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I. HISTORY OF THE PROCEEDING

On April 4, 2008, the Philadelphia Water Department (“PWD” or “Department”) initiated this rate proceeding pursuant to Sections 8-407 and 5-801 of the Philadelphia Home Rule Charter (“Charter”) and Sections 13-101 and 13-201 of the Philadelphia Code. On May 5, 2008, the Department filed its rate request with the Department of Records of the City of Philadelphia. The filing requested the implementation of new rates, to become effective July 1, 2008, in the following service categories:

- 300.0 Rates and Charges Definitions
- 301.0 Process for Setting Water, Sewer and Stormwater Management Service Rates
- 302.0 Water Charges
- 303.0 Sewer Charges
- 304.0 Stormwater Management Service Charges
- 305.0 Billing for Water, Sewer and Stormwater Management Service
- 306.0 Miscellaneous Water Charges
- 307.0 Miscellaneous Sewer Charges
- 308.0 Miscellaneous Stormwater Management Charges
- 309.0 Fire Service Connections.

In May 2008, pursuant to Philadelphia Water Department Regulations (“Regulations”) 300.3(a), the City of Philadelphia’s Mayor, President of City Council, and City Controller appointed the Hearing Officer, Harris T. Bock, Esq. The same troika appointed Community Legal Services as the Public Advocate for the general rate proceeding, pursuant to Philadelphia Water Department Regulations 300.5(a).

Hearing Officer Order No. 1¹, dated May 27, 2008, set a Pre-Hearing Conference, which was held on June 6, 2008, wherein the Hearing Officer established a procedural schedule which bifurcated the rate proceeding.² The instant Phase II was established for the sole purpose of examining proposed changes to regulations governing stormwater cost allocation. Participants in this Phase II included Andre C. Dasent, Esquire on behalf of the Philadelphia Water Department; Philip A. Bertocci, Esquire and Thu Tran, Esquire from Community Legal Services as the Public Advocate; Daniel P. Delaney, Esquire, R. Timothy Weston, Esquire, and Kevin R. Dunleavy, Esquire on behalf of Sunoco, Inc. (R&M) (“Sunoco”); Charis Mincavage, Esquire and Shelby A. Linton-Keddie, Esquire on behalf of Philadelphia Large Users Group (“PLUG”); and Brian Glass, Esquire on behalf of Next Great City Stormwater Subcommittee.

By virtue of Hearing Officer Order 21SW, dated January 6, 2009, a Pre-Hearing Conference was held on January 12, 2009. Pursuant to Hearing Officer Order 19SW, dated December 16, 2008, a Technical Hearing was held on January 13, 2009. In accordance with Hearing Officer Order 23SW, dated January 14, 2009, a Post-Hearing Conference was held on January 22, 2009. Pursuant to Hearing Officer Order No. 29SW, dated March 20, 2009, oral argument was held on April 3, 2009. A transcript of some 383 pages was generated in this Phase II of the F.Y. 2009-2012 rate proceeding.

In accordance with Hearing Officer Order 24SW, dated January 28, 2009, the parties submitted initial briefs by February 10, 2009. Complying with Hearing Officer Order 26SW, dated February 20, 2009, the parties submitted reply briefs by March 2, 2009, and sur-reply

¹ All Orders can be found on the online docket at www.DisputeRI.com/pg22.cfm.

² The initial phase of the rate proceeding was commenced with the Hearing Officer presiding over five public hearings from July 21, 2008 to July 31, 2008, and three technical hearings from August 12, 2008 to August 14, 2008. Following a briefing schedule, the Hearing Officer conducted oral argument on September 24, 2008, and issued his Recommended Decision on October 7, 2008. On October 21, 2008, Water Commissioner Bernard Brunwasser issued his decision. The new rates, pursuant to the Commissioner’s Determination were effective as of November 1, 2008.

briefs by March 9, 2009.³ This Recommended Decision follows.

II. LEGAL, STATUTORY, AND BOND COVENANT REQUIREMENTS FOR WATER DEPARTMENT RATES AND CHARGES

Section 5-800 of the Charter conveys authority to the Department to operate the water and wastewater utilities. Pertinent here is that the Charter authorizes the Department to fix and regulate rates and charges for utility services. Specifically, Section 5-801 provides, in part, as follows:

Rates and Charges. In accordance with the standards as the Council may from time to time ordain, the Water Department shall fix and regulate rates and charges for supplying water, including charges to be made in connection with water meters, and for supplying sewage disposal services.

Section 5-801. The standards referenced above are set forth in the Philadelphia Code, Sections 13-101 and 13-201. Section 13-101(2) of the Code specifically states, in part, the following respecting the determination of water rates applicable to this Phase II:

Standards for Rates and Charges. Pursuant to Section 5-801 of the Charter, the Water Department shall fix and regulate rates and charges for supplying water, without further authorization of Council, in accordance with the following standards:

(c) The rates and charges shall be equitably apportioned among the various classes of consumers.

(d) The rates and charges shall be just, reasonable and nondiscriminatory as to the same class of consumers.

Section 13-101(2)

III. FINDINGS OF FACT

History of the Proceeding

1. On April 4, 2008, the Philadelphia Water Department (“Department”) notified

³ The delay in the Hearing Officer’s Recommended Decision was occasioned by the change in the schedule for the oral argument, which was a consequence of the parties’ requests to extend the briefing schedule.

Philadelphia City Council of its intent to file proposed changes in rates for water and wastewater service to become effective July 1, 2008, or as soon thereafter as procedural requirements permit the enactment of new rates by regulation.

2. On May 5, 2008, pursuant to Sections 8-407 and 5-801 of the Philadelphia Home Rule Charter (“Charter”), the Department filed with the Department of Records its proposed regulations promulgated in connection including Section 304.0 – Stormwater Management Services Charges.

3. In support of this filing, the Department also submitted (A) pertinent engineering, financial and rate data; and (B) the prepared testimony, exhibits and supporting documentation of both the Department and Black & Veatch.

4. Mayor Michael A. Nutter, City Council President Anna C. Verna and City Controller Alan L. Butkovitz appointed Harris T. Bock, Esquire to preside over the rate hearings and prepare a report to the Commissioner summarizing the record and his recommendations. Community Legal Services was also appointed to serve as Public Advocate in the rate hearings.

5. On June 6, 2008, the Hearing Officer established a procedural schedule that bifurcated the rate proceeding (creating Phase II for the purpose of examining proposed changes to regulations governing stormwater cost allocation and administration).

6. In addition to the Public Advocate, participants in Phase II included Philadelphia Large Users Group (“PLUG”), Penn Future/Next Great City Stormwater Subcommittee, and Sunoco, Inc (R&M).

7. In accordance with Hearing Officer Order 21SW, dated January 6, 2009, a Pre-Hearing Conference was held on January 12, 2009. Pursuant to Hearing Officer Order 19SW, dated December 16, 2008, a Technical Hearing was held on January 13, 2009. In accordance

with Hearing Officer Order 23SW, dated January 14, 2009, a Post-Hearing Conference was held on January 22, 2009. Pursuant to Hearing Officer Order No. 29SW, dated March 20, 2009, oral argument was held on April 3, 2009. A transcript of some 383 pages was generated in this Phase II.

Statement of the Case

8. Phase II of the rate proceeding is wholly focused upon the proposal of the Department to transition larger meter customers (non-residential)⁴ to a parcel area based system of stormwater cost allocation. Smaller meter customers (predominantly residential)⁵ are already paying a uniform stormwater management system (“SWMS”) charge premised upon a parcel based system. The current residential stormwater charge has been a component of the monthly sewer service charge since the initiation of the implementation of the three year phase-in in FY 2002. The Department proposes in this case to phase-in a parcel area based system of cost allocation for non-residential customers over a period of three years beginning in FY 2011.⁶

9. The aggregate cost for stormwater management is approximately \$103 million annually. The revenue requirement associated with stormwater management has already been determined in Phase I of this proceeding. The fairness and reasonableness of the Department’s proposal to transition non-residential customers to a parcel area based system for SWMS and the supporting regulations are the only subjects of this Phase II proceeding.

10. The Department’s proposed regulations are premised upon the recommendations

⁴ Larger meter customers (above 5/8-inch meters) are referred to as non-residential customers for ease of reference. This group is predominantly made up of commercial, institutional, municipal and industrial customers.

⁵ Smaller meter customers (5/8-inch meters) are referred to as residential customers for ease of reference. Smaller meter customers are predominantly residential, although there are some commercial and other small non-residential customers with 5/8-inch meters. Similarly, some residential customers have larger size meters.

⁶ This is a change from the original rate filing wherein the phase-in of non-residential parcel based charges was to begin in FY 2010.

of the 1996 Stormwater Charge Allocation Community Advisory Committee (“CAC”) Report.⁷ The CAC was convened by the Department and represented a broad cross section of the PWD’s customer base. The advisory committee concluded that the Department should move to a more equitable allocation of stormwater costs premised upon the gross size of a customer’s property and the imperviousness of such property. The CAC also determined that this approach to stormwater cost allocation should be applicable to both residential and non-residential customers; and that the change should be phased-in over a reasonable period of years.

Description of the Stormwater System

11. The stormwater system is comprised of 619 miles of separate storm sewers, 1,599 miles of combined sewers and approximately 75,000 stormwater inlets, and is subject to the Department’s National Pollution Discharge Elimination System (“NPDES”) stormwater permits. These permits require the Department to implement four management programs to reduce the discharge of pollutants from its municipal separate storm sewer systems. The management programs require the Department to reduce pollution from (A) commercial/residential areas; (B) illicit connections; (C) industrial facilities; and (D) construction sites. PWD Statement 4 at 2-3.

12. The Department’s stormwater management program addresses primarily the quantity of stormwater runoff and its effects on the natural environment. The program, however, encompasses both the separate stormwater drainage systems in certain geographic areas of the City; and the combined sanitary/stormwater sewage facilities in other areas. It is the latter areas of the City where combined sewer overflows (CSOs) occur. The stormwater program is also associated with flood protection along major waterways and Philadelphia’s receiving streams and rivers. *Id.* at 3.

13. Approximately forty percent of the City’s stormwater flows into, through, and is

⁷ PWD Exhibit 4 (Attachment 26).

discharged from separate storm sewers to receiving waters. In the remaining sixty percent of the City, combined sewers carry both sanitary wastewater and, during and following storm events, stormwater runoff. Stormwater entering the combined sewer system impacts both the conveyance and treatment plant functions and capacity. A significant portion of the flow capacity provided in the combined sewers and operations at the treatment facilities⁸ are predicated on the demands of stormwater runoff entering the systems.

14. The Department's 2006 Stormwater Regulations and the proposed stormwater cost allocation process will allow the utility to encourage best practices for stormwater management on privately owned lands, which comprise approximately fifty percent of the City's land surface. Such encouragement includes monetary credits that will be made available to customers based on the stormwater management on their property.

15. If private property owners voluntarily utilize better practices and upgrade stormwater management on their parcels to take advantage of credits offered by the Department, the cost to the City and its ratepayers overall will incrementally decrease with every parcel that is managing its own runoff. The desired and intended ultimate result is advantageous to all customers and the regional environment. *Id.* at 5.

History of Transition to Parcel Area Based Stormwater Cost Allocation

16. The Department's proposal in this proceeding is the culmination of an effort which traces its genesis to the mid-1990's with the convening of the Stormwater Charge Allocation Community Advisory Committee.

⁸ The PWD's three water pollution control plants are as follows:

- (1) Northeast Water Pollution Control Plant (located at 3895 Richmond Street, with a Design Average Daily Flow of 210 Million Gallons/Day and a Design Peak Daily Flow of 420 Million Gallons/Day);
- (2) Southeast Water Pollution Control Plant (located at 25 E. Pattison Avenue, with a Design Average Daily Flow of 112 Million Gallons/Day and a Design Peak Daily Flow of 224 Million Gallons/Day; and
- (3) Southwest Water Pollution Control Plant (located at 8200 Enterprise Avenue, with a Design Average Daily Flow of 200 Million Gallons/Day and a Design Peak Daily Flow: 400 Million Gallons/Day

17. The CAC was convened by the Department to review the utility's stormwater operation and maintenance expenses, capital related requirements, and overall cost allocation guidelines. The CAC also reviewed how utilities in other jurisdictions were recovering their stormwater related costs.

18. The committee constituted a diverse group of stakeholders including representatives of large and small businesses, universities, parking lots, transportation utilities, civic groups, senior citizens, realtors and water only customers who, collectively and collaboratively⁹, undertook to study this issue over a period of two years.

19. The primary recommendations of the CAC are summarized below:

- The Department should implement a reallocation formula based upon the gross size of a customer's property and the imperviousness of the property, as these two factors are most important in determining the stormwater runoff contribution of individual properties. This reallocation should be completed for both residential and commercial properties.
- Because the impervious factor is the most dominant factor in calculating stormwater runoff, CAC recommended that eighty percent of the stormwater costs should be allocated and recovered from the total billable impervious area and twenty percent of the stormwater costs should be recovered from the total billable gross area.
 - The City's 450,000 residential properties should be treated as a single entity with total gross area and imperviousness area factors. The total costs would be divided among all residences.
- The City should also seek to recover the cost of managing stormwater from properties that do not have water meters, e.g., parking lots, utility right-of-ways, vacant land, etc.

PWD Statement 4 at 3-4.

20. The Department is now proposing to complete and implement the transition to a parcel area based system for larger meter customers (non-residential). The phase-in of parcel

⁹ The Committee is an excellent example of how the public sector and private sector can work together for the benefit of everyone.

based stormwater cost allocation is proposed to be phased in over three years (as was the case with smaller meter (residential) customers). *Id.* at 11-12.

21. Consistent with the recommendations of the CAC, and based on the decision of management, the current equivalent meter based system used for larger meter customers will be phased-out beginning in FY 2011 (over a three year period).

22. The Department, during the course of the proceeding, revised its proposal so as to postpone the phase-in of the parcel area based stormwater cost allocation for non-residential customers until July, 2010. The additional time will provide the Department with ample opportunity to conduct a thorough public outreach and educational program, particularly geared toward impacted non-residential customers, regarding the stormwater parcel based charge and possibly opportunities for non-residential customers to mitigate these charge through effective stormwater management practices on their properties. The additional time will also permit impacted customers (such as Newman & Company, Inc.) to plan financially over a longer period of time. PWD Statement 8 at 2.

23. The Hearing Officer finds that such delay is in the best interests of the utility and its customers, and applauds the Department for its judicious utilization of management prerogative.

24. Accordingly, under the Department's revised proposal, the third year of the phase-out will occur in FY 2013. The Hearing Officer finds the modified phase-in to be reasonable and justified by the record.

Proposed Allocation of Stormwater Management System Charges

25. Stormwater is a major problem in Philadelphia where an existing system of storm drains, inlets, and conveyance piping discharges untreated stormwater into receiving streams and

rivers in the separate sanitary/storm sewer, non-CSO portion of the City. In the combined sewer areas (CSO portion of the City), depending on the severity of the storm event, stormwater is combined with untreated wastewater for discharge into local rivers; or is directed to the wastewater treatment plants, imposing a capacity burden on treatment plant operations.

26. Basement flooding in certain portions of the City is also a consequence of inadequate stormwater management.

27. All of these stormwater related issues have serious environmental and utility impacts and warrant corrective action.

28. The appropriate rate design is a necessary part of any corrective action to be undertaken.

29. An appropriate stormwater rate design should (A) assign costs for stormwater management commensurate with the estimated contributions to the stormwater problem; and (B) offer incentives to customers to undertake individual actions to mitigate the stormwater runoff problem. The Department's proposed parcel based SWMS cost allocation/rate design system is designed to meet the above requirements.

30. Stormwater management is essentially related to controlling the impact of stormwater flows. Impact is a function of a customer's parcel size (gross area) and the quantity of stormwater runoff it generates (impervious area). The proposed parcel based cost allocation appropriately apportions costs based upon stormwater impact.

Parcel Area Based System of Stormwater Cost Allocation

31. The Department developed a stormwater parcel geo-database with gross area and impervious area layers delineated for most of the City's parcels¹⁰. In addition, for those parcels that currently have water and/or sewer accounts, PWD has also created cross references between

¹⁰ There are approximately 83,000 parcels classified as non-residential in the geo-database.

these utility accounts and their associated parcels.

32. The Department further delineated its customer base utilizing assessment information from the Board of Revision of Taxes (“BRT”) assessment system¹¹; the City’s geographic information system; and utility account information from the PWD billing system. PWD Statement 7 at 7.

33. All parcels were first classified into residential and non-residential parcels. Within these two broad classes, parcels that had active water or sewer accounts were designated as “billed parcels” and parcels that did not have active utility accounts and who were not water account customers were designated as “unbilled parcels.”

34. The billed and unbilled categories of residential parcels were further classified into relevant “no discount” and “discount” sub-categories (including eligible senior citizen charitable and housing authority accounts).

35. The billed non-residential parcels were classified into sub-categories including, condominium parcels; large parcels (airport, Sunoco); cemeteries, golf courses and parks; NPDES permit holders; and other non-residential sub-categories.

36. The unbilled non-residential parcels were classified into condominium parcels, City owned and other non-residential sub-categories.

37. The billed and unbilled non-residential parcels were further classified into relevant “no discount” and “discount” sub-categories as well.

38. The parcels were classified into appropriate sub-categories to facilitate estimation of revenue impact as calculated using the pertinent factors of gross area, impervious area, NPDES stormwater credits, and stormwater fee discounts, among other considerations. The

¹¹ It is certainly noteworthy that the acuity and competency of the Philadelphia Water Department management is in stark contrast to that of BRT, as reported by the *Philadelphia Inquirer* on Sunday, May 3, 2009.

foregoing classifications are consistent with the CAC recommendations. *Id.*

Cost of Service Rate Schedules for Phase-In of Parcel Area Based Stormwater Rates

39. The Department utilized the parcel data compiled in the stormwater database to estimate the total effective billable stormwater units of service. These units were estimated in terms of gross parcel area and impervious area square footage, taking into account potential reduction in billable units of service due to exemptions, non-payment of stormwater charges and potential stormwater credits. PWD Statement 7 at 9.

40. In estimating the potential reduction in billable units of service, the Department focused upon currently “unbilled” category of customers. As to this group, an educated allowance was made as to the percentage that were likely to become viable paying customers. Such allowance appropriately took into consideration the number of unbilled parcels that were identified in the stormwater billing database as currently being vacant properties.

41. All unbilled parcels would be invoiced for service based upon the billing criteria specified. However, a lower collection rate is estimated for this group of parcels due to the absence of an existing water account and the concomitant difficulty with enforcement actions for non-payment of charges from individuals or entities who were not previously PWD customers.

42. It is reasonably and responsibly anticipated that a large percentage of these “new” customers will be non-revenue producing. *Id.* at 10.

43. To estimate the reduction in billable units of service due to potential credits, PWD reviewed the stormwater parcel database by the various categories, including large parcels, parcels with their own NPDES permits, parks, golf courses, and cemeteries, among others.

44. Reasonable estimates¹² were made as to the level of credits that each parcel class

¹² While these estimates are educated guesses, it is reasonable to rely on them. However, the estimates must be examined in greater detail in the next rate case.

might apply for and be entitled to under the Department's credit policy. These estimates were premised upon the aforesaid criteria and reasoned analysis by the stormwater transition team and the track record and experience of similar utilities nationwide.¹³ *Id.*

45. The effective billable stormwater units of services were compiled in the stormwater parcel database utilizing the following formula: the total gross and impervious area square footage of residential and non-residential parcels with existing water accounts *plus* (i) the addition of gross and impervious area from the estimated new stormwater only customer parcels *net* of (ii) the estimated reduction in billable stormwater units due to potential stormwater exemptions, stormwater gross area and impervious area credits anticipated to be issued and potential non-payment of stormwater charges.

46. The effective billable square footage of gross area and impervious area, as projected, comprise the units of service to which the parcel area based stormwater rates would be applied. The estimated total effective revenue producing gross and impervious area units of service serve as the denominator in the overall calculation of the gross and impervious area system unit charges to be used in the calculation of the parcel based stormwater cost allocation. *Id.* at 9-10.

47. In determining the unit charges for gross area and impervious area, the total annual cost of service associated with stormwater operations, excluding billing and collection costs, were allocated twenty percent to gross area and eighty percent to impervious area, in accordance with the CAC recommendations and the resulting allocated costs were divided by the respective gross and impervious area units of service to obtain the applicable unit charges. *Id.* at 11.

¹³ The Department has the advantage of using its consultant, Black & Veatch, which has the data available, as well as the Department's own excellent background and working knowledge.

Proposed Phase-In of Parcel Area Based Stormwater Rates

48. The Department proposes the phase-in of the parcel area based rates for non-residential customers be the same as that used for residential customers in FY 2002, wherein a three year phase-in was utilized.

49. Because of the administrative complications associated with the implementation of a parcel area based system for larger meter customers, and an admirable determination on the part of the senior PWD management to “get it right,” the proposed start date is now deferred to July 1, 2010.

50. Proposed rates have been developed for the full level of charges for both collection and treatment of stormwater and for related billing costs for FY 2009-2012. The proposed rate regulation for stormwater service will provide the appropriate weighting of the phase-out of the current allocation approach which will vary by meter size over the proposed three year period.

51. The Table below (Table B-2 from PWD Statement 7) shows the full level proposed gross area and impervious area charges for each of the fiscal years FY 2009-2012. However, only the rates for FY 2011 and 2012 are applicable to the first two years of the proposed three year phase-in.

TABLE

PROPOSED NON-RESIDENTIAL STORMWATER CHARGES
PARCEL BASED METHODOLOGY

	Monthly Charges			Billing Costs
	Gross Area	Impervious Area	Total	
	\$/500 sf	\$/500 sf		\$/month
FY 2009	0.487	3.842		2.46
FY 2010	0.516	4.077		2.46

FY 2011	0.526	4.145	2.53
FY 2012	0.528	4.169	2.65
Minimum Charges	\$/month	\$/month	\$/month
FY 2009	2.04	8.14	10.18
FY 2010	2.16	8.64	10.80
FY 2011	2.20	8.79	10.99
FY 2012	2.21	8.85	11.06

sf – square foot

52. The standard units of service measure for the proposed parcel based system are in 500 square foot increments of gross and impervious area, respectively.

53. The total annual cost of service associated with the collection and treatment of stormwater, allocated twenty percent to gross area and eighty percent to impervious area, is divided by the respective effective billable units of gross area and impervious area to derive the system unit costs of gross and impervious area.

Stormwater Credits and Adjustments Program

54. The Department has adopted a stormwater credits program to provide non-residential and condominium property owners opportunities to seek reduction in their SWMS Charge and to also promote “green practices” that contribute to improved water quality. Stormwater credits are associated with the construction, operation, and maintenance of privately owned Stormwater Management Practices (“SMP”) that supplement the City’s stormwater management program and enhance water quality in the surrounding streams and rivers.

55. Three classes of credits, namely, GA Credits, IA Credits and NPDES Credits are to be offered. Credits are a percent reduction applied to the IA Charge, the GA Charge, or in the case of the NPDES Credits to the entire SWMS Charge, as applicable, depending on the specific onsite stormwater management practices implemented in the property. A property may be approved for credits from all of the three classes of credits. The total credit received cannot

exceed 100% of the entire SWMS Charge. All credits expire 4 years from the effective date and are subject to renewal.

56. A stormwater credit request for each parcel must be initiated by the applicant separately for each credit that the property owner seeks. The applicant must submit a complete Stormwater Credit Application, if applying for a credit for the first time; or a complete Stormwater Credit Renewal Application, if applying for renewal of credit. The application must be accompanied with the appropriate application fee and supporting documentation. The technical criteria for the issuance of credits and the administrative process involved are outlined in the Department's Credits and Adjustments Manual. PWD Exhibit 39 (PA-JM-26).

57. The Department also has a stormwater-adjustments process to enable customers to seek SWMS Charge adjustments for inaccurate property classification or inaccurate determination of a parcel's gross or impervious area.

Reasonableness of Proposed Continued Transition to a Parcel Area Based System for Stormwater Cost Allocation

Public Advocate

58. Jerome D. Mierzwa proffered testimony on behalf of the Public Advocate. Mr. Mierzwa is in overall agreement with the Department as to its proposal to complete the transition to a parcel based system of stormwater cost allocation. PA Statement 4 at 3-4.

59. Mr. Mierzwa observes that the Department's proposal is to provide non-residential customers with the incentive to reduce stormwater runoff.

60. It is his belief that a reduction in stormwater run-off should reduce the costs the Department will be forced to face in the future to address stormwater issues. A reduction in stormwater run-off, in his view, will benefit all customers.

61. He also indicates that, depending on the magnitude of the measures taken to

reduce stormwater runoff, there may be a reduction in flooding in some parts of the City, which will also benefit the entire citizenry, ratepayers and non-ratepayers. *Id.* at 4.

62. Mr. Mierzwa's major criticism of the Department's proposal is with regard to residential credits. He would like to see the availability of stormwater credits for residential customers implemented as part of the instant rate case. PA Statement 4 at 12.

63. A residential pilot program for stormwater credits should be pursued over the coming years incorporating the concept that credits may be feasible for residential customers. At this time, however, the Hearing Officer agrees with the Department's proposal to advance non-residential credits first as this makes the best economic sense in view of the sizeable potential benefits associated with larger parcels.

64. Mr. Mierzwa also raises an array of minor criticisms of the Department's proposal related to (a) the transparency of the process for stormwater credits; and (b) certain definitional changes in the proposed regulations and other changes for clarification purposes (i.e., the definition of "property" in the regulations;¹⁴ abatement of stormwater charges;¹⁵ watershed parks not subject to SWMS;¹⁶ and the exclusion of meter based charges in FY 2012).

65. All parties and the Hearing Officer agree that the stormwater credit process should be as transparent as possible, subject to privacy concerns. The Department will explore posting information related to stormwater credits and related information on its website or coordinating with BRT to provide such information. Tr. 1052-53.

¹⁴ The Department concurred with Mr. Mierzwa in its rebuttal testimony that a definition of "property" be added the proposed regulations. PWD Statement 8 at 3. The Advocate's suggestion to define "property" as a parcel listed by the Board of Revision of Taxes is acceptable to the Department.

¹⁵ The Department indicated in its rebuttal testimony that the abatement of water and sewer (including stormwater) charges assessed against vacant or surplus properties is provided for in the City Code. The purpose of the Department's regulations is to set forth water, sewer and stormwater charges and their application administratively. PWD Statement 8 at 3.

¹⁶ The Department clarified in its rebuttal testimony that watershed parks would be subject to SWMS charges. It was anticipated that such parks would qualify for 100% Impervious Area (IA) and Gross Area (GA) credits. PWD Statement 8 at 3; Tr. 1076-77.

Next Great City Stormwater Subcommittee

66. The Next Great City Stormwater Subcommittee is an organization whose members are affected by the Department's proposed rates and charges, and therefore have appropriate standing in this proceeding.¹⁷
- a. The Next Great City is a coalition comprised of over 100 civic, health, faith, labor, environmental and social service organizations within Philadelphia, all supporting a common-sense, cost-effective agenda to improve the neighborhood environment to truly make Philadelphia the "Next Great City." (Technical Hearing Tr., 1096:24-1097:12, C. Knapp; NGCSS St. 2, 2:17-20, C. Knapp; NGCSS St. 3, 2:7-10, D. Feldman; NGCSS St. 4, 2:17-21, M. Wood.)
 - b. One of the ten policy recommendations advanced by Next Great City is to stop, or at least reduce, sewer backups and flooding. This problem has been identified by polling as top issues for both Philadelphia's businesses and residents. (NGCSS St. 2, 2:21-23, C. Knapp; NGCSS St. 3, 2:11-13, D. Feldman; NGCSS St. 4, 2:22-3:1, M. Wood; NGCSS St. 5, 2:18-20, P. Starr; NGCSS Exhibit 1, p. 13; NGCSS Exhibit 2, pp. 2, 11.)
 - c. A Next Great City Stormwater Subcommittee was formed to make findings and recommendations to address these issues. (NGCSS St. 2, 3:5-7, C. Knapp; NGCSS St. 3, 2:18-20, D. Feldman; NGCSS St. 4, 3:6-8, M. Wood; NGCSS St. 5, 3:1-2, P. Starr.)

¹⁷ Pursuant to Philadelphia Water Department Regulations 300.0(k), a "party" is defined as: "Any individual, corporation or entity affected by the Department's proposed rates and charges who notifies the Department of Records or the Hearing Officer of a desire to participate fully in the technical review hearings as a Party. A Party will participate on the same basis as the Department and the Public Advocate." Having provided notice to the Hearing Officer of its intent to participate by letter dated May 30, 2008, the Next Great City Stormwater Subcommittee satisfied the second prong of the regulation.

- d. Staff and members of organizations that comprise the Next Great City Stormwater Subcommittee live and work in Philadelphia and are customers of the Philadelphia Water Department. (NGCSS St. 2, 2:14-15, C. Knapp; NGCSS St. 3, 3:4-7, D. Feldman; NGCSS St. 4, 2:10, M. Wood; NGCSS St. 5, 2:14-15, P. Starr; NGCSS St. 6, 2:6-7, B. Russell.)

67. The Next Great City Stormwater Subcommittee testimonies were all supportive of the Department's overall proposal, but voiced reservation with regard to the issue of residential stormwater credits.

68. The Department's proposal did not provide for such credits and NGCSS was critical of this omission. *See* NGCSS Statement 1 at 22-23.

69. NGCSS believes that the next step in this process is to promote City wide education of homeowners in order to raise awareness of the stormwater problem and each resident's role in solving stormwater problems. It is its contention that residential customers can work to reinforce PWD's policy goals and that they should be more involved in this effort.

70. At the urging of NGCSS,¹⁸ the Department has proposed that a residential pilot program for stormwater credits be pursued over the coming years. Such a pilot project would be based upon similar efforts undertaken in other jurisdictions. The suggestions of the NGCSS, as outlined below, will also be considered in the development of such a pilot project:

- Gaining an understanding of people's knowledge of stormwater issues and gauging their willingness to take individual action through literature research, speaking to other utilities and cities, and pilot neighborhood meetings.
- Working with PennFuture and other civic partners to organize neighborhood focus groups to identify homeowners' current stormwater practices and the barriers that may exist (is it too hard, inconvenient, etc.) to motivate them to adopt the type of practices that will provide a real stormwater management benefit.

¹⁸ The Public Advocate joins NGCSS in requesting that residential stormwater credits be investigated.

- Identify willing homeowners and blocks (row homes, twins and singles) that will allow a design team to evaluate feasible and cost-effective practices for homeowners based on their home and yard size and available green space.
- Identify the stormwater management practices that are not onerous for a homeowner to maintain.
- Pilot the implementation of selected practices on homes on a single block while also implementing PWD funded green street components in streets, public right of ways and/or public facilities.
- Work with PennFuture to identify funding sources for the stormwater management improvements to residential properties.
- Simultaneously, conduct a thorough literature research of what other cities are doing in the way of residential credits – what has worked for them and what has failed.
- Conduct additional focus groups to share residential applications (e.g., rain barrels, rain gardens, flow through planters, etc.) to determine which practices make the most sense to customers and determine a credit target that would motivate action.

71. The above is all a part of future planning. At this time, the Hearing Officer agrees with the Department that only non-residential stormwater credits should be implemented, which makes the best economic sense for the immediate term in view of the obvious benefits associated with larger parcels.

Philadelphia Large Users Group

72. Michael Ferman proffered testimony on behalf of the Philadelphia Large Users Group. Mr. Ferman is the Vice President of Operations at Newman & Company, Inc. (“Newman”).

73. Newman is a customer of the Department with a large site near the Delaware River in Northeast Philadelphia. Newman’s chief operations include a papermill as well as three other companies employing 185 people.

74. Mr. Ferman’s testimony focuses on the impact of the parcel based stormwater

charges on customers such as Newman. PLUG Statement 1 at 1-3.

75. Based upon the information he received, Newman's stormwater charges would increase from \$70,715 in 2007-2008 to \$148,978 over the phase-in period. It is his contention that Newman cannot withstand a 110% increase in stormwater charges. *Id.* at 3; Tr. 1090.

76. Mr. Ferman does not dispute that a parcel area based system of stormwater cost allocation is more equitable. His concern is predicated not upon equity, but upon the financial impact on Newman and similarly situated businesses. Tr. 1091; PLUG Statement 1 at 4-5.

77. The Department believes, and the Hearing Officer agrees, that the deferred implementation of the proposed three year transition period now proposed to begin in FY 2011 will address some of PLUG's concerns, and alleviate a portion of the financial hardship.¹⁹

78. Newman (and similarly situated customers) will also be made aware by the Department of customer initiated improvements and other techniques to lessen stormwater runoff that could mitigate the financial impact of increased stormwater charges with. Tr. 1091.

79. The Department has also created a fund to assist customers in identifying and making such improvements.

Sunoco

80. Sunoco witnesses Stephen J. Koczirka, Richard J. Goracy and James Disario raise two major areas of concern in their testimony (1) that Sunoco should not pay stormwater charges because their stormwater flows do not enter the Department's system; and (2) that the NPDES credit is unfair as calculated.

81. Sunoco does not dispute the Department's basic thesis that use of a parcel area based system for calculation of stormwater charges (versus the equivalent meter basis) is more

¹⁹ Mr. Ferman indicated that a phase-in period of at least four or five years would be helpful to make the transition easier for non-residential customers that will see large increases in stormwater charges. Tr. 1091-92.

equitable.

82. Sunoco's quarrel with PWD is based upon what it contends is a unique situation at the Philadelphia Refinery Sunoco operates, which is located along the Schuylkill River in Philadelphia, Pennsylvania, where it operates its own wastewater treatment facilities subject to its own NPDES permits.

83. For the purposes of ready reference, the refinery can be divided into four parcels: (1) the Point Breeze Processing Area ("Point Breeze"), (2) the Girard Point Processing Area ("Girard Point"), (3) the Schuylkill River Tank Farm ("SRTF"), and (4) the West Yard.

84. Aerial photographs of the Sunoco Refinery property supplied by the Department are attached as Exhibit E to Sunoco's Statement No. 1. Sunoco witness Goracy identified and described the portions of the refinery contained in each photograph in his direct testimony at Transcript ("Tr.") pages 112-4.

85. **Point Breeze.** The Point Breeze Processing Area comprises the northern portion of the Philadelphia Refinery property. The operative portions of Point Breeze are bordered on the west by the Schuylkill River and on the east by 26th Street. Passyunk Avenue splits the site into two general areas, referred to as the North Yard and South Yard. The South Yard contains approximately 375 acres and the North Yard contains approximately 247 acres, for an approximate total of 622 acres. (Sunoco Statement ("Stmt.") at 8:141-8).

86. **Girard Point.** The Girard Point Processing Area comprises approximately 365 acres, and lies on the eastern side of the Schuylkill River. (Sunoco Stmt. at 8:147-51).

87. **West Yard.** The West Yard is situated in the northwestern side of the refinery, across the Schuylkill River from Point Breeze. The West Yard covers a total area of approximately 89 acres. The West Yard is not an operational facility and all tanks have been

removed from this portion of the Sunoco property. (Sunoco Stmt. at 8-9).

88. ***Schuylkill River Tank Farm.*** The tank farm area, referred to as the SRTF, is located on the southwestern side of the Schuylkill River. The SRTF is bordered on the east by the Schuylkill River, on the south by Mingo Creek, on the west by Essington Avenue, and on the north by another industrial property. The SRTF covers a total area of approximately 222 acres. (Sunoco Stmt. at 8).

89. The total acreage of the Philadelphia refinery (comprising the four areas described in the above findings of fact) approximates 1,298 acres. (Sunoco Stmt. at 9).

90. Sunoco implements an active stormwater management program which covers each area of the Philadelphia Refinery, except for the West Yard, which is not an operational area. The following findings detail the stormwater programs in place at each major area of the Refinery property. (Sunoco Stmt. at 9).

91. For Point Breeze, the refinery operates an on-site wastewater treatment plant ("WWTP") which receives and treats stormwater generated on the Point Breeze portion of the Refinery. This WWTP manages all water generated at Point Breeze, including process water, wastewater and stormwater generated from precipitation falling on the acreage comprising the Point Breeze area. Point Breeze contains two separate management systems related to stormwater: one for process wastewaters, including stormwater from process areas, and the other for stormwater from the tank farm area. Process wastewater generated at the South Yard of Point Breeze is collected in a process wastewater sewer system that conveys wastewater to the Point Breeze Processing Area WWTP. Stormwater generated from the South Yard processing area is likewise collected and conveyed to the Point Breeze WWTP through this process wastewater system. (Sunoco Stmt. at 9).

92. The South Yard also has a separate dedicated stormwater management system designed to handle and manage stormwater from the South Yard Tank Farm area. That stormwater is collected and treated in an API oil/water separator, and then discharged through outfalls into the Schuylkill River pursuant to a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Pennsylvania Department of Environmental Protection (“PADEP”), being Permit No. PA0012629 A1 (Exhibit F to Sunoco's Direct Testimony). (Sunoco Stmt. at 9).

93. Stormwater runoff from the North Yard is collected and treated in the oil/water separators prior to discharge through outfalls into the Schuylkill River pursuant to NPDES Permit No. PA0012629 A1 (Exhibit F to Sunoco's Direct Testimony). (Sunoco Stmt. at 9).

94. Dikes surround all above ground storage tanks in both the North Yard and the South Yard. All dikes are designed to contain the product from the largest tank within the dike plus an allotment for accumulated rain water.

95. The Belmont Marketing Terminal, which is situated in the North Yard, is a truck loading facility for light and heavy fuels and gasoline, and also drains to the Point Breeze WWTP. (Sunoco Stmt. at 10).

96. At the Point Breeze WWTP, all stormwater enters at least one API-type oil/water separator equipped with oil retention baffles before being discharged to the Schuylkill River pursuant to NPDES Permit No. PA0012629 A1 (Exhibit F to Sunoco's Direct Testimony). (Sunoco Stmt. at 9). In addition, stormwater collected from processing areas is treated at an industrial WWTP prior to discharge. (Sunoco Stmt. at 9-10).

97. The Girard Point Processing Area is served by a stormwater collection system, which collects and directs stormwater to a WWTP for treatment prior to discharge. Normally all

water from the stormwater collection system is sent to the Girard Point WWTP, and then discharged through two outfalls to the Schuylkill River pursuant to NPDES Permit No. PA0011533 A1. (Sunoco Stmt. at 10).

98. The West Yard property of the Sunoco Refinery property is currently undeveloped. There are no PWD sanitary or storm sewer inlets located in the West Yard, and no stormwater generated from the West Yard is discharged into PWD facilities. Rather, all stormwater generated in the West Yard area is collected and conveyed to Sunoco's West Yard Retention Basin, which is authorized by the PADEP-issued NPDES Permit to discharge directly to the Schuylkill River via permitted Outfall 003 during heavy rainfall events. (Sunoco Stmt. at 10; Page 5 of NPDES Permit NO. PA0012629 A1, Sunoco Exhibit F).

99. The Schuylkill River Tank Farm is the only portion of the Sunoco Refinery property that discharges any stormwater directly or indirectly to PWD combined sewer or municipal separate storm sewer facilities. Although the SRTF area discharges some stormwater to PWD sewer facilities, the SRTF maintains and implements a stormwater management protocol which provides significant control of stormwater quantity and quality. Nearly all the tanks within the SRTF are provided with secondary containment dikes. As a result, precipitation falling on SRTF area is collected and contained inside the containment dikes for later controlled release to the on-site common sewer system. This on-site common sewer system collects surface drainage from other areas of SRTF facility with oil-containing equipment, and directs that stormwater flow to an API-type guard separator located at the north end of the SRTF property. The oil-water separator provide for separation of oil and grease from the stormwater before any of that stormwater leaves the property. (Sunoco Stmt. at 10).

100. Treated stormwater exiting the separator in the SRTF area is pumped via two

primary lift pumps to the municipal conduit system and ultimately to PWD sewer lines. The containment dikes in the SRTF area have adequate capacity to retain stormwater during rain events. The dikes permit Sunoco to retain the accumulated stormwater within the dikes and release it in a timed delayed manner into the conduit system before introducing it into the PWD sewer line. (Sunoco Stmt. at 10, 13).

101. Copies of the two current NPDES permits issued by PADEP for the Philadelphia refinery are attached to Sunoco's Statement No. 1 as Exhibit F:

(1) NPDES Permit No. PA0012629 A1 authorizes discharges from the Point Breeze and West Yard portions of the refinery property. This permit identifies effluent limitations, monitoring, recordkeeping and reporting requirements and permits discharges through outfalls into the Schuylkill River for stormwater from the North Yard, the Wastewater Treatment Plants, the West Yard and the South Yard.

(2) NPDES Permit No. PA0011533 A1 authorizes discharges from the Girard Point portion of the refinery property. This permit identifies effluent limitations, monitoring, recordkeeping and reporting requirements for discharges through outfalls into the Schuylkill River of stormwater from oil/water separators, cooling water from air compressors, stormwater from roof drains and wastewater from industrial wastewater treatment plants.

102. No stormwater from Point Breeze, Girard Point or the West Yard discharges to or through PWD facilities. Point Breeze, West Yard and Girard Point have had valid NPDES permits for the entire time Sunoco has owned these areas and Sunoco lawfully discharges treated stormwater directly into the Schuylkill River pursuant to the requirements of those NPDES permits. (Sunoco Stmt. at 12). Sunoco has made significant capital improvements and major upgrades to its stormwater management system at the refinery property over the years, including maintenance and upgrades to the WWTPs, construction of tank dikes/containments, addition of new stormwater, tanks and retrofitting air diffuser systems. (Sunoco Stmt. at 12).

103. The SRTF is the only area of the refinery that has the capability to discharge, and actually discharges, stormwater to sewers and facilities operated by PWD. The SRTF property

has likewise been equipped with an active stormwater management system which provides both quantity and quality benefits. PWD has benefited from Sunoco's on-site stormwater managements practices since it has reduced the peak flow rate of stormwater sent from the SRTF property to PWD facilities, and likewise provided treatment of those stormwaters to remove pollutants prior to their entry into PWD sewer facilities. (Sunoco Stmt. at 10, 13).

104. Sunoco has evaluated, and continues to evaluate, the on-site stormwater management systems at the property with the goal of enhancing the treatment and management practices. (Sunoco Stmt. at 12-13).

105. Full implementation of the Department's proposed SWMS charges will likely have a significant impact on the stormwater charges paid by Sunoco's Philadelphia Refinery.²⁰

106. PWD Exhibit 47 lists the top 500 largest increases in monthly stormwater charge and indicates that Sunoco will have the largest increase.

107. Sunoco contends that its parcels with their own treatment facilities should be excluded from the calculation of stormwater management charges. It also contends that its undeveloped West Yard parcel should likewise be excluded from the calculation of such charges because it is not connected with the PWD system. Sunoco Statement 1 at 15.

108. Sunoco's position does not take into account the fact that the adverse **impact** of stormwater discharges into rivers and streams is just as deleterious to the environment whether it comes through a privately owned or municipally owned stormwater system.

109. Stormwater management essentially relates to controlling the "impact" of stormwater flows whether it is simply the runoff that causes erosion or the pollutants carried with the runoff that affects stream health and quality. Unless properly managed, stormwater runoff

²⁰ In its Initial Brief at page 12, Sunoco estimates that annual stormwater charges at the Philadelphia Refinery site will increase from \$241,860.00 to \$5,583,680.00. However, such estimate does not take into consideration the monetary credits that Sunoco will be entitled to receive upon application.

can harm the streams, creeks and rivers and tributaries that run throughout Philadelphia. PWD Statement 8 at 5.

110. The Department is proposing to fairly allocate the costs of its stormwater management program (\$103 million annually) based upon the aforesaid “impact.”

111. CAC recommends that use of gross and impervious area of a parcel as a basis to measure stormwater runoff contribution is the most equitable way to proceed for residential and non-residential customers.

112. Sunoco differs with the Department as to the “impact” of its stormwater discharges. It believes there is no impact associated with discharges from its parcels with treatment facilities (Point Breeze and Girard Point parcels) or stormwater runoff from the West Yard.

113. The Hearing Officer finds that the record does not establish that all stormwater flows on the Sunoco parcels with onsite treatment facilities are actually treated before being discharged to the river. Some stormwater inlets at the refinery (Point Breeze and Girard Point parcels) may discharge directly to the river, particularly in severe storm situations.

114. The Hearing Officer disagrees with Sunoco’s contention that its stormwater runoff has no impact on the local environment at the parcels where there are onsite treatment facilities.

115. The Hearing Officer finds that all stormwater discharges have an impact on the local environment whether through erosion or pollutants carried with runoff. Tr. 1037.

116. As to Sunoco’s contention that the West Yard (undeveloped parcel) should also be excluded in the calculations of SWMS, it is notable that there is no stormwater management whatsoever at the West Yard.

117. Any stormwater runoff from this undeveloped parcel goes directly to the river, and as a matter of fairness, it must be charged for such runoff consistent with changes to other ratepayers. Tr.1135-36.

118. Sunoco over-states the impact of the parcel based stormwater cost allocation on its refinery accounts (approximately \$5 million annually), since it does not take into account the fact that under the rate plan established by the Department, Sunoco will be entitled to sizeable credits if their representation of stormwater flow treatment before discharge into the Schuylkill River is proven in the administrative avenue available for the allowance of monetary credits. Tr. 1080; 1121.

119. Given such credits that Sunoco will most likely receive, the gross annual impact of several million dollars in additional charges annually will be substantially diminished.

120. Under the proposed regulations, Sunoco also will be entitled to a NPDES credit in addition to IA or GA credits. This is consistent with the CAC recommendations and the fact that other cities have given such benefits to NPDES dischargers.²¹

121. The CAC also agreed that NPDES credits provided a mechanism to recognize the industries that maintained consistent compliance with their NPDES permits, through a credit that rewarded good stewardship of their operations. In recognition of the contribution made by NPDES dischargers, PWD did not want them to be at a competitive disadvantage.

122. The Department has pledged to work with Sunoco to make sure all credits to

²¹ PWD Exhibit 48 provides a NPDES credit survey for a cross-section of jurisdictions nationwide. However, it is pertinent to note that there is no justification on the cost basis of the credit, so same may, in fact, be a financial windfall for Sunoco. As Deputy Commissioner Clare testified at the technical hearing: "I would say we felt compelled to stick with the CAC recommendations and we actually even talked about getting rid of the 7% because there really wasn't anything compelling that would require us to offer a NPDES credit. So we did the whole gamut. We looked at certainly throwing out the NPDES permit credit. We looked at the 7%. We looked at 100%. But I think we felt pretty comfortable where we were." (N.T. 1171: 7-17).

which it is eligible, under the proposed regulations, are afforded to them.²²

Uncontested Clerical Changes to the Proposed and Existing PWD Regulations

123. PWD Regulation 300.0 should contain a definition of “property” applicable to Chapter 3 of the existing and proposed PWD Regulations.

124. PWD Regulation 300.0(t) should refer to the Board of Revision of Taxes, not the “Bureau of Revisions of Taxes.” Exh. PWD-51.

125. Proposed PWD Regulations 304.1(b), 304.2, and 304.3 must be amended to reflect the fact that PWD has proposed to postpone implementation of the first SWMS charge partially determined by a parcel based calculation from July 1, 2009 until July 1, 2010, while maintaining the position that the phase in should be completed in three annual steps. PWD St.-8, at 2.

126. PWD Regulation 305.1(h)(1) should not contain the words “or scheduled.” The use of term “scheduled” is archaic. Exh. PWD-51.

127. PWD Regulation 305.2 should be amended to read: “The water, sewer and stormwater charges established in Sections 302.0 et seq., 303.0 et seq. and 304.0 et seq. of these Regulations shall be applied to all general customers, excepting the following groups of special customers:” Exh. PWD-51. This language was contained in the original proposed Regulation filed with City Council. It was not the subject of any controversy in Part I of these proceedings, and should not have been changed in the Regulations that became effective November 1, 2008.²³

²² Pledges such as this in the past have, at times, been illusory. However, a “sea change” has occurred under the current top management of the Department, as aptly demonstrated by the Department’s commitment and participation in the current Water Revenue Bureau plenary mediation. The Hearing Officer also commends Revenue Commissioner Keith Richardson and Deputy Revenue Commissioner Michelle Bethel for their commitment and participation in the plenary mediation.

²³ PWD Regulation 305.2 effective November 1, 2008 omits the reference to stormwater charges contained in the original Regulations as filed. “The water and sewer charges established in Sections 302.0 et seq., 303.0 et seq. of these Regulations shall be applied to all general customers, excepting the following groups of special customers:”

IV. DISCUSSION

1. Description of Stormwater System

The stormwater system is comprised of 619 miles of separate storm sewers, 1,599 miles of combined sewers and approximately 75,000 stormwater inlets – all subject to the Department’s National Pollution Discharge Elimination System (“NPDES”) stormwater permits.²⁴ These permits require the Department to implement four management programs to reduce the discharge of pollutants from its municipal separate storm sewer systems. The management programs require the Department to reduce pollution from (A) commercial/residential areas; (B) illicit connections; (C) industrial facilities; and (D) construction sites. PWD Statement 4 at 2-3.

The Department’s stormwater management program addresses primarily the quantity of stormwater runoff and its effects on the natural environment. The program, however, encompasses both the separate stormwater drainage systems in certain geographic areas of the City and the combined sanitary/stormwater sewerage facilities in other areas. It is the latter areas of the City where combined sewer overflows (CSOs) occur. The stormwater program is also associated with flood protection along major waterways and our receiving streams and rivers. *Id.* at 3.

It is noteworthy that in approximately forty percent of the City, stormwater flows into, through and is discharged from separate storm sewers to receiving waters. In the remaining sixty percent of the City, combined sewers carry both sanitary wastewater and, during and following

²⁴ In 1987, the Clean Water Act (33 U.S.C. 1251, *et seq.*) was amended to address discharges from municipal separate storm sewer systems. Municipal separate storm sewer systems collect stormwater from homes, businesses, streets and other sources and convey it directly to rivers and creeks without treatment. Cities whose separate storm sewer systems serve a population of over 100,000, were required under these amendments to obtain a NPDES permit for their discharges. The Clean Water Act requires dischargers to reduce any contaminated flow in the storm sewer system to the maximum extent practicable. The Pennsylvania Department of Environmental Protection issued the City its initial stormwater permit on September 29, 1995.

storm events, stormwater runoff. Stormwater entering the combined sewer system impacts both the conveyance and treatment plant functions. A significant portion of the flow capacity provided in the combined sewers and operations at the treatment facilities are predicated on the demands of stormwater runoff entering the system.

As documented in this record, stormwater management is the fastest growing component of the Department's state and federally permitted wet weather programs. The Department anticipates a potential large capital cost over a twenty year horizon to rehabilitate and add new infrastructure to its combined and separate stormwater sewer systems to meet Clean Water Act²⁵ obligations. To meet these goals, the Department is using public lands, in addition to its infrastructure, to identify opportunities to manage surface stormwater flow through low impact development (green infrastructure practices), thereby infiltrating and/or detaining stormwater during a rain event and thus mitigating the treatment and conveyance capacity burden on our system while also providing an environmental benefit to our waterways and neighborhoods.

The Department's 2009 Stormwater Regulations and the proposed stormwater cost allocation process will allow the utility to encourage similar best practices on privately owned lands, which comprise approximately fifty percent of the City's land surface. To be sure, if private property owners voluntarily make changes to their parcels to take advantage of credits offered for such good practices, the cost to the City and its ratepayers overall will incrementally decrease with every parcel that is managing its own runoff. The above result is advantageous to all customers and the regional environment. *Id.* at 5.

a. Stormwater Equals Sewage

All parties in this case recognize that the PWD's power to establish a system of SWMS charges to recover the costs of stormwater management must be authorized by state law, the

²⁵ 33 U.S.C. 1251, et seq.

Home Rule Charter and City Council ordinance. Com., Dept. of Environmental Resources v. Butler County Mushroom Farm, 499 Pa. 509, 454 A.2d 1 (1982) (settled legal principle requires that power and authority to be exercised by administrative agencies must be conferred by the legislature); Bailey v. Zoning Bd. of Adjustment of the City of Philadelphia, 569 Pa. 147, 801 A.2d 492 (2002) (rules governing agency's power to administer a state statute are equally appropriate when considering an agency's power to administer a municipal ordinance).

Applicable law regarding "sewer" services defines these services very broadly to include stormwater management. Sewer service under state law includes not only stormwater processing and/or discharge through a system of combined and/or separate sewer pipes, but also a sewer utility's actions concerning stormwater which are necessary in order to assure that the overall system for processing and disposal of sanitary sewage, wastewater and stormwater can function in conformity with city, state and federal environmental laws and regulations.

The state Sewer Rental Act authorizes a municipality which has constructed "any sewer, sewerage system or sewage treatment works" to impose and collect an "annual rental, rate or charge for the use of such sewer, sewerage systems, or sewage treatment works from the owners of, or the users of water in or on the property served or to be served by it, or from both the owner and the water user..." 53 P.S. § 2231.²⁶ In the absence of a limitation, the Commonwealth Court has stated that the term "sewer" should be construed broadly. Medicus v. Upper Merion Township, 475 A.2d 918, 82 Pa.Cmwlth. 303 (1984).²⁷ Under this law, sewer service encompasses not only the transport, treatment and disposal of sanitary sewage transported

²⁶ The amount charged to customers was authorized to be sufficient, *inter alia*, to cover the "amount expended... in the operation, maintenance, repair, alteration, inspection, depreciation, or other expenses in relation to such sewer, sewerage system, or sewage treatment works..." 53 P.S. § 2232.

²⁷ In that case, where the issue was whether a stormwater culvert should be held to be considered to be a "sewer," the Court stated: "In the absence of anything which would indicate a limitation on the meaning of the term, the word "sewer" will be construed to include both storm sewers and sanitary sewers. 80 C.J.S. Sewer p. 131; and Anselmi v. City of Rock Springs, 53 Wyo. 223, 80 P.2d 419, 116 A.L.R.1250; Trustees of University Co-op Co. v. City of Madison, 223 Wis. 100, 288 N.W. 742."

through subterranean pipes, but also stormwater management services. Such stormwater management services include not but are not limited to collection, transport, treatment and disposal of stormwater transported subterranean pipes, and all other actions concerning other stormwater which are necessary in order to assure that the overall system for process and disposal of sanitary sewage, wastewater and stormwater can function in conformity with city, state and federal environmental laws and regulations.

Sewer service thus encompasses services associated with sewer, sewerage systems or sewage treatment works. Such service includes the transport and/or treatment of sanitary sewage and stormwater and/or the ultimate disposal of these materials, either through discharge into rivers or as sludge or similar material into landfills. It is noteworthy that the Sewer Rental Act recognizes that the benefits which result from sewer service are benefits which flow directly to city or county users and/or indirectly to all property owners regardless of direct use. The benefits are both specific to individual customers and general to the city or county – “for its or their benefit and the benefit of the inhabitants thereof.” 53 P.S. § 2231.

2. PWD Has the Legal Authority to Impose SWMS Charges

The Department’s authority to impose stormwater management charges emanates from Pennsylvania Statute, the Charter, and the Philadelphia Code. The wastewater system consists of combined storm/sanitary sewers, separate sanitary and stormwater systems, pumping stations and the treatment plants, and the Department has the responsibility for managing and funding these facilities. Historically, a stormwater charge has been assessed as part of the sewer facilities charge for all customers. The stormwater charge is not a new charge, but rather a modification of the existing charge (meter based) premised upon a more equitable cost recovery approach (parcel area based).

Sunoco's core argument, in this context, is that neither Section 5-801 of the Charter nor Section 13-201 of the Philadelphia Code explicitly authorizes the imposition of charges for stormwater management services. Sunoco Initial Brief at 14-15. Rather, authorization is given for charges related to "sewage disposal services." In Sunoco's parochial view, the phrase "sewage disposal services" does not include stormwater management, particularly with respect to the separate municipal storm sewer system which theoretically conveys stormwater only. Conversely, the Department contends that the applicable phrase is appropriately interpreted in light of the Charter and Philadelphia Code, as a whole, which clearly envisions the Department having the authority to operate the water and wastewater utilities (inclusive of all of its functions) and to impose charges for those services it provides.

As discussed earlier, "sewage" is broadly defined in the Philadelphia Code to include human and animal excrement as well as other pollutants and toxic substances. Under this broad definition, sanitary and stormwater flows are encompassed when one realizes the fact that raw sewage enters the flows of both the combined and separate stormwater system because of obvious reasons with the combined system and, with respect to the separate storm system, through illicit connections, leaking sewer pipes, runoff including dog excrement, oils and other pollutants from fast food restaurants, service stations and the streets generally.

Taken together, the stormwater flows even in the separate storm sewer system are not pristine, as Sunoco seems to assume. The Department has authority to impose charges for stormwater management amongst its customers, since they are an integral part of its wastewater system including, combined storm/sanitary sewers, separate sanitary and stormwater systems, pumping stations and the treatment plants which are essential components required for the functioning of the utility.

a. Discussion of Hamilton's Appeal

As support for its legal claim that the PWD does not have the authority to impose stormwater charges to the extent that the stormwater associated with the customer's property does not flow into PWD pipes or culverts, Sunoco relies heavily on the 1940 case Hamilton's Appeal, 340 Pa. 17, 16 A.2d 32 (1940). Sunoco I.B. at 29, 37. However, analysis by the Hearing Officer of the holding mandates his conclusion that this case does not give Sunoco the support it contends.

In Hamilton, the court considered the City of Philadelphia August 1940 Ordinance (hereinafter "1940 Ordinance") imposing an annual sewer charge "upon each lot or parcel of land, building or premises having any connection or being available for connection with the sewer system of the City or otherwise discharging sewage, industrial waste or other liquids or substances, either directly or indirectly, into the said sewer system." The amount of the charge imposed was to be based not upon the cost of providing the sewer service, but rather on the assessed value of the property served or being available to be served. This 1940 Ordinance was purportedly based on the Sewer Rental Act, now codified at 53 P.S. §§ 2231-2232, which empowered municipalities to provide for the imposition and collection "of an annual rental or charge for the use" of their sewer facilities. The City of Philadelphia had obtained a Common Pleas determination that the debt associated with investment in sewer infrastructure was self-liquidating utility debt within the meaning of Article IX of the State Constitution, (which imposed limits as a percentage of the total real estate tax assessments on the level of debt that the City was authorized to assume), and therefore, would not impair the borrowing capacity of the City.

This determination was challenged by a taxpayer, who contended that the 1940

Ordinance's focus on real property ownership as the basis for liability, and the manner of calculating the amount due rendered the charges a tax, rather than sums paid for the use of the municipally owned sewer system. In consequence, the taxpayer's argument went, the 1940 Ordinance had to be struck down, because the City debt level was already at or above the constitutionally permissible level.

The Supreme Court agreed with the taxpayer that the charges authorized by the 1940 Ordinance had to be construed as a tax. In its opinion, the Supreme Court focused on the fact that under the Ordinance, the charge was applied "not only to those who have availed themselves of the right to connect with the sewer but by all those to whom it is made available by its presence." The Court further observed that the

charge is made applicable not only to properties actually connected with and accommodated by the sewer system, but as well, inter alia, to (1) vacant lots not connected to the sewer system but abutting thereon, (2) vacant lots connected to the system but not using it, (3) vacant buildings not connected with the sewer system but abutting on it, (4) vacant buildings connected with the sewer system but not actually using it, (5) occupied building not connected to the sewer system but abutting thereon, and (6) as construed by the court below, to all properties directly or indirectly discharging surface water into the storm sewer system, regardless of whether they are connected with or are available for connection with the sanitary sewer system.

Hamilton's Appeal, at 34-35. Given the very broad and unrealistic scope of the 1940 Ordinance, the Court had no trouble concluding that the Sewer Rental Act provided "no authority" for such a fanciful law. Fees based on the Ordinance could not be considered rent or charges authorized by the Sewer Rental Act for actual sewer use. Moreover, charges based on the assessed value of the property served or available to be served could not pass the statutory muster of the Sewer Rental Act requirement that charges be proportional to the value of the service rendered.

This *stare decisis* analysis demonstrates how the holding of Hamilton's Appeal does not support rejection of the City's SWMS program. First, the Hamilton court's reasoning does not

address the use of either stormwater sewers or of stormwater management services.²⁸ Secondly, the 1940 Ordinance would have authorized sanitary sewer charges even for buildings with no sewer laterals. Third, the 1940 Ordinance would have authorized sanitary sewer charges even for buildings which were physically connected to the sewers, but not using them. Fourth, the 1940 Ordinance would have authorized sanitary sewer charges for vacant lots even though those lots were not physically connected to the sewer system. Under the 1940 Ordinance, all these properties, whether buildings or vacant land, were to be assessed a charge for sanitary sewer service regardless of whether they were physically connected to the City's underground sanitary sewer system and regardless of their level of use of that system.

In contrast to the 1940 Ordinance, the PWD's proposed SWMS program complements a system of sewer sanitary sewer charges which are strictly based on the property owner's actual connection to the underground sewer system. That system of charges is based on cost of service for the use which the property owner makes of the sanitary sewer system. This sanitary sewer program of charges is diametrically opposite the charges rejected by the Supreme Court in Hamilton. The SWMS program, however, addresses matters not addressed, and not contemplated, in Hamilton – the allocation of financial responsibilities for stormwater runoff among Philadelphia property owners, whether that runoff finds its ways into underground sewers for eventual “disposal” or whether that runoff, as in the case of much of Sunoco's property, runs off into the Schuylkill River.

In short, Hamilton simply does not address the question *sub judice*, and is not a linchpin for Sunoco's claim that the Sewer Rental Act does not allow the PWD to implement its SWMS

²⁸ The one mention of the discharge of “surface water” and storm sewers occurred in the Court's recitation of the lower court's summary of the 1940 Ordinance's provisions, which has been quoted above. The focus, however, was not that property owners were being charged for stormwater service without respect to use or authority under the Sewer Rental Act, but rather that property owners with stormwater runoff were to be charged for sanitary sewer service, “regardless of whether they are connected with or are available for connection with the sanitary sewer system.” Hamilton, at 35.

program for allocation and collection of stormwater costs.

Legal precedent and common sense compels the Hearing Officer to conclude that contrary to Sunoco's claims, stormwater constitutes "sewage" whether it enters Philadelphia's CSOs, separate sewers, or drains directly into the City's rivers and streams. The PWD is legally charged with the duty of minimizing adverse environmental consequences associated with all discharges into rivers and streams in Philadelphia County. Unlike the case of sanitary sewage service, where there is a directly discernable relationship between sanitary sewer "use" and water consumption, in the case of less visible stormwater management benefits, the PWD must necessarily develop another methodology for allocating SWMS services according to "use." The PWD's SWMS program does precisely that, in a two step process: (1) first assessing gross stormwater charges according to the property owner's impervious and gross area; and (2) a reasonable framework is provided (with an appeal process²⁹) for customers to obtain a credit of varying amounts from the gross SWMS charge based upon objective and measurable standards that the customer has taken, which are uniformly applied to fair and reasonable criteria applicable to all customers, which diminish the customer's "use" of the PWD's stormwater services.

The Hearing Officer finds that the Department's well-researched, fair and responsible proposal contains not even a scintilla of inconsistency with the Sewer Rental Act, the Home Rule Charter and Philadelphia's ordinances regarding sewer service, and vehemently recommends its adoption.

²⁹ It is advisable for the development of this appeal process to track the process utilized in the WRB plenary mediation, to which the management at the PWD and WRB, including the Revenue Department, have shown commendable commitment and participation.

3. Parcel Area Based System

a. History of Transition to a Parcel Area Based System of Stormwater Cost Allocation

The Department's proposal in this proceeding is the culmination of an effort which began in the mid-1990's with the convening of the Stormwater Charge Allocation Community Advisory Committee. As the Hearing Officer is aware, the CAC was convened by the Department to review the utility's stormwater operation and maintenance expenses, capital related requirements and overall cost allocation guidelines. The CAC also reviewed how other utilities were recovering stormwater related costs. The committee was a diverse group of stakeholders including representatives of large and small businesses, universities, parking lots, transportation utilities, civic groups, senior citizens, realtors and water only customers who undertook to study this issue over a period of two years. The primary recommendations of the CAC are summarized below:

- The Department should implement a reallocation formula based upon the gross size of a customer's property and the imperviousness of the property, as these two factors are most important in determining the stormwater runoff contribution of individual properties. This reallocation should be completed for both residential and commercial properties.
- Because the impervious factor is the most dominant factor in calculating stormwater runoff, CAC recommended that eighty percent of the stormwater costs should be allocated and recovered from the total billable impervious area and twenty percent of the stormwater costs should be recovered from the total billable gross area.
- The City's 450,000 residential properties should be treated as a single entity with total gross area and imperviousness area factors. The total costs would be divided among all residences.
- The City should also seek to recover the cost of managing stormwater from properties that do not have water meters, e.g., parking lots, utility right-of-ways, vacant land, etc.

PWD Statement 4 at 3-4.

The Department initiated the transition to a parcel area based system of cost allocation in FY 2002 for residential customers, consistent with the recommendation of the CAC, as alluded to previously. Department witness J. Rowe McKinley³⁰ addresses this issue in his testimony:

Since the rate hearing process related to the proposed rates for Fiscal Years 2002 through 2004, the stormwater charges to the vast majority of residential customers, as well as other smaller customers with 5/8-inch meters, have been based upon the parcel gross area/impervious area methodology that was phased in over the three year period Fiscal Year 2002 through 2004. The cost recovery of stormwater collection and treatment related costs in the service charges for 5/8-inch meters as proposed in my original testimony in this hearing for Fiscal Years 2009 through 2012 continues to recognize the weighted average gross and impervious area associated with the residential parcels for the existing customer base, with the cost recovery based on 20 percent allocation of stormwater costs to gross area and 80 percent cost allocation to impervious area.

PWD Statement 7 at 5.

The Department is now proposing to complete the transition to the total implementation of the parcel area based system for larger meter customers (non-residential). The phase-in of parcel area based stormwater cost allocation is proposed to be over three years (as was the case with smaller meter customers). *Id.* at 11-12. In keeping with the recommendations of the CAC, the current equivalent meter based system used for larger meter customers will be phased-out beginning in FY 2011 (over a three year period).³¹ The stormwater related service charges under the existing equivalent meter based system for larger meter customers – which are subject to the

³⁰ Mr. McKinley and his firm, Black & Veatch, have proven to have served the Department well in their consulting capacity in view of Mr. McKinley's breadth of knowledge and experience in similar matters involving jurisdictions throughout the country.

³¹ The Department, during the course of the proceeding, revised its proposal so as to postpone the phase-in of the parcel area based stormwater cost allocation for non-residential customers until July, 2010. The additional time will provide the Department with ample opportunity to conduct a thorough public outreach and educational program, particularly geared toward impacted non-residential customers, regarding the stormwater parcel area based charge and possibly opportunities for non-residential customers to mitigate these charges through effective stormwater management practices on their properties. The additional time will also permit impacted customers (such as Newman & Company, Inc.) to plan financially over a longer period of time. PWD Statement 8 at 2.

three year phase-out – are set forth in Table 1 below.³²

TABLE 1
PROPOSED NON-RESIDENTIAL STORMWATER CHARGES
EQUIVALENT METER METHODOLOGY

	Description	Collection and Treatment \$/month	Billing Costs \$/month
FY 2009	5/8 Inch Meter:	10.18	2.42
	3/4 Inch Meter:	62.58	2.42
	1 Inch Meter:	104.33	2.66
	1-1/4 Inch Meter:	158.55	2.90
	1-1/2 Inch Meter:	208.63	2.90
	2 Inch Meter:	333.80	3.63
	3 Inch Meter:	625.87	4.84
	4 Inch Meter:	1,043.15	9.67
	6 Inch Meter:	2,086.30	16.92
	8 Inch Meter:	3,338.08	24.18
	10 Inch Meter:	4,798.50	36.27
	12 Inch Meter:	8,971.09	48.36
FY 2010	5/8 Inch Meter:	10.80	2.42
	3/4 Inch Meter:	67.75	2.42
	1 Inch Meter:	112.92	2.66
	1-1/4 Inch Meter:	171.63	2.90
	1-1/2 Inch Meter:	225.84	2.90
	2 Inch Meter:	361.36	3.62
	3 Inch Meter:	677.52	4.83
	4 Inch Meter:	1,129.19	9.66
	6 Inch Meter:	2,258.38	16.91
	8 Inch Meter:	3,613.41	24.16
	10 Inch Meter:	5,194.27	36.24
	12 Inch Meter:	9,711.02	48.32
FY 2011	5/8 Inch Meter:	10.99	2.49
	3/4 Inch Meter:	70.30	2.49
	1 Inch Meter:	117.18	2.73
	1-1/4 Inch Meter:	178.10	2.98
	1-1/2 Inch Meter:	234.35	2.98
	2 Inch Meter:	374.94	3.73
	3 Inch Meter:	703.02	4.97
	4 Inch Meter:	1,171.71	9.94
	6 Inch Meter:	2,343.42	17.40
	8 Inch Meter:	3,749.45	24.86
	10 Inch Meter:	5,389.84	37.29
	12 Inch Meter:	10,076.65	49.72
FY 2012	5/8 Inch Meter:	11.06	2.60
	3/4 Inch Meter:	72.12	2.60
	1 Inch Meter:	120.20	2.86
	1-1/4 Inch Meter:	182.69	3.12
	1-1/2 Inch Meter:	240.39	3.12
	2 Inch Meter:	384.62	3.90
	3 Inch Meter:	721.15	5.21
	4 Inch Meter:	1,201.92	10.41

³² Table 1 presents the same information shown in Table B-1 of PWD Statement 7.

6 Inch Meter:	2,403.83	18.22
8 Inch Meter:	3,846.14	26.03
10 Inch Meter:	5,528.80	39.05
12 Inch Meter:	10,336.50	52.06

The third year of the phase-out will occur in FY 2013, under the Department’s revised proposal. Rates for that year have not, as yet, been determined.³³

Current calculations show that the majority of large meter customers will see a reduction or otherwise minor impact on the stormwater component of their water and wastewater bills. For those customers that will see noticeable increases in charges, opportunities exist to decrease the amount of their bill through the Department’s stormwater credit program. The stormwater credit program offers incentives (credits) for on-site best practices that mitigate the volume of stormwater runoff for non-residential properties, or otherwise favorably impact the sewage system.

b. Reasonableness of Parcel Area Based System

On a macro basis, the parties have not disputed, what is self-evident, the contention that the parcel area based system for stormwater allocation is more equitable than the equivalent meter basis of allocation. Several parties, however, had suggestions or modifications of the proposal as to its implementation (e.g., residential credits; longer phase-in period). However, one party, Sunoco, takes the entire proposal to task based on its contention that customers like Sunoco who have their own treatment facilities are operating subject to proprietary NPDES permits.

Of all parties involved in this proceeding, and of all the customers of the Department,

³³ The phase-in of the parcel area based system of stormwater cost allocation for non-residential customers is proposed to be completed in FY2013 (one year beyond the current Rate Period). The Department is not proposing rates for FY2013, since the rates for FY2013 and beyond will, as “the night follows the day,” be the subject of a subsequent rate proceeding. What is instantly recommended is that the framework for the transition of stormwater charges under the parcel area based system be provided for a similar period to that provided for residential customers. Principles of gradualism dictate that a phase-in be implemented to avoid abrupt changes in rates for some customers (e.g., Newman & Company and Sunoco).

Sunoco stands to be most detrimentally pecuniarily impacted by the proposed parcel area based system. Sunoco witnesses Stephen J. Koczirka, Richard J. Goracy and James Disario assert two major contentions proffered in their testimony:

- (1) that Sunoco should not pay stormwater charges because their stormwater flows do not enter the Department's system; and
- (2) that the NPDES credit is unfair as calculated.

It is pertinent to underscore the fact that Sunoco does not dispute the Department's basic thesis that use of a parcel area based system for calculation of stormwater charges (versus the equivalent meter basis) is more equitable. Sunoco's issue with PWD is based upon its unique situation at the refinery in South Philadelphia where it operates its own wastewater treatment facilities subject to its own NPDES permits.

By way of background, the aforesaid Sunoco refinery is situated on a property of some 1,298 acres along the Schuylkill River. This property is divided into four parcels – (1) Point Breeze Processing Area; (2) Girard Point Processing Area; (3) the Schuylkill River Tank Farm; and (4) the West Yard. Sunoco Statement 1 at 7-8. It is noteworthy that Sunoco has its own treatment facilities serving the Point Breeze and Girard Point parcels, which are subject to NPDES permits. The Schuylkill River Tank Farm parcel discharges to the Department's wastewater/stormwater conveyance system for treatment before discharge. *Id.* The West Yard is an undeveloped parcel and has no stormwater inlets capable of discharging to PWD. *Id.* at 10-11.

Sunoco's contention is that its parcels with their own treatment facilities should be excluded from the calculation of stormwater management charges. It also contends that its undeveloped West Yard parcel should likewise be excluded from the calculation of such charges because it is not connected with the PWD system. Sunoco Statement 1 at 15.

While Sunoco's position at first blush has a "ring of reasonableness," Sunoco does not

accept or address the “given” that stormwater discharges impact the rivers and streams whether it comes through a privately owned or municipally owned stormwater system. It bears reiteration that stormwater management essentially relates to controlling the “impact” of stormwater flows whether it is simply the runoff that causes erosion or the pollutants carried with the runoff that affects stream health and quality. Unless properly managed, stormwater runoff can harm the streams, creeks and rivers and tributaries that run throughout Philadelphia. This is the very essence of why stormwater management is so important to the City. PWD Statement 8 at 5.

The Department is proposing to allocate the costs of its stormwater management program (\$103 million annually) based upon the aforesaid “impact.” Sunoco benefits from this program, as do all parcel owners in the City. The only question presented is the fairness and reasonableness of the Department’s proposal to transition non-residential customers to a parcel area based system for SWMS (similar to the parcel based stormwater cost allocation for residential customers). CAC provides the answer in its recommendation that use of gross and impervious area of a parcel as a basis to measure stormwater runoff contribution is the most equitable way to proceed for residential and non-residential customers. It is noteworthy that CAC also took into account additional factors mitigating stormwater impact in recommending credits for stormwater management best practices and NPDES credits. In short, the factual scenario described in Sunoco’s testimony (with SMPs and NPDES permits) was not overlooked by CAC³⁴, or by the Department or the Department’s highly qualified consultants (Black & Veatch) in structuring the proposed framework.

³⁴ Sunoco is a part of and subject to the City's policy to protect and improve the quality of the water bodies that so greatly contribute to the quality of life here. The rivers and streams that surround Philadelphia constitute the source waters from which we draw the City's drinking water supplies. Keeping our source waters clean is one of the fundamental pillars of environmental management allowing us to provide safe and healthy drinking water to the citizens of Philadelphia. Sunoco’s stormwater discharges (even via their own stormwater pipe) have an undeniable impact on the overall water quality and the environment which is the Department’s concern. PWD Statement 8 at 5-6.

The Hearing Officer notes that Sunoco differs with the Department as to the “impact” of its stormwater discharges. It believes there is no impact associated with discharges from its parcels with treatment facilities (Point Breeze and Girard Point parcels) or stormwater runoff from the West Yard. However, Sunoco has not made the case that its stormwater runoff has no impact on the local environment at the parcels where there are onsite treatment facilities. In point of fact, all stormwater discharges have an impact on the local environment whether through erosion or pollutants carried with runoff. Tr. 1037.

Sunoco’s contention that the West Yard (undeveloped parcel) should be excluded in the calculations of SWMS is a classic “non-starter.” There is no stormwater management whatsoever at the West Yard. This fact is not in dispute. Perforce any stormwater runoff from this undeveloped parcel goes directly to the river. Tr.1135-36. The Hearing Officer questioned the Sunoco witnesses on this point, asking Sunoco whether there was something special about this particular parcel that justified treatment different from the thousands of other undeveloped properties included in the rate base. Per the record:

THE HEARING OFFICER: Well, is there something special about Sunoco’s property that’s undeveloped as contrasted with other property that’s in the City?

THE WITNESS: It is undeveloped and has no connections to the Philadelphia Water Department sewer system.

THE HEARING OFFICER: Well, an undeveloped parcel can have runoff for stormwater.

MR. DISARIO: Yes, it can.

Tr. 1136. There is clearly no reason to exclude the West Yard from the calculation of SWMS, as there is stormwater runoff associated with this parcel, as with all other undeveloped parcels, all of which will be charged uniformly by the instant rate design.

While Sunoco and their highly competent and well-respected counsel have advanced cogent and creative argument on their behalf, they cannot change a “given” accepted by the Hearing Officer. This given is the fact that stormwater runoff, treated or untreated, has an impact on the local environment. Furthermore, the record does not document onsite treatment of all stormwater runoff from Point Breeze and Girard Point (the portion of the parcels that drain to the treatment facilities is not established); and the evidence presented confirms direct stormwater runoff to the river from the West Yard. Tr. 1136.

As a practical matter, Sunoco’s ultimate quarrel with the Department is, in actuality, an intra-Department administrative issue. That is, Sunoco over-states the impact of the parcel based stormwater cost allocation on its refinery accounts (approximately \$5 million annually), resulting from its failure to recognize the fact that it will be entitled to sizeable credits available under the Department’s filing. Therefore, the gross annual impact of several million dollars annually will be substantially reduced for Sunoco if it takes advantage of the credit application process and qualifies for various credits reducing its overall charges.³⁵ As stated in the Department’s rebuttal testimony:

...the City has concluded that the fairest and most sensible way to apportion stormwater costs is by impact. Impact is essentially a function of your total gross area (GA) and Impervious Area (IA). A parcel’s stormwater impact is simply determined by how large the lot is (GA) and the quantity of runoff it generates once the stormwater hits the ground (IA). If the parcel owner engages in good on-site stormwater management, thereby controlling the stormwater runoff and its impact, the parcel owner gets a credit on the stormwater charge either as an IA or GA credit. [Emphasis supplied].

PWD Statement 8 at 6.

³⁵ The likelihood of Sunoco mitigating the level of stormwater charges through the use of credits depends chiefly upon the extent in which Sunoco’s onsite stormwater management improvements conform to the technical criteria prescribed by the Department for receiving GA and IA credits. PWD Statement 8 at 7. However, while the final amount is at issue, it is a “given” that Sunoco will receive some credit.

Sunoco will undoubtedly be entitled to a NPDES credit in addition to potential IA and/or GA credits. The proposed regulations provide for this cost savings consistent with the CAC recommendations and that fact that other cities have given such benefits to NPDES dischargers.³⁶ The CAC also agreed that NPDES credits provided a mechanism to recognize the industries that maintained consistent compliance with their NPDES permits, through a credit that rewarded good stewardship of their operations, and did not want NPDES dischargers to be at a competitive disadvantage.

Sunoco also seeks, as a part of its testimony, continued discussion with the Department concerning the determination of (A) the gross area and impervious area of the Philadelphia refinery for purposes of determining the SWMS charge; and (B) gross area and impervious area credits for the Schuylkill River Tank Farm parcel recognizing that the stormwater management practices and facilities that Sunoco has installed and continues to maintain on the property. Sunoco Statement 1 at 15. The Hearing Officer recommends such continuing dialogue and commends the Department for its good faith willingness to engage in such continuing discussions. This is yet another example of the fact that the upper level management of the Department do not act as blind bureaucrats, but instead as competent and reasonable managers responsible for a billion dollar enterprise whose “product” is vital to the City of Philadelphia and others.

c. Phase-In of Parcel Area Based Rates

The Hearing Officer adopts the Department’s proposal that the phase-in of the parcel area based rates for non-residential customers be similar to that used for residential customers in FY 2002. A three year phase-in was utilized in that instance. Because of the administrative

³⁶ PWD Exhibit 48 provides a NPDES credit survey for a cross-section of jurisdictions nationwide.

complications associated with the implementation of a parcel area based system for larger meter customers, the proposed start date is now deferred to be July 1, 2010.

As shown in the Table 1 above (Revised Table B-1 from PWD Statement 7), the rates have been developed and adopted for the full level of charges for both collection and treatment of stormwater and for related billing costs for FY 2009-2012. The proposed rate regulation for stormwater service will provide the appropriate weighting of the phase-out of the current allocation approach which will vary by meter size over the proposed three year period. Table 2 below (Revised Table B-2 from PWD Statement 7) shows the full level proposed gross area and impervious area charges for each of the fiscal years FY 2009-2012. However, only the rates for FY 2011 and 2012 are applicable to the first two years of the proposed three year phase-in. The standard units of service measure for the proposed parcel based system are in 500 square foot

TABLE 2
PROPOSED NON-RESIDENTIAL STORMWATER CHARGES
PARCEL BASED METHODOLOGY

	Monthly Charges			Billing Costs
	Gross Area	Impervious Area	Total	
	\$/500 sf	\$/500 sf		\$/month
FY 2009	0.487	3.842		2.46
FY 2010	0.516	4.077		2.46
FY 2011	0.526	4.145		2.53
FY 2012	0.528	4.169		2.65
Minimum Charges	\$/month	\$/month	\$/month	
FY 2009	2.04	8.14	10.18	
FY 2010	2.16	8.64	10.80	
FY 2011	2.20	8.79	10.99	
FY 2012	2.21	8.85	11.06	

sf – square foot

increments of gross and impervious area, respectively. The total annual cost of service associated with the collection and treatment of stormwater, allocated twenty percent to gross area

and eighty percent to impervious area, is divided by the respective effective billable units of gross area and impervious area to derive the system unit costs of gross and impervious area.

d. Sunoco Fails to Recognize that the Rate that the PWD Proposes to Apply to Sunoco Is the Net Result of Two Determinations -- the First Based upon the Stormwater Volume Received by Sunoco's South Philadelphia Holdings, and the Second Based upon Determination of the Impact of Sunoco's Own Stormwater Management Measures on Reducing the PWD's Overall Cost of Stormwater Management

According to Sunoco's and the PWD's initial estimates, the implementation of the proposed SWMS charges would result in a gross increase in Sunoco's annual stormwater charges at the South Philadelphia sites from about \$0.25 million annually to about \$5.6 million annually. Sunoco I.B. at 12. In support of this gross increase, the PWD has presented substantial evidence that its proposed method of allocating stormwater costs, the consensus recommendation of the Consumer Advisory Committee, effectively links charges to cost of service principles, and is therefore more reasonable than a method based on water meter size. PWD St.-7, at 2 and passim. The Advocate's witness Mr. Mierzwa reviewed this methodology and confirmed the PWD's contentions in this respect:

Charges for utility services such as stormwater management should be in proportion to the amount of service being required by a customer. The parcel based approach is superior to the meter size approach for non-residential customers because parcel size is a much better indication of a customer's stormwater management service requirements than water meter size. Many communities/utilities currently assess, or are in the process of adopting, stormwater management charges which recognize parcel size. PA St.-4 at 3.

Sunoco emphasizes the size of the increase in stormwater costs allocated to its South Philadelphia properties, as a backdrop for its claim that the gross charges are unjust, unreasonable, and discriminatory. Sunoco I.B. at 12-13, 17, 48-50. However, the size of the increase, if any, which Sunoco would have to absorb, is exaggerated for effect. Conspicuous by its absence is that Sunoco fails to mention that the proposed methodology has two parts – an

overall allocation on a single parcel based method applied City wide, and then, a second part, set forth in proposed PWD Regulation 304.5 and passim, involving an individualized determination of the amount of SWMS credits which will be applied to the gross allocation. The purpose of the proposed system of SWMS credits is to assure that in any customer's ultimate SWMS charge, due recognition is given to the reduction in the PWD's overall stormwater management costs which would be deemed to result from the site specific measures taken by each non-residential customer.

Sunoco provided no expert testimony probative of its inherent contention that the PWD's proposed methodology for determining the amount of SWMS credits that a property owner might obtain was not reasonably calculated to give appropriate recognition through SWMS credits to a non-residential customer's own actions to reduce the impact of its stormwater. While it questioned the basis for the 7% NPDES credit, Sunoco did not carry its burden of rebutting the substantial evidence that the PWD presented in support of that credit. PWD St.-8 at 7; Tr. 1014-15. Sunoco provided no expert testimony offering another percentage NPDES credit as more reasonable. Given that the aim of stormwater management is to reduce both the quality and the quantity of runoff, the claim that the NPDES credit should be 100% is not meritorious, since compliance with NPDES requirements alone, which focus on quality rather than quantity of runoff, cannot reasonably be expected to result in a 100% reduction in the impact of Sunoco stormwater flows on the PWD's overall stormwater management burdens. Tr. 1081. As for other aspects of the methodology explained in detail by the PWD, Sunoco proffered no testimony to support its claim that application of the GA and IA credits would not result in a just and reasonable net SWMS charge for Sunoco's South Philadelphia facilities.³⁷

³⁷ See proposed PWD Regulation 304.5, as amended in Exhibit PWD-7, SI-60. For more detail on the calculation of GA and IA credits, see Exhibit PWD-39, PA-JM-41.

4. Stormwater Credits and Adjustments Program

The Department has adopted a stormwater credits program to provide non-residential and condominium property owners opportunities to seek reduction in their SWMS Charge and to also promote “green practices” that contribute to improved water quality. Stormwater credits are associated with the construction, operation, and maintenance of privately owned Stormwater Management Practices (“SMP”) that supplement the City’s stormwater management program and enhance water quality in the surrounding streams and rivers.

Three classes of credits, namely, GA Credits, IA Credits and NPDES Credits are to be offered. Credits are a percent reduction applied to the IA Charge, the GA Charge, or in the case of the NPDES Credits to the entire SWMS Charge, as applicable, depending on the specific onsite stormwater management practices implemented in the property. A property may be approved for credits from all of the three classes of credits. The total credit received cannot exceed 100% of the entire SWMS Charge. All credits expire 4 years from the effective date and are subject to renewal.

A stormwater credit request for each parcel must be initiated by the applicant separately for each credit that the property owner seeks. The applicant must submit a complete Stormwater Credit Application, if applying for a credit for the first time; or a complete Stormwater Credit Renewal Application, if applying for renewal of credit. The application must be accompanied with the appropriate application fee and supporting documentation. The technical criteria for the issuance of credits and the administrative process involved are outlined in the Department’s Credits and Adjustments Manual. PWD Exhibit 39 (PA-JM-26).

The Department also has a stormwater adjustments process to enable customers to seek SWMS Charge adjustments for inaccurate property classification or inaccurate determination of

a parcel's gross or impervious area.

a. Achieving transparency in showing amount and type of SWMS credits granted to each property

As presently proposed, the PWD's SWMS charge program will provide for a system of credits up to 100% of the SWMS charge (not including portions of the charge allocated to billing and collections costs) for non-residential customers and property owners who take appropriate measures to manage stormwater run off from their properties into their sewer lines, streets and land adjoining their property, and into rivers and streams. To the extent that credits are inappropriately granted to some customers/property owners (whether due to insider influence, or faulty design of the SWMS credit standards) other customers/property owners, both residential and non-residential, will be at risk to pay more. PA St.-4, at 6, lines 23-24. At the same time, the system-wide benefits from credit-worthy measures taken by particular customers/property owners are likely in most cases only to indirectly benefit their neighbors in ways that will not be readily apparent to the general public.

In these circumstances, the Public Advocate submits that there is a benefit to taking steps to make the granting of credits as transparent as practicable. As Mr. Mierzwa stated:

It is in the public interest for the granting of such discounts [SWMS credits] to be as transparent as possible. Current records showing the amount and type of credits granted to each property receiving a stormwater credit should be readily available to the public, just like the Board of Revision of Taxes records concerning the assessed value of real property. These regulations should provide for the creation by the PWD of a public records function to make this information routinely available to any interested person.

PA St.-4, at 5.

In its Rebuttal Testimony, and at the hearings, the PWD stated that it did not rule out the possibility of creating a "web-based system similar to the Board of Revision of Taxes (BRT) or even coordinating with BRT to provide stormwater charge and credits related information." PA

St.-8, at 3. Moreover, Mr. Clare affirmed his counsel's statement that "transparency obviously would be an advantage in any situation where there are credits given or any decision is made to make sure that folks know that it's all on the merits."³⁸ However, the PWD was not at this time prepared to commit to without first resolving any potential privacy issues, and exploring more fully issues of feasibility and cost. Tr.1051-1054. The Hearing Officer understands and agrees with the PWD's concerns, but would hope some form of public credit transparency would be studied and in place by the next rate case. The Hearing Officer agrees that it would not be appropriate, in certain circumstances, to have proprietary information or perhaps structural information for buildings and improvements part of the public domain.

As the Public Advocate poignantly observed, individuals and other entities who have concerns about public disclosure of SWMS credit information would always have the option of not applying for SWMS credits.

In view of the foregoing, the Hearing Officer recommends that a condition of implementing the SWMS program would be for the PWD to develop and implement a system for public disclosure of the parties receiving SWMS credits, the properties to which the credits apply, and the dollar amount of the credit.

b. Stormwater That Falls On or Flows Into All Parts of the City of Philadelphia Gives Rise to the Duty of the PWD to Provide for Its Disposal. Sunoco's Stormwater Is No Different from the Stormwater Impacting All Parts of the City.

In the record of this proceeding, the PWD and the Next Great City Stormwater Subcommittee have submitted substantial evidence that stormwater becomes a potential threat to human health, the domestic water supply, animals, aquatic life, water related recreation and/or constitutes pollution, virtually from the time that it falls on the City and County of Philadelphia

³⁸ Tr.1053. The transcript mistakenly states "permits" instead of the similarly sounding "merits."

or flows into the City and County of Philadelphia from neighboring counties.

Ms. Dahme testified that the City has been under continued and increasing pressure from the federal Department of Environmental Protection (EPA) to take steps to limit and/or eliminate harms caused by non-point sources of water pollution – stormwater runoff into streams and rivers. PWD St.-4, at 6-7. As an example of one type of harm, she described how stormwater flowing in excessive volumes into Wissahickon Creek mixes with creek bank soils to cause a form of pollution in the Creek which has been identified by the EPA and made subject to EPA ordered restrictions. PWD St.-8, at 6. She also submitted an Exhibit with the heading “stormwater runoff volume and quality identified as the number one pollution source to rivers and streams.” Exh. PWD-45, Item #2 Stormwater Reallocation Presentation Nov 2008 (“Increasing Stormwater Management Costs”). At the core of her testimony was this fundamental observation:

We ... have problems with the pollutants that are picked up by stormwater runoff. Water is sort of the universal solvent. So when water hits the land, it picks up waste, gasoline, any kind of products that are on our land, fertilizers from lawns, takes that into our sewer systems, and we have an impact to the quality of that stormwater runoff. Tr. 935.

As NGCSS’s expert Mr. Horner testified, non-point source runoff under urban conditions is harmful, as well as discharges of untreated stormwater from separate sewers and of untreated sanitary sewage combined with stormwater from combined sewers. NGCSS St.-1, at 14, 18, 23-24. Specifically, he demonstrated how stormwater originating “pollution” from non-point sources mixes with “pollution” from point sources to raise overall pollution levels to harmful/unhealthy levels.

In larger storm events when combined sewer flows are discharged directly into the receiving waters of the Delaware and the Schuylkill and its tributaries, pollutant discharges include untreated sanitary wastes combined with the non-point source load running off of the urban landscape. Clearly, this combined

discharge of pollutants leads to water quality problems which adversely impact and limit overall water quality, fish life and vibrancy of the entire aquatic ecosystem, public water supply systems (i.e., intakes) downstream, and human recreational use.

NGCSS St.-1, at 18.

In addition, no comfort should be taken or claimed from the fact that the Sunoco parcels are located on the Schuylkill River near the southern border of the City. This fact should not be taken to mean that pollution from its facilities has no impact on Philadelphia, but rather flows exclusively south down the Schuylkill into the Delaware away from the City.

The “downstream” concept is further aggravated in this case because the Delaware and Schuylkill are tidally influenced here, meaning that pollutants discharged can actually move upstream during the incoming tides.

NGCSS St.-1, at 18.

Finally, the stormwater that falls on Sunoco’s property is almost instantaneously transformed into what is legally sewage under applicable law, the same type of material, but more toxic, as the rainfall runoff from the impervious and pervious portions of residential Philadelphia housing. One does not need to be a chemical engineer or rocket scientist to understand that the stormwater that falls on Sunoco’s properties does not long remain pristine. As demonstrated by Sunoco’s NPDES Permits, it mixes in a toxic stew on its property of Oil, Grease, Ammonia, and Benzene, and with other substances with more exotic and enticing names including Benzene, Toluene, Ethylbenzene, Chromium, Phenolic Compounds and Zinc, all deemed worthy of strict surveillance by the EPA. Sunoco St.-1, Exhibit F, NPDES Permit No. PA0011533 A1, NPDES Permit No. PA0012629 A1.

In summary, to the extent that stormwater mixes with any human or animal waste products/excrement or any other substances which are harmful to public health, harmful to a domestic water supply, harmful to animals or aquatic life, harmful to human water related

recreation, it constitutes “sewage.” Since all stormwater falling on the City of Philadelphia almost immediately mixes with such harmful substances, it becomes sewage which must be treated and properly disposed of by the City’s sewage system. Stormwater becomes “sewage” even when it does not flow into one of the PWD’s separate or combined sewers. As the sole entity ultimately responsible for disposing of sewage, the PWD has the legal duty to manage that stormwater in ways that meet applicable environmental standards, and to recover through rates which are not unreasonably discriminatory for the costs associated with performance of this duty.

c. NPDES Credit is not Arbitrary

Section 304.5 of the Department's proposed stormwater regulations addresses the credits that are available for property owners. Section 304.5(b)(3) provides that NPDES credit holders are eligible for a seven percent (7%) reduction to the overall SWMS charge. The Department explained that the proposed seven percent credit was consistent with the Citizens Advisory Committee ("CAC") recommendation. (PWD Rebuttal Testimony at p. 7). In his cross-examination, Deputy Commissioner Clare stated that the CAC report's recommendation of a seven percent credit for NPDES permit holders was based on a survey of credits provided by other municipalities and the fact that the seven percent was the alleged mid-point in the range of NPDES credits provided by other municipalities. (Tr. p. 1014-5). Sunoco submits that the Department's selection of a seven percent NPDES credit relying on the CAC report is arbitrary and unsupported by substantial evidence.

PWD points out that Sunoco’s entitlement to NPDES credits is in addition to potential Impervious Area and/or Gross Area credits. The proposed regulations provide for same, consistent with the CAC recommendations and the fact that other cities have given such benefits

to NPDES dischargers.³⁹ The CAC also agreed that NPDES credits provided a mechanism to recognize the industries that maintained consistent compliance with their NPDES permits, through a credit that rewarded good stewardship of their operations. Also, PWD noted that it did not want NPDES dischargers to be at a competitive disadvantage. PWD Initial Brief at 25.

The Hearing Officer finds that the NPDES credit proposed by the Department is an incentive recognizing that similar incentives are afforded by other cities. Stormwater credits offered as recognition of stewardship are typically rather small in amount of credit, and there are utilities that do not offer any credits for NPDES permit holders. The presence of an NPDES credit is not essential to the fairness and reasonableness of the program. However, the Hearing Officer recommends that the NPDES credit be made a part of the credit program.

5. Imposition of SWMS Charges on Properties Subject to Discontinuance Permit

The Public Advocate underscores that PWD customers receiving both water and sewer service have traditionally had the opportunity under City ordinance to obtain under certain conditions “discontinuance of water and sewer service charges” when they no longer desire water and sewer service at a particular property. A person exercising this right can obtain relief from the obligation to pay water and sewer monthly service charges for a property where service has been formally discontinued. The Public Advocate objects to the prospect that a customer who has elected discontinuance of water and sewer would still be subject to SWMS.

As PWD points out, it is “impossible to disconnect a property from the stormwater management system,” and therefore the PWD must “continu[e] to assess for stormwater management services regardless of connection to the system.” PWD St.-8, at 4. As Mr. Clare testified, “whether the sewer service [line] exists or not, stormwater will run unabated from that

³⁹ PWD Exhibit 48 provides a NPDES credit survey for a cross-section of jurisdictions nationwide.

property into the system forever, unless the system is wiped off the fact of the earth. So there's really no way to abate the stormwater charge." Tr.1063. The Hearing Officer agrees with PWD that since it is impossible to disconnect a property from the stormwater management system, a discontinuance permit should not be a method of circumventing the charges associated with stormwater management services. PWD Statement 8 at 4; Tr. 1055-58. If a person or entity owns property in the City of Philadelphia, it receives the benefit of stormwater management, and constitutional considerations require they pay for it.

6. Establishing a Pilot Program Aimed at Extending the Stormwater Credit Program to Residential Customers in the Next Rate Proceeding

Notably absent from the instant proceeding was a stormwater credit program to residential customers. It seems beyond peradventure that residential customers who implement stormwater management practices (SMPs) on their properties should be entitled to credits that correspond to the reduction of their contribution to stormwater impacts. As the Next Great City Stormwater Subcommittee noted in its direct testimony:

[A residential stormwater credit] would be fairer to residential customers, whose rates, like those of non-residential customers, should reflect any reductions they make to the amount of runoff that their properties contribute to the stormwater problem. Such credit also would create an incentive for residential customers to reduce the amount of stormwater that runs off of their properties. Taken as a whole, runoff from residential properties contributes significantly to our stormwater problem, so reducing such runoff should be a part of any solution aimed at addressing that problem. Collectively, SMPs implemented on residential properties could significantly assist in mitigating the stormwater problem, which would carry all of the same benefits to ratepayers [as SMPs implemented on nonresidential properties]. Residential SMPs also would contribute many of the same secondary quality of life benefits [as nonresidential SMPs].

(NGCSS St. 2, 6:12-22, C. Knapp.) The Next Great City Stormwater Subcommittee noted further that: "[s]everal cities, such as Ann Arbor, Michigan, Portland, Oregon, and Minneapolis, Minnesota, offer credits for residential onsite stormwater management." (NGCSS St. 2, 7:1-2, C. Knapp.)

Members of the public expressed an interest in implementing stormwater management practices on their parcels during the public input hearings. In North Philadelphia, Judith

Robinson stated:

[W]e do understand that conservation is important. So maybe you all, not to say that you're going to try to service every house with a rain barrel, but if that information was put out there and there were more rain barrels, then that might be some kind of way to offset some of the concern about the increase.

(Public Hearing No. 1 North Philadelphia 7-21-08 Tr., 70:7-14, J. Robinson.) At that same hearing, Jacqueline Williams stated:

I'm also here because I'm interested in the Office of Watershed. They teach you conservation for your property. . . . We also conserve water. We save rainwater for like our gardens and my grandparents did it for other things around the house. . . . [I]n this area I don't think they make the public aware of different ways that you can conserve water. . . . I'm interested in obtaining [a rain barrel].

(Public Hearing No. 1 North Philadelphia 7-21-08 Tr., 65:13-67:12, J. Williams.) And in

Roxborough, Beatrice Lesack stated:

If we plant more plants, if we plant more trees, more flowers, more shrubs near the house, outside near to the sidewalk, when the water comes, rather than go into the street and into the manholes that the water is collected, there will be less chance to have erosion because the water is caught in there.

(Public Hearing No. 2 Roxborough 7-22-08 Tr., 67:19-68:2, B. Lesack.) Residential customers who implement these kinds of SMPs on their properties should be entitled to stormwater credits.

The Next Great City Stormwater Subcommittee noted its disappointment that a residential credit system was not made part of the instant proceeding. Without conceding that a residential stormwater credit program should not be included in this rate proceeding, the Next Great City Stormwater Subcommittee has agreed to work together with the Water Department on a pilot program through which PWD may gather the additional information that it requires to

include a feasible and cost-effective residential stormwater credit program in the next rate proceeding.⁴⁰

The Next Great City Stormwater Subcommittee understands that PWD intends to develop a pilot program (“Model Green Neighborhoods”) with community partners in targeted neighborhoods. As the Water Department testified at the technical hearing:

We intend to spend the next few years working on a number of what we're calling model neighborhood projects, partnering with civic associations and others to really get a sense of what's feasible at a residential property level because the property is so small. We want to have, again, an understanding about what residents are willing to do, what they can feasibly do, maintenance-wise to make sure how they're mitigating is sustained, but most importantly really what they are capable of. And then we have to take a look at what is the incentive that would encourage residents to make that change and what would the impact of that incentive be on the Department's rate process.

(Technical Hearing Tr., 1046:12-1047:5, J. Dahme.)

As presently conceived, Model Green Neighborhoods and community partners will include:

- South Phila. – Passyunk Square Civic Association
- Northern Liberties – Northern Liberties Neighborhood Assoc.
- Awbury Arboretum – Tookany/Tacony-Frankford Watershed Partnership

PWD expects to target four blocks in each of these neighborhoods, focusing on perimeter blocks surrounding a publicly financed stormwater management project. The program elements will include:

- Gaining an understanding of people’s knowledge of stormwater issues and gauging their willingness to take individual action through literature research, speaking to other utilities and cities, and pilot neighborhood meetings
- Working with Next Great City, PennFuture and other civic partners to organize neighborhood focus groups to identify homeowners’ current stormwater practices and the barriers that may exist (is it too hard, inconvenient, etc.) to motivate them to adopt the type of practices that will provide a real stormwater management benefit

⁴⁰ An important outgrowth of the stormwater process thus far has been the success of the CAC. Given the impact of the CAC, the parties would be wise to employ a similar protocol in developing a residential stormwater credit program.

- Identify willing homeowners and blocks (row homes, twins and singles) that will allow a design team to evaluate feasible and cost-effective practices for homeowners based on their home and yard size and available green space
- Identify the stormwater management practices that are not onerous for a homeowner to maintain
- Pilot the implementation of selected practices on homes on a single block while also implementing PWD funded green street components in streets, public right of ways and/or public facilities
- Work with Next Great City and PennFuture to identify funding sources for the stormwater management improvements to residential properties
- Simultaneously, conduct a thorough literature research of what other cities are doing in the way of residential credits – what has worked for them and what has failed
- Conduct additional focus groups to share residential applications (e.g., rain barrels, rain gardens, flow through planters, etc.) to determine which practices make the most sense to customers and determine a credit target that would motivate action
- PWD Finance to gauge impact on rates once a residential credit program is designed.

The Public Advocate’s witness, Mr. Mierzwa would also like to see the availability of stormwater credits for residential customers. As stated in his testimony:

It would be in the public interest to recognize and provide an incentive through rates for actions taken by residential customers to reduce stormwater runoff associated with their properties. However, stormwater credits should be based on cost of service principles, because if they are not, then customers that take certain actions to reduce however insignificantly their stormwater runoff may gain credits which amount to an unfair subsidy to other customers. On the basis of discovery, we have verified that the most likely method of controlling stormwater runoff for most residential customers inhabiting Philadelphia row homes would be the use of rain barrels. However, to manage the first inch of rainfall, a row home would need a dozen 54 gallon barrels in good operating condition. This does not appear to be a workable solution, given the fact that rain barrels themselves cost approximately \$160 apiece. The savings from the use of one rain barrel are estimated to be only \$0.60 per month (PA-JM-52). Moreover, to assure good operating condition, the Department would have to undertake a system of monitoring which would likely cost more than the savings to be accomplished.

The Public Advocate recommends that the PWD work with PennFuture and the Next Great City Stormwater Subcommittee and other interested parties on a pilot project, one of whose principal goals would be to publicize the public benefits that arise when many customers prevent even a small amount of stormwater runoff. [Emphasis added].

PA Statement 4 at 12.

When asked at the oral argument whether PWD was committed to working with Next Great City and PennFuture to develop a pilot program aimed at extending the stormwater credit program to residential customers in the next rate proceeding, Mr. Dasent responded “Yes, absolutely.” (N.T. 1237:5). Mr. Dasent stated further acknowledged that PWD will have a written report regarding the matter in advance of the next rate proceeding. In view of the foregoing, the Hearing Officer is encouraged that PWD and Next Great City and PennFuture will be working together to develop the pilot program, and fully expects it to be addressed at the next rate proceeding.

V. CONCLUSIONS OF LAW

1. Section 5-800 of the Charter conveys authority to the Department to operate the water and wastewater utilities. In addition, the Charter authorizes the Department to fix and regulate rates and charges for utility services.

2. Section 5-801 requires the Department to set rates that will yield annually amounts sufficient to cover its operating expenses and debt service, in accordance with standards City Council ordains.

3. The pertinent City Council standards related to stormwater rates and charges are set forth in the Philadelphia Code at Section 13-201.

4. Philadelphia Code, Section 13-201 provides that rates and charges shall be equitably apportioned among the various classes of consumers; and that rates and charges shall be just, reasonable and nondiscriminatory as to the same class of consumers.

5. The proposed stormwater cost allocation filing and proposed rate design are consistent with the above legal requirements.

6. The existing stormwater rate design does not satisfy the legal standards governing the regulation of rates and charges in that it causes some customers to overpay for stormwater

services and some customers to underpay for stormwater services, including “stormwater only” customers who have been receiving a “free ride” for stormwater services. See Philadelphia Code § 13-201(2)(d); see also Public Advocate v. City of Philadelphia, 26 Phila. 527, 542-44 (Phila. CCP 1993) (meter-based method of charging for stormwater services “appears to present a discriminatory rate among consumers of the same class”).

7. The proposed stormwater rate design, including the stormwater credit program, satisfies the legal standards governing the regulation of rates and charges in that it results in more equitable stormwater charges that more closely reflect the actual costs of servicing stormwater from a property (i.e., a truer “cost of service”). See Philadelphia Code § 13-201(2)(d).

ORDER

Therefore, it is Ordered:

1. The Philadelphia Water Department's request for the implementation of rate restructuring for stormwater management services is granted in part and denied in part, consistent with this decision.

2. All other requests not specifically granted herein shall be deemed denied.

3. The parties shall file any Exceptions hereto on or before May 14, 2009.

Exceptions should be sent to the direct attention of the Water Commissioner with a courtesy copy to the Hearing Officer and all parties of record.

/s/

Harris T. Bock, Esq.
Hearing Officer

Dated: May 4, 2009