

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JANUARY 17, 2008

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

I. Roll Call

PRESENT: G. Starr
T. Longo
R. Sulik
S. Kelly
D. DePiero

ABSENT: D. Brown
A. Liberatore

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

II. Approval of Minutes of December 13, 2007

Mayor Longo asked the Executive Director if he had an amendment to the minutes.

Executive Director Ciaccia responded that in the second set of minutes for the working session he wanted to correct the reference to the joint venture of KMM&K to reflect the accurate designation of KM&M for the Big Creek Interceptor Project, (BCI-3D), in the second paragraph on Page 3.

MOTION - Mayor DePiero moved and Ms. Kelly seconded that the Minutes of December 13, 2007, be approved, as amended. Without objection, the motion carried unanimously.

Mayor Longo summarized the new format for the Board meetings and minutes. He outlined that the roll call had been completed, the minutes had been accepted and approved, and the agenda was reviewed. He further indicated that next on the agenda comes public comments, the Executive Director's Report, the consent agenda, action items, informal section of the meeting, followed by open session and finally, executive session.

III. Public Session (no one registered to speak at the public session)

IV. Executive Director's Report

Executive Director Ciaccia indicated that the Director's Report was included in the Board packet. He highlighted the work the Board Ad Hoc Ethics, Governance, and Board Process

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 2

Committees had done and indicated that a number of documents would be finalized shortly. The Chairman of the Board Ethics Committee, Ms. Kelly, along with Mr. Sulik and Mr. Liberatore had been very helpful to District staff in drafting an ethics policy, a related parties and a conflict of interest disclosure form which will be ready to present to the Board at the next meeting. In addition, the Governance Committee is continuing work on reviewing Board by-laws, and staff will have proposed by-law changes that will strengthen the operation of the organization and Board oversight.

Executive Director Ciaccia highlighted that Law Director Sundheimer has been reviewing the District's current MBE/WBE program and that good performance information about the program to date had been gathered. Executive Director Ciaccia mentioned that the City of Cleveland is looking to get away from their current MBE/FBE program, and that it is something that the District needs to consider, as well. District staff will be working with the Board Ethics Committee to consider various models of programs. In addition, the District had a busy month preparing for a number of litigation matters. He elaborated that the KMM&K litigation and the Big Creek Interceptor-3D, polyurea issue, would be discussed in Executive Session.

Executive Director Ciaccia also highlighted that there continues to be considerable effort toward the combined sewer overflow negotiations and that Frank Greenland would make a presentation related to the current status of the project, and bring the Board up to date on expenses incurred to date.

Related to emergency contracting, Executive Director Ciaccia highlighted that meetings had been conducted relative to how the District wants to handle emergency contracting. He elaborated that Deputy Executive Director Bucci would speak more about emergency contracting when he addresses the District's responses to the Calfee audit.

Executive Director Ciaccia was pleased to announce that NEORS was awarded the 2007 Excellence in Management Award from the National Association of Clean Water Agencies, which is significant considering a lot of the negative press the District has received concerning construction contracting. He elaborated that the award recognizes effective utility management in the five areas: employee leadership development, financial viability, stakeholder understanding support, infrastructure stability and community sustainability.

Executive Director Ciaccia went on to highlight performance metrics relative to the plants and that they are consistently met. He elaborated that with regard to financial indicators; the District would be exceeding projected revenue and under projected operating expenses, which is good news. There was nothing new to report on personnel matters.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 3

On the community relations side, Executive Director Ciaccia stated that 2008 bill inserts were produced and distributed to the District's billing agents and letters were sent out to elected officials announcing the second phase of rate increases.

Executive Director Ciaccia concluded his summary on the Executive Director's Report.

Mayor Longo asked for any questions or comments. Ms. Kelly commented that she thought she spoke on behalf of the other Board members as well as herself when she expressed her appreciation for the overview and information provided to the Board and all the work that has been put into it. There were no other questions or comments.

V. Consent Agenda

Mayor Longo asked if there were any comments, concerns or questions regarding items presented in the Consent Agenda. There were none.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution Nos. 1-08 through 13-08. Without objection, the motion carried unanimously.

VI. Action Items

Water Resource Restoration Sponsorship Program

Executive Director Ciaccia presented Resolutions 14-08, 15-08 and 16-08, related to the Water Resource Restoration Sponsorship Program. He used the example of the incinerator project to describe the program. In this example, the District obtained a loan from the State Water Pollution Control Loan Fund for the incinerator project. Instead of the interest being paid to the Water Pollution Control Loan Fund, the interest is applied to another program called Ohio EPA's Water Resource Restoration Sponsorship Program that uses the interest payments to fund community stream projects. Executive Director Ciaccia indicated that this program plays very well into the stormwater management program that the District is trying to adopt.

Executive Director Ciaccia indicated that Resolution 14-08 is a resolution to enter into partnership with the Cuyahoga Soil and Water Conservation District and the Metroparks for the Euclid Creek project. The project is for dam removal. The District will accomplish project design, enter into a construction contract, and manage the project.

Executive Director Ciaccia indicated that Resolution 15-08 is a resolution to enter into a partnership with the City of Cleveland for the Mill Creek project. The project is a stream restoration effort in the Highland Park Golf Course.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 4

Executive Director Ciaccia indicated that Resolution 16-08 is a resolution to enter into a partnership with the West Creek Preservation Committee for a stream restoration effort at the confluence of the West Creek and the Cuyahoga River.

There were no questions or comments on the aforementioned resolutions.

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution Nos. 14-08 through 16-08. Without objection, the motion carried unanimously.

Authorization to Advertise for Construction Bids

Executive Director Ciaccia indicated that the next four items related to authorization to allow the District to advertise for construction bids.

Executive Director Ciaccia stated that Resolution 17-08 is for authorization to advertise for bids for the Easterly Interceptor Lakeside Improvement Contract near the intersection of East 53rd Street and Lakeside Avenue with an engineer's estimate of \$1,750,000. Through a condition assessment, it was identified that significant structural damage to the sewer exists. The District is attempting to rehabilitate the deteriorated section of the Easterly Interceptor. Work is anticipated to begin in April and last for a period of one year.

Executive Director Ciaccia stated that Resolution 18-08 is for authorization to advertise for bid for the Mill Creek Interceptor Main Branch with an engineer's estimate at \$8,700,000. He elaborated that the project includes construction of a connection structure to reroute the flow of the main branch of the Mill Creek interceptor to the Mill Creek tunnel. The work includes rehabilitation by slip lining approximately 2,000 feet of the existing Mill Creek tunnel. The project resulted from the collapse of the Mill Creek interceptor in the landfill, which is the subject of District litigation. Work is anticipated to commence in May 2008 and take about 18 months to complete.

Executive Director Ciaccia stated that Resolution 19-08 relates to authorization to advertise for bids for the Train Avenue Relief Sewer. The engineer's estimate is \$2,500,000 and the project is to reduce flooding within the City of Cleveland near the intersection of Willey and Train Avenues. A 15-inch sewer will be replaced with a 16-inch sewer for approximately 15 feet from an existing flow divider to the Walworth Run culvert. Work is anticipated to commence in April 2008 and last for a period of one year.

Executive Director Ciaccia stated that the advertisement for bid (Resolution 20-08) relates to the Walworth Run Outfall/East Cleveland Repair Project with an engineer's estimate of \$640,000. He indicated that he was amending the request to take out the East Cleveland project.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 5

Executive Director Ciaccia described the Walworth Run Outfall repairs as necessary to prevent further deterioration of the outfall. It is a significant CSO on the west side of the District to Westerly. He elaborated that a significant portion of the structure has eroded and that the project is to replace the lost brick floor with a new concrete slab to prevent further deterioration and erosion of the old concrete base.

Executive Director Ciaccia explained that the District had initially planned to include the East Cleveland work in the Southerly and Westerly District interceptor relining and replacement contract as a change order; however, East Cleveland preferred that the District receive competitive bids for the work in order to obtain funds to reimburse the District, and therefore, the East Cleveland work was included in the Walworth Run repair project. Subsequently, the District's repair crews notified management that sanitary overflows are occurring in the East Cleveland sewer, probably due to a significant collapse, and the East Cleveland portion of the request is now being elevated to an emergency contract. Executive Director Ciaccia indicated since East Cleveland had not encumbered their money, they are in no position to act immediately to correct the situation. The situation is affecting the District's regulator and causing additional combined sewer overflows into Euclid Creek. The District is seeking authorization to go out for bids on the Walworth portion of the project, but it is not including the East Cleveland portion. The engineer's estimate for the Walworth Run portion of the project is approximately \$150,000 less than the estimate stated.

There was some discussion about how to separate the items for Board consideration. The portion related to the bid for the Walworth Run portion would remain.

Recommendation for Bid Award

Executive Director Ciaccia indicated that the final item (Resolution No. 21-08) in the grouping related to a bid recommendation. Bids were taken for Centrifuge Polymer, which is used at the Westerly Wastewater Treatment Plant for sludge dewatering and only one bid from Polydyne, Inc. was received. The bid represents a five percent increase in price. Mayor Longo asked for questions.

Regarding Resolution No. 20-08, Mayor Starr asked whether the East Cleveland project would be awarded from the District's emergency contractor list. Executive Director Ciaccia responded yes.

Mayor Starr asked Executive Director Ciaccia to detail how the emergency contracting program is working differently than in the past. Executive Director Ciaccia responded that the new policies had not been finalized, but a number of flow charts related to process have been developed. He elaborated that he did not know if there would be any significant changes because it seems to be a fair process. What needs to be determined is a definition of emergency, and being conservative in defining an emergency, and what constitutes an emergency for what period of time. There needs to be a procedure for completing a portion of

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 6

the work under emergency contract, and then possibly bidding the other portion after the emergency is over. Mayor Longo requested making recommendations to the Board regarding the changes, and Executive Director Ciaccia stated that the District would be reporting to the Board as part of the Calfee audit.

There were additional questions about the East Cleveland emergency project. Mayor DePiero asked what qualified the job for an emergency contract. Executive Director Ciaccia explained that originally, the plan was to set up and operate by-pass pumps to avoid overflows during construction. However, in the event of a major rain storm, it was questionable if the by-pass pumps could keep up, and based on all the information from District staff, he decided this morning to classify the job as an emergency. Ms. Kelly asked what portion of the estimated \$640,000 was considered to be the emergency work, and how the emergency nature of the project would affect the District being reimbursed.

Mr. Switalski, the District's project engineer, came to the podium and advised the Board that the engineer's estimate for the East Cleveland project is \$180,000, including \$130,000 - \$135,000 for East Cleveland's sewer and the remainder for the District's facilities. Therefore, the Walworth project estimate should be reduced to \$460,000. Executive Director Ciaccia stated that the District would not take the East Cleveland project until there was a signed agreement with East Cleveland that states the District is entitled to reimbursement of its costs for the project.

There were no further questions or comments.

MOTION – Mayor DePiero moved and Ms. Kelly seconded the motion to amend Resolution No. 20-08 to delete the East Cleveland repair and change the engineer's estimate from \$640,000 to \$460,000. Without objection, the motion carried unanimously.

Mayor Longo asked for a motion to adopt Resolution Nos. 17-08 through 21-08.

MOTION - Ms. Kelly moved and Mr. Sulik seconded the motion to adopt Resolution Nos. 17-08 through 21-08. Without objection, the motion carried unanimously.

Progress Payments

Executive Ciaccia indicated that there were two progress payments. Resolution No. 22-08 was for progress payment No. 2 to pay Montgomery Watson Harza \$17,636.75 in connection with the Huntington Garage stormwater outlet project. He elaborated that the total billings for this matter will be \$52,862.59, and that Montgomery Watson Harza would also be engaged for a proposal to prepare bid documents and to design the project to get it under a construction contract.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 7

Executive Director Ciaccia indicated that Resolution No. 23-08 was for progress payment No. 7 in the amount of \$9,575.49 to Wade Trim in connection with the Mill Creek Interceptor emergency repair. He elaborated that Wade Trim is the consultant that has been used in the Mill Creek Interceptor collapse as a result of the landfilling activities there, and related to the lawsuit. Aside from design work on alternative routes for sewers, Wade Trim is continuing to perform geotechnical monitoring for the District.

There were no questions.

MOTION – Ms. Kelly moved and Mr. Sulik seconded the motion to adopt Resolution Nos. 22-08 and 23-08. Without objection, the motion carried unanimously.

Change Orders

Executive Director Ciaccia indicated that the next four resolutions were change order resolutions. Resolution No. 24-08 is Change Order No. 1 on the Easterly Interceptor Hydraulic Improvement Contract with C&K Industrial Services to extend the time of completion from February 21, 2008 to August 21, 2008. Executive Director Ciaccia explained that the delay was fruitful as it allowed for investigation into the reclassification of debris from hazardous to non-hazardous materials so that it can be disposed of in a regular landfill. As a result, the District should realize savings on this project.

Executive Director Ciaccia indicated that Resolution No. 25-08 is Change Order No. 5 on the Big Creek Interceptor Rehabilitation Contract, BCI-3D, with KM&M, Joint Venture in the amount of \$226,618.49 for a modification of a particular manhole that was being reconstructed. This is an error and omission change order, and the District is evaluating the standard of care for the design plans with the design firm. Initially, the manhole was believed to need moderate rehabilitation. However, the contractor found that site conditions were significantly different from what was shown on the design drawings. The manhole was originally built in a valley. Over the years, a landowner, without the knowledge or approval of the District, added risers to the manhole as fill material was added to fill in the valley. These risers are now deteriorated and need to be replaced. An evaluation is also being made regarding the landowner's responsibility and corrective discussions are ongoing.

Executive Director Ciaccia indicated that Resolution No. 26-08 is Change Order No. 7 and is a transfer of funds change order in relation to the Easterly District Interceptors Relining and Replacement Contract with Marra Constructors, Inc. This is not an increase in the cost of the contract; it is merely moving funds from one line item in the contract to another. He elaborated that \$3,651 was left in a miscellaneous additional sewer allowance to complete additional work. The District is requesting a change order to move \$60,282.95 from the utility work allowance to the miscellaneous sewer allowance to complete additional work.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 8

Executive Director Ciaccia indicated that Resolution No. 27-08, Change Order No. 8, is a companion to Change Order No. 7, and will close out the contract. It is a deduct change order of \$222,299.88 from various line items for non-performed or partially performed work and will close out the contract.

Mayor Starr inquired how many line items typically exist in a contract like this one. Director of Engineering, Charles Vasulka, replied that it depends on the type of work, but the contracts could have 10 or 20 line items, and others have 40, 50 or 60, depending if there are many unit prices in the contract.

Mayor Starr asked if this was a new procedure to ask the Board to approve fund transfers. Executive Director Ciaccia replied that it was not a new procedure for the District; however, he wanted the Board to be aware that in the next week the District is going to take a hard look at procedures regarding change orders, contingency allowances, and contracting practices, and at by-laws and working with the Board to determine what comes to the Board.

Mayor Starr asked if it was an issue of transferring funds from one contract to another with the same contractor or consultant. Mr. Bucci replied that was a different issue that he would be addressing in his report on the District's response to the Calfee audit.

Mayor Starr inquired about an allowance for permits. Mr. Vasulka responded that the allowance could be used for street opening permits, building permits, and railroad permits. Mayor Starr said his point was that if the District is investing millions of dollars to improve a city, why are they charging us for a permit? Mr. Vasulka responded that they generally follow standard procedures to get whatever permits are required. Executive Director Ciaccia explained that the Water Department has agreements with cities to not pay for permits; however, the District does not operate under those types of agreements. It is something we may want to look at in the future.

Regarding Resolution No. 24-08, Mr. Sulik asked whether the District would be seeing any charge from C&K Industrial Services for down time on the project. Mr. Vasulka replied no.

There were no further questions, or comments.

MOTION - Mayor Starr moved and Mayor DePiero seconded the motion to adopt Resolution Nos. 24-08 through 27-08. Without objection, the motion carried unanimously.

Requests for Contract Modifications

Executive Director Ciaccia indicated that the next two items were requests for contract modifications. Resolution No. 28-08 is a modification to a contract with Montgomery Watson Harza for additional engineering services during construction in the amount of \$31,345 in connection with the East 90th Relief Sewer project. He elaborated that the project encountered

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 9

significant differing site conditions, involving sandstone and shale at depths that the borings did not show were present. The project was delayed and consequently, Montgomery Watson Harza was required to perform additional work.

Executive Director Ciaccia described Resolution No. 29-08 as a modification to Brown & Caldwell's contract in the amount of \$84,730 for the Easterly Comprehensive Facilities Plan. He elaborated that it is a significant contract and there were a number of factors that caused a need for additional funds, including the fact that the consultants were given the wrong capacity for the secondary treatment at the plant initially, and additional unanticipated work regarding the CSO plan that resulted from negotiations with the EPA.

Mayor DePiero asked what the difference between a contract modification and change order was. Executive Director Ciaccia responded that change orders are typically related to construction contracts, and there are line items in the contract to pay for changes, for example, differing site conditions. Contract modifications are typically related to professional service contracts. He elaborated that they are generally the same, but have different terminology depending on the type of contract.

Deputy Executive Director Bucci added that this issue is being evaluated in the District's examination of its contracting procedures. In the past, the design would be completed by a firm, and in some cases the contract would be modified for the design firm to perform contract administration or resident engineering services. In that case it was additional work. Executive Director Ciaccia stated that he has instructed the engineering staff that if we know that there is additional scope that has to be added to the engineering contract, then they will have to delete scope in order to accomplish what needs to be done.

MOTION – Mr. Sulik moved and Mayor DePiero seconded the motion to adopt Resolution Nos. 28-08 and 29-08. Without objection, the motion carried unanimously.

Request to Amend Resolutions

Executive Director Ciaccia indicated that there were two resolutions to amend previous resolutions. Resolution No. 30-08 is an amendment of a resolution adopted last year, Resolution No. 293-07, for a bid for purchase of laboratory quality gasses and analytical services. The resolution authorizes the District to go out for bid for a two-year requirement contract for compressed oxygen and high-grade liquid argon, as well as, necessary tanks and associated equipment required for the analytical services facility. The vendors would not bid anything less than a three-year contract to justify the cost recovery of their capital investment. Executive Director Ciaccia elaborated that the resolution is to amend the previous resolution from a two-year contract to a three-year contract.

Resolution No. 31-08 is a resolution to amend last year's salary resolution, Resolution No.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 10

315-07 because a number of classifications including Communication Specialist I to Group 10; Communications Specialist II to Group 11; Safety and Security Training Specialist from Group 7 to Group 9; and Plant Administrative Consultant Trainer from Group 16 to Group 14.

MOTION – Mayor DePiero moved and Mayor Starr seconded the motion to adopt Resolution Nos. 30-08 and 31-08. Without objection, the motion carried unanimously.

Miscellaneous Items

Executive Director Ciaccia indicated he had seven resolutions that did not fit any particular category. Resolution No. 32-08 is to approve engineering services during construction in the amount of \$241,156 to Metcalf & Eddy for the Easterly Interceptor Lakeside Improvement Contract (at East 53rd Street). He elaborated that the firm had completed the design work previously, have included DLZ as a minority subcontractor and Water Resources and Coastal Engineering as a WBE subcontractor in the amounts of 15.6 and 6.1 percent, respectively.

Executive Director Ciaccia described Resolution No. 33-08 as an easement in the amount of \$17,000 for a permanent sewer easement and temporary construction easement at the Mill Creek Interceptor Vista Branch Project. The easement would be granted to the District by the Electric Illuminating Company. The District will need to build a sewer to bypass the Mill Creek Interceptor which collapsed as a part of the land filling activity which is the subject of litigation. This also involves the medical waste found on the site, and the permitting agreement with the Electric Illuminating Company will include handling the medical waste on site.

Executive Director Ciaccia described Resolution No. 34-08 as an easement for the Dugway East Interceptor Sewer on property owned by Jesse and Jenny Johnson. The District already has an easement there and occupies two thirds of the property; therefore, Judge Donnelly has determined that it would be more equitable to acquire the parcel in fee simple as both owners are now deceased. The District has already provided \$3,000 to the Court, and since it was appraised for \$18,000, the District has to provide another \$15,000 to purchase the property.

Executive Director Ciaccia described Resolution No. 35-08 as seeking authorization for payment in the amount of \$16,445.08 for legal services performed by Walter & Haverfield in connection with a claim of a former employee for racial discrimination. The matter has now been turned over to Travelers Insurance, but this amount is needed to close out the final invoice.

Mayor Starr asked whether the matter was turned over to Travelers for payment, or for continued legal representation. Executive Director Ciaccia responded that it was for continued legal representation.

Executive Director Ciaccia described Resolution No. 36-08 as a request and payment for cellular communication overages not to exceed \$21,170. The Board had authorized the District

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 11

to pay for cellular services in the amount of \$97,500 for 2007, a yearly authorization. However, staff discovered there was an overage last year. Executive Director Ciaccia elaborated that efforts are being made to prevent this from occurring again, including an audit and full accounting of use of cellular services. The services will also be going out for bid later this year to try to achieve some benefit through competition.

Executive Director Ciaccia described Resolution No. 37-08 as authorization for another \$97,500 for cellular services for 2008 because there is not enough time to complete the review and package the specifications for a bid request.

Executive Director Ciaccia described Resolution No. 38-08 as a request authorizing the District to enter into a partnership agreement with Tri-C Foundation for the establishment of an endowed scholarship in the name of Richard N. Connelly in the amount of \$50,000. He elaborated that Mr. Connelly was a force in the District and throughout the region. The scholarship complements the District's community outreach goals of improving awareness of our business by residents and making eligible students aware of careers at the District. Todd Gaggie and Herbert Mouser were present from Tri-C and were acknowledged.

Executive Director Ciaccia indicated that concluded the resolutions that do not have a particular category.

MOTION – Mayor Starr moved and Mr. Sulik seconded the motion to adopt Resolution Nos. 32-08 through 38-08. Without objection, the motion carried unanimously.

VII. Information Items

Mayor Longo indicated that the next section was the informational section. Executive Director Ciaccia stated that he would welcome any suggestions for improving the newly implemented process. Mayor Longo asked if the items could be tabbed. Deputy Executive Director Bucci indicated that the blue divider sheets could probably be tabbed in the future.

Calfee Audit Response - Update

Executive Director Ciaccia indicated that the first informational matter related to the Calfee process response. Previously staff had indicated that the Board would be updated. Executive Director Ciaccia stated that Deputy Executive Director Bucci would present the status of the work relative to the audit.

Deputy Executive Director Bucci indicated to the Board that this was the first report on this matter, and that they were provided with a cover memo and spreadsheet. Mr. Bucci further stated that after the proactive approach of hiring Calfee, Halter & Griswold to review the District's contracting practices, a special work session was conducted on October 4, 2007, where the audit findings were reviewed along with management responses. He elaborated that

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 12

two special sessions are recommended in the future: One in February or March 2008 to present the Board with recommendations regarding the emergency contracting procedures, and the second one in May 2008 to present Board members with final policy decisions. Deputy Executive Director Bucci indicated that one of the policy decisions the Board will finalize later in the year relates to contingency allowances.

Deputy Executive Director Bucci referenced a handout which itemized the 13 different findings along with the general conditions. He elaborated the handout listed what the finding was, the general area, and the District's response as of October 4. Due dates were also listed, who is responsible and the status as of December 31, 2007. He indicated that he would address items 1, 2, 4, 5, 7 and 9.

Deputy Executive Director Bucci indicated that relative to Item 1, Finality of Change Orders, the due date assigned was January 31, 2008. He elaborated that staff will recommend that a change order should constitute full and final payment for the extra work. A work group consisting of Assistant Director of Law Lisa Mack and others in Engineering will bring forth a final recommendation at a future meeting.

Deputy Executive Director Bucci indicated that Item 2 relates to the use of consulting engineers, and Item 3 addresses the increased internal audit function at the District. He added that a report would be provided on that item as well.

Deputy Executive Director Bucci indicated that Item 4 relates to final payments, and that staff is drafting language that the District will withhold funds for disputed amounts against future progress payments which is a change from how business was previously conducted. He added that staff is also going to recommend other internal audits, including performance compliance audits, to ascertain whether we are complying with what we said we were going to do.

Relative to Item 7, emergency contracting, Deputy Executive Director Bucci indicated that staff is close to finalizing this item and a presentation is planned for a separate meeting. He elaborated that the goal is to standardize the process, including selection of contractors, paying prevailing rates, equipment rates and defining what constitutes the emergency and when it is over.

Relative to Item 9, payment at the discretion of construction supervisors, Deputy Executive Director Bucci indicated that the recommendation was pretty clear-cut, that the construction supervisor will pay what the Board authorizes and what the contract stipulates.

Deputy Executive Director Bucci concluded the discussion by stating that staff would work hard toward finalizing the recommendations in the spring and using internal audit to ensure compliance.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 13

Relative to Item 9, Mayor Longo asked whether the Oracle system would be utilized to track payments made in the normal contract process. Deputy Executive Director Bucci responded that it would. Mayor Longo followed by asking him to elaborate on the progress of that utilization.

Deputy Executive Director Bucci indicated that Item 11, implementation plan, addresses this and that Finance Director Demmerle prepared a sample report for the Board. He elaborated that staff is scheduled to have additional information at the February Board meeting.

2008 Audit Plan

The next item addressed was the 2008 Audit Plan. Executive Director Ciaccia asked Internal Audit Manager John Wasko to present the summary.

Mr. Wasko summarized the internal audit function, the authority under which the function would operate within the District, some of the highlights of the 2008 audit plan and that that the function would report to the Executive Director and the Board. Mr. Wasko introduced the two staff members who had joined the District as Brian Flanagan and Don Ziats who were present. He elaborated that in addition to internal staff, they would also use external resources, as needed.

Mr. Wasko indicated that in the detailed audit plan, 17 specific areas have been scheduled for review. He elaborated that internal audit would work with Frank Greenland regarding asset management and risk assessment, and Ms. Sundheimer regarding commercial and self-insurance coverage employed by the District and some of the strategies that can be used in order to transfer risk.

Regarding capital contracts, Mr. Wasko elaborated that a memorandum was included in the Board packet that details specific audits for contracts and the metrics that will be used by internal audit for reviewing such items.

Mr. Wasko concluded his presentation by detailing the other items internal audit would be working on, including financial audits, audits of IT, Human Resources and operational audits. He elaborated that detailed reports would be provided accordingly, including quarterly updates to the Executive Director and the Board.

Mayor Starr inquired how many internal auditors the District has employed over the 35 years. Deputy Executive Director Bucci asked Mr. Wasko when he was hired. Mr. Wasko responded that he was hired almost six years ago. With emphasis, Mayor Starr asked, one auditor? Deputy Executive Director Bucci elaborated that the District has employed co-ops previously, but there was no full-time staff before now.

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 14

Mayor Starr asked if the current staff of three would be enough and referenced recent contractual issues the District has experienced. Deputy Executive Director Bucci responded the District would complement the internal audit with external resources, like Jefferson Wells, as Mayor Starr suggested, when necessary.

Mayor Starr asked whether Mr. Wasko viewed this audit function as an extra check and balance system. Mr. Wasko responded that he did, and further, an internal audit function has to balance the needs of the organization, the needs of the stakeholders, and the goals of the organization with the risks the organization agrees to assume. Mayor Starr asked if Mr. Wasko would be reviewing all of the contracts in the future. There was some discussion about the District's resources, its expenditures and the importance of avoiding past problems.

Mayor Starr asked whether the Calfee recommendations would be reviewed, and Mr. Wasko responded that items 1 through 12 would be, as well as Element D, contract language, including issues related to legal settlements. Mayor Starr indicated his support for the enhanced internal audit function.

Mayor DePiero indicated his agreement with Mayor Starr and stated that this was an excellent step in the right direction to make the District more efficient.

Mayor Longo commented that when the District embarks into stormwater management, that things will change and impact the function. He elaborated that the Board would expect Finance to come back to detail how the course will be maintained that has been set. Deputy Executive Director Bucci responded by stating that quarterly reports would be provided.

CSO Plan Presentation

Executive Director Ciaccia indicated that the Frank Greenland would conduct the CSO Plan presentation next. He elaborated briefly that substantial costs have been incurred to date in pursuing this and that the District would continue to incur costs in pursuing the end game as it relates to CSOs. Executive Director Ciaccia also stated that Squire, Sanders & Dempsey and outside consultant resources through the firm have been engaged to assist in the effort.

Frank Greenland indicated that he intended to go over the three key areas of the District's responsibilities with respect to combined sewer overflow management, the program and the current status. He stated that he wanted to focus on the CSO program approval process that involves the District, EPA, the Department of Justice and most of the free world and which is critical to allowing the District to move forward with the CSO program.

Mr. Greenland began by displaying a photo of a combined sewer overflow. He went on to discuss how overflows occur and showed the District's service area and highlighted the 126 overflow points. He indicated that every stream in the District's service area receives at least

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 15

one discharge. There are multiple discharges to Lake Erie, Mill Creek, Big Creek, the Cuyahoga River, Doan Brook and other streams.

In terms of the District's requirements, Mr. Greenland explained that there are significant combined sewer overflow regulatory requirements. The District holds a permit from Ohio EPA for the overflows and has to comply with nine minimum controls which are maintenance related items. The District had the responsibility to develop and implement a long-term program to control combined sewer overflows and also to minimize bypasses at wastewater treatment plants.

Mr. Greenland elaborated that the District conducts facilities plans in four distinct areas to comply with the CSO permit. The facilities plans in general recommended that the District control overflows to no more than four per year. He elaborated that in a typical year there are no more than four at any one location and many of the overflows under the prescribed plan will be eliminated.

Mr. Greenland stated that the recommended plan that has been discussed is by and large a tunnel storage system similar to Mill Creek. The program is in excess of \$2 billion and rising as construction costs escalate and time passes. He elaborated by stating that the range of potential costs were being presented. We are currently finalizing our analysis of costs to deal with bypasses at the Easterly and Southerly Plants.

Another slide laid out the EPA approval process, which begins with an evaluation of whether the plan and alternative selected are adequate and whether the tunnel program is acceptable to the agency. Thereafter, the prescribed level of control is addressed, whether the four overflows per year is adequate. There are also discussions about wastewater treatment bypasses. Finally, the analysis leads to a program, its costs, an implementation schedule, and ultimately a consent decree which is a binding agreement with the US EPA.

Mr. Greenland then discussed the history of the approval process. He indicated that the last facilities plans were submitted to Ohio EPA in 2002, which started the clock on approval. Since that time, in 2003, the US EPA visited to audit compliance with the nine minimum controls. They visited for a week and evaluated what the District was doing in terms of maintaining and operating a combined sewer system.

In 2004, substantive discussions were initiated with Ohio EPA toward approval of the District's plan. The meetings were typically conducted on a monthly basis in an effort to try to craft an agreement to formalize approval. The District incurred costs to ensure that the District's technical and legal interests were being protected.

Beginning in 2005 and ongoing, the District submitted a permit to install application (PTI) to the Ohio EPA for permission to build a facility. This was an enhancement of the District's

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 16

combined sewer overflow treatment facility adjacent to the Westerly Wastewater Treatment Plant. EPA wanted the District to move the project early. The District agreed, designed the project and submitted the PTI and thereafter issues were raised which resulted in further discussions. The District appeared before a hearing examiner at EPA and has made several appeals in this still open matter.

In 2005, going into 2006, US EPA entered the process and the US Department of Justice now leads the negotiation effort. There have been significant data requests and corresponding substantial costs incurred to the District to answer whether the tunnel alternative is appropriate and adequate.

In 2007 the Board was apprised of the litigation that ensued. It was related to a 308 Order to provide information. US EPA wanted the District to sample numerous overflows for a set period of time. Ultimately, there was a settlement on this matter and the sampling was completed.

Mr. Greenland indicated that presently, the discussions have resumed. Significant progress was made at the last meeting and the agencies intimated that they deem the tunnel storage plan adequate which allows the District to get past Step 1. However, during this time in 2007 questions were raised about the affordability of the program, and the impact of the program on the region. This led to more costs for consultants and legal representation.

At the last meeting, though the agencies agreed with the concept of the plan, they have questions about whether four overflows are adequate. They outlined 23 combined sewer overflow locations for which they want the District to look at higher levels of control. The District is evaluating what steps would be taken to reduce to fewer than 4 overflows and how much it would cost. Mr. Greenland stated that on the technical side, an additional \$350,000 to \$400,000 of technical information will be required. He emphasized that because it is a \$2 billion dollar program, it is vital to get solid technical information.

Mr. Greenland added that staff is finalizing the wastewater treatment bypass report and it will be submitted to the agency at the end of January. Discussions will ensue about that later. Schedule will be a big issue once program and cost have been agreed upon. Ultimately it will end with a consent decree which is the agency's mechanism to ensure completion of the program. It includes an agreement on the size of the program and length of schedule for implementation to complete the program. They are common all across the country. Mr. Greenland elaborated that often there is a civil penalty associated with the consent decree for not meeting the schedule, and indicated that Akron, Cincinnati and Columbus are going through similar processes.

Mayor Longo asked for clarification about whether the District could end up back in court over this matter, or if it has been truly settled. Mr. Greenland replied that the District could be back

BOARD OF TRUSTEES

Regular Meeting

January 17, 2008

Page 17

in court at any time. He elaborated that the agency could at any time issue another information or sampling request, or could bring an action against the District as a whole, regarding the CSO long-term control program which the District is trying to prevent. The District is making an effort to provide them with information they have indicated they need to evaluate the program.

Mayor Starr asked who the almost \$2 million in legal fees had been with. Executive Director Ciaccia responded Squire, Sanders & Dempsey. They were retained early on and the primary contact is David Burchmore.

Mayor Starr asked whether the firm gives the District a government discount rate at all. Executive Director Ciaccia responded yes. There was further discussion about the use of consultants working through Squire, Sanders & Dempsey, and that the total cost has been approximately \$5 million dollars when looking at both consultants and attorneys. This allows the District to maintain attorney-client privilege and look at the issues in total.

Mayor Starr indicated that his last question involved justifying the rates to the rate payers. He asked if there were no overflows how much the water quality in Lake Erie would be improved. Mr. Greenland answered that the studies indicate that ultimately there are other sources of bacteria, including non-point sources that contribute to poor water quality. Part of our analysis is looking at the incremental costs to implement higher levels of control and the additional "benefits."

VIII. Open Session (no items on agenda)

IX. Public Session (no requests from the public)

X. Executive Session

Executive Director Ciaccia indicated there were there matters for discussion at executive session. One was a personnel matter and two litigation matters. He thanked the Board for hiring Benesch, Friedlander in the KMM&K MCT-3 case and stated that Barry Miller, one of the top construction lawyers in town, was present for the meeting.

MOTION - Mr. Sulik moved and Ms. Kelly seconded the motion to specifically designate discussions regarding KMM&K, Joint Venture vs. NEORSD and discussions regarding BCI-3D and KM&M, Joint Venture as confidential pursuant to the Ohio Revised Code Section 102.03(B), and as protected communication under attorney-client privilege. Without objection, the motion carried unanimously.

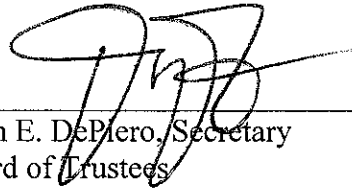
MOTION – Ms. Kelly moved and Mayor DePiero seconded the motion to go into Executive Session. Without objection, the motion carried unanimously.

Board met in Executive Session from 2:30 p.m. until 3:39 p.m.

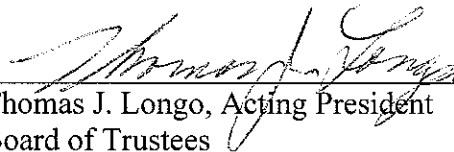
XI. Approval of Items from Executive Session (if any) (no items for approval)

XII. Adjournment

MOTION - Stated business having been concluded, Mayor Starr moved and Mr. Sulik seconded the motion to adjourn at 3:41 p.m. Without objection, the motion carried unanimously.



Dean E. DePiero, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Thomas J. Longo, Acting President
Board of Trustees
Northeast Ohio Regional Sewer District