

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JULY 5, 2012

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
R. Sulik
S. Kelly
T. DeGeeter
W. O'Malley

ABSENT: J. Bacci
G. Starr

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded that the minutes of the June 21, 2012, Board Meeting be approved. Without objection, the motion carried unanimously.

III. Installation of Officers

Marlene Sundheimer, Director of Law, administered the Oath of Office to Mr. Brown, Mr. Sulik and Ms. Kelly.

Board of Trustees Elected Officers
2012 – 2013

Mr. Darnell Brown, *President*
Mr. Ronald Sulik, *Vice President*
Ms. Sheila Kelly, *Secretary*

IV. Public Session

Executive Director Ciaccia informed the Board that no members of the public registered to speak during Public Session.

V. Executive Director's Report

Executive Director Ciaccia informed the Board that on Tuesday notice was received that Judge Pokorny issued his final ruling in the Stormwater Management Program ("hereinafter "SMP") case. He incorporated the findings from his previous ruling in February and it is an appealable order. Based on the article in *The Plain Dealer* at least one attorney for the intervening parties indicated they would appeal.

Executive Director Ciaccia stated that whether the communities will appeal remains to be seen, but he would not be surprised if they did. The contents of a quote from the Cleveland Heights attorney in *The Plain Dealer* were also expressed during the mediation hearings Cuyahoga County Executive Ed FitzGerald organized. Executive Director Ciaccia explained that the notion that the District would collect money, give the community cost share as an entitlement and reclaim the money if there was a dispute was rejected steadily and staff continues to do so. He was unsure whether the parties deem the issue worth an appeal; it does not seem like something an appellate court would consider. It is strictly about the law and what the judge decided as it relates to the law, and this does not seem to be a legal issue.

Executive Director Ciaccia advised that the changes in Title V were put out publicly for a 30-day period for comment. The most significant revision is an increase in the community cost share from 7.5% to 25% and a declining block fee structure for some larger users.

Frank Greenland, Director of Watershed Programs, advised that comments were received from Parma and the Cleveland Diocese. Both comments indicated they were amenable with the proposed revisions. Executive Director Ciaccia explained that the opposition communities have refused to comment but did so in a brief to the court and *The Plain Dealer*.

Executive Director Ciaccia stated that he hopes the changes would be adopted during the July 19 Board Meeting. He explained that smaller SMP projects have been performed and will continue. Planning continues in regards to beginning the fee in January 2013. He indicated that absent a stay of execution, staff plans to move forward with implementation and prepare for what seems to be a likely appeal.

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The Natural Resources Defense Council released a report and held a press conference recently which listed Ohio as the second to last behind Louisiana in quality of beaches from a bacteriological standpoint. He stated that staff is aware of the issue and monitors it every day.

Executive Director Ciaccia advised that Mr. Greenland participated in the press conference to describe what the District was doing and that the CSO program will have a substantial impact on cleaning up our portion of the beaches. The SMP is geared towards helping in that regard as well. He explained that stormwater flows from the streets are washed into streams to Lake Erie. When dealing with stormwater flooding issues, many communities have stripped away the natural filtering effects of the streams. He indicated that the streams need to be restored to their natural state where possible with the SMP.

Executive Director Ciaccia indicated that a letter had been received from Cleveland City Councilman Michael Polensek in which he raises an issue concerning dry-weather flows he believes are contaminating the beaches. Prior to receiving the letter staff had been testing the outfalls in Euclid Creek and seven other outfalls between Lake Erie and Euclid Avenue. Indeed, five had high levels of e-coli.

Executive Director Ciaccia advised that staff must be more aggressive on the issue. Titles III and IV of the District's Code of Regulations outline that the District has the authority to raise these issues and work with communities to find the illicit discharges causing high levels of e-coli from the outfall. Since the District's regulations to deal with illicit discharges are in the Code they need to be enforced.

Mr. Brown stated that all member communities are required to comply. The District submits annual reports which should note illicit discharges that have occurred during that period of time. His understanding of how illicit discharges would occur during a non-rain event would be a discharge from an outfall, whether a CSO, stormwater or storm outlet. Much is dependent upon self-reporting, but the District could facilitate or require some type of inventory by communities, as an example, in a particular watershed. He inquired how such an action could be implemented.

Mr. Greenland explained that staff -- through notification by a community, the public or crews in the field -- sees what appears to be an illicit discharge entering streams during dry weather. Staff performs initial sampling activities with a water quality and industrial surveillance group because flow from an outfall in dry weather does not necessarily mean it is sewage.

When test results verify there are high counts of e-coli, the next step is to inform both the community and the Environmental Protection Agency (hereinafter "EPA") of the

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presence of sewage and request the community conduct proper investigations to eliminate the illicit discharge. The District has always been cooperative and lends its assistance.

Mr. Greenland explained that in some areas, including separate sanitary and storm sewers with Phase 2 SMP regulations, there is a direct requirement in the permit between the community and EPA to find and eliminate illicit discharges and perform routine sampling requirements.

The language in Titles III and IV pertaining to illicit discharges is not as clear cut as it needs to be, Mr. Greenland opined. He advised that under the SMP staff will be on the streams with more frequency and will work with communities to find illicit discharges. However, the communities have to work in a timely fashion to remediate them.

Mr. Brown stated that he did not want to belabor the point but many communities put a lot of effort into making their sewer use code complement the Code of the District. He inquired whether the District should facilitate a process to ensure member communities put something adequate on the books. He did not think it made sense for some communities to do so with an interest in mitigating the impacts on Cleveland, and some upstream communities not doing so. This is what the Councilman is suggesting.

Mr. Greenland advised that most communities have requirements such as no clean water connections to sanitary sewers and vice versa. Staff will do research to understand across the region how communities are performing in that regard. Mr. Brown stated that would be helpful.

Shifting focus to the pollution levels of Northeast Ohio beaches, Mr. Brown stated that staff does a good job monitoring, gathering data and communicating that data. He questioned whether all communities do so and if others might be ranked ahead of the region or not ranked at all because they do not properly collect data. Mr. Greenland advised that staff believes “the more you look, the more you find” and the District are national leaders in terms of sampling frequency. He explained that about 13% of other communities sample daily; some beaches are not monitored at all and others are three times or once per week. There have been recent cuts in funding for compliance with the Beach Act. Mr. Brown indicated that was his point.

Mr. Brown stated that the region’s performance is bad but the performance of others is unknown because there is no data. Mr. Greenland confirmed and stated that staff generates ample data. Executive Director Ciaccia stated that many regions are generating data but not as frequently. One could question the comparative standing of the District’s information against theirs. Mr. Brown stated that context is always important. “We cannot justify what we do but we have a program to affect it.”

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Moving on with the report, Executive Director Ciaccia advised that the Ohio State Legislature recently passed two bills -- House Bill 487 and House Bill 509 -- which addressed issues for which the District had advocated.

One bill expanded quick-take authority, which will help acquiring property for both the CSO program and SMP. Secondly, the District now has the ability to hold conservation easements that will assist the District in carryout the SMP. Thirdly, the competitive bidding threshold was revised from \$25,000 to \$50,000 -- similar to most communities and government agencies. Staff was very happy the State made those changes.

Executive Director Ciaccia stated that the competitive bidding threshold issue will be presented to the Governance Committee or Board so the District's bylaws may be adjusted to incorporate that new threshold. Mr. Brown stated that the Board will see what is submitted and act accordingly.

Executive Director Ciaccia advised that Kyle Dreyfuss-Wells, Manager of Watershed Programs, again won an award from the Ohio Stormwater Association for Stormwater Professional of the Year.

Moving to union negotiations, Executive Director Ciaccia stated that the American Federation of State and Federal Employees, Local 2798, had a vote on the fact finding issued during negotiations. They did not meet the required 60% negative votes to override it, meaning the fact finding is in force. The contract language is currently being finalized.

Executive Director Ciaccia indicated he, Dave McNeeley, Director of Operations & Maintenance, and staff will meet with the management crew to brief them on the new contract and in particular the issue of no morning break, reduction in wash-up times and the change in the healthcare provision. Staff was fairly satisfied with the way the negotiations concluded.

District staff signed all documents as it relates to the KMM&K lawsuit and it is now officially settled. One check was received in the amount of \$116,000 from Mole Constructors towards the \$6 million due by mid-July.

Executive Director Ciaccia advised that the Suburban Council of Governments met last week but did not have a quorum and could not elect officers. He did, however, present an update on District operations.

Mr. Brown stated that the lake itself and water quality is an issue for the District in terms of wastewater and for the Cleveland Division of Water on potable water. There are challenges posed by a mild winter followed by extreme summer temperatures on Lake

Erie. He stated that if things normally not seen become a trend, they will have to be addressed.

Mr. Greenland stated that one of the more recent issues was harmful algal blooms in Lake Erie caused by a wet year, fertilization in the western basin, phosphorus run-off and hot temperatures. Also, blue green algae has now been sighted in Mentor.

Mr. Greenland advised that the District is preparing for harmful algal blooms and enhancing public notification beyond bacteria testing. Staff will examine the requirements for testing, which types can be run and who else is doing the work. He noted that "there are a lot of people in the game" -- the Ohio EPA, Ohio Department of Natural Resources, NOAA and health departments -- all running tests and posting results. District staff is developing a test methodology and will be able to screen for harmful algal blooms in 2012.

Mr. Greenland stated that issue will likely persist. Blue green algae was an issue in the 1960s and 1970s and it is back. Hot temperatures and precipitation patterns tend to cause it to grow and can be very harmful to swimmers -- equally as bad as high bacteria levels.

VI. Action Items

Authorization to Enter Into Contract

Resolution No. 155-12	Two-Year Requirement Contract for HVAC/R Maintenance Services at All District Facilities. Anticipated Expenditure: \$366,000.00.
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Resolution No. 156-12	One-Year Requirement Contract for Gravity Belt Thickener Polymer for Use at the Southerly Wastewater Treatment Plant. Anticipated Expenditure: \$375,000.00.
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Resolution No. 157-12	Two-Year Requirement Contract for Skimmings Removal at All Wastewater Treatment Plants. Anticipated Expenditure: \$110,000.00.
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MOTION – Mr. O'Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 155-12 through 157-12. After discussion and without objection, the motion carried unanimously.

Authorization to Reject Bids

Resolution No. 73a-12

Reject All Bids Pursuant to Resolution No. 73-12 for a One-Year Lubricants Inventory Requirement Contract.

MOTION – Ms. Kelly moved and Mayor DeGeeter seconded to adopt Resolution No. 73a-12. After discussion and without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 158-12

RFPs for Comprehensive Study on Alternate Billing Methods for Billing Wastewater Services.

Resolution No. 159-12

Design-Build RFPs for the Southerly Second Stage Return Sludge Pump Station Improvements (SFP-26-1) Project.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution Nos. 158-12 through 159-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown stated that design-build is done to accomplish a couple of objectives. One is either meeting a critical timeline or a financial driver. He questioned why the design-build and what milestones will be used to determine whether it was effective using this process. Kellie Rotunno, Director of Engineering & Construction, explained that the third reason for design-build is risk management. The project under discussion encompasses the replacement of six screw pumps. As evidenced from construction of the Renewable Energy Facility, purchasing equipment under one contract and installing it on another is not the best practice.

Ms. Rotunno advised that the equipment is a large portion of job and risk would be better managed with a single point of accountability from specifications to purchase and installation and performance. The risk management aspect lent itself to a design-build delivery model.

With respect to measuring success, she noted that this resolution is for an RFP and there are more steps to go. A design-build team must be selected and a request for authorization would be made to the Board to enter into a contract for an upper limit.

Ms. Rotunno explained that at the 60% design stage a guaranteed maximum price for the

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improvement would be authorized and upon the job's completion to close the contract we and report on performance.

Mr. Brown stated that he suspected Ms. Rotunno would detail performance KPIs during her monthly report. Ms. Rotunno stated that is a good point because a design-build project does not classically fall under the construction KPI of finishing within 95% of the awarded contract value for design. Staff would try to achieve that KPI and it will be a contingency amount within the guaranteed maximum that staff wants to finish under.

Executive Director Ciaccia stated that is an excellent point and he, Ms. Rotunno and F. Michael Bucci, Deputy Executive Director, will discuss about which performance indicators should be developed as it relates to design-build contracts.

Authorization to Enter Into Agreement

Resolution No. 160-12

Enter Into a Water Pollution Control Loan Fund Agreement with the Ohio EPA and the Ohio Water Development Authority to Finance the Southerly Wastewater Treatment Center Primary Treatment Improvements SFPI-2 Project.

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution No. 160-12. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 161-12

Negotiate and Enter Into Billing and Collection Services Agreement for Sewage and Stormwater Service Charges with the City of Cleveland, Department of Public Utilities.

Resolution No. 162-12

Contract with Davey Tree Expert Company for Wetland Mitigation Services at the Southerly Wastewater Treatment Plant. Contract Fee: Not-to- Exceed: \$36,826.00.

Resolution No. 163-12

Contract with Baldwin Wallace College for Customer Awareness and Customer Satisfaction Surveys. Cost: Not-to-Exceed \$75,000.00.

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| Resolution No. 164-12 | Contract with The Kaleidoscope Group, L.L.C. for Professional Services for Diversity & Inclusion Survey. Cost: \$46,860.00. |
| Resolution No. 165-12 | Contract with Shook Inc., Northern Division for the Southerly Wastewater Treatment Center Primary Treatment Improvements (SFPI-2) Project. Cost: \$42,470,629.50. |
| Resolution No. 166-12 | Contract with Kronos, Inc. for Professional Services for Upgrade of the Kronos Timekeeping System and Implementation of Online Leave Requests. Cost: Not-to-Exceed \$50,738.00. |
| Resolution No. 167-12 | One-Year Requirement Contract with Quasar Energy Group for Sludge Cake Removal at the Southerly and Westerly Wastewater Treatment Plants. Cost: Not-to-Exceed: \$531,300.00. |

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution Nos. 161-12 through 167-12. After discussion and without objection, the motion carried unanimously.

Ms. Kelly stated that the contract associated with Resolution No. 163-12 is relatively small and inquired how many bids were received. Constance Haqq, Director of Administration & External Affairs, advised that eight proposals were received from a very diverse group. Two firms were from the region and all were local. Two bidders were MBE/WBE and one made the top three. Staff was particularly impressed with Baldwin Wallace College because of the additions to the proposal they wanted to provide, including benchmarking other wastewater organizations and what they do.

Ms. Kelly questioned whether smaller firms usually contact the District if they do not win a bid to discuss deficiencies and areas for improvement. Ms. Haqq advised that in this instance the top two that did not receive the contract had discussions with the manager in charge of the project. Executive Director Ciaccia advised that there are occasions when firms want to discuss their bids and how to improve their weaknesses -- especially in regards to professional services, which is more subjective than a competitive bid.

Ms. Kelly stated that it very important for small businesses to be more competitive in this

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environment for small contracts. She wanted to make sure they were receiving information that can enhance opportunities. Executive Director Ciaccia advised that two sessions were held last week during which staff made presentations to small businesses on how to do business with the District. Every effort is being made to outreach. Ms. Haqq stated that over 100 firms attended the program conducted by the Business Opportunity Program over two days.

Mr. Sulik asked Ms. Rotunno what will be done regarding Resolution No. 165-12. Ms. Rotunno explained that the project is "two for one." The primary job is to replace and rehabilitate outdated equipment at the Southerly primary settling tanks -- work that has been needed for some time. However, the consent decree requires adding chemically enhanced high-rate treatment at the plant, which would go into the primary tanks eventually. Ms. Rotunno explained that for those reasons the two projects were combined and the pilot of that chemically enhanced high-rate treatment for wet weather treatment will be constructed as required.

Returning to the Baldwin Wallace College resolution, Mr. Brown inquired what tools will be gained from the process and how might it help in terms of service delivery. Ms. Haqq advised that Baldwin Wallace will conduct two surveys. The first is a customer satisfaction survey, which will measure the feelings of people who call the District and how well they are being served. The results of that survey will determine if the District's customers' needs are being addressed in a timely, efficient and effective manner.

The second is a customer appreciation and awareness survey. She explained that the awareness survey will determine how well media tools and outreach activities perform reaching the public. Ms. Haqq advised that if the public is more cognizant of the District on television, radio or direct mail, it can streamline the process in the future.

Moving discussion to Resolution No. 165-12, Mr. Brown stated that the established goal was 20% and Shook made a commitment of 15.45%, which was deemed a good faith effort. He questioned what a good faith effort was and whether there were not enough opportunities to make up that small percentage. Regarding Shook's MBE/WBE participation, Ms. Rotunno stated that the documentation they submitted with their bid documents showed they had not met goal but had made a good faith effort to meet it.

She did not know whether it was a result of insufficient MBEs or WBEs or not enough work that could be subcontracted. As on all contracts, staff will work with a contractor to continue their good faith effort to meet that goal throughout the life of the contract. Mr. Brown stated that was going to be his request. If it is not in absence of availability in the marketplace, he asked to continue to urge them to meet that goal. Ms. Rotunno agreed.

Executive Director Ciaccia advised that the District has awarded Shook other contracts in

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Ms. Halperin advised that the big changes include mercury as a biocumulative chemical of concern and the water quality standard for the Lake Erie Basin is very low. The previous permit had a monitoring requirement for data collection and monitoring. Based on those numbers, the District will not meet the very low number.

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Staff has been anticipating that, which is why an application was submitted for a mercury variance with the permit application. Ms. Halperin stated that the permit grants a variance from the number but requires things such as implementing a minimization program, which has been ongoing for the last couple of years. An example of such a program would be the dental amalgam separator program in which dentists keep mercury out of wastewater.

Ms. Halperin explained that the previous permit monitored fecal coliform. However, in 2010 the Ohio EPA adopted e-coli as the new bacteria standard for water quality because it is a better indicator of human health risk in recreation water. Staff asked for a compliance schedule at Easterly and Westerly. The District has until the beginning of the recreation season in 2014 to make the change.

The old permit had a monitoring requirement for phosphorous which involved limits and the collection of data. The only plant whose limit will be changed is Southerly, based on the lower Cuyahoga River total daily maximum load limit issued in 2003. That was during the old permit cycle.

Ms. Halperin stated that staff does not anticipate a problem meeting the limit, but because of the nutrient problem and pressure from environmental groups, the Ohio EPA has also asked the District to evaluate how to further reduce phosphorus concentrations in the effluent. Staff will examine the ability of the existing facilities and within 24 months submit a status report.

After the report is submitted there are 12 months to implement reasonable measures to optimize phosphorus reduction. After 48 months from the effective date of the permit, a final report is submitted to the Ohio EPA.

Ms. Halperin advised that there is a new pH limit. The former permits had a range of 6.5 to 9.0; the new range is 6.0 to 9.0. She explained that staff wanted the lower number because pH is measured instantaneously and one dip below 6.5 is a violation. A mixing zone study was conducted which proved that 6.0 was an adequate number for the plants, providing more flexibility.

Ms. Halperin explained that the last permit cycle had monitoring requirements for whole effluent toxicity in receiving water. Based on the numbers and data available, Easterly is the only plant that has the limit required to meet whole effluent toxicity.

The monitoring at Southerly and Westerly were reduced; Southerly from four times per year to two and Westerly from two to one. She stated that is good news because tests are very expensive and complicated. It also shows there is no problem since they are reducing monitoring requirements.

CSOs at Westerly and Easterly have always been under the CSO permit. Those are now included in the plant permits.

There are new monitoring requirements -- including occurrences, volume, how long they last, total suspended solids, e-coli and CBOD. Staff asked for a compliance schedule for monitoring the locations because they had not been monitored before. Sampling and metering devices must be installed by February.

Ms. Halperin noted other minor changes, including a requirement for sanitary sewer overflow monitoring and reporting. These are only sanitary sewer overflows that occur with the facilities the District owns and operates, which is purely an occurrence reporting requirement.

Westerly is currently rated at 70 million gallons per day. The District has the ability with the permit to run the plant at 100 million gallons per day, which is very important and tied to CSO compliance. The plant will be tested and run at higher levels.

Ms. Halperin advised that the final new requirement is signage for all CSOs in the system. This change was made through regulations several years ago but was not a requirement because of no permits.

Ms. Halperin summarized by stating the permits are protective of the environment and have reasonable requirements. They are the result of extensive planning that began long before her tenure at the District -- anticipating changes in regulations and determining how to meet the limits. She thinks the District's cooperative relationship with the Ohio EPA has been helpful in achieving reasonable permits.

Executive Director Ciaccia stated that phosphorus will be an issue in the coming years. Phosphorous is a reason for much of the algae and staff has discussed that the preponderance comes from the agriculture community. Wastewater plants contribute and the District will need to better understand what it contributes, how that interacts with the lake and reasonable steps to take in the future.

Executive Director Ciaccia advised that while it is unknown what will happen regarding federal regulation, there will be regulation, and Ohio is working with the federal government to formulate what they believe is a reasonable approach. There could be large dollars attached. He referenced that one year was spent during the consent decree negotiations with the federal government on the region's ability to pay. Our position was that there would be no agreement unless they acknowledged the high-burden status of the region, which they did. He stated that if there are major projects in the future related to phosphorus and nutrients, staff will look for tradeoffs through reopening the CSO consent order because of the established high-burden status.

Mr. Brown stated that it was critical issue and we know the value of going to the mat on that issue, but it was going to pay dividends down the road.

VIII. Public Session (any subject matter)

No members of the public registered to speak during Public Session.

IX. Open Session

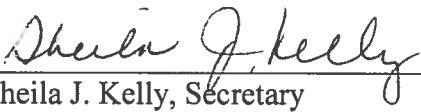
There were no items for discussion.

X. Executive Session

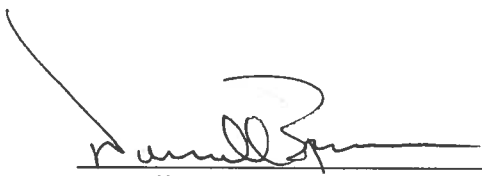
Mr. Brown stated that there were no matters for discussion in Executive Session.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Mr. Sulik seconded the motion to adjourn at 1:21 p.m. Without objection, the motion carried unanimously.



Sheila J. Kelly, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District