

**Nassau County
Office of the Comptroller
Field Audit Bureau**



**Limited Review
of the
Great Neck Water Pollution Control District**

HOWARD S. WEITZMAN
Comptroller

**MA-06
February 15, 2007**

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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INTRODUCTION

Introduction

Wastewater treatment and storm water collection services are provided for most of Nassau County through the Nassau County Sewer and Storm Water Resource District (the “County District”). The County Department of Public Works operates and maintains the County District’s two major wastewater plants, 37 pump stations, 3,000 miles of sewers, recharge basins, stream corridors and drainage channels, serving over 85% of the County’s residential and commercial establishments.

Wastewater collection and treatment in the remaining 15% of the County is managed by local entities, including four “water pollution control districts.” These local districts provide wastewater treatment services to residents within their borders, and are funded through taxes and charges to local residents.

The Great Neck Water Pollution Control district has existed since the early 1900’s, when it was established by the North Hempstead Town Board and named the Great Neck Sewer District. By resolution of the North Hempstead Town Board, dated August 12, 1980, the name of the district was changed from the “Great Neck Sewer District” to the “Great Neck Water Pollution Control District” (the “District”).

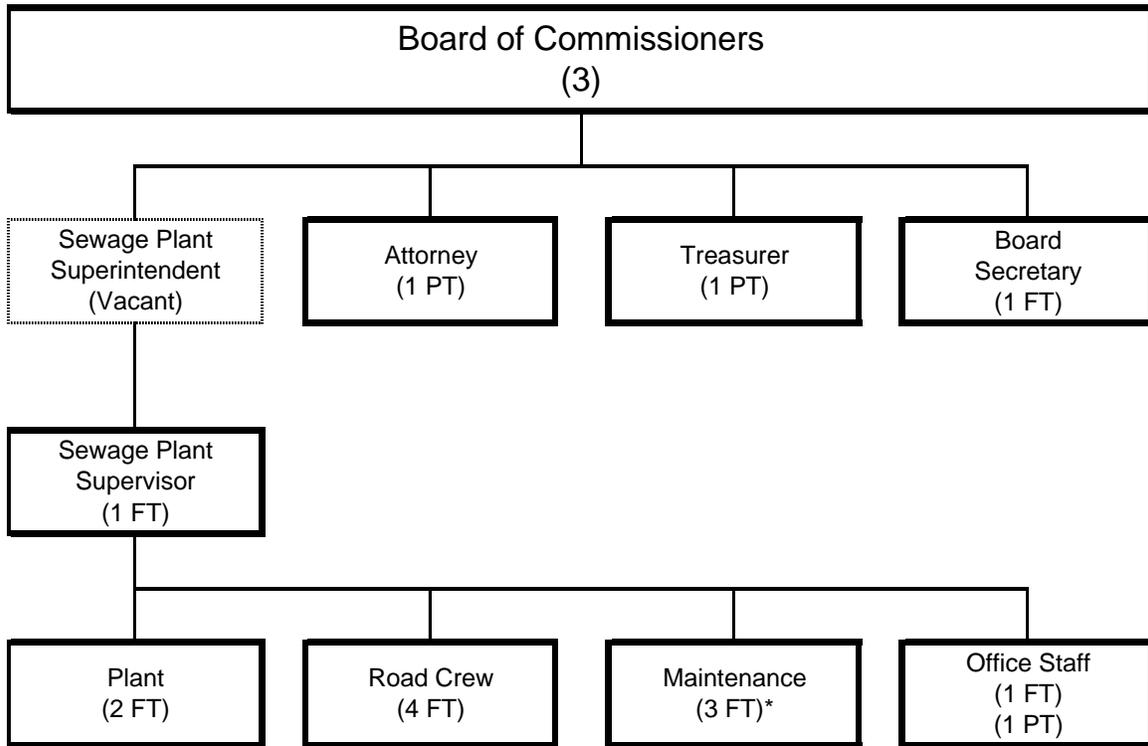
The District describes its functions as follows: It “collects wastewater -- the spent or used water from homes and businesses -- transported by the use of two pump stations and three lift stations through 45 miles of sanitary sewers. The District treats the wastewater through a multi-stage process and discharges the treated wastewater into Manhasset Bay. The District serves 15,000 residents and businesses in the Villages of Saddle Rock, part of Great Neck, Kensington, most of Thomaston and Great Neck Plaza, as well as all unincorporated areas north of the LIRR tracks, unincorporated Great Neck Manor and parts of Manhasset.”¹

District operations are overseen by a Board of Commissioners (the “Board”), which consists of three commissioners elected for three-year terms. The District is run by full time and part-time staff. The following organization chart was provided by the district; we amended it to include the position of the Superintendent and the Chief Operator.

¹ See the Great Neck Water Pollution Control District’s Web site, at <http://www.gnwpcd.net> and the description of its functions in its response to this report at Appendix II.

INTRODUCTION

Great Neck Water Pollution Control District Organizational Chart



FT – Full Time
PT - Part -Time
* Includes Chief Operator

Given the increasing complexity of the pollution control regulations surrounding treatment and discharge of “wastewater” or sewage, it may be that the rationale for small water pollution control districts has passed. A form of governance that worked in the early 1900’s, when the population of Nassau County and pollution concerns were much smaller, may no longer be adequate one hundred years later in 2007.

Based on the information discussed in this limited report, it appears that this small sewer district does not have the resources to recruit employees who have the engineering expertise necessary to operate the system. We found that the District relies on its outside engineering firm to the point where at times the consultants perform much of the work of the District. It might be sensible to use the engineering capabilities that a large firm working on many sewer and pollution control projects throughout the metropolitan area maintains at the ready, but it suggests that the District is too small to perform its mission effectively without substantial outside engineering help. Further, the report suggests that oversight of districts by part-time commissioners may no longer be an adequate model. The District reports that there was a period when its employees disregarded “standard operating and maintenance procedures” and may have engaged in a course of “vandalism,” and “theft and sabotage” which the District describes as “a near-gang

INTRODUCTION

mentality.” Appendix II. While the District reports that it has resolved the troubles with its employees through employment of the new superintendent, management problems of this magnitude are of grave concern, especially when the District’s responsibility is to treat sewage discharged into Long Island waters.

The concerns addressed in this report suggest that it is time to explore whether a more cost efficient and effective model to deliver wastewater treatment services could be put into place. We recommend that the District meet with the Town of North Hempstead, the County and the New York State Department of Environmental Conservation to begin discussions concerning how District and Long Island residents can best receive wastewater treatment services in the coming decades.

Review Scope and Methodology

On February 7, 2006 the Nassau County Civil Service Commission (the “Commission”) wrote to the Nassau County Comptroller informing him that the Commission had given its Executive Director the authority to discuss the possibility of a joint audit of the District. As a result of those discussions, it was decided that the Comptroller’s Office would conduct a limited review of the District. A copy of the Commission’s letter is included as an addendum to this report (Appendix I).

The scope of our review was limited to an examination of the District’s personnel practices and related transactions with employees, along with the district’s procurement procedures for legal and engineering services, for the period January 2003 through June 2006. This included hiring practices, job specifications, adherence to civil service requirements and relationships with independent contractors.

To accomplish these objectives, we interviewed District officials and employees and reviewed applicable laws, rules, regulations, policies and procedures. We also reviewed contracts, retainer agreements, personnel files, vendor claims and correspondence with the Commission and regulatory agencies. We believe that the review provides a reasonable basis for the findings and recommendations.

EXECUTIVE SUMMARY

Summary of Significant Audit Findings

Apparent Conflict of Interest/Appearance of Impropriety

The District contracts with an engineering firm, William F. Cosulich Associates P.C. (“WFC”), to advise it on repair, upkeep and construction of District facilities. The close ties between WFC and the District give rise to an apparent conflict of interest, since WFC has a substantial economic interest in the advice it gives the District concerning construction or repair projects.

Once the Board decides on a repair or improvement project, WFC prepares the bid specification documents, performs the engineering work related to the project and on occasion, supervises the work of a third party on the repair or construction project. WFC’s dual responsibility for making and carrying out recommendations presents a conflict of interest.

The District paid WFC \$1.084 million during the audit period. During the audit period, the District contracted with WFC to provide consultants to fill acting titles in District jobs, contracted with WFC to provide interns to work in the District at a mark-up of 180%, and hired three former WFC employees.

Procurement of Professional Services

The District has no records to show that it used a competitive process to select its engineering, legal or accounting consultants. The District has not changed its engineering consultant since 1965, its legal counsel since 1978 or its accountant since 1995. The District should, consistent with the requirements of General Municipal Law (“GML”) § 104-b and its procurement policy, issue requests for proposals for professional services.

Questionable Personnel Practices

Inconsistent Salary Offers for Sewage Plant Supervisor Position

Unlike other government entities subject to Civil Service laws, special districts are permitted to determine the salaries for certain positions. In 2004, the District attempted to appoint a WFC employee to the position of Sewage Plant Supervisor. However the Commission rejected the appointment and instructed the District to first offer the position to three District Sewage Plant Operators. The District did so, but for two of the three candidates, at salaries below their then current earnings. Each employee declined the position. The District then hired the WFC employee. In the 15-month period after the appointment, the District adjusted the Sewage Plant Supervisor’s salary four times. At the end of the 15-month period, the Supervisor earned more than the salaries (base plus overtime) of the District employees who were originally offered the position. In addition,

EXECUTIVE SUMMARY

the Supervisor was given use of a District vehicle, an enhancement the District employees were not offered. Two out of the three candidates who declined the promotion informed us that they would have accepted the position had they known that there was the possibility of receiving similar raises in this time frame.

Compliance with DEC Licensing Requirements

The New York State Department of Environmental Conservation (“DEC”) requires that wastewater treatment plants be under the responsible supervision of an appropriately certified operator. “Responsible supervision” is defined by the DEC to mean the accountability for and performance of active, daily on-site operation of the wastewater treatment plant.² The DEC regulations list many factors for determining the level of license required for responsible supervision of various types of wastewater treatment facilities. The DEC has determined that the types of facilities in the District must be supervised by an individual who holds a Grade III Wastewater Treatment Plant Operator license.

The current Sewage Plant Supervisor does not have the Grade III certification. The Board appointed an employee who holds a Grade III license as Chief Operator. However, the district personnel stated that he does not supervise the day to day operations of the District - the Sewage Plant Supervisor does. This appears to violate the DEC requirement that plant operations be supervised by a Grade III Wastewater Treatment Plant Operator.

Treatment of General Counsel as both Employee and Independent Contractor

The District’s outside counsel was also made a part-time employee in 2004, but the nature of the relationship remained one of outside advisor and client, rather than employer and employee. The counsel’s employment is governed by a “retainer agreement,” which defines what is to be done for salary and what is to be done for an hourly fee. The agreement provides that the counsel is entitled to benefits as if he is working eight days a month, but does not require that the counsel actually work any time for his salary, and the counsel does not have an office at the District. As an employee, the counsel was given family medical, dental and optical benefits at a cost to the District of \$15,963 for the period November 2004 – December 2005.

The District continued to contract with the lawyer as an outside counsel after his hiring as a part-time employee. Pursuant to the retainer agreement, the counsel bills the District for time spent on any subject matter not covered by his salary.

²N.Y. Comp. Codes R. & Regs. Tit. 6, §650.4 (2006).

EXECUTIVE SUMMARY

Attorney Compensation

The District also increased the salary and hourly wage paid to the counsel by over 100% during the audit period, while reducing the subject matters that would be covered by the salary. During the audit period the counsel's salary, initially set at \$8,000, was raised periodically until it reached \$25,000 for the period April 1, 2006 – March 31, 2007. The counsel's hourly rate was increased from \$175 to \$225 starting with the period April 1, 2005 – March 31, 2006.

Commissioners' Salaries

The three commissioners each billed the District approximately \$17,000 annually during the audit period. Payment reflected the \$80 a day statutory rate, four days a week. A sample of the commissioners' claim forms for payment of the per diem fee showed inaccuracies including at least one instance of multiple submissions for the same day by the same commissioner. The District lacks a policy for submission and approval of commissioner salary claims.

Uncollected Debt

We found that the District did not follow up to collect an outstanding past due loan of \$2,442 made to a former employee.

The matters covered in this report have been discussed with officials of the District during this audit. On November 6, 2006 we submitted a draft report to the District with a request for comments. The District's comments, received on December 29, 2006 are included as an addendum to this report (Appendix II).

TABLE OF CONTENTS

<u>Findings and Recommendations</u>	<u>Page Number</u>
Apparent Conflict of Interest/Appearance of Impropriety.....	1
Procurement of Professional Services	2
Questionable Personnel Practices	3
<i>Inconsistent Salary Offers for Sewage Plant Supervisor Position.....</i>	3
<i>Compliance with DEC Licensing Requirements.....</i>	4
<i>Treatment of General Counsel as both Employee and Independent Contractor.....</i>	4
<i>Attorney Compensation.....</i>	5
<i>FICA Payments</i>	5
Commissioners' Salaries.....	6
Uncollected Debt	7
Appendix I - Nassau County Civil Service Commission Letter to Comptroller.....	8
Appendix II - District's Response and Auditor's Follow-up.....	9

AUDIT FINDINGS AND RECOMMENDATIONS

Audit Finding (1):

Apparent Conflict of Interest/Appearance of Impropriety

The District contracts with an engineering firm, William F. Cosulich Associates P.C. (“WFC”), to advise it on repair, upkeep and construction of District facilities. During the audit period, the Board entered into an annual \$8,000 retainer agreement with WFC and paid WFC \$1.084 million, inclusive of the retainer payments. A large number of current and former WFC personnel worked in the District. The close ties between WFC and the District give rise to an apparent conflict of interest, since WFC has a substantial economic interest in the advice it gives the District concerning construction or repair projects.

- WFC is the sole outside advisor to the District on the upkeep of its water treatment system. All construction or repair projects undertaken by the District are based on the recommendation of the Sewage Plant Supervisor and a WFC engineer. In all cases, WFC is called upon to evaluate the need for a proposed repair or improvement. Once the Board decides on a project, WFC prepares the bid specification documents, performs the engineering work related to the project and on occasion supervises the project. Thus, WFC advises the Board as to whether engineering work is needed and earns substantial fees by working on those projects the Board decides to undertake.
- The daily operations of the District were managed by WFC employees during the audit period. At times in 2004 and 2005, the Acting Superintendent and the Acting Sewage Plant Supervisor for the District were full time employees of WFC. WFC billed the District \$156,389 between August 2004 and February 2006 for the cost of its employees running District operations and providing training and support to the Sewage Plant Supervisor hired in 2004.
- Three District employees were once employees of WFC, including the previous District Superintendent, who held the position between 1995 and 2003.
- In addition, the District routinely uses WFC as a temporary employment agency. While the District hires interns as seasonal Sewage Plant Attendants through the Civil Service Commission at \$10 an hour, it also uses numerous interns provided by WFC. WFC interns cost the District \$26 an hour, a 180% markup of the salary WFC pays the interns. The District spent \$29,597 on WFC interns for the period July 2004 through August 2004 and June 2005 through August 2005.

AUDIT FINDINGS AND RECOMMENDATIONS

Audit Recommendations

The District needs to ensure that the engineering recommendations are prudent and necessary, and avoid contractual relationships that give rise to potential conflicts of interest and the appearance of impropriety.

- The District should consider separating the function of engineering advisor and engineer performing the recommended work. The District might, for example, hire an engineering firm to serve exclusively as an advisor on the need for repair or construction work.
- The District should competitively procure engineering services consistent with the requirements of the General Municipal Law, as discussed in Audit Finding Two. The District should consider procuring engineering services for repair and construction on a project by project basis, rather than giving one firm an annual contract to do all engineering work in the District.
- When new vacancies arise, the District should open its recruiting process and try not to recruit senior level employees exclusively from WFC.
- The District should hire its own interns.

Audit Finding (2):

Procurement of Professional Services

General Municipal Law (“GML”) §104-b governs procurement of professional services by the District. Pursuant to GML requirements, the District has also adopted a procurement policy to govern its actions as a purchaser of goods and services. The law and the District’s procurement policy require that the District use a competitive procurement process including requests for proposals (“RFP’s”), or written or verbal pricing of services, before hiring professional firms.

We found that the District has kept the same professional firms under contract for periods spanning decades without engaging in a competitive procurement process to evaluate whether other firms would provide better or more cost effective services. Because the District has not given other professional firms the opportunity to compete for its business, the District cannot know whether it is obtaining the best possible price or the highest possible quality of work from its engineer, lawyer or accountant.

- WFC has been the sole engineering firm under contract to the District for approximately 42 years. It is not clear whether a request for proposal was issued at the time they were originally retained in 1965, but there is no evidence that the District has attempted a competitive procurement for engineering services since 1965.

AUDIT FINDINGS AND RECOMMENDATIONS

- The District has retained the same counsel since 1978, and there is no evidence that the District ever undertook a competitive procurement for legal services.
- In addition, we found that the District's independent auditors have been employed by the District since 1995.

Audit Recommendations

The District should:

- ensure that all procurement is done in compliance with the GML and the District's procurement policy; and
- use a competitive procurement process to bid out all its professional services as existing contracts come due rather than automatically renewing its contracts on a sole source basis.

Audit Finding (3):

Questionable Personnel Practices

Inconsistent Salary Offers for Sewage Plant Supervisor Position

Special districts are permitted to determine the salaries for certain positions, including the Sewage Plant Supervisor title. The salary plan is filed with the Nassau County Civil Service Commission but is not subject to the Commission's approval.

In early 2004, the District asked the Civil Service Commission three times for permission to appoint a WFC employee to its vacant Sewage Plant Supervisor position. The Commission rejected the appointment and instructed the District in June 2004 to first offer the position to three District Sewage Plant Operators, who were in a direct promotional line to Supervisor. The District did so, at \$63,700, which was below the current earnings (the total of base salary and overtime) for two of the three employees. Each employee declined the position. Due to the eligible employees' declination, the District sought and received approval from the Commission to make a provisional appointment for the Sewage Plant Supervisor position. The District then hired the WFC employee at a salary of \$63,700.

After appointing the former WFC employee to the Sewage Plant Supervisor position, the District adjusted his salary four times within a 15 month period. Within three months of hire, the District purchased a new vehicle for the Sewage Plant Supervisor's use, including use for commutation, a fringe benefit that his predecessor did not have. Within six months of hiring, the salary was increased by \$16,300 (or 26%). Less than ten months later the Supervisor was granted an additional raise of \$6,400, or 8%, bringing the total salary to \$86,400. Two out of the three candidates who declined the promotion

AUDIT FINDINGS AND RECOMMENDATIONS

informed us that they would have accepted the position had they known that there was the possibility of receiving similar raises in this time frame.

Audit Recommendation

The District should adopt uniform procedures for hiring, promotion, salary increases and fringe benefits to ensure consistent treatment of all qualified candidates and active employees.

Compliance with DEC Licensing Requirements

The DEC requires that wastewater treatment plants be under the responsible supervision of an appropriately certified operator.³ DEC regulations provide that “[r]esponsible supervision’ means the accountability for and performance of active, daily on-site operation of the wastewater treatment plant.”⁴ The regulations lay out factors used to determine what level of certification is required for the chief operator of the plant. For the District’s facilities, the chief operator must hold a Grade III Wastewater Treatment Plant Operator license. The District’s previous Superintendent held this certification.

We found that the Sewage Plant Supervisor ran the day to day operations of the plant even though he did not have the license required for that position under the DEC regulations. When the Supervisor attempted to take the test for a Grade III certification, DEC informed him that he lacked the necessary experience and as long as he was in a managerial position, he would not be able to get the necessary experience. The District and its Supervisor have not resolved this impasse with DEC.

The District did appoint an appropriately licensed employee to the position of Chief Operator. Interviews with District personnel suggest that the Chief Operator does not supervise day to day plant operations and lacks authority to make decisions about the operations of the plant.

Audit Recommendation

The District should ensure that it complies with DEC licensing requirements.

Treatment of General Counsel as both Employee and Independent Contractor

The District has retained the same legal counsel since 1978. In 2004, the outside counsel was also made a part-time employee of the District and was put on the District’s payroll. The relationship between the District and the counsel, however, remained one of outside advisor and client rather than employer and employee. In a white paper entitled “Nassau County Special Districts: The Case for Reform,” the Comptroller’s Office has critically

³ N.Y. Comp. Codes R. & Regs. Tit. 6, §650.4 (2006).

⁴ *Id.* § 650.2(g).

AUDIT FINDINGS AND RECOMMENDATIONS

noted that special districts who hire professional consultants as part-time employees with health insurance and retirement benefits, in addition to hourly consultant fees, frequently overpay for professional advice.⁵

The District and counsel continued to enter into an “Attorney Retainer” agreement after he was made an employee. The agreement describes certain work that the attorney would do as an employee, describes other work that would be billed at hourly rates, and commits the District to provide “family medical, dental and optical insurance coverage” and “to participate in the New York State Pension Plan”. The document states that pension plan participation will be “based on” 8 days a month at 6 hours a day.

The General Counsel is not required to work for the District at any time during a month and does not maintain an office at the district. If during any month all of the counsel’s work is on subject matters deemed billable under the agreement, he would draw his salary but also bill for time spent on District matters. This does not describe a usual employment relationship.

The District has not engaged in an open, competitive procurement process to select an attorney since at least 1978 when the current attorney was first retained. The District may now find it even more difficult to engage in a competitive procurement for legal services because it has made its current outside counsel an employee as well.

Attorney Compensation

The General Counsel was first made an employee on August 3, 2004 at an annual salary of \$8,000. The salary increased 125% to \$18,000 for the period April 1, 2005 through March 31, 2006 and by 37% to \$25,000 for the period April 1, 2006 through March 31, 2007. The family health insurance benefits for the counsel cost the District \$15,963 for the period November 2004 through December 2005. During the same time period, the counsel and District agreed to raise the counsel’s hourly rate from \$175 to \$225.

A review of the attorney’s bills showed that he billed for one project, an Omnipoint Facilities Network lease that might have been covered by his salary under the retainer agreement. The retainer agreement’s language made it difficult to distinguish work performed in return for salary from the work that was to be billed at an hourly rate. There is no documentation to show how the District reviewed the attorney’s decision to bill hourly for any particular project.

FICA Payments

In addition to payment of family health insurance coverage and the potential expense of pension contributions under the Retainer Agreement, by terming the counsel an

⁵ Nassau County Special Districts: The Case for Reform, December 19, 2005 at p. 9. The report is available at <http://www.nassaucountyny.gov/agencies/Comptroller/Docs/PDF/05Dec19-SpecDistRpt.pdf>.

AUDIT FINDINGS AND RECOMMENDATIONS

employee, the District has assumed responsibility for social security and Medicare payments for the counsel. The Internal Revenue Service (IRS) has specific criteria to determine whether an individual is an independent contractor, an employee, or both. The IRS does not require FICA payments if the individual is an independent contractor. A review of IRS topic 762, found on the IRS Web site, serves as a guideline in making this determination. We found that the facts suggest the General Counsel is not an employee for IRS purposes because he:

- was not required to maintain any time records to support his requirement of working eight, six hour, days per month;
- was not assigned any office space at the district; and
- unlike the Commissioners, was not required to provide any description of his day to day activities.

Audit Recommendations

The District should:

- competitively procure outside counsel before it enters into a new retainer agreement as discussed in Audit Finding (2);
- adopt a procedure to review the counsel's bills to ensure that activities covered by the General Counsel's salary are not also billed to the District; and
- terminate the employer-employee relationship with General Counsel.

Audit Finding (4):

Commissioners' Salaries

Commissioners are compensated at a per diem rate of \$80 per day for each day "actually and necessarily spent in the service of the district."⁶ The \$80 is a flat fee, whether the commissioner works for an hour or a full day. We found that all three commissioners in this District were paid an average of four days per week or approximately \$17,000 per year. Over the three year period 2003 through 2005, their total compensation totaled \$154,240.

We noted a general lack of internal controls over the commissioners' timekeeping. A review of a sample of commissioners' claim forms, which listed the dates and tasks performed, showed:

- the claim forms submitted by each of the commissioners for attending board meetings did not accurately report the dates of the meetings;
- failure to document the number of hours worked;
- claim forms were submitted and paid for the same day more than once; and

⁶ See N.Y. Town Law § 216 (2006).

AUDIT FINDINGS AND RECOMMENDATIONS

- there is a lack of internal controls and documented policy for the submission and approval of commissioner time and claim forms.

Audit Recommendations

The District should:

- establish written guidelines and procedures for commissioners to follow in connection with recording time;
- create and enforce written procedures for approving commissioner claims; and
- require commissioners to record the number of hours worked each day.

Audit Finding (5):

Uncollected Debt

The Board elected to extend a loan, in the form of a salary advance of \$5,250, on August 1, 2003 to the former provisional Sewage Plant Supervisor who was employed by the District from August 1, 2003 to January 9, 2004 when he abandoned the position. This loan was evidenced by a promissory note.

The promissory note includes a promise to repay \$5,250 without interest on or before April 30, 2004, except in the event of default whereby it would be subject to a late charge of 12% interest on the remaining balance. The loan is immediately due and payable upon termination of employment. In the event that the promissory note went into default, the borrower agreed to pay all reasonable attorneys fees and costs of collection.

The District collected a portion of this loan through salary deductions; however, when the employee abandoned the position he still owed the District \$2,442. The District's correspondence includes a letter dated January 27, 2004 from the General Counsel to the former provisional Sewage Plant Supervisor declaring that the promissory note was immediately due and payable due to termination of employment.

When the current District Sewage Plant Supervisor was questioned as to what actions had been taken to recoup this money, he referred us to the January 2004 letter described above. There was no evidence that any other action had been taken to recoup the funds.

Audit Recommendation

The District should:

- not extend credit to employees; and
- follow-up to ensure repayment of the outstanding employee loan.

Appendix I

COMMISSIONERS
JOHN J. SCHKO, JR.
JAMES F. DEMOS
SCOTT M. DAVIS



EXECUTIVE DIRECTOR
KARL KAMPE

NASSAU COUNTY
CIVIL SERVICE COMMISSION
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February 7, 2006

Mr. Howard Weitzman
Nassau County Comptroller
240 Old Country Road
Mineola, New York 11501

Dear Comptroller Weitzman:

As a result of the Commission meeting held this date, the Commission has authorized the Executive Director to engage in discussions with the County Comptroller about the possibility of a joint audit of the Great Neck Water Pollution Control District regarding certain irregularities in compliance with Civil Service rules and regulations. In previous communications and meetings with the Commission, the Board of Directors has not responded to our request for information.

Very truly yours,

Handwritten signature of John J. Schko Jr.

John J. Schko Jr.,
Chairman

JJS/JFD/SMD:fmi

Handwritten signature of James F. Demos.

James F. Demos,
Commissioner

Handwritten signature of Scott M. Davis.

Scott M. Davis,
Commissioner

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

***Response to the Nassau County Comptroller's Limited Review of the
Great Neck Water Pollution Control District 12-29-06***

**Summary of Significant Findings, pg iii - v and
Audit Findings, page 1-7**

Introduction

The Great Neck Water Pollution Control District collects wastewater -- the spent or used water from homes and businesses -- transported by the use of two pump stations and three lift stations through 45 miles of sanitary sewers. The District treats the wastewater through a multi-stage process and discharges the treated wastewater into Manhasset Bay. The District serves 15,000 residents and businesses in the Villages of Saddle Rock, part of Great Neck, Kensington, most of Thomaston and Great Neck Plaza, as well as all unincorporated areas north of the LIRR tracks, unincorporated Great Neck Manor and parts of Manhasset. The District contracts to process the wastewater of some other facilities, the largest of which is North Shore University Hospital. The District services approximately 1/3 of the Great Neck Peninsula.

District operations are overseen by a Board of Commissioners (the "Board"), which consists of three commissioners elected for three-year terms. The District is run by full time and part-time staff.

In the years 2001 and 2002 the District found itself plagued with employee and maintenance issues. The Board of Commissioners took strong action to correct these problems, starting with the forced resignation of the then Superintendent. It is important to note that the Great Neck Water Pollution Control District is regarded as a well operated and well maintained plant. All of this is described herein -- the District's Response explains what we did and why we did it.

It is clearly shown in the response that the attorney's employee status is legal. However, we are exploring other possible arrangements for counsel's next contract which begins on April 1 of this year.

Following is the District's Response to the "Draft Limited Review of the Great Neck Water Pollution Control District by the Office of the Nassau County Comptroller, Howard S. Weitzman", dated November 6, 2006.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

Conflict of Interest/Appearance of Impropriety, pages iii-v and 1-8

The Comptroller's Draft contends that the District's contract with its engineering firm, William F. Cosulich, PC (WFC), creates a condition giving rise to an apparent conflict of interest and an appearance of impropriety. These conclusions are unwarranted and ignore the conditions existing at the District prior to and during the audit period and failed to take into account the bureaucratic impediments created by the Nassau County Civil Service in processing the District's requests for additional staff.

In 2002, and prior to the audit period under review, the Board was concerned that conditions at the GNWPCD regarding both staff and maintenance, had deteriorated significantly. The Board contracted with an outside engineering consulting firm to review plant operations. The consultants advised that the District was on the verge of a potentially serious failure. The consultants attributed the problems to the then-Superintendent's lack of supervision, a failure to implement and maintain preventative maintenance programs and a disregard of recommended standard operating and maintenance procedures. At this same time vandalism, and insubordination by certain District employees, operating with a near-gang mentality, was accelerating to a point that included theft and sabotage. On two occasions the 6th Precinct of the Nassau County Police Department and the New York Department of Environmental Conservation's Enforcement Officers were called in and appropriate police reports were filed. As a consequence the Board, which had sufficient documentation to terminate the Superintendent's employment, moved to take emergency action to dismiss him. Under the circumstances the Superintendent chose, instead, to resign. The Board also sought the required support and assistance of the District's engineers, WFC to keep the plant operating properly in the absence of top management.

The District's first priority was to enhance its supervisory ranks. In March, 2002, it requested the position of Sewage Plant Supervisor from the Nassau County Civil Service (NCCS), which granted the position. There was no Civil Service list for the position at the time, and accordingly the District advertised for potential candidates. None of the District's staff showed any interest in the Supervisor's position. Two successive outside respondents were selected, but each abandoned the position within a short time of their hiring. In February, 2003, eleven months after the initial advertising for the Supervisor's position, and after the two outside applicants quit within months of each other, the District engineers, WFC, provided one of their employees, Christopher Murphy, to assist the District, which at that point was lacking day-to-day supervision, as Acting Superintendent.

On finding that the Acting Superintendent had the skills necessary to perform its management work, the District submitted his application to Nassau County Civil Service

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

for the Sewage Plant Supervisor's position. Civil Service rejected his application on the grounds that the District had failed to offer the position to its three operators. However, none of the three operators had the supervisory, technical or managerial experience to fill the position of either Sewage Plant Supervisor or District Superintendent. It should be noted that this was not a Civil Service prerequisite when the two previous Sewage Plant Supervisor candidates were approved.

Auditor's Follow-up Response:

The District's difficulties managing its staff and recruiting qualified engineers are of grave concern. As was discussed in the introduction to this report, the District may be too small to be able to hire the sophisticated staff of engineers needed to manage a sewer system and comply with all applicable pollution control regulations. Similarly, a part-time Board of Commissioners may be insufficient to set effective policy for a unionized work force that is governed by civil service rules. Nevertheless, as long as the current form of governance continues, the District must do its best to comply with the laws and regulations that govern its hiring.

On the insistence of Civil Service the District then offered the vacant position of Sewage Plant Supervisor to three Sewage Plant Operators, at a salary of \$63,700. This salary was comparable to that paid to the previous Plant Superintendent, who received a salary of \$62,400 at the time of his resignation. The three operators rejected the position. In October of 2004, two and a half years after the initial request to Civil Service for the Supervisor position, Mr. Murphy was hired as the District's Supervisor.

Since the District's new Supervisor did have the supervisory, technical and managerial skills to fill the position of Sewage Plant Supervisor, he began from his first day at the District to make the necessary changes to get the District back to an acceptable operating level, and he has continued to make significant changes and improvements to date, changes which include the initiation of proceedings, seeking and achieving the dismissal of the most disruptive of the District employees. Given the amount of overtime and the exercise of skills that these changes required, the Supervisor's salary was increased to its present \$86,400. The Supervisor's salary and benefit increases were completely appropriate rewards for very exceptional performance.

Auditor's Follow-up Response:

As noted in the audit, acceptance of the salary offered to two of the three candidates would have resulted in a decrease in compensation in return for accepting additional responsibility. We are concerned because the salary was substantially increased within a relatively short period of time after a Supervisor was hired. A more open recruitment process would have made the possibility of rapid salary increases known to the potential job applicants. Two of the employees who rejected the position informed us that they would have accepted it had they had known that they would have been eligible for salary increases of that magnitude based on their job performance.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

Concerning whether the candidates for Plant Supervisor were selected based on whether they had prior supervisory experience, the January 29th, 2004 internal job posting for Provisional Sewage Plant Supervisor, included only two eligibility requirements:

- *to currently possess a minimum of a Grade II NYSDEC Wastewater Treatment Plant Certification and be laboratory proficient and*
- *to obtain a NYSDEC Grade III Wastewater Treatment Plant Operators Certification within one and a half years of the appointment date.*

The posted job qualifications did not require, but stated that the following “were a plus”: prior supervisory experience; CCTV inspection experience; grease trap program participation knowledge; collection systems expertise/certification; and computer competency. All three employees had the Grade III certifications which implies certain levels of experience and technical expertise. The form the District submitted to the Civil Service Commission on February 13th, 2004 represented that supervision would comprise only 5 % of the position's time. With the benefit of hindsight, the District may now believe that prior supervisory experience was very important in selection of the Supervisor. In that case, the requirement of prior supervisory experience should have been weighted more prominently in job postings and in the submission to the Civil Service Commission.

Contrary to the Comptroller's implication that these employees were not given a fair evaluation, the District evaluated all applicants equally, but the skills of the applicants were not equal to the tasks. Moreover, each of the three operators would have had to move out of the position for which they were well trained into a new position for which they lacked the experience required in the Civil Service job description. There would have been a need for constant supervision. Such a promotional scheme would do serious damage to the functioning of the District and be outside the realm of rationality or fairness.

Auditor's Follow-up Response:

It is usual for employees who have been promoted to vacate jobs for which they were well trained. Competence in a position should not be used by an employer as a barrier to promotion. The District's concern that if it had promoted one of its existing employees, it would have had to provide additional supervision until the employee learned his new job should be balanced against the fact that the District also provided additional supervision for the employee it selected. Billing records from WFC show that the District contracted for an acting supervisor from October 30, 2004 until September 30, 2005 even though the District had a full time employee in this position.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

Since the District's present union contract excludes supervisory personnel, the District is discussing with its union members a proposal to add a second bargaining unit allocated to working foremen. This would allow District staff to accept supervisory responsibilities while continuing with their daily tasks. This arrangement would benefit the staff by adding another level of promotion and the District by adding another level of supervision.

In pursuing continuing improvements, the District has submitted position requests to Civil Service, including the requests for a Superintendent and a Business Manager, who would assist in this and other District business. The vacant Superintendent's position which was requested by the District in 2005 has still not been approved by Civil Service. To date the District has submitted requests to Civil Service for a total of ten positions, eight of which were recently granted only after the District had initiated litigation against Civil Service. Since all of these positions represent required work that must be done by the District, the District will be forced to continue to find appropriate support from outside consultants until it has those positions in place.

Most recently after exhausting a certified Civil Service list to hire a full time clerk typist, the District requested permission to hire provisionally. Civil Service notified the District that it would be allowed to hire provisionally, providing that the appointment be made from among those who had taken the recently given exam. When the District asked for their names, Civil Service responded that another written request must be submitted and an uncertified list would be compiled. By requiring the District to hire from an uncertified list, Civil Service is creating the potential for the District to employ a candidate who might have already failed the required Civil Service exam. This could force the District to have to reapply, re-interview, rehire and retrain another individual, repeating the months of training and time spent on the previous candidate, all at taxpayer expense.

The hiring of summer interns was also hampered by Civil Service. Civil Service delayed its response for requested intern positions for so long that the initial applicants were forced to find summer work elsewhere and the only access left to interns was through WFC. It should also be noted that the interns that have come through the engineering firm have a more extensive technical background than others, thus proving to be valuable assets to the District during their summer employment.

Auditor's Follow-up Response:

The District's difficulties in hiring through the Civil Service Commission are unfortunate and may be due simply to the complexity of civil service regulations and the small size of the District and its staff. As long as the District remains with its present form of governance, however, it must comply with civil service law and regulations.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

If the District has found that the Civil Service Commission caused delays in hiring summer interns, the District should try to anticipate its summer intern hiring in advance of need. Moreover, at least some of the delays may not exist. During 2005, the district hired two summer interns through the Civil Service Commission with employment start dates of June 30 and July 1, 2005. The WFC employees had the following start dates June 15, June 20, July 5 and July 11, 2005. Based upon these hiring dates it appears that the interns hired through Civil Service started before two of the WFC employees.

Procurement of Professional Services, pages iv and 2

The Comptroller's Draft presents several inter-related issues which purport to raise potential conflicts of interest between the District and its retained engineering firm William F. Cosulich Associates P.C. ("WFC"). Despite this conclusion the Draft fails to point to Article 18 of the General Municipal Law where the State Legislature has codified this area of the law under the heading "Conflicts of Interest of Municipal Officers and Employees." The Comptroller's Draft has not cited a single instance where the District or WFC has violated Article 18 because they are in complete compliance with the statute. Indeed, WFC is also in full compliance with Nassau County's Code of Ethics as well.

Auditor's Follow-up Response:

The close relationship between the District and WFC raises concerns that should be considered by the District's Commissioners. The finding addresses WFC's apparent conflict of interest in benefiting from making recommendations and then performing the work recommended. This is a practical issue regarding the objectivity of the professional advice provided to the District. This report did not identify any concerns regarding General Municipal Law Article 18, which bars governmental employees from benefiting from their choice of vendors.

The next issue raised by the Comptroller addresses employment by the District of several past and current employees of WFC. In particular, during a ten year period commencing in 1995 the District hired two previously fulltime WFC employees. This practice is in full compliance with both State Law and the County Code of Ethics. Nothing prohibits an individual from leaving private industry to engage in public service. The District benefits in securing the expertise of highly trained individuals who have had long experience with the District's operations and infrastructure. Once retained, the individuals enjoy independence as professional Civil Servants. Indeed, the Comptroller's criticism is wrong headed because it is the opposite practice which is regulated by the Codes. It is only when individuals leave the government to join private industry that the law prohibits their engagement with the prior agency for one or two years as appropriate. See, 18 USCA§ 207: Restrictions on former officers, employees and elected officials of the executive and legislative branches; and Nassau County Code of Ethics § 22-4.2(5), Future Employment.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

Auditor's Follow-up Response:

The Comptroller's Office stands by its finding that the number of prior and current WFC employees working for the District, when combined with WFC's role recommending projects from which it directly benefits and the District's engagement of WFC as its engineer for over 40 years combine to give rise to the appearance of a conflict of interest.

In a similar vein, the Draft criticizes the practice where current employees of WFC are used to support the District as either engineers or interns. Once again, no state or local Code of Ethics restricts this arrangement. What the Comptroller must note is that this practice is common place, not just in local municipal districts, but in New York City and Nassau County, as well. In fact, temporary employment of private professional engineers and staff is currently the routine practice by the Department of Public Works of Nassau County. There is no doubt that the County, as well as the District, benefit substantially when filling their short term staff needs with experienced professionals familiar with the municipalities' specific requirements. As to the suggestions that the District "over paid" several private interns employed by WFC, the same can be said for the County itself. The District, like the County, must have the flexibility to obtain a mix of temporary employees thus preserving their ability to obtain the best qualified individuals for the particular challenge at hand.

Auditor's Follow-up Response:

We continue to question the need to hire summer interns outside of the civil service system and commend the District to the extent it has engaged in open hiring of summer interns in the past. We have been informed by County DPW that it hires summer interns exclusively through civil service.

This report does not criticize temporary procurement of professional services from engineering firms. We do question the exclusive use of one engineering firm for all functions, including temporary staffing, without any competitive procurement. We have been informed by County DPW that it issues RFP's for stand-by engineering needs and we adhere to our view that the District should open its procurement of this and all engineering services to other firms.

Finally, the Comptroller denigrates the essence of the professional relationship between the District and its retained professionals. Acknowledging that there is no true conflict of interest present, the Draft suggests that the District cannot employ *one* retained engineer. The Comptroller indicates that "an appearance of impropriety" exists when the same engineer both recommends/advises on the "repair, upkeep and construction of District facilities" and then, once approved by the Board, performs the design and engineering work for the project itself. Under the Comptroller's theory the District should employ *two* retained engineers: one for investigation and evaluation and a

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

separate engineer for design and construction. Indeed, this logic would extend to all professional services. Two physicians would be required: one for diagnosis and one for treatment. Every district would require two attorneys: one to analyze the legal issues and a second to actually litigate the case. Clearly this approach ignores the numerous decisions of the Court of Appeals and the myriad of New York State Comptroller opinions which unanimously reposes decisions on the employment of professionals with the duly elected Board of Commissioners. See, Smith v. Flagg, 117 NY 584 (Ct. App. 1858); Vermuele City of Corning, 186 App. Div. 206 (4th Dept. 1919) aff'd. 230 NY 585 and New York State Comptrollers Opinions No. 86-25, No. 87-21 and No.93-3. The Comptroller's Draft questions the size of the fees paid to WFC during the period of the audit, January 2003 to June 2006. During that period, the District called upon the District engineers to respond to three costly emergency repair projects, in addition to providing supervisory personnel -- thus the high fees to WFC.

In 2006, in order to prepare for a required multi-million dollar treatment plant upgrade project mandated by the New York State Department of Environmental Conservation ("NYSDEC"), the District formed a Technical Advisory Committee ("TAC"), consisting of three nationally and internationally known experts with knowledge in the field of the required upgrade. The TAC is charged with advising the District and the District engineers in the formulation of the most desirable upgrade solution complying with the requirements of NYSDEC and the Environmental Protection Agency ("EPA").

Upon the request of the Commissioners, the TAC also suggested other ways to obtain engineering services for large scale budgeted projects. One method is the issuing of separate Requests for Proposal (RFPs) for the District engineer and for the Project engineer. The Board was also advised that this procedure would require extra consultants and therefore additional fees to manage this more complicated bidding process.

The Board will test the effectiveness of this approach when the District reaches the design and construction stage of the upgrade where the process will be subject to ongoing evaluation as it moves forward. The consulting engineers of most of the LI sewer districts are large, well qualified firms with considerable back-up services. If the respondents to the RFP for District Engineer are not sufficiently qualified, the District will be unwilling to surrender this level of skill and service. It also should be mentioned that the District's consultants, both engineering and legal, provide the benefit of institutional memory, a benefit that is not reflected in an RFP. The District's engineering firm and legal counsel have worked for the District far longer than any of the District's employees or its commissioners. The Comptroller's office has focused only on the negative side of this situation, but for the District, their consultant's familiarity with the facility and its history has been invaluable.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

Auditor's Follow-up Response:

The Comptroller's Office stands by our recommendation that the District expand its recruiting process to consider hiring individuals who were not employees of WFC. We also stand by the suggestion that the District consider getting independent advice on the need for projects from an engineer who will not profit from performing the work. We agree with the District's Technical Advisory Committee's suggestion that the District use a competitive procurement process by issuing RFP's and weigh the benefits of issuing separate RFP's for the District engineer and project engineers. The District argues that our recommendation to separate the advisory function from the implementation function is flawed and states that under our logic, separate physicians should diagnose and treat. However, their example further supports our opinion. Almost all insurers pay for second opinions before major surgery. The second opinion helps eliminate any conflict of interest on the part of the diagnosing physician.

We agree that contract decisions should rest with the Board. We recommend that the Board make these decisions after the District has used a competitive procurement process. The employment of the same engineering consulting firm for over 40 years and the same attorney for almost 30 years suggests that the District has not considered the possibility of hiring different professional advisors. Even if the District decides to continue to retain WFC and its current legal counsel after a competitive procurement process, it might find that the competition will help keep professional fees down, and might bring new insight into District operations.

To summarize, the Board is eager to take all steps to avoid any appearance of impropriety, provided that it does not have a disproportionately deleterious effect on facility operations or cause significant increase in costs to our taxpayers.

Auditor's Follow-up Response:

We concur with the Board's decision to take all steps to avoid the appearance of impropriety.

**Questionable Personnel Practices, pages iv and 3-5
Treatment of General Counsel as Both Employee and Independent Contractor,
page iv – v, page 5 – 6**

The Comptroller's Draft mischaracterizes the District's employment agreement with its general counsel as permitting counsel to "bill the District for time spent on any subject matter not explicitly listed as covered by his salary". In fact, the agreement does just the opposite. All legal matters undertaken on behalf of the District other than specifically delineated "Extraordinary Legal Services" are covered by his salary. "Extraordinary Legal Services" include only litigation, the drafting of sewer use agreements, pre-treatment agreements, construction agreements, intermunicipal

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

agreements and the like or other matters mutually determined by the District and the Attorney to require an unusual or extraordinary expenditure of time or effort by the Attorney.

Auditor's Follow-up Response:

We have clarified the report to explain that while the retainer agreement does define what is to be done for salary, it also describes legal matters that are to be done for an hourly fee. Legal services that are not covered by the salary are billed to the District.

The Comptroller's Draft noted that the salary and hourly wage paid to counsel increased by over 100% during the audit period, failing to take into account that counsel's compensation had remained unchanged at \$8,000 per annum since 2000. A review of the compensation paid to legal counsel at other Special Districts in Nassau County demonstrated to the District that this increase constituted fair compensation for the services rendered and brought counsel's compensation closer to parity with that of other counsel in similar districts.

The Comptroller's Draft suggests that "General Counsel is not required to work for the District at any time during a month". In fact, the District's employment agreement imposes significant and broad responsibilities upon counsel, including essentially all legal matters arising in the District other than those specifically delineated or undertaken by special labor or environmental counsel.

Auditor's Follow-up Response:

It is hard to judge the appropriate level of compensation for legal services without engaging in a competitive procurement process. The District has had the same counsel for 28 years and increased his compensation after a comparison with other districts. The Comptroller's 2005 Report: Nassau County Special Districts: The Case for Reform⁷ explained that many special districts overpay their professional advisers by putting them on payroll, giving them health benefits, retirement benefits and retiree health benefits, in addition to paying them as outside consultants. A competitive procurement process is much more likely to find the market price for professional services than a survey of other non-competitive employers.

Our statement that the "General Counsel is actually not required to work any time for his salary" is factual. We cannot comment on whether the counsel has broad responsibilities since we have seen no timesheets or other evidence of work performed for his salary, but the fact that the District's attorney does not have any regularly scheduled or required number of work hours is an indication that he is an independent contractor rather than an employee under the District's control.

⁷ Nassau County Comptroller's Office, Nassau County Special Districts: The Case for Reform, December 19, 2005, at page 9, <http://www.nassaucountyny.gov/agencies/Comptroller/Docs/PDF/05Dec19-SpecDistRpt.pdf>.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

While the Comptroller's Draft appears to take exception to the District's hiring of counsel as a part-time employee of the District, Town Law §215 (22) specifically confers upon the board of commissioners the authority to do so.

§215. Powers and duties of improvement district commissioners. Subject to law and the provisions of this chapter, the commissioners of every improvement district shall constitute and be known as the board of commissioners of such improvement district. Such board of commissioners

22. May regularly employ an attorney or an engineer for professional services and advice, or may employ from time to time and whenever necessary an attorney or engineer or counsel or expert engineering service in relation to a specific subject matter, improvement, proceedings or litigation, provided however, that no such attorney, engineer, counsel or engineering service shall be employed unless and until the town board of the town in which such district is located shall adopt a resolution authorizing such employment.

It should be noted that villages, towns and special districts routinely employ part-time counsel for routine matters for a fixed salary, with additional services such as litigation paid at an hourly rate. With regard to litigation services performed by counsel, it is self-evident that the time expended on such matters is not readily predictable. Litigation by its nature is unpredictable as to when it will arise, its frequency and its duration. Such arrangements are authorized under the Town Law where, as in the District's case, the hourly rate and the services to be performed are clearly specified in advance and the additional services performed and time expended are properly documented.

Auditor's Follow-up Response:

In our report: Nassau County Special Districts: The Case for Reform,⁸ this office has critically noted that special districts who hire professional consultants as part-time employees with health insurance and retirement benefits, in addition to paying them hourly fees as outside consultants, frequently overpay for professional advice. We have recommended that special districts could better control the cost of professional services by competitively bidding for services and by exploring using the expertise of the Town attorney, which is also permitted by the Town Law,⁹ or by joining with other water pollution control districts and paying for a single lawyer's services.

⁸ Nassau County Comptroller's Office, Nassau County Special Districts: The Case for Reform, December 19, 2005, at page 9. The report is available at <http://www.nassaucountyny.gov/agencies/Comptroller/Docs/PDF/05Dec19-SpecDistRpt.pdf>.

⁹ Town Law §215 [22].

DISTRICT’S RESPONSE AND AUDITOR’S FOLLOW-UP

“Cost Savings Ideas for Special Districts.”¹⁰ Furthermore, the Town Law does not authorize hiring attorneys as employees in addition to retaining them as a consultant at an hourly fee.

In addition to our view that districts that both employ a lawyer and pay for the lawyers’ services on an hourly basis are paying substantially more than required by the market for legal advice, we found that in this case, the relationship between the attorney and the District is such that the attorney should be considered an outside contractor for tax and employee benefit purposes.

The Comptroller suggests that the District treat counsel as an independent contractor rather than an employee, despite numerous indicia which under Internal Revenue Service guidelines suggest counsel is an employee, and despite the liabilities to which the District may be subject if it improperly treats the worker as an independent contractor. Under Internal Revenue Service criteria, an individual is likely to be an employee rather than an independent contractor when 1) he must comply with your instructions as to when, where, and how they work; 2) the individual’s services are important to your business's success or continuation; 3) the individual must personally perform the services for which you're paying; 4) the individual performs work for you for significant periods of time or at recurring intervals;; 5) the individual is required to submit regular reports; 6) the individual is paid by the hour, week, or month rather than by the job; and 7) you can fire the individual at any time.

Auditor’s Follow-up Response:

Internal Revenue Service Regulations are subject to interpretation. Aspects of the relationship that indicate the attorney is a contractor include:

- i) the District does not tell the counsel when or where to work;*
- ii) the District does not specify the sequence or order of the work to be performed;*
- iii) the counsel is free to make his or her services available to the relevant market; and*
- iv) the counsel was engaged for a one year period.*

We reiterate our recommendation that the district re-evaluate whether it is cost effective to have the counsel as an employee after taking into account the cost of fringe benefits.

Contrary to the recommendation contained in the Comptroller’s Draft that FICA payments not be deducted by the District, the Office of the New York State Comptroller specifically recommends that “where possible, payment should be made pursuant to the

¹⁰ Nassau County Comptroller’s Office, Cost Savings Ideas for Special Districts in Nassau County, December 13, 2006, at page 12. The report is available at http://www.nassaucountyny.gov/agencies/Comptroller/Docs/PDF/Cost_Saving_Initiatives121306.pdf.

DISTRICT’S RESPONSE AND AUDITOR’S FOLLOW-UP

payroll method to permit more efficient accounting for the various deductions from gross compensation which may be required”. (1989 Op St Compt 89-45)

Auditor’s Follow-up Response:

We did not recommend that the District stop deducting FICA from employee’s salaries. We pointed out that if the counsel were classified as an independent contractor the Internal Revenue Service would not require the district to make FICA payments or withhold FICA from the vendor.

The Comptroller’s Draft recommends that the District adopt a procedure to review counsel’s bills to ensure that activities covered by salary are not billed to the District. The District maintains that the present employment agreement already provides such protection by permitting hourly billing only for those services specifically delineated in the agreement and for “other matters mutually determined by the District and the Attorney to require an unusual or extraordinary expenditure of time or effort”. However, in the interests of insuring maximum transparency, future agreements with special or general counsel will require that special projects beyond the usual services rendered by counsel will be performed pursuant to resolution of the Board. In addition, the Board will require that any future agreements with special or general counsel specifically require that services performed and time expended on special projects are very clearly documented.

Auditor’s Follow-up Response:

We concur with the corrective actions taken by the District to require Board resolutions before engaging the counsel to perform extraordinary legal services and in requiring the counsel to clearly document the billing of work performed.

Compliance with DEC Licensing Requirements, pages iv and 4

The Comptroller’s Draft erroneously states that the District is in violation of NYSDEC regulations with regard to its Chief Operator who “lacks authority to make decisions about operations of the plant” and its Plant Supervisor who “did not have the certification required for that position under DEC regulations”.

Although the current Sewage Plant Supervisor does not have the Grade III certification, the District does have an employee who holds a Grade III certification and who has been appointed Chief Operator. Although the Sewage Plant Supervisor assumes the responsibility of supervision of the staff, the Chief Operator has the ability and the authority to make changes to process and maintenance in the best interest of the facility.

DISTRICT’S RESPONSE AND AUDITOR’S FOLLOW-UP

Auditor’s Follow-up Response:

The District’s statement that the Chief Operator has the authority to make changes in process and maintenance was contradicted by the Chief Operator who told us that he lacked authority to make decisions about the operations of the plant.

The Chief Operator at the District is also the most experienced operator supervising the mechanical operations at the District. He has a Grade III wastewater certification, is the most qualified employee to be Chief Operator and is paid extra for that responsibility. The NYSDEC is fully satisfied with the Chief Operator currently in that position. Also the NYSDEC regulations specifically prohibit the Superintendent from being Chief Operator. It should be noted that according to the NYSDEC regulations, the present District Supervisor has the appropriate certification and experience for the position of District Supervisor as well as for the position of District Superintendent. Because he chooses to seek further training and certification is only to his credit and to the District’s benefit.

Auditor’s Follow-up Response:

*NYSDEC Regulation 650.3 states the following: “A Chief Operator is not intended to include city managers, superintendents of public works or municipal or other officials **unless their duties include the actual operation** of a wastewater treatment plant.” (emphasis added) This language prevents an administrator who is not involved in the day-to-day operations and running of the plant to be certified as a Chief Operator. We contacted other water pollution control districts and found that others have designated their Superintendents as the Chief Operator.*

We stand by our finding that the District apparently is not in compliance with DEC Licensing requirements because their current Chief Operator does not supervise day-to-day plant operations and lacks authority to make decisions about the operations of the plant. These functions are performed by the District’s Supervisor.

Commissioner Salaries, Page 6

The Commissioner’s operate under the Town Law, and like most elected officials are on call seven days a week and twenty-four hours a day. Thankfully, they do not normally get midnight emergency calls, but their work is not bounded by the 8:00 AM to 4:00 PM hours of the staff, or for that matter, the physical boundaries of 236 East Shore Road. It is no more appropriate to require the Commissioners to record their hours than it would be to require such record keeping of Town Council Members, Town Supervisors, Town Clerks, Tax Receivers, and County Legislators, or Trustees and Mayors of those villages that pay salaries.

DISTRICT’S RESPONSE AND AUDITOR’S FOLLOW-UP

As stated in the Comptroller’s Draft, the compensation for the three part-time Commissioners over a three-year period of \$154,240 corresponds to a yearly compensation of \$17,138 or an average of \$70 per day before taxes. The Commissioners get paid only for the days they are actually at the District. This compensation is being paid to three full-time employed professionals who earn many times this amount in their private employment. If the District were put in the position of requiring the \$80 per day to represent an eight-hour day, i.e. \$10 per hour, there would be no possibility of bringing experienced professionals on to this or any other Board. The level of technical expertise, knowledge of EPA and NYSDEC regulations and the unending complexities of local government that are on the Commissioners’ daily agendas make these positions serious challenges in the realm of public service.

In short, the Commissioners of the GNWPCD work very hard for a per diem that is far less than what they earn in their “day jobs”. It is inappropriate and demeaning to suggest that they should sign in and out – a requirement demanded of no other elected officials.

Auditor’s Follow-up Response:

We recommend that the District establish procedures for commissioners to record the number of hours worked each day. Without a record being established, the district cannot audit the commissioner’s claims for payment and billing errors will continue undetected. While we did not specifically suggest that commissioners sign in and out, we do not agree that it would be “inappropriate and demeaning” to safeguard taxpayer dollars by adopting a routine procedure to record time actually at work.

Uncollected Debt, pages v and 7

The Comptroller’s Draft states “that the District did not follow up to collect an outstanding past due loan...”

The \$2442 loan, the only loan the District has ever made to an employee, was made to a relocating Sewage Plant Supervisor who subsequently abandoned his position without any notice and moved immediately out of state. District counsel wrote demanding payment in full but all mail was returned undeliverable without a forwarding address. According to legal counsel, this made further efforts to collect on the note more expensive than the value of the note, with no guarantee of success. The District reported the loan to the Internal Revenue Service.

As previously noted, this Supervisor was hired under extraordinary circumstances -- the District lacked management, Civil Service had no list and the District was receiving minimal responses to its ads. Such a loan was never made previously and it is hard to imagine that such unique circumstances would ever arise again.

DISTRICT'S RESPONSE AND AUDITOR'S FOLLOW-UP

Auditor's Follow-up Response:

The loan amount was \$5,250. The unpaid balance was \$2,442. We reiterate our recommendation that the District not extend credit to employees.