

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES SPECIAL MEETING
JUNE 8, 2017

A Special Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 10:00 a.m. by Darnell Brown. The purpose of the special meeting was to discuss the consent decree, including executive session for said purpose, pursuant to Ohio Revised Code Section 121.22(G)(1).

I. Roll Call

PRESENT: D. Brown
R. Sulik
J. Ciaccia
J. Bacci
T. DeGeeter
S. Dumas
R. Stefanik

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

Mr. Brown announced that this special meeting had been called for the purpose of an update on the consent decree. Proper public notice was published.

II. Discussion

Devona Marshall, Director of Engineering & Construction, advised that the District entered into a 25-year consent decree schedule in 2011. The consent decree requirements result in an estimated 98% capture rate of all flow into the combined system.

The decree also has a requirement to implement chemically-enhanced high-rate treatment and disinfection (CEHRT). The District is required to pilot and test the technology before it is implemented at the facilities because it was not the EPA's preferred technology. The decree also has non-Combined Sewer Overflow (CSO) control requirements regarding increasing the capacity of the plants which would eliminate or reduce the internal bypasses at the wastewater treatment plants.

The green infrastructure requirement is under Appendix 3. The District is required to spend a minimum of \$42 million on green infrastructure and achieve at least 44 million gallons of CSO control. There are also post-construction monitoring performance compliance requirements. The cost associated with the performance compliance is not part of the overall \$3 billion. Staff estimates that cost between \$25 and \$50 million.

The District entered the consent decree in 2011 with an estimated 4.5 billion gallons of CSO per year and when completed it is estimated to be less than 0.5 billion gallons. The number of overflows per CSO location will decrease from zero to 80 to less than zero to 4 per year. Prior to entering the decree, the District had already reduced CSO from an estimated 9 billion gallons when the District was formed to 4.5 billion in 2011, investing \$1 billion already in CSO control.

Ms. Marshall advised that the chemically-enhanced high-rate treatment and disinfection was not the EPA's preferred technology at the time. District staff estimated utilizing this technology would save the District an estimated \$180 million, and agreed to demonstrate that the District's preferred technology could meet the decree performance requirements. She explained that the EPA preferred technology was advocated more so by the State EPA than federal. The District is required to test the technology at all three facilities.

The District is required to increase the wet-weather capacity at Southerly Plant from 400 to 615 MGD and will result in the decrease of internal bypasses from 11 to 1 in a typical year. Easterly Plant secondary capacity is required to increase from 330 to 400 MGD, which would eliminate that internal bypass.

Mr. Brown noted that the additional storage at Easterly was smaller than Southerly but does not consider the Euclid Creek Storage facility. CEO Dreyfuss-Wells stated that the role of the Euclid Creek Tunnel is a key concept of the proposed change in the Easterly system.

Mr. Brown stated that during a rain event not everything goes through the treatment process and the Euclid Creek Storage facility stores some until it can be treated. Even though the number in terms of treatment capacity is not significant, what is being stored is significant. Ms. Marshall advised that Easterly service area will have a higher level of control than the Southerly service area.

Continuing the report, Ms. Marshall explained that the consent decree could be summed up in 25 control measures the District is required to implement over the next 25 years. The control measures include approximately 80 capital improvement projects. The District has spent or awarded \$1.2 billion in consent decree projects to date. This is in 2009 dollars to make it comparable to the \$3 billion estimated to be spent overall.

The Euclid Creek Tunnel is complete but not yet in operation because the Tunnel Dewatering Pump Station must come online. 1 of the 25 control measures, which was a small one controlling 30 million gallons per year, has been completed. The District expects to complete 14 control measures over the next five years with control of 2 billion gallons of CSO.

Ken Duplay, Chief Financial Officer, advised that once the District takes out bonds or loans they are set for paying off over the next 20 or 30 years. Capital Improvement Project dollars do not necessarily mean huge impact on short-term rate increases. There are short-term impacts on Operation & Maintenance but any changes to the long-term Capital Improvement plan will take place over time.

Mr. Brown stated that the consent decree indicates the number of CSO gallons that must be removed over a certain period of time and for the years 2030 to 2035 he has a question about what the expense will be versus what is achieved.

Ms. Marshall advised that staff submitted work plans for the three CEHRT pilot facilities that were approved by the EPA and implemented. The Westerly CEHRT Control Measure 3 Performance Test Report submitted in March 2016 was disapproved and it is pending re-submittal. The plan was disapproved because staff employed treatment of flow and disinfection in one tank. Staff also did not include a construction plan for the additional treatment quads required.

The Southerly CEHRT Performance Test report submitted in March 2015 received a conditional approval in December 2015 because there is disagreement about how to calculate and demonstrate compliance with E. coli criteria.

Mr. Brown asked for an elaboration regarding demonstrating compliance with E. coli criteria. Ms. Marshall explained that demonstrating compliance with E. coli is problematic because these facilities operate infrequently. However, staff has ongoing conversations with the agency on a technical nature and are confident it will eventually be resolved at the technical level.

Mr. Ciaccia noted that the State EPA precipitated the need for high-rate treatment and inquired with whom the District is negotiating now. Lou McMahon indicated that negotiations are with both federal and state EPA. The State has been very practical but there must be concurrence for a resolution.

Ms. Marshall advised that the District has a pending modification request to the EPA. When and if it is approved, it would be \$11 million in capital savings related to five control measures. The modification is to design criteria and not performance criteria. There is a verbal agreement and it is now before the Department of Justice.

Ms. Marshall stated that the District was moving towards corrective action regarding Appendix 3. The District cannot cost-effectively achieve 44 million gallons of control and staff is proposing to achieve that gap through gray infrastructure. Doing will save an estimated \$60 million along with Operation & Maintenance savings. The District has a written agreement with the EPA on how to calculate that corrective action.

Mr. Brown stated that this does not affect the consent decree outcome but does affect the perception of the region. He inquired how this approach compares with Philadelphia and other places that would swear by green infrastructure. CEO Dreyfuss-Wells explained that last year the Board adopted a Green Infrastructure policy which includes six areas about green infrastructure grants, the Member Community Infrastructure Program and the Regional Stormwater Management Program (RSMP). The District is implementing green infrastructure with strategic partnerships with developers and is removing stormwater from the combined sewer system and dealing with CSO control.

Mr. Ciaccia stated that the discussion on green infrastructure nationally has come down to Earth.

CEO Dreyfuss-Wells stated that the cost of green infrastructure is \$2.82 per gallon while tunnels are \$0.22 per gallon. A volume problem requires a volume solution and the District is as green as possible in terms of real green infrastructure.

Ms. Marshall noted that when the consent decree is fully implemented the District will be at 98% CSO control while Philadelphia will be fortunate to achieve 85% control. The District is currently at 82% control.

Ms. Marshall explained that staff notified the EPA that it would not meet the December 31, 2016 Achievement of Full Operation Critical Milestone date for Control Measure 1. Staff estimates achieving full operation by the end of 2017. The District was proactive commencing this control measure prior to entering into the consent decree but it was a miscalculation in regards to the schedule and how much time it would take to perform startup activities.

Mr. McMahon advised that this control measure is an anomaly because it is the only plant control measure that has achievement of full operation as a milestone. Construction of the project was 98% complete by what would have been a construction deadline; all other plant projects have only a completion of construction deadline. The EPA recognized this anomaly and the good faith effort the District has put forward and they have discretion over whether to apply stipulated penalties.

Moving to the next portion of the report, Ms. Marshall advised that to date the District has realized \$330 million in cost savings. The projected cost savings based on advanced planning is another \$400 million over the next 20 years.

Ms. Marshall stated that there are challenges with 25 defined control measures and the level of detail on the design requirements. Staff will continually look for ways to optimize design and achieve the performance requirements. A significant challenge has been the lack of a single point of contact with decision-making abilities at the EPA.

Ms. Marshall explained that the District has not deferred any construction projects associated with the pending modification request because there was no perceived risk. There was no risk because the data spoke for itself in regards to the level of performance. She advised that there is technical agreement on those currently with the EPA and staff anticipates them going through.

CEO Dreyfuss-Wells stated that the lack of a single point of contact at the EPA is particularly acute with the four issues staff will lay out and that is why the timing gets more critical.

Mr. Ciaccia stated that from a risk management standpoint there are projects going forward that are not the way they were in design and technically violate the agreement in the EPA's mind. Ms. Marshall clarified that those are the projects pending modification now. The projects in question that fall into the high-risk category are under discussion today because staff is not willing to go down the path of construction until there is concurrence internally and possibly discussions with the EPA on how to modify them.

Mr. Ciaccia questioned what type of penalty would be associated with just designing a project. Mr. McMahon explained that it depends because it is fact specific on the project, time and place. He cited an example in which one control measure was brought to the EPA as part of the pending modification request. The constructed facilities for the control measure did not meet the exact letter of the design criteria. EPA did not acknowledge the requested change in the modification request because the facilities were already constructed. To date, there has been no penalty. However, the risks are more significant the larger the project is.

Mr. Ciaccia inquired how it would be a penalty if there is no force on it. Mr. McMahon indicated that the EPA could either require corrective action and/or a penalty.

Mr. Ciaccia stated that the penalty -- if any -- is unknown. Construction is very expensive and it might be worth the penalty. Mr. McMahon stated that the penalties are thousands of dollars per day on some projects and it can take a long time to get a resolution.

Ms. Dumas speculated that a penalty could be disassembling something and constructing it again.

Mr. Ciaccia advised that the argument is the District is not compromising the level of control. CEO Dreyfuss-Wells indicated that the EPA is focused on how projects are done and the outcome.

Ms. Marshall explained that the EPA considers performance and design criterion equally. Staff knew the performance would match or exceed the categories in regards to the five control measures staff proceeded with.

Eric Luckage, Chief Legal Officer & General Counsel, stated that staff hopes with the new environment at the EPA that they will get decisions on such matters more timely moving forward. Mr. Brown stated that it is a question of whether regulatory authority is dialed back which is good fiscally but not where the District wants to be environmentally.

Mr. Ciaccia stated that would not necessarily be dialing back regulations but dialing back enforcement.

Ms. Dumas stated that even if there is no enforcement there are certain things the District should want to achieve even if they are not requirements. Ms. Marshall advised that staff would never propose something that is unreasonable; what is proposed makes sense environmentally and fiscally.

II. Executive Session

MOTION –Mayor Bacci moved to go into Executive Session to consult with District legal counsel concerning disputes involving the District that are subject of pending court action. After discussion and without objection, the motion carried unanimously by roll call vote.

The Board met in Executive Session from 10:45 a.m. to 11:52 a.m.

III. Adjournment

MOTION – With no further business, Mr. Brown stated that he would entertain a motion to adjourn. Mayor Bacci moved and Mayor DeGeeter seconded the motion to adjourn at 11:52 a.m. Without objection, the motion carried unanimously.



Timothy J. DeGeeter, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



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