

# Town of Shawangunk

## Sewer District Charges

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NOVEMBER 2019

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OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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# Report Highlights

## Town of Shawangunk

### Audit Objective

Determine whether the Town properly charged the New York State Department of Corrections and Community Supervision (DOCCS) for sewer services.

### Key Findings

- The Town:
  - Did not have a written agreement or basis for rates charged to DOCCS for sewer services.
  - Charged sewer district (District) users more than was necessary. District users, including outside users, paid \$2.1 million more than the total expenditures. Charges to DOCCS alone exceeded expenditures by \$1.4 million.
- The District had an excessive fund balance of \$4.4 million as of December 31, 2017 or a balance in excess of 844 percent of the District's average annual expenditures.

### Key Recommendations

- Consult with the Town Attorney to determine whether a written agreement with DOCCS is necessary to clarify rates to be billed and protect District taxpayers.
- Prepare an analysis annually to determine the appropriate rates to be charged to users based on annual expenses.

Town officials disagreed with certain aspects of our findings and recommendations, but indicated they planned to implement some of our recommendations. Appendix B includes our comments on the issues raised in the Town's response letter.

### Background

The Town of Shawangunk (Town) is located in Ulster County and has a District that provides sewer services to the Hamlet of Walkkill and two correctional facilities: the Walkkill Correctional Facility and Shawangunk Correctional Facility which are operated by DOCCS.

The Town is governed by a five-member elected Town Board (Board) composed of the Town Supervisor (Supervisor) and four Town Council members. The District's 2018 budget is \$594,309 for operating, maintenance and debt service costs, funded primarily by user fees and assessments.

#### Quick Facts

|                                 |             |
|---------------------------------|-------------|
| Customers                       | 487         |
| 2013 - 2017 Other Sewer Revenue | \$698,348   |
| 2013 - 2017 DOCCS Payments      | \$4,039,084 |
| 2013 - 2017 Sewer Expenditures  | \$2,625,772 |
| 2017 Fund Balance               | \$4,433,812 |

### Audit Period

January 1, 2013 – December 31, 2017  
We extended our scope back to July 2008 to review Board minutes.

# Sewer Charges

The Town provides sewer services to residents in the Hamlet of Walkkill and two correctional facilities operated by DOCCS. Sewage is treated at the Walkkill Sewage Treatment Facility and the Town's sewer expenditures for 2017 were \$564,015.

## How Should the Town Charge Outside Users?

Written agreements can define the contractual relationship and responsibilities between the outside users of a district and the local government, including what services will be provided, when they will be provided, how they will be provided and at what cost. A system of user fees may be established with varying rates to be charged to different classes of users related to the varying benefits received by each class of user, so long as there is a rational basis for distinguishing among the various classes of users. Accordingly, in the absence of express statutory authority, a municipality may not impose a user fee designed to generate revenues in excess of the cost of providing a service for the purpose of offsetting the general cost of government.

## The Town Has No Written Agreement with DOCCS

In 1978, the Town entered into a written agreement with DOCCS, an outside user, for the proportionate share of costs of construction and operations to be billed to DOCCS. The agreement was terminated by the parties in July of 2005, at which time DOCCS became an "at will" user. As the largest user of the Town's sewer system, in absence of a written agreement, DOCCS could at any time cease use of the Town's sewer services leaving the Town and the systems users with the responsibility of funding all of the operations. As shown in Figure 1 DOCCS provides 85 percent of the total revenue.

**Figure 1: Percentage of Revenue Provided by DOCCS**

|  | 2013      | 2014      | 2015      | 2016      | 2017      | Totals      |
|--|-----------|-----------|-----------|-----------|-----------|-------------|
| <b>Sewer Revenue – DOCCS</b>                         | \$846,497 | \$811,536 | \$825,807 | \$718,806 | \$836,438 | \$4,039,084 |
| <b>Sewer Revenue – Other Users</b>                   | \$75,002  | \$70,113  | \$74,477  | \$64,580  | \$67,052  | \$351,224   |
| <b>Miscellaneous Revenue</b>                         | \$72,130  | \$69,810  | \$70,238  | \$69,582  | \$65,364  | \$347,124   |
| <b>Total Revenue</b>                                 | \$993,629 | \$951,459 | \$970,522 | \$852,968 | \$968,854 | \$4,737,432 |
| <b>Percentage of Total Revenue Provided by DOCCS</b> | 85%       | 85%       | 85%       | 84%       | 86%       | 85%         |

## The Town Had No Basis for the Rates Established

The Town had different rates for residential users inside and outside of the District and a separate rate for DOCCS. However, the Town was unable to provide a basis for the rates set for the District. There was no analysis to determine if the rates charged to each class of user bears a direct relationship or had a rational underpinning to the cost of providing the service to the user. As a result, although DOCCS average usage is 59 percent of the total usage, DOCCS is paying 154 percent of total expenditures.<sup>1</sup>

**Figure 2: Charges to DOCCS**

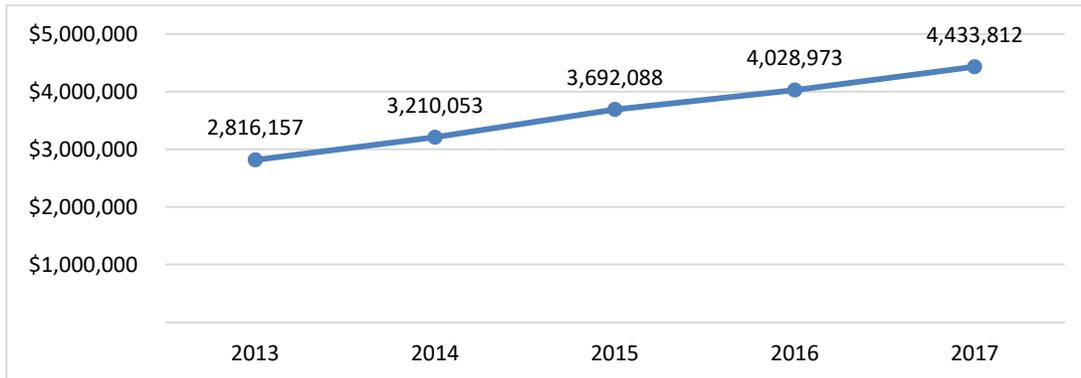
|  | 2013      | 2014      | 2015      | 2016      | 2017      | Totals      |
|--|-----------|-----------|-----------|-----------|-----------|-------------|
| <b>Total Expenditures</b>  | \$499,624 | \$557,563 | \$488,487 | \$516,083 | \$564,015 | \$2,625,772 |
| <b>DOCCS Payments</b>  | \$846,497 | \$811,536 | \$825,807 | \$718,806 | \$836,438 | \$4,039,084 |
| <b>DOCCS Percentage of Volume Treated</b>  | 55%       | 55%       | 60%       | 62%       | 62%       | 59%         |
| <b>DOCCS Percentage of Total Expenditures Paid (Inclusive of Principal and Interest on Debt)</b> | 169%      | 146%      | 169%      | 139%      | 148%      | 154%        |

Overall, District users, including outside users, paid \$2.1 million more than the total District expenditures. Charges to DOCCS alone exceeded the total expenditures by \$1.4 million.

Instead of basing the rates for each class on prior year usage, the Board arbitrarily adopted elevated rates that lead to substantial surpluses each year. In addition, the Town did not analyze rates to ensure they were appropriate for the District's operational needs or adjust the rates during the five years that were reviewed under audit.

Due to the rates being in excess of the Districts' annual needs, the District experienced operating surpluses for each of the five years over the audit period averaging \$422,332. This has led to an excessive fund balance of \$4,433,812 or a balance in excess of 844 percent of the District's average annual expenditures of \$525,154.

<sup>1</sup> DOCCS requested to be billed monthly. Therefore, each month the Town would calculate the bills as the gallons of output used by DOCCS multiplied by the rate set.

**FIGURE 3****Ending Fund Balance****Figure 4: Accumulation of Fund Balance**

|                               | 2013        | 2014        | 2015        | 2016        | 2017        |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|
| <b>Beginning Fund Balance</b> | \$2,322,152 | \$2,816,157 | \$3,210,053 | \$3,692,088 | \$4,028,973 |
| <b>Revenues</b>               | \$993,629   | \$951,459   | \$970,522   | \$852,968   | \$968,854   |
| <b>Expenditures</b>           | \$499,624   | \$557,563   | \$488,487   | \$516,083   | \$564,015   |
| <b>Operating Surplus</b>      | \$494,005   | \$393,896   | \$482,035   | \$336,885   | \$404,839   |
| <b>Ending Fund Balance</b>    | \$2,816,157 | \$3,210,053 | \$3,692,088 | \$4,028,973 | \$4,433,812 |

The accumulation of fund balance occurred because the Town charged sewer system users, including DOCCS, for sewer services in excess of annual expenditures without plans for the use of the accumulated fund balance.

**What Do We Recommend?**

Town officials should:

1. Consult with the Town Attorney and determine whether a written agreement with DOCCS is necessary to clarify rates to be billed and protect District taxpayers.
2. Prepare an analysis annually to determine the appropriate rates to be charged to users based on annual expenses.

# Appendix A: Response From Town Officials<sup>2,3</sup>

Established March 7, 1788



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August 16, 2019

NYS Comptroller  
Newburgh Regional Office  
33 Airport Center Drive, Suite 103  
New Windsor, NY 12553  
ATTN: [REDACTED]

RE: Response to Revised Draft Examination  
2018M-122 dated July 2019

Dear [REDACTED]:

We are in receipt of the revised Draft Report regarding the Wallkill Sewer District. Please consider this letter as our response.

In that some of our responses to the original Draft Report from August 2018 remain applicable, we have attached that prior response to this letter as Exhibit "A".

See  
Note 1  
Page 7

We agree that the Wallkill Sewer District should have a written agreement with the DOCCS. The prior (1978) agreement was terminated in 2005 and never replaced. We worked for several years with counsel's office at the then DOCS to develop a mutually acceptable contract but, for various reasons, that did not occur.

We respectfully disagree with the claim that the Town had no basis for past user rates. Every September the Town Board conducts public hearings on the proposed special district rates for the coming year. The Town always has been careful when it considers the need to be able to guaranty the delivery of an essential service to a customer. A healthy fund balance is necessary in case an unexpected malfunction or other emergency requires immediate corrective action. This is especially necessary when it comes to providing sewage transmission and treatment.

See  
Note 2  
Page 7

See  
Notes 3 and 7  
Page 7

In review of the rate system for the Wallkill Sewer District, the residential and commercial in-district users enjoy relatively low per gallon rates with the commercial users paying slightly more due to the nature of most commercial

See  
Note 4  
Page 7

2 The Town's response letter refers to an attachment that is not applicable. Because the Town's response letter provides sufficient detail of its actions, we did not include the attachment in Appendix A.

3 The Town's response letter refers to a page that appeared in the draft report. The page numbers have changed during the formatting of this final report.

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flows which can be and typically are different and “stronger” than the typical house-hold flow. The out-of-district users do pay a premium and this is reasonable as they do not pay an annual assessment for bonding and interest and never have so paid. Moreover, granting service to an outside of district property is a privilege not a right and often originates as a request to the Town to solve an on-site problem which is not necessarily an obligation of the local government. Regarding the separate rate for the DOCCS, we explained in our September 2018 letter some of the reasons why DOCCS should pay more than anyone else and we won’t repeat those reasons again but we do refer you to Exhibit “A” for those reasons. In further justification for those higher rates, the Town took samples from the prison flows earlier this month. The Total Suspended Solids (TSS) from the prison flows continues to be higher (180mg/L) than the TSS at the plant itself (164 mg/L) where all flows are combined.

See  
Note 5  
Page 7

See  
Note 1  
Page 7

That said, last Fall the Town reduced the DOCCS rate by close to 25% from prior years.

While this letter response is not meant to be the Corrective Action Plan (CAP), the Town is in the process of arranging to completely retire the debt of the Sewer District which will be about \$1,300,000. Additionally, the Town created a Capital Reserve Fund for the Sewer District in 1999 and plans to allocate approximately \$500,000 to this Reserve Fund. Finally, the Town has obtained preliminary estimates for needed repairs/upgrades to the system and will need approximately \$470,000 to pay for these necessary items.

See  
Note 6  
Page 7

Thus, more than one half of the current fund balance is planned to be used for just these three items. These items have always been part of the Town’s long range plan so we respectfully disagree that we were “without plans for the use of the accumulated fund balance” as noted on page 5 of the Draft. As noted in Exhibit “A” the terms of the debt the Town structured years ago prevented the Town from paying off that debt until 2019. Otherwise, the debt would have been retired earlier.

See  
Note 7  
Page 7

See  
Note 1  
Page 7

At the time that we submit the CAP we expect that we will be able to confirm the happening of the events that we project will happen in this letter.

Should anyone have any further questions please feel free to contact me.

Respectfully,

*John Valk Jr., Supervisor*

cc: Town Board Members

## Appendix B: OSC Comments on the Town's Response

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### Note 1

The prior response (Exhibit "A") refers to a previous draft report that has been revised and is no longer applicable. Therefore, Exhibit "A" is excluded.

### Note 2

The public hearings for the special district rates merely set the rates for the upcoming fiscal year. As stated in the report, the Town did not perform an analysis to determine if the rates charged to each class or user bears a direct relationship or had a rational underpinning to the cost of providing the service to the user.

### Note 3

A municipality may not impose a user fee designed to generate profits. Fund balance was accumulated due to the rates being in excess of the District's annual needs and the Town lacks plans for the use of the accumulated fund balance.

### Note 4

We disagree. Had District users, including outside users, paid only amounts necessary to fund annual sewer expenses, rates for all users could have been decreased.

### Note 5

As illustrated in Figure 2, DOCCS paid 154 percent of the total expenditures. We have amended our report to clarify that this is inclusive of principal and interest on debt.

### Note 6

The Town asserts that out of district users do not pay an annual assessment for bonding and interest. However, the Town is arranging to completely retire \$1.3 million of sewer district debt using fund balance accumulated from out-of-district users.

### Note 7

The Town asserts that the fund balance is necessary for unexpected malfunction or other emergencies that require immediate corrective action; however, our review of the Board minutes did not identify any discussions, resolutions or formal plans for the use of the accumulated fund balance regarding potential projects during the five-year audit period.

## Appendix C: Audit Methodology and Standards

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We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We reviewed Board minutes and interviewed Town officials and sewer plant personnel to gain an understanding of the District's operations, including rates and practices.
- We researched the Town's local laws and procedures related to sewer operations.
- We reviewed the 1978 written agreement between the Town and DOCCS.
- We reviewed the Town Attorney's files regarding the sewer plant and correspondence with DOCCS.
- We calculated the monthly average volume of treated sewage that flows through the Walkill Sewage Treatment Facility.
- We calculated the total flow for all District users and the percentage share of the flow for DOCCS.
- We identified payments made by DOCCS to the Town for sewer services over the audit period. We also identified the percentage of costs, including debt service, attributable to DOCCS.

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

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided 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 the CAP available for public review in the Clerk's office.

## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

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[www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf](http://www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf)

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