
REPORT TO THE ERIE COUNTY LEGISLATURE
92 FRANKLIN STREET
BUFFALO, NEW YORK 14202

OCTOBER 2008

ERIE COUNTY DEPARTMENT OF ENVIRONMENT AND PLANNING,
THE DIVISION OF SEWERAGE MANAGEMENT AND ERIE COUNTY
SEWER DISTRICT #3
FOR THE PERIOD JANUARY 1, 2007 – MAY 31, 2008



MARK C. POLONCARZ
ERIE COUNTY COMPTROLLER

Michael R. Szukala
Deputy Comptroller - Audit & Control

**HON. MARK C. POLONCARZ
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**

October 10, 2008

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202



Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of the Erie County Department of Environment and Planning, Division of Sewerage Management ("Sewerage Management") and the Erie County Sewer District #3 ("District No. 3") for the period January 1, 2007 to May 31, 2008.

We performed our audit in accordance with Generally Accepted Government Auditing Standards. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives were to determine whether the system of internal control over payroll, procurement and inventory was adequate and that the controls in place were operating as intended. To achieve our objectives, we assessed the internal controls in place, utilized questionnaires to document discussions with staff and tested transactions in our assessment of internal controls. The scope of our audit included an evaluation of internal controls over payroll preparation, purchasing, and inventory. The audit included tests of payroll transactions, purchase order transactions and the related inventory activity.

BACKGROUND:

The Erie County Sewer Districts are special service districts created pursuant to local and state law. They have been created to provide sewer services to communities within their respective boundaries as specified by the contracts between each district and the local jurisdictions served. Sewer districts are responsible for the construction, operation and maintenance of collector and interceptor storm and sanitary sewer systems and wastewater treatment facilities.

There are seven sewer districts within Sewerage Management. District No. 3 serves the towns of Hamburg, Boston, Orchard Park, and Eden. Additionally, District No. 3 covers portions of the Towns of West Seneca and Holland.

Each sewer district is governed by a Board of Managers, appointed by the County Executive. District No. 3’s Board of Managers is chaired by Erie County Legislator John Mills. The other ten (10) members of the District No. 3 Board of Managers include elected officials representing the towns within the district, current and former Sewerage Management employees, and other individuals. Board members are volunteers.

For comparison purposes, the 2008 budgets of the seven sewer districts are shown below in *Figure A*. (000’s omitted):

Figure A

| | | 2008 Budget Erie County Sewer Districts | | | | | | | |
|----------------|----|--|----------|-----------|----------|----------|----------|----------|--|
| | | Sewer District | | | | | | | |
| | | #1 | #2 | #3 | #4 | #5 | #6 | #8 | |
| Appropriations | \$ | 5,194 | \$ 6,772 | \$ 5,057 | \$ 7,923 | \$ 1,848 | \$ 4,442 | \$ 1,497 | |
| Revenues | \$ | 489 | \$ 153 | \$ 4,162 | \$ 3,614 | \$ 582 | \$ 2,072 | \$ 530 | |
| Tax Levy | \$ | 4,705 | \$ 5,259 | \$ 10,895 | \$ 4,309 | \$ 1,266 | \$ 2,340 | \$ 967 | |

Note: there is no sewer district #7.

AUDIT RESULTS and RECOMMENDATIONS:

Frank Lloyd Wright Rowing Boathouse (“Boathouse”)

The Frank Lloyd Wright Rowing Boathouse is located along the Niagara River in the City of Buffalo. The facility is geographically located outside of any existing sewer district territory.

In summer 2007, the Giambra administration proposed to the County Legislature a transaction to facilitate the Boathouse’s connection to sewer lines in order for public occupancy and use of the facility. Under the proposal (Comm. 13E-17), the County would have funded the construction of a sanitary sewer for the Boathouse by utilizing up to \$100,000 of Sewer District No. 3 capital reserves, advancing the funds to the Boathouse’s not-for-profit corporation, and requiring the corporation to repay Sewer

District No. 3. The facility would have been connected to the Buffalo Sewer Authority's system.

This funding mechanism was met with some resistance within the County Legislature. Some legislators, including Legislator Mills, Chair of the Board of Managers of District No. 3, expressed concerns over the funding source (i.e. using Sewer District No. 3 funds for a non-district expense) and others expressed concern regarding future reporting to the Legislature by the administration regarding the project. Ultimately, after one change to the funding mechanism in July 2007 to utilize other non-sewer funds from the Department of Environment and Planning, the funding scheme was altered again in December 2007 (Comm. 26E-4). In that communication, the Legislature approved the use of no more than \$85,000 of fund balance from Sewer District No. 1 to enable Sewerage Management to acquire the Boathouse's sanitary sewer system and then operate and maintain that system (a significant alteration from the prior proposal).

While the appropriation was ultimately made by Sewer District No. 1, and not Sewer District No. 3, this attempt to fund this new commitment from auditee funds was noteworthy and significant, hence its inclusion in this audit.

As a part of the County's 2007 agreement to create the Boathouse facility, the County entered into a contract with the Boathouse Corporation in which the County purchased the sanitary line from the Boathouse. This contract included a service agreement where the Boathouse Corporation agreed to pay \$22,500 over a 5 year period for operation and maintenance charges. Charges for years 6 and beyond would be \$5,500 with an annual increase of \$250 per year thereafter.

While the contract does not specify that the County's \$85,000 acquisition for the benefit of the Boathouse was a loan, the annual payment structure indicates otherwise. Assuming that the maintenance charge is the same for years one through five, the \$22,500 annual charge less the yearly operation and maintenance charge of \$5,500 equals \$17,000. This \$17,000 for the first 5 years totals \$85,000 which is the amount of the original purchase ("loan").

We found that the first year's payment of \$22,500 due April 4, 2008 had not been paid by the Boathouse Corporation. The Department of Environment and Planning sent out an updated invoice to the Boathouse Corporation that included penalty fees, one percent (1%) per month on the outstanding balance, for the months of May and July 2008. However, it did not include the penalty for April and June 2008. During our audit, we sent an Internal Audit Memorandum ("IAM") to Sewerage Management stating that the penalty invoice sent to the Boathouse was incomplete and should have included the two additional months. Sewerage Management agreed and sent out a revised invoice dated August 4, 2008. Since that time an additional month has passed and payment has still not been received. The additional late penalty for the month of August is \$234.14 increasing the outstanding balance to \$23,647.73 as of the date of this report.

We understand that Sewerage Management sent an updated statement to the Boathouse Corporation showing the additional monthly penalties incurred of \$1,147.73 in addition to the invoiced contractual payment of \$22,500, totaling \$23,647.73. Going forward, any

additional penalties should be added to the Boathouse Corporation's accounts receivable balance and entered appropriately in SAP, the County's financial accounting recording system.

On October 2, 2008 Sewerage Management informed this office that it had just received the first payment due pursuant to the agreement of \$22,500. However, this payment did not include the \$1,147.73 of accrued penalty fees that were invoiced to the Boathouse as a result of nonpayment from the original due date of April 4, 2008 through September 2008. Additionally, the Boathouse Corporation submitted a written request asking that the late charges be waived. Sewerage Management rejected the request that the late charges be waived, and a check for \$1,147.73 was subsequently received.

WE RECOMMEND that any future use of capital reserve, fund balance or other funds from respective sewer districts should only be used in that applicable district.

Sewer Payroll Summary

1. Leave Request Forms

We tested payroll transactions and supporting documentation for vacation, sick leave, bereavement, compensatory and personal time. With the exception of one hour of compensatory time that was not charged correctly, all other leave time in our sample was approved by a supervisor and properly recorded.

2. Family Medical Leave Act ("FMLA")

Our sample taken of time-off included a large proportion of employees on FMLA leave. The FMLA leave taken by District No. 3 employees was compared to Sewer District employees as a whole. District No. 3 employees incurred 3,508.63 FMLA hours for the period of our audit, while total FMLA hours for Sewerage Management as a whole summed to 6,759.13. District No. 3 represents 40% of the total Sewerage Management employees but incurred 51% of the FMLA hours. Of District No. 3's total FMLA hours, just five employees made up more than 54% of that total, or 1,909 hours. We confirmed that all of these employees were approved for FMLA leave by a doctor, and that the Erie County Personnel Department reviews these leaves closely.

3. Call-In Time

Our sample of overtime taken included what appeared to be a large proportion of call-in overtime which prompted further analysis. Call-in time occurs when an employee is brought in when unscheduled due to management's request. In such a case, the employee is guaranteed a minimum of three hours of overtime, even if the task takes less time. The instances of call-in time in our sample were properly recorded.

4. Seasonal Positions

During the course of testing payroll, we found that there were many seasonal employees that held more than one seasonal title during the year. Further investigation found that two employees violated the County's seasonal employee policy which states that

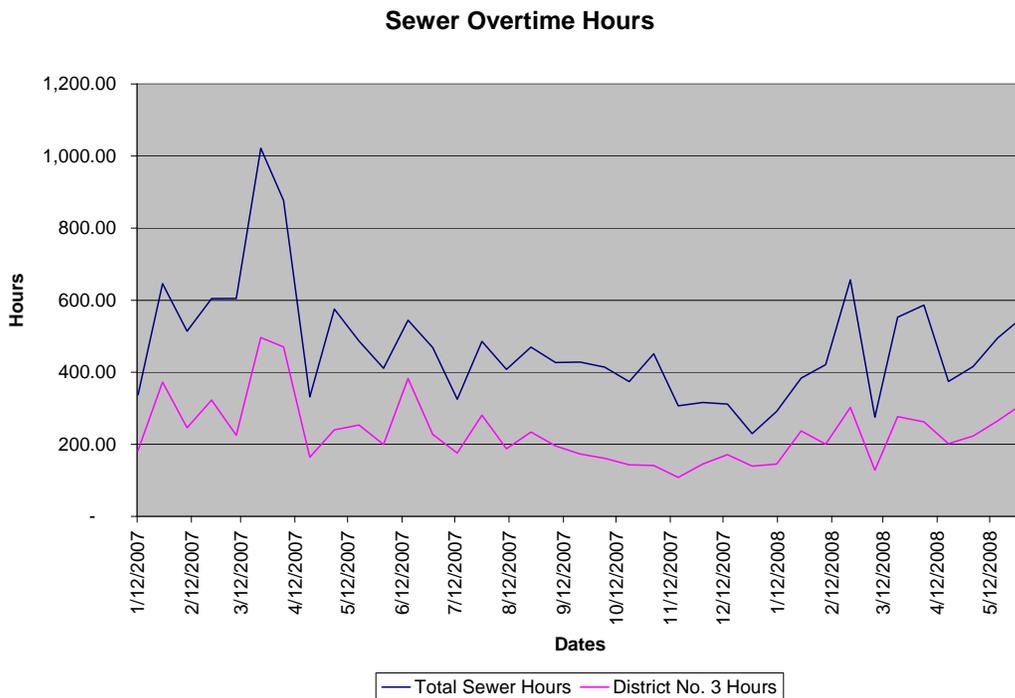
“Appointments to such Seasonal position or combination of such positions will be limited to a total of five month (sic) service during any 12 month period from date of original Seasonal appointment.” These two employees worked in seasonal titles in excess of the five month limit. An IAM was sent to Sewerage Management stating the violation and included a recommendation that these employees be taken off of active status to prevent further violation of the policy. The response from management agreed with our finding and said that the employees are now inactive, however, when we attempted to verify this statement we found that one was still listed as active in SAP as of October 7, 2008.

5. Overtime

All the items tested in our sample of overtime were approved by a supervisor and recorded correctly on SAP. However, Sewerage Management allows the unusual practice of supervisors being able to “highlight” a timesheet with a highlighter to indicate approval of overtime worked. This occurred in one item in our sample. The practice of “highlighting” to signify approval of overtime, which could easily be abused, should end. Any employee with a highlighter could approve his or her own overtime.

Our analysis of overtime showed a higher than expected use of overtime. We generated an SAP report highlighting overtime by pay period. That data was then graphed and is presented as *Figure B*.

Figure B



Note 1: Two pay periods in 2007 (3/23/07 and 4/5/07) had much higher than average overtime. The Chief Treatment Plant Supervisor explained that during March 2007 the entire sewerage system experienced extremely high flows, and the dry well of the Boston Valley Pumping Station was flooded creating a major failure and taking it out of service.

This major failure led to crews working around the clock for a number of days to bring the station back online.

Note 2: The Chief Treatment Plant Supervisor addressed other spikes in overtime by informing us that the early part of the year is when the Sewer Districts experience their highest waste water flows. This increased flow is the source of most of the problems. The early part of the calendar year, with its temperature rises combined with significant snow accumulation, is the time of greatest flow rate fluctuation. Snow melt can generate large amounts of waste water in a short time period. The flow fluctuation due to snow melt and rain causes the most problems and spawns the most overtime.

Note 3: Sewage Management informed us that a portion of the overtime was due to the increased workload as a result of the take-over of additional areas within the Town of Hamburg.

WE RECOMMEND that the compensatory time bank balance for the individual in our leave request form testing be appropriately adjusted to reflect an additional one hour taken. Also the seasonal employee that worked in excess of the County policy limit of five months should be listed as inactive in SAP. In addition **WE RECOMMEND** that approval of overtime should follow the official Erie County policy which is found in Chapter VI Section 10 of the Erie County Policies and Procedures Manual.

AUDITOR COMMENTS:

1. Capital Reserve

When the County converted its accounting software system from SFG to SAP in 2004, capital reserve project #08999 was used as a project balancing account. Since that time, minimal account activity has taken place between the debt service fund and the capital fund. Currently this project has a DUE TO OTHER FUNDS amount of \$135,000 and a positive cash balance of \$27,000 resulting in a negative balance of \$108,000.

WE RECOMMEND that Sewerage Management meet with the Comptroller's Office's Division of Accounting to discuss the steps necessary to close this account. At a minimum, this would include using the cash balance to offset a portion of the DUE TO OTHER FUNDS and determining an additional source(s) of revenue required to eliminate the remaining portion of the DUE TO amount.

2. Step to Step Promotion

The current Assistant Deputy Commissioner Sewerage Management-Administration was hired by Sewerage Management in September 2007 at step 5 level. (A comment attached in SAP shows that the step 5 level was granted by the Erie County Personnel Department per a department request.) She was previously employed at Erie Community College

(“ECC”) in a regular part time managerial confidential position that paid \$52,117.57¹ pursuant to the bargaining agreement of the Administrators’ Association of Erie ECC. Guidelines provided by the Erie County Department of Personnel regarding promotions or appointments from one bargaining unit to another indicate that hiring this employee at step 5 – a “step to step” was not proper.

The guidelines state that if the appointment is a true promotion, from a promotional list or within the same department in the same career field, the employee would receive a step to step increase. As the provision does not apply here, the fixed dollar amount promotional rule should have been utilized from the bargaining agreement from which the employee was leaving (the ECC Administrators’ Agreement). This agreement states that a promotion to a Job Group 14 or higher will receive a salary increase in the increment step that is nearest to, but not less than \$250. Using this guide, and applying the County’s Managerial Confidential Pay Area 01 scale, the promotion should have been to the step 1 salary of \$66,980 rather than to the step 5 salary of \$83,356. This resulted in a starting pay of \$16,376 more than the employee was entitled.

Based on strictly following the rules established in the bargaining agreements and in the guidelines of the Department of Personnel, the step to step increase from a managerial confidential position covered under the Administrators’ Agreement to the managerial confidential position covered under the CSEA Agreement was incorrect and the County overpaid this employee at least \$16,376.

This appointment was made at a variable minimum, as the employee was started at a higher step than entitled. Pursuant to the 2007 Adopted Budget Resolution No. 76, which forbids the County Executive from filling any position at a variable minimum without the prior approval of the County Legislature, this appointment at step 5 violated the Budget Resolution.²

WE RECOMMEND that the Department of Personnel reduce the incumbent’s step to the appropriate level and recoup the overage in salary.

¹ Employee’s wage was determined using the hourly wage of \$25.699 and 39 hours per week, the maximum hours allowed for a regular part time position. This totals \$52,117.57 if the employee worked the maximum hours for the year.

² This is not the first time that Sewerage Management has engaged in actions designed to circumvent normal County policies and legislative oversight regarding managerial-confidential employees and their salary. In July 2006, Sewerage Management proposed job group upgrades for nine (9) managerial confidential managers. The communication (Comm. 10E-13 2006) would also have enabled managerial confidential Sewerage Management employees to receive future salary upgrades at the sole discretion of the Deputy Commissioner of Sewerage Management, and not subject to Legislature review or oversight and existing County policy. Ultimately, the Legislature approved the upgrades but removed the future upgrade provision.

COMPLIANCE AND OTHER MATTERS:

As part of obtaining reasonable assurance about whether District No. 3's internal controls were in place, we performed tests of compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct effect on the determination of whether the system of controls is operating as intended. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under Government Auditing Standards.

RESULTS OF EXIT CONFERENCE:

An exit conference was held on October 7, 2008 with the Acting Commissioner of Environment and Planning, Deputy Commissioner of Sewerage Management, members of his staff, the County Attorney, a representative of the Division of Budget and Management and a representative from Legislator Mills' legislative office. The contents of this report were discussed and Sewerage Management was in general agreement with our findings.

There were two areas of significant disagreement with our audit. Sewerage Management and the County Attorney opined that paragraphs two, three and four under the section 'Frank Lloyd Wright Rowing Boathouse' were unnecessary and not neutral in tone and questioned their accuracy. We were asked to remove these paragraphs from our audit.

The Deputy Comptroller-Audit discussed these concerns with the County Comptroller and reviewed the documents and work papers that support these paragraphs. There is no evidence that any of the information in these paragraphs is factually incorrect. Additionally, we believe this information is important background that clearly illustrates how unusual this transaction was, and thus, explains our finding.

The second area for which Sewerage Management and the County Attorney expressed disagreement was the section entitled 'Step to Step Promotion'. Both Sewerage Management and the County Attorney asked that we remove all identifying details on the employee in question including her current title, former employment and gender. These officials also asked that we remove the accompanying footnote for this section and eliminate our recommendation to recoup the overage in salary and reduce the employee to the correct longevity step.

The Deputy Comptroller-Audit discussed these concerns with the County Comptroller. The information on whom this person was is critical to this finding. Blurring the details does not assist anyone in correcting this problem, nor would it prevent anyone familiar with the County budget process from determining who this person is. The footnote provides valuable background information related to the finding. Lastly, for the Division of Audit and Control to be aware that someone had been overpaid and not recommend

that the funds be recovered or the step be reduced to its correct value would be to ignore one of the division's primary functions: to enforce established procedures.

In accordance with the County's Audit Response System and Procedures, we request that the Acting Commissioner of Environment and Planning prepare a written response to our findings and recommendations and submit that to our office, the Legislature and the County Executive by November 7, 2008.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Hon. Christopher Collins, County Executive
Holly A. Sinnott, Commissioner, Environment and Planning
Erie County Fiscal Stability Authority
Glenn H. Absolom Jr., Chief Treatment Plant Supervisor, District No. 3
Gregory G. Gach, Director, Budget and Management
Hon. John J. Mills, Chairman, Board of Managers, Sewer District No. 3
Michael J. Quinn, Deputy Commissioner, Sewerage Management
William Murray, Acting Commissioner, Environment and Planning