



A Special Investigation of

**SUGAR NOTCH BOROUGH,
LUZERNE COUNTY, PENNSYLVANIA**

February 1, 2007

————— **AUDITOR GENERAL JACK WAGNER** —————

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

February 1, 2007

The Honorable Sharon Ellis
President
Sugar Notch Borough Council
151 Brook Street
Sugar Notch, Pennsylvania 18706

Dear Ms. Ellis:

In November 2005, the United States Secret Service (“Secret Service”) contacted the Pennsylvania Department of the Auditor General’s Office of Special Investigations (“OSI”) and the Pennsylvania Treasury’s Office of Investigations (“TOI”) to review allegations of misuse and abuse of state funds that stemmed from the Secret Service’s ongoing investigation of the Borough’s now-former mayor (“Mayor”). This report contains the results of our joint investigation.

In the process of conducting this investigation, OSI, TOI, and the Secret Service reviewed the Borough’s financial records and interviewed several current and former Borough officials and employees. OSI and TOI also interviewed officials from the Pennsylvania Department of Environmental Protection (“DEP”). The period under review generally covered the calendar years 2004 and 2005, unless otherwise specified.

During the course of this investigation, we found the following:

- The Mayor borrowed \$600 from a “slush fund” maintained by the Borough’s Police Department, and no documentation exists to prove that the money was reimbursed to the fund;
- The Borough paid the Mayor \$2,500 in advance for backhoe work to be performed in the Borough, which appears to violate the Borough Code, the Public Official and Employee Ethics Act, and the Mayor’s Oath of Office, and for which supporting documentation is lacking to prove that all of the work was completed; and
- The Borough inappropriately paid both the Mayor’s and his son’s cellular telephone bills and attempted to disguise the payments on the Borough Treasurer’s reports.

Although it was alleged that the Mayor used the Borough's Home Depot credit card to purchase \$2,000 worth of personal items for his home, a sample of credit card statements reviewed by OSI did not appear to contain any illegitimate or fraudulent purchases. Nevertheless, based on what we did find during our investigation, we recommend that the Borough Council improve its oversight over credit card transactions and payments of credit card bills.

We found no improprieties relating to the Borough's grant application and subsequent receipt of grant funds from DEP for assistance in purchasing a yard waste grinder machine, nor did we find any improper collusion between the Mayor and the non-profit company that operated, maintained, and stored the machine.

We thank the Borough for its cooperation with this investigation and urge it to implement all of the recommendations made in this report. The Department of the Auditor General will follow up at the appropriate time to determine whether all recommendations have been implemented. We are also forwarding copies of this report to the District Attorney of Luzerne County, the United States Attorney for the Middle District of Pennsylvania, and the State Ethics Commission for whatever further action they may deem appropriate.

We also thank the Secret Service for referring this matter us, and the Pennsylvania Treasury's Office of Investigations for its assistance with the investigation.

This report is a public document and its distribution is not limited. Additional copies may be obtained through the Department's website, www.auditorgen.state.pa.us.

Sincerely,

JACK WAGNER
Auditor General

TABLE OF CONTENTS

Executive Summary	1
Background and Introduction	4
Findings:	
I. The Mayor Borrowed \$600 From A “Slush Fund” Maintained By The Borough’s Police Department, And No Documentation Exists To Prove That The Money Was Reimbursed To The Fund	6
Conclusions and Recommendations	6
II. The Borough Paid The Mayor \$2,500 In Advance For Backhoe Work To Be Performed In The Borough, Which Appears To Violate The Borough Code, The Public Official And Employee Ethics Act, And The Mayor’s Oath Of Office, And For Which Supporting Documentation Is Lacking To Prove That All Of The Work Was Completed.....	8
Conclusions and Recommendations	12
III. The Borough Inappropriately Paid Both The Mayor’s And His Son’s Cellular Telephone Bills And Attempted To Disguise The Payments On The Borough Treasurer’s Reports.....	13
Conclusions and Recommendations	16
Additional Comments	17
Borough’s Response to Draft Report.....	20
The Department’s Comments on Borough’s Response	22
Report Distribution List	23

EXECUTIVE SUMMARY

FINDINGS	CONCLUSIONS & RECOMMENDATIONS
<p><u>FINDING I:</u> The Borough’s former Mayor borrowed \$600 from a “slush fund” maintained by the Borough’s Police Department, and no documentation exists to prove that the money was reimbursed to the fund.</p>	<p>We question the former Police Chief’s rationale in providing the Mayor with cash loans from donated funds, the appropriateness of these transactions, and the fact that the loans were not documented. We recommend that the Borough attempt to recover the \$600 from the Mayor and that it institute a system of controls with respect to this fund.</p>
<p><u>FINDING II:</u> The Borough paid the Mayor \$2,500 in advance for backhoe work to be performed in the Borough, which appears to violate the Borough Code, the Public Official and Employee Ethics Act, and the Mayor’s Oath of Office, and for which supporting documentation is lacking to prove that all of the work was completed.</p>	<p>The advance payment that the Mayor received from the Borough for backhoe work, whether approved by the Borough Council or not, appears to have violated the Borough Code, the Ethics Act, and the Mayor’s Oath of Office. The Ethics Act also appears to have been violated because no Statements of Financial Interest were found on file for the Mayor for the years 1995–1999, 2001–2003, and 2005. Additionally, due to the lack of documentation, it is unclear whether the Mayor actually performed all work for which he was paid by the Borough.</p> <p>We recommend that the Borough Council:</p> <ul style="list-style-type: none"> • Not approve any contract valued at \$500 or more with any elected and/or appointed Borough official or employee unless the provisions of Section 1103(f) of the Ethics Act are strictly observed; • Seek reimbursement from the Mayor for payment for services for which there is no documentation supporting that such services were actually provided; • Institute measures to ensure and monitor compliance by all Borough officials and employees with the requirements and

	<p>restrictions of the Ethics Act and the Borough Code;</p> <ul style="list-style-type: none"> • Ensure that all outstanding Statements of Financial Interest are filed for the Mayor and other Borough officials and employees who are required to file them; and • Pursue remedies set forth in Section 1404 of the Borough Code. <p>We are forwarding copies of this report to the District Attorney of Luzerne County and to the State Ethics Commission for whatever action they may deem appropriate.</p>
<p><u>FINDING III:</u> The Borough inappropriately paid both the Mayor’s and his son’s cellular telephone bills and attempted to disguise the payments on the Borough Treasurer’s reports.</p>	<p>The Borough paid at least \$1,073.40 in Cingular cell phone bills that were direct-debited from the Sewer Operations and Maintenance Account. An additional bill of \$1,446.81 from Cingular for September 2005 was still outstanding when investigative fieldwork concluded. We are concerned about these Cingular expenses and transactions for the following reasons:</p> <ul style="list-style-type: none"> • We found no record of the Borough Council approval in any official meeting minutes; • The Mayor’s son’s cell phone expenses were paid for by the Borough; • A direct debit to the Borough’s Sewer Operations and Maintenance Account was set up to pay for these expenses without the Treasurer’s or the Borough Council’s knowledge; and • The Treasurer attempted to hide the payments for these expenses. <p>We recommend that the Borough Council:</p> <ul style="list-style-type: none"> • Determine if Council approval and authorization were ever granted that allowed the Mayor’s cell phone expenses to be paid by the Borough; • If so, then at least seek reimbursement for the cell phone expenses of the Mayor’s son. If not, then the Borough should seek total reimbursement for all cell phone expenses

	<p>related to the Mayor and his son, including any interest and penalties;</p> <ul style="list-style-type: none"> • Investigate the Treasurer’s activities with regard to the hiding of these payments on Treasurer’s Reports and take whatever action it deems appropriate and necessary; and • Investigate how a direct debit authorization was placed on the Sewer Operations and Maintenance Account and correct any deficiencies found in internal controls. <p>We are forwarding copies of this report to the District Attorney of Luzerne County, the United States Attorney for the Middle District of Pennsylvania, and the State Ethics Commission for whatever further action they may deem appropriate.</p>
--	---

ADDITIONAL COMMENTS:

We investigated two additional allegations. Although it was alleged that the Mayor used the Borough’s Home Depot credit card to purchase \$2,000 worth of personal items for his home, a sample of credit card statements that we reviewed did not appear to contain any illegitimate or fraudulent purchases. However, based on what we did find during our investigation, we recommend that the Borough Council:

- Conduct its own review of the Home Depot credit card purchases to determine if they were legitimate, necessary, and beneficial to the Borough’s residents;
- Conduct a review of payments for credit card bills to ensure that the balances are being paid in a timely manner and in full, so as not to incur unnecessary late fees and finance charges; and
- Institute a system of controls over the use of credit cards to ensure that, in the future, such cards are used only for authorized purchases.

In addition, we found no improprieties relating to the Borough’s grant application and subsequent receipt of grant funds from the Pennsylvania Department of Environmental Protection for assistance in purchasing a yard waste grinder machine, nor did we find any improper collusion between the Mayor and the non-profit company that operated, maintained, and stored the machine.

BACKGROUND AND INTRODUCTION

In November 2005, the United States Secret Service (“Secret Service”) contacted the Department of the Auditor General’s Office of Special Investigations (“OSI”) and the Pennsylvania Treasury Department’s Office of Investigations (“TOI”) regarding an indictment of the now-former Mayor (“Mayor”) of Sugar Notch Borough (“Borough”), Luzerne County, Pennsylvania. The Secret Service conducted the investigation that resulted in the indictment.

The Mayor was indicted by a federal grand jury on June 14, 2005, and charged with credit card fraud. Specifically, he was indicted on charges that he had obtained a credit card using someone else’s name and had purchased at least \$8,000 worth of merchandise with the card.

Due to the indictment, the Mayor resigned on November 1, 2005, and a new mayor was appointed to take his place. The Mayor was re-elected in the November 2005 election, but was forced to resign once again after being sworn in on January 3, 2006. The current mayor was appointed by Borough Council on that same date following his predecessor’s resignation.

The Mayor agreed to plead guilty to a lesser federal charge of bank larceny in January 2006. The plea agreement was filed on January 4, 2006, in the United States District Court for the Middle District of Pennsylvania in Scranton. The Mayor was sentenced on April 24, 2006 to serve three years of probation and to pay \$100 in court costs and nearly \$5,000 in restitution.

The Secret Service contacted TOI and OSI in November 2005 because the scope of its investigation had expanded to include several additional allegations of fraudulent or illegal activities involving the Mayor, including the following:

- **Allegation No. 1:** The Mayor took \$600 from the Borough’s Police Department.
- **Allegation No. 2:** The Borough paid the Mayor \$2,500 in advance for backhoe work that was to be performed for the Borough. It was further alleged that he retained the entire \$2,500, even though he never actually performed \$2,500 worth of work for the Borough, and the work that he did perform was never documented on time cards.
- **Allegation No. 3:** The Borough inappropriately paid the cellular telephone bills for both the Mayor and the Mayor’s son, and attempted to disguise the payments on reports from the Borough’s Secretary/Treasurer (“Treasurer”). It

was further alleged that approval for the Mayor's cellular telephone was never voted on at a Borough Council meeting.

- **Allegation No. 4:** The Mayor used the Borough's Home Depot credit card to purchase \$2,000 worth of personal items for his home.
- **Allegation No. 5:** There were improprieties relating to Borough's grant application to, and subsequent use of grant funds received from, the Pennsylvania Department of Environmental Protection ("DEP") for assistance in purchasing a yard waste grinder machine. It was further alleged that the Mayor was in collusion with the non-profit company that operated, maintained, and stored the machine.

These allegations caused OSI and TOI to launch a joint investigation of the Borough's financial operations and the Mayor's activities. OSI and TOI continued to assist in the ongoing federal investigation being conducted by the Secret Service in the form of information gathering and sharing, financial records review, and witness interviews.

OSI, TOI, and the Secret Service conducted interviews of several current and former Borough officials and employees and performed a comprehensive review of the Borough's financial records that included cancelled checks, Treasurer's reports, ledgers, credit card statements, and grant applications/awards. OSI and TOI also interviewed DEP officials. The period under review was calendar years 2004 and 2005, unless otherwise specified.

The Borough was provided with a draft copy of this report for its review and comment. The Borough's response is included at the end of this report, followed by the Department's comments on the Borough's response. The Pennsylvania Treasury Department informed OSI that it did not plan to issue its own public report regarding this matter; however, TOI did review a draft copy of this report and had no comments.

FINDINGS AND RECOMMENDATIONS

FINDING I: **The Mayor Borrowed \$600 From A “Slush Fund” Maintained By The Borough’s Police Department, And No Documentation Exists To Prove That The Money Was Reimbursed To The Fund.**

In an interview on November 30, 2005, the Borough’s former Police Chief, in response to questions, stated that:

- The Mayor did in fact receive “loans” from a police department account.
- He loaned the Mayor \$300 approximately five years ago and another \$300 ten months later.
- These loans were strictly cash and not checks.
- He gave the Mayor the cash loans because the Mayor stated that the Mayor “needed some money.”
- The Police Department account from which these funds were disbursed was called a “slush fund.”
- This “slush fund” was totally comprised of donations made by Borough citizens.
- Borough citizens would make donations if the Borough plowed their driveway in the winter or if they just wanted to “help out” the Police Department.
- This “slush fund” was typically used to purchase floor mats for police cruisers, pens, paper clips, and office supplies needed for daily operations.
- He and the Mayor have been friends for a while and this is why he loaned the Mayor the money.
- There were no “improprieties” with these transactions, and the Mayor always intended to pay back the money.
- The Mayor never gave him a specific reason why the Mayor needed the money, and he did not ask for one.
- There would be no record of these transactions anywhere within the Borough’s records.
- The Mayor reimbursed the fund in full “and then some.”
- The Mayor reimbursed the fund in several cash payments of \$25 or \$30 increments.

Conclusions & Recommendations:

OSI was able to confirm that the Mayor did receive \$600 in cash payments from a Police Department account that was funded solely by citizen donations. OSI questions the former Police Chief’s rationale in providing the Mayor with cash loans from donated funds, the appropriateness of these transactions, and the fact that the loans were not documented.

We recommend that the Borough attempt to recover the \$600 from the Mayor and that it institute a system of controls with respect to this fund.

FINDING II: The Borough Paid The Mayor \$2,500 In Advance For Backhoe Work To Be Performed In The Borough, Which Appears To Violate The Borough Code, The Public Official And Employee Ethics Act, And The Mayor's Oath Of Office, And For Which Supporting Documentation Is Lacking To Prove That All Of The Work Was Completed.

In an interview on November 29, 2005, the Borough's Council President ("President"), in response to questions, stated that:

- The Mayor received a \$2,500 advance payment for backhoe work that he was to perform within the Borough.
- In March 2005, the Mayor contacted her to obtain Council approval for a \$2,500 advance payment relating to work he was asked to perform within the Borough.
- The approval for the advance payment was needed from four Council members.
- The payment was for backhoe work that the Mayor was going to perform on the Borough's sewer system.
- She did not recall when the Council approved the Mayor to perform this work or if she was even on the Council at the time.

The Borough's Solicitor ("Solicitor") also attended this interview. He stated that the Council approved the Mayor to perform 250 hours of work at a rate of \$10 per hour, and that the Mayor was to use the Borough's backhoe because no other Borough employee was authorized or could operate the machinery.

OSI reviewed all available Borough Council meeting minutes for the period of January 2003 to November 2005. OSI notes that many sets of meeting minutes were unavailable, handwritten, and/or illegible. OSI found no documented record of Council approval for the Mayor to perform this backhoe work in any of the meeting minutes available. However, the Solicitor stated that, at a Council meeting on November 15, 2005, the May 2004 Council meeting minutes were amended to reference the Council's approval for the Mayor to perform the backhoe work.

OSI interviewed the Treasurer on November 29, 2005, to obtain a copy of the \$2,500 advance payment check disbursed by the Borough, to review documented work performed by the Mayor, and to discuss the payment. OSI's review of the check disbursed to the Mayor indicated that it was written on March 22, 2005, and made payable to the Mayor in the amount of \$2,500. The check was disbursed from the Borough's General Fund Account maintained at Citizen's Bank. The Treasurer stated that the President instructed her to write the check to the Mayor.

OSI also reviewed the March 2005 Treasurer's Report. When asked by OSI why the March 2005 Treasurer's Report did not list any payments to the Mayor, the Treasurer stated that she had listed the \$2,500 payment on the report as paid to a particular oil

company, which was a vendor used by the Borough on a regular basis, “arbitrarily” in order to hide it from other Council members and not raise any controversy.

OSI attempted to obtain and review invoices submitted by the Mayor documenting work he performed at the Borough, but they were non-existent. The Treasurer stated that the Mayor did not submit time cards or invoices for work performed but that other Borough employees observed the Mayor performing work, which is how she knew how much work was performed. The Solicitor also confirmed this was how the Mayor’s work was documented.

During the interview on November 29, 2005, the President and Solicitor both stated that it is documented that the Mayor only performed 132 hours of backhoe work at the Borough which, at a rate of \$10 per hour, would entitle him to only \$1,320. The Solicitor stated that other Borough employees present at the time the Mayor performed work had verified these hours. If the Mayor had only performed 132 hours of work, that would mean that he did not perform the additional 118 hours worth of work at the Borough, for which he had been paid \$1,180 in advance to perform.

However, in its response to a draft copy of this report, the Borough told OSI for the first time that the Mayor did complete all 250 hours of work in 2005 and that, therefore, no reimbursement of any part of the \$2,500 advance payment would be necessary. The Borough did not provide any documentation to support this new assertion.

Regardless of whether or not the Mayor performed all the work for which he was paid in advance, he appears to have violated the Borough Code. The violation in question is found in Section 1404 of the Borough Code, as amended, which provides in pertinent part:

§ 1404. Penalty for personal interest in contracts or purchases

Except as otherwise provided in this act, no borough official either elected or appointed, who knows or who by the exercise of reasonable diligence could know, shall be interested to any appreciable degree either directly or indirectly in any purchase made or contract entered into or expenditure of money made by the borough or relating to the business of the borough, involving the expenditure by the borough of more than one thousand dollars (\$1000) in any calendar year * * *. Any official or appointee who shall knowingly violate the provisions of this section shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the borough and to ouster from office, and shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or not exceeding one hundred eighty days' imprisonment, or both.¹

¹ 53 P.S. § 46404.

Violation of this section has very serious consequences, as it provides for the assessment of a surcharge to the extent of the damage shown to be sustained by the Borough and removal from office. The violation is classified a misdemeanor and upon conviction the official shall be required to pay a fine not exceeding \$1,000 or serve a sentence not exceeding 180 days imprisonment, or both.²

Additionally, the Mayor appears to have violated the “Oath of Office” statement that he signed on March 16, 1995, in Luzerne County District Court, which states as follows:

I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office (or employment) other than compensation allowed by law.

OSI reviewed the Mayor’s Statements of Financial Interest (“SFIs”) filed at the Borough, to determine if they were filed with the Pennsylvania State Ethics Commission in accordance with state law.³ The SFIs reviewed by OSI were for calendar years 1994, 2000, and 2004. No other SFIs were available at the Borough for the Mayor. The SFI for 2004 indicated “direct and indirect sources of income” for the Mayor as “PENNDOT,” meaning the Pennsylvania Department of Transportation. No other income was listed.

According to the SFI’s instructions, an SFI must be filed “no later than May 1 of each year a position is held and of the year after leaving such a position.” As of June 1, 2006, one month past the deadline, the Mayor had not filed an SFI for calendar year 2005.⁴ In addition, because the Mayor served in office for at least part of 2006, he will be required to file an SFI for that year by May 1, 2007.

The Mayor should have listed the \$2,500 advance payment in the “direct or indirect sources of income section” on the SFI for 2005. The Borough also should have issued the Mayor an IRS Form 1099 for the \$2,500 paid to him during the year to ensure that it would be included on his federal, state, and local tax returns for calendar year 2005.

The advance payment also appears to have violated Section 1103(a) of the Public Official and Employee Ethics Act (“Ethics Act”), which states, “No public official or public employee shall engage in conduct that constitutes a conflict of interest.”⁵ A “conflict of interest” is defined as follows:

² *Id.*

³ *See* 65 Pa. C.S. §§ 1104-1105.

⁴ OSI requested and reviewed available SFIs filed by Borough officials for calendar year 2005. The Mayor’s form was not filed as of June 1, 2006. As a point of reference to avoid confusion, OSI notes that the Mayor’s brother, who was a Borough Councilman, did complete the form for 2005.

⁵ 65 Pa. C.S. § 1103(a).

§ 1102. Definitions

“Conflict” or “conflict of interest.” Use by a public official . . . of the authority of his office . . . or any confidential information received through his holding public office . . . for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.⁶

The fact that the Mayor received a pecuniary benefit for entering into an agreement with the Borough to perform backhoe work on the sewer system appears to have violated the above-cited provisions of both the Borough Code and the Ethics Act.

Furthermore, this agreement, which was entered into surreptitiously and the existence of which was initially concealed from the Borough Council,⁷ also appears to be in violation of Section 1103(f) of the Ethics Act, which provides:

§ 1103. Restricted activities

(f) Contract.—No public official . . . or any business in which the person . . . is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official . . . is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official . . . is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official . . . shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.⁸

⁶ *Id.*

⁷ As previously stated, the minutes of the Borough Council Meeting of May 2004 were amended on November 15, 2005 to approve retroactively the arrangement to pay the Mayor for doing the backhoe work at a specified rate per hour and a specified dollar value for the work.

⁸ *Id.* § 1103(f).

Conclusions & Recommendations:

The advance payment that the Mayor received from the Borough for backhoe work, whether approved by the Borough Council or not, appears to have violated the Borough Code, the Ethics Act, and the Mayor's Oath of Office. The Ethics Act also appears to have been violated because no SFIs were found on file for the Mayor for the years 1995–1999, 2001–2003, and 2005. Additionally, due to the lack of documentation, it is unclear whether the Mayor actually performed all work for which he was paid by the Borough.

We recommend that the Borough Council:

- Not approve any contract valued at \$500 or more with any elected and/or appointed Borough official or employee unless the provisions of Section 1103(f) of the Ethics Act are strictly observed;
- Seek reimbursement from the Mayor for payment for services for which there is no documentation supporting that such services were actually provided;
- Institute measures to ensure and monitor compliance by all Borough officials and employees with the requirements and restrictions of the Ethics Act and the Borough Code;
- Ensure that all outstanding Statements of Financial Interest are filed for the Mayor and other Borough officials and employees who are required to file them; and
- Pursue remedies set forth in Section 1404 of the Borough Code.

We are also forwarding copies of this report to the District Attorney of Luzerne County and to the State Ethics Commission for whatever action they may deem appropriate.

FINDING III: The Borough Inappropriately Paid Both The Mayor's And His Son's Cellular Telephone Bills And Attempted To Disguise The Payments On The Borough Treasurer's Reports.

In an interview on November 29, 2005, with the Solicitor present, the Council President, in response to questions, stated that:

- A Cingular Wireless (“Cingular”) cellular telephone bill arrived at the Treasurer’s house in June 2005.⁹
- The bill listed two names (the Mayor and the Mayor’s son) and cell phone numbers on the account.
- She called the numbers listed on the bill, and the Mayor answered one of them.
- She stated that the Mayor told her that the phone bill was his, and he would come to the Treasurer’s house to pick it up.
- She conducted a cell phone bill review, because the Treasurer noticed “discrepancies” in the Borough’s Sewer Account¹⁰ balance and relayed them to her.
- The Cingular bills were mailed to P.O. Box 3, Ashley, Pennsylvania, 18706, in care of Sugar Notch Borough Sewer Operations and Maintenance Account.
- Additionally, only one bill was received by the Borough for both the Mayor’s and his son’s monthly cell phone usage.
- The Treasurer eventually receives all Borough mail.
- The Borough was paying for the Mayor’s and his son’s Cingular bills out of the Borough’s Sewer Operations and Maintenance Account, using a direct debit payment system.

The table on the following page lists bills received and payments made by the Borough to Cingular:

⁹ AT&T Wireless initially provided the Mayor and his son’s cell phone service until that company was purchased by Cingular.

¹⁰ OSI determined that the Borough’s Sewer and Operations and Maintenance Account is a checking account held at PNC Bank. Furthermore, according to the Solicitor, the account was created in 1990 or 1991, through a loan from the Pennsylvania Infrastructure Investment Authority, equaling a one-time \$1,000,000 payout at a 1% interest rate subsidized by the Commonwealth.

Table 1

**Payments for Cellular Telephone Bills for Mayor and Mayor's Son,
Nov. 2004-Sept. 2005**

Month and Year	Amount listed on Cingular Bill	Direct Debit Amount Paid by Borough	Notes and Description of Payments
11/2004	\$150.12	\$150.12	November Cingular bill
12/2004	\$53.32	\$53.32	December Cingular bill
1/2005	N/A	N/A	No bill received
2/2005	N/A	\$65	Non-Sufficient Funds charge
2/2005	\$205.27	\$205.27	February Cingular bill
3/2005	N/A	N/A	No bill received
4/2005	\$231.01	\$231.01	April Cingular bill
5/2005	\$368.68	\$368.68	May Cingular bill
6/2005	N/A	N/A	No bill received
7/2005	\$183.32	-\$183.32	Paid initially by Borough, then credited back by Cingular
8/2005	\$300	-\$300	Paid initially by Borough, then credited back by Cingular
9/2005	\$1,446.81	N/A	Final payment due from Borough for early termination of contract, prorated charges, finance charges, and past due charges
Total	\$2,938.53	\$1,073.40*	

**This total does not include the September 2005 Cingular bill for \$1,446.81 because, as of the date of this report, it is not clear who will ultimately pay that bill. In the Borough's response to a draft copy of this report, the Borough stated that it has been unsuccessful in obtaining reimbursement from the Mayor for his cell phone expenses. This total includes a \$65.00 Non-Sufficient Funds charge that was incurred by the Borough. The Borough's financial institution levied this charge due to lack of funds available in its account when Cingular attempted to complete the direct debit transaction.*

OSI conducted a review of Borough Council meeting minutes to determine whether the Council approved and authorized the Borough to pay for the Mayor's and his son's Cingular cell phone bills. OSI found no record of any Board approval or authorization for these expenses in any available meeting minutes.

In the November 29, 2005 interview, the Solicitor stated that:

- The Mayor told him the Borough Council approved the expense at the Council meeting held in August 2003.
- The Mayor did perform work on the Borough's sewer system.
- The approval and authorization for the cell phone expense could have been made at an "executive session" of Council, for which meeting minutes are not kept.

OSI conducted an interview with the Treasurer on November 29, 2005, to discuss the circumstances surrounding the Cingular direct debit payments made from the Borough's Sewer Operations and Maintenance account. The Solicitor was also present at this interview. The Treasurer, in response to questions, stated that:

- She saw “questionable” or “unfamiliar” charges on bank statements for the Borough's Sewer Account in July 2005.
- She originally thought that they were bank charges, because she did not thoroughly review bank statements and the charges dated back to November 2004.
- It was not until later that she realized that these “unfamiliar” charges were direct debits to the Borough's Sewer Operations and Maintenance Account for the Mayor's Cingular cell phone.
- She questioned the Mayor about these charges, and he indicated that they were, in fact, his cell phone bills.
- She did not know why there were no direct debits to the Sewer Operations and Maintenance Account for the months of January, March, and June 2005, regarding cell phone bills.
- She never directly received Cingular cell phone bills and never authorized Cingular to make direct debits to the Borough's Sewer Operations and Maintenance Account.
- All Borough cell phone bills were received by the Borough's Police Department.
- She “covered up” the Mayor's cell phone bill expenses at the Borough by listing them as payments on the Treasurer's Report to different Borough vendors.
- For the May and August 2005 cell phone bills, she listed Cingular direct debits as payments to the Borough's engineering vendor.
- For May 2005, the Borough actually paid \$6,262.50 to the engineering vendor based on invoices,¹¹ but the Treasurer's Report listed \$6,631 paid to the vendor.
- This difference of \$368.50 was the approximate amount of the Cingular direct debit for the same month.
- For August 2005, the Borough actually paid \$8,440 to the engineering vendor based on invoices,¹² but the Treasurer's Report listed \$8,740 paid to the vendor.
- This difference of \$300 was the exact amount of the Cingular direct debit for the same month.
- She arbitrarily chose the engineering vendor to “cover up” the Cingular direct debits for the Mayor's cell phone bills.

¹¹ Reference check number 1244, dated May 20, 2005, from the Borough's Sewer Operations and Maintenance Account held at PNC Bank.

¹² Reference check number 1267, dated August 26, 2005, from the Borough's Sewer Operations and Maintenance Account held at PNC Bank.

- She also knew it was wrong to do this, but she had to account for the expenses somehow.

On November 22, 2005, OSI reviewed a “General Investigative Report,” filed by the Pennsylvania State Police, Troop P, Wyoming, Pennsylvania, regarding the Mayor’s cell phone bills at the Borough. The Borough’s then-current Police Chief and the Council President provided the information for this report to the State Police. The State Police then forwarded the report to the Secret Service for inclusion in its investigation.

Conclusions & Recommendations:

The Borough paid at least \$1,073.40 in Cingular cell phone bills that were direct-debited from the Sewer Operations and Maintenance Account. OSI notes that an additional bill of \$1,446.81 from Cingular for September 2005 was still outstanding when investigative fieldwork concluded.¹³ OSI is concerned about these Cingular expenses and transactions for the following reasons:

- OSI found no record of the Borough Council approval in any official meeting minutes;
- The Mayor’s son’s cell phone expenses were paid for by the Borough;
- A direct debit to the Borough’s Sewer Operations and Maintenance Account was set up to pay for these expenses without the Treasurer’s or the Borough Council’s knowledge; and
- The Treasurer attempted to hide the payments for these expenses.

We recommend that the Borough Council do the following:

- Determine if Council approval and authorization were ever granted to allow the Mayor’s cell phone expenses to be paid by the Borough;
- If so, then at least seek reimbursement for the cell phone expenses of the Mayor’s son. If not, then the Borough should seek total reimbursement for all Cingular expenses related to the Mayor and his son, including any interest and penalties;
- Investigate the Treasurer’s activities with regard to the hiding of these payments on Treasurer’s Reports and take whatever action it deems appropriate and necessary; and
- Investigate how a direct debit authorization was placed on the Sewer Operations and Maintenance Account and correct any deficiencies found in internal controls.

We are forwarding copies of this report to the District Attorney of Luzerne County, the United States Attorney for the Middle District of Pennsylvania, and the State Ethics Commission for whatever further action they may deem appropriate.

¹³ See notation accompanying Table 1.

ADDITIONAL COMMENTS

We investigated two additional allegations regarding the Mayor's use of the Borough's Home Depot credit card and the Borough's use of state grant funds for the purchase of a yard waste grinder machine. Our conclusions and recommendations follow.

Mayor's Use of the Borough's Home Depot Credit Card

In an interview on November 29, 2005, the Borough's Treasurer stated that the Borough did in fact procure and use a Home Depot credit card. The Treasurer indicated that the credit card was originally obtained for the purpose of purchasing "several sump-pumps" because Borough residents' basements were flooding. The Treasurer stated that the Mayor's house was one home that she believed was flooded. The Borough's Solicitor, who also attended this interview, confirmed that this was how the Borough operated when residents' homes flooded. The Treasurer also stated that the credit card was used to purchase materials needed for the construction of a shed, such as shovels, rakes, and building products.

The Borough paid its Home Depot credit card bills out of its General Fund account, which, according to the Treasurer, was maintained at Citizen's Bank.

OSI was shown several examples of Home Depot credit card statements by the Treasurer to show the types of items purchased by the Borough's Maintenance Department. However, these examples did not show the entire history of charges. Of the examples reviewed, OSI did note that sump-pumps and generic construction materials were purchased with the credit card. OSI also noted that the credit card bills did not appear to be paid in a timely manner because they included finance charges and late fees. The Treasurer stated that the Borough could not afford to pay the entire balance for this card from month-to-month, so she only pays the minimum balance sometimes and does not require receipts for items purchased.

The Home Depot credit card statements provided to OSI by the Borough's Treasurer as examples did not appear to contain any illegitimate or fraudulent purchases. However, without reviewing all of the credit card statements, interviewing Borough personnel as to the purpose and legitimacy of purchases, and reviewing supporting documentation, no definitive conclusions can be made regarding these credit card expenditures. Based on what we found during our investigation, we recommend that the Borough Council:

- Conduct its own review of Home Depot credit card purchases to determine if they were legitimate, necessary, and beneficial to the Borough's residents;

- Conduct a review of payments for credit card bills to ensure that the balances are being paid in a timely manner and in full, so as not to incur unnecessary late fees and finance charges; and
- Institute a system of controls over the use of credit cards to ensure that, in the future, such cards are used only for authorized purchases.

DEP Grant for Purchase of Yard Waste Grinder Machine

On December 6, 2005, OSI contacted the Regional Planning and Recycling Coordinator for the Department of Environmental Protection's Waste Management Program to discuss the Borough's grant applications made to DEP, to request records, and to gain information on the allegation. TOI also contacted the same DEP representative regarding this issue.

The following is summary of information received from DEP records and interviews regarding the Borough's grant application for the purchase of a yard waste grinder machine ("Machine"). The records were reviewed by both OSI and TOI.

In December 2002 and June 2003, the Borough submitted grant applications to DEP requesting grant funds to purchase the Machine. The Machine was to be used in conjunction with Luzerne County's recycling program. The December 2002 grant application requested \$100,000 in funds from DEP to purchase the Machine and the June 2003 grant application requested \$151,515 in funds from DEP to purchase the Machine. The Borough was subsequently awarded both grants, totaling \$251,515, in 2004.

The Borough, with the Mayor listed as a contact person, applied for these grants. Records indicate the Machine was purchased for a total price of \$265,924.02. The Borough received a check from DEP totaling \$239,330.85, which was issued by the Pennsylvania Treasury Department in January 2005 for this purchase. The Borough deposited the funds and then cut a check (#2145) on January 20, 2005 for \$239,330.85 from its General Fund to the company that sells the Machine. The remaining \$12,184.15 awarded in DEP grant funds lapsed in December 2004, when the invoice for the purchase of the Machine showed that no additional funds were needed.

A not-for-profit company named Earth Conservancy, located in Ashley, Pennsylvania, provided the remaining \$26,593.17 needed to purchase the Machine. Earth Conservancy operates, maintains, and houses the Machine at its facility in the Hanover Crossing Business Park. The funds provided by Earth Conservancy were a requirement of the grant application. The grant application and subsequent award by DEP was contingent upon Earth Conservancy providing 10% matching funds to purchase the Machine. The DEP representative indicated that Earth Conservancy used the value of previously provided services, at predetermined rate, to constitute the 10% matching funds needed to purchase the equipment. The DEP representative stated that this is referred to as "Earth Conservancy using soft money," and is allowed by DEP and the Commonwealth's grant application standards and criteria. The DEP representative also

stated that one condition of using “soft money” is that no other grant funds or funds from DEP could have been disbursed previously relating to this piece of equipment. OSI and TOI did not find any evidence contradicting the assertion by the DEP representative.

OSI reviewed a Memorandum of Understanding, signed on December 18, 2002, between the Borough and Earth Conservancy that specifies each other’s duties with regard to maintenance, storage, use, and ownership of the Machine. The Memorandum of Understanding indicates that the Borough will hold the title and ownership of the Machine for its entire useful life.

Please note that no Borough Council meeting minutes reviewed by OSI specifically referenced the Borough’s application and subsequent receipt of DEP grant funds used to purchase the Machine. The meeting minutes also do not reference the cooperative agreement between the Borough and Earth Conservancy and/or the operation of the recycling center. Additionally, the President stated that she reviewed the meeting minutes and found none of the aforementioned references. However, a review of meeting minutes available indicated that, at an April 13, 2004 meeting, the Borough received “a grant for the compost and recycling center.” OSI was unable to determine whether this “grant” was the same DEP grant used to purchase the Machine.

Based on the review of records received from DEP, which included grant applications, invoices, contracts, and support documents, as well as the interview with the DEP representative, there does not appear to have been any impropriety with regard to the Borough’s purchase of the Machine, nor does there appear to have been any improper collusion between the Mayor and Earth Conservancy. The records reviewed indicate the Borough and Earth Conservancy followed the Commonwealth’s and DEP’s grant application requirements completely with regard to the purchase of the Machine. No further action needs to be taken by the Borough.

BOROUGH'S RESPONSE TO DRAFT REPORT

SUGAR NOTCH BOROUGH

CORNER MAIN & FREED STREETS
SUGAR NOTCH, PENNSYLVANIA 18706

December 11, 2006

Jeffrey H. Gribb, Director
Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, Pennsylvania 17120-0018

Re: Special Investigation of Sugar Notch Borough
Report Response

Dear Mr. Gribb:

Thank you for giving Sugar Notch Borough the opportunity to respond to your draft report, dated November 20, 2006.

In response to your findings and recommendations included in the report:

Finding I – The undersigned nor any other member of the current Council was aware of this situation, prior to receiving this report. We will move forward with your recommendation to recover the \$600 from the former Mayor, Patrick Mullin, and will do so as soon as we have confirmation from your office that this report is final. As an additional control, we no longer have "slush fund" and the Chief of Police, nor any other police officer, has access to Borough funds.

Finding II –

- 1) The Borough Council better understands it's obligations in matters such as these, and has not, and will not, approve any contract valued at \$500 or more with any elected and/or appointed Borough official or employee unless the provisions of Section 1103(f) of the Ethics Act are strictly observed.
- 2) The former Mayor completed 250 hours of work for backhoe services to the Borough. This work was completed in 2005 - therefore reimbursement for work unperformed is no longer necessary.
- 3) All current Council members were asked to review and become familiar with the Ethics Act and Borough Code relative to this type of matter to ensure compliance for all future endeavors. As Council President, I plan to remind Council members of this duty at least once annually, specifically during the January meeting of each new year.
- 4) The Borough Solicitor is involved in pursuing remedy as set forth in Section 1404 of the Borough Code.

Finding III –

- 1) We have been unable to formally establish that Council approved a cell phone for use by the Mayor – expenses to be paid from the Sewer Account. Unfortunately, this fact was not documented in meeting minutes. However, the approval of the opening of a cell phone account is recalled by several Council Members that served at that time. These Council Members state that the Mayor's opening of an account for his son, to be reimbursed in the same manner, was not approved, and therefore an abuse of the former Mayor's authority. In addition to your recommendations, we have been recording and documenting meeting minutes for all sessions, including Executive sessions. Minutes for each and every Council meeting is now documented and filed appropriately.

Jeffrey H. Gribb
December 11, 2006
Page 2

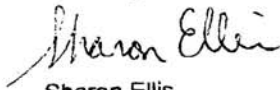
- 2) We have been attempting to seek reimbursement from the former Mayor for these expenses since late 2005, and will continue to do so. Unfortunately, we have not been successful in the recovery of any monies at this time. In addition, upon receiving your report, the Borough Solicitor, John Bednarz, has contacted the former Mayor's attorney, Attorney Adam Limongelli. As you are aware, Atty. Limongelli requested a copy of this report – per your direction, we have not provided a copy at this point in time.
- 3) We have acknowledged the Treasurer's activities and have also reviewed the apparent attempt to hide these expenses. Dorothy Narney resigned from her duties as Secretary and Treasurer on July , 2006. We have officially split the duties of Secretary and Treasurer going forward, having appointed Yvonne Pelchar as Secretary, and Mark Kus, as Treasurer, in August of 2006. Dorothy Narney is being paid hourly as a consultant, until such time that a proper transition can occur.
- 4) We have been unable to determine exactly how the direct debit authorization was placed on the Sewer Operations and Maintenance Account.

Lastly, please note that we have added additional measures to reconcile and prove expenses charged to the Borough's Home Depot card. These measures include, but are not limited to proof of receipt for all purchases and direct reconciliation to monthly statements.

Mr. Gribb, I would like to take this opportunity to state that the undersigned and the other current members of the Sugar Notch Borough Council take these allegations very seriously. We have made substantial changes to our policies and procedures, including but not limited to, separation of Council and appointed employee duties, better documentation of meeting minutes and other key facts and circumstances, and a more thorough review of each month's financial reports and all related transactional activities.

Should you have any further questions, please feel free to contact at

Sincerely,



Sharon Ellis
Sugar Notch Borough Council President

Cc: John Bednarz, Esquire

DEPARTMENT OF THE AUDITOR GENERAL'S COMMENTS ON BOROUGH'S RESPONSE TO DRAFT REPORT

We made minor changes to this report based on the Borough's response to the draft copy, but it remains essentially unchanged. We commend the Borough for the corrective actions that it has already taken in response to this investigation, which we hope will enable the Borough to operate more effectively and efficiently in the future.

Although we are pleased that the Borough has agreed to implement some of our recommendations, we urge the Borough to implement all of them. The Department of the Auditor General will follow up at the appropriate time to determine whether all recommendations have been implemented. In the meantime, we must briefly respond to the Borough's response as follows.

In its response to Finding II, the Borough committed to adhere strictly to Section 1103(f) of the Ethics Act. However, the Borough did not address the following important issues that are also discussed in the finding:

- Section 1103(a) of the Ethics Act and Section 1404 of the Borough Code;
- The lack of documentation supporting the Mayor's purported completion of all 250 hours of work for which he had been paid in advance; and
- Whether the Borough had sent an IRS Form 1099 for the payment.

We urge the Borough to consider these issues with its Solicitor and take appropriate action. In particular, if documents are not available to support the full \$2,500 payment to the Mayor, the Borough should request reimbursement for the undocumented hours. The Borough should also ensure that an IRS Form 1099 is sent to the Mayor with explicit instructions that the Mayor file amended federal, state, and local tax returns for 2005 if the income reflected in the Form 1099 has not already been reported in said returns.

In its response to Finding III, the Borough did not explain *why* it has been unsuccessful in recovering reimbursement from the Mayor for cellular telephone charges that both the Mayor and his son incurred at the Borough's expense. We urge the Borough to consider and pursue all available remedies with respect to obtaining sufficient reimbursement.

DISTRIBUTION LIST

This report was distributed initially to the members of the Borough Council of Sugar Notch Borough, the Borough's current mayor, the Borough's solicitor, and the following:

The Honorable Edward G. Rendell
Governor

State Treasurer
Harrisburg, PA

Peter J. Smith
Deputy State Treasurer for Audits
& Investigations

John J. Contino
Executive Director
State Ethics Commission

The Honorable Kathleen A. McGinty
Secretary, Department of Environmental Protection

The Honorable Michael J. Masch
Secretary of the Budget

The Honorable David W. Lupas
Luzerne County District Attorney

Harvey C. Eckert
Commonwealth Comptroller

Thomas A. Marino
U.S. Attorney for the Middle District of PA

Barbara Kosik-Whitaker
Assistant U.S. Attorney

William Slavoski
Regional Agent-in-Charge
U.S. Secret Service
Scranton Field Office

Robert Slama
Special Agent-in-Charge
U.S. Secret Service
Philadelphia Field Office

This report is matter of public record. Copies of this report are available on the Department of the Auditor General's website, www.auditorgen.state.pa.us, and from the Department's Office of Communications, 318 Finance Building, Harrisburg, Pennsylvania 17120.