



Village of Goshen

Controls Over the Waste Water Treatment Plant Project and Sewer Rates

Report of Examination

Period Covered:

June 1, 2003 — November 2, 2009

2010M-26



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

July 2010

Dear Village Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and the Board of Trustees governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of Village of Goshen, entitled Controls Over the Waste Water Treatment Plant Project and Sewer Rates. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Village of Goshen (Village) is located in the Town of Goshen (Town), Orange County. The Village is 3.21 square miles and has approximately 5,700 residents. An elected Board of Trustees, composed of a Mayor and four Trustees, governs the Village. The Mayor is the Village's chief executive and carries out day-to-day management functions.

In 2003, the New York State Department of Environmental Conservation (DEC) mandated that the Village construct a new Waste Water Treatment Plant (WWTP). Construction began in 2006 and was completed in 2007. However, because Village officials chose to construct the WWTP on the Village's capped landfill, the Village has incurred unanticipated and ongoing costs for soil remediation at the project site, as ordered by the DEC. The costs for the construction of the WWTP and for soil remediation are factored into direct billings to Village residents, and into annual billings to the Town for the residents of two sewer districts who receive service pursuant to intermunicipal agreements.

In 2008, the Village billed the Town \$371,418 for processing 181,588 gallons of sewage, or 14.7 percent of the total gallons processed. Total expenditures for the sewer fund totaled \$2.2 million for the 2008-09 fiscal year. Town officials requested an audit because the sewer bills for the Town's residents increased by 63 percent in 2008. Town officials dispute the rates charged and claim that the Town's residents are paying a disproportionate amount of the total cost.

Scope and Objective

The objective of our audit was to determine if the Village's sewer rates assessments are based on proper project costs for the period June 1, 2003 to November 2, 2009. Our audit addressed the following related questions:

- Was the WWTP properly planned?
- Are Village and Town sewer rates properly supported and accurate?

Audit Results

The Board did not properly plan for the construction of the WWTP. In 2003, the Board authorized, by resolution, the initial funding of \$22.5 million to construct the WWTP. Village officials chose to construct the WWTP on the Village's capped landfill. Construction began in 2006, and expenses incurred through November 2009 have totaled \$30 million. Although the Board hired a consultant to

oversee the project and passed resolutions to ensure that authorization was in place for the expenses as incurred,¹ the consultant was not a certified engineer and did not have the expertise to oversee the project. Although the consultant did commission engineers to perform four studies regarding the cost and design of the WWTP, the costs for soil remediation that were necessary due to the location chosen were not taken into consideration. As a result, the Village incurred unanticipated costs for soil remediation totaling \$5.5 million, which have adversely affected sewer rates charged to Village and Town residents.

Sewer rates charged to Village residents are properly supported and accurate. However, a portion of the sewer rates charged to Town residents is not supported. As a result, Town residents may have been overbilled by \$15,700. In addition, a second portion of the sewer rates charged to Town residents relates to soil remediation costs associated with the construction of the WWTP, which are not clearly addressed in the intermunicipal agreements. Town officials believe that soil remediation costs should not be allocated to Town residents. This includes the \$57,000 allocated for 2008 and \$889,000 that could be allocated over the life of the bond. Town officials have requested that the Orange County Commissioner of Health arbitrate this issue.

Comments of Village Officials

The results of our audit and recommendations have been discussed with Village officials and their comments, which appear in Appendix A, have been considered in preparing this report. Village officials generally disagreed with all of our recommendations. Appendix B includes our comments on issues raised in the Village's response letter.

¹ The Board amended the funding resolution to \$26 and then \$29 million in 2006, and to \$32.5 million in 2007.

Introduction

Background

The Village of Goshen (Village) is located in the Town of Goshen (Town), Orange County. The Village is 3.21 square miles and has approximately 5,700 residents. The Village provides a range of services to its residents including highway maintenance, water service and sewer service. These services are financed mainly by real property taxes, State aid, and user charges. An elected Board of Trustees, composed of a Mayor and four Trustees, governs the Village. All Board members have equal voting power and responsibility for the overall financial management of the Village. The Mayor is the Village's chief executive and carries out day-to-day management functions.

One Board member is appointed as the Village's Water and Sewer Commissioner, who is responsible for the general oversight of water and sewer operations. The Commissioner has the authority to set water and sewer rates, prepare the annual operating budgets, and enter into contracts on behalf of the water and sewer department. However, all resolutions are subject to the Board's final approval. The Treasurer's office is responsible for various accounting functions including the recording of cash receipts and billing for Village services.

In 2003, the New York State Department of Environmental Conservation (DEC) mandated that the Village construct a new Waste Water Treatment Plant (WWTP). Construction began in 2006 and was completed in 2007. However, because Village officials chose to construct the WWTP on the Village's capped landfill, the Village has incurred unanticipated and ongoing costs for soil remediation at the project site, as ordered by the DEC. The costs for the construction of the WWTP and for soil remediation are factored into direct billings to Village residents, and into annual billings to the Town for the residents of two sewer districts who receive service pursuant to intermunicipal agreements.

In 2008, the Village billed the Town \$371,418 for processing 181,588 gallons of sewage, or approximately 14 percent of the total gallons processed. Total expenditures for the sewer fund totaled \$2.2 million for the 2008-09 fiscal year. Town officials requested an audit because the sewer bills for the Town's residents increased by 63 percent in 2008. Town officials dispute the rates charged and claim that the Town's residents are paying a disproportionate amount of the total cost.

Objective

The objective of our audit was to determine if the Village's sewer rates assessments are based on proper project costs. Our audit addressed the following related questions:

- Was the WWTP properly planned?
- Are Village and Town sewer rates properly supported and accurate?

**Scope and
Methodology**

We examined the planning for the construction of the WWTP and sewer rates for the period June 1, 2003 to November 2, 2009.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of
Village Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Village officials and their comments, which appear in Appendix A, have been considered in preparing this report. Village officials generally disagreed with all of our recommendations. Appendix B includes our comments on issues raised in the Village's response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Village Clerk's office.

Project Planning

The Board is responsible for oversight and management of the Village's capital projects. As such, the Board is responsible for properly planning capital projects, including the hiring of appropriate professionals to ensure that all related factors are considered and included in the estimated project cost before a commitment is made to expend Village resources.

In 2003, the Board authorized, by resolution, the initial funding of \$22.5 million to construct the WWTP. Construction of the WWTP began in 2006, and expenses incurred through November 2009 have totaled \$30 million. Although the Board hired a consultant to oversee the project and passed resolutions to ensure that authorization was in place for the expenses as incurred,² the consultant was not a certified engineer and did not have the expertise to conduct a comprehensive and thorough review to determine the overall scope and cost of the project, or to oversee the project once construction was underway. Although the consultant did commission engineers to perform four studies regarding the cost and design of the WWTP and to perform on-site oversight during construction, the costs for soil remediation that were necessary due to the location chosen were not taken into consideration. As a result, the Village incurred unanticipated costs for soil remediation totaling \$5.5 million to date, which have adversely affected sewer rates.

Village officials chose to construct the WWTP on the Village's capped landfill, which was operated in the 1950s and 1960s. However, shortly after the project was put out to bid in 2005, Village officials received a directive from the New York State Department of Environmental Conservation (DEC) requiring them to remove the soil from the entire project site because it was found to include a mixture of ash, construction debris, glass, ceramic fragments, and other waste material from the time it was operated as a landfill. This directive was actually a reiteration of the prior directive dated June 28, 2004, which also required removing the soil from the entire project site, and it was imprudent for Village officials to proceed with the project without first obtaining an estimate for the cost to remove the soil once the order was received from the DEC. Village officials stated that the initial cost estimate did not include the removal of soil from the entire project site because the DEC originally provided them with a letter

² The Board amended the funding resolution to \$26 million in March 2006 and then \$29 million in November 2006, and to \$32.5 million in April 2007.

indicating that the Village would be responsible for removing only the soil from under the building location. However, Village officials could not produce this letter.

We reviewed vendor contracts, invoices, change orders and paid claims in order to determine the cost of the soil remediation which began in 2006 and has continued through November 2009. Additional costs associated with soil remediation included soil testing, laboratory expenses, building a storage shed, constructing and maintaining a road, and consultant fees totaling approximately \$5.5 million.

Village officials told us that the capped landfill was the most logical place to build the WWTP because the new WWTP would sit beside the old WWTP, allowing for the use of the existing sewer lines. They also told us that it is a gravity fed plant, the landfill is located at the lowest elevation in the Village, and physical space within the Village is limited.

Recommendation

1. Village officials should hire appropriate professionals to ensure that all related factors are considered and included in the estimated project cost before a commitment is made to expend Village resources.

Sewer Rates

The Village provides sewer services to Village residents, and to Town residents pursuant to intermunicipal agreements. Village officials are responsible for ensuring that all charges are supported, and in accordance with all applicable schedules, guidelines and agreements. It is important that agreements clearly define the steps that should be taken when changes occur that are not within the parameters of the original agreements to ensure that sewer charges are properly allocated between the parties.

Sewer rates charged to Village residents are properly supported and accurate. However, the Village does not have adequate support for a portion of the sewer rates charged to Town residents. As a result, Town residents may have been overbilled by \$15,700 for 2008. In addition, the Village included certain WWTP construction costs related to soil remediation in the overall cost computation. Town officials contend that soil remediation costs should not be allocated to Town residents. If Town officials are correct, then the Town was overbilled by \$57,000 in 2008 and could be overbilled by \$889,000 over the life of the bond. Town officials have formally requested that the Orange County Commissioner of Health arbitrate this issue.

Village Sewer Rate Calculation

Village residents are billed on a quarterly basis. The Village Board adopted the water/sewer fee schedule at a public hearing on May 22, 2006, which is used to calculate the actual usage portion of the bills. Operating and maintenance costs are allocated based on the actual usage. Special assessments of \$70.00 per unit are put into a separate account for the payment of debt service. We tested 10 sewer bills and found that they were accurate and calculated in accordance with the fee schedule, and the guidelines for the operation and maintenance costs and debt service.

Town Sewer Rate Calculation

The Village provides sewer service to the Town's two sewer districts, Hambletonian Park and Arcadia Hills, pursuant to intermunicipal agreements between the Village and the Town dated February 1980 and January 1985. The Board passes resolutions on an annual basis to extend the terms of the agreements.

The intermunicipal agreements provide the details of the calculations and time frames that must be followed for billings, which are based on meter readings that the Town gives the Village. The meter readings document the usage for each month; however, the village bills the Town annually. The Town's daily average usage is calculated by taking the total usage and dividing it by 365 days. This amount is

then divided by the Village's daily average usage to get a percentage which is multiplied by the operations and maintenance expenditures and debt service, and then multiplied by 110 percent to calculate the total amount the Town owes the Village.

We tested the billings to the Town for January 1, 2008 – December 31, 2008 totaling \$371,418 and found that they were mathematically correct according to the intermunicipal agreements. However, the billing calculations included amounts that were not supported, or were disputed, which resulted in potential overbilling.

- Lump Sum Expenditures — The 2008 billings included allocations for three lump-sum expenditures (Sewer Administration, Sanitary Sewer DPW Services and Sewage Treat/Disposal DPW Sewer) totaling \$97,000. Village officials did not have documentation to support these expenditures. These allocations resulted in billings to the Town totaling \$15,700.³ Village officials told us that they are in the process of determining the extent to which the billings were appropriate.
- Debt Service — The 2008 billings included allocations for debt service totaling \$1,510,220. We estimate that the allocations included costs for soil remediation totaling \$352,096 that were related to the construction of the WWTP.⁴ Town officials believe these costs should not have been included. Therefore, we estimate that the Town was overbilled by \$57,000 for 2008,⁵ and could be overbilled by \$889,000 over the life of the bond.⁶

Construction of the WWTP began in 2006 and ended in 2007 with an approximate cost of \$30 million. However, this amount includes only the \$5.5 million of soil remediation costs incurred through November 2009. Soil remediation continued through the end of our audit fieldwork.

Town officials contend that the soil remediation costs (\$5.5 million) should not be included in the cost allocation because the Village chose to build the WWTP on the old landfill. To that end, Town

³ \$97,000 times .147 times 1.1 = \$15,685

⁴ Based on a review of paid claims, we calculated that the costs for soil remediation totaled approximately \$5.5 million. The \$352,096 is the portion of the \$5.5 million that relates to 2008 based on our recalculation of the debt schedule after deducting \$5.5 million from the amount financed.

⁵ \$352,096 times .147 times 1.1 = \$56,934

⁶ \$5,500,000 times .147 times 1.1 = \$889,350 assuming that the ratio of gallons processed for Town and Village residents remains constant.

officials have withheld payment of \$100,000 from the 2008 billing. Village officials believe that the \$5.5 million should be included as an allocated cost because it is part of the total project cost, and, per the agreements, the Town's residents are responsible for their portion of the debt service for capital improvements.

We reviewed the agreements to determine if they clearly define services to be provided, how those services are to be charged, and the steps that should be taken when changes occur that are not within the parameters of the original agreement. The agreements, which are over 24 years old, do not provide specific parameters for the construction of the WWTP, nor do they address each party's authority in the decision making process for capital projects.

Each intermunicipal agreement has an arbitration clause which states that in the event of a dispute or question of interpretation, either party may submit the dispute or question to the Commissioner of the Department of Health of Orange County for arbitration. The Village and Town are bound by the decision of the Department of Health Commissioner. As of the completion of our fieldwork, neither the Village nor the Town had contacted the Commissioner to arbitrate the dispute.

On March 3, 2010, the Town formally requested arbitration. Town officials indicated that arbitration was not required earlier because the Town was trying to reach a compromise with the Village. If the Town officials' assertion is correct, we estimate that the Town was overbilled by \$57,000 for 2008, and could be overbilled by \$889,000 over the life of the bond.

Recommendations

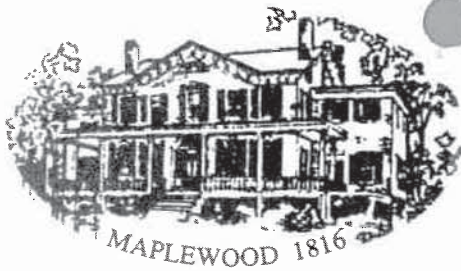
2. Village officials should ensure that they have adequate documentation to support expenditures that are allocated to the Town. Any amounts that are not supported should be refunded or not billed, as appropriate.
3. The Board should revise the intermunicipal agreements between the Village and the Town to address each party's authority in the decision making process for capital projects.

APPENDIX A

RESPONSE FROM VILLAGE OFFICIALS

The Village officials' response to this audit can be found on the following pages.

The Village's response letter refers to attachments that support the response letter. Because the Village's response letter provides sufficient detail of its actions, we did not include the attachments in Appendix A.



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Thomas J. Cione, Esq.

New York State Office of the Comptroller
Division of Local Government and School Accountability
110 State Street
Albany, New York 12236

RE: *Draft Audit/Village of Goshen Controls over the Waste Water Treatment Plant Project and Sewer Rates*

Dear Sir or Madam:

On behalf of the Village Board I acknowledge receipt of the Draft Audit you have prepared entitled: “*Village of Goshen Controls over the Waste Water Treatment Plant Project and Sewer Rates.*” This audit was prepared in response to a request made by the Town of Goshen.

The Village Board and its consultants¹ have reviewed this Draft Audit carefully. Our review has uncovered certain factual inaccuracies. Additionally, it appears that you have not consulted the relevant documentary evidence maintained in Village Hall regarding the planning and construction of the Waste Water Treatment Plant (WWTP)². As a result, many of your findings are flawed. We will identify those inaccuracies and the relevant documents hereinafter and trust that you will adjust your Audit to correct these mistakes.

Our response to the Draft Audit follows. In order to avoid duplication, we will not address the Executive Summary portion of your report. Our responses to your specific findings will be set forth under the appropriate topic following the organizational structure of the Draft Audit.

¹ The Village’s accountant, [REDACTED], has prepared a Memorandum in response to the Comptroller’s Draft Audit. It is appended to this response.

² Your Audit Methodology and Standards, set forth in Appendix B of your Draft Audit, omits any reference to a review of the Village’s files regarding this project. Respectfully, it is impossible to conduct an accurate audit of this project without reviewing the Village’s files which contain the documentary evidence supporting the Village’s actions.

See
Note 1
Page 20

See
Note 1
Page 20

Project Planning

The section of the Draft Audit dealing with Project Planning makes 5 separate findings. Each finding will be dealt with individually.

Finding #1: *The Board did not hire a certified engineer to conduct a comprehensive and thorough review to determine the overall scope and cost of the project.*

See Note 2 Page 20

Response: This finding is not accurate. The Village in fact commissioned four (4) separate engineering studies to comprehensively study and determine the overall scope and cost³ of the project. These studies were either done by, or in conjunction with, certified professional engineers. Each study is on file in the Village Hall. These studies are as follows:

- ***“Wastewater Treatment Plant Feasibility Study”*** prepared by [REDACTED], dated September 13, 2002;
- ***“Wastewater Preliminary Design and Cost Estimate Study”*** prepared by [REDACTED], dated December 30, 2002, revised March 6, 2003;
- ***“Wastewater Treatment Plant Preliminary Design, Cost Estimate study & Geotechnical Investigation”*** prepared by [REDACTED], dated December 30, 2002, revised September 2003;
- ***“Wastewater Treatment Plant Preliminary Basis of Design Report”*** prepared by [REDACTED], a large engineering firm with offices in more than twenty (20) states, in conjunction with [REDACTED], dated January, 2004.

These reports are too voluminous to attach to this response. The cover sheets from each report are attached hereto, collectively, as Exhibit A.

Finding #2: *The Board did not hire a certified engineer to oversee the project once construction was underway.*

See Note 3 Page 20

³ The analysis of the costs associated with the soil excavation will be addressed in our response to Finding #4.

Response: This finding is not accurate. Four (4) Professional Engineers, from two (2) separate engineering firms, oversaw the project once it was underway. Attached hereto and made part hereof as Exhibit B is a document entitled “*Scope of Services to [REDACTED] for Construction Services Village of Goshen Wastewater Treatment Plant Upgrade.*” This proposal was submitted by [REDACTED] to [REDACTED], the consultant employed by the Village of Goshen during the planning and initial construction of the WWTP.⁴ This proposal, accepted by the Village Board on May 23, 2005 (a copy of their resolution accepting this proposal is attached hereto as Exhibit D), provided that [REDACTED] would provide extensive construction oversight services, including day to day oversight of the project, for a fee of approximately \$1,161,152.00. Three separate engineers from [REDACTED] were personally involved in the oversight of the construction of the project. Additionally, an independent consultant, [REDACTED], was also engaged through the offices of [REDACTED] and provided peer review to the construction of the project. Therefore, contrary to the finding contained within your Draft Audit, four (4) separate engineers, employed by two (2) separate engineering firms, oversaw the project once it was underway.

Finding #3: *The Village incurred unanticipated costs for soil remediation totaling 5.5 million dollars to date, which have adversely affected sewer rates.*

Response: This finding is not accurate.⁵ First, as we will further develop in our response to Finding # 4, the Village was aware that some costs would be incurred in connection with excavation of soil at the WWTP. The extent of those costs, however, could not be ascertained until the DEC determined the extent of work that would be required at the landfill site. Second, the Village Treasurer and the Village Accountant have determined that the amount expended in connection with the soil excavation (which your Draft Audit incorrectly characterizes as “soil remediation”) is \$2,962,079.00, not \$5,500,000.00. (see report of [REDACTED], [REDACTED] appended to this report.)

⁴ [REDACTED] services were terminated in November of 2007. Thereafter, the Village contracted directly with [REDACTED]. A copy of the Village’s contract with [REDACTED] is attached hereto as Exhibit C.

⁵ The use of the nomenclature “soil remediation” is incorrect. As will be explained hereinafter, the New York State Department of Environmental Conservation (DEC) required the *excavation* of an abandoned Village landfill in connection with the construction of the WWTP. As a result, an interim stockpile, consisting of the material in the abandoned landfill, was created. Ultimately, this stockpiled material must be disposed of in some fashion. This *remediation* work has not yet begun.

See Note 4 Page 20

Finding #4: Shortly after the start of the project, Village officials received a directive from the DEC requiring them to remove the soil from the entire project site.

See
Note 5
Page 20

Response: This finding is not accurate. The directive was received *after* the project had been put out to bid but *before* the bids were awarded. While the project was in the planning stages, Village consultants had sought permission from the DEC to excavate only that portion of the landfill that was beneath only the buildings proposed for the WWTP site. This would involve excavation of approximately 21,000 cubic yards of material. The DEC ultimately denied this request (in a letter from [REDACTED], dated June 24, 2005) and ordered the Village to excavate the entire landfill, which totaled approximately 76,000 cubic yards of material. After this directive was received, the Village Board carefully analyzed, as best it could under the time constraints imposed by the DEC through their Consent Order requiring construction of a new WWTP, all of the repercussions implicated by the DEC's requirement to address the entire landfill.

The following timeline, and associated documentary evidence, is critical in understanding what occurred relative to the abandoned landfill at the WWTP site:

- **July 3, 2003:** [REDACTED] issued a report entitled "*Waste Water Treatment Plant Geotechnical Investigation.*" A copy of a portion of this report is appended hereto as Exhibit "E." This report, at page 7, made the following finding: "It is recommended that the New York State Department of Environmental Conservation, Division of Solid Waste be notified of the potential for a landfill to be located at the site and that their input be used as to any remedial activities which may be required before site work commences for WWTP construction."
- **June 28, 2004:** [REDACTED] with the [REDACTED] corresponded with [REDACTED] and acknowledged receipt of the Waste Water Treatment Plant Geotechnical Investigation. He further provided comments in connection with that investigation. His letter states that the DEC had determined that the landfill was adversely impacting groundwater and that "remedial action is required." [REDACTED] letter is attached hereto and made part hereof as Exhibit "F."
- **February 2, 2005:** On behalf of the Village of Goshen, [REDACTED] submitted a report entitled "*Landfill Disruption Work Plan*" to the DEC. A copy of the cover letter and cover sheet from the report are attached hereto as

Exhibit "G." The full report is on file in Village Hall. This report sought permission to disturb only the portion of the abandoned landfill that was beneath the buildings proposed at the new WWTP.

- **June 24, 2005:** [REDACTED] received correspondence from [REDACTED] replacement at the DEC. [REDACTED] letter states as follows: "The proposed removal of solid waste from *only the footprint of the proposed POTW structures (approximately 21 c.y.)* will not result in compliance with groundwater standards as extensive amounts of waste (including waste in groundwater) will remain." [REDACTED] went on to say that the DEC "*will be initiating enforcement against the Village*" regarding the landfill. A copy of [REDACTED] letter is attached hereto and made part hereof as Exhibit "H." [REDACTED] letter went on to identify a program known as the "Landfill Closure State Assistance Program" which would provide the Village the potential for reimbursement, of up to 50% of eligible costs, with a cap of \$2,000,000.00 for the landfill closure.
- **September 26, 2005:** The Village Board adopts a resolution regarding the disposition of the solid waste located at the WWTP site. This resolution, which acknowledges that the village is facing an enforcement proceeding, authorizes the Mayor to make application for funds under the Landfill Closure assistance Program. The resolution is annexed hereto as Exhibit I.
- **November 15, 2005:** Contracts for the WWTP are signed with the low bidders.
- **Fall 2005/Winter 2006:** Fifteen(15) separate alternatives, and their associated costs, are studied and evaluated by the Village Board regarding disposition of the landfill material. A copy of the cost analysis is attached hereto as Exhibit J.
- **March 1, 2006:** Then Village Mayor Scott Wohl writes to [REDACTED] of the DEC and requests permission to temporarily stockpile the landfill material in view of the costs associated with remediating the soil. A copy of this letter is annexed hereto as Exhibit K.
- **March 8, 2006:** [REDACTED] grants the Village's request. A copy of his letter is annexed hereto as Exhibit L.

In the summer of 2005, the Village Board was confronted with a seriously daunting task. We were under a Consent Order from the DEC and faced substantial fines if the construction of the WWTP did not move forward in a

timely fashion. The most logical place to build the new plant was next to the old plant. We owned the land and would not have to purchase any new property. The new plant could be gravity fed and we would not have to incur the cost of building and maintaining a pump station that would have to operate continuously. However, the land was adjacent to, and partially on top of, an abandoned landfill. The DEC had determined that this landfill was adversely impacting groundwater and denied our request to excavate only that portion of the land that would be improved by buildings. Upon weighing all the relevant factors, the most important of which was the best interests of the taxpayers of the Village, and given the potential of qualification of this project for State assistance, the Village Board elected to move forward with the project.

Sewer Rates

The section of the Draft Audit dealing with Sewer Rates makes two separate findings. Each finding will be dealt with individually.

Finding #1: *The lump sum allocation for expenditures from the sewer fund was not documented.*

Response: This finding is accurate. However, the Village does maintain the documentation necessary to calculate the appropriate expenditures. Using this documentation, [REDACTED] [REDACTED], has analyzed the 2008 expenditures, the year in which your office tested the billings. His evaluation, appended to this response, indicates that the sewer fund was *undercharged* by \$111,914.39. As a result, for the year 2008, the Town of Goshen was undercharged by more than \$15,000.00.⁶ The Village intends to adjust its future accounting practices accordingly.

See
Note 6
Page 20

Finding #2: *Town officials believe costs for “soil remediation” should not have been included in the billings to the Town Sewer Districts.*

See
Note 7
Page 21

Response: This finding skirts the main objective of the audit while at the same time appearing to give tacit support to the Towns position. We object to the manner in which you have handled this issue. Moreover, your statement in the Draft Audit that the sewer agreements with the Town “do not provide specific parameters for the construction of the WWTP nor do they address each party’s authority in the decision making process for capital projects” is contrary to the Village’s reading of language contained in inter-municipal agreements. For the reasons stated hereinbefore, we also disagree

⁶ \$186,190.00 (DPW costs) plus \$22,723.00 (Treasurer Department costs) = \$208,913.00 x .147 = \$30,710.00 – 15,700.00 = \$15,010.00

with your calculation that the sums attributable to soil excavation total \$5,500,000.00 as our analysis indicates the actual number is \$2,962,079.00. We suggest, if you cannot resolve this issue, that your Draft Audit be amended to provide that "Village officials believe all costs associated with the WWTP have been properly charged to the Town and the failure to include the soil excavation charges would result in the Village residents being overbilled for the WWTP." Respectfully, you can either resolve the issue or you cannot. If you cannot, your report must fairly characterize the position of both parties without favoring either party.

See
Note 4
Page 20

Recommendations:

1. The Village did hire appropriate professionals and did utilize our best efforts to ensure all that all factors were considered, including project costs, before committing to expend Village resources. We do not believe any remedial action is required in this regard.
2. We do have adequate documentation to support expenditures allocated to the Town. Examination of that documentation reveals that the Town has been *underbilled*. The Village will not seek recompense for these underbillings. However, prospective adjustments will be made to avoid this confusion in the future.
3. While we believe that the inter-municipal agreements are clear, we are presently negotiating new agreements with the Town.

See
Note 2
Page 20

See
Note 6
Page 20

We thank you for this opportunity to respond to your Draft Audit. We trust you will amend your findings in view of the information and documentation we have provided.

Very truly yours,



JOHN HIGGINS
MAYOR

Cc: Village of Goshen Board of Trustees
Meg Strobl, Village of Goshen Clerk
David A. Donovan, Esq., Village of Goshen Attorney

APPENDIX B

OSC COMMENTS ON THE VILLAGE'S RESPONSE

Note 1

Our audit included a review of all relevant documentary evidence from the Village's files including, but not limited to, the records as set forth in Appendix C of this report.

Note 2

The Board hired a consultant who was not a certified engineer. Although the consultant did commission engineers to perform four studies regarding the cost and design of the Waste Water Treatment Plant (WWTP), the studies did not include the costs for soil remediation that were necessary due to the location chosen. As a result, Village officials had no alternative but to amend the maximum cost of the project three times within 13 months to accommodate the costs for soil remediation.

Note 3

The report was adjusted to state that the consultant commissioned engineers to perform four studies regarding the cost and design of the WWTP and to perform on-site oversight during construction.

Note 4

If Village officials were aware that some costs would be incurred in connection with the excavation of soil at the WWTP, then it was imprudent to authorize and proceed with the project without first obtaining a cost estimate for the costs to excavate the soil due to the location chosen. In addition, Village officials have distinguished between the costs for stockpiling soil after it has been excavated, and the costs for the disposal of the soil after it has been stockpiled. Regardless of the classification used, the total costs incurred to date have totaled \$5.5 million. The \$2,962,079 referred to in the Village's response is only an estimate for land remediation costs, and does not include additional costs for engineering and legal claims (due to the delay in construction) that we attributed to soil remediation.

Note 5

We have amended our report to indicate that the directive came shortly after the project was put out to bid. However, this directive was actually a reiteration of the prior directive dated June 28, 2004, which also required Village officials to remove soil from the entire project site to be in compliance with ground water standards. Accordingly, although Village officials were aware that they were required to remove soil from the entire project site, they did not obtain a cost estimate for the costs to remove the soil before they put the project out to bid.

Note 6

Although the Village accountant represented that he has analyzed the 2008 expenditures and concluded that the sewer fund was undercharged by \$111,914.39, the actual impact on billings to the Town residents according to the Village accountant would be \$15,010. However, the Village accountant did

not provide any documentation to support his cost allocation and the memorandum from the Village Accountant did not include a breakdown of the summary totals used in his cost allocation.

Note 7

Although the agreements specify that the Town residents are responsible for their portion of debt service for capital improvements, the agreements do not provide specific parameters for the construction of the WWTP in particular, nor do they address each party's authority in the decision making process for capital projects for which Town residents will be responsible for paying, in general. The arbitration clause in each agreement was not initiated by either party as of the end of our field work, even though the Village and the Town have been disputing the charges for over two years. In addition, neither the Village nor the Town had re-negotiated these agreements for 25 and 30 years, respectively. The Village simply passed a resolution on an annual basis to extend the terms of the agreements.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our objective was to determine if the construction of the Village's Wastewater Treatment Plant (WWTP) was properly planned and if Village and Town sewer rates were properly supported and accurate. To accomplish our audit objective and obtain evidence, our procedures included the following:

- We interviewed Village officials regarding policies and procedures for the construction of the WWTP.
- We reviewed intermunicipal agreements for sewer service between the Village and the Town dated February 1980 and January 1985.
- We reviewed Board minutes for resolutions and other information related to the WWTP and cost studies provided by Village officials.
- We reviewed vendor contracts, payment vouchers, change orders, and payments from the New York State Environmental Facilities Corporation to determine the cost to construct the WWTP, and the portion of that cost associated with soil remediation.
- We reviewed the Village fee schedule, and recalculated 10 Village resident sewer bills to determine if they were calculated correctly.
- We calculated the expenditures for operation and maintenance costs, debt service and soil remediation.
- We recalculated the January 1, 2008 and December 31, 2008 billings to the Town for Hambletonian Park and Archadia Hills totaling \$371,418 to determine if they were mathematically correct according to the intermunicipal agreements.
- We reviewed documents from the American Institute of Architects.
- We reviewed the Revenue Bond Series 2007D and 2007C debt schedule for the WWTP.
- We recalculated the Revenue Bond Series 2007D debt schedule deducting the \$5.5 million in soil remediation costs to estimate the amount of the reduction to the Town's 2008 billing.
- We recalculated the Town's 2008 billings in total using the recalculated debt service amounts to determine the estimated billed amounts if the soil remediation had been deducted.
- We calculated the 2008 billings to the Town without the cost of soil remediation by deducting \$5.5 million from the debt schedule and dividing that amount by 30 payments to determine the principal amount for the 2007 D Bond Series.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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