

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
OCTOBER 3, 2013

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  
S. Kelly  
J. Bacci  
T. DeGeeter  
W. O'Malley

ABSENT: G. Starr

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

II. Approval of Minutes

**MOTION** – Mayor Bacci moved and Mr. Sulik seconded to approve the minutes of the September 19, 2013, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no one signed up to speak about a specific agenda topic.

IV. Executive Director's Report

Executive Director Ciaccia advised that last week the Ohio 8th Appellate District Court of Appeals ruled two-to-one that the Stormwater Management Program (hereinafter "SMP") was not authorized under Ohio Section 6119, and was also not authorized under, as they call it, the "charter," which is the court order that created the District. Judges Sean Gallagher and Kenneth Rocco ruled that the District did not have authority and Judge Larry Jones wrote a 27-page dissent opinion.

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Executive Director Ciaccia stated that overall four judges have considered the SMP and all four agree that stormwater management on a regional basis is necessary; the question is authority.

Judge Gallagher included in his opinion that the District was in some sort of “power grab” and overstepping its bounds. District staff disagrees with that assertion and partially appreciated that Judge Rocco did not agree with that characterization, although he agreed with Judge Gallagher as it relates to the authority issue.

Executive Director Ciaccia advised that staff feels very strongly they should appeal the ruling to the Ohio Supreme Court. The matter and potential strategies as it relates to the appeal will be discussed during Executive Session.

Mr. Brown requested a copy of the original court order that created the District. He thinks it is clear on a few of those points and particularly as it relates to the original mission of the District. He suggested revisiting that issue with the entire Board. Executive Director Ciaccia stated that staff will do so and highlight the appropriate areas as it relates to stormwater management because there is quite a bit in the document. However, interpretation of 6119 is another matter, which will come down to the definition of “wastewater” in the code.

Executive Director Ciaccia advised that three other utilities besides the District conduct stormwater operations under 6119 in the state, one of which is stormwater-only. The Ohio Supreme Court would be a logical step to take on the question because it is not just a regional issue in Northern Ohio.

Mr. Brown inquired if the standing of other organizations is in question. Executive Director Ciaccia stated that they are definitely affected; a court ruling states that 6119 does not allow stormwater management programs. The Court’s definition rules that stormwater cannot be treated unless there is sewage mixed with it. What is in streams and rivers can be debated.

Executive Director Ciaccia advised that collection of the fee was discontinued because the judges enjoined the District from charging it any further. Staff has worked with the Cleveland Water Department (hereinafter “CWD”) and internally for direct bills. The money that has been collected was placed in an escrow account and will not be utilized in any fashion.

As to the status of the SWP, three construction projects were underway and the point at which to cease them was being assessed.

A project at Doan Brook involved mitigation money from the City of Cleveland for another project they did several years ago. However, money collected from SMP fees will not be used on that project.

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Executive Director Ciaccia explained that at a former WRSP Euclid Creek project a contractor was authorized to repair storm damage as an SMP-related project. The contractor was mobilized and on-site but it will be shut down.

Another project at West Creek was a WRSP project and will continue.

There are 16 other projects in various stages – contracts that were under various design services and most will be shut down. The projects that encompass the green infrastructure program will continue and the Board will be presented with contract modifications so they can be carried out. The others about to begin design will be shut down completely.

Executive Director Ciaccia explained that many community leaders have expressed their displeasure at this outcome. District staff will engage communities and plan for the future knowing that another big storm will affect the area before a new court ruling is issued. The resources to mitigate its effects will not be available. He stated that although he is quoted in newspapers as saying the communities “are on their own,” the District would do whatever it could to help any community in an emergency situation.

Mayor DeGeeter questioned which other districts are operating with the same authority. Executive Director Ciaccia advised that they are Deerfield Township, ABC District in Southern Ohio and Jefferson Township. They are vulnerable if one of their ratepayers files suit, which is another reason this case going to the Ohio Supreme Court is necessary.

Ms. Kelly inquired regarding potential liability in terms of contracts being shut down. Executive Director Ciaccia advised that staff is far along on that assessment. Around \$16 million has been collected and fortunately only \$2 million has been spent. That amount can be accommodated in the operating budget and money will be advanced to put in escrow to make up for it.

The SMP employees will be reassigned to assist the District elsewhere with the Combined Sewer Overflow and green infrastructure programs and other issues under Titles 2, 3 and 4. The community discharge program will have resources as well.

Executive Director Ciaccia stated that from a budgetary standpoint the District’s total number of employees is not much different from 2011 and 2012, so it is not expected to be a big drain financially. More specifics will be available by the next Board meeting.

Ms. Kelly questioned if staff has been overwhelmed with customer service calls. Executive Director Ciaccia advised that there was a spike in calls yesterday due to the story in newspapers but staff has not been overwhelmed.

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Moving to the next item in his report, Executive Director Ciaccia advised that two law suits have been filed by taxpayers for the immediate return of SMP fees. The suits will be discussed in executive session.

Executive Director Ciaccia stated that the Charity of Choice program raised over \$86,000 this year. District employees over the last six years have given \$400,000 to local charities, which is a 40% increase over that period of time. He thanked Nolan Carver, Shawn Hageman and Kellie Rotunno.

Concluding his report, Executive Director Ciaccia advised that Douglas Dykes, Director of Human Resources, received a business leadership award from the Cleveland Society of Human Resource Managers.

V. Action Items

Authorization to Advertise

Resolution No. 238-13 CSO 049 and 050 Relocation Project. Engineer's Opinion of Probable Construction Cost: \$9,300,000.00.

Resolution No. 239-13 Easterly Wastewater Treatment Plant Primary Settling Tanks Rehabilitation Project. Engineer's Opinion of Probable Construction Cost: \$3,500,000.00.

**MOTION** – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution Nos. 238-13 and 239-13. After discussion and without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 240-13 RFPs for the Mary Street Pump Station Project.

**MOTION** – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution No. 240-13. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Purchase

Resolution No. 241-13 Purchase from Dell Marketing L.P., Through the State of Ohio Cooperative Purchasing Program, SharePoint Software User Licenses. Cost: \$89,594.68.

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Resolution No. 242-13 Purchase from Bobcat of Cleveland, Through the State Term Schedule, Four Bobcat Utility Vehicles for Use at the Easterly and Southerly Wastewater Treatment Plants. Cost: Not-to-Exceed \$53,916.12.

**MOTION** – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution Nos. 213-13 and 214-13. After discussion and without objection, the motion carried unanimously.

Regarding Resolution No. 241-13, Mr. Brown questioned if there was potential efficiency to consider an enterprise SharePoint license rather than individual license seats if that level is reached. Humberto Sanchez, Director of Information Technology, advised that the licenses are bought under the enterprise program and are referred to as end-user license program.

Authorization to Enter Into Agreement

Resolution No. 243-13 Agreement with Cuyahoga County to Allow the County to Manage Third Party Phase II Environmental Site Assessment Services on Behalf of and at no Cost to the District Through the Northcoast Brownfield Coalition Community Assessment Initiative for the Kingsbury Run Green Infrastructure Project.

**MOTION** – Mayor DeGeeter moved and Mr. O’Malley seconded to adopt Resolution No. 243-13. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 244-13 Contract with CDM Smith, Inc. for the Asset Management Implementation Phase 2 Project. Contract Amount: \$1,128,324.00.

Resolution No. 245-13 Contract with Walsh Super Excavator Joint Venture II for the Dugway West Interceptor Relief Sewer Project. Contract Amount: \$57,479,355.30.

Resolution No. 246-13 Contract with Novell, Inc. to Provide Professional Services for Phase 1 (Design) of the Network Operating System Upgrade Project. Cost: Not-to-Exceed \$46,090.00.

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Resolution No. 247-13 Contract with Zenith Systems, LLC to Provide Professional Services for Phase I (Design) of the Audio/Visual Upgrade Project. Cost: Not-to-Exceed \$52,330.00.

Resolution No. 245-13 was delayed to Executive Session.

**MOTION** – Mr. Sulik moved and Mayor Ms. Kelly seconded to adopt Resolution Nos. 244-13 and 246-13 through 247-13. After discussion and without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 248-13 Modification and Final Adjustment of Contract No. 11001553 with Spiniello Companies for the Combined Sewer Overflow Relining and Replacement Contract Project. Cost: A Decrease in the Amount of \$1,039,770.02 Bringing the Total Contract Price to \$11,655,579.98.

**MOTION** – Mayor Bacci moved and Mayor DeGeeter seconded to adopt Resolution No. 248-13. After discussion and without objection, the motion carried unanimously.

Authorization of Property-Related Transactions

Resolution No. 249-13 Authorize the District to Enter Into a Right of Entry Agreement with American Bridge Company. Consideration: \$0.00.

Resolution No. 250-13 Authorize One Permanent Easement Appropriation, from the Euclid Creek Development Condominium Owners Association, Necessary for the Construction of the Euclid Creek Tunnel – Lakeshore Blvd. Relief Sewer Project. Consideration: \$940.00.

**MOTION** – Mayor Bacci moved and Mayor DeGeeter seconded to adopt Resolution Nos. 249-13 and 250-13. After discussion and without objection, the motion carried unanimously.

VI. Information Items

1. Community Discharge Permit Program Status

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Executive Director Ciaccia stated that the Board is provided an annual update of this program, which has not had as much resources as staff would like but will be increasing.

Frank Greenland, Director of Watershed Programs, advised that Title 3 is the sanitary code and Title 4 is combined sewer code. Both require contain certain requirements for communities with their sewer systems.

Title 3 was required as a result of construction grant conditions for the Southwest and Heights Hilltop interceptors. The EPA recognized that although the District was building large regional interceptors, local systems were feeding them.

Evaluation surveys have uncovered things including sanitary sewer overflows and Inflow & Infiltration (hereinafter "I&I"). A condition of the grants that financed \$450 to \$500 million of construction was to develop a program for member communities to minimize I&I so the design intent of the interceptors was preserved. The communities with sanitary overflows were to do projects to control them.

There was a lot of interaction with communities in the 1980s and 1990s regarding those projects and programs. The Title 3 and 4 programs will be retooled to put more emphasis on SSO control and I&I.

At that time he introduced Mary Maciejowski, who currently manages the program.

Ms. Maciejowski stated that staff hoped to make an annual report to the Board to regularly apprise them of the progress.

Title 3 was the authorizing article from the code of regulations for the permit program. In 1985 Title 3 was developed in response to U.S. EPA's grant conditions for the Heights Hilltop and Southwest interceptors. In 1986 the permit program was initiated with the group of communities that were given permits during 1986 and 1987.

Title 4 came in 1993 in anticipation of U.S. EPA CSO policy in 1994. 44 communities have been issued permits so far of the communities the District serves. Separate permits have been issued to 42 communities and 10 have been issued combined sewer permits under Title 4. 8 of the 10 combined overlap.

The two categories communities were grouped into were priority 1 and priority 2. Priority 1 communities faced mandatory capital expenditure projects in the local sewer systems in response to the grant conditions.

Communities are required to perform technical program projects, which are outlined in the compliance plans they are mandated to compile submit to the District at the first stage of the

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permit program. They were developed in conjunction with the District and its findings from the sewer system evaluation studies done as the design work for the Heights Hilltop and Southwest interceptors. The information was used to develop the projects with the communities.

Ms. Maciejowski stated that the performance objectives related to the technical program projects are that SSOs were identified within each community were to be addressed by a combination of the District's construction of the interceptors and inner community relief sewers and the projects that the communities were required to complete.

They were also required to adhere to permit flow limitations identified in each community's permit. Peak flow limitations are the means by which the District regulates sewage flows discharged from member facilities to District facilities, interceptors and inner community relief sewers. Also included are community boundaries where discharge from their system flows to another local system of a downstream community. Both SSOs and peak flow limitations are listed in each community's permit.

Ms. Maciejowski advised that communities are required to properly report dry-weather problems and what they do about them.

Communities are required to implement a sewer maintenance program which they developed under the permit program. Each community submitted a plan of sewer maintenance that they intend to regularly perform on their local system, which has become part of their permit. They are required to annually update community expenditures for both maintenance and capital investment in their infrastructure.

Ms. Maciejowski advised that activities tracked include community compliance plan projects, any changes due to local investigations, which SSOs are controlled, technical program project activities on mandated projects and District-initiated permit modifications. They mostly consist of the District service area and facilities planning area changes that are sometimes made.

The dry weather discharges reported are discovered by WQIS, which informs the communities what was found and recommends what to do to resolve the problem.

Moving to statistics, Ms. Maciejowski advised that 35 of 91 projects identified have been completed for communities of the Southwest and Heights Hilltop interceptors. In the Heights Hilltop interceptor area, 56 were identified and 37 have been completed. Overall 72 of 91 projects have been completed, or approximately 79%.

A total of 222 SSOs exist within the areas; 76 are within the Southerly tributary area and 146 within the Easterly tributary area. Approximately 77% have been controlled or eliminated. The remaining 51 remain to be addressed. In some cases they may have been controlled but there is no information to verify it.



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Ms. Maciejowski advised that some reported SSOs have shown to not actually being SSOs in subsequent studies during CSO facilities planning. They have been tagged for being removed from the community permits.

Ms. Maciejowski explained that in terms of dry-weather sanitary discharges there were 15 improper connections -- most of which are improper connection issues and structural problems such as collapsed or blocked sewers. The affected areas are in six communities. Data is still coming in from 2012.

Mr. Brown questioned the distinction between priority 1 and priority 2. Ms. Maciejowski explained that priority 1 is the communities for which specific projects were identified that the communities agreed to complete in conjunction with the construction of the Heights Hilltop and Southwest interceptors. Mr. Greenland stated that priority 1 communities were driven by SSOs identified on the local collection system. The Ohio EPA wanted to take care of those overflows. The permit program made it mandatory for communities to investigate and correct overflows in the local system with capital work.

Ms. Maciejowski stated that another area of responsibility for the permit program is plan review coordination. All plans are reviewed for consistency with service and membership agreements and codes of regulation. The potential impacts to facilities are considered to make sure the proper amount of flow comes in and be in alignment with Project Clean Lake.

Ms. Maciejowski advised that timely submittal of annual community compliance report checklists is important for key areas such as SSO control, project completion, expenditures and dry-weather discharges. District staff has to remind communities often that they need to submit them every year. The EPA has been pressing communities to eliminate the SSOs in their systems.

Staff was concerned about communities possessing the physical capability to respond to emergency repairs and their local sewer systems, including emergency repairs and routine operations and maintenance.

In the future, Ms. Maciejowski advised that staff hopes to assist communities with developing plans for controlling and verifying the elimination of SSOs. Staff also wants to reduce I&I and ensure compliance with peak flow limitations. The integrated planning approach will be supported because the program collects ample information that can be utilized with the overall regional impacts to water quality for both the combined and separate sewer areas.

Mr. Brown stated that I&I contemplates stormwater. Mr. Greenland advised that one cannot manage sanitary or combined sewer systems without touching stormwater.

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Mr. Brown was confused by the impact of phase 1 and 2 stormwater regulations which affect MS-4s. As it relates to Cleveland which 96% of the system is combined and we are dealing with stormwater again. It suggests that we do regulate at least. We also regulate what gets discharged to a natural stream and how the member communities do that.

Mr. Greenland agreed and stated that these two programs need to increase activities. They impact water quality and the amount of flow treated at the wastewater treatment plants. The SSO situation locally is unknown; many overflows have been eliminated and some have likely been eliminated but monitoring data needed. There is much interest and involvement between the District and member communities.

The U.S. EPA's interest in a few communities complicates the SSO issue. They launched an initiative around 2005 and some communities received letters with various results. District staff would like to help them with their U.S. EPA dealings. The U.S. EPA CSO policy has nine minimum controls -- mostly maintenance-related. Phase 2 stormwater has six minimum controls. There are 15 minimum controls to deal with and all revolve around water quality implications.

VII. Public Session (any subject matter)

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

VIII. Open Session

There were no matters for Open Session.

IX. Executive Session

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

**MOTION** – Mr. Bacci moved to enter into Executive Session to discuss six litigation matters. Discussions of these matters in executive session are permitted as specific exemptions to the Public Meetings Act pursuant to Ohio Revised Code Section 121.22(G)(3). He specifically designated matters discussed in Executive Session be protected from public disclosure in accordance with Ohio law and the attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

The Board met in Executive Session from 1:26 p.m. to 2:03 p.m.

X. Approval of Items from Executive Session

Sewer Use Code Matters

Resolution No. 251-13

Retain Benesch Friedlander Coplan & Arnoff LLP for Legal Support with District Contract Claims Associated with the Southerly Renewable Energy Facility.

Resolution No. 252-13


Retain Weston Hurd LLP for Defense of *John McMillan vs. Northeast Ohio Regional Sewer District, et al.*


**MOTION** – Mayor Bacci moved and Mayor DeGeeter seconded to adopt Resolution Nos. 245-13 and 251-13 through 252-13. After discussion the motion carried with no objection.

Regarding Resolution No. 245-13, Mr. Brown stated that as it relates to the community benefit aspect it would be beneficial to create a mechanism to keep the Board apprised of efforts of engagement. Given the size of the contract he wanted to make sure the goals were met.

XI. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Mayor DeGeeter seconded the motion to adjourn at 2:05 p.m. Without objection, the motion carried unanimously.

  
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Sheila J. Kelly, Secretary  
Board of Trustees  
Northeast Ohio Regional Sewer District

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