

## Background

Livingston County's Board of Public Works (BPW) is a governing body appointed by the Livingston County Board of Commissioners (BOC). Among other things, the BPW has oversight authority over the Septage Receiving Station (SRS). The SRS began serving the public after its operating plan was approved by the State of Michigan in 2007.

The SRS is an Enterprise Fund with revenues of about \$3 million/year. An enterprise fund is a unit of county government whose costs of providing a service are paid for by user fees.

**False:** *An enterprise fund is not restricted as to the method of its funding. Whether through general fund appropriations, grants, millages, or special assessments, enterprise funds can and are funded by any number of revenue sources.*

The service provided by the SRS is the disposal of septic tank waste. Septic tank waste is also referred to as septage. When septic tanks are pumped out the waste is transported to the SRS by septage haulers. The septage haulers are charged a per gallon fee to dispose of the waste at the SRS.

As with any enterprise fund, the costs associated with providing this service (septage removal) are intended to be paid for by fees collected from those using the service (septage haulers).

**False:** *See above. While it is of course a goal to cover all costs with user fees in support of the County's ban on the land application of septage, there is nothing in the statute restricting the source of funds.*

It is not intended to have taxpayers in general cover the costs of this service

**False:** *The statute does not express intent in terms of how a project is funded, but does provide mechanisms such as special assessments and funding by municipalities. From the perspective of the DPW, the system was built with the intent of being fully self-funded. In fact, most residents in the county rely on on-site septic systems and would be required to pay much more in the event the facility was not available.*

This report provides my perspectives regarding the financial condition of the SRS, along with my rationale for opposing the resolution reappointing members of the Board of Public Works (BPW).

## Current Situation

Over several years, decisions made by the BPW have placed the SRS in a position where its expenses far exceed the revenue available to cover the costs of septage disposal.

**False:** *Revenue to date has exceeded expenses and has done so since 2009<sup>1</sup>. While revenue is not sufficient to fund ideal reserve fund growth, our revenues as of end of November 2024, have exceeded expenses at the facility by over \$328,000<sup>2</sup>. It would be nice to know where this information that "expenses far exceed the revenue" was gleaned especially since the auditing company suggested by the author to review the SRS financials did not express this opinion.*

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<sup>1</sup> SRS Cash reserves graph 9-6-2023

<sup>2</sup> 2024 SRS Expenditure report (4<sup>th</sup> QTR 2024 through November)

As such, taxpayers are now having to bail out the SRS by providing it with a multi-million-dollar loan  
**False:** No proposal has been made requesting or suggesting that taxpayer funds be utilized to “bail out” the SRS.

In addition to questionable financial decisions, *there have been questionable management decisions* made by the BPW that have contributed to the current situation at the SRS

**Unclear:** *The SRS has become one of the most successful septage intake facilities in the U.S according to some of our consultants in the industry. This facility ultimately accepted 3x more waste that was initially projected. It has done so due to redundancies built into the original design which have permitted volume increases in excess of its initial design. By supporting increased volume and customer base, unit costs have been held down in comparison to what they would have been with original volume estimates. These decisions allowed for seamless increases in volume intake without the need for expensive upgrades to handle the additional loading.*

*We are interested in understanding what “questionable management decisions made by the BPW” ultimately created the “situation” being described.*

### Financial Issues: How did we end up here?<sup>3</sup>

1. For years, the SRS had been using far more sewer capacity than it owned. Ultimately Hartland Township had to sue to force the SRS to purchase the sewer capacity needed to process the septage waste.

**True/False:** *Utilization of capacity in excess of that owned was anticipated long before the facility was built. This is why a rental provision was placed into and agreed on by both parties from the very beginning<sup>4</sup>. The assertion that the township “had to sue” is false. There has never been a capacity issue with the system and considering that only half of the transmission pipes’ hydraulic capacity is currently being utilized<sup>5</sup>, assertions that the SRS was utilizing capacity needed by residents is categorically false. The LRSS has never experienced any denial of service to users due to lack of pipe capacity. From the beginning, the Township was agreeable to renting its unallocated REUs to the SRS indefinitely. Ultimately, in 2023 the township alleged that no REU’s remained (despite telling us initially that we needed to purchase REU’s from them), and filed the lawsuit demanding payment and concessions far in excess of the capacity the SRS required. Since the facility opened in 2007, the SRS has paid a total of \$388,172 in rental fees. Rental discussions have occurred in the presence of the author on many occasions such as meetings, mediation, settlement discussions, etc, and the audacity to suggest that the SRS was improperly utilizing excess capacity is stunning.*

*The settlement of this lawsuit cost the SRS \$6.2 million.*

**False:** *The settlement amount is not punitive, is far less than the \$10 million the township asserted should be paid, and simply included purchase of the REU’s that the*

<sup>3</sup> This report elaborates on only SRS-related issues. There are other issues relating to BPW oversight which are not discussed in this report.

<sup>4</sup> Master Operating Agreement Regarding Sewer System between the County of Livingston and Hartland Township. July 11, 2005; Section 13.3 sub paragraph b.

<sup>5</sup> 2023-06-28 Nancy McClain Affidavit Final, bullet 16; 2024-03-14 Additional REU purchase (433) for SRS

*SRS had been renting. The \$6.2 million amounts of a purchase of REU's and incorporated no "damages." We note that we had offered in the past to purchase the REU's and were informed that no capacity was remaining in the system, despite later sales of REU's to developers. In addition, the letter of refusal dated May 23, 2023 from Hartland township indicated they would like to exercise "its discretion to reserve the remaining capacity for economic development within the Township", and advised us to purchase REUs from Genesee County or Tyrone Township, as outlined in the Master Operating Agreement section 13.3(B). We don't pretend to understand the motives behind the lawsuit, but the fact remains that despite the assertion that it did not have REU's to sell, the township ultimately sold the county the capacity.*

Because the SRS does not have adequate financial reserves, the Livingston County Board of Commissioners (BOC) voted to approve the issuance of bonds to pay this settlement on behalf of the SRS.

**True:** *That is ordinarily what would happen in any large purchase. Given that the number of REU's ultimately needed was not known, building excessive reserves for a purchase of unknown amount of capacity wasn't appropriate. Our discussions with the township, prior to early 2022, routinely indicated that volume would be available for the SRS to purchase for decades to come. In addition, less than two years prior to the township assertions that additional capacity was not available, the press facility had gone through the full review by the township board and planning commission with no mention of the need to purchase capacity.*

- a. It is noteworthy that this \$6.2 million settlement could have been avoided if the BPW had purchased the sewer capacity it needed as it expanded its operations.

**False:** *The township has long asserted that the county needed a total of 1080 REU's based on a single day's data from 2021. This requirement to use a single data point for determining capacity needs is not a methodology the township has previously used, and nowhere in the industry is it considered a "Best Practice." It had no scientific basis and would have required us to expend \$12,513,500 million<sup>6</sup>....far more than stated above by the author.*

- b. In 2021, less than one year after being appointed, a new BPW member discovered that the SRS was using far more sewer capacity than it owned

**True/False:** *As stated on Page 2, the facility, by design, utilized more capacity than owned but paid for use of that capacity in compliance with the agreement that was negotiated months before construction even began on the facility. The new BPW member might have only discovered it in 2021, but we've known about it since negotiating the contract as far back as 2006. Suggesting that capacity was being improperly utilized by the SRS is a bold and stunning lie!*

Had the BPW then acted promptly to purchase the required capacity the \$6.2 million settlement could have been reduced by about 50%.

**False:** *As noted in the prior paragraph, the township's assertion that 1080 REU's were required would have cost the county \$12,513,500. We note that this is significantly more than the \$3,616,006 ultimately paid to Hartland Twp under the REU purchase provisions outlined in the settlement agreement<sup>7</sup>.*

<sup>6</sup> 2022.09.12 Hartland Township – Notice of claim and demand for dispute resolution; Hartland LCBPW REU Purchase request response 05-23-23; Hartland Summary of Claims

<sup>7</sup> Executed Consent Judgement Livingston County 44th Circuit Court Case No. 23-31864-CK

*The accusation also seems to infer that we would have known when building the facility how much volume we would be accepting nearly 20 years after its opening. It is precisely because of this unknown that a rental agreement was worked out in the Master Operating Agreement with the Township.*

2. In 2019, at the urging of the BPW, the BOC approved the issuance of \$7.25 million in bonds to expand the capacity of the SRS. The BPW asserted that additional capacity was needed to manage increasing septage volumes. However, since the expansion was completed septage volumes have decreased. The decline in revenue associated with this decrease in volume coupled with the associated bond payments has created a significant strain on the finances of the SRS.

**False:** *This statement is not only misleading but accurately illustrates the lack of even a basic knowledge of the reasons for the expansion. The bond issuance amount was for \$6.3 million, not the \$7.25 indicated by the author. In addition, the SRS utilized \$1.4 million of reserves to defray part of the cost. The new facility was not constructed to expand the capacity due to increasing volumes, but to build a press facility in order to reduce waste strength, as noted in the Resolution to the county board<sup>8</sup>. We note that the resolution was supported by and voted “yes” on by the author of this “report.” The resolution clearly states that the bond issue was being undertaken in order to construct a press facility to comply with the Corrective Action Plan (CAP)<sup>9</sup> issued by Genesee County. Accusations that “BPW asserted that additional capacity was needed to manage increasing septage volumes” is a fabrication and is borne out by the transcripts of the project, as well as in resolutions the BOC themselves executed. The BPW had no prior plans to expand the facility, and only did so only when Genesee County mandated that we resolve the waste strength dilemma or shutter the facility.*

3. After the expansion was completed, it was discovered that two-thirds of the septage processed at the SRS came from septage haulers servicing homes outside of Livingston County. Thus, I conclude that the expansion was not needed to serve the needs of Livingston County residents, rather it served the needs of out-of-country residents. In other words, the debt payments associated with the \$7.25 million expansion could have been avoided if the SRS had focused on serving only the needs of county residents.

**False:** *Again, this statement reflects a complete lack of understanding of the expansion project as mentioned above and I would direct the reader to the CAP referenced above. In addition, limiting flow to the original 217 REU’s owned, which was a suggested solution made by the author on multiple occasions, would have resulted in insufficient revenues for covering operation costs, as well as existing debt payments. Under this assertion to limit waste flow solely to Livingston County residents, it would be nearly impossible to enforce and fiscally infeasible since it would cause the county to incur an annual revenue shortfall of approximately \$800,000<sup>10</sup>. In fact, we would not generate enough income to fully fund basic operations at that level of volume, let alone sufficient to make existing debt payments.*

<sup>8</sup> Livingston County Resolution NO: 2019-07-109; Septage Receiving Station \$6,300,000 sewage disposal bonds, series 2019; Bond Authorizing Resolution July 2019-Cover letter.

<sup>9</sup> CAP with Brians signature; CAP-Current IPP Permit with Gen. County 01-17-2019

<sup>10</sup> SRS Income Statement at 5 to 40M Gallons – updated 10-1-24

**BPW oversight issues**

1. By statute (Act 185 of P.A. 1957), the BPW has direct oversight of the Department of Public Works (DPW). As such, the BPW has statutory authority to hire the DPW Director. It is the DPW Director who oversees the day-to-day operations of the SRS. The DPW Director reports to the BPW. The BPW has hired a DPW Director who is also a member of the BPW. A conflict of interest exists since the DPW Director sits on the Board (BPW) which oversees his own job performance.

**False:** *Compensation is not determined by the BPW, avoiding any conflict of interest. Furthermore, this model is repeated in multiple statutes including Act 185, Act 342, Act 40, Part 309 P.A. 451, among others, requiring or stipulating the Drain Commissioner as a mandatory member of the board. Moreover, under Act 342 and Act 185, the Drain Commissioner can act in lieu of a board altogether, retaining all authority necessary to manage projects approved by the Board of Commissioners. Unfortunately, this assertion underscores the “personal” animus continually directed toward the Director by the author.*

4. The BPW has not conducted annual performance evaluations of the DPW Director.<sup>11</sup>

**True:** *This is one of the few true statements in this “document.” We are not opposed to annual performance evaluations. However, we are under no illusions that this suggestion is intended for anything else other than to provide the author the ability to utilize any critiques on performance as a weapon to further undermine DPW operations.*

5. Up until January 2021 the DPW Director hand-picked the members of BPW. It had been past practice that the BOC would rubber-stamp the nominees put forwarded by the DPW Director. In essence the DPW Director got to choose his bosses.

**False:** *We are unaware that the BOC ever “rubber-stamped” nominees for the BPW, or any other board for that matter. Several current members of the BPW were members long before the tenure of the current DPW Director and any positions that were filled generally involved the BOC asking for the director’s opinion on potential candidates; a welcome and professional courtesy that is typical with any professional board within the county. We would be interested in any evidence to the contrary, as we consider this a serious accusation.*

- a. When I became the Chair of the BOC (January 2021) I exercised my authority to choose a new BPW member.<sup>12</sup> This change was met with outward hostility by the DPW Director. I have never experienced this degree of hostility from any Department Director. The DPW Director went as far as saying that my decision to appoint a different BPW member, rather than rubber-stamping his choice, would ruin the “best board in Livingston County.” To the contrary, the member I chose was largely responsible for uncovering significant and long-standing SRS problems.

**False:** *This appointment was made without even a courtesy notification to the DPW Director. Unfortunately, it was a rumor from other sources that alerted me to what was being considered. Despite a phone call to the author about our concerns, the presence of the resolution on the meeting the following day was purposely withheld by the author and obscured in a resolution containing*

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<sup>11</sup> Per conversation with our Director of Human Resources on 12/9/24.

<sup>12</sup> Public Act 185 of 1957, MCL 123.736 Sec.2(b) and Board Rules



*numerous board appointments. There was no vetting of candidates, other than they were handpicked by the author and inserted onto the Board without prior discussion. What ensued was an extended period of mistrust and guarded interaction with a member of a unit of government directly involved in a dispute with the county. Other commissioners were noticeably angered that they had voted in support of the appointment without my knowledge of the resolution, or they being informed of the dispute with the township.*

- b. I opted to appoint a “fresh face” who was a subject matter expert to the BPW because of SRS-related questions that arose during my first term as a County Commissioner. That I received vehement opposition from the DPW Director confirmed to me improved oversight was warranted.

**False:** *The author never consulted the Director on the matter. The “subject matter expert” was a township employee tasked with advancing the township’s agenda, and one who routinely met with the author and exchanged information; a development that ultimately led to a rebuke by the county’s attorney to cease discussions. The member who was ousted was a county commissioner and a current sitting member of the BOC. We find it highly ironic that we have been accused of making decisions in secret, yet we strongly objected to the removal of a county commissioner from the BPW.*

6. The DPW Director has a family relationship with a septage hauler who is a significant customer of the SRS. The DPW Director is the brother in-law of the President of Howell Sanitary Company II.

**False:** *Not only deeply insulting and false, but tantamount to libel. I have no family members in the septage hauling business. One of our customers who owns a septage hauling business is a cousin of my wife. The accusatory nature of this assertion is deeply troubling and clearly demonstrates the continuing antagonism being directed at the DPW Director, by the author.*

7. While conducting my investigations into SRS issues I received substantial push back from the DPW Director. Frequently it was difficult acquiring requested information. Further, at one point the DPW Director directed his staff not to speak with me.

**True/False:** *This office has provided hundreds of pages of requested documents to the author, comprising many hundreds of hours of work by our staff. However, requests directed to my staff routinely and purposely bypassed the elected official. Despite having 2 meetings with the then BOC chair, the Administrator, and the author, in which it was agreed to channel all requests thru the department head, the author frustratingly persisted to contact staff directly. Ultimately, after numerous warnings to the author and complaints by staff about the disruption to their duties, the elected department head was left with little choice but to direct staff to decline the author’s many requests unless channeled through the department head. The disruption to the drain office has impacted operations negatively, not only in the DPW division of the office, but also to operations dealing with drains, lakes and other duties. Staff have expressed frustration with the duplicative requests for information submitted by the author in past inquiries.*

8. The State of Michigan requires every septage receiving station to have an approved operating plan. Our most recent approved plan is dated April 24, 2007 and is displayed on the following webpage.: <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/DWEHD/Septage/Operating-Plans/Operating-Plan-Livingston-County-Septage-Receiving-Station.pdf> The displayed

operating plan does not include any changes associated with the SRS expansion. It appears that the SRS is not in compliance with environmental regulations.

**False.** *The SRS is in compliance with environmental regulations and has never been denied operating and/or discharge permits. Notably, the State rarely updates the page, has virtually no updated links, has never requested a re-submission and continually reissues the discharge permit. Additionally, in personal discussions with EGLE staff regarding updating the Operating Plan, staff indicated that the site was not being updated and they didn't expect updates to occur any time in the foreseeable future.*

## Reducing Our Costs

Our SRS provides septage haulers with fringe benefits not available at other septage receiving stations. Unfortunately, septage haulers have demonstrated an unwillingness to pay extra for these fringe benefits. Septage haulers will take their business elsewhere to save on septage disposal costs. In this price sensitive market, septage haulers will forgo the fringes to lower their operating costs.

**False:** *Haulers routinely drive past other facilities to patronize the SRS. In fact, most of the neighboring facilities require outdoors discharge, making it difficult or even impossible to do during inclement weather. Haulers will travel miles further for the ability to discharge within a protected environment. Indeed, a number of haulers have expressed the sentiment that it is a privilege to come to the SRS, considering the way they are treated at other facilities.*

The septage hauling market is clearly a commodity market. It is not a differentiated product market. In a commodity market it is all about price, price, and price.

**False:** *This statement suggests that the SRS is "selling" a commodity, such as sewage. We can assure you, that we rarely receive inquiries asking to purchase our septage. A commodity market can exist when the product is identical, such as bushels of corn or barrels of oil. In this case, the amenities and convenience the SRS provides is perhaps the most important aspect of the service we provide and bears little resemblance to a "commodity market." In fact, some would argue that all markets are differentiated because service is always an integral part of the product<sup>13</sup> (<https://hbr.org/1980/01/marketing-success-through-differentiation-of-anything>) Sadly, this assertion regarding a "commodity market" reflects a fundamental lack of understanding of the services the SRS ultimately provides its customers.*

Regrettably, our cost structure is such that we are not a low-cost provider. Our customers are unwilling to pay extra for fringes such as:

*We continually interact with our customers on a daily basis and believe that this is an incorrect statement. As referenced earlier, our customers routinely drive past, or choose to avoid other facilities simply because of the amenities at the SRS. The ability for the SRS to provide an indoor offloading service at a price point similar, and often below that of other stations, which often consist solely of a hole in the pavement, is testament to the efficiency of the service we offer. Customers are typically amazed when seeing the facility that we can offer the service we do at the price point we historically have.*

<sup>13</sup> Marketing Success Through Differentiation-of Anything

- Pumping septage waste from their tanker trucks in a sheltered indoor environment rather than outside in the elements.

*In our experience, based on years of interactions with the customers, the indoor environment is perhaps one of the single most important amenities, which draw haulers from further away. Often, haulers have little choice but to come to the SRS in the winter since there are no nearby facilities which offer haulers the ability to park indoors when valves become frozen. This remark seems to suggest that we lock haulers outside and provide a hose with which to offload as a means of reducing cost.*

- Being able to connect to the internet while pumping out their tanker trucks.

*The primary reason for the internet connection is to provide connectivity with the pump station and the SRS operations. The historical “dead zone” in the valley that the facility is located created a great deal of staff callouts to check on pumps, etc. This allows us to remotely operate significant portions of both facilities without allocating a full-time position to sit there in the absence of an internet connection. We can assure you that the alternative to having internet service is far more expensive to sewer residents and haulers alike. It appears that the author is suggesting that we disengage from the internet and remove our ability to receive notifications from the pump station serving all of Hartland Twp. As a critical pump station, this would be a very dangerous move and likely to disrupt service to Hartland residents at some point.*

- Receiving Christmas stockings stuffed with gifts.

*While hardly a significant cost, we discontinued the practice several years back due to declining volumes but widely regarded the practice as one of the most successful customer service initiatives we’ve ever implemented.*

*We are perplexed by these comments. Customers remain at the core of our success and there are few business models that would suggest treating customers poorly to attract more revenue when business is tough.*

For the sake of county taxpayers, our SRS needs to become a low-cost supplier of septage services. New BPW members are needed who better understand how to run a business in a competitive, price-sensitive commodity market.

*Cost-cutting measures are routinely put in place, whether it involves staffing policy, or use of staff for the installation of new equipment, etc. The innovations to SRS facilities and operations that have been accomplished by staff are very significant in extent. We are proud of our operation and would be pleased to host anyone interested in seeing it or has constructive advice for improvements.*

## In Closing

During the Personnel Committee Meeting of December 2, 2024, I spoke against the resolution reappointing members of the Board of Public Works (BPW). This report summarizes my major areas of concern. I echoed this sentiment at the December 5, 2024, meeting of the BPW.

My decision to oppose the reappointment resolution is based on my philosophy of protecting our taxpayers from the cost of governmental waste and inefficiency. I have observed a series of sub-



optimum decisions made over time by the BPW with respect to the Septage Receiving Station (SRS). These decisions have cost Livingston County taxpayers millions of dollars.

**False:** *We show no unpaid loans or advances from taxpayer funds and would appreciate understanding where the facility has cost taxpayers so much money. I have also observed a lack of interest in vigorously addressing issues before they become a crisis. We have seen no suggestions for improvements by the author other than negative and disruptive accusations at public meetings. This behavior of gathering information from our office and then utilizing it to upend and attack our credibility is appalling and has caused damage to the morale, efficiency and economy of this office. While our response to requests for information has been to provide hard data, and is time consuming and costly in terms of FTEs, the real damage can be described emphatically by all of our supervisory staff. For instance, we have recently provided information to this author during a site visit about the significant savings we have been able to realize on proposed odor control and other elements critical for our operations. Despite this, we we're met with suggestions from the author that, among other things, the use of charcoal masks in lieu of an abatement system. Such a practice would prove instantly fatal to our staff were they to be exposed to the high concentrations of Hydrogen Sulfide in certain areas of the facility. This kind of response showcases a concerning lack of understanding of wastewater facility operations, or concern for Livingston County staff.*

Additionally, the financial health of the SRS is such that taxpayers will likely have to provide further subsidies.

**False:** *What are the subsidies that the author is referring to? We have neither requested nor discussed any need to request funds from taxpayers coffers. The suggestion that subsidies are being paid is False.*

Decisions of the BPW have created the financial trouble described herein. However, it is the BOC which is ultimately responsible for financial oversight of the county. Current policies and management systems were not robust enough to prevent these SRS problems. Furthermore, for many years our BPW appointees fell short of delivering cost effective governance and protecting the interests of taxpayers.

*The BPW oversaw a system that expanded at unprecedented rates, ultimately producing reserves in excess of those held by the Livingston Regional Sewer System. On the contrary, past Boards have remarked about the incredible success of the facility and were proud of the fact that it provided the ability to accept waste from county households at a cost far less than what would be charged if it were hauled to a different county. The comments made by the author are concerning from the standpoint they suggest that whenever a project is presented with problems, whether financial or otherwise, that someone should be punished. This would have a chilling effect on volunteerism in the county. We fully expect to see future instability from markets, regulatory agencies, and consumer behavior which will continue to challenge the BPW. We've always known that the market is not guaranteed never to slow down or to pose challenges. To suggest that this shouldn't be happening is not a reasonable expectation in any business.*

The BOC must act to protect taxpayers from further financial harm and enact policies/procedures to place the SRS on a solid financial foundation. Importantly, this includes a change of personnel at the BPW. We cannot reappoint those who have been an integral part of creating these problems.

*This comment juxtaposes fault with broader economic conditions beyond the control of any board, suggesting that persons be removed or disciplined due to external market changes. The author's personal crusade against the SRS, in our estimation, presents us with the single most challenging threat to our existing operations. The result has been damaging in terms of the diversion of resources from our office, as well as financially to the LRSS and SRS.*

*We reiterate the need for an impartial member of the county board to sit on the BPW. Moreover, we note that despite the assertions of the DPW somehow acting in a rogue manner, it was this author's direct action to replace the BOC representative with a representative of the township which was refusing to sell capacity to the SRS at the time.*

*As Director, I invite any and all commissioners to come and view our operations in order to gain a better understanding, if so desired. I also offer my apologies for the continued attempts by others to confuse the facts around the SRS, as they continue to exact time and energy from you amidst your other responsibilities. It is a shame and we can only hope that these efforts will someday be re-directed at aiding departments and being an asset to their operations!*