

Town of Marcellus

24 East Main Street, Marcellus, New York 13108

Supervisor- Daniel Ross

Councilmen- Thomas Lathrop
Donald Sherman
Kevin O'Hara
Peter Hakes

315-673-3269 315-673-9102 (fax)

www.marcellusny.com

Town Clerk- Sandra Taylor

Tax Collector- Elaine Potter
Highway Superintendent-
Donald MacLachlan

October 24, 2012

Hon. Robert E. Antonacci
Onondaga County Comptroller
421 Montgomery St.
Syracuse NY 13202

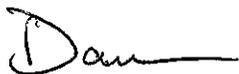
Re: Intermunicipal Agreement
Marcellus Town/Village Agreement

Dear Comptroller Antonacci:

Enclosed please find the 10-year intermunicipal agreement between the Town and Village of Marcellus regarding sewer services. This agreement is due in large part to the analysis by your staff of the previous agreement and recommendations as to how we consolidate the operations of the sewer system under one operator. We are currently in the process of implementing the terms of this contract. This is being accomplished with the assistance of \$ 600,000 Local Government Efficiency Grant from New York State.

Thank you again for your assistance. Please call my office if I can answer any questions you may have.

Best Regards,



Daniel J. Ross
Town Supervisor

6/26/12 

**INTERMUNICIPAL AGREEMENT
BETWEEN**

The Town of Marcellus on behalf of
the Marcellus Sewer Districts # 1 and 2
and
The Village of Marcellus

Agreement made as of this 9th day of July, 2012, by and between the Town of Marcellus, a municipal corporation, with its offices at 24 E. Main Street Marcellus, New York (hereinafter referred to as the "Town") on behalf of the Marcellus Consolidated Sewer Districts # 1 and 2, and the Village of Marcellus, a municipal corporation of the State of New York, with its offices at 6 Slocombe, Marcellus, New York (hereinafter referred to as the "Village").

WITNESSETH:

WHEREAS, the Town has formed, operates and maintains the Marcellus Sewer Districts # 1 and 2 within the Town, to include sewer lines and one or more pumping stations, for the purpose of providing public sanitary sewer services to Town residents ("Town Sewer System"),

WHEREAS, the Marcellus Central School District has formed the Marcellus Central School District System (the "School District") and operates and maintains such system for the purpose of providing public sanitary sewer services within the School District and contracts with the Village to transport and treat sewage from the School District;

WHEREAS, the Village operates and maintains a sewer system within its corporate boundaries, which includes sewer lines, pumping stations and a wastewater treatment plant ("Village Sewer System"),

WHEREAS, the Town contracts with the Village to use the Village Sewer System to transport and treat sewerage from the Town; and

WHEREAS, the Village Wastewater Treatment Plant's average flow for the 2011 calendar year was .39 million gallons per day, representing one hundred-three percent (103%) of the plant's design flow, which exceeds the permitted flow by the New York State Department of Environmental Conservation ("DEC"), and

WHEREAS, the DEC has ordered the Village to reduce wastewater flow by creating and executing a Flow Management Plan to address inflow and infiltration ("I & I") that is occurring in the Village, Town and School District Sewer Systems, and

WHEREAS, the Town and Village wish to consolidate the operation, maintenance, repair and billing of their sewer systems ("Consolidated Sewer System") in order to optimize operational efficiency, reduce flow within the system by addressing I & I issues and reduce taxpayer expense.

NOW, THEREFORE, in consideration of the terms, covenants and conditions contained herein, the Town and Village do hereby agree as follows:

1. VILLAGE ACTIONS

The Village agrees to

- a. Enter into agreements to have a flow management plan developed for the sewer systems in the Village, Town and School District which will detail the methods to be used to investigate I & I problems in the systems ("Flow Management Plan") and a follow-up I & I field investigation (to include videotaping, flow management, smoke testing, etc.) and report which will set forth specific actions to be taken to address I & I problems in the systems ("I & I Investigation and Report"); and
- b. Pay for its proportional share of the cost to develop the Flow Management Plan based upon the percentage of sewer units in the Village compared to the total number of sewer units in the Village, Town and Marcellus Central School District combined; and
- c. Pay for the full cost to conduct the I & I Investigation and Report as it relates to the Village Sewer System; and
- d. Oversee implementation and completion of the Flow Management Plan and I & I Investigation and Report; and
- e. Lease from the Town the Town Sewer System and when repairs to the Town Sewer System identified in the I & I Investigation and Report are made by the Town and approved by the Village, which approval shall not be unreasonable withheld ("Town System Upgrade"), the Village will enter into negotiations with the Town to assume ownership of the Town Sewer System; and
- f. Operate, maintain and repair the Consolidated Sewer System in accordance with all applicable laws and regulations; and
- g. Eliminate the "outside user fee" currently paid by Town sewer users to the Village in favor of collecting a Transmission and Maintenance Fee which is currently paid by Town sewer users to the Town; and
- h. Maintain accurate records detailing the costs incurred to monitor and oversee the operation, maintenance and repair the Town Sewer System prior to completion of the Town System Upgrade, as well as the costs incurred in overseeing implementation and completion of the I & I Investigation and Report as it relates to the Town Sewer System.

2. TOWN ACTIONS

The Town agrees to

- a. Lease to the Village the Town Sewer System and when the Town System Upgrade is complete, enter into negotiations with the Village to transfer ownership of the Town Sewer System to the Village; and

b. Pay for its proportional share of the cost to develop the Flow Management Plan based upon the percentage of sewer units in the Town compared to the total number of sewer units in the Village, Town and School District combined; and

c. Pay for the full cost to conduct the I & I Investigation and Report as it relates to the Town Sewer System; and

d. Make repairs to the Town Sewer System identified in the I & I Investigation and Report to the satisfaction of the Village, which approval shall not be unreasonably withheld, with the cost of such repairs being the sole responsibility of the Town. "Repairs" shall be defined in the I & I Investigation and Report as the high priority recommended repair areas, which would include sections of sewer or manholes that have evidence of structural cracks, spalling, offset joints and other physical deterioration that result in inflow or infiltration entering the system. "Repairs" shall also include the disconnection of any known illegal cross connections into the Town Sewer System; and

e. Continue to pay any existing debt associated with the Town Sewer System that was in existence prior to full consolidation of the sewer systems; and

f. Obtain the approval of the Board of Trustees of the Village before making any additional connections to or extensions of the Town Sewer System; and

g. Turn over to the Village any remaining balance in the Town's sewer maintenance/repair fund if the fund is not completely depleted by the Town to pay for the Town Sewer Upgrade; and

h. Have Town sewer users in the Town Sewer Districts (#1 and #2) continue to pay (but payment now will be made to the Village rather than the Town pursuant to the schedule listed in section 4 below) an annual Transmission and Maintenance Fee equivalent to the fee currently charged by the Town to maintain the Town Sewer System (25% of the Basic Service Cost referenced below); and

i. Reimburse the Village for any costs incurred by the Village to monitor and oversee the operation, maintenance and repair the Town Sewer System prior to completion of the Town Sewer Upgrades, as well any costs incurred in overseeing implementation of the I & I Investigation and Report as it relates to the Town Sewer System, which collectively exceed 10% of the Basic Service Cost referenced below in any given year (June 1 through May 31). Such reimbursement shall be made to the Village within 30 days of the Village providing an accounting of its costs to the Town. In the event a line breaks or other significant repairs are needed to the Town Sewer System prior to completion of the Town Sewer Upgrade, the Town shall pay for such repairs directly to the respective vendor(s).

3. COST OF SERVICES

a. The Town agrees to pay the Village a fee for operating and maintaining the Village Sewer System which transmits and treats sewage from the Town ("Basic Service

Fee”), plus the Transmission and Maintenance Fee referenced in section 2(f) above, in accordance with the following formula:

FORMULA

Total Village Sewer System Revenue divided by Village sewer units equals Basic Service Fee

Basic Service Fee plus Transmission and Maintenance Fee (25% of Basic Service Fee) equals Consolidated Service Fee

Consolidated Service Fee multiplied by number of Town sewer units equals Total Town Cost

b. The Village agrees to lease the Town Sewer System from the Town for one dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of such are hereby acknowledged.

4. SCHEDULE OF PAYMENTS

The Town agrees to make payments to the Village on the first business day of each of the months of April, July, October and February, each in the amount of one-fourth (1/4) the estimated Total Town Cost provided by the Village as calculated from Section 3 herein. Said payment shall be based upon an annual estimate amount to be prepared by the Village and submitted to the Town on or before June 1st of each year. The annual estimate shall first be used in calculating and making the July payment and subsequent payments in the following three quarters.

a. The Village shall by August 1st of each year prepare an audit of all eligible costs incurred, which shall be transmitted, to the Town.

b. Said costs will be subject to an audit to be conducted and certified to by a Consulting Engineer as mutually agreed upon by both the Town and Village.

c. Any and all necessary adjustments to the Total Town Cost resulting from the audit shall be incorporated into the October 1st payment each year.

5. CLASSIFICATION OF UNITS

The following classification of units will be used in both the Village and Town to determine the applicable annual sewer use payments to be made by the Town to the Village:

	CLASSIFICATION	FACTOR
1.	Single Family House	1 Unit
2.	Mobile Home or Private Lot	1 Unit
3.	Mobile Home in Park	1 Unit each
4.	Apartment Houses	1 Unit for 1 st Apt. and

		1 Unit for each add'l Apt.
5.	Church	1 Unit
6.	Parsonage – Separate Structure	1 Unit
7.	Parsonage – Attached to Church	1 Unit
8.	Firehouse or Municipal Building	1 Unit
9.	Campsite or RV Rental Unit w/Sanitary Facilities	1/8 Unit
10.	Industrial & Commercial (Stores, Restaurants, Motels, Hotels, Gas Stations, Laundromat, etc)	1 Unit and 1 Unit per 80,000 gals. of sewage per year or part thereof over 80,000 gals.

The number of units to be used in calculating the applicable annual sewer use payments as per Sections 2(f) and 3 herein shall be determined annually.

- (a) The Village shall determine and submit its actual unit count along with the annual budget on June 1st of each year.
- (b) The Town shall determine and submit its count of actual units connected to the sewer and submit said count to the Village along with the April 1st payment. Any new units within the Town which are connected to the sewer prior to October 1st of any given year shall be used in making final audit and in making the final payment adjustments the following October.

6. OTHER AGREEMENTS

a. This Agreement supersedes all prior negotiations and written or oral understandings, if any, and may not be amended or supplemented except by an instrument in writing signed by both parties hereto.

b. This Agreement shall replace all prior agreements both written and oral between Village and Town for the Town Sewer System.

7. INTERPRETATION

a. The paragraph captions are for convenience only and shall not affect the interpretation of this Agreement.

b. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

8. ASSIGNMENT

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns to which this Agreement relates.

9. NOTICES

Notices will be deemed properly given when in writing sent by certified mail postage prepaid and addressed:

If to the Town: Supervisor, Town of Marcellus
24 E. Main Street
Marcellus, New York 13108

If to the Village: Mayor, Village of Marcellus
6 Slocombe Avenue
Marcellus, New York 13108

10. HOLD HARMLESS

The Village shall indemnify, defend, keep and hold the Town, including its officers, agents and employees, harmless from and against any and all damages, costs, expenses and liability arising from any negligence by the Village or Village's failure to comply with any of the terms, covenants and conditions herein contained. The Town shall indemnify, defend, keep and hold the Village harmless from and against any and all damages, costs, expenses and liability arising from any negligence by the Town or Town's failure to comply with any of the terms, covenants and conditions herein contained. The obligation to indemnify shall also include the duty to pay any judgments or settlements, and all reasonable costs, fees and expenses, including attorney fees, incurred in connection therewith.

11. LENGTH OF AGREEMENT

The term of this Agreement shall be from June 1, 2012 until December 31, 2022, unless superseded by an agreement to transfer ownership of the Town Sewer System to the Village. This Agreement may be cancelled by the Village upon ninety (90) days prior written notice if the Town fails to timely make repairs to the Town Sewer System identified in the I & I Report to the satisfaction of the Village, which approval shall not be unreasonably withheld. "Timely" shall be defined as completing the repairs referenced in paragraph 2(d) infra within one year of issuance of the I & I Report.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and their respective seals to be hereunto affixed by their duly authorized officers the day and year first above written.

TOWN OF MARCELLUS

By Daniel G. Ross
Town Supervisor

VILLAGE OF MARCELLUS

By Mark D. Curtin
Mayor

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.
TOWN OF MARCELLUS)

On this 10th day of July, 2012, before me personally appeared Darrel J. Ross, to me personally known, who, acknowledged that he resides at 2467 Castlewick, in Marcellus, New York that he is the Supervisor of the Town of Marcellus, the corporation described in and which executed the within instrument, and that the instrument was sealed and executed pursuant to the authority in he vested.

Karen R. Pollard

PAY TO THE ORDER OF
KEYBANK
NOTARY PUBLIC
MARCELLUS, NY 13108
021300077
FOR DEPOSIT ONLY
TOWN OF MARCELLUS
TOWN CLERK
320120042864

KAREN R. POLLARD
Notary Public, State of New York
Qualified in Onon. Co. No. 01PO6027141
Commission Expires June 28, 2015

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.
VILLAGE OF MARCELLUS)

On this 26th day of June, 2012, before me personally appeared John P. Curtin, to me personally known, who, acknowledged that he resides at 6 Stocomb Ave, in Marcellus, New York, that he is the Mayor of the Village of Marcellus, the corporation described in and which executed the within instrument, and that the instrument was sealed and executed pursuant to the authority in he vested.

Dawn M. O'Hara

Notary Public

DAWN M. O'HARA
Notary Public, State of New York
No. 01OH6213160
Qualified in Onondaga County
Commission Expires Nov. 2, 2013

TRANSMISSION VERIFICATION REPORT

TIME : 06/28/2012 10:20
NAME : TOWN OF MARCELLUS
FAX : 3156739102
TEL : 3156733269
SER.# : BROG4J714569

DATE, TIME	06/28 10:17
FAX NO./NAME	4221139
DURATION	00:02:35
PAGE(S)	08
RESULT	OK
MODE	STANDARD ECM

Onondaga County Comptroller's Office Report- Village Of Marcellus/Town of Marcellus Sewer Agreement and Financial Relationship

In 2011, the Onondaga County Comptroller's Office established the Consolidation, Shared Services and Integration (CSI) Onondaga tax force, an initiative to assist local government officials in managing resources efficiently and effectively and, by doing so, provide accountability for tax dollars spent to support government operations. Included in the CSI budget was a funded position for an auditor whose sole function would be to assist municipalities and quasi-governmental agencies in identifying opportunities for cost savings.

The tax force has been asked to review the contractual and financial relationship between the Village of Marcellus (Village) and the Town of Marcellus (Town) involving the Village's Water Pollution Control Plant. The plant treats sewage from the village proper along with sewage received from 284 parcels located in the town. The town parcels are located within two districts and the Town contracts with the Village for this service.

The current contract between the Town and Village has expired and is on extension because the Town and Village have not come to terms for this service going forward. There are several concerns from both governments, which will be addressed, in further detail herein.

The CSI Tax force involves itself in this issue between the Village and Town because sharing services is integral to cost containment and a mechanism is needed to arbitrate and assist those municipalities sharing services with reconciling and resolving differences of opinion and understanding financial impacts.

Our office reviewed financial records of both governments, interviewed town and village officials, and toured the Village of Marcellus Water Pollution Control Plant. Our scope did not include a full financial audit of the books and records because we did not receive any comments involving financial mismanagement. Rather our report and procedures there under focused on the contractual relationship, its nature and practical considerations. For the most part we accepted presented financial data at face value, applying only analytical review.

Background

In 1958, the Village of Marcellus began construction of the Water Pollution Control Plant (WPCP) within Village borders. Originally, the Village ran the Plant entirely within its borders without Town involvement. In 1966, however, the Village approved the establishment of the Marcellus Knolls sewer district, now known as Extension #1. The original agreement creating the Marcellus Knolls extension required each extension resident to pay a \$50.00 annual fee for sewer usage, in addition to a \$50.00 tap-in fee.

The Village and Town shared the system pursuant to a series of one- and two-year contracts until 1980. The tap-in fee was consistent throughout these contracts, but the annual fee steadily increased, reaching its peak at \$140.00 per Town user in 1979.

In 1981, the Village and Town agreed to a new contract with three critical changes from previous contracts. The new contract finalized the formation of Marcellus Sewer Extension #2 to the Northeast and South of the Village, instituted a new fee structure for Town residents (base cost of average village user + 10% administrative surcharge), and was a ten-year agreement. From the expiration of this contract in 1991 to today, the Town and Village have been operating under a series of one-, two-, and three-year contracts with the same conditions. In 1995, the administrative charge was increased to 15% of the base cost, which is where it stands currently. The current agreement ending on May 18th of this year was extended in order for the parties reach a new agreement.

Current Contractual Relationship and Status of WPCP

The review of the current relationship between the Town and Village was set in motion by the treatment plant exceeding 95% of the plant's permitted flow. While the NYS Department of Environmental Conservation (DEC) noted the treatment plant was in compliance with all other parameters except flow, it advised the Village needed to examine the issue. Based on regulations, the DEC advised the Village of its responsibilities in flow management and stated any program must extend to the Town as well. We did not contact representatives of the DEC, taking at face value the Village's assessment regarding the capacity of the plant.

In attempting to rectify the flow problem and in communication with the DEC, the Village has built into their budget expenses related to fixing broken pipes, inspections of illegal hook-ups, and slip lining of Village pipes.

Also, with the contract expiring, the Village sent a new sewer agreement to the Town. The Village stated to the Town the new agreement included changes primarily as a result of mandates placed upon the Village by the DEC. In summary, the Village was looking to further, and insure, increased inspection efforts, repair infiltration and inflow problems (I & I) and detect illegal hookups throughout the entire system which includes the Town districts.

The Town requested the assistance of the CSI-Onondaga Tax Force to review the rate charged to the town sewer extensions. The Town was also concerned the fee charged Town residents did not include the same services the Village provided to its residents. Lastly, the Town believes one shared system will result in more cost effective system rather than the current arrangement.

Financial Information

Village Residents

Village residents are charged a separate sewer tax bill using a formula based on water usage. There are 932 sewer units within the village with sewer revenue generated within the village being approximately \$276,037 in 2011, \$276,789 in 2010 and \$283,374 in 2009. With this type of billing, users pay more for sewer charges if they use more water, thus a family with several toilets and several children may be charged several hundred dollars more than a resident living alone.

The village in all material aspects appears to have run the treatment plant responsibly and in a financially sound manner. It is noted the sewer fund balance exceeded \$200,000 recently, although a significant appropriation of the fund balance will be used on a new compost project the village hopes will reduce cost and return the investment in the long run.

Town Residents

The town resident charge is based on several more factors and depends also on which district the resident is located. For convenience the terms “resident” and “parcel” may be used interchangeably but in general the sewer charge is a “unit” charge to each town parcel located within the district.

The Town residents using the Village service reside in two special districts known as Special District SX071 Marcellus Knolls Sewer and SX072 Marcellus Sewer. These are also known as district 1 or 2, as well as extension 1 or 2. District 1 has 116 parcels; District 2 has 168 parcels resulting in a total of 284 town parcels using the Village sewage treatment plant.

In all cases, the village converts its revenue from village residents to a per unit charge which is done by dividing the total village revenue from village residents by the number of Village units (932). In 2011 the village revenue of \$276,037 divided by 932 units resulted in a base sewer charge of \$296.

Next, the Village adds to the unit charge per agreement the additional 15% surcharge. In 2011 the surcharge was \$44.40, resulting in the total per-parcel average in the Town of \$340.61.

Since the charge is a flat unit charge rather than a usage charge, each of the 284 Town parcels is taxed \$340.61 by the Village. Thus, the Town was taxed a total of \$96,392.63 by the Village in 2011. In 2010 this amount was \$96,652.99

Next the Town residents also have certain other charges in addition to the fee they must pay to the village for use of the system. Both districts share the cost of the Town's contract with Onondaga County to conduct maintenance on its pipes. Under the unit charge system, Extensions #1 and #2 paid approximately \$71.50 per unit to cover the cost of this maintenance contract (\$20,280/284).

Residents in Extension #2 are also charged an additional charge for the debt incurred by the construction of the extension itself. The total sewer tax paid by a Town parcel in Extension #1 in 2011 was \$417.39, and the total paid by a parcel of Extension #2 was \$485.12.

Issues

Town Perspective

The Town of Marcellus is concerned with and questions Town's sewer payment to the Village. Specifically the Town questions how its residents paid 40% more than Village the average Village resident in 2010, and asked our office to do a review of the costs and rules of law involved with charging for special districts. The Town board noted specific concerns regarding maintenance fees of its pipes asserting the 15% administrative surcharge levied by the Village should cover all maintenance (I & I) and other inspection and testing. The Town's interest in this issue is to ensure that its resident taxes are as reasonable as possible.

Village Perspective

First and foremost the Village is extremely concerned with the flow at the plant. The greatest worry involves DEC ordering the Village to increase flow capacity at the plant, the result of which could be a very expensive expansion of the existing plant. The Village believes, however, prevention and repair of existing sewer lines is much more cost effective in reducing the flow to the plant and insist the new agreement set forth and require more compliance from both districts in the town.

The village is also sensitive about its administrative charge, an additional charge to Town residents for the privilege of using village assets without paying the full village tax bill. The village calls this "ala Carte" usage of village services and believes it is both proper in its charge when considering the village investment and legal responsibilities to all users. Also, the village wants the districts to be more cooperative in reducing infiltration and inflow.

The concerns of each government can be summarized as simply as this:

VILLAGE

1. Minimize overflow to plant
2. Receive “fair” return on village investment
3. Reduce cost to village residents’

TOWN

1. Continuous service to district
2. Pay “fair” share
3. Receive similar services as villagers

Preliminary Statement

These two municipalities are in all likelihood for the foreseeable future united in the common purpose of providing sewage treatment to both the village residents and existing town residents. Our report will not examine any thought of disallowing the town residents’ usage of the village service. After almost 50 years of service we cannot envision the relationship deteriorating to that level.

Clearly, the Town and Village have a mutual obligation to work together to provide a vital service at the most cost effective price. We hope our report will help both municipalities understand the current financial and environmental landscape.

Pertinent Opinions and Regulations

Financial

While more formal legal opinions would be best obtained from independent counsel our review of opinions and audits of the Office of the State Comptroller of New York appear to permit the 15% surcharge the village adds to the unit charge.

In a recent audit the State Comptroller reviewed a similar town/village relationship and left without comment a 10% multiplier of operations, maintenance and debt service. However, we note included in Opinion 2001-3 of the NYS Comptroller’s Office is discussion of General Municipal Law, stating “A village may not fix its sewer rents at an amount that would generate revenues in excess of costs attributable to the sewer system, in order to provide funds for general village purposes.” We interpret this to mean a village may only tax the sewer users an amount that would cover the costs of running the system.

However, it is important to note the relationship between the town and the village with regard to sewer usage of the village plant is contractual in nature. While normally all users would be charged a similar rate, or all like-kind users would be charged under a similar formula, it is our opinion the village by contract is permitted to charge the town using the current formula.

Subject to opinions of counsel, we believe this difference is appropriate and is the mechanism by which the village recaptures some of its investment and lowers the cost to village residents.

Environmental

The NYS DEC in its letter to the village cited various regulations in advising the village of its duty to operate the treatment plant in accordance with its permit. Amongst other items the DEC advised pursuant to 6 NYCRR 750-2.9 the village must develop a plan to reduce flow.

While it appears appropriate for the village to charge town users more, it comes with risk. The risk is the overflow or some other usage that renders the plant inadequate for village use. Clearly, the first obligation of the plant is to the village users and if capacity becomes an issue the village must take steps to reduce overflow. See Village Law Section 14-1404.

Our interpretation of the applicable village laws and opinions regarding sewers is the village may be prohibited from contracting with the town in the absence of an agreement otherwise if during the life of the contract, use by the districts may render the plant inadequate for the needs of the village. See opinion Ops St Compt 89-25.

Recommendations and Discussions

- 1. The village must be given, and the town must cooperate with, full inspection authority of all town pipes and apparatus so that inflow and infiltration may be identified and corrected.***

The risk and cost of the Village being subjected to a DEC Order requiring a new treatment plant or being forced to increase its capacity is much greater than the cost of the town and village working cooperatively to minimize the flow to the plant.

The current flow in 2010 is 99%, which is greater than the NYS Department of Conservation mandated level of 95%. The Village and Town must collaborate to avoid facing a potential fine or even the WPCP getting shut down. In 2010 the Village budgeted approximately \$35,000 of its tax revenues toward fixing inflow and infiltration issues. The Town did not participate in fixing these issues in its extensions.

While we do not examine the potential problems for all if the village stopped accepting town sewage, we can only assume the resulting litigation and turmoil would be great. We therefore recommend the town and village do all that it can to minimize flow to the plant.

The Village has taken measures to fix these problems and decrease unapproved flow from its pipes, but they are concerned that the Town has not taken similar measures.

The town must also cooperate fully with enforcement, and modify where necessary, all sewer ordinances.

2. The 15% surcharge should cover the cost of I/I inspections in the short run, any cost of repair charged to each respective district

We understand the village mayor believes the 15% surcharge covers the cost to treat the sewage and nothing more. It is the fee to cover the overhead and having the contractual right to send sewage from the town districts to the village plant.

We suggest the village has a great interest in remediating any I/I issues within the town pipes and this needs to be done immediately. We also believe the village has the expertise and personnel to carry out this mission effectively and any findings and necessary repairs must be paid for by the applicable district as both village and town must cooperate to reduce the flow as soon as possible.

We recommend the village make this accommodation for a brief period reflecting the years of surcharge received and the interest in correcting the problem. While it may be possible for the village to disallow use by the town districts we find this situation too volatile to entertain. In any event the village receives almost \$100,000 from the town residents, revenue certainly helpful in defraying the cost of the WPCP.

The town will benefit from receiving like services as part of its base fee to the village but must stand ready to make necessary repairs to alleviate the I/I within its pipes.

An alternative to encourage the Town to complete full inspections of the systems, the Village could consider waiving the 15% administrative surcharge. In this scenario the Town would guarantee steps would be taken to address I/I concerns and help reduce flow to the WPCP. If the 15% surcharge were to be waived, it would result in a net decrease to a Town residents' bill by approximately \$44, and an increase to a Village residents' bill of approximately \$13.

We advocate the village take over all inspections and enforcements without an additional surcharge in the foreseeable future with all capital cost charged accordingly.

As we note above, the village has a healthy fund balance. We make no claims the balance is anything but appropriate and it appears the village has managed the fund prudently. We submit only that an immediate use of some of that money may be appropriate in performing the inspection services needed in the town districts.

3. *The town should evaluate canceling the contract with OCDWEP and work with the village to provide similar services*

The Town currently contracts with the Onondaga County Department of Water Environment Protection (OCDWEP) for certain services regarding the town districts. We suggest the town may be better off working with the village to provide those services thus helping the village understand and maintain the current system and receive additional revenue.

We note part of the town supervisor's concern off the disparity in cost to town residents involved the payment of this fee to OCDWEP. However, upon further review by our office, we discovered that the Town paid for the maintenance expenses of both 2009 (\$10,557.00) and 2010 (\$8294.40) in its 2010 budget. Hypothetically, if the Town had only paid for the current year's maintenance in 2010, each resident would have been charged only \$29.31, a savings of \$47.47. This is the "real" cost to Town residents if they had been charged in 2010 for 2010 maintenance only

Had residents paid for the maintenance in 2010 only and not 2009-10, the totals would have been \$369.92 and \$437.75, respectively. Excluding the debt payment for Extension #2, Town residents paid about 40% more than Village residents in 2010. However, when calculating the numbers without the double-payment to Onondaga County, Town residents are only paying 25% more than the average Village resident for the exact same service, including the 15% administrative charge.

As a point of reference the sewer unit charge for the Onondaga County Consolidated Sanitary District for 2011 was \$338.33.

We are not suggesting the village should provide this additional service for free but rather the interest of the village in helping maintain the town system is far greater than the county and the additional revenue should be useful to the village and may perhaps be spent more efficiently as part of an overall maintenance and operations plan involving village operators.

4. *Both the Town and Village should evaluate merging the town districts with the village to form one unified system under control of the village*

The Village has expressed an interest in consolidating the Village system and Town extensions into one system operated by Village employees. A prerequisite of this sharing of services would be the Town providing the Village with a map of Town manhole covers and a record or history of maintenance performed on the extensions. It is claimed the town has not provided this. In this scenario, the costs of the sewer, including maintenance and I/I detection, would be shared among all residents.

The current Town residents could be billed in accordance with the current Village cost system, based on water usage. The debt service costs of the extensions would continue to be payable only by the residents in the current extensions and should be allocated by a unit basis as it is now.

Many more records would need to be reviewed including town residents water usage to examine the overall effect on both residents. Also, there have been other municipalities that have converted to a uniform equalization method for many of the reasons now facing the town and village.

The ultimate benefit of this proposal is the total control of cost of maintenance by the experienced Village experts and the reduction of flow to the WPCP. The Village WPCP operators would be free to repair pipes in what are now the extensions, and to conduct inspections of potential illegal sewer hook-ups in the Town.

Conclusion

The village has a duty to insure the WPCP complies with all environmental laws and regulations and its capacity can serve village residents in the first instance.

Since it appears the town residents do not have an absolute right to use the village WPCP the town must recognize the village must take steps to minimize flow to the plant, generally by reducing infiltration and inflow.

The village appears very suitable in both its operations and financial ability to operate the plant. We have every confidence the village should take as much control of the entire system as possible to fulfill what should be everyone's common goal of reducing flow to the plant.

We recommend as an accommodation the village include the inspection services involving I/I in its base rate plus surcharge charged to the town. The town must insure the village it will take necessary repairs and allow for strict enforcement of its sewer ordinances.

JOHN P. CURTIN, MAYOR
MARY JO PAUL, TRUSTEE
PATRICK W. COX, TRUSTEE
DAWN M. O'HARA, CLERK
ANTONINO J. PROVVIDENTI, TREASURER
JEFFREY D. BROWN, ATTORNEY



Village of Marcellus

A WELCOME HOME

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November 30, 2011

Robert Antonnacci, Onondaga County Comptroller
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Syracuse, NY 13202
315-435-2130 (voice) – 315-435-2250 (fax) bobantonacci@ongov

Dear Mr. Antonnaci,

The Village is in receipt of your draft report of November 15, 2011, regarding the Village/Town Sewer Agreement and Financial Relationship. Thank you for providing it. I am including with this correspondence, a draft response to your report. While it is somewhat lengthy and perhaps more detailed than necessary, I feel that the Village should provide you with as much information as possible regarding the matter. This draft response might be helpful in understanding the Village perspective before we begin to discuss a long-term solution to the Village/Town sewer agreement and the financial relationship between each municipality.

There are several items in your report that need clarification, from the Village perspective, and I have addressed these. As to your recommendations, I have tried, with each of them, to explain the Village point of view, elaborating, where necessary, any areas that might be misunderstood. The Village welcomes each of your suggestions, and both our Board and our WWTP operators think that they might form the basis of a long-term solution to the matter.

One area in particular, wherein clarification is needed is that which addresses the role of the County (OCDWEP) and the contract that both the Town and the Village have with that agency – item #11 in the Village response. We were hoping that an audit of the Town's Sewer Districts would have been completed so that we would know what has been done by the County in the sewer extensions. Every year, usually in December, OCDWEP provides the municipalities it serves, a complete breakdown of what services (example attached) were rendered for the previous year. Perhaps your office would be able to obtain copies of what services were provided by OCDWEP to the Town for the last several (perhaps 10) years. That would at least be a starting point for discussing what the County has done in way of maintenance.

Your final statement, which recommends an accommodation by the Village to include inspection services involving I/I in its base rate plus surcharge, needs to be discussed further. Part of your recommendation also called for the Town to make necessary repairs and provide for strict enforcement of its sewer ordinances. This has been at the crux of the entire disagreement. The Village would not need to take over the sewer extensions if this had been done by the Town for the last forty years. I close by quoting one of our WWTP operators, "one cannot drive a car for forty years without changing the oil."

Sincerely,

John P. Curtin

cc: Mary Jo Paul, Trustee
Patrick W. Cox, Trustee
Jeffrey D. Brown, Attorney
Dawn M. O'Hara, Clerk
Antonino J. Provvidenti, Treasurer
Greg Crysler, WPCP Operator
Ryan Riefler, WPCP Operator

Draft Response to Comptroller's Report on Marcellus WWTP
November 29, 2011

1. I am pleased that the report tried to find common ground over the issues involved.
2. The background is mostly accurate as is the financial information.
3. As to issues, the Town's perspective that its residents paid 40% more than the Village residents is accurate, but the Village did not charge 40% more. The Town chose to charge that, not the Village. In addition, the Town asserts that the administrative surcharge of 15% covers all maintenance and that is not accurate. In absolutely no contract between the Village and Town, dating back over 40 years, does it state that the 15% surcharge covers maintenance. The 15% surcharge has always covered administration and/or transmission charges, only.
4. As to the Village perspective, the 15% surcharge not only covers Village investment and legal responsibilities (as stated in the report), but it also allows the Town sewer users to utilize Village infrastructure (sanitary pipes, manholes, etc.) in the transportation (i.e. transmission) of their sewage from the Village incorporation line to the WWTP.
5. As to concerns of each government, the Village is not in the business of making a profit from its WWTP – that is illegal. In addition, the Village does not attempt to reduce the cost of sewage treatment to village residents by adding a surcharge to the Town sewer users. In this and several other instances, the statement is made that the Village charges more to the Town sewer user so that the Village sewer user would be able to pay less. That is absolutely and blatantly false. In absolutely none of our correspondence and discussion on this matter, has the issue of reducing the cost to Village residents been approached. This may be the thinking of the Town Supervisor, but he is in total error. The Town sewer user pays a surcharge of 15% for administrative and transmission expenses (see #4 above).
6. The preliminary statement is probably accurate. The Village does not envision a discontinuation of town residents' usage of the Village service, unless the plant becomes inadequate for Village use. Then, as the report mentions, "the first obligation of the plant is to the village users and if capacity becomes an issue the Village must take steps to reduce overflow." One of those steps would be a discontinuation of Village sewer service to outside users, including the Town and the School District.
7. As to Financial considerations, the State Comptroller does allow a surcharge and that surcharge can be that which the Village decides. The Village does not fix its rents so as to generate money for "general village purposes." That is illegal. The County Comptroller's opinion that the Village may only tax the Village sewer users an amount that would cover the costs of running the system is accurate – notice, that is for Village sewer users only. The Village is under no similar obligation to limit its surcharge to outside users and is permitted to charge the town using whatever formula it so chooses. The present formula has not changed since 1995, and the Village does not envision any change in the near future. It should be noted, however, that the surcharge is significantly higher in other municipalities that offer *a la carte* services to outside users.
8. As to Environmental considerations, the report is accurate for the most part, with a notable exception. Again, the report mentions that the village charges the town user more so as to reduce the cost for village residents – again, this is categorically false and is the third such mention in this report.

9. As to Recommendation #1, the Village agrees that the Village must be given and the Town must cooperate, fully, with inspection authority of all town pipes and apparatus. It is noted that the Village spends a significant amount of money towards fixing inflow and infiltration, while the Town does not. Is there any reason, as the report notes, why "the Town has not taken similar measures?" The Village also agrees that the Town must enforce fully and modify, where necessary, all town sewer ordinances. The Town should follow the lead of the Village in this regard.
10. As to Recommendation #2, the Village Mayor, following precedents followed by every Mayor since Lester Norris in 1966, believes that the 15% surcharge covers the cost of administration and transmission expenses and nothing more. In addition, the Village agrees with the report in that "there is great interest in remediating I/I issues within the Town pipes, that this needs to be done immediately, and that any necessary repairs must be paid for by the applicable (sewer) district."
 - a. The recommendation that the 15% surcharge cover the cost of I/I inspection, for a brief period, must be more defined ("a brief period"), and discussed. While it is true that the Village does receive almost \$100,000 from Town residents, this added revenue pays for the treatment of town sewage that is delivered to the Village WWTP. It should be noted that the cost to treat town sewage would not exist if the town sewer districts were not part of the Village WWTP system. This is an expense that the Village would not have, nor would the Village have a significant I/I problem, if the town sewer districts were removed from the Village sewer system. In addition, if the town sewer districts were removed from the Village sewer system, the Village would be able to offer sewer service to new developers in the Village. At present, because the Village WWTP is at capacity, the Village is forced to count toilets and unable to allow new development to take place within the Village incorporation lines, because the Village of that capacity limit.
 - b. The suggested alternative that the Village consider waiving the 15% administrative (and transmission) charge, is absolutely rejected. Is there any reason why Village residents should pay \$13 more, while Town residents pay \$44 less, for sewer service? Is there any reason why Village residents should underwrite a Town expense, which is the transmission of their sewage through Village infrastructure? Does the Comptroller really believe that the owners of the WWTP (Village residents) should absorb this expense?
 - c. The Village might consider taking over all inspections and enforcements, but this cannot be done without an additional expense. Doing this would require the hiring of at least a half-time position in the WWTP, particularly in light of the fact that the new composting facility will soon be fully operational and require more labor by the WWTP operators.
 - d. The Village does have a healthy fund balance, at present, and the reasons for this were well explained in an earlier (September 30, 2011) correspondence to the Comptroller. As was mentioned earlier in the report, that fund balance will soon (January, 2012) be depleted, following the construction of and purchase of equipment for, a new composting facility at the WWTP. This project will result in a fund balance of approximately \$50,000, an amount that is appropriate for next year's budget, but totally inappropriate for performing inspection services in the town sewer districts.
11. As to recommendation #3, the Village does not agree that the Town should cancel the OCDWEP contract and work with the Village to provide similar services. The Village cannot provide these

services – only the County provides these services (copy attached). Even the Village contracts with the County to provide certain services, and it amounts to about \$8,000 each year and is included in the Village Sewer Fund, under contractual items.

- a. What Onondaga County provides to the Town in its maintenance contract, should be similar to that which the Village has with the County. The Village contract is not actually a maintenance agreement whereby the County makes actual repairs to sewer infrastructure. It is a fee that the County charges the Village to jet vacuum sewer lines, to do televising, to clean sewer lines of roots, etc. as well as provide a record as to what additional work should be done. If major problems are found, the County does not make the repairs, the Village hires a contractor to do this. Each year, the County comes into the Village and televises the sewer lines. Over the course of a five-year span, the entire system is televised, recommendations are made and it is then time to start televising all over again.
 - b. The Village does not know what the County does for the fee that is charged the Town under the OCDWEP contract. In recent years, the Town authorized the County to make expensive repairs to its Platt Road pump station, but televising and cleaning of the town sewer lines does not appear to be a regular item in the contract and it probably should be.
 - c. As to the “real” cost for sewer service to Town residents, it appears that the Town resident is paying 25% more than the average Village resident, but not for the exact same service. Town residents pay 25% more than Village residents every year (not including the 15%). That 25%, which the Town adds to the 15% Village surcharge, apparently goes to the County – for what service, we do not know. An audit of the sewer extensions might help to determine what has been done.
 - d. It should also be noted that Village residents also pay a County maintenance fee (under the OCDWEP contract), which is reflected not in the quarterly bill the residents receive, but as part of the cost attributable to the operation of the WWTP and so recorded in the sewer fund budget.
 - e. If the Town wants the Village to provide full maintenance of the town sewer infrastructure, it would be necessary for the Town sewer residents to continue to pay a maintenance (cleaning and televising) fee under the OCDWEP contract. If problems are found, the County would not make the repairs, but the Village could facilitate the hiring of a contractor to do this, but it would be at the expense of the sewer district involved.
12. As to Recommendation #4, the merging of town sewer districts into one unified system under the control of the Village, the Village would be willing to discuss such.
- a. The Village would need to be provided, beforehand, a full record of the history of maintenance performed in both sewer extensions.
 - b. The Village would hire, beforehand and at the Town sewer districts’ expense, an engineering firm to complete a full mapping and survey of the Town of Marcellus Sewer Extension Districts. This same firm will complete a study of the sewer infrastructure in the Sewer Extension Districts to determine the condition of and possible need for repair to said infrastructure.
 - c. The Village would engage, beforehand and at the Town sewer districts’ expense, the services of a firm (perhaps OCDWEP) to complete the televising of the entire Town Sewer Extension Districts.

This same or a similar firm would be engaged as a leak detection company to locate any leaks within the extension districts. Any leaks determined to exist will be promptly repaired at the Town sewer districts' expense.

- d. The Village would, at the Town sewer districts' expense inspect the Town Sewer Extension Districts periodically (but no less than once in each 24-month period), to ensure that no roof drains, cellar floor drains, footing drains, sump pumps or drains other than sanitary sewerage drains are connected in any way to the sewer extension districts. The Town of Marcellus would ensure that there is full compliance on the part of town sewer district residents.
- e. The Town of Marcellus would create an Operation and Maintenance (O & M) Fund for the operation, maintenance and repair of sewer infrastructure in the Town Sewer Extension Districts. At present, each Town sewer user pays an additional fee, imposed by the Town, over and above both the Village charges and the 15% surcharge combined. This figure totaled \$21,728.74 in 2011, \$18,912.89 in 2010, \$27,977.38 in 2009 (see the attached spreadsheet that totals these figures dating back to 2002). These monies might be designated as the O & M Fund for the Town Sewer Districts I would also note that if this additional cost every year, is for County maintenance, it is significantly higher than that which the Village pays to the County for its services every year.
- f. If necessary the Town Sewer Districts, might, following an engineering study of the condition of the sewer infrastructure in the extensions, be required to bond for the repair and maintenance of said infrastructure, the costs for which would be borne by residents of the Town Sewer Extension Districts.
- g. The Town would designate one of the Town Highway employees as a sewer plant liaison. This person, a Town employee, would be the main contact for the Village Highway and WWTP operators as well as the individual responsible for sewer emergencies in the Town Sewer Districts.
- h. The Village might entertain the billing of town sewer residents, based on water usage, but this would require much additional paper work on the part of the Village Clerk, and needs to be more fully discussed.
- i. Debt service in extension #2 would continue to be payable by residents of that district.