

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
DECEMBER 6, 2012

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

I. Roll Call

PRESENT: R. Sulik
J. Bacci
T. DeGeeter
S. Kelly
W. O'Malley
G. Starr

ABSENT: D. Brown

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

II. Approval of Minutes

MOTION – Mayor Bacci moved and Mr. O'Malley seconded that the minutes of the November 15, 2012 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that one member from the public registered to speak on a non agenda related topic regarding the draft Stormwater Credit Policy. Those comments were held for the appropriate Public Session.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Stormwater Management Program (hereinafter "SMP") litigation. The appeals process is ongoing and those communities and business interests in opposition to the SMP filed its brief in opposition. The District's legal team is in the process of preparing its response brief, which is expected to be completed in a couple of weeks.

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Executive Director Ciaccia advised that the District continues to aggressively hold community meetings and engaged discussion about the program. According to Executive Director Ciaccia, it was a good decision to provide the public with advance notification on the details of the SMP since this enabled the District to entertain calls prior to the bills being issued to the customers.

Executive Director Ciaccia moved to the next report item and he advised that the strategic planning process for 2013 – 2016 is underway. Executive Director Ciaccia indicated that he would like to present the Board with the proposed goals and action items at the next Board meeting in order to obtain the Board's input prior to finalizing the plan.

Executive Director Ciaccia moved to the next report item and he advised that the District is compiling the preliminary results obtained from the customer awareness survey. Those results will be shared with the Board. Executive Director Ciaccia noted that the public continues to struggle with the differentiation between the District, City of Cleveland, Division of Water (hereinafter "CWD"), and Cuyahoga County and each agency's roles with respect to water and wastewater management. The District would like to open dialogue with the Board about this issue and whether steps should be taken to address this matter with the public.

Executive Director Ciaccia moved to the next report item and he advised that the District will make a presentation to the Board in January to discuss the realities of the contracting and bidding process with respect to the Business Opportunity Program.

Executive Director Ciaccia moved to the next report item and he advised that there will be an upcoming Executive Session scheduled to discuss the *3320 Woodland* litigation, which is scheduled for trial in February.

Executive Director Ciaccia moved to the final report item regarding the new billing agreement between the District and the City of Cleveland. The existing billing agreement is obsolete since the installation of CWD's new billing system. The District and the CWD are in the process of negotiating a new billing agreement.

There were three key issues addressed during a meeting held between Executive Director Ciaccia and the City's Director of Utilities and Utilities Chief Financial Officer. The City proposed to charge the District on a "per charge basis." The District has a fixed cost recovery charge and a new stormwater charge and the City's proposal, at a minimum, will double the fees under the City's proposal. The District objected to the City's proposal and has taken the stance that the City should continue to charge the District on a "per bill basis."

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Executive Director Ciaccia advised that the District proposed a “me too” clause which means that any rate negotiated with other agencies, if lower, shall be provided to the District as well. The City did not agree to this proposal. Executive Director Ciaccia indicated that the District will drop the “me too” clause if the City dismisses the “per charge basis.” Those proposals will be brought to the Mayor of Cleveland by the Utilities Director for consideration.

Executive Director Ciaccia advised that in 2010 the District incurred certain costs in an effort to assist the CWD with remediating issues encountered with the new billing system. Those costs were not factored into the City’s proposed fee that is being charged to the District. Settlement of the District’s invoice to the City for those costs needs to be finalized.

Executive Director Ciaccia concluded his report by stating that he was comfortable with the District’s position on the CWD billing agreement and assuming that the City obtains approval on their end, he will be prepared to bring this matter back to the Board for consideration.

Mr. Sulik entertained questions for Executive Director Ciaccia.

Mayor Starr inquired if the ongoing stormwater litigation will prevent the District from moving forward with the SMP.

Executive Director Ciaccia stated that the communities and business interests in opposition to the SMP filed for an injunction with the Court of Appeals to prevent the District from implementing its SMP. That request was denied and the District is moving forward with the program. The District won the litigation notwithstanding the appeal and has therefore opted to move forward with the SMP. Executive Director Ciaccia noted that the potential risk of this decision would be in the event the District loses the appeal at this level or before the Ohio Supreme Court, then the money may have to be returned.

There were no further questions for Executive Director Ciaccia.

V. Action Items

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 292-12

RFPs for Stormwater General Professional Services.

MOTION – Mr. O’Malley moved and Mayor DeGeeter seconded to adopt Resolution No. 292-12. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement(s)

Resolution No. 293-12

Agreements for Sponsorship of the 2013 Water Resource Restoration Sponsor Program. Cost: \$13,188,202.00.

Resolution No. 294-12

Settlement Agreement with Air Products and Chemicals, Inc. Settlement Amount: \$605,433.92.

MOTION – Mr. O'Malley moved and Mayor Starr seconded to adopt Resolution Nos. 293-12 and 294-12. After discussion and without objection, the motion carried unanimously.

Director Ciaccia opened discussion on Resolution No. 293-12 for the sponsorship agreements for the 2013 Water Resource Restoration Sponsor Program (hereinafter "WRRSP"). He advised that the District borrows money from the State of Ohio, pays back the interest, and the State invests those interest payments into the WRRSP. The District receives a small decrease on its interest by being involved in this program. Executive Director Ciaccia stated that the WRRSP is an economic advantage for both the District and the communities.

Executive Director Ciaccia pointed out that over the last three years \$30 million has been invested in this region for ecological projects leveraged from this program. The District is happy to sponsor projects in this area. Although there is a limited amount of money available from the state, this region obtains a significant portion of those funds because of the District's involvement and ability to sponsor projects. Executive Director Ciaccia advised that there is a wide range of projects that have been applied for and that a good portion of those will receive state funding.

Authorization to Amend Resolution

Resolution No. 295-12

Amend Resolution No. 232-10 to rotate senior and co-senior managers for 2013 financing as it was the District's intent at the time of entering into agreements with the underwriting management team in 2010.

Resolution No. 296-12

Amend Resolution No. 233-10 to engage Squire Sanders (US) LLP and Forbes, Fields & Associates Co., L.P.A. to serve as bond counsel and co-bond counsel, respectively, for the District's 2013 bond issue. Estimated Cost: \$95,000 for the 2013 bond issue plus attorney fees (fees paid from proceeds of bond sales).

MOTION – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution Nos. 295-12 and 296-12. Without objection, the motion carried unanimously.

Salary Resolution

Resolution No. 297-12

Adopting the proposed 2013 salary resolution.

MOTION – Mayor Bacci moved and Mayor Starr seconded to adopt Resolution No. 297-12. Without objection, the motion carried unanimously.

General Increases and Special Adjustment Budget

Resolution No. 298-12

Authorizing proposed 2013 general increases for all non-union employees and special adjustment budget. Cost: 2% general increase to all non-union employees and not-to-exceed \$300,000.00 for special adjustments.

MOTION – Mayor Starr moved and Mayor DeGeeter seconded to adopt Resolution No. 298-12. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 299-12

Modify Contract No. 10002562 with the Fedeli Group for a one (1) option to renew services related to creating a comprehensive benefits program for the District. A cost increase in the amount of \$50,000.00 for option year 3, bringing the total contract amount to \$150,000.00.

Resolution No. 147-12a

Modify Contract No. 12002158 with Applications Software Technology Corporation for the Finance and Human Resources System Upgrade and Improvements Project, Phase II. A cost increase in the amount of \$2,971,860.00, bringing the total contract amount to \$3,255,563.00.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 299-12 and 147-12a. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 300-12

Authorizing a one (1) year contract with the Cleveland Clinic Foundation for the 2013 Executive Physical Program. Cost: Not-to-exceed \$75,000.00.

Resolution No. 301-12

Contract with MWH/HMM Joint Venture for the Dugway Storage Tunnel Project. Contract Amount: \$12,561,940.00.

Resolution No. 302-12

One (1) year requirement contract with Polydyne, Inc. for Centrifuge Polymer for use at the Southerly Renewable Energy Facility. Cost: \$1,909,410.00.

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution Nos. 300-12 through 302-12. Without objection, the motion carried unanimously.

VI. Information Items

There were no Information Items.

VII. Public Session

Mr. Sulik requested for Mr. Traves to report to the podium and address his comments to the Board.

Mr. Traves advised that he is with Labyrinth Management Group and that his agency submitted comments on behalf of its clients in the District's service area with respect to the District's proposed credit manual associated with the stormwater program fee.

Mr. Traves stated that his agency has experience in both Toledo with their stormwater credit program for clients and also in Michigan and that he comes with a little bit of experience.

Mr. Traves apologized that he will not be able to attend the December 20th Board meeting, at which this will be one of the topics, and that he wanted to come today and make his presentation.

Mr. Traves advised that he has served on boards and he urged for this Board to consider his agency's 12 pages of comments, which he indicated are "very substantive, important issues associated with what really is a policy activity that is being done in the guidance manual associated with a regulatory and rules and regulations designed to be equitable, fair and reasonable according to the Title V based on the demands that are imposed on the regional SMP."

Mr. Traves stated that the overall comments "touch upon that the existing draft guide does not meet those obligations. Specifically we believe that, and our clients believe that it's necessary to expand, to be fair and equitable, the different aspects, and then also simply streamline the administrative process."

Mr. Traves stated that the quantity credit as presented has "no provision for parties that have their own stormwater conveyance features like storm drains. They're privately owned. They're on private property, and they would discharge to either major surface water bodies which would be the major rivers or potentially even to Lake Erie. Those types of situations obviously pose no burden on the stormwater management infrastructure and resource footprint that Northeast Ohio Regional Sewer District is addressing. Obviously, when you back up the stream into the different Euclid creeks or the other tributaries and if you want to call them ditches or other conveyances, you do

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have and certainly any stormwater conveyance which is owned and maintained by the sewer district has a very specific jurisdiction.”

Mr. Traves stated that the second issue is essentially associated with the quality aspects and that “most of the stormwater credit programs we've been involved in and we've also reviewed and put data in and comments related to them, do have a quality aspect. I think maybe it was an oversight that the emphasis was put on individual NPDES discharge permits which may or may not include stormwater, but basically that's a quality credit you have an opportunity.”

Mr. Traves stated that the “Ohio EPA for a number of years and most of our clients have been getting away from individual permits to go to the general permit program. That general permit program has been very effective according to both Ohio EPA and US EPA in managing stormwater pollution from a large range of industrial facilities and like in Northeast Ohio's footprint in Cuyahoga County there's 62 individual NPDES permits, but there's over 350 general permits.”

Mr. Traves stated that “those general permits would be 141 pages long. They now require additional US EPA requirements as of 2011 which include monitoring specific parameters, either visually and/or through laboratory analysis and other things. So I think it's essentially equivalent to a NPDES permit on an individual basis.”

Mr. Traves stated that “if you're going to be fair and reasonable, provide a quality credit for people with that, then you should, for an individual permit, also cover those with general permits which actually include a number of my clients which are industrial facilities.”

Mr. Traves advised that “there's a whole section of people who do what's called a no exposure certification which they actually submit to the agency. And obviously if they've taken measures to cover and actually take things inside so there's no potential for stormwater pollutants to actually contribute to water, those people should have some credit too, because they actually don't need a permit specifically because they have no exposure.”

Mr. Traves indicated that the administrative process can be streamlined tremendously. There are other programs that don't require professional engineers. Toledo does. We argued against it. There is no basis within Ohio regulatory programs to require applications be submitted by an engineer for something like this. I've done permits for \$600 million coke plants and I submit them as a non-engineer...your permit application for an individual permit for wastewater discharges does not have to be submitted by an engineer in Ohio. There are permits to install components that do. Obviously if you're

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doing stormwater control measures, they're going to require drawings and things like that that require a professional engineer.

Mr. Traves noted that "we do have some comments in regard to what really could be considered a gift to the engineering community that really is not being addressed by a rebate on the fee because the rebate on the fee does not address the annual provisions and there are even different, even Toledo has an annual report provision."

Mr. Traves stated that a huge chemical plant like ArcelorMittal in the Flats completes "compliance certification for their compliance with their regulatory programs...without a PE submittal. They're doing it with a corporate officer as a responsible official. You can set that up on a one page form; you can have an annual report for certain provisions. There's a lot of administrative streamlining that can be done. You don't have to have a PE write a letter certifying that they've met the requirements for another year."

Mr. Traves stated that "those are very important things to even my small, select number of clients. I think it's a broad-based, fair and reasonable approach, and it's not adverse to the actual consideration that you do need a fee, it's just basically tweaking the guidance to be better designed to meet the fair and reasonable and be equitable across all the parties."

This concluded Mr. Traves' comments and he indicated that he would be willing to entertain any questions from the Board.

Mr. Sulik thanked Mr. Traves for his comments and he inquired if he provided District staff with his report. Mr. Traves affirmed.

Mr. Sulik requested that those comments be submitted to the Board.

Executive Director Ciaccia affirmed and he thanked Mr. Traves. He advised that substantive discussions involving those comments submitted by his agency have taken place and the District intends to respond.

VIII. Open Session

Mayor Starr advised that earlier today he met with Internal Audit Manager, John Wasko, Deputy Executive Director, F. Michael Bucci, and representatives from Honkamp Krueger, which was retained by the District to perform a quality review of the District's audit processes and departments.

Mayor Starr noted that two other Board members are on the Audit Committee, which was established as a reform package.

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Mayor Starr advised that the report and recommendation is nearing completion.

Mayor Starr stated that the Audit Committee will schedule three to four meetings next year and meet again on a regular basis.

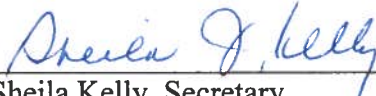
Mr. Bucci added that the ongoing audit is an "audit of the auditors" and is quality review audit. Those results will be shared with the Board.

Mayor Starr noted that one of the team auditors, Richard Ebeling, holds an MBA, CIA, CCA and CPA.


There were no further items for discussion.

IX. Adjournment

MOTION – Mr. Sulik stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Mr. O'Malley seconded the motion to adjourn at 12:56 p.m. Without objection, the motion carried unanimously.



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



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