

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of GSF Energy, L.L.C. with Certain Provisions of Its Concession Agreement

FM04-098A

June 21, 2004



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, § 93, of the New York City Charter, my office has examined the compliance of GSF Energy, L.L.C. (GSF) with the terms of its agreement with the Department of Sanitation (Department). Under the provisions of the agreement, GSF operates a landfill gas extraction and purification facility.

The results of our audit, which are presented in this report, have been discussed with officials from GSF and the Department, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that private concerns under contract with the City comply with the terms of their agreements, properly report revenues, and pay the City all fees due the City.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,

A handwritten signature in cursive script that reads 'William C. Thompson, Jr.'.

William C. Thompson, Jr.
WCT/gr

Report: FM04-098A
Filed: June 21, 2004

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Compliance of
GSF Energy, L.L.C. with Certain
Provisions of Its Concession Agreement**

FM04-098A

AUDIT REPORT IN BRIEF

This audit determined whether the GSF Energy, L.L.C. properly paid its fees due the City and complied with certain non-revenue provisions of the agreement.

The agreement required that GSF annually pay the City \$950,000, a payment in lieu of taxes (PILOT), bonus payments if production exceeded certain thresholds, and a payment if the amount of gas flared exceeded certain production levels. In addition, GSF was required to pay a \$1,265,000 biannual facility fee. GSF was also required to upgrade the existing purification plant and construct a second plant.

Audit Findings and Conclusions

GSF generally paid the required fees and complied with certain provisions of the agreement. GSF paid the annual concession fee of \$950,000, the biannual facility fee of \$1,265,000, and the \$50,000 due under the PILOT provision. In addition, based on the amount of landfill gas processed, we determined that GSF was not required to make bonus payments for calendar years 1999 through 2002.

GSF did not complete the construction of the additional purification plant and did not pay \$200,000 in excess flaring payments due for calendar years 2000 and 2001. Under normal circumstances, GSF would have been required to pay the City for excess flaring in the calendar years occurred; however, under the terms of a revised agreement, GSF is no longer obligated to pay outstanding flaring fees or to construct the additional plant. Accordingly, this report makes no recommendations.

INTRODUCTION

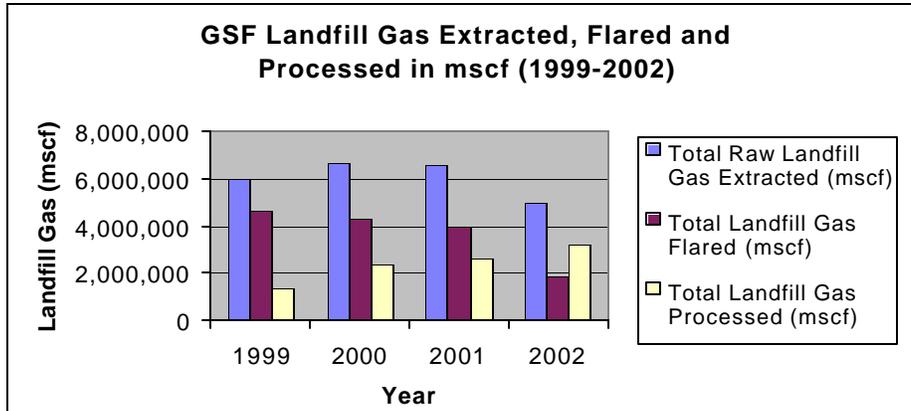
Background

In 1998, the Department of Sanitation (DOS) entered into a 20-year concession agreement (agreement) with GSF Energy, L.L.C. (GSF) to operate a landfill gas extraction and purification facility at the Fresh Kills Landfill in Staten Island, New York. The City entered into this agreement in order to control odors, generate revenue, and promote compliance with laws and regulations regarding gas emissions.

The agreement required that GSF pay the City \$950,000, a payment in lieu of taxes (PILOT), bonus payments if production exceeded certain thresholds, and a payment if the amount of gas flared exceeded certain productions levels.¹ In addition, GSF was required to pay a \$1,265,000 biannual facility fee. GSF was also required to upgrade the existing purification plant and construct a second plant.

See Figure 1 below for a four-year summary of gas extracted, flared, and processed by GSF in million square cubic feet (mscf).

Figure 1



As allowed by the agreement, on January 16, 2003, GSF filed a “Notice of Surrender” in which it sought to terminate its agreement with the City. In the notice, GSF claimed that commercial quantities of gas were no longer obtainable at the landfill, due in part to the deposit of debris from the September 11, 2001 destruction of the World Trade Center. After negotiation between GSF and DOS, the agreement was amended on January 7, 2004.

¹ Flaring is a measure used to control gas buildup and prevent harmful emission of landfill gas into the atmosphere.

Objectives

The objectives of this audit were to determine whether GSF properly paid its fees due the City and complied with certain non-revenue provisions of the agreement.

Scope and Methodology

The scope period covered by this audit was calendar year 2002. However, to determine whether GSF was required to pay additional concession fees, we expanded the scope period to cover the amount of gas processed, flared, and purified for calendar years 1999 through 2002.

We reviewed the GSF agreement and abstracted those provisions pertinent to our audit objectives. We interviewed GSF personnel to obtain an understanding of how gas is processed and to identify the procedures and controls used for recording and reporting gas extracted, flared and sold. We also interviewed DOS Fiscal Services personnel to obtain an understanding of the process of collecting and recording payments from GSF. We documented our understanding of these procedures in written narratives and flowcharts. We then assessed the adequacy of the controls to determine the type and extent of testing needed to ensure that GSF paid the appropriate fees to the City.

To determine the accuracy and reliability of the GSF Certified Production Reports submitted to DOS, we judgmentally selected for testing the four-week period of November 29, 2002, through December 26, 2002. This period was selected because GSF had the capability of processing and reselling the gas from all four sections of the landfill at that time. We traced the amounts reported on the Certified Production Reports to GSF weekly reports, daily production summaries, daily flow reports, and flaring charts. The results of the above tests, while not projectable to all GSF production data for the audit period, provided a reasonable basis to assess the accuracy of production data submitted to DOS.

To determine whether GSF paid the appropriate annual concession and biannual facility fees, we traced the GSF payments listed on DOS receipts journals and to the City's Financial Management System. We also determined whether GSF complied with the PILOT provision in the agreement. We also calculated bonus payments due, if any, based on the total amount of gas extracted, processed, and flared during calendar years 1999 through 2002.

Finally, with regard to certain non-revenue provisions of the agreement, we performed the following tests: ascertained whether Certified Production Reports were submitted; toured the facility and met with GSF officials to determine whether the existing purification plant was upgraded and whether an additional plant was constructed; and reviewed insurance policies to determine whether GSF acquired the appropriate insurance.

* * * * *

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of books and records and other audit procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with GSF and DOS officials during and at the conclusion of this audit. A preliminary draft report was sent to GSF and DOS officials on May 14, 2004. On May 20, 2004, we received written notice from GSF and DOS officials waiving their right to an exit conference. On May 26, 2004, we submitted a draft report to GSF and DOS officials with a request for comments. On May 26, 2004, GSF sent an e-mail stating that they had no comments on the report. On May 28, 2004, we received a response from the Commissioner of DOS stating that “I am pleased with the audit’s findings and conclusions and therefore do not have any further comments.”

The full text of DOS’s response is included as an addendum to this report.

FINDINGS

GSF generally paid the required fees and complied with certain provisions of the agreement. Specifically, for calendar year 2002, GSF paid the annual concession fee of \$950,000, the biannual facility fee of \$1,265,000, and the \$50,000 due under the PILOT provision. Also, based on the amount of landfill gas processed, we determined that GSF was not required to make bonus payments for calendar years 1999 through 2002. With regard to the non-revenue provisions of the agreement, GSF provided the City with certified production reports, upgraded the existing plant, and acquired the appropriate insurance coverage.

GSF did not complete the construction of the additional purification plant and did not pay \$200,000 in excess flaring payments due for calendar years 2000 and 2001. Under normal circumstances, we would have recommended that DOS collect the \$200,000 in flaring fees due from GSF and ensure that the additional purification plant be constructed. However, under the terms of a revised agreement, GSF is no longer obligated to pay outstanding flaring fees or construct the additional plant. Accordingly, this report makes no recommendations.



sanitation

JOHN J. DOHERTY
Commissioner
125 Worth Street, Room 720
New York, New York 10013

May 28, 2004

Mr. Greg Brooks
Deputy Comptroller
Policy, Audits, Accountancy and Contracts
Office of the Comptroller
One Centre Street, Room 530 South
New York, NY 10007-2341

**Re: Audit Report on the Compliance of GSF Energy, LLC
With Certain Provisions of Its Concession Agreement
FM04-098A**

Dear Deputy Comptroller Brooks:

Thank you for the opportunity to review your **draft** report on the referenced audit before its public release. I am pleased with the audit's findings and conclusions and therefore do not have any further comments.

Please call our audit liaison, Mr. Cris Gonzales, at (212) 412-0512 if you have any questions.

Sincerely,

John J. Doherty

C: L. Cipollina
R. Orlin
M. Bellew
C. Gonzales
G. Davis III – Mayor's Office of Operations

www.nyc.gov/sanitation

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