



Town of Porter

Sewer Billings to Fort Niagara State Park

Report of Examination

Period Covered:

January 1, 2014 – April 17, 2017

2017M-162



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

December 2017

Dear Town 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 Town Board 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 the Town of Porter, entitled Sewer Billings to Fort Niagara State Park. 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 New York State 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*

Introduction

Background

The Town of Porter (Town) is located in Niagara County and has a population of approximately 6,600 residents. The Village of Youngstown (Village), and Fort Niagara State Park (Fort), which is operated by the New York State Department of Parks, Recreation and Historic Preservation (Parks), are also located in the Town. The Town is governed by a five-member elected Board composed of the Town Supervisor (Supervisor) and four Council members. The Board is responsible for the general management and control of the Town's financial affairs and for safeguarding Town assets. The Supervisor is the Town's chief financial officer and is responsible for maintaining the accounting records and preparing financial reports. Sewer billings are prepared by the water/sewer clerk and debt service invoices are prepared by the Town's bookkeeper. The Town's 2016 adopted budget included sewer-related appropriations totaling \$367,000.

The Town provides sewer services to the residents of the Porter west sewer improvement area (378 customers) and the Lakeshore sewer district (157 customers). While sewer improvement areas and sewer districts both function to provide sewer services to Town residents, the method of forming and accounting for each entity is distinct and different.¹

In 1970, the Board, on behalf of the Porter west sewer improvement area, entered into a contract with Parks for sewer services at the Fort.² The Town owns the sewer facilities, equipment and lines (i.e., the joint transmission system) and also provides system operation and

¹ A sewer improvement area and a sewer district are not synonymous, and the methods for raising costs may vary depending on whether the project was authorized as a sewer improvement or a district. Sewer districts are authorized by Articles 12 and 12-A of Town Law, which have substantially different provisions from those applicable to improvement areas. Under Article 12-C of Town Law, sewer improvements may be undertaken without the formation of a special district. The Town can charge the associated capital costs of the sewer improvement to an area of benefited properties (on a benefit or ad valorem basis), to the area of the Town outside of any incorporated villages by imposing a general tax levy, or by a combination of both. The operation and maintenance costs are a town-outside-village expense. In the case of a sewer district, capital costs and operation and maintenance are charged on a benefit basis against those properties deemed benefited. In both cases, user fees (sewer rents) may also be imposed.

² The 1970 contract was between the Town and the Niagara Frontier State Park Commission. Subsequently, the functions of the Commission were transferred to, and are now centrally administered by, the New York State Department of Parks, Recreation and Historic Preservation. There is no stated term in the 1970 contract agreement between the Town and Parks.

maintenance. The agreement between the Town and Parks states that operation and maintenance costs will be allocated between the Town, Parks and the Village based on each entity's proportionate share of sewer flow. The construction of the sewer lines was designed to allow Parks to eliminate the treatment plant located at the Fort and save the State money. During 2015 and 2016, Parks has paid the Town approximately \$177,000 for operation and maintenance, debt service and repair costs.³

In 1974, the Town, again acting for the Porter west sewer improvement area, entered into an agreement with the Village for sewer services. The Town's contract with the Village was amended in 1996, changing the billing basis from sewer flows to water consumption. The Town did not enter into a similar amended agreement with Parks. Nevertheless, the Town billed all system users (the Town, the Village and Parks) sewer rents to fund operation and maintenance costs based upon each entity's water consumption.

Objective

The objective of our audit was to review the Town's billing for sewer services provided to the Fort. Our audit addressed the following related question:

- Is the Town properly billing the New York State Department of Parks, Recreation and Historic Preservation for sewer services provided to Fort Niagara State Park?

Scope and Methodology

We examined the Town's billing process for sewer services provided to the Fort for the period January 1, 2014 through April 17, 2017.

In 2013, the Village stopped paying the Town for its share of sewer operation and maintenance costs for the joint transmission system. Town officials stated that this occurred because Village officials believed the sewer rates charged by the Town were excessive. In 2015, the Town filed a lawsuit against the Village for payment of these charges. As of December 31, 2016, Town records indicate that the Village owes the Town approximately \$283,000. We did not include Village sewer billings within the scope of our audit. However, we reference the Village when it is necessary to provide additional perspective.

³ Paid by Parks in 2015 and 2016: \$19,173 for joint transmission operation and maintenance, \$38,909 for sewage treatment and disposal, \$80,278 for debt service on the Lewiston treatment plant and \$39,085 for a 2014 repair to a lift station

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 B of this report.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and recommendations and indicated they have planned to initiate corrective action.

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 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 Town Clerk's office.

Sewer Billings

The 1970 contract (contract) between the Town and Parks provides for sharing the construction costs of a sewer system to transport sewage from the Fort, through the Town, to the Lewiston Water Pollution Control Center (treatment plant) located in the Town of Lewiston. The contract also provides for Parks to reimburse the Town for its share of annual operating and maintenance costs. Town officials should bill Parks for these costs in accordance with the terms of the contract. The Board should monitor the billings to ensure they are consistent with the contract terms.

The Town did not follow the contract provisions when it billed Parks for operation/maintenance and debt service costs for the joint transmission system. Although the contract required operation and maintenance costs to be billed based on each entity's⁴ proportionate share of sewer flow, the Town billed Parks based on water consumption. Furthermore, the Town billed Parks for certain debt service costs⁵ in a manner that appears to be inconsistent with the contract. We estimate that Parks was inaccurately billed by approximately \$152,900 for operation and maintenance, debt service and a repair to a lift station (Figure 1):

Figure 1: Inaccurate Sewer Billings to Parks	
	Amount
Operation and Maintenance – Joint Transmission System Costs (2015 and 2016)	\$14,500
Operation and Maintenance – Sewage Treatment and Disposal Costs (2015 and 2016)	\$22,200
Debt Service Costs – Treatment Plant Improvements (2015 and 2016)	\$80,300
Repair to Lift Station (2015)	\$35,900
Total Inaccurate Sewer Billings	\$152,900

Operation and Maintenance Costs

According to the contract, Parks is required to pay the Town an amount equal to its proportionate share of the Town's annual operating and maintenance costs for the joint transmission system. By contract, operation and maintenance costs include all expenditures incurred only for meter pits, gravity lines, lift/pump stations, force main lines through which the Fort's sewage flows, and sewage treatment and disposal costs. The Parks share of these costs is determined based on the ratio of the Fort's total sewer flow into the Town's lines to the Town's total sewage flow into the Town of Lewiston system.

⁴ Parks, Town and the Village of Youngstown

⁵ Debt service payments started in 2013 for improvements and upgrades to the treatment plant.

While the contract requires Parks to pay for its proportionate share of the costs that the Town incurred to operate and maintain the joint transmission system, the Town did not identify and segregate these costs. By not properly separating costs specific to the Porter west sewer improvement area from those of the Lakeshore sewer district, Town officials did not have the information readily available to properly bill Parks for sewer services provided to the Fort.

The Town also did not account for operation and maintenance costs for the sewer improvement area in the appropriate fund. Rather, operation and maintenance costs for the sewer improvement area and sewer district were commingled and accounted for in one fund. The Supervisor is required to account for operation and maintenance costs associated with the sewer improvement area, which includes the joint transmission system, in the town-outside-village general fund. Financial operations for the Lakeshore sewer district should be accounted for in a separate fund. Accounting for sewer operations in this manner helps identify costs associated with the joint transmission system.

In 1996, the Town amended its original contract with the Village, revising the method of allocating operation and maintenance costs, from sewer flows to water consumption. Parks was not a party to this agreement and there is no evidence that the Town established a separate agreement with Parks.⁶ The Town based all subsequent sewer billings for not only the Village but also for Parks on water consumption, despite the fact that it did not have a contractual commitment from Parks to make this change.

The Board annually sets sewer rent rates⁷ and bills Parks quarterly based on water consumption. The former Town bookkeeper said that sewer rates were originally established by the Board a long time ago and the Board periodically increases them when necessary; as long as total revenue the Town receives covers sewer expenditures, officials are satisfied that the rates are sufficient.

We reviewed expenditures for 2015 and 2016 and documented costs associated with the joint transmission system. In addition, we allocated operation and maintenance costs for the Fort based on its

⁶ A Parks representative stated that Parks did not enter into an agreement with the Town subsequent to the 1970 contract.

⁷ 2016 adopted sewer rates for the Fort and the Village are \$1.70 per thousand gallons of water consumption and for Town residents, \$2.60 per thousand gallons of water consumption. The rate for sewage treatment and disposal services is \$3.45 per thousand gallons of water consumption.

proportionate share of sewer flow as indicated in the contract,⁸ rather than water consumption. We estimate that Parks would have paid approximately \$14,500 less for operation and maintenance for the joint transmission system and approximately \$22,200 less for sewage treatment and disposal costs (Figure 1) if the Town had billed Parks according to the contract, i.e., based on sewer flows rather than water consumption.

Debt Service Costs

According to the contract, Parks was required to pay the Town 36.5 percent of the Town's debt service costs related to the construction of the joint transmission system. Furthermore, the contract states that if construction of enlarged or more sophisticated treatment facilities at the treatment plant is necessary, Parks will participate in negotiations to determine what share, if any, it will agree to pay. Consequently, an allocation of 36.5 percent was applicable only for the debt service related to the initial construction of the joint transmission system. Town officials were unsure when the debt service for the original construction of the joint transmission system was paid off.

In 2013, the Town of Lewiston began billing the Town for debt service related to capital improvements⁹ to its treatment plant. The Town in turn billed Parks for 36.5 percent of the debt service costs.¹⁰ Parks has made three payments towards debt service to the Town totaling approximately \$80,300.¹¹

We spoke with a Parks representative who said Parks was not contacted and did not participate in negotiations to determine what share, if any, it would agree to pay for these improvements. Additionally, in May 2017 the Town of Lewiston entered into an agreement with the Town of Porter, Village of Youngstown and Village of Lewiston concerning operation and maintenance costs as well as the current capital improvement project to the treatment plant. This agreement established percentage rates that each of the four parties would

⁸ The Fort's proportionate share of water consumption is approximately 8 percent and its proportionate share of sewer flow is approximately 3 percent. The Fort's water consumption is greater than sewer flow, because Parks uses water to annually fill a swimming pool. At the end of the summer this water is drained directly into Lake Ontario

⁹ The Town of Lewiston issued 30-year serial bonds to fund improvements and upgrades to its treatment plant. These improvements consist of sludge drying equipment, an energy-efficient blower, computers and miscellaneous repairs. There are 26 annual principal payments remaining on the outstanding debt.

¹⁰ The Town of Lewiston billed the Town of Porter for all debt service costs relating to the Town, Village and Parks. The Town in turn billed the Village and Parks for a share of these costs. In 2015, the Village began paying the Town of Lewiston directly. However, the Town continues to bill Parks for a share of the costs.

¹¹ Parks made debt service payments to the Town of \$26,245 and \$27,202 in 2015 and \$26,832 in 2016.

contribute toward debt service payments. Parks was not a party to this agreement and was not mentioned in the agreement. Therefore, it is unclear if Parks is responsible under the terms of the contract for debt service related to improvements at the treatment plant. Because Parks was only obligated to pay 36.5 percent for debt service related to the original construction of the joint transmission system, the Town may have incorrectly billed Parks approximately \$80,300 for debt service related to the plant improvements.

In addition, a significant repair to a lift station in the joint transmission system cost the Town approximately \$107,000. According to the Town's contract with Parks, repairs to the joint transmission system are considered part of operation and maintenance costs, which should be allocated on the basis of sewer flows. However, the Town billed Parks and the Village separately for this repair using the same allocation method as used for debt service. As a result, Parks may have been incorrectly billed 36.5 percent (approximately \$39,100) of the total repair costs. Based on the Fort's proportionate share of sewer flows, Parks should have paid approximately \$3,200. Consequently, the Town may have incorrectly billed Parks by approximately \$35,900 for this repair (Figure 1).

Parks paid a higher share of costs than agreed upon in its contract. Town officials said that Parks did not question the amount being billed. A Parks representative told us that Parks officials are concerned about the amount being billed for debt service and repairs, and that in 2013 she submitted an agency request to the Town to update the terms of the original contract that was established in 1970. According to the Parks representative, the Town's attorney responded that the contract had no end date and therefore the Town was not interested in updating the terms. In any case, the Town is responsible for ensuring that billing is accurate and consistent with contract provisions.

Recommendations

The Board should:

1. Properly and accurately bill Parks for sewer services as provided for in the 1970 contract.
2. Consult with the Town attorney to identify the appropriate manner to address any previous inaccurate billings.
3. Review the terms of the 1970 contract with the Town attorney and revisit terms with Parks, if appropriate.

The Supervisor should:

4. Account for revenues and expenditures specific to the Porter west sewer improvement area in the town-outside-village general fund, and account for revenues and expenditures specific to the Lakeshore sewer district in the sewer district fund.

APPENDIX A
RESPONSE FROM LOCAL OFFICIALS

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



TOWN OF PORTER

3265 Creek Road • Youngstown, New York 14174 • (716) 745-3730 • Fax (716) 745-9022

November 10, 2019

Mr. Jeffrey D. Mazula, Chief Examiner
Office of the New York State Comptroller
Buffalo Regional Office
295 Main Street, Suite 1032
Buffalo, New York 14203-2510

VIA E-MAIL
Muni-Buffalo@osc.state.ny.us

Re: Town of Porter Audit Response
to Examination 2017M-162

Dear Mr. Mazula,

Please accept this correspondence as the Town of Porter's Audit Response to the above referenced examination. The Town Board seriously considers its responsibility to manage the fiscal affairs of the Town of Porter (the "Town") and to comply with all contractual obligations it has with its vendors and other state and local agencies. The Town Board gratefully accepts constructive input and recommendations from the Office of the New York State Comptroller and will continue its efforts to maintain revenues, control expenses and meet its contractual obligations.

The stated objective of your audit was to determine whether the Town properly billed the New York State Department of Parks, Recreation and Historic Preservation (the "Park") for sewer services provided to the Park at its Fort Niagara facility. Your report estimates that the Town may have overbilled the Park approximately \$152,000.00 for the period 2015-2016 for both operation and maintenance expenses and capital improvements and repairs. The report is based your findings that billing methods used by the Town deviate from the terms and conditions of an October, 1970 agreement between the Town and the Park (the "Agreement") which related to the construction and operation of a water treatment facility built in the Town of Lewiston which accepts and treats sewerage from the Town of Porter, including the Village of Youngstown and the Park.

The Town acknowledges that commencing in 1996 the formula for billing was changed from metered sewer flow rates to metered water consumption rates for operation and maintenance expenses. This method of billing was applied to all users of the sewer facilities including the Park, sewer users in the Town of Porter and sewer users in the Village of Youngstown. Your report estimates that the Park may have been overcharged \$36,700.00 for these operation and maintenance expenses as a result of changing the billing formula.

Mr. Jeffrey D. Mazula, Chief Examiner
November 10, 2017,
Page 2.

Your audit also estimates that the Park may have been overbilled \$116,200.00 for payments made by the Park to the Town towards necessary capital improvements and capital repairs to the sewer system. The Town acknowledges that it charged the Park at the rate of 36.5% of the cost of these capital improvements and repairs based on the percentage formula set forth in the Agreement.

The Town acknowledges the accuracy of the billing method described in the report but renders no opinion as to whether the amounts billed were unnecessary or unwarranted. As part of the Town's Corrective Action Plan (the "CAP") the Town will endeavor to determine whether or not there was an overpayment made by the Park for operation and maintenance expense. The Town will examine what the charge for these expenses would have been to the Park if all users of the system were to have been billed based on sewer flow versus water consumption. It is likely that there would have been a higher cost charged per thousand gallons of sewerage versus the cost charged per thousand gallons of water consumed. If it is determined after this analysis that there was an overpayment made by the Park the Town would enter into discussions with the park to determine how to resolve that issue.

It also appears in the report that the estimated overpayment for the capital improvements and repairs reflects all of the payments made by the park for capital improvements and repairs. The Town respectfully submits that the Park benefits from these capital improvements and repairs and while the percentage charged may be in dispute, there is no dispute that some portion of these expenses are the responsibility of the Park. Again, the Town will address this expense in detail in its CAP and negotiate any adjustments that may be necessary to insure the Park was fairly charged for the benefit it received.

In closing, the Town will propose in its CAP that accurate methods be employed to insure the Park is properly billed, identify and correct any billing errors which may have occurred and to enter into discussions with the Park to review and revise the Agreement.

Respectfully Submitted,

Merton K. Wiepert, Supervisor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed Town officials to gain an understanding of the Town's Sewer Department operations and practices.
- We reviewed the Town's local laws and procedures related to sewer operations.
- We reviewed contracts between the Town and Parks, between the Town and Village and between the Town of Porter and the Town of Lewiston.
- We calculated the percentage share of sewer flow for the Town, Fort and Village based on sewer meter readings.
- We identified costs specific to the joint transmission system for 2015 and 2016. Included in these costs were wages, fringe benefits, utilities, contractor services, equipment and supply purchases, vehicle costs, insurance and other miscellaneous expenditures.
- Using our calculation of estimated total operation and maintenance costs specific to the joint transmission system for 2015 and 2016, we recalculated Parks' allocation of these costs if they were based on the Fort's proportionate share of sewer flow.
- We identified payments made by Parks in 2014, 2015 and 2016 toward debt service for capital improvements to the treatment plant.
- We identified expenditures related to a repair to a joint transmission lift station in 2014 and calculated the amount of these expenditures that should be attributed to Parks based on the Fort's proportionate share of sewer flow.

We conducted this performance audit in accordance with 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 C

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