

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
JULY 17, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Mr. Brown.

I. Roll Call

PRESENT: D. Brown  
T. Longo  
G. Starr  
R. Sulik  
S. Kelly  
D. DePiero  
A. Liberatore

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

Mayor Longo advised that there was an error on page one (1) of the July 3<sup>rd</sup> Board meeting minutes in which Mayor Longo was listed as being present and absent. Mayor Longo was absent from the July 3<sup>rd</sup> Board meeting.

**MOTION** – Mr. Liberatore moved and Ms. Kelly seconded that the minutes of the July 3, 2008 Board meeting, be approved with the amendment. Without objection, the motion carried unanimously.

III. Election of Officers

Mr. Sulik commented that in the past year the District underwent transition including a new senior management team, revised procedures for awarding and monitoring construction contracts through completion, expansion of the legal staff, pursuing the hiring of an outside consultant to oversee program management (hereinafter “PM”), and the expansion of the internal auditing department. In the spirit of maintaining continuity of leadership, he nominated Mr. Brown as President, Mayor Longo as Vice President and Mayor DePiero as Secretary.

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Mayor Starr inquired about the Board's practice of annual rotation of elected officers as customarily done over the District's 35 year history. He questioned if the Board plans to return to the rotation method at some time after completion of the FBI investigation.

Mr. Brown stated that in accordance with the Bylaws, the Board is required to hold an annual election of officers and that the nominated candidates are willing to serve another term; however, the Board may consider any form of placement of officers including the rotation method. Executive Director Ciaccia explained that the rotation method was not used for the full 35 years since the District was established. Mr. Bucci clarified that for approximately the initial fifteen (15) years of its operation, the Board President was constant and that the rotation method was not implemented until sometime in the 1980's.

**MOTION** – Mr. Sulik moved to nominate Mr. Brown as President, Mayor Longo as Vice President and Mayor DePiero as Secretary, seconded by Ms. Kelly, without objection the motion carried unanimously.

Mr. Brown stated that the past year has been challenging, but positive and indicated that much time was invested by Board members to move the agenda forward. He showed appreciation to the Board and staff for its engagement, dedication and leadership efforts demonstrated to move forward with District goals.

Director of Law, Marlene Sundheimer, administered the oaths of office to Mr. Brown, Mayor Longo and Mayor DePiero.

**Board of Trustees Elected Officers**  
**2008 – 2009**

***Darnell Brown, President***  
***Mayor Thomas J. Longo, Vice President***  
***Mayor Dean E. DePiero, Secretary***

IV. Public Session

Executive Director Ciaccia stated that Mr. Norman K. Edwards and Mr. Perry Roberts, Sr., two (2) members from the public, registered to speak at Public Session regarding diversity, which was not a specific agenda item issue. Mr. Brown informed Board members that Mr. Edwards was present at the July 3, 2008 Board meeting to discuss diversity but left the meeting prior to the second Public Session. Mr. Brown stated that, with Board approval, he would be willing to grant Mr. Edwards and Mr. Roberts the opportunity to speak at the first Public Session agenda item rather than waiting for the second Public Session.

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**MOTION** – Mayor Starr moved and Ms. Kelly seconded the approval of allowing Mr. Edwards and Mr. Roberts the opportunity to speak at the first Public Session although it was not on a specific agenda item. Without objection, the motion carried unanimously.

Mr. Edwards stated that he is President of the Black Contractors Group. He advised Board members that over the past three and one half years he appeared at several meetings to discuss inclusion on the District's projects as far as contractors and workforce. Mr. Edwards stated that he was dissatisfied with the lack of construction work being awarded to African American contractors by the District.

Mr. Edwards indicated that past General Counsel, William Schatz, did not allow him to speak at Board meetings regarding "front companies" receiving awards on District construction projects. He stated that 90% of the District's construction projects are awarded to KM&M, Independence Excavating and Nerone and Sons and are not in compliance with the District's subcontracting goals and do not employ minority or female workers.

Mr. Edwards indicated that Executive Director Ciaccia and Director of Administration and External Affairs, Constance Haqq, met with him to discuss the District's development of the Small Business Enterprise Program (hereinafter "SBE").

Mr. Edwards stated that the Black Contractors Group tried to obtain diversity on the Metro Hospital jobs. He stated that a Mr. West at Metro Hospital chose to use Project Labor Agreement(s) (hereinafter "PLAs"), and that the Black Contractors Group challenged the use of PLAs and won its case in federal court. As a result, the County no longer uses PLAs, with the exception of single projects not including collective bargaining agreements.

Mr. Edwards stated that he visited the Granger Road construction site and was disappointed at the lack of minority laborers, contractors and drivers. He stated that the District paid large amounts of money to prime contractors that do not employ minority workers. He cited as an example that for seven (7) months trucks were parked on Granger Road and the trucking firms were paid even though the project was idle. He stated the District is wasting millions of dollars on prime contractors who become fat millionaires.

Mr. Edwards stated that due to the lack of employment opportunities, he witnessed many African Americans losing their homes, cars and the financial means needed to send their children to college. Fortunately, his five (5) children were afforded the opportunity to attend and graduate college. He commented that African Americans are sometimes stereotyped as drug dealers and he stressed that this is not accurate. He is acquainted with many hardworking and honest African Americans desirous of employment.

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Mr. Edwards stated that the Board is diverse and it is unclear as to why minority and women participation is lacking on District projects. He alleged that the DiGeronimos (Independence Excavating) and KM&M will not employ African Americans, but have been awarded many District projects. He accused prime contractors awarded District projects to have stolen from the District, as well.

Mr. Edwards inquired how qualified and skilled minority contractors can be given the opportunity to participate and perform on District construction projects. He stressed that minority business enterprises (hereinafter "MBE") have the ability to obtain proper bonding, own their equipment and are qualified, and is uncertain why District projects continue to be awarded to the same companies.

Mr. Brown responded to Mr. Edwards' comments. He stated that the Board has recognized this issue as a significant challenge, and as a Board, they have engaged a number of resources to determine how to establish a legitimate affirmative action program that would withstand legal challenge, and how to achieve this program in an expedited manner. He explained that District professional services contracts have incorporated diversity and inclusion; however, construction contracts need to be more inclusive. Mr. Brown pointed out that the Board and senior staff members reflect commitment to diversity and the Board's commitment to inclusion extends to the contracting community, as well. He further stated resources have been allocated to engage in the necessary research to establish a legitimate and legally defensible subcontracting program that affords greater opportunity for participation in District contracts. The region will become truly successful when it includes participation from all members of the contracting community.

Mr. Brown advised that a consultant has been retained by the District to facilitate in the development of the District's SBE program. One of Executive Director Ciaccia's performance goals was to implement a subcontracting program to provide greater contracting opportunities for local businesses and to increase local community participation and diversification on District projects. This issue is of great importance to the Board and is included as part of the criteria established for Executive Director's performance evaluation.

Mr. Brown expressed the Board's awareness of these ongoing issues related to construction contracts and indicated that it shares Mr. Edwards' concerns. Past practice did not include proper documentation to verify what was occurring on construction contracts. Mr. Brown emphasized that the Board is committed to addressing this issue and will demonstrate this by its performance. He also stated that the District is willing to work with Mr. Edwards and anyone else who is interested in the issues raised by Mr. Edwards because those issues are important for the future of the District.

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Mr. Edwards stated he had heard "lip service" before from University Hospitals and throughout the City of Cleveland. He suggested that prime contractors who exclude minority subcontracting goals should not be permitted to bid on District projects.

Mr. Edwards expressed his concern as to the District offering Mr. Schatz a buyout in light of the pending FBI investigation and "what was stolen from here."

Mr. Brown reminded Mr. Edwards to not stray from the particular issue he wished to address with the Board, which was diversity. He reminded Mr. Edwards that he was to discuss the issue as it relates to the District. Mr. Edwards stated "We're talking about the City of Cleveland, Mr. Brown. You have not put forth an effort to make a change for the City of Cleveland." He further stated "You have done nothing for diversity, so don't sit up there and give us a show."

Mr. Edwards became increasingly upset and claimed that Mr. Brown has "done nothing" for diversity through his position with the City of Cleveland. As Mr. Brown attempted to bring the meeting back to order, Mr. Edwards continued to state "It's not fair. It's not fair. You need to get it together and this Board should get it together. Don't be respectful because you're not respecting me by not putting black people to work and you know that they're not working. You know that and you sit up there." When Mr. Brown told him he was done listening to Mr. Edwards, Mr. Edwards stated "I know you're done. You should be done. You've done a horrible job. A horrible job. You've done a terrible job and you've stolen money from here, our tax dollars, our tax dollars."

At this point Mr. Brown again requested the meeting be brought back to order. Mayor DePiero attempted to diffuse the situation and acknowledged Mr. Edwards' frustrations and the valid points he made. Mayor DePiero stated that the new leadership at the District is looking at all of these issues and understands the frustration. Mr. Edwards stated that Mayor DePiero does not understand how it feels to be black. Mayor DePiero acknowledged that he does not, but stated that Mr. Edwards was given the opportunity to speak, and this was a public forum that must be governed by rules and time limits set forth by the Board that must be complied with.

Mr. Edwards stated that "it is a public meeting and we use our tax dollars for the Sewer District. I pay my water bill". He asked the Board if African Americans, minorities and females will be given the opportunity to work on District projects in the future. Mayor DePiero stated that the "answer is yes" and explained that the District is in the process of putting a new subcontracting program in place. Mr. Edwards stated that "Mr. Schatz said 'yes' also when I sat down with Mr. Schatz".

Mr. Brown again attempted to call order to the meeting. Mr. Brown acknowledged that the Board understood the complaints expressed by Mr. Edwards. The Board explained its

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position on this issue and the actions being taken to address his construction contracting concerns. Mr. Brown requested the Board be given an opportunity to implement its SBE program. Mr. Brown suggested Mr. Edwards track the process being used by the District to increase construction contracting opportunities. Mr. Brown challenged Mr. Edwards to hold the Board accountable, if the program does not deliver.

Mayor Starr thanked Mr. Edwards for his comments and questioned if he had any written documentation supporting his claims. Mr. Edwards explained that his attorney possesses three (3) years of documentation and over 1,000 documents regarding his allegations.

Mayor Starr advised that he would like to address Mr. Edwards' concerns. Mayor Starr inquired as to which department was responsible for the oversight of the MBE/WBE program. Executive Director Ciaccia clarified that the program was managed by an individual, not a department, responsible for the oversight of MBE/WBE program who reported to the former General Counsel.

Mayor Starr inquired if one (1) individual was assigned to ensure that prime contractors were in compliance with the District's 15% MBE and 5% WBE participation goals. Executive Director Ciaccia clarified that one (1) individual managed the program and, upon her departure, the Law Department assumed the job responsibilities.

Mayor Starr questioned how long this position was vacant, to which Deputy Executive Director, Michael Bucci, responded that it has been between three (3) and five (5) years. Mayor Starr stated that Mr. Edwards' concerns are legitimate because it has taken the District five (5) years to fill the position designated to enforce MBE/WBE goals. Mayor Starr stated that the MBE/WBE goals were not met and inquired if Executive Director Ciaccia agreed with this observation. Executive Director Ciaccia stated that he felt the benchmarks, or goals were enforced minimally. Mayor Starr questioned if the new Contract Compliance Manager will have the ability to review past construction contracts to verify if benchmarks were met. Executive Director Ciaccia advised that the District has reviewed this issue and, in the past, it would not be atypical for a contractor to set MBE/WBE goals at 15% and 5% and achieve something less on District projects. Executive Director Ciaccia speculated that MBE/WBE goals were not met for several years due to a lack of monitoring of the District's MBE/WBE program. As a result, this created an environment where there was not much commitment to reach MBE/WBE goals on projects.

Mayor Starr stated that although some may be alarmed by Mr. Edwards' style and delivery of his allegations, he was not. Mayor Starr stated that he was more concerned as to the accuracy of Mr. Edwards' claims. Mayor Starr inquired if the District was not enforcing its subcontracting standards, and Executive Director Ciaccia stated that Mr.

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Edwards' claims are legitimate as it relates to the monitoring of the District's MBE/WBE subcontracting program.

Executive Director Ciaccia stated that he and Ms. Haqq held a meeting with Mr. Edwards to discuss his concerns. Executive Director Ciaccia felt that the meeting was positive and discussions entailed the District's past and future subcontracting program goals as well as the need for a disparity study. At the meeting, Mr. Edwards was far less emotional and brought up workforce issues and was advised that the District does not have specific workforce minority and female goals. They also discussed the City of Cleveland's affirmative action program which sets residency goals but is a race- and gender-neutral program. Mr. Edwards suggested the District integrate worksite goals, similar to the State's program, in its SBE program, and Executive Director Ciaccia explained that he was not sure if these goals were geared towards a private company's affirmative action goals, or a public agency's worksite goals. Executive Director Ciaccia advised Mr. Edwards, at their meeting, that he would research the State's worksite goals. Furthermore, he explained that it is not unusual for a public entity to have a race- and gender-neutral program. Executive Director Ciaccia stated that there is state law relative to worksite goals that is specific to state contracts and further research is required to identify goals for agencies other than procurement specific the State of Ohio.

Mayor Starr reiterated Mr. Edwards' list of accusations of the use of front companies, contractors being paid while not performing work, millions of dollars being stolen and contract steering. He inquired if Mr. Edwards had evidence identifying that these contractors were hired by the District. Mr. Edwards requested clarification from Mayor Starr. Mayor Starr questioned if Mr. Edwards had evidence proving that contractors, hired by the District, are included in his allegations, more specifically, paying contractors while no work is being performed or that employees of the District were steering contracts. Mr. Edwards inquired if Mayor Starr was referring to contractors required to work on the Granger Road project and then responded that his lawyer has this information. Mayor Starr requested that Mr. Edwards share this information with the Board and the public indicating that it could be informative in light of the discussions related to the ongoing FBI investigation over the past eighteen (18) months.

Mr. Brown stated that when Ms. Sundheimer joined the District, one of her initial charges was to research the District's past construction contract policy and the monitoring of these projects. The Board then became aware that there was little to no monitoring of the District's subcontracting program. The Board began the process of establishing a defensible and effective subcontracting program to provide opportunities within the contracting community to participate on District projects. Mr. Brown stated that Mr. Edwards' concerns are compatible with the Board. This issue is very important to the Board and as the District moves forward with implementation of its SBE program model, he challenged all parties to monitor the development and hold the Board accountable.

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Executive Director Ciaccia informed Mr. Brown that there was one (1) more public speaker, Mr. Perry Roberts, Sr.

Mr. Roberts informed Board members that he is Secretary of the Black Contractors Group. He stated that the discussions involving the District's proposed subcontracting program sounded good. He indicated that he is as passionate as Mr. Edwards regarding the lack of work for African American contractors, and cited the Euclid Corridor Project as an example. He stated that with regard to the Euclid Corridor Project, he noticed one (1) or two (2) African American workers working on this project compared to a couple hundred Caucasian workers.

Mr. Roberts acknowledged that as the District develops its subcontracting program, it will need to be in accordance with law, include a disparity study and take the *Richmond v. Croson* case into consideration. In an effort to increase participation, he recommended the District not limit its MBE/WBE goals to construction contracts only and to hold prime contractors accountable for maintaining District standards. He suggested MBE/WBE participation should be requirements, not just goals, and fines and penalties be enforced if they are not met. Mr. Roberts speculated that the results from the disparity study will indicate significant gaps amongst the contracting community and suggested that in order for the program to be a success, contractors receiving District projects should be required to hold its workforce to the same MBE/WBE standards.

Mr. Roberts stated that he has been a Cleveland resident his entire life and in the past twenty (20) years he has witnessed inequality within the contracting community, and he is hopeful that the District moves forward with the development of its new subcontracting program.

Mayor Longo thanked Mr. Roberts for his comments. He stated that discussions were held between the Board and Executive Director Ciaccia and Ms. Sundheimer regarding the District's present MBE/WBE program. The need for a disparity study was discussed and, at that time, some Board members wanted to steer away from any percentages for the District's new subcontracting program. The Board decided to implement the SBE program model and Mayor Longo acknowledged Mr. Roberts for identifying the challenges the District will face more specifically creating a legally defensible program while being fair and equitable to the contracting community. Although this is not an easy feat, the Board is committed to achieving its goals.

### V. Executive Director's Report

Executive Director Ciaccia began his report and informed Board members that District staff in conjunction with the Governance Committee continues to review the court order



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to accommodate stormwater management. Stormwater issues and discrepancies within the court order are being reviewed in detail, and all necessary changes will be incorporated into a red-lined version of the existing court order.

In addition to stormwater discussions, the Governance Committee is currently reviewing the criteria established within the court order regarding the determination of the Board's flow and population seats. A fair amount of research has been conducted regarding the calculation of sewage flow resulting in discrepancies as to the measurement of flow in Subdistricts 1 & 2. The District continues to research these outstanding issues and will bring its determination to the Board for review.

Executive Director Ciaccia moved to his next report item regarding the District's subcontracting program. He advised Board members that the District continues to operate under its existing MBE/WBE program as it develops its SBE program model. Executive Director Ciaccia stated that staff made its recommendation for the hiring of a Contract Compliance Manager and this position should be filled by the end of July. Furthermore, a consultant has been retained by the District to assist with the disparity study.

Executive Director Ciaccia moved to his next report item regarding the East Bank Flats project. He stated that Board members authorized up to \$8 million toward this project for sewer replacement offsetting some of the District's commitments for its Combined Sewer Overflow (hereinafter "CSO") plan and defraying some of the costs associated with this program. Executive Director Ciaccia stated that he advised Finance Director, Jennifer Demmerle, to withhold payments at this time due to redesign strategies being discussed. The project scope originally separated storm and wastewater sanitary sewers, but now discussions entail the use of combined sewers instead. Switching to combined sewers will result in the need for connector sewers and a pump station which could create potential cost overruns. Executive Director Ciaccia stated that this is an opportunity for the District to revisit its agreement to ensure project costs do not exceed the \$8 million initially approved by the Board. He suggested meeting with staff internally first and then with representatives from the East Bank Flats project. Staff plans to present its findings to the Board sometime in August.

Mr. Brown stated that when the Board first discussed the project scope it included several benefits for the District including the illumination of several overflows, the construction and operation of a pump station which would be the responsibility of the City of Cleveland and additional internal investments. He agreed that any redesign or changes to the project scope and its impact to the final outcome and benefits to the District should be brought to the Board so they have a greater understanding of these issues. Executive Director Ciaccia affirmed.

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Executive Director Ciaccia moved to his next report item regarding the Stormwater Management Program (hereinafter "SMP"). He stated that the SMP is still in its development phase. The District met with several member communities the preceding week including Mayor Starr's community, City of Middleburg Heights.

The Stormwater Advisory Committee (hereinafter "SAC") was established, which is a diverse group of seventeen (17) representatives from churches, businesses and other agencies throughout the region. The SAC held its first meeting Wednesday, July 16<sup>th</sup> from 6:00 p.m. to 8:30 p.m.

Executive Director Ciaccia moved to his next report item and advised that the number of meetings held between the government and the District regarding its CSO Long-Term Control Plan (hereinafter "LTCP") have increased. Discussions have escalated to technical issues which could be construed as a good sign. Executive Director Ciaccia advised that a telephone conference was held prior to the Board meeting, although not overly productive, at least regular meetings have been scheduled for the next three (3) to four (4) months. He informed Board members that certain issues must be addressed at the state level in order to influence potential outcomes. Executive Director Ciaccia explained that he is not fully prepared to discuss these issues at present but staff will develop a strategy and present this to the Board at a subsequent meeting.

Executive Director Ciaccia moved to the next report item regarding the Southerly fill area radiation. He explained that a few years ago, Cobalt-60 was discovered at the Southerly and Easterly plants resulting from discharges from the old Advanced Medical System in Collinwood. The Cobalt-60 discharge flowed to Easterly and its sludge is sent to Southerly to be incinerated and placed in the ash lagoons. Cobalt-60 was discovered, henceforth, the District was required to complete radiation testing.

In the course of testing for Cobalt-60, the consultant discovered radiation levels at Southerly's North Fill Area (hereinafter "NFA"), north of the Southerly plant and west of I-77. Radiation was discovered to be three (3) to four (4) times higher than background levels, and it was not Cobalt-60. The District continues to test for radiation in this area; however, the test results indicate that the levels detected are not harmful. The District plans to mitigate the situation by excavating the material and transferring it to a licensed landfill. Notice has been given to all District employees advising them of the situation and informing them that this matter is being rectified. Executive Director Ciaccia stated that he wanted to notify the Board, employees and public of the situation and that this matter is being handled.

Executive Director Ciaccia moved to his next report item regarding the Westerly Low Level Interceptor (hereinafter "LLI"). He informed Board members that the LLI is located east of the Metropolitan Housing Complex. At this location, the embankment is

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sagging causing the LLI to become deformed. The Board signed emergency resolutions to provide support for the LLI, but the hill continues to slump, threatening the District's interceptor. The District is working collaboratively with the Army Corps of Engineers and the City of Cleveland regarding the LLI. Executive Director Ciaccia explained that this is a real potential problem for the region. If the hillside were to slide into the river, it would destroy the interceptor and block the river channel preventing ships from passing through.

Executive Director Ciaccia advised that he requested Sewer Design Manager, Rick Switalksi, to become proactive with the LLI situation because federal funding is available for these types of projects. Senator Voinovich was instrumental in establishing Section 594, which earmarked federal funds for infrastructure. Since the District is the only affected agency with infrastructure in the affected area, it plans to pursue Section 594 funding for this particular project. Executive Director Ciaccia stated that discussions ensued between the District and City of Cleveland. The District is desirous of becoming more involved with the City of Cleveland's disaster and remediation planning.

In response to Executive Director Ciaccia's discussions regarding the Westerly LLI, Mr. Brown indicated that the City of Cleveland's emergency response exercise plan is scheduled for August, and it includes stakeholders from the City, County and State. Mr. Brown indicated that stakeholders along the riverfront are also included, and he encouraged the District to get representation as well.

Mr. Brown explained that both delegations are fully aware of this potential problem. He agreed with Executive Director Ciaccia's assessment of the situation and explained that this could become a catastrophic event affecting the land, infrastructure, commerce and river. Prolonging the remedy for this situation could result in the District paying ten (10) times more. Unfortunately, funding is not easily accessible for these types of problems, and Mr. Brown stated that the federal government should establish new tools.

Mr. Brown advised that in October, the City of Cleveland will receive a recommendation from the Army Corps of Engineers regarding remediation. At this point, cost estimates exceed \$50 million. Mr. Brown reiterated that the District should be involved as it is a large stakeholder and that the potential outcome will be significant in the remediation of this project. Executive Director Ciaccia agreed.

Executive Director Ciaccia moved to his next report item regarding the service area expansion and indicated that Deputy Executive Director, Michael Bucci, is spearheading this issue. The District is close to reaching service agreements with the City of Pepper Pike and the Village of Moreland Hills. Meetings have also been held between the District and the Cities of Bedford and North Royalton. Executive Director Ciaccia explained that the District is interested in the possibility of assuming the aforementioned

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communities' local sewer systems, so long as it is financially prudent, for the reason that it would be beneficial to the environment. Executive Director Ciaccia advised that the Board will receive further updates on all service area expansion issues.

Executive Director Ciaccia moved to his next report item regarding grit disposal at the wastewater treatment plants. He informed Board members that high levels of reactive sulfides have been detected in the grit and the District is currently researching this issue. The contractor responsible for hauling the grit to the landfill has been reluctant to do so because of the levels of reactive sulfides. The District is stockpiling and analyzing the grit and documenting its findings in support of the material being non-hazardous. Executive Director Ciaccia explained that having this material identified and classified properly is in the best interest of the District because disposing of the grit in a hazardous waste landfill would be very costly to the District, at least seven (7) times more than the amount presently expended. Experts that analyzed the grit indicated that it is non-hazardous; however, the District is compiling ample documentation in support of these findings prior to certifying that the material is non-hazardous.

Executive Director Ciaccia moved to his next report item regarding the budget. He informed Board members that the District reached its 50% benchmark and is currently operating under budget. The District expended 45% of its Operations and Maintenance budget. Total revenues are approximately \$90 million and the District budgeted \$169 million for 2008, therefore the District is ahead in that regard and Executive Director Ciaccia stated that this is a good sign. He mentioned that the District may not realize its projected revenue for June or July due to the wet weather.

Executive Director Ciaccia referred to the District's cash balance, which was at \$207 million. The District budgeted \$132.6 million for 2008. He stated that this is not necessarily positive and is an indicator that the District is not getting the projects out. Executive Director Ciaccia speculated that considerable movement on projects will occur with the implementation of PM.

Executive Director Ciaccia moved to his final report item and informed Board members that the District received positive exposure. He commended Rick Switalski and Ed Haller on their interview with WCPN, and in addition to the radio interview, they appeared at the Great Lakes Brewing Company for its Science Café. Approximately 120 people attended the Science Café to learn about the District and its operations. Executive Director Ciaccia advised that he is scheduled to be interviewed by Leon Bibb for Kaleidoscope on Friday, July 25<sup>th</sup>, and this segment will air on Sunday.



**Resolution No. 172-08**

**Granting a permanent easement to Ohio Bell Telephone Company, d/b/a/ AT&T, for its use of a portion of District property located on Garfield Boulevard, west of Warner Road, in the City of Garfield Heights for the installation and maintenance of a telecommunication cabinet. Consideration offered by AT&T is \$1,000.00.**

**MOTION** – Mayor DePiero moved and Mayor Longo seconded to adopt Resolution Nos. 166-08 through 172-08. Without objection, the motion carried unanimously.

VII. Action Items

Authorization to Advertise for Bids

No discussion ensued on Resolution Nos. 173-08 through 175-08.

**Resolution No. 173-08**

**Southerly Digester “A” Decommissioning Project, Contract 28A. Engineer’s estimate is \$1,000,000.00.**

**Resolution No. 174-08**

**Southerly Wastewater Treatment Center Digester Dome Removal, Contract 28C1. Engineer’s estimate is \$600,000.00.**

**Resolution No. 175-08**

**Division Avenue Pump Station Building Repair, Contract PS-3. Engineer’s estimate \$80,000.00.**

**MOTION** – Mr. Sulik moved and Mr. Liberatore seconded to adopt Resolution Nos. 173-08 through 175-08. Without objection, the motion carried unanimously.

Authorization to Award

**Resolution No. 176-08**

**Two-year requirement contract for skimmings removal to Ohio Bulk Transfer Co. Cost is \$111,475.00.**

Mayor DePiero advised Board members that Ohio Bulk Transfer Company is a client of the law firm McDonald Hopkins, LLC, where he is of counsel; therefore he abstained from the vote. Mr. Brown requested the Secretary carry out a roll call.

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**MOTION** – Mr. Liberatore moved and Ms. Kelly seconded to adopt Resolution No. 176-08. A roll call vote was taken, and the motion carried with one (1) abstention vote by Mayor DePiero.

**Resolution No. 177-08**

**Miles Avenue Relief Sewer Construction to Terrace Construction Company, Inc. Cost not to exceed \$1,644,385.60.**

Mayor Starr inquired as to how long Terrace Construction has been in business. Executive Director Ciaccia advised that this company has been involved with the contracting community for a long period of time and has underground and utility-related experience. Terrace Construction has done substantial work with the Cleveland Division of Water, Cleveland Thermal Energy and the Cleveland Division of Water Pollution Control. Presently, Terrace Construction is working on the Euclid Corridor project, and he is unaware of Terrace Construction's past bidding history with the District.

Executive Director Ciaccia explained that competition for this project increased amongst the local contracting community because this was an open cut job. He was pleased to see newer contractors show interest in District projects. Nine (9) bids were received and each was relatively close, which indicates that the bid specifications were good as well as the competition.

No discussion ensued on Resolution No. 178-08.

**Resolution No. 178-08**

**Residuals Management Validation Workshop. Cost not to exceed \$200,000.00.**

**Resolution No. 179-08**

**Contract to CH2M-Hill for Program Management Phase 1. Cost not to exceed \$925,000.00.**

Mr. Brown inquired as to the project administration fee of \$310,000 included in PM Phase 1. Director of Engineering and Construction, Kellie Rotunno, explained that project administration is the cost incurred for on-site PM staff administering the program.

Mr. Brown commented that the proposal indicated 80% of the people involved with PM will be local and requested the District monitor the amount of travel expenses. Ms. Rotunno advised that she analyzed the bid closely and that travel costs and expenditures were calculated as a percent of fee, which were under her personal tolerance threshold of 5%.

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Mr. Brown commented that the prerequisite to moving forward with recommendation on PM Phase 2 is to have successful and satisfactory completion of PM Phase 1. He requested staff provide the Board with the criteria used to deem successful completion of PM Phase 1. Ms. Rotunno affirmed. Executive Director Ciaccia stated that PM is a substantial engagement for the District and he will continue to update the Board on its development in the Executive Director's reports.

**MOTION** – Mr. Liberatore moved and Ms. Kelly seconded to adopt Resolution Nos. 177-08 through 179-08. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

No discussion ensued on Resolution No. 180-08.

**Resolution No. 180-08**

**Entering into the fourth of four (4) one (1) year options with Janitorial Services, Inc. for janitorial services at the George J. McMonagle Building and Environmental and Maintenance Services Center. The total estimated 2008 expenditure is \$312,694.00.**

**MOTION** – Mr. Liberatore moved and Mayor Starr seconded to adopt Resolution No. 180-08. Without objection, the motion carried unanimously.

Authorization of Contract Modification and Closeout

No discussion ensued on Resolution No. 181-08.

**Resolution No. 181-08**

**Shaw Brook Improvement Project with Shook, Inc. Cost increase of \$38,124.00 bringing the total not-to-exceed contract amount to \$1,070,957.00, and transfer of funds.**

**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 181-08. Without objection, the motion carried unanimously.

Authorization to Amend Resolution

**Resolution No. 31-08b**

**Amendment to salary Resolution 315-07 by moving two (2) and adding seven (7) classifications.**



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Mayor DePiero questioned if these positions are being added, or if they are reclassifications. Human Resources Director Douglas Dykes advised that the positions being moved are considered reclassifications; however, the remaining positions will be added. Mayor DePiero inquired if these added positions were budgeted for in 2008. Mr. Bucci stated that the Engineering Department underwent reorganization and four (4) of the "new positions" are reclassifications and not added. Executive Director Ciaccia explained that the positions are still considered new classifications.

Mayor DePiero questioned if the three (3) remaining classifications were incorporated in the 2008 budget. Ms. Demmerle confirmed that these reclassifications were also budgeted for.

Mayor Starr requested clarification as to how many new employees will be added to the District. Mr. Bucci responded that the new positions include the Organizational Environmental Employee Development Consultant and the Contract Compliance Officer. Mr. Bucci reiterated that these positions were included in the 2008 budget, but the positions have not been filled. Executive Director Ciaccia reminded Board members that the contract compliance officer will monitor the District's new SBE program.

Both Mayor Starr and Ms. Kelly requested further explanation of Resolution No. 31-08b. Mr. Bucci clarified that the first two (2) positions are simply reclassifying employees from one level to another. Four (4) out of the seven (7) added classifications resulted from recent reorganization within the Engineering Department. These four (4) positions are changing job titles for existing employees and do not require additional hiring. Mr. Bucci advised that the Logic Control Developer Trainee was budgeted as a "non-trainee" position. The District was having difficulty finding a candidate for this position under the initial criteria developed for the "non-trainee" description. The District then created a second position as "trainee" and reclassified it at a lower grade. The Organizational Environmental Employee Development Consultant and Contract Compliance Officer are budgeted positions, however need to be filled, and the District intends to hire external candidates for these two (2) positions.

Ms. Kelly questioned if the District plans to hire one (1) Contract Compliance Officer. Ms. Demmerle stated that the staff made its recommendation to Executive Director Ciaccia for the hiring of a Contract Compliance Manager to begin in August. A Contract Compliance Officer, overseen by the Contract Compliance Manager, was included in the 2008 budget as well. A second Contract Compliance Officer will most likely be budgeted for in 2009 leaving this department with a total of one (1) manager and two (2) officers.

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Ms. Kelly inquired if the Contract Compliance Manager's responsibilities include monitoring the District's SBE program. Ms. Demmerle advised that the Contract Compliance Manager will monitor the SBE certification process, make on-site visits to ensure prime contractors are not utilizing "front" companies, conduct field inspections, certify payroll to confirm subcontractors are being paid and implement outreach activities. Ms. Demmerle explained that the Contract Compliance Manager will be doing the majority of work initially, and once the Contract Compliance Officers are transitioned into the department, the manager will then oversee the program.

Ms. Kelly questioned what the expected number of Contract Compliance Officers will be. Ms. Demmerle stated that the District anticipates the hiring of two (2) officers, but the program is still in its development phase and this could possibly increase.

Executive Director Ciaccia stated that, in the future, staff will reorganize its reporting mechanisms for Board presentation to alleviate any confusion.

Mayor Starr questioned the District's level of awareness as it relates to the upcoming rate increase of approximately 15% to 20% between 2011 and 2016, and if the District plans to continue expanding its workforce. Executive Director Ciaccia replied that the District is aware of these upcoming issues and does not plan to raise overall employment levels within the District. Certain departments may require additional staffing such as the new Contract Compliance section. District staff will need to assess the workforce and possible need for employee reallocation. Executive Director Ciaccia stated that his goal, at a minimum, is to keep employee levels presently consistent. He informed Board members that union contract negotiations are forthcoming and these potential rate increases will need to be factored in as well. Thus, the District cannot drastically augment its work force. Mr. Dykes added that Human Resources' responsibilities include the assessment and identification of positions, which may be combined, eliminated or added based upon the reevaluation of all job descriptions.

Executive Director Ciaccia stated that certain departments have expanded and it is important to identify the reduction in the use of outside consultants and contracted work resulting from this increase. He stated that the implementation of stormwater management will also bring additional revenue, but the District is sensitive to the looming economic issues.

**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 31-08b. Without objection, the motion carried unanimously.

VIII. Information Items

1. Internal Audit 2008, 2<sup>nd</sup> Quarter Update.

Executive Director Ciaccia informed Board members that the Manager of Internal Audit, John Wasko, will present the 2<sup>nd</sup> Quarter Audit report.

Mr. Wasko advised Board members that included in their Board packets is a full 2<sup>nd</sup> Quarter Internal Audit 2008 report. He explained that the 1<sup>st</sup> quarter update was a backlog of finance and the 2<sup>nd</sup> quarter update is a backlog of Engineering and Construction. The construction projects selected for the first round of audits were chosen prior to Ms. Rotunno joining the District because projects selected must be audited from commencement to conclusion.

Mr. Wasko commended Board members for approving its amended Bylaws in June and stated that he looks forward to future discussions with the appointed Audit Committee.

Mayor Starr questioned how many contracts the Internal Audit Department is currently reviewing. Mr. Wasko stated that Internal Audit is presently reviewing five (5) contracts. Mayor Starr then questioned how many contracts in total are being audited. Mr. Wasko explained that there are currently twenty-five (25) to thirty (30) active contracts and Internal Audit is required to examine approximately twenty percent (20%) of the present contract population.

Mayor Starr inquired as to the selection process used to determine which contracts are to be audited. Mr. Wasko stated that two (2) contracts were selected in conjunction with MBE/WBE compliance and contracting review. Four (4) contracts were selected based upon a sample of the types of contracts the District engages in, including: emergencies, sewer construction and plant construction. Furthermore, Internal Audit selects contracts based on the various contractors used.

Mayor Starr inquired if Internal Audit examined past contracts. Mr. Wasko stated that they did and referred to two (2) contracts incorporated in his quarterly report, which were completed in 2006 and 2008. Mayor Starr questioned if contracts completed between five (5) to twenty (20) years prior will be audited. Mr. Wasko stated that Internal Audit examines recent history and that reviewing projects from many years ago will not be effective as the District moves forward with its development of policies and procedures.

Mayor Starr asked if Internal Audit's findings included anything unusual while examining these contracts. Mr. Wasko stated that there may have been some gaps in documentation and process control within the prosecution of the projects similar to the information provided to the Board by Executive Director Ciaccia and Ms. Rotunno.

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Mayor Starr questioned if Internal Audit discovered similar issues comparable to the audit conducted by Jefferson Wells in which it was discovered that work was not performed. Mr. Wasko stated there was no indication of work not being performed, but documentation was lacking in some cases involving change orders.

2. Outside Counsel Matters Report, 2<sup>nd</sup> Quarter 2008.

Executive Director Ciaccia stated that included in the Board packets is a quarterly report on outside legal counsel matters and that Ms. Sundheimer was available for any questions from the Board.

Mr. Brown advised Board members that this is the Law Department's first attempt at preparing a quarterly update report on outside legal counsel matters. He suggested Board members review the report and provide recommendations or suggestions with respect to the report format. The report will continue to be given on a quarterly basis.

Mayor DePiero thanked staff for the outside legal counsel update. He supported the issuance of requests for proposals (hereinafter "RFP") for outside legal services and expressed that this would provide other Cleveland area law firms the opportunity to bid on District legal work. Mayor DePiero stated that firms will reexamine its hourly rates if they are required to bid on District work and this would ultimately benefit the ratepayers.

Mayor Starr complimented District staff on the quarterly report and stated that the information was very beneficial.

IX. Open Session

Mr. Brown moved discussion to the status of the Ad Hoc Committees. He explained that in 2007 the Board established three (3) Ad Hoc Committees: Governance, Board Process and Ethics.

The Board Process Committee included Mayor DePiero, Mayor Longo and Mr. Brown and its charge was to formalize the Board process, making it more effective. Mr. Brown stated that the Board Process Committee revised the Board agenda and established a process that brought clarity to discussions related to Board matters.

The Ethics Committee included Ms. Kelly, Mr. Liberatore and Mr. Sulik and its charges were to develop an Ethics Policy and review the MBE/WBE program. The Ethics Committee also completed a Code of Conduct and Decorum and a Conflict of Interest Policy and sign-off form for Board and senior staff.

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Mr. Brown informed Board members that the Governance Committee is pending and that there is still outstanding work that needs to be completed. This committee has completed its Bylaws revision, but is currently reviewing the court order.

Mr. Brown stated that Board Process and Ethics Committees have completed all charges and should be closed out. He thanked Board members and staff engaged with these committees for ensuring the work was accomplished. He commented that the work completed by each committee has raised District standards and increased the value returned on the ratepayers' dollars.

X. Public Session (no requests from the public)

XI. Executive Session

Mr. Brown indicated there was a matter for discussion at Executive Session.

**MOTION** – Mayor Longo moved and Ms. Kelly seconded the motion to go into Executive Session to discuss legal matters related to the privilege log and federal grand jury subpoenas, and that all discussions be kept confidential.

Prior to adjourning into Executive Session, Mayor Starr indicated that he had a few questions concerning the matters for discussion in this non public forum. He stated that a balance must be reached to protect the District's private interests in litigation and the public ratepayers' rights to be informed of the District's ongoing issues. He requested clarification as to what the specific exclusion is under the open meetings law preventing this discussion from being held publicly.

Ms. Sundheimer stated that, in accordance with Ohio Revised Code §121.22(G), there are two (2) bases permitting the adjournment to executive session: 1) to discuss pending court actions; and 2) to discuss confidential matters involving the District. Ms. Sundheimer then referred to the correspondence included in the Board packets pertaining to this issue.

Ms. Sundheimer indicated that the subject matter for discussion in executive session relates to public records not yet provided to the federal government pursuant to the grand jury subpoenas issued. These records are protected from discovery as privileged attorney-client communications, attorney work product, and documents including privileged information related to pending litigation involving the District.

Ms. Sundheimer explained that the District is in the process of responding to the federal government's subpoena, issued by the U.S. District Court, and this is considered to be a court action. Documents were retained and labeled as privileged for reasons set forth.

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These documents are being analyzed by the District's legal counsel to prevent the release of privileged records that could potentially harm the District or impede pending litigation. Ms. Sundheimer stressed that the government does not want privileged documents.

Ms. Sundheimer stated that at the July 3<sup>rd</sup> Board meeting, a request was made for staff to provide the Board with the privilege log. Ms. Sundheimer advised that this information be discussed in executive session which would enable her, as the District's legal advisor, to explain what constitutes privilege and why these documents are included on the privilege log. Ms. Sundheimer stated that discussions can include the possibility of waiving privilege in some instances so long as it is warranted. In order to do this, Ms. Sundheimer explained that she will need to clarify, to the Board, the basis for the waiver and how it can relinquish its privilege.

Mayor Starr requested, for the record, the District state how many pages of documents, papers or electronic files would be included in the discussion. Ms. Sundheimer stated that there were approximately 120 to 140 pages of documentation for discussion.

Mayor Starr questioned if the Board will be given a copy of the privilege log or, at a minimum, a summary of the information discussed at executive session. Ms. Sundheimer stated that Board members would not be able to take a copy of the log with them out of executive session because it is considered attorney-client work product. The information will be projected on an overhead screen. These documents are being analyzed by District and Calfee, Halter & Griswold (hereinafter "Calfee") attorneys and the log is not finalized. Ms. Sundheimer stated that this information is being shared with the Board because of the request made at the July 3<sup>rd</sup> Board meeting.

Mayor Starr questioned who is in possession of the privileged information. Ms. Sundheimer stated that the information is in the possession of the outside legal counsel representing the District.

Mayor Starr questioned if Ms. Sundheimer is in possession of the information as well. Ms. Sundheimer indicated that she was.

Mayor Starr inquired if any other government bodies, outside of the District, are in possession of the information. Ms. Sundheimer indicated that no other state or federal government agencies are in possession of this information.

Mayor Starr questioned if any members of the media have the documents. Ms. Sundheimer indicated they do not.

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Mayor Starr commented that outside legal counsel and District staff can possess the information. He then questioned why the Board (the Supreme Court or overseer) of the District cannot obtain the privilege log.

Ms. Sundheimer explained that the contents of the privilege log can be shared with the Board in executive session; however, it is not advisable to take a copy of the log outside of executive session. Ms. Sundheimer stated that her opinion is based on the reason that the log itself is attorney work product and is considered a privileged and confidential document.

Executive Director Ciaccia informed Board members that neither he nor any other staff members outside of the Law Department have a copy of the privilege log.

Mayor Starr understood that some documents may be attorney-client privileged and the District does not want to harm its interests. He questioned who would be responsible for withholding documents not considered attorney-client privileged that may evidence wrongdoing.

Ms. Sundheimer stated that the purpose of discussing this issue in executive session is to explain the process used in identification of the documents that may legally be protected by attorney-client privilege. After District and Calfee attorneys complete their analysis, a recommendation will be made to the Board to waive privilege as to some of the documents and that those records would be turned over to the federal government and then be made public.

Mayor Starr questioned if discussions will only include attorney-client privilege between the Board and former District staff and General Counsel. Ms. Sundheimer affirmed.

Mayor Starr inquired if discussions will include criminal investigations or any related material. Ms. Sundheimer stated that the federal subpoena is in furtherance of a criminal investigation.

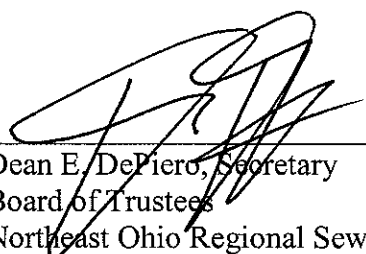
Mayor Starr questioned if discussions will only include civil issues. Ms. Sundheimer indicated that it will be explained in executive session why these documents are presently attorney-client privilege protected.

Mr. Brown requested the Secretary carry out a roll call for the motion to adjourn into Executive Session. Without objection, the motion carried unanimously.

The Board met in Executive Session from 2:22 p.m. until 2:44 p.m.

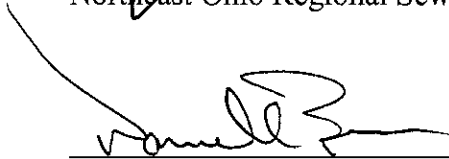
XII. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor DePiero moved and Mr. Sulik seconded the motion to adjourn at 2:45 p.m. Without objection, the motion carried unanimously.



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



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