

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
APRIL 3, 2014

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  
W. O'Malley  
J. Bacci  
T. DeGeeter  
S. Dumas  
R. Stefanik

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

II. Approval of Minutes

**MOTION** – Mayor Bacci moved and Mayor DeGeeter seconded to approve the minutes of the March 20, 2014, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no one signed up to speak about a specific agenda topic.

IV. Executive Director's Report

Executive Director Ciaccia requested that the Board review the budget book at their leisure. The District has won awards from the Government Finance Officers Association for a number of years and likely will again this year.

Moving to the topic of the Stormwater Management Program ("SMP") litigation, District staff asked for and received a 20-day extension for filing support briefs from the entities that will be

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in support. The new filing date is May 12. He was still hopeful that a hearing on the case will take place this summer.

Following up on articles recently in *The Plain Dealer*, Executive Director Ciaccia stated that he traveled to Philadelphia and met with his counterpart of the Philadelphia system. There had been a division of opinions among the two utilities and he wanted them to realign. Additionally, he explained that they need to reframe the green-versus-gray infrastructure issues from a national perspective because they are both leaders of The National Association of Clean Water Agencies and must lead discussion in a productive manner. They will be in Washington, D.C. on Monday having that discussion.

Executive Director Ciaccia stated that the Green Infrastructure Steering Committee was recently reconstituted. Staff met with the Chief of Staff for the City of Cleveland, Ken Silliman, Chief of Sustainability Jenita McGowan and Board President Brown. Ms. McGowan agreed to chair that committee, which will also include representatives from the City of Cleveland and others.

The initial meeting which may lead to a reopening of the consent order with the U.S. and State EPA relative to integrated planning was held last week. There was a good discussion about how to proceed.

Executive Director Ciaccia advised that a meeting was also held with the consulting team carrying out the integrated planning technical analysis. The EPA allows utilities in cities to consider the regulatory factors they may be facing regarding the financial capability to carry out a program.

Staff can consider potential future regulations in terms of nutrients and what communities are facing with separate sewer systems. Such issues can be examined now and at some point revisit the affordability analysis that was part of the consent order.

The consulting team, Wade Trim, teamed with CH2M Hill, is conducting advanced facility planning, and is also performing an analysis toward the integrated planning effort. Decision points may be reached in the summer of 2015 when a determination will be made internally regarding how to approach it.

Executive Director Ciaccia stated that the process will not be quick. He would like to know what direction the District is taking prior to the next rate study which will be done during the first quarter of 2016. Staff will not be in a position to negotiate a new consent decree by then, but should determine where integrated planning is heading and ultimately to approach the EPA about opening the decree.

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The EPA made it clear they are not guaranteeing to open the decree, but they are open to continuing discussions. They were very proactive by asking for a meeting. Both sides agreed to meet again in six months for an update.

Executive Director Ciaccia advised that yesterday he attended the Greater Cleveland Partnership annual meeting, during which the District won a best in class award for senior staff diversity for the second year in a row.

Executive Director Ciaccia asked Kellie Rotunno, Director of Engineering & Construction, to provide a brief update on the Renewal Energy Facility ("REF"). Ms. Rotunno advised that two incinerators are burning contemporaneously more than 23 wet tons per hour. All three incinerators should be running by early May.

Mr. Brown questioned the amount of renewable energy that will be produced. Ms. Rotunno advised that sludge must be burned first to generate the waste heat; then when the waste heat boilers are operating that steam will be directed into the turbine. She will follow up with the Board in terms of when the renewable energy component will be operational, but the important aspect is that burning sludge means not having to haul it.

Executive Director Ciaccia explained that there is also an air permitting issue and at the next meeting a resolution will be presented to start addressing that issue. There could be \$15 to \$47 million in additional costs to that facility under a separate contract. Additionally, the District was approached by an energy company regarding energy opportunities that will be detailed in the near future.

Ms. Rotunno advised that staff is in the fact-finding mode, considering alternatives for financing and understanding the value of the renewable energy produced from the facility. In the power industry, credits are available to generators of electricity called renewable energy credits and energy efficiency credits. Staff will meet later this week to hear a proposal to leverage credits from the facility to offset the capital investment to bring it into compliance with the Clean Air Act obligation. Efforts are ongoing to find ways to take renewable energy and energy efficiency credits and to offset the capital expenditure.

Executive Director Ciaccia explained that there may be opportunities to take the capital cost off the balance sheet and finance it in a different way. All options are being considered because there are up to \$47 million of capital costs that were not considered in the original program. The requirements were the result of regulations changes which changed regulatory oversight for air emissions from burning biosolids from wastewater treatment facilities from the Clean Water Act to the Clean Air Act on this issue.

Mr. Brown inquired if this was a permitting-related issue and whether the target was changed. Executive Director Ciaccia affirmed and stated that regulatory requirements for biosolids and the

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emissions from biosolids were moved from Clean Water Act to the Clean Air Act. The Clean Air Act has a more stringent requirement as it relates to mercury emissions from that facility.

Mr. Brown questioned whether the District's advocacy group kept an eye on such things. Executive Director Ciaccia stated that they do; the District joined a lawsuit through NACWA to fight the reclassification but did not prevail.

Mr. Brown inquired whether the credits are annual. Ms. Rotunno stated that the credits expire after a certain number of years. The short- and long-term financial implications will be assessed by an internal team to look at financial, legal and operational hurdles.

Mr. Brown stated that there is the opportunity to obtain credits for facilities that produce power that takes the load off the grid. They pay annually for that ability in the event there is a strain on the system. Ms. Rotunno advised that operations and the regulatory compliance group previously determined based upon the kilowatt per hour and consumption rates that it would not be profitable.

Mr. Sulik inquired how far along staff is with compiling the additional costs. Ms. Rotunno advised that the process is ongoing; final numbers will not be available until the contractor is completely demobilized and the facility is fully operational. Counsel is tracking the costs for potential recuperation.

Executive Director Ciaccia stated that the president of the company that supplied the incinerators will be in town tomorrow. He suggested going into Executive Session during the next Board Meeting to discuss the nuances of the project. The additional costs have been captured and he was hopeful to reach an agreement.

Closing his report, Executive Director Ciaccia advised that he had a an interesting meeting with Bratenahl Mayor Licastro and Cleveland City Councilman Mike Polensek concerning truck traffic from the construction sites at Easterly. Some traffic will be re-directed off of East 140th Street. He noted a resolution on the agenda regarding damage claims in the area.

V. Action Items

Authorization to Advertise

Resolution No. 60-14

RFPs for Design and Construction Administration/Resident Project Representation Services for the Union/Buckeye Green Infrastructure Project.

Resolution No. 61-14

Advertise for Construction of Southerly Non-

Potable Water Pumps Rehabilitation Project.  
Engineer's Opinion of Probable Construction Cost:  
\$650,000.00.

Resolution No. 62-14

Advertise for Lawn Maintenance Services at All  
District Facilities. Anticipated Expenditure:  
\$78,800.00.

**MOTION** – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution Nos. 60-14 through 62-14. After discussion and without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 63-14

Purchase from Bobcat of Cleveland, Through the  
State Term Schedule, Four Bobcat Utility Vehicles  
for Use at the Easterly and Southerly Wastewater  
Treatment Plants. Cost: Not-to-Exceed  
\$52,324.24.

Resolution No. 64-14

Participate in the Cooperative Purchasing Program  
with the Ohio Department of Transportation for  
Bulk-Treated Ice Control (Rock Salt) for Use at  
All Wastewater Treatment Plants and the  
Environmental and Maintenance Services Center.  
Anticipated Expenditure: \$17,674.00.

**MOTION** – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution Nos. 63-14 and 64-14. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 65-14

Agreement with North Coast Regional Council of  
Park Districts for the Nine Mile Creek Site  
Wetland Mitigation Project. Agreement Amount:  
\$35,000.00.

Resolution No. 66-14

Settlement Agreement with Thistledown Racing  
Club/Caesars Entertainment Due to Erroneous  
Billing. Settlement Amount: \$80,315.08.

**MOTION** – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution Nos. 65-14 and 66-14. After discussion and without objection, the motion carried unanimously.

Authorization to Ratify Agreement

Resolution No. 67-14

Ratify the District's Agreement with the City of Cleveland and the Cuyahoga County Fiscal Officer for 2013 Digital Imagery. Cost: The District's Contribution is \$22,750.00.

**MOTION** – Mayor DeGeeter moved and Mayor Bacci seconded to adopt Resolution No. 67-14. After discussion and without objection, the motion carried unanimously.

Mr. Brown inquired if this item was to update the aerial mapping of the District area. Frank Greenland, Director of Watershed Programs, affirmed, and explained that the District has had an agreement with the other two entities for years. Every couple of years the area is updated with new aerial imagery – the cost of which is shared.

Authorization to Enter Into Contract

Resolution No. 68-14

Professional Services Contract with URS Corporation for the Kingsbury Run Culvert Repair Project. Contract Amount: \$1,257,735.76.

Resolution No. 69-14

Professional Services Contract with Osborn Engineering Co. for the Westerly Wastewater Treatment Center Ferric Chloride Tanks Project. Contract Amount: \$1,185,000.00.

**MOTION** – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 68-14 and 69-14. After discussion and without objection, the motion carried unanimously.

Mr. Brown questioned the limits of the Kingsbury Run Culvert Repair project, and if it affects the development there between MLK Drive and Kinsman Road. Ms. Rotunno advised that the scope of the project is to restore the hydraulic capacity of the section of the culvert between Kinsman and East 79th Street.

Mr. Brown stated that on occasion the system pressurizes and manholes blow off. Ms. Rotunno explained that it is likely unrelated to the repairs in the culvert because the culvert is open and not blocked.

Mr. Brown stated that he would appreciate a discussion about concerns he has about Kingsbury Run. Ms. Rotunno indicated that she would follow up on the subject.

Authorization of Contract Modification

Resolution No. 70-14

Modify Contract No. 10000024 with Walsh Construction Company for the Southerly Wastewater Treatment Center Renewable Energy Facility Contract 28. Cost: An Increase in the Amount of \$500,000.00, Bringing the Total Contract Price to \$95,829,000.00.

Resolution No. 71-14

Final Adjustment of Contract No. 13002482 with Terrace Construction Co., Inc. for the Spring-Jennings Cut-Off Sewer Project. Cost: A Decrease in the Amount of \$185,937.65, Bringing the Total Contract Price to \$318,232.45.

**MOTION** – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution Nos. 70-14 and 71-14. After discussion and without objection, the motion carried unanimously.

Regarding Resolution No. 70-14, Mr. Sulik questioned whether the \$500,000 would be added into the calculations on the settlement with the company. Ms. Rotunno advised that the \$500,000 is to replenish the general allowance to keep the construction moving forward. Coordination issues are still being resolved between the incinerators and boiler supply contract and the installation contract. She stated that at this time it is not clear how much is due to extended overhead. There are issues associated with items related to completing the project.

Mr. Sulik inquired if things were missed during the design. Mr. Brown stated that it is certainly off-schedule. Ms. Rotunno explained that design-related issues will be tallied when the project is complete, but many stem from procuring the equipment under one contract and installing it under a second contract. That was a decision made by the District that may have led to the coordination issues and costs.

Ms. Rotunno advised that although there have been coordination issues and professional services have been extended, the total contract value has only been increased by 3.3%. Contract modifications on the project are running at about 10%, which is higher than the 3% typically at the District but within the threshold of tolerance in the industry. Staff has learned many lessons through the construction and procurement of the equipment. The additional \$500,000 should be enough for the contractor to demobilize. At that point what will be attributable to boiler defects will be sought with potential recouping of the costs.

Mr. Sulik requested a summary of the problems during a future Board Meeting. Executive Director Ciaccia agreed that a summary is appropriated and suggested doing so in Executive Session because there are litigation issues.





Authorization to Retain Legal Counsel

Resolution No. 77-14

Retain Benesch, Friedlander, Coplan & Aronoff LLP for Legal Support for Resolution of Property Damage Claims Related to Combined Sewer Overflow Construction Projects.

**MOTION** – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 77-14. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested an explanation. Executive Director Ciaccia explained that a massive construction projects are ongoing simultaneously at Easterly. A number of damage-related claims to houses or property have been received. Standard practice is to turn such claims over to the contractor and their adjusters who work with the contractor's insurance company. The community does not appreciate the very slow process and unless the contractor's insurance company believes the contractor is negligent, they will not pay. The District gets into a less advantageous position with customers, which has necessitated setting up an internal claims process to turn the situation around. He asked Marlene Sundheimer, Director of Law, to elaborate.

Ms. Sundheimer stated that the Board previously received a summary of the reason staff wishes to retain Benesch to help set up an internal claims process and retain independent adjusters. So far there has not been much success with contractors taking responsibility for damage claims.

The process cannot be compromised due to contractual provisions that put the responsibility first on the contractor and then the District as an additional insured. Staff is taking a different approach by hiring its own adjuster and with a claims specialist investigating the claims. They would will give notice to the contractor of responsibility under the contract and invite them to investigate the claims in tandem. That is now the responsibility of the District to take that step.

Payment for legitimate claims will result in going back to the contractor under the indemnification clause for reimbursement. The claimant will get a more immediate response from the District and hopefully many claims will be resolved in an expeditious manner that is more satisfactory to the community, Mayor Licastro and Councilman Polensek. Most of the complaints are coming from the residents in Bratenahl and Cleveland along Lakeshore and the surrounding streets from the Easterly plant.

Ms. Sundheimer advised that four contracts are going simultaneously that involve vibration-type construction activities. It is very difficult to determine who was conducting the activity when the damage occurred and if there was any negligence or liability. From a contractual perspective and from an insurance framework, it is understandable why the contractors are not taking responsibility.

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Situations may occur in which damage is legitimate but determining who is responsible may be impossible. Such situations may result in payment for the damage without seeking reimbursement from the contractors, similar to a no-fault moral claim.

Staff is prepared to set up a process whereby payments can be made under that process. Payments will come from an insurance reserve fund. The best estimate in terms of the value of the 11 claims is a maximum of \$5,000 for repairing cracks in walls and repainting. So far claims have not been investigated.

Mr. Brown inquired if the District should do something differently. There may be a cumulative effect of four contractors working in the same geographic area. Generally when doing surface work the area is examined for pre-existing conditions to track impacts. Ms. Sundheimer advised that staff will look at contract documents to reset the relationship with the contractors and make sure at the time contracts are awarded there is a provision to have an approved claims management plan. Baseline surveys were conducted of the surrounding areas but the overlap of four contracts was not anticipated.

Ms. Sundheimer explained that staff intends to look at the individual contract schedules when activities were performed to map a contractor's activity at the time the alleged damage occurred. Two or three of the 11 may be actual claims.

Mr. Brown's concern was that a number of the projects require a long-term presence. The relationship with the community and political entities there is a critical issue. How well staff handles the issues now is going to determine the level of support it should expect based on the outcomes of the work product.

Mr. Brown cautioned to proceed very deliberately. Residents are entitled to some level of quiet and enjoyment of their homes. The price of progress and construction sometimes are the impacts, but people should not be worse off post-construction than when it started; it is supposed to be a benefit. He wanted to hear more about how the outcomes will be reached.

Executive Director Ciaccia advised that staff's goal is to compensate quickly those that deserve compensation; others may be subject to a moral claims judgment. Staff will fight with the contractors on legitimate claims.

Mr. Brown stated that there are people in the community and counsel and mayors are engaged; everyone is trying to get the community to understand this is a benefit. Having such an issue unresolved makes the job more difficult. Executive Director Ciaccia stated that State representatives are involved, too.

VI. Information Items

There were no Information Items.

VII. Public Session (any subject matter)

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

VIII. Open Session

There were no items for discussion.

IX. Executive Session


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

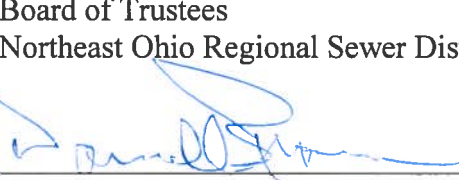
X. Approval of Items from Executive Session

There were no items for approval.

XI. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Ms. Dumas seconded the motion to adjourn at 1:22 p.m. Without objection, the motion carried unanimously.

  
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Walter O'Malley, Secretary  
Board of Trustees  
Northeast Ohio Regional Sewer District

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