

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
MAY 6, 2010

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
D. DePiero
G. Starr
J. Bacci
S. Kelly
W. O'Malley
R. Sulik

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

II. Approval of Minutes

MOTION – Mayor DePiero moved and Mayor Starr seconded that the minutes of the April 15, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the charges brought against the District's former General Counsel, William Schatz, on April 21, 2010. In June of 2007, the Federal Bureau of Investigation (hereinafter "FBI") began to subpoena documents. Almost three years later action was taken.

Executive Director Ciaccia commented that he was very proud of District staff for handling the situation and continuing to meet its obligations to the customers.

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The District continues to work diligently to insure our customers that "it is not business as usual." The District has taken many precautions since the incident and has coordinated with the federal government during the investigation. The District spent a lot of resources and money to organize the documentation requested by the FBI and that hundreds of thousands of documents were needed in order to assist with the investigation.

Some of the improvements made at the Board level included the establishment of an Ethics Policy and Ethics Committee, revised Bylaws to clarify change order and contracting authority for District staff, development of detailed meeting minutes, implementation of an Audit Committee, strengthening the Internal Audit Department, and pursuing lawsuits wherein the customers and the District "were not treated fairly."

The Law Director now reports directly to the Executive Director so there is more accountability. The Law Director is also a full-time position and cannot hold outside employment.

Staff changed its contracting procedures which resulted in no contracts closing out over 10% of the base contract amount in the past three years with the exception of three legacy projects in 2008. Executive Director Ciaccia stated that "there have been no legal settlements outside of the court to get past contract modifications and change orders." Contract terms and conditions were changed, bids have been fair and the District is receiving more bids on their projects. Some may think this is a result of the current economic conditions, but we believe the District is now perceived as being more open to doing business.

Executive Director Ciaccia advised that although we have stopped the water from coming onto the sinking ship, we still have more work to do. Prior to the charges, "we did not want to get mired down in the past" but now we need to determine what went wrong and what can be done in order to prevent these types of situations from occurring.

The District can continue to proceed and use every measure to successfully close out three litigation matters. The 3320 Woodland Avenue, Ltd. lawsuit involves a collapsed interceptor in a landfill. There will be a mediation hearing on this litigation in June. Executive Director Ciaccia stated that "it's not lost on us that Mr. Schatz was also acting as an attorney for that particular landowner." The District needs to aggressively attempt to recover that money. The Big Creek Interceptor (hereinafter BCI-3D") litigation involves the failed polyurea lining. Mediation was not successful to date and the trial is scheduled in October of 2010.

Executive Director Ciaccia moved discussion to the Mill Creek Tunnel - 3 (hereinafter "MCT-3") project. The District stopped paying on this job due to previous overpayments and since the contractor was not completing the work and the District determined that the

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contractor was in default. The contractor sued the District and the District counterclaimed that it overpaid approximately \$15 million on change orders 1-15. The District also claimed that it should be credited \$6 million since a smaller machine was used which resulted in the tunnel diameter being slightly smaller than what was originally indicated in the bid specifications. The District recently contracted to complete the MCT-3 project, which will cost approximately \$5 million. The District's claims total about \$25 million in this lawsuit.

Executive Director Ciaccia indicated that being filed today is the "second amended counterclaim and third party complaint," and that "we are now bringing fraud and civil conspiracy into the case."

The basis of the District's claim is that "KMM&K and Schatz failed to disclose and concealed from the Board the fact that bribes in at least \$682,130 had been corruptly paid for the purpose of influencing Schatz's advice and recommendation to the Board with respect to the legal settlements. Secondly, KMM&K bribes and Schatz's acceptance of the bribes deprived the Board of competent, unbiased, diligent, uncompromised, and professional legal advice and representation regarding the four legal settlements."

Executive Director Ciaccia explained that the original complaint related to the MCT-3 project had two legal settlements. The charges brought forth by the government against Mr. Schatz included the MCT-2 project in which there were also two legal settlements. The District is incorporating the two legal settlements from the MCT-2 project into the amended pleadings.

Executive Director Ciaccia stated the third claim was that by "concealing bribes paid to Schatz by KMM&K, Schatz and KMM&K intended to induce the Board into accepting and approving the unjustified and unwarranted legal settlements."

Lastly, the District is asking for rescission of the four legal settlements, two from the MCT-2 project which included a rock over-break claim of almost \$5.4 million and the additional muck-hauling of almost \$1 million. Two legal settlements from the MCT-3 project which include the unforeseen costs of electrical services and supply for \$807,000 and the unforeseen costs for steel products in the amount of \$621,000.

Executive Director Ciaccia indicated that those issues are being incorporated into the new claims and will add \$7.5 million to the initial \$25 million which we are seeking in the original claim.

Executive Director Ciaccia indicated that the Board will be apprised of the development going forward. These matters were originally going to be discussed during an Executive Session; however, the District is filing the claims today and felt it important to discuss

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these matters during a public forum. Therefore, there will not be a need to adjourn into Executive Session.

Mr. Brown commented that “post this whole issue we have done a lot of due diligence” and that the Board and staff implemented “a number of systems of accountability.” Those changes resulted in better processes and improvements and the ability to track the status of contracts and change orders. The Board’s Bylaws were revised and three committees were established for specific purposes. The outcome of the forensic audit completed by Pete Comodeca resulted in many recommendations that were implemented by the Board and staff.

Mr. Brown indicated that we have reached a point wherein we “need to have a litmus test” to determine the effectiveness of those processes and determine whether they have resulted in the predicted outcomes. Mr. Brown advised that at some point he would like to discuss the “value-added,” and he suggested conducting some type of performance audit and determine whether we should be conducting additional due diligence that does not conflict with the federal government’s work. This would include reviewing change orders and all legal settlements from that time period so we can get closure on these issues and move forward “with some level of confidence.”

Mayor Starr inquired if Executive Director Ciaccia was finished with this topic because he wanted to make a statement. Executive Director Ciaccia advised that he was finished discussing the amended complaint and that he wanted to move discussion to the past contracts. Mayor Starr expressed his desire to make a statement after Executive Director Ciaccia concluded.

Executive Director Ciaccia advised that the federal government has 10-years of worth of information and hundreds of thousands documents. At this point, it has come down to criminal matters involving legal settlements and civil matters involving some of the change orders.

According to Executive Director Ciaccia, since 1980 there have been 40 legal settlements, which he indicated were listed in a document that he would make available. Given the defined criminal activity in the government’s information document, Executive Director Ciaccia suggested that the District examine the 40 legal settlements.

Executive Director Ciaccia referred to a spreadsheet containing 168 District projects of which 87 were plant projects and 81 were collection and conveyance projects. The change orders and legal settlements were listed in the document. This information will be made available to the Board upon request. Executive Director Ciaccia described this information as “voluminous” and “pretty telling” and that many of the contracts exceeding the base contract amount by 10% gradually increased through the “80’s, 90’s

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and seven years of the 2000's." Executive Director Ciaccia advised that 43 of the 168 contracts listed exceeded the base contract amount by 10% or more. Therefore, Executive Director Ciaccia proposed examining all of the legal settlements and the 43 contracts that exceeded the base contract amount.

Executive Director Ciaccia advised that the District met with the law firm of Bricker & Eckler LLP (hereinafter "Bricker & Eckler") and that attorneys Jack Rosati and Richard Blake were present at the meeting to address any questions. Mr. Rosati and Mr. Blake performed a review and investigation of the Cuyahoga County contracts as a result of the recent Cuyahoga County corruption case, and they provided the District with a redacted copy of their report. District staff desires meeting with Mr. Rosati and Mr. Blake in order to define a project scope and costs associated for this type of work at the District. Staff would then come back to the Board with their findings and discuss strategies.

Executive Director Ciaccia wanted to discuss what the District can do at this point moving ahead and he suggested comparing the District, at present, to the findings of the Calfee report performed by Mr. Comodeca. In addition, the Auditor of the State conducts performance audits and the District will be meeting with that agency on May 24th. The District can also issue a request for proposal (hereinafter "RFP").

The District has been proactive by augmenting its Internal Audit staff from one to four and hiring three external auditing firms some of which specialize in construction auditing and scrutinizing District contracts.

The District currently has a "mixed-bag" of legacy projects, new projects with old terms and conditions and front-end documents, and new contracts with new terms and conditions and front-end documents. Therefore, a project scope will be necessary to accommodate these variables. According to Executive Director Ciaccia, this is something that has to be done and the District will need to carefully proceed in order to maintain its customers' confidence.

Mayor Starr referred to Executive Director Ciaccia's discussion as it relates to the forensic audit. He indicated that "there is no 'I' in team" and that he really does not "care who gets the credit and who gets publicity" since his primary concern is "representing the taxpayers of this District."

Mayor Starr inquired if Executive Director Ciaccia recalled their discussion about one and half years prior broaching the topic of "auditing all of the construction contracts as far back as we possibly could." Executive Director Ciaccia indicated that he recalled that discussion and had a copy of his response dated September 3, 2008.

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Mayor Starr commented that he “liked the fact that you are doing it and I support it,” but there may be a different approach. Mayor Starr advised that he was given “short notice” this morning that Executive Director Ciaccia would address this matter at the meeting; however, he has an entire file and has spent “countless amount of hours on this topic alone and researching it.”

Mayor Starr stated that “the Obama administration, for instance, is targeting Medicare” and that they have estimated \$50 billion to \$60 billion in Medicare fraud. One of the Obama administration techniques is to allow “outside auditors... law firms to bid and to come forward and examine the record of the Medicare fraud and get a bounty or a contingency amount of 20%.”

Mayor Starr stated that he is not discounting Bricker & Eckler’s ability and he stated that they are a “wonderful firm.” However, rather than paying expensive legal fees, the District can send out an RFP on a contingency basis like 20% and “save the District a lot of money and maybe recover tens of millions of dollars, more.”

Mayor Starr commented that “where there is smoke there is fire.” He questioned, “How much more money is out there?” Mayor Starr indicated that he will present Executive Director Ciaccia and the Board with a resolution that he drafted at the next Board meeting.

Executive Director Ciaccia advised that he wanted to distinguish between a forensic audit and his proposal. The District conducted a forensic audit on the MCT-3 contract through PricewaterhouseCoopers which was a “painstaking, page-by-page document that we had total discovery power to get it during a court case.” This cost the District \$600,000. Executive Director Ciaccia explained this to be “a very powerful tool when you absolutely believe what you are going after and you’ve seen something and now it’s time for a deep dive.” Executive Director Ciaccia indicated that is what he is recommending with the Bricker & Eckler approach. The District must first identify those projects that are “worthy of taking a deep dive before just throwing a broad brush on it.”

Executive Director Ciaccia indicated that as it relates to Medicare fraud, they are catching people currently in the act of stealing. Investigating a past incident in which the “books are closed” and having no means of subpoena or getting discovery would be to push “the cart before the horse.” The District would first need to bring an action against a contractor in order to examine their books. Executive Director Ciaccia stated that the District would only have its documentation.

Executive Director Ciaccia indicated that he was glad Mayor Starr had the information and that it will be helpful. Whichever approach the Board determines most suitable for this investigation will most likely include conducting interviews of current and past

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District employees and Board members. There will be a thorough discussion and research of the documentation as it relates to the projects. Staff will move according to the Board's direction on this matter.

Mayor Starr inquired about the time period the IRS [Internal Revenue Service] requires one to keep records. Executive Director Ciaccia replied that we will have to research this issue.

Mayor Starr redirected his question to the Finance Director and he inquired if the timeframe to keep records is 7-years. Deputy Executive Director, F. Michael Bucci, indicated that "it is a difficult question" and that "with tax fraud, there is no time limit."

Mayor Starr indicated that he wanted to "set the record straight" and discuss the history. Mayor Starr provided the court reporter with a copy of his documentation, a copy of which is attached hereto and incorporated herein as Exhibit "A".

According to Mayor Starr, there were some media sources that reported inaccurate information regarding his conduct on this Board, and he wanted to "set the record straight." News Channel 3 [WKYC] has a saying which is "report the facts...and here are the facts."

Mayor Starr referred to a memo which "I distributed, that I put together on what the problems that I perceived being on this Board were, what the standards should be and what the plan was: Cost overruns—reforming the Northeast Ohio Regional Sewer District Capital Projects Management, authored by me, prepared by me on March 15, 2007."

Mayor Starr stated that his analysis indicated the problem was "excessive cost overruns on capital projects well beyond industry standards or reasonableness." Mayor Starr advised that during this process, he asked the former administration to provide the Board with project summaries, which the Board now receives. This information was necessary for the Board to provide the proper oversight of the money being spent and to determine what percentage of the project cost was under the contract amount, whether the project was within the contract price as awarded by the Board or if there were any cost overruns. According to Mayor Starr, "they reluctantly supplied us with 30 contracts dated from 1999 to 2006." The projects were referred to as acronyms, and that "the previous administration and director refused to give the names of the projects and we had to make additional requests." Mayor Starr advised that in 1999, the EIDP project closed at 285% over the Board's original contract award.

Mayor Starr stated that within this report, the projects ranged from 285%, 66%, 107%, 47%, 50% . . . on down. The information came from Charlie Vasulka, former Director of

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Engineering and Construction, on March 8, 2007. Mayor Starr indicated that “a week later, I reported this well before any media source or anybody had this information.” Mayor Starr stated that the Board later learned from Executive Director Ciaccia that “these figures given to us were wrong” and that “they were disguising, deliberately, what the figures were” as “allowances.” Mayor Starr claimed that “we weren’t given the correct information.”

Mayor Starr indicated that the second point he raised during that discussion involved the construction standards. Mayor Starr commented that he “ran projects for 30-years” in his city and that “some of us who are working in public and private sector also have done it.” Mayor Starr commented that “not all projects are going to be perfect [and] not all projects will come in at cost, but what should be the reasonableness of it? Should it be 185%? Should it be 45%? Absolutely not.”

Mayor Starr indicated that he then went to the Association of the Advancement of Cost Engineering (hereinafter “ACE”) and the ACE would not provide any information to Mayor Starr unless he joined the organization. Mayor Starr joined the ACE and now receives their public works information, and he urged the District to join the ACE as well.

Mayor Starr referred to an article located in the *Public Works* magazine titled “Management of Capital Project Development.” Mayor Starr read aloud from the second column on page 62:

In public works projects, changes during construction as a result of oversight during design and changed conditions in the field [Mayor Starr commented that in the underground it gets complicated] are considered normal up to around 5 percent of the construction cost. Costs above this level may indicate inadequate design effort was provided or there may be special circumstances that result in greater changes.

Mayor Starr commented that this was a “pretty authoritative source dealing with public contracts” and that he went to the ACE in an effort to educate himself as a Board member.

Mayor Starr stated that at the City of Cleveland Department of Public Utilities, Julius Ciaccia handled over \$1 billion in above ground and underground improvements in 20 years and had one change order over 10%.

Mayor Starr advised that on January 11, 2007, Carl Monday reported on the City of Chicago. Carl Monday went to the Chief Water District Engineer to inquire about the

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City of Chicago's \$2.5 billion water project. Mayor Starr referred to a quote within the article, "the industry norm is around 10 percent, not the forty or fifty percent in the Cleveland district." Mayor Starr stated that the "the project that came in over budget was .06% in the City of Chicago at \$2.5 billion."

Mayor Starr advised that Carl Monday went to the City of Detroit to study a \$14 million sewer overflow project at Wayne State University. The cost overruns on that project were 7%.

Mayor Starr advised that during his tenure, "it was reported that you were voting on these contracts and you were asking questions [and] the answer couldn't be further from the truth." Mayor Starr indicated that at the beginning of his term he asked Mr. Schatz at a Board meeting on September 9, 1998 as to what is the industry standard for construction contracts. Mayor Starr stated that at this time the District was not keeping minutes of the Board proceedings and Mr. Schatz replied that "in our industry, we seek the optimum goal of seven to eight percent as being an outstanding percentage."

Mayor Starr stated "so after all this I say okay, since you're complaining, what should be the plan? The plan should be reform of the bidding and management of capital projects." Mayor Starr read aloud from a memo he sent to the Board on October 30, 2006, called "reform" and he stated that "1) Consideration of risk/reward program for contractors – should the taxpayers always bear the risk, which we always did, now we're not; 2) Contract forms; 3) Best practices review; 4) Scope/contract negotiations; and 5) Involvement of multiple departments in the scope development, better communications amongst the department. Mayor Starr questioned, "How simple is that?"

Mayor Starr read aloud a quote from the memo: "This process and others can always be improved. One key question with asset management is whether an improvement is a want or a need."

Mayor Starr advised that he suggested "accountability of employees, consultants and contractors." At that time, Mayor Starr posed a question to the former Director of Engineering and Construction, Charlie Vasulka, "do we continue to award contracts to consultants and contractors who have submitted poorly designed plans or contractors who have mismanaged projects?" The answer he was provided on March 14, 2007 was "that's a very good question; we never assess the performance of contractors and consultants."

Mayor Starr commented that he "ran into one trustee over the weekend that used to serve on this Board, a very prominent CPA and accountant. His quote was I never saw it coming."

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Mayor DePiero stated that he “had the opportunity to talk to Ciaccia about this and about what the game plan is going forward and looking at these old contracts,” and he expressed his support “looking back and taking a good look at those contracts.” Mayor DePiero questioned that “if you start going back 15, 20, 25 years, how thorough of a review and how much information are you really going to be able to get to determine whether there were mistakes made or whether there was fraud involved.” Mayor DePiero stated that “obviously we need to do this for the rate payers, but at some point, you may be throwing good money after bad.”

Executive Director Ciaccia expressed his desire to work with the Bricker & Eckler team to establish a scope and determine how much this will cost. He reminded the Board that the District turned over 10-years worth of records to the federal government related to their investigation. Executive Director Ciaccia suggested that “we should take a different look” at some of those contracts and determine which contracts we may want to examine from the 90’s and the 80’s.

Executive Director Ciaccia commented that the District may be interested in conducting a review similar to what Bricker & Eckler conducted in Cuyahoga County given the costs associated with that examination. The District can then decide whether it chooses to “go on a deeper dive” on any given project and determine at that time the amount of money we would be willing to spend. Executive Director Ciaccia indicated that his proposal is a two-staged approach and that we would first identify “what might be fertile and what probably isn’t anymore” based on the statute of limitations or record retention laws.

Mr. Brown commented that the Board can anticipate receiving recommendation(s) as to how we might proceed and that he was hopeful the District will receive more than one option and also the pros and cons of the proposed strategies. Mr. Brown advised that we will have an interest in change orders over a certain amount.

Mr. Brown indicated that he understood Mayor Starr’s “passion” and “zeal” about the history and that this is a “very tragic situation.” Mr. Brown believed that we need to ask ourselves “What have we learned?” “What are the lessons learned?” And, “have we, as a result of the lessons learned, been in a position to right this ship?” Are we “diligent and knowledgeable about the position of this District and how it is operated, how it is supposed to be operated and how to continue to make sure that we move towards systems of best practices but also systems of accountability and transparency?”

Mr. Brown commented that “this has not been an easy process and that it has taken a lot of time, work and effort of a lot of people” in order for the District to recreate itself as a Board as well as to build a new executive staff. This is a new team and this was not done haphazardly and took much thought and contemplation as to what was needed in terms of authority, responsibility and reporting.

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Mr. Brown stated that the former General Counsel “allegedly reported to the Board” and those issues were self-corrected. Mr. Brown suggested that the District conducted a “post-analysis” in order to determine whether “what we have done rises to the level of making us better at what we are doing, or are we the best at what we should be doing.” Mr. Brown urged Executive Director Ciaccia to take into consideration “how we go about making that determination and bringing that information back to this Board.” Executive Director Ciaccia stated that “we will do that.”

Executive Director Ciaccia moved to the next report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter “CSO LTCP”). There have been further discussions with the government which included green infrastructure. Executive Director Ciaccia was hopeful that the District’s agreement will include green infrastructure in lieu of gray infrastructure.

Mr. Brown commented that the green infrastructure works if we construct green infrastructure facilities within our member communities. Mr. Brown inquired about “who we are working with” and “who is engaged with helping us facilitate some of these approaches that will have to be used which do require land.”

Director of Engineering and Construction, Kellie Rotunno, advised that she and Mr. Greenland and Ms. Dreyfuss-Wells will be traveling to Columbus on Friday to meet with a task group within Governor Strickland’s office. It will engage individuals throughout the state as to how green infrastructure and stormwater management programs can help urban areas. Not only are we working with the City of Cleveland, Cuyahoga County Land Bank and member communities regarding green infrastructure, we are collaborating with individuals at the state level in an effort to educate ourselves about what other Ohio urban cities are doing as it relates to green infrastructure. Ms. Rotunno stated that “we will partner with our member communities as we march forward.”

The District received proposals for the Green Infrastructure Feasibility Study (hereinafter “GIFS”) from seven firms on Friday, April 30th. Those proposals are being evaluated. Ms. Rotunno stated that “when we kick off that GIFS and our projects start to take shape and form in locations and neighborhoods” and we demonstrate the types of technology, a lot of that will “start to flush out” and we will report to the Board on the GIFS moving forward.

Mr. Brown commented that “it is timely that you are meeting with the state,” and that he was hopeful that the Ohio Department of Transportation (hereinafter “ODOT”) will be involved in this meeting since they are “one of the largest contributors to impervious pavement and stormwater runoff damages.”

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Mr. Greenland advised that ODOT was invited to attend the meeting in Columbus. Furthermore, ODOT representatives attended the local meeting, Opportunity Corridor, which Mr. Greenland described as a big project that will change the landscape. There were "spirited" discussions about stormwater management making sure that as we create opportunities we are not creating problems.

Mr. Greenland advised that ODOT contacted him this week to request a meeting to discuss the Stormwater Management Program (hereinafter "SMP") and "how we can partner as we move together on different initiatives related to stormwater."

Executive Director Ciaccia moved to the next report item regarding the SMP and he advised that the Judge Tim McMonagle and then Judge John Russo recused themselves from the case pending in the Cuyahoga Court of Common Pleas. This matter has been assigned to Judge Tom Pokorny, who is a retired visiting judge. The Case Management Conference (hereinafter "CMC") is scheduled for May 20th.

Executive Director Ciaccia advised that the City of Bedford filed an answer consenting to the SMP. Eighteen communities indicated that the court should make the decision. Twelve communities filed a Motion for Definite Statement indicating that the District's claim is not clear. Twelve communities believe that the District does not have the authority to implement the SMP. There are few communities that have not yet responded.

Executive Director Ciaccia advised that some law directors advised the District to refrain from communicating directly with the city officials, and he sent correspondence to the mayors to confirm whether their intent is to not be a participant in this SMP Credit Policy review process. Executive Director Ciaccia turned discussion over to Mr. Greenland to elaborate on this issue.

Mr. Greenland advised that subsequent to the SMP Credit Policy Manual Board presentation, the District mailed over 200 policies to the member communities and other interested parties. The draft Credit Policy was also posted on the District's website. A meeting was held on April 26th to discuss the Credit Policy and to respond to community inquiries. There were 30 attendees representing 26 communities and some participants from Summit County. We received letters from some communities indicating that due to the pending litigation, they would not comment on the Credit Policy. Mr. Greenland was hopeful that they will reconsider their position on that issue.

May 10th is the deadline for comments on the Credit Policy. Staff will review the comments and make appropriate revisions to the Credit Policy. The revised Credit Policy will be presented to the Board in June. The District received five comment letters thus far.

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Executive Director Ciaccia advised that there has been no activity on case the pending in the Summit County Court of Common Pleas.

Executive Director Ciaccia referred to an article published in *The News Leader* in Summit County titled "City's Stormwater Committee Goes on Permanent Hiatus." The article indicated that "city budget cuts and tight finances result in another casualty in April" and that the City of Macedonia is shutting down its stormwater program. Macedonia has spoken out against the District's SMP. Executive Director Ciaccia stated that a council member from Macedonia was quoted in the article stating that "we are hoping we don't get a hundred year rainfall in the next five or ten years because the money is just not there [and] referred to a storm so bad it occurs an average of every century." Executive Director Ciaccia commented that "we know how one hundred year storms are [and] it depends on where you're at when they happen."

Executive Director Ciaccia stated that funding is clearly a problem in these types of programs and the District is offering a solution and is hopeful that this community and other communities understand that stormwater cannot be managed locally.

Executive Director Ciaccia advised that at the April 29th Suburban Council of Governments (hereinafter "SCOG") meeting Mayor Leiken was elected president, Mayor Welo was elected vice president and Mayor White was elected secretary. Mayor Bacci and Executive Director Ciaccia presented reports on District operations, the Bill Schatz matter, and the CSO LTCP and rate implications.

Mayor Bacci requested that Executive Director Ciaccia expound upon the watershed issues raised by Mayor Kuchta during the SCOG meeting. Executive Director Ciaccia advised that Mayor Kuchta alleged that the District will not properly handle stormwater and that this needs to be done on a watershed basis, and that the District is leaving a lot of communities out of the program.

In response to Mayor Kuchta, Executive Director Ciaccia advised that "it would be great to do it on a total watershed-basis;" however, the District has authority over its member communities. Executive Director Ciaccia indicated that he challenged Mayor Kuchta to "bring some of the Summit communities that are in the watershed into the program" and Mayor Kuchta believed that this should be the District's responsibility.

Executive Director Ciaccia advised that Mayor Kuchta raised the issue as to why they should pay for CSOs when his community has separated storm and sanitary sewers. Executive Director Ciaccia replied that the inner ring suburbs and City of Cleveland are saddled with the combined sewers, and that "we should all pay for it... because we all

chose to basically leave through sprawl and leave the city and inner ring suburbs saddled with the burden.”

Mr. Brown stated that these are the requirements within the Court Order and it is not an option. Executive Director Ciaccia explained that “it will not be an option” and that the District is not segregated as it relates to the CSO issue within the Court Order.

Executive Director Ciaccia moved to the next report item regarding the federal advocacy services. Senator George Voinovich, Congresswoman Marcia Fudge and Congressman Dennis Kucinich “put us in for a million dollars” for the Renewable Energy Facility and Senator Sherrod Brown “put us in for \$2 million.” We are also pursuing WRDA funding.

Executive Director Ciaccia announced that the District is “due to seek an award from the Commission on Economic Inclusion as their 2009 non-profit/government best in class for supplier diversity.” Executive Director Ciaccia especially thanked Purchasing Manager, Jackie Williams, and Contract Compliance Manager, Tiffany Jordan, on their efforts. The award ceremony will be held on Wednesday, May 12th at Corporate College East between 5:30 p.m. and 7:00 p.m. Executive Director Ciaccia invited Board members to attend.

Mr. Brown acknowledged the due diligence and efforts made to implement the Small Business Enterprise Program (hereinafter “SBE”). There was much hard work from the staff as well as input, concerns and issues raised by the Board. Mr. Brown commented that we see “quick fruit-bearing” resulting from due diligence and earnest work.

V. Action Items

Authorization to Advertise

Resolution No. 120-10	One (1) year requirement contract for 45,000 pounds of liquid polymer for use at the Southerly Wastewater Treatment Plant. Anticipated expenditure: \$104,000.00.
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Resolution No. 121-10	Waste heat boilers renovations at the Southerly Wastewater Treatment Plant. Anticipated expenditure: \$1,000,000.00.
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MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution Nos. 120-10 and 121-10. Without objection, the motion carried unanimously.

Authorization to Reject Bids

Resolution No. 36a-10 Early procurement of transformers for the
Easterly Tunnel Dewatering Pump Station
Electrical Substation.

MOTION – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution No. 36a-10. Without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 122-10 Authorization to amend Title I, Sewer Use
Code, Section 1.0501 – Definitions.

Resolution No. 123-10 Settlement agreement with Produce
Packaging, Ltd., Northeast Ohio Regional
Sewer District Case No. 10-004. Cost:
Produce Packaging shall pay the District
\$2,000.00 in full satisfaction of all charges
and costs.

MOTION – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 122-10 and 123-10. The motion carried with one abstention from Mr. Brown on Resolution No. 122-10.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 124-10 RFPs for Occupational Health Care
Services. Cost not to exceed \$52,500.00.

Resolution No. 125-10 Diversity and Inclusion Training. Cost:
\$75,000.00.

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution Nos. 124-10 and 125-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 126-10 Cleveland Botanical Gardens Rain Garden
Partnership. Cost: Grant funds not to
exceed \$12,284.00.

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Resolution No. 127-10

Grant award with the Ohio Department of Natural Resources Division of Soil and Water Resources. Amount of grant award: \$1,500.00.

MOTION – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution Nos. 126-10 and 127-10. Without objection, the motion carried unanimously.

Appropriation of Easement

Resolution No. 128-10

Appropriation of one (1) permanent easement (ECT-5P), owned by Travis L. Everett and Sonja Graham-Everett necessary for the construction of the Euclid Creek Tunnel Project. Fair market value to be deposited with the Cuyahoga County Probate Court: \$500.00.

MOTION – Mr. O’Malley moved and Mayor DePiero seconded to adopt Resolution No. 128-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 129-10

Two (2) year requirement contract with Crane America Services, Inc. for crane inspection and maintenance at all Wastewater Treatment Plants and Pump Stations. Cost: \$88,203.68.

Resolution No. 130-10

One (1) year requirement contract with East Manufacturing Corporation for sludge hauling trailers for use at the Southerly and Westerly Wastewater Treatment Plants. Cost: \$239,970.00.

Resolution No. 131-10

Two (2) year requirement contract with Inland Waters of Ohio, Inc. for grit and screenings disposal at all Wastewater Treatment Plants. Cost: \$881,947.08.

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Resolution No. 132-10

Contract with DLZ Ohio, Inc. for professional design services for the Easterly Wastewater Treatment Plant Code and Safety Improvements (EFPI-2) project. Cost: \$1,097,671.00.

Resolution No. 133-10

Contract with Spiniello Companies for the Big Creek Interceptor 3D Lining Rehabilitation (BCI-3D-LR) project. Cost: \$1,924,822.50.

MOTION – Mayor Bacci moved and Mayor DePiero seconded to adopt Resolution Nos. 129-10 through 133-10. After discussion and without objection, the motion carried unanimously.

Mr. Sulik referred to Resolution No. 133-10, and he inquired if it would be better to remove the coating and apply new coating rather than remove and fix portions of the coating.

Executive Director Ciaccia explained that the BCI-3D-LR project is to fix the problems that were incurred during the BCI-3D project. He also wanted to clarify for the Board as to why the District did not choose the lowest bidder. Executive Director Ciaccia turned discussion over to Ms. Rotunno.

Ms. Rotunno advised that it is expensive to remove the entire coating and because it is a cure-it-in-place liner, it will not be necessary to remove 100% of the failed coating. The new liner effectively becomes the pipe for conveying the sewage flow through it. Ms. Rotunno advised that partial removal is sufficient to remove only the portions in order to secure a good bond between the liner and the existing pipe with liner or the spray-on coating. Ms. Rotunno advised that the design engineer met with the manufacturers of CIPP to confirm that this methodology would work, and “we are confident that it will work in this case.”

Ms. Rotunno advised that the bid of Suburban Maintenance & Construction was determined to be non-responsive. They exceeded the allowable percentage for the bid item for mobilization and they failed to provide qualification material which was required as part of the bid package in order to demonstrate lining inside of pipe experience. Their lining experience had been restricted only to tanks, which is horizontal piping. Ms. Rotunno advised that “we are looking for people with experience in doing that type of coating if they were going to use a spray-on coating.”

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Mr. Sulik requested clarification on "5% mobilization." Ms. Rotunno indicated that this cap was incorporated into the "bid documents on the measurement payment regarding what we thought would be fair and equitable for a mobilization percentage on a project of this magnitude."

Mr. Sulik questioned, "What is mobilization?" Ms. Rotunno defined mobilization as the contractor's process of getting their trailer to the site and for the equipment set up. In some cases, the contractor purchases their insurance depending on what they included in the mobilization. On a \$1.9 million project, the District determined that 5% of the bid would be adequate. The other bidders had no problem meeting the 5%; however, Suburban Maintenance & Construction exceeded that amount.

Mr. Sulik inquired whether this was a significant factor. Executive Director Ciaccia stated that this clause was incorporated into the bid documents for the reason that contractors at times imbalance their bids by placing money into mobilization since this is paid first. If the contractor gets into a jam later, then there is no money to pay for it.

Mr. Sulik posed a hypothetical situation. If a \$1.6 million bid is allotted \$80,000 for mobilization and a \$2 million bid is allotted \$100,000 for mobilization, but it takes the same amount of effort to bring trailers to a location and install them regardless of the bid amount. How would a percentage be a fair way of gauging the mobilization amount?

Ms. Rotunno replied that the percentage is not always capped at 5%, it is determined on a project-by-project basis. This project does not require much mobilization. The duration in the field to complete the construction is about six weeks.

Mr. Sulik questioned whether it would cost every contract bidder \$100,000 to mobilize their equipment, and that the 5% seemed to be a true figure if the other contractors were able to meet this requirement.

Ms. Rotunno advised that some contractors own or rent different trailers or equipment and become competitive in their mobilization fee. In some instances, contractors bid less than the allowable percentage. In order to keep bids conforming, the District sets a percentage goal. They can be below or above that amount, but the District caps the percentage to limit an imbalance in the bids.

Executive Director Ciaccia indicated that they will re-review the bids to determine the spread. Mr. Sulik replied, "Just check it for me."

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VI. Information Item

1. Disparity Study Update.

Ms. Colette Holt, legal counsel for NERA Economic Consulting (hereinafter "NERA"), was present to provide the Board with an update on the disparity study.

Ms. Holt stated that the legal standards control the entire architecture and progress of the study in order to ensure that if the rates and gender-conscious program are adopted, the District would have a sound chance of defending that program against a challenge.

The primary principle is that the evidence must be reflected in the Minority Business Enterprise (hereinafter "MBE") and Women's Business Enterprise (hereinafter "WBE") programs, if adopted. Programs having resulted from an inadequate analysis and evidence of political motivations have been struck down.

Ms. Holt indicated that the "District staff has been fantastic to work with and totally responsive to NERA." The prime contractors have not been as responsive and it is taking longer than anticipated for NERA to gather the data.

Ms. Holt stated that "we have been successful" and that "it is important to get this right." If it takes longer to gather the evidence needed, then we should do that. Ms. Holt indicated that NERA is confident in going forward that they we have managed to obtain enough evidence and contract date to provide the District with a solid study. Ms. Holt stressed that NERA is here to support the District.

Ms. Holt referred to a handout that was provided to the Board. Ms. Holt indicated that she and Dr. Wainwright are testifying in two additional challenges including one of which they were experts for the United States Department of Justice in a challenge to the ADA program. NERA is confident that it can provide the District the level of expertise if necessary.

Ms. Holt stated that "we have multiple sources of high-quality data, and we want to be sure that we provide that to you and that we properly analyze that for your study." Ms. Holt referred to the deliverables that reflect what NERA found necessary from a statistical standpoint, and that the courts require a solid statistical basis for your program. If an organization has great anecdotal evidence but the statistical foundation is inadequate, they will lose if challenged. NERA wanted to ensure that they obtained enough evidence for the utilization of MBEs and WBEs on contracts.

NERA will examine economy-wide data to determine the experiences of MBE and WBE firms outside of District contracts. It will be important to establish to a court the need for

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remedial intervention in your marketplace. NERA will review the rates in which women and minorities form businesses, their earnings from those businesses and whether there are significant disparities between them.

NERA is reviewing credit denials and loan rates to obtain supporting evidence as well as looking into the District's contracting.

NERA is conducting a telephone survey of MBE and WBE firms and comparable non-minority and women-owned firms. This survey will inquire about the accuracy of our availability estimates as well as the expenses in doing business with the District and throughout the market-area.

NERA conducted focus groups two months ago. Those tasks have been completed and the information is listed under the anecdotal analysis slide.

Interviews with District personnel have been ongoing and Ms. Holt advised that she met with the team this morning to discuss their experiences with the program and procurement challenges as well as to obtain feedback about how they would like to move forward. This information will form the recommendations that will be part of the study.

The completed tasks include project initiation; data requests were filled; the master MBE/WBE directory has been assembled; conducted business owner interviews; and prepared the contractor and subcontractor database.

Ms. Holt moved discussion to the ongoing and upcoming tasks. The mail surveys were mailed and NERA is awaiting responses. NERA does a lot of follow-up in order to increase the responses. NERA is also conducting the census data analysis, which has been ongoing. NERA is conducting surveys to ensure whether the MBE or WBE classification of firms is accurate. NERA continues to determine the geographic and procurement markets. According to Ms. Holt, in order to ensure a successful program, it is necessary to "accurately reflect where you spend your money and what you spend it on."

Ms. Holt stated that she handles the legal standards and review which is always ongoing since a new case can surface. Although she does not anticipate any changes, the final chapter will be sent around the July 1st.

Ms. Holt concluded her presentation by stating that NERA continues to work on recommendations based on feedback from the District staff and from the business owner interviews. The anticipated date to have a final draft for review is July 15th.

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Mayor Starr inquired if the Black Contractors Group has been contacted and interviewed. Ms. Holt indicated that she thought NERA obtained their list and was "pretty sure" that they were contacted and received invitations to attend the business owner interviews. Ms. Holt stated that she conducted several interview sessions and met with over a thousand firms over the past couple of years. She indicated that the response from Cleveland has been "amazing." Participation was great and therefore the outreach was great.

Ms. Holt thanked TRIAD for doing a fantastic job of outreach. Ms. Holt advised that there was great participation in the focus groups and a lot of comments and interaction with African-American-, Hispanic- and Women- owned firms. Ms. Holt indicated that the great participation "was largely due to our sub and the efforts of the District's staff to get people there."

VII. Open Session

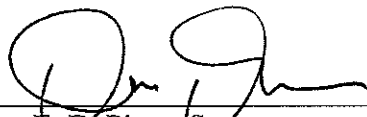
Mr. Brown advised that the election of officers to the Board will take place in June, and he appointed Mr. Sulik, Ms. Kelly and Mayor Bacci to the nominating committee for the 2010-2011 Board officers wherein they accepted their assignment.

VIII. Public Session (any subject matter)


No members from the public registered to speak at Public Session.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded he would entertain a motion to adjourn. Ms. Kelly moved and Mayor DePiero seconded the motion to adjourn at 1:50 p.m. Without objection, the motion carried unanimously.



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



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

**COST OVERRUNS – REFORMING THE NORTHEAST OHIO REGIONAL
SEWER DISTRICT CAPITAL PROJECTS MANAGEMENT**

**PREPARED REMARKS BY TRUSTEE GARY W. STARR to BOARD OF TRUSTEES
NORTHEAST OHIO REGIONAL SEWER DISTRICT 3-15-07**

I. The Problem

Excessive cost overruns on capital projects well beyond industry standards or reasonableness

<i>Year Completed</i>	<i>Project</i>	<i>Original Contract</i>	<i>Contract with Cost Overruns</i>	<i>Actual Dollars Cost Overruns</i>	<i>Cost Overruns Percentage</i>
1999	E.I.D.P.	300,000	1,155,000	855,000	285.00 %
	S:IR-9	534,400	778,843	244,443	45.74 %
	Hts. O.C.I	804,350	943,647	139,297	17.32 %
	NEC-1	239,900	399,868	159,968	66.68 %
	S:23	3,620,000	4,542,914	922,914	25.49 %
	E:142-E	1,624,800	1,824,646	199,846	12.30 %
2000	S:27A	5,565,400	6,686,652	1,121,252	20.15 %
	IPF-1	656,490	739,498	83,008	12.64 %
	Vax 6000	666,705	1,385,753	719,048	107.85 %
	Software License	120,600	168,740	48,140	39.92 %
	Consultant	140,000	219,045	79,045	56.46 %
	MCR-1	499,875	603,255	103,380	20.68 %
	RGP-1	292,185	364,596	72,411	24.78 %
2001	EMSC-R1	8,300,000	9,705,253	1,405,253	16.93 %
	FBRS	10,261,809	11,604,627	1,342,818	13.09 %
	TR-5	698,100	1,064,741	366,641	52.52 %
	IR-10	1,251,000	1,495,382	244,382	19.53 %
	MISC-1	759,000	1,039,067	280,067	36.90 %
	MCIR-1	2,591,696	3,829,216	1,237,520	47.75 %
2002	AR-8	834,000	993,333	159,333	19.10 %
	CVI-R1	1,172,562	1,909,473	736,911	62.85 %
2003	CSOTF-MI-1	6,410,000	7,388,503	978,503	15.27 %
	SPPRS	2,298,954	3,467,939	1,168,985	50.85 %
	PA-2	2,666,771	3,460,504	793,733	29.76 %
	IR-11	1,284,170	1,572,756	288,586	22.47 %
	MISC-2	1,499,600	1,892,441	392,841	26.20 %
2004	MCSO-2B	2,538,250	3,421,360	883,110	25.81 %
2005	SOMRS	3,114,772	3,784,530	669,758	21.50 %
2006	EDISAC	2,100,000	3,632,574	1,532,574	72.98 %
	CSOFLOAT-2	1,360,000	1,703,736	343,736	25.27 %
TOTALS		64,205,389	81,777,892	17,572,503	27.3692%

(Source: Charles J. Vasulka, Director of Engineering and Construction,
Northeast Ohio Regional Sewer District, 3/8/07)

II. The Standard

1. Association for the Advancement of Cost Engineering (American Association of Cost Engineers)

Read paragraph – Public Works Magazine – Management of Capital Project Development page 62, second column:

“In public works projects, changes during construction as a result of oversight during design and changed conditions in the field are considered ‘normal’ up to about 5 percent of the construction cost. Costs above this level may indicate that inadequate design effort was provided or there may be special circumstances that result in greater changes.” (5%)

(Source: *Public Works Magazine*)

2. City of Cleveland – Dept. of Public Utilities, Julius Ciaccia. Handled 1 billion dollars above/below ground improvements in 20 years – one change order over **10%**. (10%)

(Source: Julius Ciaccia, Dir. Of Public Utilities – City of Cleveland)

3. City of Chicago – Chief water district engineer (10%)
“Industry norm is around 10 percent, not the 40% or 50% in the Cleveland District.” Just “recently completed a \$2.5 BILLION reservoir restoration ... the project came in over budget, but by less than one percent (.06%).

(Source: News report, WKYC, Carl Monday 1/11/07)

4. City of Detroit – Wayne State University studied a \$14 million sewer overflow project. Cost overruns: about 7 per cent. (7%)

(Source: News report, WKYC, Carl Monday 1/11/07)

5. William Schatz, Legal Counsel, Sewer District (7-8%)
10% new construction, **15%** rehabilitation

“In our industry, we seek as the optimum goal 7 to 8% as being an outstanding percentage.”

(Source: William Schatz, Legal Counsel, NEORSD 9/9/98)

III. The Plan – Reform of the bidding and management of capital projects

1. Oct. 30, 2006 **Reform** Memo to Board:
 - a. Consideration of risk / rewards program for contractors
 - b. Contract forms
 - c. Best practices review
 - d. Scope / contract negotiations
 - e. Involvement of multiple departments in scope development (better communications)

Quotes from memo:

“This process and others can always be improved.”

“One key question with asset management is whether an improvement is a want or a need.”

2. Accountability of employees, consultants and contractors.

Do we continue to award contracts to consultants and contractors who have submitted poorly designed plans or contractors who have mismanaged projects?

The answer:

“Good question. We never assess the performance of contractors and consultants.” 3/14/07

Charlie Vasulka

Director of Engineering and Construction, N.E.O.R.S.D.