are present in Lake Erie, swimming beaches and streams.

There are 62 communities in the District's service area. Combined sewers contain sanitary and stormwater flow in one pipe. According to Mr. Greenland, combined sewers are the oldest sewers in the nation and that all older urban centers have them.

Mr. Greenland referred to an image and he stated that the green arrow represents dry weather flow which travels towards the District's Wastewater Treatment Plants (hereinafter "WTTs"). During wet-weather events street runoff and runoff from rooftops causes flow to increase and the combined sewer system rises. CSOs, represented by the red arrow, are then discharged into the environment.

Mr. Greenland referred to an image depicting the CSO locations throughout the District's service area. He stated that the OEPA has identified 126 CSO locations in our area. All the urban streams in the combined sewer area have at least one overflow, and many of these streams have multiple overflows. Rocky River, Big Creek, Mill Creek, Cuyahoga River, Doan Brook and the lakefront all experience appreciable amounts of CSOs.

Mr. Greenland moved discussion to the regulatory requirements and stated that in 1994 the U.S. EPA promulgated the federal CSO Control Policy followed by a delay in implementation. Guidance documents were produced by the federal government to inform communities and sewer districts of the key elements of compliance regarding the CSO control policy. The OEPA had to determine how to regulate policies within the state in order implement the federal requirements, which resulted in a year of delay before a state strategy was developed in 1995.

Mr. Greenland advised that the District has a permit for its CSOs from the OEPA, which is similar to a WTT permit. In 1997, the OEPA incorporated into the permit the requirement to develop a long-term plan to control CSOs.

To meet the OEPA's requirements, District staff performed facilities plans, which include detailed evaluations of the flow monitored in streams, water quality in streams, flow in sewer systems and the development of different alternatives. Different strategies to control overflows were examined and factors such as environmental benefit, cost and the ability to meet the CWA mandate were considered. All facilities plans were submitted to the OEPA for review.

Mr. Greenland advised that there were delays in the implementation of this program. The planning studies were being performed between 1995 and 2002. In 1999, the Westerly plan was submitted to the OEPA. In 2000, the CSO policy was codified into the CWA. In 2002, the District submitted plans for both the Easterly and Southerly

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districts and began to negotiate with the OEPA, which is the District's delegated regulatory authority.

Detailed discussions were held with the OEPA in 2004 to reach an agreement on a consent decree. Mr. Greenland explained that negotiations fell apart at the end of 2004 largely due to scheduling issues, as the federal government wanted a 20-year agreement or less whereas the District preferred a 30-year implementation plan.

Mr. Greenland explained that in 2005 the Board approved a 30-year CSO LTCP, which is when the federal government became involved. The United States Department of Justice (hereinafter "U.S. DOJ"), the U.S. EPA -- both in Washington and Chicago respectively, the OEPA and the Ohio Attorney General (hereinafter "OAG") were involved in the negotiations and significant discussions were held towards reaching an agreement on a consent decree.

Discussion was turned over to Ms. Rotunno to discuss details of the negotiated agreement.

Ms. Rotunno stated that the District has named its compliance with the CWA and CSO policy "Project Clean Lake" (hereinafter "PCL").

She stated that the CSO program was originally conceived in 2002 as a \$1.6 billion plan. The original \$1.6 billion plan, without changing any elements, escalated to \$2.7 billion when cost refinements were incorporated. At that point, District staff started negotiating hard to reach a resolution.

Issues discussed included levels of control, acceptable annual overflow, wet-weather plant bypasses at Easterly, Westerly and Southerly and green infrastructure. Ms. Rotunno stated that affordability was always taken into consideration during the negotiations.

Ms. Rotunno explained that the District's original \$1.6 billion CSO LTCP escalated to \$2.7 billion and involved a high level of control to achieve water quality goals that resulted in about 813 million gallons of CSO in a typical year.

In July 2009, the government suggested that the District reduce annual CSO volume to 251 million gallons, which would have added \$1 billion to the total cost of the program. Ms. Rotunno explained that the federal government believed our region could afford this type of program.

Between July 2009 and February 2010 District staff negotiated fervently and decreased the total cost by \$700 million and reached a negotiated agreement. The District and

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governments agreed to an annual CSO volume of 494 million gallons and total program cost of \$3 billion.

Ms. Rotunno discussed the history of total program cost negotiations, ranging from the government's \$3.7 billion proposal in July 2009 and the District's \$3 billion counterproposal in January 2010, to which the government ultimately agreed to in February 2010.

Ms. Rotunno explained that the plan increased by \$331 million by adding some program elements but almost \$700 million was reduced over the governments' proposal.

According to Ms. Rotunno, \$331 million was added in the Easterly district for a wet-weather treatment facility, which will reduce CSO volume to 123 million gallons. The secondary treatment process capacity was expanded up to 400 MGD, which eliminated a wet-weather plant bypass. During wet-weather conditions at Easterly, a portion of flow would bypass the plant's secondary treatment and discharge into the lake with only primary treatment. That was not desirable to the government from a water quality standpoint. Additionally, the Easterly plant bypass was eliminated.

The consolidation sewers in the Easterly district were upsized to hold higher volume in the tunnels and reduce the number of overflows from the prior CSO volume the government wanted.

Ms. Rotunno stated that in the Westerly district, the Combined Sewer Overflow Treatment Facility (hereinafter "CSOTF") received an approximate \$9 million enhancement to include the addition of chemicals to reach a higher level of treatment. One tunnel has been upsized, accounting for \$40 million, which is the only tunnel upsized from the original plan in Westerly, to achieve a lower number of CSOs per year.

At Southerly, secondary capacity was expanded, consolidation sewers were upsized for \$9 million and a chemically enhanced high-rate treatment was added for \$47 million. This was to address the wet-weather plant bypasses that were occurring at the plant during rain.

Ms. Rotunno stated that "if there is an exciting piece to this consent decree it is the opportunity to do green infrastructure," which will be incorporated area-wide and represent \$42 million of the program cost. She explained that green infrastructure can typically control stormwater above ground in a less costly manner than controlling it underground by building a large tunnel. Staff believes every gallon of CSO that can be treated above ground with green infrastructure could be treated more cost effectively than by building a tunnel.

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Ms. Rotunno stated that if CSOs can be captured with green infrastructure, the size of gray infrastructure could be reduced along with the overall price of the program, which Ms. Rotunno said was “really what this is about as well as bringing an investment above ground to where the community can actually see it.” Tunnels provide a benefit; however, they cannot be seen.

Ms. Rotunno referred to an image depicting a green infrastructure project near Philadelphia, Pennsylvania, which was described as an unusually shaped unusable piece of real estate converted into a retention well providing recreation and revitalization to the neighborhood. There may be opportunities to build similar green infrastructure in Northeast Ohio due to foreclosures and vacant property.

Ms. Rotunno explained that during negotiations the District pushed the government beyond its traditional comfort zone of using gray infrastructure by allowing the use of green infrastructure. As a result, gray infrastructure decreased and Ms. Rotunno was hopeful that this would also reduce the overall cost of the program.

Ms. Rotunno stated that there is a civil penalty in the consent decree for alleged water quality violations and CSO discharges. In 2009, the federal government proposed that the District pay a \$2.8 million civil penalty. After negotiations, the District and government agreed to a \$2 million civil penalty, which will be split in half between the state and the federal government.

Within the \$1 million state portion, 40% or \$400,000 will be applied to supplemental environmental projects (hereinafter “SEPs”) which would stay in our region. Ms. Rotunno explained that it is very important to invest as much money as possible in Northeast Ohio.

The proposed state SEP was in concert with the OEPA. The OEPA is working diligently with the City of Akron to remove the Route 82 dam, which will take water out of the Ohio Canal. Akron is going to build a pump station to convey the water back into the canal so water can be maintained, but they will not be conducting the operations and maintenance on it. She explained that the District’s negotiating team offered a SEP as part of the operation and maintenance of that pump station so the Ohio Canal would maintain water when the Route 82 dam is removed. However, that project is still in the environmental impact study phases.

Ms. Rotunno stated that District staff convinced the federal government that it wanted to partner with the Cuyahoga County Solid Waste District. She stated that hazardous household waste in Cuyahoga County is not easily disposed. Cuyahoga County is moving toward a special waste convenience center to provide residents with an opportunity to drop off hazardous household waste and have it collected on a more frequent basis. Under the District’s partnership with the Cuyahoga County Solid Waste

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District, the volume of household hazardous waste collected in Cuyahoga County is expected to double.

Ms. Rotunno assured that affordability was an issue discussed throughout the negotiating process. She explained that the U.S. EPA believed that in this region 2% of median household income should go toward wastewater costs as a threshold for affordability.

In 2005, District staff believed this region to be an extremely high-burdened community. The District was at 2.31% of median household income, which was well above the 2% threshold the federal government believed to be acceptable. In October 2006, the federal government came back and believed the District to be at 1%.

Ms. Rotunno explained that there was much back and forth between the District and governments regarding whether the District would be considered a high-burdened community. In 2008, the District argued that it was at 2.36% and the government came back with 1.97%. The District incorporated the local cost and other factors ratepayers were experiencing and believed the median was upwards of 2.46%. Ms. Rotunno stated that District staff was determined to obtain a high-burden designation, and after more negotiations, the government conceded. They did not, however, update their percentage over 2%. The governments merely agreed to the high-burden designation.

Ms. Rotunno explained that over the course of negotiations the government's worst-case proposal was a \$3.7 billion CSO program to be implemented over 15 years. Under this scenario, the average monthly residential bill would have exceeded 2% of the median household income between 2020 and 2022. Rate increases that would be needed to support the District's capital program, operations and maintenance, CSO programs and operations would be over 20% in 2012.

Executive Director Ciaccia asked Ms. Rotunno what the average monthly bill will be in 2012. Ms. Rotunno stated that in 2012 the average monthly bill will be less than \$40 and probably \$35.

Executive Director Ciaccia then asked what the average monthly bill will be in 2016 at the end of the next rate period. Ms. Rotunno stated that it would be about \$60.

Ms. Rotunno advised that after more negotiations, the government offered a 20-year program, which expanded the time frame when affordability would cross the 2% threshold, but still resulted in spiky rate increases over the next five years. She stated that the program would not have been practical from an implementation standpoint. Meanwhile, the District was still proposing a 30-year program.

The District and governments ultimately agreed to a \$3 billion program over a 25-year implementation period. The average residential bill does not become more than 2% of

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median household income within the 25-year period, and it levels out rate increases during the next five years to less than 15%. The rates are expected to increase an average of 13% annually between 2012 and 2016 before dropping to 10%, and then dropping further down during the remaining years. Ms. Rotunno stressed that this rate schedule supports the entire District operation and the entire capital program, not just the consent decree.

Ms. Rotunno explained that the consent decree spans a 25-year period, ending in 2036. All improvements must be completed and the District must achieve performance criteria. The agreement is very stringent with respect to penalties, with close construction monitoring and demonstration of achievement regarding levels of control. Green infrastructure is a significant aspect as well.

The next step is to present the consent decree to the Board at their December 2nd meeting. If it is adopted and signed, it will be lodged in federal district court, and the federal register notice will be 30 days during which there may be public comment.

Mayor Leiken stated that he asked two questions prior to the presentation, one of which he thinks has been partially answered. He questioned what the projected rate increase would be for the average participant and how much of that increase is attributable to this settlement. Ms. Rotunno stated that in 2012 the average residential sewer bill will be \$35 per month and will be around \$55 per month in 2016.

Ms. Rotunno stated that a 9% increase is estimated in order to support the District's ongoing operations, maintenance and capital program. The difference between the 9% and 13% increase is likely what the consent decree represents. Mayor Leiken noted that is about 4% a year and asked if the amount attributable to the settlement would be roughly \$8 or \$9 per month. Ms. Rotunno stated that was correct.

Mayor Leiken stated that he wanted to get that information out because he did not believe it was clarified in the media. He stated that essentially the cost increase for the average resident that is attributable to the settlement over a four-year period would be in the range of \$35 to \$45. Ms. Rotunno affirmed and stated that roughly 25 cents on the dollar for every dollar collected over the next 25 years will go towards the consent decree. Mayor Leiken asked if the increases will decrease after 2017. Ms. Rotunno affirmed.

Mayor Leiken stated that his second question was related to the issue of further delay and he inquired whether the District staff has a position regarding the benefits and disadvantages of such an action. Executive Director Ciaccia stated that the government will undoubtedly return to its initial proposal and the 25-year CSO program currently under discussion would be off the table, because it cannot be unilaterally delayed. He stated that there are two parties in a negotiation and any notion that the District can unilaterally delay is false. In the event of delay, the government would revert to its

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original onerous proposal, as it did with Akron, and we would negotiate from there in court. Executive Director Ciaccia advised that the effects of escalation represent over \$100 million per year of delay.

Mayor Leiken turned the meeting over to Mayor Starr for his comments.

Mayor Starr stated that he did not think anyone was in favor of pollution and that we all want cleaner lakes and streams. Since 1972, the District spent close to \$1 billion on CSO corrections and the amount of CSOs was reduced by half during that time. Mayor Starr stated that the District should proceed in correcting that. He questioned, "How fast do we proceed? How much do we spend? Who pays for it?"

According to Mayor Starr, he has raised issues of affordability, transparency, accountability and the public's right to know and comment on the consent decree. Mayor Starr stated that he would focus on what the Board received, which he explained as the details of the 47-page agreement that contains exactly what would be agreed to, if and when it is approved.

Mayor Starr commented that the Board received general PowerPoint presentations, which lacked detail. He indicated that on August 19, 2010, he requested the PowerPoint presentation, but was unable to obtain it since it was subject to attorney-client privilege.

Mayor Starr explained that the 47-page consent decree was released to the public on November 12, 2010 and the Board is expected to vote on it at its December 2nd meeting. Mayor Starr commented that "they won't exactly pin down the date or time" and he questioned as to why we do not know when this vote will take place.

Mayor Starr stated that there are approximately 19 days between November 12 and December 2 to judge informatively and vote on a \$3 billion tax increase over the next 25 years. The Gateway project cost about \$1.5 billion and the Medical Mart project, which is slated to cost \$455 million, was discussed over a five-year period with hundreds of meetings.

Mayor Starr stated that "since the release of this document and posted on the Internet and our website that I urged and they finally agreed to, they scheduled six public hearings. They already held four public hearings prior to the release of the document to the public." He questioned, "Isn't that also puzzling?"

Mayor Starr stated that "they only held two public hearings since the release of the document stamped attorney-client privilege." Mayor Starr stated that those two meetings were standing-room only. He attended and spoke during the meeting held last Thursday (November 18) in which 300 people attended. According to Mayor Starr the meeting was attended by an "angry, hostile, concerned and anguished group of residents from

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Northeast Ohio.” Mayor Starr indicated that “there should be more transparency, more hearings.”

Mayor Starr referred to the \$57 annual fee associated with the District’s stormwater program, which he indicated that he supported. Mayor Starr requested that Executive Director Ciaccia advise as to how many communities are suing the District over the stormwater program, to which Executive Director Ciaccia replied that no one is suing the District, but there are 15 communities opposing the program. Mayor Starr stated that 206 meetings have been held over a two-year period over an annual \$57 fee. He reiterated that the CSO program costs \$3 billion and two public hearings have been held.

Mayor Starr advised that the first bills reflecting the increased rates will go out on April 1, 2012, if the CSO program is approved. At that time, citizens will be filing their federal, state and local taxes. Mayor Starr stated that it is difficult to ascertain what typical water usage is. He suggested placing focus on the 13% increase over five years rather than the typical bill, which he stated are indisputable.

Mayor Starr indicated that he recently discovered that our water rates expired and that the City of Cleveland Division of Water (hereinafter “CWD”) increased rates 5% from 2009 to 2010. Mayor Starr questioned, “What will Cleveland City Council do when this expires?” It was his understanding from the CWD that “they are waiting for us to act first; then they are going to tag increases on.”

Mayor Starr explained that he has been trying to “become informative” as a part-time Trustee. He has made this a full-time cause because he thinks these issues are important. He fully expects that on April 1, 2012, “our phones will be ringing off the hook when rates increase.”

Mayor Starr stated, “I take issue with the assumptions that this is based on the federal EPA.” An estimated 4% increase in annual income with residents of Northeast Ohio and the affordability issue of 2%. He stated that for those making \$25,000 per year, 2% of their income represents \$500.

Mayor Starr questioned, “What was approved in 2005? Who was the president of the Board?” Mayor Starr replied, “I was president of the Board. This is what we approved. This is all in the minutes. All these issues I’ve raised in detail in the minutes on page 9 to page 13.” The 2005 vote was simply the Trustees’ authorization to proceed with negotiations, “not a blank check for District officials.”

He stated that he supported Resolution 55-05 based upon the three conditions reflected in the meeting minutes:

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First, Mr. Bill Schatz, former general counsel, assured us that the federal government would help underwrite the cost. Mayor Starr noted that federal grants may restart and congressional delegations may be able to help us out on a zero percent loan increase.

Mayor Starr stated that the second condition was that every consideration would be made to ensure any rate increases would be affordable. Mayor Starr does not believe they are. He stated that most importantly, the Board did not receive the 47-page agreement until November 12, 2010, and it is for a 25-year period, not 30 years. He stated that the program would be cheaper and more affordable on a monthly basis if it is spread over 30 years.

Mayor Starr stated that on August 10, 2010, the Board's legal counsel advised that "the Board has a fiduciary duty to determine if the proposed consent agreement is fair, reasonable, and in the best interests of the District ratepayers." He stated that is exactly what he has been doing. Continuing the quote, "it would be impossible, as well as impractical at this time for the Board now to undertake the review of the matters subject to the consent agreement." He stated that there has not been enough time.

Mayor Starr indicated that he had requested an impact statement on what the program will cost businesses. The statement claims that 31,000 jobs will be created. Mayor Starr asked if it will cost jobs. He has over 1,400 businesses in Middleburg Heights, many of which are small operations of two to six people. He has heard from them "loud and clear how it will financially impact them and how many people they would have to lay off."

Mayor Starr referred to the public transparency issue and inquired as to why these documents had been subject to attorney-client privilege. "If they are public records, why aren't they given to the public?"

Mayor Starr commented that he had stated his position on some of the issues he rose on behalf of the 39 communities that he has been honored to represent. Mayor Starr commented that has done this "honestly, openly and with great thought and detail and research." He thanked the SCOG for the opportunity to present additional issues.

Mayor Leiken wanted to discuss the cost of each participant, which he explained to be somewhat confusing in the media. If the average sewer bill is \$35 per month and each year the impact of this settlement accounts for an additional 4%, the average cost to the participant represents an additional \$18 per year, or \$72 over four years. He requested clarification on the numbers since the mayors will be required to respond to their constituents.

Mayor Leiken questioned whether he was correct in understanding that the "real impact" is 4% a year on their sewer bill. F. Michael Bucci, Deputy Executive Director, stated that the impact of the settlement is 4% of the 13% increase; about a third of the increase is

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due to CSO, not 4% of the entire bill. Mayor Leiken clarified that a third of the increase is roughly 4%.

Mr. Bucci stated that the EPA's guidance document sets an affordability limit of 2% of personal income for wastewater.

Mayor Leiken questioned if residents will pay an extra 4% each year on their existing sewer bills due to the settlement. He gave an example that if a resident receives approximately a \$100.00 sewer bill, then it would cost \$4 a month or \$48 for the year. Mr. Bucci clarified that it would be 4% of the 13% increase. If the bill increases from \$35 to \$60, a \$25 increase in 2016, one-third of that amount is based on the CSO. One-third of \$25.00 is \$8.00. Mayor Leiken clarified that 4% is roughly one-third of 13% increase. Mr. Bucci stated that it accounts for a third of the increase, not of the total bill. Mr. Bucci stated that the increase will be based upon one-third of the rate increase and not one-third of the total bill.

Mayor Leiken used an example, stating that if a \$100.00 bill increased by \$13.00, then the amount attributable to the settlement would be about \$4.25. Mr. Bucci affirmed. Mr. Bucci explained that the District sampled 80,000 residential accounts (there are 300,000 total) in the service area and examined average usage over a two-year time frame. He stated that the results were surprising and showed that average residential homes usage was 7.5 MCFs per year.

Mayor Starr questioned, "Where was this?" Mr. Bucci replied that average usage was based only on residential usage since the EPA wanted to get to 2% median household income. The District then sampled apartment complexes four units or less and then apartment complexes over 20 units were examined. The results showed that their average usage was about 6.7 MCFs per year. Mr. Bucci explained that is how the District arrived at the average bill of 7.5 MCFs, which was based on a large sample size.

Mayor Leiken stated that "there have been some pretty frightening numbers" printed in the newspaper, which showed estimated rate increases through 2035. The cost of living is not factored in and \$1.00 in 2035 will be worth less than \$1.00 in 2010. The cost of living has more than doubled since 1982, so 2035 dollars are very different from 2010 dollars.

Mayor Leiken indicated that another issue causing confusion is what has been presented as the total cost of all increases. The impact of the settlement appears to be 4%, or 4.25% of the existing tax on the existing bill, which for a \$35-per-month ratepayer would equate to about \$1.50 per month. He stated that seems to be what is under discussion as opposed to the extreme numbers that have been reported. Mayor Leiken wanted to clarify that issue since the mayors will need to accurately explain this information to their residents.

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Mayor Starr requested that Mayor Leiken's question and the District's response be provided to the SCOG members in a memo format. Executive Director Ciaccia confirmed. Mayor Leiken requested that the memoranda show the average rate on a monthly basis and what it will be over the next four years. Although 2035 seems like a long way, Mayor Leiken indicated that he wanted to understand how this will impact the residents over the next four or five years. Mayor Leiken inquired if Executive Director Ciaccia would send the SCOG members a memo wherein Executive Director Ciaccia indicated that he would.

Mr. Schweikert stated that he attended the public meeting last week and Mr. Greenland and Ms. Rotunno did a fantastic job with a large audience. He added that Executive Director Ciaccia did a great job as well. He believed we are experiencing backlash from "sticker shock." Mr. Schweikert stated that he knows the argument is time versus transparency, and wondered whether Executive Director Ciaccia could find room to compromise on Mayor Starr's call for a one-year moratorium and possibly ask for a six-month extension to accommodate this sticker shock.

Executive Director Ciaccia assured that the federal government has been monitoring the District's situation. David Burchmore of Squire, Sanders and Dempsey has been involved throughout the negotiating process. Executive Director Ciaccia advised that they will try to communicate with the governments to determine what would be acceptable. However, the governments have been pushing to get this deal done.

Executive Director Ciaccia stated that the negotiating team has communicated with their bosses and he has communicated with the Board. Although there may be some discrepancies between Executive Director Ciaccia and Mayor Starr as to how well that communication was, Executive Director Ciaccia indicated that he believed they communicated well.

In response to Mr. Schweikert's request, Executive Director Ciaccia advised that he was under the impression that the governments' bosses wanted to wrap it up. He will feel them out; however he was unsure of the results. Executive Director Ciaccia questioned if this region's economy will be in better shape six months from now?

Mr. Schweikert stated that he understood and appreciated the fact that there is no guarantee, but that Executive Director Ciaccia's willingness to ask shows the SCOG that there may be "a little wiggle room." Although the government may say no, there still may be some hope. Executive Director Ciaccia stated that he does not expect a response from the federal government and he asked David Burchmore if he would expect a response. Mr. Burchmore indicated that it would be difficult predicting their response. The governments would certainly file a lawsuit against the District within weeks should we fail to execute the consent decree. If District staff requests an additional two weeks or more time into the month of January, Mr. Burchmore speculated that the governments

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may take no action, but he could not predict how the governments would respond if the District requested an additional six months. Executive Director Ciaccia agreed that we cannot make that prediction.

According to Mayor Starr, the State of Florida is under the same circumstances as the District. They are faced with water quality issues and unfunded mandates of \$8 billion. However, Florida was granted a 15-month moratorium because elected officials including Governor Crist, senators, congressmen, mayors and councils united and alleged that this unfunded mandate would place a financial burden and strain on the taxpayers. Mayor Starr stated that the basis of the EPA granting Florida an extension was financial burden and is called affordability. He questioned, "What am I talking about here? Affordability."

Mayor Starr stated that he discovered Florida's time extension through his own Internet research, not through the District. He questioned, "How many other states are doing the same thing that that I'm not aware of yet?" Mayor Starr commented that he has not conducted all of the necessary research since he is only part-time.

Mayor Starr commented that the District is paying federal and state lobbyists \$60,000 per year and that he was unsure if the District has local lobbyists. He questioned as to why District lobbyists cannot help. Mayor Starr advised that he had sent a letter to Senator Sherrod Brown last week requesting aid from his office as well as the federal government.

Mayor Mulcahy inquired if Mayor Starr believed that if more time was granted, then the outcome of the consent decree could be different. Mayor Starr stated "possibly," but indicated that he does not have all the answers. In 2011, we will be facing "new realities" in Washington as well as in the state government. Mayor Starr questioned, "Is the EPA overreaching? Do they have a heart? Can they have compassion for the area of the country leading in poverty, unemployment, foreclosures and exodus of businesses?" Mayor Starr inquired as to why the EPA cannot take these issues into consideration.

Mayor Starr stated that this issue has only been debated during the last couple weeks, and he questioned, "Why didn't we do this a year ago?" Mayor Starr explained that the process was subject to attorney-client privilege and he stated that he had the "scary document" given to the Board blown up and taken to presentations. According to Mayor Starr the 25% rate increase was changed and he indicated that a one-year moratorium could buy time. There are 1 million people, or 330,000 customers out there, putting forth suggestions and ideas.

Mayor Mulcahy stated that impact of the settlement was somewhat minimized and she questioned as to what is driving the rest of the increases and if it may be due to normal expected inflation. Executive Director Ciaccia replied that since 2005, when the \$1.6-

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billion-in-2002-dollars plan was adopted, the District and Board made a concerted effort to continue with projects associated with that CSO program while negotiations proceeded and \$95 million worth of that 2005 plan has already been implemented.

Executive Director Ciaccia stated that a \$198 million bid for the Euclid Creek Tunnel (hereinafter "ECT") is on his desk, which was part of the 2005 plan. Additionally, a \$100 million Tunnel Dewatering Pump Station (hereinafter "TDPS") that was in the 2005 plan is in the design phase. Those projects are going forward notwithstanding the negotiations. One project that is not a part of the negotiations is the \$170 million Renewable Energy Facility (hereinafter "REF"), which will replace the incinerators at Southerly. Executive Director Ciaccia explained that those projects are authorized to go forward and are not contingent upon the consent decree.

Mayor Leiken stated that he was not minimizing the cost of the settlement rather he wanted to get the facts out so everyone can understand and consider them appropriately in which he believed everyone now has achieved a greater understanding.

Mayor Leiken stated that a separate issue is why other District costs are increasing so significantly. Those are issues are for consideration but the topic for today's meeting is the settlement and how much it will cost.

Mayor Lyons requested clarification on the issue of 4% of the increase being attributable to the settlement over the next four or five years. The discussion of the 9% increase was not fully addressed. Mayor Lyons stated that Executive Director Ciaccia did not distinguish the answer.

Executive Director Ciaccia stated the District has over \$1 billion worth of booked assets, many of which were built in the 1970s and early 1980s when big federal grants were available. Renewal on those assets is due, which have to be handled without federal grants. The \$170 million REF project incineration replacement project is a significant example of one of those projects. Part of the increase will be for District operations and maintenance, which is marginally increasing. Although more assets are being placed on the books since the CSO program consists of new assets, the District will have more operations and maintenance associated with those.

Mayor Lyons stated that putting aside the settlement, 9% of the rate increase is attributable to the District's current maintenance and operations. Then the total percentage decreases to about 7%. From 2026 to 2035 it is below 5%. Mayor Lyons questioned, "How do we manage to get that far down in terms of ongoing operating expenses at that point?"

Mr. Bucci stated that the biggest challenge the District currently faces, as improvements have been made in the collection system, is that treatment of flow coming into the plant is

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rising while billing units are dropping. The District lost 8,000 accounts last year through foreclosures and approximately 5% billable MCFs. We are projecting a 3% loss in MCFs over the next five years.

Executive Director Ciaccia explained that the percentages decrease in the latter years of the program for the reason that as the rates increase the percentages decrease because just as much money is being raised with lower percentage increases.

Mayor Mulcahy inquired if the water and the beaches will be clean at the program's conclusion, with no more alerts. Executive Director Ciaccia replied that the water will certainly be cleaner.

Mayor Mulcahy inquired about the other issues of concern. Executive Director Ciaccia stated that as a suburban-urbanized region, the main concern is CSOs and sewage discharging into the lake.

The nutrient issue, which mostly stems from agriculture, has to be addressed and the EPA is trying to figure out how to manage this problem. Nutrients are causing a dead zone in the lake and there will be forthcoming regulations which the District needs to guard itself against. According to Executive Director Ciaccia, he has held discussions with EPA officials wherein they indicated that they "know they are going to have trouble beating the agricultural community, and are going to want to dump the control on us." Executive Director Ciaccia indicated that the District has "put all our eggs on this combined sewer overflow basket where it belongs." He explained that is why it was important to obtain the high-burden designation, because even though it only applies to CSOs, when future regulations arise, the District can show that it has been declared a high-burden region.

Mr. Kagler stated that he understood PowerPoint presentations are general, but most of the conversation involved residential customers. He inquired whether District staff examined non-residential customers, particularly industrial customers. Will the rate increases be applied equally to industrial customers and not just the base rates but also the surcharge rates? Mr. Kagler advised that in his community industrial customers advised that rates are higher in this region than in others, which makes it difficult to be competitive from an economic development standpoint. Mr. Kagler questioned if this issue has been taken into consideration, and if the resources generated will be disproportionately on the residents or on the businesses? Mr. Kagler questioned, "What impacts are you anticipating on businesses and flack from that?"

Mr. Bucci explained that the District's rate study is ongoing and those results will likely be presented to the Board during the first quarter of 2011. In response to Mr. Kagler's inquiry regarding industrial customers, Mr. Bucci stated, "as part of the negotiating process, it was the fact that it was the cost to the residential units." However, as we

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develop our rate model, we will utilize typical bills from small industrial, large industrial and large commercial.

Executive Director Ciaccia noted that historically the District raised rates evenly amongst all classes of customers. Mr. Bucci stated that there is no difference between residential or commercial rates.

Mr. Kagler stated that sewer rates are becoming a key factor in stay-or-go decisions for businesses. Executive Director Ciaccia noted that electric and gas utilities are contributing factors as well. According to Mr. Kagler, sewer rates have been impacting economic development decisions more than other utilities.

Mayor Starr questioned, "Who are you for the record?" Mr. Kagler replied that he represents Twinsburg Township.

Mayor Leiken stated that the average business will be more impacted than residential customers because it would pay significantly more than \$35 per month. Mr. Bucci stated that businesses pay more because they use more, and that is being considered in the development of the rate analysis.

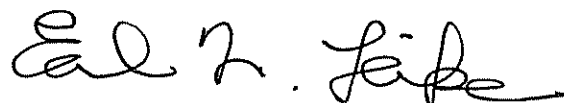
Trustee Carr inquired if any action will be taken regarding Mayor Starr's request for a time extension and more conferences with the EPA. Executive Director Ciaccia advised that it would be the Board's decision.

Mayor Leiken suggested that any questions be directed to Executive Director Ciaccia or Mayor Starr between now and the time the Board votes. He noted that Mayor Bacci was present and asked if he felt anything was inadequately addressed during the meeting.

Mayor Bacci stated that the issues are always adequately addressed by Executive Director Ciaccia and his staff. Mayor Bacci stated that Mayor Starr's position was made over the last couple weeks but needs to be discussed with other Board members.

III. Adjournment

MOTION – There being no further business to come before the SCOG, Mayor Leiken adjourned the meeting at 11:24 a.m.



Mayor Earl Leiken, President
Suburban Council of Governments