



- *Accountability*
- *Transparency*
- *Integrity*

## **Operational Review**

# **Eastern Rensselaer County Solid Waste Management Authority**

**December 1, 2016**

**OR-2016-02**

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## Executive Summary

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### **Purpose and Authority:**

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Eastern Rensselaer County Solid Waste Management Authority was performed from April through August 2016 and was conducted in accordance with our statutory authority and compliance review protocols, which are based on generally accepted professional standards. The purpose of our review was to provide an objective determination of the effectiveness of the Authority and its operations in accordance with its mission and public purpose.

### **Background Information:**

The Eastern Rensselaer County Solid Waste Management Authority (Authority) was established in 1989 pursuant to Article 8, Title 13-H of Public Authorities Law to provide comprehensive and cost effective solid waste management services for its member municipalities. The Authority is comprised of seven members. The Authority manages contracts for transportation, disposal and recycling for its members, and provides other services such as creating and distributing educational calendars and managing and operating an outlet for reusable items known as the ERC Community Warehouse. The Authority is governed by a seven member board of directors comprised of a representative from each of its member municipalities. The Authority has five employees who manage its operations and finances. The Authority operates on a January 1 fiscal year. During 2015, the Authority had \$637,113 in revenues and \$628,072 in expenses. About 75 percent of these costs and revenues are related to the costs for transportation and disposal, which are reimbursed by the member municipalities.

### **Results:**

We found that the Executive Director has established relationships with two professional organizations that create conflicts of interest with his Authority responsibilities. The Executive Director signed an agreement with the professional

organizations to solicit sponsorships from businesses that provide waste management services to offset the costs of the organizations' annual conferences. This agreement was made without board approval. Some of the companies solicited by the Executive Director also provide services to the Authority.

In addition, we found that the Executive Director did not solicit proposals or competitively select the vendors providing transportation and disposal services. Instead, the Executive Director simply extended the previous contracts with the vendors. In exchange for the extended contract, the Authority's disposal company paid the Authority \$50,000. And it appears that the extended agreement with the transportation company results in higher costs than may have been obtained had the contract been competitively selected. We determined that municipalities that are members of the Authority could have saved more than \$20,000 in transportation costs in 2014 and 2015 had the Authority competitively selected its contract. These vendors also sponsored the annual conferences.

We found the Authority board is failing its fiduciary duty to oversee management and ensure the Authority operates efficiently and effectively. The board does not review or monitor the Authority's finances but instead allows the Executive Director to act autonomously. This lack of oversight has led to member municipalities being overcharged more than \$85,000 in disposal and operating costs in 2013, 2014, and 2015. In addition, we found the Executive Director used Authority funds for his personal use and identified other unnecessary costs being incurred. Also, we found the board is not in compliance with other fiduciary requirements of Public Authorities Law, including signing an acknowledgement of their fiduciary duty to the Authority and receiving the required board member training.

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## Introduction and Background

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The Eastern Rensselaer County Solid Waste Management Authority (Authority) was established in 1989 pursuant to Article 8, Title 13-H of Public Authorities Law to provide comprehensive and cost effective solid waste management services to its members and construct and operate co-composting and recycling facilities. The Authority is authorized to collect, receive, transport, process, dispose of, sell, store, recycle and deal with solid waste in a way that is economically and environmentally beneficial to its members. Although the legislation included 13 member municipalities, six members withdrew in the early 1990s to manage their own solid waste. There are currently seven active members: the towns of Stephentown, Pittstown, and Schaghticoke and the villages of Castleton-on-Hudson, Nassau, Valley Falls, and Hoosick Falls.

Although the Authority was originally intended to construct and operate co-composting and recycling facilities, this was never done. Moreover, the Authority does not directly provide solid waste services to the member municipalities. Instead, six of the member municipalities contract directly with private companies to collect solid waste and recyclable material at residents' homes (curbside pickup). When requested, the Authority assists municipalities with developing requests for proposals for those contracts. The remaining member municipality maintains a transfer station for residents to drop off their waste and recyclables. The Authority then contracts with private companies to dispose of or process the waste and recyclable material from the member municipalities. The Authority also contracts with a private company to transport material from the transfer station to the disposal or recycling site.

Other solid waste is collected from municipalities providing periodic clean up days for residents to dispose of bulky material such as furniture, metal or construction material that is not collected curbside; from the Authority accepting electronic items and waste tires; and from the Authority sponsoring annual household hazardous waste collection days. This material is transported and disposed through the Authority contracts. The Authority pays the contractors for the waste transported and disposed, and then bills each municipality for its appropriate share of the costs. The member municipalities are also responsible for funding the Authority's operations. Annually the Authority determines the amount to be funded by the member municipalities based on estimated costs and revenues. The actual amount paid by each municipality is offset by the revenue received from the sale of recyclable material generated by the respective municipality.

The Authority also creates and distributes a calendar that provides educational information on recycling programs and highlights municipal events. In addition, the Authority operates and manages an outlet for goods that would normally be disposed of in a landfill but instead are made available for resale to the public. To provide tax deductions to donors, a 501(c)(3) not-for-profit corporation, known as

the ERC Community Warehouse (Warehouse), was established in 1995. The Authority generally does not include Warehouse revenues or expenses in its financial records, as it considers the Warehouse to be a separate entity. However, the Authority provides significant financial and operational support for the Warehouse and we therefore included the Warehouse as part of Authority operations. Our review did not evaluate or consider the appropriateness of the Authority's structural relationship with the Warehouse.

The Authority is governed by a seven member Board of Directors comprised of a representative from each member municipality. The board meets six times a year and members serve five year terms. The Warehouse has a separate board of directors that is comprised of three members and meets at least once a year.

The Authority has five employees. The day to day operations are managed by the Executive Director who oversees the operations and finances of the Authority and Warehouse. In addition, there are four part-time employees that consist of an Administrative Assistant who works from home and is responsible for the financial records, two store clerks who collect donations and sell reusable goods at the Warehouse, and another part-time employee who assists with donation pickups and drop offs. In 2015, total personnel costs were \$106,510.

The Authority operates on a calendar fiscal year. In 2015, including Warehouse operations, the Authority had total revenues of \$637,113 and total expenses of \$628,072, the majority of which consists of costs associated with the transportation and disposal services, which are billed to and paid by the respective municipality. Aside from these pass-through costs, the Authority's total operating costs were \$164,439, of which 64 percent was for salary and payroll related costs. Total operating income for 2015 was \$138,270, which includes \$74,125 in member fees paid by municipalities and \$35,940 in Warehouse sales.

### ***Compliance Review Objectives***

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to assess the effectiveness of Authority operations.

## ***Compliance Review Scope and Methodology***

Our compliance review was conducted between April and August 2016. The review initially assessed Authority operations and finances for the period January 1, 2014 through June 30, 2016, but was extended to include certain transactions in 2013. To perform our review we relied on the following documentation and data sources:

- Authority and Warehouse financial records
- Board meeting minutes
- Municipal solid waste and recycling reports
- Operating agreements for disposal and transportation
- Policies and procedures indicative of good governance practices
- Annual reports required by the Public Authorities Law

In addition to reviewing documents and records, we interviewed Authority employees and board members, met with officials from select non-member municipalities and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve board oversight over financial transactions and the effectiveness of Authority operations. The Authority responded to the results and recommendations of our review and stated that the Authority will implement several of the recommendations of the report, including formally reviewing and assessing the Authority's operations and activities annually to demonstrate its cost effectiveness to its member municipalities. The Authority's responses are reflected within this report where appropriate.

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## Review Results

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### Conflicts of Interest and Questionable Activity

The Authority's Executive Director is responsible for the day to day operations of the Authority, including responsibility for negotiating contracts with the private businesses that provide transportation, recycling and disposal services. We found that the Executive Director has a relationship with professional organizations that creates conflicts of interest with his Authority responsibilities. These conflicts were not disclosed by the Executive Director and it appears that contracts negotiated by the Executive Director result in more than \$45,000 in potential excess costs that are passed on to member municipalities.

**The Authority's Executive Director works for a professional organization without board authorization that presents a conflict of interest.** The Executive Director is a member of two professional organizations that focus on issues related to solid waste management; the Solid Waste Associations, New York State Chapter (SWANA) and the Federation of New York Solid Waste Associations (Federation). The Authority pays the annual membership fee of \$200. Since 2010, the Authority's Executive Director has had an agreement to provide services to these organizations as part of their annual conferences. Specifically, the Executive Director serves as the Conference Exhibitor/Sponsor Coordinator and is responsible for soliciting companies and organizations to provide sponsorships and exhibits that help to offset the costs for the conferences. The Executive Director is paid a total of \$6,000 a year by the professional organizations for these services. The Authority was unable to provide any record that the Authority board approved this arrangement.

This arrangement presents a significant conflict of interest given the Executive Director's responsibility for managing and negotiating Authority contracts. We found five of the ten businesses that the Authority has contracts or agreements with for disposal, transportation and recycling services are with companies that also sponsor the annual conference. This results in the Executive Director negotiating contracts for the Authority with companies from which he has requested and received sponsorship fees for the annual conference.

The Authority responded that it will advise both SWANA and the Federation that the contract with the Authority is no longer valid. However the Authority stated that it will permit its Executive Director to supplement his salary by entering into a separate agreement with the above entities. The Executive Director will be directed to carefully evaluate potential sponsors and vendors for any appearance of conflict of interest and will bring any questionable sponsors/vendors to the attention of the Board. The Authority further noted that the Executive Director did not and has not ever solicited two of the five referred sponsors/vendors; rather those businesses were solicited by other individuals within the Federation or SWANA.

Permitting the Executive Director to continue to work for SWANA in the same capacity fails to adequately address the conflict of interest that it presents - the Executive Director engaging for personal pecuniary gain with an organization that solicits funds from Authority vendors. Further, we question the appropriateness of the Authority allowing the Executive Director to supplement his salary and work for another organization during his normal work hours for the Authority. Board approval of such activity would not be in line with its fiduciary duty to the Authority given the activities being engaged in by the Executive Director are not related to the mission and purpose of the Authority.

**The Authority accepted \$50,000 from its disposal company to extend its agreement without seeking competition.** In November 1992, the Authority entered into an agreement with a private company for disposal of solid waste. This agreement was for twenty years and was set to expire at the end of 2012. When the contract approached its expiration, the Authority did not prepare a request for proposal nor attempt to seek competitive proposals for solid waste disposal services. Instead, the Executive Director negotiated a five-year extension of the contract with its existing provider, which was approved by the board. In exchange for this extension, the company agreed to pay the Authority \$50,000 in two installments; \$25,000 in 2013 and \$25,000 in 2016. We determined that the \$25,000 was deposited in the Authority's account in 2013, but was not used to offset the Authority's costs that were allocated to and paid by the member municipalities. In June 2016 the Authority received the remaining \$25,000. It is questionable whether this arrangement was in the best interest of the Authority or the member municipalities. The Authority's solid waste disposal vendor also sponsors the professional conferences. The Authority did not respond to the appropriateness of these transactions.

**The Authority's contract for waste transportation appears to have cost members over \$20,000 in potential excess transportation fees.** Waste transportation services generally consist of transporting containers where solid waste or recyclable material has been deposited to a designated location. Payment is not based on the amount of material, but rather on the number of containers regardless if the container is full or not. The Authority had an agreement with a vendor for waste transportation services for the period January 1, 2010 through December 31, 2012. However, when the contract expired the Authority did not seek competitive pricing for a new agreement, but instead continued to use the prior agreement for an additional two years. In 2014, rather than prepare a request for proposal or attempt to seek competitive proposals, the Executive Director negotiated a three-year extension of the contract through 2017. The Authority's waste transportation vendor is also a sponsor of the professional conferences.

We reviewed the rates paid by the Authority for transportation services under this extension and found they are higher than those paid by other municipalities for similar services. As part of our review, we met with officials from the Town of Berlin, which is not a member of the Authority. Town officials told us they seek competition when awarding the contract for transportation services and provided us with their

contracts for 2014 and 2015. These contracts show that Berlin paid \$128 per container in 2014 and \$148 per container in 2015. These rates are significantly lower than those paid by the Authority, which were \$177.75 per container in 2014 and \$180.24 per container in 2015. Further, the vendor used by the Town of Berlin in 2014 was the same vendor used by the Authority in 2014, yet the Authority paid almost \$50 (39 percent) more per container. We determined that had the Authority competitively selected its transportation services and obtained prices similar to Berlin, its members could have saved \$21,426 in transportation costs during 2014 and 2015. The Authority responded that in the future it will competitively select waste services and non-waste related services, and that all contracts will be reviewed and approved by the Authority's Finance Committee.

### **The Authority Board is Failing its Fiduciary Duty**

Public Authorities Law Section 2824 requires public authority boards to provide direct oversight of management, review and monitor financial and management controls, and establish written policies. This includes establishing adequate financial controls to safeguard Authority assets and periodically reviewing and monitoring Authority operations and financial reports. However, we found the board does not provide effective oversight of the Executive Director, but instead allows the Executive Director to act autonomously regarding Authority finances and operations. This lack of oversight has led to member municipalities being overcharged for the Authority's services, resulting in \$82,469 in overpayments for 2013, 2014, and 2015. We also found inappropriate expenditures and payments for health insurance not covered under Authority policies.

**The board does not review Authority financial data.** We reviewed board meeting minutes for 2013, 2014 and 2015 and determined there was no presentation, review or discussion by the board of the Authority's finances. It appears the Executive Director may verbally present some financial information to the board and that the board receives the annual audit, but there is no routine presentation of financial information or discussion regarding the Authority's financial status during the year or at year end. As such, board members are unable to determine whether Authority expenses and revenues are adequate and appropriate. Board members admitted that oversight of the Authority is lax and that there is a high dependence on the Authority's Executive Director to properly oversee and operate the Authority. In responding to our report the Authority stated that profit and loss statements for the Authority and the Warehouse will be presented at every board meeting.

**The annual allocations to member municipalities are not based on actual data.** As indicated, member municipalities are responsible for funding the Authority's operations. Annually the Executive Director estimates the Authority's operating costs and revenues for the following year. This estimate is used as a basis for determining the amount to be charged to member municipalities. However, the Authority's estimates are not based on historical data, and exclude certain costs and revenues, including the Warehouse.

For example, for 2013 the Authority had actual operating costs of \$229,964 and received \$91,434 in revenues, resulting in a total of \$138,530 to be funded by the member municipalities. Yet the Authority set the total to be funded at \$116,120. For 2014 and 2015 the Authority had actual operating costs of \$171,414 and \$164,438 and received \$106,128 and \$54,081 in revenues, respectively, resulting in a total of \$65,286 for 2014 and \$110,357 for 2015 to be funded by the member municipalities. Yet the Authority set the total to be funded at \$116,120 for each year. This is due to some extent on the Authority not including Warehouse operations in the estimate, but is primarily due to a failure to use historical costs and revenues as a basis for the estimates prepared by the Executive Director. The Executive Director also indicated that he attempts to keep the amount charged to municipalities at a constant level, so municipalities are better able to plan for the required payments. As indicated, the Authority charged its members the same \$116,120 for 2013, 2014 and 2015.

The Authority responded that its Finance Committee will continue to adopt a budget based on actual and projected revenues and expenses of the Authority, but will exclude the revenues and expenses of the Warehouse. However, this does not address the issue since the Authority's estimates are not based on actual revenues and expenses. For example, for 2014 the Authority estimated total operating expenses of \$128,525, although the prior year's total expenses were \$137,612. In addition, the Authority estimated total revenue of \$12,405 for 2014 although actual revenues for 2013 were \$51,185. The Authority actually received \$88,734 in 2014.

**The annual charges to member municipalities resulted in overbillings totaling \$34,186 for 2013 through 2015.** Once the board approves the total amount to be allocated to member municipalities, each municipality's share is determined based on population. These amounts are then reduced by recycling revenues earned by each municipality. However since the allocation is not based on actual costs and the board does not periodically review expenses and revenues, the board is unable to ensure that the amount charged to its members is accurate.

We determined the Authority overbilled its members a total of \$34,186 for 2013, 2014 and 2015. For 2013, the amount to be funded by the member municipalities was \$138,530, and the recycling credits due to the member municipalities were \$11,092. Therefore the actual amount due from member municipalities was \$127,438. However, after recycling credits the Authority only charged \$105,028 to the municipalities for the year. For 2014 the amount to be funded was \$65,286 and there were a total of \$68,612 in recycling credits due to member municipalities, resulting in an excess of \$3,326 for the year. This would result in possible payments to the municipalities or minimal charges, depending on the amount of recycling revenue attributed to each municipality. Yet the Authority charged \$47,508 to the municipalities for the year; resulting in an excess charge of \$50,834. For 2015 the amount to be funded was \$110,358 and recycling credits totaled \$41,995. Therefore, the Authority should have charged \$68,363 to the member

municipalities. However, the Authority charged \$74,125 to the municipalities, an excess of \$5,762. As a result, the total excess charges to the member municipalities for the three years was \$34,186.

<b>Allocation of Authority Costs to Member Municipalities</b>				
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Total</b>
Authority Operating Costs	\$229,964	\$171,414	\$164,439	\$565,816
Less Other Income	\$91,434	\$106,128	\$54,081	\$251,642
Authority Operations (net)	\$138,530	\$65,286	\$110,358	\$314,174
Less Recycling Revenue	\$11,092	\$68,612	\$41,995	\$121,699
Amount to be Charged	\$127,438	(\$3,326)	\$68,363	\$192,475
Actual Amount Charged	\$105,028	\$47,508	\$74,125	\$226,661
Excess/(Shortfall)	(\$22,410)	\$50,834	\$5,762	\$34,186

The Authority responded that it does not believe that it has overbilled its member municipalities with respect to operating costs. The Authority stated that the report incorrectly included the revenues and expenses related to the Warehouse with the actual operating budget of the Authority.

Although the Authority claims that the Warehouse is separate, we believe that the Authority provides significant Warehouse operations as part of the Authority's operations: the Executive Director's job description indicates that he is responsible for Warehouse operations; Authority employees operate the Warehouse; and the Authority provides significant funding for Warehouse operations. Therefore, it is appropriate to consider the Warehouse as part of the Authority. Further, we do not believe the Authority board can provide adequate oversight and transparency of Authority financial records and operations without accounting for Warehouse operations.

However even if Warehouse operations were excluded, as the Authority claims is appropriate, we still found the Authority overbilled its members. Over the three-year period, the Authority's financial records show it overbilled its members \$68,576. This is due to the Authority not basing the allocations on actual revenues and expenses. For example, the Authority estimated \$12,405 in income for 2014, consisting of grant revenue and interest income. However the total income received for 2014 was \$88,734, a difference of \$76,329. This difference is due primarily to increased grant revenue that was received, as well as the payment from SWANA. This difference was not reflected in the estimate for 2015; instead the Authority estimated only \$24,705 in income for 2015. The following table reflects the Authority's charges to the member municipalities excluding warehouse operations.

Allocation of Authority Costs to Member Municipalities (Excluding Warehouse Operations)				
	2013	2014	2015	Total
Authority Operating Costs	\$137,612	\$151,023	\$149,208	\$437,843
Less Other Income	\$51,185	\$88,734	\$18,140	\$158,059
Authority Operations (net)	\$86,427	\$62,289	\$131,068	\$279,784
Less Recycling Revenue	\$11,092	\$68,612	\$41,995	\$121,699
Amount to be Charged	\$75,335	(\$6,323)	\$89,073	\$158,085
Actual Amount Charged	\$105,028	\$47,508	\$74,125	\$226,661
Excess/(Shortfall)	\$29,693	\$53,831	(\$14,948)	\$68,576

**The Authority overbilled its members \$51,687 for disposal costs.** The Authority contracts with a vendor to dispose of solid waste that is transported to the vendor's site. The Authority pays the vendor and then charges each municipality for its appropriate share of those costs. To determine each municipality's share, the Authority maintains records by each municipality indicating the date, the type and weight of material disposed, the amount paid, and the location of the disposal. The Authority bills each municipality monthly for the municipality's costs.

We found that the bills to municipalities were accurate for 2014. However, in 2015 the total costs incurred by the Authority for waste disposal was \$393,043, yet the Authority billed the municipalities a total of \$439,314. As a result, the municipalities were overbilled \$46,271 for disposal costs for 2015. We reviewed billing data through April 2016 to determine whether adjustments were made to correct the overcharges, but found that no adjustments were made. Instead, we identified an additional \$5,416 that was overbilled to municipalities in January 2016. The Executive Director told us the overcharges occurred because the disposal costs were lower in 2015, but that the board decided to continue charging municipalities the higher rate. He indicated this decision was made to keep the charges to municipalities stable, but since the disposal costs did not return to the previous level, in 2016 the Authority then began charging municipalities for the actual costs of disposal.

The Authority responded that it does not believe it has overbilled its member municipalities for disposal costs, and reiterated the explanation provided by the Executive Director, stating that the Board approved the overcharges. However this discussion and approval was not recorded in the Authority's board minutes. Further, these costs have not increased to date, yet the Authority has taken no action to credit the member municipalities for the overcharges. The Authority stated the board will make sure all board conversations are properly voted on and contained in the minutes, but did not address whether or not it will reimburse its members for these overbillings.

**The Authority allocated its costs to municipalities incorrectly by using outdated census data.** The Authority allocates its costs to its member municipalities based on population. However, we found the Authority is using outdated population data to allocate its costs to the member municipalities. The Authority used the 2000 census data as a basis for allocating its 2013, 2014 and 2015 costs. However, 2010 census data is available and is more reflective of current population. Using the older census data results in an inaccurate allocation, with some municipalities being overcharged while others are undercharged.

Municipality	2000 Census	2010 Census	Annual Allocation based on 2000 Census	Annual Allocation based on 2010 Census	Difference	Accumulated Difference 2013-2015
Town of Pittstown	5,644	5,735	\$28,902.27	\$29,093.41	(\$191.14)	(\$573.42)
Town of Stephentown	2,873	2,903	\$14,712.40	\$14,726.80	(\$14.40)	(\$43.20)
Town Schaghticoke	7,456	7,679	\$38,168.64	\$38,955.24	(\$786.60)	(\$2,359.80)
Village of Castleton	1,619	1,473	\$8,290.97	\$7,472.47	\$818.50	\$2,455.50
Village of Hoosick Falls	3,436	3,501	\$17,592.18	\$17,760.42	(\$168.24)	(\$504.72)
Village of Nassau	1,161	1,133	\$5,945.34	\$5,747.66	\$197.68	\$593.04
Village of Valley Falls	491	466	\$2,508.19	\$2,364.00	\$144.19	\$432.57

The Authority responded that it will use the most current US Census data in future billing to its member municipalities.

**Authority funds are being used inappropriately.** We found the Executive Director uses Authority funds for his personal use. For the three-year period 2013 through 2015 we identified 25 instances where the Executive Director used Authority funds for purposes that do not appear to be related to Authority operations. While for most of these instances the funds were reimbursed by the Executive Director, the use of the funds represents an interest-free loan being provided to the Executive Director and is an inappropriate use of Authority funds.

For example, the Authority has a vehicle that is used to transport recyclable and reusable materials which runs on diesel fuel. However, we found 20 occasions totaling \$529 where unleaded gasoline was purchased. There were no records to support why the fuel was purchased for 18 of these transactions but for two of the purchases the Executive Director reimbursed the Authority for the purchases, indicating they were for his personal use. The Executive Director explained to us the remaining transactions were occasions where he used his personal vehicle to pick up donations for the Warehouse or to conduct other Warehouse related business. However, this differs from the Executive Director's typical process where he would submit claims for mileage reimbursement when using his personal vehicle for Authority purposes. We also identified five instances during 2014 when

the Executive Director used Authority funds for his personal use, including purchases at stores and restaurants, totaling \$371.36. The Executive Director reimbursed the Authority for the use of these funds.

The Authority responded that it will direct the Executive Director to refrain from using Authority funds for personal use, and that if the Executive Director is required to utilize his personal vehicle for Authority business, he will be compensated for mileage. The Authority also notes that it does not believe that its Executive Director has misused or misappropriated funds; but that record-keeping needs to be improved.

**The Authority is incurring unnecessary costs associated with the Executive Director's work for the professional membership organization and for health benefits not covered under board approved policies.** The Executive Director's agreement to solicit sponsors for the annual conference stipulates that he will be paid a total of \$6,000 annually by the professional membership organizations. However, rather than being paid directly by the organizations, the Executive Director receives an additional \$6,000 annually in his salary, and the Authority is paid \$6,000 by the organizations. This process results in increased payroll related costs, such as payroll taxes and workers compensation costs that are being paid by the Authority. We determined the additional payments from the professional membership organization equated to eight percent of the Executive Director's total salary. The total amount of payroll taxes and workers compensation paid by the Authority for 2013 through 2015 was \$18,830. Therefore, the additional payroll taxes and workers compensation costs attributable to the additional salary was \$1,494. Since the work performed by the Executive Director for this additional salary is not part of the Authority operations, these additional costs should not be paid by the Authority and included in the costs that are allocated to the municipalities.

According to the Authority's employee benefits package policy, the Authority does not participate in any health insurance plan unless determined by the board. There are no records to indicate that the board approved a health insurance plan for employees. Yet in 2014 and 2015 the Authority respectively paid \$6,212 and \$7,164 in health insurance premiums for the Executive Director. In addition the Authority paid a total of \$1,083 for medical bills submitted by the Administrative Assistant in 2014 and 2015. The Authority responded that it plans to retroactively approve payments for health insurance to the Executive Director, but did not address the payments to the Administrative Assistant.

**Board members have not signed an acknowledgement of fiduciary duty or attended board member training, as required by law.** Public Authorities Law Section 2824 requires all board members sign a written acknowledgement of their fiduciary duty. Board members are to acknowledge that they understand their fiduciary obligation to perform their duties and responsibility in good faith and with proper diligence and care, consistent with the enabling stature, mission and bylaws of the Authority and the laws of New York State. Board members are also required

to participate in approved training within one year of appointment. We found that Authority board members had not signed the written acknowledgement of their fiduciary duty and that the majority of Authority board members have not attended the required board member training. Although all seven of the current board have been members for more than a year, only two members have attended the required training. Following our review, each board member signed their acknowledgement of fiduciary duty. The Authority also responded that all new and existing board members will attend board member training.

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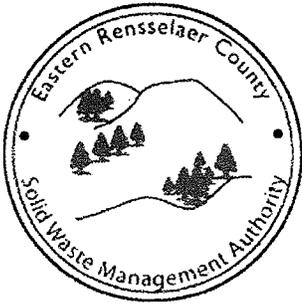
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## Recommendations

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1. The Authority should discontinue the arrangement with SWANA and the Federation as it presents a significant conflict of interest.
2. Authority members and employees should ensure any potential or perceived conflicts of interest are disclosed to the board and the public.
3. The Authority should competitively select all service contracts to ensure that costs are competitive and reasonable.
4. Board members should provide proper oversight and direction for Authority operations by implementing appropriate policies and procedures, including:
  - Require board review and approval for all contracts.
  - Adopt an annual budget based on historical Authority revenues and expenditures.
  - Monitor Authority revenues and expenditures throughout the year for adherence with the approved budget, identify any deviations and investigate the reasons therefor.
  - Ensure that adequate and appropriate supporting documents are provided for all expenditures.
  - Ensure that payments are made only for appropriate Authority costs.
  - Prohibit the use of Authority funds for personal use.
5. The Authority should ensure that costs allocated to the member municipalities are accurate and reflect all Authority costs and receipts, including Warehouse operations.
6. The Authority should refund the \$34,186 overbilled to member municipalities for Authority operating costs during the period of our review.
7. The Authority should refund the \$51,687 overbilled to member municipalities for 2015 and 2016 disposal costs.
8. The Authority should allocate its costs to member municipalities based on the most current US Census data.
9. Board members should acknowledge their fiduciary duty at the time of their appointment in accordance with Section 2824(1)(h) of Public Authorities Law.
10. Board members should attend board member training required by Section 2824(2) of Public Authorities Law, to ensure that they properly understand their roles and responsibilities as board members.
11. The board should review and assess Authority operations and activities to determine whether it provides cost effective services to its member municipalities.



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The ERCSWMA was created to manage solid waste issues leaving local town governments free to manage other pressing rural problems and relieving them of the burden of individually managing their waste and recycling streams. While on the surface, solid waste management appears to be simple, it is far more complex with many variables that need consideration before judgments are made about the effectiveness of any given operation.

Member municipalities of the very rural ERCSWMA cover the four corners of Rensselaer County and have limited transportation and disposal opportunities. The ERCSWMA was formed based on a commitment to reduce, reuse and recycle what we could, then create energy from the remainder through combustion. The current contracts for the ERCSWMA reflect the on-going commitment to the four Rs, within the confines of the available facilities handling these unwanted materials.

These responses to the Authorities Budget Office (ABO) Recommendations are the result of several consultations and in collaboration with the Chair of the Eastern Rensselaer County Solid Waste Management Authority (ERCSWMA). A draft has additionally been provided to the Board of Directors of the ERCSWMA for their review and comment, which is reflected herein.

1. Although the ERCSWMA recently authorized its Executive Direction (ED) to enter into an agreement to act as Sponsor/Vendor Coordinator for the Federation of NY Solid Waste Associations through SWANA-NYS, the ERCSWMA will notify [has notified] both SWANA-NYS and the Federation of NY Solid Waste Associations (Federation) of the concerns held by the Authorities Budget Office, and will advise those entities that the contract with the ERCSWMA is no longer valid. The ERCSWMA will however permit its ED to supplement his minimal salary by entering into a separate agreement with the above entities. That being said, the ED will be directed to carefully evaluate potential sponsors and vendors for any appearance of a conflict of interest and will bring any questionable sponsors/vendors to the attention of the Board. If it is felt that a conflict does exist, the ED will be directed to refrain from any contact and refer the sponsor/vendor to a representative of the Federation and/or SWANA. It should further be noted that the ED did not and has not ever solicited two of the 5 referred sponsors/vendors. Rather those businesses were solicited by others within the Federation/SWANA-NYS group.

2. See #1 above.

3. Depending on the specific services requested in the future, the ERCSWMA will issue an RFP for waste services, as permitted under NYS GML Sec 120w. As required for other non-waste related services, the ERCSWMA will issue a bid.

4. ERCSWMA does have a sitting Finance Committee and said Committee has been advised of the recommendations of the ABO and in the immediate future will:

- a. review and approve all contracts and provide written documentation of such approval;
- b. continue to adopt a budget based upon actual and projected revenues and expenses of the ERCSWMA, excluding the revenues and expenses of the ERCCW which has its own board of directors for oversight;
- c. monitor and review revenues and expenses in a timely fashion and investigate any deviations;
- d. require adequate and appropriate supporting documentation for all expenditures, including retroactively making a motion to provide health insurance for the ED;
- e. ensure that reimbursements and/or other payments are for ERCSWMA costs only; and
- f. direct the ED to refrain from using ERCSWMA funds for personal use, even when the same can be easily repaid. If the ED is required to utilize his personal vehicle for ERCSWMA business, he will be compensated for mileage based upon the annual federal rate provided an expense report is submitted and substantiated. It should be noted that the ERCSWMA does not believe that its ED has misused or misappropriated funds; rather that poor record-keeping is the culprit and that better records will be kept in the future.

5. The ERCSWMA believes that costs allocated to its member municipalities are accurate and the ED will be [has been] directed to provide a Profit & Loss statement for both the ERCSWMA budget and the ERCCW budget at every ERCSWMA meeting.

6. The ERCSWMA does not believe it has overbilled its member municipalities with respect to operating costs. The ABO has wrongly included the revenues and expenses related exclusively to the ERC Community Warehouse (ERCCW), a separate 501(c)3, with the actual operating budget of the ERCSWMA. The ERCCW, while related to the ERCSWMA, is a typical reuse retail outlet in that revenues from one year are reserved for operations the following year, as there is a clear seasonality and yearly change with respect to used goods. While the ERCSWMA communities do benefit from having a reuse center within their geographical area where they can freely drop off home goods rather than pay to get rid of them, the two entities should be defined separately due to the variabilities in the reuse business. Further, the ERCCW actually saves the ERCSWMA operating costs by utilizing (but paying for) office and meeting space for the ED and Board. Reuse is one of the best methods for reducing the amount of waste that requires ultimate disposal and the ERCSWMA board has repeatedly supported the co-existence of the ERCCW throughout its existence.

7. The ERCSMWA does not believe it has overbilled its member municipalities with respect to disposal costs. The board of directors discussed this and it was agreed to continue to bill at 69.50 per ton. It however did not make the minutes. The board will make sure all board conversations are properly voted on and contained in the minutes. Also, the budget numbers provided by the ABO do not reflect the numbers used by the ERCSWMA to bill its member municipalities.

a. Further, with respect to the comparison between Authority and non-Authority members, the comparison is inaccurate. The Town of Stephentown chooses to operate a transfer station for the convenience of its residents. The cost is higher per user only because there are less users than those utilizing the Berlin/Petersburgh facility, for whatever reason. Additionally, the Berlin/Petersburgh facility is located on a major state highway, lending itself to easier transportation, while the Stephentown facility is on a

Note 1

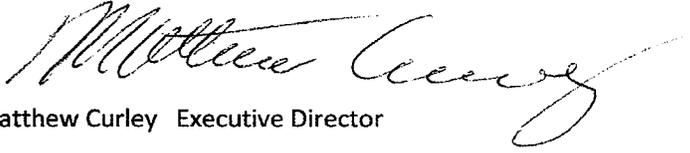
back country road. There are other variables as well that can influence the accuracy of the number of users, however, that is a Town issue, not an ERCSMWA issue.

8. The ERCSWMA will use the most current US Census data in future billings to its member municipalities.

9. Any and all new board members will be required to acknowledge their fiduciary duty in accordance with Section 2824(1)(h) of the Public Authorities Law upon their appointment to the board by their respective Town.

10. All new and existing board members will attend board member training as required by Section 2824(2) of the Public Authorities Law to ensure that they fully understand their roles and responsibilities as board members.

11. The board of the ERCSWMA will formally review and assess the ERCSWMA operations and activities annually to demonstrate its cost effectiveness to its member municipalities. Such review and assessment will be presented and discussed at its Annual Meeting and will be reflected in the minutes for the meeting.

A handwritten signature in cursive script, appearing to read "Matthew Curley".

Matthew Curley Executive Director

A handwritten signature in cursive script, appearing to read "Jean Carlson".

Jean Carlson Chairman

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## Authorities Budget Office Comments

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1. Based on the Authority's response this section was removed from the report.