

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JULY 16, 2009

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
G. Starr
D. DePiero
S. Kelly
T. Longo
W. O'Malley
R. Sulik

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Mayor DePiero moved and Mr. O'Malley seconded that the minutes of the July 2, 2009 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia advised that Mr. Tom LaMalfa registered to speak at Public Session regarding the litigation budget, which did not pertain to any agenda action items. Mr. Brown indicated that the Board will entertain Mr. LaMalfa's comments at the appropriate Public Session and proceeded with the agenda.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP"). The federal government provided the District with a draft Consent Decree, which is being reviewed by the District's Law Department and David Burchmore of Squire Sanders & Dempsey (hereinafter "SSD"). The government requested that the District provide its comments to

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the government within two (2) weeks. Mr. Burchmore advised the government that the District will provide comments after the July 21st meeting wherein the government is expected to provide the District with its version of the CSO LTCP. Executive Director Ciaccia advised that the District meets with the federal government regularly and that progress is being made. The government is interested in moving forward with the Consent Decree discussions, but the District wants to postpone specific discussion of the Consent Decree until the government submits its proposed CSO LTCP. The District submitted its version of the CSO LTCP to the government last year and proposed a phased approach, which was rejected by the government.

The District received a \$50,000 grant from the Ohio Department of Natural Resources (hereinafter "ODNR") Office of Coastal Management to conduct the Walworth Run Green Infrastructure Feasibility Study. There are opportunities to incorporate green infrastructure into the CSO LTCP. The District is determined to incorporate both gray and green infrastructure into the CSO LTCP.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). The District entered into its third round of meetings with member communities, which are going well. The District's Department of Communication and Community Relations (hereinafter "CCR") conducted meetings with school board officials. Further, District staff met with state and local agencies including the Ohio Department of Transportation (hereinafter "ODOT") as it pertains to the innerbelt. The District met with those agencies to discuss the impacts of stormwater.

Executive Director Ciaccia moved to the next report item regarding capital program management. The Program Manager compiled a monthly report, and the Board will receive a briefing of the report's executive summary from Kellie Rotunno, Director of Engineering and Construction, during the Information Items portion of the agenda. Executive Director Ciaccia requested feedback from the Board as to whether they prefer receiving the PM report quarterly or monthly. The District established key performance indicators (hereinafter "KPIs") as well as the program metrics. Executive Director Ciaccia was pleased with Program Management (hereinafter "PM") reporting thus far and he believed it will provide the Board with valuable information on the PM process.

The Renewable Energy Facility (hereinafter "REF") construction and installation project is expected to cost over \$100 million and staff will make its recommendation for Board consideration as to the advertisement of bids in August.

Requests for Proposals (hereinafter "RFP") are being considered for the Euclid Creek Tunnel Dewatering Pump Station (hereinafter "ECT-DPS") at the Easterly plant. The ECT-DPS will be part of the CSO LTCP. The proposals are due July 31, 2009, and

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Executive Director Ciaccia was hopeful that the District will receive multiple proposals for consideration.

District staff met with City of Cleveland (hereinafter "City") attorneys to discuss outstanding business issues with the Cleveland Division of Water (hereinafter "CWD"). The City requested a rate reduction for their residuals-handling and is considering alternative methods for its residuals. Discussions included the future billing and collection agreements based upon the new billing system and the District's potential role in CWD's Automated Meter Reading program.

Executive Director Ciaccia moved to the next report item regarding the Small Business Enterprise (hereinafter "SBE") program. On June 24th, District staff attended an event at the Cleveland City Hall Rotunda, which was attended by many SBE firms. At this event, four firms were certified with the District as SBEs, 21 companies completed the vendor registration form, and five vendors submitted preliminary certification packets.

On June 24th, the District hosted an event at its Environmental Maintenance and Services Center (hereinafter "EMSC") to discuss the District's procurement procedure changes for professional services vendors. The District received 119 representatives from 82 different companies and presentations were given by Kellie Rotunno and Tiffany Jordan.

Executive Director Ciaccia advised that over 200 firms are certified with the District as an SBE, and SBE participation goals are expected to increase as more companies become certified with the District.

Executive Director Ciaccia moved to the next report item and indicated that labor negotiations are slowly proceeding. He speculated that the union will request using the fact-finding process soon. The negotiations have not included any economic issues. The District proposed wage increases at 2% for 2009, 1% for 2010, and 0% for 2011. The union's counterproposal was 6% in 2009, 6% in 2010 and 6% in 2011.

Executive Director Ciaccia moved to the next report item regarding the recent oil spills on the Cuyahoga River. The District continues conducting its investigation. The initial oil spill was discovered at Kingsbury Run. Subsequent to the initial oil spill, 500 dead gulls were discovered near the Mittal Steel plant, which is upstream from the Kingsbury site. Upstream from where the dead gulls were located, a company was discovered discharging into the Cuyahoga River and the District conducted analysis at this location. Executive Director Ciaccia turned discussion over to Frank Foley, Superintendent of Environmental Services, to report the recent developments of this issue to the Board.

Mr. Foley summarized the presentation he provided at the July 2nd Board meeting. As early as Monday, June 15th, members from the Western Reserve Rowing Association

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noticed dead or struggling gulls on the Cuyahoga River. Monday, June 22nd, participants at the 40th anniversary Burning River event noticed struggling gulls. Wednesday, June 24th, District investigators noticed grease-like material at the Kingsbury Run netting facility. Thursday, June 25th, Mike Scott, reporter for *The Plain Dealer*, inquired if the District was aware of the dead gulls discovered on the Cuyahoga River. Friday, June 26th, the District was notified by the Ohio Environmental Protection Agency (hereinafter "OEPA") that dead gulls were discovered in the turning basin.

Significant events occurred since the July 2nd Board meeting. On Thursday, July 9th, District investigators noticed an oily discharge coming from CSO-088, which is 2 miles upstream from the turning basin. That oily discharge was traced back to a facility adjacent to CSO-088. Monday, July 13th, District investigators noticed more oily material at the Kingsbury Run netting facility.

Many samples were collected and the District is awaiting some of those results. The grease-like material collected at the Kingsbury Run facility on June 24th was a mixture of vegetable and animal oil, and metals, as well as sulfate, which are commonly found in wastewater.

The District obtained feather samples, which were collected by the Coast Guard on June 26th at the turning basin. The laboratory was not able to correlate those feathers with any of the discharge.

District investigators pulled a dead bird out of the Cuyahoga River on July 1st. The bird and residue from the feathers were sent to the laboratory. The material on the feathers appeared to have animal and vegetable oil, similar to the grease-like substance found at Kingsbury Run.

The week of July 6th, samples were collected upstream at CSO-088, which contained animal and vegetable oil. In addition to the discharge discovered at CSO-088, a dead bird covered in a greasy substance was also found in this vicinity near the railroad tracks, and those feather samples were submitted to the laboratory. The results determined the substance to be an animal and vegetable oil substance.

The District requested that the laboratory compare the July 9th discharge at CSO-088, the June 24th grease-like substance sample located at Kingsbury Run, and the dead bird sample obtained in the Cuyahoga River on July 1st. According to Mr. Foley, the laboratory preliminarily indicated that the discharge from CSO-088 more closely matches the dead bird sample than the grease-like substance found at Kingsbury Run.

Mr. Foley stated that there are various contributing factors that could have caused this unfortunate situation, but he did not believe the actual cause will be identified. Potential

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sources at Kingsbury Run include cooking grease from a restaurant that is flushed from a catch basin after the rain or indiscriminate dumping. Greasy material was identified near Kingsbury Run at East 75th Street resulting from work being done in the collection system. District sewer maintenance crews have been cleaning that material, but investigators do not believe this to be the source of origin because the greasy substance does not match the samples.

The District awaits additional sample results and continues to investigate this incident. District inspectors regularly examine the Kingsbury Run regulators to identify any oil or grease that may build-up in the collection system, and the Kingsbury outfall is inspected on a daily basis. There were allegations of illegal dumping made regarding a restaurant, which was not located in the Kingsbury area, as well as, Mittal Steel, and the District followed up on those tips.

Mr. Foley stated that the next step involves examining all of the sample results in an effort to reach a conclusion. The District will obtain a list of all the restaurants within the Kingsbury area from the Cuyahoga County Board of Health (hereinafter "CCBOH"), and the District will send a letter to all of those restaurants.

Mr. Foley concluded by informing the Board that the District is unaware as to the place of origin for the grease-like substance for the reason that there are multiple locations where oil or grease was discharged into the Cuyahoga River within the last few weeks. Mr. Foley was not convinced that the grease-like substance found at Kingsbury Run resulted in the dead birds identified at the turning basin for the reason that it is upstream and that various sightings of birds struggling on the Cuyahoga River were reported almost two weeks before the grease-like substance was discovered on the river.

Executive Director Ciaccia added that Kingsbury Run has 2 booms that the grease-like substance would need to go through and travel upstream before entering the Cuyahoga River, and that it is more likely that the source of origin is from CSO-088, and resulting from the District's due diligence, we were able to track down that source.

Mr. Brown commented that he read the story in the newspaper and has discussed this issue with Executive Director Ciaccia. Mr. Foley's presentation addressed some of Mr. Brown's concerns including the location of the dead birds in relationship to the Kingsbury Run outfall and the fact that this would have to flow upstream. The oily discharge discovered at CSO-088 seems to be more consistent with the type of residue found on the dead birds, and Mr. Foley affirmed. Mr. Brown indicated that this location is upstream from where the dead birds were discovered and logically this is more likely to be the originating source. Mr. Brown recommended that this information be shared with the other state agencies.

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Mr. Brown inquired if District staff was able to conclude the source of the discharge found at CSO-088. Mr. Foley stated that it is an industrial facility located adjacent to CSO-088.

Mr. Brown inquired as to the action taken in response to this issue thus far. Mr. Foley indicated that the District is working with the OEPA, Coast Guard and ODNR on that response, and that the company at issue had stopped discharging into the river.

Mr. Brown questioned if there was a problem with the systems in place at the industrial processing facility, and stated that he was certain that this company had to abide by some type of pretreatment permit requirement. Mr. Foley advised that the company treats used restaurant grease for resale. Their system, unbeknownst to the District, was tied into a CSO outlet downstream of the last regulator.

Mr. Brown inquired whether this was a new operation, and Mr. Foley stated that this company has been there for about 3 years, but the facility is very old. Mr. Brown asked if the use of the facility was different and Mr. Foley advised that the prior company had a similar operation.

Mr. Brown inquired whether this company should have known that their system was tied into and the potential for this illegal discharge. He presumed that this would have some bearing as to any additional actions the District may take against them. Mr. Foley replied that "they could have known and probably should have known." The District's records indicated that it was tied into the combined sewer system.

Frank Greenland, Director of Watershed Programs, compared the industrial discharge to residential illicit discharges. Phase 2 regulations require communities to check for and correct any illicit discharges, and residential houses occasionally are tied into the storm sewer instead of the sanitary sewer. The District and communities conduct sampling at the outfalls to identify illicit discharges and then make those corrections.

Mr. Greenland indicated that the issue with the factory adjacent to CSO-088 is similar to a residential household being misconnected to the storm sewer. Mr. Greenland stated that this probably should have been known, but it was not clearly an illicit connection. Furthermore, gulls in this vicinity increased dramatically over the last year and have nested upon the steel mill property because it is undisturbed. Those gulls have unfortunately encountered an illicit discharge, but the good news is that this problem is being resolved.

Mr. Brown was concerned about the environmental impacts resulting from the oil spill and whether the party responsible for illegally discharging into the environment should assume some of the financial obligation for restoration of the environment.

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Executive Director Ciaccia advised that OEPA's enforcement agency is investigating this issue, which has not yet been completed, and the evidence may or may not support this particular industrial agency as responsible.

Mr. Brown commented that further due diligence is needed before reaching a final outcome and that he was appreciative that this matter was referred to the OEPA, but the offender must still abide by the District's *Code of Regulations* (hereinafter "Code"), which includes penalties and fines for illegal discharge. Mr. Brown requested follow-up from the staff as to this issue, and he indicated that the District's responsibilities include protecting the environment by enforcing those regulations.

Mayor Longo inquired if the entire investigation was turned over to the OEPA. Mr. Foley indicated that it was not and that the District is continuing its investigation.

Mr. Foley advised that the Code limits the District's enforcement over agencies discharging into the environment, and this becomes the OEPA's responsibility. The Code addresses discharge into a septic system when there are sanitary or combined sewers available, and to Mr. Foley's knowledge, there is no language within the Code that provides the District with a lot of authority when someone is discharging into the environment.

Mayor Longo questioned, "why not?" Marlene Sundheimer, Director of Law, stated that this is a situation of concurrent jurisdiction. The OEPA has the primary authority to enforce violations of discharges into the environment. The District through its sewer code has concurrent jurisdiction, but there may be a gap in authority in this particular situation.

Mr. Brown explained that he did not understand the gap when the discharge of grease is an illegal discharge. Mr. Greenland responded that the District enforces federal pretreatment regulations and separate sanitary codes and regulations. The District needs "to take a hard look at that gap and see what we can do about that."

Mayor Longo stated that he found the investigation to be confusing because the investigative agencies disagree as to the findings. He suggested that the District be the primary investigator when situations like these occur. All agencies should be on the same path and there should not be any glitches within the Code.

Executive Director Ciaccia stated that those points were well taken and that his goal is to enhance the entire water monitoring program. The District cannot rely on an agency that does not have the resources. We need to develop our own resources in order to take care of this region. Executive Director Ciaccia commented that the staff has done a good job

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in this particular matter, but we do need to tie up loose ends, which will be completed before reporting back to the Board.

Ms. Kelly inquired when the investigation will be completed and whether the company that was illegally discharging into the Cuyahoga River has had any prior illicit discharging violations. Mr. Foley replied that he was unaware of any prior violations, but he will review the file. Ms. Kelly commented that in the past, other companies that illegally discharged into the environment have been repeat offenders.

Executive Director Ciaccia moved to the next report and stated that although 2009 is more than 50% completed, the District has 55.9% left in its budget. The District is doing well financially and exceeding its rate study estimates, which is positive.

Executive Director Ciaccia moved to the last report item and informed the Board that on July 15th, House Bill 3202 (hereinafter "HB 3202"), the Water Protection and Reinvestment Act for 2009, was introduced by Congressman Earl Blumenauer (D-Oregon), which will establish a clean water trust fund. The District contacted Congressman Steve LaTourette (R-Ohio) to lobby his support on HB 3202. Congressman LaTourette and three additional Republicans signed onto HB 3202.

Executive Director Ciaccia advised that HB 3202 proposes taxing water-based beverages, soaps and detergents, toiletries, toilet tissue, water softeners, cooking oils, and pharmaceuticals in order to raise \$10 billion a year to be allocated for clean water projects. Executive Director Ciaccia speculated that there will be much opposition to HB 3202, and he indicated that he noticed a television advertisement by the Beverage Bottle Associations opposing taxation on their industry as it relates to the Health Care Bill. Staff will keep the Board apprised of any new developments pertaining to HB 3202.

Mayor Longo inquired if the \$100 million REF project is considered as part of the EPA's Consent Decree. Executive Director Ciaccia stated "no." Mayor Longo commented that he found that fascinating.

Mayor Longo stated the representation on the Cuyahoga County Planning Commission is set up by region, and the Chagrin region includes the whole southeast area going towards Chagrin. The Commission is developing a strategic plan for the Mill Creek drainage area and the District has been involved with those discussions. A meeting will be held Thursday, July 23rd to restructure the representative's districts according to watershed. Given the EPA and the federal government requirements, Mayor Longo inquired if the committee should consider rearranging its interface and encourage agencies such as the Cuyahoga County Planning Commission to organize along a watershed basis.

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Mr. Greenland stated that the SMP is centered and based on a watershed basis. Each watershed will be examined and will have Capital Improvement Plans and Operation and Maintenance Plans in order to return revenue back to the watersheds. The EPA supports a watershed-based permitting strategy, which should be a long-term goal for the reason that it allows an agency like the District and communities to examine a wide range of environmental issues facing the watershed and develop the most cost effective strategy to enhance water quality.

The current system enables the District to have a wastewater permit as well as other communities operating wastewater treatment plants to acquire their own wastewater permit. The District has the CSO permit and the communities have the Phase II Stormwater Permit. The total maximum daily load program is another forthcoming stormwater endeavor. There are expected permitting requirements to reduce stormwater pollutants. There are many silo programs to generate capital projects and programs. Mr. Greenland indicated that watershed-based projects will be a more cost effective approach to implement projects in order to protect water quality.

Mayor Longo commented that he will discuss this proposal with Paul Alsenas and members of the Cuyahoga County Planning Commission. He was unsure whether the watershed-based approach will be an effective strategy, but "every community is part of some watershed" therefore this seems to be the most efficient approach.

Mr. Greenland added that when considering a broader scale, bigger problems are identified and resources will be invested to address the larger issues.

V. Information Items

1. **Write-off of Direct Billing Accounts in the Amount of \$15,500.**
2. **Write-off of Inactive Accounts in the Amount of \$1,575,071.80.**

Jennifer Demmerle, Director of Finance advised that the first two information items pertain to annual write-offs for accounts deemed uncollectible by the District. Direct billing write-offs are for customers directly billed by the District and were in the amount of \$15,500, and the majority of those write-offs are for customers who filed for bankruptcy.

The write-off for inactive accounts in the amount of \$1,575,071.80 are for accounts inactive for at least 6 years and no cash activity for two 2 years. Ms. Demmerle stated that this is consistent with the prior year's write-offs and represents less than 1% of the District's total revenues.

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Mayor Longo inquired about foreclosure-related inactive accounts. Ms. Demmerle stated that the majority of inactive accounts are final bills, which includes foreclosures, land bank accounts, and discharged bankruptcy cases.

Mayor Longo stated "have we had a chance to tie that information back, like the county would have for the collections for the property taxes or what the banks are doing trying to unload their properties? There has to be a correlation here because somebody just can't have a vacant piece of property or be living in a place and it's inactive and there's no sewage or water coming in or out that facility." F. Michael Bucci, Deputy Executive Director, replied that those write-offs are for accounts from 2002 and prior.

Mayor Longo questioned if the District "has any idea what's going to happen in the next 3 to 4 years?" Mr. Bucci stated that staff has been examining this and will conduct further analysis. The District is also working on an agreement with the City of Cleveland. Unless a house is completely abandoned and is a vacant lot, the water meter is not shut off. It is difficult crosschecking the water and sewer bills with county records. Mr. Bucci anticipates that CWD's new billing system and the District's GIS system will assist with this in the future.

Executive Director Ciaccia added that the District has not seen a sharp increase in accounts receivables over the past 90 days.

Mayor Longo commented that the housing market crash could tremendously impact the District's revenues. Ms. Demmerle stated that the District takes the economy into consideration for its budgeted uncollectible amount, which was increased to 4% or 5% from 2%.

Ms. Kelly informed Mayor Longo that the banks have been assuming the past and delinquent water and sewer bills on foreclosed properties when they are transferred, and that delinquent water and sewer bills do get paid. Mayor Longo questioned if this occurs even when the properties are dumped for \$5,000 or \$10,000. Ms. Kelly affirmed and indicated that even if there is negative escrow to the bank, those properties are not transferred unless those water bills are paid.

3. Executive Director Mid Year Report.

Executive Director Ciaccia advised that the mid-year performance report provides the Board with an overview of the accomplishments made in conjunction with the District's performance plan. Executive Director Ciaccia requested that the Board peruse the mid-year report and he will entertain any questions.

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Mr. Brown recommended that a Board subcommittee be formed in order to review the mid-year report and highlight the Board's concerns. This subcommittee should meet with Executive Director Ciaccia to discuss effective strategies and evaluate the goals that were agreed upon at the beginning of the year. Mr. Brown suggested that concerns, litigation issues, recovery plans, and projects no longer on schedule should be discussed in this forum.

Executive Director Ciaccia supported Mr. Brown's suggestion. Staff's performance goals are aligned with the District's Strategic Plan, and in order to fully comprehend the mid-year report, the District's Strategic Plan and underlying issues must be taken into consideration.

Executive Director Ciaccia stated that things are going well as everyone is moving forward in the same direction. There is a lot on the table, but there are no stumbling blocks at this time. Although the District's biggest challenge is working with the government on the CSO LTCP, Executive Director Ciaccia was comfortable with the District's approach thus far on the CSO LTCP government negotiations.

Mr. Brown appreciated Executive Director Ciaccia's comments and indicated that the mid-year report is a good document. It would be helpful to ensure clarity on both sides in terms of the in-game and end outcome so that when we reach the year-end review, there is no disconnect.

4. Second Quarter Outside Counsel Report.

Ms. Sundheimer advised the Board that the Second Quarter Outside Counsel Report was incorporated into their packets for review and that she was not planning on making a formal presentation; however, she will entertain any questions from the Board.

Mr. Brown commented that the Outside Counsel Report provides the Board with information pertaining to the District's level of engagement of outside counsel on certain cases. Mr. Brown suggested that it would be beneficial for the Board to reach a level of understanding as to the District's exposure on those legal matters and the amount of resources being allocated for the engagement of outside counsel.

Ms. Sundheimer corroborated Mr. Brown's comments and advised that those issues should be discussed in an Executive Session. She indicated that a summary report regarding the District's relevant exposure can be compiled and presented to the Board in Executive Session.

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5. Program Management Status Report and Update – May 2009.

Executive Director Ciaccia explained that a standing monthly PM meeting is held between Mr. Bucci, the program manager, Engineering, Law and Finance Departments, and himself, and that a capital PM report will be generated monthly. Executive Director Ciaccia asked for the Board's feedback as to the PM report format and inquired whether the Board desired receiving the PM report on monthly, quarterly, or biannual basis. Discussion was turned over to Ms. Rotunno to provide the Board with the PM presentation.

Ms. Rotunno presented the Board with an update on the Capital Improvement Program (hereinafter "CIP") and the performance made since instituting PM principles. The PM report is generated on a monthly basis and the Board was provided with an executive summary for May 2009.

The monthly status reports include three sections. The first section is the executive summary. The second section is the PM consultant contract summary and the assessment of their key performance indicators (hereinafter "KPI"). The third section includes the financial contract data summarized on a program level on a project-by-project basis. The PM report compiles project-specific data for 41 projects that are currently being managed under the CIP. The entire PM report is approximately 250 pages, and the Board received the executive summary only, but the entire report is available for inspection by the Board members.

The PM report pulls data from multiple sources and currently the data is being retracted from the Oracle financial system. The District implemented a contract for a construction scheduling and financial tracking tool by Primavera called P6. Data is also compiled from the Department of Engineering and Construction staff, construction supervisors, project managers, and the Office of Contract Compliance.

Ms. Rotunno proposed that the executive summary be included in the second monthly Board meeting packets as an information item. The Board may inform staff as to whether they prefer having a monthly, quarterly or biannual formal presentation.

Ms. Rotunno advised that there were three primary key performance objectives under the CIP including delivering at least 90% of the planned CIP, delivering more accurate engineer estimates, and delivering 85% of projects with less than 5% change orders. Ms. Rotunno advised that there are two methods used to determine whether 90% of the planned CIP is being delivered and two tracking metrics used. One is the number of projects awarded and the other is the dollar value of the project awarded. It is important to take both of those into consideration because although we may be achieving the project

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metric, we could be lagging on the financial metric. If the District is plus or minus 10% of the lowest bidder, then the engineer's estimate was fairly accurate. More details will be provided as to the delivery of 85% of District projects within 105% of the base contract amount.

The District's goal for 2009 included the delivery of 48 projects. In order to meet the goal of 90%, the District will need to deliver 43 of those projects. Ms. Rotunno advised that 18 projects should have been awarded; however, the District is lagging at 22% and awarded only 14 of those projects. Ms. Rotunno referred to a graphic and the light blue bars, which depicted the target goal, and the dark blue bars, which indicated the District's actual performance.

Ms. Rotunno advised that the District issued a large number of design projects in January, which were most likely to have been carried over from 2008, and the District is close to tracking with respect to what was planned for on the design project basis. The District was meeting its KPIs in January and February for construction projects, but lagged behind in March and May. Ms. Rotunno advised that the District is not meeting its KPI of delivering 90% of the CIP on a cash flow basis and is lagging behind on a monthly basis.

The District's goal for engineer's estimates is plus or minus 10% and the actual to-date is minus 6% of the bids. Ms. Rotunno referred to a table that summarized all of the bids awarded since January 2009. The engineer's estimate is adjacent to the award amount and the variance was depicted on the right. At the bottom, the construction awards total was listed at 6% under the engineer's estimate. The fluidized bed incinerator procurement was the largest project in that field of projects and was delivered within 10%. Ms. Rotunno explained that the District is not meeting its individual project goal of 10%, but in totality on the aggregate of the projects, we are achieving that metric. Ms. Rotunno assured that the necessary measures are being taken to improve project-specific estimation on these jobs to ensure that each project meets the KPI.

Ms. Rotunno moved to the third KPI, which was 85% of project delivery within 105% of the budget. Ms. Rotunno stated that "we have to deliver 85% of our projects within that range." She referred to a graphic depicting general allowances within District contracts used to manage changes on the base contract, which are authorized by Executive Director Ciaccia. There are specific allowances on construction contracts typically called "work orders," which are authorized by Ms. Rotunno. Ms. Rotunno referred to a graphic depicting the total allocation on construction contracts, and advised that those have been managed very tightly. Although those contract funds are available, they can only be allocated per the approval of Ms. Rotunno or Executive Director Ciaccia. Ms. Rotunno reported that the District has delivered four out of five projects, or 80% were closed within 5% of the base contract amount.

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Ms. Rotunno moved to the second part of the third KPI, which was the percent change on the contract from the base amount, and she reported that the District was actually 3% under the base contract amount. The aggregate of 3% under the base contract amount suggests that the District did not excessively use the budgeted specific allowance or general allowance funds excessively, which was a positive indicator.

Ms. Rotunno moved to the Minority Business Enterprise (hereinafter "MBE"), Women Business Enterprise (hereinafter "WBE") and Small Business Enterprise (hereinafter "SBE") tracking, and advised that the District's subcontracting goal is 20% on its CIP. Ms. Rotunno referred to graphic wherein the light blue bars represented WBE goals and the dark blue bars indicated MBE goals. The prime contractors committed \$17.9 million, or 18%, to a mixture of MBE and WBE firms, which was within 2% of the District's subcontractor participation goals. The summary did not incorporate SBE goals since the report was compiled before implementation of the SBE program. Subsequent versions of the PM report will include the SBE participation goals. Ms. Rotunno advised that the tracking report indicates the amounts paid out to the subcontractors.

Ms. Rotunno summarized the PM report and stated that the District is lagging behind on 90% delivery of projects on a cash flow basis. The District is meeting some of the metrics relative to construction bids versus engineer's estimates. The District is meeting its total percent change on delivering 85% of projects within 105% of the base budget, but is missing on the percentage of projects within that metric. Ms. Rotunno anticipated an increase in the numbers depicted in red. With respect to the KIPs, it is good to be under in some cases but bad to be under in terms of the negative percentages.

Ms. Rotunno reminded the Board that the PM reporting process is in its initial stages and that this new tool requires learning how to report the data from multiple sources and is updated regularly. Ms. Rotunno informed the Board that the table was updated prior to the meeting and that the District is 13% under its KPI for the number of projects, 16% under on the CIP award, and 8% under the number of projects closed under the base contracts. The numbers continue to improve and evolve, and staff monitors and tracks PM regularly. A summary KPI table will be incorporated into the Board's monthly reports and will precede the executive summary. Ms. Rotunno advised the Board that she will entertain any of their questions.

Mr. Brown thanked Executive Director Ciaccia and Ms. Rotunno for providing a tool that enables the Board to monitor the capital planning process and PM in which the District made a significant investment. Mr. Brown stated that the PM report is an effective tool providing concise information. Mr. Brown was pleased with the report's format and specifically appreciated the use of the red and green inks indicating the program's

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metrics. Mr. Brown suggested that on some of the lagging metrics, an action item be included outlining a recovery plan.

Executive Director Ciaccia stated that Mr. Brown raised a good point and requested that Ms. Rotunno explain the timing issue involving a continuous lag on the financial reporting.

Ms. Rotunno indicated that "that is exactly where we want to go with this report." The executive summary narrative provides detailed data information. The initial report is light on the reporting and the staff intends including in subsequent reports a correction plan in order to reach the KPIs by the end of the year. Ms. Rotunno reminded the Board that the PM contract incorporates an at-risk fee component stipulated upon meeting those KPIs and we will be working together to make sure that happens.

Mayor Starr thanked Ms. Rotunno for the PM update and commented that the District has 43 pending projects totaling approximately \$96 million. Mayor Starr stated "they are categorized treatment plants, collection systems, CSOs are the major one, and you've got 85% that are under 5%, at 5% or below." Ms. Rotunno stated that they are currently at 80%, but the goal is 85%.

Mayor Starr inquired as to the reason the Board did not receive a listing of all of the pending projects. Ms. Rotunno advised that next month's PM report will include an 11" x 17" pullout listing all of the projects, financial data, contractor and consultant information, the project's status, including pending changes and an estimated date of completion.

Mayor Starr referred to the program summary construction allowance on page 10, and inquired if the Board can track those change orders because in the past, change orders "may be disguised as other phrases in the contracts and it was not easy to discern the actual overage or cost overruns." Mayor Starr inquired if the four subcategories and authorized general allowances were all considered to be change orders.

In response to Mayor Starr's inquiry, Ms. Rotunno advised that the terminology for "general allowance" and "specific allowance" was developed during the implementation of the construction contract change policy. General allowances are authorized by Executive Director Ciaccia for change orders within 10% of the base contract amount. Change orders exceeding the 10% general allowance requires Board authorization. Ms. Rotunno advised that the staff is tracking the use of general allowances and reporting them as changes.

Mayor Starr inquired if Executive Director Ciaccia approves change orders up to 10% of the original contract price, the Board approves change orders over the 10% original

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contract amount, with Ms. Rotunno authorizing general allowances. Ms. Rotunno clarified that the Director of Engineering and Construction authorizes specific allowances for unquantifiable work elements unforeseen by the contractor at the time the contract is bid.

Mayor Starr inquired as to how many District projects exceeded the 10% base bid since the change in administration roughly two years ago. Executive Director Ciaccia stated "none."

Mayor Starr stated "that's not a fair question because I want to know how many of these contracts started with the prior administration that we're trying to clean up the mess or close out." Ms. Rotunno replied that she refers to those as the "legacy projects" which significantly contribute to the \$4.5 million listed in the report for specific allowances. The legacy projects had dozens of specific allowances that were allocated and budgeted but unknown, and we have been able to manage them within the contract price without modification. Mayor Starr requested that Ms. Rotunno explain what is "unknown." Ms. Rotunno clarified that unknown is "something that you cannot tactilely touch or see."

Mayor Starr commented that the District implemented PM to track construction contracts, which has not been done in 35 years. Ms. Rotunno replied that "we are doing so much more now" since her joining the District 15 months ago. The goal is to provide a transparent process that is easy to streamline on a project-by-project basis.

Mayor Starr commented that "past contracts that were 30%, 40%, 50%, or 80% over original bid amounts, in order to establish our credibility back to us as a Board and to the general public, the ratepayers, is it fair to say that we are now in the last two years managing our money better concerning construction contracts than we did in the past?" Ms. Rotunno replied "absolutely yes." The construction supervisors have dramatically changed their reporting protocols and are "the warriors out on the front line with our contractors." Ms. Rotunno commented that the construction supervisors heard "Executive Director Ciaccia's mantra and challenge to us and have stepped up and are managing their contracts." Furthermore, the Law Department partnered with the Department of Engineering and Construction to interpret contracts and changes. According to Ms. Rotunno, we are holding the line, which resulted in better fiscal control over our construction projects.

Executive Director Ciaccia added that Board provided him with the authority to approve general allowances up to 10% of the original contract bid, and the goal is under 5%.

Mayor Starr applauded the new administration for what they accomplished in the last two years, and stated that the remaining question is "what happened in the last 35 years?"

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In response to Mayor Starr, Mr. Brown commented that he was not sure whether we can speak to that, but one thing that brings value to this organization is its approach, which enabled staff to achieve the common objective. The ability to remain effective is dependent upon the performance of his peers. This Board stressed the importance of transparency and staff has identified the types of tools necessary as well as establishing accountability within the District, which "is a different approach to life in terms of where we are in 2009."

Mr. Sulik commented that he would prefer receiving the PM report monthly until the Board familiarizes itself with the report format. Mr. Sulik stated that "this is a great report" and that the Board never received this type of information.

Mayor Longo inquired as to how the Board will be apprised of any changes or unique situations on District projects. Ms. Rotunno replied that on page 8 of the executive summary was a section titled "Critical Issues and Path Forward" and this section will provide the Board with advance notice of any potential issues or problems. On page 9, there is a section titled "Pending Professional Services/Contract Modifications" which is intended to provide the Board with any forthcoming issues. Furthermore, the 11" x 17" foldout will summarize all District projects and have a similar project-by-project analysis depicted by red and green inks.

VI. Consent Agenda

There were no Consent Agenda items.

VII. Action Items

Authorization to Advertise

No discussion ensued on Resolution No. 155-09.

Resolution No. 155-09

**Southerly Wastewater Treatment Plant
Renewable Energy Facility (REF),
procurement of Steel H-Piles, Contract
28G. Engineer's estimate \$2,750,000.00.**

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution No. 155-09. Without objection, the motion carried unanimously.

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Authorization to Enter into Agreement

No discussion ensued on Resolution No. 156-09.

Resolution No. 156-09

Entering into an American Reinvestment and Recovery Act (ARRA) Agreement with the Ohio Environmental Protection Agency and Ohio Water Development Authority for the ARRA funding of the Mill Creek Interceptor Main Branch – Contract MCI-MB.

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution No. 156-09. Without objection, the motion carried unanimously.

Sewer Use Code Matters

No discussion ensued on Resolution Nos. 157-09 and 158-09.

Resolution No. 157-09

Settlement Agreement with Juanita Bryant. Settlement amount: \$6,262.77.

Resolution No. 158-09

Settlement Agreement with Keith Manning. Settlement amount: \$75.63.

MOTION – Mayor Longo moved and Mr. O’Malley seconded to adopt Resolution Nos. 157-09 and 158-09. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

Resolution No. 159-09

Contract with Montgomery Watson Harza Americas, Inc., to perform the Easterly Facility Plan Improvements – Contract EFPI-1. Cost not to exceed \$1,609,065.00.

Resolution No. 160-09

Contract with Wonderware NorthEast for the procurement of human-machine interface software and thin client hardware. Cost not to exceed \$427,000.00.

Resolution No. 161-09

**Contract for the purchase of electricity at
the Southerly Wastewater Treatment
Plant, in the amount of \$9,026,000.00.**

Executive Director Ciaccia advised that the prices for the purchase of electricity at the Southerly plant were locked in just this morning prior to the meeting and the District received a favorable bid, which will save the District \$900,000 annually.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 159-09 through 161-09. Without objection, the motion carried unanimously.

VIII. Open Session

There were no items for discussion.

IX. Public Session (any subject matter)

Mr. LaMalfa reported to the podium to address his comments to the Board. Mr. LaMalfa indicated that he was primarily interested in the economics of litigation. As a researcher and analyst, Mr. LaMalfa examined similar matters and inquired if the District would make available its financial statements and data on recoveries and litigation expenses, and secondly, whether any recent cost benefit analysis has been conducted on this topic.

Executive Director Ciaccia stated that no formal cost benefit analysis has been conducted to date.

Mr. LaMalfa inquired if the data is available to examine recovery and expenses over the past decade. Ms. Demmerle indicated that she will assist Mr. LaMalfa with his request.

X. Executive Session

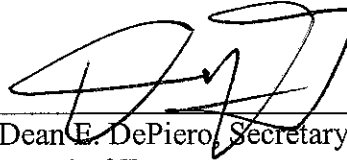
Mr. Brown stated that there were matters for discussion in Executive Session.

MOTION – Mr. Sulik moved to enter into Executive Session to discuss litigation matters pertaining to KMM&K, KM&M, 3220 Woodland Avenue Limited, and federal litigation matters, and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 2:00 p.m. to 2:34 p.m.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mr. O'Malley seconded the motion to adjourn at 2:36 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