

BEFORE THE
PHILADELPHIA WATER COMMISSIONER

FY 2009-2012 Philadelphia Water Department :
Water and Wastewater Rate Proceeding - Phase 2 :
Stormwater Cost Allocation :

**REBUTTAL TESTIMONY OF JOSEPH CLARE,
JOANNE DAHME AND DAVID KATZ**

Q. PLEASE STATE YOUR NAMES AND BUSINESS ADDRESSES FOR THE RECORD.

A. My name is Joseph S. Clare, III and I serve as the Deputy Water Commissioner – Finance and Administration. Appearing with me in the presentation of this rebuttal testimony is David Katz, Deputy Commissioner and Joanne Dahme, Watersheds Program Manager. Our business address is Philadelphia Water Department, 1101 Market Street, Fifth Floor, Philadelphia, Pennsylvania.

Q. HAVE YOU BOTH PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. Ms. Dahme and I have previously submitted testimony in this proceeding. Mr. Katz is proffering testimony for the first time in this proceeding.¹

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. This testimony serves several purposes. First, it addresses the revisions in the Department's proposals for stormwater cost recovery as identified in informal discovery and PWD discovery responses. Additionally, this testimony will respond to various portions of the direct testimony of Jerome D. Mierzwa, proffered on behalf of the Public Advocate; the direct testimonies of Stephen J. Koczirka, Richard J. Goracy and James Disario, all proffered on behalf of Sunoco, Inc.; and the direct testimony of Wesley R. Horner, proffered on behalf of the Next Great City Stormwater Subcommittee (Penn Future).

Revisions to the Department's Proposal

Q. PLEASE DESCRIBE THE DEPARTMENT'S REVISIONS TO THE STORMWATER COST ALLOCATION PROPOSAL.

¹ Mr. Katz was appointed Deputy Water Commissioner in June 2001 - managing the Department's Environmental Policy and Planning efforts. Previous to this appointment, Mr. Katz served as a Divisional Deputy City Solicitor and had served as the General Counsel to the Department. Mr. Katz holds a B.S. in Economics from the Wharton School, University of Pennsylvania and a J.D. from the Washington College of Law, American University. Prior to joining the City Law Department, Mr. Katz served in a variety of public and private legal positions. See attached resume of experience.

- A. PWD's original rate filing of April 4, 2008 is largely the basis of the Department's current proposal. However, the Department has proposed several modifications to its stormwater proposal via answers to interrogatories during this phase of the case.

The Water Department made the decision to separate the Rates Increase proceeding from the Stormwater component of the Rates Process. This decision was made as both processes were fairly complex and while they are related, it was thought that each deserved a focused and thorough public process. As a result, the Rate Proceeding for Stormwater commenced only in November 2008, following the completion of the Rates Increase proceeding. The Rate Proceeding for Stormwater will close at the delivery of the Hearing Officer's Report, due on March 31, 2009.

The implementation of a parcel area based SWMS charge requires significant technology and operations related activities. Due to the need to have the requisite technology, new business processes, requisite staffing, training, public outreach, and other resources for a successful launch of the parcel area based stormwater charge, we have proposed to delay the phased-in implementation of the proposed SWMS charges until July 1, 2010.

In addition, as the Department's Regulations call for a sixty days notice to all affected customers when billing rates are revised, this would have required the Department to contact all affected non-residential and residential water only customers by April 1, 2009 regarding the resolved stormwater proceeding and impact on the stormwater component of their bill. As a result of this ambitious schedule, the Department decided to postpone the three year phase-in of the stormwater parcel based charge, as currently proposed, until July 2010. The additional time will provide the Department with ample opportunity to conduct a thorough public outreach and education program, particularly geared toward impacted non-residential customers, regarding the stormwater parcel based charge and possibly opportunities for non-residential customers to mitigate these charges through effective stormwater management practices on their properties. This additional time will also allow impacted customers to plan financially over a longer period of time.

Rebuttal to Public Advocate's Testimony

Q. PLEASE STATE THE AREAS OF THE PUBLIC ADVOCATE'S TESTIMONY THAT YOU WILL ADDRESS.

- A. Jerome D. Mierzwa's testimony, proffered on behalf of the Public Advocate, is supportive of the Department's proposals, but raises the following issues which will be addressed in this rebuttal testimony:

- Regulations should provide for the creation of a public records function so that stormwater related information is available to any interested person;
- "Property" as referenced in the regulations should be defined as a parcel listed by the Board of Revision of Taxes;
- The proposed regulations should reflect that outstanding water and sewer charges (including stormwater charges) may be abated at the time of a property's acquisition by the City or the Redevelopment Authority;

- The proposed regulations should specify that watershed parks will not be subject to SWMS charges;
- Proposed regulations should be revised to exclude meter based charges in FY 2012;
- The City Ordinance governing discontinuance permits impacts the ability of PWD, by regulation, to make all residential properties subject to the SWMS Charge; and
- The “Sewer” portion of Mr. Mierzwa’s Table 1-S is for FY 2009 and not FY 2010 as indicated in the title. The “Stormwater” portion is appropriate for FY 2010.

Each of the above subjects will be addressed, in turn, below.

Q. IS IT APPROPRIATE FOR THE DEPARTMENT TO CREATE A PUBLIC RECORDS FUNCTION FOR STORMWATER RELATED INFORMATION?

A. The Department does 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.

Q. SHOULD THE DEPARTMENT INCLUDE A DEFINITION OF “PROPERTY” IN ITS REGULATIONS FOR PURPOSES OF CLARITY?

A. Yes. The Department proposes that the regulations be amended to include a definition of “property.”

Q. IS IT APPROPRIATE FOR THE PROPOSED REGULATIONS TO REFLECT THAT OUTSTANDING WATER AND SEWER CHARGES (INCLUDING STORMWATER CHARGES) MAY BE ABATED UPON A PROPERTY’S ACQUISITION BY THE CITY OR REDEVELOPMENT AUTHORITY?

A. No. 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 regulations is to set forth water, sewer and stormwater charges and their application administratively.

Q. SHOULD THE PROPOSED REGULATIONS SPECIFY THAT WATERSHED PARKS WILL NOT BE SUBJECT TO SWMS CHARGES?

A. No. Watershed parks will be subject to SWMS charges. However, it is anticipated that such parks will qualify for 100% Impervious Area (IA) and Gross Area (GA) credits.

Q. IS IT APPROPRIATE TO REVISE THE PROPOSED REGULATIONS TO EXCLUDE METER BASED CHARGES FOR FY 2012?

A. Not at this point in time. As stated in this testimony the phase-in period for parcel based stormwater charges may be extended, as requested by the Department via this testimony.

Q. PLEASE COMMENT ON WHETHER THE CITY ORDINANCE GOVERNING DISCONTINUANCE PERMITS IMPACTS THE ABILITY OF PWD BY REGULATION TO MAKE ALL RESIDENTIAL PROPERTIES SUBJECT TO THE SWMS CHARGE.

A. Mr. Mierzwa's statements misstate the purpose of the discontinuance permit, which results in his mistaken conclusion. A discontinuance permit is not, as Mr. Mierzwa states, "obtainable when a property owner desires to retain ownership of a property, while minimizing monthly expenses associated with continued ownership." A discontinuance permit is the process through which a property owner permanently disconnects a property from the water and sewer system. Section 19-1601 specifically requires a customer not only secure a discontinuance permit, but also secure "such permit as may be required for any breaking and paving of the street or highway." Philadelphia Code §19-1601(1)(a)(.2). The basis for this second requirement is that the service line connecting the property to the water and sewer system be removed. The cost for reconnection to the system could be thousands of dollars. It was never the intention of Council that a discontinuance permit be used to minimize monthly expenses associated with property ownership. 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.

Mr. Mierzwa states, "Traditionally, 'sewer' charges in Philadelphia have included charges associated with stormwater management, because many parts of Philadelphia's sewer system consist of combined sewers to collect and process both sanitary sewerage and stormwater." Likewise, the stormwater rate reallocation is designed to be revenue neutral and PWD will be reallocating current assessments for stormwater management services, thus "the SWMS charge is not a new charge, but rather results in a separation of charges for stormwater services previously provided as part of the sewer charge." Although Mr. Mierzwa's statements regarding traditional sewer charges are accurate, Mr. Mierzwa fails to follow through with the argument that it is impossible to disconnect a property from the stormwater management system, which provides the rationalization for continuing to assess for stormwater management services regardless of connection to the system. Previously stormwater management service was assessed based upon meter size and therefore directly associated with a property's service connection, which could be disconnected. Under rate reallocation, stormwater management service will be assessed based upon property characteristics, which is unrelated to the service connection and cannot be disconnected.

Section 19-1601 permits a customer to cause the Department to discontinue water and sewer service charges. Based upon the purpose of this Section and the basis for stormwater management service charges under rate reallocation, it is a reasonable interpretation of Section 19-1601 that sewer service charge refers to sanitary sewer service charge only. A property may only permanently disconnect from the water and sanitary sewer service, therefore, it is reasonable to assume that a discontinuance permit is not available for stormwater management services under the new parcel based method of cost recovery for stormwater related costs.

Q. PLEASE COMMENT ON THE “SEWER” PORTION OF MR. MIERZWA’S TABLE 1-S WHICH REFLECTS RATES FOR FY 2009 AND NOT FY 2010 AS INDICATED IN THE TITLE.

A. The sewer portion of Mr. Mierzwa’s Table 1-S does not reflect the accurate FY 2010 rates. The actual FY 2010 sewer portion of the rates is as follows:

Meter Size	FY 2010 Sewer Service Charge
5/8 inch	4.13
¾ inch	14.43
1 inch	22.37
1-1/2 inch	41.79
2 inch	65.63
3 inch	120.66
4 inch	203.06
6 inch	403.16
8 inch	641.52
10 inch	924.04
12 inch	1,703.78

Rebuttal to Sunoco Testimony

Q. PLEASE STATE THE AREAS OF SUNOCO’S TESTIMONY THAT THE DEPARTMENT WILL ADDRESS.

A. 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.

Q. WHY IS SUNOCO MISTAKEN IN ITS BELIEF THAT IT SHOULD BE EXEMPTED FROM STORMWATER CHARGES AS PROPOSED UNDER THE PROPOSED REGULATIONS?

A. Sunoco misses the point that the impact of stormwater discharges to the rivers and streams is the same whether it comes through a privately owned or municipally owned stormwater system.

Stormwater management essentially relates to controlling the impact of stormwater flows whether it is simply the run-off that causes erosion or the pollutants carried with the run-off that affects stream health and quality. Unless properly managed, stormwater run-off can harm the streams, creeks and rivers and tributaries that run throughout Philadelphia.

Given the foregoing, the City has concluded that the fairest and most sensible way to apportion our 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 a parcel owner engages in good on-site stormwater

management, thereby controlling the stormwater run-off and its impact, the parcel owner gets a credit on the stormwater charge either through an IA or GA credit. Thus, the initial allocation system, as well as the credit system, is the most logical, rational and equitable way to distribute the burden of storm water costs.

The City's policy in controlling stormwater impact is 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.

Q. ARE THE PROPOSED CHANGES IN STORMWATER COST ALLOCATION A PART OF AN OVERALL STRATEGY TO IMPROVE LOCAL WATERWAYS?

- A.** It should be noted that PWD faces numerous and complex environmental and regulatory challenges. Whether it's crafting a Combined Sewer Overflow Long Term Control Plan policy or meeting our NPDES stormwater permit obligations we believe that an implementation strategy focused on the direct ecological improvement of streams and creeks throughout the City is often the most effective way to meet these challenges.

The direct improvement and enhancement of our streams is also our best implementation strategy for meeting our regulatory requirements. Probably the best way to illustrate this is through a specific example.

EPA several years ago determined that the Wissahickon Creek was impaired as the result of too much stormwater causing sediment erosion in the creek. As a result of this impairment finding, EPA issued what is known as a Total Maximum Daily Load (TMDL) for the Wissahickon limiting the amount of sediment that could enter the Wissahickon from all sources including the City's stormwater system. Our obligation was then reflected in the City's NPDES stormwater permit.

PWD determined that rather than trying to control the amount of runoff entering the creek, which would have been enormously expensive and difficult, that the best strategy was to actually reinforce and rebuild the stream banks so that the runoff would no longer cause excessive erosion.

When we rebuild the stream banks we rebuild them so they can handle the flow from all sources entering the creek, not just the City's contribution. Otherwise the direct stream enhancement approach would not work.

So again, from a regulatory implementation strategy viewpoint the critical factor is impact. All properties that contribute stormwater to surface water bodies impact water quality and the overall ecology. Therefore, the impact of stormwater discharges is the same to us whether it comes through a privately owned or municipally owned stormwater pipe. All who cause such impact, therefore, must fairly share the costs.

Managing and improving our streams and creeks by directly enhancing the natural environment allows PWD to efficiently and effectively manage its regulatory challenges.

Again, what governs here is impact. All who impact our streams must share the costs, since they most certainly share the benefits.

Q. SHOULD SUNOCO BENEFIT FROM CREDITS ASSOCIATED STORMWATER IMPROVEMENTS MADE ON ITS PROPERTIES?

A. Yes. Sunoco is eligible to receive the maximum IA and GA credits if management practices on its property meet the credit criteria as defined in the Department's regulations. Sunoco can benefit from credits that are offered to all non-residential properties. These credits are available after appropriate application submittals to the City by the property owner and subject to the review and approval by the Department as specified in the proposed regulations.

Q. WHEN WILL SUCH CREDITS BE DETERMINED UNDER THE PROPOSED REGULATIONS?

A. The Department is currently working with Sunoco and other non-residential property owners to evaluate current stormwater management practices and to provide information regarding enhancements to their current practices. This work will continue into the foreseeable future.

As specified in the proposed regulations, property owners whose accounts are in good standing may apply for applicable credits using forms and procedures prepared by the Department and by paying the applicable credit application fee.

Q. WILL CREDITS FOR STORMWATER RELATED IMPROVEMENTS LIKELY MITIGATE THE LEVEL OF CHARGES FOR SUNOCO?

A. The likelihood of Sunoco mitigating the level of stormwater charges through the use of the credits depends on the extent to which Sunoco's onsite stormwater management improvements conform to the technical criteria stipulated by the Department for receiving GA and IA credits. It would also depend on Sunoco's submission of the appropriate documentation supporting the derivation of such credits, payment of the applicable fees, maintenance of their water account in good standing and operation and maintenance of the stormwater management devices as required by the Department.

Q. WHY DID THE DEPARTMENT UTILIZE A 7% CREDIT FOR NPDES PERMITS IN ITS REGULATIONS?

A. It was the Department's intention to give an additional benefit over and above IA and GA credits to NPDES dischargers. This was done consistent with the Citizens Advisory Committee (CAC) Report and the fact that other cities had given such benefits to NPDES dischargers. 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 did not want its NPDES dischargers to be at any competitive disadvantage.

As stated in this testimony, the Department's fundamental cost allocation strategy is based on impact, which in turn is based on the gross area and impervious area of the parcel. This is by far the most sensible and fairest way to allocate our stormwater costs.

Rebuttal to Penn Future Testimony

Q. WHAT AREAS OF PENN FUTURE COALITION TESTIMONY WILL YOU ADDRESS?

A. The testimonies submitted by Wesley R. Horner (Next Great City Stormwater Subcommittee), Brady Russell (Clean Water Action), Patrick Starr (Pennsylvania Environmental Council), Christine Knapp (Citizens for Pennsylvania's Future), Marilyn Wood (10,000 Friends of Pennsylvania), David W. Feldman (Habitat for Humanity) were all very supportive of the Department's proposed changes in stormwater cost allocation. The issue of stormwater credits for residential customers was the only point of concern at this time.

Q. IS IT APPROPRIATE TO EXPLORE THE POSSIBILITY OF A PILOT PROGRAM FOR STORMWATER CREDITS FOR RESIDENTIAL CUSTOMERS IN THE FUTURE?

A. Yes. PWD can and should explore the possibility of a residential stormwater credit program. However, due to staffing limitations and administrative requirements this program should not be implemented at the same time the parcel area based SWMS charge is implemented. Also, the credit program should take into account the relative potential impacts of the installation of the various devices necessary to achieve residential stormwater credits on PWD's system and the level of resources and sophistication that should be anticipated from residential properties. The residential credit program should not be a burden for PWD to implement or maintain, and it should result in a positive cost/benefit relationship for all of the users of the stormwater system.

However, over the past few years, PWD has hosted numerous rain barrel workshops, in which rain barrels were provided at no cost to participants, as a means to empower residents and raise their level of awareness about the importance of stormwater management to our rivers and streams and infrastructure. PWD has also produced a Homeowner's Manual for Stormwater Management, which outlines a number of good housekeeping practices and landscaping modifications that can be made on residential properties.

Q. PLEASE DESCRIBE THE NATURE OF SUCH A RESIDENTIAL PILOT PROGRAM?

A. Such a residential program has not been developed and therefore specifics are generally not available. However, other jurisdictions with stormwater charges have implemented such a residential credit program, and we have agreed to review some of those currently operated residential credit programs to determine the specific features of what might be successfully offered and implemented by PWD.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

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DAVID ALAN KATZ

HIGHLIGHTS OF QUALIFICATIONS

Eighteen years experience with the Water Department in legal and policy making positions. Experienced in complex regulatory and environmental matters, rate making, grant funding, suburban wholesale contracts and working with industry, community groups and regulatory agencies.

EXPERIENCE

2001 to Present

Deputy Water Commissioner, Environmental Policy and Planning

- Handle complex regulatory and environmental issues involving wastewater, storm water , water and air .
- Work with federal, state and regional regulatory agencies in developing and drafting discharge permits and compliance strategies for improving water and air quality.
- Resolve site specific pollution issues working with community groups and industry.
- Review and comment on major new environmental legislation.
- Assist and advise Water Commissioner on numerous issues affecting the Water Department as fifteen year member of Executive Staff.

1990 - 2001

Divisional Deputy City Solicitor for the Water Department, 1992-2001; Chief Assistant City Solicitor, Water Department 1990-1992, Law Department, City of Philadelphia

- General Counsel to the Water Department supervising the Law Department's Water Unit.
- Extensive counseling and litigation on all issues affecting the Water Department.
- Negotiated and drafted environmental permits and Consent Decrees.
- Successfully litigated Act 339 sewage grant funding case winning Department over 20 million dollars.
- Successfully litigated rate making cases for Department.
- Negotiated all wholesale contracts for the sale of water and wastewater to suburban entities.
- Regulated and worked with industrial entities as the City's Pretreatment attorney.

1989

Gordon and Berger P.C., Philadelphia PA

- Corporate Associate

1987–1989

**Chief Assistant City Solicitor, Assistant City Solicitor,
Law Department, Claims Division**

- Defended City against tort and civil rights claims.

1986-1987

Hertzbach, Trichon and Silverstein, Philadelphia PA

- Associate in general practice

1984-1985

Neighborhood Legal Services, Washington D.C.

- Staff attorney handling employment, landlord-tenant and government benefit law.

EDUCATION

Washington College of Law, American University

Washington D. C., Juris Doctor, 1983

Wharton School, University of Pennsylvania

Philadelphia PA., Bachelor of Science in Economics, 1979

Graduated Cum Laude

**PROFESSIONAL
AFFILIATIONS**

Frequent lecturer on environmental issues affecting water and wastewater utilities.

Served as Vice Chair, Legal Affairs, Association of Metropolitan Sewerage Agencies.

Authored the wastewater industry's guide for compliance with the Clean Water Act's water quality issues entitled *Association of Metropolitan Sewerage Agencies Evaluating TMDLs...Protecting the Rights of POTWs.*