

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JUNE 2, 2011

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
D. DePiero
J. Bacci
W. O'Malley
G. Starr

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

II. Approval of Minutes

MOTION – Mayor DePiero moved and Mayor Bacci seconded that the minutes of the May 19, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia advised that mediation spear-headed by Cuyahoga County Executive Ed FitzGerald related to the Stormwater Management Program (hereinafter "SMP") has been ongoing with Cleveland State University Provost Geoffrey Mearns.

Sessions have taken place the past three Fridays from 2:00 p.m. to 4:00 p.m. The communities that attended included lawyers from the communities of Strongsville, Beachwood, Cleveland Heights, Lyndhurst, Olmsted Falls, and Broadview Heights, which are the only communities participating in-person at mediation.

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Provost Mearns discussed his thoughts individually with the parties as to what he thought were areas of potential compromise. Executive Director Ciaccia stated that he could talk about them at a later date with the Board during Executive Session.

The District agreed that Provost Mearns had a good grasp of the issues important to both sides. He also talked with the communities, but the outcome of those talks is unknown. The communities asked for a couple of weeks to report to their mayors and councils, so no meeting is scheduled for this Friday; the next meeting is scheduled for June 10.

Executive Director Ciaccia stated that staff intends to meet this Friday with Provost Mearns and an intervening party, the Catholic Diocese. They have a proposal they want to present.

Frank Greenland, Director of Watershed Programs, and Kyle Dreyuss-Wells, Manager of Watershed Programs, met with the Cleveland Municipal School District, one of the intervening parties, to discuss concerns they have and to go over their projected charges to provide the proper perspective of the program.

Staff also had discussions with Columbia Township and Lorain County. He advised that there is some movement in that regard, and Summit County initiated discussions with the District aside from the mediation which we will consider. They claim they will submit a proposal they think could help settle the dispute.

Executive Director Ciaccia stated that Judge Pokorny ruled certain Summit County communities were not District members. Subsequent to that ruling documentation was found indicating that Hudson was officially brought into the District as a member; staff is offering that to the court by way of a motion to consider Hudson. In addition, Lyndhurst filed an appeal of the Judge's ruling related to the District's authority. The District filed a brief opposing that motion asking that be thrown out by the Appeals Court. Executive Director Ciaccia explained that mediation will take a longer than expected but as long as the parties are talking, the District will participate. He advised that the trial date is set for September. Judge Pokorny reissued a trial date saying this was the last time he would continue the case.

Executive Director Ciaccia advised that in March he was visited by David Marquardt, the Director of the Department of Environmental Services for Summit County, who works for the Summit County Executive. He explained the District master-meters its sewer service to their entity, which serves the communities of Hudson, Richfield Township, Bath Township and a few communities not considered District member communities. They have an agreement with the District and are asking to open that agreement for reconsideration. Mr. Marquardt and his staff raised the issue of the formula by which the

District charges their master meter customers, and specifically how inflow & infiltration is calculated into their rate formula.

Executive Director Ciaccia advised that he told Mr. Marquardt he understood his issues, and he understood the logic behind them; however, he advised Mr. Marquardt that the District would only entertain these issues, along with other outstanding Summit County issues on the table such as the SMP and Summit County's challenge of the District's rates related to Combined Sewer Overflows (hereinafter "CSO"). Executive Director Ciaccia stated he wanted to get all the issues resolved if he were to entertain amending the current agreement to consider a new rate formula.

Executive Director Ciaccia advised that Mr. Marquardt did not particularly care for that response; he sent Executive Director Ciaccia a letter objecting to the linkage between the issues. In the meantime, he stated that Summit County is a part of the discussions on the SMP, and the master meter rate formula will be on the table, as well, and at some point that issue will be resolved. A meeting will be scheduled in the very near future to discuss it.

Executive Director Ciaccia advised that discussions were held during the CSO debate about regulations. He wanted to be clear on how regulations affect the District and how they are carried out.

The main environmental regulations are the Clean Air Act, the Safe Drinking Water Act and the Clean Water Act. Those laws were passed many years ago and the United States Environmental Protection Agency (hereinafter "US EPA") is bound to create regulations that comply with them. In some cases they have been sued by environmental groups for not dealing with issues fast enough, and conversely, by other interest groups such as the National Association of Clean Water Agencies (hereinafter "NACWA"), the American Waterworks Association and industries. This comes into play as rules are discussed.

Certain regulations have been promulgated; the most-discussed being CSO regulations. Executive Director Ciaccia stated that these regulations are not in development; they are strictly under enforcement and compliance. He stated that "there are no games" with regulations that are in effect. New rules and regulations, currently being promulgated, include nutrients, sanitary sewer overflows, and the sewer system incineration (SSI) rule under the Clean Air Act. The District continues to make itself known in those areas, and the NACWA is also working on the District's behalf in submitting comments on new rules and regulations.

Executive Director Ciaccia explained that the District and 100 other utilities have funded an effort to legally fight some aspects of the proposed SSI rule because they are based on

flawed numbers. He explained that the District is making itself known on existing regulations to influence laws and amendments, "but that it is an uphill climb."

During the previous Board Meeting Mayor Starr cited an article from *The Wall Street Journal*. Executive Director Ciaccia stated that he was not aware of it and thanked him for raising the issue. He advised that a response was located at Mayor Starr's desk. He elaborated to advise that the article mentioned a particular rule the EPA is promulgating related to non-gas fired boilers, commercial-industrial-style waste incinerators, solid waste incinerators and sewage-sludge incinerators, which regulate air emissions and mercury standards.

That rule is in development and District staff is doing its best to make its comments known to the US EPA, but any notion that they will back off is false. He played a video excerpt from an interview with Lisa Jackson, the administrator of the US EPA, on May 19.

(Thereupon, the videotape interview was played for the Board.)

Executive Director Ciaccia stated that the Obama Administration is not backing off these rules and staff expects that these rules will eventually come out. Staff is hopeful that its input will be considered and will make the rule more reasonable. He stated that he wanted to make sure some discussion was held on that topic because it continues to come up.

Executive Director Ciaccia stated that he wanted to have a brief discussion on green infrastructure. He explained that green infrastructure has very effectively been incorporated into the consent decree language and staff is very proud of that. The green infrastructure will provide the opportunity to save money on the long-term CSO plan by utilizing green infrastructure rather than gray. Green is not considered a total substitute for gray and staff is conducting a deep analysis of both types.

Executive Director Ciaccia stated that some systems are touting that they intend to use 100% green infrastructure to capture seven-billion gallons of CSOs. Staff knows there is a lot of talk about green-for-gray and some of it is "over the top" while others do not buy into it at all. He advised that District staff thinks there is a place for it but it needs to be strategic and realistic. Members of the public have asked questions about it during public meetings.

Recently, Kellie Rotunno, Director of Engineering & Construction, and Kyle Dreyfuss-Wells, Manager of Watershed Programs, met with *The Plain Dealer* Editorial Board to bring them up to speed on the green infrastructure approach. He asked Ms. Rotunno to provide a briefing on what we are looking at from a cost standpoint.

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Ms. Rotunno explained that the District's green infrastructure approach has been embraced by the EPA as green infrastructure will be utilized where it makes sense from a triple bottom-line perspective.

The CSO program was originally proposed as predominantly gray infrastructure. Tunnels will provide a considerable amount of storage and an incredible lifecycle in terms of durability. While they represent a larger investment from a capital perspective, they become more cost effective when looking at life-cycle costs of gray infrastructure investments. Ms. Rotunno explained that a comparison between green and gray infrastructure requires looking at a lifecycle annualized cost including how long these assets are expected to exist and how often they might have to be redone. The operations & maintenance (hereinafter "O&M") associated with a tunnel is very different from that associated with an extended detention basin or a wetland detention area.

Ms. Rotunno stated that there needs to be detailed discussion of the triple bottom-line economics of the green infrastructure, the environmental benefits, and community impacts to make the best decision for the plan. The District is committed to a 44-million gallon minimum reduction of CSOs using green infrastructure under the consent decree and having a plan for where those projects will go by the end of the year. However, the industry does not yet have the details on lifecycle costing, and the District will take a leading role to vet what the true costs are of green and gray infrastructure so sound economic decisions are made that take into account O&M and lifecycle expectancy of these infrastructure improvements.

Mr. Brown thanked Ms. Rotunno for providing that insight and stated that the trade-off of green-for-gray has to have some level of science and the ability to demonstrate the outcome for the federal government to accept it as legitimate.

Mr. Brown stated that he was struck by the O&M because those costs are built into conventional gray infrastructure. However, there is also a maintenance aspect with green infrastructure in terms of rooftops, bio-swales and detention ponds.

Mr. Brown stated that in many respects the government entity has the oversight responsibility for gray infrastructure and promulgates rules a municipality must follow with respect to green. He stated that area becomes somewhat unclear because rooftops do not belong to the public; there are private property owners and private property changes hands. There is some perspective on the ability to construct green infrastructure that is not in the public right-a-way, but also the long-term concern regarding how it is maintained.

Ms. Rotunno stated that is part of the industry struggle in vetting the true costs because green infrastructure does not have a long history; it is very difficult to find a green

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infrastructure project that has been in place for 20 years and to know the O&M associated with that feature. Green infrastructure is not as common as tunnels, pipes and plant improvements that have been in place for 50 years. The industry does not have that data and that is partly why the EPA asked the District as part of the consent decree to help develop a database on the lifecycle costs and benefits of green infrastructure. She advised that the District is on the cutting edge since the consent decree has been signed and endorsed by the EPA. She indicated that Cincinnati is also implementing green infrastructure but everyone is learning the O&M of these features.

Mr. Brown stated that in many respects this is a test case for this approach to CSO impacts. Ms. Rotunno agreed and stated that the District's successes will create opportunities for other utilities to follow and where it is not successful -- which Executive Director Ciaccia has said is not an option -- the door will close on green infrastructure. Staff is very much interested in keeping it open but also keeping a disciplined approach when looking at the lifecycle cost of green versus gray.

Ms. Rotunno advised that gray infrastructure has a longer lifecycle than green structures, which may need to be rebuilt occasionally. The District will work very closely with the EPA to determine what will be used for the lifecycle cost for O&M.

Mayor Starr stated that "we're all for clean water" and "clean air" but he believes the federal government owes the public fairness, reasonableness and flexibility in terms of regulations.

Mayor Starr stated that he mentioned ten and five years ago -- with Senator Voinovich in 2005 -- he is against unfunded mandates that put unreasonable burdens on families and businesses in Northeast Ohio. There is significant support for that position amongst senators, congressmen and the public. He stated that the groups mentioned are worthwhile organizations but there were no consumers or average taxpayers represented.

Mayor Starr asked if the federal government should take into consideration the worst recession since the Great Depression. Issues were raised during public meetings regarding the assumptions of these regulations. He stated that the most glaring of which was that taxpayers could afford 2% of their income going to the federal government for clean water and air. Mayor Starr stated that was debatable, as was income rising by 4% per year. He thinks reasonable people have a right to disagree and he enjoys listening to people of opposing positions.

Mayor Starr advised that the article from *The Wall Street Journal* referenced came from a resident at a public hearing. That information was shared and he thanked the staff for following up on it. He stated that "we're all for the same goal" but the question is how to get there, who pays for it and where does the burden fall. "That is great public debate."

Executive Director Ciaccia, in reference to the prior comment about consumers' voices, stated that he was a consumer and believes he elects representatives to be his voice. If the majority of those elected officials go in a certain direction, that is the direction in which the country goes. He stated that until the majority shifts the other way it will continue to move in the current direction. "Everybody can talk about "I'm for this," and "I'm for that," but until they put their votes on the line on behalf of me and my position, then I have been heard but didn't prevail."

V. Action Items

Authorization to Revise Title I

Resolution No. 123-11	Authorizing 2012-2016 Rate Structure, Wastewater Affordability Program and Crisis Voucher Program.
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MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 123-11. Mr. Brown asked the secretary to proceed with the roll call and the motion carried with two "No" votes by Mayor DePiero and Mayor Starr.

Mayor Starr asked to read prepared remarks on the proposed sewer rate increase. Mayor Starr stated:

"This board will vote to tax now, you the consumer, a whopping additional three-billion dollars for sewer services. I plan to vote no today. I want no part of this shameless money grab that will hammer close to one million residents mired in the worst recession in decades with this monster tax increase of 75%. Is the Sewer District clueless about skyrocketing water, gasoline and food prices, 10% unemployment, and the merciless foreclosures that we are experiencing? My colleagues, of course, will say they did listen to you during the public hearings. But, trust me, those hearings were a ruse. Sewer District leaders are turned and tuned in to the more high-priced lawyers and legal expenses that we pay every week, and the bankers who stand to make millions of dollars on this deal.

"My question to you: What about the elderly woman in Middleburg Heights so poignantly pleading her case that echoed the legions of other protestors at that public hearing and others that fell on deaf ears? Quote: 'I'm on a fixed income. How am I going to be able to pay for it?'

"What about the mayors and the city councils of at least a dozen communities who want no part of this big money government power play?"

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“By the way, I’ve also heard from the respected George V. Voinovich, a former U.S. Senator, whose love of Lake Erie is unmatched. As a state representative, Mr. Voinovich was a leader in the creation of the Ohio Environmental Protection Agency, so he truly has been a powerful advocate for a clean environment. Yet, Sen. Voinovich backs my call for a one-year moratorium that I made well before the December 2, 2010 vote to accept a tentative agreement with the US EPA that will activate the rate increase.

“‘Quite frankly, I was disappointed with the Sewer District in terms of lack of support as to a moratorium,’ Voinovich wrote me. He said he and Sen. Sherrod Brown had tried in vain to get the EPA to relax its hardball stance toward Greater Cleveland, but a second try would be worth the effort. He said he has contacted Gov. John Kasich recently to help us lobby for more affordable terms than what the federal government is giving us.

“As the most senior Sewer Board member and one-time President, I have been fighting Sewer District rate increases since 2005. That was about the time when I discovered wide-spread corruption that resulted in tens of millions of dollars lost on unscrupulous contractors. My feeling today is the same. How could we approve a huge rate increase that exceeds the rate of inflation amidst the stench of criminal behavior? I ask for a moratorium to give the rate payers, the taxpayers, a chance to read the fine points of the consent agreement that has been kept largely secret for, number one, to consider alternatives to the unaffordable tax increase; second, to determine if the changing political climates in Columbus and Washington would offer new approaches; and three, to give the City of Cleveland time to fix the mess in the water billing department which collects our sewer district bills.

“My colleagues have to know that their vote today will send a horrible message to our constituents that everyday people don’t count. My colleagues should know how much damage they will be inflicting on regional government costs. This is a scary big government power grab. If this is regionalism, I want no part of it.”

Mr. Brown stated that he felt compelled to say a few words on behalf of the process. He thinks there are two issues at stake. One has already been settled, which is the consent decree. The District has a firm agreement with the federal government for terms and conditions that are much more favorable than initially asked for, which was less than 20 years and in excess of \$3 billion and did not address the issue of affordability to the ratepayers.

Mr. Brown stated that to say that the Board or staff has not listened to the public strikes him as hollow given that this discussion has been had. He stated he has personally been engaged with the discussion since 2005, and if the Board was not listening, it would have acted well before now.

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It is 2011 and the District is in the position to do something many cities across the country have not had the opportunity to do in terms of agreeing to a 25-year schedule with the federal government, becoming only the second utility in the country to do so. Mr. Brown stated that it is not easy to deal with the issues of affordability as it relates to seniors and those challenged financially through affordability programs. The consent decree terms demonstrate that the District has sensitivity to those issues, but at the same time says that it will be complying with a regulation that was promulgated in 1972.

Mr. Brown stated that the fact of the matter is the District was being sued by the federal government and came to terms in a way that allows for moving the compliance issue forward while protecting the District. He stated that the Board takes its responsibilities very seriously, and all Board members have been engaged in the process of reforming the issues that resulted in anything construed as corruption, unethical or money-grabbing. The Board participated in the process of developing an outstanding senior staff and rules and regulations that provide excellent oversight to an agency with a significant mission and challenge in terms of environmental justice and responsibility.

Mr. Brown stated that there have been a number of public hearings; in March the process started with the proposal from the consultants; and there have been three significant financial overview meetings to consider the cost of the CSO program and the cost of the overall operation and maintenance of the utility.

Mr. Brown stated that the District must continue to provide and be in compliance with its mission. He was struck by the fact that the organization continues to find ways to address affordability issues with Homestead rates, which will result in a 40% reduction for seniors and a new Crisis Voucher Program that allows folks who come into an abrupt hardship to be eligible for some relief. He stated that the District has done its due diligence in this regard and that the Board has strived to carry out its task of making sure this is a healthy and viable utility, managed with fiscal prudence and in compliance with the law. He wanted the public to understand that the Board does not take its role lightly; no member turned a deaf ear to anything, and all have been very sensitive to their charge and mission.

Authorization to Advertise

Resolution No. 124-11

Two-Year Requirement Contract for the Bearings and Seals Product Class for Use at Our District Facilities. Anticipated Value: \$37,683.00.

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution No. 124-11. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 125-11

RFPs for Easterly Human-Machine Interface (HMI-2) Project, Estimated Project Period: August 2011 Through May 2012.

MOTION – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution No. 125-11. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 126-11

Sole Source Purchase from BioGX, Inc., Reagents for Analysis of *E.coli*. Cost: \$46,305.00.

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution No. 126-11. Without objection, the motion carried unanimously.

Mr. Brown stated that the District is doing this in partnership with one of the state and federal agencies that provides rapid turnaround for evaluation after a rain event. He inquired if this is to help with postings for beach swimming. Mr. Greenland explained that staff is attempting to evaluate rapid test methods for bacteria. Under the current methodology it takes 24 hours to receive the result. Therefore, warning the public is based on the previous day's information. Staff is trying to shorten that time frame so that within a matter of hours, a sample could be taken in the morning with the result posted almost immediately, better warning the public.

Mr. Brown questioned if this is a sole-source product. Mr. Greenland stated that the reagents are proprietary in nature.

Authorization to Enter Into Agreement

Resolution No. 127-11

Joint Funding Agreement with the U.S. Geological Survey for Water Monitoring Services. Cost: \$117,595.00.

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution No. 127-11. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 128-11

Contracts with Charter One Bank N.A.,

Fifth Third Bank, First Merit Bank N.A.,
The Huntington National Bank, KeyBank
N.A., and JP Morgan Chase Bank N.A. for
the Deposit of Active and/or Interim Funds.

Resolution No. 129-11

Contract with Applications Software
Technology Corporation for the Design of
the Oracle iRecruitment Software Module
Configuration for Human Resources. Cost:
Not to Exceed \$63,760.00.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution Nos. 128-11 and 129-11.

Mr. Brown asked the Secretary to proceed with the roll call for Resolution Nos. 128-11 and 129-11 and the motion carried with one abstention by Mayor DePiero.

In reference to Resolution No. 128-11, Mayor DePiero inquired if there should be separate resolutions for each entity.

Marlene Sundheimer, Director of Law, advised that the resolution can authorize the District to enter into multiple contracts and these are multiple agreements for the same subject matter -- the deposit of active and interim funds. She stated that she does not see a legal reason why the District could not adopt a single resolution that authorizes multiple contracts.

Mayor DePiero stated that he would be in abstention in an abundance of caution as his law firm has been adverse or has represented at least one of the banks in the past.

Authorization to Rescind Resolution

Resolution No. 48a-11

Rescind Resolution No. 48-11 which Authorized the Taking of Bids for a One-Year Copy Paper Requirement Contract for Use at Our District Facilities. To Ensure that the District Continues to Receive the Lowest and Best Pricing from our Suppliers, Purchasing will Buy Copy Paper on a Quarterly Basis Using Our Standard Request-for-Quote Process.

MOTION – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution No. 48a-11. Without objection, the motion carried unanimously.

Authorization to Rescind Resolution and Authorization to Advertise

Resolution No. 80a-11

Rescind Resolution No. 80-11 to Issue RFPs for the Euclid Creek Pump Station Project, and Authorize the Advertisement for the Euclid Creek Pump Station and Lakeshore Boulevard Relief Sewer (ECPS/LBRS) Project.

MOTION – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution No. 80a-11. Without objection, the motion carried unanimously.

Mr. Brown wanted to confirm that he understood how these two projects work together. The Lake Shore interceptor takes dry flow by gravity, during wet weather events. When there is a wet weather event, assistance is needed from the pump station on one side of the river to pump flow to the other side. Ms. Rotunno affirmed that his understanding was correct.

Mr. Brown inquired if these are companion projects, which Ms. Rotunno affirmed.

Mr. Brown questioned if it makes sense for an entity to do this as opposed to multiple. Ms. Rotunno explained that is why the prior resolution is to be rescinded; staff wanted them to be coupled because they are inter-dependent upon one another.

Mr. Brown inquired if this is for a five-year storm. Ms. Rotunno stated it is related to the level of service. Mr. Greenland advised the level of service is consistent with residential Cleveland.

Mr. Brown questioned if it is five years, which Mr. Greenland confirmed.

Mr. Brown inquired if that is the purpose for which they are typically designed. Mr. Greenland again affirmed and stated that there is an overflow at the Euclid Creek Pump Station that could provide greater levels of service during certain storm events and that will be considered throughout the design process.

Mr. Brown stated that in general this will add some capacity to an interceptor that is significantly undersized in an area with a lot flooding. Mr. Greenland affirmed.

Mr. Brown inquired as to the schedule for this project. Ms. Rotunno advised that this

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project is scheduled to be completed by 2015 along with the Euclid Creek Tunnel Project. They will likely be online within nine months of each another, with the Euclid Creek Tunnel and tunnel dewatering pump station going in first.

Mr. Brown appreciated staff's efforts and stated that this was one of the early action areas identified when the process began.

Authorization to Donate

Resolution No. 130-11

Donate Obsolete Information Technology Equipment to RET3 Job Corp.

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 130-11. Without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 131-11

Adopting the Findings of the Hearing Examiner with Regard to the Sewer Account of Tracie Burkes, Sewer District Case No. 11-005.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution No. 131-11. Without objection, the motion carried unanimously.

Authorization of Revisions

Resolution No. 132-11

Adopt Revisions to *Northeast Ohio Regional Sewer District Code of Ethics*.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to approve Resolution No. 132-11. After discussion, Mayor Bacci moved and Mr. Sulik seconded to table Resolution No. 132-11. Without objection, the motion to table the resolution carried unanimously.

Mr. Brown reminded the Board that Mr. Sulik and the Ad-Hoc Committee on Ethics, along with support from the staff and counsel spent a lot of time and effort reviewing, updating and making recommendations to incorporate data into the document. The Board has had some time for review and comment. He asked Mr. Sulik if he had additional comments.

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Mr. Sulik advised that the Committee provided a copy to all Board members a couple weeks ago for review. There was a lot of changes to words and terms and clarification of a couple of things, and he suggested this be reviewed every two years and to include it in the handbook to employees, the Board's handbook for any new members, have it explained to them, and post it on the District Web site so it would be available to anybody. He recommended approval.

Mayor Starr advised that he had questions. The Code of Ethics mirrors most of the State statutes in addition to open records and meetings statutes. He questioned Section 4.0 definitions as it relates to Section 5.3, Definition F. regarding confidential information. He posed the following questions:

“Who designates something as confidential? Is there anything that is discussed in executive session automatically confidential? If it's confidential today is it always confidential even if all or part of it is revealed in another context such as a court filing? What if a Board member reports something to the board or to the Law Director that has been done in the past that might be confidential with the expectation that some action might be taken but nothing is done and after some period of time can the board member report that information to an outside source? Can the Board member go to the media? Can the Board member go to the Attorney General, prosecutor or to the public? Can the Board keep a piece of information confidential forever?”

Mayor Starr advised that those were some of his questions concerning that section.

Mr. Brown inquired if Mayor Starr's questions were typed, which Mayor Starr affirmed.

Mr. Brown asked Mayor Starr if he could give his questions to the staff for review and response. Mayor Starr agreed.

Mr. Brown asked the Board to hold this resolution pending the response.

Mayor Starr stated that he appreciated that gesture. He stated that Section 2 says "Confidential information has been designated as confidential to the person receiving such information by the party delivering." He advised that he had further questions but there is a motion to table, meaning no further discussion.

Mr. Brown advised that he wanted to ensure all questions had been either asked or submitted to the staff.

Mayor Bacci stated that the motion is to move the meeting forward so the questions may be answered, and once they are answered the resolution may be considered again.

As a point of order, Mayor Starr stated that on a tabling motion rule, parliamentary rules indicate there is no discussion; it cuts off debate. That is basic and fundamental but if there is a motion to postpone it may be discussed and he could raise issues.

Mr. Brown advised that there is a motion and a second to hold the resolution.

Mr. Sulik requested that questions be submitted to the staff and counsel so they can answer them before the next Board Meeting. Mayor Starr agreed and stated that it helps the Board in terms of clarity of behavior and conduct.

VI. Information Items

1. Program Management Status Report and Update - May 2011

Kellie Rotunno, Director of Engineering & Construction, stated that the department recently launched a new state-of-the-art Capital Improvement Program (hereinafter "CIP") data analysis and management tool that provides a window into the CIP unlike any it had before. With the tool staff can easily reference financials, schedules, sort data by milestone and program and look at CSO and plant projects together. The program management consultant has been working diligently to get the tool operational. She advised that staff is no longer "flying blind" from a data perspective and demonstration to those who would like to see how it works.

Ms. Rotunno advised that the CSO-centered Euclid Creek projects are experiencing a lot of activity. The Euclid Creek Tunnel and Nine Mile Creek electrical substation projects have mobilized. Excavators can be seen on the south side of I-90.

Staff is preparing to advertise the tunneling watering pump station project, which is the most significant project in the CIP for 2011 at \$87 million. She advised that a resolution requesting authorization to advertise is expected to be presented to the Board within its next two meetings and it is important the Board focuses its attention on that, as it is the biggest project of the year.

In an effort to increase maximum wet weather treatment capacity at the Easterly plant to 400 million gallons per day and to comply with the consent decree there will soon be professional service contract awards for the Dugway West Interceptor and the Easterly Sustained Secondary Capacity Improvement Projects.

Mr. Brown questioned the current status of those projects. Ms. Rotunno advised it is now roughly 330 million gallons and will be pushed to 400 million gallons. That will be a big project and is going through the selection process. Staff is negotiating the scope and fee with the selected firm and will request authorization to enter contracts in the near term.

Ms. Rotunno advised that there will likely be contract modifications for no-cost time extensions on some construction projects. Very wet spring weather caused issues with a number of projects. The contract modifications are anticipated at no cost as they relate to schedule.

Mr. Brown inquired if they are just time extensions, which Ms. Rotunno confirmed and advised that they will come in over the next couple months. She indicated the Renewable Energy Facility (hereinafter "REF") and the need to coordinate the issues between two contracts -- one for the installation of incinerators with Contract 28 and one for manufacturing and procuring the incinerators with Contract 28(B).

Engineering & Construction staff and its contractor, vendors and design consultants have been working very hard and are bringing the incinerator manufacturer into town for a meeting where we're going to get things mapped out to make sure we keep this project on track. We are optimistic we can do that.

Ms. Rotunno moved discussion to Key Performance Indicators (hereinafter "KPI") for the month of May. She advised that eight projects are planned for award this year at a value of \$48.6 million; however, we have awarded seven projects valued at \$34.8 million. She advised that Deputy Executive Director F. Michael Bucci and Finance Director, Jennifer Demmerle will be happy staff is bringing projects in a cost-effective manner with bids lower than the planning numbers.

Ms. Rotunno explained that staff is on target in terms of its project awards for the year. One project was planned for award in May but was not. She advised that five Requests for Proposal (hereinafter "RFP") for professional services are anticipated through July and staff will come to Board for authorization to issue those RFPs in the next couple of months.

Two more construction projects will be advertised by the end of July -- the Effluent Filter Improvements and the Easterly Tunnel Dewatering Substation Projects.

Over \$100 million in construction projects will be awarded this year and a lot of activity is anticipated. Ms. Rotunno stated that projects are on average 13.3% under the engineers' estimate. She explained that the engineers' opinion is a probable construction cost is rather low in a competitive market and a little out of KPI range. Staff would like the engineers to be less conservative with their estimates but she would rather have it low than high.

Ms. Rotunno stated that she was happy to report that the District is 100% compliant in regards to the delivery of construction projects. While only two projects have closed year-to-date both used less than 105% of the base contract, which is within the KPI. In

terms of the general allowance there is \$456 million in active construction contracts, \$31.64 million of which is in the general allowance and only \$3.85 million has been authorized, representing 10% of the 10% allowance. There has been a 1% change order on the total population of construction contracts currently being managed.

Taking into account projects completed between January 2009 and May 2011, projects are finishing on average \$8.5 million under what the bids, which is a very competitive management insight into how staff is handling the construction program.

Ms. Rotunno advised that two projects have closed this year with one meeting MBE and WBE subcontracting goals. The one small business enterprise project that we close out this year, which was for the Big Creek Interceptor Relining Project, did not quite meet the SBE goal, so we are 50% of that goal but there are a lot of projects in the queue we will close and we will get more data to put in the KPI.

Mr. Brown stated that the data Ms. Rotunno provided is informative. He stated that the CPI tool is very transparent but quantifies that things put in place are working. Perhaps more progress could be made in terms of predictability with bids and where it ends up with construction costs for the actual billing. He stated that the tool "is everything we talked about several years ago" when the program management initiative began and enables a good definition of the result of investing in the capital monitoring tool. He thanked Ms. Rotunno and her staff.

Ms. Rotunno stated that the private sector would be envious of the CIP tool; it is a tremendous advantage in managing the CIP and she recognized the staff and consultants for its development.

Mr. Brown stated that he may take up the invitation to see the CIP tool.

VII. Open Session

There were no matters for Open Session.

VIII. Public Session (any subject matter)

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

IX. Executive Session

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

X. Adjournment

MOTION – Mr. Brown stated that business having been concluded he would entertain a motion to adjourn. Mayor DePiero moved and Mr. Sulik seconded the motion to adjourn at 1:39 p.m. Without objection, the motion carried unanimously.



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



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