

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
MAY 1, 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 Mr. Sulik seconded to approve the minutes of the April 17, 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 began his report by stating that last week he attended a breakfast meeting with Independence Mayor Kurtz, along with Mayor Stefanik, former Mayor and District Trustee Dean DePiero and Government Affairs Specialist Joe Jenkins. Mayor Kurtz is the current president of the Mayors and Managers Association. During the meeting they discussed the District's consent decree program, how green infrastructure plays into it and how to move forward with integrated planning with the hope to eventually re-engage the U.S. Environmental Protection Agency (EPA) regarding the consent order.

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Executive Director Ciaccia stated that the meeting went well. He also made suggestions on how mayors might get involved if they chose to do so. Mayor Kurtz reportedly advised the Mayors and Managers Association that they had a good meeting and there may be more dialogue in the future.

Executive Director Ciaccia stated that he and staff want to engage the mayors as much as they desire; the consent decree entails a large program with substantial obligations and they want to keep everything in context for them and the media.

Moving to the next topic, Executive Director Ciaccia advised that this morning he, Mr. Jenkins and Director of Watershed Programs Frank Greenland again met with the members of The First Suburbs Consortium, which consists of mayors of the inner-ring suburban communities. The meeting took place at the Bedford Heights community center.

Executive Director Ciaccia explained that he made a presentation to the group at the request of Shaker Heights Mayor Leiken. The issues discussed included the consent order, green infrastructure, the status of the Regional Stormwater Management Program (SMP) and thoughts regarding integrated planning and how they might re-engage the EPA on the consent order.

Staff will continue to engage suburban officials; a proposal will be given to Mayor Kurtz as to how they might continue to be re-engaged if they chose to do so.

Executive Director Ciaccia emphasized it is if they choose -- it is one thing to be concerned about the program and question it, but another to be at the table. The Board members from suburban communities are at the table and know the story behind the programs.

The next item of the report, Executive Director Ciaccia reported, was that he and staff met with *The Plain Dealer* editorial board this week. The meeting was more encompassing than just green infrastructure and the consent order. Staff wanted to lay out the other issues the District faces, such as nutrient control and phosphorus. Senior Environmental Specialist Beth Toot-Levy did a good job addressing those issues, which the editorial board was very interested in.

District staff had the opportunity to express that they are on the right track and looking for every green infrastructure opportunity that can be done in an intelligent way.

Executive Director Ciaccia advised that during the next Board meeting he would like to give a presentation that goes deeper into staff's thoughts on how to approach green infrastructure. Legal counsel has been engaged because the goal is to revisit the consent order; it will be in a legal context as it was when the original was negotiated.

The consultants are conducting advanced facility planning for the program and are charged with developing what will be utilized for integrated planning with the EPA. Other issues in the region

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will be considered -- specifically the collection systems in Cleveland and the suburban areas -- to look at environmental benefits as it relates to water.

Executive Director Ciaccia stated that last week in Chicago, Farmers Insurance sued Cook County and every municipality in it claiming they failed to upgrade their sewer systems to handle increased rainfall due to climate change that is causing widespread sewer backups during heavy rains. The insurance companies are starting to protect themselves from the increased storms and events. A similar action has not occurred in this region but he would not be surprised.

The recent National Association of Clean Water Agencies (NACWA) conference had a summit with a number of utilities and the EPA on climate change, resiliency and the effects of heavier than usual storms, particularly coastal cities vulnerable to hurricanes.

A representative from the insurance company's association was in attendance and vocal in that meeting. Executive Director Ciaccia did not know how serious a court would take such a lawsuit but it is something to think about.

Recently Akron was served with another lawsuit regarding their Combined Sewer Overflow (CSO) program. They have bids out to construct a CSO facility and included in their bids community benefits, PLAs and hiring goals. They were sued by the Ohio Contractors Association in federal court. The federal court put an injunction on Akron from opening their bids and there will be a hearing.

Executive Director Ciaccia stated that the District is involved with community benefits and put together a program they know is legally defensible. The District did not encumber the construction contracts with such requirements. The Good Neighbor Ambassador Program is being implemented outside of the terms of the construction contracts. That will prove to be a wise decision as the program rolls out.

He forwarded a copy of the notice of the Akron lawsuit to the Board and Natoya Walker at the City of Cleveland. He also asked Director of Administration & External Affairs Constance Haqq to send it to the Commission of Economic Inclusion as they discuss community benefits and PLAs as it relates to these types of programs.

### V. Action Items

#### Authorization to Issue Request for Proposals (RFPs)

Resolution No. 80-14

RFPs for the Design Criteria Engineer - Southerly Maximum Achievable Control Technology Compliance and Operations Improvements Project.

Estimated Project Cost: \$3,600,000.00.

After discussion, this resolution was held.

Executive Director Ciaccia requested this resolution be held. New technology should be considered before sending out RFPs for this possible \$47 million investment. The Board previously had questions about the air rule that prompted this, and staff will take the opportunity to talk about that at this time. He asked Environmental Specialist Sarah Rehner to talk about the MACT air regulation.

Ms. Rehner advised that she was part of the District's regulatory compliance group and would talk about sewage sludge incinerators (SSI) and the air emission regulations.

Air emissions from sewage sludge incinerators are regulated by a number of state and federal rules. One area of the federal rules will potentially impact the Southerly and Westerly incinerators.

Historically sewage sludge incinerators have been regulated under Section 112 of the Clean Air Act. Due to recent changes beginning March 21, 2016, sewage sludge incinerators will be regulated under Section 129 of the Clean Air Act. Section 129 regulates air emissions from solid waste incinerators. Previously, sewage sludge was not considered a solid waste and was not subject to these rules.

There has been a long history of regulatory debate over which section of the Clean Air Act sewage sludge incinerators should be regulated under. On March 21, 2011, the U.S. EPA changed the definition of solid waste to include sewage sludge and that pulls the District's incinerators under the new rule.

Section 129 states that any facility which combusts solid waste material from commercial or industrial establishments or the general public is a solid waste incineration unit. Solid waste incineration units require the maximum degree of reduction, which is why the emission limits for this role are so low.

Ms. Rehner explained that the District participated in each step of the rule-making process and submitted drafts, comments and proposed rules, provided the EPA with stack test information from incinerators and supported NACWA in their administrative and legal challenge of the EPA's rules.

In 2011 the District joined NACWA's sewage sludge incinerator advocacy coalition and contributed \$35,000 to the effort under Resolution No. 109-11. In late 2013 the District contributed an additional \$7,500 to the advocacy coalition in support of NACWA's continuing litigation efforts.

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NACWA's main argument in the court case is that sewage sludge is not a solid waste; they contend that sewage sludge is created at the plant through biological, chemical and physical treatment and therefore is not from the general public. Additionally, they point out that the EPA failed to collect the required amount of data needed for setting new emission limits and did not consider the variability of sewage sludge.

Ms. Rehner stated that the Washington, D.C. Circuit Court denied NACWA's challenge in August 2013. While they did not agree with the main argument, the court ruled that the EPA must justify the methods they used to develop the emission limits.

Under this rule, Easterly and Westerly will become Title 5 facilities. Title 5 facilities are considered major and have more detailed recordkeeping and reporting requirements, as well as more frequent inspection schedules.

Westerly is the only facility that will be affected; Southerly is already a Title 5 facility and the incinerator at Easterly will be shut down permanently before the compliance deadline.

Westerly has two multiple-hearth incinerators that will be affected by the rule. The incinerators will be subject to more stringent emission limits and will be subject to emission limits on more pollutants than in the past.

Southerly has the three new fluidized bed incinerators -- the old incinerators will be shut down by the compliance date. Under the rule, fluidized bed incinerators have lower emission limits than multiple-hearth incinerators, and Southerly will be more challenged to meet the limits than Westerly.

Ms. Rehner advised that the good news is all District incinerators are considered existing units because of when construction began. New units must meet lower emission limits upon startup and there would not be a compliance period.

The District is also in compliance with the first requirement of the new rule, which was to submit Title 5 applications by March 21, 2014.

Ms. Rehner stated that staff is hopeful that Westerly will meet the new limits without installing additional control equipment based on historical data and emissions testing conducted last year; however, more data is needed to verify this determination and therefore the multiple-hearth incinerators will be retested in late 2014 or early 2015 to gather more data.

Staff is concerned that the fluidized bed incinerators at Southerly will not meet the emission limits for all pollutants. They anticipate that most of the pollutants will be lower than the limit but some may not. Since the incinerators are new, historical data is not available and emissions

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testing are being conducted as each new incinerator comes online.

Should the fluidized bed incinerators not meet the emission limits for one or more pollutants, it could result in upgrades to install additional control equipment. Potential capital improvements are being evaluated.

With the compliance deadline in less than two years, staff will need to work quickly to determine what -- if any -- control equipment is needed and put plans in place to meet the compliance deadline.

Mr. Brown questioned what the District's exposure would be in terms of dollars. Ms. Rotunno advised that capital improvement options are still being evaluated. However, as part of the startup of the fluidized bed incinerators, the manufacturer of scrubber units recently adjusted some of the inside mechanicals and learned space is available in the scrubbers for an additional tray. Technology is available that could be retrofitted into the existing space cost-effectively, at a material cost of less than \$100,000 per incinerator.

The initial incinerator testing indicated that mercury emissions are 80% of the MACT requirements. If such technology was retrofitted into each of the scrubbers for the cost of a few hundred thousand dollars at full scale, staff could operate and test the technology in a short period of time to ascertain whether they can comply with the MACT requirements and avoid the \$47 million expenditure.

Ms. Rotunno stated that this alternative surfaced as recently as this morning because of the additional space identified. Staff would like time to evaluate that technology as a potential avenue to comply with the MACT requirements before any agreement is entered into any for MACT technology design.

Mr. Brown stated that the Board will wait to hear a timeline on how long it will take for the proof of concept. Ms. Rotunno affirmed that staff will report back to the Board in terms of the timeline. Emissions testing must be conducted on the other two units.

Executive Director Ciaccia explained that at this point it is a research-and-development initiative. Staff is hopeful it will be fruitful and further capital costs can be avoided; there is a reasonable expectation that it could work. The technology is apparently used in the electric industry but not to this point in the wastewater industry. Should it work in this case it will be very beneficial to the company putting the technology forward and the wastewater industry.







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Mr. Sulik asked for a brief explanation.

Executive Director Ciaccia advised that Glenn Krassen, from Bricker & Eckler, was in attendance and on an ad-hoc basis has looked at various power issues as they come along. The District has been approached with energy-related opportunities that will require more robust consulting services from Mr. Krassen. He asked Ms. Rotunno to elaborate.

Ms. Rotunno explained that the District has potential capital expenditures of \$47 million driven by MACT regulations that were not anticipated. Staff is tasked with finding alternative means to finance projects from energy-cost savings and offsetting.

Energy service companies do such types of energy efficiency projects that become “self-funding.” The capital costs are financed and paid for by savings on energy and become self-liquidating debt. The general consensus among District staff was to consider this option.

The goals are to offset potential capital expenditures, improve sustainability and energy efficiency, potentially create a new revenue stream and reduce long-term operating costs after the debt is paid off from electricity and energy savings. The savings would go on in perpetuity -- retaining energy savings.

Ms. Rotunno advised that staff has had meetings with multiple entities but today she would specifically talk about a potential 50-megawatt combined heat and power cogeneration facility that would be constructed at Southerly, adjacent to the Renewable Energy Facility (REF). An energy service company would construct a gas turbine that would generate up to 49.9 megawatts. More than 50 megawatts triggers different regulations; the District could utilize 49.9 megawatts and below and potentially sell some back to the market.

The idea was presented to the executive, finance and legal teams. What was presented was a potential for a net financial benefit to the District.

Ms. Rotunno stated that spending \$45 million on MACT or other capital projects and would cost about \$93 million with interest cost over 20 years.

While the District would have to finance the cost of construction of a combined heat and power facility at Southerly, that facility and the electricity it generated could be sold to create a net benefit of \$170 million over 20 years. Ms. Rotunno emphasized “potential” to draw attention to the concept and that there are many questions to be answered.

Additionally, staff needs to further study the legal authority, the electrical utility market, purchase agreements and whether they can be entered into, negotiated or how it would be contracted. There are also questions regarding whether it would be a performance or design-build contract; whether payment obligations can be offset by savings or the generation of incremental revenue; who will own the assets and operate the facility; and what happens after the

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20-year term.

Ms. Rotunno stated that Executive Director Ciaccia asked a collective team to study the potential financial benefit to the District and the ratepayers. The legal team and Mr. Krassen would be instrumental in finding out if the concept is feasible.

Executive Director Ciaccia advised that as many wastewater utilities are becoming heavily burdened with debt they are seeking alternative financing opportunities. The District was presented with a public-private partnership and given the organization's standing with debt and what will occur over the next three years staff felt compelled to give such an arrangement serious consideration.

Executive Director Ciaccia explained that staff must have due diligence and there are heavy external considerations with FirstEnergy; contracts with Cleveland Public Power for Easterly and Westerly go into 2018. They may benefit from such an arrangement as well.

Mr. Brown stated that the electric industry is somewhat a volatile industry, and today is entirely different from three to five years in the future. There are many risks associated with going down this path. He thinks that due diligence is an important part and to the extent that somebody would be willing to guarantee an outcome that would result in the savings to the District makes it a more palatable offering.

Mr. Brown stated that there are certain conditions the Board would be interested in before talking about feasibility of a project. Executive Director Ciaccia agreed and stated that the risk profile must be completely detailed because it is a large endeavor. It is unique here.

Mr. Brown stated that over the last six months he has seen at four or five presentations and they are not unique. Executive Director Ciaccia stated that no one is as uniquely qualified as the Northeast Ohio Regional Sewer District to accomplish such a project.

Ms. Dumas stated that when debt service is going to be based on recovery of cost or savings, there are always reasons why that does not happen and there should be an abundance of caution. Executive Director Ciaccia stated that is a valid comment and the Board must be completely engaged during the process. They will hear more in the future but he requested passage of this resolution to go through that process.

Executive Director Ciaccia also noted that it says, "... and other opportunities" because there is another smaller opportunity. He asked Ms. Rotunno to explain.

Ms. Rotunno advised that the other opportunity does not involve cogeneration. The opportunity involves performance-based energy efficiency contracting methods in which the District would potentially enter into an agreement with an energy service company.

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The energy service company would make capital improvements at the EMSC facility, including the laboratory, by optimizing the HVAC units to save at least 20% on electricity. While doing so they could fix residual issues at the laboratory facility concerning air flow that would also realize energy savings.

Ms. Rotunno stated that legal consultation is needed to determine whether this type of performance contracting can be done. The District would enter into a contract with a vendor to perform the design and construction and guarantee 20% savings. Should they not deliver 20% they would pay the difference. Funding is available under the Ohio Air Quality Development Authority as a potential method of funding.

Mr. Brown's initial response was that if the authority is granted to pursue these options he would ask for another report to the Board regarding what that opportunity is so they have an opportunity to affirm the feasibility of moving forward in that direction.

Executive Director Ciaccia advised that staff will return to the Board with a resolution to either enter into a contract or agreement.

Authorization to Amend Resolution

Resolution No. 87a-14

Amend Resolution 87-14 with Mythics, Inc. for the Annual Maintenance and Support of Oracle Applications and Databases. Cost: A Change in the Not-to-Exceed Contract Amount from \$336,834.73 to \$366,834.73.

**MOTION** – Mayor Bacci moved and Mayor Stefanik seconded to adopt Resolution No. 87a-14. After discussion and without objection, the motion carried unanimously.

VI. Information Items

1. Financial Report and Investment Advisor Performance Report for the Three-Month Period Ending March 31, 2014

Ms. Demmerle advised that financials for the first quarter were provided in the Board members' packets and overall the benchmarks are being met.

The District is operating within the rate-study parameters of 2011 and within budget. Capital payments are tracking a little behind and investments are meeting the benchmark with a return on investment of 0.11%. The District is also meeting all financial metrics that rating agencies look at.

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Operating revenues for the first three months of 2014 are up from last year by 9%, primarily due to the rate increase. Expenses are down \$1 million from this time last year.

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 was a matter for discussion in Executive Session.

**MOTION** – Mayor Bacci moved to enter into Executive Session to discuss pending claims in connection with Southerly Renewable Energy Facility construction contracts. Discussions of these matters in executive session are permitted as specific exemptions to the Public Meetings Act pursuant to Ohio Revised Code Section 121.22(G)(3). He specifically designated matters discussed in Executive Session be protected from public disclosure in accordance with Ohio law and the attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

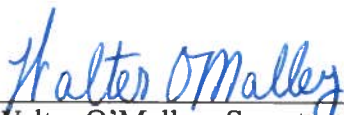
The Board met in Executive Session from 1:25 p.m. to 1:53 p.m.

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 Mayor DeGeeter seconded the motion to adjourn at 1:54 p.m. Without objection, the motion carried unanimously.

  
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Walter O'Malley, Secretary

Board of Trustees

Northeast Ohio Regional Sewer District

A handwritten signature in black ink, appearing to read "Darnell Brown", is written over a horizontal line.

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