

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
JULY 21, 2011

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown  
R. Sulik  
D. DePiero  
S. Kelly  
W. O'Malley

ABSENT: J. Bacci  
G. Starr

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

II. Approval of Minutes

**MOTION** – Mr. O'Malley moved and Ms. Kelly seconded that the minutes of the July 7, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia stated that an Executive Session will be necessary towards the end of the meeting to discuss the ongoing mediation regarding the Stormwater Management Program (hereinafter "SMP") litigation.

A hearing will be held on July 27 regarding a motion the District filed to reconsider the judge's decision that six Summit County communities were not member communities and therefore out of the case.

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Subsequent to that ruling documentation was found which staff believes makes the case that Hudson indeed is a member community. The District has asked the judge to examine that information and possibly reconsider his ruling relating to Hudson.

Executive Director Ciaccia advised that the final pretrial with Judge Pokorny will be held on August 17 with a trial date of September 6. He stated that the case will ostensibly rule on whether the SMP charge is a fee or tax. Judge Pokorny has already granted the motion that the District has the authority to carry out the SMP.

Executive Director Ciaccia reiterated that the remaining issue is determining whether the fee the District proposes to charge is a fee as opposed to a tax. That is moving forward and he believed the only thing that could potentially stop it is a successfully mediated settlement before the trial date.

A mediation meeting was held last Friday with Nora Hurley, of Cuyahoga County Executive Ed FitzGerald's office, running the session. He stated that the meeting went well and documents were exchanged. Staff sent another document yesterday which will be reviewed during Executive Session. The parties are scheduled to meet again this Monday with Cleveland State University Provost Geoffrey Mearns resuming the role of mediator.

Executive Director Ciaccia advised that the past week was eventful with heavy storms passing through the region, resulting in significant flooding throughout the service area and beyond. Summit County and Akron experienced severe conditions and are working on their issues. The District has extended them an offer of assistance. There was some interest and staff is waiting for a call back. He explained that the storms keep coming and continue to make the case for the SMP.

During the storm a significant combined sewer overflow occurred at Edgewater Beach, which necessitated its closure. He asked Deputy Director of Operations & Maintenance, Ron Czerski to update the Board in regards to the situation.

Mr. Czerski advised that there were three significant aspects about the storm. Edgewater Park overflowed between 1:00 and 3:00 a.m., with about 6.8 million gallons and lasted for one-and-a-quarter hours. The Euclid Creek pump station lost power as well and had to be run on generator power. Warnings were also posted at three beaches: Villa Angela, Euclid and Edgewater Park. Overall, Mr. Czerski stated that the organization fared well through the storm.

Mr. Brown questioned if the storm was of high intensity but a short duration. Mr. Czerski explained that the storm was of a very high intensity but duration varied

throughout the area. Parma experienced about five inches of rain per hour while there were several inches an hour in other parts of the West Side.

Mr. Greenland explained that the storm was unique because even though the duration was short the intensity was sustained for three hours. News outlets have reported the event in Summit County as “a 1,000-year event.”

Mr. Brown stated that he had never heard that terminology used before. Mr. Greenland advised that wording was reported in an article. He continued to advise that staff examined data and in certain areas the claim could be made for a 500-year-type storm and three inches is a lot of rain in one hour.

Mr. Brown stated that he does not know of many systems designed to handle that type of storm. Mr. Greenland advised that the systems are not designed for 500-year storms.

Mr. Brown inquired why other areas did not flood. Mr. Greenland explained that the storm was localized; Solon got little to no precipitation and locations a few miles away were subject to four to five inches. There was a corridor of very heavy rain.

Mr. Brown inquired if a weather system sat on top of another system. Mr. Greenland advised that some think it sat in a given area and rained through in a tight band for three hours at a very high intensity.

Mr. Czerski explained that only 28 flooding calls were processed. Staff expected many more.

Mr. Sulik questioned if the beaches were open. Mr. Czerski stated that he did not know if the postings had been removed. He also clarified that the District does not actually close beaches; the District puts out a posting.

Mr. Sulik inquired if the postings had been removed. Mr. Greenland stated that he did not know. Mr. Czerski indicated he would find out.

Mr. Brown stated that is a good question given the extreme heat lately. He believed it was very likely people are trying to go to the beach and asked its condition. He also questioned what the readings are based on because he thought there was a rapid turnaround process with the analysis of data and feedback within a few hours. It seems this would have been an appropriate time for that to occur.

Mr. Czerski stated that process was used and a high level of bacteria was present. He stated he would find out right away if the postings were removed. Mr. Brown stated that was then; the question is the status of the bacteria now.

Ms. Kelly questioned how long it typically takes for public facilities to be cleaned and safe following an event such as this. Mr. Czerski asked Frank Greenland, Director of Watershed Programs, to respond to Ms. Kelly's inquiry.

Mr. Greenland asked for clarification of "public facilities." Ms. Kelly specifically referred to beaches. Mr. Greenland explained that when an appreciable rain event occurs there will typically be elevated bacteria levels for about three days before it dissipates. Rivers flushing out with elevated bacteria levels sometimes complicate the matter and can result in high bacteria levels for more than three days.

Ms. Kelly inquired if extreme heat affects bacteria. Mr. Greenland stated that sudden and high temperatures tend to kill off bacteria. High winds can be more of a problem. Mr. Brown stated that wind is more of a factor and the area's currents tend to blow into shore as opposed to away from shore.

Mr. Greenland explained that wind direction is a variable. Bacteria tend to die off over time and sunlight helps that process. What is flushed into the water typically lasts up to three days.

Mr. Brown stated that the issue seems to be the frequency of getting a reading, analysis and making a determination regarding the current state. Mr. Greenland stated that staff will check the Nowcast and get an answer.

After a brief moment to access the Nowcast website, Mr. Greenland advised that there is a Nowcast advisory based on data from Edgewater and the swimming advisory is in effect.

Executive Director Ciaccia stated that at Edgewater there is some sand erosion. Mr. Czerski affirmed and explained that the District will bring in a contractor to replace much of the sand that got washed out. Three quotes have been received and the cost is estimated at less than \$15,000.

Mr. Brown noted that the outfall blew out and asked for a definition of what that means. Mr. Czerski explained that the outfall is a 9-foot, 3-inch pipe with a flat gate. When the gate opens it literally rolls across the beach, washing out the trench it cuts into. A substantial trench was cut into the beach and that sand must be replaced.

Executive Director Ciaccia stated that it is important to realize that particular overflow activates infrequently. In the past it overflowed up to 60 times per year; now it occurs once a year. Mr. Czerski advised that it is sometimes less than once per year.

Mr. Brown inquired what that change is attributed to and whether it is a result of increased storage capacity or a change in rainfall patterns. Mr. Czerski stated that much was attributable to an excessive amount of rain in a very short period of time.

Mr. Brown clarified that he was not referring to the most recent storm but the overall reduction in overflow frequency. Mr. Czerski explained that one of the controls at Edgewater Park and the northwest interceptor is a tunnel designed to handle millions of gallons of storage.

Mr. Brown questioned if District facilities are storing more. Mr. Czerski stated that is correct.

Mr. Greenland explained that the reduction in frequency is entirely due to District facilities installed over the 1970s and 1980s, including the northwest auto regulators; the northwest interceptor; and the combined sewer overflow treatment facility, which resulted in dramatic overflow reductions at Edgewater.

Changing subjects, Executive Director Ciaccia advised that the Ohio Auditor of State will release their performance audit sometime next week. The matter was discussed following the previous Board meeting.

Deputy Executive Director F. Michael Bucci advised that the report would be released on July 28. Executive Director Ciaccia stated that staff thinks it may be used to the District's benefit.

Moving discussion to finances through June, Executive Director Ciaccia advised that operating revenues are currently about \$77.7 million, which represents 46% of the amount budgeted. The District is seemingly a little behind on revenues and he asked Finance Director, Jennifer Demmerle, to elaborate.

Ms. Demmerle advised that revenues are presently about \$86 million. There is a timing difference between when the report was created and when entries were posted. Revenues are slightly above 50% of the budget. She advised that during the next Board meeting a copy will be provided of the second quarter financial statements with the actual figures; this report was created with preliminary estimates. Executive Director Ciaccia stated that this is a better situation than last year.

Likewise, the District is under budget on expenses, using 43.7% of what was budgeted at the year's halfway point. He advised that personnel salaries, benefits and utilities are the three largest categories of expenses and are running just under 50%. That is also a good sign and staff believes that trend will continue through the year.

Executive Director Ciaccia advised that as it relates to reserves and cash balances, the District is cutting into the bond project account. About \$41 million was knocked off the first part of this year, which was expected with the big Capital Program. He pointed that out for context because \$44.6 million was spent so far this year on operations and maintenance (hereinafter "O&M"). Another \$41 million was spent on capital projects.

Executive Director Ciaccia advised that capital projects and capital spending will be a big part of the financial picture the remainder of this year and going forward. He stated this is what the rate increases are going towards. The capital expenses will mirror or exceed O&M costs, which is a trend that will continue.

Executive Director Ciaccia noted that several students were in the audience. Staff wanted to let them experience how the Board operates.

Mayor DePiero stated that this morning he and members of his staff were debriefed regarding the recent storm event. He advised that three to four years ago the City of Parma entered into an agreement with the Cuyahoga County Sanitary Engineer's Office to conduct an assessment and develop a cleaning and maintenance program for its sewers and made improvements.

Mayor DePiero stated that storm events and his briefing cause him to believe more strongly than ever that the SMP is necessary and that communities opposing it "need to look at the big picture."

Mayor DePiero explained that an area of southwest Parma along Sprague Road and West 130<sup>th</sup> that had never had flooding issues before experienced significant problems in February and again during the recent rain event.

While looking at maps and how the water and creeks flow from North Royalton into Parma and down to Middleburg Heights Mayor DePiero stated "it is clear that part of the reason is because of what is being pushed down the pike from other communities."

Mayor DePiero stated that his community's solution would open more waterways that would move the problem into Middleburg Heights. He stated that such an action, if not done in cooperation, would cause problems for neighboring communities.

Citing another example, Mayor DePiero stated that five feet of water was located at Brookpark Road at Tiedeman Road because the water stopped when it got to Cleveland. He stated that this is one of the projects Parma is discussing with the City of Cleveland and the District and the problems will not get solved. Mayor DePiero stated that communities cannot solve the problem until the SMP program is in place. He explained

that the program would not “be the silver bullet” and flooding is getting worse in some areas.

Mayor DePiero urged the District to continue to “push to get this deal done” so the organization can move forward. He urged the Court to not grant further extensions and to move ahead in the event of a trial because these problems are not getting solved.

Mr. Brown appreciated Mayor DePiero’s comments. He stated that those communities have more in common than they acknowledge. He explained that waterways are the transportation highway for stormwater and it does not have to rain excessively for residents to feel an impact. Areas downstream from an event may be significantly impacted.

Mr. Brown stated that the reconstruction of infrastructure such as streets, roads and bridges also affect flow. He explained that bridges in particular are control mechanisms for flow. An expanded bridge installed to facilitate traffic flow on pavement opens the opportunity for stream flow, which depending on what is happening downstream can create problems.

Mr. Brown stated that the District will hold firm on its position. He explained that the legalities “will have to run its course,” but due diligence has been done and millions of dollars have been spent. He stated that the District did not enter into this strategy lightly and always directed it on firm footing in terms of why the program was being pursued.

Mr. Brown stated that this is a legal discussion about the merits of the science and that no community itself can deal with this issue; it is a regional problem.

Executive Director Ciaccia advised that Judge Pokorny has been firm regarding the September court date and there will be no more extensions. He stated that Judge Pokorny may consider an extension if both parties requested an extension, but that option does not interest District staff. He advised that they intend to move forward with the trial if no settlement is reached through mediation within the next few weeks.

V. Action Items

Authorization to Advertise  
Resolution No. 161-11

One-Year Requirement Contract for Final Clarifier Polymer  
for Use at the Southerly Wastewater Treatment Plant.  
Anticipated Expenditure: \$112,230.00.

- Resolution No. 162-11      One-Year Requirement Contract for Lease of Predictive Maintenance Equipment and Services at the Southerly Wastewater Treatment Plant. Anticipated Expenditure: \$78,000.00.
- Resolution No. 163-11      One-Year Requirement Contract for Sodium Bisulfite Solution for Use at All Wastewater Treatment Plants. Anticipated Expenditure: \$198,500.00.
- Resolution No. 164-11      Southerly Wastewater Treatment Center, Gravity Thickener Dome, Paint and Miscellaneous Repair (PMR-2). Engineer's Opinion of Probable Construction Cost: \$700,000.00.

**MOTION** – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution Nos. 161-11 through 164-11. Without objection, the motion carried.

Authorization to Issue Request for Proposals (RFPs)

- Resolution No. 165-11      RFPs for the CSO 049 and 050 Relocation (C49/50R) Project.

**MOTION** – Mr. O'Malley moved and Mr. Sulik seconded to adopt Resolution No. 165-11. Without objection, the motion carried.

Authorization to Purchase

- Resolution No. 166-11      Direct Purchase from Sole Source Vendor Abel Pumps, L.P., Abel Pump Parts for Use at the Southerly Wastewater Treatment Plant. Cost: Not-to-Exceed \$100,000.00.
- Resolution No. 167-11      Direct Purchase from Polychem Systems, Preliminary and Primary Treatment Tank Parts for Use at All Wastewater Treatment Plants. Cost: Not-to-Exceed \$358,000.00.
- Resolution No. 168-11      Purchase Under the State Term Schedule, a Closed Circuit Television (CCTV) Truck from Envirosight and a Chassis for the CCTV Truck from Mike Bass Ford for Use at Sewer System Maintenance and Operation. Cost: Not-to-Exceed \$188,674.00 for the CCTV Truck and Not-to-Exceed \$50,625.00 for the Chassis.



Resolution No. 169-11 Purchase from Novell, Under the State of Ohio Contract No. STS 5333740-4, Annual Software Support and Maintenance Contract for Network Operating Software. Cost: Not-to-Exceed \$51,500.00.

**MOTION** – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution Nos. 166-11 through 169-11. Without objection, the motion carried.

Authorization to Enter Into Contract

Resolution No. 170-11 Two-Year Requirement Contract with Dominion Retail, Inc. for Natural Gas for Use at All District Facilities. Anticipated Expenditure: \$7,576,200.00.

**MOTION** – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution No. 170-11. Without objection, the motion carried.

Mayor DePiero inquired if there were additional retailers that supply natural gas than the two that submitted bids. He questioned if there was a reason why only two bids were received or if the two were the only with the ability to do so. Mr. McNeeley stated that since 1993 the bids have been between Hess and Dominion and the District is a large consumer.

Mr. Brown inquired if the two firms are the only providers. Mr. McNeeley advised that no other vendor has ever responded to the bids.

Mr. Brown asked if there are other vendors capable of providing this service. The scope of the bid is of a large volume and is very steady and predictable. He advised that it is a “perfect opportunity” for a supplier that sells wholesale. Mr. McNeeley advised that he was not aware of other suppliers but could research the subject.

Authorization of Rights of Entry

Resolution No. 171-11 Warrensville Heights – Shurmer Drive Stormwater Project. Consideration: \$0.00.

**MOTION** – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 171-11. Without objection, the motion carried.

Authorization of Revisions

Resolution No. 132-11

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

**MOTION** – Mayor DePiero moved and Mr. Sulik seconded to hold Resolution No. 132-11. Without objection, the motion carried.

Mr. Sulik stated that he believes that the entire Board should vote on the revision of the Ethics code “and not be decided by five people or a vote in the newspaper.” He thinks a vote should occur during a Board session.

VI. Open Session

There were no matters for Open Session.

VII. Public Session (any subject matter)

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

VIII. Executive Session

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

**MOTION** – Mr. Sulik moved and Mr. O’Malley seconded go into Executive Session to consult with legal counsel and District administration regarding mediation and litigation regarding the Stormwater Management Program. Discussion of these matters in executive session are permitted as specific exemptions to the Public Meeting Act pursuant to Ohio Revised Code Section 121.22(G)3. He specifically designated all matters discussed in executive session to be protected from public disclosure in accordance with Ohio Revised Code Section 121-22(G) and attorney/client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

Mr. Brown advised that he wished to comment on the Executive Director’s report under Information Items after the Executive Session.

Executive Director Ciaccia advised that Mr. Czerski informed him the advisories at Edgewater and the other beaches had been removed this afternoon.

The Board met in Executive Session from 1:02 p.m. to 1:25 p.m.

Approval of Item from Executive Session

Resolution No. 172-11      Authorization to Release Proposed Changes to Title V  
Stormwater Management Code for Member Community  
Review and Comment.

**MOTION** – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution No. 172-11. Without objection, the motion carried.

IX.    Information Items

1.    Mid-Year Performance Report 2011

Mr. Brown stated that he believed the report was accurate and very thorough. He provided the Board with an opportunity to raise questions, issues or to ask for clarification regarding any of the content contained therein. There being none, he continued with his comments.

Mr. Brown stated that a number of things speak to concerns regarding the current state of the SMP, the Combined Sewer Overflow Long-Term Control Plan and State Pollutant Discharge Elimination System permits. He explained that while the District does a good job regarding discussion with the awarding of contracts and meeting goals MBEs, FBEs and SBEs, he was more concerned about performance. He voiced concern regarding making sure contracted results are verified with both prime and subcontractors as the Capital Program progresses. Sometimes an opportunity presents itself to discuss those issues during Construction & Engineering Report.

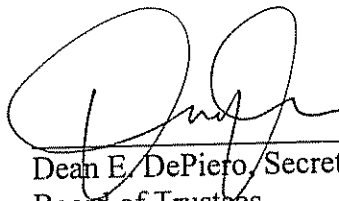
Mr. Brown stated that the question is staff’s role in terms of monitoring compliance at work sites so the numbers contained in reports are validated. He stated he was very sensitive to what is going on with organizations that have similar challenges or programs. He wanted to make sure the District is validating that job performance is consistent with the report.

Executive Director Ciaccia stated that staff will try to incorporate that into the next Construction & Engineering report for discussion.

X.    Adjournment

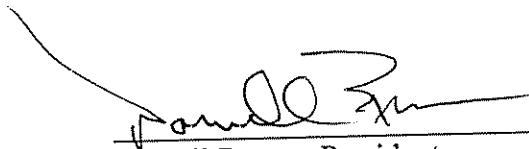
**MOTION** – Mr. Brown stated that business having been concluded he would entertain a motion to adjourn. Ms. Kelly moved and Mayor DePiero seconded the motion to adjourn at 1:30 p.m. Without objection, the motion carried unanimously.

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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  
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