

Department of Environment Wastewater Commissions

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Department of Environment Wastewater Commissions

Why we reviewed wastewater commissions

1.1 During 2008, in part due to concerns expressed directly to us by members of the public relating to the accountability of provincial wastewater commissions, we reviewed the status of reporting by these organizations to the Department of Environment. The results of that review raised a concern in our Office that, although all commission board members were appointed by the Lieutenant-Governor in Council as specified under the Clean Environment Act, there was an apparent lack of oversight of these commissions. In April 2009 our office received a letter from the Minister of Environment Roland Haché that included the following request.

“...the Department requests your assistance in auditing a selection of [wastewater] commissions to ensure that the revenue they generate is being spent in a manner that follows appropriate financial practices and that expenditures are consistent with the mandate of the commission. The department would also welcome recommendations from your office to improve on the accountability of water & wastewater commissions.”

1.2 Therefore, given:

- the apparent lack of oversight by the Province;
- that governance structures and processes for each of the three larger commissions appeared to be somewhat different;
- uncertainty about the level of oversight provided by municipalities;
- the Minister’s request; and
- the fact that commissions had never been looked at in terms of the value for money they provide to ratepayers;

we decided that there would be value in our Office doing a more in depth review of the governance and accountability structures and processes, and financial management of provincial wastewater commissions.

1.3 The objective of our review was:

To assess the adequacy of the governance and oversight structures and processes for New Brunswick wastewater commissions.

1.4 In completing our review, we concentrated almost entirely on the three largest sewerage commissions in the Province including the Greater Moncton Sewerage Commission, the Greater Shediac Sewerage Commission and the Fredericton Area Pollution Control Commission. In keeping with our objective, and in consideration of the Minister's request, our work focused on:

- ensuring that the revenue commissions generate is being spent in a manner that follows **appropriate financial practices**
- ensuring that the **expenditures are consistent with the mandate** of the commissions, and
- making **recommendations to improve the accountability** of water & wastewater commissions.

Our key findings and conclusions

1.5 A key step completed during our review involved a line by line comparison of revenues, expenditures, and reserves reported in the financial statements of the three large commissions. This analysis showed no significant variances for the Greater Shediac Sewerage Commission or the Fredericton Area Pollution Control Commission. However, some significant differences in expenditure patterns and reserves were noted for the Greater Moncton Sewerage Commission.

1.6 We recognize the the Greater Moncton Sewerage Commission offers a valued service and has achieved national and international recognition since its establishment in 1983 particularly with respect to the biosolids composting operations. We would also note the Commission is in a healthy fiscal situation as it has sufficient annual revenue streams to cover operations as well as ongoing capital projects necessary to maintain infrastructure, no debt and a \$8.5 million reserve account.

- 1.7** However, our concerns with this commission stem from the fact the board governance and accountability is not functioning effectively.
- 1.8** In our opinion a proper functioning governance structure, where the board and management each have specific powers resulting in a clear separation of duties, does not exist at the Greater Moncton Sewerage Commission. The role that the board of this commission has adopted is not limited to providing good governance, oversight and strategic direction, but also includes front line management and direct control of many aspects of commission activities.
- 1.9** With respect to accountability, the relationship between the Commission and the three municipalities (Moncton, Dieppe and Riverview) who represent the ratepayers, is such that the Commission approves annual budgets, capital projects and rate increases with little or no prior consultation nor formal approval from the municipal councils. In our discussions with key municipal representatives, two of the three municipalities cited concerns with the current accountability process between the Commission and their councils.
- 1.10** Below we list instances of questionable financial practices and/or expenditures we found that we believe should be of concern to the three involved municipalities and local ratepayers. Some of these expenditures, in fact, appear to be outside of the Commission's mandate. The period of our expenditures review covered 2007 to early 2010.
1. Five international trips to Europe and Asia were taken by the Chair, other board members, and senior management staff, with a net cost of \$86,890.
 2. The Commission sponsored and hosted an International Water Association conference in Moncton in 2007 at a net cost of \$530,852, exceeding the Commission's conference budget of \$204,000 by 160%. Significant staff time associated with arranging and presenting the conference is not included in this figure.
 3. As of December 31, 2009, the Commission had set aside capital reserves of \$8.5 million. The audited financial statements indicate, "*Investments carried in the reserve accounts*

consist of savings funds.” The Commission has no documented investment policy. Given the size of the reserve and the duty of judgment and care under the Trustees Act, one would expect an investment policy more rigorous than holding the \$8.5 million in a savings account. It was also noted that the contributions to the reserve in 2008 and 2009 were well in excess of what commission by-laws allow.

4. The Commission has not tendered or solicited quotes for insurance services for at least ten years. Premiums are \$189,000 per year, a much higher rate than for other large commissions in the Province.
5. Personal payments of \$9,600 annually (i.e. \$800 per month) were made to the Chair and coded as “Reimbursement of Office Expenses” for which no invoices were on file. They were supported only by a board minute dated 14 March 1996.
6. Two cases were found, totalling \$5,800 in claims, where the backup supporting payments made to the Chair for travel did not include supporting invoices but only email requests for payment.
7. The Chair’s blackberry usage charges over the period February 2007 to January 2010 which totaled \$20,311, an average of over \$550/month were paid by the Commission.
8. Christmas parties for a board of 6, staff of 13 and guests were held costing \$7,109 in 2009, \$5,600 in 2008, and \$6,739 in 2007.
9. The board instructed senior management to prepare and present research documents on various aspects of wastewater and biosolids processing. For example, the Commission co-edited with the United Nations (UN Habitat) on an over 600 page Atlas entitled *Global Atlas of Excreta, Wastewater Sludge and Biosolids Management: Moving Forward the Sustainable and Welcome Uses of a Global Resource*; Commission representatives then travelled to Vienna, Austria to officially launch the Atlas.

1.11 The Greater Moncton Sewerage Commission’s

involvement in national and international initiatives appears to be well outside the mandate established in legislation for provincial wastewater commissions. These are activities in which neither of the other large provincial wastewater commissions we reviewed are involved. We question the value to local ratepayers, as it has been costly both in terms of dollars spent and the opportunity cost associated with taking staff time away from mandated activities.

1.12 Two board members, the Chair and Vice-Chair, have served in excess of 20 years on the board, much longer than modern governance best practices would recommend. In particular, the Chair has held his current position since the Commission was established in 1983.

1.13 The situation at the Greater Moncton Sewerage Commission has arisen, in part, because existing legislation does not provide a comprehensive governance and accountability framework for provincial wastewater commissions. It covers only the appointment of board members and the mandated areas within which wastewater commissions are to operate. It is silent in other areas, most critically in identifying which external stakeholders are to oversee the plans and performance of wastewater commissions, and providing those stakeholders with appropriate reporting and other tools to allow them to hold commissions to account.

1.14 The same deficiencies in the legislative framework would impact upon the Fredericton Area Pollution Control Commission and the Greater Shediac Sewerage Commission. However, we believe that the Fredericton Commission is subject to sufficient monitoring and oversight, primarily through the financial and operational oversight provided by its six member board and by the City of Fredericton. And for the Greater Shediac Commission it appears that effective monitoring and oversight is provided by its eleven member board, which has adopted a number of good governance practices. Both commissions appear to be operating within their legislated mandates and expenditures reported in their 2008 and 2009 financial statements appear to be reasonable. However, we are concerned that both commissions have very long-serving members on their boards.

1.15 We made the following additional observations relating to the governance and oversight of provincial wastewater commissions.

- We were pleased to note that appointments made to wastewater commission boards since 2009 have been for four-year terms. However, prior to 2009 term limits were not attached to appointments to wastewater commission boards. Consequently, the boards of wastewater commissions we reviewed tended to be made up of a relatively high proportion of very long-serving members. The average length of service for members of those boards was approximately 14 years. Experience has shown that when governance problems arise, it is often a lack of term limits at the root those problems. The 2005 Report of the Office of the Auditor General of Manitoba, *Examination of the Crocus Investment Fund*, or our own 2009 Report, *La Caisse populaire de Shippagan*, provide compelling examples of why attaching term limits to board appointments is critical.
- We were pleased to note that the new provincial appointment policy document includes descriptions of many governance best practices for reference and application by agencies, boards, and commissions. However, the Department of Environment has not taken appropriate steps to educate the boards regarding governance best practices in general.
- The 2008 Finn report, *“Building Stronger Local Governments and Regions – An Action Plan for the Future of Local Governance in New Brunswick”*, included comments and a recommendation relating to provincial wastewater commissions that would significantly alter the way these commissions are governed if implemented. At the time our report was being prepared, the Department of Local Government had announced its intention to hold public consultation meetings on the future of local governance in New Brunswick.
- The Greater Moncton Sewerage Commission indicated that the Province has been very slow in filling vacancies on their board.

Recommendations to Improve Accountability

1		
	Recommendation	Department's Response
	<p>1.44 We recommend the Department of Environment establish additional legislative requirements geared to strengthening governance and accountability of provincial wastewater commissions. In this regard, the Department should develop a regulation that:</p> <ul style="list-style-type: none"> • attaches specific term limits to all appointments to wastewater commission boards. Longest-serving members of provincial boards (i.e. those having served 20 years or more) should be replaced immediately, and other members in place for longer than maximum legislated term limits should be replaced as soon as practical on a case by case basis; • prescribes any local or provincial requirements for the appointment of regional or other representative board members (i.e. by and/or from particular municipalities, aboriginal reserves, etc.); • prescribes the roles, responsibilities, and accountabilities of government, board members, municipalities and key stakeholders; • sets annual reporting requirements for wastewater commissions as well as procedures for annual budget and business plan approvals; • establishes the requirement for all executive members of the board, including the Chair, to be elected from among appointed members; • requires all commissions delivering service to one or more municipalities to set up a technical steering committee that, where possible, involves engineering staff from those municipalities to ensure that commission plans for capital projects are acceptable and as a source of technical advice; and • establishes other terms and conditions as considered appropriate in the circumstances. 	<p>The Department agrees with the Auditor General's recommendation.</p>

<p>1.45 We also recommend Executive Council Office amend the provincial policy document, “An Appointment Policy for New Brunswick Agencies, Boards and Commissions” to require term limits be placed on all government appointments to agencies, boards, and commissions.</p>	<p>Executive Council office’s response: Given that most statutes set out the terms of members appointed by the Lieutenant Governor in Council, this issue is not one that is specifically addressed in the policy document ‘An Appointment Policy for New Brunswick Agencies, Boards and Commissions’. The legislative framework for commissions established under section 15.2 of the Clean Environment Act is somewhat unique in that it provides the authority to establish terms rather than setting out the term in the legislation itself. I can see no obstacle to the amendment of the policy document to provide for setting term limits in these circumstances.</p> <p>Additional Department of Environment comment: It is expected that the issue of term limits for wastewater commissions will also be addressed through Department of Environment’s response to recommendation 1.44.</p>
<p>1.46 We recommend the Department of Environment ensure that board vacancies at wastewater commissions are filled on a timely basis.</p>	<p>The Department is limited in its ability to further expedite appointments as a significant multi-step review process is required. However, the Department will continue with its ongoing efforts to ensure that notices of vacancies are processed on a timely basis.</p>
<p>1.47 We recommend the Department of Environment ensure that all wastewater commission boards in the Province are provided with ongoing guidance in the areas of governance and accountability. This guidance could include, but not be limited to, such areas as:</p> <ul style="list-style-type: none"> • How to prepare board member position profiles and other selection criteria for reference by appointing bodies; • The roles and responsibilities of commission board members; • How to hold management accountable for performance; • Committees of the board; • Commission board members’ accountability obligation to commission stakeholders; and • Steps to take when a commission wants to involve itself in areas outside its legislated mandate. 	<p>The Department agrees with the Auditor General’s recommendation and will request assistance from the Department of Local Government. It should be noted that the Department of Local Government is currently leading an initiative towards enhancing local governance in the Province, which includes increasing accountability and transparency in local and regional services.</p>

<p>1.59 We recommend necessary steps be taken, by the Department of Environment to ensure wastewater commissions comply with the Public Purchasing Act.</p>	<p>Within the context of the report, the Department interprets this as a recommendation to amend the necessary legislative and/or regulations to make the wastewater commissions subject to the requirements of the <i>Public Purchasing Act</i>. As indicated in the report, the Act does not currently apply to these commissions.</p>
<p>1.127 We recommend, the Department of Environment, in consultation and agreement with the City of Moncton, the City of Dieppe and the Town of Riverview, evaluate the existing GMSC Board member composition in light of our findings regarding questionable governance, accountability and financial management practices. Emphasis should be placed on ensuring GMSC operates under a modern governance framework and that it is well positioned to serve ratepayers of Moncton, Riverview and Dieppe within the legislated mandate.</p>	<p>The Department agrees with the Auditor General's recommendation.</p>
<p>1.128 Once the Board of GMSC has been determined, the Department of Environment, in cooperation with the Greater Moncton Sewerage Commission, the Department of Local Government, the City of Moncton, the City of Dieppe, and the Town of Riverview, should develop a plan specifically geared to improve:</p> <ul style="list-style-type: none"> • governance processes; • financial management; • monitoring and oversight; • accountability; and • compliance with provincial legislation at the Greater Moncton Sewerage Commission. 	<p>The Department agrees with the Auditor General's recommendation.</p>

Scope

1.16 In completing our review, we held discussions with representatives from the Department of Environment and the Department of Local Government. We also reviewed documents provided by those departments.

1.17 In addition, we surveyed the four largest wastewater commissions in the Province including (by total revenue) the Greater Moncton Sewerage Commission, the Fredericton Area Pollution Control Commission, the Greater Shediac Sewerage Commission, and the Commission des Egouts de Val D'Amours Inc. We reviewed and tabulated the results of those surveys.

1.18 We interviewed and held discussions with various commission board members, managers, municipal representatives, and stakeholders associated with the three largest provincial wastewater commissions (i.e. the Greater Moncton Sewerage Commission, the Fredericton Area Pollution Control Commission, and the Greater Shediac Sewerage Commission). We reviewed financial reports and records, and other documents provided to us by wastewater commission representatives. We completed comparative analyses of revenues, expenditures, and reserves. We also toured wastewater processing facilities in Fredericton, Riverview, and Shediac, and a commission-owned bio-solids composting facility in Moncton.

1.19 We confirmed facts included in this report with commissions and/or provincial departments as appropriate. In the case of the Greater Moncton Sewerage Commission, this confirmation process included consideration of information presented in a response received from the Chair, and an onsite visit by the Auditor General to discuss matters raised.

1.20 We did no further work relating to the Commission des Egouts de Val D'Amours and the other five small wastewater commissions listed later in this report due to their small size.

1.21 Our work also included doing research relating to wastewater processing and governance.

1.22 Information referenced in this report is as of mid 2010 unless otherwise indicated.

Background

1.23 In most areas of the Province drinking water distribution and wastewater treatment facilities are operated by individual municipalities or private entities, and therefore provincial wastewater commissions do not exist. Wastewater commissions have been set up over the years to provide wastewater treatment systems, and in some cases community drinking water, outside of incorporated areas or where a group of municipalities have agreed to share a service. However, we would note that all wastewater processing facilities in New Brunswick, whether run by commissions or not, must have a current approval to operate certificate from the Department of Environment.

1.24 There are nine provincial water and wastewater commissions (wastewater commissions) in New Brunswick. Certain commissions were originally established in the 1960s under the Water Act, legislation repealed when the Clean Environment Act was passed in 1971. Since then, all commissions have been covered under Section 15.2 of the Clean Environment Act. Among other things, Section 15.2 assigns responsibility for the appointment of board commissioners to the Lieutenant-Governor in Council. The Act is administered and enforced by the Department of Environment.

1.25 Typically wastewater commissions set up in unincorporated areas bill end users directly for services provided. However, in cases where the services of a wastewater commission are shared by multiple communities, commissions sometimes instead bill civic water utilities who in turn bill end users. Thus, these municipalities have a vested interest in ensuring, on behalf of their water and sewerage system ratepayers, that the services delivered by their wastewater commissions are cost-effective.

1.26 Financially, wastewater commissions are covered under the Municipalities Act and treated as municipalities for legislative purposes. The Municipalities Act also provides commissions with the legal ability to access funds through the Municipal Capital Borrowing Board and some other funding avenues (e.g. federal) open to municipalities. This Act is administered and enforced by the Department of Local Government.

1.27 A description of wastewater commission operations can be found in Appendix 1.

1.28 The Department of Environment has been assigned responsibility for administering and enforcing the Clean Environment Act. Section 15.2(1) of the Act states:

The Lieutenant-Governor in Council may

- (a) appoint a board of not fewer than three nor more than eleven persons and constitute it a corporation for the purposes of this Act;*
- (b) assign a name to the corporation;*
- (c) prescribe the term of office and*

Role of the Province of New Brunswick

Department of Environment

Clean Environment Act

remuneration of the members of the corporation;
(d) prescribe the duties and powers of the corporation; and
(e) exempt the corporation in whole or in part from the provisions of Part 3 of the Energy and Utilities Board Act.

1.29 Section 15.2 goes on to describe:

- the type of activities that wastewater commissions are legally entitled to carry out (i.e. their mandate); and
- the continuance of all wastewater commissions established under the former Water Act that was repealed when the Clean Environment Act came into effect in 1971.

1.30 There is no regulation covering wastewater commissions under the Clean Environment Act. Overall then, guidance provided to the Department of Environment and wastewater commissions by existing legislation is limited.

1.31 We believe that the Province is ultimately accountable for the effectiveness of provincial wastewater commissions by virtue of its involvement in the appointment of commissioners. Therefore in order to protect the public interest, the Province must ensure that governance and accountability structures and processes are contributing to effective commissions. In practice though, with the exception of board appointments, the Province has implicitly delegated any authority over governance and accountability processes to the boards of the commissions and/or involved municipalities. And it has not taken any steps to ensure that monitoring and oversight provided by boards and municipalities is adequate.

Role in appointing board members to wastewater commissions

1.32 All of the larger wastewater commissions have been set up for a number of years and appointment processes for each have been established in practice. Potential candidates for wastewater boards are identified within the regions represented by each commission, and their names are forwarded to the Province by the commission for approval.

1.33 However, following the 2007 report, *An Accountable and Responsible Government – The Government’s*

Response to the Final Report of the Commission on Legislative Democracy, the Province developed the policy document, “*Changing the Way Appointments Are Made - An Appointment Policy for New Brunswick Agencies, Boards and Commissions*” The policy establishes new practices around how government appointments to agencies, boards, and commissions are to be made.

1.34 Implementation of the appointment policy has involved some changes to practices for identifying candidates for appointment to commission boards. In particular, interested parties may now apply for consideration as board members on a government website established for that purpose without being recommended by anyone associated with their local wastewater commission. Further, although there is no reference to term limits in the policy, the Department of Environment has decided in implementing this policy to also set term limits on future appointments to water and wastewater commission boards. A letter sent to the Chair of the Greater Moncton Sewerage Commission by the Minister of Environment dated 24 June 2009 stated,

“...the Department has begun to recommend that the Lieutenant-Governor in Council appoint any new members to water and wastewater commissions for four-year terms to enable renewal in membership. Further, in recognizing the benefits of longer term membership, the Department would give consideration to recommending that these terms be renewed for two additional consecutive four-year terms, for a maximum period of twelve years. Members would then be required to sit out for a four-year period before the Department would consider recommending re-appointment to a commission.”

1.35 Our office supports departmental plans to set term limits on all appointments. From discussions with legislative audit offices in other jurisdictions, their experiences have shown that when governance problems arise, it is often a lack of term limits at the root those problems. The 2005 Report of the Office of the Auditor General of Manitoba, *Examination of the Crocus Investment Fund*, or our own 2009 Report, *La Caisse populaire de Shippagan*, provide compelling examples of why attaching term limits to board appointments is

critical. In fact, in the Shippagan report we recommended:

Executive Council ensure that term limits exist for all members of the governing bodies of provincial Crown corporations, agencies, boards and commissions. If existing members of governing bodies have been in place for a long period of time, there should be a transition plan to replace them. The length of the transitional period should be inversely proportional to the length of time the board member has served.

***Executive Council Office
Response***

1.36 In response to this 2009 recommendation we were informed that “*the Executive Council Office maintains a database that contains the names of all members appointed to agencies, boards and commissions by the Lieutenant Governor in Council. In order to ensure the timely appointment and reappointment of members to these bodies, departments are sent a notice 210 days prior to the expiration of the term of every appointee. It is then incumbent upon each department to take the steps necessary to provide for the appointment of new members or the reappointment of existing members.*

1.37 *With respect to the recommendation of your office regarding the placing of limits on the number of terms a member may serve on the governing body of a Crown entity, the Executive Council Office continues to monitor departmental submissions to ensure compliance with any statutory limits on the duration of board membership and to encourage efforts to solicit the participation of new members.*

1.38 Long-serving board members can contribute positively to the boards on which they serve. However, the risks associated with having entrenched board members may, in many cases, be more significant than the risks associated with having a less experienced board.

1.39 Best governance practice suggests that the terms of service for board members must be long enough for members to gain experience and cultivate sufficient knowledge to understand the organization, but not so long that boards become entrenched and lacking in new ideas. Staggered terms for board members are often used to balance a board’s need for continuity and experience with the need to refresh the board by bringing in

individuals with new perspectives and skills, in order to effectively address the evolving challenges faced by the organization.

1.40 The boards of wastewater commissions we reviewed tend to be made up of a relatively high proportion of very long-serving members, as can be seen in Exhibit 1.2. The average length of service for members of those boards was over 14 years.

1.41 Representatives of the water and wastewater commissions we talked to indicated that they were not consulted about the proposed changes before they were implemented in the new provincial appointment policy. Ultimately, though, representatives of the Fredericton Area Pollution Control Commission and the Greater Shediac Sewerage Commission did not have any significant concerns with the changes. The Greater Moncton Sewerage Commission, and the associated municipalities, had more significant concerns about the changes. In particular, the Chair believed that there had been a long-established practice of allowing the three involved municipalities – Moncton, Dieppe, and Riverview – to identify appointees to the board who were then simply ratified by the Lieutenant-Governor in Council. As a separate issue, the Chair also noted that there have been significant delays by the Province in making recent appointments to their board, and that this new process may further delay appointments.

***2008 report of the
Commissioner on the
future of local
governance***

1.42 The 2008 Finn report, “*Building Stronger Local Governments and Regions – An Action Plan for the Future of Local Governance in New Brunswick*”, included comments and a recommendation relating to provincial wastewater commissions. It recommended that a transition plan be developed by the Province and municipalities that would outline a process by which wastewater systems currently owned and operated by the Province and/or small commissions be transferred to regional service districts, which are also recommended in the report. The report also stated:

Consideration will also have to be given to the future structure of larger commissions such as the Greater Moncton and Greater Shediac Sewerage Commissions. In some cases, it might make sense to place the entity under the full control of the new

or reconfigured municipality, while in other circumstances it might be more effective to leave it as a separate service provider or to request that the [Regional Service Districts] take on such responsibilities. Such decisions would depend, in large part, on the future alignment of municipal boundaries.

1.43 The changes recommended in the Finn report, if implemented, would have a significant impact on the governance of provincial wastewater commissions. At the time our report was being prepared, the Department of Local Government had announced its intention to hold public consultation meetings on the future of local governance in New Brunswick during April and May 2011 in various locations around the Province.

Recommendations to improve the accountability of wastewater commissions

1.44 We recommend the Department of Environment establish additional legislative requirements geared to strengthening governance and accountability of provincial wastewater commissions. In this regard, the Department should develop a regulation that:

- attaches specific term limits to all appointments to wastewater commission boards. Longest-serving members of provincial boards (i.e. those having served 20 years or more) should be replaced immediately, and other members in place for longer than maximum legislated term limits should be replaced as soon as practical on a case by case basis;
- prescribes any local or provincial requirements for the appointment of regional or other representative board members (i.e. by and/or from particular municipalities, aboriginal reserves, etc.);
- prescribes the roles, responsibilities, and accountabilities of government, board members, municipalities and key stakeholders;
- sets annual reporting requirements for wastewater commissions as well as procedures for annual budget and business plan approvals;
- establishes the requirement for all executive members of the board, including the Chair, to be elected from among appointed members;
- requires all commissions delivering service to one or more municipalities to set up a technical

steering committee that, where possible, involves engineering staff from those municipalities to ensure that commission plans for capital projects are acceptable and as a source of technical advice; and

- establishes other terms and conditions as considered appropriate in the circumstances.

1.45 We recommend Executive Council Office amend the provincial policy document, “An Appointment Policy for New Brunswick Agencies, Boards and Commissions” to require term limits be placed on all government appointments to agencies, boards, and commissions.

1.46 We recommend the Department of Environment ensure that board vacancies at wastewater commissions are filled on a timely basis.

1.47 We recommend the Department of Environment ensure that all wastewater commission boards in the Province are provided with ongoing guidance in the areas of governance and accountability. This guidance could include, but not be limited to, such areas as:

- How to prepare board member position profiles and other selection criteria for reference by appointing bodies;
- The roles and responsibilities of commission board members;
- How to hold management accountable for performance;
- Committees of the board;
- Commission board members’ accountability obligation to commission stakeholders; and
- Steps to take when a commission wants to involve itself in areas outside its legislated mandate.

Technical leadership and guidance in wastewater processing

1.48 All three wastewater commissions we talked to indicated that the Department of Environment should be providing more leadership and guidance in the area of wastewater processing than it is currently doing. For example, one representative felt that the Department should be giving advice to wastewater commissions on how to meet provincial operating standards, as some commissions simply do not have the technical capability to improve their operations. In recent years, the

Department has assumed no regular consultative or other role with regards to operations. Neither do they act as a provincial advocate for wastewater commissions at the national or international level.

1.49 We did note during our work that two of the larger Commissions do have access to some technical expertise from the municipalities they serve. In particular, a City of Fredericton engineering staff member sits on the design review committee that reviews planned capital projects at the Fredericton Area Pollution Control Commission. Also, Greater Shediac Sewerage Commission representatives discuss planned infrastructure projects with the Town of Shediac or the Beaubassin Planning Commission, depending on the location of those projects.

1.50 A representative of the Department noted that it would create a conflict of interest if they were setting operating standards and issuing certificates of approval to operate, while at the same time giving advice on operations. Consequently, the Department's focus has been on ensuring compliance with certificates of approval to operate and explaining to wastewater processors the guidelines and standards they must meet to comply with those certificates. For technical advice and support the Department believes that commissions should be relying on their consultants. A representative of the Department of Local Government also noted that one of the key services of the Capacity Building and Local Services branch of that Department is to provide engineering and technical support to communities including incorporated and unincorporated areas. The representative went on to indicate that this service would be available to wastewater commissions, particularly the smaller ones who may not have the resources to hire such expertise.

1.51 Information on provincial standards associated with the operation of wastewater treatment facilities may be found in Appendix 2.

Department of Local Government

1.52 The Department of Local Government is responsible for administering and enforcing the Municipalities Act. Perhaps the most important section of that Act relating to wastewater commissions is Section 189(18) that states:

For the purposes of this section, a corporation created or continued under section 15.2 of the Clean Environment Act shall be deemed to be a municipality.

1.53 This section means that municipal financial reporting standards and other reporting requirements as established by the Department of Local Government must be complied with by provincial wastewater commissions. So, wastewater commissions must maintain balanced budgets, and provide the Department with a copy of their annual budget. They may also establish reserve funds, charge users rates for services provided, and access funds through certain funding avenues open to municipalities.

1.54 We also investigated whether provincial wastewater commissions are subject to the Public Purchasing Act administered by the Department. Regional solid waste commissions, which have comparable operational mandates to wastewater commissions, are required to comply with the Public Purchasing Act.

1.55 Upon enquiry, a Local Government representative stated:

Following our review of the Municipalities Act, the Clean Environment Act and the Public Purchasing Act we have concluded that wastewater commissions are not subject to the Public Purchasing Act.

1.56 A representative of the Department of Supply and Services indicated that they “*have never processed anything on behalf of the wastewater commissions.*”

1.57 As discussed later in this report, all three of the large wastewater commissions in the Province are planning or completing significant upgrades to their facilities to meet the new Canadian Council of Ministers of the Environment standards referred to in Appendix 2. However, there is currently no legislated requirement as to the purchasing process they must follow in completing those upgrades, meaning that a risk exists that appropriate purchasing practices will not be followed. Also, as discussed later in this report, during our review we noted the lack of tendering of insurance by the Greater Moncton Sewerage Commission.

1.58 In our opinion wastewater commissions should follow fair and accountable purchasing processes and be

required to comply with the Public Purchasing Act, similar to solid waste commissions, given that they are provincial agencies that spend public money.

Recommendation

1.59 We recommend necessary steps be taken by the Department of Environment to ensure wastewater commissions comply with the Public Purchasing Act.

**Provincial
wastewater
commissions**

1.60 There are nine wastewater commissions in the Province. They are:

- The Greater Moncton Sewerage Commission
- The Fredericton Area Pollution Control Commission
- The Greater Shediac Sewerage Commission
- La Commission des Egouts de Val D'Amours Inc.
- Musquash Sewerage Commission
- Michaud Sewerage Commission 1986 Inc.
- La Commission des Egouts d'Allardville
- The St. Margarets Water and Wastewater Commission
- The Apohaqui Sewerage Commission

1.61 Other wastewater processing facilities in the Province are either private or a part of a municipal entity. In completing our work, we selected the four largest wastewater commissions and sent them a preliminary information survey. These commissions were:

- The Greater Moncton Sewerage Commission which provides service to the Cities of Moncton and Dieppe, and the Town of Riverview.
- The Fredericton Area Pollution Control Commission which provides service to the City of Fredericton. Prior to the 1973 amalgamation, the area served consisted of the Village of Barkers Point, the Village of Nashwaaksis, the Town of Marysville and the City of Fredericton.
- The Greater Shediac Sewerage Commission which provides service to the Town of Shediac, along with some local service districts in the area.
- La Commission des Egouts de Val D'Amours Inc. which provides service to a few small towns and local service districts in the north-eastern part of the Province.

1.62 Exhibits 1.1 and 1.2 below provide some comparative general and governance information about the four selected commissions.

Exhibit 1.1 – General Information (as of December 31, 2009 unless otherwise indicated)

Commission	Date of Incorporation	Level of Processing	Number of Staff	Operating Revenues (fiscal year)	Total Assets (December 31)	Capital Reserve Fund (December 31)
The Greater Moncton Sewerage Commission	3 March 1983	Primary (Chemically-assisted)	13	\$7,640,864	\$105,825,642	\$8,512,747
The Fredericton Area Pollution Control Commission	3 July 1968	Secondary (Biological)	8	\$2,061,298	\$17,158,314	\$40,000
The Greater Shediac Sewerage Commission	25 June 1969	Secondary (lagoon)	6	\$1,471,358	\$28,456,334	\$896,006
La Commission des Egouts de Val D'Amours Inc.	7 November 1991	Secondary (lagoon)	1 (part-time)	\$262,914 (2008)	\$7,252,007 (2008)	\$33,354 (2008)

Exhibit 1.2 - Governance Information (Averages as of October 2009)

Commission	Number of board members	Average Term	Longest Serving	Frequency of Meetings	Annual General Meeting Held?
The Greater Moncton Sewerage Commission	6	14.3 years	27 years	Monthly (additional meetings scheduled if needed)	No
The Fredericton Area Pollution Control Commission	6	18 years	29 years	Monthly	Yes
The Greater Shediac Sewerage Commission	11	11.5 years	21.5 years	Monthly	Yes
La Commission des Egouts de Val D'Amours Inc.	8	12.9 years	18 years (4 members)	Regular	No

1.63 Based on the information we obtained through our survey and because of the lack of monitoring and oversight of commission activities by the Province, we chose to further review three of the four wastewater commissions. These were the Fredericton Area Pollution Control Commission, the Greater Shediac Sewerage Commission, and the Greater Moncton Sewerage Commission. The fourth commission we

surveyed, la Commission des Egouts de Val D'Amours Inc. was not examined any further due to its small size.

1.64 A key step completed during our review involved a line by line comparison of revenues, expenditures, and reserves reported in the financial statements of the three large commissions. This analysis showed no significant variances for the Fredericton and Greater Shediac commissions. However, some significant differences in expenditure patterns and reserves were noted for the Greater Moncton Sewerage Commission. These are discussed in detail in the next section, along with a number of other issues we identified in our subsequent review of that commission.

**Greater Moncton
Sewerage
Commission**
*Operations and Capital
projects*

1.65 Since 1994, the Greater Moncton Sewerage Commission has provided chemically-assisted primary processing with sludge dewatering of wastewater for the City of Moncton, the City of Dieppe, and the Town of Riverview. The Commission owns, operates and maintains a network of 35 kilometers of collector sewers and tunnels, nine pumping stations, a large wastewater processing facility located in Riverview, and a composting facility located in Moncton. The three municipalities own, operate, and maintain the wastewater collection and trunk lines that connect with the Commission's network.

1.66 The Commission bills the three municipalities for all services provided at a commission-approved per unit rate which was \$140 during 2009. The number of billing units to be charged for each category of user (i.e. residential, industrial, commercial and institutional) is specified in the individual bylaws of the three municipalities. The municipalities include Commission costs as a component in setting the water and sewerage rates that they use in billing end users of water and sewerage services. Most Commission revenues come from the three municipalities. However, it also obtains some revenue by allowing septage disposal by private operators at the Riverview treatment plant.

1.67 Part of original Department of Environment regulatory activities in 1970s and 1980s under the Clean Environment Act was to assist municipalities to allow them, or associated wastewater commissions, to build secondary-level wastewater treatment plants.

Government records indicate that the Commission was provided with approximately \$44.5 million through the Water Pollution Control Grant Program and Clean Water Grant Program during the period from 1983/84 to 1995/96.

- 1.68** The Commission's main pumping station, located at the plant site in Riverview, was put on line in 1989. Since that time the plant has been expanded in capacity, underground tunnel connections have been constructed, equipment has been modernized, and a composting operation has been built on a separate site.
- 1.69** The current facility has been assessed by the Department of Environment as high risk based upon criteria in the Canada-Wide Strategy for the Management of Municipal Wastewater Effluent upon which the new Canadian Council of Ministers of the Environment (CCME) standards are based. Consequently the Department has informed the Commission, by a letter dated July 7, 2009, that it must upgrade its facility to provide biological (i.e. secondary level) treatment of wastewater within the next ten years. This will require installing and integrating two biological processing units into the treatment facility, at an estimated cost of \$40 to \$50 million.
- 1.70** The Commission is currently planning this upgrade as part of the implementation of its long term strategy. Implementation of this strategy is expected to cost approximately \$120 million in total, which includes the estimated \$40 to \$50 million to meet CCME standards. Implementation of this strategy will include not only the move to biological treatment, but also construction of a secondary river crossing, an enhanced network of pumping stations to be designed to protect against sewer overflow discharges, and other enhancements to the Riverview facility. The Commission has requested provincial funding to assist it in meeting the provincially-imposed ten-year deadline for moving to biological processing and in completing its other planned long-term projects.
- 1.71** However, we would note that audited financial statements show capital expenditures by the Commission totaling \$12.9 million over the period from 2005 to 2009. Also, during that period an additional

\$2.5 million was transferred to the reserve fund. At December 31, 2009, the reserve fund balance was \$8.5 million. We were also informed that the rate the Commission charges to the three municipalities was increased by \$20 per unit (i.e. to \$160) for 2011. Therefore, it is important to note that the Commission may be able to internally finance some or all of the enhancements needed to meet the new CCME standards.

Biosolids

1.72 The Greater Moncton Sewerage Commission is operating a composting plant adjacent to the Westmorland Albert Solid Waste Corporation facility in Moncton. The composting plant, which produces high-grade Type A compost, was officially opened in 2008 and it now allows the Commission to process most of their bio-solids in-house. Two private composting companies that were previously being used have been completely phased out and a third receives less volume from the Commission than it did previously. A Commission representative indicated that public acceptance of the finished compost product, which is currently being provided free of charge to local citizens who visit the plant site, has been good and is growing. The Commission expects compost produced by the plant to eventually become a revenue producer.

1.73 A Commission representative estimated the cost of producing compost in-house to be \$40 to \$45 per ton, which is somewhat more expensive than using private composting companies which cost approximately \$20 per ton plus shipping. However, the Commission believes it is of higher quality than privately-produced compost. They cite it is cheaper than paying the \$63 per ton tipping fees that would be charged to dump biosolids at the local Westmorland Albert Solid Waste Commission landfill. The Chair stated that by not selecting the landfill option, the Commission has diverted over 10,000 tons of sludge annually, thus saving landfill space and preventing the discharge of methane gas into the atmosphere.

1.74 Further, the Commission believes that by applying its own expertise in processing biosolids into compost, it is able to ensure that potentially harmful effects are properly mitigated. It does not believe it could provide such assurances if its biosolids were being composted by

private operators.

Governance structure

1.75 As shown in exhibit 1.2 above, there are six members on the board of the Greater Moncton Sewerage Commission. The original conceptual plan (i.e. the Touchie document) for the Commission was developed in 1983 by Boyd A. Touchie Engineering Ltd. and Anderson Associates Limited in consultation with the three municipalities and the Province. As suggested in the Touchie document, two members are appointed to represent Moncton, and one each from Dieppe and Riverview, along with a fifth member, the Chair, who is to be someone acceptable to all three municipalities. The Province may appoint a sixth member to the board for whom no municipality is specified if it wishes.

1.76 The identification of potential candidates for the Commission board has always been based upon the 1983 Touchie document. The names of recommended candidates have been agreed upon by specific municipalities and forwarded through the Commission to the Province. However, appointments to the board have always been made by the Lieutenant-Governor in Council as specified in the Clean Environment Act.

1.77 Changes to the provincial appointment policy to allow direct application for board positions by interested individuals have caused concerns on the part of the Commission board and the three municipalities. In particular, the Chair indicated that these changes were made without any consultation with the three municipalities or the Commission, and run contrary to their interpretation of the intent of the Touchie document.

1.78 During our review, we identified the following concerns related to board governance at the Commission.

- The current board includes two long serving members, the Chair who has been in that position since the Greater Moncton Sewerage Commission was established 27 years ago, and the Vice-Chair, who has served on the board for 22 years. Three additional long-serving members resigned from the board during the fall of 2009 after having served 15, 21, and 26 years on the board. No other member of the board has served for more than two years. As

already noted, governance best practices would include setting term limits for members which would preclude individuals from serving excessively-long terms like these.

- Two individuals who were in attendance at board meetings during early 2010, and were listed as commissioners in the minutes, were not appointed by the Lieutenant-Governor in Council until 15 July 2010. They had only been recommended to the Province by the Commission and the related municipalities prior to that date.
- The Commission does not hold an annual general meeting as required in By-Law 1.23. We note that By-Law 1.16(a) requires that auditors are to be appointed at the annual meeting. Their survey response indicated that instead of an annual general meeting, they, “*report formally to the three municipalities of Moncton, Dieppe and Riverview, on a yearly basis, and informally more often as the need or occasion requires. We make public presentations at the three councils as required and are available to answer any questions that may arise. ...*”

1.79 We made the following additional observations relating to the governance of the Greater Moncton Sewerage Commission.

- Most board business is conducted by the board as a whole. However, there is a Salary and Benefits Review committee in place involving one board member and the director of operations.
- According to Commission Bylaws 1.16 and 1.19 to 1.22, the Secretary and Treasurer are to be elected from among board members, the Chair is selected in consultation with the municipalities of Moncton, Dieppe and Riverview, and the Vice-Chair is selected by the Lieutenant-Governor in Council. Bylaws 1.19, 1.21 and 1.22 give the Chair, the Secretary and the Treasurer signing authority. The Chair indicated that the Vice-Chair has also been given signing authority.
- There are five By-Laws, all of which were approved in their present form between 1983 and 1987. They have not been updated in the past 23 years, although they do appear to be quite similar to those of the Fredericton Area Pollution Control Commission and the Greater Shediac Sewerage Commission.

Oversight by stakeholders

1.80 There is little monitoring and oversight of the Greater Moncton Sewerage Commission by the Province, aside from that required in relation to the Department of Environment's issuance of the Commission's provincial certificate of approval to operate. The Department of Local Government receives and files the annual Commission budget and audited financial statements. The Department of Environment is also provided with the Commission's audited financial statements. Neither department uses this information for monitoring purposes. The Commission has chosen to adopt a pay-as-you-go approach to fund plant improvements since receiving \$44.5 million in provincial funding towards construction of the initial processing facility in the mid-1980s, so it has no involvement with the provincial Municipal Capital Borrowing Board.

1.81 Further, the City of Moncton, the City of Dieppe, and the Town of Riverview have limited formal contact with the Commission. In practice, the only regularly-scheduled formal contact between it and the municipalities are yearly meetings during which the Commission presents its audited financial results and answers questions from the city councils. This gives municipalities limited opportunity for formal oversight of the Commission. Further, municipalities have no formal involvement in planning the Commission's capital projects, and they do not approve its budget or rates.

1.82 The Chair did indicate that he keeps the mayors and councils of each municipality up to date on any issues that concern their municipalities. As well the Chair indicated that board representatives nominated by the three municipalities also have contact with them, and the Director of Operations and the Director of Special Projects do meet with municipal staff as they feel necessary.

1.83 Our discussions with municipal representatives indicated concerns with respect to accountability. Two of the three municipal representatives believe councils have limited ability to hold the Commission to account for its performance. Specifically, under current legislation they cannot compel the Commission to provide them with information they need, and they cannot independently replace board members who they

feel are not acting in the best interests of their municipality. Further, concern was expressed that application of the new provincial appointment policy might result in someone being appointed who has no connection with the municipality, thereby reducing their ability to hold the Commission to account.

1.84 On the other hand, one of the three indicated no concern with the current accountability relationship, stating GMSC provides answers when asked, noted the good reputation of the Commission, felt they have a good eye on the finances and believe current rates to be fair. However, the same municipality indicated the Commission had not presented Council with a budget lately, nor had they provided a presentation on the \$120 million future expansion project.

1.85 All three municipalities suggested that legislation be changed to allow them to directly appoint their representatives on the Commission board as they are the ones funding the commission, not the Province. This would be similar to the process under the provincial regulation for solid waste commissions where the Lieutenant-Governor in Council only appoints local service district representatives and the municipalities appoint their own representative board members.

Division of duties
between the board and
management

1.86 Initially, our purpose in examining the Greater Moncton Sewerage Commission in more detail was to understand the differences we noted between expenditures and reserves reported by the Commission compared with those shown for other commissions. However, we observed in our first meeting with the Commission that the division between the board and management was not clear, and that the board seemed to be involved in areas that should be handled by management.

1.87 The Conference Board of Canada report, “*Corporate Governance Best Practices – A Blueprint for the Post-Enron Era*”, includes the following comment about the relative roles of a board and management.

A strong and effective board should have a clear view of its role in relationship to management. The board’s duty is to focus on guidance and strategic oversight, while it is management’s duty to run the company’s business ... general board

responsibilities should include:...

- *Reviewing and approving management's strategic and business plans ...*
- *Selecting, monitoring, advising, evaluating, compensating, and if necessary replacing the CEO ...*
- *Reviewing and approving the corporation's financial objectives ...*
- *Reviewing and approving material transactions not in the ordinary course of business*
- *Monitoring corporate performance against strategic business plans, including overseeing operating results on a regular basis to evaluate whether the business is being properly managed...*

1.88 Conversely, a letter dated July 15, 2009 addressed to the Minister of Environment from the Chair explains the board's interpretation of its role as follows:

The reality of the administrative and political process of Water and Wastewater Commissions and the GMSC [i.e. Greater Moncton Sewerage Commission] in particular is as follows:

- i) The elected officials for the GMSC are the Mayors and Councilors of the Municipalities of Moncton, Dieppe and Riverview;*
- ii) The Commission members serve at the pleasure of the authorities who appoint them i.e. Moncton, Dieppe and Riverview or the Province of New Brunswick as the case may be. The tenure of commission members is based on whether or not they are doing a good job. The municipalities are at liberty to replace members at any time if commission members are not doing a good job. As well municipalities do not lose the benefit of the expertise of members simply due to their length of tenure.*
- iii) The commission members play a similar role as the senior public servants in the province of New Brunswick. The role of staff personnel is to be primarily responsible for the operation of the facilities and the Commission members are responsible for other issues, including the vision, direction and implementation of policies and ongoing improvements.*
- iv) The suggestion to have commission members*

*appointed for a four year term, with the possibility of two additional four year terms, followed by a mandatory sitting out for four years before being eligible to sit an additional term must be viewed in the same light as if all **public civil service employees** were ordered to leave the public service for four years after working twelve years. You can imagine the negative consequences this would have on the management of government. The same scenario applies to the commissions. ...*

1.89 The letter goes on to say:

...Managing wastewater treatment plants effectively requires specialized and expert knowledge that is not learned on the streets or in university classes. The learning curve is a very long one and experienced members are crucial to the proper functioning of commissions. Commission members have to look at least 20 years into the future and have to have the benefit of hindsight and knowledge acquired by years of service.

1.90 We disagree with the Chair's assertions on two key points.

- **Chair's assertion:** Board members are "appointed" by the three municipalities and may be replaced by the municipalities if they are not doing a good job.
- **AG Comment:** In fact, as previously discussed, provincial legislation clearly indicates that all wastewater commission board members are appointed by the Lieutenant-Governor in Council, and may also be removed by that body, although in the past candidates recommended by municipalities have been appointed.
- **Chair's assertion:** Board members have a similar role to that of senior public servants (i.e. are members of senior management.) and therefore need to develop substantial operational expertise over an extended period of service.
- **AG Comment:** Management and staff need to have sufficient and appropriate technical and management skills. Volunteer board members do not. Commission board members are

appointed by the Province to govern the Greater Moncton Sewerage Commission, not manage it. As such, they are appointed for the general skills, experience and business sense that they bring. Board members are there to provide oversight, reviewing and questioning management plans and performance, rather than initiating projects and making management-level decisions. Further, in order to be able to effectively hold management accountable for organizational performance on behalf of Commission stakeholders, it is critical that the roles and responsibilities of the board be distinct from those of management.

1.91 We also noted:

- The “Manager of Special Projects”, who is shown on the Greater Moncton Sewerage Commission’s organization chart as reporting to the Director of Operations, is being assigned work directly by the Chair/board without the involvement of the Director of Operations. Such projects have involved research, travel and advocacy activities not directly related to the operation of the facility.
- A recently-appointed board member indicated that he has been assigned responsibility by the board for energy efficiency at the processing plant.

1.92 In practice, this board is not operating as a governing board, but rather as an executive management committee. And, in practice, the Chair is the CEO of the Greater Moncton Sewerage Commission. Consequently, the board cannot hold the current Director of Operations (i.e. the nominal CEO) accountable for corporate performance because that individual does not have control over all aspects of the operation. Given the very limited stakeholder monitoring and oversight that takes place, this raises the question as to whom the effective CEO of the Greater Moncton Sewerage Commission (i.e. the Chair) is, in fact, accountable.

1.93 In conclusion, based on our review, we do not believe that this Commission is subject to sufficient monitoring and oversight. As will be discussed in the next section, there have been some financial decisions

taken that should have been questioned, and in our opinion overturned by the board. We believe that involved municipalities and local ratepayers should be concerned with the current situation.

Financial management

- 1.94** We noted the Board reviews and approves monthly financial statements which include budget to actual detail as well as past historical results.
- 1.95** However, a key step completed during our review involved a line by line comparison of revenues, expenditures, and reserves reported in the financial statements of the three large commissions. From that review, we noted a number of expenditure classifications where the Greater Moncton Sewerage Commission's costs were significantly different than those incurred by the Fredericton Area Pollution Control Commission and the Greater Shediac Sewerage Commission. In particular "insurance", "commissioners' expense", and "travel and continuing education" were all significantly higher on a proportionate basis for the Greater Moncton Sewerage Commission. We also noted that "conference matters", an expense unique to the Moncton commission, was very high for the 2007 fiscal year.
- 1.96** Because of the number of variances encountered in our review of the Greater Moncton Sewerage Commission statements, and the correspondingly higher risk related to the existence of these variances, we decided to spend additional time looking at the Commission's financial management practices and general financial records, and reviewing specific accounts and transactions.
- 1.97** From our review, we identified the following issues of concern relating to financial controls and propriety of expenditures.
- 1.98** The Commission has no comptroller and there is limited management control over financial decision-making. The Director of Operations administers purchasing related to operations and maintenance. However, the Chair usually provides up front authorization for activities not directly related to operations, such as the 2007 World Conference, preparation of the Global Atlas of Biosolids, travel by the Chair and other board members, and travel and

committee/board activities undertaken by the Manager of Special Projects. These initiatives (and related expenditures) are not always approved in advance by the Board nor is the Director of Operations always made aware of them.

1.99 Board members have sole authority to sign cheques. Senior management do not. All cheques are signed at board meetings. The Director of Operations indicated that he reviews the complete list of payables, invoices and P.O.'s prior to any meeting. The Chair also stated that board members receive a list of cheques to be signed a minimum of 24 hours before each meeting. Supporting documentation for each payable amount is made available for inspection by board members at those meetings. However in practice, because of the other agenda items that must be covered during a typical board meeting, we believe it would be difficult for board members to adequately scrutinize all backup. For example the February 2010 payables listing contained 90 separate items. Consequently, there is an ongoing risk that cheques will be issued where appropriate, sufficient backup documentation does not exist.

1.100 Travel by board members and staff for conferences, meetings, and continuing education is common. Some travel for operational matters (e.g. observation of alternate operating practices at other facilities), continuing education, and the occasional conference should be expected for staff. However, we believe that the number of national and international trips being taken by board members and senior staff for conferences and other meetings during the period under review was excessive.

1.101 During the 2007 to early 2010 period, the three Commission representatives travelling the most were:

- the Chair, who took 4 domestic, 1 US, and 4 international trips;
- the Manager of Special Projects, who took 16 domestic, 3 US, and 2 international trips; and
- the Director of Operations who took 5 domestic, 4 US, and 3 international trips.

1.102 Five international trips taken between 2007 and 2009 and not directly related to operations cost the Commission \$86,890 and included:

- International Water Association world conference in Katmandu, Nepal – 2009 - \$10,442 for the Chair and Manager Special of Projects, who was a keynote speaker at that conference;
- International Water Association world conference in Copenhagen, Denmark – 2009 - \$7,348 for one board member;
- International Water Association world conference in Vienna, Austria – 2008 - \$30,542 for the Chair, one other board member, and the Manager of Special Projects to launch the *Global Atlas* discussed below;
- United Nations – Water for African Cities conference – Nairobi, Kenya – 2007 - \$9,873 for Chair, Director of Operations, and a contracted consultant in response to an invitation from the United Nations. Note that the cost figure represents the Commission's net cost as certain of the Chair's travel costs were reimbursed by the United Nations; and
- International Water Association world conference in Antalya, Turkey – 2007 - \$28,685 for Chair, one other board member, the Director of Operations, and a contracted consultant. The Chair indicated that this trip was taken in anticipation of a similar conference in Moncton in 2007.

1.103 One additional international trip was taken to Germany in 2008 by the Director of Operations. It related to the development of the Commission's composting operation and cost \$5,214.

1.104 Staff from the other two commissions we reviewed travelled much less over the same period, and members of their boards travelled rarely. Also, trips taken by representatives of the Fredericton Area Pollution Control Commission and the Greater Shediac Sewerage Commission were always in the Eastern Canada area.

1.105 During the summer of 2007, the Greater Moncton Sewerage Commission hosted an International Water

Association world conference in Moncton. The net budget for this conference (i.e. the amount the Commission was expected to cover) was initially \$204,000. However, actual net cost to the Commission to host the 468 attendees was \$530,852 as reported in the Commission's financial statements. Costs included \$102,000 for hotel conference facilities and rooms, \$106,000 for a special evening banquet held in a rented tent onsite at the Riverview facility, and \$179,000 paid to one supplier for printing and promotional services associated with the conference. Reported expenses do not include the cost of management, staff and consulting time associated with planning and hosting the conference.

1.106 Insurance expense as disclosed in the Commission's financial statements was approximately \$189,000 for 2009 (4.5 percent of general and operating expenses), \$182,000 for 2008, and \$178,000 for 2007. These premiums are significantly higher than those of the other two commissions we examined. Upon discussion, we learned that the Moncton commission had been purchasing services from the same insurance broker for over ten years without issuing a public tender. The Chair indicated that the broker goes to the market as needed to verify the various price options and makes a recommendation annually to the board. According to the Chair, the board then approves or rejects that recommendation.

1.107 Extending the Public Purchasing Act, as previously discussed, to cover wastewater commissions would require the Commission to call tenders periodically in purchasing insurance.

1.108 Recent Commission Christmas parties for a staff of 13, board of 6, their spouses, and their invited guests have included restaurant buffets, professional musical performances and gifts for staff members. Total Christmas party costs for 2007 were \$6,739, for 2008 were \$5,600, and for 2009 were \$7,109.

1.109 The Chair's blackberry usage charges over the period from February 2007 to January 2010 which totaled \$20,311 an average of over \$550/month, were paid by the Commission. Board members are provided with either a Blackberry or a laptop computer by the

Commission and associated costs are also covered. This benefit is conferred on members as an alternative to paying per diems for meeting attendance. Per diems are only paid to board members who are travelling on Commission business. Costs associated with Blackberries and computers provided to other board members appeared to be minimal.

1.110 Monthly payments of \$800 (i.e. \$9,600 annually) coded as “Reimbursement of Office Expenses” were made personally to the Chair during the period we reviewed. (i.e. from early 2007 to early 2010.) No invoices were on file. Upon further enquiry, we were provided with a copy of Commission board minutes dated 14 March 1996 that included the following item. *“Policy re: Reimbursement of Expenses. The Greater Moncton Sewerage Commission’s policy is that it will reimburse costs incurred by the Chairman in his duties, in particular a portion of the salary of a secretary plus the use of office equipment and supplies. The value of these costs are established at 20 hours per month of secretarial work valued at \$30.00 per hour plus \$200.00 per month lump sum for equipment and supplies. Carried.”* Commission staff indicated that this arrangement has not been reviewed recently.

1.111 During a brief review of invoices we noted two cases, totaling \$5,800 in claims, where the backup supporting payments made to the Chair for travel did not include original invoices but only email requests for payment and some backup calculations. Cheques reimbursing these amounts were duly signed by board members. All reimbursements should have proper supporting documentation.

1.112 Based upon our findings, we have concluded the Chair/board of directors has made a number of questionable financial decisions on behalf of the Greater Moncton Sewerage Commission, and financial management at Commission needs to be improved. The Chair/board of directors has assumed a management role in initiating many significant financial transactions on behalf of the Commission. We believe that this role is inconsistent with the board’s responsibility to govern the Commission. In particular, because the board is also responsible for approving the financial transactions it has initiated, there is no effective internal oversight relating

to those transactions.

Capital reserves

1.113 As of December 31, 2009, capital reserves of \$8.5 million had been set aside by the board of directors. As of December 31, 2008 the balance was approximately \$7.0 million. Representatives of the board indicated that it is their intention to increase this reserve to \$10 million and maintain it at that level for the foreseeable future.

1.114 The board chair indicated that it is a contingency fund to cover costs of the replacement, over time, of major capital equipment due to the predictable deterioration of machinery through usage and obsolescence, as well as the situation where something catastrophic happens at the Riverview facility that is not covered by the current insurance policy. We have no concerns with the creation of reserve funds in general. However, we noted questionable practices associated with this particular reserve fund as described below.

1.115 There are two Commission by-laws dealing with the establishment of reserve funds. Sections 3 and 4 of both bylaws state:

3. Each year the Board of Directors of the Commission shall determine by annual resolution the amount of money to be transferred to the Reserve Fund.

4. The amount transferred to the Reserve Fund shall not exceed 7% of the gross revenue derived in the previous fiscal year from the proceeds of the services provided by the Commission.

1.116 Setting up such a capital reserve essentially means that money is being collected from current ratepayers to fund the cost of delivering future services. The terms of Section 4 of the two by-laws was intended to limit the extent of the impact on current ratepayers in any one year, but appears to have been ignored by the board as is shown in Exhibit 1.3.

Exhibit 1.3 Excess Transfers to Greater Moncton Sewerage Commission Reserve Fund

Fiscal Year	Gross Revenue of Previous Year	Allowable Transfer to Reserves (7% of Gross Revenue)	Actual Transfer to Reserves (as approved by Board)	Excess Transfer to Reserve
2008	\$7.012 million (2007)	\$491,000	\$1,000,000	\$509,000
2009	\$7.363 million (2008)	\$515,000	\$1,500,000	\$985,000

1.117 The total reserve fund balance of \$8.5 million at December 31, 2009 represented in excess of one year's operating revenue from ratepayers.

1.118 The by-laws also state:

6. The money transferred into the Reserve Fund established under this by-law shall be invested or reinvested in accordance with the Trustees Act.

1.119 Section 2 of the Trustees Act states:

Unless a trustee is otherwise authorized or directed by an express provision of the law or of the will or other instrument creating the trust or defining his powers and duties, he may invest trust money in any kind of property, real, personal or mixed, but in so doing, he shall exercise the judgment and care that a man of prudence, discretion and intelligence would exercise as a trustee of the property of others.

1.120 Note 3 to the December 31, 2009 Greater Moncton Sewerage Commission financial statements indicate, "Investments carried in the reserve accounts consist of savings funds." The Commission has no documented investment policy. Given the size of the reserve and the duty of judgment and care under the Trustees Act, one would expect an investment policy more rigorous than holding the \$8.5 million in a savings account.

Mandate

1.121 The Clean Environment Act clearly establishes the parameters within which provincial wastewater commissions may operate.

*15.2(2) A corporation constituted under subsection (1) may
(a) construct, acquire, establish, enlarge, control, manage, maintain and operate waterworks or*

wastewater works;
 (b) provide and supply water to a person;
 (c) receive, treat or dispose of wastewater from a person;
 (d) make arrangements and enter into agreements with a person with respect to the operation of waterworks, wastewater works, supply of water or the reception, treatment and disposal of wastewater;
 (e) acquire, hold and dispose of real or personal property;
 (f) engage and pay personnel;
 (g) finance, with the approval of the Lieutenant-Governor in Council, any of its undertakings;
 (h) assess, charge and collect fees for services from a person;
 (i) operate a waterworks or wastewater works on behalf of a government, or a person; and
 (j) generally, perform any function or duty prescribed by the Lieutenant-Governor in Council.

1.122 During our interviews and review of financial records and other documents at the Commission, we noted one area in which it had heavily involved itself that we feel is beyond its mandate. Specifically the Commission, led by the Chair, appears to have taken on a national and international advocacy role for wastewater processing, and in particular environmentally responsible treatment/disposal of bio-solids. The Chair indicated that this was a mandate the Commission had to adopt as the knowledge, leadership and expertise on this issue was either lacking or non-existent, both provincially and nationally. As well the Chair reported that the Commission is impacted adversely by the negative publicity generated by utilities that do not follow proper practices. Therefore, he believes it is necessary to try to increase both public knowledge, and the expertise of the wastewater processing industry as a whole.

1.123 In 2009, the Chair stated:

“At the request of the United Nations-UN Habitat we were invited to make a presentation on environmental issues to managers of African cities at the UN-Habitat campus in Nairobi Kenya. Plans are in the offing for the GMSC to do other projects, in co-operation with, and at the request of, UN-Habitat. As well, in order to advance the global

environmental agenda and to better our knowledge and operations, we have accepted the invitation to attend and speak at various conferences ranging from China, to Norway, Turkey, New Zealand, Hungary, Nepal, USA and Canada to name a few.”

1.124 Representatives of the board also indicated that these trips have educational value for those who attend. However, regardless of the benefits in terms of educating attendees, or in making business contacts, international involvement appears to be well outside the bounds of what was intended when the Commission was established. National and international learning, presentations, and advocacy activities have included:

- i) Board members, most commonly the Chair accompanied in many cases by senior management, travelling within North America and to various locations around the world to attend conferences, meetings, and to give presentations.
- ii) Upon board request, senior staff members, and on occasion the Chair, preparing and presenting research documents on various aspects of wastewater and biosolids processing. A September 2009 letter to the Minister of Environment from the Greater Moncton Sewerage Commission’s Chair provides one example of the type of initiative with which the Commission has become involved. In it the Chair made the following comment. *“Again with the aim of benefitting our knowledge and operations, we have initiated, were editors, and worked in cooperation with the United Nations (UN Habitat) to publish the following: “Global Atlas of Excreta, Wastewater Sludge, and Biosolids Management: Moving Forward the Sustainable and Welcome Uses of a Global Resource”*. The over 600 page Atlas, compiled during the United Nations-declared “Year of Sanitation”, identifies the Chair and Manager of Special Projects as two of the three co-editors. It collected specific articles written in various countries by highly specialized professionals in the field. Commission representatives travelled to the International Water Association world conference in Vienna, Austria in 2008 to officially launch the Atlas.
- iii) The Commission, in the summer of 2007, hosted an International Water Association conference in Moncton as previously discussed. In the September

2009 letter to the Minister of Environment, the Chair stated:

With the aim of benefitting our knowledge and operations, we held a World Environmental Conference in Moncton in 2007, attended by representatives of 44 countries, as well as the United Nations, the World Health Organization, and the World Bank. The ability to host this world conference was due to the fact that relationships, on a global level, have been established over the years.

Also, in an article written by the Chair and a Commission consultant, and included in the September 2007 issue of Environmental Science & Engineering Magazine, the goals of this conference were reported as follows:

The local objectives involved educating and engaging the local public, media, regulators and politicians, as well as advancing the scientific knowledge related to the local issues. Another objective was to increase the network of professionals necessary for it to carry out its long-term plans in an effective manner. The national objectives also involved educating and engaging the national public, media, regulators and politicians. As well, one of the primary objectives was to continue the promotion of the work necessary to implement a Canadian Biosolids Partnership (CBP), which is an initiative of the GMSC [Greater Moncton Sewerage Commission].... The GMSC also had a global objective of attempting to initiate a Global Biosolids Network or Organization. This global organization would bring together various stakeholders, including the International Water Association, around the issue of biosolids, and would have, among its objectives, the promotion of standards, regulations, applications and management of wastewater biosolids, together with research and the education of the general public.

1.125 The Chair also indicated that the Commission, its staff, and the Chair himself have been consulted by various

organizations, including the Federal Department of the Environment and the Federal Minister of the Environment and were invited to speak at the Atlantic Mayors' Conference.

1.126 These are activities in which neither of the other two large provincial wastewater commissions we reviewed are involved and they consume resources intended for use in providing service to ratepayers in Moncton, Dieppe and Riverview.

*Greater Moncton
Sewerage Commission –
Recommendations*

1.127 We recommend, the Department of Environment, in consultation and agreement with the City of Moncton, the City of Dieppe and the Town of Riverview, evaluate the existing GMSC Board member composition in light of our findings regarding questionable governance, accountability and financial management practices. Emphasis should be placed on ensuring GMSC operates under a modern governance framework and that it is well positioned to serve ratepayers of Moncton, Riverview and Dieppe within the legislated mandate.

1.128 Once the Board of GMSC has been determined, the Department of Environment, in cooperation with the Greater Moncton Sewerage Commission, the Department of Local Government, the City of Moncton, the City of Dieppe, and the Town of Riverview, should develop a plan specifically geared to improve:

- governance processes;
- financial management;
- monitoring and oversight;
- accountability; and
- compliance with provincial legislation at the Greater Moncton Sewerage Commission.

**The Fredericton
Area Pollution
Control
Commission
Operations**

1.129 The Fredericton Area Pollution Control Commission provides chemically-assisted primary and secondary processing of wastewater for the City of Fredericton. The Commission owns, operates and maintains most lift stations and the processing plant, while the City of Fredericton owns, operates and maintains the wastewater collection system, along with two lagoons and some pumping stations.

1.130 The Commission does not bill the City of Fredericton on a per unit basis, but rather based upon an overall budget that is developed and approved by the commission, reviewed by City of Fredericton staff, and included in the overall water and sewerage budgets approved by Fredericton City Council. The City of Fredericton includes Commission costs as a component in setting the water and sewerage rates charged by its civic water and sewerage utility to end users.

1.131 The Commission's processing facility was last upgraded in 1994. However, it is now in the process of completing an upgrade that will allow it to meet the new Canadian Council of Ministers of the Environment (CCME) guidelines and provide effective wastewater treatment to the City for the next 25 years. A representative of the City of Fredericton indicated that they have no concerns about the services provided by the Fredericton Area Pollution Control Commission.

1.132 Government records indicate that the Commission has received approximately \$8.1 million in government funding from 1972 to date, most of which was provided under the Municipal Sewage Grant Program. It expected to receive additional funding of \$4.3 million under the Building Canada Fund to cover 67% of costs associated with the ongoing upgrade.

1.133 The Commission currently transfers bio-solids produced from wastewater treatment to a private composting company. At the time we were completing our fieldwork, there were some concerns about the future of that company. However, Commission management has made arrangements with the Fredericton Region Solid Waste Commission to accept their bio-solids for disposal should there be a change in the status of the composting company.

Conclusions from our review examination

1.134 The six-member board of directors appears to be governing, rather than managing the Commission. However, we are concerned that the median length of service for board members as of October 2009 was 18 years and the longest serving member had been on the board for 29 years. The terms of service are much longer than modern governance best practices would recommend.

1.135 We believe that the Fredericton Area Pollution Control Commission is subject to sufficient monitoring and oversight, primarily through the financial and operational oversight provided by the City of Fredericton. This focus on monitoring the Commission by the City is, in part, because Commission costs have a direct relationship on the water and sewerage rates that must be charged to end users by the City.

1.136 Also, from our examination we have concluded that all Fredericton Area Pollution Control Commission expenditure items as disclosed in their 2008 and 2009 financial statements appear to be reasonable.

1.137 Finally, during our review of Commission's financial information, discussions with representatives of Fredericton Area Pollution Control Commission and the City of Fredericton, and tour of Fredericton facilities, we found no evidence that Fredericton is involved in any activities beyond those specified in Section 15.2(2) of the Clean Environment Act.

The Greater Shediac Sewerage Commission Operations

1.138 The Greater Shediac Sewerage Commission provides lagoon-based secondary processing of wastewater for the Town of Shediac, and the Pointe-Du-Chene, Scoudouc, and Scoudouc Road local service districts. Effluent from processing is also subjected to ultraviolet light to further reduce its bacterial content at the main Commission facility. Effluent from this facility currently meets the new Canadian Council of Ministers of the Environment (CCME) standards. A second Commission facility, located in Scoudouc, is presently being upgraded to allow it to meet CCME standards.

1.139 Government records indicate that the Commission has been provided with approximately \$15.7 million in government funding since 1973 through various federal and provincial programs such as the Gas Tax Fund, the Municipal/Rural Infrastructure Fund, the Municipal

Sewage Grant Program, and others.

1.140 Plans have been made to dredge the sewerage lagoons at the main facility and resulting bio-solids will be processed by a private composting company. The Greater Moncton Sewerage Commission assisted the Greater Shediac Commission in planning the disposal of its bio-solids.

1.141 Unlike the other two large commissions in the Province, the Greater Shediac Sewerage Commission owns all sewerage collection systems as well as lift stations and the processing plant. End users of wastewater treatment services are billed directly by the Commission. There is no Town of Shediac or local service district involvement in either billing or collection of revenues, although the Town of Shediac passes on any complaints it receives from local customers to the Commission.

1.142 Rates differ for different areas serviced by the Commission. Because its infrastructure was developed in stages, the cost of infrastructure extensions required to service particular areas can be accurately estimated. Rates charged during 2009 were \$220, \$375, or \$475 per unit depending on the area served. The two higher rates relate to extensions of the Commission's collection system and processing capabilities to outlying areas and were agreed upon by residents of those outlying areas prior to development.

1.143 Of the total of six staff at the Commission, three work in operations and three work in customer service handling billing, collections, and other administrative duties.

Conclusions from our review examination

1.144 The eleven-member board of directors appears to be governing, rather than managing the Commission. The board has adopted a number of good governance practices, including the adoption of a committee-based approach that enhances the quality of monitoring and oversight. Further, because the Commission is billing end users of their service, it must answer to ratepayers directly with regards to rates charged. And one councilor from the Town of Shediac serves as a member of the board. Consequently, we believe that this Commission is subject to sufficient monitoring and oversight.

1.145 However, for reasons outlined earlier in this report, we

are concerned that the median length of service for board members as of October 2009 was 12 years and the longest serving member had been on the board for 21.5 years.

1.146 We have also concluded that all Commission expenditure items as disclosed in their 2008 and 2009 financial statements appear to be reasonable.

1.147 Finally, during our review of Greater Shediac Sewerage Commission financial information, discussions with Commission representatives, and a tour of Commission facilities, we found no evidence that it is involved in any activities beyond those specified in Section 15.2(2) of the Clean Environment Act.

Appendix 1 – Wastewater commission operations and associated risks

1.148 Wastewater processing works as follows. Wastewater produced by residential, institutional, commercial and industrial sources is captured by a collection system and moved through a series of pipes using a combination of gravity and lift stations to a treatment facility. At the facility various processes are applied to the wastewater to remove sufficient biological and other contaminants from it to ensure that resulting effluent is of appropriate quality for release back into the Environment.

1.149 There are up to four stages of processing that may occur at a wastewater processing facility, depending upon the individual processing facility involved, and the effluent standards that must be met.

- Preliminary processing – screening incoming wastewater to remove materials such as plastics, wood, paper, and grit particles that are often found in raw wastewater.
- Primary processing – temporarily holding the wastewater in settling tanks or ponds (i.e. lagoons) where heavy solids can settle to the bottom for removal while lighter solids float to the surface for skimming. Where space is at a premium, chemicals are sometimes used to expedite this process.
- Secondary processing – removing dissolved and suspended biological matter from wastewater through the use of aerobic biological treatment processes (i.e. introducing micro-organisms that metabolize the biological matter, thereby allowing it to be removed from the wastewater.)
- Tertiary processing – a variety of additional processing methods that may be employed whenever specific wastewater contaminants that must be removed cannot be removed by primary or secondary treatment.

Appendix 2 – Provincial standards and policies for water and wastewater commission operations

Provincial standards for effluent

1.150 As part of its mandate, the Department of Environment is responsible for inspecting and reviewing the operations of wastewater commissions and providing them with certificates of approval to operate. Standards associated with that certification are based on the amount of organics contained in effluent released into a watercourse by the processing plant after all treatment has been completed, and would be similar to the quality of effluent produced by a typical secondary level wastewater treatment facility.

1.151 Current provincial standards do not address chemicals contained in wastewater effluent, and they only briefly touch on the disposal of biosolids removed from wastewater. A representative of the Department indicated current technology typically does not allow for the targeted cost-effective removal of chemicals from wastewater. Consequently treatment facilities are not designed for specific chemical removal. Secondary treatment processes may result in some unplanned removal of chemicals, although the extent of such chemical removal is not being measured.

1.152 Further, a departmental representative noted that research on the impact of many chemicals in wastewater effluent has yet to be done, or is ongoing. Where a significant negative impact on the receiving environment is determined to exist, the federal government, through Environment Canada, can address it by going to those responsible (e.g. manufacturers of cleaning products) and requiring that they change ingredients. Individual municipalities can also control chemicals in their wastewater through the introduction of a sewer-use bylaw.

New federal/provincial effluent standards to be introduced

1.153 On 17 February 2009, the Canadian Council of Ministers of the Environment (CCME), which includes both federal and provincial representatives, endorsed the *Canada-Wide Strategy for the Management of Municipal Wastewater Effluent*. The CCME website states:

The strategy sets out a harmonized framework to manage discharges from more than 3,500

wastewater facilities in Canada, many of which are currently in need of repair and upgrading. It provides an agreed-upon path forward for achieving regulatory clarity for owners of municipal wastewater facilities. ...

1.154 The strategy was developed to create consistency in the treatment of wastewater effluent across jurisdictions. In the past, it was possible for wastewater commissions to meet their own provincial standards but fail to meet those specified in the federal Fisheries Act.

1.155 The new standards set a basic effluent quality that must be met, adjusted to a higher standard as necessary depending on the receiving environment. The strategy requires that all wastewater processors provide a minimum of secondary level processing. Any necessary plant upgrades must be completed within a 10 to 30 year timeframe, depending on the assessed risk of the facility. Lower risk facilities are to be given a longer timeframe within which to comply. All Commissions we met with were aware of these new standards.

1.156 In New Brunswick, the Department of Environment will be responsible for ensuring compliance through its approval to operate reviews, although the federal government has retained the right to enforce its own legislation at its discretion.

Provincial policy relating to biosolids

1.157 Biosolids are essentially the organic sludge that is removed from raw wastewater during processing. They do not include plastics and non bio-degradable items. Those items are screened out at the intake point of wastewater processing facilities and disposed of at local solid waste landfills.

1.158 A Department of Environment representative provided the following information relative to provincial policy in this area

- Certificates of approval to operate require that all biosolids produced by wastewater commissions must be disposed of at an approved facility. (i.e. Either a composting company or a solid waste landfill.)
- In the past the Department of Environment issued permits allowing the spreading of biosolids directly on farmland. However, in 2006 the Department

decided that better options for disposal were now available throughout the Province, and informed wastewater processors that such permits would no longer be issued.

- Approved composting facilities may be run by private companies or by wastewater commissions. In either case they need an appropriate Department of Environment certificate of approval to operate.
- The Province provides no funding to composting facilities, except as may be provided to private companies through Business New Brunswick.
- Solid waste commissions must accept biosolids at their landfills provided they contain at least 15% solids as specified in their own regulation. However, the Department considers this means of disposal of biosolids as a fallback option, preferring that they be used in compost.
- Septic tank cleaners may make agreements with wastewater commissions relating to the disposal of sludge they collect.