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**INDEPENDENT STATE AUDITOR'S  
REPORT ON CERTAIN ACTIVITIES  
OF CERTAIN LOCAL SEPTIC SYSTEMS REPAIR GRANTS**

**OFFICIAL AUDIT  
REPORT  
SEPTEMBER 28, 1999**

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## INTRODUCTION

Background

As authorized by Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted an audit of the Community Septic Management Program's distribution of grants and loans to local communities for the repair of septic systems to meet the requirements of Title V, and the local communities' management and disbursement of these funds to eligible low- and moderate-income homeowners. On July 10, 1995, the Department of Environmental Protection signed an agreement with the Department of Housing and Community Development (DHCD) to administer the \$10 million Septic System Repair Program, including the joint awarding of grants. The funding for this program was authorized by Chapter 85, Section 2, of the Acts of 1994.

Septic grants of up to a maximum of \$100,000 were awarded to eligible municipalities. Contracts between the towns and DHCD commenced on January 3, 1996 and terminated on October 31, 1997. The awards were based on a formula that considered both the percentage of the municipality that does not have sewerage and the median household income of the community. Under the provisions of this program, approximately \$6,800,000 was awarded to 96 communities. Eligible homeowners applied for loans or betterments from their municipality and were required to repay the loans over a 10- or 20-year period at an interest rate of not more than 5%. Eligible homeowners with low or moderate income had first priority in their municipality for loans or betterments. Municipalities had to choose either the loan or betterment program to be offered to homeowners. Under the loan program, the homeowner oversaw construction, and the loan was placed against the property only. The loan was subordinate to existing loans and mortgages. Under the betterment program, each community's Board of Health oversaw construction, and the homeowner was personally responsible for repayment. Betterments were added to property tax bills, and the town held first position for repayment priority if property was sold or otherwise disposed of. Also, under these two programs elderly homeowners age 65 years or older with incomes of less than \$20,000 had the following options for deferral of payment:

- Loan Program: Elderly homeowners could request a deferred payment loan, under which the loan amount, with interest, would be paid at time of sale or transfer of the property.
- Betterment Program: Elderly homeowners may be eligible for deferral of payments pursuant to Chapter 80, Section 13B, of the General Laws, which allows for deferral of betterment payments at the time of sale or transfer of the property or on the death of the property owner.

Homeowners who qualified for a deferral did not have to make any payments until the expiration of the term of the deferral or the sale or other disposition of the property. All of the communities chose the betterment program with the exception of the town of Carver, which chose the loan program.

The municipalities were allowed to spend 10% of the total grant funds for their costs of administering the program. When a municipality entered into a Septic System Repair Program contract with the Commonwealth, it certified that all loan and betterment repayments, including interest and penalties, would be deposited in a separate Revolving Fund to be used to make additional loans or betterments. Each municipality treasurer was also required to establish a separate bank account once the program had been approved. Both grant and repayment funds must be deposited into this Revolving Fund account.

Local municipalities may decide to delegate certain functions of the Community Septic Management Program to a public regional agency for administration; however, compliance with program regulations and accountability rested with the community. Initial awarding of grants under this program has ended, and DHCD is in the process of collecting final financial data from the 96 municipalities as projects are completed. As of April 1998, a total of 90 participating communities have submitted final financial data, and the remaining six communities have unresolved administrative and reporting issues that were being addressed by the coordinator of the Septic System Repair Program at DHCD.

The Massachusetts Water Pollution Abatement Trust has taken over the responsibility for managing the loan program for the Community Septic Management Program. The trust, which is the state Revolving Loan Fund, helps finance wastewater treatment projects throughout the Commonwealth. It is administered through the State Treasurer's Office and is overseen by a three-member board, composed of the State Treasurer as chairman, the Secretary of the Executive Office for Administration and Finance, and the Commissioner of the Department of Environmental Protection. The trust was created in 1989 but

did not make its first loan until 1992. During 1997, the trust created a new fund to account for the receipts and disbursements in conjunction with the Commonwealth's Title V regulations. The Community Septic Management Program Fund was the recipient of funds from bond issuances from the trust's Third Pooled Loan Program Financing, which occurred on April 29, 1997. The fund is also used for pass-through assistance payments from the Commonwealth to communities to fund administrative costs in setting up loan programs to homeowners at the community level.

For our review, we examined the following municipalities:

<u>Administered by the Town</u>	<u>Administered by SRPEDD<sup>1</sup></u>	<u>Administered by MVC<sup>2</sup></u>
Carver <sup>3</sup> Westport	Berkley Freetown Rochester Swansea	Gosnold

<sup>1</sup> Southeastern Regional Planning and Economic Development District Agency (SRPEDD).

<sup>2</sup> Martha's Vineyard Commission.

<sup>3</sup> Administered partially by Northbridge Environmental Management Consultants.

All of the above listed communities have submitted final reports to DHCD with the exception of the town of Berkley, which is communicating with SRPEDD in order to finalize its report.

#### Audit Scope, Objectives, and Methodology

Our examination concentrated on seven communities located in the southeastern region of the Commonwealth selected at random. Our review included examining each town's documentation pertinent to the Community Septic Management Program as well as regional planning agency documentation. We also reviewed the records of homeowners who were awarded funds under this program.

We conducted our audit in accordance with applicable generally accepted government auditing standards for performance audits. The objectives of our audit were to determine whether the seven municipalities we reviewed were in compliance with applicable laws, rules, and regulations, and instructions for this program. To accomplish our objectives, we:

- Reviewed the contract between the community and the Commonwealth;
- Reviewed the contract between the community and the Regional Planning Agency, where applicable;
- Reviewed financial reports sent to DHCD;
- Documented the community treasurer's separate bank account for the Septic System Repair Program;
- Documented the community accountant's separate Septic System Repair Program account in the general ledger; and
- Reviewed and analyzed all homeowners' Septic System Repair Program projects in each community for program eligibility and compliance with applicable laws and regulations.

The criteria that we used for our review were as follows:

- contract provisions;
- Department of Environmental Protection, 310 Code of Massachusetts Regulations 14.00, Financial Assistance to Municipalities for Correcting Failed On-Site Disposal System;
- Department of Housing and Community Development, Septic System Repair Program Guidebook; and
- Massachusetts General Laws, Chapter 30, Section 39M, Contracts for Public Works and other applicable General Laws, such as Chapter 80, "Betterments."

According to program regulations, the local Board of Health was the municipal agency responsible for the administration of the Septic System Repair Program. The local health agent was responsible for inspecting completed Septic System Repair Program projects and issuing certificates of compliance with the provisions of Title V.

## AUDIT RESULTS

1. Failure to Obtain Competitive Bids on Construction Projects over \$10,000

Our review of the seven communities that participated in the Septic System Repair Program revealed that 10 contracts estimated by the awarding authority to have a value more than \$10,000 were awarded in violation of the Massachusetts General Laws, Chapter 30, Section 39M , which states, in part:

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than ten thousand dollars . . . shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids....

The Department of Housing and Community Development (DHCD), which gave each participating community specific written instructions for all phases of the program, required that the work be bid under the provisions of this law.

Our audit revealed that each of the contracts in question was administered by the Southeastern Regional Planning and Economic Development District Agency (SRPEDD). The contracts are listed as follows:

<u>Town</u>	<u>Project</u>	<u>Estimated Cost</u>	<u>Final Project Cost</u>	<u>*Time to Complete</u>
Freetown	#5	\$16,871	\$18,267	10 months
Freetown	#8	\$16,000	\$17,120	5 months
Berkley	#4	\$12,150	\$14,505	7 months
Berkley	#6	\$10,400	\$12,020	5 months
Berkley	#7	\$10,800	\$12,520	6 months
Berkley	#9	\$12,250	\$12,427	6 months
Rochester	#1	\$10,500	\$10,520	2 months
Rochester	#6	\$11,500	\$14,180	7 months
Swansea	#7	\$10,700	\$11,670	5 months
Swansea	#10	\$11,326	\$12,371	12 months

\* Time period from homeowner application to construction completion.



SPREDD included a memorandum in each of these 10 project files that stated “the contract is exempted from Chapter 30B procurement process under public health threat, immediate emergency repair.” However, none of the communities’ Board of Health declared an emergency or made a record of the emergency as required by General Laws, Chapter 30B, Section 8, Emergency Procurements, which states, in part:

Whenever the time required to comply with a requirement of this chapter would endanger the health or safety of the people or their property a procurement officer may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances. The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor’s name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for an emergency procurement.

The procurement officer shall submit a copy of this record at the earliest possible time to the state secretary for placement in any publication established by the state secretary for the advertisement of procurements.

An example of an emergency situation would be if an applicants’ home was not inhabitable due to a failed septic system. This was not the case in any of the projects that were declared to be emergency situations by SRPEDD. As noted in the project detail, the time to complete each one of the 10 contracts ranged from two months to 12 months, which does not meet the criteria for emergency procurements under Section 8 of Chapter 30B of the General Laws.

Recommendation: The local communities who have the primary accountability for compliance with program regulations should seek competitive bids for contracts estimated to cost more than \$10,000 and follow proper procedures for declaring emergencies.

## 2. Failure to Charge Homeowners for Betterments in a Timely Manner

Nine homeowners in Freetown who participated in the Septic System Repair Program were advised by the town’s Board of Assessors on January 6, 1998 to ignore betterment payments listed on tax bills, because an error existed in the computation of the principal and interest due to the town. Subsequent to our audit, the town of Freetown issued betterment assessment bills dated as of 12/31/98, 3/31/99 and 6/30/99. However, contrary to the Department of Revenue’s requirement that assessments for

betterments must be made within six months after the completion of the improvement, these bills were issued 16 months after the completion of all nine projects. All of the nine projects involved were completed during the period of December 1996 through August 1997 and were administered by SRPEDD.

The Assessors Handbook issued by the Division of Local Services of the Department of Revenue (DOR), Section J, which describes assessing betterments, states in part:

Assessment for betterment must be made within six months after the completion of the improvement . . . .

Additionally, the Informational Guidelines Release from DOR's Division of Local Services, Property Tax Bureau, No. 94-208 of November 1994 Guidelines, Section 5 states, in part:

As work is completed on each project, and the final cost is definitely known, the board of health must certify the final project cost for each parcel to the board of assessors. (MGL Ch. 80, Sec. 4).

Because the town had not collected betterment repayments from homeowners in a timely manner, it did not have funds in its Septic System Repair Program-Revolving Fund to issue additional septic loans or betterments to homeowners.

Recommendation: The town should meet with the representative of the regional planning authority responsible for administering the program for the town and resolve any issues needed. The town may then issue betterment bills to the nine homeowners and start collecting payments due the town so that the funds repaid can be deposited into the Septic System Repair Program-Revolving Fund and new grants can be made to additional homeowners.

### 3. Failure to Establish Separate Bank Accounts

Our audit revealed that two of the seven communities we examined, Berkley and Swansea, did not establish separate bank accounts as required by Commonwealth grant regulations. Exhibit A, "Certifications," which is part of the contract between the municipality and the Commonwealth for the Local Septic System Repair Grant, states in part:

In entering into this program contract the Municipality hereby certifies in Item #8 that . . . . It will deposit all loan and betterment repayments, including interest and penalties, in a separate fund to be used to make additional loans or betterments for the same purpose.

Additionally, instructions to municipalities for Loan Administration for Municipal Finance Officers for the Septic System Repair Program, Revolving Loan Fund, state in part:

Upon notice of approval of the grant contract under this program, the community's Treasurer should establish a separate bank account.

Because these two towns did not establish and maintain separate bank accounts for all transactions relating to the Local Septic System Repair Program grants, the towns cannot be assured that these funds, including repayments, interest, and penalties, have not been commingled with other town funds, and are not available for the issuance of additional septic loans or betterments to homeowners in the community.

Recommendation: The Treasurers of Berkley and Swansea should each immediately establish a separate bank account for the Local Septic System Repair Program Grant. In doing so, these two towns should reconstruct all financial transactions relating to the program to ensure that all loan and betterment repayments, including interest and penalties received to date, are included in that separate bank account.

#### 4. Failure to Obtain Approval for Project Awards to Over-Income Homeowners

Our audit review revealed that one homeowner in Berkley was over the income limit for participation in the Septic System Repair Program. The town did not follow the procedures for expanding program eligibility to include homeowners who exceed low- and moderate-income levels.

A memorandum from the Program Coordinator at DHCD dated July 28, 1996 to the Septic System Repair Program Administering Agencies on expanding program eligibility states in part:

The Septic System Repair Program may be offered to homeowners with failed septic systems who exceed low and moderate income if the municipality (or the regional administering agency on the municipality's behalf) demonstrates that there has been insufficient interest by low and moderate income homeowners. Before instituting this program change, please notify DHCD (formerly EOCD) in writing . . . .

Because the town of Berkley did not follow the procedures for expanding program eligibility instituted by DHCD, the Commonwealth cannot be assured that all low or moderate income homeowners residing in Berkley were given an opportunity to take advantage of the program.

Recommendation: The town of Berkley should follow the procedures for expanding program eligibility as outlined in the memorandum from the DHCD Program Coordinator.

5. Failure to Reconcile Septic Grant Bank Account and Properly Separate Funds

Our audit revealed that, although the town of Carver's Treasurer maintains a separate Septic System Repair Program bank account, all receipts and disbursements for the Septic System Repair Program during fiscal year 1998 went through the town's general fund bank account, whereas no activity was recorded in the Septic System Repair Program bank account. Additionally, the Septic System Repair Program bank account has not been reconciled to agree with the town's general fund ledger account, evidencing both noncompliance and a deficiency in internal controls over cash. Specifically, Exhibit A of the contract between the town and the Commonwealth for the Local Septic System Repair Grant, states in part:

In entering into this program contract, the municipality hereby certifies in Item #8 that . . . . I will deposit all loan and betterment repayments, including interest and penalties, in a separate fund to be used to make additional loans or betterments for the same purpose.

Sound business practice advocates that the Treasurer maintain a separate Septic System Repair Program bank account and that it be reconciled with the town Accountant's general ledger account.

Because Septic System Repair Program funds were not reconciled on a periodic basis and receipts and payments for the Septic System Repair Program were not processed through a separate bank account, the town cannot be assured that the funds that were commingled with the town's other funds are available for the issuance of additional septic loans or betterments to homeowners in the community and that interest earned on the bank deposits was credited to the Septic System Repair Program account.

Recommendation: The town of Carver's Treasurer should take immediate steps to reconcile and use the Septic System Repair Program bank account and deposit all payments, repayments of loans and betterments, and interest and penalties in the account, less amounts paid for payments to contractors and other vendors.

6. Failure to Award Grants to Low- and Moderate-Income Homeowners Before Higher Income Homeowners

The town of Swansea awarded a Septic System Repair loan to a homeowner who was \$10,925 over the approved income level for awards while there was an active waiting list of four homeowners of low- and moderate-income levels. Additionally, the town did not apply for and receive permission from DHCD to expand the program eligibility as explained in Audit Result No. 4. Exhibit A of the contract between the town and DHCD states, in part:

Funds will be used for loans or betterments to “low and moderate income households,” as defined in 310 CMR 14.03.

Because a Septic System Repair loan was given to the ineligible homeowner, funds were denied to the four low- and moderate-income homeowners on the waiting list.

Recommendation: The town of Swansea should follow the procedures agreed upon in the contract and grant loans and betterments to eligible homeowners with low or moderate-income levels before homeowners who are over the eligible income level. Additionally, the town should follow the procedures explained in Audit Result No. 4 for expanding program eligibility before granting any loans or betterments to over-income applicants.

Auditee’s Response: Each of the seven municipalities and DHCD were given the opportunity to review and respond to a draft report. DHCD was the only department that responded, as follows:

As the state agency responsible for the administration of the Septic System Repair Program, the Department of Housing and Community Development provided detailed and specific guidance and on-going technical assistance on all aspects of the program to each of the municipalities which received a grant, and where appropriate, to a regional agency which administered the grant on behalf of the municipality.

This included, but was not limited to, information and sample documents regarding: loan agreements; betterment agreements; the process for procuring contractors; procedures concerning administering the program and financial oversight; and criteria for selecting eligible homeowners to receive a loan or betterment.